NEW EXTRADITION ACT: OLD TREATIES

In recent years extradition to and from countries other than the United States and a few others has been difficult if not impossible. One of the reasons for this is that we are operating under legislation that does not reflect current circumstances. Canada's Extradition Act was passed in 1877 and is patterned on the British Extradition Act of 1870. It has not been significantly changed since that time. Another reason is that most countries that have extradition treaties with Canada, but particularly those with civil law systems, find it difficult to meet Canadian evidentiary requirements to succeed in extraditing suspected criminals from Canada.

One question being examined is the relationship between the new Act and the extradition treaties that are in existence at the time it enters into force. Canada's extradition treaties fall into three fairly distinct periods. The first is from 1873 to 1928 when Britain concluded a number of extradition treaties, some thirty of which are still in force for Canada. These treaties are all moribund. They do not reflect modern treaty law nor current Canadian treaty practice. For instance under most of these treaties we could extradite for the offence of slavery but not for narcotics trafficking.

The second period is from 1969 to 1981 when several old treaties were renegotiated and new ones concluded. These were a great improvement on the earlier treaties but still have flaws, one of them being that they maintain the old "list" approach where offences are listed in the treaty and extradition will only be granted for those offences. Modern treaties do not incorporate lists but cover all extraditable offences punishable by a term of imprisonment of one year or by a more severe penalty.

The third period is from 1985 to the present, during which we have completed nine extradition treaties that conform broadly with modern extradition law and practice.

Consideration is being given to terminating many of the treaties in the first category. While we would normally recommend that they simply be left "on the books" unused, we think there are compelling reasons for terminating them. It is necessary to ensure that all treaties meet the terms of the Charter of Rights and these older treaties would be unlikely to withstand a Charter challenge. The treaties in the second category would remain in force temporarily, but would be renegotiated or updated on a priority basis to bring them into line with the new legislation. The treaties in the third category would remain in force under the new Act.