



DEPARTMENT OF JUSTICE

Safeguards and Challenges in the Canadian Extradition Process

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Extradition is based on a Respect for Differences in legal systems

- Extradition is not possible without a fundamental respect for different legal systems:

“I see nothing unjust in surrendering to a foreign country a person accused of having committed a crime there for trial in the ordinary way in accordance with the system for the administration of justice prevailing in that country simply because that system is substantially different from ours with different checks and balances. The judicial process in a foreign country must not be subjected to finicky evaluations against the rules governing the legal process in this country.” (Schmidt v. The Queen, SCC)

- Canadian judicial system is a good one but it is not the only one.
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General Safeguards in Extradition

Extradition is Treaty Based

- As a member of the world community we accept that there are other ways of doing things.
 - Canada will only enter into treaties with countries we trust to have a fundamentally fair justice system and respect for human rights.
 - Some countries will extradite without a bilateral or multilateral treaty simply on the basis of reciprocity, i.e. “We will extradite to you if you promise to extradite to us in the future under like circumstances.”
 - Under the *Extradition Act*, we can only extradite to designated partners or pursuant to an extradition agreement- not based on reciprocity.
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General Safeguards in Extradition

- Dual Criminality
- Specialty
- Reciprocity



Safeguards in Canadian Extradition Process

- 1) No arrest on a Red Notice- provisional arrest requires an arrest warrant issued by a Superior Court judge,
- 2) Authority to Proceed only issued by Minister`s delegates in IAG where there is a reasonable prospect the case could proceed to surrender:
 - Is there a treaty?
 - Does the request meet the requirements of the treaty?
 - Do the circumstances in requesting state still appear to meet our standards of fundamental justice?
 - Is there sufficient admissible evidence to meet the requirements of dual criminality?
 - A large percentage of requests for extradition (other than from the United States) are rejected or stalled at this stage.



Safeguards in the Canadian Extradition System

3) An extradition hearing before a judge of the Superior Court of the province:

- Determines if the evidence provided by the requesting state is admissible.
 - Assesses whether there is some admissible evidence of every element of the Canadian offence on the ATP.
 - Attorney General of Canada is represented by regional justice counsel who are authorized by the ATP to seek committal but function independently in a quasi-prosecutorial fashion to present evidence before the court.
 - Independent decision of Superior Court – unless there is a committal there can be no extradition.
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Safeguards in the Canadian Extradition System

4) The Minister of Justice must personally decide whether to order surrender:

- Person sought can make confidential submissions to the Minister
 - Minister will consider any relevant issues other than the sufficiency of the evidence including:
 - Length of sentence
 - Human rights considerations
 - Health concerns
 - Due process considerations.
 - Must be satisfied that there is no breach of the Charter (unjust or oppressive);
 - Must be satisfied that not made on the basis of a ground of discrimination;
 - Advice provided to the Minister by counsel not involved in the first (ATP) stage of the extradition process - fresh eyes.
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Safeguards in Canadian Extradition System

5) Review Process

- Appeal from decision on committal to Provincial Court of Appeal;
- Judicial review of the Minister's decision (also to Provincial Court of Appeal)
- Appeal to the Supreme Court of Canada with Leave.



Ultimate Safeguard: Extradition is not a Trial

- If a person is extradited they will face a trial in the requested state where they will have the benefit of all the safeguards of the foreign trial process including hearing witnesses, challenging evidence and appealing the verdict of the trial court if convicted.



Challenges in Extradition

- Delays;
- Differences between legal regimes can be challenging (civil vs criminal law);
- Differences in approaches to jurisdiction in different states;
- Foreign states are frustrated by the complexity of our system;
- Different languages may lead to translation issues;
- Lack of understanding of the process- leads to arguments that are akin to those that would be made at a trial rather than at a preliminary hearing.



Conclusion

- Crime is increasingly international in nature because of the digital world we live in and because of the increased ease of travel.
- Canada does not have extra-territorial jurisdiction to prosecute criminal offences.
- Without extradition, crimes go unpunished and Canada contributes to impunity for crimes and risks becoming a safe haven for criminals.