Extradition Act (1999, c. 18)
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Extradition Act

1999, c. 18

An Act respecting extradition, to amend the Canada Evidence Act, the Criminal Code, the Immigration Act and the Mutual Legal Assistance in Criminal Matters Act and to amend and repeal other Acts in consequence

[Assented to 17th June, 1999]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title
1. This Act may be cited as the Extradition Act.

PART 1
INTERPRETATION

Definitions
2. The definitions in this section apply in this Act.

"Attorney General" « procureur général »
"Attorney General" means the Attorney General of Canada.

"court" « tribunal »
"court" means

(a) in Ontario, the Ontario Court (General Division);

(b) in Quebec, the Superior Court;

(c) in New Brunswick, Manitoba, Alberta and Saskatchewan, the Court of Queen's Bench;

(d) in Nova Scotia, British Columbia, Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; and

(e) in Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court.

"court of appeal" « cour d'appel »
"court of appeal" means

(a) in the Province of Prince Edward Island, the Appeal Division of the Supreme Court; and

(b) in all other provinces, the Court of Appeal.

"extradition agreement" « accord »

"extradition agreement" means an agreement that is in force, to which Canada is a party and that contains a provision respecting the extradition of persons, other than a specific agreement.

"extradition partner" « partenaire »
"extradition partner" means a State or entity with which Canada is party to an extradition agreement, with which Canada has entered into a specific agreement or whose name appears in the schedule.

"International Criminal Court" « Cour pénale internationale »
"International Criminal Court" means the International Criminal Court as defined in subsection 2(1) of the Crimes Against Humanity and War Crimes Act.

"judge" « juge »
"judge" means a judge of the court.

"justice" « juge de paix »
"justice" has the same meaning as in section 2 of the Criminal Code.

"Minister" « ministre »
"Minister" means the Minister of Justice.

"specific agreement" « accord spécifique »
"specific agreement" means an agreement referred to in section 10 that is in force.

"State or entity" « État ou entité »
"State or entity" means

(a) a State other than Canada;

(b) a province, state or other political subdivision of a State other than Canada;

(c) a colony, dependency, possession, protectorate, condominium, trust territory or any territory falling under the jurisdiction of a State other than Canada;

(d) an international criminal court or tribunal; or

(e) a territory.

1999, c. 18, s. 2; 2000, c. 24, s. 47; 2002, c. 7, s. 169.

PART 2
EXTRADITION FROM CANADA

Extraditable Conduct

General principle
3. (1) A person may be extradited from Canada in accordance with this Act and a relevant extradition agreement on the request of an extradition partner for the purpose of prosecuting the person or imposing a sentence on -- or enforcing a sentence imposed on -- the person if

(a) subject to a relevant extradition agreement, the offence in respect of which the extradition is requested is punishable by the extradition partner, by imprisoning or otherwise depriving the person of their liberty for a maximum term of two years or more, or by a more severe punishment; and

(b) the conduct of the person, had it occurred in Canada, would have constituted an offence that is punishable in Canada,

(i) in the case of a request based on a specific agreement, by imprisonment for a maximum term of five years or more, or by a more severe punishment, and

(ii) in any other case, by imprisonment for a maximum term of two years or more, or by a more severe punishment, subject to a relevant extradition agreement.

Conduct determinative
(2) For greater certainty, it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterized by the extradition partner in the same way as it is in Canada.

Extradition of a person who has been sentenced
(3) Subject to a relevant extradition agreement, the extradition of a person who has been sentenced to imprisonment or another deprivation of liberty may only be granted if the portion of the term remaining is at least six months long or a more severe punishment remains to be carried out.

Further proceedings
4. For greater certainty, the discharge of a person under this Act or an Act repealed by section 129 or 130 does not preclude further proceedings, whether or not they are based on the same conduct, with a view to extraditing the person under this Act unless the judge is of the opinion that those further proceedings would be an abuse of process.

Jurisdiction
5. A person may be extradited

(a) whether or not the conduct on which the extradition partner bases its request occurred in the territory over which it has jurisdiction; and

(b) whether or not Canada could exercise jurisdiction in similar circumstances.

Retrospectivity
6. Subject to a relevant extradition agreement, extradition may be granted under this Act whether the conduct or conviction in respect of which the extradition is requested occurred before or after this Act or the relevant extradition agreement or specific agreement came into force.

No immunity
6.1 Despite any other Act or law, no person who is the subject of a request for surrender by the International Criminal Court or by any international criminal tribunal that is established by resolution of the Security Council of the United Nations and whose name appears in the schedule, may claim immunity under common law or by statute from arrest or extradition under this Act.

2000, c. 24, s. 48.

Functions of the Minister

Functions of the Minister
7. The Minister is responsible for the implementation of extradition agreements, the administration of this Act and dealing with requests for extradition made under them.

Publication of Extradition Agreements

Publication in Canada Gazette
8. (1) Unless the extradition agreement has been published under subsection (2), an extradition agreement -- or the provisions respecting extradition contained in a multilateral extradition agreement -- must be published in the Canada Gazette no later than 60 days after it comes into force.

Publication in Canada Treaty Series
(2) An extradition agreement -- or the provisions respecting extradition contained in a multilateral extradition agreement -- may be published in the Canada Treaty Series and, if so published, the publication must be no later than 60 days after it comes into force.

Judicial notice
(3) Agreements and provisions published in the Canada Gazette or the Canada Treaty Series are to be judicially noticed.

Designated States and Entities

Designated extradition partners
9. (1) The names of members of the Commonwealth or other States or entities that appear in the schedule are designated as extradition partners.

Amendments to the schedule
(2) The Minister of Foreign Affairs, with the agreement of the Minister, may, by order, add to or delete from the schedule the names of members of the Commonwealth or other States or entities.

Specific Agreements

Specific agreements
10. (1) The Minister of Foreign Affairs may, with the agreement of the Minister, enter into a specific agreement with a State or entity for the purpose of giving effect to a request for extradition in a particular case.

Inconsistency
(2) For greater certainty, if there is an inconsistency between this Act and a specific agreement, this Act prevails to the extent of the inconsistency.

Evidence
(3) A certificate issued by or under the authority of the Minister of Foreign Affairs to which is attached a copy of a specific agreement entered into by Canada and a State or entity is conclusive evidence of the agreement and its contents without proof of the signature or official character of the person appearing to have signed the certificate or agreement.

Minister's Power to Receive Requests

Request to go to Minister
11. (1) A request by an extradition partner for the provisional arrest or extradition of a person shall be made to the Minister.

Provisional arrest request to go to Minister
(2) A request by an extradition partner for the provisional arrest of a person may also be made to the Minister through Interpol.

Warrant for Provisional Arrest

Minister's approval of request for provisional arrest
12. The Minister may, after receiving a request by an extradition partner for the provisional arrest of a person, authorize the Attorney General to apply for a provisional arrest warrant, if the Minister is satisfied that

(a) the offence in respect of which the provisional arrest is requested is punishable in accordance with paragraph 3(1)(a); and

(b) the extradition partner will make a request for the extradition of the person.

Provisional arrest warrant
13. (1) A judge may, on ex parte application of the Attorney General, issue a warrant for the provisional arrest of a person, if satisfied that there are reasonable grounds to believe that

(a) it is necessary in the public interest to arrest the person, including to prevent the person from escaping or committing an offence;

(b) the person is ordinarily resident in Canada, is in Canada or is on the way to Canada; and

(c) a warrant for the person's arrest or an order of a similar nature has been issued or the person has been convicted.

Contents of the warrant
(2) A provisional arrest warrant must

(a) name or describe the person to be arrested;

(b) set out briefly the offence in respect of which the provisional arrest was requested; and

(c) order that the person be arrested without delay and brought before the judge who issued the warrant or before another judge in Canada.

Execution throughout Canada
(3) A provisional arrest warrant may be executed anywhere in Canada without being endorsed.

Discharge if no proceedings
14. (1) A person who has been provisionally arrested, whether detained or released on judicial interim release, must be discharged

(a) when the Minister notifies the court that an authority to proceed will not be issued under section 15;

(b) if the provisional arrest was made pursuant to a request made under an extradition agreement that contains a period within which a request for extradition must be made and the supporting documents provided,

(i) when the period has expired and the extradition partner has not made the request or provided the documents, or

(ii) when the request for extradition has been made and the documents provided within the period but the Minister has not issued an authority to proceed before the expiry of 30 days after the expiry of that period; or

(c) if the provisional arrest was not made pursuant to a request made under an extradition agreement or was made pursuant to an extradition agreement that does not contain a period within which a request for extradition must be made and the supporting documents provided,

(i) when 60 days have expired after the provisional arrest and the extradition partner has not made the request or provided the documents, or

(ii) when the request for extradition has been made and the documents provided within 60 days but the Minister has not issued an authority to proceed before the expiry of 30 additional days.

Extension
(2) On application of the Attorney General, a judge

(a) may extend a period referred to in subsection (1); or

(b) shall, in the case of a person arrested on the request of the International Criminal Court, extend a period referred to in subsection (1) for the period specified by the Attorney General, not to exceed 30 days.

Release of person
(3) In extending a period under subsection (2), the judge may also grant the person judicial interim release or vary the conditions of their judicial interim release.

1999, c. 18, s. 14; 2000, c. 24, s. 49.

Authority to Proceed

Minister's power to issue
15. (1) The Minister may, after receiving a request for extradition and being satisfied that the conditions set out in paragraph 3(1)(a) and subsection 3(3) are met in respect of one or more offences mentioned in the request, issue an authority to proceed that authorizes the Attorney General to seek, on behalf of the extradition partner, an order of a court for the committal of the person under section 29.

Competing requests
(2) If requests from two or more extradition partners are received by the Minister for the extradition of a person, the Minister shall determine the order in which the requests will be authorized to proceed.

Contents of authority to proceed
(3) The authority to proceed must contain

(a) the name or description of the person whose extradition is sought;

(b) the name of the extradition partner; and

(c) the name of the offence or offences under Canadian law that correspond to the alleged conduct of the person or the conduct in respect of which the person was convicted, as long as one of the offences would be punishable in accordance with paragraph 3(1)(b).

Copy of authority to proceed
(4) A copy of an authority to proceed produced by a means of telecommunication that produces a writing has the same probative force as the original for the purposes of this Part.

Arrest or Summons Following Authority to Proceed

Warrant of arrest or summons
16. (1) The Attorney General may, after the Minister issues an authority to proceed, apply ex parte to a judge in the province in which the Attorney General believes the person is or to which the person is on their way, or was last known to be, for the issuance of a summons to the person or a warrant for the arrest of the person.

When provisionally arrested
(2) If the person has been arrested pursuant to a provisional arrest warrant issued under section 13, the Attorney General need not apply for a summons or warrant under subsection (1).

Issuance of summons or warrant of arrest
(3) The judge to whom an application is made shall issue a summons to the person, or a warrant for the arrest of the person, in accordance with subsection 507(4) of the Criminal Code, with any modifications that the circumstances require.

Execution throughout Canada
(4) A warrant that is issued under this section may be executed, and a summons issued under this section may be served, anywhere in Canada without being endorsed.

Date of hearing -- summons
(5) A summons that is issued under this section must

(a) set a date for the appearance of the person before a judge that is not later than 15 days after its issuance; and

(b) require the person to appear at a time and place stated in it for the purposes of the Identification of Criminals Act.

Effect of appearance
(6) A person appearing as required by subsection (5) is considered, for the purposes only of the Identification of Criminals Act, to be in lawful custody charged with an indictable offence.

Appearance

Appearance
17. (1) A person who is arrested under section 13 or 16 is to be brought before a judge or a justice within twenty-four hours after the person is arrested, but if no judge or no justice is available during this time, the person shall be brought before a judge or a justice as soon as possible.

Appearance before justice
(2) The justice before whom a person is brought under subsection (1) shall order that the person be detained in custody and brought before a judge.

Decision of judge
18. (1) The judge before whom a person is brought following arrest under section 13 or 16 shall

(a) if the person has been arrested on the request of the International Criminal Court, order the detention in custody of the person unless

(i) the person shows cause, in accordance with subsection 522(2) of the Criminal Code, that their detention in custody is not justified, and

(ii) the judge is satisfied that, given the gravity of the alleged offence, there are urgent and exceptional circumstances that justify release -- with or without conditions -- and that the person will appear as required; or

(b) in any other case, order the release, with or without conditions, or detention in custody of the person.

Mandatory adjournment
(1.1) An application for judicial interim release in respect of a person referred to in paragraph (1)(a) shall, at the request of the Attorney General, be adjourned to await receipt of the recommendations of the Pre-Trial Chamber of the International Criminal Court. If the recommendations are not received within six days, the judge may proceed to hear the application.

Recommendations of Pre-Trial Chamber
(1.2) If the Pre-Trial Chamber of the International Criminal Court submits recommendations, the judge shall consider them before rendering a decision.

Review by court of appeal
(2) A decision respecting judicial interim release may be reviewed by a judge of the court of appeal and that judge may

(a) confirm the decision;

(b) vary the decision; or

(c) substitute any other decision that, in the judge's opinion, should have been made.

1999, c. 18, s. 18; 2000, c. 24, s. 50.

Criminal Code
19. Part XVI of the Criminal Code applies, with any modifications that the circumstances require, in respect of a person arrested under section 13 or 16 or to whom a summons has been issued under section 16.

Section 679 of the Criminal Code
20. Section 679 of the Criminal Code applies, with any modifications that the circumstances require, to the judicial interim release of a person pending

(a) a determination of an appeal from an order of committal made under section 29;

(b) the Minister's decision under section 40 respecting the surrender of the person; or

(c) a determination of a judicial review of the Minister's decision under section 40 to order the surrender of the person.

Date of hearing -- provisional arrest
21. (1) If a person has been provisionally arrested, the judge before whom the person is brought shall

(a) order the person to appear before the court from time to time during the period referred to in paragraph 14(1)(b) or (c); and

(b) set a date for the extradition hearing if the Minister has issued an authority to proceed.

Date of hearing after authority to proceed issued
(2) If a person has been arrested or is a person to whom a summons has been issued under section 16, the judge before whom the person is brought shall set a date for the extradition hearing.

Hearing
(3) The judge shall set an early date for the extradition hearing, whether that date is in or out of the prescribed sessions of the court.

Application for transfer
22. (1) On application of the Attorney General or the person arrested or to whom a summons has been issued under section 16, the judge shall, if satisfied that the interests of justice so require, order that the proceedings be transferred to another place in Canada and that the person appear before a judge in that place, and

(a) if the person is detained, that the person be conveyed by a peace officer to the place; and

(b) if the person is not detained or has been released on judicial interim release, that the person be summoned to appear at the place.

Execution throughout Canada
(2) A summons issued under paragraph (1)(b) may be served anywhere in Canada without being endorsed.

Order respecting expenses
(3) If the order under subsection (1) was made on the application of the Attorney General, the judge may order that the Attorney General pay the person's reasonable travel expenses incurred further to the order.

Substitution and Amendment of Authority to Proceed

Substitution of authority to proceed
23. (1) The Minister may substitute another authority to proceed at any time before the extradition hearing begins. All documents issued and orders made by the court apply in respect of the new authority to proceed, unless the court, on application of the person or the Attorney General, orders otherwise.

New date for hearing
(1.1) Where the Minister substitutes another authority to proceed under subsection (1) and the person applies for another date to be set for the beginning of the extradition hearing in order to give the person an opportunity to examine the new authority, the judge may set another date for the hearing.

Amendment of authority to proceed
(2) The judge may, on application of the Attorney General, amend the authority to proceed after the hearing has begun in accordance with the evidence that is produced during the hearing.

Withdrawal of the authority to proceed

(3) The Minister may at any time withdraw the authority to proceed and, if the Minister does so, the court shall discharge the person and set aside any order made respecting their judicial interim release or detention.

Extradition Hearing

Extradition hearing
24. (1) The judge shall, on receipt of an authority to proceed from the Attorney General, hold an extradition hearing.

Application of Part XVIII of the Criminal Code
(2) For the purposes of the hearing, the judge has, subject to this Act, the powers of a justice under Part XVIII of the Criminal Code, with any modifications that the circumstances require.

Competence
25. For the purposes of the Constitution Act, 1982, a judge has, with respect to the functions that the judge is required to perform in applying this Act, the same competence that that judge possesses by virtue of being a superior court judge.

Order restricting publication of evidence
26. Before beginning a hearing in respect of a judicial interim release or an extradition hearing, a judge may, on application by the person or the Attorney General and on being satisfied that the publication or broadcasting of the evidence would constitute a risk to the holding of a fair trial by the extradition partner, make an order directing that the evidence taken not be published or broadcast before the time that the person is discharged or, if surrendered, the trial by the extradition partner has concluded.

Exclusion of person from hearing
27. The presiding judge may make an order excluding any person from the court for all or part of an extradition hearing or hearing in respect of a judicial interim release if the judge is of the opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice to exclude the person.

Power to compel witnesses
28. A judge who presides over an extradition hearing or a hearing in respect of a judicial interim release may compel a witness to attend the hearing and sections 698 to 708 of the Criminal Code apply, with any modifications that the circumstances require.

Order of committal
29. (1) A judge shall order the committal of the person into custody to await surrender if

(a) in the case of a person sought for prosecution, there is evidence admissible under this Act of conduct that, had it occurred in Canada, would justify committal for trial in Canada on the offence set out in the authority to proceed and the judge is satisfied that the person is the person sought by the extradition partner; and

(b) in the case of a person sought for the imposition or enforcement of a sentence, the judge is satisfied that the conviction was in respect of conduct that corresponds to the offence set out in the authority to proceed and that the person is the person who was convicted.

Order of committal
(2) The order of committal must contain

(a) the name of the person;

(b) the offence set out in the authority to proceed for which the committal is ordered;

(c) the place at which the person is to be held in custody; and

(d) the name of the extradition partner.

Discharge of person
(3) A judge shall order the person discharged if the judge does not order their committal under subsection (1).

Relevant date
(4) The date of the authority to proceed is the relevant date for the purposes of subsection (1).

Extradition when person not present at conviction
(5) Subject to a relevant extradition agreement, if a person has been tried and convicted without the person being present, the judge shall apply paragraph (1)(a).

Authority to keep person in custody
30. (1) The order of committal constitutes the authority to keep the person in custody, subject to an order of judicial interim release.

Duration of order
(2) The order of committal remains in force until the person is surrendered or discharged or until a new hearing is ordered under paragraph 54(a).

Rules of Evidence

Definition of "document"
31. For the purposes of sections 32 to 38, "document" means data recorded in any form, and includes photographs and copies of documents.

Evidence
32. (1) Subject to subsection (2), evidence that would otherwise be admissible under Canadian law shall be admitted as evidence at an extradition hearing. The following shall also be admitted as evidence, even if it would not otherwise be admissible under Canadian law:

(a) the contents of the documents contained in the record of the case certified under subsection 33(3);

(b) the contents of the documents that are submitted in conformity with the terms of an extradition agreement; and

(c) evidence adduced by the person sought for extradition that is relevant to the tests set out in subsection 29(1) if the judge considers it reliable.

Exception -- Canadian evidence
(2) Evidence gathered in Canada must satisfy the rules of evidence under Canadian law in order to be admitted.

Record of the case
33. (1) The record of the case must include

(a) in the case of a person sought for the purpose of prosecution, a document summarizing the evidence available to the extradition partner for use in the prosecution; and

(b) in the case of a person sought for the imposition or enforcement of a sentence,

(i) a copy of the document that records the conviction of the person, and

(ii) a document describing the conduct for which the person was convicted.

Other documents -- record of the case
(2) A record of the case may include other relevant documents, including documents respecting the identification of the person sought for extradition.

Certification of record of the case
(3) A record of the case may not be admitted unless

(a) in the case of a person sought for the purpose of prosecution, a judicial or prosecuting authority of the extradition partner certifies that the evidence summarized or contained in the record of the case is available for trial and

(i) is sufficient under the law of the extradition partner to justify prosecution, or

(ii) was gathered according to the law of the extradition partner; or

(b) in the case of a person sought for the imposition or enforcement of a sentence, a judicial, prosecuting or correctional authority of the extradition partner certifies that the documents in the record of the case are accurate.

Authentication not required
(4) No authentication of documents is required unless a relevant extradition agreement provides otherwise.

Record of the case and supplements
(5) For the purposes of this section, a record of the case includes any supplement added to it.

Oath or solemn affirmation
34. A document is admissible whether or not it is solemnly affirmed or under oath.

No proof of signature
35. A document purporting to have been signed by a judicial, prosecuting or correctional authority, or a public officer, of the extradition partner shall be admitted without proof of the signature or official character of the person appearing to have signed it.

Translated documents
36. A translation of a document into one of Canada's official languages shall be admitted without any further formality.

Evidence of identity
37. The following are evidence that the person before the court is the person referred to in the order of arrest, the document that records the conviction or any other document that is presented to support the request:

(a) the fact that the name of the person before the court is similar to the name that is in the documents submitted by the extradition partner; and

(b) the fact that the physical characteristics of the person before the court are similar to those evidenced in a photograph, fingerprint or other description of the person.

Judge's Report

Report of the judge
38. (1) A judge who issues an order of committal of a person to await surrender shall transmit to the Minister the following documents:

(a) a copy of the order;

(b) a copy of the evidence adduced at the hearing that has not already been transmitted to the Minister; and

(c) any report that the judge thinks fit.

Right to appeal
(2) When the judge orders the committal of a person, the judge shall inform the person that they will not be surrendered until after the expiry of 30 days and that the person has a right to appeal the order and to apply for judicial interim release.

Property

Property seized
39. (1) Subject to a relevant extradition agreement, a judge who makes an order of committal may order that any thing that was seized when the person was arrested and that may be used in the prosecution of the person for the offence for which the extradition was requested be transferred to the extradition partner at the time the person is surrendered.

Conditions of order
(2) The judge may include in the order any conditions that the judge considers desirable, including conditions

(a) respecting the preservation and return to Canada of a thing; and

(b) respecting the protection of the interests of third parties.

Powers of Minister

Surrender
40. (1) The Minister may, within a period of 90 days after the date of a person's committal to await surrender, personally order that the person be surrendered to the extradition partner.

When refugee claim
(2) Before making an order under subsection (1) with respect to a person who has made a claim for refugee protection under the Immigration and Refugee Protection Act, the Minister shall consult with the minister responsible for that Act.

Powers of the Minister
(3) The Minister may seek any assurances that the Minister considers appropriate from the extradition partner, or may subject the surrender to any conditions that the Minister considers appropriate, including a condition that the person not be prosecuted, nor that a sentence be imposed on or enforced against the person, in respect of any offence or conduct other than that referred to in the order of surrender.

No surrender
(4) If the Minister subjects surrender of a person to assurances or conditions, the order of surrender shall not be executed until the Minister is satisfied that the assurances are given or the conditions agreed to by the extradition partner.

Extension of time
(5) If the person has made submissions to the Minister under section 43 and the Minister is of the opinion that further time is needed to act on those submissions, the Minister may extend the period referred to in subsection (1) as follows:

(a) if the person is the subject of a request for surrender by the International Criminal Court, and an issue has been raised as to the admissibility of the case or the jurisdiction of that Court, for a period ending not more than 45 days after the Court's ruling on the issue; or

(b) in any other case, for one additional period that does not exceed 60 days.

Notice of extension of time
(6) If an appeal has been filed under section 50 and the Minister has extended the period referred to in subsection (1), the Minister shall file with the court of appeal a notice of extension of time before the expiry of that period.

1999, c. 18, s. 40; 2000, c. 24, s. 51; 2001, c. 27, s. 250.

When appeal pending
41. (1) The Minister may postpone the making of the order of surrender if

(a) an appeal has been filed under section 50;

(b) the Minister files a notice of postponement with the court of appeal before the expiry of the period referred to in subsection 40(1); and

(c) the order is made not later than 45 days after the date of the decision of the court of appeal.

No further deferral of appeal
(2) When the Minister has filed a notice of postponement with the court of appeal under paragraph (1)(b), that court may not defer the hearing of the appeal under subsection 51(2).

Amendments
42. The Minister may amend a surrender order at any time before its execution.

Submissions

Submissions
43. (1) The person may, at any time before the expiry of 30 days after the date of the committal, make submissions to the Minister in respect of any ground that would be relevant to the Minister in making a decision in respect of the surrender of the person.

Late acceptance of submissions
(2) The Minister may accept submissions even after the expiry of those 30 days in circumstances that the Minister considers appropriate.

Reasons for Refusal

When order not to be made
44. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that

(a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or

(b) 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.

When Minister may refuse to make order
(2) The Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner.

Refusal in extradition agreement
45. (1) The reasons for the refusal of surrender contained in a relevant extradition agreement, other than a multilateral extradition agreement, or the absence of reasons for refusal in such an agreement, prevail over sections 46 and 47.

Exception -- multilateral extradition agreement
(2) The reasons for the refusal of surrender contained in a relevant multilateral extradition agreement prevail over sections 46 and 47 only to the extent of any inconsistency between either of those sections and those provisions.

When order not to be made
46. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that

(a) the prosecution of a person is barred by prescription or limitation under the law that applies to the extradition partner;

(b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or

(c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character.

Restriction
(2) For the purpose of subparagraph (1)(c), conduct that 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. The following conduct also does not constitute a political offence or an offence of a political character:

(a) murder or manslaughter;

(b) inflicting serious bodily harm;

(c) sexual assault;

(d) kidnapping, abduction, hostage-taking or extortion;

(e) using explosives, incendiaries, devices or substances in circumstances in which human life is likely to be endangered or serious bodily harm or substantial property damage is likely to be caused; and

(f) an attempt or conspiracy to engage in, counselling, aiding or abetting another person to engage in, or being an accessory after the fact in relation to, the conduct referred to in any of paragraphs (a) to (e).

When Minister may refuse to make order
47. The Minister may refuse to make a surrender order if the Minister is satisfied that

(a) the person would be entitled, if that person were tried in Canada, to be discharged under the laws of Canada because of a previous acquittal or conviction;

(b) the person was convicted in their absence and could not, on surrender, have the case reviewed;

(c) the person was less than eighteen years old at the time of the offence and the law that applies to them in the territory over which the extradition partner has jurisdiction is not consistent with the fundamental principles governing the Youth Criminal Justice Act;

(d) the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada against the person; or

(e) none of the conduct on which the extradition partner bases its request occurred in the territory over which the extradition partner has jurisdiction.

1999, c. 18, s. 47; 2002, c. 1, s. 190.

When grounds for refusal do not apply
47.1 The grounds for refusal set out in sections 44, 46 and 47 do not apply in the case of a person who is the subject of a request for surrender by the International Criminal Court.

2000, c. 24, s. 52.

Discharge
48. (1) If the Minister decides not to make a surrender order, the Minister shall order the discharge of the person.

When refugee claim

(2) When the Minister orders the discharge of a person and the person has made a claim for refugee protection under the Immigration and Refugee Protection Act, the Minister shall send copies of all relevant documents to the minister responsible for that Act.

1999, c. 18, s. 48; 2001, c. 27, s. 251.

Appeal

Appeal

49. A person may appeal against an order of committal -- or the Attorney General, on behalf of the extradition partner, may appeal the discharge of the person or a stay of proceedings -- to the court of appeal of the province in which the order of committal, the order discharging the person or the order staying the proceedings was made,

(a) on a ground of appeal that involves a question of law alone;

(b) on a ground of appeal that involves a question of fact or a question of mixed law and fact, with leave of the court of appeal or a judge of the court of appeal; or

(c) on a ground of appeal not set out in paragraph (a) or (b) that appears to the court of appeal to be a sufficient ground of appeal, with leave of the court of appeal.

Notice of appeal

50. (1) An appellant who proposes to appeal to a court of appeal or to obtain the leave of that court to appeal must give notice of appeal or notice of the application for leave to appeal not later than 30 days after the decision of the judge with respect to the committal or discharge of the person, or the stay of proceedings, as the case may be, in any manner that may be directed by the rules of court.

Extension of time

(2) The court of appeal or a judge of the court of appeal may, either before or after the expiry of the 30 days referred to in subsection (1), extend the time within which notice of appeal or notice of an application for leave to appeal may be given.

Hearing of appeal

51. (1) An appeal under this Act shall be scheduled for hearing by the court of appeal at an early date whether that date is in or out of the prescribed sessions of that court.

Deferral of appeal

(2) The hearing of an appeal against an order of committal may be deferred by the court of appeal until the Minister makes a decision in respect of the surrender of the person under section 40.

Provisions of the Criminal Code to apply

52. (1) Sections 677, 678.1, 682 to 685 and 688 of the Criminal Code apply, with any modifications that the circumstances require, to appeals under this Act.

Rules

(2) Unless inconsistent with the provisions of this Act, rules made by the court of appeal under section 482 of the Criminal Code in relation to appeals to that court under that Act apply, with any modifications that the circumstances require, to appeals under this Act.

Powers of the court of appeal

53. On the hearing of an appeal against an order of committal of a person, the court of appeal may

(a) allow the appeal, in respect of any offence in respect of which the person has been committed, if it is of the opinion

(i) that the order of committal should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) that the order of committal should be set aside on the ground of a wrong decision on a question of law, or

(iii) that, on any ground, there was a miscarriage of justice; or

(b) dismiss the appeal

(i) if it does not allow the appeal on any ground referred to in paragraph (a), or

(ii) even though the court of appeal is of the opinion that on the ground referred to in subparagraph (a)(ii) the appeal may be decided in favour of the appellant, if it is of the opinion that no substantial wrong or miscarriage of justice has occurred and the order of committal should be upheld.

Effect of allowing appeal
54. If the court of appeal allows an appeal under paragraph 53(a), it shall

(a) set aside the order of committal and

(i) discharge the person, or

(ii) order a new extradition hearing; or

(b) amend the order of committal to exclude an offence in respect of which the court is of the opinion that the person has not been properly committed on a ground referred to in subparagraph 53(a)(i), (ii) or (iii).

Powers
55. (1) On the hearing of an appeal against the discharge of a person or against a stay of proceedings, the court of appeal may

(a) allow the appeal and set aside the order of discharge or stay, if it is of the opinion

(i) that the order of discharge should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) that the order of discharge or the stay of proceedings should be set aside on the ground of a wrong decision on a question of law, or

(iii) that, on any ground, there was a miscarriage of justice; or

(b) dismiss the appeal.

Order for new extradition hearing or committal
(2) The court of appeal may, if it sets aside a stay of proceedings, order a new extradition hearing. The court of appeal may, if it sets aside an order of discharge, order a new extradition hearing or order the committal of the person.

Deferral of Supreme Court appeal
56. (1) The Supreme Court may defer, until the Minister makes a decision with respect to the surrender of the person under section 40, the hearing of an application for leave to appeal, or the hearing of an appeal, from a decision of the court of appeal on an appeal taken under section 49, or on any other appeal in respect of a matter arising under this Act.

Deferral of Supreme Court appeal
(2) The Supreme Court may also, if an application for judicial review is made under section 57 or otherwise, defer the hearing until the court of appeal makes its determination on the application.

Judicial Review of Minister's Order

Review of order

57. (1) Despite the Federal Courts Act, the court of appeal of the province in which the committal of the person was ordered has exclusive original jurisdiction to hear and determine applications for judicial review under this Act, made in respect of the decision of the Minister under section 40.

Application
(2) An application for judicial review may be made by the person.

Time limitation
(3) An application for judicial review shall be made, in accordance with the rules of court of the court of appeal, within 30 days after the time the decision referred to in subsection (1) was first communicated by the Minister to the person, or within any further time that the court of appeal, either before or after the expiry of those 30 days, may fix or allow.

Section 679 of the Criminal Code
(4) Section 679 of the Criminal Code applies, with any modifications that the circumstances require, to an application for judicial review.

Hearing of application
(5) An application for judicial review shall be scheduled for hearing by the court of appeal at an early date whether that date is in or out of the prescribed sessions of that court.

Powers of court of appeal
(6) On an application for judicial review, the court of appeal may

(a) order the Minister to do any act or thing that the Minister has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, quash, set aside, set aside and refer back for determination in accordance with any directions that it considers appropriate, prohibit or restrain the decision of the Minister referred to in subsection (1).

Grounds of review
(7) The court of appeal may grant relief under this section on any of the grounds on which the Federal Court may grant relief under subsection 18.1(4) of the Federal Courts Act.

Defect in form or technical irregularity
(8) If the sole ground for relief established in an application for judicial review is a defect in form or a technical irregularity, the court of appeal may

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; or

(b) in the case of a defect in form or a technical irregularity in the decision, make an order validating the order, to have effect from the time and on the terms that it considers appropriate.

One hearing by court of appeal
(9) If an appeal under section 49 or any other appeal in respect of a matter arising under this Act is pending, the court of appeal may join the hearing of that appeal with the hearing of an application for judicial review.

Provincial rules of judicial review apply
(10) Unless inconsistent with the provisions of this Act, all laws, including rules, respecting judicial review in force in the province of the court of appeal apply, with any modifications that the circumstances require, to applications under this section.

1999, c. 18, s. 57; 2002, c. 8, s. 141.

Order of Surrender

Contents of the surrender order
58. An order of surrender must

(a) contain the name of the person who is to be surrendered;

(b) describe the offence in respect of which the extradition is requested, the offence for which the committal was ordered or the conduct for which the person is to be surrendered;

(c) state the extradition partner to which the person is to be conveyed;

(d) direct the person who has custody of the person to be surrendered to deliver them into the custody of the person or a member of the class of persons referred to in paragraph (e);

(e) designate the person or class of persons authorized for the purposes of section 60;

(f) set out any assurances or conditions to which the surrender is subject;

(g) fix, in the case of postponement of surrender under section 64, the period of time at or before the expiry of which the person is to be surrendered; and

(h) fix, in the case of a temporary surrender under section 66,

(i) the period of time at or before the expiry of which the person to be surrendered must be returned to Canada, and

(ii) the period of time at or before the expiry of which final surrender shall take place.

Surrender for other offences
59. Subject to a relevant extradition agreement, the Minister may, if the request for extradition is based on more than one offence, order the surrender of a person for all the offences even if not all of them fulfil the requirements set out in section 3, if

(a) the person is being surrendered for at least one offence that fulfils the requirements set out in section 3; and

(b) all the offences relate to conduct that, had it occurred in Canada, would have constituted offences that are punishable under the laws of Canada.

Power to convey
60. On the execution of a surrender order, the person or persons designated under paragraph 58(e) shall have the authority to receive, hold in custody and convey the person into the territory over which the extradition partner has jurisdiction.

Escape
61. (1) If the person escapes while in custody, the law that applies with respect to a person who is accused or convicted of a crime against the laws of Canada and who escapes applies with respect to the person.

Arrest
(2) If the person escapes while in custody, the person or member of the class of persons having custody of the person has the power to arrest them in fresh pursuit.

Delay before surrender
62. (1) No person may be surrendered

(a) until a period of 30 days has expired after the date of the committal for surrender; or

(b) if an appeal or a judicial review in respect of a matter arising under this Act, or any appeal from an appeal or judicial review, is pending, until after the date of the final decision of the court on the appeal or judicial review.

Waiver of period of time

(2) The person may waive the period referred to in paragraph (1)(a) if they do so in writing.

Place of surrender
63. A surrender may take place at any place within or outside Canada that is agreed to by Canada and the extradition partner.

Postponement of surrender
64. (1) Unless the Minister orders otherwise, a surrender order made in respect of a person accused of an offence within Canadian jurisdiction or who is serving a sentence in Canada after a conviction for an offence, other than an offence with respect to the conduct to which the order relates does not take effect until the person has been discharged, whether by acquittal, by expiry of the sentence or otherwise.

Offence before or after surrender
(2) For greater certainty, the person need not have been accused of the offence within Canadian jurisdiction before the surrender order was made.

Return to Canada
65. If a person returns to Canada after surrender before the expiry of a sentence that they were serving in Canada at the time of surrender, the remaining part of the sentence must be served.

Temporary Surrender

Temporary surrender
66. (1) The Minister may order the temporary surrender to an extradition partner of a person who is ordered committed under section 29 while serving a term of imprisonment in Canada so that the extradition partner may prosecute the person or to ensure the person's presence in respect of appeal proceedings that affect the person, on condition that the extradition partner give the assurances referred to in subsections (3) and (4).

Time limits
(2) An order of temporary surrender is subject to the time limits set out in subsections 40(1) and (5) and paragraph 41(1)(c).

Assurances
(3) The Minister may not order temporary surrender under subsection (1) unless the extradition partner gives an assurance that the person will remain in custody while temporarily surrendered to the extradition partner and

(a) in the case of temporary surrender for a trial, that the person will be returned within 30 days after the completion of the trial, unless a relevant extradition agreement provides for another time limit; and

(b) in the case of temporary surrender for an appeal, that the person will be returned within 30 days after the completion of the proceedings for which the presence of the person was required, unless a relevant extradition agreement provides for another time limit.

Time limit
(4) The Minister may require the extradition partner to give an assurance that the person will be returned no later than a specified date or that the person will be returned on request of the Minister.

Assurances in extradition agreements
(5) Any assurance referred to in subsections (3) and (4) that is included in a relevant extradition agreement need not be repeated as a specific assurance.

Final surrender after temporary surrender
(6) A person shall, subject to subsection (7), be surrendered to the extradition partner without a further request for extradition after the person

(a) has been temporarily surrendered;

(b) has been convicted by the extradition partner and had a term of imprisonment imposed on them;

(c) has been returned to Canada under subsection (4); and

(d) has finished serving the portion of the sentence that they were serving in custody in Canada at the time of the temporary surrender, unless the Minister orders that they be surrendered earlier.

No final surrender if circumstances warrant
(7) The Minister may, in circumstances that the Minister considers appropriate, revoke the surrender order and order the discharge of the person.

Notice
(8) The authority who has custody of the person to be surrendered under subsection (6) shall give the Minister reasonable notice of the time when the portion of the person's sentence to be served in custody is to expire.

Final surrender when Canadian sentence expires
(9) When the sentence that the person is serving in Canada expires during the period during which the person is temporarily surrendered to an extradition partner, the surrender is considered to be a final surrender.

Waiver of return
(10) The Minister may, after consultation with the Solicitor General of Canada or the appropriate provincial minister responsible for corrections, waive the return of the person by the extradition partner.

Final surrender despite subsection 3(3)
(11) A person may be surrendered under subsection (6) even if the term of imprisonment imposed by the extradition partner, or the portion of the term remaining to be served, is less than that required by subsection 3(3).

Order for surrender
67. An order of surrender prevails over a prior warrant or other order under which the person to whom it applies is otherwise detained in Canada or at liberty under terms and conditions.

Calculation of sentence
68. For the purposes of calculating a sentence that a person to whom an order of temporary surrender applies is serving in Canada at the time of the temporary surrender, the person

(a) is credited with any time that is served in custody outside Canada under a temporary surrender order; and

(b) remains eligible for remission in accordance with the laws of the correctional system under which the person was serving the sentence in Canada.

Remedy

Remedy in case of delay
69. A judge of the superior court of the province in which the person is detained who has the power to grant a writ of habeas corpus, may, on application made by or on behalf of the person, and on proof that reasonable notice of the intention to make the application has been given to the Minister, order the person to be discharged out of custody unless sufficient cause is shown against the discharge if

(a) the Minister has not made an order of surrender under section 40

(i) before the expiry of the period referred to in subsection 40(1) and any additional period referred to in subsection 40(5), or

(ii) if a notice of postponement has been filed under paragraph 41(1)(b), before the expiry of 45 days after the date of the decision of the court of appeal referred to in paragraph 41(1)(c); or

(b) the person is not surrendered and conveyed to the extradition partner

(i) within 45 days after the order of surrender is made by the Minister under section 40, or

(ii) if an appeal or judicial review in respect of any matter arising under this Act, or an appeal from such an appeal or judicial review, is pending, within 45 days after the final decision of the court is made,

over and above, in any case referred to in subparagraph (i) or (ii), the time required to convey the person to the extradition partner.

Consent

Consent to committal
70. (1) A person may, at any time after the issuance of an authority to proceed, consent, in writing and before a judge, to committal.

Judge to order committal
(2) A judge before whom a person consents under subsection (1) shall

(a) order the committal of the person into custody to await surrender to the extradition partner; and

(b) transmit a copy of the consent to the Minister.

Consent to surrender
71. (1) A person may, at any time after arrest or appearance, consent, in writing and before a judge, to being surrendered.

Judge to order surrender
(2) A judge before whom a person consents to being surrendered shall

(a) order the committal of the person into custody to await surrender to the extradition partner; and

(b) transmit a copy of the consent to the Minister.

When Minister receives consent
(3) The Minister may, as soon as is feasible after receiving a consent to surrender, personally order that the person be surrendered to the extradition partner.

Sections not applicable
(4) When a person consents to being surrendered to the extradition partner, the following sections do not apply:

(a) section 43 (submissions to the Minister);

(b) section 44 (reasons for refusal);

(c) section 48 (discharge of person);

(d) section 57 (judicial review of Minister's decision); and

(e) paragraph 62(1)(a) (delay before surrender).

Waiver of Extradition

Waiving extradition
72. (1) A person may, at any time after arrest or appearance, waive extradition in writing and before a judge.

Judge to inform person

(2) A judge before whom a person gives a waiver under subsection (1) must inform the person

(a) of the consequences of the waiver including the consequences of waiving the protection of specialty; and

(b) that they will be conveyed without delay to the extradition partner.

Judge to order conveyance
(3) The judge shall

(a) order the conveyance in custody of the person to the extradition partner; and

(b) transmit a copy of the waiver and the order to the Minister.

Conveyance order
(4) The conveyance order must

(a) contain the name of the person who is to be conveyed; and

(b) state the extradition partner to which the person is to be conveyed.

Escape
73. (1) If the person escapes while in custody for conveyance, the law that applies with respect to a person who is accused or convicted of a crime against the laws of Canada and who escapes applies with respect to the person.

Arrest
(2) If the person escapes while in custody for conveyance, the person in whose custody the person is has the power to arrest them in fresh pursuit.

Transit

Transit
74. (1) The Minister may consent to the transit in Canada of a person surrendered by one State or entity to another, subject to any terms and conditions that the Minister considers appropriate.

Consent to transit
(2) A consent to transit constitutes authority to the officer of the surrendering State or entity or the receiving State or entity to keep the person in custody while in Canada.

Sections to apply
(3) Sections 58 (contents of surrender order), 60 (power to convey), 61 (escape) and 69 (remedy in case of delay) apply, with any modifications that the circumstances require, in respect of the consent to transit.

Special authorization
75. (1) The Minister may, in order to give effect to a request for consent to transit, authorize a person in a State or entity who is inadmissible under the Immigration and Refugee Protection Act to come into Canada at a place designated by the Minister and to go to and remain in a place in Canada so designated for the period specified by the Minister. The Minister may make the authorization subject to any conditions that the Minister considers desirable.

Variation of authorization
(2) The Minister may vary the terms of an authorization granted under subsection (1) and, in particular, may extend the period of time during which the person is authorized to remain in a place in Canada.

Non-compliance with conditions of authorization
(3) A person in respect of whom an authorization is granted under subsection (1) and who is found in a place in Canada other than the place designated in the authorization or in any place in Canada after the

expiry of the period of time specified in the authorization or who fails to comply with some other condition of the authorization is, for the purposes of the Immigration and Refugee Protection Act, deemed to be a person who entered Canada as a temporary resident and remains in Canada after the period authorized for their stay.

1999, c. 18, s. 75; 2001, c. 27, s. 252.

Unscheduled landing
76. If a person being extradited or surrendered from one State or entity to another arrives in Canada without prior consent to transit, a peace officer may, at the request of a public officer who has custody of the person while the person is being conveyed,

(a) if the person is being surrendered to the International Criminal Court, hold the person in custody for a maximum period of 96 hours pending receipt by the Minister of a request for a consent to transit from that Court; or

(b) in any other case, hold the person in custody for a maximum period of 24 hours pending receipt by the Minister of a request for a consent to transit from the requesting State or entity.

1999, c. 18, s. 76; 2000, c. 24, s. 53.

PART 3
EXTRADITION TO CANADA

Definition of "competent authority"
77. In this Part, "competent authority" means

(a) in respect of a prosecution or imposition of a sentence -- or of a disposition under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985 -- the Attorney General, or the Attorney General of a province who is responsible for the prosecution of the case; and

(b) in respect of the enforcement of a sentence or a disposition under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985,

(i) the Solicitor General of Canada, if the person would serve the sentence in a penitentiary, or

(ii) the appropriate provincial minister responsible for corrections, in any other case.

1999, c. 18, s. 77; 2002, c. 1, s. 191.

Request by Canada for extradition
78. (1) The Minister, at the request of a competent authority, may make a request to a State or entity for the extradition of a person for the purpose of prosecuting the person for -- or imposing or enforcing a sentence, or making or enforcing a disposition under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, in respect of -- an offence over which Canada has jurisdiction.

Request for provisional arrest
(2) The Minister, at the request of a competent authority, may make a request to a State or entity for the provisional arrest of the person.

1999, c. 18, s. 78; 2002, c. 1, s. 192.

Order in respect of evidence
79. (1) A judge may, for the purposes of acquiring evidence for a request for extradition, on the ex parte application of a competent authority, make any order that is necessary to

(a) secure the attendance of a witness at any place designated by the judge;

(b) secure the production as evidence of data that is recorded in any form;

(c) receive and record the evidence; and

(d) certify or authenticate the evidence in a manner and form that is required by the requested State or entity.

Part XXII of the Criminal Code to apply
(2) Part XXII of the Criminal Code applies, with any modifications that the circumstances require, to orders under subsection (1).

Specialty if person is in Canada
80. Subject to a relevant extradition agreement, a person who has been extradited to Canada by a requested State or entity shall not, unless the person has voluntarily left Canada after surrender or has had a reasonable opportunity of leaving Canada,

(a) be detained or prosecuted, or have a sentence imposed or executed, or a disposition made or executed under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, in Canada in respect of an offence that is alleged to have been committed, or was committed, before surrender other than

(i) the offence in respect of which the person was surrendered or an included offence,

(ii) another offence in respect of which the requested State or entity consents to the person being detained or prosecuted, or

(iii) another offence in respect of which the person consents to being detained or prosecuted; or

(b) be detained in Canada for the purpose of being surrendered to another State or entity for prosecution or for imposition or execution of a sentence in respect of an offence that is alleged to have been committed, or was committed, before surrender to Canada, unless the requested State or entity consents.

1999, c. 18, s. 80; 2002, c. 1, s. 193.

Conveyance of surrendered person
81. (1) A person who is surrendered to Canada by a requested State or entity may be brought into Canada by an agent of the requested State or entity if the Minister so authorizes and be delivered to an appropriate authority to be dealt with according to law.

Power to convey
(2) On the execution of a surrender order, the authorized agent of the requested State or entity shall have the authority to hold the person in custody in Canada until delivery under subsection (1).

Escape
(3) If the person escapes while in custody, the law that applies with respect to a person who is accused or convicted of a crime against the laws of Canada and who escapes applies with respect to the person.

Arrest
(4) If the person escapes, the authorized agent of the requested State or entity has the power to arrest them in fresh pursuit.

Order of detention for temporary surrender
82. (1) Subject to subsection (2), a judge shall, on application of the competent authority made at any time before the temporary surrender, order the detention in custody of a person who is serving a term of imprisonment or has otherwise lawfully been deprived of their liberty in a requested State or entity and whose temporary surrender Canada has requested for the purpose of prosecution or appeal.

Time limit
(2) The order must contain a provision that the person will not be detained in custody after

(a) a date specified in the order;

(b) in the case of surrender for a trial, 45 days after the completion of the trial; or

(c) in the case of surrender for an appeal, 30 days after the completion of the proceedings for which the presence of the person was required.

Order of detention to prevail
(3) An order made under subsection (1) prevails over an order made by a Canadian court, a judge of a Canadian court, a Canadian justice of the peace or any other person who has power in Canada to compel the appearance of a person, in respect of anything that occurred before the person is transferred to Canada.

Variation of detention order
(4) The judge who made the detention order or another judge may vary its terms and conditions and, in particular, may extend the duration of the detention.

Return
(5) Subject to subsection (6), the person shall be returned to the requested State or entity on completion of the proceedings in Canada for which the person was temporarily surrendered or on the expiry of the period set out in the order, whichever is sooner.

Return if right of appeal
(6) The person shall not be returned to the requested State or entity

(a) if the person has been convicted in Canada, before 30 days after the conviction, unless the person or the competent authority declares that there will be no appeal; and

(b) if the person has been acquitted, before 30 days after the acquittal, unless the competent authority declares that there will be no appeal.

Return for appeal
(7) The court of appeal may, on application, recommend that the Minister request another temporary surrender of a person who has been returned to the requested State or entity after trial, if the court of appeal is satisfied that the interests of justice require their presence for the appeal.

Commencement of sentence
83. (1) Subject to subsection (3), the sentence or disposition of a person who has been temporarily surrendered and who has been convicted and sentenced, or found guilty and sentenced, in Canada, or in respect of whom a disposition has been made under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, does not commence until their final extradition to Canada.

Warrant of committal
(2) The warrant of committal issued under the Criminal Code in respect of the person must state that the person is to be committed to custody to serve the sentence or disposition immediately on their final extradition to Canada.

If concurrent sentences ordered
(3) The sentencing judge may order that the person's sentence, or the disposition under the Young Offenders Act, chapter Y-1 of the Revised Statutes of Canada, 1985, be executed concurrently with the sentence they are serving in the requested State or entity, in which case the warrant of committal or order of disposition shall state that the person is to be committed to custody under subsection (2) only for any portion of the sentence or disposition remaining at the time of their final extradition to Canada.

1999, c. 18, s. 83; 2002, c. 1, s. 194.

PART 4
TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND RELATED AMENDMENTS AND REPEALS

Transitional Provisions

Cases pending -- former Extradition Act

84. The Extradition Act repealed by section 129 of this Act applies to a matter respecting the extradition of a person as though it had not been repealed, if the hearing in respect of the extradition had already begun on the day on which this Act comes into force.

Cases pending -- Fugitive Offenders Act

85. The Fugitive Offenders Act repealed by section 130 of this Act applies to a matter respecting the return under that Act of a person as though it had not been repealed, if the hearing before the provincial court judge in respect of the return had already begun on the day on which this Act comes into force.

Consequential Amendments

86. to 88. [Amendments]

Related Amendments

89. to 128. [Amendments]

Repeals

129. and 130. [Repeals]

SCHEDULE

(Sections 2 and 9)

STATES OR ENTITIES DESIGNATED AS EXTRADITION PARTNERS

Antigua and Barbuda

Australia

The Bahamas

Barbados

Botswana

Costa Rica

Ghana

Grenada

Guyana

The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Resolution 955 (1994) of the Security Council of the United Nations

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law Committed in the Territory of the Former Yugoslavia since 1991, established by Resolution 827 (1993) of the Security Council of the United Nations

Jamaica

Japan

Lesotho

Maldives

Malta

Mauritius

Namibia

Nauru

New Zealand

Papua New Guinea

Singapore

Solomon Islands

South Africa

St. Kitts & Nevis

St. Lucia

St. Vincent & The Grenadines

Swaziland

Trinidad and Tobago

Tuvalu

United Kingdom of Great Britain and Northern Ireland

Vanuatu

Zimbabwe