

Canada surrendering law enforcement sovereignty

Three Canadian citizens face possible life imprisonment in the United States following recent arrests and extradition orders orchestrated by the U.S. government. These events raise serious questions about Canada's sovereignty over law enforcement.

Background

In May 2005, a U.S. Federal Grand Jury indicted Canadian citizens Marc Emery, Gregory Williams and Michelle Rainey-Fenkarek on charges of conspiracy to distribute marijuana seeds, grow marijuana and engage in money laundering. Emery is the leader of the B.C. Marijuana Party and, along with Williams and Rainey-Fenkarek, is an active supporter of marijuana legalization. Emery has publicly admitted to selling marijuana seeds.

In July 2005, local Canadian police and the RCMP executed arrest warrants issued by the United States Department of Justice against the three, taking them into custody in Halifax, Nova Scotia. While the arrests were being made, Canadian law enforcement officers searched Emery's Vancouver-based office — also at the request of the U.S. government.

The U.S. Attorney's Office then filed extradition requests, asking Canadian officials to bring the three to Seattle, Washington to stand trial on the charges.

The extradition requests were made under the Mutual Legal Assistance Treaty between Canada and the United States signed in 1990.

What does Canada's Extradition Act Say?

The key section of the Canadian Extradition Act (1999) is Paragraph 3 (1) b, which states that:

A person may be extradited from Canada in accordance with this Act and a relevant extradition agreement ... if the conduct of the person, had it occurred in Canada, would have constituted an offence that is punishable in Canada (i) in the case of a request based on a specific agreement, by imprisonment for a maximum term of five years or more, or by a more severe punishment, and (ii) in any other case, by imprisonment for a maximum term of two years or more, or by a more severe punishment, subject to a relevant extradition agreement.

Emery, Williams and Rainey-Fenkarek are accused of selling viable marijuana seeds over the Internet to U.S. customers. Selling viable seeds is illegal according to Canada's Controlled Drugs and Substances Act (selling sterile seeds is not), and carries a sentence of up to five years (less a day) imprisonment. Although there is general acknowledgement that seeds are sold regularly in Canada, the law has not been enforced since 1968, with the exception of a case in Saskatchewan in 2000 when Ian Fergus Hunter was

To enforce Canadian laws on behalf of the United States raises no sovereignty issue in itself. But to enforce them selectively, only when the Americans ask us to, raises an enormous one.

***- Colby Cosh
National Post, Aug. 2005***

convicted of selling viable seeds and sentenced to a \$200 fine. In comparison, similar charges in the U.S. carry penalties of 10 years to life imprisonment without parole.

Given that an extradition order can only be granted if the person has committed an offence punishable in Canada, there are two scenarios:

1. If selling viable marijuana seeds is no longer considered a punishable crime in Canada and its ban under the Controlled Drugs and Substances Act is obsolete, the extraditions should be denied.
2. If the intent of Canada's Department of Justice is to assert that selling viable marijuana seeds is a

punishable offence in Canada, then it should deny the extraditions, charge and prosecute the three under Canadian law.

The threat to Canadian sovereignty

These arrests and the upcoming extradition processes constitute more examples of Canada's increasing surrender of its sovereignty to the United States in matters of law enforcement.

Three other recent examples highlight this trend:

- Last March, an off-duty Vancouver police officer was stopped in B.C.'s Fraser Valley by Texas State Troopers working with the RCMP to detect drivers under the influence of marijuana.
- A U.S. attorney prosecuting three Canadians in a cross-border drug tunnel case is asking a Seattle judge to seize the Langley, B.C. property on which the tunnel was constructed, regardless of whether or not individuals or banks in Canada have an outstanding claim on the Langley land.
- An FBI agent based in Canada has been identifying American victims of telemarketing fraud so that Canadian suspects can be prosecuted in civil actions in the U.S., using evidence that wouldn't be admissible in a Canadian criminal court.

According to the U.S. Consulate in Vancouver, officers from the FBI, the Drug Enforcement Agency, the U.S. Secret Service, the Bureau of Alcohol, Tobacco and Firearms as well as the Department of Homeland Security currently operate on Canadian soil.

As a sovereign country, Canada enacts laws and maintains corresponding departments and agencies to enforce those laws. The government should either enforce its own laws, or change those that it doesn't want to enforce. The Canadian government should not allow U.S. judicial priorities to shape its actions, and should not agree to extradite Canadian citizens on the basis of U.S. law.

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