International Transfers

An information booklet on the transfer of offenders to Canada
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MISSION STATEMENT OF THE CORRECTIONAL SERVICE OF CANADA

The Correctional Service of Canada (CSC), as part of the criminal justice system and respecting the rule of law, contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

STRATEGIC OBJECTIVE

To implement international treaties and agreements that will ensure the rights of Canadian and foreign offenders.
INTRODUCTION

The problem of Canadians arrested and incarcerated abroad is not a new one. However, even with the expansion of international criminal law in the twentieth century, particularly in the realm of bilateral extradition treaties, little effort was directed to the growing problem of imprisoned foreign nationals. Canadians travelling abroad continue to encounter legal problems for decades. It was not until the mid 1970s with the expansion of air travel to larger numbers of people and a world-wide increase in drug use that the situation took a dramatic turn. Consequently, at the fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders in September 1975, Canada proposed that an international system be established for the exchange of parolees who were nationals of foreign countries. As a result, Canada and the United States undertook to develop a transfer of prisoners treaty and the legislative provisions to serve as models for other countries.

Currently, there are well in excess of two thousand Canadians known to be incarcerated abroad in any given year. Canadians incarcerated in foreign countries often find themselves facing serious problems coping with local conditions. The most common problems involve culture shock, isolation, language barriers, poor diets, inadequate medical care, disease and inability to contact friends and family. Consequently, bouts of depression and hopelessness are not uncommon.

While Canadian consular personnel provide all assistance possible, their ability to help is often limited. Their role generally consists of ensuring that offenders’ rights under local laws are protected, that they are not discriminated against on the basis of citizenship and in acting as contact between the offenders and their families. In extreme cases, they can provide dietary supplements and emergency medical assistance. In some prison systems, the offender’s family is expected to provide food and financial assistance. A complete list of Canadian Missions abroad can be found at the following internet address: International.gc.ca.

In cooperation with the Department of Foreign Affairs and International Trade, officials of the Ministry of Public Safety Canada have negotiated and concluded several bilateral treaties and three multilateral agreements for the transfer of offenders.

The purpose of these agreements is to enable offenders to serve their sentence in their country of citizenship, thereby facilitating their eventual reintegration into society. Once transferred, the offender’s sentence is administered in accordance with the laws and procedures of the country of citizenship, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise.

This booklet is designed to provide Canadian citizens incarcerated abroad, their families and interested parties with information regarding the process and consequences of repatriation by means of transfer in order to enable an offender to make an informed decision on whether to return to Canada in accordance with the conditions of a respective transfer agreement.
**ELIGIBILITY CRITERIA FOR TRANSFER UNDER AN AGREEMENT IN FORCE**

There is little variance in the eligibility criteria in the various transfer treaties:

1. Offenders must be citizens, by birth or naturalization, of Canada;
2. Offenders must have been convicted and sentenced;
3. The offence must be punishable as a "crime" under the laws of Canada at the time the International Transfers Unit receives the request for transfer. Bear in mind that some agreements do not recognize convictions solely for military or immigration offences;
4. The judgement must be final, that is, there must not be any judicial proceedings pending by way of appeal or by any other form of review upon the conviction or the sentence;
5. The sentence must be one that can be administered under the laws of Canada or adjusted accordingly; examples of exclusions are death sentences, hard labour or indeterminate sentences;
6. As a general rule, at least six months of the sentence must remain to be served at the time of receipt of the application for transfer, although, in exceptional circumstances, this period may be less;
7. Parolees and probationers are generally included in the definition of "offender" and can therefore be transferred;
8. Written consent of the offender is required (as well as the approval of the sentencing country and Canada); and
9. All fines and legal fees must be satisfied prior to transfer.

**ADMINISTRATIVE ARRANGEMENTS**

If no treaty is in force between Canada and a foreign entity on the transfer of offenders, the *International Transfer of Offenders Act (ITOA)* allows Canada to enter into an administrative arrangement with the foreign entity for the transfer on a case-by-case basis of offenders with:

- a state with which negotiations for the signing of a bilateral treaty are still underway;
- a state with which a long term treaty is not considered desirable by either the state or Canada but there are compelling reasons to repatriate Canadian citizens; or
- an entity that is not recognized as a state by Canada such as Taiwan or with a special administrative region such as Macau.

An administrative arrangement for transfer would require the approval of the Minister of Foreign Affairs and the Minister of Public Safety.
To apply for a transfer under this provision, you must contact your nearest diplomatic post.

The *ITOA* also includes provisions allowing Canada to enter into an administrative arrangement with a state or non-state entity for the transfer, on a case-by-case basis, of a person who has been declared unfit to stand trial or not guilty on account of a mental disorder, and that the decision can no longer be appealed. The consent of provincial authorities in Canada would be a condition of the transfer.

**TRANSFER PROCESS**

The country in which a person has been convicted and sentenced is responsible for informing the offender of any transfer agreement with Canada and the nature and substance of the agreement.

**HOW TO APPLY FOR TRANSFER**

Under most bilateral treaties, offenders must express their request to the authorities of the sentencing country, through the institutional authorities. However, under the *Council of Europe Convention on the Transfer of Sentenced Persons*, offenders may generally express their interest to either the sentencing country or Canada.

1. Notwithstanding local requirements, an offender must complete the "*Request for Transfer to Canada*" ([form CSC/SCC 0308E](#)) as well as the "*Information form in support of a request for transfer to Canada*" ([CSC/SCC 0614E](#)).

2. The offender must also complete the "*Authorization for release of personal information*" ([form CSC/SCC 1395](#)) that allows the International Transfers Unit to share information about the status of the application.

3. The offender must secure and send original proof of citizenship to the nearest Canadian diplomatic post. Valid documents are one of the following:

   - Birth certificate from a Canadian province;
   - Canadian citizenship card, certificate or letter from the Canadian “Citizenship Branch”; or
   - letter from the appropriate provincial authority certifying that the offender was born in Canada.

Once the Canadian diplomatic post receives the above-noted document(s), it will:

- verify and confirm the date that Canadian citizenship was granted; or
- verify and confirm the birth in Canada; or
- provide and/or witness the statutory declaration of non renunciation of Canadian citizenship where necessary; and
- prepare the appropriate travel document for the offender’s return to Canada.
WITHDRAWAL

If an offender no longer wishes to transfer to Canada, a written withdrawal must be forwarded to either the Canadian diplomatic post or the International Transfers Unit of the Correctional Service of Canada at any time before the transfer takes place.

PROCESSING OF THE APPLICATION

Transfer treaties are a federal responsibility requiring the approval of both the sentencing country and Canada. In addition, approval by either the provincial, territorial or state authority, as the case may be, is required where an offender is under such jurisdiction. An example is the case of a "state offender" in the United States, where the consent of both the state and the federal authorities is required.

In Canada, implementation of the ITOA and related treaties rests with the Correctional Service of Canada (CSC). The International Transfers Unit of the CSC is responsible for the processing of all applications for transfer, to and from Canada, and their subsequent submission to the Minister of Public Safety, with whom rests the decision authority in Canada. However, in the case of offenders sentenced to less than two years, probationers, young offenders or persons declared unfit to stand trial or not criminally responsible on account of a mental disorder, approval of the respective provincial authority must also be obtained.

All applications for transfer are processed individually, with every effort being made to process requests as expeditiously as possible, upon receipt of the sentencing documentation from the sentencing country.

For every application, the International Transfers Unit shall:

1. verify the application for completeness and quality of supporting documentation, conform to the requirements of the ITOA and relevant transfer agreement, and follow up as required;

2. confirm through the Department of Foreign Affairs and International Trade that the applicant’s citizenship is verified;

3. verify that at least six months of the offender’s sentence remains to be served at the time of the application;

4. confirm that no proceeding by way of appeal or by extraordinary review procedure upon the offender’s conviction or sentence is pending in the sentencing state and that the prescribed time for appeal has expired;

5. complete a criminal record check in order to identify any outstanding criminal matters or police interests in Canada, and that the applicant’s criminal history is brought to the attention of interested third parties as required.

6. request that a community assessment be completed in the region where the offender is most likely to return to assess:
   • whether the offender has social or family ties to Canada;
whether the offender’s return to Canada will endanger public safety, including:
   i. the safety of any person in Canada who is a victim, as defined in subsection 2(1) of the CCRA, of an offence committed by the offender;
   ii. the safety of any member of the offender’s family, in the case of an offender who has been convicted of an offence against a family member; or
   iii. the safety of any child, in the case of an offender who has been convicted of a sexual offence involving a child.

whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;

whether the offender has accepted responsibility for the offence for which they have been convicted, including by acknowledging the harm done to victims and to the community;

whether the offender has cooperated or has undertaken to cooperate with a law enforcement agency;

whether the offender has any health concerns, their nature and level of seriousness;

whether the offender has refused to participate in a rehabilitation or reintegration program; and

whether the offender has, in the past, escaped lawful custody, or breached a court order or probation/parole order. Whether he/she have knowledge whether the offender has links to criminal organizations, gangs or security threat groups and, if so, the nature of his/her involvement.

7. seek confirmation that the offence for which the offender has been convicted constitutes a criminal offence in Canada, or would constitute a criminal offence if committed in Canada at the time the Minister of Public Safety receives the application.

8. seek confirmation that the sentence is one that can be administered under the laws and procedures of Canada, including the application of any provision for reduction of the term of confinement by parole, statutory release or otherwise;

9. collect information on the manner in which the offender’s sentence will be managed if transferred; and obtain eligibility dates for various types of conditional release;

10. request security information to verify the factors enumerated in paragraphs 10(1)(a) to (c) and 10.2(a) of the ITOA for the Minister’s consideration;

11. collect information where possible, other than through the Community Assessment, on the offender’s acceptance of responsibility for the offence, including acknowledging the harm done to victims and the community;

12. verify that the offender was not previously transferred under the ITOA or the Transfer of Offenders Act;

13. initiate any other action deemed necessary base on requirements of an individual case;

14. collect information to address any other factor the Minister of Public Safety considers relevant.
15. obtain provincial or territorial approval, where necessary; and

16. when the application for transfer has been completely processed, prepare a ministerial submission for decision and disclose the contents of the file with the applicant to allow him/her to make further submissions.

CONSIDERATION FOR TRANSFER

Pursuant to the ITOA:

10.(1) In determining whether to consent to the transfer of a Canadian offender, the Minister may consider the following factors:

(a) whether, in the Minister’s opinion, the offender’s return to Canada will constitute a threat to the security of Canada;

(b) whether, in the Minister’s opinion, the offender’s return to Canada will endanger public safety, including
(i) the safety of any person in Canada who is a victim, as defined in subsection 2(1) of the Corrections and Conditional Release Act, of an offence committed by the offender,
(ii) the safety of any member of the offender’s family, in the case of an offender who has been convicted of an offence against a family member, or
(iii) the safety of any child, in the case of an offender who has been convicted of a sexual offence involving a child;

(c) whether, in the Minister’s opinion, the offender is likely to continue to engage in criminal activity after the transfer;

(d) whether, in the Minister’s opinion, the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;

(e) whether, in the Minister’s opinion, the foreign entity or its prison system presents a serious threat to the offender’s security or human rights;

(f) whether the offender has social or family ties in Canada;

(g) the offender’s health;

(h) whether the offender has refused to participate in a rehabilitation or reintegration program;

(i) whether the offender has accepted responsibility for the offence for which they have been convicted, including by acknowledging the harm done to victims and to the community;

(j) the manner in which the offender will be supervised, after the transfer, while they are serving their sentence;

(k) whether the offender has cooperated, or has undertaken to cooperate, with a law enforcement agency; or

(l) any other factor that the Minister considers relevant.

10.(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister may consider the following factors:

(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

(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.
DEcision

Both the sentencing country and the offender must be apprised of any decision.

In the event of an approval by the Minister of Public Safety, the Canadian offender will receive written notification from the International Transfers Unit as to the manner in which the sentence will be administered in Canada, including eligibility dates for various forms of conditional release, and will be asked to provide written consent to the transfer.

Pursuant to section 11(2) of the ITOA, if the Minister of Public Safety does not consent to the transfer, the Minister shall give reasons in writing. The International Transfers Unit will forward the reasons to the offender.

Denial of an application for transfer by either country (at any level) precludes the transfer of the offender at that time. The offender may re-apply after one year from the date of the denial in the event of a denial by the Minister of Public Safety or at a time specified by the sentencing country.

Transfer Operation

Offenders are generally transferred shortly after all parties (Canada, sentencing country and the offender) have consented to the transfer, depending on the complexity of the transfer operation.

Transfers can be carried out in groups or individually, depending on circumstances.

The amount of luggage offenders will be entitled to bring with them will vary depending on the mode of transportation. Any personal effects such as hygienic products, feminine products, toiletries and cosmetics must be disposed of prior to transfer at the offender’s expense.

Upon return to Canada:

- an offender sentenced to two or more years is generally placed in a federal institution nearest to the point of entry. As soon as it is operationally feasible, the offender will be moved to an appropriate institution in the region of his/her choice, based on the results of the offender’s Intake Assessment process.
- an offender sentenced to less than two years will be transferred to a provincial institution in his/her province of residence.
- Probationers/parolees will be given instructions on where they are to report.
EFFECT OF A TRANSFER TO CANADA

The sentence of a transferred offender will be administered under the laws of Canada, including any provision for conditional release.

If for any reason, the sentence originally imposed by the sentencing country ceased to be enforceable in the sentencing country, Canadian authorities, as soon as they are informed of this, would release the offender from the sentence being served.

Canada has no jurisdiction over any proceedings, regardless of their form, intended to challenge, set aside or otherwise modify convictions or sentences handed down in the sentencing country.

Under some treaties, either country may pardon an offender after transfer but generally the sentencing country alone retains that right.

A transfer to Canada is irreversible. Unlike some countries, Canada has no laws which would allow an offender to be returned to the sentencing country. Only a Canadian court may order the release and deportation of an offender on the grounds that he/she is not a Canadian citizen.

Pursuant to Section 4 of the ITOA, subject to subsection (3), a transfer is not available unless the Canadian offender’s conduct would have constituted a criminal offence if it had occurred in Canada at the time the Minister receives the request for a transfer. Section 13 of the ITOA is a deeming provision: The enforcement of a Canadian offender’s sentence is to be continued in accordance with the laws of Canada as if the offender had been convicted and their sentence imposed by a court in Canada. This deeming provision is to enable the Correctional Service of Canada to manage a foreign sentence. In doing so, the Correctional Service of Canada obtains and manages information, including foreign convictions and sentencing documentation received from the foreign country. In addition, there could be information on the offender’s foreign conviction in the Canadian Police Services Information Center’s (CPSIC) database. Disclosure of information is subject to Sections 7 & 8 of the Privacy Act.

If the criminal offence for which the offender was convicted and sentenced in the sentencing country is one that would have been identified in Canada under section 15 or 36.3 of the ITOA, and referred to in paragraph (a), (c), (c.1), (d) or (e) of the definition “designated offence”, in subsection 490.011(1) of the Criminal Code, the offender is required to comply with the Sex Offender Information Registration Act. This obligation begins on the day of transfer to Canada.
OVERVIEW OF THE CORRECTIONAL SERVICE OF CANADA

The Correctional Service of Canada is the federal agency responsible for administering sentences of imprisonment of two years or more. Its role is to assist offenders to reintegrate society as law-abiding citizens, through institutional programs designed to prepare offenders for return to society and the supervision of offenders on conditional release.

The Correctional Service of Canada is headed by the Commissioner, who in turn reports to the Minister of Public Safety. Its National Headquarters in Ottawa is responsible for the overall planning and policy development, while five geographic regions - Atlantic, Quebec, Ontario, Prairies and Pacific - administer the operation of the institutions and parole offices.

RECEPTION PROCESS

Upon arrival at the Reception Centre in the offender’s region of choice, every offender undergoes an orientation period, normally for two weeks, where they are counseled regarding adaptation to the specific institution, institutional regulations and program opportunities.

All new offenders:

- undergo a full assessment of programs and security needs, which may include medical, psychological, psychiatric, vocational and educational needs;
- are provided with guidance regarding adaptation to the penitentiary environment and spiritual, educational and vocational needs; and
- are informed about the federal correctional system in general.

An Intake Assessment process is generally completed within 60 to 90 days, after which the offender is placed in an institution deemed appropriate for his/her individual security and program needs.

INSTITUTIONAL PLACEMENT

Placement of offenders in an appropriate federal institution is based on factors such as:

(a) the degree and kind of custody and control necessary for
   (i) the safety of the public,
   (ii) the safety of that person and other persons in the penitentiary, and
   (iii) the security of the penitentiary;
(b) accessibility to
   (i) the person’s home community and family,
   (ii) a compatible cultural environment, and
   (iii) a compatible linguistic environment; and
(c) the availability of appropriate programs and services and the person’s willingness to participate in those programs.
If the initial institutional placement does not meet the offender’s identified needs, the offender is normally transferred to a more appropriate facility upon availability.

If the offender disagrees with the institutional placement, the opportunity exists to appeal the placement decision.

**HEALTH CARE SERVICES**

The objective of the Correctional Service of Canada is to provide a complete range of health care services to offenders and a limited range of rehabilitative care services to conditionally released offenders which are comparable in quality to services available to the average Canadian.

The Correctional Service of Canada’s health care program provides offenders with a complete range of medical, dental, nursing, pharmaceutical, psychiatric and psychological services. Serious medical problems or special requirements which cannot be handled internally are referred to health care facilities in the community.

**OFFENDER CONTACT WITH COMMUNITY TIES**

With the objective of maintaining and developing family and community ties, the Correctional Service of Canada encourages offenders to correspond and communicate by telephone, letters and visits.

**VISITS**

In order to participate in any type of visiting program, visitors must be security cleared. In the event that a visitor is refused access, written notification of the reasons are provided.

Visiting hours are normally conducted outside the hours of the offender’s work program and are usually limited only by the institution’s schedule, personnel resources and space availability. Facilities are available that allow offenders to meet with legal counsel under conditions in which confidentiality is assured.

Offenders are eligible to participate in private family visits programs with relatives such as a spouse or common-law partner, children, parents, foster parents, siblings, grandparents and in-laws. Visits are normally granted for up to 72 hours per offender every two months. All offenders are eligible for private family visiting except those who are:

- assessed as being currently at risk of becoming involved in family violence;
- in receipt of unescorted temporary absences for family contact purposes;
- in a special handling unit or are awaiting decision or have been recommended or approved for transfer to a special handling unit; or
- in disciplinary segregation at the time of the scheduled private family visit

An inmate is not eligible to participate in a private family visit with other inmates.
CONDITIONAL RELEASE IN CANADA

As indicated earlier, all Canadian offenders incarcerated abroad will be informed in writing, prior to transfer, of their projected eligibility dates for various forms of conditional release in Canada.

Under the Corrections and Conditional Release Act or the Criminal Code, the day on which a Canadian offender is eligible for a temporary absence, day parole or full parole is before the day of their transfer, the day of their transfer is deemed to be their day of eligibility.

Remember: Eligibility does not mean automatic release.

Conditional release in Canada permits offenders to serve part of their sentence in the community under supervision, subject to conditions imposed by the Parole Board of Canada.

Despite sections 122 and 123 of the Corrections and Conditional Release Act, the Parole Board of Canada is not required to review the case of a Canadian offender until six (6) months after the day of their transfer.

All forms of conditional release may be suspended and/or revoked if the offender violates the conditions of his release, demonstrates behavior that poses an undue risk to the community or re-offends.

SENTENCE TO SERVE IN CANADA

Pursuant to subsection 22(1) of the ITOA, the length of a Canadian offender’s sentence equals the length of the sentence imposed by the foreign entity minus any time that was, before their transfer, recognized by the foreign entity as a reduction, other than time spent in confinement after the sentence was imposed. These may include jail credits, good time credits, remission credits and work credits.

Pursuant to subsection 22(2) of the ITOA, the time that a Canadian offender spent in confinement, after the sentence was imposed and before their transfer, is subtracted from the length of the sentence determined in accordance with reductions, i.e. jail credits granted by the foreign entity. The resulting period constitutes the period that the offender is to serve on the sentence, in Canada.

Pursuant to section 23 of the ITOA, subject to sections 19 and 24, a Canadian offender who is transferred to Canada is eligible for full parole on the day on which they have served, commencing on the day on which they commenced serving their sentence, the lesser of seven years and one third of the length of the sentence as determined under subsection 22(1) of the ITOA.
**Statutory Release**

Pursuant to section 26(1) of the *ITOA*, if a Canadian offender transferred to Canada is detained in a penitentiary, they are entitled to be released on statutory release on the day on which they have served, commencing on the day of their transfer, two thirds of the period determined in accordance with subsection 22(2), to be served in Canada. Statutory Release does not apply to offenders serving a life sentence.

**Detention Order**

Under the *Corrections and Conditional Release Act* the Parole Board of Canada can, according to established criteria and procedures, direct the continued detention until warrant expiry of those inmates considered likely to commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence before the end of their sentence.

**Release from Prison (Provincial)**

Pursuant to section 26(2) of the *ITOA*, if a Canadian offender transferred to Canada is detained in a prison, they are entitled to be released on the day on which they have served, commencing on the day of their transfer, the sentence to serve in Canada less the amount of any remission earned under the *Prisons and Reformatories Act* on that period.
ENQUIRIES

Although this booklet answers many of the general questions a Canadian offender incarcerated abroad may have, many aspects of the transfer treaties or of the manner in which sentences are served in Canada are too complex to cover in a general information booklet such as this.

For more details, interested parties are invited to contact the Correctional Service of Canada.

Enquiries should be directed to:

International Transfers Unit
Institutional Reintegration Operations Division
Offender Programs and Reintegration Branch
Correctional Service of Canada
340 Laurier Avenue West
Ottawa, Ontario
K1A 0P9

Tel: (613) 947-9708
Fax: (613) 952-7676

Email: internationaltransfers@csc-scc.gc.ca
Website: http://www.csc-scc.gc.ca/text/prgrm/inttransfer/trans-eng.shtml