

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

BETWEEN:

TIBERIU GAVRILA

Appellant
(Applicant)

- and -

THE MINISTER OF JUSTICE OF CANADA

Respondent
(Respondent)

**AMNESTY INTERNATIONAL (CANADA SECTION),
ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES EN DROIT DE
L'IMMIGRATION,
CANADIAN CIVIL LIBERTIES ASSOCIATION**

Interveners

**FACTUM OF THE INTERVENER,
AMNESTY INTERNATIONAL (CANADA SECTION)**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – STATEMENT OF FACTS

1. The Intervener, the Canadian Section of Amnesty International (“Amnesty Canada”) takes no position on the facts.

PART II – POSITION ON POINTS IN ISSUE

2. Amnesty Canada accepts the issues as framed by the Appellant, and takes the following positions on the issues raised by the appeal:

- a) The Court of Appeal erred in holding that the extradition and refugee determination procedures are distinct and independent from each other. These two regimes are interconnected and they must be interpreted so as to ensure that all of Canada’s international obligations and obligations under the *Canadian Charter of Rights and Freedoms* (“the *Charter*”) are respected.
- b) The Court of Appeal erred in holding that the *Extradition Act* provides sufficient protection against *refoulement*.
- c) In exercising his discretion to surrender a Convention Refugee for extradition the Minister must ensure that he is acting in compliance with Canada’s international obligations and the *Charter*. This requires that the Minister conduct a proper risk assessment in accordance with the principles of fundamental justice so that extradition does not expose a person to a risk of persecution or torture.

PART III – STATEMENT OF ARGUMENT

A. The Extradition and Refugee Protection Regimes Are Not Distinct

The Statutes Have Similar Objectives

3. The Quebec Court of Appeal erred in holding that the refugee and extradition regimes are two distinct processes. Instead, the *Extradition Act*¹ and the *Immigration and Refugee Protection Act* (“IRPA”)² should be viewed as complimentary pieces of legislation, that must both be interpreted in a manner consistent with Canada’s international obligations, including the obligation to uphold the principle of *non-refoulement* in cases where the Government of Canada is dealing with the possible extradition of a refugee or refugee claimant.

4. Both statutes are concerned with the issues of criminality and risk. With regards to criminality, both Acts attempt to ensure that Canada is not a safe haven for individuals who have committed serious crimes elsewhere. The *Extradition Act* codifies into domestic law Canada’s international obligations to surrender fugitives who have committed crimes, or are alleged to

¹ *Extradition Act*, S.C. 1999, c. 18.

² *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

have committed crimes, in other jurisdictions.³ Similarly, IRPA is meant “to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks”.⁴

5. With regards to the risks faced by an individual being removed from Canada, both the extradition and refugee regimes require a determination as to whether or not the person is at risk of torture, persecution, cruel, inhumane or degrading treatment in the country to which they are to be sent. This determination must be made in a manner consistent with the principles of fundamental justice. This risk assessment is required in order to ensure Canada does not return a person to persecution or torture in breach of our international obligations or section seven of the *Charter*.⁵

The Statutes Have Overlapping Procedures

6. In both the extradition and refugee determination procedures a competent body, either the Immigration and Refugee Board (“the IRB”) or the Superior Court, determines whether there are reasonable grounds to believe that the person has committed the offence. Under s. 24 of the *Extradition Act*, this is carried out in a hearing before a Superior Court judge. In IRPA, the IRB makes this determination if the Minister raises a s. 98 exclusion issue.⁶ Section 98 of IRPA incorporates Article 1F(b) of the *United Nations Convention relating to the Status of Refugees* (“Refugee Convention”) into IRPA, which denies refugee protection to persons who there are reasonable grounds to believe have committed a serious non-political crime.⁷

7. Similarly, in both regimes a proper constitutionally mandated risk assessment is done by the IRB or the Minister of Citizenship and Immigration. If there is risk to the person upon return,

³ *United States of America v. Kwok*, [2001] 1 S.C.R. 532 at para. 27.

⁴ IRPA, *supra*, at s. 3(i).

⁵ *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9. In most cases when a person claims refugee protection the determination will be carried out at the Refugee Protection Division (RPD) of the IRB. However, if the claimant is excluded or found ineligible to make a refugee claim then he or she is still entitled to a risk assessment known as a Pre Removal Risk Assessment (PRRA) which is carried out prior to removal.

⁶ The provision has been used to deny Convention Refugee status to claimants in circumstances where they have not been sought for extradition. The leading case is *Jayasekara v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404, where the Federal Court of Appeal provides guidelines of the interpretation of s. 98.

⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, v. 189, p. 137. While the exact meaning of the term “serious non-political crime” may be the subject of differing views, it is clear that not all extraditable offenses are so serious a character as to involve exclusion from refugee status”: United Nations High Commissioner for Refugees, Note on Problems of Extradition Affecting Refugees, EC/SCP/14, 27 August 1980 at para. 5.

then under both Acts, the *Charter* and Canada's international obligations preclude return unless there are exceptional circumstances that are consistent with fundamental justice.⁸

8. In cases where the extradition of a refugee claimant is sought, section 40(2) of the *Extradition Act* requires the Minister of Justice to consult with the Minister of Citizenship and Immigration prior to rendering a decision on surrender.⁹ In this procedure, the Minister of Citizenship and Immigration bears the responsibility of providing the Minister of Justice with a risk analysis that has been conducted in accordance with the principles of fundamental justice. The Minister of Citizenship and Immigration has expertise in this area and is already responsible for conducting pre-removal risk assessments in the context of some claims for refugee protection.¹⁰ It is therefore logical that the *Extradition Act* gives the responsibility for making the risk assessment to the Minister of Citizenship and Immigration.

9. In contrast, where the extradition of a person who has already been found to be a Convention Refugee is sought, the *Extradition Act* does not require a consultation with the Minister of Citizenship and Immigration. There is no need for a new assessment of risk. At that stage, a binding positive determination on risk has already been made by the Immigration and Refugee Board ("the IRB").

10. Given these two overlapping objectives and procedures, it is essential that the *Extradition Act* and IRPA are interpreted in conjunction with one another to avoid conflict and ensure the best possible outcome for each objective is achieved.

Principles of Statutory Interpretation Require that the Extradition Act and IRPA be reconciled

11. It is an established principle of statutory interpretation that the legislature intends to produce

⁸ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 [*Suresh*]; *United States of America v. Burns*, [2001] 1 S.C.R. 283. Relevant international obligations include the protection against *refoulement* in Art. 33 of the *Refugee Convention*, *supra*, and the prohibition on return to torture in Art. 3 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* : UNGA Resolution 10 December 1984, A/RES/39/46 [*Convention Against Torture*].

⁹ In cases where the claimant is the subject of an authority to proceed, under s. 105 of IRPA the claim is suspended and if the Minister determines to surrender, and the offence is punishable by more than 10 years, then the claim is deemed to be rejected and the person is not entitled to a PRRA.

¹⁰ Under IRPA, determinations of claims for refugee protection are made by the IRB if a person is found eligible to make a refugee claim. In all other circumstances, and in the case of a failed refugee claimant, determinations of claims for refugee protection are made by the Minister (or his/her delegate) who decides the PRRA. Individuals are still entitled to procedural fairness in the PRRA process, including an opportunity to respond.

coherent, internally consistent legislation.¹¹ Therefore, different legislative enactments should be interpreted, where possible, in a manner that avoids conflict. Furthermore, to achieve a harmonious interpretation, the scope of one or both overlapping provisions may be narrowed to make room for the other, and any apparent repugnancy should be avoided by reconciling the two enactments where possible.¹²

12. It is Amnesty Canada's submission that the Quebec Court of Appeal erred because it did not reconcile the two statutes. Instead, it created a conflict between them by holding that the *Extradition Act* could be interpreted independently of IRPA, even where a Convention Refugee is sought for extradition to the country where the IRB has determined they have a well founded fear of persecution. Interpreting the *Extradition Act* independently of IRPA effectively allows the Minister of Citizenship and Immigration to revoke a person's refugee status without following the procedures specified in IRPA for doing so,¹³ thus rendering these provisions meaningless. Such an interpretation puts the *Extradition Act* procedures in direct conflict with the rights and procedures in IRPA.

13. Amnesty Canada's submission is that such a conflict can be avoided. The two statutes can and should be interpreted in a harmonious fashion by requiring the Minister of Justice to accept that a person is at risk of persecution if the IRB has found them to be a Convention Refugee under IRPA. The Minister of Justice must then accept the IRB's positive risk determination when exercising his discretion to surrender an individual. If the sought-after individual is a Convention Refugee, the Minister of Justice will be precluded from surrendering the person to the country where they face a risk of persecution, unless the procedures set out in IRPA are used to have the decision of the IRB vacated, a cessation is obtained, or a determination pursuant to section 115(2) of IRPA is made. The requirement that the Minister of Justice respect the procedures outlined in IRPA can be read into the *Extradition Act* without any conflict with the text or purpose of the Acts. In this way, the *Extradition Act* can be reconciled with IRPA.

14. Furthermore, a purposive analysis of the two legislative schemes reveals that the Minister of

¹¹ Ruth Sullivan, *Statutory Interpretation*, 2nd ed. (Toronto: Irwin Law Inc., 2007) at p. 305.

¹² *Condominium Plan No. 762 0380 (Owners) v. Edmonton (City of)* 2001 ABQB 97 at para. 86.

¹³ Once the IRB has granted status, the Minister can only revoke this status by bringing a cessation application under s. 108 of IRPA, and establishing on a balance of probabilities that the reasons for which the person sought protection have ceased to exist, or by bringing a vacation application under s. 109, and establishing that the refugee status was obtained through a misrepresentation.

Justice is not authorized to extradite a person that the IRB has deemed to be a Convention Refugee to a country where they have a well founded fear of persecution. IRPA explicitly lays out a procedure for the extradition of refugee claimants, but is silent on the issue of individuals who have been found to be Convention Refugees. Had Parliament intended the *Extradition Act* procedure to apply to individuals who have already been granted refugee status, this would also have been explicitly laid out in IRPA. By implication, this silence suggests that the procedure outlined in IRPA should be followed.

15. The presumption in IRPA is that a claim for refugee status will be determined by an independent tribunal, the Refugee Protection Division of the IRB or by a PRRA officer doing a risk assessment under section 112. Nothing in the *Extradition Act* explicitly confers on the Minister of Justice the authority to determine cessation of refugee status, and s. 105 of IRPA is confined to circumstances in which the authority to proceed under s. 15 of the *Extradition Act* is issued prior to determination of the refugee claim. Moreover, nothing in the *Extradition Act* directly or by necessary implication empowers the Minister of Justice to usurp the jurisdiction of the independent tribunal with expertise in conferring refugee status to be able to determine cessation of that status once granted. If the legislature intended to confer upon the Minister of Justice such authority, it could have done so. Therefore, Amnesty Canada submits that the Minister of Justice is without jurisdiction to extradite a Convention Refugee, and must use the appropriate procedures laid out in IRPA to set aside the refugee status.

B. The Extradition Act, IRPA and the Minister’s Exercise of Discretion Must Accord with Canada’s International Law Obligations and Section Seven of the *Charter*

The Principle of *Non-Refoulement* is one of Canada’s International Legal Obligations

16. The principle of *non-refoulement* is a cornerstone in international refugee protection.¹⁴ The principle of *non-refoulement* is codified in Article 33(1) of the Refugee Convention:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.¹⁵

¹⁴ UN High Commissioner for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, December 2009, 1975 – 2009, at Conclusion No. 6, see also Conclusion 25, para. (b), where the UNHCR Executive Committee argues that the principle of *non-refoulement* is progressively acquiring the character of *jus cogens* [“Executive Committee Conclusions”]; UN High Commissioner for Refugees, *Thematic Compilation of Executive Committee Conclusions*, August 2008, Third edition.

¹⁵ Refugee Convention, *supra*, Article 33(1).

The principle of *non-refoulement* applies to any person who has been deemed a refugee under the terms of the Refugee Convention and is binding on all states that have ratified the Convention.

17. Canada ratified the *Refugee Convention* in 1969, therefore the principle of *non-refoulement* forms part of Canada's international obligations.¹⁶ Furthermore, *non-refoulement* is generally recognized as a principle of customary international law.¹⁷ It has been incorporated in international treaties at both the universal and regional levels with a significant number of State parties.¹⁸ This principle has also been systematically reaffirmed in Conclusions of the Executive Committee and in Resolutions adopted by the General Assembly, thus demonstrating international consensus on this principle.¹⁹

18. Canada has implemented the principle of *non-refoulement* in section 115(1) of IRPA:

A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.²⁰

19. According to this Court's jurisprudence, s. 115 of IRPA should be interpreted in a manner "which is consonant with the relevant international obligations" because it is the domestic implementation of Article 33 of the *Refugee Convention*.²¹

20. Amnesty Canada submits that in light of Article 33(1) of the Convention, the phrase "removed from Canada" in section 115(1) of IRPA must be interpreted to mean "returned in any

¹⁶UN High Commissioner for Refugees, State Parties to the 1951 Convention and its 1967 Protocol.

¹⁷ Executive Committee Conclusions, at Conclusion No. 79, para. (i); UN High Commissioner for Refugees, *UNHCR Note on the Principle of Non-Refoulement*, November 1997, [UNHCR Note]. See also Executive Committee Conclusions, Conclusion No. 22 para. II A 2; Conclusion No. 25, at para. (b). The principle of *non-refoulement* was first referred to in Article 3 of the *1933 Convention relating to the International Status of Refugees* and later endorsed by the U.N. General Assembly Resolution 8(I), 13th Plen. Mtg., 12 February 1946, para. c(ii); Guy S. Goodwin-Gill: *Convention Relating To The Status Of Refugees Protocol Relating To The Status Of Refugees*, United Nations Audiovisual Library of International Law 2008 at 4.

¹⁸ Ibid. See e.g. Article 22(8) of the *American Human Rights Convention* O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978 which provides that: "In no case may an alien be deported or returned to a country regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions."

¹⁹ UNHCR Note, *supra*; See in particular Executive Committee Conclusions, Conclusion No. 6, and Article 3 (1) of the *Declaration on Territorial Asylum* United Nations GA Res. 2312 (XXII) (1967) .

²⁰ IRPA, *supra*, s. 115(1)

²¹ *National Corn Growers assn. v. Canada (Import tribunal)* [1990] 2 S.C.R. 1324 at para. 74. See also *Pushpanathan v. Canada (Minister of Citizenship and Immigration)* [1998] 1 S.C.R. 982.

manner whatsoever;”²² a phrase that has repeatedly been held by the international community to preclude extradition to the country of persecution. Interpreted in this way, IRPA adequately protects refugees against *refoulement* in accordance with international law, including Canada’s obligations under the *Refugee Convention* and the *Convention Against Torture*.

21. Similarly, the Minister of Justice must exercise the discretion conferred upon him in sections 15 and 40 of the *Extradition Act* in accordance with Canada’s international legal obligations and the *Charter*.²³ The Minister’s failure to appropriately apply the principle of *non-refoulement* when exercising his discretion renders his decision unreasonable.

Non-Refoulement is a Mandatory Bar to Extradition but for Exceptional Circumstances

22. The principle of *non-refoulement* establishes a mandatory bar to extradition where extradition would result in the surrender of a Convention Refugee to a country where they face a risk of persecution, unless there are reasonable grounds to believe the individual is a danger to the security of country, or has been convicted of a particularly serious crime.²⁴ For State Parties of the *Refugee Convention* or the *Protocol Relating to the Status of Refugees*,²⁵ the obligation to protect refugees from *refoulement* prevails over any duty to extradite which they may have under a bilateral or multilateral extradition treaty with respect to a State requesting extradition.²⁶

23. There are several reasons why extradition must be interpreted as falling within the scope of Article 33(1) of the *Refugee Convention*. First, the words of Article 33(1) are apparent. The phrase “in any manner whatsoever” indicates clearly that the concept of *refoulement* must be construed expansively and without limitation. There is nothing in the formulation of the principle in Article 33(1) or in the exceptions indicated in Article 33(2) to the effect that extradition falls outside the scope of its terms.²⁷

²² *Refugee Convention*, *supra*, section 33(1).

²³ [*Baker v. Canada \(Minister of Citizenship and Immigration\)*](#), [1999] 2 S.C.R. 817 at paras. 69-71.

²⁴ *Refugee Convention*, *supra*, Art. 33(2).

²⁵ UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267.

²⁶ Sibylle Kapferer (UNHCR Consultant): *The Interface Between Extradition and Asylum*, Legal and Protection Policy Research Series, Department of International Protection, November 2003, at para 229; UNHCR Note on Problems of Extradition Affecting Refugees, *supra*, at para. 16.

²⁷ UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007: “The prohibition of *refoulement* to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, **extradition**, informal transfer or “renditions”, and non-admission at the border in the circumstances described below. This is evident from the wording of Article 33(1) of

24. Second, the express terms of a number of standard-setting multilateral conventions in the field support this proposition including Article 3(2) of the *1957 European Convention on Extradition*²⁸ and Article 4(5) of the 1981 *Inter-American Convention on Extradition*.²⁹ Furthermore, the UN High Commissioner for Refugees (“the UNHCR”) Executive Committee has reaffirmed the fundamental character of the principle of *non-refoulement*, recognised that refugees should be protected from extradition to a country where they have well-founded fear of persecution, and called upon States to ensure that the principle of *non-refoulement* is taken into account in the drafting of extradition treaties and the application of national legislation.³⁰

25. Third, any exclusion of extradition from the scope of Article 33(1) would undermine the effectiveness of the *Refugee Convention* because it would allow States to defeat the prohibition on *refoulement* by simply making an extradition request. Such a reading of Article 33 would not be consistent with the humanitarian object of the Refugee Convention.³¹

C. The *Extradition Act* Does Not Provide a Proper Risk Assessment and Adequate Protection against *Refoulement*

26. The Quebec Court of Appeal erred in determining that the assessment done by the Minister of Justice under the *Extradition Act* is a proper risk assessment which upholds our international and constitutional obligations to protect refugees from *refoulement*.

27. The procedure for determining whether or not to surrender a fugitive in the extradition context is set out in section 44(1) of the *Extradition Act*. It reads as follows:

The Minister shall refuse to make a surrender order if the Minister is satisfied that
 (a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or
 (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.

28. There are three central reasons why this procedure does not provide refugees with sufficient protection against *refoulement*. First, the nature of the decision making process is set out very

the 1951 Convention, which refers to expulsion or return (refoulement) "in any manner whatsoever" (emphasis added, paragraph 7). See also: Sir Elihu Lauterpacht CBE QC, Daniel Bethlehem: *The Scope and Content of The Principle of Non-Refoulement*, United Nations High Commissioner For Refugees, 20 June 2001, at para. 72.

²⁸ Paris, 13.XII.1957.

²⁹ Organization of American States, *Inter-American Convention on Extradition*, 25 February 1981; Lauterpacht and Bethlehem, *supra* at para. 73.

³⁰ Executive Committee Conclusions, *supra*, Conclusion No.17, at paragraphs (b)-(e). 27.

³¹ Lauterpacht and Bethlehem, *supra* at para. 74. See also UN High Commissioner for Refugees: “UNHCR shocked by extradition of Uzbeks from Kyrgyzstan” News Stories, 9 August 2006.

differently in the two Acts. Under s. 44(1)(a) of the *Extradition Act*, a decision of the Minister of Justice as to whether the surrender of an individual would be unjust or oppressive is a discretionary decision subject to deference.³² Consequently, all the Minister must do is consider the relevant factors, and ensure his decision is within the scope of his discretion. In contrast, a refugee determination made pursuant to IRPA is judicial in nature. All facts are determined based on an assessment of the evidence, and the legal issues are determined based on jurisprudence on the definition of Convention Refugee.

29. Furthermore, the Minister of Justice's decision to extradite requires the Minister to balance all the relevant circumstances and weigh factors in favour of surrender with factors against surrender. The risk assessment is but one of these factors.³³ In contrast, under IRPA, a finding by the IRB that the individual is at risk is a complete bar to removal except in very limited circumstances.³⁴ The Minister's analysis under s. 44(1)(a) is therefore considerably different from the IRB's determination that a person faces a risk of persecution.

30. Second, the standard and burden of proof that an individual must meet in order to establish that they are at risk is much more demanding under the *Extradition Act* than it is under IRPA. According to IRPA, a refugee has to demonstrate that there is more than a mere possibility of persecution.³⁵ This threshold is set out in the *Refugee Convention* and has been accepted by many states as the required threshold.³⁶ This threshold is also consistent with the human rights purpose of the legislation. In contrast, the *Extradition Act* requires an applicant to demonstrate on a higher balance of probabilities standard that he or she is at risk. The applicant also bears the burden of proof under the *Extradition Act*; a burden which the Government would have to bear in order to set aside an individual's refugee status under IRPA or to justify a determination made under section 115(2).

31. The higher burden that the *Extradition Act* places on an applicant makes it more likely that an individual at risk will be returned to a country where they face persecution, contrary to the principle of *non-refoulement*. This discrepancy also means that refugees who are the subject of

³² *Canada (Justice) v. Fischbacher*, [2009] S.C.J. No. 46 at para. 37.

³³ *Ibid.* at para. 38.

³⁴ *Suresh*, *supra*.

³⁵ *Adjei v. Canada (Minister of Employment and Immigration)* [1989] 2 F.C. 680.

³⁶ See for example *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

extradition requests have to meet a different threshold in order to receive protection from Canada when compared to those individuals who are not subject to such requests.

32. Third, the surrender factors outlined in s. 44(1)(b) of the *Extradition Act* are narrower than the factors that are considered under IRPA. Section 44(1)(b) of the *Extradition Act* requires the Minister to refuse extradition if the request for extradition is made for the purpose of prosecuting or punishing the person by reason of a prohibited ground. Yet, the definition of persecution captures a much broader range of circumstances. For example, persecution includes systemic discrimination, grave violations of economic, social and cultural rights, enforced disappearances, sexual violence, torture and extrajudicial killing, and can include acts committed by non-state agents. A Convention refugee may therefore be at risk of persecution that is unrelated to a criminal prosecution. Similarly, the principle of *non-refoulement* protects against all forms of persecution, and cannot be limited to cases where a refugee would be unfairly prosecuted.

33. In the Appellant's case, the IRB was not aware of his criminal prosecution when it determined that he faces a risk of persecution in Romania. Therefore, it may be that the request for surrender was not made for the purpose of persecuting the Appellant, but that he continues to face a broader risk of persecution unrelated to his criminal prosecution. Because the *Extradition Act* only refers to persecutory prosecutions, it does not adequately protect against all forms of persecution.

PART IV – COSTS SUBMISSIONS

34. Amnesty Canada does not seek any costs in this appeal, and asks that it not be subject to any cost orders.

PART V – ORDER REQUESTED

35. Amnesty Canada requests permission to make oral argument. Amnesty Canada takes no position on the disposition of this appeal, but respectfully requests that the legal issues raised in the appeal be decided in accordance with the foregoing submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of January, 2010.

Lorne Waldman
Counsel for the Intervener, Amnesty International

Jacqueline Swaisland

PART VI - TABLE OF AUTHORITIES

<u>Cases Cited</u>	<u>Paragraph No(s).</u>
<i>Adjei v. Canada (Minister of Employment and Immigration)</i> , [1989] 2 F.C. 680	29
<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , [1999] 2 S.C.R. 817	20
<i>Canada (Justice) v. Fischbacher</i> , 2009 SCC 46	27
<i>Charkaoui v. Canada (Citizenship and Immigration)</i> , 2007 SCC 9	5
<i>Condominium Plan No. 762 0380 (Owners) v. Edmonton (City of)</i> , 2001 ABQB 97	11
<i>INS v. Cardoza-Fonseca</i> , 480 U.S. 421 (1987)	29
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PART VII – RELEVANT LEGISLATIVE PROVISIONS



CANADA

CONSOLIDATION

CODIFICATION

Immigration and Refugee Protection Act

Loi sur l'immigration et la protection des réfugiés

S.C., 2001, c. 27

L.C., 2001, ch. 27

Current to December 2, 2009

À jour au 2 décembre 2009

Published by the Minister of Justice at the following address:
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the Protocol to that Convention, signed at New York on January 31, 1967. Sections E and F of Article 1 of the Refugee Convention are set out in the schedule.

Act includes regulations

(2) Unless otherwise indicated, references in this Act to “this Act” include regulations made under it.

OBJECTIVES AND APPLICATION

Objectives — immigration

3. (1) The objectives of this Act with respect to immigration are

(a) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;

(b) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;

(b.1) to support and assist the development of minority official languages communities in Canada;

(c) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;

(d) to see that families are reunited in Canada;

(e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

(g) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

(h) to protect the health and safety of Canadians and to maintain the security of Canadian society;

(i) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory

« résident permanent » Personne qui a le statut de résident permanent et n’a pas perdu ce statut au titre de l’article 46.

« résident permanent »
“permanent resident”

(2) Sauf disposition contraire de la présente loi, toute mention de celle-ci vaut également mention des règlements pris sous son régime.

Terminologie

OBJET DE LA LOI

3. (1) En matière d’immigration, la présente loi a pour objet :

Objet en matière d’immigration

a) de permettre au Canada de retirer de l’immigration le maximum d’avantages sociaux, culturels et économiques;

b) d’enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;

b.1) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;

c) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l’immigration;

d) de veiller à la réunification des familles au Canada;

e) de promouvoir l’intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;

f) d’atteindre, par la prise de normes uniformes et l’application d’un traitement efficace, les objectifs fixés pour l’immigration par le gouvernement fédéral après consultation des provinces;

g) de faciliter l’entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d’activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l’échelle internationale;

h) de protéger la santé des Canadiens et de garantir leur sécurité;

i) de promouvoir, à l’échelle internationale, la justice et la sécurité par le respect des

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	<p>to persons who are criminals or security risks; and</p> <p>(j) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.</p>	<p>droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;</p> <p>j) de veiller, de concert avec les provinces, à aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.</p>	
Objectives — refugees	<p>(2) The objectives of this Act with respect to refugees are</p> <p>(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;</p> <p>(b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;</p> <p>(c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;</p> <p>(d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;</p> <p>(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;</p> <p>(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;</p> <p>(g) to protect the health and safety of Canadians and to maintain the security of Canadian society; and</p> <p>(h) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.</p>	<p>(2) S'agissant des réfugiés, la présente loi a pour objet :</p> <p>a) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution;</p> <p>b) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d'affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller;</p> <p>c) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada;</p> <p>d) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;</p> <p>e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;</p> <p>f) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada;</p> <p>g) de protéger la santé des Canadiens et de garantir leur sécurité;</p> <p>h) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.</p>	Objet relatif aux réfugiés
Application	<p>(3) This Act is to be construed and applied in a manner that</p>	<p>(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :</p>	Interprétation et mise en oeuvre

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	claimant who is charged with an offence under an Act of Parliament that may be punished by a maximum term of imprisonment of at least 10 years.	fédérale punissable d'un emprisonnement maximal d'au moins dix ans.	
Continuation	(2) On notice by an officer that the suspended claim was determined to be eligible, proceedings of the Refugee Protection Division and of the Refugee Appeal Division shall continue.	(2) L'étude de la demande reprend sur avis portant que la demande est recevable.	Continuation
Notice of ineligible claim	<p>104. (1) An officer may, with respect to a claim that is before the Refugee Protection Division or, in the case of paragraph (d), that is before or has been determined by the Refugee Protection Division or the Refugee Appeal Division, give notice that an officer has determined that</p> <p>(a) the claim is ineligible under paragraphs 101(1)(a) to (e);</p> <p>(b) the claim is ineligible under paragraph 101(1)(f);</p> <p>(c) the claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and that the claim was not otherwise eligible to be referred to that Division; or</p> <p>(d) the claim is not the first claim that was received by an officer in respect of the claimant.</p>	<p>104. (1) L'agent donne un avis portant, en ce qui touche une demande d'asile dont la Section de protection des réfugiés est saisie ou dans le cas visé à l'alinéa d) dont la Section de protection des réfugiés ou la Section d'appel des réfugiés sont ou ont été saisies, que :</p> <p>a) il y a eu constat d'irrecevabilité au titre des alinéas 101(1)a) à e);</p> <p>b) il y a eu constat d'irrecevabilité au seul titre de l'alinéa 101(1)f);</p> <p>c) la demande n'étant pas recevable par ailleurs, la recevabilité résulte, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait;</p> <p>d) la demande n'est pas la première reçue par un agent.</p>	Avis sur la recevabilité de la demande d'asile
Termination and nullification	<p>(2) A notice given under the following provisions has the following effects:</p> <p>(a) if given under any of paragraphs (1)(a) to (c), it terminates pending proceedings in the Refugee Protection Division respecting the claim; and</p> <p>(b) if given under paragraph (1)(d), it terminates proceedings in and nullifies any decision of the Refugee Protection Division or the Refugee Appeal Division respecting a claim other than the first claim.</p>	<p>(2) L'avis a pour effet, s'il est donné au titre :</p> <p>a) des alinéas (1)a) à c), de mettre fin à l'affaire en cours devant la Section de protection des réfugiés;</p> <p>b) de l'alinéa (1)d), de mettre fin à l'affaire en cours et d'annuler toute décision ne portant pas sur la demande initiale.</p>	Classement et nullité
	<i>Extradition Procedure</i>	<i>Procédure d'extradition</i>	
Suspension if proceeding under Extradition Act	105. (1) The Refugee Protection Division and Refugee Appeal Division shall not commence, or shall suspend, consideration of any matter concerning a person against whom an authority to proceed has been issued under section 15 of the <i>Extradition Act</i> with respect to an offence under Canadian law that is punishable under an Act of Parliament by a maximum term	105. (1) La Section de la protection des réfugiés ou la Section d'appel des réfugiés sursoit à l'étude de l'affaire si la personne est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la <i>Loi sur l'extradition</i> pour une infraction punissable aux termes d'une loi fédérale d'un emprisonnement d'une durée maximale égale ou supérieure à dix ans tant qu'il n'a	Sursis

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	of imprisonment of at least 10 years, until a final decision under the <i>Extradition Act</i> with respect to the discharge or surrender of the person has been made.	pas été statué en dernier ressort sur la demande d'extradition.	
Continuation if discharge under <i>Extradition Act</i>	(2) If the person is finally discharged under the <i>Extradition Act</i> , the proceedings of the applicable Division may be commenced or continued as though there had not been any proceedings under that Act.	(2) Si la personne est remise en liberté sans conditions, l'affaire procède comme si la procédure d'extradition n'avait jamais eu lieu.	Libération
Rejection if surrender under <i>Extradition Act</i>	(3) If the person is ordered surrendered by the Minister of Justice under the <i>Extradition Act</i> and the offence for which the person was committed by the judge under section 29 of that Act is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, the order of surrender is deemed to be a rejection of a claim for refugee protection based on paragraph (b) of Section F of Article 1 of the Refugee Convention.	(3) L'arrêté visant la personne incarcérée sous le régime de la <i>Loi sur l'extradition</i> pour l'infraction visée au paragraphe (1) est assimilé au rejet de la demande d'asile fondé sur l'alinéa b) de la section F de l'article premier de la Convention sur les réfugiés.	Extradition
Final decision	(4) The deemed rejection referred to in subsection (3) may not be appealed, and is not subject to judicial review except to the extent that a judicial review of the order of surrender is provided for under the <i>Extradition Act</i> .	(4) La décision n'est pas susceptible d'appel ni, sauf sous le régime de la <i>Loi sur l'extradition</i> , de contrôle judiciaire.	Décision finale
Limit if no previous claim	(5) If the person has not made a claim for refugee protection before the order of surrender referred to in subsection (3), the person may not do so before the surrender.	(5) La personne qui n'a pas demandé l'asile avant la date de l'arrêté d'extradition ne peut le demander dans l'intervalle entre cette date et sa remise aux termes de l'arrêté.	Précision
	<i>Claimant Without Identification</i>	<i>Étrangers sans papier</i>	
Credibility	106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	106. La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.	Crédibilité
	<i>Decision on Claim for Refugee Protection</i>	<i>Décision sur la demande d'asile</i>	
Decision	107. (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.	107. (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.	Décision
No credible basis	(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall	(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état	Preuve

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state in its reasons for the decision that there is no credible basis for the claim.

Cessation of Refugee Protection

Rejection

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;

(b) the person has voluntarily reacquired their nationality;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

(e) the reasons for which the person sought refugee protection have ceased to exist.

Cessation of refugee protection

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Effect of decision

(3) If the application is allowed, the claim of the person is deemed to be rejected.

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

Applications to Vacate

Vacation of refugee protection

109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

dans sa décision de l'absence de minimum de fondement de la demande.

Perte de l'asile

Rejet

108. (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

b) il recouvre volontairement sa nationalité;

c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

e) les raisons qui lui ont fait demander l'asile n'existent plus.

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

Perte de l'asile

(3) Le constat est assimilé au rejet de la demande d'asile.

Effet de la décision

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

Exception

Annulation par la Section de la protection des réfugiés

Demande d'annulation

109. (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

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of the opinion that a hearing is required or if it has allowed an appeal by the Minister that was based on a question of the claimant's credibility.

tat de l'appel du ministre, sur une question de crédibilité du demandeur, lui est favorable.

DIVISION 3

PRE-REMOVAL RISK ASSESSMENT

Protection

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Exception

(2) Despite subsection (1), a person may not apply for protection if

(a) they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;

(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;

(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or

(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

Restriction

(3) Refugee protection may not result from an application for protection if the person

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

SECTION 3

EXAMEN DES RISQUES AVANT RENVOI

Protection

Demande de protection

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Exception

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la *Loi sur l'extradition*;

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);

c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

Restriction

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

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	<p>(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or</p> <p>(d) is named in a certificate referred to in subsection 77(1).</p>	<p>c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;</p> <p>d) il est nommé au certificat visé au paragraphe 77(1).</p>	
Consideration of application	<p>113. Consideration of an application for protection shall be as follows:</p> <p>(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;</p> <p>(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;</p> <p>(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;</p> <p>(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and</p> <p>(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or</p> <p>(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.</p>	<p>113. Il est disposé de la demande comme il suit :</p> <p>a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;</p> <p>b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;</p> <p>c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;</p> <p>d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :</p> <p>(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,</p> <p>(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.</p>	Examen de la demande
Effect of decision	<p>114. (1) A decision to allow the application for protection has</p> <p>(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and</p> <p>(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.</p>	<p>114. (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.</p>	Effet de la décision
Cancellation of stay	<p>(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with</p>	<p>(2) Le ministre peut révoquer le sursis s'il estime, après examen, sur la base de l'alinéa 113d) et conformément aux règlements, des</p>	Révocation du sursis



CANADA

CONSOLIDATION

CODIFICATION

Extradition Act

Loi sur l'extradition

S.C., 1999, c. 18

L.C., 1999, ch. 18

Current to December 2, 2009

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	(ii) when the request for extradition has been made and the documents provided within the period but the Minister has not issued an authority to proceed before the expiry of 30 days after the expiry of that period; or	(ii) soit le ministre n'a pas pris l'arrêté dans les trente jours suivant l'expiration de ce délai, malgré que la demande ait été faite et les documents fournis dans le délai;	
	(c) if the provisional arrest was not made pursuant to a request made under an extradition agreement or was made pursuant to an extradition agreement that does not contain a period within which a request for extradition must be made and the supporting documents provided,	c) à défaut d'accord ou de délai pour présenter une demande d'extradition et fournir les documents à l'appui :	
	(i) when 60 days have expired after the provisional arrest and the extradition partner has not made the request or provided the documents, or	(i) soit à l'expiration des soixante jours suivant l'arrestation si le partenaire ne s'est pas acquitté de ses obligations dans ce délai,	
	(ii) when the request for extradition has been made and the documents provided within 60 days but the Minister has not issued an authority to proceed before the expiry of 30 additional days.	(ii) soit lorsque le ministre n'a pas pris l'arrêté dans les trente jours suivant l'expiration de ce délai, malgré que la demande ait été faite et les documents fournis dans ce délai.	
Extension	(2) On application of the Attorney General, a judge	(2) Sur demande du procureur général, un juge :	Prorogation des délais
	(a) may extend a period referred to in subsection (1); or	a) peut proroger les délais mentionnés au paragraphe (1);	
	(b) shall, in the case of a person arrested on the request of the International Criminal Court, extend a period referred to in subsection (1) for the period specified by the Attorney General, not to exceed 30 days.	b) dans le cadre d'une affaire dont est saisie la Cour pénale internationale, doit proroger les délais mentionnés au paragraphe (1) pour la période prévue par le procureur général, sans dépasser trente jours.	
Release of person	(3) In extending a period under subsection (2), the judge may also grant the person judicial interim release or vary the conditions of their judicial interim release.	(3) Le cas échéant, il peut remettre la personne en liberté provisoire ou, si elle l'est déjà, modifier les conditions de celle-ci.	Mise en liberté provisoire
	1999, c. 18, s. 14; 2000, c. 24, s. 49.	1999, ch. 18, art. 14; 2000, ch. 24, art. 49.	
	AUTHORITY TO PROCEED	ARRÊTÉ INTRODUCTIF D'INSTANCE	
Minister's power to issue	15. (1) The Minister may, after receiving a request for extradition and being satisfied that the conditions set out in paragraph 3(1)(a) and subsection 3(3) are met in respect of one or more offences mentioned in the request, issue an authority to proceed that authorizes the Attorney General to seek, on behalf of the extradition partner, an order of a court for the commitment of the person under section 29.	15. (1) Le ministre peut, après réception de la demande d'extradition, s'il est convaincu qu'au moins une infraction satisfait aux conditions prévues à l'alinéa 3(1)a) et au paragraphe 3(3), prendre un arrêté introductif d'instance autorisant le procureur général à demander au tribunal, au nom du partenaire, la délivrance de l'ordonnance d'incarcération prévue à l'article 29.	Pouvoir du ministre
Competing requests	(2) If requests from two or more extradition partners are received by the Minister for the ex-	(2) En cas de demandes concurrentes visant l'extradition d'une même personne, le ministre	Demandes concurrentes

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	tradition of a person, the Minister shall determine the order in which the requests will be authorized to proceed.	détermine l'ordre dans lequel elles seront traitées.	
Contents of authority to proceed	(3) The authority to proceed must contain (a) the name or description of the person whose extradition is sought; (b) the name of the extradition partner; and (c) the name of the offence or offences under Canadian law that correspond to the alleged conduct of the person or the conduct in respect of which the person was convicted, as long as one of the offences would be punishable in accordance with paragraph 3(1)(b).	(3) L'arrêté comporte les éléments suivants : a) le nom ou description de l'intéressé; b) le nom du partenaire; c) la désignation des infractions qui, du point de vue du droit canadien, correspondent à l'ensemble des actes reprochés à l'intéressé ou pour lesquels il a été condamné et dont au moins l'une d'entre elles serait sanctionnée de la façon prévue à l'alinéa 3(1)b).	Teneur de l'arrêté
Copy of authority to proceed	(4) A copy of an authority to proceed produced by a means of telecommunication that produces a writing has the same probative force as the original for the purposes of this Part.	(4) La copie de l'arrêté reproduite par un moyen de télécommunication qui rend la communication sous forme écrite a, pour l'application de la présente partie, la même force probante que l'original.	Copie
	ARREST OR SUMMONS FOLLOWING AUTHORITY TO PROCEED	MANDAT D'ARRESTATION OU SOMMATION	
Warrant of arrest or summons	16. (1) The Attorney General may, after the Minister issues an authority to proceed, apply <i>ex parte</i> to a judge in the province in which the Attorney General believes the person is or to which the person is on their way, or was last known to be, for the issuance of a summons to the person or a warrant for the arrest of the person.	16. (1) Le procureur général peut, une fois que le ministre a délivré l'arrêté introductif d'instance, présenter à un juge compétent dans la province où il croit que se trouve la personne recherchée, dans celle où l'on croit qu'elle se trouvait ou dans celle vers laquelle elle se dirige, une demande <i>ex parte</i> en vue de la délivrance d'une sommation ou d'un mandat d'arrestation.	Délivrance du mandat d'arrestation ou d'une sommation
When provisionally arrested	(2) If the person has been arrested pursuant to a provisional arrest warrant issued under section 13, the Attorney General need not apply for a summons or warrant under subsection (1).	(2) S'il y a eu déjà arrestation en exécution d'un mandat d'arrestation provisoire, le procureur général n'a pas à présenter une nouvelle demande.	Arrestation provisoire
Issuance of summons or warrant of arrest	(3) The judge to whom an application is made shall issue a summons to the person, or a warrant for the arrest of the person, in accordance with subsection 507(4) of the <i>Criminal Code</i> , with any modifications that the circumstances require.	(3) Le juge saisi de la demande délivre, avec les adaptations nécessaires, la sommation ou le mandat d'arrestation prévus au paragraphe 507(4) du <i>Code criminel</i> .	Conditions de délivrance
Execution throughout Canada	(4) A warrant that is issued under this section may be executed, and a summons issued under this section may be served, anywhere in Canada without being endorsed.	(4) Le mandat d'arrestation peut être exécuté et la sommation signifiée sur tout le territoire canadien sans avoir à être visés.	Exécution du mandat
Date of hearing — summons	(5) A summons that is issued under this section must	(5) La sommation, d'une part, fixe la date de la comparution de l'intéressé devant le juge, celle-ci ne pouvant suivre de plus de quinze jours celle de la délivrance de la sommation, et,	Sommation : date de comparution

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Right to appeal	(2) When the judge orders the committal of a person, the judge shall inform the person that they will not be surrendered until after the expiry of 30 days and that the person has a right to appeal the order and to apply for judicial interim release.	(2) Il informe l'intéressé qu'il ne sera pas extradé avant trente jours et qu'il a le droit de faire appel de l'ordonnance d'incarcération et de demander sa mise en liberté provisoire.	Information de l'intéressé
PROPERTY		BIENS SAISIS	
Property seized	39. (1) Subject to a relevant extradition agreement, a judge who makes an order of committal may order that any thing that was seized when the person was arrested and that may be used in the prosecution of the person for the offence for which the extradition was requested be transferred to the extradition partner at the time the person is surrendered.	39. (1) Sous réserve de l'accord applicable, le juge qui ordonne l'incarcération de l'intéressé peut aussi ordonner que les biens saisis lors de l'arrestation et qui peuvent servir dans le cadre de la poursuite de l'infraction à l'origine de la demande d'extradition soient remis au partenaire lors de l'extradition.	Ordonnance de remise
Conditions of order	(2) The judge may include in the order any conditions that the judge considers desirable, including conditions (a) respecting the preservation and return to Canada of a thing; and (b) respecting the protection of the interests of third parties.	(2) L'ordonnance est assortie des modalités qu'il estime indiquées, notamment en vue de la conservation des biens saisis et de leur retour au Canada, ainsi que de la protection des droits des tiers.	Modalités
POWERS OF MINISTER		POUVOIRS DU MINISTRE	
Surrender	40. (1) The Minister may, within a period of 90 days after the date of a person's committal to await surrender, personally order that the person be surrendered to the extradition partner.	40. (1) Dans les quatre-vingt-dix jours qui suivent l'ordonnance d'incarcération, le ministre peut, par un arrêté signé de sa main, ordonner l'extradition vers le partenaire.	Arrêté d'extradition
When refugee claim	(2) Before making an order under subsection (1) with respect to a person who has made a claim for refugee protection under the <i>Immigration and Refugee Protection Act</i> , the Minister shall consult with the minister responsible for that Act.	(2) Si l'intéressé demande l'asile au titre de la <i>Loi sur l'immigration et la protection des réfugiés</i> , le ministre consulte le ministre responsable de l'application de cette loi avant de prendre l'arrêté.	Consultation
Powers of the Minister	(3) The Minister may seek any assurances that the Minister considers appropriate from the extradition partner, or may subject the surrender to any conditions that the Minister considers appropriate, including a condition that the person not be prosecuted, nor that a sentence be imposed on or enforced against the person, in respect of any offence or conduct other than that referred to in the order of surrender.	(3) Avant d'extrader, le ministre peut demander au partenaire de lui fournir les assurances qu'il estime indiquées ou poser les conditions qui lui paraissent appropriées, y compris celle voulant que l'intéressé ne soit poursuivi, se fasse infliger une peine ou la purge qu'en rapport avec les infractions pour lesquelles l'extradition est accordée.	Assurances et conditions
No surrender	(4) If the Minister subjects surrender of a person to assurances or conditions, the order of surrender shall not be executed until the Minister is satisfied that the assurances are given or	(4) Le cas échéant, l'extradition est retardée jusqu'à ce que le ministre soit satisfait des assurances reçues ou qu'il estime que les conditions sont acceptées.	Suspension de l'extradition

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	the conditions agreed to by the extradition partner.		
Extension of time	<p>(5) If the person has made submissions to the Minister under section 43 and the Minister is of the opinion that further time is needed to act on those submissions, the Minister may extend the period referred to in subsection (1) as follows:</p> <p>(a) if the person is the subject of a request for surrender by the International Criminal Court, and an issue has been raised as to the admissibility of the case or the jurisdiction of that Court, for a period ending not more than 45 days after the Court's ruling on the issue; or</p> <p>(b) in any other case, for one additional period that does not exceed 60 days.</p>	<p>(5) Le ministre, s'il est d'avis qu'un délai supplémentaire est nécessaire pour rendre une décision par suite des observations que lui présente l'intéressé en vertu de l'article 43, peut proroger le délai qui lui est imparti au paragraphe (1) :</p> <p>a) dans le cas où l'intéressé fait l'objet d'une demande de remise par la Cour pénale internationale et qu'il doit se pencher sur une question de recevabilité ou de compétence, d'au maximum quarante-cinq jours après que la Cour pénale internationale a rendu une décision sur la remise;</p> <p>b) dans les autres cas, d'au maximum soixante jours.</p>	Prorogation de délai
Notice of extension of time	<p>(6) If an appeal has been filed under section 50 and the Minister has extended the period referred to in subsection (1), the Minister shall file with the court of appeal a notice of extension of time before the expiry of that period.</p> <p>1999, c. 18, s. 40; 2000, c. 24, s. 51; 2001, c. 27, s. 250.</p>	<p>(6) En cas d'appel interjeté conformément à l'article 50 et de prorogation du délai de quatre-vingt-dix jours, le ministre dépose un avis de prorogation à la cour d'appel avant l'expiration de ce délai.</p> <p>1999, ch. 18, art. 40; 2000, ch. 24, art. 51; 2001, ch. 27, art. 250.</p>	Avis de prorogation
When appeal pending	<p>41. (1) The Minister may postpone the making of the order of surrender if</p> <p>(a) an appeal has been filed under section 50;</p> <p>(b) the Minister files a notice of postponement with the court of appeal before the expiry of the period referred to in subsection 40(1); and</p> <p>(c) the order is made not later than 45 days after the date of the decision of the court of appeal.</p>	<p>41. (1) Le ministre peut reporter la prise de l'arrêté d'extradition lorsque sont réunies les conditions suivantes :</p> <p>a) un appel a été interjeté conformément à l'article 50;</p> <p>b) il dépose à la cour d'appel un avis de report dans le délai prévu au paragraphe 40(1);</p> <p>c) l'arrêté est pris au plus tard quarante-cinq jours après la décision de la cour d'appel.</p>	Appel en instance
No further deferral of appeal	<p>(2) When the Minister has filed a notice of postponement with the court of appeal under paragraph (1)(b), that court may not defer the hearing of the appeal under subsection 51(2).</p>	<p>(2) Le dépôt de l'avis visé à l'alinéa (1)b) empêche la cour d'appel d'exercer son pouvoir de reporter l'audition de tout appel de l'ordonnance d'incarcération conféré par le paragraphe 51(2).</p>	Report impossible
Amendments	<p>42. The Minister may amend a surrender order at any time before its execution.</p>	<p>42. Le ministre peut modifier l'arrêté d'extradition tant qu'il n'est pas mis à exécution.</p>	Modification de l'arrêté
	SUBMISSIONS	OBSERVATIONS DE L'INTÉRESSÉ	
Submissions	<p>43. (1) The person may, at any time before the expiry of 30 days after the date of the committal, make submissions to the Minister in respect of any ground that would be relevant to</p>	<p>43. (1) L'intéressé peut, au plus tard trente jours après la délivrance d'une ordonnance d'incarcération, présenter ses observations au</p>	Observations

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	the Minister in making a decision in respect of the surrender of the person.	ministre sur toute question touchant son extradition éventuelle vers le partenaire.	
Late acceptance of submissions	(2) The Minister may accept submissions even after the expiry of those 30 days in circumstances that the Minister considers appropriate.	(2) Le ministre peut toutefois, si à son avis les circonstances le justifient, accepter les observations après l'expiration du délai de trente jours.	Délai supplémentaire
REASONS FOR REFUSAL		MOTIFS DE REFUS	
When order not to be made	<p>44. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that</p> <p>(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or</p> <p>(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.</p>	<p>44. (1) Le ministre refuse l'extradition s'il est convaincu que :</p> <p>a) soit l'extradition serait injuste ou tyrannique compte tenu de toutes les circonstances;</p> <p>b) soit la demande d'extradition est présentée dans le but 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, ou il pourrait être porté atteinte à sa situation pour l'un de ces motifs.</p>	Motifs de refus
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.	(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.	Pouvoir de refuser
Refusal in extradition agreement	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.	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.	Primauté des accords
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 to the extent of any inconsistency between either of those sections and those provisions.	(2) Ceux prévus dans un accord multilatéral l'emportent sur les dispositions incompatibles des articles 46 et 47.	Accord multilatéral
When order not to be made	<p>46. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that</p> <p>(a) the prosecution of a person is barred by prescription or limitation under the law that applies to the extradition partner;</p> <p>(b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or</p> <p>(c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character.</p>	<p>46. (1) Le ministre refuse l'extradition s'il est convaincu que :</p> <p>a) toute poursuite à l'endroit de l'intéressé est prescrite en vertu du droit du partenaire;</p> <p>b) les actes reprochés constituent une infraction militaire sans constituer par ailleurs une infraction criminelle;</p> <p>c) les actes reprochés constituent une infraction à caractère politique.</p>	Refus obligatoire dans certains cas