

HARPER GREY LLP

3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: EXTRADITION IN THE FACE OF MEDICAL HARDSHIP – FINDING THE BALANCE

The Court of Appeal dismissed the applicant's judicial review of the Attorney General's decision, pursuant to section 44 of the Extradition Act, SC 1999, c. 18, to issue a surrender order, despite the applicant's deteriorating medical condition. The Court of Appeal found the Attorney General balanced all of the relevant considerations and the decision was reasonable.

Administrative law – Decisions reviewed – Ministry of Justice – Extradition and repatriation – Judicial review – Appeals – Compliance with legislation – Standard of review – Reasonableness

MacKenzie v. United Kingdom of Great Britain and Northern Ireland, [2020] S.J. No. 4, 2020 SKCA 3, Saskatchewan Court of Appeal, January 3, 2020, R.G. Richards C.J.S., B. Barrington-Foote and J.D. Kalmakoff JJ.A.

The applicant, Mr. McKenzie, is a retired Roman Catholic priest in his late 80s. He lived in Scotland until he emigrated to Canada in the late 1980s. Mr. McKenzie faced allegations that he physically and sexually assaulted male students at a boarding school in Scotland. The United Kingdom requested the extradition of Mr. McKenzie to face charges in Scotland. Mr. McKenzie consented to his committal for extradition. This left the issue of whether the Ministry of Justice and Attorney General (the "Minister") ought to issue a surrender order.

Section 44(1) of the Extradition Act, SC 1999, c. 18, provides that the Minister "shall refuse" to make a surrender order if he or she is satisfied that the surrender order would be "unjust or oppressive having regard to all of the relevant circumstances". Mr. McKenzie's submissions focused on his health problems and his inability to live independently. Significant evidence was put forward regarding his health issues, including independent medical assessments. In the face of this evidence, the Minister sought confirmation from Scotland regarding the medical resources that would be available to Mr. McKenzie if extradited. In the end, the Minister concluded that the circumstances raised by Mr. McKenzie did not justify a refusal of the extradition request and that a surrender order would not be unjust in the circumstances.

On judicial review, Mr. McKenzie argued that the Minister erred in his assessment of whether a surrender would be "unjust or oppressive" within the meaning of section 44(1) of the Extradition Act. He sought an order setting aside the decision or, alternatively, a direction for reconsideration.

The Court of Appeal confirmed that the reasonableness standard applied to the Minister's decision. It also confirmed that in applying section 44(1), the Minister was required to consider "all of the relevant circumstances, singly and in combination", although the decision was ultimately one of a discretionary nature. Mr. McKenzie's challenge was solely based on his health concerns – namely, that he would be sent to Scotland at the age of 87, with declining physical health and little ability to care for himself. He argued the Minister should have ordered additional medical assessments.

The Court of Appeal rejected Mr. McKenzie's submissions. It concluded that the Minister had squarely addressed the question of whether it would be unjust or oppressive to order the surrender in light of Mr. McKenzie's medical condition, and gave "full consideration" to the evidence Mr. McKenzie put forward. This, the Court of Appeal noted, was evident by the fact the Minister obtained additional information from Scottish authorities to confirm what health resources were available to Mr. McKenzie during his extradition and once in Scotland. The Court of Appeal also rejected the contention that additional medical evidence was necessary given Mr. McKenzie's "deteriorating" medical condition. The Court of Appeal said the deteriorating health of Mr. McKenzie was not "new" and, in fact, was recognised by the Minister. The Court of Appeal distinguished the situation from one where the applicant had a new medical condition or complication. Accordingly, there was no need for additional medical evidence. Finally, the Court of Appeal highlighted the very serious nature of the charges Mr. McKenzie faced and the need to ensure respect for the law and Canada's international obligations. This was a relevant factor in the Minister's decision.

In the end, the Court of Appeal dismissed the application and confirmed the Minister acted reasonably in ordering Mr. McKenzie's surrender.

This case was digested by [Adam R. Way](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Adam R. Way at away@harpergrey.com.