

D Conclusion

[119] To conclude:

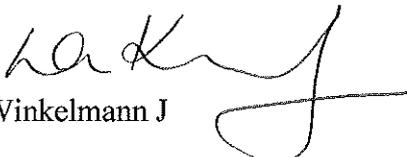
1. The Extradition Act is to be construed in the light of its purpose, the extradition treaty between the United States and New Zealand, and also in the light of the provisions of Bill of Rights Act.
2. The person sought is entitled to the procedural rights protected by s 27 of the Bill of Rights Act to ensure that he or she has a fair hearing. The purpose of the extradition hearing is to decide whether the threshold established for extradition in s 24(2)(d)(i) is met. Therefore, those procedural rights are not of a scale that would be afforded in a full hearing (trial) to determine whether a charge is proved. There is nothing in the ROC provisions procedure which alters the s 24(2)(d)(i) threshold, or which further constrains the procedural rights of the person sought in relation to that hearing beyond any constraints which are explicit in the Extradition Act.
3. The person sought is entitled to adduce evidence which is relevant to that narrow issue. Consistent with the need to ensure that the extradition process is expeditious, the extradition Judge will ensure that only evidence relevant to that issue is produced. The oral evidence application in the Summary Proceedings Act provides a useful procedure for this purpose.
4. Without disclosure the person sought will be significantly constrained in his or her ability to participate in the hearing, and the requesting state will have a significant advantage in terms of access to information.
5. The extradition court does have jurisdiction to order disclosure to ensure a fair hearing because it has all the powers and jurisdiction of a court conducting a committal hearing. Because the applicant is a

party to the proceeding, orders for disclosure does not involve the District Court making orders with extraterritorial affect.

6. The provision of disclosure does not undermine the ROC procedure. Nor is it inconsistent with the conduct of an expeditious and focused extradition hearing. The hearing can be kept within its proper bounds by controlling the evidence that is allowed to be called. To attempt to control it by severely constraining the information available to the person sought is to use a very blunt instrument and risks an unfair hearing.
7. The person sought does not have to establish that any potential challenge to the application for extradition has an "air of reality" before he or she will be entitled to disclosure.
8. Disclosure should be of documents relevant to the extradition phase. The Judge structured the disclosure ordered around the elements of the offences alleged against the first respondents. He did not therefore exceed the proper scope of disclosure for the extradition hearing.

Result

[120] The application for review is dismissed.


Winkelmann J