Court of Queen's Bench of Alberta

Citation: Lloyd v Attorney General of Canada, 2021 ABQB 204

Date: 20210318
Docket: 210112066X1
Registry: Calgary

Between:

**Attorney General of Canada and
Her Majesty the Queen in Right of Alberta**

Respondents

- and -

Carol Lloyd

Applicant

**Reasons for Judgment
of the
Honourable Mr. Justice N.E. Devlin**

Overview

[1] Carol Lloyd is wanted in Canada, accused of defrauding her former employer of over $1.8 million. Despite acknowledging the defalcation, she has mounted a vigorous battle against extradition from the United Kingdom in the British courts ["the UK Proceedings"]. In litigation spanning 2018 to 2020, she challenged her extradition on the basis that it would violate her human rights on account of her physical and mental unwellness

[2] The UK Proceedings have been completed and the UK's Minister of State has ordered Ms. Lloyd extradited. Having exhausted her appeals in the UK, Ms. Lloyd now seeks to enjoin Canadian authorities from taking her into custody and returning her to Canada under the UK Extradition Order. She argues that both the process of her return, and the circumstances she would face upon her arrival, would offend her rights under sections 7 and 12 of the *Charter* due to the condition of her physical and mental health.

[3] For the following reasons her application is dismissed.

Background

[4] Ms. Lloyd is charged with one count of fraud over $5000. The alleged conduct took place over an 18-month period, comprised Ms. Lloyd writing checks to herself from her employer 99 times, and ended shortly before she decamped to the UK in late 2015. Ms. Lloyd is a dual citizen of Canada and the UK and has residence rights in both nations. In November 2017, Canadian authorities submitted an extradition request to the UK. Ms. Lloyd was arrested in May 2018, and the UK Proceedings began shortly thereafter.

Nature of this Application

[5] In the present application, Ms. Lloyd seeks a variety of constitutional remedies under section 24(1) of the *Charter* for anticipatory infringements of her section 7 and 12 rights. All of these are premised on the alleged threat posed to her physical and mental health by the process of extradition to Canada. Specifically, she claims that her risk of stroke while in flight, and risk of completed suicide at the prospect of extradition, are sufficiently grave that pursuing the extradition process would be cruel treatment and an unjustified infringement of her right to life and security of the person.

[6] Ms. Lloyd also alleges that the circumstances she will find herself in once forcibly returned to Canada would be so harsh and devastating that the results of extraditing her to Canada would independently amount to an infringement of sections 7 and 12.

[7] Against Alberta, the prosecuting authority, Ms. Lloyd seeks a 'conditional stay' of the charges until such time as the alleged risks to her health and well-being posed by the extradition and pre-trial processes are resolved. She also seeks a mandatory injunction directing the Attorney General of Alberta to ask the Attorney General of Canada to delay or discontinue Canada's extradition request. As against Canada, she seeks a similar mandatory injunction directing the Attorney General to withdraw, or delay implementation of, Canada's extradition request.

[8] Mr. Engel, for the applicant, styled this as an interim injunction application. During the hearing I inquired how a further 'full' hearing would differ. He offered that the Canadian authorities should disclose the qualifications of the medic they propose to send to accompany Ms. Lloyd during her flight to Canada, and that her UK physicians would then be asked to provide comment on that. Quite fairly, this was the extent of further evidence he contemplated. Canada and Alberta do not propose further evidence and appear to have no intention of providing any further 'disclosure'. Effectively, therefore, the Court is positioned to determine this matter on a full record.

The UK Proceedings

[9] As the issues before this Court overlap with those litigated in the UK Proceedings, a detailed consideration of what has been argued and judicially determined is in order. In the UK Proceedings, Ms. Lloyd resisted extradition on the basis that she would suffer degrading and inhumane treatment in prison in Canada, that her physical and mental condition would make extradition unjust and oppressive, and that extradition would be a disproportionate interference with her family's right to a private life together. These claims were advanced under Articles 3 and 8 of the UK *Human Rights Act 1998*, and section 91 of the UK *Extradition Act 2003*.

[10] Ms. Lloyd admitted the offence in the UK Proceedings, but stated that she may defend herself at trial on the basis that she had been coerced into committing the crime by her abusive son who supposedly owed a debt to organized crime figures.

[11] Chief Magistrate Emma Arbuthnot (as she then was) rejected the arguments raised on Ms. Lloyd's behalf. She concluded that Ms. Lloyd had been persistently misleading in her evidence and dealings with medical experts, that her rights and wellbeing faced no serious jeopardy from extradition, and that her removal to Canada was lawful and warranted.

[12] These determinations were made after careful and detailed consideration of extensive evidence, including *viva voce* testimony, particularly with respect to Ms. Lloyd's physical and mental health, together with evidence regarding the specific locations where Ms. Lloyd is likely to be detained if she is extradited to Canada. Her Canadian counsel, Mr. Engel, as well as some of his in-custody clients, gave evidence on her behalf.

[13] Judge Arbuthnot identified several credibility issues. She found that Ms. Lloyd told a number of lies to the Court and was supported in misleading the Court by her daughter, and to a lesser extent by her husband. Judge Arbuthnot also found that the evidence of two of the medical experts was compromised as their assessments of Ms. Lloyd were substantially based on untruthful or misleading self-reporting of her symptoms, lifestyle, and relationship with her son. The strength of the Court's findings on credibility is striking:

> In a number of respects, the defendant misrepresented to the court but also to her own expert (the consulting psychologist) certain aspects of her history. It is rarely the case in extradition that a defendant or requested person and his or her witnesses are ready to go to such lengths to mislead the court but I find that this has happened in this case.
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> …
>
> I find Mrs. Lloyd told the court a number of lies. I find that Mr. Lloyd and probably and more clearly Ms. Danielle Lloyd supported the defendant in her effort to mislead the court. Inevitably these lies have meant it is much more difficult for the court to work out which part of the defendant's evidence in relation to her physical and mental health issues is true and which is exaggerated or false.

[14] Judge Arbuthnot accepted that Ms. Lloyd does suffer a degree of physical and mental unwellness, though her reporting of her unwellness was exaggerated. Most of Ms. Lloyd's physical health problems were found to be long-standing, pre-dating her move back to the UK, and had been investigated during the period that she lived in Canada. The "working diagnosis" of multiple sclerosis (MS) was new, but the Court determined that Ms. Lloyd had suffered the underlying symptoms since her time in Canada.

[15] The Court accepted that Ms. Lloyd has been diagnosed with osteoarthritis, fibromyalgia, carpel tunnel syndrome, hammer toe deformity, and psoriatic arthritis. She suffered from blackouts in 2016 and fractured her elbow in 2018. She required steroid injections in her knee in January, 2018. She was found to have some mobility issues, but to be exaggerating their extent; she was determined to be fairly mobile and not in need of a wheelchair.

[16] Of relevance for the present circumstances, based on the record in the UK Proceedings, Ms. Lloyd was found to be at no more risk of stroke than any other person her age.

[17] With respect to Ms. Lloyd's mental health, Judge Arbuthnot found that she is adversely affected by her fear of being extradited to Canada. This fear causes Ms. Lloyd stress and anxiety. Judge Arbuthnot also found that Ms. Lloyd has been anxious and depressed for many years, pre-dating the alleged fraud in Canada. She has likely had bulimia for twenty years and may have been abused by her first husband. However, Judge Arbuthnot could neither find that Ms. Lloyd was abused by her son nor that she suffered PTSD, anxiety or depression due to being threatened by drug dealers in Canada.

[18] Judge Arbuthnot did not accept Ms. Lloyd's evidence of having made a suicide attempt in 2015 after returning to the UK. She also found that Ms. Lloyd and her family exaggerated her inability to concentrate and loss of hearing as no signs of either were found when Ms. Lloyd was assessed by an experienced psychologist.

[19] Ms. Lloyd was portrayed by herself and her family as someone who needed to be cared for. However, Judge Arbuthnot found that she was in fact a regular caregiver for her grandchildren and her mother-in-law. Ms. Lloyd was found to be capable of looking after young children and the elderly and to not have trouble looking after herself to the extent claimed, providing more care to others than she required for herself.

[20] Judge Arbuthnot determined that Ms. Lloyd's physical and mental condition was not such that it would be unjust or oppressive to extradite her. Physically, Ms. Lloyd had exaggerated her symptoms and was more mobile than she claimed to be. Mentally, Ms. Lloyd's risk of suicide was found to be low. Judge Arbuthnot found that Canadian prisons could adequately manage and treat her physical and mental health issues.

[21] In the potent understatement characteristic of British jurisprudence, Justice Arbuthnot concluded that:

> Having read about the defendant extensively and watched her giving evidence, having seen the lengths she has been willing to go to avoid extradition I have concluded that she will find a strength and a determination which will help her to get through a relatively short prison sentence in Canada.

[22] Ms. Lloyd's appeals from this decision were dismissed, and she has received advice that bringing further proceedings in the UK would be futile.

Scope of the UK ruling

[23] The decision in the judicial phase of the extradition in the UK determined that Ms. Lloyd's health conditions, as of the time of those proceedings, were of limited severity and did not render her extradition contrary to the UK's human rights instruments and the humanitarian considerations intrinsic to the UK *Extradition Act 2003*. While the focus of those inquiries related to prison conditions in Canada, section 21 of the UK legislation appears to require a comprehensive consideration of the human rights implications of the extradition being sought, in respect of the entire process.

[24] The UK Proceedings neither factually nor legally bind this Court. Their relevance lies in providing context to Ms. Lloyd's approach to this matter and her baseline of health at the time of the decision. It also defines the scope of issues already adjudicated. With that in mind, this application falls to be determined on the materials now put before the Court.

Evidence on this application

[25] Ms. Lloyd filed an affidavit on this appeal, annexing letters from her treating physicians. She describes the symptoms she experiences related to her physical and mental health as well as their impact on her lifestyle. Particularly, Ms. Lloyd states that she fears that an overseas flight or long journey could cause her to experience a stroke event.

[26] Ms. Lloyd also states that she intends to kill herself rather than be extradited to Canada for trial. If she is extradited before she has a chance to kill herself, she states that she has nowhere to live in Canada and no means to support herself.

Evidence regarding Ms. Lloyd's physical condition

[27] The majority of the annexed letters are from Dr. Rhys Davies, a Consultant Neurologist at whose clinic Ms. Lloyd is a patient. In his letters, Dr. Davies acknowledges that Ms. Lloyd has neurological symptoms. He writes to her referring physician that, "I thought the neurological examination was essentially unremarkable" (Letter to Dr. Parish authorized on 16/10/2019), and that, "the main cause of her fluctuating symptoms is migraine pathophysiology" (Letter to Dr. Bremner authorized on 15/07/2019) and that "I think she also has a low grade CIS inflammatory disorder" (Letter to Dr. Parish authorized on 16/10/2019). Dr. Davies summarizes Ms. Lloyd's health status in the following terms (Letter to Ms. Lloyd 23/03/20):

> In short, you have three neurological conditions. One (the migraine with aura) is currently severe but not medically serious. The other two (cerebrovascular disease and CIS) are serious but currently not causing severe symptoms. In general overexertion is [sic] very much to be recommended but it is not possible to quantify this.

[28] In the same letter, Dr. Davies addresses the risk of stroke specifically, stating that Ms. Lloyd's presentation of hardening of the arteries *may* entail an increased risk of stroke, of unknown degree, writing that:

> The precise relationship between such changes on scans and full-blown stroke disease is difficult to determine but one would acknowledge in broad terms that the risk of stroke disease is likely to be increased.

[29] Dr. Davies qualified this statement by writing that: "Again this is an area of Medicine whereby relationships to life stress, travel and so on are poorly understood." Dr. Davies does not provide a conclusive opinion that the flight from the UK to Canada will negatively affect Ms. Lloyd's health. Rather, he writes that, "Risks for stroke are incompletely understood but certain types of Stroke risk may be affected substantially by altitude" and "…air travel definitely risks an adverse outcome from a Stroke occurring during a long haul journey, because of inability to access advanced treatment" (Letter to Ms. Lloyd 04/01/2021).

[30] While he states that, "I think it is entirely possible that your health would be adversely affected if you had to make an arduous journey overseas. I would counsel against such travel, unless absolutely necessary" (Letter to Ms. Lloyd 17/12/2019), he does not describe what an "arduous journey" would entail nor does he counsel her against taking a flight to Canada.

[31] A letter from Dr. Kucharczyk, a general practitioner, also describes that Ms. Lloyd had reported experiencing symptoms that could represent a colorectal cancer. However, Dr. Kucharczyk was unable to say what impact these symptoms would have on Ms. Lloyd's fitness to fly as such an opinion is not in the doctor's area of expertise. Ms. Lloyd confirms in her affidavit that subsequent testing revealed no cancer.

[32] Ms. Lloyd's daughter, Danielle, also provided an affidavit. In it, she speaks about her beliefs regarding her mother's, and to a lesser extent her step-father's, current state of mental and physical health. She also states that she aids in caring for her mother, particularly by helping her step-father in monitoring Ms. Lloyd on a twenty-four hour basis to ensure that she does not take her own life.

[33] In sum, Ms. Lloyd appears to have a condition which may elevate her risk of stroke. The quantum of that risk is not assessed and no specific treatment is counseled. In turn, it is noted that, in general terms, time at altitude may increase certain types of stroke risk. The record contains no medical opinion as to whether this applies to Ms. Lloyd, nor as to the magnitude of such risk. Finally, it is noted that stroke is now treatable, and that rapid access to medical care may improve outcomes. Again, this is not specifically correlated to Ms. Lloyd.

[34] Despite having been asked for at least three medico-legal letters, Dr. Davies never proscribes ordinary travel. At its highest, his clinical advice for management of Ms. Lloyd's condition is that she avoid overexertion and "arduous" overseas journeys.

Evidence regarding Ms. Lloyd's mental health

[35] The second pillar upon which Ms. Lloyd resists extradition is that her removal to Canada would provoke her to commit suicide. In her affidavit she states:

> Since the commencement of extradition proceedings, I have come to the conclusion that I would prefer to take my own life then be removed from my family be transferred to Canada.

[36] This assertion is supported by an opinion from Dr. Ruth, a psychiatrist. In a letter annexed to Ms. Lloyd's affidavit, she notes that Ms. Lloyd was admitted to hospital on November 4, 2020, voluntarily, on the basis of her deteriorating mental health and her expression of intention to take her life as an alternative to extradition and incarceration in Canada. Dr. Ruth makes two notable conclusions in her letter:

> Mrs. Lloyd's predominant symptom is anxiety which is maintained by the uncertainty of her current situation, Mrs. Lloyd has considerable anxiety regarding being extradited to Canada in particular how she will cope with in a custodial setting because of her physical health. Her current situation is maintaining her anxiety and also depressive symptoms.

…

> Mrs. Lloyd is still deemed to be a high risk of completed suicide should she face extradition and incarceration Canada. The risk of suicide is situation specific.

[37] Taken at face value, the psychiatrist's opinion is that both Ms. Lloyd's general mental unwellness, and in particular her expressed intention to commit suicide, are related to her legal predicament. Significantly, the psychiatrist does not suggest that the extradition or trial process would exacerbate an existing mental health condition so as to increase suicide risk, but rather that Ms. Lloyd's "situation specific" response to being extradited is that she is would rather kill herself than be returned to Canada.

Other evidence

[38] Leanne Fliczuk, Mr. Engel's legal assistant, filed two affidavits, annexing email correspondence with the Crown and certain email attachments to that correspondence, as well as a webpage from Alberta Health Services official website and an excerpt from the *Paramedics Profession Regulation*, Alta Reg 151/2016. The annexed emails and attachments include several references to the fact that Canadian authorities have arranged for a medical professional (specified in the later correspondence as a paramedic) to accompany Ms. Lloyd on the flight to Canada.

[39] As noted earlier, Mr. Engel advised that the only evidentiary additions he contemplated in the event of a further hearing would be an opinion from Dr. Davies on the adequacy of the proposed paramedic's qualifications and capabilities. It was not suggested that any further or better medical evidence would be provided. For their part, the provincial and federal Crowns felt the record was complete and expressed no intention of engaging with Ms. Lloyd through any further exchange of information.

Analysis

[40] Ms. Lloyd styles this application as adjunct to the criminal trial, making *Charter* relief available. The Crown disagrees, characterizing this as a challenge against the extradition proceedings as an improper attempt by Canadian courts to interfere with judicially authorized foreign actions to which the *Charter* does not apply.

Extradition is not part of the domestic trial

[41] An attempt to stop Canadian authorities from pursuing or participating in the inbound extradition of a person wanted for prosecution here in Canada is not a component of the domestic criminal proceedings. The fact that a charging document lies dormant in the Provincial Court, awaiting the accused's return to Canada, does not afford the accused standing to seek *Stinchcombe*-like disclosure, or other remedies, in respect of the extradition proceedings. Unless and until Ms. Lloyd attorns to the jurisdiction of the Alberta Courts through personal appearance, she has no standing to seek relief within the four corners of, or in relation to, the nascent criminal proceeding. The Court will not entertain trial-related applications from an accused person on warrant status. Ms. Lloyd will obtain standing to seek relief respecting the trial if and when she attorns personally to the jurisdiction of the Alberta Courts, willingly or otherwise.

[42] Therefore, this application is a free-standing application for relief under the *Charter*, on which Ms. Lloyd bears the onus to establish the applicability of the *Charter*, infringements of her rights, and the entitlement to specific remedies.

Application of the *Charter* to in-bound extraditions

[43] Extradition is the process by which one state (the requesting state) seeks the return of a person wanted for prosecution from a foreign state (the requested state) into which its own enforcement jurisdiction does not reach. The requesting state formally asks through diplomatic channels for the requested state to employ its jurisdiction to arrest and return the wanted individual. This process takes place between states who are extradition partners.

[44] Both facets of extradition (sending and requesting) are governed by the *Extradition Act*, SC 1999, c 18 ["the *Act*"]. Inbound extraditions are governed by Part 3 of the *Act*, which empowers the Minister of Justice to make requests to return wanted individuals to our country. Specifically, section 78(1) provides that:

> The Minister, at the request of a competent authority, may make a request to a State or entity for the extradition of a person for the purpose of prosecuting the person for…an offence over which Canada has jurisdiction.

[45] Counsel for the Attorney General of Canada acknowledges the ministerial act authorized by section 78 would be judicially reviewable for compliance with the *Charter* as a domestic act of governance: see also ***R v MacIntosh***, 2008 NSCA 124 at para 34. He contends, however, that the enforcement actions of arresting the sought person in the foreign state, and transporting them back to Canada, are exclusively within the enforcement jurisdiction of the requested state. Therefore, these acts are not "within the authority of Parliament" or the provincial legislatures and not subject to the *Charter*, pursuant to the Supreme Court's dictates regarding its extraterritorial application in ***R v Hape***, 2007 SCC 26 ["***Hape***"].

[46] On Ms. Lloyd's behalf, Mr. Engel argues that, since it will be Canadian police officers, acting upon the instructions of their superiors in Canada, who would be taking custody of Ms. Lloyd from British police and escorting her onto the flight to Canada, the *Charter* must necessarily apply. He was not able, however, to point to any specific authority for this proposition, as it appears to be a question of first impression.

[47] Section 32 of the *Charter* defines and limits the scope of its applicability. It provides that:

> 32(1) This Charter applies:
>
> (a) to the Parliament and the government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and the Northwest Territories; and
>
> (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

[48] The leading case on extraterritorial application of the *Charter* is ***Hape***, in which the Supreme Court reviewed its previous jurisprudence and restated a comprehensive rule. Writing for

the majority, LeBel J, held that the *Charter* does not apply (absent certain exceptions) to the actions of Canadian police operating abroad. The majority's rationale for delimiting the *Charter*'s reach in this manner was found in both the wording of section 32, which constrains the *Charter* to the areas of Parliament's legislative competence, and in the principles of comity under international law. Writing at pararagphs 69, 94 and 104-105, LeBel J. explained the *Charter*'s relationship to extraterritorial acts as follows:

> [69] As the supreme law of Canada, the *Charter* is subject to the same jurisdictional limits as the country's other laws or rules. Simply put, Canadian law, whether statutory or constitutional, cannot be enforced in another state's territory without the other state's consent. This conclusion, which is consistent with the principles of international law, is also dictated by the words of the *Charter* itself. The *Charter's* territorial limitations are provided for in s. 32, which states that the Charter applies only to matters that are within the authority of Parliament or the provincial legislatures. In the absence of consent, Canada cannot exercise its enforcement jurisdiction over a matter situated outside Canadian territory.
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> …
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> [94] Section 32(1) puts the burden of complying with the *Charter* on Parliament, the government of Canada, the provincial legislatures and the provincial governments. While my colleague is correct in stating, at para. 161, that s. 32(1) defines to *whom* the *Charter* applies and not *where* it applies, s. 32(1) does more than that. It also defines in what circumstances the *Charter* applies to those actors. <u>The fact that a state actor is involved is not in itself sufficient</u>, as Bastarache J. suggests. The activity in question must also fall within the "matters within the authority of" Parliament or the legislature of each province. <u>A criminal investigation in the territory of another state cannot be a matter within the authority of Parliament or the provincial legislatures, because they have no jurisdiction to authorize enforcement abroad</u>. Criminal investigations, like political structures or judicial systems, are intrinsically linked to the organs of the state, and to its territorial integrity and internal affairs. Such matters are clearly within the authority of Parliament and the provincial legislatures when they are in Canadian territory; it is just as clear that they lie outside the authority of those bodies when they are outside Canadian territory.
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> …
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> [104]… a Canadian police officer is not stripped of his or her status as such on crossing the border into the US, but the officers' authority to exercise state powers is necessarily curtailed. Canada does not have authority over all matters respecting what the officer may or may not do in the foreign state. <u>Where Canada's authority is limited, so too the application of the *Charter*</u>.
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> [105]…While concurrent jurisdiction over prosecutions of crimes linked with one or more country is recognized under international law, the same is not true of investigations, which are <u>governed by and carried out pursuant to territorial</u>

> jurisdiction as a matter inherent in state sovereignty. Any attempt to dictate how those activities are to be performed in a foreign state's territory without the state's consent would infringe the principle of non-intervention. And, as mentioned above, without enforcement, the *Charter* cannot apply.
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> [emphasis added]

[49] These passages describe precisely what happens during the foreign phase of an inbound extradition. The domestic law enforcement jurisdiction of the requested state – as embodied here in the UK Order for Extradition – is deployed to allow the arrest, detention, and transportation of the person sought. Canadian law and jurisdiction play no role in this. Critically, the police officers who physically transport the sought person in custody from the UK to Canada exercise UK authority, granted under UK law. At no point until her arrival in Canada, and arrest pursuant to a domestic warrant here, do the officers who bring Ms. Lloyd to Canada exercise *any* Canadian-based authority to detain or otherwise maintain physical control or compulsion over her.

[50] As the British Columbia Court of Appeal held in ***R v Tan,*** 2014 BCCA 9 at para 50:

> In sum, the state of the law is this: the *Charter* does not apply to Canadian state actors engaging in official duties extraterritorially (*Hape*). This is subject to two exceptions: (1) consent of the foreign state to the application of Canadian law in its territory, though, as LeBel J. stated, "[i]n most cases, there will be no such exception and the *Charter* will not apply" (*Hape* at para. 113); (2) the participation of Canadian officials in activities that violate Canada's international human rights obligations (*Hape*; *Khadr* 2008; *Khadr* 2010). Of course, any evidence tendered in a Canadian trial is always subject to *Charter* scrutiny to determine if its admission would render the trial unfair: *Harrer*; *Terry*.
>
> [Emphasis added]

[51] Canadian police do not necessarily carry the *Charter* with them when working in and under a foreign jurisdiction. As McLachlin J (as she then was) explained in ***R v Terry***, [1996] 2 SCR 207 at para 14, it is a "settled rule that a state is only competent to enforce its laws within its own territorial boundaries." *Charter* review will only lie if the foreign state consents to its application or a case is made out that the Canadian actors' conduct contravene Canada's international human rights obligations. Save for those limited exceptions, "[i]nternational customary law and the principle of comity of nations generally prevent the *Charter* from applying to the actions of Canadian officials operating outside of Canada": *Khadr v Canada (Prime Minister)* 2010 SCC 3, at para 14.

[52] There is no latitude for consent to the *Charter's* application in extradition as the requested state's law governs by definition. Moreover, on the facts of this case, the UK Proceedings determined that extradition would be rights-compliant. The UK's human rights instruments are broadly similar to our own and to the international standards on the treatment of prisoners. While the record before this Court differs somewhat factually, the British Court's determination nevertheless provides a baseline for the analysis here, and points away from the presence of any human rights violation.

[53] It was argued that, since Ms. Lloyd's extradition will be planned and dispatched from Canada, the relevant acts would take place sufficiently within Canada for the *Charter* to apply to the entirety of the police conduct. However, this level of nexus to Canada is omnipresent when Canadian police officers travel overseas in the execution of their duties and indeed was present in ***Hape*** itself. To accept that this level of connection the Canada brings the entire venture under the ambit of the *Charter* would render ***Hape*** hollow and cannot be correct. Rather, the Supreme Court must be understood as having rejected the control-based test for the extraterritorial application of the *Charter*: ***Amnesty International Canada v Canada (Minister of National Defence)***, 2008 FC 336 at paras 282 and 294, affm'd 2008 FCA 401, leave ref'd [2009] SCCA No 63.

[54] It was further argued that the *Charter* should apply because, assuming all goes well, the flight carrying Ms. Lloyd will eventually enter Canadian airspace and land in Canada, at which point the events in question would no longer be extraterritorial. The rationale of ***Hape***, as I understand it, however, is that Canadian courts must avoid pronouncing on the *Charter*-compliance of conduct undertaken through the authority of another nation, reviewed and sanctioned by its own courts.

[55] In this case, Ms. Lloyd asks this Court to determine that carrying out an Order of the UK Minister of State, made under UK law, and found to be in compliance with fundamental human rights norms by the UK courts, is actually a breach of those same norms. Such a determination would necessarily extend to steps taken on UK soil and on a flight originating in the UK. A pronouncement of that nature by this Court would be an archetypal failure to respect comity, which is "the deference and respect due by other states to the actions of a state legitimately taken within its territory": ***Morguard Investments Ltd v De Savoye***, [1990] 3 S.C.R. 1077, at 1095.

[56] The source of law for the impugned action of returning Ms. Lloyd to Canada, in custody and against her will, appears to derive from section 197(6) of the UK *Extradition Act 2003*, which provides that:

> (6) An order for a person's extradition under this Act is sufficient authority for an appropriate person—
>
> (a) to receive him;
>
> (b) to keep him in custody until he is extradited under this Act;
>
> (c) to convey him to the territory to which he is to be extradited under this Act.

[57] The power to carry out these acts through forcible compulsion appears to stem from section 209 of the same act, which authorizes "a person" (notably not necessarily a British peace officer), to "use reasonable force, if necessary, in the exercise of a power conferred by this Act." The entire process of conveyance to Canada is under UK jurisdiction and empowered by UK law.

[58] By way of illustration, in the reciprocal scenario of an outbound extradition from Canada to the UK, section 58 of the *Act* requires the Canadian Minister of Justice to designate the individuals empowered to take custody of the extraditee for purposes of the return journey in his or her Order of Surrender. In turn, section 60 of our *Act* expressly asserts jurisdiction over, and provides the lawful authority for, the act of transportation back to the requesting state:

Power to convey

> 60 On the execution of a surrender order, the person or persons designated under paragraph 58(e) shall have the authority to receive, hold in custody and convey the person into the territory over which the extradition partner has jurisdiction.

[59] A principled and pragmatic view of the authority exercised by the actors accompanying a returning extraditee supports the conclusion that the *Charter* only comes into play on arrival and arrest in Canada. The order of extradition, and the acts of surrender and transport, are wholly a judicial and political act of our extradition partner, the UK, which has conclusively determined the extradition to be lawful and in conformity with the applicable human rights guarantees. As the Supreme Court noted in ***Schreiber v Canada (Attorney General)***, [1998] 1 SCR 841 at para 29:

> The reality of international criminal investigation and procedure is that it necessitates co-operation between states. The fact that the government of Canada may play a part in international investigations and proceedings, which might have implications for individual rights and freedoms such as those enumerated in the Charter, does not by itself mean that the Charter is engaged.

[60] The participation of Canadian actors in this process is permitted, governed, and constrained entirely by the dictates of the UK law authorizing it, together with Canada's international human rights obligations, as per ***Khadr***. Domestic Canadian judicial review of inbound extradition process is properly limited to examining compliance with those two sources of law. The *Charter* does not apply. Our comity-driven deference to our extradition partners' judicial determinations only "ends where clear violations of international law and fundamental human rights begin": ***Hape*** at para. 52.

[61] It is worth noting that this limitation on the *Charter*'s reach does not leave persons being extradited to Canada devoid of legal protections. The rights secured by sections 7 and 12 of the *Charter* are echoed in articles 6, 7 and 10 of the *International Covenant on Civil and Political Rights*, 1966, COURTS 1976/47; 999 UNTS 171; 6 ILM 368; articles 1, 2 and 16 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 198, TS 1987/36; 1465 UNTS 85, 23 ILM 1028; and article 15 of the *Convention on the Rights of Persons with Disabilities*, UN Doc A/61/611. The circumscription of the *Charter*'s reach in this context is not synonymous with a license to abuse persons subject to extradition.

[62] The question is not whether Ms. Lloyd's physical extradition must be conducted in accordance with fundamental human rights guarantees of humane treatment for prisoners, but rather which rights instruments, and which courts' supervisory authority, must govern. I conclude that, in the case of inbound extradition, the laws and courts of the requested state prevail, save for extreme instances in which the conduct is shown to be offside of Canada's international human rights obligation: ***Hape*** at para 52; ***Khadr*** at paras 18-21.

[63] The conclusion that the *Charter* does not apply to Ms. Lloyd's return until her arrival in Canada is dispositive of much of this application. Nevertheless, I will consider the substance of her claim in the event that my conclusion on section 32 is in error.

No infringement of sections 7 or 12 in any event

[64] Ms. Lloyd seeks an injunction on the basis that her rights under sections 7 and 12 of the *Charter* are in jeopardy. Those sections provide the following guarantees of rights:

> 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
>
> 12 Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

[65] In order to establish that a constitutional injunction is appropriate, the applicant must meet the familiar tripartite test set out in ***RJR-Mac Donald Inc v Canada (Attorney General)***, [1994] 2 SCR 311, and reaffirmed in ***Harper v Canada***, 2000 SCC 57 at para 4:

> In considering whether an injunction should be granted, and by extension whether an injunction should be stayed pending appeal, the Court considers: (i) whether there is a serious issue to be tried; (ii) whether absent an injunction there will be irreparable harm to the individual seeking the injunction and (iii) the balance of (in)convenience....

[66] This application fails at the first and third steps.

Transportation back to Canada would constitute "treatment" under section 12

[67] As a preliminary point, extradition to Canada involves the applicant spending time in detention for non-punitive reasons. Therefore, it would meet the definition of "treatment" for the purposes of section 12 if the *Charter* applied: ***Charkaoui v Canada (Citizenship and Immigration)***, 2007 SCC 9 at paras 95-98.

[68] I turn then to the first consideration in the tripartite test.

No serious constitutional issue arises

[69] Sections 7 and 12 are both triggered by serious, demonstrated risks of harm. In order for section 7 to be engaged, the impact on an individual's wellbeing posed by the impugned state action must be serious: ***Chaoulli v Quebec (AG)***, 2005 SCC 35 at para 123. An alleged risk to life, directly or through denial of access to healthcare, must relate to concrete, factually proven medical needs, as opposed to remote or speculative risks: see ***Canada (Attorney General) v PHS Community Services Society***, 2011 SCC 44. Indeed, "[i]t is clear that the right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action": ***New Brunswick (Minister of Health and Community Services) v G (J)***, [1999] 3 SCR 46 at para 59.

[70] For instance, in ***R v Nasogaluak***, 2010 SCC 6 at para 38, the Supreme Court found that a failure to obtain medical treatment for a prisoner seriously injured by the police which "posed a very real threat" to his health infringed section 7. In ***R v Magomadova***, 2015 ABCA 26, at para 24, our Court of Appeal held that a trial will only be stopped on account of the accused's infirmity

when it is shown that the trial process itself "would seriously imperil her health." In that case, a diagnosis of an aggressive, terminal, metastatic cancer, together with chronic pain, was deemed insufficient. A similarly high threshold was articulated in ***R v Dodd***, (1994) 121 Nfld & PEIR 37, 1994 CanLII 10393 (NL SC) at para 33, where the Court followed an earlier Ontario case in holding that a trial should not proceed only if it is "itself life threatening".

[71] In respect of section 12, the applicant must prove that the treatment at issue would "outrage standards of decency" ***R v Smith***, [1987] 1 SCR 1045 at 1072, and be "abhorrent or intolerable": ***R v Boudreault***, 2018 SCC 58 at paras 45, 94. This threshold is a "high bar" (***R v Nur***, 2015 SCC 15 at para 39), in keeping with the purpose of section 12, which is "inextricably anchored in human dignity": ***Quebec (Attorney General) v 9147-0732 Québec inc***, 2020 SCC 32 at para 17.

[72] Moreover, both rights contain a further internal balancing. Section 7 expressly permits the state to impose risks of physical and mental harm when doing so is in accordance with the principles of fundamental justice: ***Carter v Canada (Attorney General)***, 2015 SCC 5 at paras 64, 71-72. Indeed, that is the premise of the entire penal system. Imprisonment is never medically indicated. Nevertheless, individuals in far worse physical condition than Ms. Lloyd may be jailed, if the law demands it, after a fair trial: see for example ***R v Maczynski***, 1997 CanLII 2491, 120 CCC (3d) 481 (BCCA); ***R v Zeigler***, 2017 ABQB 515 at paras 76-80.

[73] Section 12 also contains an internal aspect of proportionality: ***R v Morrisey***, 2000 SCC 39 at para 26. As Sopinka J discussed in ***Canada (Minister of Employment and Immigration) v Chiarelli***, [1992] 1 SCR 711 at 736, this requires a consideration of the countervailing societal interests at play when determining whether the impugned treatment is cruel or unusual:

> The deportation of a permanent resident who has deliberately violated an essential condition of his or her being permitted to remain in Canada by committing a criminal offence punishable by imprisonment of five years or more, cannot be said to outrage standards of decency. On the contrary it would tend to outrage such standards if individuals granted conditional entry into Canada were permitted, without consequence, to violate those conditions deliberately.

[74] In summary, sections 7 and 12 are not concerned with trivial discomforts, imagined risks or anxieties, or even actual physical and psychological harm that that is proportionate to the reasons for its imposition. The law in this regard was aptly described by the Divisional Court in ***Dixon v Ontario (Director, Ministry of the Environment)***, 2014 ONSC 7404 at para 61:

> The current state of the law was summarized by the Supreme Court of Canada in their decisions in *New Brunswick (Minister of Health and Community Services) v. G. (J.), Blencoe v. British Columbia (Human Rights Commission) and Chaoulli v. Quebec (Attorney General)*. In *G.(J.)* the Supreme Court of Canada observed that it was clear the right to security of the person did not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action. Instead, for an infringement of security of the person to be made out, the impugned state action must, when the effects are assessed objectively, have a serious and profound effect on the psychological integrity of a person of reasonable sensibility. [footnotes omitted]

[75] Risks of harm which do not meet this threshold do not engage *Charter* scrutiny.

Factual conclusion on the risk of stroke

[76] Ms. Lloyd taking a commercial flight between London and Calgary, in the company of a medic, does not approach the requisite risk to engage sections 7 and 12. The medical evidence, at its highest, shows that she may have an unquantified increase in stroke risk over the general population, which may increase by some again unquantified degree when airborne. Even within the cautious practice of the medical profession, her specialist would go no further than saying that over-exertion and 'arduous' overseas journeys are best avoided.

[77] Divorced from Mr. Engel's eloquent advocacy on the enormity of the situation, what we have is a 61-year-old woman, in somewhat below average health, taking a transatlantic flight. Critically examined, the evidence does not suggest or support that the journey from London to Calgary places her at any greater risk of stroke during this relatively brief and unremarkable journey than many older travelers suffering common conditions such as hypertension.

[78] The limited risk she faces is in keeping with the principles of fundamental justice. She has been duly committed for extradition for a serious crime causing considerable harm to its victims. Travel while in custody is a reasonable and proportionate corollary to that situation unless a specific and significant risk to life is shown. The evidence in this case falls far short of that. For the same reasons, nothing in her treatment in the course of extradition would qualify as cruel or unusual. To so find would cheapen the meaning of the fundamental right to be free of abuse at the hands of the state.

Factual conclusion on threats of self-harm

[79] I accept that Ms. Lloyd is very anxious about the prospect of return to Canada to face trial and the likely prospect of imprisonment. This is a natural and very human anxiety, felt by most individuals facing criminal charges, especially those facing trial away from home. Her threats of self-harm, however, do not give rise to a serious constitutional issue.

[80] The record demonstrates that this is not a situation in which the process of extradition would exacerbate an existing health condition such that suicidal ideation would be inevitably and organically provoked. Rather, as the consultant psychiatrist notes, Ms. Lloyd's expressed contemplation of suicide is a situational response to her desire not to be extradited and face justice in Canada. It is effectively a consciously chosen declaration that "you won't take me alive". Ms. Lloyd's singular determination to resist extradition, including by going to the extreme of suicide, is not a foundation on which *Charter* relief can be based for several reasons.

[81] First, if Ms. Lloyd chooses to take the step of ending her life prior to her pre-extradition detention in England, that would be an act wholly of her own conscious choosing, and too remote from any state action to which section 32 the *Charter* applies. Second, once she is in the custody of UK authorities, or the Canadian agents dispatched to transport her, she may be both appropriately restrained and continuously supervised, such that any risk of suicide would be fully attenuated.

[82] Third, a suspect's willful determination to avoid apprehension and judicial process cannot transform proportionate enforcement actions into *Charter* infringements. Engaging in a policy of judicial appeasement towards threats of this nature would bring the administration of justice into disrepute. For instance, if a suspect in Canada committed a crime, barricaded themselves in their home when the police came to effect an arrest, and said "don't come through the door or I will kill myself", the *Charter* does not compel the authorities to demure and depart until the suspect's sentiments on the subject of being apprehended temper themselves. This case is no different. The threat of deliberate, premeditated harm to oneself or others, made as a countermeasure to the lawful enforcement of criminal process, does not raise a serious constitutional issue.

[83] It is important to re-iterate that the record in this case shows the threat of self-harm to be a conscious choice and situationally specific to Ms. Lloyd's adamance that she will not return to Canada. This is not a case in which an objectively ascertained health condition will be worsened by extradition in a manner that may provoke life-threating episodes of mental illness.

[84] Finally, the UK court found that Ms. Lloyd's claims to unwellness were permeated with lies and willful attempts to mislead both the court itself and the experts retained to provide it evidence. Her attempts to do so were the object of specific comment by Arbuthnot J, as noted above. As such, and given her status as an acknowledged fraudster of significant scale, claims dependent upon self-reporting from her or her family carry little weight.

[85] For all of these reasons I find that the self-professed risk of suicide also presents no serious *Charter* issue to be tried. Having found that this application fails at the first, I now move to the third consideration on granting of injunctive relief.

The balance of convenience favours completion of the extradition

[86] Extradition is meant to be a simple and expeditious process by which the criminal processes of partner states are permitted to operate in harmony. The record reveals that the delays in this case threaten to reach the temporal boundaries imposed by the UK's extradition legislation. The crime for which Ms. Lloyd is sought is serious, she has enjoyed full due process in the requested state, and her conduct therein revealed a determined dishonesty towards the judicial process.

[87] If Ms. Lloyd were situated in Canada, there is no doubt, on the record before me, that she would be brought to trial, irrespective of where she lived. The fact that she is in the UK should not be permitted to interpose an obstacle to the administration of justice. Being subject to criminal prosecution is never pleasant and always stressful. I have no doubt that Ms. Lloyd is genuinely anxious and unhappy about this prospect. However, her claim is largely duplicative of the UK Proceedings and reveals no objectively measurable risk to her wellbeing. Ms. Lloyd may be determined to avoid returning to Canada, but the balance of convenience in this case tilts strongly towards to proper administration of justice moving forward.

Ms. Lloyd's circumstances in Canada would not infringe the *Charter*

[88] Finally, Ms. Lloyd further argues that upon her return to Canada she would be homeless, penniless, and without necessary medical treatment. She contends that visiting these circumstances on her would be both cruel and a deprivation of her right to life and security of the person. These submissions do not raise a serious *Charter* claim sufficient to ground injunctive relief.

[89] First, if Ms. Lloyd is not granted judicial interim release, the penal authorities bear fully responsibility to house, cloth, and provide medical care for her. If released, Ms. Lloyd holds Canadian citizenship and would be entitled to access Canada's generous social benefits and universal entitlement to healthcare. That said, neither section 7 nor 12 of the *Charter* guarantee economic rights, nor any particular standard of living: ***Gosselin v. Québec (Attorney General)***, 2002 SCC 84 at para 81. The *Charter* guarantees neither a right to housing nor a minimum level of income or social welfare benefits: ***Grant v Canada (Attorney General)***, 2005 CanLII 50882 (ON SC), 77 OR (3d) 481; ***Lacey v British Columbia***, 1999 CanLII 7023 (BCSC).

[90] These claims also fail from a factual perspective. Ms. Lloyd acknowledges taking over $1.8 million from her employer. Her explanation for the alleged disposition of those funds found little favour in the UK Proceedings. Moreover, Ms. Lloyd deposes that she has made no attempts to plan for her impending time in Canada on account of her determination not be returned, stating in her affidavit that: "I have not contemplated a plan for how I would support myself in the event of extradition to Alberta, as I will end my life before extradition."

[91] One's own intransigence is a frail basis for a claim under section 7. The record in this case falls far short of supporting the contention that Ms. Lloyd would live in penury if brought to Canada and granted judicial interim release pending the resolution of the criminal charges. This facet of her claim raises no serious constitutional question to be tried.

[92] Of course, Ms. Lloyd remains free to avail herself of the full remedial scope of the *Charter* once in Canada, should she have an evidentiary basis to do so.

Conclusion

[93] The application for injunction is dismissed.

Heard on the 5th day of March, 2021.
Dated at the City of Calgary, Alberta this 18th day of March, 2021.

N.E. Devlin
J.C.Q.B.A.

Appearances:

Tom Engel
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Cam Regehr
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