Federal Court  Cour fédérale

Date: 20110704

Docket: T-1498-10

Citation: 2011 FC 814

Ottawa, Ontario, July 4, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

BRADLEY TIPPETT

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

APPLICATION

[1] This is an application for judicial review of a decision made by the *Minister of Public Safety and Emergency Preparedness* (Minister) on or about August 10, 2010 and communicated to the Applicant on August 18, 2010 (Decision) which denied the Applicants transfer request under the *International Transfer of Offenders Act* (ITOA).

BACKGROUND

[2] In October of 2007, the Applicant, Bradley Tippett, and two accomplices arranged to purchase 100 kg of cocaine, at a price of $14,500 per kilogram ($1,450,000.00), from a confidential informant (CI) in Florida. The Applicant negotiated with the CI regarding how the transaction would occur and agreed to purchase 25 kg first and purchase the remainder in 25 kg increments. The Applicant, accompanied by one accomplice, met with the CI in Florida to purchase the first 25 kg, inspected 1 kg of cocaine, agreed to the acceptability of the cocaine, and requested the remaining 24 kg. At that time, law enforcement officers arrested the Applicant and his accomplice and subsequently recovered $350,000 of US currency from their vehicle.

[3] On May 30, 2008, the Applicant pleaded guilty to “Conspiracy to Possess with Intent to Distribute Cocaine” and was sentenced to 63 months of imprisonment and three years of supervised release, following his release from imprisonment.

[4] On September 30, 2008, the Applicant requested, pursuant to the ITOA, that the Minister approve his request to be transferred to Canada in order to serve the remainder of his prison sentence (Request).

[5] The CSC Request Forms for Canadian Citizens incarcerated abroad (CSC Request Forms) expressly required the Applicant to provide reasons in support of his Request. The forms provide several opportunities for the Applicant to make written representations to the Minister addressing all pertinent factors and circumstances of his individual Request in respect of the pressing and

substantial objectives of the ITOA. For example, the forms invited the Applicant to provide information regarding a number of factors, including:

1. SUPPORT

   List persons or agencies who might be willing to give you support following your transfer.

2. OTHER INFORMATION:

   Set out any other information that you think Canadian officials should know about you or your case.

3. PERSONAL DATA:

   Synopsis of personal and family history.

4. RESIDENCE ABROAD:

   How long have you resided abroad?

   Briefly state the reasons for being abroad.

5. CURRENT OFFENCE(S):

   Name of accomplices(s)

   Offenders version of offense(s)

6. PREVIOUS CRIMINAL HISTORY (In Canada and abroad):

7. PROGRAM FACTORS:

   Offenders occupational and program interests

   Drug /alcohol involvement

   General health

   Offenders immediate needs

[6] In completing the CSC Request Forms in support of his request, the Applicant:

a. listed his wife as a person willing to provide him support after his transfer;

b. provided the following account of his reasons for being abroad:

> I came to Miami for a vacation and was charged with conspiracy to possess with intent to distribute 5 kg or more of cocaine.
>
> I pled guilty and have been sentenced to 63 months. I was given Minor Role by the Crown Prosecutor.

c. Named two accomplices;

d. Provided the following account of his version of the offense:

> I was in Miami on vacation and I was with the wrong people at the wrong time and I was arrested and charged with conspiracy to possess with intent to distribute 5 kg or more of cocaine. I was given Minor Role by the Crown Prosecutor and was sentenced to 63 months.

e. Identified his most serious conviction/type of conviction as:

> Damage of Property and DWI

f. Identified only “Interested in receiving GED” as his “occupational and program interests” under the “program factors” heading.

[7] The Applicant chose not to submit “any other information that you think Canadian officials should know about you or your case” and presented no information demonstrating: his acceptance of responsibility for his criminal offense; his efforts at rehabilitation in the US; or any particular rehabilitation and reintegration or other needs that could not be met in the US. He also chose not to disclose information regarding: outstanding charges; previous supervision experience; history of violence (not involving property damage); or other convictions.

[8] Significantly, in respect of the "PROGRAM FACTORS" heading, the Applicant identified no other "occupational and program interests," no drug or alcohol involvement, and no immediate treatment, protection or other needs.

[9] On December 23, 2008, the Applicant met with his Unit Team at the Northeast Ohio Correctional Center for his "initial classification." The Unit Team "recommended participation in the Financial Responsibility Program to address his felony assessment, GED, and vocational training." The Certified U.S. Case Summary notes that "participation in the facility 40 hour substance abuse group" was identified as a long-term program participation goal for the Applicant.

[10] The CSC Community Assessment also noted that, as of March 6, 2009, when the Applicant's parents were contacted, they: were not "aware of [the Applicant] participating in, or completing vocational or job-training programs"; were "not confident what [the Applicant's] employment plans are for his release"; "could not describe social network [the Applicant] was involving himself with prior to the index offense"; and "acknowledge[d] he was obviously associating with negative peers during the commission of the offense," but they "d[id] not know the extent of [the Applicant's] role within this peer group" and "could not comment on the level of influence his most recent associates have had on him."

[11] As the Applicant submitted his Request pursuant to the *Council of Europe Convention on the Transfer of Sentenced Persons*, Canada must make a decision prior to seeking a decision from the US.

[12] On July 30, 2010, the Minister denied the Request (Decision).

THE DECISION

[13] In his reasons for denying the Request, the Minister: (a) identified the purposes of the ITOA; (b) noted that these purposes "serve to enhance public safety in Canada"; and (c) articulated the legislative framework in which he exercised his discretion in considering requests for transfer under the ITOA as follows:

> For each application for transfer, I examine the unique facts and circumstances as presented to me in the context of the purpose of the Act and the specific factors enumerated in section 10.

[14] The Minister outlined the circumstances of the offense for which the Applicant is serving a foreign sentence as follows:

> The applicant, Bradley Tippett, is serving a sentence of imprisonment for five years and three months in the United States for conspiracy to possess with intent to distribute cocaine. On October 25, 2007, the applicant and an accomplice were apprehended when attempting to purchase large quantities of cocaine. An amount of $350,000 was recovered from their vehicle.

[15] The Minister identified a number of concerns upon his examination of the unique facts and circumstances of the Applicant's Request – as presented to him – in respect of his mandated consideration of "whether, in[his] opinion, the offender will, after the transfer, commit a criminal organization offense within the meaning of section 2 of the *Criminal Code*" and noted that:

a. the Applicant "worked with two accomplices"

b. "there is information on file that suggests that another accomplice was involved who was not apprehended";

c. the Applicant "has ties with an organized criminal syndicate believed to be involved in the purchase and trafficking of a large quantity of narcotics"; and

d. the Applicant "was involved in the commission of a serious offense that, if successfully committed, would likely result in the receipt of a material or financial benefit by the group he assisted."

[16] The Minister noted in respect of his mandated consideration of "whether the offender has social or family ties in Canada" that the Applicant "has social and family ties in Canada and that [his] family members remain supportive."

[17] The Minister also noted the Applicant's criminal history, including a number of young offender and adult convictions between 1996 and 2004 and information that the Applicant was wanted in Calgary for an impaired driving conviction in 2006.

[18] In concluding his reasons, the Minister summarized his approach as follows:

> Having considered the unique facts and circumstances of this application and the factors enumerated in section 10, I do not believe that a transfer would achieve the purposes of the Act.

LEGISLATIVE FRAMEWORK

[19] The ITOA states as follows:

3. The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the	**3.** La présente loi a pour objet de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en

community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux.

Double incrimination

…

…

Administration of Act

6. (1) The Minister is responsible for the administration of this Act.

Application

6. (1) Le ministre est chargé de l'application de la présente loi.

Designation by Minister

(2) The Minister may, in writing, designate, by name or position, a staff member within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act* to act on the Minister's behalf under section 8, 12, 15, 24, 30 or 37.

Délégation expresse

(2) Le ministre peut désigner par écrit — nommément ou par désignation de poste — tout agent au sens du paragraphe 2(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition* pour l'exercice des attributions que lui confèrent les articles 8, 12, 15, 24, 30 et 37.

Request for transfer

7. A person may not be transferred under a treaty, or an administrative arrangement entered into under section 31 or 32, unless a request is made, in writing, to the Minister.

Demande de transfèrement

7. Le transfèrement d'une personne en vertu d'un traité ou d'une entente administrative conclue en vertu des articles 31 ou 32 est subordonné à la présentation d'une demande écrite au ministre.

CONSENT

CONSENTEMENT

Consent of three parties

8. (1) The consent of the three parties to a transfer — the offender, the foreign entity and Canada — is required.

Consentement des trois parties

8. (1) Le transfèrement nécessite le consentement des trois parties en cause, soit le délinquant, l'entité étrangère et

le Canada.

[20] Subsection 10(1) of the ITOA sets out the factors that the Minister must consider in determining whether to grant or deny a Canadian offender's request for a transfer :

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

[21] Subsection 10(2) of the ITOA sets out the factors that the Minister must consider in determining whether to grant or deny a Canadian offender's or a foreign offender's request for a transfer :

Factors — Canadian and foreign offenders	Facteurs à prendre en compte : délinquant canadien ou étranger

10(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:	10(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger :
(*a*) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the *Criminal Code*; and	*a*) à son avis, le délinquant commettra, après son transfèrement, une infraction de terrorisme ou une infraction d'organisation criminelle, au sens de l'article 2 du *Code criminel*;
(*b*) whether the offender was previously transferred under this Act or the *Transfer of Offenders Act*, chapter T-15 of the Revised Statutes of Canada, 1985.	*b*) le délinquant a déjà été transféré en vertu de la présente loi ou de la *Loi sur le transfèrement des délinquants*, chapitre T-15 des Lois révisées du Canada (1985).

ISSUES RAISED

[22] In his written submissions, the Applicant raises three main issues that he says reveal the Decision to be wholly unreasonable and lacking in transparency and intelligibility:

1. The Minister’s Decision fails to account for the discrepancy between the Applicant and his accomplice, Mr. Curtis, who was deemed not to have links to organized crime and who has since been transferred to Canada;
2. The Minister’s Decision, to the extent that it is concerned about the Applicant’s prior Canadian criminal record, provides no reason whatsoever as to why continuing to exclude the Applicant will advance the objectives of the Act;

3. The Minister's Decision does not provide any substantive or intelligible explanation for how denying the Applicant's transfer request is consistent with the purpose of the Act.

[23] These issues were somewhat modified and refocused at the oral hearing of this application in Ottawa on June 27, 2011 as indicated in my Analysis.

STANDARD OF REVIEW

[24] Following *Dunsmuir v New Brunswick*, 2008 SCC 9, the Federal Court has held that decisions of the Minister refusing offender transfer requests, pursuant to the ITOA, are discretionary, entitled to significant deference, and thus reviewable on a reasonableness standard.

[25] The Parties agree that the applicable standard for the issues raised is reasonableness and the Court concurs.

[26] In *Grant v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 958, at paragraphs 26-32, Justice David Near found that the Minister's interpretation and application of the ITOA in exercising his discretion to grant or deny transfer requests under that statute will similarly attract the post-*Dunsmuir* presumption that his decisions be reviewable on a standard of reasonableness.

[27] As Justice Sean Harrington underscored in *Michael DiVito v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 983, the question for the reviewing court is not whether it would have been reasonable for the Minister to agree to the transfer, but whether it was unreasonable to refuse the transfer.

[28] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

ARGUMENTS

The Applicant

i) No Consideration of the Organized Crime Factors in relation to Mr. Curtis

[29] The CSC Memorandum of April 22, 2010 provided to the Minister explains that the Applicant and his accomplices Brent Curtis and Marcel Meir Reboh met with a CI to arrange the planned transaction for which the Applicant and his co-defendants were ultimately convicted.

[30] The same CSC Memorandum indicates that the Applicant has ties to organized crime in the person of Mr. Reboh's brother, Max Reboh. It is alleged that Max Reboh funded the trip of the Applicant and Mr. Curtis to Florida. On the strength of this assertion, the Minister concludes that "the Applicant has ties with an organized crime syndicate believed to be involved in the purchase and trafficking of a large quantity of narcotics." There is no other information in the record apart from the link between the Applicant and Max Reboh through Marcel Reboh and the Florida trip that appears on the record.

[31] However, the file for Mr. Curtis, whose transfer was initially denied on May 14, 2009, contained no CSC Memorandum or other information alleging that he had links to organized crime.

[32] Moreover, subsequent to a successful judicial review application of his denial in September 2010, Mr. Curtis has been transferred to Canada.

[33] There is a clear discrepancy between the treatment of the Applicant and Mr. Curtis with respect to the allegation of a link to organized crime. On the facts, it is established that both men were funded by Max Reboh to transport drugs from Florida and were known to Max's brother Marcel; however, not only is the link to organized crime absent from the Curtis file, the Minister also chose to repatriate Mr. Curtis after judicial review of his earlier decision.

[34] While there is a distinction between the respective criminal backgrounds and prior records of the Applicant and Mr. Curtis, there is nonetheless an irreconcilable factor in the Curtis file, which ultimately militated in favor of the Applicant's transfer back to Canada. The Minister must be

consistent and transparent in his reasons and may not arbitrarily invoke alleged links to organized crime to delay or frustrate a transfer request. Clearly, the link to organized crime has significance in the reasoning of the Minister to deny the Applicant's Request; however, it is unclear what the significance of such link may be, where it has not precluded the transfer of the Applicant's accomplice back to Canada.

[35] Effectively, the significant difference between the file of Mr. Curtis and that of the Applicant resides in the fact that the Applicant has a criminal record, whereas Mr. Curtis does not. No conclusion is contingent on this bare fact as the recidivism rate for the Applicant has been judged as low and he is assessed as not likely to commit an organized crime offense.

ii. Canadian Criminal Record does not Preclude Transfer Back to Canada

[36] The criminal record of the Applicant is clearly included in the CSC Memorandum to the Minister, which also includes an outstanding conviction for impaired driving in Alberta and an assault conviction.

[37] There is no reason articulated by the Minister as to why it would not meet the objectives of the Act to deny the transfer of the Applicant to Canada given his prior criminal record. The Canadian system is aware of the Applicant's record and there is no evidence that the Alberta Prairie Region cannot manage his sentence.

[38] To the contrary, if indeed the existence of a prior criminal record requires rehabilitation of the Applicant, such rehabilitation will only be managed by the Prairie region intake unit if a transfer is granted.

[39] Astonishingly, if the Applicant serves his full sentence in North East Ohio Correctional, he will be deported to Canada on or about May 21, 2012 and will not be subject to any supervision requirement or controls and his foreign convictions will not be recorded in the RCMP's criminal records databank as part of his Canadian criminal record.

[40] In this sense, the Minister appears to be "free riding" off the American system in order to maintain the Applicant's term of incarceration, which would effectively circumvent any transitional rehabilitation assessment in Canada that is part of an early return. In this light, the Minister's continued refusal cannot be understood as a lawful exercise of discretion because the Minister is constrained from the outset by the purpose of the ITOA.

[41] As part of his response to any transfer request, the Minister must turn his mind to the question of rehabilitation and provide intelligible and transparent reasons as to how rehabilitation and reintegration of the offender will be advanced by his decision, or conversely, how the administration of justice will be protected. It is entirely inadequate for the Minister to simply state as he does in his Decision that "I do not believe that a transfer would achieve the purposes of the Act."

[42] More fundamentally, the Minister must be disabused of the notion that there is a presumption that a decision that simply considers the statutory factors pursuant to section 10 of the

ITOA meets the objectives of the ITOA. The statutory factors must be considered in light of the purposes of the Act. If indeed, the Minister believes that delaying the transfer of the Applicant to Canada will enhance public safety in Canada by providing no rehabilitative assessment or training to the Applicant in Canada and simply reinserting him into his community with no police supervision, the Minister must provide a basis for his conclusion.

[43] Similarly, if the Applicant supposedly poses a threat to the public safety by his early return, while still incarcerated, the Minister must provide evidence for this assertion.

[44] Logically, the Minister has committed a fallacy and has obfuscated his reasons under the rubric of enhancing public safety. His Decision in this regard is neither transparent nor intelligible. Any substandard meaning that is ascribed to his conclusion must be imputed because he has failed to provide transparent reasons. It is not the role of the Court to impute meaning to bare conclusions, but rather to determine whether the reasons proffered transparently and intelligibly support the conclusion.

iii. Decision does not Accord with Purpose of the ITOA

[45] The Applicant suffers from a problem with alcohol abuse that has escalated to cocaine use.

[46] While being housed at a privatized detention facility in the US, the Applicant needs access to proper treatment. Where clear evidence is raised as to the nature of the rehabilitative and

reintegrative needs of the Applicant, it is incumbent on the Minister to determine whether the Applicant's needs may be advanced through effecting his transfer from the foreign state to Canada.

[47] On the record, there is no comparative information regarding rehabilitative treatment programming in the US as compared to Canada. In this regard, it is important to note that there is also no presumption that public safety will be enhanced by maintaining a foreign convicted offender outside of Canada. On the facts of the case, although there is mention of a prior assault charge, there is no indication that the Applicant is either prone towards violence or that he has or will cause violence while detained in the US or in Canada. To the contrary, the record reveals that

> Mr. Tippett is presently incarcerated in a Minimum security facility. He has demonstrated a pattern of satisfactory institutional adjustment with no or little intervention required and has not incurred any disciplinary charges.

[48] The question of comparative analysis of US and Canadian inmate programming is not an esoteric one, but it has been completely marginalized on the false assumption that public safety for Canadians and the inmate alike are fostered by maintaining detention abroad. The analysis here is distinct from a specific inquiry into whether the foreign prison system violates the detainee's human rights (i.e. ITOA s. 10(1)(*d*)). It raises pertinent questions such as:

1. Does the Bureau of Prisons (BOP) provide early pre-release or treatment programming for non-citizens who will be deported?
2. Is Youngstown prison administered publicly or privately through the Corrections Corporation of America (CCA)? What is the relative standard of private-run prisons in the United States as compared to public jails in Canada?

3. Does the for-profit model of jailing impact upon the responsiveness of staff and the institution to the individual needs of the inmate who is seeking transfer?
4. Are Sentenced Criminal Aliens (such as the Applicant) eligible for halfway house release?
5. Are Sentenced Criminal Aliens (such as the Applicant) eligible to participate in drug treatment programs in view of the drug addiction problem of the Applicant?
6. How does eligibility for parole compare between Canada and the US under the *Corrections and Conditional Release Act*?
7. Does the Minister's declaration regarding organized crime links of the Applicant bear upon his conditions of sentence in the United States (i.e. does it disqualify him from an earlier release date)?
8. Are there issues of overcrowding at North East Ohio? How do such issues compare to Prairie Region federal correctional facilities in Canada?

[49] The fact that none of these questions has ever been raised or answered by the Minister is a testament to a systemic disregard in respect of meeting the objectives of the ITOA in a manner that is meaningfully responsive to the rehabilitation and reintegration needs of the Applicant in this community. This disconnect between the Minister's inquiry and the objectives of the Act renders his ultimate conclusion entirely unreasonable.

Respondent

i. ITOA Legislative Framework and the Minister's Role in the ITOA Context

[50] Section 6 of the ITOA vests the Minister with the responsibility for the administration of the ITOA. Upon receipt of a request for a transfer under section 7, and subject to the consent of the foreign entity to the transfer under section 8, the Minister is empowered by Parliament to exercise substantial discretion in determining whether to consent to each transfer request, subject to his consideration of the relevant facts and the relevant factors set out in the legislation.

[51] In *Holmes v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 112, Justice Michael Phelan rejected a narrow interpretation of the term "administration of justice" in the Act's Purpose clause and held that it includes "public safety and security considerations." In his reasons for concluding that any infringement of section 6 Charter rights is saved by section 1 of the Charter, Justice Phelan observed that the ITOA's pressing and substantial objectives also include Canada's interests in: "ensuring that punishment by countries with whom Canada has relevant treaties is respected"; "respecting the rule of law and other countries"; and "respecting international relations."

[52] In light of his recognition of the ITOA's broad and diverse pressing and substantial objectives, Justice Phelan noted that the suggestion that, once a foreign country consents to a transfer, the Minister is "virtually obliged" to consent to the transfer:

> ignores the fact that the prisoner has put himself in the position of restricting his freedoms; ignores the goals of rehabilitation by assuming that no other country can rehabilitate a person; ignores the particular individual circumstances of reintegration by assuming that

> all Canadian citizens have long and deep connections in Canada and ignores the secondary purposes of the Act in respecting the rule of law in other countries and respecting international relations.

[53] In *Pierino DiVito v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 39, Justice Robert Mainville identified the security of Canada and the prevention of offenses related to terrorism or to organized crime as additional pressing and substantial objectives served by Parliament's decision to empower the Minister to determine whether or not to allow offenders to serve their sentences in Canada.

[54] The ITOA does not create or recognize a "right" of Canadian offenders to return to Canada, but creates a framework for implementing Canada's international treaty agreements and administrative arrangements designed to enable offenders to serve their sentences in the country to which they are citizens or nationals.

[55] In *Getkate v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 965 at paragraphs 26 and 29, the court noted that the ITOA does not create an automatic right to return to Canada to serve a sentence, but serves "to assist rehabilitation and reintegration in appropriate situations." Although rehabilitation is a core objective of the ITOA, there is no presumption that a given transfer will serve the objective of rehabilitation and, even if the Minister believes a transfer would serve this objective, it is open to the Minister to deny the transfer request based on his consideration of the other pressing and substantial objectives of the ITOA.

[56] Similarly, in *Pierino DiVito*, above, the Federal Court of Appeal observed that:

> Though for some offenders the loss of the perceived "benefit" of a potential earlier conditional release under the Canadian correctional system may be unfair […]. Barring exceptional circumstances, there is nothing unfair or unreasonable in the fact that [offenders who have committed offenses in foreign jurisdictions] are subject to the incarceration systems of the foreign jurisdictions in which they committed their offenses.

[57] Justice Mainville, in *Pierino DiVito*, above, found that the legislative framework in which the Minister's discretion is exercised in the ITOA context is reasonable and rationally linked to the pressing and substantial objectives of the ITOA in a number of ways:

> First, the Minister's discretion is strongly fettered by specific enumerated factors which must be considered, including notably whether the offender's return to Canada would constitute a threat to the security of Canada (paragraph 10(1)(*a*) of the act) or whether the offender will, after the transfer to Canada, commit a terrorism offence or criminal organization offence (paragraph 10(2)(*a*) of the act). These are serious and important constraints on the Minister's discretion. Second, the scheme of the legislation allows the offender to make prior representations to the Minister through a written request in which all pertinent factors and circumstances can be addressed (section 7 of the act). Third, the Minister must provide written reasons if he refuses his consent to the transfer (section 11 of the act). Finally, the decision of the Minister is subject to judicial review before the Federal Court, and the decision of that court is itself subject to appeal to this Court and ultimately, in appropriate cases, to the Supreme Court of Canada.

[58] As transfers under the ITOA are a discretionary privilege for offenders incarcerated abroad, predicated on Canada undertaking to administer their sentences and assuming the risks and responsibilities of these undertakings, and are not a right or presumptive entitlement, applicants must demonstrate that their transfers would advance – and not threaten or undermine – the beneficial objectives of the Act. Applicants are put on notice of what "pertinent factors and circumstances" will be considered by the Minister by virtue of the purposes of the ITOA, the factors set out in section 10 of the ITOA, and the information requested in the CSC Request Forms.

ii. Section 10 Factors

[59] In *Kozarov v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 866, Justice Harrington recognized that the Minister's determination of whether to consent to a transfer under section 8 of the ITOA is to be treated as a discretionary decision and not as a fact-finding mission mandating approval based on a binary analysis of the factors. The Court has repeatedly emphasized the Minister's residual discretion under the ITOA, noting that the factors the Minister must consider under section 10 are not exhaustive, nor are any "determinative of the result." Rather, they "are simply factors to be weighed by the Minister any reasonable and transparent way."

[60] The factors that the Minister must consider under section 10 of the ITOA are consistent with and rationally connected to the stated purpose of the Act as set out in section 3 and the objectives of the legislation. In *Holmes*, above, Justice Phelan noted that "[t]he the protection of society in the best interests of the Canadian citizen prisoner are balanced in the Act through the factors which the Minister is required to consider."

[61] For example, Justice Phelan identified the section 10(2)(*a*) factor as "address[ing] both the need to protect society and the utility of attempting to rehabilitate a person who will continue the same kind of conduct that has led to his or her incarceration," and rejected the argument that section 10(2)(*a*) is a significant impairment of an offenders disputed section 6 rights as "ignor[ing] the consideration that persons who will (again) engage in these offenses undermine the beneficial objectives of the Act."

[62] In *Dudas v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 942, Justice John O'Keefe observed that it would be open to the Minister to "[take] into account all relevant considerations and come to the conclusion that approval of the transfer request would not assist in achieving the objectives of the international transfer of offenders system," provided that the Minister "state that this was the ultimate test he set out for himself" and "express which purpose or purposes were most crucially relied on in coming to his ultimate conclusion." He also noted that "the Minister may lawfully come to his or her own conclusion" in exercising his or her discretion under the ITOA and "[t]he fact that a Minister has come to a given conclusion before, does not prevent that same Minister or a different Minister from lawfully changing his or her mind if faced with the same set of facts at a later date."

[63] The Court has consistently recognized that the Minister's exercise of his discretion under the ITOA requires that he consider and weigh information from various sources and ultimately make a decision in light of his obligations under the ITOA as well as his other statutory obligations and policy considerations, including "prevent[ing] members or associates of criminal organizations from exercising influence and power in institutions and in the community" and balancing the protection of society and the best interests of the Canadian citizen prisoner.

[64] In determining whether he will approve a transfer request by a Canadian citizen, the Minister may weigh the corollary risks and obligations of undertaking to administer an applicant's foreign sentence in Canada. Accordingly, the Minister's discretion to grant or deny a transfer request imports considerations and decision-making functions pertaining to the administration of a

custodial sentence for a criminal conviction, such as offender classification, placement and transfers within Canada, as well as parole and conditional release.

[65] Although it is open for the Minister to base his decision to grant or refuse a transfer request on his assessment of the enumerated factors, he is not required to limit his consideration to these factors, nor is he required to make findings in respect of any or all of the mandated factors.

[66] The Minister's role is to consider the enumerated factors and weigh them in a reasonable and transparent way in informing his global assessment of whether a given transfer meets the stated objectives of the Act. However, having addressed the enumerated factors, the Minister may weigh or balance the relevant factors and considerations as he sees fit.

iii. The Decision

[67] In his reasons for denying the Request, the Minister clearly articulated and applied the legislative framework for the exercise of his discretion in considering requests for transfer under the ITOA, in accordance with the guidance provided by *Pierino DiVito*, above, and *Holmes*, above, namely basing his Decision on his belief that a transfer would not achieve the purposes of the Act, subject to his consideration of the unique facts and circumstances of the Request as presented to him in the context of the purposes of the Act and the specific factors enumerated in section 10.

[68] As in *Holmes*, above, the decision "focused on the potential for commission of a criminal organization offense," making reference to the specific information relating to the section 10(2)(*a*)

factor that caused the Minister concern. Moreover, based on the nature of the Applicant's criminal activity, the Minister could reasonably conclude that "another accomplice was involved who was not apprehended" and that the Applicant "has ties with an organized criminal syndicate believed to be involved in the purchase and trafficking of a large quantity of narcotics." The Minister also reasonably expressed concern regarding the Applicant's "extensive" criminal history in Canada, including multiple convictions dating back to 1996.

[69] As Justice Near noted in *Grant*, above, international drug trafficking constitutes "a very serious crime that one could reasonably conclude required financing, planning and other logistics often associated with organized crime." The Applicant and his accomplices had arranged to purchase 100 kg of cocaine. The Applicant and his accomplice had the means to pay the CI more than $350,000 in US currency. Furthermore, the Court can take judicial notice of the fact that cocaine is a dangerous drug, and sells between $100-$120 per gram, placing the street value of the drugs seized from the Applicant at between $10 million and $12 million.

[70] Accordingly, the Minister's consideration of the fact that the Applicant was involved in the commission of a serious offense involving large quantities of cocaine which would have likely benefited the group he assisted is relevant to his assessment of the section 10(2)(*a*) factor, as this recognizes the resources, premeditation, and organization of the Applicant's unidentified associations in Canada and the US. This consideration also demonstrates that his rationale in finding that the Applicant's transfer would not achieve the purposes of the Act was informed by his consideration of aspects of the administration of justice purpose.

[71] The Minister also "noted the positive aspects of [the Applicant's] situation," namely the existence of "social and family ties in Canada" and the fact that the Applicant's "family members remain supportive." While the Minister's reference to the "positive aspects" in respect of the Applicant's request is limited to his consideration of the section 10(1)(*c*) factor, this was the only ITOA factor for which the Applicant presented the Minister supportive reasons in his CSC Request Forms in support of his request under section 7 of the Act.

iv. Little Evidence Presented

[72] It was incumbent on the Applicant to present any evidence he wished the Minister to consider as part of his application. He presented no evidence that the US could not rehabilitate him and presented no information regarding his "particular individual circumstances of reintegration." In fact, both the Certified US Case Summary and the CSC Executive Summary Report before the Minister note the Applicant's recommended program participation in the US, including GED, which was the only program interest the Applicant identified in the CSC Request Forms in support of his request. Moreover, the CSC Community Assessment noted obstacles to the Applicant's reintegration, namely uncertain employment prospects and associations with "negative peers."

[73] Although the Minister's Decision clearly weighed the "public safety" and "administration of justice" purposes of the Act more heavily than the rehabilitation and reintegration purposes, he did not ignore those purposes. The Minister's hand-written notes underscore his balancing of the ITOA purposes on the information before him, noting: "extensive record," "organized crime activity,"

"[l]arge quantity of dangerous narcotics," "[c]onsidered family and ties to Canada, but not satisfied this warrants return at this time."

[74] Furthermore, as Justice Phelan observed in *Holmes*, above, the Minister's consideration of the section 10(2)(*a*) factor "addresses both the need to protect society and the utility of attempting to rehabilitate a person who will continue the same kind of conduct that has led to his or her incarceration." The Minister's consideration of this factor and the Applicant's criminal record demonstrate the Minister's concerns regarding: the Applicant's criminal history and failure to remain "rehabilitated" and "reintegrated" in the past; his involvement in the commission of a serious offense; his ties with an organized criminal syndicate; and the likelihood "that another accomplice was involved who was not apprehended." These considerations are rationally connected to the rehabilitation and reintegration purposes of the ITOA and may inform the Minister's consideration of whether the Applicant has accepted responsibility for his offending, severed ties with his accomplices, and made efforts towards his own rehabilitation such that his transfer would not threaten or undermine the beneficial objectives of the Act.

v. Misapprehension

[75] The Applicant does not allege that the Minister considered any irrelevant factors, made any errors in his assessment of the file information, or made any conclusions contrary to information or advice before him. Contrary to the Federal Court's findings in respect of the Minister's broad discretion to weigh the relevant facts or factors as he sees fit, subject to his having addressed the relevant factors raised in respect of a given transfer request, the Applicant invites the Court to

reweigh the factors cited by the Minister as fixed and predetermined "tests" that the Minister must satisfy in order to "disentitle" the Applicant from a transfer.

[76] The Applicant's characterization of the issues in this application wrongly presents the Minister's role as requiring him to "provide evidence" in support of any negative conclusions regarding the purposes of the ITOA. The Applicant also proposes to impugn the Minister's Decision by imposing constraints on the Minister's exercise of his discretion that have no basis in the ITOA, namely requiring the Minister to consider factors not provided by the ITOA and not raised in the Applicant's Request.

[77] In *Grant*, above, Justice Near expressly held that there is no legal basis to require the Minister to explain decisions in respect of an applicant's accomplices and that "each case must be determined by the Minister individually on its merits and record of evidence."

[78] Observing that the doctrine of legitimate expectations is limited to procedural fairness, and citing Justice Ian Binnie's guidance in *Mount Sinai Hospital v Quebec (Minister of Health and Social Services)*, 2001 SCC 41, that the reviewing court frame its inquiry "in terms of the underlying principle […] that broad public policy is pre-eminently for the Minister to determine, not the courts," Justice Near observed that:

> We have no idea what conditions the co-accused faced in Costa Rican prisons or what their personal circumstances were, and it is unreasonable and unnecessary to expect the Minister to list these as a justification for the outcome of the present application.

[79] Moreover, the Federal Court has repeatedly emphasized that the Minister may weigh or balance the relevant factors and considerations as he sees fit. As Justice O'Keefe observed in *Dudas*, above, a decision released together with *Curtis* – the Minister may lawfully come to his own conclusion in exercising his discretion as to whether to grant an applicant the "discretionary privilege" of a transfer under the ITOA and "[t]he fact that a Minister has come to a given conclusion before, does not prevent that same Minister or a different Minister from lawfully changing his or her mind if faced with the same set of facts at a later date."

[80] Notwithstanding the above, the Applicant submits that the Minister's consideration of the criminal organization factor is unreasonable "for its failure to provide a consistent assessment of criminal organization affiliation," which the Minister "may not arbitrarily invoke," concluding that: "[e]ither the Applicant is linked to organized crime or he is not – the selective tolerance of organized crime links erodes the intelligibility of the decision."

[81] This argument is completely unsupported, both in fact and in law. Mr. Curtis' transfer request and other documents relating to his request were not part of the record before the Minister in this case. The Minister considers each transfer request on the basis of its separate facts and circumstances. The Applicant cites the "facts" on the record in this case as "establishing" the same link to organized crime in respect of Mr. Curtis; however, there is no basis for the Court to assume that the same "facts" were before the Minister in assessing Mr. Curtis' transfer request. It is not for this Court to speculate as to what "significance" the Minister ascribed to factors in respect of individual requests considered on their merits and record of evidence.

vi. No Right or Presumptive Entitlement

[82] As transfers under the ITOA are a discretionary privilege for offenders incarcerated abroad, predicated on Canada undertaking to administer their sentences and assuming the risks and responsibilities of these undertaking, and not a right or presumptive entitlement, applicants must demonstrate that their transfers would advance – and not threaten or undermine – the beneficial objectives of the Act. Applicants are put on notice of what "pertinent factors and circumstances" will be considered by the Minister by virtue of the purposes of the ITOA, the factors set out in section 10 of the ITOA, and the information requested in the CSC Request Forms.

[83] Contrary to the Applicant's assertion that the Applicant's "Canadian Criminal Record does not preclude transfer back to Canada," the Minister made no such determination, nor was he required to treat his consideration of the Applicant's prior record as a binary analysis to disentitle the Applicant from a transfer. The Applicant presents as a foregone conclusion that the Applicant's rehabilitation and reintegration can only be managed in Canada. As such, he suggests that the Minister must "provide evidence" that: Canada cannot manage the Applicant's sentence; and/or the Applicant's early return "poses a threat to public safety."

[84] Given this narrow presentation of the Minister's discretion under the ITOA, and ignoring the ITOA's diverse pressing and substantial objectives, the Applicant suggests that the Minister is "virtually obliged" to consent to his transfer request:

> In this sense, the Minister appears to be "free riding" off the American system in order to maintain the Applicant's term of incarceration, which would effectively circumvent transitional rehabilitation assessment in Canada that is part of an early return. In

> this light, the Minister's continued refusal cannot be understood as a lawful exercise of discretion because the Minister is constrained from the outset by the purpose of the ITOA.

[85] The Applicant attempts to underscore his presumptive entitlement to a transfer by asserting that there is "no presumption that public safety will be enhanced by maintaining a foreign convicted offender outside of Canada" and accusing the Minister of employing "the false assumption that public safety for Canadians and the inmate alike are fostered by maintaining detention abroad."

[86] However, as noted above, the Applicant's suggestion of presumptive entitlement to a transfer has been expressly rejected by this Court in *Holmes*, above, which observed that other countries can rehabilitate offenders and that the ITOA's pressing and substantial objectives include Canada's interests in: "ensuring that punishment by countries with whom Canada has relevant treaties is respected;" "respecting the rule of law and other countries;" and "respecting international relations."

[87] The Minister is not "'free riding' off the American system." The Applicant's own criminal conduct led to his conviction and sentence in the US. Barring Canada's undertaking to administer the Applicant's US sentence, he must serve his sentence in the US in accordance with US law. This is a consequence of his own actions and is not unfair or unreasonable.

[88] The Court's role is to assess the reasonableness of the Minister's Decision, having reference to the Minister's analysis of the materials before him. It was open to the Applicant to frame issues before the Minister in his Request with reference to the purposes of the ITOA, the factors set out in section 10, and the information requested in the CSC Request Forms. However, contrary to the

Applicant's assertion that "clear evidence was raised as to the nature of the rehabilitative and reintegrative needs of the Applicant," his Request identified no particular rehabilitation and reintegration or other needs that could not be met in the US.

[89] If the Applicant believed the issues of "the adequacy of current rehabilitative and integrative programming in the United States" and "whether these needs can be better served in a Canadian federal institution" warranted the Minister's consideration in his assessment of the Applicant's Request, it was incumbent on the Applicant to identify these issues and make submissions regarding all pertinent factors and circumstances in his Request.

ANALYSIS

[90] The Applicant has raised a variety of issues but the focus at the hearing of this matter requires the Court to address the following.

Comparisons with Mr. Curtis

[91] First of all, the Applicant complains that his co-accused, Mr. Curtis eventually achieved a transfer back to Canada while the Applicant was refused a transfer by the same Minister. He says that the Minister came to contradictory decisions upon similar facts. Hence, the Decision is unreasonable in that it lacks intelligibility because it fails to explain why he was treated differently from Mr. Curtis.

[92] I find this argument illogical. Mr. Curtis' request for transfer was initially refused by the Minister. Mr. Curtis then had the Minister's decision judicially reviewed. It was only after Justice O'Keefe sent the matter back for reconsideration on September 21, 2010 that Mr. Curtis was eventually granted a transfer in light of the issues and conclusions found in Justice O'Keefe's reasons. Those reasons identified evidentiary facts that suggest Mr. Curtis' case was very different from the Applicant's case. In particular, Justice O'Keefe concluded that, in Mr. Curtis' case, the "CSC only had a belief that he had links to organized crime" and that Mr. Curtis "had no previous criminal record." The Minister's Decision regarding the Applicant was rendered on or about August 10, 2010, so it is difficult to see how the Minister could or should have made any reference to the Curtis situation.

[93] As the Respondent points out, no explanation was required on the facts of this case because, even on its face, the situation of Mr. Curtis was very different from that of the Applicant. As Justice O'Keefe pointed out in *Curtis*, above, at paragraph 16, the evidence related to Mr. Curtis gave rise to separate considerations that were highly material to the two cases:

> Secondly, neither U.S. nor Canadian investigations into his background and the circumstances of his offending have specifically identified the applicant as associated or involved with any specific criminal organization. In fact, the evidence points to the contrary and to conclude otherwise was unreasonable. Certainly, the evidence does not support that the applicant will commit a criminal organization offence. The evidence provided the following things:
>
> > The applicant had no previous criminal record;
> > The CSC only had a belief that he had links to organized crime;
> >
> > CSC concluded that the applicant should experience little difficulty securing employment on release;

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

[94] Mr. Curtis may have been involved in the commission of the same offense as the Applicant but the facts in his case that were highly material to a transfer decision were not shared by the Applicant. The Applicant, for instance, did have a previous criminal record, CSC had more than a belief that he had links with civilized crime, there was no evidence that the Applicant would not experience difficulty in securing employment on release. In any event, Mr. Curtis' transfer request and the documentation related to that request were not before the Minister when he made the Decision in this case.

[95] Perhaps more importantly, there is really no evidence before the Court as to how or why the Curtis decision was made other than as appears in the judgment of Justice O'Keefe, which suggests significant differences. Even the sentences were different: the Applicant received a sentence of 63 months while Mr. Curtis received 57 months. This does not suggest that the Minister was dealing with similar cases when the transfers were considered or that the Minister needed to explain why the Applicant's request for transfer was refused when Mr. Curtis' request was eventually granted.

[96] The jurisprudence is clear that the Minister is obliged to deal with each case individually on its merits. In *Grant*, above, Justice Near had the following to say on point at paragraphs 47 and 48:

> Counsel for the Applicant acknowledged during the hearing that had Mr. Grant's co-accused been denied their transfer application, it would be improper to conclude that Mr. Grant's application be similarly denied. Counsel agreed that each case must be determined by the Minister individually on its merits and record of evidence.

> As an anecdote, the fact that two of Mr. Grant's co-accused transfer requests have been approved may be compelling, but as a matter of law, the doctrine of legitimate expectations is limited to procedural fairness. In *Mount Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, Justice Ian Binnie affirms that the doctrine of legitimate expectation is limited to procedural relief. Furthermore, at para. 35 Justice Binnie emphasizes that although in some situations it might be difficult to distinguish between substance and procedure, "The inquiry is better framed in terms of the underlying principle mentioned earlier, namely that broad public policy is pre-eminently for the Minister to determine, not the courts." We have no idea what conditions the co-accused faced in Costa Rican prisons or what their personal circumstances were, and it is unreasonable and unnecessary to expect the Minister to list these as a justification for the outcome of the present application.

[97] There is nothing before me on the present set of facts to suggest that the Minister acted unreasonably because the Applicant was not granted the same transfer that Mr. Curtis eventually received, or that the Minister had to provide a specific explanation as to why the Applicant was denied a transfer when Mr. Curtis eventually achieved that result.

Drug and Alcohol Dependency – Rehabilitation

[98] The Applicant also says that the Decision is unreasonable because the Minister failed to consider his drug dependency issues in the context of section 3 of the ITOA and failed to conduct a comparison of the different programs available in Canada and the US that promote rehabilitation and reintegration.

[99] This was not an issue that the Applicant raised in his Request to the Minister. The Applicant says, however, that in the Executive Summary Report that informs the Minister’s Decision, there is

a mention in the Public Safety Risk Assessment that “File information indicates that Mr. Tippett has a history of beer and hard liquor abuse which escalated to cocaine for which he has not received any treatment or programming.” The Applicant says that the mere mention of this issue in the Report required the Minister to initiate an investigation into the Applicant’s problems and whether programs available in Canada would better assist the Applicant’s rehabilitation and reintegration than programs available in the US. The Applicant was unable to refer the Court to any jurisprudence that would support such a position. It is not difficult to see why.

[100] The onus is upon the Applicant, in his request for a transfer, to raise the matters and provide the evidence and information that he wishes the Minister to consider. The ITOA scheme does not require the Minister to independently raise and review issues that the Applicant has not raised in his Request. As the Respondent points out, transfers under the ITOA are a discretionary privilege for offenders incarcerated abroad, predicated on Canada undertaking to administer their sentences and assuming the risks and responsibilities of these undertakings, and not a right or presumptive entitlement. Applicants must demonstrate that their transfers would advance – and not threaten or undermine – the beneficial objectives of the Act. Applicants are put on notice of what “pertinent factors and circumstances” will be considered by the Minister by virtue of the purposes of the ITOA, the factors set out in section 10 of the ITOA, and the information requested in the CSC Request Forms.

[101] If the Request and the materials before the Minister are read as a whole, there is nothing that would, reasonably speaking, alert the Minister to a need to consider that the Applicant’s drug habits and rehabilitation needs might require a comparison of US and Canadian programs, or to suggest

that the Applicant's rehabilitation and reintegration needs related to his drug use could not be addressed in the US system. There is also nothing to suggest that the Applicant has considered and/or attempted to access what is available to him in the US. This is borne out by the Request itself.

[102] The Request does not even indicate that the Applicant has a drug or alcohol problem or that he has any complaint with the US system regarding this issue. There is nothing before the Minister – and there is nothing before this Court – to suggest that the Applicant was seeking a transfer on the basis of something that was not available to him in the US. In my view, the Applicant has raised this issue in this review application in a desperate attempt to fault the Minister. He offers no grounds to suggest that the Minister could or should have been aware that he was seeking a transfer in order to facilitate his rehabilitation with respect to a drug dependency; and he offers no logic or authority that would suggest that the Minister, irrespective of what might be set out in the Request, should have initiated a comparative investigation into the availability of programs for drug and alcohol dependency under the US and Canadian systems.

Criminal Organization Offense

[103] In my view, when the Decision is read as a whole, the Minister indicates that he has considered all of the factors necessary under the ITOA scheme, the purposes of the ITOA, and the facts that are specific to the Applicant's Request. The Decision to refuse the Request is clearly based upon considerations arising out of section 10(2)(*a*) of the ITOA and the Applicant's connections to organized crime:

> The Act requires that I consider whether, in my opinion, the offender will, after the transfer, commit a criminal organization offense within the meaning of section 2 of the Criminal Code. In considering this factor, I note that the applicant worked with two accomplices and there is information on file that suggests that another accomplice was involved who was not apprehended. Furthermore, the applicant has ties with an organized criminal syndicate believed to be involved in the purchase and trafficking of the large quantity of narcotics. The applicant was involved in the commission of a serious offense that, if successfully committed, would likely result in the receipt of a material or financial benefit by the group he assisted.

[104] I see nothing unclear or unintelligible about the reasons on this point as they relate to the purposes of the ITOA. The only question that arises, in my view, is whether the Minister's conclusions on point are reasonable given the evidence that was before him. The Applicant says they are not because Minister goes beyond the evidence and comes to conclusions that the evidence does not support.

[105] The Applicant says that the relevant information on point that was before the Minister appears in paragraph 5E of the Report prepared by the International Transfer Unit:

> Given the results of verification with counterparts in the Security and Intelligence areas, the information obtained to date does not lead one to believe that he would, after the transfer, commit an act of terrorism, within the meaning of section 2 of the *Criminal Code*. However, the CSC Prairies regional security division Senior Project Officer has found information that suggests that Mr. Tippett has links to an organized syndicate. In fact, Intelligence information indicates that Max Reboh, the brother of Marcel Meir Reboh, one of Mr. Tippett's accomplices, funded the attempt to purchase the drugs and sent Mr. Tippett and Mr. Curtis to Florida to purchase the drugs. Mr. Max Reboh is currently living in Alberta and is considered to be associated to elements of organized crime.

[106] In my view, this paragraph makes it clear that the Minister was obliged to consider subsection 10(2)(*a*) of the ITOA from the perspective of whether, after transfer, the Applicant will

"commit a…criminal organization offense within the meaning of section 2 of the *Criminal Code*…."

[107] Under section 2 of the *Criminal Code* a "criminal organization offense" means

(*a*) an offence under section 467.11, 467.12 or 467.13, or a serious offence committed for the benefit of, at the direction of, or in association with, a criminal organization, or	*a*) Soit une infraction prévue aux articles 467.11, 467.12 ou 467.13 ou une infraction grave commise au profit ou sous la direction d'une organisation criminelle, ou en association avec elle;
(*b*) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (*a*);	*b*) soit le complot ou la tentative en vue de commettre une telle infraction ou le fait d'en être complice après le fait ou d'en conseiller la perpétration.

[108] The relevant evidence before the Minister on this issue was

a. The advice from the International Transfer Unit that:

   i. "CSC Prairies regional security division Senior Project Officer has found information that suggests that Mr. Tippett has links to an organized syndicate";

   ii. "Intelligence information indicates that Max Reboh, the brother of Marcel Meir Reboh, one of Mr. Tippett's accomplices, funded the attempt to purchase the drugs and sent Mr. Tippett and Mr. Curtis to Florida to purchase the drugs";

   iii. "Mr. Max Reboh is currently living in Alberta and is considered to be associated to elements of organized crime";

b. Large sums of money and large quantities of narcotics were involved and there is no indication from the Applicant's background how he could have financed the drug purchases himself or through any means other than his connection to the Rebohs.

[109] So the issue here is whether there was sufficient evidence to allow the Minister to make a good faith finding that the Applicant presents a significant risk of committing a criminal organization offense once transferred to Canada. See *Grant*, above, at paragraph 38.

[110] The Applicant plead guilty to "Conspiracy to Possess with Intent to Distribute Cocaine," a serious crime that, given the quantity of narcotics involved, required financing, planning and other logistics – as the record shows. Considering the entirety of the evidence and the discretion allowed the Minister in making this Decision, his conclusion that the Applicant will likely commit an organized crime offense if returned to Canada falls within the range of possible, acceptable outcomes defensible in respect of the facts and the law. See *Grant*, above, at paragraph 46.

[111] Although noting the specific fact differences between the situation in *Holmes*, above, and the situation in the present case, nevertheless I think Justice Phelan's words in *Holmes* can be applied appropriately to the Minister's Decision in the present case:

> **59** In this 2nd decision the Minister focused on the potential for commission of a criminal organization offence. He noted the knowing use of the Applicant's residence for criminal activities, the payment for its use and the smuggling activities conducted. He further noted the amount of drugs smuggled, the participation of an unidentified (presumably by the Applicant) accomplice and the long-term implications on Canadian society had the Applicant been successful.

> **60** The Minister, in reaching his negative conclusion on the transfer application, noted the positive aspects of Holmes' situation including the strong family support, lack of criminal record and rehabilitation efforts.
>
> **61** With respect to the reasonableness of the decision, it is evident that the Minister weighed the aspects of administration of justice, such as the nature of the offence, its circumstances and consequences, more heavily than the other purposes of the Act - rehabilitation and reintegration. However, he did not ignore these other purposes. The Applicant's challenge to the Minister's decision is a challenge to the relative weight the Minister gave.
>
> **62** While it is arguable that Holmes appears to be a perfect candidate for transfer given the strong facts of rehabilitation and reintegration, the very essence of deference in this case is to acknowledge that having addressed the relevant considerations, the actual weighing or balancing is for the Minister to conduct. Absent unreasonableness or bad faith or similar such grounds, it is not for the Court to supervise the Minister.
>
> **63** There is nothing unreasonable in the Minister's decision; it takes into consideration the relevant factors and imports no new and unknown factors, and it is intelligible and transparent as to how the Minister came to his conclusion. It therefore meets the requirements of law and should not be disturbed.

[112] The Applicant takes issue with paragraph 4 of the Decision and suggests that the Minister employs faulty logic regarding the Applicant’s criminal history as it relates to his future rehabilitation and reintegration needs. In my view, however, the purpose of paragraph 4 is clearly to support the heart of the Decision and the Minister’s conclusion that, notwithstanding the positive aspects of the Request, subsection 10(2)(*a*) of the ITOA was engaged and that, given the links to organized crime, and the Applicant’s past criminal record, the Applicant presents a significant risk of committing a criminal organization offense if transferred to Canada.

[113] I can find no reviewable error in the Decision.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed with costs to the Respondent.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1498-10
STYLE OF CAUSE :	BRADLEY TIPPETT v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 27, 2011
REASONS FOR JUDGMENT AND JUDGMENT	**Russell J.**
DATED:	July 4, 2011

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