



Extradition Prosecutions

Extradition for the Purpose of Prosecution

When a person is transferred from one country to another for the purpose of prosecution, it is called “extradition.” It is a diplomatic process involving the surrender of the person who is accused or has been convicted of a crime in the requesting country.

Extradition can involve bringing someone to Canada from another country, or surrendering a person who is physically situated in Canada to a foreign jurisdiction. The legal process that applies in a particular situation may be governed by a number of different considerations, including:

- the procedures and threshold tests established by the federal *Extradition Act*;
- applicable treaties;
- matters of international convention; and,
- formal and informal reciprocity agreements between countries.

The federal Department of Justice is responsible for managing all extradition requests and the governing legislation is the *Extradition Act*. More information on the extradition process can be found at www.justice.gc.ca/eng/cj-jp/emla-eej/tocan-aucan.html.

Extradition Requests Made on Behalf of the BC Prosecution Service

Crown Counsel may seek extradition of a person charged with or convicted of a crime who is located in another country. Extradition is available not only for outstanding criminal charges, but for sentencing proceedings and completion of sentences. The decision to seek extradition is governed by BC Prosecution Service policy on *Extradition and Mutual Legal Assistance* (EXT 1), which can be found at: www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/ext-1.pdf

The process begins with the issuance of a warrant for arrest. If the accused is not physically present in Canada and a decision is made to apply for extradition, the BC Prosecution Service will forward a request for extradition to the International Assistance Group of the federal Department of Justice. The federal government makes the formal extradition request to the foreign country and functions as the conduit between the Canadian prosecution authority and the foreign state.

Where the person sought is a flight risk, Canada may make a request for what is called a “provisional warrant” which allows the fugitive to be arrested in the foreign state, and held in custody pending delivery of the full extradition request. Once the person is arrested on the warrant, they may be entitled to a bail hearing and may be released pending the outcome of the extradition hearing.

The fugitive may waive their right to an extradition hearing and be summarily returned to Canada, or can choose to have an extradition hearing in the foreign country. When this happens, a court in the foreign country will determine, based on the evidence provided by Canadian prosecutors, whether or not the accused should be extradited to Canada. The hearing is conducted on the law and procedures of the foreign state – Canadian law is not applicable. The evidence for the extradition hearing will be summarized for the purpose of the hearing, and sent to the foreign country to assist the court in making a decision whether to extradite the person to Canada. Although there are varying standards for extradition, foreign courts will typically require that the available evidence:

- establishes that a crime has been committed according to the laws of both Canada and the foreign country – this is known as “dual criminality”;
- is admissible in a Canadian court;
- is available to the Canadian prosecution authority and sufficient to convict on a prima facie basis (evidence that is sufficient, on initial examination, to establish all elements of the crime); and,
- establishes that the person being extradited is the person who committed the crime.

Some countries have very different rules regarding the admissibility of evidence for the purpose of an extradition hearing, and may not admit evidence garnered by Canadian investigators from confessions, searches, or electronic surveillance. When the Canadian evidence is not admitted in the foreign court, it can make extradition difficult to achieve. In any event, the process for extraditing someone to Canada is complex and can be time consuming.

If the foreign court upholds the extradition request and commits the fugitive for surrender, the matter is then placed before an executive member of the foreign country’s government to make a decision as to whether to surrender the accused to Canada. The court’s decision to commit and the Minister’s decision to surrender may be appealed to higher courts. These processes may take considerable time to complete. A person who is extradited to Canada may, generally speaking, only be prosecuted for the offences on which they were extradited.