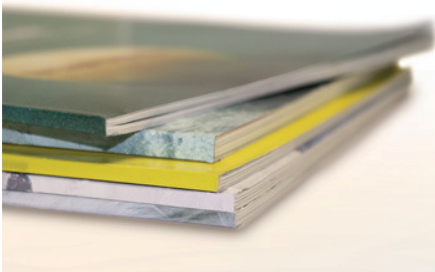


Extradition at What Price?

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BY SHANT MANOK-SANOIAN

The full impact of the Extradition (Jersey) Law 2004 (the “Law”), has recently been felt in Jersey through the high profile case of *De Figueiredo v. Commonwealth of Australia* [2010] JRC 146 and [2010] JRC 197. This case was the first ever contested extradition to come before Jersey’s Royal Court and its outcome therefore is highly significant. Appleby acted for the appellant in both the extradition proceedings before the Magistrate and in the recent appeals before the Royal Court.

The case arises out of a request made from the Commonwealth of Australia, back in January 2009, for the extradition of the appellant (an accountant) from Jersey to Australia to face criminal charges relating to alleged evasion of the payment of income tax.

The extradition hearing took place before the Magistrate last year. The Magistrate found that all

the legal and procedural requirements for extradition had been satisfied and that there were no statutory bars to extradition; furthermore, the extradition would be compatible with the appellant’s human rights. The Magistrate accordingly sent the case to the Attorney General who issued his order for extradition in December 2009. The appellant appealed against the Magistrate’s decision and Attorney General’s order.

Erred in Fact and Law

The appellant argued that the Magistrate erred in fact and law in holding that:

- (a) the conduct for which extradition was requested amounted to an extradition offence under the Law;
- (b) it was not unjust or oppressive to extradite the appellant; and,
- (c) the extradition was compatible with his human rights.

The Royal Court found that the Magistrate was correct in holding that the alleged conduct took place in Australia even though the appellant had never been to Australia, as it was sufficient that the effect of his conduct was intentionally felt in Australia. In order for there to be an “*extradition offence*”, the conduct set out in the request must also amount to an offence in Jersey if it occurred in Jersey. This is based on the concept of “*dual criminality*”. The court held that it was implicit, even though not actually alleged, that the appellant had intended to submit false tax returns to the Australian authorities. This conduct, had it occurred in Jersey, would also amount to an offence in Jersey and was therefore an “*extradition offence*”.

Breach of Human Rights

The court also held that it was not unjust or oppressive to extradite the appellant and that extradition would not breach his human rights. It said that the appellant would be given a fair trial in Australia and with regards to his right to a family life, it was only in exceptional circumstances that the extradition of a person would be held to be an unjustified or disproportionate interference with the right to family life. This was not such an exceptional circumstance.

The appellant’s second appeal was against the Attorney General’s decision to order extradition. This appeal was mainly concerned with the principle of “*specialty*”. This is an important principle which is intended to ensure that an extradited person is only tried in the foreign country for the offences for

which he is extradited.

Insofar as a non European Union country has agreed to extradite, there will usually be a formal extradition treaty. However, as between Commonwealth countries there are simply extradition arrangements in place. Therefore, the Attorney General must issue a certificate confirming the existence of specialty arrangements with Australia. Under Article 32 of the Law, the Attorney General must not order a person’s extradition if there are no specialty arrangements with that particular country. In this case, the Attorney General issued his certificate on the same day as he made his order for extradition.

The appellant argued that the Attorney General was prohibited from ordering his extradition because the wording of his certificate did not comply with the precise requirements of the Law. Furthermore, the Attorney General’s decision was defective as he did not state that he was satisfied that he was not prohibited under Article 32 from ordering extradition. The Attorney General then issued a second certificate some nine months later in order to cure the defects in the earlier certificate. In addition, Australia, as respondent to the appeal, submitted affidavit evidence in order to explain the extent and nature of its specialty arrangements with Jersey.

Extrinsic Evidence

The court admitted the affidavit evidence, despite the existence of English case law clearly showing that extrinsic evidence is inadmissible in construing

identical statutory language to that in our 2004 Law. The court, however, was of the view that it was entitled to look at evidence that came in after the making of the extradition order in deciding whether specialty requirements had been complied with. The court also held that the second certificate was admissible for the purposes of clarifying and remedying the wording of the earlier defective certificate.

The court went on to find that the Attorney General's failure in his decision to refer to specialty, did not invalidate his order as it was clear from the evidence that the Attorney General was well aware of and had already considered the question of specialty when ordering the appellant's extradition. The appellant's appeal was accordingly dismissed.

Appeal Dismissed

It can be seen from the above that very complex and technical arguments were put forward in the appeal hearings. This should come as no surprise as extradition proceedings by their very nature are

complex and involve much technical legal argument. In England, the position has traditionally been that extradition must not be ordered in circumstances where there is anything less than strict compliance with all statutory requirements. It may be said that the Royal Court's decision in this case shows a relaxation in judicial attitude to the necessity for strict observance with technical requirements of the law in the interests of comity and co-operation with other states. It remains to be seen what impact this extradition order may have on Jersey's financial services industry.

Advocate Michael O'Connell appeared for the appellant.

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