IN THE SUPREME COURT OF BELIZE, A. D. 2016
CONSOLIDATED CLAIMS

CLAIM NO. 50 OF 2016

IN THE MATTER OF Section 20(3), 9 and 14 of the Constitution, Chapter 4 of the Substantive Laws of Belize

AND

IN THE MATTER OF a Case Stated by Rohn Knowles challenging the constitutionality and legality of extradition proceedings by the Government of United States of America

BETWEEN:

(ROHN KNOWLES	**CLAIMANT**
(	
(AND	
(	
(THE ATTORNEY GENERAL	**DEFENDANT**

AND

CLAIM NO. 51 OF 2016

IN THE MATTER OF Section 20(3), 9 and 14 of the Constitution, Chapter 4 of the Substantive Laws of Belize

AND

IN THE MATTER OF a Case Stated by Kelvin Leach challenging the constitutionality and legality of extradition proceedings by the Government of the United States of America

BETWEEN:

(KELVIN LEACH	**CLAIMANT**
(	
(AND	
(	

(THE ATTORNEY GENERAL OF BELIZE DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Godfrey Smith, SC, for the Claimant Rohn Knowles
Mr. Eamon Courtenay, SC, and Iliana Swift for the Claimant Kelvin Leach
Mr. Nigel Hawke, Acting Solicitor General, and Trienia Young, Senior Crown Counsel, for the Defendant

---

J U D G M E N T

The Facts

1. On September 12, 2014 the Government of the United States of America requested the Provisional Arrest of the Rohn Knowles and Kelvin Leach, the Claimants pursuant to Article 9 of the Extradition Treaty between the Government of the United States and the Government of Belize. This Treaty was executed on March 30th, 2000. The United States had until November 14th, 2014 to submit the formal request for extradition in accordance with Article 9(4) of the Treaty. On September 15th, 2014 the Honourable Minister of Foreign Affairs issued an Order to the Chief Magistrate for Warrants of Apprehension of the Claimants who were classified as fugitives of the United States of America. On September 19th, 2014, both Claimants applied for bail by way of petition to the Supreme Court of Belize. Hanomansingh J. granted the Claimants bail in the sum of $100,000.00 with one Surety. He also attached conditions of bail whereby the Claimants were not allowed to leave Belize, they had to surrender all travel documents to the Court and they had to report to Queens Street Police Station every

Monday and Friday. The United States then submitted the official extradition request on November 13th, 2014. When the extradition proceedings were about to commence before the Chief Magistrate, the documents were not authenticated and were only tendered for identification because of a constitutional objection. The Claimants contend *inter alia* that their fundamental rights have been infringed and that the extradition proceedings are an abuse of process. The matter now comes before this court for its determination by way of a case stated.

The Issues

2. These are the issues of law which arise for the court's determination as articulated in the written submissions of Godfrey Smith, SC, filed on behalf of the Claimants:

   i) Whether the evidence in support of the Requests was obtained in violation of the Claimants' right not to be subjected to arbitrary search and seizure guaranteed by section 9 of the Belize Constitution?

   ii) Whether the evidence in support of the Requests was obtained in violation of the Claimants' right to privacy guaranteed by section 14 of the Belize Constitution?

   iii) Whether the evidence in support of the Requests was illegally obtained in violation of the Interception of Communications Act?

   iv) Whether the extradition proceedings are an abuse of process?

3. **<u>Legal Arguments on behalf of the Applicant</u>**

<u>ISSUE NO. 1:</u> Whether the evidence in support of the Requests was obtained in violation of the Claimants' right not to be subjected to arbitrary search and seizure guaranteed by section 9 of the Belize Constitution?

Mr. Smith, SC, argues on behalf of the Claimants that the interception of communications in the absence of valid judicial authorization is a flagrant violation of the Claimants' constitutional rights. He contends that the evidence in support of the Extradition Requests consists of transcripts of telephone conversations and videos recorded by an undercover federal agent pursuant to US legislation which supports the regime of "*participant surveillance*". He states that the Government cites 18USC 2518 which permits the interception of oral or electronic communication so long as one of the parties to the communication has given prior consent. Learned Counsel submits that the evidence also consists of recordings of telephone conversations and emails obtained through search warrants granted by United States District Court authorizing the interception of telephone conversations made from Belize to the Bahamas. He argues that the right to protection against arbitrary search and seizure is a right which was elevated and underscored by the Belize Legislature through its inclusion in section 9 of Chapter II Protection of Fundamental Rights and Freedoms in the Belize Constitution which states:

"9(1) Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision -

(a) that is required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources or the development or utilization of any property for a purpose beneficial to the community;

(b) that is required for the purpose of protecting the rights or freedoms of other persons;

(c) that authorizes an officer or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate, or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or to that authority or body corporate, as the case may be; or

(d) that authorizes, for the purpose of enforcing the judgment or order of the court in any civil proceedings, the search of any person or

property by order of a court or entry upon any premises by such order."

Mr. Smith, SC, concedes that this right is not absolute and that the demands of law enforcement and prevention of crime may necessitate its interruption. He contends that constitutional jurisprudence has consistently emphasized the importance of judicial intervention in striking a balance between these interests. In ***Thanh Long Vu v Her Majesty and the AG of Ontario*** [2013] 3R.S.C. 657 where the Supreme Court of Canada described the need for judicial involvement in imperative terms at paragraph 22 as follows:

"… the police must obtain judicial authorization for the search before they conduct it, usually in the form of a search warrant. The prior authorization requirement ensures that, before a search is conducted, a judicial officer is satisfied that the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance the goals of law enforcement."

Mr. Smith, SC, also cites the Belize Supreme Court case of ***Jitendra Chawla (AKA) Jack Charles v. The AG*** SCA No. 208 of 2002 which reiterated the significance of judicial authorization when restricting the right against arbitrary search and seizure. The Supreme Court found that section 87 of the Customs Regulations Act was unconstitutional on the grounds that a Writ of Assistance authorizing search and entry did not provide for any procedure or requirement to obtain judicial authorization. Learned Counsel

also submits that judicial authorization in cases of interception of communication is even more important due to the inherent secrecy of the operation. He cites ***R v. Duarte*** [1990] 1 S.C.R. 30 where the courts have analyzed the constitutionality of "*participant surveillance*" regime in the Canadian legislation which dispensed with the need for judicial authorization. In holding that the constitutional right does impose an obligation on police to seek prior judicial authorization, the Court highlighted the function of such authorization in balancing competing interests:

> *"… this represents an acceptable balance in that the imposition of an external and objective criterion affords a measure of protection to any citizen whose private communications have been intercepted. It becomes possible for the individual to call the state to account if he can establish that a given interception was not authorized in accordance with the requisite standards."*

The court went on to warn against the serious risks faced when the obligation to seek authorization is dispensed with and the decision to intercept is left to absolute discretion of the state:

> *"… if the state were free, at its sole discretion, to make permanent electronic recordings of our private communications, there would be no meaningful residuum to our right to live our lives free from surveillance. The very efficacy of electronic surveillance is such that it has the potential, if left unregulated, to annihilate any expectation that our communications will remain private. A society which exposed us, at the whim of the state, to the risk of having a permanent*

electronic recording made of our words every time we opened our mouths might be superbly equipped to fight crime, but would be one in which privacy no longer had any meaning."

"Participant surveillance infringes s.8 of the Charter. It leaves all the conditions under which conversations are intercepted to the sole discretion of the police and therefore cannot be held to meet the definition of 'reasonable' in the context of s.8 of the Charter. Its large-scale use by police could by-pass any judicial consideration of the entire police procedures and make the entire scheme in Part IV of the Code largely irrelevant. Indeed, the constitutionality of Part IV.1 of the Code is predicated on the numerous safeguards designed to prevent the possibility that the police recourse to electronic surveillance as a routine administrative matter."

Mr. Smith, SC, submits that intercepting the Claimants' electronic communications pursuant to the participant surveillance regime violated their right against arbitrary search and seizure by disregarding the high constitutional importance of obtaining prior judicial authorization. He further submits that US authorities had the option of proceeding under the Mutual Legal Assistance and International Co-operation Act (MLAICA) which was enacted to facilitate international cooperation. The use of a foreign search warrant not only violates Belize's sovereignty, but also obfuscates the principle of legal certainty aimed at ensuring that persons know the laws to which they are subject. The US search warrant disregards wholesale the protections afforded to persons within the jurisdiction of Belize under

Belize's laws. Such authorization therefore cannot be regarded as valid judicial authorization that strikes a balance between the relevant competing interests in Belize.

4. **<u>ISSUE NO. 2</u>: Whether the evidence in support of the Requests was obtained in violation of the Claimants' right to privacy guaranteed by section 14 of the Belize Constitution?**

On this second issue, Mr. Smith, SC, argues that the evidence that the Government of the United States seek to rely on were obtained in violation of their Right to Privacy. Section 14 of the Belize Constitution guarantees a person protection of his privacy in relation to himself and his correspondence:

> *"14.(1) A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. The private and family life, the home and the personal correspondence of every person shall be respected.*
>
> *(2) Nothing contained in or done under the authority of ay law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision of the kind specified in subsection (2) of subsection 9 of the Constitution."*

Learned Counsel submits that in order to record an individual's telephone conversation it must be done in accordance with the law. In ***Malone and the United Kingdom*** [1984] ECHR 10 the Applicant was acquitted of charges

pursuant to a warrant issued by the Home Secretary. He then brought civil proceedings to establish that the tapping of his telephone conversation by police was unlawful. The Court held that the law in England and Wales providing for the issuance of the warrant by the Home Secretary was wholly lacking in that it did not "*indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on public authorities. To that extent, the minimum degree of legal protection to which citizens are entitled under the rule of law in a democratic society is lacking".*

Mr. Smith, SC, argues that in the case at bar the evidence in the affidavit of Thomas McGuire shows that on several occasions they recorded telephone conversations without Leach's consent and without any prior authorization. Exhibits C, D, K and O were therefore obtained without any prior authorization and in violation of Leach's Right to Privacy.

5. **<u>ISSUE NO. 3</u>: Whether the evidence in support of the Requests was illegally obtained in violation of the Interception of Communications Act?**

On this third issue, Mr. Smith, SC, contends that the Government of the USA seeks to rely on unlawful evidence obtained contrary to the Interception of Communications Act Chapter 229(1) of the Laws of Belize RE 2011 ("ICA") which regulates how communications in Belize may be intercepted or recorded in the course of criminal investigations.

Section 3 of the ICA states:

> *"3.(1) Except as provided in this section any person who with intent intercepts communication in the course of its transmission by means*

of a public postal service or a communications network without authorization, commits an offence and, on conviction on indictment, is liable to,

(a) A fine of not less than twenty thousand dollars and not exceeding fifty thousand dollars or to a term of imprisonment not exceeding three years in the first instance;

(b) A fine of not less than fifty thousand dollars and not exceeding one hundred thousand dollars or to a term of imprisonment not exceeding five years in the second instance; and

(c) A fine of one hundred thousand dollars and a term of imprisonment not exceeding five years in the subsequent instance."

Section 5 of the ICA provides that if an authorized officer wishes to intercept a communication, he must make a request to the Director of Public Prosecutions who would make an ex parte application to a Judge in chambers for an interception direction. Mr. Smith, SC, points out that Section 6(1)(a)(vi) of the ICA provides that one of the considerations for a Judge is whether the interception direction is sought pursuant to a mutual legal assistance agreement. Section 6(1)(a)(vi) states:

"6(1) An interception direction shall be issued if a Judge is satisfied, on the facts alleged in the application pursuant to section 5 of this Act, that there are reasonable grounds to believe that,

(a) Obtaining the information sought under the interception direction is necessary in the interests of,

…

(vi) giving effect to the provision of any mutual legal assistance agreement in circumstances appearing to the Judge to be equivalent to those in which he would issue an interception direction by virtue of subparagraph (v);…"

Mr. Smith, SC, contends that a review of the Requests with respect to the Knowles exhibits E, F, H, I, K, L, P and Q are all recordings of alleged conversations between an undercover agent and a party in Belize. Thomas McGuire deposes that these recordings were made as participant surveillance. Therefore no interception direction was sought under the ICA. This is likewise the case for the Request with respect to Leach. Exhibits C, E, K, F, H, I, M, N and O are all recordings of communications with the undercover agent and a party in Belize. No interception direction was sought pursuant to the ICA.

6. **<u>ISSUE NO. 4</u>: Whether the extradition proceedings are an abuse of process?**

On this ground Mr. Smith, SC, submits that where it is clear that the extradition proceedings are an abuse of process the Court has the power to declare the proceedings an abuse and order that the extradition not proceed. In ***Regina v. Horseferry Road Magistrate Court Ex Parte Bennett*** [1994] 1 A.C. 42 Mr. Bennett was forcibly removed from South Africa to England to be tried for several criminal offences. The House of Lords found

that the criminal proceedings in England was an abuse of process and should be stayed. Lord Griffith said:-

> *"The great growth of administrative law during the latter half of this century has occurred because of the recognition by the judiciary and Parliament alike that it is the function of the High Court to ensure that executive action is exercised responsibly and as Parliament intended. So also should it be in the field* of *criminal law and if it comes to the attention of the court that there has been a serious abuse of power it should, in my view, express its disapproval by refusing to act upon it."*
>
> *"Let us consider the position in the context of extradition. Extradition procedures are designed not only to ensure that criminals are returned from one country to another but also to protect the rights of those who are accused of crimes by the requesting country. Thus sufficient evidence has to be produced to show a prima facie case against the accused and the rule of specialty protects the accused from being tried for any crime other than that for which he was extradited. If a practice developed in which the police or prosecuting authorities of this country ignored extradition procedures and secured the return of an accused by a mere request to police colleagues in another country they would be flouting the extradition procedures and depriving the accused of the safeguards built into the extradition process for his benefit. It is to my mind unthinkable that in such circumstances the court should declare itself to be powerless*

and stand idly by; I echo the words of Lord Devlin in ***Connelly v. Director of Public Prosecutions*** *[1964] A.C. 1354:*

> *'The courts cannot contemplate for a moment the transference to the Executive of the responsibility for seeing that the process of the law is not abused.'"*

Mr. Smith, SC, contends that the extradition proceedings in the case at bar are an abuse of process and an "*affront to the rule of law*". As demonstrated, the Government of the United States has now turned to the Belize Courts and request that the Claimants be extradited based on evidence that is in clear violation of the safeguards that have been entrenched in the Belize Constitution. It is respectfully submitted that the Court is obligated to ensure that its process is not abused and to declare that these extradition proceedings are such an abuse and to order that the extradition should not be granted.

7. **<u>Legal Arguments on behalf of the Respondent</u>**

The Learned Solicitor General Mr. Nigel Hawke submits on behalf of the Government of Belize that extradition proceedings are *sui generis*. He cites ***Scantlebury and others v. The Attorney General of Barbados and others*** (2009) 76 WIR 86 where Simmons CJ (as he then was) opined:

> *"These appeals are against a judgment of Reifer J in judicial review proceedings commenced under the provisions of the Administrative Justice Act, Cap 109B. In those proceedings, the appellants sought judicial review of the Chief Magistrate, Mr. Clyde Nicholls, made in*

relation to a request by the Government of the United States of America ('USG') for the extradition of the appellants. These appeals raise issues specific to the law of extradition and highlight the special character of extradition proceedings. Although such proceedings are grounded in the criminal law, they are very much sui generis."

Mr. Hawke submits that extradition proceedings fall within a special class and cannot be treated as an ordinary criminal matter within our jurisdiction. It takes on the mode of a committal proceeding as nearly as possible but it remains extradition proceedings.

Mr. Hawke argues that the entire proceedings before this Court in this case stated are premature in that extradition proceedings should be completed first before such applications are made. He cites ***Government of the United States v. Bowe*** (1989) 37 WIR 9 where the Court of Appeal of Barbados in considering statutory and constitutional provisions similar to Belize, was explicit in its declaration that any constitutional challenge to extradition proceedings must be made after those proceedings before the Chief Magistrate have concluded:

"64. In our judgment, the appellants could have and should have appealed in accordance with s.20 of the Act after conclusion of the committal proceedings. All that was necessary was that after the application to cross-examine the deponents on their affidavits was refused, the appellants should have awaited the Chief Magistrate's decision.

Instead they chose the route of judicial review under the Constitution and under the Administrative Justice Act. In our judgment, s.20 of the Act provided an adequate and efficacious remedy. In Thakur Persad Jaroo v. The AG [2002] UKPC 5, (2002) 59 WIR 519 the Judicial Committee of the Privy Council said that if another procedure is available, resort to a procedure such as is provided in s.24 of the Constitution will be inappropriate. Resort to it will be an abuse of process. We agree with Reifer J's dismissal of the applications for judicial review. ***First the appellants ought to have allowed the committal proceedings to be completed before seeking to challenge them. Secondly, an adequate remedy was available to the appellants under s. 20 of the Act."***

Mr. Hawke argues that the Court clearly outlined that the procedure adopted by the appellants in that case was not proper in that they should have waited for the outcome of the committal proceedings. In the case at bar, the extradition proceedings have not even commenced.

Mr. Hawke also submits that the matters raised by the Applicants are not matters for the extradition judge but for the trial judge, and the principle of reciprocity should apply. The question, therefore, of whether the evidence of Mr. Thomas McGuire is unreliable because of the manner of its procurement is best left to the jurisdiction of the United States of America. In the process of extradition, due to the principles of comity between Belize and the United States, there is a presumption that the evidence is reliable. This presumption may be rebutted but this issue must be left to the trial

judge in the United States. The Court here is concerned with whether there is a *prima facie* case to commit based on the evidence that has been tendered. He relies on ***Ferras v. The United States of America, Her Majesty the Queen and Irwin Cotler, Minister of Justice and Attorney General of Canada and another*** [2006] SSC 33**.** In that case, the Canadian Supreme Court dismissed appeals where the accused alleged that ss.32(1)(a) and 33 of the Extradition Act infringe s.7 of the Canadian Charter of Rights and Freedoms because they allow for the possibility that a person may be extradited on inherently unreliable evidence. McLachlin CJ in delivering the judgment of the court held that the provisions of the Extradition Act governing the admission of evidence at a committal hearing are consistent with the guarantee in s.7 of the Charter that no one may be deprived of liberty except in accordance with the principles of fundamental justice. The principles of fundamental justice applicable to an extradition hearing require that the person sought for extradition receive a meaningful judicial determination of whether the case for extradition prescribed in s.29(1) of the Act has been established, that is, whether there is sufficient evidence to permit a properly instructed jury to convict. This requires a meaningful judicial hearing before an independent, impartial judge and a judicial decision based on an assessment of the evidence and the law. A person cannot be extradited upon demand, suspicion or surmise.

Mr. Hawke argues that the reliability and value of evidence because of the alleged way in which it was obtained, requires a finding of fact on the part of the court and that is better left to trial in the United States where a jury will make that determination. In the trial in the United States full disclosure

of all the evidence will be made including all recordings and electronic evidence and there will be opportunity for rigorous cross-examination there to truly test the evidence that is presented at the trial. However, the role of the extradition judge is very limited in the extradition proceedings and the evidence at this stage is far too limited.

In conclusion, Mr. Hawke draws the court's attention to the dicta of La Forrest J. in ***Republic of Argentina v. Melino*** [1987] 4WWR 289 where the Supreme Court of Canada described the role of the extradition judge as follows:

> *"The extradition judge took the view that he enjoyed a much broader jurisdiction than that possessed by a magistrate presiding at a preliminary hearing under the Criminal Code. He was not, he affirmed, sitting as a persona designata but as a court of law and, as such, retained all his powers and jurisdiction as a judge of a superior court except to the extent that the treaty or a statute otherwise provided. I cannot accept this proposition. It seems to me to ignore the modest function of an extradition hearing which(barring minimal statutory and treaty exceptions) is merely to determine whether the relevant crime falls within the appropriate treaty and whether the evidence presented is sufficient to justify the executive surrendering the fugitive to the requesting country for trial there. Responsibility for the conduct of our foreign relations, including the performance of Canada's obligations under extradition treaties, is of course, vested in the executive. I repeat: the role of the extradition judge is a modest*

one; absent express statutory or treaty authorization, the sole purpose of an extradition hearing is to ensure that the evidence establishes a prima facie case that the extradition crime has been committed. The procedure bears a considerable affinity to a preliminary hearing, and the judge's powers have some similarity to those of a magistrate presiding at such a hearing, who as this court has held in ***Mills v The Queen [1986] 1 SCR 863*** *has no power to administer Charter remedies. Indeed, the reasoning in Mills appears to me to be even more applicable to an extradition judge. The fact that an extradition judge is often a superior court judge does not alter the matter."*

Mr. Hawke submits in conclusion that the case stated is misconceived and asks that the matter be remitted to the Chief Magistrate for the evidence to be tendered and authenticated so that extradition proceedings can proceed.

8. **<u>Decision</u>**

I am grateful to all counsel for their submissions, oral and written, which have greatly assisted this court in arriving at its decision. I agree completely with the submissions made by the Learned Solicitor General in this matter. I find that this application is premature and I see no reason for not allowing the extradition proceedings to continue to take its course. As Mr. Hawke rightly pointed out, there is no reason for the Applicant not to have waited for the Magistrate to make a decision and then appeal all the way up to the Caribbean Court of Justice if necessary. That course of action would not in

any way deprive the Applicants of the opportunity to have the courts adjudicate upon any alleged violation of their constitutional rights; on the contrary, it reinforces the principle that the Applicants should exhaust all their remedies available before seeking constitutional relief. This practice of disrupting the flow of extradition proceedings with these unnecessary applications was frowned upon in ***Government of the United States of America v. Bowe*** (1989) 37 WIR 9 where the Privy Council held that generally speaking on an application for extradition the entire case (including all the evidence which the parties wish to adduce) should be presented to the magistrate before either side applies for a prerogative remedy. Only where it is clear that the extradition proceedings must fail should this practice be varied. I agree with Mr. Hawke's contention that bringing this matter by way of a case stated is an unwarranted attempt to bring an application for constitutional relief before the Court before the extradition proceedings in the Magistrate Court are completed. This application is clearly premature as there is no evidence before the Magistrate since the documents were not even tendered when the Applicants launched this case stated in the Supreme Court, interrupting the extradition proceedings before the Magistrate and bringing the case to a halt.

I also agree with the Learned Solicitor General that this application is misconceived. Mr. Smith, SC, articulated four issues for the court's deliberation in this case stated and in so doing he has launched substantial attacks on the reliability and admissibility of the evidence in this case. I fully agree with the Learned Solicitor General's arguments that all the issues

raised by Mr. Smith, SC, are matters which are governed by principles of comity and reciprocity in extradition proceedings, and are better left for the determination of the trial judge in the United States. Extradition matters are *sui generis* and there is a presumption that the evidence is reliable and that the Claimants will get a fair trial in the United States. While it is true that in this case there was no compliance with our local legislation on the recording of electronic communications, the Interception of Communications Act Chapter 229 of the Laws of Belize, the evidence sought to be relied upon as the basis for this request was gathered pursuant to a warrant issued by a United States judge. Questions of admissibility and reliability of evidence are not issues for an extradition judge in Belize whose duty it is to determine whether there is a *prima facie* case to be tried within the parameters of the extradition treaty between Belize and the United States. I feel compelled to cite MacLachlin J in ***Kindler v Canada (Minister of Justice)*** [1991] 2SCR 779 as referred to by Mottley P. in Civil Appeal No. 11 of 2002 ***Rhett Fuller v. The Attorney General of Belize*** as follows:

> *"… While the extradition process is an important part of our system of criminal justice, it would be wrong to equate it to the criminal trial process. It differs from the criminal process in purpose and procedure. Extradition procedure, unlike criminal procedure, is founded on the concepts of reciprocity, comity and respect for differences in other jurisdictions. This unique foundation means that the law of extradition must accommodate many factors foreign to our internal criminal law. While our conceptions of what constitutes a fair*

*criminal law are important to the process of extradition, they are necessarily tempered by other considerations**. Most importantly, our extradition process, while premised on our conceptions of what is fundamentally just, must accommodate differences between our system of criminal justice and the systems in place in reciprocating states. The simple fact is that if we were to insist on strict conformity with our own system, there would be virtually no state in the world with which we could reciprocate.** Canada, unable to obtain extradition of persons who commit crimes here and flee elsewhere, would be the loser. For this reason, we require a limited but not absolute degree of similarity between our laws and those of the reciprocating state. We will not extradite for acts which are not offences in this country. **We sign treaties only with states which can assure us that their systems of criminal justice are fair and offer sufficient procedural protections to accused persons.** We permit our Minister to demand assurances relating to penalties where the Minister considers such a demand appropriate. But beyond these basic conditions precedent of reciprocity, much diversity is of necessity tolerated." (emphasis mine)*

I must say, with respect, that I find very little merit in the submissions made on behalf of the Applicants in this case stated and I hereby refer the matter back to the Chief Magistrate for completion of the extradition proceedings.

The relief sought is refused.

Costs awarded to the Respondent to be paid by the Applicants to be agreed or assessed.

Dated this Friday, 30th day of June, 2017

_____
Michelle Arana
Supreme Court Judge