Court File No. 36981

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

THE ATTORNEY GENERAL OF CANADA ON BEHALF OF THE REPUBLIC OF INDIA

APPELLANT
(Respondent)

AND:

SURJIT SINGH BADESHA and MALKIT KAUR SIDHU

RESPONDENTS
(Applicants)

AND:

SOUTH ASIAN LEGAL CLINIC OF ONTARIO, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS, THE CANADIAN CENTRE FOR VICTIMS OF TORTURE and THE CANADIAN COUNCIL FOR REFUGEES

INTERVENERS

FACTUM OF THE RESPONDENT, SURJIT SINGH BADESHA

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

Michael Klein Law Corporation
Suite 1050 – 777 Hornby St.
Vancouver, BC V6Z 1S4

Per: **Michael Klein, Q.C.**
Telephone: (604) 687-4288
Fax: (604) 687-4299
E-mail: michael@michaelkleinlaw.com

Counsel for the Respondent, Surjit Singh Badesha

Michael Sobkin
331 Somerset Street W.
Ottawa, ON K2P 0J8

Telephone: (613) 282-1712
Fax: (613) 288-2896
E-mail: msobkin@sympatico.ca

Agent for the Respondent, Surjit Singh Badesha

Sugden, McFee & Roos LLP
700 – 375 Water Street
Vancouver, BC V6B 5N3

Per: **E. David Crossin, Q.C.**
Elizabeth France
Miriam Isman
Telephone: (604) 687-7700
Fax: (604) 687-5596
E-mail: dcrossin@smrlaw.ca

Counsel for the Respondent,
Malkit Kaur Sidhu

Michael Sobkin
331 Somerset Street W.
Ottawa, ON K2P 0J8

Telephone: (613) 282-1712
Fax: (613) 288-2896
E-mail: msobkin@sympatico.ca

Agent for the Respondent,
Malkit Kaur Sidhu

Attorney General of Canada
Department of Justice Canada
284 Wellington Street
Ottawa, ON K1A 0H8

Per: **Janet Henchey**
Diba B. Majzub
Telephone: (613) 948-3003
Fax: (613) 957-8412
E-mail: janet.henchey@justice.gc.ca

Counsel for the Appellant

Deputy Attorney General of Canada
Department of Justice Canada
50 O'Connor Street
Ottawa, ON K1A 0H8

Per: **Robert J. Frater, Q.C.**
Telephone: (613) 670-6289
Fax: (613) 954-1920
E-mail: robert.frater@justice.gc.ca

Agent for the Appellant

Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M4X 1A4

Per: **Ranjan K. Agarwal**
Preet K. Bell
Telephone: (416) 863-1200
Fax: (416) 863-1216
Email: agarwalr@bennettjones.com

Counsel for the Intervener, South Asian Legal Clinic of Ontario

Bennett Jones LLP
World Exchange Plaza
1900 – 45 O'Connor Street
Ottawa, ON K1P 1A4

Per: **Robyn Ryan Bell**
Telephone: (613) 683-2307
Fax: (613) 683-2323
Email: ryanbellr@bennettjones.com

Agent for the Intervener, South Asian Legal Clinic of Ontario

Simcoe Chambers
116 Simcoe Street, Suite 100
Toronto, ON M5H 4E2

Per: **John Norris**
Telephone: (416) 596-2960
Fax: (416) 596-2598
Email: john.norris@simcoechambers.com

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Per: **Matthew Estabrooks**
Telephone: (613) 786-0211
Fax: (613) 788-3573
Email:
matthew.estabrooks@gowlingwlg.com

David Asper Centre for Constitutional Rights
University of Toronto
78 Queen's Park Crescent
Toronto, ON M5S 2C3

Per: **Cheryl Milne**
Telephone: 416-978-0092
Fax: 416-978-8894
Email: cheryl.milne@utoronto.ca

Counsel for the Intervener, David Asper Centre for Constitutional Rights

Agent for the Intervener, David Asper Centre for Constitutional Rights

Goldblatt Partners LLP
Barristers and Solicitors
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Per: **Adriel Weaver**
Louis Century
Telephone: (416) 977-6415
Fax: (416) 591-7333
Email: aweaver@goldblattpartners.com

Goldblatt Partners LLP
Barristers and Solicitors
500 – 30 Metcalfe Street
Ottawa, ON K1P 5L4

Per: **Colleen Bauman**
Telephone: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

Counsel for the Interveners, Canadian Lawyers for International Human Rights, the Canadian Centre for Victims of Torture, and the Canadian Council for Refugees

Agent for the Interveners, Canadian Lawyers for International Human Rights, the Canadian Centre for Victims of Torture, and the Canadian Council for Refugees

TABLE OF CONTENTS

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The Respondent Surjit Singh Badesha ("Badesha") and his co-respondent Malkit Kaur Sidhu ("Sidhu") face surrender to the Republic of India. Justice Donald (Justice Newbury concurring) writing for the majority of the Court of Appeal for British Columbia held that without meaningful assurances that they would not be subjected to torture and abuse while confined in an Indian prison, Badesha and Sidhu could not be surrendered to India.

2. Badesha submits that the within appeal brought by the Attorney General for Canada on behalf of the Republic of India (the "Appellant") should be dismissed. Badesha submits that notwithstanding the Minister asking for and obtaining assurances from the Republic of India that Badesha would not be subjected to torture or other abuse while confined in an Indian prison, the Court of Appeal did not err in concluding that Badesha could not be sent back to face a prosecution for murder and conspiracy to commit murder on these particular assurances. The Court of Appeal rightly held that the Minister failed to consider whether the assurances were meaningful in light of the real and substantial risk that Badesha (and Sidhu) would be subjected to life threatening torture and abuse.

3. Badesha submits that the Appellant is incorrect in stating that there was no substantial risk of torture and abuse. Badesha submits that the Minister, in seeking assurances, recognized that risk and attempted to address that risk. Further, Badesha submits that in order to support its position, the Appellant seeks to revisit and in effect recast the conclusions reached by the Minister on risk, an undertaking that Badesha submits is unavailable on the facts of this case given the Minister's findings on risk and his attempt to negate that risk through assurances.

4. Badesha submits that from the material placed before the Minister and the Court of Appeal, there can be no doubt that torture and abuse are endemic within the Indian prison system and that the risk of an inmate suffering torture, abuse and death at the hands of Indian prison authorities is real and substantial.

5. Further, Badesha submits that the Court of Appeal did not reweigh the factors relevant to surrender analysis. The Court of Appeal recognized the inadequacies of the assurances in the face of a real and substantial risk and correctly concluded that the failure of the Minister to properly assess the efficacy of the assurances was an error on the part of the Minister and the Minister's decision was thus outside a range of reasonable outcomes.

6. Badesha further submits that the Court of Appeal did not unduly fetter the discretion of the Minister. It is further submitted that to ascribe to the Appellant's position on the ability of a court to review a decision of the Minister amounts to there being no ability to meaningfully review the decision of the Minister, a proposition Badesha submits is contrary to authority and to the *Extradition Act*, S.C. 1999, c. 18.

7. Badesha submits that this Court must be mindful about what the Court of Appeal ordered:

> First, the disposition I propose is to set aside the Minister's decision to accept the assurances, leaving it to the Minister to secure meaningful and effective assurances through diplomatic channels; and, second, if it becomes apparent that no such guarantees are possible, the Minister could revisit the question whether the applicants could be tried in Canada.[1]

8. The effective disposition was to refer the matter back to the Minister presumably to engage in further dialogue with India so as to ensure Badesha and Sidhu were adequately protected from torture and abuse. The Court of Appeal is not saying that Badesha and Sidhu cannot be sent back to India. The Court of Appeal instead places reliance upon the Minister to find a meaningful solution to the concerns recognized by the Minister.

9. Finally, Badesha submits that a flaw in Appellant's alarmist claim that the Court of Appeal's decision will have far reaching consequences for all of Canada's international obligations arises as a result of the Appellant failing to recognize that extradition is a two way street. The Court of Appeal's decision does not affect the

---

[1] *India v. Badesha* 2016 BCCA 88, AR Vol. I, p. 136 para. 71 *(Badesha*, BCCA)

"reciprocity that Canada expects from its treaty partners".[2] Any reciprocity between nations must incorporate Canadian values of humane and fair treatment of persons sought no matter what their crime, and Badesha submits that any treaty partner must know that about Canada and understand that Canadian values are part of the bargain when extradition arrangements are made. When a surrender does not incorporate those values, it cannot occur and maybe, but not necessarily, as the majority of the Court of Appeal alluded to, a domestic prosecution is a viable alternative.

10. It is submitted that Badesha's factum should be read in conjunction with the factum of Sidhu. Badesha adopts the submission of Sidhu. So as to reduce redundancy, Badesha will refer to and incorporate references from the submission of Sidhu.

B. History of Proceedings

11. For the most part, Badesha agrees with and accepts the history of the proceedings as outlined in both the Appellant's and Sidhu's submissions. However, Badesha submits contrary to the Appellant's submission on this point, the human rights reports that were submitted to the Minister were not "general" in nature.[3]

12. An important point of emphasis is that the Minister's decision to surrender on the condition that assurances will be obtained is dated November 27, 2014.[4] By a letter dated January 18, 2015 the Minister advises Badesha that the Minister has received assurances and that Badesha will be surrendered.[5] As will be discussed in more detail, the January 18 letter is brief and contains little or no analysis of the capacity of India to give effect to the assurances and as will be submitted, the Court of Appeal correctly found that the Minister erred by accepting the assurances simply based upon the good faith of the requesting state.

---

[2] Appellant's Factum p. 2, para. 4
[3] Appellant's Factum p. 4, para. 9
[4] Minister's Surrender Reasons Nov. 27, 2014, AR Vol. I, p. 69
[5] Minister's Surrender Reasons Jan. 18, 2015, AR Vol. I, p. 106

PART II - STATEMENT OF POSITION

13. Badesha submits that the Court of Appeal did not err in its review of the Minister's assessment of risk nor did it err by re-weighing the factors relevant to the surrender analysis. Badesha submits that first, the Minister accepted that Badesha faced a real and substantial risk that he would face torture or abuse in an Indian prison and that is why the Minister sought assurances from India. Second, the Court of Appeal was correct in determining that reliance upon good faith alone was insufficient and that the Minister erred by failing to adequately consider the effectiveness of the assurances and the capacity of India to implement the assurances. The Court of Appeal rightly concluded that this failure was fatal to the Minister's decision to surrender as the decision fell outside a range of reasonable outcomes. Contrary to the assertions of the Appellant, the Court of Appeal properly remitted the matter back to the Minister to seek assurances that are effective in preventing the harm that Badesha faces within an Indian prison.

PART III – ARGUMENT

A. The Minister's Role in Determining Surrender

14. Badesha does not take issue with the Appellant's position that the Minister's role in determining whether or not a person ought to be surrendered to a requesting state is "largely political in nature"[6]. In fact, the Respondent submits that there must be careful scrutiny of the Minister's decision and by virtue of s.57 of the *Extradition Act*,[7] that scrutiny is vested with the court of appeal of the province in which there has been an order of committal. Badesha submits that the political nature of the decision to surrender requires careful scrutiny because political decisions may not be consistent with principles and values enunciated by the *Canadian Charter of Rights and Freedoms*.

15. Further, Badesha takes no issue that the guidance that the Minister must seek is found in section 44(1)(a) of the *Extradition Act*, which requires the Minister to refuse surrender where extradition would be "unjust or oppressive". Further, and clearly,

---

[6] Appellant's Factum p. 12, para. 25
[7] *Extradition Act*, S.C. 1999, c. 18

surrender cannot occur if it would be contrary to the principles of fundamental justice as surrender would then be running afoul of section 7 of the *Charter*.

16. Moreover, Badesha does not dispute the Appellant's claim supported by *United States of America v. Burns*[8] that in determining fundamental justice, the analysis must be made in the context of the law on extradition. Further, as a general proposition, Badesha agrees that the analysis must be "informed by comity, reciprocity, the good faith of Canada in honouring its international obligations and the presumption that the person sought will receive a fair trial in the foreign jurisdiction."[9] One of the cases cited in support of that claim is *Kindler v. Canada (Minister of Justice)*.[10] Badesha submits that *Kindler* has now been effectively modified in a significant way by this Court's decision in *Burns*.

17. Clearly, it is submitted that while the issues of comity, reciprocity and the good faith of Canada in honouring its international obligations must be considered, there are demonstrable limits upon those considerations and those limits were clearly defined in *Burns* when this Court ruled that the person sought could not be surrendered without an assurance that they would not receive the death penalty.

18. In *Burns*, this Court held that notwithstanding the requesting State's desire to subject the persons sought to the death penalty, that punishment was not consistent with Canadian values and while there may be exceptions to that claim, notwithstanding the infringement upon international comity and reciprocity, the values enunciated by the *Charter* effectively limited the political nature of the extradition process such that the person sought could not be surrendered absent an assurance that they would not be put to death.

---

[8] Appellant's Factum p. 12, para. 26, citing *United States of America v. Burns*, 2001 SCC 7 *(Burns)*
[9] Appellant's Factum p. 12, para. 26
[10] Appellant's Factum p. 12, para. 26, citing *Kindler v. Canada (Minister of Justice)*, [1991] 2 SCR 779 (*Kindler*)

19. Therefore, notwithstanding the political nature of the Minister's role, the Minister must act within parameters defined by the *Charter* before ordering the surrender of an individual to a requesting State.

20. Badesha does not take any issue with the Appellant's claim that *Lake v. Canada (Minister of Justice)* is the applicable law in determining the factors that must be considered before a person can be surrendered to a requesting state.[11]

21. Moreover, Badesha agrees with the assertion by the Appellant that examples, (not exhaustive it is submitted), that can meet the threshold to prevent surrender include whether or not the person sought would face the death penalty, whether or not there is a substantial risk of torture or other serious human rights violations or factors specific to the individual including youth, insanity, mental disorders or pregnancy.[12]

B. The Standard of Review of the Minister's Decision

22. Badesha also agrees with the Appellant's articulation of the standard of review of the Minister's decision. Deference is owed to the Minister and the reviewing court's task is to determine whether the Minister considered the relevant facts and reached a defensible conclusion that falls within a range of reasonable outcomes.[13] Important to the within appeal is Badesha's submission that the Court of Appeal recognized the Minister's role but as will be discussed, properly found that the Minister erred in his analysis of the effectiveness of assurances.

C. Evidence of Risk

(1) <u>The Minister Found Risk</u>

23. As discussed more fully below, Badesha adopts the submission of Sidhu in response to the Appellant's position about the assessment of risk in the extradition context.

---

[11] Appellant's Factum, p. 14, para. 30 citing *Lake v. Canada (Minister of Justice)*, 2008 SCC 23 ("*Lake*")
[12] Appellant's Factum, p. 13 – 14 para. 29
[13] Appellant's Factum, p. 14, para. 30 citing *Lake, supra*

24. However, more pointedly, it is respectfully submitted that the Appellant seeks to revisit and effectively recast the findings of the Minister.

25. Badesha submits that the Minister acknowledged that there was a substantial risk that Badesha may suffer torture or other abuse that would infringe Badesha's right to life liberty and security of the person. Undermining the Appellant's argument is the inescapable conclusion that the Minister determined that Badesha (and Sidhu) faced a real and substantial risk of torture or abuse or death at the hands of Indian prison officials. Contrary to the submission of the Appellant, the Minister explicitly acknowledged that risk. The best evidence supporting that conclusion is that the Minister sought assurances from the Republic of India in order to address the risk.

26. It is useful to review Badesha's submission to the Minister and the Minister's response.

27. Badesha pointed out to the Minister that he was an elderly man (now 71 years of age) suffering from a number of age related conditions including an overactive bladder, bladder pain syndrome and degenerative arthritis in his spine. It was made clear to the Minister that Badesha was not a robust man and therefore more acutely vulnerable to harsh prison conditions and although no one should suffer torture or abuse at the hands of any authority, Badesha's age and frailties inevitably make the consequences of torture and abuse more severe and likely life threatening.[14]

28. Badesha pointed out that notwithstanding his incarceration in a Canadian institution, his medical treatment in the institution has been adequate. He is seen by a healthcare team at a minimum of once per month and has access to a healthcare ward whenever health concerns arise. If a medical issue cannot be addressed by the institution, he is transported to an external hospital for medical treatment. He has been transported on several occasions to deal with his various medical issues.[15]

---

[14] Badesha's Submission to the Minister, AR Vol. III, p. 47
[15] Badesha's Submission to the Minister, AR Vol. III, p.46

29. The Respondent submitted to the Minister that prison conditions in India were abhorrent. The India Human Rights Report published by the United States Department of State was cited (and acknowledged by the Court of Appeal) which provided the following:

> Prison conditions were frequently life threatening and did not meet international standards.
>
> Physical conditions: Prisons were severely overcrowded and food, medical care, sanitation, and environmental conditions often remained inadequate. Potable water was only occasionally available. Prisons and Detention Centres remained understaffed and lacked sufficient infrastructure. Prisoners were physically mistreated.[16]
>
> …..From 2001 to 2010, the National Human Rights Commission (NHRC) recorded 14,231…persons died in police and judicial custody in India. This includes 1,504 deaths in police custody and 12,727 deaths in judicial custody from 2001 – 2002 to 2009 – 2010. A large majority of these deaths are a direct consequence of torture in custody. These deaths reflect only a fraction of the problem with torture and custodial deaths in India. Not all the cases of deaths in police and prison custody are reported to the NHRC. The NHRC does not have jurisdiction over the armed forces under Section 19 of the Human Rights Protection Act. Further, the NHRC does not record statistics not resulting in death. Torture remains endemic, institutionalised and central to the administration of justice and counter terrorism measures. India has demonstrated no political will to end torture.[17]

30. The Minister also referenced information provided to the Minister concerning the "Punjab Jail Manual". The Manual provided that medical officers frequently visit the prisons and they are on call 24 hours a day. The Manual further indicates that the prisons have modern medical equipment. The Minister also stated that the Canadian High Commission in India provided information to the Department of foreign affairs confirming that prisons in that area do have "medical facilities for the basic medical care of inmates". Inmates requiring further specialized care are referred to a local hospital and then to one of the two post graduate medical institutes in the Indian cities of Chandigarh

---

[16] United States Department of State, India Human Rights Report (the "India Human Rights Report"), AR Vol. IV p. 25

[17] *Badesha* BCCA, AR Vol. I, pp. 120 – 121, para. 22

or Amritsar. The Minister apparently took some comfort from this Manual and stated the following:

> However, considering the findings documented in the *Human Rights Report*, which you have brought to my attention, and the other information that is before me, I have concluded the Mr. Badesha's surrender should be made conditional on receipt of a formal assurance from India that he will receive needed medical care and medications while in custody, in addition to an assurance that India will take reasonable steps to ensure his safety while in custody in India.[18]

The assurance provided reads as follows:

> It is submitted that Section 53 of Criminal Procedure Code, 1973, provide for examination of accused by Medical Practitioner at the request of Police officer. Section 54 of the Criminal Procedure Code, 1973, provides for Examination of accused person by Medical officer. Further, Section 55-A of Criminal Procedure Code, 1973, deals with Health and Safety of accused persons. It has been provided under Section 55-A of Criminal Procedure Code, 1973, that "it shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused." In view of the above, every reasonable effort will be made to meet the safety and medical needs of Surjit Singh Badesha a.k.a. Surjit Singh and Malkiat Kaur Sidhu.[19]

31. The Minister acknowledged and it is submitted agreed with the findings of the India Human Rights Report. A synopsis of the report is that the Indian prison conditions are abhorrent. His response to the submission was to seek assurances.

32. In effect, risk of harm of sufficient likelihood must have existed because to conclude otherwise would mean that the assurances were superfluous. It is clear the Minister had concerns that there were real and substantial risks to the health and welfare of Badesha and Sidhu.

33. The Appellant can argue that the seeking of assurances does not constitute proof of risk and maybe there will be a case where that is so but that is not this case. In this case the risk was acknowledged and acted upon by the Minister. Clearly, the Minister was persuaded by the material placed before him. It is useful to add that the sources of the material concerning corruption and police and prison brutality did not arise from the

---

[18] Minister's Surrender Reasons (Badesha) November 27, 2014, AR Vol. I, p. 79
[19] India's Assurance, AR Vol. I, p. 108

outliers of human rights watchers. The Minister, wisely it is submitted, accepted the assessments of the U.S. State Department.

34. In essence, the Minister was not wilfully blind to the obvious: Indian prisons are infected with staff who torture and abuse and murder inmates. Yet, in its argument, the Appellant says there is not enough proof. The person sought is required to demonstrate "on balance" that in effect, torture and abuse are inevitable. It is submitted that by whatever standard that is applied, on the facts of this case, the standard was met because the Minister accepted that prison conditions were abhorrent and life threatening.

(2) <u>Assurances are Evidence of Risk</u>

35. The Appellant relies upon three provincial appellate decisions to assert that seeking assurances does not constitute proof of risk.[20] It is submitted that this is not an accurate statement and in fact, the cases cited by the Appellant do not support the Appellant's proposition.

36. In both the 2006[21] and 2009[22] decisions involving Saxena, the Minister did not find that there was a substantial risk. In the 2006 decision, the Court stated the following:

> [55] The Minister said that he did not consider the concerns raised by Mr. Saxena about the way he may be treated in Thailand were any basis on which to refuse surrender. In reaching that conclusion, he considered the relevant factors and Mr. Saxena has not shown why it was patently unreasonable of the Minister to conclude, as he did, that Mr. Saxena will not be mistreated if returned to Thailand, but rather will "likely, if anything, receive preferential treatment".[23]

37. In *United States of Mexico v. Hurley*,[24] the Court, after noting the assurances that were sought prior to the Minister's order of surrender made this statement:

---

[20] Appellant's Factum p. 26, para. 66.
[21] *Thailand v. Saxena* 2006 BCCA 98, leave to appeal dismissed , [2006] S.C.C.A.No. 147 ("*Saxena* 2006")
[22] *Saxena v. Canada (Minister of Justice)* 2009 BCCA 223 leave to appeal dismissed, [2009] S.C.C.A. No. 301
[23] *Saxena* 2006, *supra*
[24] *United States of Mexico v. Hurley* [1997] O.J. 2487 (CA)

> 64 Based upon these facts, all of which were before the Minister, it is my opinion that the appellant has not demonstrated, on a balance of probabilities, that he will be persecuted as a result of his surrender to Mexico. In particular, I am influenced by the conditions imposed by the Minister and the fact that the Minister is confident that Mexico "will meet the conditions for surrender set out in [the] warrant" (see p. 2 of his letter of May, 13, 1996). I am not satisfied, on the evidence, that the Minister erred in his assessment of the situation. I am therefore unable to conclude that the appellant is more likely than not to be subjected to persecution upon his return to Mexico. Consequently, the appellant's s. 7 rights cannot be said to have been violated by the Minister's decision to surrender him to Mexico. (emphasis added)

38. Finally, in *Mendez Suarez c. Canada (Ministre de la Justice) (Etats-Unis du Mexico*), the Court found that after considering the extradition request submitted to him and carefully analyzing the applicant's opposing arguments, the Minister of Justice concluded that his extradition would not be unjust or oppressive and would not violate his rights under s. 7 of the *Canadian Charter of Rights and Freedoms* but only if assurances were sought by the Minister.[25]

39. Therefore, Badesha submits that not only do these cases not support the Appellant's claim, in fact, they support Badesha's submission that assurances become necessary and are designed to address risk and courts recognize that in some cases, assurances can convert surrender from an unjust and oppressive exercise of Ministerial discretion to one that does not violate the rights of the person sought. The Minister is not going to ask for assurances without cause. International relations will not be fostered if the Minister asks for assurances without a cogent reason to do so. Badesha submits comity between nations would be undermined if for example, the Minister asked for an assurance that a person sought would not face torture when that requesting state had no history of torturing detainees and where no one alleged that the requesting state had in fact tortured detainees. In short, assurances are designed to protect persons sought from conduct that would cause surrender to be unjust and oppressive and assurances are a reliable indicator of the Minister's view about that conduct being a real and substantial risk to the person sought.

---

[25] *Mendez Suarez c. Canada (Ministre de la Justice)(Etats-Unis du Mexico*), 2014 QCCA 281 leave to appeal dismissed, [2014] C.S.C.R. No. 128 (p. 2)

40. Important to this appeal and as will be discussed more fully, is that the above noted cases, do not consider the efficacy of the assurances. In the case at bar, the Court of Appeal went beyond a consideration of the good faith of partner nations, which the court rightly held must be presumed and considered whether or not the assurances would be effective. Badesha submits that the Court of Appeal's analysis was complete and based on common sense noting the obvious in that once Badesha was returned to India, there may be little that Canada can do to protect him from torture and abuse at the hands of prison officials. It is submitted that this perspective was necessary to the consideration about whether or not surrender would be unjust and oppressive.

(3) <u>The Standard of Proof of Risk</u>

41. Badesha submits that the Minister found a real and substantial risk of torture or abuse. Badesha submits that for the purposes of this appeal, the standard of proof need not be discussed because on any standard, it has been met. However, Badesha adopts the submission of Sidhu concerning the standard of proof and type of evidence necessary to find that a person sought, if surrendered, faces a real and substantial risk of torture or abuse. Additionally, Badesha makes these further comments concerning the standard of proof of risk and the nature of the evidence required to prove risk.

42. Badesha submits that if the Appellant's position on risk is accepted, the person sought will have to show that a corrupt prison or other governmental official has publicly announced that the person sought, presumably in advance of their arrival in the requesting state will be subjected to torture or abuse.

43. This is not to say that never would happen. An example of this occurring is the case of *United States v. Cobb*.[26] *Cobb* is an example of an imprudent and offensive comment from a District Attorney stating amongst other things that uncooperative fugitives would be subjected to rape while in prison. The comments of the District Attorney were found to be "sinister" and this Court reinstated the stay imposed by the

---

[26] *United States of America v. Cobb* 2001 SCC 19 ("*Cobb*")

Extradition Hearing Judge. It is also submitted that a comment like that, if it were to occur within a Canadian criminal proceeding would likely garner the same result.

44. The Appellant has also placed heavy reliance on *Pacificador v. Canada (Minister of Justice)*[27] in support of its argument that "generic" evidence is insufficient and that the real and substantial risk must be a personal one.[28]

45. However, it is submitted that neither *Cobb* nor *Pacificador* lay down a threshold that must be met. *Cobb* is an isolated and obvious case where the comments of the District Attorney were disclosed. It is submitted that such an event will rarely occur and maybe post *Cobb* may never happen again.

46. Rhetorically, in the present case, one must ask what is the likelihood that a corrupt official from an Indian prison would disclose to any official with supervisory authority, let alone a Canadian Consular official, that the person sought will be tortured or otherwise abused?

47. To set as a standard of proof that a particular person has been singled out and there must be a "personalized risk, unique to the person sought" [29] creates an absurdity in that barring some serendipitous imprudent comment by the prospective torturer or abuser, or some governmental official, no one can predict that a person will be subject to torture or abuse. The Appellant's position also denies the obvious: torture and abuse inevitably occur out of sight and behind closed doors so as to ensure that the torturers and abusers do not get caught and the continued threat of torture and abuse prevents the tortured and abused from disclosing their plight.

---

[27] *Pacificador v. Canada (Minister of Justice)* (2002), 166 C.C.C. (3d) 321, leave to appeal refused [2003] 1 S.C.R. xiv ("*Pacificador*")
[28] Appellant's Factum p. 22, para. 53
[29] Appellant's Factum p. 18, para. 40

48. Once it is accepted that torture and abuse are "endemic", a conclusion the Minister must have made given his acceptance of the India Human Rights Report,[30] a real and substantial risk is made out.

49. The next consideration is what, if any, remedy can the Minister resort to in order to live up to international obligations and at the same time respect the rights of the persons sought.

50. It is submitted that once potential harms have been acknowledged, a tension exists between the Minister's role as a representative of Canada in respect of its international agreements with other countries and the Minister's role in protecting the rights of individuals that are affected by these international agreements, in this case, the Treaty on Extradition between Canada and the Republic of India.

51. The Court of Appeal did not err in re-weighing the Minister's assessment of risk. The court agreed with it. Once that occurred, it became necessary to review the Minister's decision to determine whether or not the assurances adequately addressed the risk.

D. The Alleged Errors of the Majority on Risk

(1) Overview

52. In Badesha's case, the Minister sought and was granted assurances by India. The Court of Appeal reviewed the Minister's acceptance of the assurances and found that the assurances did not adequately address the risk acknowledged by the Minister and in this regard, the Court of Appeal found the minister's decision not within a range of reasonable outcomes.

53. Badesha submits that there can be no contrary argument to the fact that provincial courts of appeal, because of s. 57 of the *Extradition Act*, have been given jurisdiction to review the Minister's decision on surrender. In this case, the Appellant argues that the majority of the Court was not sufficiently deferential to the Minister. The Appellant

---

[30] Ministers Surrender Reasons, (Badesha) November 27, 2014, AR Vol. I p.79

states that the majority "second guessed" the Minister.[31] Badesha submits that accepting the Appellant's position would mean that the Minister's decisions on surrender can never be overturned.

54. As stated, Badesha does not quarrel with the Appellant's articulation of the standard of review but, Badesha submits that the majority of the Court of Appeal correctly stated the test. So did the dissent. It is therefore useful to examine more closely, the majority and dissenting decisions.

(2) <u>Contrasting the Majority and Dissenting Judgments</u>

a – The Decision on Surrender and the Assurances

55. The Minister gave his decision on surrender on November 27, 2014. In that decision, he ordered Badesha's surrender but with the condition that assurances be provided. On January 18, 2015, the Minister received and forwarded to Badesha the assurances received from India. In coming to the conclusion that the assurances concerning the health and safety of Badesha were adequate, the Minister stated:[32]

> With reference to India's Criminal Procedure Code, India assures Canada that "*every reasonable effort will be made to meet the safety and medical needs of"* Mr. Badesha.

The Minister goes on to say:

> Finally, with regard to Canadian Consular access to Mr. Badesha while he is in Indian custody, India has noted its obligations under the *Vienna Convention on Consular Relations* and has assured Canada that "*[c]onsular access shall be provided as per India's obligations*" under that agreement.
>
> I am entitled to presume that India will not jeopardize its treaty relations with Canada or other states, by breaching the formal assurances which it has given to Canada (Thailand v. Saxena BCCA 98)
>
> In all the circumstances, I am satisfied that India has provided sufficient assurances to Canada and, therefore, surrendering Mr. Badesha to India would not

---

[31] Appellant's Factum p. 34, para. 84
[32] Minister's Surrender Reasons (Badesha) dated January 18, 2015, AR Vol. I, at page 107

> be unjust or oppressive, or violate his rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

56. Badesha submits that two points emerge from the above passage. First, there is no critical analysis by the Minister about the efficacy of the Indian assurances. India states that "every reasonable effort" will be made to address Badesha's health and safety concerns but there is no consideration about what is "reasonable". Moreover, in providing the assurance, India's Ministry of External Affairs, in its letter of December 18, 2014, cites sections of something referred to as the Criminal Procedure Code, 1973.[33]

57. It is important to note that all of the material placed before the Minister and the Court on review discusses torture, abuse and the fact that over 14,000 deaths of inmates in Indian prisons post-dates 1973 and occurs in spite of India's Criminal Procedure Code thereby negating any suggestion that the Code is effective.

58. Second, it is clear that the Minister places complete reliance upon the good faith of India to not "breach" its formal assurances. As will be discussed, good faith alone is not sufficient. India may very well have the best of intentions with respect to the health and well-being of Badesha but that does not mean that it will be able to ensure Badesha's security while in custody. In fact, the evidence placed before the Minister and the Court suggests the contrary to be true and is demonstrative of a prison system that is chaotic, inherently corrupt and for the inmates of the prison, life threatening.

59. As will be discussed below, the same considerations apply to consular access. In a similar manner, India cites its statutorily defined obligations with respect to consular access but there is nothing in the Minister's reasoning that suggests in any way that the Minister considered whether or not consular access would be sufficient protection for the health and safety of Badesha.

b – The Majority Judgment

60. The majority judgment can be broken down into the following points:

---

[33] Assurances from India's Ministry of External Affairs December 18, 2014, AR Vol. I, at page 108

> 1 – The majority cites *Lake* noting that: Reasonableness does not require blind submission to the Minister's assessment; however, the standard does entail more than one possible conclusion. The reviewing court's role is not to re-assess the relevant factors and substitute its own view. Rather, the court must determine whether the Minister's decision falls within a range of reasonable outcomes.[34]
>
> 2 – The majority cites *Suresh* for three propositions. First, the reviewing court may not re-weigh the evidence but may intervene if the Minister fails to consider the appropriate factors. Second, death penalty assurances are more easily monitored than assurances regarding the use of torture and that is particularly so where "torture is inflicted not only with the collusion but through the impotence of the state in controlling the behaviour of its officials". Third, as stated by this Court, "In evaluating assurances by a foreign government, the Minister may also wish to take into account the human rights record of the government giving the assurances, the government's record in complying with its assurances, and the capacity of the government to fulfill the assurances, particularly where there is doubt about the government's ability to control its security forces."[35]
>
> 3 – The concern is not with the good faith of the state providing assurances but with their capacity to carry them out. [36]
>
> 4 – Citing *Sing v. Canada (Citizenship and Immigration)*, a failure to consider whether assurances are responsive constitutes an error.[37]
>
> 5 – "...assurances are reasonably accepted where they respond in a practical way to the concerns giving rise to them. Assessment of assurances, particularly those concerning torture, requires consideration of the requesting state's capacity to fulfill them. The failure to consider whether such assurances meaningfully respond to the concerns they are intended to address may amount to an error."[38]

61. The majority identified and relied upon jurisprudence that permits the reviewing court to consider the efficacy of the assurances. In this respect, the majority was not reweighing evidence but found support in the decision of *Suresh,* and concluded that the Minister must consider "the capacity of the government to fulfill the assurances, particularly where there is doubt about the government's ability to control its security forces."[39] It is clear from the Minister's January 18 letter to Badesha, the Minister

---

[34] *Badesha* BCCA para. 33
[35] *Badesha* BCCA paras. 35 - 36
[36] *Badesha* BCCA para 37, citing *Sing v. Canada (Citizenship and Immigration)*, 2011 FC 915 ("*Sing*")
[37] *Badesha* BCCA para. 38
[38] *Badesha* BCCA para. 40
[39] *Badesha* BCCA para. 36, citing *Suresh* at para. 125

blindly accepted the assurances from India with no regard for their effectiveness. The Minister, erroneously placed complete reliance upon the good faith assertion by India that it had legislation that was designed to protect inmates within its prisons without any regard to the undisputed fact that India's record on torture and abuse in prisons at the hands of its officials was appalling notwithstanding the presence of what must be concluded as ineffective legislation.

62. The majority exposed the error in the Minister's decision: The Minister sought and was granted assurances but did not consider their efficacy. Badesha submits that the majority was correct in holding that the Minister's decision was deficient and therefore in error and thus unreasonable.

63. Although not central to this appeal, Badesha submits that the Minister has passed up an opportunity to address the obvious concern that India prisons cause. If the role of the Minister in the context of extradition is to consider the need for comity between nations and the interdiction of transnational crime and balance those concerns with the rights of persons sought to be free from the threat of torture and abuse, the present case presents a perfect opportunity to do so. As a recognized world leader in human rights, Canada can say to its treaty partners, clean up your prison system so that it operates without denying the rights of its inmates thereby enhancing both international relationships and respect for human rights.

c – The Dissenting Judgment

64. Goepel JA found that the Minister's Nov. 27, 2014 decision did not fail to consider India's capacity to fulfill its assurances respecting health and safety.[40] But once again, the Minister did not have the assurances until well after concluding his November 27, 2014 decision stating that assurances were necessary before Badesha could be surrendered. In the Minister's letter to Badesha dated January 18, 2015, there is no analysis about the effectiveness of the assurances only a blind acceptance of them.

---

[40] *Badesha* BCCA para. 120

Therefore, with respect, Goepel JA is in error when he finds that the Minister did in fact consider India's capacity to fulfill its assurances.

65. Similarly, Goepel JA seemingly ignores the guidance provided by *Suresh* which outlines the problem about relying upon assurances when evidence would suggest that a requesting state's human rights record (like India's) was of concern, especially when it relates to the government's ability to control its own employees. Goepel JA took some comfort in the Minister noting that India was putting forward domestic legislation that would allow India to ratify the *UN Convention Against Torture*. Goepel JA also noted that the Minister found that respecting assurances is a matter of public honour and therefore there was a "diplomatic incentive" to comply with assurances.[41]

66. Goepel JA, in holding that the Minister had not failed to consider a relevant factor stated the following:

> The Minister's decision to surrender is predicated on his view that the appellants will not be mistreated and that reliable assurances to that effect have been given. It was for the Minister to weigh the relevant factors. It is not, with respect, the role of this Court to reweigh the factors upon which that determination has been made.[42] (Emphasis added)

However, Badesha respectfully submits that Goepel JA, notwithstanding his statement to the contrary[43] erred by conflating the capacity to implement assurances with India's good faith or motivation to implement the assurances. With respect, and rhetorically, where does the Minister ever address the reliability of the assurances in his letter of January 18, 2015? As was noted by the majority, the Minister failed to address the distinction between India's good faith and its capacity to implement the assurances.

d - Analysis

67. The Appellant submits that the majority erred by re-weighing the factors relevant to the surrender analysis.[44] Further, the Appellant places significant reliance upon the

---

[41] *Badesha* BCCA para. 121
[42] *Badesha* BCCA para. 123
[43] *Badesha* BCCA para. 123
[44] Appellant's Factum paras. 71 - 72

Minister's statement that "I am satisfied that India would have the ability to comply with said assurances".[45] As stated, this statement was made before the Minister even had an opportunity to consider the assurances.

68. The Appellant lists a number of points considered by the Minister and submits that it was not the assurances alone that caused the Minister to conclude that surrender would not be unjust or oppressive.[46] Further, the Appellant submits that the majority "isolated" one factor failing to "pay attention" to the ultimate question: would surrender expose Badesha to a substantial risk and thereby be unjust or oppressive.[47]

69. With respect, the Appellant fails to grasp this fact: Indian Prisons are dangerous for its inmates. This concern was recognized by the Minister. Second, the Appellant fails to grasp that the majority did not say that Badesha should never be surrendered but surrendered only if India could provide effective assurances that Badesha would not be tortured or abused or worse. In this respect, the assurances were pivotal in the surrender analysis. Finally, once the importance of the assurances was recognized, it was crucial for the Minister to consider and ensure that the assurances would be effective or simply put, they are worthless.

70. In comparing the majority and dissenting judgments, it is again useful to examine the assurances provided by India which only state that India has legislation in place addressing the health and safety of prisoners and for consular access and that every reasonable effort will be made to ensure the health and safety of Badesha while in custody. However, the document does not elaborate about what the effort will be and how it will occur and of greater significance, there is nothing from the Minister that reconciles the apparent lack of effectiveness of the legislation with India's reliance upon the legislation when providing assurances.

71. Badesha submits that unlike the dissenting judgment, the majority properly determined the deficiency in the Minister's decision on surrender. Once the concerns

---

[45] Appellant's Factum para. 72
[46] Appellant's Factum para. 74
[47] Appellant's Factum para. 75

were identified, it was incumbent upon the Minister to consider whether assurances adequately addressed those concerns and this required a consideration as to whether or not the assurances were meaningful. The majority concluded they were not and Badesha submits that this conclusion was inevitable based upon all of the evidence placed before the Minister and the Court and therefore correct. The Minister erred by solely relying on India's good faith without consideration for the capacity of India to implement its assurances.

E. Alleged Errors: Reweighing Factors Relevant to Surrender

(1) Consideration of Assurances in Assessing Risk

72. Badesha agrees with the Appellant's submission that assurances can be a "reliable tool" in preventing risk of mistreatment. Further, compliance with assurances is vital to international relations.[48] However, compliance in the circumstances of this case is equally vital to the life, liberty and security of the person sought.

73. Badesha also takes no issue with the Appellant's proposition that a reviewing court must be circumspect [49] when reviewing Ministerial decisions but again, a reviewing court has been vested with jurisdiction to review and it is submitted cannot be blind to the obvious even if that may impinge upon international relations. While afforded deference, international relations do not trump *Charter* protected rights. Refusing surrender may well be inconvenient to international agreements but as we learned from *Burns,*[50] it does happen when to do otherwise would be an affront to protected rights.

74. The Appellant cites a number of reasons to support a conclusion that India's assurances will be complied with. The Appellant submits that India would not jeopardize its treaty relationship with Canada.[51] But Badesha submits that this is just a reiteration of good faith which was dealt with by the majority. The same can be said for the Appellant placing reliance upon the length of time India and Canada have been treaty partners, the

---

[48] Appellant's Factum para. 76
[49] Appellant's Factum para. 77
[50] *Burns, supra*
[51] Appellant's Factum para. 78

number of bilateral treaties between the two countries and the treaties India has with other countries.[52]

75. The Appellant also notes that Canada has relied upon the extradition treaty with India for both sending a person sought to India and for Canada seeking the return of a person sought to Canada.[53] However, the issue before the Minister in the present case has not been considered in any real detail and further, in this case, the Minister has acknowledged that Indian prisons are abhorrent. Once that acknowledgment has occurred, a meaningful response, in the form of effective assurances is required.

(2) <u>The Efficacy of Consular Access</u>

76. In determining whether the assurances provided by India for consular access were adequate, the majority considered reports of persons in custody in India being subjected to torture because they complained about poor prison conditions[54] and the failure of India to adopt any anti-torture laws.[55] The majority also expressed concern about the "virtual impunity" enjoyed by law enforcement personnel for their human rights violations[56]. The majority considered "the fact that the human rights abuses documented in the material occurred under the very same enactments India recites in its assurances."[57] The majority chose substance over form. Badesha submits that the majority recognized the reality of Indian prisons and the overwhelming evidence that torture, abuse and death occur in spite of legislation allowing for consular access such that the Minister's seeking comfort from India's recitation of legislation was unreasonable.

77. Further, the majority distinguished between consular monitoring of the imposition of the death penalty and consular monitoring of torture and abuse. The majority considered and rejected the notion that an assurance of consular monitoring would mitigate the health and safety risks in this case. The majority held:

---

[52] Appellant's Factum para. 78, 79
[53] Appellant's Factum para. 79
[54] *Badesha* BCCA para. 25
[55] *Badesha* BCCA para. 28
[56] *Badesha* BCCA para. 26
[57] *Badesha* BCCA para.61

> [66] I have no doubt that consular monitoring can be effective regarding the death penalty and the corruption/fair trial issues. Court processes are discreet events and relatively easy to follow. The more worrisome issue is the day-to-day exposure to harm in custody and the risks associated with retaliation against prisoners who complain. The Minister places heavy emphasis on consular monitoring, but it has its limits in mitigating the risks. Consular staff may only discover a rape, beating or neglect of medical care after the fact[58]…(Emphasis added.)

78. The majority, in reaching this conclusion relied upon the comprehensive and compelling analysis provided by the Federal Court in *Sing*. As a result of such concerns, the majority found that the assurances given by India to the Minister providing consular access were inadequate and thus, the Minister's decision to accept them was not reasonable.

(3) Deference to Ministerial and Prosecutorial Discretion

79. The Appellant also points to the comments of the majority regarding the potential for Badesha and Sidhu to be tried in Canada, arguing that it went beyond its jurisdiction and thereby interfered with both Ministerial and prosecutorial discretion.[59] It is noteworthy that Badesha and Sidhu are alleged to have organized the murder of Jassi Sidhu while they were still in Canada so it is not as though the majority's comments are drawn from thin air.

80. However, and with respect, the comment is *obiter* and did not factor into the court's conclusion regarding the efficacy of the assurances. Badesha knows of no formal decision by the Attorney General for British Columbia stating that Badesha and Sidhu could not be prosecuted or even if that was ever considered. But more importantly, it is again necessary to be mindful about what the majority concluded: The assurances do not adequately address the risk. The Court of Appeal referred the matter back to the Minister to come up with better and effective assurances. Absent the Minister procuring effective assurances, in recognition of the nature of the crime alleged to have been committed, the

---

[58] *Badesha* BCCA Para. 66
[59] Appellant's Factum pp. 34 - 35, paras. 84 and 85

Court of Appeal mused about the possibility of a Canadian trial. With respect, that was not the focus of its judgment.

81. It is also noteworthy that as far as Badesha is aware, no effort has been made by the Minister to seek effective assurances as the Minister was invited to do. The Court of Appeal has not stated Badesha and Sidhu should not be sent back to India. It has said that if they are to be sent to India, they are not to be tortured or abused.

F. Conclusion

82. Badesha submits that both the Minister and the majority of the Court of Appeal for British Columbia saw the obvious: Badesha (and Sidhu) face a real and substantial risk that they may suffer torture or abuse at the hands of Indian officials. The Minister sought assurances to prevent that from occurring. Where the Minister and the majority differ is the effect of the assurances. Because torture and abuse are difficult to monitor, any assurance purporting to prevent torture or abuse needs to be scrutinized for effectiveness. The majority correctly concluded that the Minister erred in failing to adequately consider the effectiveness of the assurances and India's capacity to implement the assurances and therefore, his decision fell outside a range of reasonable outcomes. Badesha submits that the Court of Appeal was correct in ordering the Minister to seek and obtain effective assurances to prevent torture and abuse of Badesha and Sidhu.

PART IV – COSTS

83. Badesha does not seek costs

PART V – ORDER SOUGHT

84. That the within appeal be dismissed and the majority judgment of the Court of Appeal for British Columbia upheld.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

_____

Michael Klein Q.C.
Counsel for the Respondent Surjit Singh Badesha
February 17, 2017

PART VI – TABLE OF AUTHORITIES

Legislation Cited	**Paragraphs**
Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, s. 7	15, 18, 19, 37, 54, 72
Extradition Act, S.C. 1999, c. 18, ss. 44 and 57	6, 14, 15, 53

Case Law Cited

Kindler v. Canada (Minister of Justice), [1991] 2 S.C.R. 779	16
Lake v. Canada (Minister of Justice), 2008 SCC 23	20, 60
Mendez-Suarez c. Canada (Ministre de la Justice) (Etats-Unis du Mexique) 2014 QCCA 281, Leave to appeal dismissed, [2014] C.S.C.R. 128	38
Pacificador v. Canada (Minister of Justice) (2002), 166 C.C.C. (3d) 321 Leave to appeal dismissed, [2003] 1 S.C.R. xiv	44, 45
Saxena v. Canada (Minister of Justice), 2009 BCCA 223, Leave to Appeal dismissed, [2009] S.C.C.A. No. 301	36
Sing v. Canada (Citizenship and immigration), 2011 FC 915	60
Suresh v. Canada, 2002 SCC 1	59, 60, 64
Thailand v. Saxena, 2006 BCCA 98, Leave to appeal dismissed, [2006] S.C.C.A. No. 147	36, 55
United States of Mexico v. Hurley (1997), 116 C.C.C. (3d) 414 (Ont.CA)	37
United States v. Burns, 2001 SCC 7	16, 17, 18, 73
United States of America v. Cobb, 2001 SCC 19	43, 45

PART VII – STATUTORY PROVISIONS

Canadian Charter of Rights and Freedoms	Charte Canadienne des Droits et Libertes
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.	**7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
Extradition Act, S.C. 1999, c.18 Reasons for Refusal • **44 (1)** The Minister shall refuse to make a surrender order if the Minister is satisfied that ○ **(a)** the surrender would be unjust or oppressive having regard to all the relevant circumstances; or ○ **(b)** the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons. **(2)** The Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner.	Motifs de refus • **44 (1)** Le ministre refuse l'extradition s'il est convaincu que : ○ **a)** soit l'extradition serait injuste ou tyrannique compte tenu de toutes les circonstances; ○ **b)** soit la demande d'extradition est présentée dans le but de poursuivre ou de punir l'intéressé pour des motifs fondés sur la race, la nationalité, l'origine ethnique, la langue, la couleur, la religion, les convictions politiques, le sexe, l'orientation sexuelle, l'âge, le handicap physique ou mental ou le statut de l'intéressé, ou il pourrait être porté atteinte à sa situation pour l'un de ces motifs. **(2)** Il peut refuser d'extrader s'il est convaincu que les actes à l'origine de la demande d'extradition sont sanctionnés par la peine capitale en vertu du droit applicable par le partenaire.

Review of order • **57 (1)** Despite the *Federal Courts Act*, 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 this Act, made in respect of the decision of the Minister under section 40. **(2)** An application for judicial review may be made by the person. **(3)** An application for judicial review shall be made, in accordance with the rules of court of the court of appeal, within 30 days after the time the decision referred to in subsection (1) was first communicated by the Minister to the person, or within any further time that the court of appeal, either before or after the expiry of those 30 days, may fix or allow. **(4)** Section 679 of the *Criminal Code* applies, with any modifications that the circumstances require, to an application for judicial review. **(5)** An application for judicial review shall be scheduled for hearing by the court of appeal at an early date whether that date is in or out of the prescribed sessions of that court. **(6)** On an application for judicial review, the court of appeal may ○ **(a)** order the Minister to do any act or thing that the Minister has	**Révision judiciaire** • **57 (1)** Malgré la *Loi sur les Cours fédérales*, la cour d'appel de la province où l'incarcération a été ordonnée a compétence exclusive pour connaître, conformément au présent article, de la demande de révision judiciaire de l'arrêté d'extradition pris au titre de l'article 40. **(2)** La demande peut être présentée par l'intéressé. **(3)** La demande est faite, en conformité avec les règles de pratique et de procédure de la cour d'appel, dans les trente jours suivant la première communication de l'arrêté à l'intéressé par le ministre, ou dans le délai supérieur que la cour d'appel peut, avant ou après l'expiration de ces trente jours, fixer. **(4)** L'article 679 du *Code criminel* s'applique, avec les adaptations nécessaires, aux demandes présentées en application du présent article. **(5)** La demande est inscrite pour audition dans les meilleurs délais que la cour soit ou non en session. **(6)** Saisie de la demande, la cour d'appel peut : ○ **a)** ordonner au ministre d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière

unlawfully failed or refused to do or has unreasonably delayed in doing; or o **(b)** declare invalid or unlawful, quash, set aside, set aside and refer back for determination in accordance with any directions that it considers appropriate, prohibit or restrain the decision of the Minister referred to in subsection (1). **(7)** The court of appeal may grant relief under this section on any of the grounds on which the Federal Court may grant relief under subsection 18.1(4) of the ***Federal Courts Act***. **(8)** If the sole ground for relief established in an application for judicial review is a defect in form or a technical irregularity, the court of appeal may o **(a)** refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; or o **(b)** in the case of a defect in form or a technical irregularity in the decision, make an order validating the order, to have effect from the time and on the terms that it considers appropriate. **(9)** If an appeal under section 49 or any other appeal in respect of a matter arising under this Act is	déraisonnable; o **b)** déclarer nul ou illégal, annuler, infirmer, ou infirmer et renvoyer pour décision suivant ses instructions, l'arrêté d'extradition, en restreindre la portée ou en interdire la prise. **(7)** Elle peut prendre les mesures prévues au présent article pour les mêmes motifs que la Cour fédérale peut le faire en application du paragraphe 18.1(4) de la ***Loi sur les Cours fédérales***. **(8)** Elle peut rejeter toute demande fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun tort grave ni déni de justice et, le cas échéant, valider la décision entachée de vice et lui donner effet selon les modalités qu'elle estime indiquées. **(9)** En cas d'appel en instance interjeté dans le cadre de l'article 49 ou fondé sur la présente loi, elle peut joindre l'audition de l'appel à celle d'une demande de révision judiciaire. **(10)** Sauf incompatibilité avec la présente loi, les lois ou règles relatives à la révision judiciaire en vigueur dans la province s'appliquent, avec les adaptations nécessaires, aux demandes présentées au titre du présent article.

pending, the court of appeal may join the hearing of that appeal with the hearing of an application for judicial review. **(10)** Unless inconsistent with the provisions of this Act, all laws, including rules, respecting judicial review in force in the province of the court of appeal apply, with any modifications that the circumstances require, to applications under this section.	