
CANADA / JUDGMENT

U.S.A. v. Adam

2013 BCCA 207

COURT

British Columbia Court of Appeal

DECIDED

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2013 BCCA 207 U.S.A. v. Adam

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

U.S.A. v. Adam,

2013 BCCA 207

Date: 20130503

Docket: CA040047

Between:

The Attorney General of Canada on behalf of

The United States of America

Respondent

And

Acram Adam

Appellant

- and -

Between:

Acram Adam

Applicant

And

The Minister of Justice

Respondent

Before:

The Honourable Mr. Justice Hinkson

(In Chambers)

On appeal from: Supreme Court of British Columbia, July 3, 2012

(U.S.A. v. Adam, 2012 BCSC 969, Vancouver Docket No. 25585)

Counsel for the Appellant:

Karen Bastow

Counsel for the Respondents:

Diba B. Majzub

Place and Date of Hearing:

Vancouver, British Columbia

April 9, 2013

Place and Date of Judgment:

Vancouver, British Columbia

May 3, 2013

Reasons for Judgment of the Honourable Mr. Justice Hinkson:

Introduction

- [1] On October 7, 2010, the Honourable Rob Nicholson, the Minister of Justice of Canada, acting through his delegate, issued an Authority to Proceed ("ATP") pursuant to s. 15 of the Extradition Act, S.C. 1999, c. 18. The ATP authorized the Attorney General of Canada to seek an order for the committal of the applicant to be prosecuted in the United States (the "Requesting State") for his alleged conduct corresponding to the Canadian criminal offence of conspiracy to traffic in a Schedule III substance, Methylenedioxymethamphetamine ("MDMA") contrary to s. 5 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, and s. 465 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] The applicant contended that the extradition proceedings should be judicially stayed, and in the alternative, opposed his committal for surrender. On July 3, 2012, his applications were dismissed by a Justice of the Supreme Court of British Columbia, who instead granted an order committing him into custody for extradition to the Requesting State. Her reasons for judgment are indexed at 2012 BCSC 969.

- [3] On July 3, 2012, the applicant was granted judicial interim release by Mr. Justice Chiasson, in chambers, pending a decision by the Minister of Justice on whether he would authorize a Surrender Order.
- [4] On January 31, 2013, the Minister of Justice ordered the applicant's surrender to the Requesting State.
- [5] The applicant has filed an appeal from the committal decision and an application for judicial review of the Order for Surrender, and now applies for orders for the appointment of counsel for both his appeal and his application for judicial review pursuant to s. 684 of the Criminal Code. If an order for counsel is granted, the applicant seeks an order for judicial interim release on the same terms as the order granted by Chiasson J.A. on July 3, 2013, pending the hearing of his appeal and application for judicial review.

Background

- [6] The applicant was born in the Sudan and came to Canada at the age of six as a Convention refugee. He is a permanent resident of Canada but is not a Canadian citizen. He contended before the Supreme Court justice, as he does on this application, that because he is not a Canadian citizen, if he is committed for extradition to the Requesting State, convicted of the charges, and sentenced to more than five years' imprisonment, as he likely would be, he would lose his permanent resident status in Canada without recourse to the protections of the Immigration and Refugee Protection Act and in violation of Canada's international commitments. He contends that this would be an abuse of process and a violation of his rights under ss. 7 and 12 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11. Without permanent resident status, and with no status in the U.S., he contends that he would then be at high risk of deportation to the Sudan, which has been in a state of civil war since 1956 and is plagued by war, atrocities, and genocide.
- [7] The applicant proposes that the resolution of this stated difficulty is a stay of the extradition proceedings to allow him to plead guilty to the corresponding offence in Canada, so as to serve a sentence in Canada and maintain his permanent resident status here.

Discussion

- [8] Section 684(1) of the Criminal Code provides:

684.(1) A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

- [9] Section 52 of the Extradition Act establishes that s. 684 of the Criminal Code applies to the extradition process.
- [10] A single justice of this Court has jurisdiction to order counsel for a committal appeal in an extradition proceeding and for a judicial review preceding where, as here, an appeal and a judicial review are joined: *United States of America v. Beltran*, 2011 ONCA 775.
- [11] The appointment of counsel under s. 684 is subject to a two-part test: the appointment of counsel must be in the interests of justice; and the accused must have insufficient means to obtain legal assistance.
- [12] The first part of the s. 684 test requires that I consider whether it appears desirable in the interests of justice that Mr. Adam should have legal assistance.
- [13] In *R. v. Bernardo* (1997), 105 O.A.C. 244, 121 C.C.C. (3d) 123 (Ont. C.A.) at para. 20, Mr. Justice Doherty observed that:

The "interests of justice" referred to in s. 684(1) must take cognizance of the broad access to appellate review contemplated by s. 675 and the wide remedial powers of the court of appeal set out in s. 686. Justice demands that an accused who appeals under s. 675 be afforded a meaningful opportunity to establish the merits of the grounds of appeal advanced by that appellant. That same interest also insists that the court be able to fully and properly exercise its broad jurisdiction at the conclusion of the appeal. Anything less is inconsistent with the statutory scheme created by Part XXI of the Criminal Code.

- [14] In *R. v. Butler*, 2006 BCCA 476 at paras. 8 - 9, Madam Justice Rowles set out the factors to be considered when determining whether counsel ought to be appointed pursuant to s. 684 of the Criminal Code:
- [8] There are a number of case authorities in this province which set out factors to be considered when an application is brought under s. 684(1), including *R. v. Gill* (1984), 57 B.C.L.R. 141, [1984] B.C.J. No. 1729 (C.A.), (Lambert J.A., in Chambers); *R. v. Baig* (1990), 58 C.C.C. (3d) 156, 10 W.C.B. (2d) 476 (B.C.C.A.) (Hinds J.A., in Chambers); and *R. v. Ellard*, [2006] B.C.J. No. 2158, 2006 BCCA 374 (Donald J.A., in Chambers). The factors include: the appellant's financial ability to retain counsel; the availability of legal aid; the seriousness of the offence and the penalty imposed; the complexity of the appeal; the level of education of the appellant; the appellant's knowledge of language, both written and spoken; the competence or ability of the appellant to present the appeal effectively without legal assistance; and whether the appeal is one where the assistance of counsel is necessary in order to marshal the evidence and present argument.
- [9] The factors referred to in the cases have as their focus two related concerns: the first is whether an accused will be able to effectively present his or her appeal without the help of a lawyer; and the second is whether the court will be able to properly decide the appeal without the assistance of counsel. Almost invariably, those concerns coincide.

- [15] The manner in which the applicant proposes to advance his appeal and his application for judicial review is complicated, but that does not necessarily mean that his case is complex. While he would doubtless be assisted by the appointment of counsel, the real questions are whether he will be able to effectively present his appeal without the help of a lawyer, and whether the court will be able to properly decide the appeal without the assistance of counsel.
- [16] The applicant applied to the Legal Services Society for legal aid, but was refused for non-financial reasons. The offences for which his extradition is sought are serious. He has a grade twelve education. There is nothing in his material to suggest that his written or oral language skills are in any way deficient.
- [17] As the applicant proposes that he be permitted to plead guilty to the corresponding Canadian offence, the evidence relevant to his appeal and his judicial review application is limited in scope. It is set out in the reasons for judgement of the Supreme Court justice and the correspondence between counsel for the applicant and the Minister of Justice, so the assistance of counsel to re-marshal the evidence is not required.
- [18] In *Butler*, Madam Justice Rowles confirmed that the threshold requirement on the merits of the appeal is an arguable case, citing with approval the following comments by Mr. Justice Doherty, for the Court, in *Bernardo* at para. 22:

In deciding whether counsel should be appointed, it is appropriate to begin with an inquiry into the merits of the appeal. Appeals which are void of merit will not be helped by the appointment of counsel. The merits inquiry should not, however, go any further than a determination of whether the appeal is an arguable one. I would so limit the merits inquiry for two reasons. First, the assessment is often made on less than the entire record. Second, any assessment beyond the arguable case standard would be unfair to the appellant. An appellant who has only an arguable case is presumably more in need of counsel than an appellant who has a clearly strong appeal.

a) The Appeal from the Committal Order

- [19] As his appeal pertains to the jurisdiction of the Court and other questions of law, the standard of review on the appeal will be that of correctness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at 222.
- [20] I am not persuaded that the applicant has satisfied the merits threshold for the appointment of counsel to assist in his appeal. He has not identified an arguable appeal, or satisfied the requirement of showing that it is desirable in the interests of justice that he have further legal assistance for his appeal.
- [21] The Supreme Court justice addressed the three issues raised before her by the applicant:
1. whether an order of committal would perpetrate an abuse of process and would violate Mr. Adam's rights under ss. 7 and 12 of the Charter, because of its consequences for his immigration status in Canada and its potential to result in his deportation to the Sudan;

2. whether the Record of the Case establishes that Mr. Adam is the person named in it, and the person who engaged in the alleged conduct; and
 3. whether the admissible evidence is sufficient to justify committal.
- [22] On his application for the appointment of counsel, the applicant renews these submissions, and contends as well that the ATP was granted based upon a material misrepresentation of facts, and was thus an abuse of process either by law, or as an inappropriate exercise of discretion by the Minister of Justice.
- [23] At paras. 18 - 19 of her reasons, the Supreme Court justice observed:
- [18] However, Mr. Adam's status in Canada is properly a matter for the Minister's consideration at the next stage of the extradition process. If this court makes an order for committal, s. 43 of the Extradition Act affords Mr. Adam an opportunity to make submissions to the Minister. Further, the Minister's decision will be subject to judicial review in the Court of Appeal: s. 57 Extradition Act.
- [19] For similar reasons, Mr. Adam's submission that, instead of making a surrender order, Canada should charge him and allow him to plead guilty in Canada, is also properly made to the Minister at the next stage, and not by way of an application at this stage for relief based on an abuse of process.
- [24] I am unable to identify any legal error in those conclusions.
- [25] In dealing with the second issue raised by the applicant, the Supreme Court justice summarized the Record of the Case at paras. 4 - 9 of her reasons for judgment as follows:
- [4] In brief overview, the prosecution would revolve around the evidence of a "cooperating witness", or "CW" as abbreviated, who is said to have known Mr. Adam for several years and to have facilitated several narcotics transactions with him in 2008. This person was working in conjunction with the U.S. government in May 2008, when, the CW is expected to testify, Mr. Adam agreed to deliver to him approximately 180,000 MDMA pills in exchange for 18 kilograms of cocaine.
- [5] In a monitored and recorded telephone call on May 20, 2008, Mr. Adam is said to have agreed to send a person to San Francisco to help facilitate that transaction. Late in the evening that same day, a person ("HT") telephoned the CW to say that he and another person had arrived at the airport, and the CW picked them up and took them to a hotel in San Mateo, California.

- [6] In a meeting the next day with the CW and HT and his companion, two undercover Drug Enforcement Agency ("DEA") agents produced a sample of one kilogram of cocaine for HT to test. HT is said to have been satisfied with the sample, and then to have demonstrated, with an "X", how he wanted the other 17 kilograms marked. Mr. Adam is said to have previously told the CW that his cousin would "put an 'X' on our stuff so we know where it is when he comes down here".
- [7] The CW spoke later that day with Mr. Adam about the "load driver" with whom the CW was to meet that evening to obtain the MDMA pills.
- [8] Near the end of the evening, and while under surveillance by the DEA, the CW met in a Tower Records parking lot with HT and another person, AM, the latter of whom opened his car trunk and showed the CW two suitcases. The CW examined the contents, understanding them to be MDMA pills, and shortly afterwards directed HT and AM back to HT's hotel, while, he told them, he went to retrieve the cocaine. En route to HT's hotel, HT and AM were pulled over for erratically changing lanes, and the two suitcases were found in the trunk. The suitcases contained approximately 149,000 MDMA or ecstasy pills.
- [9] Mr. Adam is said to have telephoned the CW during the transaction in the Tower Records parking lot, and also several times in a frantic state after HT's and AM's arrest. In a monitored and recorded call on May 23, 2008, the CW and Mr. Adam discussed HT's arrest.
- [26] The Supreme Court justice then concluded that the requirements of s. 29(1)(a) of the Extradition Act were satisfied, as the person before her was Mr. Adam, and he was the person sought by the Requesting State and alleged to have engaged in the conduct on which the request of the Requesting State was based. I see no legal error on the part of the judge in arriving at those conclusions.
- [27] With respect to the third issue before her, the Supreme Court justice concluded that the Record of the Case presented a body of circumstantial evidence from which a properly instructed jury could reasonably infer the guilt of the applicant, meeting the requirements of s. 29(1)(a) of the Extradition Act.
- [28] In my opinion, it was open to the Supreme Court justice to come to that conclusion, and I am not persuaded that she committed any legal error in so doing.
- [29] Finally, with respect to the applicant's contention that that the ATP was granted based upon a material misrepresentation of facts, the Supreme Court justice concluded at paras. 17 - 18 of her reasons that:
- [17] Mr. Adam notes instead that the Minister initiated these proceedings by issuing the Authority to Proceed on a flawed understanding of a key fact. The Record of the Case describes Mr. Adam as a Canadian citizen. It was not until Cst. Heather Lew arrested Mr. Adam, and Mr. Adam produced a permanent resident's card, that it came to light that he was not a Canadian citizen. Mr. Adam submits that in issuing the Authority to Proceed the Minister therefore cannot have appreciated or considered the potential consequences, and

the likelihood of Mr. Adam's eventual deportation to the Sudan.

[18] However, Mr. Adam's status in Canada is properly a matter for the Minister's consideration at the next stage of the extradition process. If this court makes an order for committal, s. 43 of the Extradition Act affords Mr. Adam an opportunity to make submissions to the Minister. Further, the Minister's decision will be subject to judicial review in the Court of Appeal: s. 57 Extradition Act.

[30] I see no error in this analysis.

[31] It is therefore my opinion that none of the applicant's grounds of appeal have merit and that he has failed to show that the interests of justice warrant the appointment of counsel under the first part of the two-part test under s. 684 of the Criminal Code.

[32] The Court of Appeal Practice Directive Applications for a Court-Appointed Lawyer under Section 684 of the Criminal Code (Criminal Practice Directive, 19 September 2011) suggests that applicants should generally be able to show that they cannot afford to retain counsel for the appeal and that they applied to the Legal Services Society for legal aid and were refused.

[33] The onus is on the applicant to demonstrate insufficient means: *R. v. Schiel*, 2012 BCCA 1 at para. 9 (Chambers). The applicant says that he lacks sufficient means to obtain legal counsel to represent him on his appeal or his judicial review. He applied to the Legal Services Society for legal aid, but was refused for non-financial reasons. He swears that he has no savings and does not own a car. He has not disclosed any banking records.

[34] I am not prepared to assume, for the purpose of his applications, that the applicant has shown that he has insufficient means to retain counsel. However, given my conclusions with respect to the first part of the s. 684 test, it is unnecessary to address this second part of the test.

[35] I dismiss the application pursuant to s. 684 of the Criminal Code, for the appointment of counsel to the applicant for his appeal.

b) Judicial Review of the Surrender Order

[36] Section 57 of the Extradition Act provides that the Court of Appeal of the province in which the committal of the person was ordered has exclusive original jurisdiction to hear and determine applications for judicial review under the Act, made in respect of the decision of the Minister under s. 40 of the Act.

[37] In *Canada (Justice) v. Fischbacher*, 2009 SCC 46, [2009] 3 S.C.R. 170 at 183 - 184, Madam Justice Charron clarified that:

Canada's international obligation to surrender fugitives from justice to other states is a product of numerous treaties concluded with various extradition partners, including the Treaty between Canada and the United States, relevant to the present appeal. The Extradition Act implements Canada's extradition treaties into domestic law so that, from a domestic standpoint, extradition is

entirely "a creature of statute": *McVey (Re)*, [1992] 3 S.C.R. 475, at p. 508. Accordingly, the Minister's role and breadth of his discretion can only be understood with reference to the legislative scheme established by the Act. I begin with some brief comments about double criminality, a fundamental principle of the extradition process codified by the Act.

[38] The applicant concedes that the standard of review applicable to his application for the judicial review of the Surrender Order is reasonableness, with the exception of his contentions regarding the jurisdiction of the Minister of Justice, which he says are reviewable on a correctness standard.

[39] As explained by Justices Bastarache and LeBel at pp. 220 - 221 in *Dunsmuir*:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[40] The decision of the Minister of Justice in granting a Surrender Order is an exercise of discretion and is to be afforded significant deference, so long as the correct legal tests are considered before the discretion is exercised: *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] 1 S.C.R. 761 at 779.

[41] The Surrender Order of the Minister of Justice was conditional upon the receipt of an assurance from the Requesting State that the applicant would be given the opportunity to return to Canada at the conclusion of the criminal proceedings against him. This assurance has been provided. The Minister of Justice further noted that Citizenship and Immigration Canada had advised him that, as a protected person (having arrived to Canada as a Convention refugee), Mr. Adam would have the right to re-enter Canada following the conclusion of the criminal proceedings.

[42] Despite these conditions, the applicant contends that the Surrender Order of January 31, 2013, constitutes a breach of his s. 7 Charter rights, and is unreasonable and unjust.

[43] The offences with respect to which the applicant has been ordered committed and surrendered to face trial in the Requesting State are multi-jurisdictional, as the applicant's participation was in Canada, while the MDMA seized by United States Drug Enforcement Agency ("DEA") agents in the Requesting State is alleged to have been sent from Canada to the Requesting State. The applicant contends that Canada and the Requesting State thus share jurisdiction over the offences arising from the events alleged.

- [44] The grounds upon which the applicant intends to pursue his application for judicial review of the Surrender Order are first, that the decision breached his s. 7 Charter rights by authorizing the ATP based on erroneous information, or failing to consult again with the extradition partner once the correct information was received.
- [45] Second, as I understand him, the applicant contends that the decision of the Minister of Justice was not reasonable and that he was incorrect in his finding that he did not have the authority to refer the case to a Canadian authority for prosecution. Mr. Adam contends that the Minister of Justice misapprehended the principles of prosecutorial discretion and the scope of his discretion under s. 44(1)(a) of the Extradition Act.
- [46] Third, the applicant contends that ordering surrender is unjust, oppressive and an abuse of process. This contention is based on the view that:
- 1) the Canadian International Extradition Treaty with the United States, Can. T.S. 1991 No. 37 ("the Treaty") provides that the Minister shall decide whether to extradite the person sought or to submit the case to competent domestic authorities for prosecution, and
 - 2) the Minister of Justice failed to ensure that the Requesting State was appraised of the correct facts regarding Mr. Adam's citizenship once they were known.
- [47] In answer to the applicant's first contention on his application for judicial review, the Minister of Justice explained in his response to the applicant's submissions regarding his potential surrender:

Before issuing an ATP, my officials in the International Assistance Group (IAG) must determine that the extradition request complies with the Act and any applicable treaty. Although the Record of the Case incorrectly states that Mr. Adam is a Canadian citizen, I note that counsel in the IAG obtained information, prior to issuing the ATP, from Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) indicating that Mr. Adam is a citizen of Sudan, who has Convention refugee and permanent resident status in Canada. In any case, the ATP was issued based on the fulfillment of the conditions set out in the Act and the Treaty. Mr. Adam's citizenship was not relevant to the decision to initiate extradition proceedings against him, and would not have had any impact on the issuing of the ATP.

Mr. Adam's status as a Convention refugee and a permanent resident of Canada is relevant to my decision on surrender. The impact of surrender on Mr. Adam, given his Convention refugee and permanent resident status, is duly considered below.

- [48] The applicant has pointed to no error of law underlying the reasoning of the Minister of Justice with respect to the lack of impact that the erroneous information had upon the decision to issue the ATP, and there can be no argument that the conclusion reached with respect thereto is unreasonable.

[49] In answer to the applicant's second contention on his application for judicial review, the Minister of Justice explained in his response to the applicant's submissions regarding his potential surrender:

While you make reference to the Supreme Court of Canada's decision in *United States of America v. Cotroni*, supra, I note that Mr. Adam is not a Canadian citizen. As such, section 6(1) of the Charter does not apply to him. The fact that Canada has jurisdiction to prosecute Mr. Adam does not bar me from ordering his surrender to the United States. Neither, in my view, should Mr. Adam's willingness to plead guilty in Canada determine the jurisdiction in which he will face prosecution (*France v. Liang* (2007), 227 C.C.C. (3d) 351 (Ont. C.A.)).

I have also considered whether preferring extradition to a domestic prosecution would be unjust or oppressive, or contrary to Mr. Adam's rights under section 7 of the Charter.

Section 44(1)(a) of the Act requires me to refuse the surrender of a person sought for extradition if I determine that it would be "unjust or oppressive having regard to all of the relevant circumstances". This is effectively a codification of my obligation to consider Charter requirements and, in particular, to assess whether surrender would breach the principles of fundamental justice under section 7 of the Charter. In other words, I must determine whether Mr. Adam's surrender to the United States would shock the conscience of Canadians and be simply unacceptable on the bases that you have advanced (*United States v. Burns*, [2001] 1 S.C.R. 283).

[50] In *Lake*, the Supreme Court of Canada held that it is for prosecutorial authorities, not the Minister of Justice, to decide whether to initiate a prosecution. In his surrender decision, the Minister of Justice noted that the Public Prosecution Service of Canada ("PPSC") had already exercised its discretion to not initiate a criminal prosecution of the applicant. As the applicant has not alleged bad faith or improper motives, he therefore has no basis upon which to argue that the Minister unreasonably declined to interfere with the PPSC's discretion. I therefore see no merit in this ground for judicial review.

[51] Article 17 bis of the Treaty provides:

If both contracting Parties have jurisdiction to prosecute the person for the offense for which extradition is sought, the executive authority of the requested State, after consulting with the executive authority of the requesting State, shall decide whether to extradite the person or to submit the case to its competent authorities for the purpose of prosecution. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

- (i) the place where the act was committed or intended to be committed or the injury occurred or was intended to occur;
- (ii) the respective interests of the Contracting Parties;
- (iii) the nationality of the victim or the intended victim; and

(iv) the availability and location of the evidence.

[52] In *United States of America v. Singh*, 2009 ONCA 247 at paras. 5 - 6, the Ontario Court of Appeal found that:

The applicant is not a citizen of Canada and accordingly has no constitutional right to remain in Canada under s. 6 of the Charter of Rights and Freedoms. He thus has no right to a review in accordance with the factors set out in *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469. The applicant submits, however, that Article 17 bis of the Treaty of Extradition between Canada and the United States of America, Can. T.S. 1991 No. 37, gives him a comparable right to have the Minister of Justice conduct a review to determine whether he should be prosecuted in Canada rather than the United States.

We would not give effect to this submission. We have serious doubts that Article 17 bis confers any rights on the accused...

[53] These comments apply equally to the applicant.

[54] In answer to the applicant's third contention on his application for judicial review, the Minister of Justice pointed out in his response to the applicant's submissions regarding his potential surrender that the PPSC had advised the applicant's counsel that it would not intervene in the applicant's extradition proceedings and explained:

You point out that under Article 17bis of the Treaty, I have the authority to refer Mr. Adam's case to the competent prosecutorial authority for prosecution in Canada. However, Mr. Adam has not been charged in Canada. I do not have the authority to direct or attempt to influence the competent investigative authorities to pursue an investigation or lay charges against him. Pursuant to section 40 of the Act, my role in the extradition process is essentially political in nature (*United States of America v. Kwok*, [2001] 1 S.C.R. 532; *Lake v. Canada (Minister of Justice)*, [2008] 1 S.C.R. 761; *Sriskandarajah v. United States of America*, 2012 SCC 70).

In my view, it cannot be said that Mr. Adam's surrender to the United States would shock the conscience of Canadians and thereby violate the principles of fundamental justice. The investigation into Mr. Adam's alleged conduct was carried out exclusively by the DEA and all of the evidence, including a cooperating witness and intercepted communications, is located in the United States. While Canada may have jurisdiction to prosecute Mr. Adam, no investigation has been carried out by Canadian authorities, and no charges have been laid against Mr. Adam in Canada. I am satisfied that, under the circumstances, it would not be unjust or oppressive to extradite Mr. Adam to the United States.

[55] I have already addressed the inability of the Minister of Justice to submit the case to competent domestic authorities for prosecution and the fact that the Minister of Justice relied on relevant case authorities in concluding that the Treaty does not confer substantive rights on the applicant. I conclude that the applicant's third contention respecting his judicial review is without merit.

- [56] The alleged failure to ensure that the Requesting State was aware of the applicant's Sudanese citizenship cannot amount to an abuse of process, as it is clear that the United States had been so informed and the surrender order is conditional on the United States providing assurances that the applicant will be able to return to Canada at the conclusion of the United States' criminal proceedings.
- [57] In the result, I am unable to see that the applicant has an arguable case for judicial review of the Surrender Order of the Minister of Justice, and thus he has not satisfied the merits threshold for the appointment of counsel to assist him with a judicial review of the Surrender Order: that it is desirable in the interests of justice that he have further legal assistance for his judicial review. As with his appeal, given my conclusions with respect to the first part of the s. 684 test, it is unnecessary to address this second part of the test with respect to his application respecting his judicial review.
- [58] In the result, I also dismiss the application pursuant to s. 684 of the Criminal Code, for the appointment of counsel for the applicant for his judicial review.

Judicial Interim Release

- [59] Although the applicant's material included a notice of application for judicial interim release, as that was only sought if an order for the appointment of counsel was made, no submissions were made, either orally or in the applicant's written material to support such an order, with the exception of Mr. Adam's affidavit. Given the disposition of the application for the appointment of counsel and in the absence of submissions on the issue, I will simply adjourn the application for judicial interim release.

"The Honourable Mr. Justice Hinkson"

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