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REFORMING CANADA'S EXTRADITION SYSTEM

Report of the Standing Committee on Justice
and Human Rights

Randeep Sarai, Chair

JUNE 2023
44th PARLIAMENT, 1st SESSION

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**Randeep Sarai
Chair**

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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

has the honour to present its

THIRTEENTH REPORT

Pursuant to its mandate under Standing Order 108(2), the committee has studied Extradition Law reform and has agreed to report the following:

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LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

RECOMMENDATION 1

That the Government of Canada commission an independent review of all extradition treaties and identify partners with a history of serious human rights violations. 12

RECOMMENDATION 2

That the Government of Canada modernize outdated treaties and withdraw from treaties with partners that seriously contravene international human rights standards. 12

RECOMMENDATION 3

That the Government of Canada examine whether domestic extradition law and processes adequately reflect international standards. 13

RECOMMENDATION 4

That the Department of Justice’s International Assistance Group receive the training it needs so that it can conduct gender-based analysis plus in the course of its duties. 14

RECOMMENDATION 5

That the *Extradition Act* be amended to add the risk of torture as grounds to deny an extradition request for a person sought..... 15

RECOMMENDATION 6

That the *Extradition Act* be amended to require the Government of Canada to negotiate diplomatic assurances with partner countries when there is a potential risk of torture following extradition, and that Canadian courts be authorized to order the Government of Canada to negotiate such assurances..... 17

RECOMMENDATION 7

That the Department of Justice collaborate closely with the Department of Foreign Affairs to negotiate diplomatic assurances, and that the Department of Justice also participate in the follow-up to ensure that extradition partners in fact adhere to these conditions. 18

RECOMMENDATION 8

That the *Extradition Act* be amended to give Canadian courts, in the case of abuse of process by a partner state, the power to refuse to order the detention, thereby halting the extradition process. 19

RECOMMENDATION 9

That the *Extradition Act* be amended to lower the required threshold to rebut the presumption of reliability of the extradition partner’s record of the case at the committal hearing..... 22

RECOMMENDATION 10

That section 33 of the *Extradition Act* be amended to enshrine an obligation for a partner state to undertake the holding of the trial of a person sought for extradition within a year of the surrender to the foreign state. 23

RECOMMENDATION 11

That the *Extradition Act* be amended to add a legal obligation for the Department of Justice to disclose to the person sought for extradition any exculpatory evidence in its possession or that it knows of that could compromise or weaken the request of the partner state. 24

RECOMMENDATION 12

That the *Extradition Act* be amended to introduce a “forum bar” rule, which would allow individuals committed for extradition to file a request before a Canadian court of law so that their prosecution be held in Canada, when a significant portion of the offence is committed in Canada and when it is in the interest of justice to prosecute here..... 28

RECOMMENDATION 13

That the *Extradition Act* be amended to introduce a “human rights bar” rule, which would allow individuals sought for extradition to submit evidence to be considered at the committal hearing if they believe that the requesting partner state is seeking prosecution for reasons that are incompatible with human rights law, and upon such finding by the judge, that the person’s discharge be ordered. 28

RECOMMENDATION 14

That the *Extradition Act* be amended to give the extradition judge a greater role relative to that of the Minister of Justice, particularly by granting Canadian courts the power to rule on the fairness of the extradition order, taking into account the situation of the person sought and the extradition partner’s respect for human rights. 32

RECOMMENDATION 15

That the *Extradition Act* be amended to expand the scope of section 44(1)(b) and include the criterion of a sufficient causal connection in regard to assessing prohibited grounds of discrimination. 34

RECOMMENDATION 16

That the *Extradition Act* be amended to expand the list of enumerated grounds under section 44(1)(b) to include gender identity and gender expression, to reflect the language of the *Canadian Human Rights Act*. 34

RECOMMENDATION 17

That the *Extradition Act* be amended to include, in the list of reasons for refusal to extradite, the presence of a major disparity between Canadian sentencing and sentencing in the partner state. 35

RECOMMENDATION 18

That, within six months of the end of each fiscal year, the Department of Justice publish on its website all data, statistics and internal policies, with the exception of confidential information, in order to ensure that the extradition process is transparent and that the public is better informed on the subject. 38

RECOMMENDATION 19

That the Government of Canada issue an annual report to Parliament on the implementation of the *Extradition Act*, which would include, but not be limited to, the number of extradition requests submitted to Canada, the country that submitted them, the alleged offences, whether the person to be extradited is a Canadian citizen or a permanent resident, and the diplomatic assurances provided by the partner country. 39

RECOMMENDATION 20

That the Government of Canada undertake comprehensive reform of the *Extradition Act* as soon as possible and consider making changes to the extradition process not requiring legislation, in the interim, in order to avoid further injustices in extradition proceedings. 40



REFORMING CANADA'S EXTRADITION SYSTEM

CHAPTER 1: INTRODUCTION

According to customary international law, states are responsible for prosecuting and penalizing criminal offences committed within their jurisdiction.¹ However, they cannot enforce their laws outside of their jurisdiction. Thus, extradition is the process by which “an accused or convicted person located in one country is surrendered to another country for the purpose of prosecution or for the imposition or enforcement of a sentence.”² The *Extradition Act* (the Act)³ provides a framework for this procedure in Canada.

The Supreme Court of Canada has stated that the extradition process serves two objectives: “the prompt compliance with Canada’s international obligations to its extradition partners, and the protection of the rights of the person sought.”⁴ According to experts who support reforming the Act, this balance needs to be re-established.

The shortcomings of the Act were highlighted by the *Diab* case,⁵ which was shocking for Canadians. Hassan Diab was extradited to France and detained for three years in a maximum-security prison before being released, without ever standing trial. Some legal experts see this case as proof that the Act must be reformed, because according to the independent review of his extradition prepared by lawyer Murray Segal for the Department of Justice, the Crown did comply with the Act, despite the consequences Mr. Diab faced.⁶

According to some members of the Canadian legal community, the biggest problem is the legal foundation for extradition and its subsequent interpretation by Canadian

1 [R. v. Hape](#), 2007 SCC 26.

2 Department of Justice, [About the International Assistance Group](#).

3 [Extradition Act](#), S.C. 1999, c. 18.

4 [M.M. v. United States of America](#), 2015 SCC 62.

5 [France v. Diab](#), 2014 ONCA 374 (CanLII).

6 Murray D. Segal, [Independent Review of the Extradition of Dr. Hassan Diab](#), Government of Canada, May 2019.



courts, particularly in regard to international human rights law and the *Canadian Charter of Rights and Freedoms* (the Charter).⁷

In September 2018, an independent group comprising academics, defence lawyers and human rights organizations met as part of the Halifax Colloquium on Extradition Law Reform hosted by Dalhousie University. Subsequently, a report outlining proposals for extradition law reform was published in October 2021.⁸

On 22 September 2022, the House of Commons Standing Committee on Justice and Human Rights (the Committee) agreed to undertake a comprehensive study on reforming the 1999 *Extradition Act* and to invite witnesses to provide recommendations to the Committee on how to modernize the current system so that the civil liberties of all Canadians and permanent residents of Canada are upheld in extradition proceedings.⁹

Between 1 February 2023 and 13 February 2023, the Committee held four meetings and heard 12 witnesses. The Committee also received five briefs.¹⁰

This report integrates some of the proposals from the Halifax Colloquium, but also includes additional recommendations.

7 [*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*](#), being Schedule B to the *Canada Act 1982* (U.K.).

8 Robert J. Currie, [*Changing Canada's Extradition Laws: The Halifax Colloquium's Proposals for Law Reform*](#), Canadian Partnership for International Justice, October 2021.

9 House of Commons, Standing Committee on Justice and Human Rights [JUST], [*Minutes of Proceedings*](#), 22 September 2022.

10 Appendices A and B of this report provide a list of witnesses who appeared before the Committee and a list of briefs, respectively.

CHAPTER 2: THE EXTRADITION PROCESS IN CANADA

2.1 The *Extradition Act*

In Canada, the extradition process, as outlined in the Act, has three phases:¹¹

- 1) Authority to Proceed (decision of the International Assistance Group, Department of Justice Canada);
- 2) Extradition hearing (decision of the court—judicial phase); and
- 3) Order of Surrender (decision of the Minister of Justice Canada—ministerial phase).

In addition to the Act, extradition law in Canada is governed by international treaties, on the basis of reciprocity with certain partners, such as the United Kingdom (U.K.), as well as the Charter.

2.2 The *Canadian Charter of Rights and Freedoms*

Sections 6 and 7 of the Charter are often invoked in extradition cases. Paragraph 6(1) of the Charter outlines the right of a citizen of Canada to remain in Canada (mobility of citizens),¹² while section 7 governs the right to life, liberty and security of the person, which cannot be infringed upon, except “in accordance with the principles of fundamental justice.”¹³ The Minister of Justice must always consider section 7. If the Minister finds extradition would violate section 7, then surrender would not proceed as section 44(1)(a) of the Act would be met.¹⁴

11 [Extradition Act](#), S.C. 1999, c. 18. For a summary of the extradition process in Canada, see Department of Justice, [Infographic: Extradition in Canada](#); and JUST, [Evidence](#), 1 February 2023, 1640 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

12 See [United States of America v. Cotroni](#); [United States of America v. El Zein](#), [1989] 1 S.C.R. 1469; and [United States of America v. Ferras](#); [United States of America v. Latty](#), 2006 SCC 33, paras. 81–83.

13 [Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982](#), being Schedule B to the [Canada Act 1982](#) (U.K.), s. 7.

14 JUST, [Evidence](#), 1 February 2023, 1645; and JUST, [Evidence](#), 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).



At the judicial phase, the Supreme Court of Canada stated in *Ferras*¹⁵ that the provisions of the Act regarding the threshold of evidence produced at the extradition hearing do not infringe the principles of fundamental justice, under section 7 of the Charter.¹⁶ In *Ferras*, Chief Justice McLachlin, writing for the majority, ruled that:

[T]he principles of fundamental justice applicable to an extradition hearing require that the person sought for extradition must receive a meaningful judicial determination of whether the case for extradition prescribed by s. 29(1) of the Extradition Act has been established — that is, whether there is sufficient evidence to permit a properly instructed jury to convict. This requires an independent judicial phase, an independent and impartial judge and a judicial decision based on an assessment of the evidence and the law.¹⁷

At the ministerial phase, before delivering an Order to Surrender, the Minister must “be satisfied that surrender would not be contrary to the [C]harter.”¹⁸ The Minister must also consider 44(1)(a) of the Act, which states that the Minister shall refuse surrender if satisfied that “the surrender would be unjust or oppressive having regard to all the circumstances.”¹⁹ Such “unjust or oppressive” surrenders would be contrary to section 7 of the Charter and contrary to the principles of fundamental justice.²⁰

Some witnesses appearing as part of the study commented on the possibility of seeking reparations should Charter rights be infringed without justification.²¹

15 [United States of America v. Ferras; United States of America v. Latty](#), 2006 SCC 33.

16 *Ibid.*, para. 50.

17 *Ibid.*, para. 26.

18 See, for example, JUST, [Evidence](#), 1 February 2023, 1635 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice); and [M.M. v. United States of America](#), 2015 SCC 32, para. 26.

19 [Extradition Act](#), S.C. 1999, c. 18, s. 44(1)(a).

20 JUST, [Evidence](#), 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

21 See, for example, JUST, [Evidence](#), 6 February 2023, 1555 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada), 1600 (Matthew Behrens, As an Individual).

CHAPTER 3: RECIPROCITY BETWEEN EXTRADITION PARTNERS

3.1 What does reciprocity mean?

Under the Act, Canada may proceed with the extradition of an individual apprehended in its jurisdiction only when a partner state is making the request.²² These partners must be identified as such under the Act, having either entered into a bilateral or multilateral extradition agreement to which Canada is a party, or been listed in the schedule to the Act.²³

These extradition treaties include reciprocal obligations between Canada and its partners. According to Janet Henchey, Director General and Senior General Counsel for the International Assistance Group in the Department of Justice's National Litigation Sector, "Reciprocity is a key feature of extradition, as is the principle of international comity, meaning the mutual respect that partners have for the differences that may exist between their respective laws and judicial systems."²⁴

When a request for extradition is made, it is the law of the country where the individual is apprehended that applies, from the moment they are arrested until a decision is made on whether they will be surrendered to the authorities of the state making the request. According to Ms. Henchey, reciprocity does not mean that extradition partners use identical systems and procedures; rather, "[t]he idea behind it is that we will ensure that justice is done and that the person is not getting safe haven from prosecution by not being extradited."²⁵

Ms. Henchey explained to the Committee that, as long as imperfections in the justice system of Canadian partners are not contrary to the principles of fundamental justice, the lack of certain safeguards should not automatically become an obstacle to extradition.²⁶

22 *Extradition Act*, S.C. 1999, c. 18, s. 3(1).

23 *Ibid.*, s. 9; and JUST, *Evidence*, 1 February 2023, 1645 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

24 JUST, *Evidence*, 1 February 2023, 1645 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

25 JUST, *Evidence*, 8 February 2023, 1800 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

26 *Ibid.*, 1755.



According to Ms. Henchey, “The whole concept behind the *Extradition Act* is the importance of balancing the rights of the individual against the interests of the requesting state.”²⁷ To achieve this balance, the Act gives the person being sought the power to take the matter before the Federal Court or to call on the Minister of Justice to discharge them.²⁸ If the court is “unsatisfied with the minister’s failure to address a fundamental right under the [C]harter, then it would be returned back to the minister for [them] to reconsider that and explain the circumstances.”²⁹ The Minister’s decision may then be subject to a judicial review before the Federal Court of Appeal and the Supreme Court of Canada if it is appealed.³⁰ This balance is also achieved by having safeguards in place for the person against whom extradition is sought. The three phases of extradition assist in this regard, as does the principle of dual criminality. Canada does not extradite individuals who are charged with an offence that does not have a corresponding crime under Canadian law.³¹

However, the Act has been roundly criticized in recent years by individuals in the Canadian legal community because some allege that the balance is tipped in favour of the interests of partner states at the expense of the human rights of the individuals being extradited.

According to Donald Bayne, the lawyer for Hassan Diab, re-establishing this balance means rethinking reciprocity. Since “[e]xtradition is said to rely on comity,” a “true reciprocity” is needed between Canada and its extradition partners.³² According to Rania Tfaily, Mr. Diab’s wife, reciprocity between countries should not be limited to obligations outlined in extradition treaties. It is by honouring their respective international human rights obligations that countries show a true reciprocity.³³ In her opinion, an “extradition law that is more just and fairer” for Canadians who are sought would not necessarily violate the principle of international comity.³⁴

27 JUST, *Evidence*, 1 February 2023, 1700 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

28 Ibid.

29 JUST, *Evidence*, 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

30 JUST, *Evidence*, 1 February 2023, 1700 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

31 *Extradition Act*, S.C. 1999, c. 18, s. 3(1)(a) and (b).

32 JUST, *Evidence*, 8 February 2023, 1705 (Donald Bayne, As an Individual).

33 JUST, *Evidence*, 6 February 2023, 1550 (Rania Tfaily, As an Individual).

34 Ibid.

3.2 Modernizing extradition treaties

When she appeared before the Committee, Janet Henchey, of the Department of Justice, shared that there were “some treaties that haven’t [been] used in a long time [and that] we would potentially want to reconsider.”³⁵ Ms. Henchey said that it was only since three or four years that the Department of Justice was given a mandate and associated funding to renegotiate and renew old treaties.³⁶

Canada currently has at least 10 extradition partners³⁷ that have been singled out by the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism “for introducing or adopting rights-violating counterterrorism laws.”³⁸ According to Matthew Behrens, spokesperson for the group Women Who Choose to Live, extradition to these countries violates Canada’s obligations to grant asylum to persecuted minorities under the *Immigration and Refugee Protection Act*.³⁹

Balpreet Singh, Legal Counsel for the World Sikh Organization of Canada, said that extradition treaty negotiations with India were influenced by political considerations targeting the Sikh minority.⁴⁰ Mr. Singh suggested that the Government of Canada establish a process to periodically examine extradition treaties to ensure that countries with which Canada has extradition treaties are respecting their international human rights obligations.⁴¹

Timothy McSorley, of the International Civil Liberties Monitoring Group, also believes that Canada should proceed with “a comprehensive review, immediately, of all treaty partners, and then ongoing review to see changes in their laws,”⁴² particularly in regard

35 JUST, [Evidence](#), 1 February 2023, 1650 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

36 Ibid.

37 These 10 countries are Austria, Denmark, France, Haiti, India, Israel, the Netherlands, Nicaragua, Peru and the Philippines, according to a document submitted to the Committee: JUST, Memo, International Civil Liberties Monitoring Group, 10 February 2023.

38 JUST, [Evidence](#), 8 February 2023, 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

39 JUST, [Evidence](#), 6 February 2023, 1545 and 1600 (Matthew Behrens, As an Individual).

40 JUST, [Evidence](#), 6 February 2023, 1555 and 1600 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada).

41 JUST, [Evidence](#), 6 February 2023, 1625 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada).

42 JUST, [Evidence](#), 8 February 2023, 1710 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).



to laws that may lead to human rights violations against people in custody, specifically torture.⁴³

RECOMMENDATION 1

That the Government of Canada commission an independent review of all extradition treaties and identify partners with a history of serious human rights violations.

RECOMMENDATION 2

That the Government of Canada modernize outdated treaties and withdraw from treaties with partners that seriously contravene international human rights standards.

CHAPTER 4: TOWARD A FAIRER AND MORE JUST *EXTRADITION ACT* UNDER INTERNATIONAL HUMAN RIGHTS LAW

4.1 Taking into account existing international human rights instruments and gender-based discrimination

To make the Act fairer and more just, Canada should ensure that international human rights instruments are central to its relations with its designated partners, and it should add substantive obligations to provide protection from torture and discrimination.

Lawrence L. Herman, an international lawyer, explained that while extradition treaty obligations are generally in accordance with widely accepted international norms, they are not governed by intergovernmental or multilateral frameworks, but rather, they reflect Canadian domestic law and public policy considerations.⁴⁴

According to Alex Neve, Senior Fellow at the University of Ottawa’s Graduate School of Public and International Affairs, “[i]nternational human rights concerns need to be taken very seriously and not be just part of a political discretionary process.”⁴⁵ Similarly, Robert J. Currie, Professor of Law at Dalhousie University’s Schulich School of Law, said

43 Ibid., 1730.

44 JUST, [Brief](#), Lawrence L. Herman, 13 February 2023, p. 2.

45 JUST, [Evidence](#), 6 February 2023, 1720 (Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual).

that, since human rights are “affirmed, recognized and protected under Canadian law and under international law,” Canada “has [legal] obligations in both those regards.”⁴⁶

According to Timothy McSorley, of the International Civil Liberties Monitoring Group, it is incredibly important for Canada’s extradition procedure to be modified “so that international human rights and civil liberties obligations are explicitly taken into account,”⁴⁷ because it is incumbent upon Canada to protect the human rights and civil liberties of its nationals.⁴⁸ Alex Neve suggested, as outlined in the report stemming from the Halifax Colloquium,⁴⁹ that “the whole range of Canada’s international human rights obligations [be] enshrined in the *Extradition Act*.”⁵⁰

In addition, Matthew Behrens expressed his view that the Department of Justice’s International Assistance Group is not equipped “when it comes to gender-based analysis,” and emphasized that there was a real possibility of discrimination in those cases.⁵¹ For example, in the *M.M.* case,⁵² where the United States obtained the extradition of a mother who had fled to Canada with her children to escape their abusive father, Mr. Behrens mentioned that the reasons given by the then Minister of Justice, Jody Wilson-Raybould, “were infused with a complete lack of knowledge about the consequences and dynamics of violence against women.”⁵³

RECOMMENDATION 3

That the Government of Canada examine whether domestic extradition law and processes adequately reflect international standards.

46 JUST, [Evidence](#), 6 February 2023, 1720 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

47 JUST, [Evidence](#), 8 February 2023, 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

48 *Ibid.*, 1710.

49 Robert J. Currie, [Changing Canada’s Extradition Laws: The Halifax Colloquium’s Proposals for Law Reform](#), Canadian Partnership for International Justice, October 2021.

50 JUST, [Evidence](#), 6 February 2023, 1720 (Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual).

51 JUST, [Evidence](#), 6 February 2023, 1550 (Matthew Behrens, As an Individual).

52 [M.M. v. United States of America](#), 2015 SCC 32.

53 JUST, [Evidence](#), 6 February 2023, 1550 (Matthew Behrens, As an Individual).



RECOMMENDATION 4

That the Department of Justice’s International Assistance Group receive the training it needs so that it can conduct gender-based analysis plus in the course of its duties.

4.2 The risk of torture

According to lawyer Donald Bayne, Canada has a duty, under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention against Torture),⁵⁴ “to not deport or extradite a single person to torture or to situations in which they would be faced with evidence obtained under torture.”⁵⁵ This protection is codified under section 44(1)(a) of the Act.⁵⁶

However, in recent years, there were claims that individuals extradited by Canada had suffered treatment described by authors of these claims as being akin to torture. For instance, Timothy McSorley and Rania Tfaily explained that the extradition of Mr. Diab to France was approved despite damning reports describing how France’s anti-terrorism laws were being used to undermine the right to a fair trial for persons being prosecuted for terrorism in France, which contravenes the Convention against Torture.⁵⁷ Following his extradition, it was held by both Donald Bayne and Timothy McSorley that Mr. Diab did in fact experience psychological pressure while he was in French custody, including prolonged solitary confinement over the nearly three years he was detained in a maximum-security facility.⁵⁸

In *Boily*,⁵⁹ another individual experienced torture after being extradited to Mexico, and the Federal Court of Canada recently awarded him \$500,000 in compensation.⁶⁰

54 United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 26 June 1987.

55 JUST, *Evidence*, 8 February 2023, 1730 (Donald Bayne, As an Individual).

56 *Extradition Act*, S.C. 1999, c. 18, s. 44(1)(a).

57 JUST, *Evidence*, 8 February 2023, 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group); and JUST, *Evidence*, 6 February 2023, 1610 (Rania Tfaily, As an Individual).

58 JUST, *Evidence*, 8 February 2023, 1705 (Donald Bayne, As an Individual), 1550, 1635, 1725 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

59 *Boily v. Canada*, 2017 FC 1021.

60 JUST, *Evidence*, 8 February 2023, 1655 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

Janet Henchey underlined that the typical “first step” the Department of Justice will take when considering whether to proceed with an extradition request emanating from a partner state that the Department is “not 100% comfortable with” is to consult with the Department of Foreign Affairs.⁶¹ Consultations with the Department of Foreign Affairs may also be completed at the ministerial phase of the extradition process, and the Minister may also review human rights reports “to get a sense of what the circumstances would be for the person [extradited] in the foreign country.”⁶²

In comparison, lawyer Anand Doobay testified that U.K. courts are empowered to assess the real risk that the accused will be tortured, and to make extradition decisions accordingly.⁶³ To do so, the judge will study “NGO reports, country reports and U.S. State Department reports,” and can consult expert witnesses as well.⁶⁴ Independent confirmation of torture must be established not only at the objective level, as a general observable trend, but also at the subjective level, if the individual is in a specific targeted category.⁶⁵

RECOMMENDATION 5

That the *Extradition Act* be amended to add the risk of torture as grounds to deny an extradition request for a person sought.

4.3 Diplomatic assurances

Furthermore, if Canada seeks to review the Act to ensure it is fairer as regards international human rights law, it should reconsider how diplomatic assurances are made and agreed upon with extradition partners.

61 JUST, [Evidence](#), 8 February 2023, 1815 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

62 Ibid.

63 In 2010, Anand Doobay was appointed to a panel to review “the potential shortcomings of the extradition system” in the United Kingdom, and the shortcomings in the systems of partner countries. The purpose of the review was to take into account the “serious consequences” for human rights when extraditing to these countries, “while not allowing this to become a complete bar to extradition.” JUST, [Evidence](#), 13 February 2023, 1550 (Anand Doobay, As an Individual).

64 JUST, [Evidence](#), 13 February 2023, 1645 (Anand Doobay, As an Individual).

65 Ibid.



When the Department of Justice believes that it would not be appropriate to extradite someone,⁶⁶ such as when an individual's human rights are at risk of being violated following extradition, the Department of Justice seeks assurances from the extradition partner.⁶⁷ The assurance most frequently sought is the one related to the death penalty. Since most extradition requests are submitted by the United States, where the death sentence is still in effect in some of its states, Canada will always seek an assurance when this sentence is on the table,⁶⁸ based on the ruling in the *Burns* case.⁶⁹ Of all the assurances obtained by the Department of Justice, "it's the easiest one to monitor," and there has never been a situation where it wasn't respected by a Canadian partner.⁷⁰

Other types of assurances, such as those relating to the conditions in prison or access to consular services for Canadian citizens, are much rarer and more difficult to enforce.⁷¹ In *Badesha*,⁷² for example, the Department of Justice obtained assurances from India in respect to trial and penitentiary conditions for the persons sought.⁷³ According to Balpreet Singh, of the World Sikh Organization of Canada, despite these assurances, the fact that an individual is being extradited to a country that has not signed the Convention against Torture should weigh heavily on the conscience of Canadians.⁷⁴

Joanna Harrington, Professor of Law at the University of Alberta's Faculty of Law, said that, in following a "strong human rights approach to extradition," the Minister of Foreign Affairs and the Minister of Justice should collaborate to determine whether extradition could take place under "conditions [which] address the risk to the individual."⁷⁵ This approach was used in *Hurley*,⁷⁶ where the two ministers "did actually

66 JUST, *Evidence*, 1 February 2023, 1650 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

67 JUST, *Evidence*, 8 February 2023, 1750 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

68 Ibid.

69 *United States v. Burns*, 2001 SCC 7.

70 JUST, *Evidence*, 1 February 2023, 1650 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

71 Ibid.

72 *India v. Badesha*, 2017 SCC 44.

73 JUST, *Evidence*, 6 February 2023, 1755 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual).

74 JUST, *Evidence*, 6 February 2023, 1615 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada).

75 JUST, *Evidence*, 6 February 2023, 1720 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual).

76 *R. v. Hurley*, 2010 SCC 18.

discuss what conditions should be placed on the surrender to a country where there was a concern of systemic discrimination against, in that case, a gay man.”⁷⁷

Janet Henchey, of the Department of Justice, explained that this type of collaborative approach was already in place with the Department of Foreign Affairs:

When we first receive a request, if it's not from a country that we're very comfortable with and used to dealing with, ... [we will consult] with our partners at the Department of Foreign Affairs to ask them what information they have about the conditions in this particular country.⁷⁸

It is then up to the Minister of Foreign Affairs to follow up with the state to which Canada extradited the person sought to ensure that the conditions that were agreed upon are being respected.⁷⁹ According to Ms. Henchey, once a person is extradited, the Department of Justice is no longer responsible for them,⁸⁰ because “[c]onsular affairs are handled by the Department of Foreign Affairs, and Canadian citizens have the right to consular services while they’re serving a sentence in another country.”⁸¹

By comparison, the U.K. has adopted a prospective approach: when a real risk of torture has been proven before the courts, the courts can order that diplomatic assurances between state authorities are needed.⁸²

RECOMMENDATION 6

That the *Extradition Act* be amended to require the Government of Canada to negotiate diplomatic assurances with partner countries when there is a potential risk of torture following extradition, and that Canadian courts be authorized to order the Government of Canada to negotiate such assurances.

77 JUST, *Evidence*, 6 February 2023, 1720, 1810 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual).

78 JUST, *Evidence*, 8 February 2023, 1815 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

79 *Ibid.*, 1750.

80 *Ibid.*, 1755.

81 *Ibid.*, 1815.

82 JUST, *Evidence*, 13 February 2023, 1615 (Anand Doobay, As an Individual).



RECOMMENDATION 7

That the Department of Justice collaborate closely with the Department of Foreign Affairs to negotiate diplomatic assurances, and that the Department of Justice also participate in the follow-up to ensure that extradition partners in fact adhere to these conditions.

4.4 Abuse of process

Nonetheless, according to Balpreet Singh, of the World Sikh Organization of Canada, diplomatic assurances cannot be the panacea, because it is not always possible to ensure they are applied properly.⁸³ On that topic, lawyer Anand Doobay pointed out that diplomatic assurances cause “difficulty for all countries trying to resolve the tension between a need to co-operate and to protect individuals.”⁸⁴ For instance, this is the case for assurances stating that a trial be held within a reasonable time or that no mistreatment occur.

According to Janet Henchey, of the Department of Justice, in Canada, “[i]t is not unheard of that someone would argue, ‘You can’t send me to this country because I’m not going to get tried within a reasonable time.’”⁸⁵ In these situations, the Minister of Justice asks the extradition partner, “Do you have laws about ensuring that somebody is tried within a reasonable time?”⁸⁶ However, regarding assurances that the trial will take place within a reasonable time once the individual is extradited, Ms. Henchey said that “it would be unduly restrictive to insist upon a particular time period, because there are so many things that you cannot predict about how a trial is going to unfold.”⁸⁷

In Mr. Diab’s case, for example, “despite French assurances that they were ready to go to trial, they clearly were not.”⁸⁸ Rania Tfaily explained that, in the three years and two months following Mr. Diab’s extradition, the case against him collapsed, and on 12 January 2018, “French judges concluded there was insufficient evidence to charge

83 JUST, [Evidence](#), 6 February 2023, 1600 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada).

84 JUST, [Evidence](#), 13 February 2023, 1640 (Anand Doobay, As an Individual).

85 JUST, [Evidence](#), 8 February 2023, 1805 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

86 Ibid.

87 Ibid.

88 JUST, [Evidence](#), 6 February 2023, 1645 (Rania Tfaily, As an Individual).

him and ordered his release.”⁸⁹ Mr. Diab was in solitary confinement for nearly three years without standing trial, which is “a clear violation of international human rights.”⁹⁰

After a reform in 2014, the approach introduced in the U.K. helped address this issue. According to Anand Doobay, U.K. courts can consider the argument of abuse of process when an individual who is slated for extradition can show that the U.K. was prepared to overlook evidential difficulties to try to extradite them.⁹¹

There have been cases of people being extradited and then placed in pretrial detention for long periods of time because their case has in fact not been ready to be prosecuted. So the U.K. introduced a bar that says if the case has not been charged and is not ready to be tried, then that is a reason to stop extradition.⁹²

In Canada, a person is eligible to apply for judicial interim release (bail) when they are subject to an arrest warrant under the Act.⁹³ After being sought for committal and arrested, an individual is entitled to request a release order from the court, in respect of the same legal principles that govern the general bail procedure as provided in the *Criminal Code*.⁹⁴

RECOMMENDATION 8

That the *Extradition Act* be amended to give Canadian courts, in the case of abuse of process by a partner state, the power to refuse to order the detention, thereby halting the extradition process.

89 Ibid.

90 Ibid.

91 JUST, *Evidence*, 13 February 2023, 1550 and 1605 (Anand Doobay, As an Individual); United Kingdom, *Extradition Act 2003*, c. 41, s. 12A.

92 Ibid., 1610.

93 *Extradition Act*, S.C. 1999, c. 18, s. 18(1)(a).

94 *Extradition Act*, S.C. 1999, c. 18, s. 19 (incorporates by reference Part XVI of the *Criminal Code*, Compelling Appearance of Accused Before a Justice and Interim Release); *Criminal Code*, R.S.C. 1985, c. C-46.



CHAPTER 5: JUDICIAL PHASE—EVIDENTIARY REQUIREMENTS

5.1 Presumption of reliability for the record of the case

Canada’s current extradition system provides for a presumption of reliability of the extradition partner’s record of the case at the committal hearing, pursuant to section 33(3)(a) of the Act.⁹⁵

Keeping in mind that the extradition hearing is not and should not be equated to a trial,⁹⁶ a record of the case of an individual sought by the extradition request, certified by a judicial or prosecuting authority of the partner state, is presented before a judge, not requiring sworn statements or any other supporting evidence.⁹⁷ The defence cannot cross-examine either the authors of the summary of evidence or any fact witnesses, unlike in an adversarial process. Consequently, second- and third-hand hearsay can be admitted into evidence under the Act.⁹⁸

Janet Henchey, of the Department of Justice, said that this presumption of reliability can always be challenged.⁹⁹ She added that “[i]t’s to the detriment of the requesting state if they don’t put enough evidence forward.”¹⁰⁰

Yet many witnesses told the Committee about how difficult, verging on impossible, it is for the defence to rebut the presumption of reliability, and called for it to be abolished as a result.¹⁰¹

95 [Extradition Act](#), S.C. 1999, c. 18, s. 33(3)(a); and [United States of America v. Ferras; United States of America v. Latty](#), 2006 SCC 33, para. 52.

96 JUST, [Evidence](#), 8 February 2023, 1740 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

97 In [United States of America v. Ferras; United States of America v. Latty](#), 2006 SCC 33, para. 55, the Supreme Court reminded that: “some treaties may not require that availability of evidence be certified. But that does not change the requirements of s. 29(1) of the Act that the extradition judge be satisfied that committal for extradition is justified.”

98 JUST, [Evidence](#), 8 February 2023, 1640, 1655, 1700, 1730 (Donald Bayne, As an Individual); JUST, [Evidence](#), 13 February 2023, 1600 (Michelyne C. St-Laurent, As an Individual); and JUST, [Brief](#), Michelyne C. St-Laurent, 8 February 2023.

99 JUST, [Evidence](#), 8 February 2023, 1820 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

100 *Ibid.*, 1740.

101 See for example JUST, [Evidence](#), 6 February 2023, 1550, 1635 (Rania Tfaily, As an Individual), 1705 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, [Evidence](#), 8 February 2023, 1650, 1655, 1700, 1725, 1730 (Donald Bayne, As an Individual).

In a brief to the Committee, the British Columbia Gurdwaras Council and the Ontario Gurdwaras Committee wrote the following:

While persons sought are theoretically permitted to challenge the reliability of the evidence, the presumption of innocence is reversed as they bear the onus of rebutting the presumption of reliability and will only be successful where courts find the evidence “so defective or appears so unreliable that the judge concludes it would be dangerous or unsafe to convict” or if the evidence could be shown to be “manifestly unreliable.”¹⁰²

Lawyer Donald Bayne said that, “under this act, the [extradition] judge is not allowed to assess weight at all”¹⁰³ and serves as nothing more than a “rubber stamp.”¹⁰⁴ In his view, the most-needed change to the current extradition system is to remove this presumption of reliability and put the burden of proof on the extradition partner, which would then have to establish, based on the balance of probabilities, that the evidence is reliable.¹⁰⁵ He added:

The system now has a reverse onus on the Canadian, the person sought, and they have to prove it to what has become to be interpreted in the courts as an unattainable standard called “manifest unreliability.”¹⁰⁶

However, Ms. Henchey specified that the extradition judge’s role is not to determine the admissibility of the evidence in the record of the case, but rather to determine whether the evidence is sufficient to go to trial in the country seeking the extradition.¹⁰⁷ As for the burden of proof for a request for committal, she noted the following:

I don’t think it makes sense to build up the level of proof to a higher level. It’s a level that we’re familiar with in the criminal justice system, the prima facie case that’s used in a preliminary inquiry. It wouldn’t make sense to make it “beyond a

102 JUST, [Brief](#) (jointly submitted), British Columbia Gurdwaras Council and Ontario Gurdwaras Committee, 16 February 2023, p. 9.

103 JUST, [Evidence](#), 8 February 2023, 1640 (Donald Bayne, As an Individual).

104 *Ibid.*, 1715.

105 *Ibid.*, 1700.

106 *Ibid.*

107 JUST, [Evidence](#), 8 February 2023 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice). For an in-depth analysis of the role of a judge at a committal hearing, see [United States of America v. Ferras](#); [United States of America v. Latty](#), 2006 SCC 33, [M.M. v. United States of America](#), 2015 SCC 32, para. 36 ff.



reasonable doubt,” because that’s the trial standard. The standard that’s being proposed is what you use at a civil trial.¹⁰⁸ ...

The balance of probability is not a standard that’s used in the criminal context.¹⁰⁹

This witness also added:

If we were to change the law to require witnesses to be heard and cross-examined, we would never finish our extradition hearings in any kind of reasonable time frame.¹¹⁰

Finally, several witnesses said that the threshold for the evidence needed to extradite an individual is very low.¹¹¹ However, lawyer Anand Doobay raised the point that, in many countries, such as Azerbaijan and Turkey, “no evidence at all needs to be provided,” and the case is based solely on the allegations.¹¹² The representative from the Department of Justice, Janet Henchey, opined that Canada has “one of the most rigorous extradition systems in the world” in this regard.¹¹³

In view of the above, the Committee shares the concerns raised by several witnesses on what some qualify, in practice, as an “irreversible” or an “irrefutable” presumption of reliability of the extradition partner’s record of the case. However, the Committee fears that a complete removal of this presumption would drastically change the nature of the committal hearings, transforming them into “trials,” that would unduly prolong extradition delays. Hence, the Committee recommends the following:

RECOMMENDATION 9

That the *Extradition Act* be amended to lower the required threshold to rebut the presumption of reliability of the extradition partner’s record of the case at the committal hearing.

108 JUST, [Evidence](#), 8 February 2023, 1740 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

109 Ibid., 1745.

110 Ibid., 1815.

111 See, for example, JUST, [Evidence](#), 13 February 2023, 1625 (Michelyne C. St-Laurent, As an Individual); JUST, [Brief](#), Michelyne C. St-Laurent, 8 February 2023; and JUST, [Evidence](#), 6 February 2023, 1645 (Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual).

112 JUST, [Evidence](#), 13 February 2023, 1610 (Anand Doobay, As an Individual).

113 JUST, [Evidence](#), 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

RECOMMENDATION 10

That section 33 of the *Extradition Act* be amended to enshrine an obligation for a partner state to undertake the holding of the trial of a person sought for extradition within a year of the surrender to the foreign state.

5.2 Disclosure of evidence

As part of the evidence reviewed by a judge at the committal hearing, it should be noted that “[e]vidence gathered in Canada must satisfy the rules of evidence under Canadian law in order to be admitted,”¹¹⁴ under section 32(2) of the Act. Some witnesses commented on the interpretation of this section.

Firstly, a number of witnesses mentioned the need for full disclosure of all relevant evidence in an extradition case.¹¹⁵ Secondly, a question was raised before the Committee, whether the Government of Canada is required to disclose evidence obtained in Canada that is in its possession or only the evidence made available by the partner state. On this topic, Professor Robert J. Currie said, “any exculpatory evidence in the hands of either the Canadian Crown or the foreign state should be disclosed to the defence.”¹¹⁶ Furthermore, lawyer Donald Bayne told the Committee the following:

There’s no full disclosure made here. They can pick and choose foreign states. We just trust them to be as honourable as Canadians would be.¹¹⁷

...

The prosecutor [representing the Canadian Crown] makes a cost-effective analysis: “Is it worth more to me if I disclose it and try to have it admitted, or is it actually going to harm my case?” In that case, you don’t disclose it because you’re not going to rely on it.¹¹⁸

114 *Extradition Act*, S.C. 1999, c. 18, s. 32(2).

115 See, for example, JUST, *Evidence*, 6 February 2023, 1635 (Rania Tfaily, As an Individual), 1705 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, *Evidence*, 8 February 2023, 1655, 1700, 1705, 1720 (Donald Bayne, As an Individual), 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

116 JUST, *Evidence*, 6 February 2023, 1705 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

117 JUST, *Evidence*, 8 February 2023, 1655 (Donald Bayne, As an Individual).

118 *Ibid.*, 1720.



In contrast, the representative from the Department of Justice, Janet Henchey, said that her department had “an ethical duty” to disclose exculpatory evidence in its possession or under its control.¹¹⁹ In her testimony, she highlighted the following:

On the statement that’s been made repeatedly that we hang on to exculpatory evidence, we don’t have the whole case, because it’s in the foreign state, but if we have something, we’re disclosing it. If it’s exculpatory, we would certainly be disclosing it.¹²⁰

It is important to note that in the U.K., the national prosecutor, playing the role of the Minister of Justice in extradition cases, has “a specific obligation to disclose evidence it’s aware of that might undermine, or weaken, the request it’s prosecuting,” as lawyer Anand Doobay explained.¹²¹

RECOMMENDATION 11

That the *Extradition Act* be amended to add a legal obligation for the Department of Justice to disclose to the person sought for extradition any exculpatory evidence in its possession or that it knows of that could compromise or weaken the request of the partner state.

5.3 Inherent difficulty in applying foreign laws

During the Committee’s study, a number of witnesses suggested that the person sought for extradition should be able to present exculpatory evidence in their defence.¹²²

Rania Tfaily emphasized that the Act should be amended to “allow the person sought a meaningful chance to defend themselves.”¹²³

Some witnesses also suggested that prosecutions for the offences leading to an extradition request should take place in Canada, or at the very least, that people should

119 JUST, [Evidence](#), 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

120 Ibid.

121 JUST, [Evidence](#), 13 February 2023, 1555 (Anand Doobay, As an Individual).

122 See, for example, JUST, [Evidence](#), 6 February 2023, 1550, 1635, 1640 (Rania Tfaily, As an Individual); JUST, [Evidence](#), 8 February 2023, 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group); and JUST, [Brief](#) (jointly submitted), British Columbia Gurdwaras Council and Ontario Gurdwaras Committee, 16 February 2023, p. 12.

123 JUST, [Evidence](#), 6 February 2023, 1640 (Rania Tfaily, As an Individual).

have the opportunity to plead guilty in Canada,¹²⁴ particularly if they have a “mental illness or autism spectrum disorder,”¹²⁵ including people with a diagnosis of Asperger’s,¹²⁶ or when there is a significant disparity between the sentences meted out in Canada and those in some foreign countries.¹²⁷ Furthermore, lawyer Michelyne C. St-Laurent told the Committee about Canada’s universal jurisdiction: since 1989, Canada has been able to prosecute a resident or citizen of Canada for a crime committed abroad.¹²⁸

On the other hand, Janet Henchey, of the Department of Justice, reiterated that the extradition hearing is not a trial¹²⁹ and that it should not be turned into one, particularly so as not to delay the trial in the foreign country.¹³⁰ She also raised the point that extradition cases are heavily litigated. An average extradition process takes from 18 months to two years, but in a very litigious case it can go on for up to 10 years.¹³¹

According to lawyer Anand Doobay, “the most important question” in an extradition case is the matter of jurisdiction.¹³² According to Mr. Doobay, “[i]n today’s world, with globalization and technological advances, it is increasingly common that more than one country may have jurisdiction to prosecute.”¹³³ France, for example, categorically refuses to extradite its citizens: French citizens must stand trial in France.¹³⁴

124 See, for example, JUST, [Evidence](#), 6 February 2023, 1640 (Rania Tfaily, As an Individual); JUST, [Evidence](#), 13 February 2023, 1600, 1620 (Michelyne C. St-Laurent, As an Individual); and JUST, [Brief](#), Michelyne C. St-Laurent, 8 February 2023.

125 JUST, [Evidence](#), 13 February 2023, 1620 (Michelyne C. St-Laurent, As an Individual); JUST, [Brief](#), Michelyne C. St-Laurent, 8 February 2023; and JUST, [Brief](#), Michelyne C. St-Laurent, 19 February 2023.

126 JUST, [Brief](#), Michelyne C. St-Laurent, 19 February 2023.

127 JUST, [Evidence](#), 13 February 2023, 1600, 1620 (Michelyne C. St-Laurent, As an Individual); and JUST, [Brief](#), Michelyne C. St-Laurent, 8 February 2023.

128 JUST, [Brief](#), Michelyne C. St-Laurent, 8 February 2023; on the topic of universal jurisdiction, see JUST, [Brief](#), B’nai Brith Canada, 13 February 2023. See also s. 7 of the [Criminal Code](#), R.S.C. 1985, c. C-46.

129 This was confirmed by the Supreme Court of Canada in [M.M. v. United States of America](#), 2015 SCC 32, para. 38.

130 JUST, [Evidence](#), 8 February 2023, 1740 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

131 *Ibid.*, 1815.

132 JUST, [Evidence](#), 13 February 2023, 1640 (Anand Doobay, As an Individual).

133 *Ibid.*, 1550.

134 *Ibid.*, 1640; and JUST, [Evidence](#), 6 February 2023, 1640 (Rania Tfaily, As an Individual).



Some witnesses, such as lawyer Donald Bayne, believe that Canada should not extradite “if the requesting state, such as France, does not in fact reciprocate with Canada by extraditing requested citizens to Canada.”¹³⁵

Others, such as Professor Robert J. Currie, believe that extradition remains

an important tool and a necessary tool in order for Canada to meet its international obligations and in order to ensure that people who break the law face justice. There may be more situations in which [it would be more] appropriate to hold trials in Canada than is currently the case, but there are always going to be lots of cases where it’s appropriate to extradite the individual as well.

...

What we would like to see is a fairer way of making the determinations about whether or not to extradite and, yes, it may involve more consideration of what the foreign state’s criminal law system looks like, but that evidence is available out there and it’s available to be put before the court.¹³⁶

The United Kingdom adopted this approach when it modernized its legislation and introduced the “forum bar” rule in 2013. It gives the courts the ability to examine, when a significant proportion of the crime was committed within the U.K.,¹³⁷ “whether it’s in the interest of justice”¹³⁸ for the crime to be prosecuted in the U.K. rather than in the state requesting extradition.¹³⁹ The judge could then consider factors associated with the individual’s private and family life,¹⁴⁰ such as the individual’s ties to the U.K.,¹⁴¹ and the best interests of the child.¹⁴²

After such consideration, if the court deems “that extradition is justified, given the need to prosecute serious crimes, and the need to co-operate internationally,” the person sought can be handed over to the foreign authorities.¹⁴³ However, the court also has the

135 JUST, [Evidence](#), 8 February 2023, 1705 (Donald Bayne, As an Individual).

136 JUST, [Evidence](#), 6 February 2023, 1715 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

137 JUST, [Evidence](#), 13 February 2023, 1630 (Anand Doobay, As an Individual).

138 *Ibid.*, 1550.

139 *Ibid.*, 1640.

140 JUST, [Evidence](#), 13 February 2023, 1550 (Anand Doobay, As an Individual).

141 *Ibid.*, 1630.

142 *Ibid.*, 1640.

143 *Ibid.*, 1555.

flexibility to take into account any other reasons why it would be inappropriate to extradite in a particular case.¹⁴⁴

That said, Anand Doobay admitted that applying the forum bar in the U.K. can be complex, saying that “[i]t’s quite a difficult picture for a court to consider when weighing up these various factors,” particularly when the court has to reconcile respect for human rights with diplomatic pressure from a state seeking to address criminal impunity.¹⁴⁵

As Mr. Doobay observed, “ordinarily, the court is going to find that the rights of private and family life are outweighed by the need to have effective extradition arrangements,” but in rare cases, the court may deny the extradition for reasons involving the individual’s private and family life.¹⁴⁶ Government prosecutors also have a form of veto and can issue a certificate before the courts that prevents individuals from invoking the forum bar.¹⁴⁷ They can also prepare a belief letter explaining to the judge why the trial should not take place in the U.K.¹⁴⁸

In Canada, only the Department of Justice has the flexibility required to seek “information in relation to the circumstances in [a] particular case” so that it can “address whether or not it would be fair” to extradite.¹⁴⁹ Extradition requests denied by Canada at this stage are considered to be discharged by the Minister and remain confidential.¹⁵⁰ Therefore, there is no way to know what the Minister considered to be determining factors in these situations.

The U.K. Extradition Act also provides for a “human rights bar,” which allows individuals to submit evidence to the judge during the extradition hearing if they believe they are “being prosecuted for a reason that’s not proper,” under the rights set out in the *European Court of Human Rights Convention*.¹⁵¹ If the judge is convinced that the

144 Ibid.

145 Ibid., 1630.

146 Ibid., 1645.

147 Ibid., 1630.

148 Ibid.

149 JUST, *Evidence*, 8 February 2023, 1750 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

150 Ibid., 1750 (Denials account for approximately 25% of requests received by the Group, according to Janet Henchey of the Department of Justice).

151 JUST, *Evidence*, 13 February 2023, 1605 (Anand Doobay, As an Individual).



extradition would not be compatible with these conventional human rights, they must order that the person be discharged.¹⁵²

Mr. Doobay expressed that, in his opinion, it would be impossible to have a full extradition trial in Canada by applying the laws of the requesting state. However, a human rights bar could allow the judge to consider evidence related to potential human rights violation, providing the example of the U.K. for comparison:

There are cases in which, it seems to me, it would be appropriate to examine further the evidence that's put forward. Again, within the U.K. we tend to be able to do this by having the safeguards of human rights standards. In exceptional cases, those can be used to say there is a reason to examine the evidence in more detail than would ordinarily be done. ...

I completely understand that there is a tension and that it is not possible in every case to insist upon a trial when you're having an extradition hearing. But I do think that the system should cater to people in those exceptional cases where there is really something to be discussed in relation to the evidential test and there's a potential for unfairness.¹⁵³

RECOMMENDATION 12

That the *Extradition Act* be amended to introduce a “forum bar” rule, which would allow individuals committed for extradition to file a request before a Canadian court of law so that their prosecution be held in Canada, when a significant portion of the offence is committed in Canada and when it is in the interest of justice to prosecute here.

RECOMMENDATION 13

That the *Extradition Act* be amended to introduce a “human rights bar” rule, which would allow individuals sought for extradition to submit evidence to be considered at the committal hearing if they believe that the requesting partner state is seeking prosecution for reasons that are incompatible with human rights law, and upon such finding by the judge, that the person's discharge be ordered.

152 United Kingdom, [Extradition Act 2003](#), c. 41, s. 21.

153 JUST, [Evidence](#), 13 February 2023, 1610 (Anand Doobay, As an Individual).

CHAPTER 6: MINISTERIAL PHASE—REBALANCING THE ROLES OF THE JUDGE AND THE MINISTER

6.1 The decision to extradite an individual

The decision to extradite someone to a partner state, also called an “Order of Surrender,” is ordered by the Minister of Justice,¹⁵⁴ whose power to order the surrender is outlined in section 40 and following of the Act.¹⁵⁵

Section 43(1) of the Act provides that interested parties may present submissions to the Minister before a decision is rendered in respect of any ground that may be relevant “in making a decision in respect of the surrender of the person.”¹⁵⁶

Janet Henchey, of the Department of Justice, indicated that the Minister’s decision must take into account both the interests of the person sought and Canada’s international treaty obligations.¹⁵⁷ She added that the Minister’s powers must follow the guidance provided by the Supreme Court of Canada, stating that:

To suggest that the Minister of Justice is running wild, doing whatever he wants to do, and can get away with it because he has this massive discretion....The discretion is to operate within the realm of the law. If he's stepping outside of what the law requires, then he's going to be overturned by the courts.¹⁵⁸

She summarized the exercise of ministerial discretion, balancing the rights of the individual sought for extradition, as follows:

[T]here are a lot of provisions in the legislation to address the rights of the individual. The whole concept behind the Extradition Act is the importance of balancing the rights of the individual against the interests of the requesting state to have them brought there for prosecution.

154 See the definition of “minister” in s. 2 of the *Extradition Act*, S.C. 1999, c. 18.

155 *Ibid.*, s. 40 ff.

156 *Ibid.*, s. 43(1). For the procedure that would apply in such a case, see JUST, *Evidence*, 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

157 JUST, *Evidence*, 1 February 2023, 1645 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

158 JUST, *Evidence*, 8 February 2023, 1810 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).



Yes, there are a lot of provisions that allow for the rights of the person to be protected. They can make arguments before the extradition judge. They can make arguments before the Minister of Justice.

There are no restrictions, for example, to what can be said to the Minister of Justice, so they can bring forward concerns about their health, concerns about the treatment they will get in the foreign state, concerns about treatment in prison or concerns about the length of their sentence. There is pretty much nothing they can't raise before the minister, and the minister will consider and issue written reasons for his assessment of what they have said.

That, then, goes before the court, if they choose to bring a judicial review. Everything that happens is either before a judge or before the minister and then can be appealed before the court or judicially reviewed. Then there is the opportunity to go before the Supreme Court to seek leave if they are unsatisfied with the outcome of the appeal.¹⁵⁹

Ms. Henchey further added in her testimony:

The minister needs to make a determination about whether he should be ordering extradition at all. Sometimes, he determines it's not appropriate to extradite in a particular circumstance. Sometimes, it's possible to overcome the problems you might face in the requesting state through assurances. It doesn't happen very often, other than a death penalty assurance. The death penalty assurance is our most frequently sought assurance.¹⁶⁰

Despite these considerations, a number of witnesses who appeared before the Committee advocated for the extradition judge to play a larger role relative to that granted to the Minister by the Act.¹⁶¹

Lawyer Donald Bayne said that “[a]t the end of the day,” the Minister’s powers covered “virtually everything,” while judges do not have a judicial function in the extradition process, as usually would be their role.¹⁶²

159 JUST, *Evidence*, 1 February 2023, 1700 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

160 *Ibid.*, 1650.

161 See, for example, JUST, *Evidence*, 6 February 2023, 1600, 1615 (Matthew Behrens, As an Individual), 1615 (Rania Tfaily, As an Individual), 1615 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada), 1650 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual), 1655 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual), 1720 (Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual).

162 JUST, *Evidence*, 8 February 2023, 1715 (Donald Bayne, As an Individual).

Professor Robert J. Currie spoke about “a rebalancing of roles,” which in the extradition process would mean a better balance between the roles of the courts and of the government, as well as between Charter rights and administrative efficiency.¹⁶³

Similarly, Timothy McSorley, of the International Civil Liberties Monitoring Group, said that “there must be a rebalancing to increase the role for judges in weighing factors such as fairness, civil liberties and human rights, among others, in the final decision for extradition.”¹⁶⁴

On that point, Professor Joanna Harrington made the following recommendation:

Since extradition involves the loss of an individual’s fundamental right to liberty, a rational basis exists for a more robust role to be accorded to the extradition judge. Indeed, in Victorian times it was the role of the judge to consider whether extradition in the circumstances was unjust or oppressive. Today Canadian extradition law directs that the justice minister make that call. Enabling a more robust role for the extradition judge would allow an individual’s circumstances, the values of the Canadian legal system and the human rights record of the requesting country to be considered directly and openly by a court.¹⁶⁵

In their joint brief to the Committee, the British Columbia Gurdwaras Council and the Ontario Gurdwaras Committee recommended incorporating “[r]obust Charter protections and effective judicial oversight” at the surrender stage of the extradition process “through a much higher standard of review, along with explicit consideration of Canada’s international human rights obligations.”¹⁶⁶

Furthermore, unlike Canada’s extradition system, in the U.K. it is the courts that assess the risk of a possible human rights violations and can deny extradition on those grounds, according to Anand Doobay.¹⁶⁷

163 JUST, [Evidence](#), 6 February 2023, 1655 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

164 JUST, [Evidence](#), 8 February 2023, 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

165 JUST, [Evidence](#), 6 February 2023, 1650 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual).

166 JUST, [Brief](#) (jointly submitted), British Columbia Gurdwaras Council and Ontario Gurdwaras Committee, 16 February 2023, p. 10.

167 JUST, [Evidence](#), 13 February 2023, 1550 (Anand Doobay, As an Individual).



Matthew Behrens recommended that the Act be amended so that it “complies with international fair trial standards.”¹⁶⁸

Upon a state presenting an extradition request, the Minister makes the ultimate decision. Some witnesses suggested that the ultimate decision to extradite should fall to the judge.¹⁶⁹ On that topic, Matthew Behrens said that the Minister is biased when he ultimately decides whether to proceed with the extradition request of a partner state, since he is the one who authorized extradition proceedings in Canada in the first place:

It would seem to me that a court would be far more independent than the individual who has decided to proceed with the extradition. The minister has already made his position clear by proceeding with the extradition, so he has a bias. He's decided this is a case that needs to be pursued. He fights it in court, even though the court process itself is completely neutered by the Extradition Act. We need to beef up the role of the judiciary in this process, because that's the only oversight mechanism that will ensure the sought individual's rights are going to be upheld and respected.¹⁷⁰

Rania Tfaily said that, in her view, it would be easier to justify a denial of surrender while maintaining international relations if the denial came from the judiciary rather than a ministerial decision.¹⁷¹

RECOMMENDATION 14

That the *Extradition Act* be amended to give the extradition judge a greater role relative to that of the Minister of Justice, particularly by granting Canadian courts the power to rule on the fairness of the extradition order, taking into account the situation of the person sought and the extradition partner’s respect for human rights.

168 JUST, [Evidence](#), 6 February 2023, 1615 (Matthew Behrens, As an Individual).

169 See, for example, JUST, [Evidence](#), 6 February 2023, 1615 (Matthew Behrens, As an Individual) (Rania Tfaily, As an Individual) (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada), 1720 (Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual).

170 JUST, [Evidence](#), 6 February 2023, 1615 (Matthew Behrens, As an Individual).

171 JUST, [Evidence](#), 6 February 2023, 1615 (Rania Tfaily, As an Individual).

6.2 Reasons for refusal

In sections 44 to 47, the Act outlines the reasons for which the Minister can refuse to extradite the person sought.¹⁷²

For example, the Minister must refuse to make a surrender order if they are satisfied that it would “be unjust or oppressive having regard to all the relevant circumstances”¹⁷³ or when the extradition requested by the partner state is intended to punish an individual for their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status.¹⁷⁴

Witnesses noted that the language in this section of the Act does not match the grounds listed in the *Canadian Human Rights Act*¹⁷⁵ in that the grounds of gender identity and gender expression are omitted.¹⁷⁶

Also, it should be noted that under the Act, the Minister shall refuse to make a surrender order only if the primary purpose of the extradition is to persecute the individual on prohibited grounds of discrimination.¹⁷⁷

According to Balpreet Singh, of the World Sikh Organization of Canada, this criterion is not flexible enough: as soon as “there’s a causal connection between the abuse of human rights of an accused in a foreign country and Canada’s decision to extradite, [C]harter protections [should] be in force.”¹⁷⁸ Lawyer Anand Doobay said that this was the approach chosen in the U.K.:

The bars [of prohibited grounds of discrimination] apply if you can show someone is being prosecuted for that particular reason or that they may face some form of prejudice after they are extradited. They give pretty good protection. You just have to be able to prove a causal link. You have to be able to show that it’s one of the reasons they are being prosecuted, not the only reason. You have to be able to

172 *Extradition Act*, S.C. 1999, c. 18, ss. 44–47. There are additional reasons resulting from case law, such as when extradition would violate the principles of fundamental justice referred to in section 7 of the *Canadian Charter of Rights and Freedoms*. See *M.M. v. United States of America*, 2015 SCC 32, para. 26.

173 *Extradition Act*, S.C. 1999, c. 18, s. 44(1)(a).

174 *Ibid.*, s. 44(1)(b).

175 *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, s. 3.

176 *Extradition Act*, S.C. 1999, c. 18, s. 44(1)(b).

177 *Ibid.*

178 JUST, *Evidence*, 6 February 2023, 1555 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada).



show that it's one of the reasons they may suffer prejudice after their return. ... For example, ... harsher treatment in custody or ... greater risk of ... violence.¹⁷⁹

Furthermore, as was discussed previously, many witnesses raised concerns about the Minister's power to make legal decisions involving persons sought, given the Minister's political role in extradition cases.¹⁸⁰

Several witnesses proposed adding criteria to refuse extradition in given cases.¹⁸¹ For example, Professor Robert J. Currie suggested that "one ground for refusal should be extreme disparity of sentencing between Canadian criminal law and the foreign state's criminal law."¹⁸²

In the brief provided after her appearance before the Committee, lawyer Michelyne C. St-Laurent suggested several amendments to the Act that would protect persons sought for extradition if they have "a mental illness or a permanent and/or congenital neurological condition."¹⁸³ She believes these factors should be added to the reasons for refusal under sections 44(1) and 47 of the Act.

RECOMMENDATION 15

That the *Extradition Act* be amended to expand the scope of section 44(1)(b) and include the criterion of a sufficient causal connection in regard to assessing prohibited grounds of discrimination.

RECOMMENDATION 16

That the *Extradition Act* be amended to expand the list of enumerated grounds under section 44(1)(b) to include gender identity and gender expression, to reflect the language of the *Canadian Human Rights Act*.

179 JUST, [Evidence](#), 13 February 2023, 1615 (Anand Doobay, As an Individual).

180 See, for example, JUST, [Evidence](#), 6 February 2023, 1600, 1615 (Matthew Behrens, As an Individual), 1555 (Balpreet Singh, Legal Counsel, World Sikh Organization of Canada), 1705 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, [Evidence](#), 8 February 2023, 1715 (Donald Bayne, As an Individual).

181 See, for example, JUST, [Evidence](#), 6 February 2023, 1615 (Matthew Behrens, As an Individual), 1710 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, [Brief](#), Michelyne C. St-Laurent, 19 February 2023.

182 JUST, [Evidence](#), 6 February 2023, 1710 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

183 JUST, [Brief](#), Michelyne C. St-Laurent, 19 February 2023.

RECOMMENDATION 17

That the *Extradition Act* be amended to include, in the list of reasons for refusal to extradite, the presence of a major disparity between Canadian sentencing and sentencing in the partner state.

CHAPTER 7: TRANSPARENCY AND OVERSIGHT OF THE EXTRADITION PROCESS

7.1 Role of the International Assistance Group

Section 7 of the Act states the following: “The Minister is responsible for the implementation of extradition agreements, the administration of this Act and dealing with requests for extradition made under them.”¹⁸⁴

In practice, the exercise of this power is largely delegated to the International Assistance Group (IAG), a specialized office at the Department of Justice. The IAG oversees extradition proceedings, with some of its lawyers acting either as litigators or as decision-makers.¹⁸⁵

Some witnesses pointed out what they felt or saw as an apparent or actual conflict of interest in the department’s functioning and recommended reviewing the current structure of the IAG.¹⁸⁶ Lawyer Donald Bayne commented:

When you come to the ministerial stage, the minister turns to the same people who were very ardent and aggressive advocates in the courtroom for advice on whether, ministerially, he should surrender the fugitive. There’s clearly a bias there too.¹⁸⁷

184 [Extradition Act](#), S.C. 1999, c. 18, s. 7.

185 For more details on the role of the IAG, see JUST, [Evidence](#), 1 February 2023, 1635 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

186 See, for example, JUST, [Evidence](#), 6 February 2023, 1600 (Matthew Behrens, As an Individual), 1655 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, [Evidence](#), 8 February 2023, 1715 (Donald Bayne, As an Individual).

187 JUST, [Evidence](#), 8 February 2023, 1715 (Donald Bayne, As an Individual).



Professor Robert J. Currie recommended that the Committee

look at restructuring the international assistance group and dividing up the functions in terms of which staff, which lawyers, are allocated to fight the case on behalf of the requesting state in our adversarial system. There's nothing inappropriate about doing that, but that branch of the office should be separate from the branch wherein the minister makes the surrender decision, so that's it's not all sort of emerging from a black box.¹⁸⁸

7.2 Publication of data and information

On its website, the Government of Canada publishes general information on the extradition process¹⁸⁹ and makes available statistics on requests from the United States from 2008 to 2018.¹⁹⁰

Janet Henchey, of the Department of Justice, said that the media asks for statistics on a regular basis, which are provided. She stated, "Statistics aren't really an issue."¹⁹¹

However, several witnesses criticized the lack of data currently available to the public on extradition procedures, including statistics and internal policies.¹⁹²

According to Professor Joanna Harrington, although the government has published some information, the public still does not clearly understand the extradition process.¹⁹³

188 JUST, *Evidence*, 6 February 2023, 1705 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

189 See Government of Canada, *Extradition and Mutual Legal Assistance*; Government of Canada *General Overview of the Canadian Extradition Process*; and Department of Justice, *Infographic: Extradition in Canada*.

190 Department of Justice, *Extradition in Canada – Key Statistics on United States Requests from Extradition from Canada*.

191 JUST, *Evidence*, 8 February 2023, 1745 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

192 See, for example, JUST, *Evidence*, 6 February 2023, 1650 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual), 1655, 1710 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, *Evidence*, 8 February 2023, 1635 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

193 JUST, *Evidence*, 6 February 2023, 1650 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual).

Professor Robert J. Currie told the Committee that “the world of extradition has traditionally been quite murky and below the public’s radar, and troubling problems have been allowed to grow,” like in the case of Hassan Diab.¹⁹⁴

However, Ms. Henchey told the Committee that it would be inadvisable to disclose certain data to the public owing to confidentiality issues:

We get requests for extradition. At that point, they’re confidential unless we move forward with them. We receive quite a few requests for extradition that never see the light of day, because we don’t authorize them.¹⁹⁵

In response to these concerns, Professor Robert J. Currie made the following comment:

We all know that state-to-state communications are privileged, and I’m certainly not suggesting that the entire thing needs to be blown wide open. I know that’s a concern the IAG has. There is a distinction between the communications themselves and the fact of communications. There’s a lot [of] information that could be provided there.¹⁹⁶

Regarding the specific case of the United States and the reason the government publishes statistics on requests from that country but not from others, Ms. Henchey gave the following explanation:

The reason we don’t disclose it for every country is that whole issue of identifying the existence of a request. There are a lot of countries with which we don’t deal very often. We might have one request in five years from a particular country. If we identify that, we could potentially identify a request we didn’t execute.

Honestly, we could do a better job at disclosing some of our statistics. However, there are some we simply can’t, because it would reveal confidential information. We disclose it with the United States because the quantity of requests is so large that we’re not going to identify a particular request by providing statistics.¹⁹⁷

194 JUST, *Evidence*, 6 February 2023, 1655 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

195 JUST, *Evidence*, 8 February 2023, 1745 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).

196 JUST, *Evidence*, 6 February 2023, 1710 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

197 JUST, *Evidence*, 8 February 2023, 1750 (Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector, Department of Justice).



RECOMMENDATION 18

That, within six months of the end of each fiscal year, the Department of Justice publish on its website all data, statistics and internal policies, with the exception of confidential information, in order to ensure that the extradition process is transparent and that the public is better informed on the subject.

7.3 Reporting obligation

Witnesses also suggested that the Committee consider implementing a mechanism for monitoring the activities of the IAG in order to make the extradition process more transparent.¹⁹⁸ Timothy McSorley, of the International Civil Liberties Monitoring Group, argued that “there needs to be greater transparency in reporting from the government on the number of extraditions, the types of extraditions and the cases there are, because there’s a lack of clarity and a lack of understanding among the public.”¹⁹⁹

Professors Joanna Harrington and Robert J. Currie believe that a reporting obligation should be added to the Act, requiring the government to produce an annual or biannual report to Parliament.

Professor Harrington pointed out that a similar mechanism is provided for in the *Corruption of Foreign Public Officials Act*.²⁰⁰ In her testimony, she recommended that the reporting obligation include

- regular public disclosure of the number of extradition requests Canada receives, from which countries and for what crimes;
- what evaluation of the requests received was undertaken, the reasons for any delay and the end result;

198 See for example: JUST, [Evidence](#), 6 February 2023, 1600 (Matthew Behrens, As an Individual), 1650 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual), 1710 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual); and JUST, [Evidence](#), 8 February 2023, 1655 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

199 JUST, [Evidence](#), 8 February 2023, 1655 (Timothy McSorley, National Coordinator, International Civil Liberties Monitoring Group).

200 JUST, [Evidence](#), 6 February 2023, 1650 (Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta, As an Individual).

- whether the individual to be extradited is a Canadian citizen or a permanent resident; and
- public disclosure of the assurances provided by a foreign country that were used to secure an individual's extradition.²⁰¹

Another example, raised by Robert J. Currie, is the work of the Security Intelligence Review Committee, which oversees the Canadian intelligence apparatus and receives annual reports on the kinds of activities engaged in by certain departments and government entities.²⁰² Professor Currie made the following recommendation to the Committee:

The IAG could be mandated in the *Extradition Act* to produce an annual or biannual report that provided statistics about the kinds of extradition requests that were made and the status and consideration of cases, naturally removing any privileged and confidential information.²⁰³

RECOMMENDATION 19

That the Government of Canada issue an annual report to Parliament on the implementation of the *Extradition Act*, which would include, but not be limited to, the number of extradition requests submitted to Canada, the country that submitted them, the alleged offences, whether the person to be extradited is a Canadian citizen or a permanent resident, and the diplomatic assurances provided by the partner country.

CHAPTER 8: CONCLUSION

The Committee has heard calls for comprehensive reform of Canada's *Extradition Act*. Cases were cited as evidence of real harms resulting from flaws in our existing legislation and process and as examples of injustices that will likely continue to occur in the absence of reform. The Committee received detailed proposals for the kind of legislative reforms witnesses felt are needed both in testimony before the Committee and in the report from the Halifax Colloquium. Witnesses also suggested a number of other changes that could be made to improve the extradition process that would not require legislation. The Committee urges the government to act quickly to reform the

201 Ibid.

202 JUST, *Evidence*, 6 February 2023, 1710 (Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University, As an Individual).

203 Ibid.



HOUSE OF COMMONS
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CANADA

Extradition Act and Canada's extradition process to prevent further injustices resulting from flaws in Canada's extradition system.

RECOMMENDATION 20

That the Government of Canada undertake comprehensive reform of the *Extradition Act* as soon as possible and consider making changes to the extradition process not requiring legislation, in the interim, in order to avoid further injustices in extradition proceedings.

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
<p>Department of Justice</p> <p>Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector</p> <p>Erin McKey, Director and General Counsel, Criminal Law Policy Section</p>	2023/02/01	46
<p>As an individual</p> <p>Matthew Behrens</p> <p>Robert J. Currie, Professor of Law, Schulich School of Law, Dalhousie University</p> <p>Dr. Joanna Harrington, Professor of Law, Faculty of Law, University of Alberta</p> <p>Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa</p> <p>Rania Tfaily</p>	2023/02/06	47
<p>World Sikh Organization of Canada</p> <p>Balpreet Singh, Legal Counsel</p>	2023/02/06	47
<p>As an individual</p> <p>Donald Bayne</p>	2023/02/08	48
<p>Department of Justice</p> <p>Janet Henchey, Director General and Senior General Counsel, International Assistance Group, National Litigation Sector</p> <p>Erin McKey, Director and General Counsel, Criminal Law Policy Section</p>	2023/02/08	48

Organizations and Individuals	Date	Meeting
International Civil Liberties Monitoring Group Timothy McSorley, National Coordinator	2023/02/08	48
As an individual Anand Doobay Michelyne C. St-Laurent	2023/02/13	49

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

B'nai Brith Canada

British Columbia Gurdwaras Council

Herman, Lawrence L.

Ontario Gurdwaras Committee

St-Laurent, Michelyne C.

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 46, 47, 48, 49, 62, 63 and 67](#)) is tabled.

Respectfully submitted,

Randeep Sarai,
Chair

