Supreme Court to Hear Appeal of Omar Khadr Repatriation Order

On November 13, 2009, the Supreme Court of Canada will hear the Government of Canada's appeal of a high-profile constitutional case: *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*. The Court issued its decision on the Prime Minister's application for leave to appeal on September 4th, just twenty days after the Federal Court of Appeal issued the latest ruling in the case. The Supreme Court followed its practice of giving no reasons for its decision to hear a further appeal. The April 23, 2009 order of the Federal Court of Canada that the government must seek Khadr's repatriation to Canada – upheld on appeal on August 14 – is stayed pending resolution of the appeal.[1]

Khadr remains in detention in the United States facility at Guantanamo Bay, Cuba, awaiting trial on charges that include murder. Critics of the government's decision to seek an appeal of the case emphasized the harm that further delay in repatriation could do to Khadr (who would presumably be detained in Canada while awaiting trial here).[2] The Court has agreed to expedite its hearing of the case, which goes some way to meeting this concern.[3]

The repatriation order was the result of a successful argument that Khadr's rights under section 7 of the *Charter* (life, liberty and security of the person) had been violated by Canadian officials who interviewed Khadr in 2003. The lower courts found that the officials knew that U.S. officials had used techniques on Khadr that amounted to torture under the law, but they nonetheless questioned him and shared the information he gave them with his U.S. captors.

The Supreme Court's decision may clarify constitutional uncertainties about the *Charter*'s application to foreign policy and consular services.

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[1] "Judgment in Leave Application" *Supreme Court of Canada* (4 September 2009). [2] Editorial, "Appealing Khadr ruling is colossal waste of effort" *Montreal Gazette* (28 August 2009); editorial, "Ottawa's tin ear on Khadr case" *Toronto Star* (26 August 2009); editorial, "Disowning Canadians abroad"*The Globe and Mail* (31 August 2009); editorial, "Irony behind Khadr's case" *Calgary Herald* (30 August 2009). [3] Janice Tibbetts, "Top court will hear federal appeal of Khadr repatriation order" *Ottawa Citizen* (4 September 2009).