The Committee for Justice in Canada
B'NAI BRITH CANADA
Le comité pour la justice au Canada

Submission to the Standing Committee on Justice and Human Rights for its Study on Extradition Law Reform
February 13, 2023

B'nai Brith Canada is Canada's oldest grassroots Jewish community organization dedicated to eradicating racism, antisemitism and hatred in all its forms, championing the rights of the marginalized, while providing basic human needs for members of the Jewish community.

INTRODUCTION

The general approach of the Government of Canada to those accused of war crimes, crimes against humanity and complicity in genocide has been to seek revocation of citizenship and deportation. In B'nai Brith Canada's view, while revocation of citizenship and deportation are better than doing nothing, they are not the full measure of justice. The accused may never face justice in the country to which the person is removed. Revocation of citizenship and removal is merely relocation of the accused. Depending on the circumstances, that relocation may involve no substantial hardship. It is not punishment. It is not accountability for crimes.

RECOMMENDATIONS

B'nai Brith Canada proposes the following recommendations to ensure that Canada's extradition system is better served for the victims of war crimes, crimes against humanity and genocide:

1. That the Government of Canada direct its Crimes Against Humanity and War Crimes Program (War Crimes Program), either to prosecute in Canada or to elicit extradition from extradition treaty partners or, where appropriate, enter into specific extradition agreements, in cases where the evidence available is such that, in the view of the Program, a prosecution or extradition request would succeed. Revocation of citizenship and removal should not be pursued in these cases. The victims are better served by prosecution or extradition for trial where the evidence warrants than revocation of citizenship and removal, as conviction and sentencing involves more complete accountability.

2. That the Government Canada provide funding for the War Crimes Program that is sufficient to implement this recommendation.

THE FLAWS WITH REVOCATION OF CITIZENSHIP AND REMOVAL/DEPORTATION

Revocation of citizenship and removal are tempting recourses for Canada because they are less expensive, less demanding and easier to establish than either extradition or prosecution in Canada. Canada has universal jurisdiction legislation for war crimes, crimes against humanity and genocide. Many of those revoked citizenship and removed from Canada or simply removed from Canada before obtaining citizenship for those crimes could prosecuted in Canada or extradited for those crimes. However, the difficulties in prosecution and extradition have made revocation of citizenship and removal or, where the person is not already a citizens, just removal the default recourse.

There is only one case of successful universal jurisdiction prosecution in Canada, the Rwandan case of Munyaneza. He was convicted since the failed effort to prosecute Nazi war criminals in Canada and the change in the legislation to correct the defects the Nazi war criminal effort made evident. There were two extradition efforts in Canada during the Nazi war criminal effort, against Albert Helmut Rauca and Michael Seifert, both successful.

Robert Kaplan, a Member of Parliament from Toronto, and Solicitor General in the Trudeau government from 1980 to 1984, tried to push the Canadian government into ending the immunity of Nazi war criminals in Canada. He elicited extradition requests from Western governments and initiated investigation of cases in Canada for that purpose. He pushed the investigation that eventually led to the arrest in June 1982 and the extradition in May 1983 of Albert Helmut Rauca to Germany. Rauca had been accused of responsibility for 11,500 deaths in Kaunas, Lithuania in 1941.

Rauca died in a German prison in October 1983 awaiting trial, forty two years after the crimes took place that he was charged with committing. He had spent thirty three of those years in Canada.

In November 2000, an Italian military tribunal found Michael Seifert guilty, in absentia, of various crimes committed while he was a guard at a German police transit camp in northern Italy and sentenced to life in prison. At Italy's request, the Canadian government commenced extradition proceedings against Seifert.

The Minister of Citizenship and Immigration also commenced proceedings to revoke Seifert's citizenship in the Federal Court of Canada on November 13, 2001. The Federal Court found against Seifert on November 13, 2007. On December 28, 2005, the Minister of Justice ordered Seifert's surrender to Italy. He was extradited to Italy February 15, 2008.

In the case of Radislav Grujicic, Grujicic immigrated to Canada in 1948 and became a Canadian citizen in 1956. He was a paid informer for the RCMP security service from 1949 to 1951, when his cover was blown. Yugoslavia asked for extradition. The request was never honoured.

Canada at the time did not have an operative extradition agreement with Yugoslavia. Grujicic could have nonetheless been extradited under a specific agreement between Canada and Yugoslavia to give effect to the Yugoslavia extradition request. However, that did not happen.

Grujicic was instead accused in Canada in December 1992 of conspiring with German occupying forces in Belgrade Yugoslavia in the persecution of communists during World War II. The prosecution dropped the charges against Grujicic in September 1994 because he was too ill to stand trial.

The advantages of revocation of citizenship and removal proceedings for the Government is that there is a lesser legal standard, that the rules of evidence are more relaxed and the standard of proof is less. For revocation of citizenship, obtaining citizenship by false representation or fraud or by knowingly concealing material circumstances are sufficient. It is not necessary to show that the person who obtained citizenship was guilty of a war crime, crime against humanity or complicity in genocide. If the relevant false representation or fraud or knowing concealment of material circumstances is hiding commission of war crimes, crimes against humanity or complicity in genocide, all that it is necessary to show is that the false representation or fraud or knowing concealment of material circumstances foreclosed inquiries on these matters. That is so whether or not the inquiries, if made, would have established guilt.

This is also true for a removal order sought on the basis of misrepresentation on entry. Foreclosure of inquiries is sufficient to establish the misrepresentation.

If revocation of citizenship and removal or just removal is sought on the basis of commission of war crimes, crimes against humanity or complicity in genocide, the standard of proof is less than in criminal proceedings. Criminal proceedings require proof beyond a reasonable doubt. Extradition proceedings require establishing that there is sufficient evidence at trial to establish proof beyond a reasonable doubt. Revocation of citizenship for false representation or fraud or knowing concealment of material circumstances for requires proof on the balance of probabilities. Revocation of citizenship and removal for commission of war crimes, crimes against humanity and complicity in genocide require only that there are reasonable grounds to believe that the facts have occurred.

In criminal and extradition proceedings, strict rules of evidence apply. Typically witnesses must be heard live, subject to cross examination. Hearsay is not allowed. In revocation of citizenship and removal proceedings, all evidence is allowed which the tribunal considers credible or trustworthy in the circumstances. What that difference means in practice is that in citizenship and immigration proceedings written statement are often allowed into evidence without the necessity of producing live witnesses to support these statements.

In the upshot, extradition proceedings are more complicated and expensive than revocation of citizenship and removal proceedings. For extradition, even where there is an extradition agreement, it may be necessary to elicit an extradition request. Where there is no general extradition agreement, it would be necessary to enter into a specific extradition agreement for the person concerned. Proving the case against the person concerned is more difficult with extradition proceedings both because of the heightened standard of proof and the more stringent evidentiary requirements. The result has been, for those against whom there is evidence of war criminality, criminality against humanity or complicity in genocide, almost complete recourse to revocation of citizenship and removal proceedings.

This is an unsatisfactory situation for those cases where an extradition request would be made, if elicited, or where a specific extradition agreement is available and the person would receive a fair trial after extradition, and where evidence is sufficient to meet the standard of proof and evidentiary requirements for extradition. There are, of course, cases where the evidence that is available meets only the citizenship and immigration standards of proof and evidentiary requirements. In those cases, those procedures should be followed. However, in cases where extradition requests consistent with international standards of justice are possible, and where the evidence is sufficient to meet extradition standards, it is, in our view, wrong to resort to revocation of citizenship and removal just because it is cheaper.

Relocation of perpetrators to their home country without extradition cuts down to the accused the cost of flight. If all a person seeking haven in Canada risks is return to the country fled, the flight may seem worth the risk. If the person faces, in contrast, extradition for trial, the disincentive of flight to Canada will be greater. As well, victims are better served by extradition for trial than by revocation of citizenship and removal because trial, conviction and sentencing involves more complete accountability.

If all that can be proved is foreclosure of inquiries, then, so be it. But if the commission of the crimes can be proved, they should be proved at the level required for extradition proceedings, not only to hold the perpetrators to account, but also to provide a more adequate remedy to the victims.

ADEQUATE FUNDING FOR CANADA'S WAR CRIMES PROGRAM

Ultimately, our position is that the Canada's War Crimes Program should be adequately funded so that they do not have to resort to revocation of citizenship and deportation even in the strongest of cases because that is all that they can afford. With justice, as with everything else, you get what you pay for. Inadequate funding for extradition leads to cheap justice. Canada needs to spend more to get more, more for Canada and more for global justice, to combat the worst crimes known to humanity.

The focus of this Committee is law reform. Yet, there is no point tinkering with a law which is not going to be used, at least in this area, against the most serious crimes. The message this Committee needs to convey is not only that the law should be this or that, but also that the law should be used. An ideal law that sits in the statute books unused for the gravest crimes is an idle law. Making extradition work means not only legislating; it also means paying.