



## Kindler v. Canada (Minister of Justice)

File No. 21321

**Country:** Canada

**Region:**

**Year:** 1991

**Court:** Supreme Court of Canada

**Health Topics:** Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to life

### Facts

On November 15 1983, the appellant (Kindler) was found guilty of first degree murder, conspiracy to commit murder and kidnapping in the State of Pennsylvania. Following his conviction, the jury heard further evidence and recommended the imposition of the death penalty. Before the formal imposition of the sentence, Kindler escaped from prison and fled to Canada in September 1984. The Minister of Justice of Canada, reviewed the material supplied by the appellant, and ordered his extradition pursuant to Sec. 25 of the Extradition Act without seeking assurances from the US (under Art.6 of the Extradition Treaty between the two countries) that the death penalty would not be imposed or, if imposed, not carried out. Both the Trial Division and the Court of Appeal of the Federal Court dismissed the appellant's application to review the Minister's decision. The case came in an appeal before this Court for determination of whether the Minister's decision to surrender the appellant to the US, without first seeking assurances that the death penalty will not be imposed or executed, violates the appellant's rights under Sec. 7 or Sec. 12 of the Canadian Charter of Rights and Freedoms. The Court framed two additional constitutional questions i.e. Whether Sec. 25 of the Extradition Act infringes sec. 7 or sec. 12 of the Charter; and, if so, whether such infringement is justified under Sec. 1.

### Relevant legislation:

Article 6, Extradition Treaty between Canada and the United States of America, Can. T.S. 1976 No. 3: When the offense for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not permit such punishment for that offense, extradition may be refused unless the requesting State provides such assurances as the requested State considers sufficient that the death penalty shall not be imposed, or, if imposed, shall not be executed.

Sec. 25, Extradition Act, R.S.C., 1985, c. E-23:

Subject to this Part, the Minister of Justice, on the requisition of the foreign state, may, under his hand and seal, order a fugitive who has been committed for surrender to be surrendered to the person or persons who are, in the Minister's opinion, duly authorized to receive the fugitive in the name and on behalf of the foreign state, and the fugitive shall be so surrendered accordingly.

Section 7, Canadian Charter of Rights and Freedoms:

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.

Section 12, Canadian Charter of Rights and Freedoms:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

### Decision and Reasoning

Majority opinion by L'Heureux-Dubé, J. MacLinn and J. Gonthier and concurring opinion by J. La Forest upholding the actions of the Minister. The Court held that Sec. 7 of the Charter and not Sec. 12 was the appropriate provision under which the actions of the Minister were to be assessed. The Minister's actions did not constitute cruel and unusual punishment and did not violate Sec. 7. J. MacLinn also held that Sec. 25 of the Extradition Act did not violate Sec. 7 of the Charter. The issue was not whether death penalty was justified but whether the extradition to the U.S. of a person who may face the death penalty there shocks the conscience. There was no clear consensus in Canada that the death penalty was morally unacceptable, and the Court expressed concern that Canada may become a safe haven for fugitives who commit serious crimes

if they know that they will not be extradited.

C.J. Lamer and J. Sopinka dissented. J. Cory dissented in a separate opinion.

They held Sec. 25 of the Extradition Act infringed Sec. 7 of the Charter. The dissenting opinion discussed how historically Courts in Canada were reluctant to impose the death penalty and this reflected the importance of values such as dignity of individuals. The Minister's actions offended principles of fundamental justice by allowing another State to impose the death penalty and constituted cruel and unusual punishment.

Justice Sopinka also held that limiting the application of Sec. 7 of the Charter to situations which shock the conscience was overly restrictive. It was possible to participate in effective extradition without depriving the fugitive of the protection of the Charter. Justice Cory held that death penalty violated Sec. 12 of the Charter as it deprives individuals of human dignity. Canada had an obligation to not extradite a person to face a cruel and unusual treatment or punishment, and in doing so violated Sec. 12. The judge also held that the "safe haven" argument was not borne from evidence and it was not necessary that fugitives would flee to Canada.

## Decision Excerpts

Majority opinion:

"The extradition of an individual who has been accused of the worst form of murder in the US, which has a system of justice similar to [Canada], could not be said to shock the conscience of Canadians or to violate an international norm. The extradition did not go beyond what was necessary to service the legitimate and compelling social purpose of preventing Canada from becoming an attractive haven for fugitives. The Minister determined, in the interests of protecting the security of Canadians, that he should not, in this case, seek assurance regarding the penalty to be imposed."

"The procedure followed by the Minister in reaching his decision to surrender the appellant did not offend the principles of fundamental justice. Nor did the subsidiary grounds "the alleged arbitrariness, the death row phenomenon and the mode of execution" lead to a different result."

Dissent:

"First, punishments must never be grossly disproportionate to that which would have been appropriate to punish, rehabilitate or deter the particular offender or to protect the public from that offender. Second, and more importantly for the purposes of this case, punishments must not in themselves be unacceptable no matter what the crime, no matter what the offender. Although any form of punishment may be a blow to human dignity, some form of punishment is essential for the orderly functioning of society. However, when a punishment becomes so demeaning that all human dignity is lost, then the punishment must be considered cruel and unusual. At a minimum, the infliction of corporal punishment, lobotomisation of dangerous offenders and the castration of sexual offenders will not be tolerated."

"The death penalty not only deprives the prisoner of all vestiges of human dignity, it is the ultimate desecration of the individual as a human being. It is the annihilation of the very essence of human dignity."