



Government
of Canada

Gouvernement
du Canada

Federal Involvement
in the Case of
Ernest Fenwick MacIntosh

- Information contained in this publication or product may be reproduced, in part or in whole, and by any means, for personal or public non-commercial purposes, without charge or further permission, unless otherwise specified.

- You are asked to:
 - exercise due diligence in ensuring the accuracy of the materials reproduced;

 - indicate both the complete title of the materials reproduced, as well as the author organization; and

 - indicate that the reproduction is a copy of an official work that is published by the Government of Canada and that the reproduction has not been produced in affiliation with, or with the endorsement of the Government of Canada.

- Commercial reproduction and distribution is prohibited except with written permission from the Department of Justice Canada. For more information, please contact the Department of Justice Canada at: www.justice.gc.ca.

©Her Majesty the Queen in Right of Canada,
represented by the Minister of Justice and Attorney General of Canada, 2013

ISBN 978-1-100-23006-1

Cat. No. J2-389/2013E-PDF

Table of Contents

Introduction	1
Federal and Provincial Roles	2
Extradition Process	3
The Extradition of Ernest Fenwick MacIntosh	4
The Path to Extradition	4
Delays by the International Assistance Group	4
Scope of the Extradition Request	5
The Nova Scotia Public Prosecution Service Continues to Gather Evidence	5
Final Request	6
Passport Issues	7
The MacIntosh File	8
1997 Passport Issuance	8
1998 Passport Litigation	8
Issuance of 2002 Passport	9
Border Control Issues	10
The MacIntosh File	11
Process Improvements Implemented	12
Extradition Process	12
Passport Process	12
Border Control Process	13
Conclusion	14
Annex 1	
Extradition requests made to and from Canada	15
Annex 2	
Median time for completion of Extradition Requests	16
Annex 3	
Extradition Process: Chronology of Events	17

Introduction

Ernest Fenwick MacIntosh was extradited to Canada from India in June 2007 to stand trial on 43 charges of sexual abuse. The charges related to incidents involving nine young persons between 1970 and 1977. Mr. MacIntosh was brought back to Canada to face justice after a lengthy investigation and extradition process that began in February 1995 when the first complainant went to the police.

In trials that took place in July and December 2010, Mr. MacIntosh was found guilty on a total of 17 counts. However, a year later, the Nova Scotia Court of Appeal quashed the convictions and entered a stay on all charges, ruling that the delay in bringing Mr. MacIntosh to trial was unreasonable and breached his right under the *Canadian Charter of Rights and Freedoms* to be tried within a reasonable time.

In April, 2013, the Supreme Court of Canada dismissed the Crown's appeal. This ended the 18-year effort by provincial and federal authorities to bring Mr. MacIntosh before Canadian courts to answer the very serious charges of sexual assault of children against him.

Sadly, the delay that led to the criminal proceedings being dropped against Mr. MacIntosh cannot be reversed; however, all public authorities involved in the case can still review what transpired and account for what happened and take responsibility for what occurred.

This report is the result of a thorough examination of the role that federal authorities played in these unfortunate events in order to determine how the Government of Canada's actions contributed to this outcome. The review included analysis of all available evidence from the federal departments and agencies implicated in the MacIntosh file.

This report also identifies changes implemented in the intervening years to ensure that the mistakes made are not repeated. When read with the provincial reports, the findings will contribute to the public understanding of what took place and, it is hoped, help to restore confidence in the criminal justice system and the other institutions involved. Most importantly, it is hoped that although the devastating consequences cannot be undone, the explanations found here can bring some measure of understanding to the victims and their families who were directly affected by these failures and allow them to move past these difficult facts.

Federal and Provincial Roles

The Federal and Provincial Roles in the MacIntosh Case

Under Canada's Constitution, federal and provincial governments are responsible for different aspects of the criminal justice system. In general, Parliament is responsible for enacting criminal laws and for criminal procedure, while the provinces are responsible for the administration of criminal justice. This means that provincial attorneys general are in charge of prosecuting *Criminal Code* offences in each province. Crown prosecutors act on behalf of provincial attorneys general and are supported by municipal and provincial police.

In the MacIntosh case, the RCMP acted as the provincial police force for Nova Scotia and was responsible for investigating and laying charges. The Nova Scotia Public Prosecution Service was responsible for prosecuting Mr. MacIntosh.

Provincial authorities in Nova Scotia have already acknowledged their significant role in these events. On July 10, 2013, the Nova Scotia Director of Public Prosecutions released his report to the Attorney General of Nova Scotia. The same day, at the request of the Attorney General of Nova Scotia, the RCMP publicly released its report concerning its own investigation of the allegations against Mr. MacIntosh. These reports acknowledge shortcomings and identify measures that they have already taken or will be taking in response to the MacIntosh case. The provincial Minister of Justice issued an apology to the victims.

This report deals with the federal role in:

- coordinating the extradition request to India,
- issuing and attempting to revoke Mr. MacIntosh's passport, and
- controlling his alleged entry into Canada from abroad.

Extradition Process

What is “extradition”?

Extradition is the process where one country asks another country to hand over a person who is either accused or convicted of committing a crime in the requesting country. Canada currently has extradition treaties with 51 different countries, including (since 1987) India. All requests for extradition to and from Canada are transmitted through the International Assistance Group, within the Department of Justice Canada.

Who decides to have someone extradited?

The decision to extradite is typically made by the prosecution service responsible for prosecuting the person in question. In the MacIntosh case, it was the Nova Scotia Public Prosecution Service who made the decision to seek his extradition.

What is Justice Canada’s role?

Once a prosecution service decides to seek an extradition, the International Assistance Group helps them make that extradition request happen. It does this by advising the prosecutors on the steps involved and

offering guidance on how to properly prepare the necessary documents. Once these materials are complete, the International Assistance Group then works with the foreign country involved to make sure that all of the requirements of the extradition treaty are met. When the International Assistance Group is satisfied that everything is in order, the extradition request is officially made – usually by sending a diplomatic note to the foreign country.

How long does it take?

Over the past decade, most requests have taken between six and 20 months from the time the prosecutors have decided to seek an extradition, to the time the fugitive is returned to Canada. In a typical year, Canada will make roughly 40 extradition requests, and receive around 160 requests from other countries – so on average, the International Assistance Group manages approximately 200 new extradition files per year. For a review of the number of extradition files handled by the International Assistance Group, the staffing of this group and the amount of time for the extradition process, see Annexes 1 and 2.

Extradition Process

The Extradition of Ernest Fenwick MacIntosh

The Path to Extradition

The effort to extradite Mr. MacIntosh began in August 1997, when the Nova Scotia Public Prosecution Service contacted Justice Canada officials in the International Assistance Group. They were enquiring how to request Mr. MacIntosh's extradition from India to stand trial for allegations of sexual assault dating back to the 1970s. Justice officials explained the process and raised an important point, one that would factor into the delay in the return of Mr. MacIntosh; they advised that, based on previous extradition requests, requests to India for extradition required first-person affidavits from witnesses that identified Mr. MacIntosh. For a full detailed chronology of all interactions between the Nova Scotia prosecutors and Justice Canada, see Annex 3.

A full year passed before the Nova Scotia Public Prosecution Service provided Justice officials with some documentation to support its request to extradite Mr. MacIntosh. Missing from the necessary documents was any identification evidence, such as a photograph, linking Mr. MacIntosh to the alleged offences. Justice officials needed this in order to transmit the extradition request to India. They conveyed this requirement to the Nova Scotia Public Prosecution Service five times over the ensuing fifteen months without receiving any evidence or assurance that it was being collected. Finally, in April 2002, Justice officials wrote to the Nova Scotia prosecutors, asking them to confirm if they still wished to pursue the extradition request.

Shortly after this enquiry, the Nova Scotia prosecutors reported significant developments in the case against Mr. MacIntosh: the RCMP had charged him with 41 new counts back in October and December 2001, which were the subject of a Canada-wide warrant. The Nova Scotia Public Prosecution Service now wanted to pursue extradition on a total of 43 charges, involving eight new complainants.

To advance the extradition process, Justice officials asked the Nova Scotia prosecutors to provide first-person affidavits from all nine complainants. Justice officials also spoke to the RCMP liaison officer in India who advised that to avoid future complications, these affidavits should be sworn before a judge. Justice officials then advised the Nova Scotia prosecutors accordingly. Four months later federal Justice officials were still waiting for the sworn affidavits. They expressed concern that the extradition matter now dated back almost five years.

In June 2003, the Nova Scotia Public Prosecution Service provided Justice officials with five sworn affidavits sworn before a notary public. The identification evidence, however, was still missing.

Delays by the International Assistance Group

Six years had now passed since the first Nova Scotia Public Prosecution Service contact, seeking advice on how to extradite Mr. MacIntosh. During that time, the federal government had initiated twenty-two contacts with Nova Scotia. Regrettably, in June 2003, a reassignment of the file within the International Assistance Group would then add a further eleven-month delay to a mounting

Extradition Process

timeline. The new counsel who received the file did not appreciate its urgent nature given the extent of time it had taken for Nova Scotia to respond to earlier requests for information. This was a mistake given the cumulative delays and mounting charges.

When the MacIntosh file was reassigned, counsel did not take steps to review the file and does not appear to have used an administrative system which triggers a reminder to follow up on the file. Also, counsel's superiors did not have in place a system which would have enabled them to become aware of this error until many months later.

After a thorough investigation of this eleven-month delay, the conclusion is that there was serious human error and the absence of institutional systems to catch this mistake.

Scope of the Extradition Request

In May 2004, the Nova Scotia Public Prosecution Service sought to confirm whether a request for Mr. MacIntosh's extradition had been made. Justice officials, back on the case, noted that a number of the complainants had still failed to identify a photograph of Mr. MacIntosh in their affidavits.

This was important due to the "rule of specialty." Under this rule, the country handing over the person does so on the basis that the person will only stand trial for the charges that were identified and supported by evidence in the extradition request. This is a principle found in international law, the extradition treaty Canada has with India and Canada's Extradition Act. Canada cannot unilaterally change this law.

As a result, Mr. MacIntosh would likely not have been prosecuted for any charges that were not included in the extradition request. It was therefore important for Nova Scotia authorities to determine all the charges which were to be included in the request before it was made.

In some instances, at the request of the country in which the person is being prosecuted, the "rule of specialty" can be waived by the foreign country after extradition has taken place. There is no way to be certain in advance of the success of a request for waiver, since it would be up to the foreign country to decide whether or not to waive specialty. Specialty is generally only waived where new charges come to light after a person has already been extradited.

In this case Nova Scotia knew there were nine complainants. In June of 2004, while they were still gathering evidence on some charges, Nova Scotia indicated that they were considering extradition on charges relating to only five of the nine complainants. Federal Justice officials were prepared to go forward with whatever number of charges that Nova Scotia wanted to proceed with, as long as there was sufficient evidence supporting those charges. The issue of waiver of specialty never arose in any discussions.

The Nova Scotia Public Prosecution Service Continues to Gather Evidence

In January 2005, the Nova Scotia Public Prosecution Service was still collecting additional evidence needed to finalize the request. In March 2006, they informed Justice officials that they were working on the remaining affidavits.

Extradition Process

Final Request

Finally, the Nova Scotia Public Prosecution Service provided their formal request for Mr. MacIntosh's extradition in May 2006. The request now covered all nine complainants. The package contained some complainant affidavits. As well, it contained the affidavit of a police officer summarizing the evidence of other alleged victims, and included identification evidence from a photo line-up. The Nova Scotia prosecutors said that this was the best evidence they could provide, and Justice officials agreed to proceed with the request.

In July 2006, Justice officials sent the request to what was then the Department of Foreign Affairs and International Trade, asking them to prepare and send the formal diplomatic note to India, seeking Mr. MacIntosh's extradition.

Once the formal request to India was made for extradition, it moved swiftly through the Indian system. On July 14, 2006, the Canadian High Commission in New Delhi sent the diplomatic note, formally requesting Mr. MacIntosh's extradition from India under the treaty for

prosecution on 22 charges of indecent assault and 21 counts of gross indecency, for allegations spanning the period from September 1, 1970, to September 1, 1975.

On April 5, 2007, India arrested Mr. MacIntosh in response to Canada's request for extradition. On May 22, 2007, India granted his extradition on the charges for which his extradition was sought, and he was turned over to Canadian authorities for removal on June 6, 2007. On June 8, 2007, Mr. MacIntosh made his first appearance in Port Hawkesbury Provincial Court.

The above chronology reveals that the main delay arose as a result of the extradition process in Nova Scotia, as acknowledged in the Nova Scotia Report. As is clear from Annex 3, Justice Canada officials made repeated enquiries of the Nova Scotia Prosecution Service, fourteen of which are not detailed in their report. Eleven months of delay, however, are attributable to federal Justice officials who should have responded faster to the information provided by the Nova Scotia Public Prosecution Service, when it finally arrived in June 2003.

Passport Issues

Who is eligible for a passport? How does Passport Canada decide?

Every Canadian citizen is allowed to apply for a Canadian passport. If an individual is not subject to any travel restrictions, and the Passport Program is not aware of any other reason they should not be eligible, then a passport is issued. The same basic process is used to determine the eligibility of every applicant. The Passport Canada Program uses a combination of trained officers and technology to verify the applicant's identity and determine if they are entitled to a Canadian passport.

How do people get added to "watch lists"?

People are included on the Passport watch list (also called the Passport System Lookout) when there is reason to believe that the applicants are "high-risk". This could mean that the person has a history of, for example, criminality or fraud or there is a concern about child abduction.

Today, electronic data from the Correctional Service of Canada and the Parole Board of

Canada about federal offenders and parolees is automatically added to the passport system, as is information from Justice Canada concerning child support arrears. The RCMP's Canadian Police Information Centre (CPIC), which contains records of criminal convictions and arrest warrants, is not directly linked to this system, but Passport officials do have access to that information.

When it is determined that the person is no longer high-risk, the Passport Canada Program will remove their name from the watch list.

Can someone on the watch list be issued a passport?

Being on the watch list does not mean a person is automatically ineligible for a passport. Passport officers review the files of persons on the watch list to determine whether they are still considered a risk or subject to any mobility restrictions. It does mean, however, that their application goes through a separate and additional process in order to ensure they meet the criteria for a passport.

Passport Issues

The MacIntosh File

1997 Passport Issuance

When Mr. MacIntosh applied to the High Commission in New Delhi for a new passport in May 1997, no red flag was raised, despite his name being added to the watch list in 1996. This issuance was an error and it is unknown exactly why this error occurred. Two factors, however, likely contributed to the problem: first, information technology problems were common at the time; second, in this period the focus was on quick service to Canadians – so, for example, Canadian missions in foreign countries could print and issue passports themselves.

When Government officials learned that a passport had been issued to Mr. MacIntosh, actions were immediately taken to revoke it. On September 22, 1997, the Passport Office told Mr. MacIntosh that it was proposing to revoke his passport and informed him of his right to file an objection to the proposed revocation within 30 days. In response, Mr. MacIntosh wrote to the Passport Office on October 1, 1997, objecting to the revocation. He also stated that he intended to retain legal counsel, and asked for a two-month extension for this purpose. The Passport Office agreed to delay any decision on revocation until December 1, 1997.

In October 1997, Mr. MacIntosh's counsel wrote to the Passport Office, requesting a copy of all information and materials in its possession that would be considered in making a decision on revocation. An investigator with the Passport Office replied and referred to the information that had been received from law enforcement officials:

Mr. MacIntosh had been charged with indecent assault and gross indecency under sections 156 and 157 of the *Criminal Code*, and a Canada-wide warrant had been issued for his arrest on April 11, 1996. At that time, the Passport Office did not have a copy of the arrest warrant, which the RCMP subsequently sent by fax on December 3, 1997.

On December 1, 1997, Mr. MacIntosh's counsel wrote a detailed letter to the Passport Office, setting out the reasons why his passport should not be revoked. On December 8, 1997, the Passport Office advised Mr. MacIntosh's counsel of its final decision to revoke on February 1, 1998, in order to give Mr. MacIntosh time to arrange his affairs.

1998 Passport Litigation

Mr. MacIntosh filed legal proceedings in Federal Court in January 1998 challenging the final decision to revoke his passport. As well, he applied for an "interim stay" (temporary halt) of the removal of his passport pending the final decision on revocation by the Court. Federal counsel had four days to prepare for this motion. Typically, the full record including the warrant is not filed on an interim stay motion, although in hindsight it may have assisted in demonstrating the seriousness of the alleged crimes for which the passport was being revoked.

On January 22, 1998, Mr. Justice Rouleau of the Federal Court granted Mr. MacIntosh's request for an interim stay. He found that the test for an interim stay was met since Mr. MacIntosh needed his passport for his work and the "balance of convenience" suggested that he keep it until the main hearing.

Passport Issues

Justice Rouleau also commented negatively on the fact that the Government had not produced a copy of the arrest warrant. Although a copy of the warrant was not provided to Mr. MacIntosh until after the hearing, Mr. MacIntosh and the court had been provided with a summary of the outstanding charges and relevant facts.

Justice Rouleau was concerned that there was no warrant in the record before him and that the Crown was using the passport revocation process improperly in order to advance a criminal investigation. The courts have ruled that other processes such as immigration cannot be used solely to avoid the checks and balances in the extradition process. Similarly, Justice Rouleau was concerned that the passport revocation process was being used to further a separate police investigation process.

With the decision and concerns of Justice Rouleau in mind, and fearing a precedent-setting loss in front of the court, the Government made the difficult decision to settle the litigation with Mr. MacIntosh – allowing him to keep his passport, which was still valid at the time. This was certainly an unsatisfactory outcome, but Justice Rouleau's decision underscored the risk that a court would see the passport revocation as a back-door attempt by Canadian authorities to force Mr. MacIntosh to return to Canada. If we had known then what we know now, we would have pursued revocation more aggressively in 1997 and 1998.

Two additional factors were present at the time the settlement decision was made. First, government officials knew that an extradition request was pending. There was no reason to believe at the time that the extradition proceedings would be

so lengthy. Further, Passport Canada would also still be able to revoke Mr. MacIntosh's passport if further charges were laid after 1997. Additional charges were in fact laid against Mr. MacIntosh in October and December 2001.

Issuance of 2002 Passport

When Mr. MacIntosh applied for a new passport at the mission in New Delhi in May 2002, a watchlist hit was generated based on the 1997 warrant and the mission sought guidance from the Passport Security Division. Unfortunately, contact was never successfully made between the Passport Security Division and the RCMP and the new charges were not known to the Passport Program. As a result, the mission in New Delhi once again issued a new passport to Mr. MacIntosh, valid from May 2002 to 2007.

After a thorough investigation of the 2002 issuance, the conclusion is that there was human error as a result of failed communications between the Passport Office and the RCMP.

There is no way of knowing whether successfully revoking Mr. MacIntosh's passport in 1997, or refusing to issue him a new passport in 2002, would have led to him returning to Canada without the need for extradition. Nothing in the law would have compelled Mr. MacIntosh to return from India once his passport expired. He conceivably could have continued to live in India without a valid passport, although his activities and movements would have been significantly constrained. There is no doubt, however, that Mr. MacIntosh continuing to hold a valid passport throughout the relevant period compounded the failings by public institutions in this case.

Border Control Issues

It has been suggested that Mr. MacIntosh entered and exited Canada between the laying of charges in December 1995 and his extradition to Canada in June 2007. While there is considerable uncertainty

about whether or not this actually happened, it has raised concerns about the integrity of government systems in this case.

Border Notification Systems

The RCMP and Canada Border Services Agency both have information management systems that provide alerts to possible attempts to enter the country by persons who are the subject of active warrants. Such alerts can occur in two ways.

What checks take place at the border when travelling to Canada?

When travellers enter Canada, they are subject to an inspection. Based on what happens at this first inspection, the traveller may be referred to a secondary inspection. Before the creation of the Canada Border Services Agency (including prior to May of 2000), the systems of the Canada Customs and Revenue Agency (the agency then responsible for border services) allowed officers at secondary inspection to run an inquiry for an active warrant in an RCMP database only at major ports of entry. Now, Canada Border Services Agency officers can query all active warrants in their database at secondary examination at all automated ports of entry. Most ports of entry in Canada are now automated.

Canada Border Services Agency officials also use a second type of alert known as a “lookout” which is entered into their system on the Agency’s own initiative or upon the request of a law enforcement or security agency. Border Services officers receive a notification at the primary inspection if they encounter a person who is the subject of a lookout trying to enter Canada. The lookout contains instructions directing the Border Services officer to next steps including, at secondary examination, contact information of the issuing law enforcement agency.

How long do lookouts stay on the system?

When Canada Border Services Agency creates a lookout, an expiry date is assigned following established criteria. A lookout expires automatically unless it is extended or renewed by the requestor. In the case of arrest warrants, the lookout can be adjusted to match the warrant expiry date.

The system, however, does not generate any information about an expired lookout that would be available to Canada Border Services Agency officers at either primary or secondary inspection.

Border Control Issues

The MacIntosh File

Canada Border Services Agency has no information to indicate that Mr. MacIntosh entered or left Canada between 1997 and 2007. Nor does the Canadian mission in New Delhi have any evidence, despite media reports to the contrary.

Although anyone entering Canada must present themselves to the Canada Border Services Agency upon arrival, the border control systems at the time did not record every traveller, or even every holder of a Canadian passport. Consequently, it is impossible to draw a firm conclusion from Canada Border Services Agency records as to whether Mr. MacIntosh in fact re-entered Canada. Further, Canada Border Services Agency's record retention practices only required that traveller history records be kept for six years.

What we do know is that in October 1997, the RCMP red-flagged Mr. MacIntosh's passport at the request of Nova Scotia prosecution officials and two lookouts were entered into the database then called the "Canada Customs Integrated Customs Enforcement System." These lookouts were based on the warrant information provided by the RCMP. Had Mr. MacIntosh attempted to enter Canada while an active lookout was in the database, the system would have flagged him for examination at the primary inspection line.

However, there are some periods of time during which the lookouts on Mr. MacIntosh were expired. Had he appeared at a port of entry during one of these periods, no hits would have been registered. It is therefore possible that Mr. MacIntosh could have returned to Canada during a period when one of the lookouts had expired and prior to the lookouts being extended or renewed.

Process Improvements Implemented

Extradition Process

Without question, this report and the Nova Scotia report on the MacIntosh case shine a light on serious shortcomings in the execution of the extradition process in this case. The International Assistance Group was entirely responsible for an eleven-month delay of the 18-year saga moving the file forward while the Nova Scotia Public Prosecution Service has admitted responsibility for the remainder of the delay. Better communication would have also assisted, especially because Nova Scotia had little experience with the extradition process. As a result, the following improvements have been made at the federal level:

- Strengthened systems for file management to ensure ongoing monitoring of progress of all active files:
 - A team consisting of a lawyer and a paralegal is now assigned to each file, rather than just one person.
 - Teams report regularly to their team leader on the progress of each file; the team leader reports to the Director General.
 - An electronic “bring-forward” system is now in place to automatically flag files requiring attention.
- Increased education and collaboration with provincial authorities:
 - The International Assistance Group is in the process of creating a publicly available Internet site containing information on how to make extradition requests, along with contact information.
 - The International Assistance Group now offers training to provincial authorities. Nova Scotia prosecutors received the training in September 2013.
 - The International Assistance Group now has a designated official to act as liaison with Nova Scotia authorities.

Passport Process

This report highlights the shortcomings in the passport renewal process in both 1997 and 2002 when Mr. MacIntosh lived in India. The passport program has since adopted numerous measures aimed at a more systematic, proactive and risk-based approach to the exercise of passport refusal and revocation powers. These measures include:

- Providing a copy of the arrest warrant to support entries on the Passport Control List (or watch list) is now standard practice.
- Passport security officials have direct access to the Canadian Police Information Centre (CPIC).
- Program integrity resources have been increased significantly from just three persons responsible for all intelligence, information-gathering and fraud and criminality reviews in 1998, to 60 persons in 2013.
- Daily electronic exchanges from Correctional Services Canada occur in order to obtain details of federal offenders.

Process Improvements Implemented

- Passport officials systematically query CPIC for all passport applications where risk factors are identified and for applications to replace lost or stolen passports.
- Outreach to security, intelligence and law enforcement partners is in place to collect information on threats to the integrity of the passport program.
- Facial recognition software has been introduced into the passport screening process.
- The passport refusal and revocation decision-making processes have been modernized to increase efficiencies and timeliness.
- Border Services officers are required to record identity documents of all travellers upon entry.
- Border Services officers working in secondary inspection at automated ports of entry have access to CPIC.
- Border Services officers are authorized to arrest and detain persons subject to outstanding warrants for federal offences in force in the jurisdiction.
- Canada Border Services Agency now receives pre-arrival information for air travel.
- Measures have been taken since a comprehensive 2012 review to strengthen reporting, monitoring, oversight and accountabilities in the Canada Border Services Agency lookout process.
- By end of 2014, all in-bound passengers, including Canadian citizens, will be screened against national and international warrant lists.

Further program integrity and security improvements are being considered as part of the passport modernization strategy.

Border Control Process

Canada's border services operations have undergone significant improvements in recent years, particularly in relation to identifying and detaining persons who are the subject of active warrants.

Key areas that have been strengthened include the following:

- Systems are in place at all primary inspection lines at automated ports of entry (nearly all) to automatically generate active Canada Border Services Agency lookouts.

Conclusion

This report, like the Nova Scotia one, identifies mistakes, missteps, breakdowns in communications and errors in dealing with the MacIntosh file by both provincial and federal officials. For this, first and foremost, we say to the victims, who have suffered so much throughout this ordeal, we are sorry for the federal government's part in this failure of the justice system. It took great courage for the victims to have come forward. The victims and all Canadians had a right to expect better from federal public officials.

The circumstances surrounding the failed prosecution of Mr. MacIntosh highlighted failings in the criminal justice process and pointed to weak links in other institutions on which Canadians depend. The federal involvement revealed human errors that might have been caught through better oversight, follow-up and communication between departments and agencies. There was a duty to do better as innocent people suffered further trauma as a result of shortcomings and failures. Sadly, prioritizing files involving child sexual assault does not appear to have happened.

The path toward restored confidence begins with providing an explanation of what transpired that led to delays and other failings by the federal government in this case. It is hoped that this review answers the question of what involvement federal officials had on the MacIntosh file.

Many steps have already been taken and others are being worked on to strengthen our processes. These include, most notably:

- improvements in extradition systems and processes, including strengthened file monitoring and closer cooperation with and outreach to prosecution authorities;
- system-integrity improvements to the passport issuance and revocation processes, including strengthened alert systems; and
- improvements to strengthen the ability of border control systems to identify and either detain those who are the subject of active warrants or prevent their entry into Canada.

We hope that the remedial steps taken to date demonstrate a clear intention to make every effort to prevent a similar outcome from happening again. Once again, to the victims, we offer our most sincere apologies.

Ottawa, Canada

October 2013

Annex I

Extradition requests made to and from Canada

Calendar / Fiscal year	Incoming requests (Request from other countries for extradition of persons located in Canada)	Outgoing requests (Requests by Canada for extradition of persons located in other countries)	Total Requests per year
2003	200	41	241
2004	178	36	214
2005	183	31	214
Apr. 1, 2005 – Mar. 31, 2006	176	26	208
Apr. 1, 2006 – Mar. 31, 2007	124	44	168
Apr. 1, 2007 – Mar. 31, 2008	125	48	173
Apr. 1, 2008 – Mar. 31, 2009	137	40	172
Apr. 1, 2009 – Mar. 31, 2010	162	51	213
Apr. 1, 2010 – Mar. 31, 2011	186	35	224
Apr. 1, 2011 – Mar. 31, 2012	178	30	208
Apr. 1, 2012 – Mar. 31, 2013	101	44	145
Average Yearly Total	159	39	198

The International Assistance Group had 6.5 counsel and 2 paralegals in 1997, and 14 counsel and 7 paralegals by the end of 2002. Today, IAG has 20 counsel and 9 paralegals. The growth since 1997 is due largely to the significant increase in the number of mutual legal assistance requests that the group handles each year.

Annex 2

Median time for completion of Extradition Requests

Fiscal year	Median number of days per completed request	Median number of months per completed request	Median number of years per completed request
Jan. 1, 2003 – Mar. 31, 2003	239.5	7.9	0.66
Apr. 1, 2003 – Mar. 31, 2004	377.5	12.4	1.03
Apr. 1, 2004 – Mar. 31, 2005	270.5	8.9	0.74
Apr. 1, 2005 – Mar. 31, 2006	271.5	8.9	0.74
Apr. 1, 2006 – Mar. 31, 2007	270.5	8.9	0.74
Apr. 1, 2007 – Mar. 31, 2008	284.5	9.4	0.78
Apr. 1, 2008 – Mar. 31, 2009	293	9.6	0.80
Apr. 1, 2009 – Mar. 31, 2010	348.5	11.4	0.95
Apr. 1, 2010 – Mar. 31, 2011	150.5	4.9	0.41
Apr. 1, 2011 – Mar. 31, 2012	147	4.8	0.40
Apr. 1, 2012 – Mar. 31, 2013	89	2.9	0.24
Apr. 1, 2013 – Aug. 14, 2013	16.5	0.6	0.05

Annex 3

Extradition Process: Chronology of Events

August 15, 1997	The Nova Scotia Public Prosecution Service (NSPPS) contacts the International Assistance Group (IAG) to discuss potential extradition request to India seeking return of Ernest Fenwick MacIntosh
August 19, 1997	IAG writes to NSPPS regarding dual criminality and provides copy of extradition treaty with India
October 8, 1997	NSPPS writes to IAG to ask whether dual criminality is confirmed
October 16, 1997	IAG writes to NSPPS to indicate that dual criminality was raised in August and are still awaiting response
November 6, 1997	IAG writes to NSPPS to advise they are still awaiting response from Indian authorities
December 4, 1997	IAG writes to NSPPS enclosing positive response from India re: dual criminality and indicating that extradition is possible, depending on specific facts and circumstances
August 14, 1998	NSPPS sends IAG materials in support of extradition request on two charges involving one complainant
October 22, 1998	IAG speaks to NSPPS by telephone, indicating that materials provided by NSPPS do not meet requirements of treaty and explaining deficiencies
November 25, 1998	IAG writes to NSPPS to follow up, asking when necessary supplementary materials to be provided
January 7, 1999	IAG writes to NSPPS again to follow up, asking when necessary supplementary materials to be provided
January 7, 1999	NSPPS writes to IAG, apologizing for delay and advising that they are still trying to obtain photograph of Mr. MacIntosh
November 1, 1999	IAG write to NSPPS to follow up, asking when necessary materials in support of extradition request will be provided
November 2, 1999	NSPPS Halifax writes to IAG to advise that NSPPS Port Hawkesbury office has assumed carriage of matter
January 13, 2000	IAG counsel speaks to NSPPS Port Hawkesbury; forwards copy of Nov. 25, 1998 request re: supplementary materials

Annex 3

Extradition Process: Chronology of Events

April 12, 2002	IAG writes to NSPPS, asking NSPPS to confirm whether it remains interested in pursuing extradition
April 18, 2002	NSPPS writes to IAG to confirm interest in pursuing extradition and desire to proceed on 43 charges; promises to forward necessary documentation shortly
April 26, 2002	IAG writes to NSPPS to advise that request needs to be supported by first-person affidavit from each alleged victim
April 26, 2002	IAG writes to RCMP Liaison Officer in India to advise of pending request and inquire re: swearing requirements in India
May 3, 2002	RCMP Liaison Officer writes to IAG to advise re: swearing requirements in India
May 6, 2002	IAG writes to NSPPS to convey information received from RCMP Liaison Officer on May 3, 2002
August 15, 2002	IAG writes to NSPPS to follow up, asking for update on status of request
June 9, 2003	IAG writes to NSPPS to follow up, asking for confirmation that request is still being pursued, noting that communications date back almost 5 years
June 24, 2003	NSPPS writes to IAG, indicating that sworn affidavits from four complainants are pending and will be forwarded asap
July 8, 2003	IAG receives June 24, 2003 package from NSPPS; file is reassigned within IAG
May 6, 2004	IAG discovers inactivity on file following July 8, 2003 reassignment; file is reassigned within IAG
May 13, 2004	NSPPS writes to IAG, referencing June 24, 2003 letter and asking IAG to advise as to status
June 4, 2004	IAG discusses file with NSPPS by phone, noting that materials in support of request still lack identification evidence and indicating what is still required
September 17, 2004	IAG reviews file pursuant to bring forward (BF); as no response from NSPPS following June 4, 2004 conversation
November 17, 2004	IAG reviews file pursuant to BF; as still no response, BF'd for further 60 days (to January 17, 2005)

Annex 3

Extradition Process: Chronology of Events

January 17, 2005	IAG writes to NSPSS requesting update as to status of request
January 26, 2005	NSPPS writes to IAG to advise that outstanding items and affidavit of lead investigator are being pursued and will be provided asap
July 15, 2005	IAG contacts NSPPS by telephone; is advised that previous prosecutor on extended leave and new prosecutor now on file
March 2006	IAG and NSPPS speak by phone; NSPPS indicates they are working on affidavit
April 13, 2006	IAG calls NSPPS seeking update on status of request
May 1, 2006	NSPPS forwards draft affidavit from RCMP officer to IAG
May 9, 2006	IAG and NSPPS speak by telephone; NSPPS advises they are waiting for RCMP officer to swear affidavit
May 9, 2006	IAG writes to NSPPS confirming receipt of draft affidavit
May 24, 2006	NSPPS writes to IAG, providing materials required to proceed with extradition request
July 5, 2006	IAG sends extradition request to DFAIT, requesting that diplomatic note to India be issued, seeking Mr. MacIntosh's extradition
July 14, 2006	Canada formally requests extradition of Mr. MacIntosh from India

Shaded entries refer to communications from IAG not mentioned in the Nova Scotia Report.

Shaded entries refer to communications from NSPPS not mentioned in the Nova Scotia Report.