

**Commission of Inquiry into Certain Allegations Respecting Business
and Financial Dealings Between Karlheinz Schreiber and the Right
Honourable Brian Mulroney**

**REPLY OF THE ATTORNEY GENERAL OF CANADA TO KARLHEINZ
SCHREIBER'S APPLICATION REGARDING HIS PRESENCE FOR PART I
AND II OF THE INQUIRY**

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Commission of Inquiry into Certain Allegations Respecting Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney

REPLY OF THE ATTORNEY GENERAL OF CANADA TO KARLHEINZ SCHREIBER'S APPLICATION REGARDING HIS PRESENCE FOR PART I AND II OF THE INQUIRY

1. On May 11th, 2009, Karlheinz Schreiber, through his counsel, filed an application for an Order, Direction or Recommendation that he remain available in Ottawa to attend the balance of Part I and Part II in order to instruct counsel.
2. The Attorney General of Canada takes no position with respect to any recommendation that Mr. Schreiber remain available in Ottawa to attend and instruct counsel.
3. However, with respect to the issuance of an order or direction the Attorney General of Canada takes the following position:

Jurisdiction of Public Inquiries

4. As stated by Commissioner Major in the *Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182's* ruling on access to documents, a Commission of Inquiry's powers are limited by statute or its terms of reference:

"Unlike a court of inherent jurisdiction, a Commission of Inquiry only has the powers granted to it by statute or by its Terms of Reference."¹

5. In fact, a public inquiry's existence depends entirely on the Governor in Council and cannot operate outside the parameters established by the Governor in Council.²

¹ See Major Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, ruling on access to documents at para. 10. Available online: http://www.majorcomm.ca/en/reasonsforddecision_aivfa_request/index.asp. [Major Commission].

6. As affirmed by the Supreme Court of Canada, there is no common law basis for a Commission's authority.³

Ministers Discretion in Extradition Matters

7. The *Extradition Act* (the "Act") serves as the statutory basis, along with a relevant extradition agreement, for all extraditions from Canada.⁴

8. Section 7 of the Act states that:

"7. The Minister is responsible for the implementation of extradition agreements, the administration of this Act and the dealing with requests for extradition made under them"

9. The decision of whether or not to issue a warrant of surrender falls within the exclusive discretionary authority of the Minister of Justice. As stated by the Supreme Court of Canada in the *Idziak*⁵ case:

"It has been seen that the extradition process has two distinct phases. The first, the judicial phase, encompasses the court proceedings which determine whether a factual and legal basis for extradition exists. If that process results in the issuance of a warrant of committal, then the second phase is activated. There the Minister of Justice exercises his or her discretion in determining whether to issue a warrant of surrender.[...]

[...]

Parliament chose to give discretionary authority to the Minister of Justice. It is the Minister who must consider the good faith and honour of this country in its relations with other states. It is the Minister who has the expert knowledge of the political

² *Dixon v. Canada (Commission of Inquiry into Somalia)*, 149 D.L.R. (4th) 269 at p. 276; *Stevens v. Canada (Attorney General)*, [2004] F.C.J. No 2116 at par. 22;

³ *A.G. of Quebec and Keable v. A.G. of Canada. et al.*, [1979] 1 S.C.R. 218 at p. 244.

⁴ *Extradition Act* 1999, 18, section 3 and 7

⁵ *Idziak v. Canada (Minister of Justice)* [1992] 3 S.C.R. 631 at p. 17 of 21; see also, *Germany v. Schreiber* [2006] O.J. No. 789 at par. 64; *Schreiber v. Canada (Minister of Justice)* 91 O.R. (3d) 641; *United States of America v. Kwok* [2001] 1 S.C.R. 532 at par. 89-93; *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469 at p. 36;

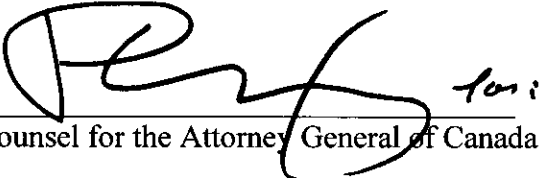
ramifications of an extradition decision. In administrative law terms, the Minister's review should be characterized as being at the extreme legislative end of the *continuum* of administrative decision-making."

(Our underlining)

Conclusion

10. Considering the above, it is respectfully submitted that the Applicant's request for the issuance of an Order or Direction to the Attorney General that he remain available in Ottawa to attend the balance of Part I and Part II in order to instruct counsel must be dismissed. There exists no authority, granted by statute or by the Terms of Reference, which authorizes the Commissioner to make any such order or direction.

Dated at Ottawa this 15 of May, 2009.


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