

Court File No.: T-536-04

IN THE FEDERAL COURT

BETWEEN:

OMAR AHMED KHADR by his Next Friend FATMAH EL-SAMNAH

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

AFFIDAVIT OF SERGE PAQUETTE

I, Serge Paquette, of the City of Ottawa, in the Province of Ontario, SWEAR THAT:

1. I am employed as Director, Emergency Services, Consular Affairs Bureau with the Department of Foreign Affairs and International Trade (DFAIT). As such, I have personal knowledge of the facts deposed to below, save and except where stated to be on information and belief, and where so stated I verily believe it to be true.
2. One of the major functions of DFAIT is the administration of consular relations for the Minister of Foreign Affairs. This function is conducted by the Consular Affairs Bureau. The role of the Canadian government in the administration of consular relations for Canadians imprisoned abroad is described in the booklet "A Guide for Canadians Imprisoned Abroad", a copy of which is attached as Exhibit A to this affidavit.
3. I am informed by Scott Heatherington, Director, Foreign Intelligence Division, that in this case, DFAIT sought consular access to Omar Khadr when it first learned of his detention by the United States of America (USA). The USA has indicated that persons detained in Guantanamo Bay are not entitled to consular assistance and refused to allow Canada to provide consular services to Omar Khadr while detained in Guantanamo Bay.

4. I am further informed by Scott Heatherington, Director, Foreign Intelligence Division, that in order for DFAIT to achieve access to Omar Khadr, the USA would only accept an intelligence official from DFAIT's Security and Intelligence Bureau. A DFAIT intelligence official visited Omar Khadr in Guantanamo Bay on two occasions. These visits were not for the purpose of bringing or assisting any prosecution of Omar Khadr. Rather the purpose of the visits was to allow the DFAIT intelligence official to assess Omar Khadr's well-being and general circumstances.

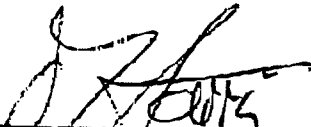
5. Canada has continued, and continues, to request access to Omar Khadr from the USA to verify his welfare and such access may be granted in the future. DFAIT stands prepared to provide such continuing assistance to Omar Khadr to ensure his health and well-being, when permitted to do so by the detaining authority.

6. As noted in the brochure, consular services are provided to the detainee/prisoner. Information collected by consular officers about the detainee/prisoner is not provided to others, such as the family, without the detainee/prisoner's express consent. It is not appropriate and may be contrary to the detainee/prisoner's wishes to take instructions from the family or others with regard to the extent or quality of consular services that Canada may attempt to provide. Such interference may impede Canada's attempts to obtain access to Omar Khadr in the future, when or if the USA permits the same.

7. In the context of the current detentions in Guantanamo Bay, any restriction on the ability of DFAIT officers to visit Omar Khadr may hinder its ability to provide services to him and does not improve the likelihood of access being permitted by the USA.

8. I swear this Affidavit in response to a motion by the Plaintiff for an interim injunction restraining Canadian officials from interviewing Omar Khadr in the future.

SWORN before me at the City of Ottawa in the Province of Ontario on February 18, 2005.


 Commissioner for Taking Oaths in and for the Province of Ontario

DAVID ALLAN HARRIS,
 Commissioner, etc., in and for the Province of Ontario,
 Barrister and Solicitor


 SERGE PAQUETTE

This is Exhibit "A" referred to in
the Affidavit of

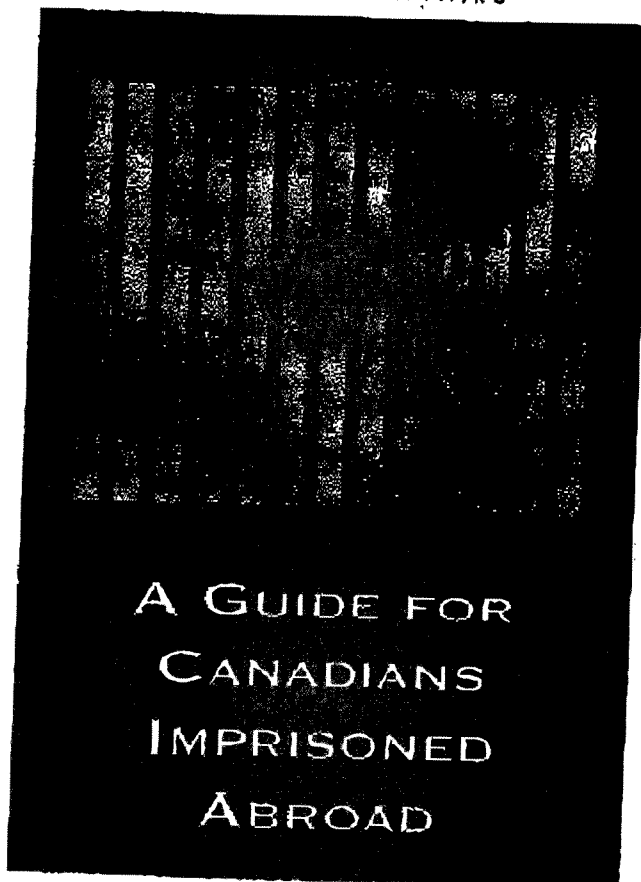
Serge Paquette

Sworn before me this 18th day

of February, A.D. 2005

[Signature]
A Notary Public, A Commissioner for Oaths in
and for the Province of Alberta

CONSULAR AFFAIRS



A GUIDE FOR
CANADIANS
IMPRISONED
ABROAD

Department of Foreign Affairs and International Trade

Canada

A GUIDE FOR CANADIANS IMPRISONED ABROAD

Published by the Department of Foreign Affairs and International Trade

For more information or additional free copies of this booklet, check the
Canadian Affairs Web site <http://www.cic.gc.ca> or write to:

Expatriés Serrins
Department of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, ON K1A0S2
Tel: 1 800 267-4678 (in Canada) or (613) 944-4378
E-mail: expatref@dfait-maad.gc.ca

We would like to receive your comments on this booklet. Write to us at
the above address or e-mail us at expatref-maad.gc.ca

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This publication is available in alternative formats upon request.

On document et sous divers formats en français, voir le site du site à
l'adresse des services aux citoyens à l'étranger.

Note: The information in this booklet is subject to change. Please
consult our Web site for the other resources listed in the Further
Information or Assistance section for the most up-to-date information.

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Introduction

... justice and assistance to ...

Recognizing words in any language. Speak to you by a judge in a foreign court, perhaps in a language you do not understand they are talking. They are also depending on your family and friends.

Thousands of Canadians are imprisoned in foreign countries. Most of them are in the United States; the rest are in prisons in almost 100 other countries.

The criminal justice system in many countries is different from that in Canada. This does not mean that those systems are inferior. A case arises that a Canadian may be at a disadvantage because of unfamiliarity with the local judicial system, culture and language. Frequently, people conditions are better than those in Canada.

As a Canadian detained or imprisoned in a foreign country, you will be subject to the laws of that country. You may be facing an oppressive family or friends of a Canadian detained or imprisoned in a foreign country who carry a considerable financial and emotional burden over an extended period.

This booklet provides information to help you, as well as your family and friends, benefit from the assistance provided by the Consular Section of Canada through its consular services. This assistance is available through the Consular Affairs Bureau of the Department of Foreign Affairs and International Trade. An Office of the Consular Information provided in the form Home Information or Assistance (services) and through Canadian diplomatic and consular offices abroad. "Consular" refers to the services a government can provide to its citizens who encounter difficulty abroad. These services are clearly established in international law and, more specifically, under the terms of the Vienna Convention on Consular Relations, to which Canada and many other nations are signatories. For further information on the Home Information, contact the Consular Affairs Bureau or consult our Web site (http://www.dfa.gc.ca/consular/eng/eng_index.html).

Canadian consular officials have extensive experience in dealing with the types of problems you may encounter, and understand how difficult the situation can be for everyone. They are there to help. Stay in touch with them, keep them informed about your situation, and call on them for the assistance you need.

Protection, Advice and Assistance

Relative Prisoner

The emotional stress and practical problems arising from arrest and imprisonment in a foreign country can be daunting. The Department of Foreign Affairs, not International Trade can provide you with advice and assistance.

If you break the laws of another country, you are subject to the judicial system of that country. Being a foreigner or not knowing the local laws is not an excuse, any more than it would be in Canada. The Department can neither protect you from the consequences of your actions nor overrule the decisions of local authorities.

If you are detained or arrested in a foreign country and you discuss to talk to Canadian consular officials, any information you give them will remain completely confidential and is protected under Canada's Privacy Act. It will not be passed on to anyone, other than consular officials concerned with your case, without your permission. You have the right, for example, to determine who will be notified of your situation, and who may act as your representative. Your family and friends will not have access to any information without your consent. The Royal Canadian Mounted Police (RCMP) and other police agencies have their own independent commitments, however,

and may learn of your circumstances through these sources.

If you are detained or arrested abroad and you wish to have Canadian consular officials notified, you should clearly make that request to the arresting authority. You should contact the nearest Canadian office abroad or the Department of Foreign Affairs and International Trade at 1 800 267-8788 in Canada and the United States or (613) 998-8815 (toll collect from abroad).

The arresting foreign authorities have an obligation, under the Vienna Convention on Consular Relations, to advise you of your right of access to a consular representative. They must, however, be obliged to inform a Canadian official, consular or researcher, of your detention, or arrest, unless you request it.

Family and Friends in Canada

As a family member or friend of a person detained or imprisoned abroad, you should contact the Consular Affairs Bureau of the Department of Foreign Affairs and International Trade at 1 800 267-8788 in Canada and the United States or (613) 998-8815.

A consular official can provide you with general information about the

country involved, prison conditions and the local justice system. You will not be given any details of the detention or arrest, or told how to establish communication with the person, unless the detainee/prisoner has authorized it.

You should resist the urge to take immediate action, such as visiting the detainee/prisoner, or sending money or parcels. You should discuss your actions with a consular official in Ottawa, who will advise you on the feasibility of such initiatives and how best to proceed.

It is important to note that, in many countries, mail sent or received by detainee/prisoners will be opened and read by prison authorities. It is also not unusual for telephone conversations to be monitored. Consular officials are not to be writing anything that you would not wish to become public.

The general approach of Canadian consular services emphasizes self-reliance, respect for privacy and the provision of help where this is needed. To the extent possible, you should make every effort to maintain direct contact with the detainee/prisoner through normal channels. Advice and information is available from consular officials, both in Ottawa and at regional offices. If you are a Canadian citizen, you may wish to contact your local consulate or embassy.

Consular Services Canada (Diverse-223-5234). However, the range of these services will be determined by your own ability to provide support and assistance. In general, officials will provide a more comprehensive range of services when a Canadian is detained or imprisoned in a country where it is difficult for family or friends to meet such assistance, or where the prison conditions warrant such services.

The Role of the Government of Canada

A non-Canadian charged with a criminal offence in Canada would be tried under Canadian criminal law in a Canadian court, and, if convicted, sentenced accordingly. Just as Canadians would not accept a foreign government interfering with the Canadian judicial process, the Government of Canada cannot interfere in the judicial affairs of another country.

The Government of Canada will make every effort to ensure that you receive equitable treatment under the local criminal justice system. It will ensure that you are not penalized for being a foreigner and that you are neither discriminated against nor denied justice because you are Canadian. If arrested, however, seek professional legal treatment for you, or try to exempt you from the due process of local law.

Hiring a Foreign Lawyer

The choice of legal representation in the country of your detention or arrest can be significantly important and should be made with care and caution. As a first step, you should consult with a consular official at the Canadian diplomatic or consular office responsible for services in the country of detention or arrest.

Consular officials can provide a list of lawyers who have expertise in your particular type of case, and who may have represented Canadians in the past. They can, of course, recommend specific lawyers. You may, of course, prefer to engage a lawyer who is not on the list. The decision to hire a specific lawyer remains your responsibility. In either event, you may wish to consider whether a lawyer is

- experienced in your type of case;
- well regarded in the local legal community.

Services Provided by Consular Officials

The range of services provided by Canadian consular officials varies from case to case and from country to country. Services appropriate to your case and situation will be discussed with you and/or those you designate. At your request, officials can

- assist you in writing to your family or friends in your language of choice; and
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- assist you in writing to your family or friends in your language of choice; and

Consular officials will facilitate communication between you, or someone you designate, and your lawyer. Although officials will provide you with information based on their experience, they cannot make decisions for you. Ultimately, all decisions affecting the conduct of the case must be made by you or your representative.

- notify your family or friends of your situation and let them know what you need—**and how**—they can help
- help you remain in touch with your representative, family or friends

- request immediate and regular access to you;
 - seek to ensure equitable treatment under local laws upon your arrest or detention, consistent with the standards of the host country;
 - obtain information about the status of your case and ensure that you are treated in accordance with local laws and regulations; and
 - provide you, your representative or family with information on the local judicial and prison systems, appropriate times for court appearances, typical sentences in relation to the alleged offence and bail provisions;
 - make every effort to ensure that you receive adequate nutrition, and medical and dental care;
 - arrange for the purchase, at your expense and if permitted, of necessary food supplies, essential clothing and other items to ensure your well-being through the prison system;
 - deliver mail and provide permitted reading material if normal postal services are unavailable;
 - deliver messages to you if telephone or postal services are unavailable or impractical;
 - contact relatives or friends on your behalf and ask them to send you funds as requested and
 - attempt to locate missing personal property.
- There are some services that Canadian consular officials cannot provide to you for reasons of law and public policy. For example, consular officials cannot:
- get you out of jail;
 - post bail, pay lawyer's fees or pay fines;
 - provide legal advice or interpret local laws;
 - select or recommend a specific lawyer;
 - become involved in matters of substance between you and your lawyer;
 - forward or deliver parcels entering or leaving the country, or clear them through customs;
 - claim any personal assets regarding what can and cannot be brought into or taken out of the prison;
 - make travel or accommodation arrangements for your family or friends; or
 - transfer funds.

Visiting a Canadian in Prison Abroad

Arrangements to visit a Canadian imprisoned abroad should be in place before your departure. Certain countries allow visits only at specific times of the year, or place restrictions on the number of visits a prisoner may receive or on who may visit. Common-law spouses, for example, may not be recognized. In some cases, language may be a problem and you will need to be accompanied by an interpreter. It is also important to note that prison

authorities are unlikely to grant any special treatment to visitors from Canada, such as exempting them from regular visiting hours.

You should discuss with officials in Ottawa the details of any proposed visit early in the planning stages. Your attorney will be forwarded to the diplomatic or consular office, which will make the necessary arrangements for the visit to the prison.

Transfer of Offenders Treaties

Canada has valid transfer of offenders treaties with many countries. These treaties enable Canadians convicted of offences in other countries to serve, with their consent and the approval of Canada and the sentencing countries, their sentences in Canadian penal institutions, where they can more easily prepare for their return to Canada if no life. The Solicitor General of Canada is the authority responsible for the implementation of these treaties. The Consular Service, a component of the Department of the Solicitor General, administers the International Transfer of Offenders Program through the Department of Foreign Affairs

and international trade and its offices abroad. Transfer decisions are discretionary and, for Canada, not with the Solicitor General of Canada.

The countries with which Canada has arrangements for the transfer of offenders are: Albania, Austria, Azerbaijan, the Bahamas, Belgium, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Cuba, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Oman, Nigeria,

Republic of, Malawi, Malta, Mexico, Morocco, the Netherlands, Nicaragua, Nigeria, Norway, Panama, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, Trinidad and Tobago, Turkey, Ukraine, the United Kingdom, the United States of America, Venezuela, Yugoslavia and Zimbabwe. For information on transfer of offenders treaties, contact the Consular Affairs Bureau or consult our Web site (<http://www.cic.gc.ca/interprogr/transferofoffenders.asp>). You can also contact Consular Service Canada or visit its Web site (<http://www.cic.gc.ca/interprogr/interprogr.asp>).

Only you, as the detainee/prisoner, may make the request for transfer to a Canadian prison.

Canadian consular officials will provide you with the necessary documentation to make an application for transfer. However, your application must be approved by both the host country and Canada. If your application is accepted, you will be transferred to Canada, where you will complete the terms of your original sentence, subject to Canadian laws and regulations, including extradition rules.

It is important to note that a foreign conviction will not constitute a criminal record in Canada. As Canadian law and policy do not

of their sentence in a Canadian correctional facility. An offender imprisoned in a state that has acceded to the treaty, such as law, would apply for a transfer to a Canadian institution.

If Canada does not have a treaty with the country of incarceration, a transfer is not possible. The number of countries with which Canada has transfer arrangements is increasing, and you should inquire with the Consular Affairs Bureau of the Department of Foreign Affairs and International Trade in Ottawa, or with the local diplomatic or consular office, for current information.

Only you, as the detainee/prisoner, may make the request for transfer to a Canadian prison. Canadian consular officials will provide you with the necessary documentation to make an application for transfer. However, your application must be approved by both the host country and Canada. If your application is accepted, you will be transferred to Canada, where you will complete the terms of your original sentence, subject to Canadian laws and regulations, including extradition rules.

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Call for Canadian Importation Approval

Name of patient: _____

Address: _____

Tel.: _____ **Fax:** _____

Name of consular official abroad: _____

Address: _____

Tel.: _____ **Fax:** _____

Name of consular official in Ottawa: _____

Consular Affairs Bureau
 Department of Foreign Affairs and International Trade
 125 Sussex Drive, Ottawa, ON K1A 0S2, Canada
 Tel: 1 (800) 267-6788 (in Canada and the U.S.) or (613) 996-8885
 (call collect from abroad)
 Fax: (613) 943-1054 or (613) 996-5038

An application for transfer can be submitted only after you have been convicted and sentenced for a crime, all appeals concerning your conviction and sentence must be exhausted, or the prescribed time for appeal must have expired. In addition, at least six months must remain on your sentence at the time of submitting your request for transfer.

Consent to withdrawal of consent before the transfer has been completed, the Government of Canada does not object to a transfer pending to abandon a sentence imposed in progress. This is not necessary in the case of all sentencing authorities, as a number of other governments determine the process to be irreversible at a certain stage. It is important to be fully aware of the sentencing authority's policies regarding transfer requests before submitting an application.

For More Information or Assistance

Consular Affairs Bureau
 Department of Foreign Affairs and International Trade
 125 Sussex Drive
 Ottawa, ON K1A 0S2, Canada
 www.csis.gc.ca
 Tel: 1 800 267-6788 (in Canada and the U.S.) or (613) 996-8885
 (call collect from abroad)
 E-mail: voya@csis.gc.ca
 mcs@dfatp.ca
 Fax: (613) 943-1054 or (613) 996-5038
 TTY: 1 800 394-3472 (in Canada and the U.S.) or (613) 943-1350

International Transfer
 Conventional Transfer Centre
 340 Laurier Ave. West
 Ottawa, ON K1P 0P9, Canada
 www.ccs-acc.gc.ca
 Tel: (613) 996-4155
 Fax: (613) 952-7676