



I N S I D E

4. **Extradition – warrant of arrest – absence of safeguards against illegal arrest – police officers effecting arrest without arrest warrant.**
5. **Immigration and Asylum – whether legitimate expectation that certificate of removal will not be cancelled following an earlier decision in other case.**
7. **Mutual Assistance in Criminal Matters – Serious or complex fraud – assistance in obtaining evidence for foreign proceedings – Whether Attorney General under duty to consider what legal protection was available to person being investigated if the information is used in criminal proceedings in requesting country – whether undertaking should have been first sought and obtained.**

Extradition – fundamental justice – whether considerations of fundamental rights are engaged at stage of extradition process – Canadian Charter of Rights and Freedoms, S.7 – Extradition Act s. 9(3) – (Canada)

The United States of America sought the extradition of C and G from Canada to face charges of fraud and conspiracy to commit fraud in the US state of Pennsylvania. C and G were Canadian citizens who lived in the US.

The allegations against C and G were that they together with others set up a fraudulent scheme whereby they advertised to American residents that they could sell their gemstones at inflated prices to overseas buyers. Interested people were then informed that they had to augment their existing collections so that they could get the desired price for their gemstones. About 67 persons who purchased these additional stones were defrauded of \$22 million since, allegedly, no overseas buyers existed and no purchases of the existing gemstone collections ever took place, nor were these transactions ever intended.

Many of the original co-conspirators voluntarily attorned to the jurisdiction of Pennsylvania. C and G (and others), however, contested their extradition on the basis that to extradite them would be an unjustified violation of their *Charter* rights, in light of statements made by the American judge assigned to their trial, and of statements made by the prosecuting attorney responsible for their case. The statements complained of were that (1) at the sentencing of one of the co-accused the trial judge, said that the other co-conspirators who had not voluntarily submitted to trial would receive the maximum impossible sentence if convicted; and (2) the Prosecutor had said in a television interview that if they were convicted the accused persons would suffer homosexual rape in prison.

C and G argued at trial that in light of the powerful influence on sentencing that can be exerted by an American prosecutor, the prosecutor's comments constituted a very serious threat. They argued that if extradited, (i) they would face sentences in the Requesting State that were very substantially higher than those they would face in Canada, and (ii) they would be subjected to homosexual rape in prison. To extradite them in those circumstances would constitute a breach of their right to security of the person and a violation of the principles of fundamental justice, contrary to s. 7 of the *Charter*.

(continued on page 2)

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The extradition judge found that the United States had made out a *prima facie* case for extradition, but nevertheless refused to order the committal of the appellants on the basis of the comments made by the American judge and by the prosecutor. Accordingly, he stayed the extradition proceedings. The Court of Appeal set aside the stay and remitted the matter to the extradition judge. C and G appealed to the Supreme Court of Canada. The appeal raised the issue of whether the Court of Appeal for Ontario erred in finding that considerations relating to s. 7 of the *Charter* were not engaged at the committal stage of the extradition process, were beyond the jurisdiction of the extradition judge, and thus were only engaged at the time of the decision of the Minister of Justice to surrender the fugitive

C and G argued that s. 9(3) of the *Extradition Act* gave an extradition court complete jurisdiction in connection with *Charter* matters as they related to the judicial function performed at the committal stage of the extradition process. The US position was that s. 9(3) did not expand the role of the *Charter* at that phase of the process and that the extradition judge had the same limited *Charter* jurisdiction previously exercised by the *habeas corpus* judge with respect to *Charter* issues.

It was argued on behalf of C and G that the determination of whether a fugitive's s. 7 rights were infringed should not be left to the Minister, as a Minister is not "a court of competent jurisdiction". They submitted that the threats of homosexual rape and maximum sentence arising solely as a result of the exercise of a fugitive's rights pursuant to Canadian law, amounted to an infringement of s. 7 of the Canadian *Charter* of Rights and Freedoms. To issue a committal order would amount to an abuse of the judicial process. They urged the court to exercise its power, under the Common Law and statute, to control such abuse by staying the extradition proceedings.

The US on the other hand responded that s. 7 *Charter* issues were not engaged at the extradition hearing stage unless they somehow related to the narrow function of the extradition judge. Counsel argued that the comments in question were irrelevant to the decision of the extradition judge as regards the sufficiency of the evidence and that it was for the Minister to give effect to s. 7 in deciding whether to surrender. Moreover, whether the issue was approached in terms of the *Charter* jurisdiction of the extradition judge or in terms of the inherent jurisdiction of superior courts, the extradition judge ought not to have pre-empted the decision of the Minister of Justice in respect of

the comments made by the U.S. judge and prosecutor. Counsel relied on *Argentina v. Mellino*, [1987] 1 S.C.R. 536, as establishing that it is not the extradition court's role to give effect to suggestions that a fugitive will not be given a fair trial in the Requesting State.

► **Held:** allowing the appeal;

1. The *Charter* jurisdiction of the committal court must be assessed in light of the court's limited function under the Act. This function only extends to the determination of whether the foreign authority has put forward sufficient admissible evidence to make out a *prima facie* case against the fugitive

The *Charter* applies to extradition proceedings in the sense that the treaty, the extradition hearing in Canada and the exercise of the executive discretion to surrender the fugitive all have to conform to the requirements of the *Charter*: *Canada v. Schmidt*, [1987] 1 S.C.R. 500, and *United States v. Burns*, [2001] 1 S.C.R. 283. The committal judge presides over a judicial hearing and must ensure that the hearing is conducted in accordance with the principles of fundamental justice. The extradition judge is therefore competent to grant *Charter* remedies, including a stay of proceedings, on the basis of a *Charter* violation but only insofar as the *Charter* breach pertains directly to the circumscribed issues relevant at the committal stage of the extradition process.

2. Both the extradition hearing and the exercise of the executive discretion to surrender a fugitive must conform with the requirements of the *Charter*, including the principles of fundamental justice: *Schmidt*; *United States v. Allard*, [1987] 1 S.C.R. 564; *Burns*. The principles of fundamental justice guaranteed under s. 7 vary according to the context of the proceedings in which they are raised: *Idziak v. Canada (Minister of Justice)*, [1992] 3 S.C.R. 631; *Dynar*. Where the issues before the courts involve a liberty and security interest, s. 7 is engaged and requires that the proceedings be conducted fairly. Accordingly, although the committal hearing is not a trial, it must conform with the principles of procedural fairness that govern all judicial proceedings in this country, particularly those where a liberty or security interest is at stake.

3. The issue at the committal stage was not whether the fugitives would have a fair trial if extradited, but whether they had a fair extradition hearing in light of the threats and inducements imposed upon them, by those involved in requesting their extradition, to force them to abandon their right to such a hearing. The focus

of the fairness issue was thus the hearing in Canada, to which the *Charter* applied, and not the eventual trial in the U.S., which it might have been premature to consider pending the Minister's decision on surrender. "Conduct by the Requesting State, or by its representatives, agents or officials, which interferes or attempts to interfere with the conduct of judicial proceedings in Canada is a matter that directly concerns the extradition judge".

4. "Section 7 permeates the entire extradition process and is engaged, although for different purposes, at both stages of the proceedings. After committal, if a committal order is issued, the Minister must examine the desirability of surrendering the fugitive in light of many considerations, such as Canada's international obligations under the applicable treaty and principles of comity, but also including the need to respect the fugitive's constitutional rights. At the committal stage, the presiding judge must ensure that the committal order, if it is to issue, is the product of a fair judicial process".

5. Although s. 7 of the *Charter* incorporates the abuse of process doctrine, it does not extinguish the common law doctrine, as was recognized by L'Heureux-Dubé J. in *R. v. O'Connor*, [1995] 4 S.C.R. 411. A stay of proceeding was a remedy available against an abuse of process: *R. v. Jewitt*, [1985] 2 S.C.R. 128. A stay should be granted 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", or where the proceedings are "oppressive or vexatious", but must only be exercised in the clearest of cases: *R. v. Young* ([1985] 2 S.C.R. [128], at pp.136-37). "When a stay of proceedings is entered in a criminal case for abuse of process, "[t]he prosecution is set aside, not on the merits . . . , but because it is tainted to such a degree that to allow it to proceed would tarnish the integrity of the court": *R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667. The remedy is reserved for the clearest of cases and is always better dealt with by the court where the abuse occurs: *R. v. Jewitt*, [1985] 2 S.C.R. 128.'

The s. 7 issue before the extradition judge was whether the extra-judicial conduct and pronouncements of a party to the proceedings, or of those associated with that party, disentitle it from the judicial assistance that it sought and whether it would violate the principles of fundamental justice to commit the fugitives for surrender to the Requesting State. In the present case, the utterances complained of were an

attempt to influence the unfolding of the Canadian judicial proceedings by putting undue pressure on the appellants to desist from their objections to the extradition request. They were inappropriate and unequivocally amounted to an abuse of the process of the court. Moreover, a committal order requiring a fugitive to return to face such an ominous climate — which was created by those who would play a large, if not decisive role in determining the fugitive's ultimate fate was not consistent with the principles of fundamental justice.

"These concerns, and the remedies to which they give rise, properly belong to the judicial phase of the extradition process as they are not dependent on the ultimate outcome of either the committal or the surrender decision. Nothing the Minister could have done would address the unfairness which would taint a committal order obtained under the present circumstances. The Minister is not the guardian of the integrity of the courts. It is for the courts themselves to guard and preserve their integrity. This is therefore not a case that must await the executive decision. The violations of the appellants' rights occurred at the judicial stage of the process and call for redress at that stage and in that forum."

6. The argument that the impugned comments were not uttered by Canadians and therefore did not, in themselves, engage the *Charter* mischaracterized the issue. The appeal was not a case of "foreign" conduct, which may not attract *Charter* scrutiny, conduct that was attributable to a litigant before a Canadian court. This was sufficient to trigger the application, of either s. 7 of the *Charter* or the common law doctrine of abuse of process.

7. "By placing undue pressure on Canadian citizens to forego due legal process in Canada, the foreign State had disentitled itself from pursuing its recourse before the courts and attempting to show why extradition should legally proceed. The intimidation bore directly upon the very proceedings before the extradition judge, thus engaging the appellants' right to fundamental justice at common law, under the doctrine of abuse of process, and as also reflected in s. 7 of the *Charter*. The extradition judge did not need to await a ministerial decision in the circumstances, as the breach of the principles of fundamental justice was directly and inextricably tied to the committal hearing."

Harry Cobb and Allen Grossman v. United States of America (Supreme Court of Canada) [2001] S.C.C. 19

Extradition – Arrest warrant – dual purpose of entering and arresting illegal Immigrant – application in chambers – whether amounted to absence of safeguards – whether police officers could lawfully effect an arrest without having the warrant with them – Extradition Act ss. 13 & 29, Criminal Code, s. 529 – (Canada)

D had been charged and convicted of the offences of alien smuggling and illegal transportation of aliens in the United States. He was sentenced to six months imprisonment and was to surrender himself at a stated date to commence his sentence. He failed to do so and escaped to Canada. He was then charged with the offence of failing to voluntarily surrender himself for incarceration as ordered by the court. A warrant for his arrest was issued by a court in the American state of New York, and an extradition request made to the Canadian authorities for his surrender. The Canadians issued a warrant for his arrest. D applied to the court for the Canadian warrant to be quashed on the following grounds:

- 1) The warrant was invalid because it required in its second part, the police officers to enter a dwelling house for the purpose of arresting the person sought.
- 2) Counsel who appeared before the court was the same one who drafted the warrant, and this was inappropriate.
- 3) The application for the issuing of the warrant took place in chambers and not in open court, and led to an absence of safeguards.
- 4) The warrant was in fact two warrants: one that authorised provisional arrest pursuant to the Extradition Act, and another authorising the entry of a dwelling house under the Criminal Code.
- 5) The warrant did not name particular police officers and did not set a particular time limit.
- 6) The police officers effecting the arrest did not have the arrest warrant with them as required by law.

► Held:

1. The first important question was whether the information put before the judge issuing the warrant was sufficient to support a provision to enter two dwelling houses in order to arrest D. The evidence before the court showed that D was associated with the two houses mentioned in the warrant, which was sufficient to support the issue of a warrant authorising the entry of one of the two houses. The court had also limited the

purpose of the warrant specifically to the arrest of D and that the officer executing it must take care to ensure that D was in the dwelling house before entering it. The officer could not enter both houses. There was nothing wrong in terms of this part of the warrant.

2. There was nothing wrong with counsel drawing up an order, making submissions to the court, providing information to the court and proposing the draft terms of the order he sought. It only becomes an order when the judge signs it.

3. The safeguard that exists in cases like this, where the application had been made in chambers is that an application can be brought to quash the warrant, at which the judge can hear submissions as to the sufficiency of the evidence that had been put before the issuing judge. The warrant will be quashed where it is found that the evidence was insufficient to support its issue. "A warrant must stand or fall on the evidence that was before the judge that issued the warrant". This was exactly what happened in this case.

4. The statutory Scheme of the extradition process is such that s. 13 of the Extradition Act is the one that authorises the arrest of a person sought. Then s. 529 of the Criminal Code details that a warrant to arrest a person under any Act may authorise the entry into a dwelling house for those purposes. There was nothing wrong with the warrant, since it was clearly envisaged and allowed by the statutory scheme.

5. These arguments were founded on an analogy for search warrants that was not appropriate for arrest warrants. Section 13(2) of the Extradition Act provides that a search warrant can be executed anywhere in Canada without being endorsed. It was illogical and impractical for a warrant to require that specific police officer(s) should execute it or that it should be executed within a specific time limit.

6. In respect of the submission regarding possession of the arrest warrant, section 29 of the Criminal Code provides that "it is the duty of every one who executes a warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so". The evidence was that the warrant was left in the police car that was parked immediately outside the house where the arrest was being effected. If the need arose, the police officers could have simply stepped out to their car to get it. The intent of section 29 that the police officer should have the warrant and be able to produce it if required to do so, had been met.

Other issues raised involved constitutional questions and were adjourned to allow for the requisite notice period.

United States of America v. Van Thu Dao, Supreme Court of British Columbia, January 2001

Immigration and Asylum – whether there was legitimate expectation that certificate of removal will not be cancelled following an earlier decision in other case – application of condition (c) of s. 2(2) of the Asylum and Immigration Appeals Act 1993 – (United Kingdom)

Z, an ethnic Albanian from Kosovo, applied for asylum in the United Kingdom. He had entered the UK on the Eurostar from Brussels. He told an immigration officer that he had crossed into Macedonia on foot from Kosovo and travelled from there to Brussels in the back of a lorry. Inquiries by the Home Office revealed that his story was untrue. He had first gone to Germany and claimed asylum there. Subsequently he had claimed asylum in Belgium.

The United Kingdom and Germany are parties to the 1990 Dublin Convention on “determining the state responsible for examining applications for asylum lodged in one of the member states of the European Communities” (European Communities No. 40 (1991)). Article 6 provides that the member state into which an applicant for asylum has irregularly crossed from a non-member state shall be responsible for examining his application. By article 11.1, if a member state with which an application has been lodged considers that another member state is responsible for examining the application, it may “call upon the other member state to take charge of the applicant”.

The Secretary of State requested the German government to determine Z’s application and the German authorities agreed to do so. Section 6 of the UK Asylum and Immigration Appeals Act 1993, provides that during the period between the making of a claim for asylum and its substantive determination by the Secretary of State, the applicant may not be removed from the United Kingdom. But section 2 of the Asylum and Immigration Act 1996 creates an exception to give effect to the provisions of the Dublin Convention.

Z was subsequently refused leave to enter and he was issued directions for removal to Germany. Z applied for judicial review of the decisions. He contended that the Secretary of State was not

reasonably entitled to form the opinion that condition (c) was satisfied. Condition (c) of section 2(2) provides that: “(c) that the government of that country or territory would not send him to another country or territory otherwise than in accordance with the [Geneva] Convention [of 28 July 1951 relating to the status of refugees as amended by the New York Protocol of 31 January 1967 relating to the status of refugees].”

The Secretary of State had not made adequate inquiry into the way the Germans dealt with Kosovo asylum applications, which inquiry would have revealed that there was a serious danger that Z would be returned to Kosovo in breach of the Convention.

In *R. v. Secretary of State for the Home Department, Ex p Besnik Gashi* [1999] 1NLR 276, the Court of Appeal considered the complaint that the German courts applied the wrong standard of proof for asylum applications. The Court accepted that statistics which had been produced in evidence, revealing what appeared to be a wide disparity between German and UK acceptances of asylum applications from Kosovars over the same periods “should have put the Secretary of State on further inquiry as to whether Germany is in fact a safe country”. Buxton LJ, said, at p 306H that “There may well be an explanation; but it has not been given.... The duty of anxious consideration to enable the Secretary of State to be satisfied that there is no real risk of Mr Gashi being sent by Germany to another country otherwise than in accordance with the Convention therefore required, on the facts of this case, that the Secretary of State should consider, and almost certainly seek further explanation of, the figures as to actual recognition rates in Germany. Since he has taken no steps in that direction, his decision cannot stand.”

However, the actual ground of decision left open the possibility that full investigation might show that there was nothing wrong with German practice.

The Secretary of State appealed to the House of Lords. Then the Divisional Court heard a similar case, *R. v. Secretary of State for the Home Department Ex p Shefik Gashi and Artan Gjoka*. Collins J in that case said that delay was not material to the question of whether a section 2(2) certificate could be validly issued. The Home Office then formed the view that although he had not expressly decided anything about pre-25 March 1999 certifications, the principle of the case should apply equally to them. This meant

that the appeal in the *Besnik Gashi* case had little if any practical significance for any of the applicants in the same situation. The Secretary decided to re-certify all Kosovars applicants. The Secretary of State therefore withdrew his appeal in the *Besnik Gashi* case. He then wrote to Z. He referred to Collins J's decision and said:

"Following the judgment of [Collins J] ... the Secretary of State reviewed his certificate in your client's particular case, in order to determine whether or not it should be maintained, in the light of the changed situation for Kosovan Albanians both in Europe and in Kosovo. The Secretary of State remains clearly of the view that your client is properly returnable to Germany under section 2 of the [1996 Act]..."

Z then amended his application for judicial review to include a challenge to the later decision. The application was dismissed. He appealed through to the House of Lords.

Z argued that he had a legitimate expectation that unless the Secretary of State was successful in his appeal in the *Besnik Gashi* case, he and all other applicants whose cases had been adjourned pending the *Besnik Gashi* decision would receive substantive consideration of their asylum claims, and secondly that it was unfair of the Secretary of State, having left Mr Zeqiri in a state of uncertainty while he waited for the *Besnik Gashi* appeal to be heard, to remove him to Germany on other grounds. This would deprive him of what he regarded as the advantage of having his claim determined in the United Kingdom rather than Germany.

➤ **Held:**

The first issue is to consider whether the Secretary of State's letter of 2 November 2000 purported to be a certificate within the meaning of section 2(1) of the 1996 Act. Z argued that he was not issuing a new certificate but seeking to revive one which, as a result of the application of the un-appealed decision in the *Besnik Gashi* case, had been held unlawful and void. Therefore his letter was ineffective. It did not purport to be a new certificate and could not resurrect the old one. Their Lordship rejected this contention. The statute requires the Secretary of State to address the position at the time when he is giving the certificate: he must certify that in his opinion the subsection (2) conditions "are fulfilled" and condition (c) is that the German government "would not" send the applicant to another country otherwise than in accordance with the

Convention. The letter said that he had "taken into account the present situation" and addressed Z's situation as follows:

"The Secretary of State remains clearly of the view that your client is properly returnable to Germany under section 2 of the [1996 Act] and that he is re-admissible to Germany under the provisions of the Dublin Convention".

On a fair reading of the letter it was inescapable that the Secretary of State was saying that in the circumstances as they then existed, the subsection (2) conditions were in his opinion satisfied. The letter should therefore be treated as a certificate as of the date it was written.

2. On the question of whether Z had a legitimate expectation that unless the House of Lords reversed the *Besnik Gashi* case, his application for asylum would receive substantive consideration in the United Kingdom. There is no doubt that the *Besnik Gashi* case was regarded as a test case for all Albanian Kosovar applicants, such as Z, who were seeking to challenge the section 2 certificates for their removal to Germany. In the opinion of the House, this meant that the applicants and the Home Office agreed to abide by whatever the *Besnik Gashi* case decided. None of the issues decided by the Court of Appeal would be re-litigated.

There was always the possibility that the certificate would be quashed on grounds which did not preclude the Home Secretary from reconsidering the matter and issuing a new one. This was what actually happened.

The *Besnik Gashi* case did not prevent the Secretary of State from issuing a new certificate. But did the conduct of the Secretary of State in relation to that appeal give rise to a legitimate expectation that unless he overturned the decision on appeal, he would not issue a fresh certificate?

It is well established that conduct by an officer of state equivalent to a breach of contract or breach of representation may be an abuse of power for which judicial review is the appropriate remedy: see Lord Templeman in *R v Inland Revenue Commissioners, Ex p Preston* [1985] AC 835, 866-867. This particular form of the more general concept of abuse of power has been characterized as the denial of a legitimate expectation. In principle, an alleged representation must be construed in the context in which it is made. The question is not whether it would have founded an estoppel in private law but the broader question of whether, a public authority acting contrary to the

representation would be acting "with conspicuous unfairness" and in that sense abusing its power, per Simon Brown LJ, in *R v Inland Revenue Commissioners, Ex p Unilever plc* [1996] STC 681, 695B

In the present case what is relied upon is not a representation directly to the applicants but one which is said to arise out of the conduct of adversarial litigation and was made to the applicant's legal representatives. The question is therefore what would have been understood by a lawyer rather than an unaided Kosovar refugee.

There was no suggestion that the Secretary of State made any representation in advance of the *Besnik Gashi* hearing that, if his certificate was

quashed, on whatever grounds, he would (subject to an appeal) give substantive consideration to the applications.

The house disagreed with the Court of Appeal on the finding that the Secretary of State had created a legitimate expectation. There was no conduct which amounted within its context to a sufficiently clear representation as to the effect of the *Besnik Gashi* case. There would be any unfairness or abuse of power in allowing the Secretary of State to treat that case as deciding no more than it actually did.

R. v. Secretary of the Home Department, Ex parte Zeqiri [2001] House of Lords (Unreported)

MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Mutual Assistance in Criminal Matters – Serious or complex fraud – assistance in obtaining evidence for foreign proceedings – Attorney General's discretion under s24 of the Criminal Justice Act 1990 – Whether Attorney General under duty to consider what legal protection was available to person being investigated should information be used in criminal proceedings in requesting country – whether undertaking should have been first sought and obtained – (Isle of Man)

The Attorney General of the Isle of Man received requests from the District Attorney of the County of New York in the United States of America, following which he issued authorizations and notices requiring information and production of documents from Velmet (Isle of Man) Ltd.. The documents sought related to an on-going investigation in the United States involving complex fraud. The information and documents were disclosed without objection. The Attorney General then issued further authorisations requiring information and disclosure from B who was an employee of Velmet.

B applied to the Court for the following orders:

- (a) a declaration that in responding to the notices from the Attorney General under s.24 he was entitled to invoke any privileges that he would have had if the enquiry had taken place in the United States;
- (b) the notices should be quashed on the basis that the Attorney General had not properly exercised his discretion in issuing them;
- (c) any other necessary relief.

B alleged that he believed that the notices had been issued in connection with criminal proceedings or proposed criminal proceedings in the United States. He was concerned that the protection afforded under s.24 of the Criminal Justice Act, (protection regarding use of the information obtained) might not be available to him, nor was he afforded any other protection, in particular protection against self-incrimination afforded under the Fifth Amendment to the US Constitution. He submitted that since there was no Isle of Man dimension to the investigations, in that the Attorney General was only seeking the information for use in another jurisdiction, he ought to have exercised his power under s.21 of the Act and not s. 24.

The Attorney General on the other hand contended that

- (a) s.24 was intended for use in investigations of serious and complex fraud "wherever committed", whereas s. 21 was for general use in obtaining evidence in criminal proceedings or investigations outside the Island;
- (b) if he determined that there were reasonable grounds to believe that an offence of serious or complex fraud had been committed, he could exercise his powers under s.24 notwithstanding that there might be no Manx element to the case other than the provision of the requested information;
- (c) the undertakings given by the District Attorney gave protection equivalent to s.24(7) of the Act and
- (d) to revoke the notices would be an empty exercise since the Attorney General had a continuing discretion and could issue a new notice.

Section 24 provides *inter alia*:

- (1) The powers of the Attorney General under this section shall be exercisable in any case in which it appears to him-
 - (a) on reasonable grounds that there is a suspected offence involving serious or complex fraud, wherever committed; and
 - (b) that there is good reason to do so for the purpose of investigating the affairs of any person...
- (7) A statement by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him –
 - (a) on a prosecution for an offence under subsection (13)
 - or
 - (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it. ...”

Subsection (13) provides that a person shall be guilty of an offence if in purported compliance with a requirement under s. 24 he makes a statement which he knows to be false or misleading in a material particular or he recklessly makes a statement which is false or misleading in a particular manner.

Section 21 of the 1991 Act provides *inter alia*:

- “(1) This section has effect where the Attorney General receives -
- (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the island or a prosecuting authority in such country or territory; or
 - (b) from any other authority in such country or territory which appears to him to have the function of making requests of the kind to which this section applies, a request for assistance in obtaining evidence in the Island in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in that country or territory. ...”

➤ **Held:** granting the application and quashing the Notices;

1. The words “wherever committed” in s.24(1) clearly entitle the Attorney General in appropriate circumstances to exercise his powers under s.24 and to provide assistance to authorities situated outside the jurisdiction and that in providing such assistance there was no requirement that there should be a “Manx dimension” by way of investigation or prosecution or otherwise.

2. S.24 enables assistance to be provided where there is a suspected offence involving serious or complex fraud wherever committed, whereas s.21 enables evidence to be obtained for use in any criminal proceedings or investigations in other jurisdictions. The Attorney General upon receiving the letters of request was entitled to consider exercising the powers conferred upon him by s.24 and would have been so entitled even if B was correct in saying that the exercise of such powers would provide assistance to a foreign authority investigating a foreign suspected offence involving serious or complex fraud with no real or material connection with the Isle of Man.

3. The Court has powers to review the actions of the Attorney General with a view to finding out whether he had taken into account matters which he ought not to have taken into account. S. 24(7) has no extra- territorial effect and therefore in the circumstances of this case could not provide any protection to B. In the absence of any specific agreement between B and the District Attorney for New York, the only potential protection for B would be afforded by the Fifth Amendment. It was realistic to assume that in compliance with the notices, B will provide information and give his evidence in the Isle of Man and will not be afforded any protection by the Fifth Amendment. There was no evidence that the Attorney General had taken this into account and sought assurances that the evidence will not be used to incriminate B before issuing the notices. He had done so only after the notices had been issued. He had therefore failed to exercise his discretion on the proper principles and the court would quash the notices.

In the Matter of a Bond [1999-01] Manx Law Report (MLR) 440

