

Extradition law fails to protect Charter rights, B.C. court rules

Judge rejects lesser standards for evidence gathered by prosecutors in other countries

BY ROD MICKLEBURGH, VANCOUVER

Canada may have a tougher time extraditing fugitives fleeing criminal charges in foreign countries, after a B.C. Supreme Court judge ruled yesterday that a section of the country's extradition law violates the Charter of Rights and Freedoms.

The ruling by Madame Justice Marvyn Koenigsberg quashes efforts by Canadian authorities to send prominent Mexican politician Raul Monter Ortega back to Mexico to face charges that he took part in a sensational multimillion-dollar fraud.

Federal Justice Department lawyer Deborah Strachan filed an immediate notice to appeal the decision, which she said could put Canada in violation of almost all its 50 extradition treaties with other nations.

"This is a very significant ruling, both legally and practically," Ms. Strachan said in an interview.

"We have been relying on (extradition) evidence put together in compliance with our treaties for over 100 years, and now we find that it contravenes the Charter of Rights."

Mr. Monter, 57, a former state leader of Mexican President Vicente Fox's National Action Party, is accused by Mexican authorities of involvement in a scheme that allegedly defrauded offshore investors of more than \$16-million.

After fleeing Mexico in 1997, RCMP arrested Mr. Monter at his

home in a Vancouver suburb where he had been living quietly for more than two years helping his wife run a wedding-products business.

Outside the courthouse, Mr. Monter said he was overjoyed by the court's decision.

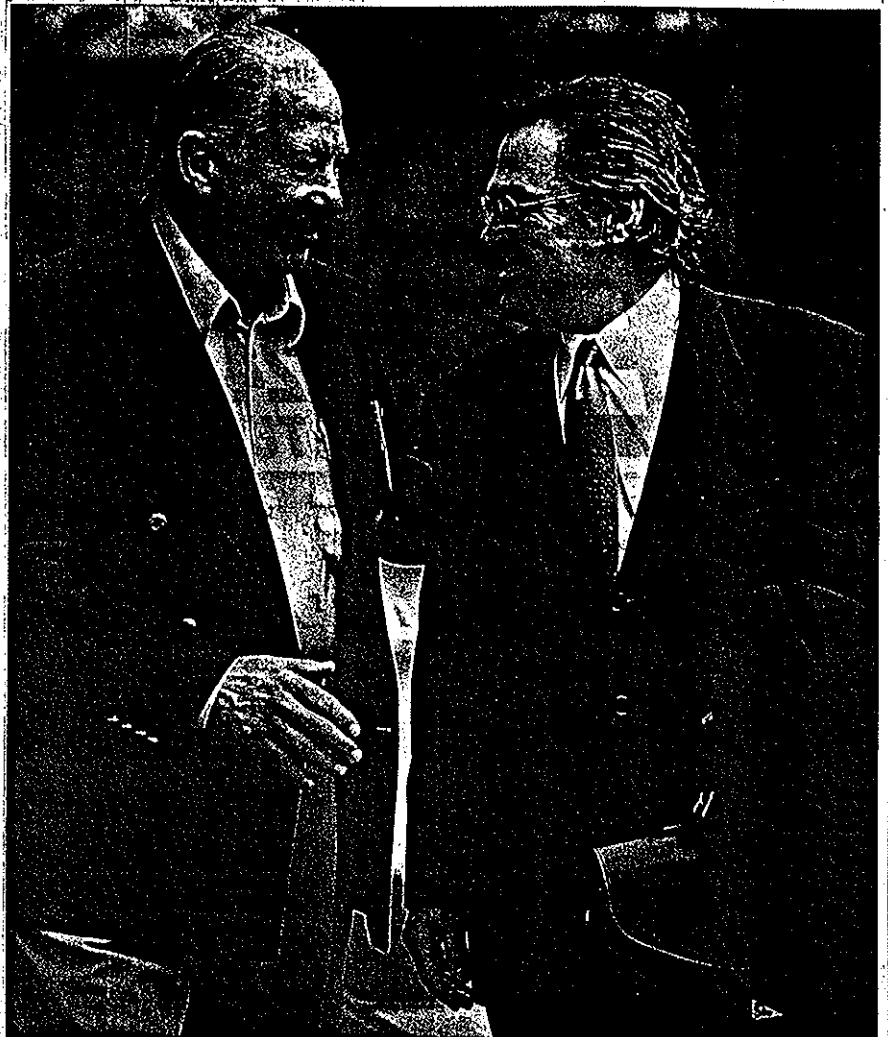
"Today I can confirm that I am innocent of all the charges I am accused of in Mexico. But if I had stayed there to fight them, I would still be in jail," said the tall, distinguished-looking former politician.

"When I left Mexico, I was looking for a country that would give me the opportunity to rebuild my life and protect me from unfair laws. I found that country," Mr. Monter said. "It is Canada."

The complex judgment centres on Section 32, Article 1b of Canada's redrawn Extradition Act, which allows evidence to be admitted at extradition hearings provided only that the evidence conforms with the terms of the relevant extradition treaty.

The section, which the federal government relied on in presenting its case against Mr. Monter, does not require evidence to be certified by Mexican authorities or a guarantee that evidence relied on for extradition will actually be presented at Mr. Monter's trial. Those are requirements in other sections of the Extradition Act.

Judge Koenigsberg agreed with arguments by Mr. Monter's lawyer, David Martin, that the section therefore contravenes the Charter by denying "the principles of funda-



JOHN LEIDMANN/THE GLOBE AND MAIL

Former Mexican politician Raul Monter Ortega, left, leaves B.C. Supreme Court in Vancouver yesterday with his lawyer, David Martin, after winning a Charter challenge of the federal Extradition Act.

mental justice" to Mr. Monter. "It authorizes the use of otherwise inadmissible evidence," she wrote. "The issue is one of balance between the purposes of extradition and fundamental justice safeguards for the individual."

Mr. Martin said the decision underscores the principle that extradition evidence "can't be shoddy

and countries that want people back must obey [Canadian] law and comply with the rules."

If the evidence against a fugitive is solid, there should be no problem for the country seeking his or her extradition to certify that the evidence and witnesses relied upon will be used at the subsequent trial, he explained.

But that did not happen in Mr. Monter's case, Mr. Martin said. "He would have been sent down there and just languished in jail."

"The court is insisting on Canadian standards of justice. It requires foreign governments to comply with our laws in supplying evidence. This is a significant decision, and I am very, very happy about it."