

**** Preliminary Version ****

Case Name:

**United Mexican States v. Ortega; United States of
America v. Fiessel**

(Jose) Raul Monter Ortega, appellant;

v.

**Attorney General of Canada on behalf of the United
Mexican States, respondent.**

And between

**Robert Shull, Terry Shull and Leonard Fiessel,
appellants;**

v.

**Attorney General of Canada on behalf of the United
States of America, respondent.**

[2006] S.C.J. No. 34

[2006] A.C.S. no 34

2006 SCC 34

2006 CSC 34

[2006] 2 S.C.R. 120

[2006] 2 R.C.S. 120

268 D.L.R. (4th) 36

351 N.R. 52

[2006] 12 W.W.R. 193

J.E. 2006-1460

227 B.C.A.C. 317

56 B.C.L.R. (4th) 201

209 C.C.C. (3d) 387

39 C.R. (6th) 237

2006 CarswellBC 1789

69 W.C.B. (2d) 712

EYB 2006-107829

File No.: 30998.

Supreme Court of Canada

Heard: March 23, 2006;

Judgment: July 21, 2006.

**Present: McLachlin C.J. and Bastarache, Binnie, LeBel,
Deschamps, Fish, Abella, Charron and Rothstein JJ.**

(3 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Catchwords:

Constitutional law -- Charter of Rights -- Liberty and security of person -- Fundamental justice -- Extradition -- Committal hearing -- Whether provisions of extradition legislation relating to evidence at committal hearing permit extradition on unavailable evidence -- If so, whether provisions infringe principles of fundamental justice applicable to extradition -- Canadian Charter of Rights and Freedoms, s. 7 -- Extradition Act, S.C. 1999, c. 18, ss. 29, 32(1)(b).

Summary:

Extradition of the appellants was sought, by Mexico in one case and the US in the other, under the

treaty method provided for in s. 32(1)(b) of the *Extradition Act*. The appellants alleged that s. 32(1)(b) infringes s. 7 of the *Canadian Charter of Rights and Freedoms* because the treaty method does not contain a requirement that the evidence tendered at the committal hearing be certified as available for trial in the requesting state. In both cases the extradition judges accepted the constitutional objection, but the Court of Appeal set aside those decisions and remitted the matters to the extradition judges.

Held: The appeals should be allowed and the cases returned to the extradition judges.

For the reasons given in *United States of America v. Ferras*, 2006 SCC 33, s. 32(1)(b) of the *Extradition Act* is constitutional. [paras. 1-3]

Cases Cited

Followed: *United States of America v. Ferras*, 2006 SCC 33.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, ss. 1, 7.

Extradition Act, S.C. 1999, c. 18, s. 32(1)(b).

History and Disposition:

APPEALS from a judgment of the British Columbia Court of Appeal (Donald, Smith and Thackray JJ.A.) (2005), 253 D.L.R. (4th) 237, 212 B.C.A.C. 228, 350 W.A.C. 228, 196 C.C.C. (3d) 225, [2005] B.C.J. No. 1090 (QL), 2005 BCCA 270, setting aside a judgment of Koenigsberg J. (2004), 237 D.L.R. (4th) 281, 183 C.C.C. (3d) 75, 117 C.R.R. (2d) 191, 118 C.R.R. (2d) 189, [2004] B.C.J. No. 402 (QL), 2004 BCSC 210, and a judgment of Goepel J., [2004] B.C.J. No. 1434 (QL), 2004 BCSC 908, dismissing applications for committal. Appeals allowed.

Counsel:

Richard C. C. Peck, Q.C., and Eric V. Gottardi, for the appellant (Jose) Raul Monter Ortega.

David J. Martin, for the appellants Robert Shull, Terry Shull and Leonard Fiessel.

Robert Frater and Janet Henchey, for the respondents.

The judgment of the Court was delivered by

1 McLACHLIN C.J.:-- These appeals, together with the appeals by Ferras, Latty and Wright (*United States of America v. Ferras*; *United States of America v. Latty*, 2006 SCC 33 (the "*Ferras* appeals")), released concurrently, raise the constitutionality of provisions of the *Extradition Act*, S.C. 1999, c. 18, relating to the evidence that can be put before an extradition judge. For the reasons given in the *Ferras* appeals, I conclude that the challenged provisions are constitutional. However, I would allow the appeals and return the cases to the extradition judges for determination in accordance with the interpretation of the Act set out in those reasons.

2 It will be open to the United Mexican States and the United States of America to supplement the evidence by showing that the evidence is available for trial.

3 The constitutional questions are answered as follows:

1. Does s. 32(1)(b) of the *Extradition Act*, S.C. 1999, c. 18, in whole or in part, infringe the rights and freedoms guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*?

Answer: No.

2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

Answer: It is unnecessary to answer this question.

Solicitors:

Solicitors for the appellant (Jose) Raul Monter Ortega: Peck and Company, Vancouver.

Solicitors for the appellants Robert Shull, Terry Shull and Leonard Fiessel: David J. Martin Law Corporation, Vancouver.

Solicitor for the respondents: Attorney General of Canada, Ottawa.

cp/e/qw/qlplh