



CORRECTIONAL SERVICE CANADA

CHANGING LIVES. PROTECTING CANADIANS.



International Transfers Annual Report

2016-2017



Correctional Service
Canada

Service correctionnel
Canada

Canada

INTRODUCTION

The Population Management and Transfers Division (referred to as Division, hereinafter) is accountable for the implementation of the [International Transfer of Offenders Act](#), related treaties, and the International Transfers of Offenders Program. The Division's Transfers Unit is responsible for processing of applications for transfer and coordinating the actual transfer operations of Canadian offenders abroad and foreign offenders in Canada (Federal and Provincial) as well as extradition operations.

Offender transfers of Canadian citizens to Canada from other countries, or of foreign offenders under CSC's jurisdiction to their home country, alleviate undue hardships borne by offenders and their families, due to distance, foreign language, foreign judicial system, and foreign culture. They also facilitate their eventual reintegration into society in their country of citizenship.

The offenders who transfer to Canada have an opportunity to participate in programming that targets the factors that may have led to their offence. Offenders are gradually returned to society and they are encouraged and assisted to become productive members of the community, thereby contributing to Correctional Service Canada's (CSC) Strategic Outcome of contributing to public safety.

Legislative Framework

The [International Transfer of Offenders Act](#) (ITOA) is an Act to implement treaties and administrative arrangements on the international transfer of persons found guilty of criminal offences.

International transfers normally take place between Canada and those countries with which a valid transfer agreement exists. Canada has entered into international transfer agreements with over 112 foreign entities and territories through 15 bilateral treaties, and three multi-lateral schemes; the Council of Europe [Convention on the Transfer of Sentenced Persons](#), the [Scheme for the Transfer of Convicted Offenders within the Commonwealth](#), and the Organization of American States [Inter-American Convention on Serving Criminal Sentences Abroad](#). Along with the agreements, Canada's implementing legislation [ITOA](#), are the legal basis for carrying out international transfers.

The Division is also accountable for the management, amendment, and implementation of the [Commissioner's Directive 704 – International Transfers](#).

Decision Authority

The Director of the Division has the delegated authority from the Minister of Public Safety and Emergency Preparedness (Minister) to administer the [ITOA](#). The Transfers Unit is responsible for the processing of all applications for transfer, to and from Canada, and their subsequent submission to the Minister, with whom rests the decision authority in Canada.

Transfer of offenders' treaties are a federal responsibility requiring the approval of both the sentencing country and the receiving country. 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.

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.

TRANSFER APPLICATIONS

At any given time, there are over 300 applications for international transfer being processed, with an additional average of 170 new applications received each year. During the last five fiscal years, 870 new applications for transfer have been received by the Division.

The following table identifies the number of new applications received per fiscal year in addition to the number of applications carried over from the previous fiscal year, for which a final decision had not yet been rendered.

Table 1: Overview of transfer applications received

| Fiscal Year | Number of active applications carried over from previous fiscal year | Total number of new applications received during fiscal year | Applications from foreign nationals in Canada | Applications from Canadian Citizens abroad | Total (applications carried over and new applications received) |
|--------------|--|--|---|--|---|
| 2012 - 2013 | 316 | 226 | 12 | 214 | 542 |
| 2013 - 2014 | 266 | 205 | 10 | 195 | 471 |
| 2014 - 2015 | 279 | 170 | 12 | 158 | 449 |
| 2015 - 2016 | 301 | 139 | 14 | 125 | 440 |
| 2016 - 2017 | 296 | 130 | 6 | 124 | 446 |
| TOTAL | 1458 | 870 | 54 | 817 | 2328 |

Source: International Transfers Database

The majority, 660 of the 870 applications received in the last five fiscal years, were from Canadian citizens incarcerated in the United States of America (USA). The second largest number of applications was from Australia (28 applications), followed by China¹ (26 applications), Japan (11 applications), and Panama (8 applications).

¹ Transfer applications received from China were pursuant to section 31 of the [ITOA](#)

Processing Timeframes

Of the 870 transfer applications received over the last five fiscal years, CSC obtained the sentencing documentation for 671 applications. Of those 671 applications, the Minister rendered a decision on 286 applications.

The following table illustrates the average processing time in months from the time CSC receives the sentencing documentation until the Minister's decision is rendered for the applications received in their respective fiscal years. Applications received in the most current fiscal year may also still be in process therefore not accounted for in the processing timeframes.

Table 2: Average processing timeframes

| Fiscal Year Application was received | Average Processing Time in Months | | | | Total |
|---|-----------------------------------|--|---|-------------------------------|------------|
| | Less than 6 months | More than six months and less than nine months | More than nine months and less than twelve months | More than twelve months | |
| 2012 - 2013 | 10 | 24 | 14 | 50 | 98 |
| 2013 - 2014 | 4 | 3 | 7 | 70 | 84 |
| 2014 - 2015 | 5 | 4 | 7 | 39 | 55 |
| 2015 - 2016 | 6 | 4 | 6 | 26 | 42 |
| 2016 - 2017 | 2 | 4 | | 1 | 7 |
| TOTAL | 27 | 39 | 34 | 186 | 286 |

Source: International Transfers Database

Reasons for Fluctuation

With new countries signing agreements, the complexity of the cases, the accuracy of documentation and the translation of documents, these processing timeframes may fluctuate greatly.

In addition, since 2012-2013, there has been a significant increase in the number of offenders requesting a transfer under an administrative arrangement as no treaty was in force between Canada and the foreign entity on the transfer of offenders at the time of application. As of March 31, 2017, 39 offenders incarcerated in Haiti, Philippines, Ethiopia, Hong Kong, China, Laos, and Scotland, in addition to 2 offenders incarcerated in Canada, submitted such a request. The processing timeframes for these applications were significantly longer than for other cases given the case complexity and the delays associated with obtaining official sentencing documentation from foreign authorities.

OUTCOMES OF APPLICATIONS

Of the 870 new transfer applications received over the past five fiscal years, 28% resulted in a denial by either country, 17% resulted in a transfer, 14% of the offenders withdrew their application and 5% were deemed ineligible.

Table 3: Results of applications of the last five fiscal years²

| Fiscal Year application was received | Number of applications received | Status as of March 31, 2017 | | | | |
|--------------------------------------|---------------------------------|-------------------------------|---|---|--|------------|
| | | # that resulted in a transfer | # that resulted in a denial by either country | # that resulted in the offender withdrawing | # that resulted in the offender being ineligible | Other |
| 2012 - 2013 | 226 | 55 | 85 | 32 | 15 | 39 |
| 2013 - 2014 | 205 | 43 | 61 | 34 | 7 | 60 |
| 2014 - 2015 | 170 | 24 | 42 | 32 | 11 | 61 |
| 2015 - 2016 | 139 | 26 | 31 | 16 | 7 | 59 |
| 2016 - 2017 | 130 | 3 | 25 | 8 | 2 | 92 |
| Total | 870 | 151 | 244 | 122 | 42 | 311 |

Source: International Transfers Database

Not all applications received resulted in an approval, denial or withdrawal. Of the remaining 311 transfer applications, 222 were still in process as of March 31, 2017 (either because of the complexity of the cases, sentencing documentation not received or the lengthy processing timeframes). The other 89 remaining applications were closed as:

- offenders were released from the institution and ultimately deported (depending on the country's legislation, release from the institution can be at the expiration of the sentence, or before, if good time credits are earned; mandatory release, etc.);
- offenders passed away.

DECISIONS RENDERED BY THE MINISTER

During the last five fiscal years, CSC has submitted an average of 100 applications per year to the Minister. Not all files submitted to the Minister result in the Minister rendering a decision. While the file is under consideration by the Minister, the offender may withdraw their request for transfer, they may be released from custody, or the foreign country may deny the application. In such circumstances, CSC's Transfers Unit terminates the process of the transfer application.

In determining whether to consent to the transfer of a Canadian offender, the Minister may take into consideration a number of factors listed in section 10 of the International Transfer of Offenders Act as it existed at the time the offender submitted their application, and not at the time the decision was rendered.

The following table provides the number of decisions rendered by the Minister during the past five fiscal years regardless of the date the transfer application was received, processed and submitted

² Outcomes of transfer applications received during a given fiscal year will fluctuate as decisions and transfers do not necessarily take place the same year that applications were received.

to the Minister for decision. The table includes offenders requesting a transfer to Canada, and those requesting a transfer from Canada.

Table 4: Decisions rendered by the Minister

| Fiscal Year Decision rendered | Total Number of Decisions Rendered | Number of Applications Approved ³ | Number of Applications Denied |
|-------------------------------|------------------------------------|--|-------------------------------|
| 2012 - 2013 | 168 | 98 | 70 |
| 2013 - 2014 | 75 | 54 | 21 |
| 2014 - 2015 | 35 | 35 | 0 |
| 2015 - 2016 | 82 | 79 | 3 |
| 2016 - 2017 | 115 | 114 | 1 |
| Total : | 475 | 380 | 95 |

Source: International Transfers Database

Of the 475 decisions rendered by the Minister in the past five fiscal years, 20% were denials and 80% were approvals.

Reasons for denials

The majority of the transfer applications denied by the Minister during the last 5 fiscal years were based on following sections of the ITOA as it existed prior to May 2012.

Table 5: Reasons for denials from last five fiscal years – previous ITOA

| % of denials | Sections of the previous ITOA |
|--------------|---|
| 31.6% | 10.1(a) "whether the offender's return to Canada would constitute a threat to the security of Canada" |
| 18% | 10.1(b) "whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence" |
| 3.8% | 10.1(c) "whether the offender has social or family ties in Canada" |
| 30.8% | 10.2(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" |

The Government of Canada's Safe Streets and Communities Act (Bill C-10) included amendments to the International Transfer of Offenders Act which modified the purpose of the Act to ensure it specifically refers to public safety and expanded the factors for consideration that the Minister of Public Safety may take when rendering a decision on the transfer of a Canadian offender to Canada. The coming into force date for the International Transfer of Offenders Act component of Bill C-10 was May 3, 2012.

³ Not all applications approved by Canada for any given reporting year resulted in an actual transfer or a transfer that same year. There are several possible reasons, including denials by the foreign country, the transfer took place the subsequent reporting year, the offender withdrew their transfer application following an approval by Canada, the offender passed away, or the offender was released from custody by the foreign country.

As of March 31, 2017 – only a few transfer applications had been denied under the following sections of the new ITOA.

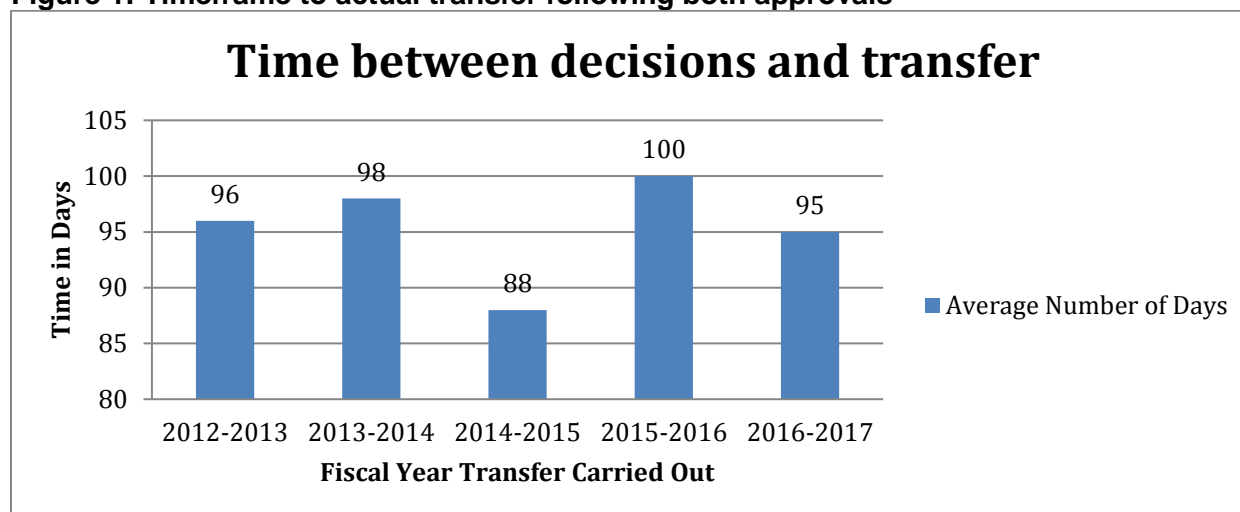
Table 6: Reasons for denials from last five fiscal years – current ITOA

| % of denials | Sections of the current ITOA |
|---------------------|--|
| 0.8% | 10.1(a) “whether, in the Minister’s opinion, the offender’s return to Canada will constitute a threat to the security of Canada” |
| 1.5% | 10.1(b) “whether, in the Minister’s opinion, the offender’s return to Canada will endanger public safety” |
| 1.5% | 10.1(c) “whether, in the Minister’s opinion, the offender is likely to continue to engage in criminal activity after the transfer” |
| 2.3% | 10.1(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” |
| 0.8% | 10.1(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” |
| 0.8% | 10.1(l) “any other factor that the Minister considers relevant” |
| 1.5% | 10.2(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 “ |

TIMEFRAME BETWEEN DECISIONS AND THE TRANSFER

Once an offender’s request to transfer is approved by the Minister, the foreign country and the offender’s consent is verified, the Transfers Unit initiates and coordinates the offender’s repatriation operation. The date and location of the actual repatriation operation must be agreed upon by both countries.

The following chart illustrates the average time (in days) that was required to carry out a transfer, from the day all required approvals were received, regardless of which country approved first, to the transfer date. This timeframe is dependent upon receipt of the foreign country’s approval, the offender’s consent and the time required to organize the transfer.

Figure 1: Timeframe to actual transfer following both approvals

Source: International Transfers Database

Various factors that can have an impact on the above timeline

Offenders are generally transferred shortly after all parties (Canada, sentencing country and the offender) have consented to the transfer. Delays may be the result of:

- the time required to draft and implement a transfer operation protocol when dealing with a country's first transfer operation;⁴
- the complexity of a transfer operation, distance and operational capability;
- a pre-established protocol and/or internal legislation with certain countries; related to the timeframe required for the movement of an offender who has been approved for an international transfer;
- the availability of transfer teams in both countries;
- the fact that there are pre-established dates for transfer operations with our most important partner, the United States.

⁴ In the last five fiscal years, 2 transfers were first time transfer operations (Croatia, South Korea). There was also a first transfer under an administrative arrangement.

TRANSFER OPERATIONS

The frequency of transfer operations is generally determined by the requirements of the receiving and sending countries and of the offender. CSC's International Transfers Unit, in conjunction with the respective country, sets the transfer dates, plans, and implements the ensuing transfer operations. Transfer operations can be carried out in groups or individually, depending on circumstances.

Canada and the United States have agreed to four set transfers per year, due to the high volume of transfers between these two countries. Transfers from the United States to Canada are generally done via a land transfer while international transfers from other countries usually take place by air (commercial, chartered aircraft or RCMP).

Transfers to Canada

The majority, 1,520 of the 1,917 Canadian citizens transferred to Canada, since 1978, were sent from the United States. Of those, 1,353 were under Federal jurisdiction, while 167 were State offenders.

Of the 251 Canadian citizens transferred during the last five fiscal years, 202 were from the United States. Mexico had the second largest amount with 14 offenders, followed by Panama with 7 offenders, Peru with 6 offenders, and Dominican Republic with 5 offenders.

Transfers from Canada

Of the 136 offenders transferred from Canada to foreign countries since 1978, 109 were American citizens.

Of the 9 offenders that transferred from Canada during the last five fiscal years, 3 were transferred to the United Kingdom while 2 offenders were transferred to Germany. The remaining offenders were transferred to Denmark, France, Netherlands and the United States.