

**LEBON, Yves**

This is my decision under the *International Transfer of Offenders Act* (ITOA) with respect to the application of Yves LeBon for transfer from the United States to Canada. I am reconsidering this matter pursuant to a decision of the Federal Court of Appeal dated April 27, 2012.

On July 18, 2008, Mr. LeBon was sentenced to a term of imprisonment of ten years with respect to the offences of ‘Possession with Intent to Distribute Cocaine’ and ‘Improper Entry by Alien.’

Mr. LeBon is a 48-year-old Canadian who entered the United States on August 17, 2007 under the pretense of a trip to meet family in Maine. He crossed into the United States at Champlain, New York. On August 22, 2007, Mr. LeBon was stopped for a minor traffic violation. The Trooper who completed the stop asked Mr. LeBon if he could search the vehicle and Mr. LeBon consented to the search. The search revealed 119 packages each containing one kilogram of cocaine.

I note from the file that Mr. LeBon is a first time offender and that he is married with one son. The Correctional Service of Canada (CSC) assessment is that Mr. LeBon’s social and family ties are very strong. Mr. LeBon’s record during incarceration indicates that he has adjusted satisfactorily and that he does not have any record of disciplinary intervention. I also note the sentence reduction that Mr. LeBon received with respect to acceptance of responsibility.

I also note from the file that the Royal Canadian Mounted Police (RCMP), Canadian Security Intelligence Service (CSIS) and CSC do not have information that indicates that Mr. LeBon has ties to terrorism or a criminal organization within the meaning of section 2 of the *Criminal Code*.

However, this conclusion is not determinative of the issue of involvement with a criminal organization. Mr. LeBon was arrested with 119 kilograms of cocaine, an amount well beyond that which would have been characteristic of personal use. He had travelled from New York to Illinois. Given this distance it is reasonable to conclude that there were at least two other individuals involved in this transaction – the person from whom Mr. LeBon received the drugs and the person to whom he was going to deliver the drugs. The involvement of three individuals suggests that, even though other individuals have not been identified, this was an enterprise involving a criminal organization.

The amount of drugs involved in this transaction also suggests that the transaction involved a criminal organization. No street value was put on the drugs, however, transactions of this size involve significant financial reward.

Mr. LeBon has also not been forthcoming with respect to his involvement in the transaction. His application to transfer asks particular questions with respect to the nature of the offence and the accomplices involved in the offence. Mr. LeBon refused to answer question 4(c) 'Nom du/des accomplices.' This refusal came about despite the fact that he must have picked the drugs up from someone and was delivering them to someone. He also did not give a statement to authorities after arrest.

Mr. LeBon was also asked for his version of the offence in question 4(d) of the application to transfer. His version was limited to a simple rendition of the facts of his arrest. He did not provide any reasonable explanation as to how he came into possession of the drugs, or where he was delivering them to.

The file also reveals that there is no reasonable explanation for Mr. LeBon's participation in this transaction. There is no information with respect to undue hardship or financial pressure which would have explained why Mr. LeBon ended up participating in this transaction.

Based upon my review of the file, I find that Mr. LeBon has not been forthright in his application. His description of the offence is incomplete in that it does not set out the circumstances of his offence. Further, Mr. LeBon's application does not identify any of his accomplices in Canada or the United States who were involved in this enterprise.

Counsel for Mr. LeBon has submitted that there is no evidence of participation in a criminal organization offence and that Mr. LeBon's participation was limited to that of a the role of a 'drug mule.' For the reasons set out above I reject the submission with respect to the criminal organization offence. Counsel's argument that Mr. LeBon was limited to the role of a 'drug mule' is not supported by the record and particularly is not supported by Mr. LeBon's application.

I acknowledge the opinion of CSC that Mr. LeBon would not commit a terrorism or organized crime offence within the meaning of section 2 of the *Criminal Code*. However, for the reasons set out below I disagree with that opinion.

In deciding whether Mr. LeBon will commit a criminal organization offence after his return I am not required to predict the future. To say that I must be certain he would commit such an offence would render this section meaningless. Rather, I am required to consider whether in all the circumstances there is a 'significant risk' he will commit such an offence. The fact that Mr. LeBon was involved in a criminal enterprise of the nature that I have described above and that he was not forthcoming in his application with respect to the extent of the enterprise, the sources of his cocaine or his accomplices in

Canada or the United States leads me to conclude there is a significant risk that Mr. LeBon will commit a criminal organization offence.

The fact that 119 kilograms of cocaine were involved in this transaction, with the associated financial gain, and the fact that the transaction involved traversing the Canada-U.S. border also leads me to believe that Mr. LeBon's transfer at this time would bring the administration of justice into disrepute.

In arriving at this conclusion I have reconsidered all of the file materials and the decision of the Court (the Federal Court and the Federal Court of Appeal) in the first judicial review application. I have weighed correspondence from Mr. LeBon's counsel. I have considered Mr. LeBon's lack of a prior criminal record and his efforts at rehabilitation while incarcerated in the U.S. I have balanced his family and social ties to Canada, the interest in reintegrating and rehabilitating Mr. LeBon and whether he will commit a criminal organization offence after his return.

However, it is clear that when the contents of the file are considered and the factors noted above are weighed there is a significant risk that Mr. LeBon will commit a criminal organization offence. There is nothing in the record which indicates that Mr. LeBon has severed his ties with this organization. His failure to be forthcoming in his application gives me even greater concern regarding this point. I have also concluded that Mr. LeBon's transfer would bring the administration of justice into disrepute. Either one of these conclusions would be sufficient for me to determine that Mr. LeBon should not be transferred to serve the balance of his sentence in Canada.

I have concluded, having considered all of the evidence and the factors in this application and the purposes of the *ITOA*, that Mr. LeBon's transfer would not achieve the purposes of the *ITOA*.

Vic Toews, P.C., Q.C., M.P.  
Minister of Public Safety