

EXTRADITION IN CANADA

General Overview of the Canadian Extradition Process

Extradition in Canada is conducted in conformity with the *Extradition Act*, international treaties and the *Charter of Rights and Freedoms*. All individuals are afforded fair treatment and due process.

EXTRADITION FROM CANADA: REQUEST FOR EXTRADITION

- Canada is able to extradite persons to stand trial, for imposition of a sentence or to serve a sentence, at the request of a foreign state or entity that is an extradition partner under Canada's *Extradition Act*.
- A person may be extradited from Canada only if the alleged criminal conduct in question, and for which the extradition is requested, is recognized as criminal by both countries. As communications between states are privileged, all information related to specific cases is confidential and cannot be released publicly until an arrest is made under an extradition warrant. Following this step, public information may be released on a case by case basis. However, even when a case is pending in the courts, the information may continue to be confidential if the court issues a publication ban.
- The foreign country may seek the extradition of a person in two ways: by providing Canada with a formal extradition request and supporting documentation or by requesting the person's provisional arrest, which must then be followed by a formal extradition request.

There are three phases to the extradition process:

- 1. Authority to Proceed:** the decision to commence the proceedings by issuing an Authority to Proceed; this decision is made by Department of Justice officials.
- 2. Judicial Phase:** the extradition hearing, which takes place before a judge of the superior court.

- 3. Ministerial Phase:** the decision on surrender, which under the *Extradition Act* must be made by the Minister of Justice. This decision cannot be delegated to officials.

First Phase: Authority to Proceed

- Upon the arrest (whether provisional or following the formal request for extradition), the person is brought before a judge of the superior court of the Canadian province or territory where the arrest was made to be spoken to and to be given an opportunity to apply for bail.
- When the arrest is provisional, the country or entity requesting the extradition has a set number of days (from the date of provisional arrest) to submit its formal request and documentation.
- Counsel with the Department of Justice Canada on behalf of the federal Minister of Justice, must determine within 30 days after the deadline for the receipt of the request and supporting documents, whether an Authority to Proceed will be issued.
- The decision on whether to issue an Authority to Proceed is taken by Department of Justice officials in accordance with the requirements of the applicable extradition treaty, if any, and the *Extradition Act*.



- Requirements under the *Extradition Act* include reviewing the offence involved and determining whether it could have resulted in a jail sentence of 1 year or more (under the Treaty with the United States), had it taken place in Canada, and whether the conduct for which extradition is sought is considered criminal in both Canada and the requesting state. This is known as dual criminality.
- Dual criminality is established if the conduct would be criminal in Canada. It does not matter what the offence is called, nor do the elements of the offence have to match the foreign offence.
- The Authority to Proceed authorizes an extradition hearing to be held before the court to consider whether the individual should be committed for extradition.
- The Authority to Proceed must contain:
 - a. the name or description of the person whose extradition is sought;
 - b. the name of the extradition partner; and
 - c. the name of the offence or offences under Canadian law that correspond to the alleged conduct of the person or the conduct in respect of which the person was convicted, as long as one of the offences would be punishable in Canada.

Second Phase: Extradition hearing (Judicial Phase)

- The decision at this stage is made by a judge of the superior court of the province (the extradition judge).
- At the extradition hearing:
 - If the individual is sought to stand trial, the judge must determine if the evidence provided by the extradition partner is sufficient to commit the person for trial in Canada if the conduct had occurred in this country.
 - If the individual is sought for imposition or enforcement of sentence, the judge must determine if the conviction was in respect

of conduct that would be punishable in Canada, including evidence of identification.

- If the presiding judge is satisfied with the evidence, they will order the person committed for extradition pending the decision of the Minister of Justice on surrender. Otherwise, the person is discharged and released.
- The Judicial Phase of the extradition process is not a trial. A trial will take place in the requesting state or entity, if surrender is ordered.

Third Phase: Decision on Surrender (Ministerial Phase)

- At the Ministerial Phase, the Minister of Justice must determine whether the person sought should be surrendered (extradited) to the requesting state. The Minister is only tasked with making this decision after an extradition judge has ordered the person committed at the extradition hearing.
- The Minister's surrender decision must take into consideration the requirements of the *Extradition Act*, the extradition treaty between Canada and the United States, the Canadian *Charter of Rights and Freedoms* and any submissions made by the person sought for extradition. Third party considerations are not relevant to the decision on surrender.
- The *Extradition Act* sets out a series of mandatory and discretionary grounds for refusal to surrender.
- Mandatory grounds include whether the surrender would be unjust or oppressive in all the circumstances or if it was made on the basis of a ground of discrimination.
- The Minister must also refuse surrender where the consequences of surrender would be contrary to the principles of fundamental justice under s. 7 of the *Charter* or, in the case of a Canadian citizen, be an unjustifiable infringement of the right to remain in Canada guaranteed by s. 6(1) of the *Charter*.
- The Minister also takes into consideration any submissions made by the person sought for extradition with respect to why they believe their surrender should not be ordered.

- If the Minister orders surrender, the person must be surrendered to the requesting state within 45 days unless the time is interrupted by an appeal/judicial review.

Appeals

- The individual sought may appeal the decision of the extradition judge and/or apply for judicial review of the Minister's decision to the Court of Appeal in the province where the extradition hearing took place.
- If the Court of Appeal upholds the decisions of the extradition judge and the Minister, the individual may seek leave to appeal either or both decisions to the Supreme Court of Canada. The Supreme Court will only hear appeals that raise issues of public importance.

Waiver or Consent

- At any stage in the extradition process a person may waive their rights under the *Extradition Act* and be immediately removed to the requesting state. They may also consent to committal or surrender resulting in a significantly expedited process.

EXTRADITION TO CANADA

- The extradition process is also used when Canada requests the extradition of a person to Canada from another country for trial, imposition or service of sentence.
- The Minister of Justice may only seek extradition from another state at the request of the competent authority (i.e. the Attorney General of Canada or the Attorney General of the province) who is responsible for the prosecution in Canada.
- The foreign state will apply its own laws to executing the Canadian request. Canadian officials will be advised of the progress of the proceedings.

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