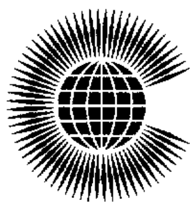

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For further information or copies, please contact: The Editor, Criminal Law Section, Legal & Constitutional Affairs Division (LCAD), Commonwealth Secretariat, Marlborough House, Pall Mall, London SW1Y 5HX, United Kingdom.
Tel: +44 (0)20 7747 6417/6420/6423
Fax: +44 (0)20 7839 3302
E-mail: k.prost@commonwealth.int
v.wright@commonwealth.int

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Extradition – arrest on provisional warrant – search and seizure – whether common law power extinguished by statute – PACE (United Kingdom)

A court in Germany issued a warrant for the arrest of R, a German businessman. The warrant contained an allegation that he and other persons committed fraud in Germany. R had left Germany at the end of 1995 and lived in England. The Bow Street Magistrates' court issued a provisional warrant for R's arrest under section 8(1) of the Extradition Act 1989.

The provisional warrant alleged conspiracy to defraud, which is an extradition crime as defined by section 2 of the 1989 Act. The information placed before the magistrates' court would have justified the issuance of a warrant for the arrest of a person accused of such an offence in the United Kingdom.

Following police surveillance, R was arrested pursuant to the warrant in the driveway of his house a few yards from its front door. The police were entitled under section 17 of the Police and Criminal Evidence Act 1984 ("PACE") to enter the grounds of the house to arrest the respondent pursuant to the warrant.

R brought an application for judicial review against the appellant and the Home Secretary in respect of the decision by the police to enter his home and to search for and seize items.

The Divisional Court held in R's favour and declared that the entry and search carried out by the police were unlawful; that R's rights under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms had been violated; and ordered the return of the items seized from R.

The Divisional Court in its judgment held that the common law power of search and seizure following an arrest had been extinguished by PACE and that the relevant provisions in respect of search and seizure in PACE related only to domestic offences and did not extend to extradition offences. The Commissioner of Police appealed and the Divisional Court certified the following question for the consideration of the House of Lords:

> "At common law, does a police officer executing a warrant of arrest issued pursuant to section 8 of the Extradition Act 1989 have power to search for and seize any goods or documents which he reasonably believes to be material evidence in relation to the extradition crime in respect of which the warrant was issued?"

➲ **Held**: allowing the appeal;

1. The Common Law Power before PACE:

It was a well-established principle of the common law that on the arrest of a person pursuant to a warrant the police officer effecting the arrest could search that person and seize any articles which he found on him which he reasonably believed to be material evidence against him for the purpose of preserving that evidence until trial. It was clear that this power to seize also extended to articles which were present in the room in which the person was arrested and of which he was in possession: *Dillon v O'Brien and Davis* (1887) 16 Cox CC 245

It would be contrary to common sense to hold that the power to search and seize after arrest did not extend to searching the remainder of the premises belonging to the suspect in or on which he had been arrested. When the police are not authorised to arrest a man they should only have power to search his house pursuant to a search warrant or under statutory authority. But the position is different when the police are entitled to arrest him. In *Chic Fashions* after referring to the power of a police officer to arrest a suspect Salmon LJ stated, at p 319:

> "If the man's person is not sacrosanct in the eyes of the law, how can the goods which he is reasonably suspected of having stolen or received be sacrosanct? Only if the law regards property as more important than liberty; and I do not accept that it does so. It would be absurd if the police had the power to arrest a man, but, having failed to catch him, had no power to seize the goods in his house which they reasonably believed he had stolen or unlawfully received."

This reasoning applies with even greater force when the suspect has been arrested.

It was further argued that that after the arrest of a suspect in his house pursuant to a warrant, the police should not be entitled to search the remainder of the house because they had not been authorised to carry out such a search by a magistrate. The Lords held that the magistrate had considered it proper to authorise the arrest of the suspect. The arrest and the taking into custody of a person and the entry into his home to effect the arrest is a much greater intrusion into his home, his liberty and his privacy than the search of his home and seizure of articles subsequent to his arrest. As such, search and seizure will often be necessary to prevent the disappearance of material evidence before the police have time to obtain a search warrant.

The Court rejected the argument that having arrested R, not in his house, but outside it in the grounds of his property, the police were not entitled to enter the house to search it. The house and the grounds surrounding it comprised the premises and it would be artificial to draw a distinction between a house and its grounds in relation to the power to search following an arrest of a suspect on his premises.

On the contention that the power to search after arrest was limited to domestic offences alone, and should not be extended to extradition offences, the Lords said that the effective combating of international crime was as important as the effective combating of domestic crime. "Unfortunately in this century crime has ceased to be largely local in origin and effect. Crime is now established on an international scale and the common law must face this new reality": per Griffiths LJ in *Liangsiriprasert (Somchai) v Government of the United States of America* [1991] 1 AC 225, 251. If, prior to PACE, the police had power under the common law, after an arrest for a domestic crime, to search the suspect's house and seize articles which would constitute material evidence against him at a subsequent trial, the common law gave a similar power when an arrest had been made for an extradition crime. In relation to the power to search and seize there was no difference between a warrant of arrest in domestic proceedings and a warrant of arrest in extradition proceedings.

2. The provisions of PACE

Section 17 of PACE authorizes the police to enter and search premises for purposes of executing warrants of arrest for purposes of investigating a crime and to search such premises to the extent reasonable to carry out that purpose.

Section 23 defines "premises" as including "any place". Extradition proceedings are criminal proceedings: see *R v Governor of Brixton Prison, Ex p Levin* [1997] AC 741. Therefore the warrant of arrest issued in this case under section 8(1)(b) of the 1989 Act was a warrant of arrest within the meaning of section 17(1)(a)(i). Accordingly the police had power under section 17(1)(a)(i) to enter R's premises for the purpose of executing the warrant of arrest but, by reason of section 17(4), the police, having arrested the respondent, had no power to search his house.

The Court also rejected the argument that, in addition to the Common Law power, the police

had power under sections 18 and 19 of PACE to search R's house and to seize the articles. Section 18 only applies to the premises of a person who is under arrest for an "arrestable offence". An "arrestable offence" as defined in section 24(1) was in the court's opinion, a domestic offence and the extradition crime alleged to have been committed by R in Germany could not be regarded as an "arrestable offence" within the meaning of section 24(1). Section 19(3)(a) only applies to the seizure of evidence in relation to "an offence which [the police officer] is investigating or any other offence". Any offence has been construed to be confined to domestic offences : *R v Southwark Crown Court, Ex p Sorsky Defries* [1996] Crim LR 195. In this case the police were not investigating a domestic offence and were not entitled to claim a power to seize under section 19(3)(a).

The question therefore was whether the common law power of search and seizure after an arrest on a warrant issued pursuant to section 18(1)(b) of the 1989 Act was extinguished by PACE.

In the opinion of the court, the common law power of search and seizure was not extinguished by PACE and that the Divisional Court erred in holding that Part II of PACE did not provide any saving for the common law power.

The Court considered that the question was not whether PACE saved the common law power but whether PACE extinguished it. It is a well-established principle that a rule of the common law is not extinguished by a statute unless the statute makes this clear by express provision or by clear implication. The common law power was a valuable one in respect of an extradition offence because, just as in respect of a domestic offence, it guarded against the risk of the disappearance from the suspect's house of material evidence after his arrest and before the police had time to obtain a search warrant. Sections 18 and 19 of PACE are confined to domestic offences and the provisions of the Act did not lead to the conclusion that Parliament intended to revoke the common law power exercisable after the execution of a warrant of arrest for an extradition offence. Besides, section 19(5) expressly preserved any power otherwise conferred.

The fact that Parliament made provision in section 7 of the 1990 Act for a justice of the peace to issue a search warrant in respect of a foreign offence did not mean that there was no common law power to search and seize after an arrest for an extradition offence. The power to seize and search to prevent the disappearance of material evidence is needed where the police pursuant to a provisional warrant arrest a suspect and where, prior to finding and arresting the suspect, it was not possible to apply for a search warrant.

The common law power of search and seizure after arrest does not constitute a violation of a person's rights under article 8 of the European Convention on Human Rights. The power has the legitimate aim in a democratic society of preventing crime, and is necessary in order to prevent the disappearance of material evidence after the arrest of a suspect. The power is proportionate to that aim because it is subject to the safeguards that it can only be exercised after a warrant of arrest has been issued by a magistrate or a justice of the peace in respect of an extradition crime and where the evidence placed before him would, in his opinion, justify the issue of a warrant for the arrest of a person accused of a similar domestic offence.

Commissioner of Police for the Metropolis, Ex P Rottman, R. v. [2002] UKHL 20

Source: www.bailii.org/cgi-bailii/disp.pl/uk/cases/UKHL/2002/20html

EXTRADITION - eligibility for surrender - review of order for release made by magistrate - application and meaning of s 10(1) of the *Extradition Act 1998* (Cth) - where a person is finally convicted in that person's absence - whether s 10(1) applies where absence is voluntary – (Australia)

T was arrested in Greece while in possession of 27.5 grams of heroin, packed in six pieces in the shape of an egg. He was charged with offences concerning, possession of heroin, purchase of heroin, assisting in the disposal of heroin and obtaining heroin for personal use. He was convicted of the offences in absentia and sentenced. He then escaped to Australia. The Hellenic Republic of Greece requested that Australia surrender T so that he could serve his sentence in Greece. The responsible minister served notice under the Extradition Act for the issue of a warrant of arrest. The warrant was duly issued and T was arrested and remanded in custody. Subsequently, at the extradition hearing, the magistrate found that T was not eligible for surrender to Greece and discharged him.

The Hellenic Republic of Greece applied for review under s 21(1)(b) of the *Extradition Act 1998* (Cth) (the Act) of the order.

Subsections 19(3)(a) and (b)of the Extradition Act stipulate different requirements depending on whether the offence concerned is one of which the person is accused, or of which the person has been convicted. One of the differences is that if the offence for which the person is sought is one for which the person is accused, a warrant for the arrest of the person, or a copy of such warrant, must be produced to the magistrate. If the person sought has already been convicted, no such warrant need be produced to the magistrate.

The Hellenic Republic did not produce to the magistrate a warrant or copy warrant for the arrest of T. Thus, if the offences for which T was sought were offences of which he was accused within the meaning of s 19(3)(a) there was a fatal deficiency in the documentation.

The magistrate determined that, for the purposes of s 19(3), the offences for which T was sought were ones of which he was accused, and not convicted. He noted that T had been convicted in his absence within the meaning of s 10(1). As the Hellenic Republic had not produced a warrant for T's arrest as an accused person, the requirements of s 19(2)(a) had not been satisfied.

The question before the Court on review was whether the magistrate was correct to have held that T was convicted in his absence within the meaning of s 10(1).

The Hellenic Republic contended that a person is not convicted in absence where he voluntarily waives a right to be present at his trial. Rather, a conviction in absence occurs only where a person is not entitled to be present at his trial. It was submitted that T was entitled to be present at his trial, but chose not to attend. Hence, he was not convicted in his absence for the purpose of s 10(1). Rather, he should have been treated as a convicted person under s 19(3)(b). The failure of the Hellenic Republic to produce a warrant for the arrest of T as part of the supporting documents was, therefore, immaterial.

Counsel for T submitted that a person is convicted in his absence if he is not in attendance at the trial and conviction. T was not in attendance at his trial and conviction, and hence, he was convicted in his absence for the purpose of s 10(1). Production of a warrant of arrest was, therefore, necessary, in the absence of which the magistrate was correct to determine that T was not eligible for surrender.

➲ Held: dismissing the appeal;

1. Unassisted by reference to the history or context of the relevant provisions or their purpose, one would construe the reference to a conviction in a person's absence in s 10(1) as a reference to a conviction obtained when the person was not present at trial or conviction. Absence simply means not present. On this approach no question would arise as to the reason for the person's non-attendance. Such a construction reflects the ordinary use of the language.

In *Gapes v Commercial Bank of Australia Ltd* (1979) 27 ALR 72, Northrop J held that an employee who was physically present at work was not "absent from duty" even though the employee was not performing his duties. His Honour said that "absent from duty" should be "given its ordinary meaning as referring to physical bodily absence from duties".

2. The better construction of s.10(1) was that a conviction in absence meant a conviction obtained when the accused was not present for whatever reason. T was not present at his trial or conviction. Therefore, he was to be treated as an accused for the purpose of the hearing before the magistrate. It was necessary for the Hellenic Republic to produce an authenticated warrant under s.19(3)(a). It failed to do so. The magistrate was correct to order that T be released under s. 19(10)(a).

Hellenic Republic v. Tzatzimakis [2001] FCA 340

Source: www.auslii.edu.au

Extradition – voluntary surrender – guilty plea at trial – offences for which extradition was obtained different from offence to which he pleaded guilty – adequacy of assurances sought and obtained- (United Kingdom)

Four accused persons of Russian origin, who at the relevant time lived in England, together set up a scheme by which businessmen in Russia, Belarus and the Ukraine were invited to attend a series of seminars or courses in Los Angeles, sponsored by the Roosevelt Foundation in the United States of America. The only cost to those attending was to be their airfare and hotel expenses. Brochures were distributed. Nearly 700 business applied for 1450 places on the courses. A total of about £1.5m was sent by prospective subscribers. They were swindled. The project was a sham. There were no seminars or courses. The information contained in the

brochures was entirely bogus. N was one of the individuals accused of having perpetrated the fraud. All of the accused persons pleaded guilty to various charges. Specifically, N pleaded guilty to conspiracy to furnish false information contrary to section 1(1) of the Criminal Law Act 1977. He was sentenced to three years imprisonment and a confiscation order of £400,000 made against him.

N had been arrested in Geneva, Switzerland. He consented to his extradition. The Investigating Magistrate informed him that he could not be 'held or prosecuted for any matters other than that of the printed prospectuses for courses to be held in the USA in conjunction with (his) wife and Mrs Kouznetsova'.

N appealed contending inter alia that he had not been extradited from Switzerland for the offence to which he pleaded guilty, and the appropriate consents had not been obtained from the authorities in Switzerland, contrary to Section 18 of the Extradition Act 1989 and the European Convention on Extradition.

During a preparatory hearing at the Crown Court, the Assistant Director of the Serious Fraud Office wrote to the Swiss Authorities responsible for N's extradition. In view of the 'speciality agreement' between the United Kingdom and Switzerland, the consent of the Swiss authorities was sought to 'bring charges... which are different from the charge on which he was extradited...those charges might include conspiracy to obtain property by deception or other offences of dishonesty arising out of the mechanics of the execution of the fraud he is already charged with'. The letter also stated that: "No unfairness could result to Michael Newman from your giving consent to this request. The extradition will still not be used to try him for anything other than the extent of his involvement in the affairs of Investco Corporation, arising from the same factual basis of involvement in the alleged fraud which resulted in his extradition."

The Swiss authorities responded noting that since the facts alleged in the letter from the Serious Fraud Office were identical to those set out in the original warrant, there was no need for an 'extension of the extradition', and that there was no objection to proceedings against N 'not only for conspiracy to defraud but also for conspiracy to obtain property by deception'. The Serious Fraud Office again wrote to the Swiss authorities asking that the approval be for offences which they specifically mentioned including conspiracy to obtain property by deception, all of which were offences 'necessarily committed in the course of conduct which led to the extradition and upon which the extradition was based'. They expressly referred to conspiracy to furnish false information.

Counsel for N submitted that the requisite consent to proceeding with a charge of conspiracy to furnish false information was never obtained from the Swiss authorities.

➲ **Held**: dismissing the appeal;

The summary of the essential facts before the Investigating Judge dated 28 July 1997 read:

'Although the investigating judge did not use the word "invoice" in his summary, and nothing specific had been said about furnishing false information, the thrust of the allegation was clearly understood: under the cover of Investco, and by means of lying brochures, Russian scientists were swindled. The offences related to 'the association of criminals with a view to fraud and the obtaining of property by deception'. The Court did not read 'with a view to fraud' as synonymous with or limited to the technicalities of conspiracy to defraud in domestic law, unless it is understood that each conspiracy to defraud involves its own specific manifestations.'

This made it clear that the Swiss authorities were prepared to extradite N for associating with others 'with a view to fraud, taking the form of swindling Russian scientists under the umbrella of Investco'. They rightly understood that the facts alleged in the letter from the SFO dated 11 December did not represent an extension of the extradition. In reality, the constituent elements were unchanged. This explained their response to N's Swiss lawyers that "the Swiss authorities did not regard the faxes of 11 December, or 15 December, or 16 December as a 'new request' ". In these circumstances, the absence of any negative response to the SFO powerfully suggested that the course proposed was indeed 'acceptable' to the Swiss authorities. This conclusion was fortified by the absence of any further query from the Swiss authorities to the SFO in response either to their letter dated 16 December, or indeed to the letter from the applicant's Swiss lawyer. That provided a salutary reminder to the Swiss authorities (if one were needed) of the obligation to protect N's interests against any unjustified extension of the extradition. Having considered it, the Swiss authorities were untroubled. Neither was the court.

R. v. Newman [2002] ECWA Crim 939.

Source: www.bailii.org

Mutual legal assistance in criminal matters – search and seizure pursuant to request for documents relating to fraud – application to forward materials to requesting country – whether search warrant must include proof of ministerial approval – whether reasonable grounds to support issue of warrant – (Canada)

A search warrant was issued pursuant to s. 12(1) of the Mutual Assistance in Criminal Matters Act (the Act) on April 17, 2000 for the search of premises of International Brokers Ltd. ("IBL") in British Columbia, Canada. A gathering order was made for the production of certain documents and records, pursuant to s. 18(1) of the Act.

The United States requested Canada to have a search and seizure carried out in Canada under the treaty between Canada and the United States on mutual assistance in criminal matters (the "request") which the Minister of Justice approved.

A grand jury investigation was being conducted in the U.S. into allegations of telemarketing fraud by IBL. The offences under investigation included mail fraud, fraud by wire, radio or television communication, and transportation of stolen goods, securities and monies greater that $5,000. It was alleged that representatives of IBL, namely El-Jabsheh, Danbrook, and Edwards, contacted senior citizens in the U.S. and induced them to send money to Canada pursuant to two schemes. The first involved falsely informing the senior citizens that they had won a large amount of money but that they should first send money to IBL to cover taxes and fees associated with the sweepstakes and lottery winnings before they could collect their winnings. The second enticed the seniors to enter an Australian lottery that purportedly provided an opportunity to win $10 million each week. Money sent by senior U.S. citizens was deposited to an IBL bank account in Surrey, British Columbia. None of the seniors who sent money received any money back.

The victims identified two addresses in Surrey as provided by IBL. RCMP officers searched the premises and seized certain materials connected with the schemes.

An application was made on behalf of the United States under sections 15 and 20 of the Act for the documents and materials seized as a result of the search, to be sent to the United States of America. The respondents contested the application arguing that the application for the search warrant did not include proof of the approval of the Minister as required under s. 11(1) and that there were no reasonable grounds to support issuance of the search warrant within s.12(1) of the **Act**.

➲ **Held:** granting the application and ordering that the materials be forwarded to the requesting country;

1. Legislative Analysis

The Act was to be given a liberal interpretation so as to achieve its purpose of international co-operation in criminal matters: *Canada (Attorney General) v. Dawson* (1999), 248 A.R. 82 at paras. 13-15 (Q.B.), *Russian Federation v. Pokidyshev* (1999), 138 C.C.C. (3d) 321 at 327-329 (Ont. C.A.)). Requests for assistance by foreign states must be approved by the Minister of Justice: s. 11(1), s. 17(1), *Russian Federation v. Pokidyshev*. Thus, the Minister exercises an executive function distinct from the judicial one. The Minister's role to conduct Canada's foreign relations is essentially political. The judicial role is restricted to ensuring compliance with the statutory conditions precedent to making the order requested and crafting an order which balances the legitimate state and individual interests at stake.

Upon the request of a foreign state, the Minister reviews the request to ensure compliance with the relevant treaty (s. 8(1)). If the foreign state requests assistance through use of a search warrant, ss. 10-12 of the *Act* applies. The Minister must approve the request and then forward it to competent authorities so that application can be made for a search warrant (s. 11(1)), *Russian Federation v. Pokidyshev*. The application is made pursuant to s. 11(2). A judge may issue a search warrant if the requirements under s. 12(1) are met, namely:

"(a) an offence has been committed;

(b) evidence of the commission of the offence or information that may reveal the whereabouts of a person who is suspected of having committed the offence will be found in a building, receptacle or place in the province; and

(c) it would not, in the circumstances, be appropriate to make an order under subsection 18(1)."

Ss. 18(1) governs the issuance of evidence gathering orders. It differs from a search warrant order under s. 12(1) because it compels a party who is in possession of relevant material to deliver it to the court whereas the search order allows law enforcement officers to seize evidence from a party in possession.

Once a search has been executed, the officer who executed the warrant must file a written report with the court and the Minister (s. 14). A judge must then consider whether the items seized should be forwarded to the foreign state. The circumstances set out in s. 15(1) under which the judge may refuse to order that the material be sent to the requesting state is cast in broad terms (*R. v. Budd* (2000), 150 C.C.C. (3d) 108 at 117 (Ont. C.A.)). S. 15 requires a judge considering the propriety of the execution of a warrant issued under s. 12 to order that a record or thing seized in execution of the warrant be returned, where the judge is not satisfied that the warrant was executed according to its terms and conditions or where the judge is satisfied that an order should not be made under paragraph (b), to:

> (i) the person from whom it was seized, if possession of it by that person is lawful, or
>
> (ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful."

In any other case, the judge can order that a record or thing seized in execution of the warrant be sent to the requesting state or entity and include in the order any terms and conditions that the judge considers desirable, including terms and conditions

> (i) necessary to give effect to the request, ...
>
> (ii) with respect to the preservation and return to Canada of any record or thing seized, and
>
> (iii) with respect to the protection of the interests of third parties."

If an order is made under s. 15, the matter is then referred back to the Minister for a final decision (s. 16).

The statutory sections for which the court is responsible limit judicial discretion. The judicial role under Part I of the *Act* is twofold. The judge must ensure compliance with the statutory conditions precedent to the making of the order requested and the judge must craft an order which balances the legitimate state and individual interests at stake: *United Kingdom v. Hrynyk* (1996), 107 C.C.C. (3d) 104 at 117. The terms of the order will depend, to a large extent, on the nature of the order made and the individual interests affected by the order. The Court went on to state that "There are, however, limits on the discretion vested in the s. 20 judge. These limits flow from the nature of the judicial role in the process contemplated by the Act. In the court's view, a judge under s. 20 is not concerned with the advisability of assisting the foreign jurisdiction or whether the foreign jurisdiction will comply with any order the judge might make. Those matters must be addressed by the Minister of Justice. Similarly, a judge on a s. 20 application cannnot be concerned with the ultimate evidentiary value of the requested material to the foreign jurisdiction: *United States of America v. Ross* (1994), 44 B.C.A.C. 228." para 40, *UK v. Hrynk*"

A judge under section 15 has the same restrictions in that while the discretion does not extend to reviewing the Minister's decision to approve the request for assistance, it does include determining that such an approval has been obtained and that proper evidence to support the application is before the court so as to make a determination under s. 15(1). Thus, when the judge decides whether or not to send the seized materials to the requesting states at the hearing under s. 15 of the Act, the judge may consider the conduct of the Canadian authorities in obtaining the material used to support the information. It will be for the judge at the s. 15 hearing to decide whether an order should be made sending the material to the requesting states in view of the conduct of the Canadian authorities and the alleged ***Charter*** violations. In making that determination, the judge will also take into consideration the need to ensure that Canada's international obligations are honoured and to foster co-operation between investigative authorities in different jurisdictions: *United States of America v. Dynar* [1997], 115 C.C.C. (3d) 481.

2. Review of the Warrant

The respondents argued that there was insufficient information to obtain the search warrant.

The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record that was before the authorizing judge as amplified on the review, the

reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere.

It was not necessary to provide specific evidence against each respondent. The information concerning IBL and the search location was specific enough to establish that an offence had been committed and that evidence of the offence could be found at 10706 King George Highway. There was, in any event, some evidence linking the respondents with IBL and the search location.

There was sufficient reliable information to support issuance of the search warrant under s. 12(1) of the **Act**.

3. Approval of Minister

The respondents contended that approval of the Minister was a condition precedent to issuance of the search warrant and that the confirmation of approval was not approval at all. The United States replied that whether there had been an approval or not did not affect the validity of the search warrant but was a factor to be considered within s. 15(1).

The court agreed with the United States that it was not necessary to prove that approval had been obtained in order to issue a search warrant under s. 12(1) which set out the criteria to be established. The requirement for Ministerial approval of the request and the duty upon the Minister to provide the competent authority with necessary documents and information were the separate sphere of responsibility of the Minister. It was up to the Minister to decide whether he should issue the required approval and that decision was not subject to review by this court. The approval was irrelevant to performance of the judicial duty under s. 12(1).

Approval or lack thereof becomes a relevant consideration under s. 15(1). When considering whether to transmit seized information, the judge has a broad discretion and can consider the conduct of the Canadian authorities (*R. v. Budd, supra* at para. 28). Part of this consideration should be whether there has been approval at the ministerial level as opposed to agreement between agencies or enforcement authorities to act. There should be evidence that the Minister has attended to consideration of Canada's international obligations through approval of the process as is required under s. 11(1). This does not mean that courts will become involved in the political questions associated with treaty or international obligations. Mindful that the court should not reach out to bring within their jurisdiction matters that the Act has not assigned to them, the court should restrict its considerations to fulfillment of the statutory conditions.

USA v. El-Jabsheh et al [2002] BCSC 246

Source: www. canlii.org/bc/cas/bcsc/2002/2002bcsc246.html

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