



Policy:

Extradition and Mutual Legal Assistance

Policy Code:

EXT 1

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Cross-references:

Extradition

Extradition is the diplomatic process which involves the surrender by one country, at the request of another, of a person who is accused or has been convicted of a crime committed within the jurisdiction of the requesting country. The federal government is responsible for all extradition requests and the governing legislation is the *Extradition Act*, SC 1999, c 18. All extradition requests proceed through the International Assistance Group (IAG), Department of Justice (DOJ), Ottawa.

The offences which may be subject to extradition and the requirements for return will be determined by extradition treaties between Canada and the foreign state, or sometimes, for certain Commonwealth countries, other legislation from the foreign jurisdiction may apply.

Requests by British Columbia for Extradition

When considering whether a case may be appropriate for extradition from a foreign country, Crown Counsel should consult with the Resource Counsel responsible for extradition and a Regional Crown Counsel, Director, or their respective deputy who will ultimately decide whether the BC Prosecution Service will request extradition.

In framing extradition requests, Crown Counsel should be aware that extradition treaties and legislation often contain a “speciality” clause under which the accused may only be prosecuted for offences for which extradition was sought (subject to certain exceptions). The facts of the alleged Canadian offence may also have to be assessed in light of any requirement that those facts also constitute an offence in the requested country (“double criminality”).

At all stages of the extradition process, Crown Counsel should consult with police who will liaise with their foreign counterparts, assist in the application, and coordinate the eventual return of the accused. In British Columbia, police are responsible for the cost of

returning a fugitive. Crown Counsel should confirm with police that necessary arrangements are in place before an extradition request is made.

The main factors in determining whether an extradition request should be made include:

- public interest: generally, extradition will only be considered if the Crown is seeking a substantial jail sentence, usually penitentiary time and the expense of extradition is justified in relation to the social benefit of the ultimate prosecution
- viability/strength of case: Crown Counsel should confirm that the witnesses are available, there is a substantial likelihood of conviction and that trial delay is not an issue
- location of the fugitive: an extradition request cannot be made unless the location of the fugitive has been confirmed by police and foreign authorities are able to execute any warrant issued
- treaty requirements: generally, a foreign country will require evidence of Canadian law and the facts of the alleged offence so Crown Counsel should ensure that the specific requirements of the treaty with the foreign state may be met
- alternatives to extradition: all reasonable alternatives to extradition, including voluntary return or pending deportation by the foreign states, should be considered
- delay: the failure of the Crown to seek extradition, or pursue it diligently, may be taken into account in a trial delay application by the accused

Crown Counsel should also consider whether a provisional arrest warrant or other appropriate INTERPOL notice is necessary. Provisional arrest warrants will accelerate the extradition process, and are only necessary in exigent circumstances, when it is believed that an accused may flee a foreign country.

Request by Foreign States for Return of Persons in Canada

DOJ handles all applications by foreign states for the return of fugitives in Canada. Foreign fugitives may only be arrested on warrants issued under the *Extradition Act*. Except as provided below, the BC Prosecution Service has no role to play in the extradition of fugitives from Canada.

When a foreign state is seeking the extradition of a Canadian citizen, the Attorney General of Canada is required to review the case to determine if prosecution in Canada would be equally effective. The process was developed as a result of the Supreme Court of Canada decision in *United States v Cotroni*, [1989] 1 SCR 1469. In these circumstances, DOJ counsel will request the Attorney General of B.C. to complete a *Cotroni* assessment for the federal minister. Regional Crown Counsel will designate Crown Counsel, who

would be normally responsible for the prosecution, to complete an assessment for the Assistant Deputy Attorney General and the Deputy Attorney General. Resource counsel responsible for extradition will assist with the necessary forms, precedents and forwarding of materials. After considering the assessment and the recommendation of the Assistant Deputy Attorney General, the Deputy Attorney General provides a recommendation to the federal minister.

Mutual Legal Assistance

Mutual Legal Assistance (MLA) refers to the request by one country to assist another in the collection of evidence or information, lending exhibits, transfer of prisoners to testify or the enforcement of fines and confiscation orders. MLA is governed by international treaties and federal enabling legislation. All requests are processed through the IAG, DOJ Ottawa.

Outgoing Requests

Although police and Crown Counsel are both 'competent authorities' to make MLA requests, investigative requests will normally be made by police. Resource Crown Counsel responsible for MLA requests will assist police and local Crown Counsel with drafting and submitting requests to the IAG, DOJ Ottawa.

Incoming Requests

The BC Prosecution Service does not deal with MLA requests from other countries. All incoming requests are handled by DOJ.