

PRINCIPLES PROVIDING A FRAMEWORK FOR MUTUAL LEGAL ASSISTANCE AND EXTRADITION AND MORE INFORMATION: CANADA 2004

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I – Legal framework

- 1. Bilateral and multilateral instruments linking Canada to its G8 partners in the field of international co-operation and in the fight against terrorism**

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- 2. General framework for judicial co-operation**

MUTUAL LEGAL ASSISTANCE

The *Mutual Legal Assistance in Criminal Matters Act* is Canada's domestic legislation for implementing its mutual legal assistance treaties in criminal matters. This Act may only be applied in relation to requests submitted to Canada under a treaty, multilateral convention, administrative arrangement or designation. The Act gives Canadian courts the power to issue compulsory measures in Canada to gather evidence for a criminal investigation or prosecution in a foreign state or entity or to locate a person who is suspected of having committed an offence on the basis of a request made under a treaty, convention, special arrangement or designation. The legislation permits assistance to be rendered at any stage of a criminal matter, from investigation to appeal.

EXTRADITION

On June 17, 1999 a new *Extradition Act* came into force for Canada. The new Act provides a comprehensive and modern scheme of extradition which is applicable to all requests for extradition made to Canada.

The new *Extradition Act* provides that if certain preconditions are met a person may be extradited for one or more of three purposes:

For the purpose of prosecution;

For the purpose of imposing a sentence on the person; or

For the purpose of enforcing a sentence already imposed on the person.

Canada's assistance under the new Act may be engaged on the basis of:

An extradition agreement between Canada and the state or entity making the request. A copy of Canada's bilateral extradition treaties is contained in Appendix A;

A multilateral agreement to which both Canada and the requesting party are signatories and which contains a provision on extradition;

A specific arrangement entered into between Canada and the requesting state or entity with respect to a person or persons in a particular case; and

A general designation of the requesting state or entity as an "extradition partner" under the *Extradition Act* thereby allowing the extradition partner full recourse to the provisions of the *Extradition Act* notwithstanding the absence of an extradition agreement. In addition to a number of members of the Commonwealth, Canada has designated as extradition partners, two non-commonwealth countries, Costa Rica and Japan, as well as the International Criminal Court, and International Criminal Tribunals concerned with the prosecution of persons responsible for violations of international law in Rwanda and in the former Yugoslavia.

3. Specific principles providing a framework for mutual legal assistance and extradition

MUTUAL LEGAL ASSISTANCE

Dual criminality: As a general rule, dual criminality is not required. In fact, Canada's model mutual legal assistance treaty does not include a dual criminality clause and Canada does not seek to include dual criminality as a requirement in its mutual legal assistance treaties. However, a treaty may create exceptions in specific cases. Where dual criminality is required in a mutual legal assistance treaty, the relevant clauses take a flexible approach to this requirement and deem it to be fulfilled as long as the conduct underlying the offence for which cooperation is sought is a criminal offence under Canadian law, regardless of whether the offence is categorized in the same manner or denominated by the same terminology in the requesting State.

Translation: Canada requires incoming requests for mutual legal assistance to be provided, in writing, in either French or English.

The Canadian Charter of Rights and Freedoms: The Charter is part of the constitution, which is the supreme law of Canada, and guarantees certain rights and freedoms. Any actions taken by Canadian authorities in relation to a foreign request will be governed by the Charter. The most relevant provisions are the following:

Sections 8: the right of any person to be secure against unreasonable search and seizure;

Section 11(c): the right of any person charged with a criminal offence not to be compelled to be a witness in proceedings against him or her in respect of that offence; and

Section 13: the right of any person not to have any incriminating evidence given in a proceeding used against him or her in any other proceeding, except in the case of false testimony.

Sections 11(c) and 13 are of particular note, since in many other legal systems suspected and charged persons can be required to make statements. In Canada, suspected and charged persons cannot be required to give statements unless the requesting state provides the witness with use and derivative use immunity from prosecution.

Confidentiality: In Canada, the existence and nature of requests for assistance are subject to confidentiality. Disclosure may only be made of the request when a court file has been opened in Canada and the file has not been ordered sealed by the court. Further, evidence obtained pursuant to a request for assistance can only be used for the purposes stated in the request for assistance unless Canada consents to its further use.

Political Offence: As a general rule, Canada's mutual legal assistance treaties do not recognize the political offence doctrine as an express ground of refusal to execute a request for assistance. Nonetheless, certain treaties may create exceptions in specific cases.

EXTRADITION

Dual Criminality: Dual criminality is required. However, the *Extradition Act* takes a flexible approach to dual criminality test; it focuses on the alleged or proven acts of the person sought and not on technical classifications within different legal systems. The dual criminality requirement is deemed fulfilled if the conduct underlying the offence for which extradition is sought is a criminal offence under Canadian law, regardless of whether the offence is categorized in the same manner or denominated by the same terminology and the offence is punishable by a maximum term of imprisonment exceeding the minimum prescribed by the *Extradition Act* or by the relevant agreement. However, in some of Canada's older bilateral extradition agreements maintain the list approach to extradition.

Translation: Canada requires incoming requests for provisional arrest and extradition to be provided, in writing, in either English or French.

Political Offence: Section 46 of the *Extradition Act* outlines the mandatory grounds of refusal of an extradition request unless modified by a bilateral extradition agreement. It provides that the Minister of Justice shall refuse to order surrender of a person sought for extradition if he/she is satisfied that the conduct in respect of which extradition is sought is a political offence or an offence of a political character. Essentially, all serious violent conduct is excluded from the definition of political offence or offence of a political character. Furthermore, conduct which constitutes an offence mentioned in a multilateral extradition agreement for which Canada, as a party, is obliged to extradite the person or submit the matter to its appropriate authority for prosecution does not constitute a political offence or an offence of a political character.

In the case of a bilateral extradition agreement between Canada and the foreign state, only the grounds of refusal as agreed with the foreign state in the bilateral agreement will apply to requests submitted by that state, regardless of the grounds of refusal contained in the *Extradition Act*. Most of Canada's bilateral extradition agreements provide a mandatory ground of refusal of extradition based on political offence or offence of a political character.

Death Penalty: Canada does not have the death penalty. Section 44(2) of the *Extradition Act* provides the Minister of Justice with the discretion to deny surrender if he is satisfied that the conduct in respect of which extradition is made is punishable by death under the laws of the extradition partner. However, in 2001, the Supreme Court of Canada held in *United States of America v. Burns* (2001) 151 C.C.C. (3d) 97 (S.C.C.) that the Minister of Justice is constitutionally required to seek assurances that the death penalty will not be imposed in all but exceptional cases. The Supreme Court of Canada did not define « exceptional case ».

Nationals: Canada does extradite its nationals.

4. Framework for the fight against terrorism

Effective December 24, 2001, Canada's *Anti-Terrorism Act* amended the *Criminal Code* to establish provisions aimed at disabling and dismantling the activities of terrorist groups and those who support them and created new offences to the *Criminal Code*. Prior to December 24, 2001, terrorists could

already be prosecuted for hijacking, murder and other acts of violence. Pursuant to the *Anti-Terrorism Act*, new offences were added to the *Criminal Code*. The new offences make it a crime to:

Knowingly collect or provide funds, either directly or indirectly, in order to carry out terrorist crimes;

Knowingly participate in, contribute to or facilitate the activities of a terrorist group. The participation or contribution itself does not have to be a criminal offence and will include knowingly recruiting new individuals for the purpose of enhancing the ability of the terrorist group to facilitate or commit terrorist activities;

Instruct anyone to carry out a terrorist activity on behalf of a terrorist group; and

Knowingly harbour or conceal a terrorist.

Additionally, Canada's *Anti-Terrorism Act* added new offences, obligations, seizure, restraint and forfeiture authority against terrorist property to the *Criminal Code*:

Section 83.08 of the *Criminal Code* imposes a freeze on any property that is owned or controlled by a terrorist group by prohibiting all persons in Canada and every Canadian outside Canada from knowingly dealing in any such property. The section prohibits entering into any transaction in respect of such property; it also prohibits the provision of any financial or other related service for the benefit of a terrorist group in respect of property owned or controlled by a terrorist group.

Section 83.13 of the *Criminal Code* allows the Attorney General to apply to the Federal Court of Canada for a seizure or restraint order in respect of property owned or controlled by or on behalf of a terrorist group. Similar orders may be obtained in respect of property that has been or will be used to facilitate or carry out a terrorist activity.

The *Criminal Code* was amended so as to deem a terrorist offence to be a criminal organization offence so that offence-related property, as defined by the *Criminal Code* may, on application by the Attorney General of Canada, be subjected to a restraint order.

Section 83.14 of the *Criminal Code* allows the Attorney General to make an application to a judge of the Federal Court for an order of forfeiture in respect of property owned or controlled by a terrorist group or property that has been used to facilitate a terrorist activity.

The *Criminal Code* was amended so as to allow, on application by the Attorney General, for the forfeiture of proceeds of crime derived from the commission of terrorist offences and the forfeiture of offence-related property.

A copy of the multilateral counter-terrorism instruments in force for Canada is attached as Appendix B.

II – The Canadian central authorities

The Minister of Justice is the central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act*. The International Assistance Group (IAG), which is part of the Federal Prosecution Service at the Headquarters of the Department of Justice in Ottawa, was established to carry out the functions assigned to the Minister of Justice as central authority for Canada under the *Extradition Act* and the *Mutual Legal Assistance in Criminal Matters Act* and to provide advice to the Minister on his/her responsibilities under these statutes.

The IAG reviews and coordinates extradition and mutual legal assistance requests made to Canada, as well as those made by Canada to other countries. It deals only with requests for assistance in criminal matters. The IAG also has the additional mandate to develop and advise on policy in the area of bilateral treaties and multilateral conventions concerning extradition and mutual legal assistance.

Under the authority of the Assistant Deputy Attorney General (Criminal Law), the IAG is responsible for the development of operational policy in the area of extradition and mutual legal assistance, in consultation with other branches of the Department of Justice and other interested government departments. As well, the IAG participates in the negotiation of extradition and mutual legal assistance agreements and provides consultative advice, to the requesting state if necessary, with respect to the preparation of requests for assistance and extradition to Canada. The IAG also has established linkages with the International Criminal Tribunals concerned with the prosecution of persons responsible for violations of international law in Rwanda and the former Yugoslavia, and also with the International Criminal Court. Finally, the IAG also carries out, *inter alia*, the following duties: coordinates and/or supports the provision of Canadian *viva voce* evidence at foreign trials in other countries, coordinates and provides operational policy advice and support for Canada's participation in international bodies involved in criminal law policy with operational consequences, training for investigators and prosecutors working in the specialized areas of extradition and mutual legal assistance, both inside and outside Canada and providing operational and legal advice to other sections of the Department of Justice on issues which have some link to the work of the IAG.

On a day-to-day basis, the IAG helps Canadian and foreign authorities to gather evidence for criminal cases or to obtain the extradition of a person sought. Legal counsel within the IAG are knowledgeable in the field of extradition and mutual legal assistance and are familiar with the roles and responsibilities of key personnel in the Department of Justice, the Government of Canada, and other concerned institutions and agencies. When crime crosses national boundaries, the IAG facilitates cooperation with Canada's international counterparts in law enforcement.

The International Assistance Group may be reached at:

The International Assistance Group

Department of Justice

239 Wellington Street

Ottawa, Ontario

K1A 0H8

Telephone: (613) 957-4832

Facsimile: (613) 957-8412

The International High Tech and Computer-related Crime Point of Contact is :

Royal Canadian Mounted Police (RCMP)

National Operations Centre

Ottawa, Ontario

Telephone : (613) 993-4460

Facsimile : (613) 993-4477

Secure Facsimile : (613) 993-4479

(available 24 hours a day)

III –Procedure

1. Procedure to be followed when Canada is the requesting State.

MUTUAL LEGAL ASSISTANCE

All requests for mutual legal assistance in criminal matters flow through the IAG. In Canada, the following are considered competent authorities to request mutual legal assistance: the Attorney General of Canada, the attorney general of a province, or any person or authority with responsibility in Canada for the investigation or prosecution of offences.

A request made by a competent Canadian authority will be reviewed and coordinated by the IAG.

Requests may be forwarded by the IAG in one of the following ways: diplomatic channels (in the absence of a treaty), or by the IAG to the central authority of the requested state or entity.

Specific Admissibility Requirements: Under Canadian law, there are very specific requirements in order for business and banking records to be admissible in Canadian court proceedings. The *Canada Evidence Act* permits the introduction, into evidence in a Canadian court proceeding, of business and banking documents or of certified copies of business and banking records created in the normal course of business of a bank or another entity (if originals cannot or cannot practicably be produced) located in a foreign jurisdiction, only under certain conditions. Accordingly, requests by Canada will set out the specific information which is required in order to meet the admissibility requirements of the *Canada Evidence Act*.

EXTRADITION

The IAG acts on behalf of the Minister in seeking the extradition of individuals from foreign states. At the request of the prosecution or correctional authorities in Canada, the IAG will seek the provisional arrest and the extradition of an individual wanted for prosecution, imposition of sentence or enforcement of sentence found outside of Canada

Interpol may issue «red circulars» to be disseminated to states which are members of Interpol. These circulars name individuals to be arrested for the purpose of extradition. The competent Canadian authority (i.e., the prosecution or correctional service) authorizes the issuing of the red circulars, which are then approved by the IAG before circulation.

2. Procedure followed when Canada is the requested State

MUTUAL LEGAL ASSISTANCE

A foreign state or entity can request assistance from Canada in the gathering of evidence for criminal matters, including terrorism cases, through three separate routes: treaty and convention requests, letters rogatory (court issued non-treaty letter of request) and non-treaty requests. The fullest assistance can be provided for treaty or convention requests. More limited assistance is available for letters rogatory and non-treaty requests.

For the most common types of assistance (production orders and search and seizure), a Canadian court must be satisfied before it will issue an order that there are grounds to believe that an offence has been committed and that evidence of the commission of the offence will be found in Canada. The request for assistance should set out sufficient information for the Canadian judge to be satisfied on these two points.

Mutual Legal Assistance Requests – the Process

2.1. Treaty Requests and Requests submitted under Administrative Arrangement or Designation to Canada

Under the *Mutual Legal Assistance in Criminal Matters Act*, Canada may provide the following assistance:

- Seizing evidence by search warrant;

- Obtaining documentary evidence by production order;

- Obtaining evidence through the execution of other warrants;

- Compelling witness testimony, including compelling witnesses to give evidence in foreign proceedings by means of audio or videolink;

- Lending exhibits which have been tendered in Canadian court proceedings;

Obtaining an order for the examination of a place or site in Canada (including the exhumation and examination of a grave);

The transfer of a sentenced prisoner (with his or her consent) to testify or assist in an investigation;

Serving documents;

The enforcement of orders made by a court of criminal jurisdiction for the restraint, seizure or forfeiture of property situated in Canada; and

Enforcement of foreign criminal fines (to a limited extent).

The bilateral treaties and conventions specify the information required in a request for assistance. In general terms, a request for assistance to Canada should include:

A summary of the allegations under investigation or prosecution, including the grounds on which the allegations are based and a clear indication of how the assistance requested is relevant to the alleged offence;

The text of the offences under investigation or prosecution in the requesting state or entity;

A description of the evidence sought, including any specific procedures to be applied during the process (e.g. list of questions; form for certification of documents, if required by the requesting state or entity), whether and to what extent the foreign authorities wish to participate in the evidence gathering process;

Time limits facing the requesting state or entity;

Any special confidentiality requirements; and

Any other information that might allow Canadian officials to identify and provide the evidence requested or to render the assistance sought.

The IAG reviews the requests it receives to ensure formal compliance with the relevant treaty, if applicable, the *Mutual Legal Assistance in Criminal Matters Act* and any other relevant Canadian law. The request will be considered to determine if it contains sufficient specific information for its execution and if there are any circumstances which would require that the request be refused or postponed on any basis provided for in the applicable treaty. Requests containing insufficient information are not systematically returned. Rather, the IAG will seek additional information from the requesting state or entity with a view to providing the requested assistance, if possible, under Canadian law.

Where the assistance sought will require a compulsory measure in Canada (for example, search and seizure), the IAG will examine the material provided to determine whether it meets the standards of the relevant Canadian legislation. For most types of orders, the requesting authority must show reasonable grounds to believe that an offence has been committed and that evidence of the commission of the offence will be found in Canada.

In general, the execution of the request is carried out by the competent authority in the relevant province where it is believed that the evidence sought is located. Counsel with the competent authority will apply to the court of competent jurisdiction for the necessary orders.

Requests for mutual legal assistance are executed in accordance with Canadian law. Prior to transmitting the evidence gathered pursuant to an order of the Canadian court, a judicial hearing to consider the execution of the request takes place. The judge makes a determination whether the evidence and information obtained should be sent abroad with or without conditions. At this hearing, parties claiming an interest in the evidence gathered may be permitted by the judge to make representations opposing the sending of the evidence. An appeal lies with leave of the court of appeal from any order or decision of a judge under the *Mutual Legal Assistance in Criminal Matters Act* within 15 days of the order.

Requests submitted pursuant to a treaty or administrative arrangement which do not require compulsory measures will be submitted by the IAG to a relevant police or investigative agency, or in some instances to a government department, to obtain the assistance or information sought.

2.2. Letters Rogatory (Court issued non-treaty letters of request) made to Canada

This mechanism requires two essential conditions: that there be a criminal matter pending before a foreign judge, court or tribunal and that the foreign judicial body wishes to obtain the evidence sought. It is important that this be clearly stated in the letter rogatory. In addition, the request should include information that indicates how the evidence sought is relevant to the foreign proceedings.

No treaty is required for this procedure; it is a discretionary provision. Unlike mutual legal assistance requests, which are often used at the police investigation stage, letters rogatory can only be issued when there is a criminal matter pending before a foreign court.

Section 46 of the *Canada Evidence Act* allows for some compulsory measures to be issued by a Canadian court in response to a request from a foreign state emanating from a judge, court or tribunal of a foreign state (letter rogatory). Witnesses can be compelled to appear and testify before the foreign judicial authority and must produce any relevant documents requested. No other compulsory measures are available.

Letters rogatory received from a foreign state are reviewed by IAG counsel to determine if the assistance requested can be provided on a voluntary basis, without resort to a court order. If so, the request will generally be submitted to Canada's federal police force, the Royal Canadian Mounted Police («the RMCP»), for execution. If the assistance cannot be provided on a voluntary basis, IAG counsel will review the request for compliance with the requirements of section 46 of the *Canada Evidence Act* to determine whether an order may be sought compelling a witness to appear and provide testimony and/or documents.

2.3. Non-Treaty Letters of Request made to Canada

Canada does what it can to help those countries with whom it does not have a treaty relationship. However, assistance is limited to voluntary aspects (e.g. taking voluntary statements from persons or serving documents). No compulsory measures are available where there is no treaty and the request does not come within the requirements of section 46 of the *Canada Evidence Act*.

Non-treaty requests, which are not governed by the provisions of section 46 of the *Canada Evidence Act*, generally because they do not emanate from a court, will be reviewed and submitted to the RCMP to determine whether the assistance sought can be provided on a voluntary basis, without resort to court order.

2.4. Categories of Evidence/Information which can generally be obtained without a Request for Mutual legal Assistance

The following categories of evidence/information can be obtained from Canada without resort to a request for mutual legal assistance and can be obtained through law enforcement channels:

- Public records, including incorporation records;

- Court records;

- Voluntary interviews of witnesses;

- Copies of criminal records;

- Copies of intercepted communications which have been gathered pursuant to a domestic investigation in Canada;

- Assistance in locating a witness or suspect;

- Address check;

- Copies of information in Canadian police files or custody;

- Assistance in conducting police surveillance or other tracking and undercover measures that do not require court authorization;

- Vehicle identification information;

- Firearms identification information;

- Passport number verification;

If a law enforcement contact is needed in Canada, contact can be made with the Royal Canadian Mounted Police – National Operations Center at 613-993-6440, who can provide the appropriate contacts for the Royal Canadian Mounted Police, provincial or local law enforcement agencies, as the case may be.

EXTRADITION

2.1. Authorizing Extradition Proceedings

The Minister of Justice is responsible for the implementation of extradition agreements, the administration of the Act and, dealing with requests for extradition or provisional arrest under the Act or applicable agreement. Provisional arrest refers to a request for the apprehension of an individual, generally in circumstances of urgency or a similar ground of public interest, prior to the preparation of the documentary material upon which the formal extradition will be requested. The request for provisional arrest must demonstrate that the individual is ordinarily resident in Canada, is in Canada, or is on the way to Canada.

A provisional arrest request may be made through Interpol.

The Minister has the discretion to approve an application for a provisional arrest warrant if satisfied that:

The offence in question is subject to certain minimum penalty requirements set out in the Act, or relevant arrangement, if any; and

The extradition partner will make a formal request for the extradition of the person subsequent to the person's provisional arrest within the time frame set out in the Act or the applicable agreement.

Once a formal extradition request is received, the Minister may if satisfied that 1) in the case of requests for the prosecution of the person certain minimum penalty requirements established by the Act or relevant extradition arrangement have been met, or 2) in the case of a person already convicted and who is sought for the enforcement of a sentence, certain minimum lengths of sentence as defined by the Act or relevant extradition arrangement remain to be served, issue an authority to proceed. An authority to proceed authorizes an extradition hearing to be held in order to consider whether the person should be committed for extradition.

These responsibilities are, in practice, performed by counsel at the International Assistance Group (the IAG) on behalf of the Minister of Justice.

2.2. Court Proceedings.

Once approved, the IAG forwards the request and all supporting material to the regional office of the Department of Justice in the region where the person sought is believed to be. That regional office will assign legal counsel to take conduct of the case and to initiate and conduct proceedings before a judge to seek an order for the committal for extradition of the person. Regional counsel will also represent the extradition partner throughout any appeal or judicial review hearings.

A person arrested in Canada pursuant to a request for provisional arrest or extradition must be brought before a judge within 24 hours after arrest or if no judge is available during this time, the person must be brought before a judge as soon as possible. The individual is entitled to be considered for bail. In Canada, there is not a presumption against bail in extradition matters.

Generally, the person whose extradition is sought appears at the extradition hearing and participates, with the assistance of legal counsel. In the case of a person sought for the purpose of prosecution, the judge will determine if the evidence provided by the extradition partner is such that the person would be committed for trial in Canada if the offence had occurred in this country. In the case of a person sought for the imposition or enforcement of a sentence, the judge will determine if the person has been convicted with respect to a matter that corresponds to a Canadian offence.

2.3. Evidence at the Extradition Hearing

At the extradition hearing, the *Extradition Act* allows evidence to be presented in a variety of ways:

In the usual manner applicable to Canadian domestic proceedings such as through the testimony of witnesses;

In reliance on the provisions for the introduction of evidence set out in an applicable extradition agreement; or

By means of a «record of the case».

The record of the case is a new and innovative provision which permits the admissibility at the extradition hearing of a document summarizing the evidence available to the extradition partner for use in the prosecution, even if it contains evidence otherwise inadmissible in Canadian domestic proceedings, as long as certain safeguards are respected. In the case of a person sought for prosecution, this includes having a judicial or prosecuting authority of the extradition partner certify that the evidence summarized in the record of the case is available for trial and is either sufficient to justify prosecution or gathered in accordance with their law. In the case of a person sought for imposition or enforcement of a sentence, this includes having a judicial, prosecuting or correctional authority certify that the documents in the record of the case are accurate.

If the presiding judge is satisfied with the evidence, he or she orders the person detained pending the decision of the Minister of Justice whether to surrender the person. Otherwise, the person is discharged and released.

2.4. The Decision to Surrender

The judicial phase of the extradition process is a determination only that the evidence is sufficient to warrant that the person be extradited. The ultimate decision with respect to whether the person will, in fact, be surrendered to the extradition partner is that of the Minister of Justice. At this phase of the process, the Minister will consider any written representations from the person or the person's counsel with respect to why the person should not be extradited or concerning any conditions to which the surrender should be subject. In reaching a decision on surrender the Minister will be obliged to weigh the submissions of the person against Canada's international obligations with respect to extradition. The Minister in reaching his or her decision must respect the rights of the person sought as guaranteed by the *Canadian Charter of Rights and Freedoms*. The *Extradition Act* obliges the Minister to deny surrender if he or she is satisfied that the surrender would be unjust or oppressive having regard to all the relevant

circumstances; or the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their 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 prejudiced for any of those reasons.

If the person is serving a sentence in Canada, the Minister may order temporary surrender so that the person can face prosecution or appeal proceedings in the courts of the extradition partner and then be returned to Canada to serve the balance of his or her outstanding sentence here. While the Minister relies upon advice from the IAG, he or she decides each case personally. When the Minister agrees to surrender the person, the IAG helps with arrangements for the actual transfer of the person to authorized agents of the requesting state or entity.

3. Appeals against request for mutual legal assistance or extradition

MUTUAL LEGAL ASSISTANCE

Pursuant to the *Mutual Legal Assistance in Criminal Matters Act*, an appeal may be filed to the appropriate court of appeal from any order or decision made by a judge or court in Canada under the Act within fifteen days of the order or decision.

EXTRADITION

The person sought for extradition may appeal the decision of the extradition judge to the Court of Appeal in the province where the extradition hearing was held. Further, the person sought may apply to the Court of Appeal for judicial review of the decision of the Minister of Justice. The decision of the Court of Appeal may be further appealed to the Supreme Court of Canada, with leave. The person sought for extradition may be granted bail by the court pending appeal and/or application for judicial review.

Appendix A

1. Commitments pursuant to bilateral mutual legal assistance Treaties

In the area of Mutual Legal Assistance Canada has entered into treaties with the countries below:

1. Canada/Argentina (December 20, 2001)
2. Canada/Austria (December 1, 1997)
3. Canada/Australia (March 14, 1990)
4. Canada/Bahamas (July 10, 1990)
5. Canada/Belgium (April 1, 2003)
6. Canada/China (July 1, 1995)
7. Canada/Czech Republic (November 1, 2000)
8. Canada/France (May 1, 1991)
9. Canada/ Hellenic Republic (January 28, 2000)
10. Canada/Hong Kong (March 1, 2002)
11. Canada/Hungary (September 1, 1996)
12. Canada/India (October 25, 1995)
13. Canada/Israel (March 16, 2000)

14. Canada/Italy (December 1, 1995)
15. Canada/Korea (February 1, 1995)
16. Canada/Mexico (October 21, 1990)
17. Canada/Netherlands (May 1, 1992)
18. Canada/Norway (January 14, 1999)
19. Canada/Peru (January 25, 2000)
20. Canada/Poland (July 1, 1997)
21. Canada/Portugal (May 1, 2000)
22. Canada/Romania (June 30, 1999)
23. Canada/Russia (December 18, 2000)
24. Canada/South Africa (May 4, 2000)
25. Canada/Spain (March 3, 1995)
26. Canada/Sweden (December 1, 2001)
27. Canada/Switzerland (November 17, 1995)
28. Canada/Thailand (October 3, 1994)
29. Canada/TrinidadTobago (October 11, 2003)
30. Canada/Ukraine (March 1, 1999)
31. Canada/United Kingdom (September 17, 1993)
32. Canada/United States (January 24, 1990)
33. Canada/Uruguay (March 1, 2002)

2. Canada's Commitment through bilateral extradition Treaties

Entered Into Force

1. Albania July 11, 1927
2. Argentina February 9, 1894
3. Austria* ** October 2, 2000
4. Belgium* March 17, 1902
5. Bolivia November 4, 1898
6. Chile August 22, 1898
7. Colombia December 16, 1899
8. Cuba May 22, 1905
9. Czechoslovakia* December 15, 1926
10. Denmark* ** February 13, 1979
11. Ecuador July 2, 1886
12. El Salvador* January 13, 1883
13. Estonia September 18, 1928
14. Finland** February 16, 1985

15. France* ** December 1, 1989
16. Germany* ** September 30, 1979
17. Greece* February 26, 1912
18. Guatemala* December 13, 1886
19. Haiti* February 21, 1876
20. Hong Kong** June 13, 1997 (Pt 1 at p.2711, Sept. 13, 1997)
21. Hungary March 30, 1874
22. Iceland July 7, 1873
23. India February 10, 1987
24. Israel December 19, 1969
25. Italy** June 27, 1985
26. Korea** February 1, 1995 (Vol. 131, No. 11-15 - March 15, 1997)
27. Latvia* September 18, 1928
28. Liberia March 23, 1894
29. Lithuania September 18, 1928
30. Luxembourg March 15, 1881
31. Mexico* ** October 21, 1990
32. Monaco May 23, 1892
33. Netherlands December 1, 1991
34. Nicaragua* August 24, 1906
35. Norway* October 17, 1873
36. Panama August 26, 1907
37. Paraguay July 17, 1911
38. Peru May 20, 1907
39. Philippines** November 12, 1990

- 40. Portugal* March 19, 1894
- 41. Romania* May 21, 1894
- 42. San Marino March 19, 1900
- 43. South Africa May 4, 2001
- 44. Spain* ** August 15, 1990 (Vol. 125, No. 11, Part 1-March 10, 1991)
- 45. Sweden* October 30, 2001
- 46. Switzerland* ** March 19, 1996 (Part 1 - December 7, 1996)
- 47. Thailand November 24, 1911
- 48. Tonga November 29, 1879
- 49. United States** March 22, 1976
- 50. Uruguay March 20, 1885

* Does not extradite its nationals

** Death penalty provisions

3. Multilateral Treaties containing mutual legal assistance and extradition provisions, in force for Canada

1. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (entered into force on 14 October 1971, in force for Canada 24 July 1972)
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (entered into force on 26 January 1973, in force for Canada 26 January 1973)
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (entered into force on 20 February 1977)
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983, in force for Canada 3 January 1986)
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979 and opened for signature at Vienna and New York on 3 March 1980 (entered into force on 8 February 1987)
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989, in force for Canada 1 September 1993)
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (entered into force on 1 March 1992, in force for Canada 16 September 1993)

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988 (entered into force on 1 March 1992, in force for Canada 16 September 1993)
9. Organisation of American States Inter-American Convention on Mutual Assistance in Criminal Matters, done at Nassau on 23 May 1992 (entered in force on 14 April 1996, in force for Canada 3 July 1996)
10. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna 20 December 1988 (entered in force on 11 November 1990)
11. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, New York 10 December 1984 (entered in force 26 June 1987, in force for Canada 24 July 1987)
12. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, done at Paris on 21 November 1997 (entered in force 15 February 1999)
13. United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 (entered in force 29 September 2003)

Appendix B

1. Multilateral counter terrorism Instruments

In Force for Canada:

Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969; in force for Canada since 5 February 1970)

Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (entered into force on 14 October 1971; in force for Canada since 24 July 1972)

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (entered into force on 26 January 1973; in force for Canada since 26 January, 1973)

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973 (entered into force on 20 February 1977; in force for Canada since 20 February 1977)

International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983; in force for Canada since 3 January 1986)

Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979 and opened for signature at Vienna and New York on 3 March 1980 (entered into force on 8 February 1987; in force for Canada since 8 February 1987)

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989; in force for Canada since 1 September 1993)

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988 (entered into force on 1 March 1992; in force for Canada since 16 September 1993)

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988 (entered into force on 1 March 1992; in force for Canada since 16 September 1993)

Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 (ratified by Canada on November 29, 1996; entered into force on June 21, 1998)

International Convention for the Suppression of the Financing of Terrorism (Open for signature from 10 January 2000 to 31 December 2001; ratified by Canada on February 19, 2002; entered into force on April 10)

Not in force for Canada:

International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997, in force since May 2001; Canada signed on January 12, 1998, but has not ratified. Implementing legislation was included in Bill C-36 (*Anti-Terrorism Act*) which put Canada in a position to ratify.