NOVA SCOTIA COURT OF APPEAL
Citation: *Lunn v. Canada (Justice)*, 2016 NSCA 49

Date: 20160608
Docket: CA 443641
Registry: Halifax

Between:

Cyril Gordon Lunn

Applicant

v.

Minister of Justice (Canada)

Respondent

Judges:	MacDonald, C.J.N.S., Farrar and Bourgeois, JJ.A.
Appeal Heard:	April 13, 2016, in Halifax, Nova Scotia
Held:	Application dismissed, per reasons for judgment of MacDonald, C.J.N.S.; Farrar and Bourgeois, JJ.A. concurring
Counsel:	Christopher I. Robinson, for the applicant Thomas Beveridge and Patricia MacPhee, for the respondent

Reasons for judgment:

[1] The applicant, Cyril Gordon Lunn, challenges the Federal Justice Minister's decision to surrender him to the United States to face bankruptcy fraud charges. Ancillary to this, he seeks further disclosure.

BACKGROUND

From Poverty to Wealth to Bankruptcy

[2] Mr. Lunn just turned 68. At 15, he left school and his Nova Scotia home to seek a better life in Toronto. But he stayed there for just a year, convinced that, in the early 1960's, Boston was the place to be. From a financial perspective at least, he was right. Despite his lack of education, hard work and obvious intelligence made him quite rich. His lawyer explained it this way in his submissions to the Minister:

> Cyril spent most of the rest of his working life in the U.S. where he distinguished himself as a hard working man, who, at an unprecedented young age, became the foreman on many construction jobs. Never inclined to shy away from hard work, Cyril gradually began to work for himself doing construction related jobs in the greater Boston area until he was able to begin buying properties, renovating properties, buying and selling land, operating heavy equipment, and more. He became well known as a guy who got jobs done on time and on budget and with that reputation Cyril gradually became professionally and financially successful in the construction/renovation industry at a particularly prolific time in the property development business in the Boston area.

[3] However, in 2001 Mr. Lunn declared bankruptcy. What led to this? Well that depends upon whom you ask.

[4] According to Mr. Lunn, he was embezzled by a "cunning and cut throat" common law partner, Ms. Christine Morrissey, with her "surreptitious corporate mischief". His lawyer explained to the Minister:

> In the midst of that success in the U.S., Cyril had a common law partner (not recognized in Massachusetts), Christine, who was also Cyril's employee. She, too, was very smart, but she was cunning and cut throat in a way Cyril could not later have imagined. It must be remembered, Cyril left school at age 15, junior high school age, and, by his own admission, was almost illiterate during much of this successful financial period. Cyril relied entirely on Christine for all of the

> writing, reading, and business administration matters related to his business. Cyril worked 7 days a week, almost never stopping except for a few hours of sleep at night. He needed a trustworthy and hard working business employee; something he thought he found in Christine. Cyril did the hard labour in the field. Christine ran the office including all clerical and administration work, handling the phones, faxes, and letters, banking and finance, cheque writing, and more. That relationship eventually broke down when Christine and Cyril parted ways, but not before Cyril put Christine through law school, something he did because he could see from his own declining health an end to his working days in the near future and he wanted to be sure that Christine was well positioned to look after her needs and those of her family in the aftermath of Cyril's ability to earn an income. It must be stated that throughout his business life, Cyril supported his parents and other family members in both Canada and the U.S., and supported Christine and her family in the U.S. He worked doggedly hard all the time so that the people around him could be furnished with better lives.
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> After putting Christine through law school, she eventually became a successful lawyer in Boston having used her legal skills to take from Cyril money, companies, land, etc. This, unbeknownst to Cyril, occurred over an extended period of time and Cyril was entirely in the dark throughout. When asked how he could let this happen, Cyril explains that he trusted Christine completely. He needed her entirely. She could read and write and he relied on her for everything related to his businesses. He had no idea she was embezzling from him and setting him up for future financial failure. Cyril prided himself on being able to do the work of several men. He was not interested so much in paperwork or corporate management. That, he left to his employee Christine.
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> As a consequence of Christine's surreptitious corporate mischief, Cyril had to declare personal and corporate bankruptcy.

[5] Yet, according to United States prosecutors, Mr. Lunn had clandestinely funnelled $3-4 million U.S. back to Canada just before declaring bankruptcy. The 2006 indictment, for which the U.S. seeks extradition, alleges:

> 1. At all times material to this Indictment, defendant CYRIL GORDON LUNN ("LUNN") was an individual living in Pepperell, Massachusetts and Nova Scotia, Canada.
>
> 2. Beginning in or about 1985 and continuing until a date unknown, LUNN was the owner of CY Realty Corporation, a construction and land development business located in Pepperell, Massachusetts.
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> 3. Beginning on a date unknown in or about 1998, LUNN began to transfer cash which he owned in the United States to Canada. LUNN transferred the cash personally and with the assistance of others. LUNN obtained the funds from bank accounts and safe deposit boxes which he had in the United States. LUNN's transfer of his cash continued until a date unknown, but at least until September

> 2001. LUNN caused some or all of the funds which he transferred to Canada to be deposited in safe deposit boxes in Canada. In total, LUNN transferred approximately $3-4 million in cash from the United States to Canada.
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> 4. As of October 21, 2001, LUNN's assets included approximately $3-4 million in United States and Canadian currency.
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> 5. On or about August 18, 2001, LUNN caused CY Realty Corporation to file in the United States Bankruptcy Court for the District of Massachusetts in Worcester a bankruptcy petition for liquidation under Chapter 7 of the Bankruptcy Code. The case was captioned In re: CY Realty Corp., case number 01-45240. Lunn did not disclose at any time during the CY Realty Corporation bankruptcy that he owned approximately $3-4 million in United States and Canadian currency.
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> 6. On or about October 21, 2001, LUNN caused to be filed in his own name in the United States Bankruptcy Court for the District of Massachusetts in Worcester a bankruptcy petition for liquidation under Chapter 7 of the Bankruptcy Code. The case was captioned In re: Cyril Gordon Lunn, case number 01-46312.
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> 7. On or about October 21, 2001, LUNN caused to be filed in the Bankruptcy Court a Statement of Financial Affairs and schedules of his property and debts. Those documents purported to list all of LUNN's assets and debts and to provide additional information concerning his assets and business affairs. Each of those documents was declared to be true by LUNN under penalty of perjury, and signed on or about October 15, 2001.
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> 8. In the documents he caused to be filed with the Bankruptcy Court, LUNN failed to disclose his ownership of approximately $3-4 million in United States and Canadian currency.

[6] Regardless of which version is true, we do know two things. Firstly, in his 2001 bankruptcies, Mr. Lunn's reported debts exceeded the modest assets he disclosed. Secondly, he returned to Canada a year later.

The Criminal Process

[7] In 2004, Mr. Lunn's bankruptcy trustee got wind of a family law dispute in Nova Scotia where Mr. Lunn purportedly testified to having transferred $3-4 million U.S. into Canada prior to his bankruptcy. This prompted a criminal investigation that in September of 2006 culminated in the charges for which the U.S. now seeks surrender.

[8] Meanwhile, in the Fall of 2004 (upon becoming aware of the investigation) Mr. Lunn travelled by car to the U.S. with a friend, ostensibly to address the

matter. In the process, he ended up being charged with smuggling undeclared money into the U.S. He was released on bail, including a condition that he remain in the U.S. However, in early 2005, Mr. Lunn breached that condition and fled to Canada where he has been ever since. In his submission to the Minister, he rationalizes his actions this way:

> In 2004, Cyril was heading back to Massachusetts from Canada by car to address the bankruptcy charges against him alleging that he failed to disclose all of his assets. Upon entering the U.S. (at St. Stephen, New Brunswick/Calais, Maine), Cyril was examined by a U.S. border official who asked him to disclose any large sums of money he was bringing into the states. Cyril had no such money. His passenger, a friend named Debbie who was planning to travel in the U.S., did, unbeknownst to Cyril, have cash with her. Cyril was charged on the spot for misleading or lying to a federal agent. He was released on bail with terms and conditions to remain in the Maine, New Hampshire, or Massachusetts areas.
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> Cyril had no resources in the U.S. at that time to sustain himself and he had no family in either Canada or the U.S. who could support him, his vehicles were seized and he could not work there. He was facing impoverishment there and made the unilateral decision to return to Canada contrary to the terms and conditions of his release in Maine. Cyril returned to Canada in 2005 where he has remained to this day.

[9] Yet the U.S. authorities allege:

> On October 6, 2004, LUNN and Smith were arrested on charges of bulk cash smuggling. A search of the vehicle being driven by LUNN and Smith discovered approximately $69,891 in cash (US and Canadian), checks and money orders which LUNN and Smith had failed to disclose to customs officials at the border. The vehicle search also found 13 checkbooks from eight different checking accounts, including one checkbook from the Bank of Montreal in the name of "Cyril Lunn."

[10] This still outstanding matter does not form part of the extradition request before us, but it will factor significantly into my analysis below.

[11] In any event, it was not until the Fall of 2012 that the U.S. sought his extradition from Canada on the bankruptcy fraud charges. This lengthy delay is fundamentally important to Mr. Lunn. It is central to both his disclosure motion and surrender challenge. It will, therefore, be dealt with in more detail below.

[12] Canada issued its authorization to proceed in August of 2013. Then, in February, 2015, before Justice John Murphy of the Supreme Court of Nova Scotia,

Mr. Lunn acknowledged that there was sufficient evidence to justify his committal. He therefore, with the advice of counsel, signed a consent to committal. This left him with only one option to avoid extradition: convincing the then Minister, the Honourable Peter MacKay, not to surrender him.

[13] Mr. Lunn pursued this political option vigorously, with impassioned submissions filed by his counsel.

[14] In August of 2015, the Minister issued his decision directing unconditional surrender. This is what Mr. Lunn now challenges before us.

[15] Ancillary to this, and to further support his surrender challenge, Mr. Lunn filed his preliminary disclosure motion.

[16] We arranged to hear both matters on April 13, 2016, beginning with the disclosure motion in the morning. This was dismissed from the bench (with reasons to be incorporated in our decision on the merits). Then, in the afternoon, we heard and reserved judgment on the application proper.

ISSUES

[17] In my analysis that follows, I will first explain why we refused Mr. Lunn's motion for further disclosure. I will then address Mr. Lunn's challenge to the Minister's surrender decision. This will have two aspects: (a) whether Mr. Lunn even has a right to complain about the delay, considering he originally skipped bail and fled the U.S. and (in any event) (b) the merits of the Minister's decision to surrender.

ANALYSIS

The Disclosure Motion

[18] Mr. Lunn is convinced that the U.S. authorities sat on their hands for the six years post indictment, doing next to nothing to advance the prosecution against him. Even worse, they misled our Canadian authorities into thinking that they were actively working the file. He is further convinced that their records, if disclosed, would lay all this bare (or, he concedes, at least put this issue to rest). He explains this in his supporting brief:

> 32 The Applicant says that the Minister's decision violated his s. 7 *Charter* rights on two fronts: 1) the delay issue was resolved against the Applicant absent any evidence supporting the validity of the delay itself; and 2) the Minister relied on statements attributed to the USDOJ which, if they indeed *were* made by the USDOJ, are false and misleading. If the Applicant succeeds in demonstrating either of these propositions, we submit that the Ministerial decision to surrender him, ought to be overturned as unconstitutional and in violation of his *Charter* rights, or in the alternative remitted back to the Minister for reconsideration with directions from the Court.
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> 33 The production the Applicant seeks goes directly to the heart of both the allegations of unconstitutionality of the Minister's decision: the production will substantiate – or refute – the assertions attributed to the USDOJ and a) they didn't know where the Applicant was in September 2006, and b) from 2007-2012 they continued to investigate his whereabouts; and the production will provide *actual evidence* as to whether or not the delay was the result of bad faith or an abuse of process.
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> 34 In other words, if the production proves that the USDOJ in fact *did know* where the Applicant was living in 2006; and that they in fact did *nothing* for the ensuing 6 years to find him, and therefore intentionally misled the IAG in an effort to satisfy the Minister as to their *bona fide* efforts to locate Mr. Lunn and therefore put-paid to the abusive-delay argument…then the Applicant will, in all likelihood, have his remedy, and the Minister's decision will be reversed with the result that the Applicant's surrender will be found unconstitutional.
>
> 35 And to these allegations of unconstitutionality, we point out that the US indictment itself speaks to the fact that the alleged bankruptcy fraud came to the attention of US authorities by virtue of the civil matter Mr. Lunn was involved with against his former spouse. The Court decision has been readily available to the public since September 2004, and it along with the court file of the matter would have clearly shown that the Applicant was living in the Annapolis Valley in NS at the time, and would have also contained the names of a host of witnesses and family members who could have been contacted regarding his whereabouts. Therefore, for the USDOJ to assert that at the time of the indictment they didn't know where the Applicant was, strains credulity.

[19] As I will explain, this request is misguided.

[20] Consider, first, the context of this request. The delay issue was raised by Mr. Lunn from the get go. For example, in his initial submissions to the Minister, his counsel wrote:

> Delay of Prosecution and Refusal To Disclose:
>
> Cyril Lunn declared bankruptcy in October 2001. He was then charged with bankruptcy fraud in the U.S. The United States did not seek Cyril's extradition

until 2013 and he was not arrested until July 2014 in Nova Scotia. The extraordinary delay requesting Cyril's extradition, the U.S. authorities would have us think, is because they could not locate Cyril who, they declared, was operating under the radar to avoid their detection. Nothing could be further from the truth.

Cyril returned to Canada from the United States in 2002. Since that time, Cyril has not attempted in any way to avoid detection. He has lived a very visible, public life and never then or now operating in the shadows of Canada.

Cyril has operated a car or truck and heavy equipment for the entire 13 years he has been back in Canada relying on the drivers licenses he has had from New Brunswick, Nova Scotia and from British Columbia. All drivers licenses have always had his address, accurate addresses, where Cyril was in fact living. He made a provincial medicare application in New Brunswick that contains his address. He had a Canada Pension Plan statement delivered to him at his Canadian address. He has had a few motor vehicle and municipal traffic violations over those 13 years and has answered each and every one of those events using his address and phone number in Canada. He had a motor vehicle accident in B.C. in 2011 processed through insurance companies and this, too, was all processed using Cyril's Canadian address and phone number. He registered and studied in a high school adult education program in British Columbia always using his proper address. He filed tax returns in Canada in each year all possessing his contact and identity data. He has been legally employed in Canada with various companies in the Maritimes and British Columbia each time paying taxes, CPP, EI, etc and always using his permanent address at the time of each employment. He has lived with Claudette Shea in Dorchester, New Brunswick maintaining that stable, consistent address for the past three years or more. All of these addresses and identity references are part of the public record and available at any time to any person or organization that might have wanted to locate Cyril Lunn. There was no legally acceptable excuse for the delay pursuing Cyril Lunn in Canada.

For the record, Cyril has lived at (in no special order):

1) 49 Water Street, Dorchester, New Brunswick
2) Sarsfield Road, Centerville, N.S.
3) 77 Newton Avenue Crescent, Prince George, B.C.
4) 84602 Rte 106, P.O. Box 1524, Memramcook, N.B.
5) 4001 – 15th Avenue, Prince George, B.C.
6) 361 Glen Road East, RR#1, Pictou, N.S.

Most of the above references are verified in the supporting material provided with this submission and all of these references speak loudly to the fact that Cyril was living a normal life in Canada, visibly active in the work force and in community working, driving, using the medical system, paying taxes, and possessing standard Canadian identity documents. He took no steps of any kind to hide his identity or

his person for any reason. Indeed, there were occasions when Cyril would be engaged with RCMP officers in Canada for various reasons and always made clear to them his identity. Cyril did not need to be found. He was there – public and available.

Against his backdrop of such open visibility, it cannot be said that Cyril was avoiding detection by any person or organization and that raises the legitimate question of why it took the U.S. authorities so long to apply for Cyril's extradition to the United States.

Cyril is entitled to the usual safe guards afforded to any Canadian or, for that matter, any person in Canada. He is Charter protected from unreasonable delay and Cyril is severely prejudiced by the fact that it has taken the U.S. authorities an unnecessarily long period of time to commence an application to extradite him back to the U.S.

The failure to request Cyril's extradition was not Cyril's invisibility in Canada. It was the unexplained failure or disinterest of the U.S. justice system to take the necessary steps at an earlier stage to apply to Canada to request Cyril's extradition. And during the interim decade, Cyril and his daughter Emma have developed a genuine parent child relationship on which both rely, but more significantly, which is integral to Emma's development pursuant to her learning disability. Emma has come to rely on Cyril. Neither Cyril nor Emma, but particularly Emma, should now suffer because the United States Department of Justice did not diligently pursue Cyril when they could have and when they should have.

[21] This concern was not ignored. Instead it prompted Canada's International Assistance Group (IAG) to make further inquiries to the U.S. Department of Justice (USDOJ). The USDOJ's response is incorporated in the IAG's subsequent report to the Minister:

- Delay

The USDOJ advises that criminal investigators became aware of Mr. Lunn's alleged bankruptcy fraud in 2004. From 2004 to 2006, the case was investigated by law enforcement officials and the grand jury. Mr. Lunn was indicted by the grand jury for the charges upon which his extradition has been sought on September 14, 2006. An arrest warrant was issued the next day, but investigators were unaware of Mr. Lunn's whereabouts.

In 2007, in an attempt to locate Mr. Lunn, the USDOJ investigators contacted Mr. Lunn's sister, who was living in Florida. She advised that she had not heard from Mr. Lunn since 2003 and that neither she nor any family members knew of his whereabouts. Investigations into Mr. Lunn's whereabouts continued until he was located in March, 2011. US authorities proceeded to prepare an extradition request, and on November 28, 2012 sought Mr. Lunn's extradition from Canada.

> The USDOJ has further advised that pursuant to the Sixth Amendment to the US Constitution, an accused person has the right to a speedy trial. If surrendered, Mr. Lunn will have the opportunity to raise the issue of delay and any alleged violation of his rights before the US court. In determining whether a speedy trial violation has occurred, the Court will consider the following factors: "the length of the delay, the defendant's assertion of his right and the prejudice to the defendant."

[22] This explanation was also reflected in the Minister's decision under review.

> Given your submissions, information was sought from the Office of International Affairs, United States Department of Justice (USDOJ) regarding the delay in seeking Mr. Lunn's extradition. The USDOJ advised that criminal investigators became aware of Mr. Lunn's alleged bankruptcy fraud in 2004. From 2004 to 2006, the case was investigated by law enforcement and the grand jury. Mr. Lunn was indicted by the grand jury for the charges upon which his extradition has been sought on September 14, 2006. An arrest warrant was issued the next day, but investigators were unaware of Mr. Lunn's whereabouts.
>
> The USDOJ has further advised that in 2007, in an attempt to locate Mr. Lunn, investigators contacted Mr. Lunn's sister, who was living in Florida. She advised that she had not heard from Mr. Lunn since 2003 and that neither she nor any family members knew of his whereabouts. Investigations into Mr. Lunn's whereabouts continued until he was located in March, 2011. US authorities proceeded to prepare an extradition request, and on November 28, 2012 sought Mr. Lunn's extradition from Canada.

[23] The Minister accepted this information as accurate and found no evidence of bad faith or abuse on the part of the USDOJ. Instead, Mr. Lunn was quite properly reminded that his concerns would be best addressed at his trial in the United States:

> As a result, in the absence of evidence of bad faith, the significance of the delay is best assessed by the trial judge in the context of Mr. Lunn's right under the Sixth Amendment of the United States Constitution to a speedy trial. I am satisfied that the delay in this case is not a basis to refuse the surrender of Mr. Lunn to the United States.

[24] So it would appear that the Minister took Mr. Lunn's concerns seriously.

[25] Furthermore, Mr. Lunn is not seeking more disclosure from the Minister. Aside from privileged legal advice, Mr. Lunn has the Minister's complete file. Nor is Mr. Lunn entitled to full disclosure at this stage. That would be a matter for his proposed U.S. proceeding. In this regard, I endorse the following explanation by

Laskin, J.A. in *United States v. Whitley*, [1994] OJ No. 2478 (CA) aff'd, [1996] 1 SCR 467 (albeit in a procedural fairness context):

> 41 But the content of an administrative decision-maker's duty of fairness varies depending on the nature of the proceedings, the consequences of the decision for the individual affected and any applicable statutory provisions: *Knight v. Indian Head School Division No. 19* [1990], 1 S.C.R. 653 and *Syndicat Des Employés de Production du Québec & de L'Acadie v. Canada (Canadian Human Rights Commission)* [1989], 2 S.C.R. 879. The Minister's surrender decision is political in nature, not judicial. It lies at the legislative end of the spectrum of administrative decision making. The Minister is obligated to ensure that a fugitive has adequate disclosure of the case against him and a reasonable opportunity to state his or her own case. **The Minister, however, is not obligated to hold an oral hearing nor is he required to provide the kind of disclosure or the kind of procedural safeguards applicable in judicial proceedings.** He is not bound by the record before the extradition judge but may consider other material relevant to the exercise of his discretion; and he is not even obligated to provide detailed reasons for his decision though he certainly did so in this case. *Kindler v. Canada, supra, Idziak v. Canada (Minister of Justice)* (1992), C.R.R. (2d) 77 (S.C.C.).
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> 42 Other than the legal memoranda, which are privileged (see *Idziak, supra*), the appellant received a copy of or was told the substance of all of the government's material that went to the Minister. He was given a reasonable opportunity to state his own case and to comment on the materials prepared by the Minister's staff. The appellant made detailed submissions on the application of the principles in *Cotroni, supra*, and the Minister considered those submissions in his decision. I do not think that the Minister's duty of fairness calls for anything more in this case.
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> [Emphasis added]

[26] In fact, all this was raised by Mr. Lunn in his submissions to the Minister, to which the Minister offered this fulsome response:

> The inadequate disclosure provided by the United States
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> You submit that the adequacy of the disclosure provided by the United States should cause me concern. First, you argue that because the US prosecutor has refused to provide Mr. Lunn with disclosure regarding the charges against him, Mr. Lunn does not know whether there is anything contained within the disclosure that could be instrumental in his extradition proceedings. In addition, you argue that not having full disclosure has prevented Mr. Lunn from attempting to resolve the charges with US authorities.

> The SCC has held that there is a limited disclosure requirement in extradition proceedings. Canadian domestic disclosure requirements mandated in *R v Stinchcombe*, [1991] 3 SCR 326 cannot simply be transplanted into the extradition process (*United States of America v Dynar*, [1997] 2 SCR 462). In addition, the SCC has recognized that the imposition of Canadian norms of procedural fairness on foreign authorities should be avoided (*Dynar, supra*). Persons sought for extradition only have a right to disclosure of the evidence that the Requesting State is relying on to establish its *prima facie* case (*United States v Kwok*, 2001 SCC 18). This does not equate to full disclosure from the Requesting State. With some limited exceptions, an extradition judge may order the production of materials relevant to the issues properly raised at the committal stage of the process, but in no case does the extradition judge have the ability to order disclosure in the possession of a foreign state (*Kwok, supra*).
>
> As Minister of Justice, at the surrender stage, I have a duty of fairness to ensure that a person sought has adequate disclosure of the case against him or her and a reasonable opportunity to state his or her own case (*Kwok, supra*).
>
> With the exception of the legal advice, which is subject to solicitor-client privilege, you have been provided with all the information that has been put before me for my consideration in this matter, including a copy of the Record of the Case (ROC), certified on August 5, 2013, the Supplementary ROC, certified on October 10, 2013, the Summary of the Case, and the Supplementary Summary of the Case. In light of this, I am of the opinion that Mr. Lunn has been provided all disclosure he is entitled to in order to satisfy the duty of procedural fairness. As a result, there is no requirement to seek further disclosure prior to rendering my decision on surrender.
>
> Moreover, in my view, the fact that Mr. Lunn does not have full disclosure is not, in and of itself, impeding him from entering into resolution negotiations with the US prosecutors. He has decided not to enter into those negotiations until he has full disclosure – a decision he is free to make, but not one that imposes any further disclosure obligations either on the United States or Canada.

[27] Instead, Mr. Lunn's request goes much further. He wants this Court to force the Minister to essentially reject the USDOJ's explanation and to pry into the requesting state's domestic police practices. That would be a very slippery slope. I find this caution from Romilly, J., in *United States v. Freimuth*, 2004 BCSC 154 (although made in the context of a committal hearing) to be apt:

> 56 Allegations of misconduct by foreign authorities should not be given any credence without further proof. In the absence of such evidence, entertaining allegations that foreign officials are misleading our Courts "conveys a reflection of the gravest possible kind, not only upon the motives and actions of the responsible government, but also impliedly upon the judicial authorities of a neighbouring and friendly power": *United States of America v. Turenne*, [1998]

> M.J. No. 541 (Man. Q.B.) at para. 25. See also *United States of America v. Akrami,* [2000] B.C.J. No. 2000, 2000 BSCC 1438 (B.C.S.C.) at para. 21.

[28] In other words, for the Court to act there must be an "air of reality" to the alleged misconduct. This must include evidence of misconduct or bad faith to support the allegation. Doherty, J.A. in *R. v. Larosa,* [2002] O.J. No. 3219 (Ont. C.A.) explains:

> 79 The "air of reality" standard I have attempted to describe is consistent with that prescribed by Finlayson J.A. (for the majority) in *R. v. Durette* (1992), 72 C.C.C. (3d) 421 at 437-38, rev'd on different grounds (1994), 88 C.C.C. (3d) 1 (S.C.C.). In *Durette*, the appellants claimed that they were denied their right to trial within a reasonable time and in the evidentiary inquiry into that claim sought to compel the testimony of certain Crown officials and police officers. The appellants wanted to inquire into the reasons for certain decisions made by the Crown which had had the effect of delaying the trial of the appellants. Finlayson J.A. said at 437-38:
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> > ... In order to ask the court to delve into the circumstances surrounding the exercise of the Crown's discretion, or to inquire into the motivation of the Crown officers responsible for advising the Attorney-General, the accused bears the burden of making a tenable allegation of *mala fides* on the part of the Crown. Such an allegation must be supportable by the record before the court, or if the record is lacking or insufficient, by an offer of proof. Without such an allegation, the court is entitled to assume what is inherent in the process, that the Crown exercised its discretion properly, and not for improper or arbitrary motives. ...
> >
> > [T]he allegation of improper or arbitrary motives cannot be an irresponsible allegation made solely for the purpose of initiating a "fishing expedition" in the hope that something of value will accrue to the defence. [Emphasis added.]
>
> 80 The reasoning in *Durette, supra*, has been applied recently on an application to compel the production of material in support of an abuse of process allegation at the committal phase of the extradition process: *Vreeland v. United States of America* (2002), 164 C.C.C. (3d) 266 (Ont. S.C.J.), at 275-77.
>
> 81 The appellant bears the burden of demonstrating the "air of reality" and may do so by reference to the appeal record or to evidence, normally by way of affidavit, tendered in support of the motion for production and the compelling of testimony.

[29] Here, Mr. Lunn offers nothing more than the delay itself to substantiate his conjectured state misconduct. That is not enough to warrant the exceptional relief sought.

[30] For these reasons, the disclosure motion is denied.

The Minister's Decision

Fleeing the United States

[31] It is significant that during this entire 6 year delay, Mr. Lunn was a fugitive from the law. As noted, he was charged by U.S. authorities in 2004 after allegedly trying to enter that country with undeclared cash. He was granted bail on the condition that he remain within the U.S. Yet, he freely admits skipping bail and sneaking across the border to Canada. These charges are still outstanding (although, as noted, not part of the extradition request). Furthermore, at that time, Mr. Lunn knew full well that he was being investigated for the bankruptcy charges for which he now faces extradition. In fact, he said he entered the U.S. at the time specifically to deal with these pending charges. It is, therefore, fair to infer that had he not skipped bail, these extradition charges would have been dealt with long ago. It would be ironic, indeed, to now reward Mr. Lunn for his own illegal act. In essence, here is the script we are being invited to endorse – enter the United States to deal with serious fraud allegations, get arrested on other charges, get bail on a condition to stay in the U.S., skip bail, flee to Canada, and then blame the U.S. authorities for taking too long to track you down. I, therefore, endorse this passage from Lord Brown in *Gomes and Goodyer*, [2009] UKHL 2, ¶ 26-27:

> 26 True it is that Laws LJ then added: "An overall judgment on the merits is required, unshackled by rules with too sharp edges." If, however, this was intended to dilute the clear effect of Diplock para 1, we cannot agree with it. This is an area of the law where a substantial measure of clarity and certainty is required. **If an accused like Goodyer deliberately flees the jurisdiction in which he has been bailed to appear, it simply does not lie in his mouth to suggest that the requesting state should share responsibility for the ensuing delay in bringing him to justice because of some subsequent supposed fault on their part, whether this be, as in his case, losing the file, or dilatoriness, or, as will often be the case, mere inaction through pressure of work and limited resources. We would not regard any of these circumstances as breaking the chain of causation (if this be the relevant concept) with regard to the effects of the accused's own conduct.** Only a deliberate decision by the requesting state communicated to the accused not to pursue the case against him, or some other circumstance which would similarly justify a sense of security on his part notwithstanding his own flight from justice, could allow him properly to assert that the effects of further delay were not "of his own choice and making".

> 27 There are sound reasons for such an approach. Foremost amongst them is to minimise the incentive on the accused to flee. There is always the possibility, often a strong possibility, that the requesting state, for want of resources or whatever other reason, may be dilatory in seeking a fugitive's return. If it were then open to the fugitive to pray in aid such events as occurred during the ensuing years—for example the disappearance of witnesses or the establishment of close-knit relationships—it would tend rather to encourage flight than, as must be the policy of the law, discourage it. Secondly, as was pointed out in Diplock para 2, deciding whether "mere inaction" on the part of the requesting state "was blameworthy or otherwise" could be "an invidious task". And undoubtedly it creates practical problems. Generally it will be clear one way or the other whether the accused has deliberately fled the country and in any event, as was held in *Krzyzowski*, given that flight will in all save the most exceptional circumstances operate as an almost automatic bar to reliance on delay, it will have to be proved beyond reasonable doubt (just as the issue whether a defendant has deliberately absented himself from trial in an inquiry under section 85(3) of the Act). But it will often be by no means clear whether the passage of time in requesting the accused's extradition has involved fault on the part of the requesting state and certainly the exploration of such a question may not only be invidious (involving an exploration of the state's resources, practices and so forth) but also expensive and time consuming. It is one thing to say—as Lord Edmund-Davies said in Kakis and later Woolf LJ said in *Osman (No. 4)* and Laws LJ in *La Torre*—that in borderline cases, where the accused himself is not to blame, culpable delay by the requesting state can tip the balance; quite another to say that it can be relevant to and needs to be explored even in cases where the accused is to blame.
>
> [Emphasis added]

[32] That alone would be enough for me to dismiss Mr. Lunn's application.

The Six-Year Delay

[33] In any event, I will now consider the Minister's decision on its merits. In the process, I will first consider the standard upon which it should be reviewed. I will then consider whether it requires our intervention.

Standard of Review

[34] To address the standard of review, I begin by considering the Minister's role in the extradition process.

[35] In Canada, extradition comprises a two-step process: one judicial and one ministerial. LeBel, J. in *United States v. Lake*, 2008 SCC 93 states:

> 21 The process of extradition from Canada has two stages: a judicial one and an executive one. The first stage consists of a committal hearing at which a committal judge assesses the evidence and determines (1) whether it discloses a *prima facie* case that the alleged conduct constitutes a crime both in the requesting state and in Canada and that the crime is the type of crime contemplated in the bilateral treaty; and (2) whether it establishes on a balance of probabilities that the person before the court is in fact the person whose extradition is sought. In addition, s. 25 of the *Extradition Act*, S.C. 1999, c. 18 (formerly s. 9(3) of the *Extradition Act*, R.S.C. 1985, c. E-23), empowers the committal judge to grant a remedy for any infringement of the fugitive's *Charter* rights that may occur at the committal stage: *Kwok*, at para. 57.
>
> 22 After an individual has been committed for extradition, the Minister reviews the case to determine whether the individual should be surrendered to the requesting state. This stage of the process has been characterized as falling "at the extreme legislative end of the *continuum* of administrative decision-making" and is viewed as being largely political in nature: *Idziak v. Canada (Minister of Justice)*, [1992] 3 S.C.R. 631 (S.C.C.), at p. 659 (emphasis in original). Nevertheless, the Minister's discretion is not absolute. It must be exercised in accordance with the restrictions set out in the *Extradition Act*, as well as the *Charter*.

[36] As noted, Mr. Lunn consented to his committal at the judicial stage. Therefore, this matter involves only his challenge to the Minister's political decision to surrender him unconditionally. As LeBel, J. confirms, our review therefore engages administrative law principles:

> 25 Section 43(1) of the *Extradition Act* provides that an individual who has been committed for extradition may make submissions against surrender to the Minister and the Minister must consider them before making his decision. If the Minister decides to order surrender, he is required to give the individual reasons for his decision: *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.). In particular, the Minister must respond to any submissions against surrender made by the individual and explain why he disagrees: *United States v. Taylor* (2003), 175 C.C.C. (3d) 185 (B.C.C.A.).
>
> 26 …Section 57(7) provides that the grounds for judicial review of the Minister's decision to order surrender are those on which the Federal Court may grant relief under s. 18.1(4) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Thus, under s. 57(2), judicial assessment of the Minister's decision by the court of appeal is a form of administrative law review and must be conducted in accordance with the applicable administrative law standard. As I will explain below, it is my view that the applicable standard is reasonableness.

[37] In reaching his decision, the Minister had to balance a number of competing factors. As Charron, J. in *Canada (Minister of Justice) v. Fischbacher*, 2009 SCC 46 notes, these factors will vary from case to case:

> 38 Reaching a conclusion on surrender requires the Minister to undertake a balancing of all the relevant circumstances, weighing factors that militate in favour of surrender against those that counsel against. The circumstances that will be "relevant" to a surrender decision will vary depending on the facts and context of each case.

[38] As well, the process is weighted in favour of extradition, with the Minister expected to accede to the foreign state's request unless doing so would "shock the conscience" or be "simply unacceptable". LeBel, J. in *United States v. Lake*, 2008 SCC 93 explains:

> 31 The Minister is also often asked to consider whether surrender would violate an individual's rights under s. 7 of the *Charter*. The test that has been applied is whether ordering extradition would "shock the conscience" (*Schmidt*, at p. 522), or whether the fugitive faces "a situation that is simply unacceptable" (*Allard*, at p. 572). In *Schmidt*, La Forest J. emphasized that deference is owed to the Minister's assessment:
>
> > The courts have the duty to uphold the Constitution. Nonetheless, this is an area where the executive is likely to be far better informed than the courts, and where the courts must be extremely circumspect so as to avoid interfering unduly in decisions that involve the good faith and honour of this country in its relations with other states. In a word, judicial intervention must be limited to cases of real substance. [p. 523]
>
> 32 In *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779, the majority of this Court explained that the proper approach is to balance the factors for and against extradition in the circumstances in order to determine whether extradition would tend to "shock the conscience". In *United States v. Burns*, [2001] 1 S.C.R. 283, 2001 SCC 7, the Court reaffirmed the *Kindler* approach but added that the words "shock the conscience" should not "be allowed to obscure the ultimate assessment that is required: namely whether or not the extradition is in accordance with the principles of fundamental justice" (para. 68). In making this assessment, the relevant factors may be specific to the fugitive, such as age or mental condition, or general, such as considerations associated with a particular form of punishment.

[39] Furthermore, the Minister would have been well aware of the political ramifications of his decision, certainly more so than this Court. His decision is, therefore, entitled to significant deference and must be upheld as long as it is

reasonable. As LeBel, J. explains, this is so, even when (as here) the fugitive seeks to invoke his s. 7 *Charter* rights:

> 34 This Court has repeatedly affirmed that deference is owed to the Minister's decision whether to order surrender once a fugitive has been committed for extradition. The issue in the case at bar concerns the standard to be applied in reviewing the Minister's assessment of a fugitive's *Charter* rights. Reasonableness is the appropriate standard of review for the Minister's decision, regardless of whether the fugitive argues that extradition would infringe his or her rights under the *Charter*. As is evident from this Court's jurisprudence, to ensure compliance with the *Charter* in the extradition context, the Minister must balance competing considerations, and where many such considerations are concerned, the Minister has superior expertise. The assertion that interference with the Minister's decision will be limited to exceptional cases of "real substance" reflects the breadth of the Minister's discretion; the decision should not be interfered with unless it is unreasonable (*Schmidt*) (for comments on the standards of correctness and reasonableness, see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9).

[40] In short, we must defer to the Minister's decision as long as it falls within the range of reasonable outcomes. Again, I refer to LeBel, J.:

> 41 Reasonableness does not require blind submission to the Minister's assessment; however, the standard does entail more than one possible conclusion. The reviewing court's role is not to re-assess the relevant factors and substitute its own view. Rather, the court must determine whether the Minister's decision falls within a range of reasonable outcomes. To apply this standard in the extradition context, a court must ask whether the Minister considered the relevant facts and reached a defensible conclusion based on those facts. I agree with Laskin J.A. that the Minister must, in reaching his decision, apply the correct legal test. The Minister's conclusion will not be rational or defensible if he has failed to carry out the proper analysis. If, however, the Minister has identified the proper test, the conclusion he has reached in applying that test should be upheld by a reviewing court unless it is unreasonable. This approach does not minimize the protection afforded by the *Charter*. It merely reflects the fact that in the extradition context, the proper assessments under ss. 6(1) and 7 involve primarily fact-based balancing tests. Given the Minister's expertise and his obligation to ensure that Canada complies with its international commitments, he is in the best position to determine whether the factors weigh in favour of or against extradition.

Was the Minister's Decision Reasonable?

[41] In challenging the Minister's decision, Mr. Lunn questions not just the 6-year delay from the date of the indictment (September 2006) until the extradition

request (November 2012), but also the 20 months from the time the U.S. authorities reported locating him (March 2011) until the extradition request.

[42] Further, he says that, while the delay itself is bad enough, the U.S. authorities obviously misled the Minister when attempting to justify it. That, he insists, cannot be tolerated. He wants us to overturn the Minister's surrender order outright or at least remit the matter back to the Minister with a direction that the USDOJ's explanation for the delay be afforded no weight.

[43] For the following reasons, I see no merit to these submissions.

[44] First, it is noteworthy that the delay was only one of many complaints advanced by Mr. Lunn. For example, he raised:

1. A lack of particulars of the case against him;
2. His fear of receiving a more severe penalty in the United States compared to Canada;
3. The unreliability of the evidence against him;
4. His poor health and the fact that he might not receive proper treatment in a U.S. prison;
5. His close relationship with his young daughter that would be jeopardized should he end up in a U.S. prison.

[45] In his decision, the Minister addressed every one of these concerns comprehensively.

[46] Mr. Lunn also sought certain assurances should his surrender be inevitable. These included: (a) whether his health concerns could be adequately managed; (b) that he not be prosecuted for the outstanding border offences; and (c) that he serve any prison time in Canada. To these, the Minister confirmed that: (a) assurances were already received that Mr. Lunn's medical needs would be met by the U.S prison system; (b) assurances were received that he would not be prosecuted for the border offences; and (c) he could, in time, apply to serve his time in the Canada but that would be a process for down the road.

[47] In short, the Minister's reasons were detailed and comprehensive.

[48] Dealing specifically with the delay issue, here is the Minister's full response:

You submit that there has been an "unreasonable delay" in seeking Mr. Lunn's extradition. You argue that Mr. Lunn has lived a very visible life in Canada, not attempting to avoid detection, and the failure of the United States to seek Mr. Lunn's extradition in a timely manner, has prejudiced him because in the interim, he has had a child with whom he has developed a close bond.

In *Argentina v Mellino*, [1987] 1 SCR 536, the Supreme Court of Canada (SCC) considered the issue of delay in extradition proceedings. It held that foreign delay would attract section 7 Charter concerns only in the rare instances of delay occasioned by, or amounting to, an abuse of process; those extreme circumstances which could be said to create conditions where a decision to surrender would be "simply unacceptable".

Given your submissions, information was sought from the Office of International Affair, United States Department of Justice (USDOJ) regarding the delay in seeking Mr. Lunn's extradition. The USDOJ advised that criminal investigators became aware of Mr. Lunn's alleged bankruptcy fraud in 2004. From 2004 to 2006, the case was investigated by law enforcement and the grand jury. Mr. Lunn was indicted by the grand jury for the charges upon which his extradition has been sought on September 14, 2006. An arrest warrant was issued the next day, but investigators were unaware of Mr. Lunn's whereabouts.

The USDOJ has further advised that in 2007, in an attempt to locate Mr. Lunn, investigators contacted Mr. Lunn's sister, who was living in Florida. She advised that she had not heard from Mr. Lunn since 2003 and that neither she nor any family members knew of his whereabouts. Investigations into Mr. Lunn's whereabouts continued until he was located in March, 2011. US authorities proceeded to prepare an extradition request, and on November 28, 2012 sought Mr. Lunn's extradition from Canada.

You indicate that Mr. Lunn disputes that his sister was unaware of his location, and in any event, that this information is not relevant. Rather, you state that the focus should be on the fact that Mr. Lunn was "visible" in Canada and could have easily been found by authorities.

Extradition is based on the principles of comity and fairness to other cooperating states in rendering assistance in bringing fugitives to justice. As noted by the SCC in *Mellino, supra,* the processing of international requests involves inherent complexities that do not exist in domestic prosecutions. Therefore, delay in the extradition context must be so excessive as to result in an abuse of process.

There is nothing in this case that would suggest that the American authorities have acted in bad faith, and I have not been provided with any specific information to suggest that the delay was the result of bad faith or improper motive on the part of the American authorities.

I am of the view that neither the time taken to investigate the offences, nor the time taken to locate and seek Mr. Lunn's extradition can be characterized as abusive. Similarly, there is no evidence that there has been any bad faith or

> improper motive on the part of American authorities. While it may be true that Mr. Lunn was living a "visible life" in Canada after he left the United States in 2002, there is no evidence that American law enforcement had any reason to believe that Mr. Lunn had left the United States. In addition, your submissions indicate that Mr. Lunn has lived at five different addresses in Canada over the past 13 years, in Nova Scotia, New Brunswick, and British Columbia. Given the situation, it is understandable that it took American authorities time to locate Mr. Lunn.
>
> Further, the fact that Mr. Lunn has had a child since the charges for which his extradition is sought were laid, does not, in my view, constitute prejudice in the delay context. While Mr. Lunn's personal circumstances must be taken into account on my decision on surrender, and are discussed below, they are not a consideration in the context of delay. When evaluating the possible prejudice caused by delay, only that which affects the trial fairness is relevant. No such prejudice is alleged.
>
> As a result, in the absence of evidence of bad faith, the significance of the delay is best assessed by the trial judge in the context of Mr. Lunn's right under the Sixth Amendment of the United States Constitution to a speedy trial. I am satisfied that the delay in this case is not a basis to refuse the surrender of Mr. Lunn to the United States.

[49] Before us, counsel for the Minister acknowledged that the reference to there being "no evidence that American law enforcement had any reason to believe that Mr. Lunn had left the United States" was an error. In fact, their investigation was triggered when they became aware that he was living in Canada and pursuing a Canadian court case. However, the Minister's counsel insists, and I agree, that this would have no bearing on the ultimate decision. Knowing that Mr. Lunn was in Canada does not mean they would know where in Canada he lived, especially considering the various Canadian addresses he held over the years.

[50] Otherwise, in my view, the Minister's approach to Mr. Lunn's concerns and ultimate decision were perfectly reasonable. He correctly noted that delay in the surrender context would rarely come into play. It would require an abuse of process that would render the requested surrender "simply unacceptable". In this regard, his reference to *Argentina (Republic) v. Mellino*, [1987] 1 SCR 536 (SCC) was appropriate. In fact, in *Mellino*, La Forest, J. for the majority, added that relief flowing from abuse would flow only from the "clearest of cases":

> 30 At the hearing and on this appeal, counsel for Mellino also argued that the delay in the proceedings constituted an abuse of process. For this position, he particularly relied on *R. v. Jewitt*, [1985] 2 S.C.R. 128, [1985] 6 W.W.R. 127, 47 C.R. (3d) 193, 21 C.C.C. (3d) 7, 20 D.L.R. (4th) 651, 61 N.R. 159 [B.C.]. There,

> Dickson C.J.C., writing for the court, adopted the view expressed by Dubin J.A. in *R. v. Young* (1984), 46 O.R. (2d) 520, 40 C.R. (3d) 289 at 329, 13 C.C.C. (3d) 1, 10 C.R. 307, 3 O.A.C. 254 (C.A.), that at common law there existed a discretionary power in a trial judge to stay proceedings in a criminal case for abuse of process (pp. 136-37):
>
> > …where compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexatious proceedings.
>
> Dickson C.J.C., however, expressly repeated the caveat made in *Young* that this is "a power which can be exercised only in the 'clearest of cases'."

[51] Of particular relevance to this matter, La Forest, J. further cautioned against attempts at "supervising the conduct of….prosecutorial officials of a foreign state":

> 34 In assessing the issue, a court must not overlook that extradition proceedings must be approached with a view to conform with Canada's international obligations. The courts have on many occasions reiterated that the requirements and technicalities of the criminal law apply only to a limited extent in extradition proceedings. One cannot view delay resulting from the complexity involved in dealing with activities that reach across national boundaries and involve different systems of law and several levels of bureaucracies in the same way as that in local prosecutions. This is especially so when one considers that extradition proceedings are but a small part of the many and variegated responsibilities of diplomatic officials. It is interesting that the time schedule set forth in art. XIV has been described as hectic and criticized as too onerous: see V.E. Hartley Booth, British Extradition Law and Procedure (1980), vol. 1, p. 42.
>
> 35 **At all events, the assumption by a Canadian court of responsibility for supervising the conduct of the diplomatic and prosecutorial officials of a foreign state strikes me as being in fundamental conflict with the principle of comity on which extradition is based.**
>
> [Emphasis added]

[52] Here, I can see no evidence of abuse, let alone this being one of those "clearest of cases". In fact, Mr. Lunn's assertion that the U.S. authorities misled the Minister is, at most, conjecture.

[53] Furthermore, this case is not even close to those where Canadian courts have seen fit to interfere in a Minister's surrender decision. For example, in *Logan v. United States of America*, 2015 NBCA 59, Quigg, J.A. succinctly describes the types of situations that might prompt a court to act:

> 33 Setting aside a Minister's Surrender Order on such a ground is extremely rare and may only be granted in the "clearest of cases", where the continuation of the judicial proceedings would irreparably prejudice the integrity of the justice system (*R. v. Nixon*, [2011] 2 S.C.R. 566, para. 41). It is an exceptional remedy reserved for cases involving the most egregious forms of state misconduct or other abuse. Mr. Logan must provide overwhelming evidence that the proceedings are unfair to the point they are contrary to the interests of justice. Allegations of abuse by state actors are grave matters and should not be given any credence without concrete proof (*United States of America v. Anekwu*, [2009] 3 S.C.R. 3, para. 3).
>
> 34 The Attorney General gives various examples of the high threshold that must be met to establish a clear case of abuse of process, warranting a stay of extradition proceedings, or the setting aside of the Minister's surrender decision:
>
> > In *United States of America v. Khadr* (2011), 273 CCC (3d) 55 (Ont CA), a stay was ordered in circumstances where the evidence introduced at the committal hearing was obtained through the misconduct of the requesting state. The United States had obtained an inculpatory statement from Mr. Khadr while he was detained in Pakistan, subjected to beatings by police and denied consular services. In *United States of America v. Cobb*, [2001] 1 S.C.R. 587, there was evidence that the foreign authorities had made statements suggesting that if the persons sought contested extradition, they would be given the maximum sentences available and be subjected to homosexual rape in prison. In *United States of America v. Tollman* (2006), 212 CCC (3d) 511 (Ont CA), the Court found evidence of a deliberate plan to engineer the return of Mr. Tollman to the United States without affording him the opportunity to exercise his rights under the *Act*, including subjecting him to a harsh prison setting. In *Czech Republic v. Zajicek* (2012), 280 CCC (3d) 1 (Ont CA), it was alleged that Mr. Zajicek had been arbitrarily detained and subjected to police brutality and torture in the Czech Republic – the country seeking his extradition.

[54] Mr. Lunn's experience comes nowhere close to any of these examples. Instead, his situation is very close to that described in *Germany (Federal Republic) v. Krapohl* (1998), 110 OAC 129 (CA). The factual resemblance is uncanny, and I cannot say it any better than Goudge, J.A.:

> 20 The law is clear that s. 11 of the *Charter*, including the s. 11(b) right to be tried within a reasonable time, has no application to extradition proceedings: see *Argentina (Republic) v. Mellino* (1987), 33 C.C.C. (3d) 334 (S.C.C.). The delay put forward here was solely that of a foreign state whose conduct is not subject to *Charter* regulation. The Minister, therefore, did not err in giving no effect to the delay, as a matter of law.

> 21 The Minister did, however, consider the delay in the way in which the submissions made to him invited, namely as something which necessarily deepened the roots sunk by the applicants in northern Ontario and hence increased the negative impact of their surrender. The Minister concluded that such factors do not bar prosecution in Canada and are not compelling grounds warranting the breach of our international obligations. In my view, this conclusion was entirely within the Minister's discretion and can in no way be said to be plainly unreasonable.
>
> 22 Apart from this consequence of delay, the Minister's letter makes clear that he was fully aware of the fact of the delay and that he gave full consideration to all the information provided to him, including this. So far as the applicants' argument simply attacks the relative weight which the Minister attached to the delay, it is not, in my view, a proper basis for judicial review of the Minister's decision. The relative weighing of various factors in arriving at his decision to order surrender is, in my opinion, particularly something for the Minister's discretion. Given the political nature of his task, the Minister's decision is not open to review on this basis.

[55] For all these reasons, the Minister's decision is reasonable.

[56] Before concluding (and as an abundance of caution), I will briefly address an issue raised by Mr. Lunn in his written brief but not raised in oral argument. He suggests that the Minister had no right to rely on hearsay evidence from the IAG when accounting for the delay. He argues:

> 39 It is clear from the decision that the Minister based the entirety of his findings on the issue of delay, upon information provided by the IAG which was attributed to the USDOJ. This information was provided to the Minister as part of the IAG's legal submissions to the Minister on the question of the Applicant's surrender, and we submit they cannot be accepted by the Minister as evidence of the efforts and activities of the USDOJ to locate the Applicant.
>
> 40 The Applicant submits that, in fact, the Minister had no evidence whatsoever as to the activities or efforts of the USDOJ to locate the Applicant over a period of six years. In other words, this very significant delay was completely unexplained.

[57] This submission has no merit. It is common practice and completely understandable that the Minister would rely on IAG memos to support his decision. By way of example, see *United States of Mexico v. Hurley*, [1997] OJ No. 2487 (CA) at ¶ 37 to ¶ 39 and *Whitley, supra* at ¶ 36.'

Disposition

[58] I would dismiss the application.

Michael MacDonald, C.J.N.S.

Concurred in:

Farrar, J.A.

Bourgeois, J.A.