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OCT 06 2009

King County Prosecutor
Appellate Unit

NO. 63498-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

FREDDIE LEVI HARRIS,

Appellant.

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STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Michael J. Fox, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred when it refused to grant credit for time served while Appellant was being detained on a Canadian immigration hold.

2. The court applied the wrong legal standard when it refused to grant credit for time served.

Issues Pertaining to Assignments of Error

1. Appellant, a resident of Canada, was tried and convicted in Washington for offenses committed while he resided here. After the jury retired to consider its verdict, but before it delivered the verdict, Appellant left the United States and returned to his family in Canada. A bench warrant was issued. Canadian authorities, aware of the warrant, arrested Appellant and detained him for deportation proceedings. After more than a year of proceedings, Appellant was deported from Canada, turned over to police in Washington and returned to King County for sentencing. In what appears to be an issue of first impression in Washington, should Appellant be awarded credit for time served during his deportation proceedings in Canada when it appears he was detained in custody because of the outstanding bench warrant in Washington state?

2. In Appellant's motion requesting credit for time served while detained in Canadian custody, Appellant asked the court to award

credit for time served as an act of discretion. The court denied that request, citing in its oral ruling, Appellant's decision to seek asylum in Canada as the reason. In an analogous circumstance, a published Washington opinion held the defendant was entitled for credit for the time served while fighting extradition from another state. Did the court below apply the wrong legal standard when it refused to grant credit for time served detained in custody while fighting deportation in Canada?

B. STATEMENT OF THE CASE¹

On February 6, 1997, the King County prosecutor's office charged Appellant Freddie Levi Harris with one count of second-degree robbery and one count of second degree kidnapping. CP 1-4. Those charges arose from the February 7, 1994 robbery of a Seattle restaurant. CP 72-73. Harris owned the janitorial company that cleaned the restaurant. CP 72.

At the time the information was filed, Harris was residing in Canada. CP 73. According to Harris, he did not learn of these charges until 2003 when he applied for permanent residency in Canada and the required background check revealed criminal charges. CP 73. Soon after this discovery, Harris turned himself in at the border. CP 73. Harris was

¹ The statement of facts regarding the underlying charges and convictions is taken largely from the unpublished opinion of this Court in State v. Harris, No. 59195-9-I, slip opinion at 1-3 (July 28, 2008). This decision appears in the court record below and has been forwarded to this Court as clerk's papers. See CP 72-74 (statement of facts in prior decision).

arraigned in March 2003, released and allowed to return to Canada. CP 73.

At arraignment, Harris was represented by private counsel, but by April 2003, he could no longer afford counsel, and a public defender was appointed. CP 73. Harris failed to appear for his case scheduling hearing on May 19, 2003, and a bench warrant was issued. CP 73. Harris said he had not received a scheduling date from his attorney until weeks after the hearing date had passed. CP 73. Shortly after the warrant was issued, Harris's original public defender withdrew due to a conflict, and Harris was assigned another attorney.² CP 73.

Once Harris was informed of the warrant, he notified Canadian authorities, who detained him for two weeks until they could conduct a hearing. CP 73. The Canadian authorities released Harris while they awaited more information on the warrant and charges. CP 73. Harris was released under the condition that he report weekly to Canadian authorities. CP 73-74.

On April 27, 2004, Harris found transportation to the border crossing at Peach Arch. He was detained at the border with 38 pounds of marijuana in the vehicle. CP 74. Harris pled guilty to possession of

² Harris's dissatisfaction with this second appointed attorney, and that attorney's performance, was addressed, in the direct appeal in No. 59195-9-1. See, CP 71-82.

marijuana with intent to deliver and served 90 days in the Whatcom County jail before being transferred to King County for the robbery-related charges.³ CP 74.

The trial on the robbery charges started on February 28, 2005. CP 74. The amended information charged: Count I -- first degree robbery, with a deadly weapons enhancement; Count II -- unlawful imprisonment; Count III -- bail jumping; and Count IV -- first degree kidnapping, with a deadly weapons enhancement. CP 5-7. In mid-trial, the State again amended the information to add the kidnapping charge as a predicate to the bail jumping allegation. CP 16-18.

A jury convicted Harris on all counts, and found both deadly weapons enhancements. CP 74. Harris, however, failed to appear to hear the jury's verdicts, and a bench warrant was issued. CP 25, 74, 92.

After leaving Washington, Harris returned to Vancouver, B.C. where he was arrested by the Canadian Border Services Agency (CBSA) on April 25, 2005. CP 89, 93. While in custody, Harris attempted suicide and was transferred to a hospital for a psychiatric assessment. CP 93. While being released from the hospital, Harris escaped and remained at large until June 28, 2005 when he was rearrested. CP 93. Harris

³ This VUCSA charge was not challenged in Harris's original appeal and is not at issue in this appeal.

apparently applied for political asylum and remained in the continuous custody of the Canadian authorities from June 28, 2005 until he was deported back to the United States on August 21, 2006. CP 93, 96. The record indicates arrangements between CBSA and the King County Prosecutor's office had been made to have Seattle Police Department detectives present at the border to personally take custody of Harris when he entered the United States. CP 92, 95. Harris was booked into the King County Jail on August 22, 2006. CP 27.

Back in Washington, Harris obtained new counsel who brought a motion for a new trial. CP 74. That motion was denied, and Harris was sentenced to 96 months with all charges to be served concurrently. CP 55, 74. At sentencing, however, the issue of whether Harris should receive credit for time served while being detained in Canada was reserved until Harris could obtain documentation from the Canadian authorities. CP 84.

In the meantime, Harris was charged with bail jumping in regard to his failure to appear to hear the jury's verdict in the robbery-related charges. CP 84. Counsel appointed for that case was also appointed to address the credit for time served in Canada issue. CP 84. The motion to amend the judgment and sentence to grant credit for that time was filed on November 24, 2008. CP 83-96.

The court held a hearing on this issue on April 14, 2009. RP 2.⁴ The court denied Harris's request for credit for his time served in Canadian detention stating, "The basis for the ruling are his willful acts wound him up in this situation. He had a choice to make and he made the choice that he was going to seek asylum in Canada rather than deal with this charge." RP 8.

In the written order, the court characterized Harris's motion as "a motion by the defendant to award him credit for time he served in Canadian custody from 6/28/05 to 8/21/06 on unrelated matters." CP 97. Without any further findings, the court's order said, "It is hereby ordered that the defendant's motion is denied."⁵ CP 97.

This appeal timely follows. CP 102-03.

C. ARGUMENT

This case appears to present an issue of first impression for this Court: whether a defendant should be granted credit for time served in detention while challenging deportation from Canada to face criminal charges in Washington state.

⁴ The verbatim report of proceedings here consists of one volume of transcript from the April 14, 2009 hearing, which is referenced in this brief as "RP."

⁵ At the hearing on the motion for credit for time served, the court also heard Harris's oral motion for discovery of documents regarding the representation provided by his former appointed counsel. RP 8. The court denied this request until Harris could provide a more complete statement of why these documents might be relevant to a personal restraint petition. CP 98; RP 9. This appeal does not address this discovery request.

This appeal presents two related challenges to the trial court's refusal to grant Harris credit for the time he was detained in custody by the CBSA. The first issue is whether the Canadian decision to detain Harris while he was challenging his deportation was based on the existence of his Washington state warrant. The second issue is whether the court applied the wrong legal standard when it cited pursuit of political asylum as a basis to deny the credit for time served motion. An analogous Washington state case holds credit cannot be denied because a defendant chooses to fight extradition.

1. CREDIT FOR TIME SERVED SHOULD HAVE BEEN GRANTED BECAUSE CANADIAN AUTHORITIES DETAINED HARRIS IN CUSTODY SOLELY IN REGARD TO HIS WASHINGTON WARRANT.

Washington courts sentencing a defendant are required to give credit for all confinement time served prior to sentencing if that confinement was solely in regard to the offense for which the defendant is being sentenced. RCW 9.94A.505(6).⁶ Failure to give credit for time served prior to sentencing implicates a defendant's constitutional rights to due process, equal protection and double jeopardy. Reanier v. Smith, 83 Wn.2d 342, 352, 517 P.2d 949 (1974).

⁶ RCW 9.94A.505(6) provides: "The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced."

Fundamental fairness and the avoidance of discrimination and possible multiple punishment dictate that an accused person, unable to or precluded from posting bail or otherwise procuring his release from confinement prior to trial should, upon conviction and commitment to a state penal facility, be credited as against a maximum and a mandatory minimum term with all time served in detention prior to trial and sentence.

Reanier v. Smith, 83 Wn.2d at 364; see also In re Phelan, 97 Wn.2d 590, 594, 647 P.2d 1026 (1982) (quoting Reanier with approval).

The Phelan Court specifically found the Reanier rationale was not limited to those detained prior to trial solely because of indigency. “Whether the pretrial confinement be occasioned by the inability to post bail or the individual's inability to ‘otherwise procur(e) his release from confinement prior to trial’, Reanier requires that credit for time served be granted against the individual's maximum sentence.” Phelan, 97 Wn.2d at 594.

The issue here is whether Harris should be given credit for the time he spent in detained in Canadian custody while proceeding through the Canadian immigration processes, including his request for political asylum, before he was delivered to Washington authorities at the border. No Washington case directly addresses this issue. Two cases were found from other states, which address credit for time served in foreign

jurisdictions: People v. Nagler,⁷ a New York case, and Nicastro v. Cuyler,⁸ a Pennsylvania case. But, those cases arrive at contradictory results, and neither directly addresses the factual and legal circumstances here.

In Nagler, the defendant fled from New York to France before trial. Nagler, 251 N.Y.S.2d at 109. The defendant was returned under an extradition order and moved for credit for time served in prison in France while awaiting extradition. Id. Because procedures followed below precluded a direct review of this issue, the appellate court cited “the broadness and scope” of the New York statute granting credit for time served as the basis for circumventing those procedural inhibitions. Nagler, 251 N.Y.S.2d at 109-11. The court directed credit should be provided for time spent in the French prisons while awaiting extradition. Nagler, 251 N.Y.S.2d at 111-12.

Nagler does not directly apply here because, unlike the New York authorities, the King County Prosecutor’s office did not have to file extradition proceedings with the Canadian authorities in order to receive Harris into custody. Rather, the King County Prosecutor’s office was able to arrange informally with the Canadian authorities to be present at the

⁷ 1 A.D.2d 490, 251 N.Y.S.2d 107 (1964).

⁸ Ct. 539, 467 A.2d 1218 (1983).

border when Harris was returned, and to take him into custody there. CP 91-92, 95; cf. Nagler, 251 N.Y.S.2d at 111 (a fugitive from justice detained in a foreign country by reason of a treaty stipulation is held in custody under process of law and legal arrest). In addition, Washington's credit for time served statute, which requires a person be held "solely in regard to the offense for which the offender is being sentenced," is not written as broadly as the New York statute.

In Nicastro, the defendant had escaped from a Pennsylvania prison while serving a five-to-ten year sentence. Nicastro, 467 A.2d at 1219. He was subsequently arrested in Canada on a detainer from Pennsylvania and held on that detainer for six days until he was released by Canadian authorities on conditions that he report to immigration authorities. Id. at 1219-20. While on release, however, Nicastro committed another crime in Canada and was incarcerated for a period on that offense. Id. Nicastro asked for credit for all time spent in Canada on the detainer, including time attributable solely to immigration purposes and the time he spent incarcerated on the Canadian criminal offenses. Id. at 1220. Analyzing the facts for the sole reasons for the various terms of incarceration in Canada, the court held Nicastro was not entitled to credit for time incarcerated by reason of the Canadian criminal charges. Id. at 1221. Regarding the time Nicastro spent incarcerated on the detainer for

Canadian immigration purposes, the court noted the Commonwealth had already granted Nicastro's request for credit for those six days. Id. at 1220 n.3. Noting further that the Commonwealth had not challenged granting credit for those six days below, the court said in dicta that the same principles applicable to the criminal charges would have precluded credit for any time Nicastro spent in custody solely for immigration reasons. Id. at 1221.

Nicastro does not apply here because unlike that case, Harris was never detained in custody for any criminal activity committed in Canada. What Nicastro does show, however, is that Canadian authorities will generally release persons facing deportation under conditions. Nicastro, 467 A.2d at 1219-20.

The question here is not whether the Canadian authorities had bases for excluding Harris from Canada unrelated to the charges underlying this case. Rather, the key issue here is whether Canada's decision to keep Harris detained in custody during his immigration proceedings was made in regard to this Washington case.

Division 6 of the Canadian Immigration and Refugee Protection Act addresses detention and release of permanent residents and foreign nationals who may be inadmissible to Canada. See Immigration and

Refugee Protection Act, S.C., ch. 27, §§ 54-61 (2001).⁹ Under § 55(2)(a) of this statute:

(2) An officer may, without a warrant, arrest and detain a foreign national other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, and admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister[.]

§ 55(2)(a) in part.

Under § 58(1), however, persons subject to immigration proceedings are required to be released unless the Immigration Division makes required findings:

(1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

(a) they are a danger to the public;

(b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister[.]

§ 58(1) in part.

⁹ A copy of this statute downloaded from the official Department of Justice Canada website is attached as Appendix A to this brief. The website consulted was <http://laws.justice.gc.ca/en/notice/index.html?redirect=%2Fen%2Findex.html>. Official versions of Canadian Laws and Regulations are published by the Minister of Justice at <http://laws-lois.justice.gc.ca>. Absent evidence to the contrary, any copy of a statute published by the Minister in electronic form is considered evidence of the statutes and of its contents. Legislative Revision and Consolidation Act, sub sections 31(1) and (2) (2009).

Under § 58(2), the Immigration Department is authorized to detain those persons it finds should not be released:

(2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

§ 58(2) in whole.

As these statutory provisions governing detention of persons by the Canadian Immigration Division show, persons facing deportation from Canada should be released pending their immigration hearing unless the Division finds the person is “a danger to the public” or the person is “unlikely to appear.” From the documents presented below, nothing suggests the Canadian authorities detained Harris because they believed him to be a danger to the public. Rather, those documents suggest they detained him because they believed he was unlikely to appear. CP 93-94.

Under Canadian regulations, the Immigration Division considers the following factors when determining whether a person represents a flight risk:

244. For the purposes of Division 6 of Part 1 of the Act, the factors set out in this Part shall be taken into consideration when assessing whether a person

(a) is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister[.]

....

245. For the purposes of paragraph 244(a), the factors are the following:

(a) being a fugitive from justice in a foreign jurisdiction in relation to an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;

(b) voluntary compliance with any previous departure order;

(c) voluntary compliance with any previously required appearance at an immigration or criminal proceeding;

(d) previous compliance with any conditions imposed in respect of entry, release or a stay of removal;

(e) any previous avoidance of examination or escape from custody, or any previous attempt to do so;

(f) involvement with a people smuggling or trafficking in person operation that would likely lead the person to not appear for a measure referred to in paragraph 244(a) or to be vulnerable to being influenced or coerced by an organization involved in such an operation to not appear for such a measure; and

(g) the existence of strong ties to a community in Canada.

Immigration and Refugee Protection Regulations, SOR/2002-227, C.P. 2002-997 (2002).¹⁰

Two of the factors for determining a flight risk weigh heavily against Harris, and both of those implicate his Washington sentence: Harris was a fugitive from justice in Washington, and he had previously avoided examination or custody by absenting himself from hearing the jury's verdict. Immigration Regulation, § 245 (a), (e).

The record of the April 11, 2006 Canadian Immigration hearing notes Harris had been unable to abide by his previous terms and conditions of release. CP 93. That, however, is not one of the factors to be considered in determining whether a person represents a flight risk. In addition, failure to abide by terms and conditions is not a basis for denying release from detention unless it can be shown the person is a flight risk. The hearing officer also noted Harris had escaped from immigration custody and was at large for approximately two months. CP 93. Such an escape is one of the factors for determining whether a person should be detained as a flight risk, but it is not the factor emphasized by the hearing officer. CP 93. Rather, the hearing officer focused on Harris's status in Washington to determine he was a flight risk:

¹⁰ A copy of these regulations is attached as Appendix B to this brief. They were downloaded from the same website as the Immigration statutes cited above and have the same evidentiary validity as those statutes.

He is a fugitive from justice in the state of Washington, US and he fled that state before he could receive a verdict and sentence in a criminal matter, despite the fact he was under a large bond

He likely faces some very serious jail time for those convictions in the US

When he is removed from Canada he will be handed over to the US and will have to face jail time for the convictions from which he fled

For these reasons it is unlikely that PC will voluntarily cooperate w[sic] our dept in his removal

CP 93-94.

In the hand-written notes reflecting the member's decision in that hearing, the only flight risk factor noted was, "He was convicted by a jury in the US for those charges – finding of fact – he wasn't in the court room." CP 94. From the record presented below, and from the Canadian statutes and regulations, it appears Harris most likely would have been released from custody under terms and conditions pending his deportation from Canada if it were not for the criminal proceedings in Washington.

Because the record reflects the significance the Canadian authorities attributed to the Washington criminal proceeding, Harris's detention as a flight risk in Canada should be attributed to the offenses for which Harris was sentenced here. Because the record reflects no other

determinative factor for assessing him as a flight risk, his detention in custody in Canada was solely in regard to the robbery-kidnap-bail jumping sentencing at issue here.

Because Harris was confined in custody for reasons solely in regard to the sentence imposed in this case, he should have been awarded credit for the entire time served in Canada.

2. THE COURT APPLIED THE WRONG LEGAL STANDARD WHEN IT REFUSED TO GRANT CREDIT FOR TIME SERVED BECAUSE HARRIS'S DEPORTATION CHALLENGE DELAYED HIS RETURN TO WASHINGTON.

The court's written order denying Harris's motion for credit for time served made no explicit findings and drew no explicit conclusions. CP 97. Rather, it merely denied the motion. Id. When a court makes inadequate written findings, however, the basis for the decision may be supplemented by the court's oral decision or statements in the record. State v. Teuber, 109 Wn. App. 640, 36 P.3d 1089 (2001), rev. denied, 146 Wn.2d 1021 (2002).

Here, the court's oral announcement of the decision provided that supplementation, "The basis for the ruling are [sic] his willful acts wound him up in this situation. He had a choice to make and he made the choice that he was going to seek asylum in Canada rather than deal with this

charge.” RP 8. The court, however, erred by basing its decision on Harris’s attempt to avoid return to Washington state.

In State v. Brown,¹¹ the defendant fled the state after he was contacted by police investigating allegations he had sexually abused his step-sister. Brown, 55 Wn. App. at 741. Brown was eventually arrested in California and spent 83 days in California jails contesting his extradition. Id. At sentencing, however, the court failed to give him credit for the time spent in California fighting extradition. Id. at 756. The Court found Brown’s detention in California was attributable only to the offenses for which he had been convicted and sentenced. Id. at 757. On this issue, the Court agreed with Brown that the plain language of the statute required he be granted credit for the time he spent in California fighting extradition. Id.

This case is similar. As discussed above, this Washington case was the predominant factor in Canada’s assessment of Harris as a flight risk, requiring his detention during his political asylum proceedings. The court’s oral statement of his basis for denying credit cites Harris’s attempt to obtain political asylum in Canada. RP 8. No meaningful distinction can be drawn between Brown’s fleeing to California and receiving credit

¹¹ 55 Wn. App. 738, 780 P.2d 880 (1989), rev. denied, 114 Wn.2d 1014, 791 P.2d 897 (1990).

for the time served while being detained to fight his extradition and Harris's flight to Canada with his subsequent attempt to obtain political asylum. Brown received credit for the time he spent fighting extradition, and Harris likewise should receive credit for the time he spent in detention petitioning for political asylum.

Because the court applied the wrong legal standard to deny Harris credit for the time he served in detention while petitioning for political asylum, this Court should reverse.

D. CONCLUSION

For the reasons stated above, this Court should remand with direction to grant Harris credit for time served while he was detained by Canadian immigration authorities.

DATED this 6th day of October 2009.

Respectfully submitted,

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Appendix A

Canadian Immigration and Refugee Protection Act

S.C., 2001, c.27

Division 6, Detention and Release

§§ 54 – 61

Current to September 10, 2009



CANADA

CONSOLIDATION

CODIFICATION

Immigration and Refugee
Protection Act

Loi sur l'immigration et
la protection des réfugiés

S.C., 2001, c. 27

L.C., 2001, ch. 27

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OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

Inconsistencies
in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité
— lois

Immigration and Refugee Protection — September 10, 2009

(e) the effect and enforcement of removal orders;

(f) the effect of a pardon under the *Criminal Records Act* on the status of permanent residents and foreign nationals and removal orders made against them; and

(g) the financial obligations that may be imposed with respect to a removal order.

résident permanent ou de l'étranger et la mesure de renvoi le visant;

g) les obligations financières qui peuvent être imposées relativement aux mesures de renvoi.

DIVISION 6

DETENTION AND RELEASE

Immigration Division

54. The Immigration Division is the competent Division of the Board with respect to the review of reasons for detention under this Division.

Arrest and detention with warrant

55. (1) An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

Arrest and detention without warrant

(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); or

(b) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

Detention on entry

(3) A permanent resident or a foreign national may, on entry into Canada, be detained if an officer

(a) considers it necessary to do so in order for the examination to be completed; or

(b) has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security or for violating human or international rights.

Notice

(4) If a permanent resident or a foreign national is taken into detention, an officer shall

SECTION 6

DÉTENTION ET MISE EN LIBERTÉ

Jurisdiction compétente

54. La Section de l'immigration est la section de la Commission chargée du contrôle visé à la présente section.

Arrestation sur mandat et détention

55. (1) L'agent peut lancer un mandat pour l'arrestation et la détention du résident permanent ou de l'étranger dont il a des motifs raisonnables de croire qu'il est interdit de territoire et qu'il constitue un danger pour la sécurité publique ou se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi.

Arrestation sans mandat et détention

(2) L'agent peut, sans mandat, arrêter et détenir l'étranger qui n'est pas une personne protégée dans les cas suivants :

a) il a des motifs raisonnables de croire que celui-ci est interdit de territoire et constitue un danger pour la sécurité publique ou se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);

b) l'identité de celui-ci ne lui a pas été prouvée dans le cadre d'une procédure prévue par la présente loi.

Détention à l'entrée

(3) L'agent peut détenir le résident permanent ou l'étranger, à son entrée au Canada, dans les cas suivants :

a) il l'estime nécessaire afin que soit complété le contrôle;

b) il a des motifs raisonnables de soupçonner que celui-ci est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux.

Notification

(4) L'agent avise sans délai la section de la mise en détention d'un résident permanent ou d'un étranger.

Immigration et protection des réfugiés — 10 septembre 2009

without delay give notice to the Immigration Division.

Release —
officer

56. An officer may order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. The officer may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.

56. L'agent peut mettre le résident permanent ou l'étranger en liberté avant le premier contrôle de la détention par la section s'il estime que les motifs de détention n'existent plus; il peut assortir la mise en liberté des conditions qu'il estime nécessaires, notamment la remise d'une garantie.

Mise en liberté

Review of
detention

57. (1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.

57. (1) La section contrôle les motifs justifiant le maintien en détention dans les quarante-huit heures suivant le début de celle-ci, ou dans les meilleurs délais par la suite.

Contrôle de la
détention

Further review

(2) At least once during the seven days following the review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention.

(2) Par la suite, il y a un nouveau contrôle de ces motifs au moins une fois dans les sept jours suivant le premier contrôle, puis au moins tous les trente jours suivant le contrôle précédent.

Comparutions
supplémentaires

Presence

(3) In a review under subsection (1) or (2), an officer shall bring the permanent resident or the foreign national before the Immigration Division or to a place specified by it.

(3) L'agent amène le résident permanent ou l'étranger devant la section ou au lieu précisé par celle-ci.

Présence

Release —
Immigration
Division

58. (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

58. (1) La section prononce la mise en liberté du résident permanent ou de l'étranger, sauf sur preuve, compte tenu des critères réglementaires, de tel des faits suivants :

Mise en liberté
par la Section de
l'immigration

(a) they are a danger to the public;

a) le résident permanent ou l'étranger constitue un danger pour la sécurité publique;

(b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);

b) le résident permanent ou l'étranger se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);

(c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights; or

c) le ministre prend les mesures voulues pour enquêter sur les motifs raisonnables de soupçonner que le résident permanent ou l'étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux;

(d) the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Min-

d) dans le cas où le ministre estime que l'identité de l'étranger n'a pas été prouvée mais peut l'être, soit l'étranger n'a pas raisonnablement coopéré en fournissant au mi-

Immigration and Refugee Protection — September 10, 2009

	ister is making reasonable efforts to establish their identity.	nistre des renseignements utiles à cette fin, soit ce dernier fait des efforts valables pour établir l'identité de l'étranger.	
Detention — Immigration Division	(2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.	(2) La section peut ordonner la mise en détention du résident permanent ou de l'étranger sur preuve qu'il fait l'objet d'un contrôle, d'une enquête ou d'une mesure de renvoi et soit qu'il constitue un danger pour la sécurité publique, soit qu'il se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi.	Mise en détention par la Section de l'immigration
Conditions	(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.	(3) Lorsqu'elle ordonne la mise en liberté d'un résident permanent ou d'un étranger, la section peut imposer les conditions qu'elle estime nécessaires, notamment la remise d'une garantie d'exécution.	Conditions
Incarcerated foreign nationals	59. If a warrant for arrest and detention under this Act is issued with respect to a permanent resident or a foreign national who is detained under another Act of Parliament in an institution, the person in charge of the institution shall deliver the inmate to an officer at the end of the inmate's period of detention in the institution.	59. Le responsable de l'établissement où est détenu, au titre d'une autre loi, un résident permanent ou un étranger visé par un mandat délégué au titre de la présente loi est tenu de le remettre à l'agent à l'expiration de la période de détention.	Remise à l'agent
Minor children	60. For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.	60. Pour l'application de la présente section, et compte tenu des autres motifs et critères applicables, y compris l'intérêt supérieur de l'enfant, est affirmé le principe que la détention des mineurs doit n'être qu'une mesure de dernier recours.	Mineurs
Regulations	61. The regulations may provide for the application of this Division, and may include provisions respecting (a) grounds for and conditions and criteria with respect to the release of persons from detention; (b) factors to be considered by an officer or the Immigration Division; and (c) special considerations that may apply in relation to the detention of minor children.	61. Les règlements régissent l'application de la présente section et portent notamment sur : a) les conditions, motifs et critères relatifs à la mise en liberté; b) les critères dont l'agent et la section doivent tenir compte; c) les éléments particuliers à prendre en compte pour la détention des mineurs.	Règlements
	DIVISION 7 RIGHT OF APPEAL	SECTION 7 DROIT D'APPEL	
Competent jurisdiction	62. The Immigration Appeal Division is the competent Division of the Board with respect to appeals under this Division.	62. La Section d'appel de l'immigration est la section de la Commission qui connaît de l'appel visé à la présente section.	Juridiction compétente

Appendix B

Canadian Immigration and Refugee Protection Regulations

SOR/2002-227

C.P. 2002-997, June 11, 2002

Part 14, Detention and Release

§§ 244 – 250

Current to September 8, 2009



CANADA

CONSOLIDATION

CODIFICATION

Immigration and Refugee Protection Regulations

Règlement sur l'immigration et la protection des réfugiés

SOR/2002-227

DORS/2002-227

Current to September 8, 2009

À jour au 8 septembre 2009

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :
<http://laws-lois.justice.gc.ca>

OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published
consolidation is
evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications
comme élément
de preuve

...

[...]

Inconsistencies
in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

Incompatibilité
— règlements

Registration
SOR/2002-227 June 11, 2002

IMMIGRATION AND REFUGEE PROTECTION ACT
FINANCIAL ADMINISTRATION ACT

Immigration and Refugee Protection Regulations

C.P. 2002-997 June 11, 2002

Whereas, pursuant to subsection 5(2) of the *Immigration and Refugee Protection Act*, the Minister of Citizenship and Immigration has caused a copy of the proposed *Immigration and Refugee Protection Regulations* to be laid before each House of Parliament, substantially in the form set out in the annexed Regulations;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Citizenship and Immigration and the Treasury Board, pursuant to subsection 5(1) of the *Immigration and Refugee Protection Act* and paragraphs 19(1)(a)^b and 19.1(a)^b and subsection 20(2) of the *Financial Administration Act*, and, considering that it is in the public interest to do so, subsection 23(2.1)^c of that Act, hereby makes the annexed *Immigration and Refugee Protection Regulations*.

Enregistrement
DORS/2002-227 Le 11 juin 2002

LOI SUR L'IMMIGRATION ET LA PROTECTION DES
RÉFUGIÉS
LOI SUR LA GESTION DES FINANCES PUBLIQUES

**Règlement sur l'immigration et la protection des
réfugiés**

C.P. 2002-997 Le 11 juin 2002

Attendu que le ministre de la Citoyenneté et de l'Immigration, conformément au paragraphe 5(2) de la *Loi sur l'immigration et la protection des réfugiés*, a fait déposer le projet de règlement intitulé *Règlement sur l'immigration et la protection des réfugiés*, conforme en substance au texte ci-après, devant chaque chambre du Parlement,

À ces causes, sur recommandation du ministre de la Citoyenneté et de l'Immigration et du Conseil du Trésor et en vertu du paragraphe 5(1) de la *Loi sur l'immigration et la protection des réfugiés* et des alinéas 19(1)a)^b et 19.1a)^b, du paragraphe 20(2) et, estimant que l'intérêt public le justifie, du paragraphe 23(2.1)^c de la *Loi sur la gestion des finances publiques*, Son Excellence la Gouverneure générale en conseil prend le *Règlement sur l'immigration et la protection des réfugiés*, ci-après.

^a S.C. 2001, c. 27

^b S.C. 1991, c. 24, s. 6

^c S.C. 1991, c. 24, s. 7(2)

^a L.C. 2001, ch. 27

^b L.C. 1991, ch. 24, art. 6

^c L.C. 1991, ch. 24, par. 7(2)

son who has been authorized to enter their country of destination.

Payment of removal costs

243. Unless expenses incurred by Her Majesty in right of Canada have been recovered from a transporter, a foreign national who is removed from Canada at Her Majesty's expense shall not return to Canada if the foreign national has not paid to Her Majesty the removal costs of

- (a) \$750 for removal to the United States or St. Pierre and Miquelon; and
- (b) \$1,500 for removal to any other country.

PART 14

DETENTION AND RELEASE

Factors to be considered

244. For the purposes of Division 6 of Part I of the Act, the factors set out in this Part shall be taken into consideration when assessing whether a person

- (a) is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2) of the Act;
- (b) is a danger to the public; or
- (c) is a foreign national whose identity has not been established.

Flight risk

245. For the purposes of paragraph 244(a), the factors are the following:

- (a) being a fugitive from justice in a foreign jurisdiction in relation to an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
- (b) voluntary compliance with any previous departure order;
- (c) voluntary compliance with any previously required appearance at an immigration or criminal proceeding;

personne autorisée à entrer dans son pays de destination.

Remboursement des frais

243. À moins que les frais engagés par Sa Majesté du chef du Canada n'aient été recouverts du transporteur, l'étranger qui est renvoyé du Canada aux frais de Sa Majesté ne peut revenir au Canada avant d'avoir remboursé à Sa Majesté les frais de renvoi suivants :

- a) pour un renvoi vers les États-Unis ou Saint-Pierre-et-Miquelon, 750 \$;
- b) pour un renvoi vers toute autre destination, 1 500 \$.

PARTIE 14

DÉTENTION ET MISE EN LIBERTÉ

Critères

244. Pour l'application de la section 6 de la partie I de la Loi, les critères prévus à la présente partie doivent être pris en compte lors de l'appréciation :

- a) du risque que l'intéressé se soustraie vraisemblablement au contrôle, à l'enquête, au renvoi ou à une procédure pouvant mener à la prise, par le ministre, d'une mesure de renvoi en vertu du paragraphe 44(2) de la Loi;
- b) du danger que constitue l'intéressé pour la sécurité publique;
- c) de la question de savoir si l'intéressé est un étranger dont l'identité n'a pas été prouvée.

Risque de fuite

245. Pour l'application de l'alinéa 244a), les critères sont les suivants :

- a) la qualité de fugitif à l'égard de la justice d'un pays étranger quant à une infraction qui, si elle était commise au Canada, constituerait une infraction à une loi fédérale;
- b) le fait de s'être conformé librement à une mesure d'interdiction de séjour;
- c) le fait de s'être conformé librement à l'obligation de comparaître lors d'une instance en immigration ou d'une instance criminelle;

(d) previous compliance with any conditions imposed in respect of entry, release or a stay of removal;

(e) any previous avoidance of examination or escape from custody, or any previous attempt to do so;

(f) involvement with a people smuggling or trafficking in persons operation that would likely lead the person to not appear for a measure referred to in paragraph 244(a) or to be vulnerable to being influenced or coerced by an organization involved in such an operation to not appear for such a measure; and

(g) the existence of strong ties to a community in Canada.

Danger to the public

246. For the purposes of paragraph 244(b), the factors are the following:

(a) the fact that the person constitutes, in the opinion of the Minister, a danger to the public in Canada or a danger to the security of Canada under paragraph 101(2)(b), subparagraph 113(d)(i) or (ii) or paragraph 115(2)(a) or (b) of the Act;

(b) association with a criminal organization within the meaning of subsection 121(2) of the Act;

(c) engagement in people smuggling or trafficking in persons;

(d) conviction in Canada under an Act of Parliament for

(i) a sexual offence, or

(ii) an offence involving violence or weapons;

(e) conviction for an offence in Canada under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,

(i) section 5 (trafficking),

(ii) section 6 (importing and exporting), and

(iii) section 7 (production);

d) le fait de s'être conformé aux conditions imposées à l'égard de son entrée, de sa mise en liberté ou du sursis à son renvoi;

e) le fait de s'être dérobé au contrôle ou de s'être évadé d'un lieu de détention, ou toute tentative à cet égard;

f) l'implication dans des opérations de passage de clandestins ou de trafic de personnes qui mènerait vraisemblablement l'intéressé à se soustraire aux mesures visées à l'alinéa 244a) ou le rendrait susceptible d'être incité ou forcé de s'y soustraire par une organisation se livrant à de telles opérations;

g) l'appartenance réelle à une collectivité au Canada.

246. Pour l'application de l'alinéa 244b), les critères sont les suivants :

Danger pour le public

a) le fait que l'intéressé constitue, de l'avis du ministre aux termes de l'alinéa 101(2)b), des sous-alinéas 113d)(i) ou (ii) ou des alinéas 115(2)a) ou b) de la Loi, un danger pour le public au Canada ou pour la sécurité du Canada;

b) l'association à une organisation criminelle au sens du paragraphe 121(2) de la Loi;

c) le fait de s'être livré au passage de clandestins ou le trafic de personnes;

d) la déclaration de culpabilité au Canada, en vertu d'une loi fédérale, quant à l'une des infractions suivantes :

(i) infraction d'ordre sexuel,

(ii) infraction commise avec violence ou des armes;

e) la déclaration de culpabilité au Canada quant à une infraction visée à l'une des dispositions suivantes de la *Loi réglementant certaines drogues et autres substances*:

(i) article 5 (trafic),

(ii) article 6 (importation et exportation),

(iii) article 7 (production);

(f) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament for

- (i) a sexual offence, or
- (ii) an offence involving violence or weapons; and

(g) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,

- (i) section 5 (trafficking),
- (ii) section 6 (importing and exporting), and
- (iii) section 7 (production).

Identity not established

247. (1) For the purposes of paragraph 244(c), the factors are the following:

(a) the foreign national's cooperation in providing evidence of their identity, or assisting the Department in obtaining evidence of their identity, in providing the date and place of their birth as well as the names of their mother and father or providing detailed information on the itinerary they followed in travelling to Canada or in completing an application for a travel document;

(b) in the case of a foreign national who makes a claim for refugee protection, the possibility of obtaining identity documents or information without divulging personal information to government officials of their country of nationality or, if there is no country of nationality, their country of former habitual residence;

(c) the destruction of identity or travel documents, or the use of fraudulent documents in order to mislead the Department, and the circumstances under which the foreign national acted;

(d) the provision of contradictory information with respect to identity at the

f) la déclaration de culpabilité ou la mise en accusation à l'étranger, quant à l'une des infractions suivantes qui, si elle était commise au Canada, constituerait une infraction à une loi fédérale :

- (i) infraction d'ordre sexuel,
- (ii) infraction commise avec violence ou des armes;

g) la déclaration de culpabilité ou la mise en accusation à l'étranger de l'une des infractions suivantes qui, si elle était commise au Canada, constituerait une infraction à l'une des dispositions suivantes de la *Loi réglementant certaines drogues et autres substances*:

- (i) article 5 (trafic),
- (ii) article 6 (importation et exportation),
- (iii) article 7 (production).

247. (1) Pour l'application de l'alinéa 244c), les critères sont les suivants :

a) la collaboration de l'intéressé, à savoir s'il a justifié de son identité, s'il a aidé le ministère à obtenir cette justification, s'il a communiqué des renseignements détaillés sur son itinéraire, sur ses date et lieu de naissance et sur le nom de ses parents ou s'il a rempli une demande de titres de voyage;

b) dans le cas du demandeur d'asile, la possibilité d'obtenir des renseignements sur son identité sans avoir à divulguer de renseignements personnels aux représentants du gouvernement du pays dont il a la nationalité ou, s'il n'a pas de nationalité, du pays de sa résidence habituelle;

c) la destruction, par l'étranger, de ses pièces d'identité ou de ses titres de voyage, ou l'utilisation de documents frauduleux afin de tromper le ministère, et les circonstances dans lesquelles il s'est livré à ces agissements;

d) la communication, par l'étranger, de renseignements contradictoires quant à son identité pendant le traitement d'une demande le concernant par le ministère;

Preuve de l'identité de l'étranger

	time of an application to the Department; and		<i>e)</i> l'existence de documents contredisant les renseignements fournis par l'étranger quant à son identité.	
	<i>(e)</i> the existence of documents that contradict information provided by the foreign national with respect to their identity.			
Non-application to minors	<i>(2)</i> Consideration of the factors set out in paragraph <i>(1)(a)</i> shall not have an adverse impact with respect to minor children referred to in section 249. SOR/2004-167, s. 65(E).		<i>(2)</i> La prise en considération du critère prévu à l'alinéa <i>(1)a)</i> ne peut avoir d'incidence défavorable à l'égard des mineurs visés à l'article 249. DORS/2004-167, art. 65(A).	Non-application aux mineurs
Other factors	248. If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release: <i>(a)</i> the reason for detention; <i>(b)</i> the length of time in detention; <i>(c)</i> whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time; <i>(d)</i> any unexplained delays or unexplained lack of diligence caused by the Department or the person concerned; and <i>(e)</i> the existence of alternatives to detention.		248. S'il est constaté qu'il existe des motifs de détention, les critères ci-après doivent être pris en compte avant qu'une décision ne soit prise quant à la détention ou la mise en liberté : <i>a)</i> le motif de la détention; <i>b)</i> la durée de la détention; <i>c)</i> l'existence d'éléments permettant l'évaluation de la durée probable de la détention et, dans l'affirmative, cette période de temps; <i>d)</i> les retards inexpliqués ou le manque inexpliqué de diligence de la part du ministère ou de l'intéressé; <i>e)</i> l'existence de solutions de rechange à la détention.	Autres critères
Special considerations for minor children	249. For the application of the principle affirmed in section 60 of the Act that a minor child shall be detained only as a measure of last resort, the special considerations that apply in relation to the detention of minor children who are less than 18 years of age are <i>(a)</i> the availability of alternative arrangements with local child-care agencies or child protection services for the care and protection of the minor children; <i>(b)</i> the anticipated length of detention; <i>(c)</i> the risk of continued control by the human smugglers or traffickers who brought the children to Canada; <i>(d)</i> the type of detention facility envisaged and the conditions of detention;		249. Pour l'application du principe affirmé à l'article 60 de la Loi selon lequel la détention des mineurs doit n'être qu'une mesure de dernier recours, les éléments particuliers à prendre en considération pour la détention d'un mineur de moins de dix-huit ans sont les suivants : <i>a)</i> au lieu du recours à la détention, la possibilité d'un arrangement avec des organismes d'aide à l'enfance ou des services de protection de l'enfance afin qu'ils s'occupent de l'enfant et le protègent; <i>b)</i> la durée de détention prévue; <i>c)</i> le risque que le mineur demeure sous l'emprise des passeurs ou des trafiquants qui l'ont amené au Canada;	Éléments particuliers : mineurs

(e) the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and

(f) the availability of services in the detention facility, including education, counselling and recreation.

d) le genre d'établissement de détention prévu et les conditions de détention;

e) la disponibilité de locaux permettant la séparation des mineurs et des détenus adultes autres que leurs parents ou les adultes qui en sont légalement responsables;

f) la disponibilité de services dans l'établissement de détention, tels que des services d'éducation, d'orientation ou de loisirs.

Applications for travel documents

250. If a completed application for a passport or travel document must be provided as a condition of release from detention, any completed application provided by a foreign national who makes a claim for refugee protection shall not be divulged to government officials of their country of nationality or, if there is no country of nationality, their country of previous habitual residence, as long as the removal order to which the foreign national is subject is not enforceable.

Demande de titre de voyage

250. Si, comme condition de mise en liberté, le demandeur d'asile doit remplir une demande de passeport ou de titre de voyage, la demande ne doit pas être divulguée aux représentants du gouvernement du pays dont il a la nationalité ou, s'il n'a pas de nationalité, du pays de sa résidence habituelle, à moins qu'une mesure de renvoi ne devienne exécutoire à son égard.

PART 15

THE IMMIGRATION APPEAL DIVISION

Conditions

251. If the Immigration Appeal Division stays a removal order under paragraph 66(b) of the Act, that Division shall impose the following conditions on the person against whom the order was made:

(a) to inform the Department and the Immigration Appeal Division in writing in advance of any change in the person's address;

(b) to provide a copy of their passport or travel document to the Department or, if they do not hold a passport or travel document, to complete an application for a passport or a travel document and to provide the application to the Department;

(c) to apply for an extension of the validity period of any passport or travel document before it expires, and to pro-

PARTIE 15

SECTION D'APPEL DE L'IMMIGRATION

Conditions

251. Si la Section d'appel de l'immigration sursoit à une mesure de renvoi au titre de l'alinéa 66b) de la Loi, elle impose les conditions suivantes à l'intéressé :

a) informer le ministère et la Section d'appel de l'immigration par écrit et au préalable de tout changement d'adresse;

b) fournir une copie de son passeport ou titre de voyage au ministère ou, à défaut, remplir une demande de passeport ou de titre de voyage et la fournir au ministère;

c) demander la prolongation de la validité de tout passeport ou titre de voyage avant qu'il ne vienne à expiration, et en fournir subséquemment copie au ministère;

d) ne pas commettre d'infraction criminelle;

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 63498-4-I
)	
FREDDIE HARRIS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 6TH DAY OF OCTOBER, 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] FREDDIE HARRIS
DOC NO. 300190
MCNEIL ISLAND CORRECTIONS CENTER
P.O. BOX 881000
STEILACOOM, WA 98388

SIGNED IN SEATTLE WASHINGTON, THIS 6TH DAY OF OCTOBER, 2009.

x. *Patrick Mayovsky*