BRIEF TO THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

REVIEW OF THE *EXTRADITION ACT*

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BRIEF

I. The judge's powers as regards extradition and the authority to proceed

Section 24(2) of the *Extradition Act*[1] stipulates that the extradition judge has the powers of a justice under Part XVIII of the *Criminal Code* (preliminary inquiry).

Section 15 stipulates that "[t]he authority to proceed must contain […] (c) the name of the offence or offences under Canadian law that correspond to the alleged conduct of the person".

Taken together, what do these two sections mean? Section 15(3)(c) means that the authority to proceed with "documents sent by a State other than Canada" includes an account of events based solely on hearsay. There are no sworn statements from the witnesses behind the charges, nor electronic or video documentary evidence that could have been given, if necessary, nor the indictment, nor the exact date of the offences of the events described by each of the witnesses.

As the law currently stands, the accused has no opportunity to defend themselves against the charges, which is a human rights violation.

Moreover, without the exact dates confirmed by the witnesses, the "accused" cannot plead based on the statute of limitations for the alleged conduct, which exists in the United States.

Based on Section 24, the extradition judge does not in fact have the powers of a justice under Part XVIII of the *Criminal Code*, because the justice has the obligation to analyze the testimonies or statements of sworn witnesses to the charges; any hearsay evidence is inadmissible because it is not reliable. Moreover, the accused receives these statements prior to the hearing. This allows the accused to provide evidence to the contrary, which is not possible at an extradition hearing.

Section 24 as written allows the judge to accept the hearsay account of events sent by the foreign country.

The judge starts from the premise that the evidence in the record of the case is reliable.[2]

It is important to note that the word "certified" means only that the document, the record of the case (ROC) sent to Canada was signed by a U.S. authority.

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[1] *Extradition Act* S.C. 1999 c. 18

[2] Idem, paras. 52–56

Furthermore, the *Extradition Act* allows the judge to accept an account of events based solely on hearsay. In fact, the case law basically says that "the issue is not whether the information in the record is true".[3]

Proposed amendments

Section 15(3)(c) of the *Extradition Act*

The name of the offence or offences, the testimonial evidence with sworn statements or solemn declarations from the witnesses to the charges (names and addresses of witnesses may be redacted if necessary), as well as any electronic or video documentary evidence, and the indictment.

Under this section as written, the accused does not even have the right to know what the charges are, and thus cannot know exactly what they are being accused of, which is contrary to all rules of law.

With the suggested amendment, the accused will be able to present a defence at the hearing.

The extradition judge could then make a decision based on the veracity and reliability of the evidence sent by the State other than Canada.

Furthermore, the judge could decide that, under the law of the State other than Canada, the limitations period for the crime has passed. For example, in the United States, certain crimes have a statute of limitations. In this regard, the defence is responsible for proving that the offences are time-barred.

Section 24(2) of the *Extradition Act*

For the purposes of the hearing, the judge has the powers of a justice under Part XVIII of the Criminal Code.

II. Right of the accused to have their trial in Canada and to plead guilty in Canada.

A) Right of the accused to have their trial in Canada

Canada has universal jurisdiction under the *Criminal Code* to try any crime committed outside of Canada by a Canadian resident or citizen.

Canada has held trials of Rwandans in Canada who have allegedly committed crimes in their country of origin. Canada has also tried a Canadian citizen for allegedly sexually assaulting minors in Mexico as well as engaging in child pornography.

[3] United States of America v. Ferras (2006) 2 S.C.R. 77, para. 68

There are also Canadians who have committed crimes abroad from within Canada.[4]

In *Cotroni*, the appellant was charged with exporting drugs from Canada to the United States. He was denied the right to have his trial in Canada with dissent.

That was in 1989, and since then Canada has amended the *Criminal Code* by adding its "universal jurisdiction".

Proposed amendment for this purpose:

Every citizen of Canada has the right under the Canadian Charter to be tried in Canada for crimes committed outside of Canada, which, under the Canadian Criminal Code, is a crime in Canada.

B) Right of the accused to plead guilty in Canada to a crime committed outside of Canada

This solution would have significant benefits for both Canada and foreign countries:

1. Reduced costs for Canada and foreign countries.
2. Meeting our international obligations.
3. Some defendants suffer from mental illnesses, such as autism spectrum disorders. It is very important for these people to remain in a familiar environment (family, language, stability and medical care). In these cases, the crimes are generally committed from Canada (drug trafficking/Internet fraud).
4. Disproportionate sentences between Canada and certain foreign countries.

Suffice it to say that, for drug trafficking (XANAX), **the maximum sentence in Canada is three (3) years.**

In the United States, some states (such as Connecticut) impose **a minimum sentence of five (5) years and a maximum sentence of forty (40) years** for the same crime.

[4] United States of America v. Cotroni (1987) 1 S.C.R. 1469

Proposed amendment for this purpose:

Any Canadian citizen has the right to plead guilty in Canada to crimes committed outside of Canada.

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