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**Canada
and
Austria**

**Treaty between the Government of Canada and the Government of the Republic of Austria
on extradition. Ottawa, 5 October 1998**

Entry into force: *1 October 2000, in accordance with article 18*

Authentic texts: *English, French and German*

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**Canada
et
Autriche**

**Traité d'extradition entre le Gouvernement du Canada et le Gouvernement de la
République d'Autriche. Ottawa, 5 octobre 1998**

Entrée en vigueur : *1^{er} octobre 2000, conformément à l'article 18*

Textes authentiques : *anglais, français et allemand*

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[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA
ON EXTRADITION

**THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF
THE REPUBLIC OF AUSTRIA**, hereby referred to as "the Contracting Parties";

DESIRING to provide for more effective co-operation in the suppression of
crime and to facilitate the relations between the two States in the area of extradition,

REAFFIRMING their respect for each other's legal systems and judicial
institutions,

HAVE AGREED as follows:

ARTICLE 1

Obligation to Extradite

Each Contracting Party agrees to extradite to the other, in accordance with the
provisions of this Treaty, persons who are wanted for prosecution or the imposition or
enforcement of a sentence or an order for deprivation of liberty in the Requesting
State for an extraditable offence.

ARTICLE 2

Extraditable Offences

1. For the purposes of this Treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting Parties that is punishable by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted if a period of at least six months of imprisonment or other deprivation of liberty remains to be served.
2. If extradition is granted for an offence described in paragraph 1 of this Article, extradition may also be granted for other offences which are punishable under the laws of both Contracting Parties but, by reason of the penalty prescribed or the period of deprivation of liberty imposed and remaining to be served, would not otherwise be extraditable pursuant to this Treaty.

3. For the purpose of this Article:
 - a) an offence shall be an extraditable offence whether or not the laws of the Contracting Parties place the offence within the same category or denominate the offence by the same terminology; and
 - b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account in determining whether the conduct would amount to an extraditable offence in the Requested State and it shall not matter whether, under the laws of both Contracting Parties, the offence comprises the same elements.
4. Extradition may be granted irrespective of when the offence in relation to which extradition is requested was committed, provided that the conduct:
 - a) was an offence in the Requesting State at the time it occurred; and
 - b) would, if it had occurred in the Requested State at the time of the making of the request for extradition, have constituted an offence against the law in force in that State.
5. If the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the person sought is a national of the Requesting State or the law of the Requested State provides for the exercise of jurisdiction over an offence committed outside its territory in similar circumstances. Where the law of the Requested State does not so provide, the Requested State may, in its discretion, grant extradition.
6. An offence against a law relating to taxation, customs duties, foreign exchange control or any other revenue matter (fiscal offence), is an extraditable offence. Provided that the conduct for which extradition is sought is an offence in the Requested State, extradition may not be refused on the ground that the law of the Requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting State.

ARTICLE 3

Grounds for Refusal

1. Extradition shall not be granted in any of the following circumstances:
 - a) if the offence for which extradition is requested is regarded by the Requested State as a political offence. The taking or attempted taking of the life of a Head of State or a member of his or her family shall not be considered to be a political offence;
 - b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political belief;
 - c) if the offence for which extradition is requested constitutes an offence under military law which is not an offence under ordinary criminal law;
 - d) if final judgment has been rendered in the Requested State in respect of the offence for which extradition is requested; or

- e) if the person whose extradition is requested cannot, according to the laws of the Requesting State, be prosecuted or punished by reason of prescription.
2. Extradition may be refused in any of the following circumstances:
- a) if the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken;
 - b) if the offence for which extradition is requested is subject to the jurisdiction of the Requested State and that State will prosecute that offence;
 - c) if the offence for which the extradition is requested is punishable by death under the law of the Requesting State;
 - d) if the person sought has been convicted in absentia; or
 - e) if final judgment has been rendered in a Third State in respect of the offence for which extradition is requested, provided that:
 - (i) the judgment imposed in the State of the commission of the offence resulted in the person's acquittal; or
 - (ii) the term of imprisonment or other deprivation of liberty to which the person was sentenced has been completely enforced or has been the subject of a pardon or an amnesty.

ARTICLE 4

Channels of Communication

Requests for extradition and any subsequent correspondence shall be communicated between the Ministries of Justice of the Contracting Parties; however, the use of the diplomatic channel is not excluded.

ARTICLE 5

Request and Supporting Documents

1. The request for extradition shall be in writing and in all cases shall be supported by:
- a) information concerning the description, identity, location and nationality of the person sought; and
 - b) the text of the provisions of the law of the Requesting State applicable to the offence, including any law relating to prescription and, where the offence occurred outside the territory of the Requesting State, any law relating to jurisdiction.

2. In the case of a person accused or sought for prosecution, the request shall be accompanied by:
 - (a) the original or a certified copy of the order of arrest or of any document having the same force and effect, issued by a judge of the Requesting State; and
 - (b) in the event that the law of the Requested State so requires, evidence that would justify committal for trial of the person sought, if the conduct had occurred in the Requested State. For that purpose, a summary of the facts of the case setting out the evidence, including evidence of the identity of the offender, shall be admitted in evidence as proof of the facts contained therein provided that the judge or prosecutor that produces it, certifies that the evidence described in the summary was obtained in accordance with the law of the Requesting State. The summary may include any report, statement, reproduction or other useful documentation. The summary may contain evidence gathered in the Requesting State or elsewhere and shall be admitted in evidence whether or not such evidence would otherwise be admissible under the law of the Requested State.
3. In the case of a person sought for the enforcement of a judgment, the request shall be accompanied by:
 - a) a certified copy of the judgment and a confirmation that it has final and binding effect;
 - b) a description of the conduct for which the person sought was convicted, where the judgment or the warrant of arrest does not describe this conduct; and
 - c) if the judgment covers only the conviction, a warrant of arrest issued by a judge of the Requesting State; or
 - d) if the judgment covers both conviction and sentence, a statement showing how much of the sentence has not been served.
4. All documents submitted in accordance with this Treaty shall be in, or accompanied by a translation into, an official language of the Requested State. Any translation of documents submitted in support of a request for extradition shall be admitted for all purposes in extradition proceedings.
5. All documents and certified copies thereof submitted in support of a request for extradition and appearing to have been certified or issued by a judge, a prosecutor or a public official of the Requesting State shall be admitted as evidence in extradition proceedings in the Requested State without having to be taken under oath or affirmation and without proof of the signature or of the official character of the person appearing to have signed them.
6. No authentication or further certification of documents submitted in support of the request for extradition shall be required.