



January 23, 2009

The Right Honourable Stephen Harper, P.C., M.P.
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister:

On behalf of the Canadian Bar Association, I am writing to urge you to repatriate Omar Khadr to Canada. U.S. President Obama has signed an executive order to close Guantanamo Bay within the year and assigned senior officials to review the status of all detainees. As you review these developments, we add our voice to those calling for the Canadian government to advise the U.S. that it is open to receiving Mr. Khadr in Canada to face judicial process here.

Under the terms of the executive order, the review team will determine first “whether it is possible to transfer or release the individuals consistent with the national security and foreign policy interests of the U.S. and, if so, whether and how the Secretary of Defense may effect their transfer or release.” The case for Mr. Khadr’s repatriation to Canada is plain. He was 15 years old when he was apprehended in Afghanistan. He 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, nor has he been afforded any process that takes into account his unique status as a minor. He has been detained in the general population of detainees in Guantanamo Bay, without any physical, psychological or educational services that would normally be afforded a minor under the terms of the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*.

Mr. Khadr has already spent six years in pre-trial custody. The U.S. has had ample opportunity to bring its processes into compliance with the tenets of the Rule of Law and its international obligations, and to try him.



Once Mr. Khadr is repatriated, it will be up to officials in the Canadian justice system to conduct an independent assessment of admissible evidence against him, to determine whether this evidence supports charges under Canadian law, and if so, whether he should be tried as an adult or a child.¹ Because of the secrecy and allegations of torture that have plagued the U.S. proceedings to date, the best chance to fairly and openly assess Mr. Khadr's criminal culpability may in fact be in Canadian proceedings.

President Obama will soon make an official visit to Canada. We hope that visit will provide the opportunity for Canada to stand side by side with the U.S., with a renewed commitment to the Rule of Law and international obligations to children involved in armed conflict.

Yours truly,

(Original signed by J. Guy Joubert)

J. Guy Joubert

- c. The Honourable Lawrence Cannon, P.C., M.P.
Minister of Foreign Affairs
- c. The Honourable Rob Nicholson, P.C., M.P.
Minister of Justice

¹ See Brief to Senate Standing Committee on Human Rights filed by Professor Craig Forcese and members of his Foreign Policy Practicum at the University of Ottawa, detailing options for charging Mr. Khadr in Canada. <http://aix1.uottawa.ca/~cforcese/other/khadrrepatriation.pdf>