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PUBLIC PROSECUTION SERVICE

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EXTRADITION OF FUGITIVES TO CANADA

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

EXTRADITION OF FUGITIVES TO CANADA

Extradition refers to the diplomatic process by which one state arranges for the return of a fugitive found in another state in respect of a crime committed within the jurisdiction of the requesting state. Such formal requests may relate to those accused of crimes, as well as convicted offenders with outstanding sentences. The Extradition Act (Canada) is the governing legislation in seeking the delivery of accused and convicted offenders to Canada from another country. Extradition is generally dependent on the existence of a treaty between Canada and the country in which the fugitive is located. Once a request is made, the law of the foreign country and the relevant treaty will apply to the processing of the Canadian request in the requested state.

It is important to note that, in the context of child abduction cases, extradition proceedings relate only to the accused and do not operate to facilitate the return of children to Canada. Proceedings are conducted under the Hague Convention for the return of abducted children.

Extradition by Canada from Foreign Jurisdictions

a. Treaty and Non-Treaty Countries

A request for extradition by Canada is ultimately a diplomatic overture made by the Minister of Justice (Canada) to his or her counterpart in a foreign jurisdiction. Most requests are made to countries with which Canada has entered into a treaty. However, requests for the return of fugitives may also be made to countries which are not treaty signatories in the discretion of the Minister of Justice, and dependent in the laws of the foreign state.

In almost all cases, the treaty sets out the offences for which extradition is possible, including any applicable limitation periods imposed by the foreign state and any excluded offences, such as those of a political character.

The treaty may also reflect the form in which the extradition materials are to be presented. In some jurisdictions, such as the United States, affidavits of fact may contain hearsay. In others, such as India, affidavits may only be offered in the first person. Other differences include whether affidavits may be sworn before a Notary Public, or must be sworn before a judge of the Supreme Court of Nova Scotia.

b. Principles of Customary International Law

There are two common law principles to consider before making a request for extradition:

- Dual criminality is the requirement that the criminal conduct underlying the offences for which extradition is sought, must also be criminal were it to

occur in the foreign state. (It is not necessary that the foreign state have the exact same offence.)

- The second is the principle of specialty, which dictates that a prosecution in Canada may proceed only in respect of the specific offences for which the offender was surrendered, or for included offences therein. Section 80 of the Extradition Act, which codifies the principle of specialty also permits a prosecution to proceed in Canada for offences, other than those for which the accused was surrendered if either the foreign state or the accused consents. Specialty cannot be waived by the accused. This principle is an obligation between states and can only be waived by the foreign state.

c. Making a Request for Extradition

A request for extradition should begin with an inquiry by a police service to the Chief Crown Attorney of the region or branch which is (or will be) responsible for the prosecution. Since a request for extradition by the Minister of Justice to the foreign jurisdiction warrants that a prosecution will proceed for the identified offences, a firm written commitment in that regard from the appropriate Chief Crown Attorney is necessary.

In assessing whether a request for extradition should be made, the following factors should be carefully considered:

- whether the evidence indicates a sufficiently strong case to support the extradition request;
- whether the general circumstances of the case, including the seriousness of the offence and the dangerousness of the accused, warrant the initiation of extradition proceedings;
- whether the Crown will be seeking a relatively substantial period of imprisonment upon conviction;
- whether there is a significant and pressing public interest in securing the return of the accused to Canada for prosecution.

Once the case has been reviewed by the appropriate Chief Crown Attorney and a commitment to prosecute is reached, a request is then made to the Deputy DPP.

d. Provisional Warrants

The next step in the process involves a determination of whether a request for a provisional warrant for the arrest of the accused should be made. A request for a provisional warrant is designed to relay information in an expedited manner to the International Assistance

Group of the Department of Justice (Canada), which, in turn, provides it to the foreign state so that the accused may be held in that state pending completion of the extradition materials.

A request for a provisional warrant is appropriate particularly where there is a risk of flight by the fugitive from his or her current location. Such a warrant is also appropriate in circumstances in which it is believed that the fugitive is a danger to the community. If the information is provided in an accurate and complete form, an arrest may be effected quickly thereafter. The form should be completed by the police and forwarded to the Deputy DPP. If time is short, arrangements may be made to send the form directly from the police to the International Assistance Group.

In most jurisdictions, if the foreign state accedes to the request for provisional arrest the accused has an opportunity to apply for bail pending the formal extradition hearing. The relevant treaty usually sets out the period in which the formal request for extradition must be made. In the United States, for example, extradition materials must be prepared and received by the U.S. Central Authority within 60 days of the execution of the Provisional Warrant.

e. Extradition Materials

The extradition materials are essentially the same, whether or not a Provisional Warrant has been executed. The materials consist of one or more affidavits of fact and one or more affidavits of law.

The affidavits of fact are prepared by the police in conjunction with the local Crown Attorney, and set out the relevant facts in support of the offence and identify the specific offences for which extradition is sought. The affidavit of fact needs to attribute the evidence to a particular source and should not be a mere narrative of the allegations. The level of proof required in extradition hearings is generally the demonstration of a prima facie case.

The drafting of affidavits of law is to be overseen by the Chief Crown Attorney responsible for the prosecution. Completed affidavits will be delivered to the Deputy DPP who will ensure that all materials relevant to the request for extradition are forwarded in a timely manner to the International Assistance Group at the Department of Justice. Those materials will then be presented through diplomatic channels to the foreign state by the Minister of Justice (Canada).

Chief Crown Attorneys and the Deputy DPP have precedents for the necessary affidavits and requests for provisional warrants.

The International Assistance Group contact phone number (after hours) is (613) 851-7891.