



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Extradition and Mutual Legal Assistance		CROSS-REFERENCE: ABD 1

POLICY

When considering whether British Columbia should request the Government of Canada to apply to another country for the extradition of an accused or convicted fugitive, Crown Counsel should consult with Regional or Deputy Regional Crown Counsel. Relevant factors include the following:

- whether the return of the fugitive can be achieved through some alternative process (such as voluntary return or deportation)
- whether the Crown has a strong case to support extradition
- whether the circumstances of the case and the public interest warrant the initiation of extradition proceedings
- whether the Crown would be seeking a relatively substantial jail sentence, usually penitentiary time

Once a preliminary decision has been made to proceed, Crown Counsel should consult with the Headquarters lawyer responsible for extradition who can advise on the treaty requirements. This will assist Regional or Deputy Regional Crown Counsel in making a final decision as to whether an application should be prepared. The procedure outlined below should be followed.

DISCUSSION

1. Extradition 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.

2. Extradition is usually achieved pursuant to the terms of a treaty between Canada and the other country. For Commonwealth countries there may be no treaty and, if so, the United Kingdom legislation applies. It may be possible to obtain the return of an accused or convicted person from a country when there is no applicable treaty or legislation.
3. There are a number of different kinds of treaties, each with its own requirements as to the substance and form of the extradition application. The Headquarters lawyer can provide a copy of any applicable treaty or relevant legislation and provide advice on the requirements.

- a) Location of the Fugitive

An extradition application cannot be made unless a location where the fugitive can be arrested has been confirmed by the police. While an exact address is not necessary, it is necessary that the fugitive can be arrested somewhere within a specific country which will determine the extradition requirements.

- b) Whether Extradition Possible from the Country where the Fugitive Located

- i) The Headquarters lawyer can confirm whether there is a treaty or applicable legislation which will allow extradition and if not, whether the federal Justice Department will make an inquiry as to whether the requested state would consider a request for the return of the fugitive. For some countries, extradition will not be possible.
- ii) If there is a treaty or applicable legislation, the Headquarters lawyer can determine whether the act committed by the fugitive (which violates an offence against a law of Canada) also violates an extraditable offence against the law of the other country, so that the principle of "dual criminality" is met.

- c) Whether Provisional Warrant Required

Once it is established that extradition is possible (and Regional or Deputy Regional Crown Counsel has made a decision to proceed), a provisional warrant application may be appropriate if there is an urgent need to arrest the fugitive immediately to prevent his leaving the other country. The Headquarters lawyer will provide Crown Counsel with the application form and advice as to its completion and transmittal by Crown Counsel to the Federal Justice Department, International Assistance Group, in Ottawa. That office makes all applications at the request of British Columbia.

4. Extradition Application – Procedure

- a) **Deadline:** The treaty or legislation will require that the extradition materials be completed within a certain period of time after the arrest of a fugitive on a provisional warrant, usually 45 or 60 days. If no provisional warrant has been executed, Crown Counsel may prepare the extradition materials in due course and the fugitive will be arrested at the time of the application.
- b) The Headquarters lawyer will provide Crown Counsel with checklists, along with a recent precedent, if necessary, and will be available to advise on the drafting of the materials. Extradition generally requires an Affidavit of Law and affidavits of the witnesses to prove the case on a standard analogous to that for committal at preliminary hearing.
- c) Crown Counsel should provide the Headquarters lawyer with unsworn drafts of the affidavits for review prior to swearing. This obviates the need for re-swearing where the materials require amendment.
- d) Crown Counsel should send the sworn affidavit and other materials comprising the application package, to the Headquarters lawyer who will forward British Columbia's request to the federal Justice Department that the extradition application proceed.
- e) Crown Counsel should provide the Headquarters lawyer with one extra copy of the application materials for the Headquarters' file.
- f) As part of the request for extradition, the Province of British Columbia must undertake to comply with the "Rule of Specialty" or similar rule, as applicable. The rule usually requires an undertaking not to prosecute the fugitive for any offences committed prior to his return to Canada other than the offences for which the extradition application is made.
- g) At the request of the Federal Justice Department, communication to and from the International Assistance Group will normally be made through the Headquarters lawyer. Canada retains a lawyer in the other country to conduct the extradition hearing before a court in that place.

5. Return of the Fugitive

When the fugitive is ready for return, the Federal Justice Department will contact the investigating officer and advise as to the time and procedure for travelling to the requested state (at the cost of the police department) and returning the fugitive in custody to the location in British Columbia where the trial will be conducted. Following the return of the fugitive, a first appearance and bail hearing will occur as the British Columbia court will then have jurisdiction on the information or indictment.

Extradition from Canada to Other Countries

The Federal Justice Department handles all applications by other countries for the return of fugitives from Canada to those other countries. British Columbia has no role to play in extraditions from Canada to other countries.

Sometimes a police department in another country will ask the police in British Columbia to arrest a fugitive on the strength of a warrant issued in that country. It is important to advise the police that a person cannot be arrested in Canada for the purpose of extradition to another country without that other country first having made an application for extradition to Canada resulting in the issuance of an extradition warrant by a B.C. Supreme Court Justice under the *Extradition Act* (of Canada).

If there is a warrant under some other Canadian legislation such as the *Immigration and Refugee Protection Act* or if the accused has committed offences in British Columbia, the local police may be able to effect an arrest, but that arrest does not hold the fugitive for extradition purposes.

Mutual Legal Assistance

Under Mutual Legal Assistance treaties with other countries and under enabling federal legislation, both Crown Counsel and the police are “competent authorities” for the purpose of making requests to the International Assistance Group of the Department of Justice for assistance from other countries.

In British Columbia, Crown Counsel make requests for assistance where evidence is required after a charge has been laid. Police make requests for assistance at the investigation stage.

Investigation is a police function and Crown Counsel are not in a position to provide advice on every case where the police, as competent authorities, may wish to seek assistance from other countries for investigative purposes. This does not mean that in certain high profile cases Crown Counsel will not become involved in advising the police about the general nature of the evidence which may be required, however, applications for assistance must be made by the police directly to the International Assistance Group and Crown Counsel should not sign them off.

The Department of Justice, not the Criminal Justice Branch, handles requests from other countries for mutual legal assistance.