

CANADA / JUDGMENT

# Saxena v. Thailand

2006 BCCA 194

## COURT

British Columbia Court of Appeal

## DECIDED

19 April 2006

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2006 BCCA 194 Saxena v. Thailand COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Saxena v. Thailand, 2006 BCCA 194 Date: 20060419 Docket: CA027749 CA031462 IN THE MATTER OF An application pursuant to s. 680(1) of the Criminal Code, R.S.C. 1985, c. C-46 for a review of the decision of the Honourable Madam Justice Saunders of the Court of Appeal for British Columbia pronounced on the 6th day of March 2006, at Vancouver, British Columbia Between: Rakesh Saxena Applicant And The Attorney General of Canada on behalf of The Kingdom of Thailand and Canada (Minister of Justice) Respondents Before: The Honourable Madam Justice Southin The Honourable Mr. Justice Mackenzie The Honourable Mr. Justice Thackray Oral Reasons for Judgment N.L. Cobb Counsel for the Applicant D.J. Strachan J. G. Johnston Counsel for the Respondent Place and Date: Vancouver, British Columbia 19 April 2006

- [1] SOUTHIN, J.A.: This is a preliminary objection by the Attorney General of Canada acting on behalf of The Kingdom of Thailand to this division of the Court reviewing the order of Madam Justice Saunders refusing release to the applicant, pending his application for leave to the Supreme Court of Canada, from the various proceedings which have taken place under which he is to be surrendered to The Kingdom of Thailand, pursuant to the Extradition Act.
- [2] The issue arises because this Court is sitting pursuant to a direction of the Chief Justice of this Court purportedly made pursuant to s. 680 of the Criminal Code, which says:
680. (1) A decision made by a judge under section 522 or subsection 524(4) or (5) or a decision made by a judge of the court of appeal under section 261 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,
- (a) vary the decision; or
  - (b) substitute such other decision as, in its opinion, should have been made.
- (2) On consent of the parties, the powers of the court of appeal under subsection (1) may be exercised by a judge of that court.

- (3) A decision as varied or substituted under this section shall have effect and may be enforced in all respects as though it were the decision originally made.
- [3] Counsel on behalf of the Attorney General for Canada says that s. 680 of the Criminal Code is not imported into the Extradition Act and therefore, she argues, the Chief Justice had no power to order a review of the order of Madam Justice Saunders.
- [4] The section of the Extradition Act which is in issue, s. 19.5(1) as it stood at the relevant time, which was when these proceedings against the applicant began is this: 19.5(1) Sections 677, 678.1, 679, 682 to 685 and 688 of the Criminal Code apply, with such modifications as the circumstances require, to appeals under this Act.
- [5] Section 680 of the Criminal Code is not one of the sections listed in s. 19.5(1). The argument which has taken place across Canada over that absence appears to be whether one should import into s. 679, s. 680. Some Chief Justices have said that one should. In my opinion, one should not.
- [6] If Parliament had intended that there should be a further review after an application under s. 679, that is a further review when what is before the Court is extradition proceedings, it could have easily inserted s. 680 into s. 19.5(1). It did not do so. In my opinion it is not correct as a matter of statutory interpretation for any court to put words into Acts of Parliament or to assume that the words used do not mean what they say. Therefore, in my view, s. 680 not being one of the sections listed in s. 19.5(1) of the Extradition Act, there is no jurisdiction in a Chief Justice of the Court of Appeal or the Acting Chief Justice to order a review under s. 680.
- [7] The Extradition Act is a code and it is not the place of the judges to put into a code things which Parliament has chosen not to put into it. That being so, I would give effect to the preliminary objection taken by the counsel for the Attorney General and declare that this Court has no jurisdiction in this matter. It follows that the merits of the application are not before us.
- [8] MACKENZIE, J.A.: I agree.
- [9] THACKRAY, J.A.: I agree. "The Honourable Madam Justice Southin"

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Prepared on 26 October 2026 · Esheria