

INTERNATIONAL TRANSFER OF OFFENDERS:  
A STRATEGIC APPROACH

The Transfer of Offenders Act was passed in 1978. Since then there has been considerable activity on both the domestic and the international front. Domestically, treaties have been ratified with 6 countries, 341 Canadians have been repatriated, and 105 foreign nationals have been returned to their country of domicile. As well, Canada is a party to the Convention on the Transfer of Convicted Persons of the Council of Europe which provides for the transfer of offenders with 30 countries. Canada has been actively involved in the negotiation of the Organisation of American States Inter-American Convention on Serving Criminal Sentences abroad and deliberations at Commonwealth and the United Nations' meetings.

This experience has provided Canada with a good sense of its purposes and principles in international transfers. It has also served to identify problem areas, omissions in law and policy, and key implementation issues. Canada is now at a significant juncture: it has outgrown its skeletal statutory framework and ad hoc treaty negotiations, and should now be positioning itself with an integrated statute and treaty negotiation structure.

We may speak of four general objectives in the transfer of offenders:

1. Humanitarianism

Language barriers, unfamiliar environment and lack of contact with friends and relatives increase the pains of imprisonment for foreign offenders. Customs and food may be unfamiliar or incompatible with the inmate's religious precepts or dietary requirements, health and sanitary conditions may be unsatisfactory, discipline may be excessive, and corruption and discrimination may prevail. Concern for these factors is demonstrated both in a desire to return Canadian offenders to Canada from abroad and in a reluctance to return foreign offenders to what may be harsh conditions in their home countries.

2. Social re-integration

Underlying the sense of compassion and desire to alleviate suffering is the interest in facilitating the successful reintegration of the offender into society. This objective is really distinct from the first one, as it is a motivating force even where the offender is incarcerated in a foreign country with correctional standards and social customs similar to Canada's. An offender incarcerated in a foreign jurisdiction may not be able to take advantage of any release planning and conditional release, either because such things do not exist there or because policy or statute limits their availability to foreign offenders.