



April 24, 2009

The Right Honourable Stephen Harper, P.C., M.P.
House of Commons
Ottawa, Ontario
K1A 0A6

The President of the United States
White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Repatriation of Omar Khadr

Dear Prime Minister and Mr. President:

On behalf of the Canadian Bar Association (CBA), I write to you to urge the U.S. and Canadian governments to work together to facilitate the repatriation of Omar Khadr, the only Western citizen who continues to be detained at Guantánamo Bay.

The CBA is a national association representing 38,000 jurists across Canada. We work to promote the Rule of Law and improve the administration of justice in Canada and around the world. It is in this light that we have protested Mr. Khadr's subjection to the military tribunal process in Guantánamo Bay and called for his repatriation. We take no position on Mr. Khadr's guilt or innocence. Our concern is that he receive a fair trial in accordance with all procedural protections and special considerations to be afforded a minor, as required by domestic and international law. Canada's justice system is well equipped to fairly and openly assess Mr. Khadr's criminal culpability, in a manner that reflects his status as a minor at the relevant time.

Mr. President, we welcomed the news of your decision to close Guantánamo Bay within the year and to assign officials to review the status of all detainees. Pursuant to your executive order, you have tasked review members to first consider "whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect their transfer or release."

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Yesterday, Canada's Federal Court ruled the ongoing refusal of the Government of Canada to request Mr. Khadr's repatriation to Canada "offends a principle of fundamental justice and violates Mr. Khadr's rights under s. 7 of the *Charter*". It ordered the government to seek Khadr's repatriation as soon as practicable.¹

Mr. Khadr was 15 years old when he was wounded on the battlefield in Afghanistan, a child under the terms of the *Convention on the Rights of the Child*. Mr. Khadr has not been fully afforded the basic entitlements of due process under the Rule of Law, such as the right to counsel and the right to know the case against him. He has not been afforded any process that took into account his unique needs and status as a minor under the *Optional Protocol of the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. He has been detained in the general population of detainees in Guantánamo Bay and has not received any physical, psychological or educational services that would assist in his rehabilitation. The Federal Court of Canada found that the terms of the *Convention on the Rights of the Child* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* were violated in relation to Mr. Khadr's treatment.

Prime Minister, the time has come for the Canadian government to advise the U.S. that it is willing to negotiate the terms of Mr. Khadr's repatriation to Canada to face Canadian justice. In turn, Mr. President, we urge the U.S. government to negotiate the terms of Mr. Khadr's repatriation with the Canadian government and to transfer available evidence respecting his conduct to the Canadian government. We urge you to come to an agreement that recognizes international human rights obligations, due process and the Rule of Law, and the desirability of ensuring the national security of both countries.

Yours truly,

(Original signed by J. Guy Joubert)

J. Guy Joubert

- c. The Honourable Lawrence Cannon, P.C., M.P., Minister of Foreign Affairs
- The Honourable Rob Nicholson, P.C., M.P., Minister of Justice
- H. Thomas Wells, Jr., President, American Bar Association

¹ *Khadr v. Canada*, 2009 FC 405