

# Extraditions in Canada

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# Key Stages to an Extradition Proceeding

- Authority to Proceed
- Securing the Presence of the Person Sought
- Intake – Receiving the ROC(s) and Seeking Disclosure
- The Committal/Extradition Hearing (the Judicial Phase)
- Surrender (the Ministerial Phase)
- Appeal

# Authority to Proceed

- Nation to Nation request between “extradition partners”
- For Prosecution vs. For Sentencing
- Subjection extradition agreement, for an offence whose maximum sentence is two years or more in the Requesting State (5 years or more in Canada)
- Double or (Dual) Criminality
- Authority to Proceed or ATP (s. 15)

# Securing the Presence of the Person Sought

- Provisional Arrest Warrant (ss. 12-13)
- Extradition Warrant (s. 16)
- Bail pending committal (ss. 18-19)

# Intake – Receiving the ROC(s) and Seeking Disclosure

- The “Judicial Phase” begins
  - Inherent jurisdiction?
  - Charter jurisdiction?
- The ROCs
- Adducing Defence Evidence – s. 32(1)(c)
- *Larosa* / Disclosure Motion

# Intake – Receiving the ROC(s) and Seeking Disclosure

## ○ M.M. v. United States of America, 2015 SCC 62

[63] This means that there continues to be a high threshold for refusing committal on the basis that the supporting evidence is unreliable. It is only where the evidence supporting committal is “so defective or appears so unreliable” or “manifestly unreliable” that it would be “dangerous or unsafe” to act on it that the extradition judge is justified in refusing committal on this basis.

# Intake – Receiving the ROC(s) and Seeking Disclosure

## ○ M.M. v. United States of America, 2015 SCC 62

[85] This is not to say that courts must always reject evidence which (1) invites the judge to assess credibility, (2) establishes a basis for competing inferences, or (3) provides for an exculpatory account of events. It is possible that such evidence may in certain, and likely fairly unusual, cases meet the high threshold for showing that the evidence of the requesting state should not be relied on. *Ferras* leaves open the possibility that, for example, evidence of virtually unimpeachable authenticity and reliability which contradicts the ROC could rebut the presumption of its reliability and could justify refusal to commit. Such situations I would expect to be very rare.

# The Committal/Extradition Hearing

- Abuse of Process

- Committal

# Surrender – The “Ministerial Phase”

- Surrender Issues (ss. 44-47)
  - “unjust and oppressive”
  - Discrimination on the basis of race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person’s position may be prejudice for any of those reasons
  - Punishable by death (absent assurances)
  - Limitation period
  - Political offence or an offence of a political character
  - Autre fois acquit/convict
  - No right of appeal (if convicted in absentia)
  - Criminality in Canada

# Appeals

- Judicial Review of Surrender
- Appeal of Committal Order

# Q/A

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