

**NOVA SCOTIA COURT OF APPEAL**

Cite as: Romania v. Cheng, 1997 NSCA 49

**IN THE MATTER OF THE EXTRADITION ACT, R.S.C. 1985, Ch. E-23**

**AND IN THE MATTER OF AN APPLICATION BY THE STATE OF ROMANIA,  
REQUESTING STATE, FOR THE EXTRADITION OF Shiou CHENG, Chung-Chih  
WU, Chin-Shiu KUO, Che-Min JANG, Ko-Lung WANG, and Yung-Lai NI:**

**BETWEEN:**

THE STATE OF ROMANIA

Applicant

James Martin and  
and Raymond Mitchell  
for the Applicant

**- and -**

SHIOU CHENG, CHUNG-CHIH WU,  
CHIN-SHIU KUO, CHE-MIN JANG,  
KO-LUNG WANG and YUNG-LAI NI

Respondents

Warren Zimmer  
for the Respondent,  
Shiou Cheng

David Bright, Q.C.  
for the Respondent,  
Chung-Chih Wu

Kevin Burke, Q.C.  
for the Respondent,  
Chin-Shiu Kuo

Duncan Beveridge  
for the Respondent,  
Che-Min Jang

Stanley MacDonald  
for the Respondent,  
Ko-Lung Wang

Kevin Coady  
for the Respondent,  
Yung-Lai Ni

Application Heard:  
March 6, 1997

Judgment Delivered:  
March 6, 1997

**BEFORE THE HONOURABLE JUSTICE GERALD B. FREEMAN IN CHAMBERS**

**FREEMAN, J.A.:**

Justice Michael MacDonald of the Supreme Court issued a decision this morning finding that the six individual respondents were entitled to an order of discharge under the **Extradition Act**, R.S.C. 1985, C. E-2, because it was not alleged, and there was no evidence on which he could find, they had committed crimes to which that **Act** applied within the territorial boundaries of the State of Romania.

The respondents were alleged to have caused the death of Romanian citizens found as stowaways on their ship, the *Maersk Dubai*, on the Atlantic Ocean between Spain and Halifax. Applying the low standard of evidence appropriate in such matters, which are procedurally similar to preliminary inquiries, Justice MacDonald found that, had it not been for the jurisdictional problem, he would have committed them to stand trial for second degree murder, manslaughter, or both.

While the alleged crimes are extremely serious, the respondents must be presumed innocent unless and until they are found guilty beyond a reasonable doubt. The appellant's concern is that the respondents, who are all residents of Taiwan in the Republic of China, will have returned home and left this jurisdiction before the appeal can be heard, making the appeal moot. This is a responsible concern but it falls short of a certainty on the evidence before me, and in any event it must be balanced against other considerations.

The Department of Justice, representing Romania as the requesting state

under the **Act**, immediately gave notice of appeal and sought an abridgement of the notice periods. Counsel for all parties were present and a chambers hearing was convened. I ordered that the notice periods be abridged and that the appeal be set down. Determination of a date acceptable to counsel has been adjourned for two weeks. I heard counsel on the appellant's request for a stay of Justice MacDonald's decision or, at least, his order of discharge.

An application for a stay from a disposition of a court setting individuals at liberty appears to be without precedent. Neither the **Extradition Act** nor the **Criminal Code** provide for a stay in such circumstances. The **Nova Scotia Civil Procedure Rules**, however, provide a basis for the appellant's request. Under **Civil Procedure Rule 62.10** a stay of execution can be granted in civil matters. **Rule 65.03**, made under the authority of s. 482 of the **Criminal Code**, provides for civil rules to be adopted in criminal proceedings. A civil stay was adapted by this Court to relieve against terms of a probation order pending appeal in **Keating v. R.** (1991), 66 C.C.C. (3d) 530 (S.C.A.D.).

Altogether different considerations are involved when the liberty of individuals is in issue. It would be a dangerous precedent if accused persons could be deprived of liberty pending an appeal by a stay of the discharge or acquittal they have won in the court that heard their cases on their merits. In fact, there is no precedent for it, and I do not believe it would serve the interests of justice if I were to exercise my discretion to create one.

In **R.v. Potvin** (1993), C.C.C. (3d) 97 (S.C.C.) Sopinka J. suggests that a person discharged or acquitted is no longer under accusation even though an appeal has been brought. He states at p. 110:

"If on the appeal the judgment is set aside and the matter is remitted for trial, the accused reverts to the status of a person charged."

At page 111 he states:

"No restraints can be placed on the liberty of the former accused pending appeal."

Whatever remedies are available to the appellant in the present circumstances, I do not consider a stay of Justice MacDonald's judgment or the orders included in it to be among them. I dismiss the application for the stay.

Freeman, J.A.