A-799-96

CORAM: **DENAULT J.A.**
MacGUIGAN J.A.
DESJARDINS J.A.

BETWEEN:

RAYMOND DESFOSSÉS

Appellant

- and -

ALLAN ROCK, MINISTER OF JUSTICE CANADA

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montreal, Quebec, on Wednesday, June 25, 1997.)

MacGUIGAN J.A.

In our view the principles in extradition cases have been already laid down by the Supreme Court of Canada in recent decisions. For instance, Cory J. put it this way in *Idziak v. Canada*, [1992] 3 S.C.R. 631, 659-60:

> Parliament chose to give discretionary authority to the Minister of Justice.... 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.... The extradition hearing is clearly judicial in its nature while the actions of the Minister of Justice in considering whether to issue a warrant of surrender are primarily political in nature.... The Act simply grants to the Minister a discretion as to whether to execute the judicially approved extradition by issuing a warrant of surrender.

S. 7 of the *Charter*, like the common law, imposes the additional element, as McLachlin J. pointed out in *Kindler v. Canada* [1991] 2 S.C.R. 779, 856 that for intervention the Minister must have erred in law or exercised his discretion upon an inadmissible basis. Put another way, La Forest J. in *Canada v. Schmidt*, [1987] 1

S.C.R. 500, 523 stated that "judicial intervention must be limited to cases of real substance."

We are all in general agreement with the decision of the Motions Judge, Dubé J. While we have some doubts as to whether the *capias* or warrant of arrest could be correctly said "not to be an essential ingredient under the Treaty" [*Appeal Book* I, 16], we agree with the following statement by Dubé J. [*Appeal Book*, I, 16]:

> Faced with an indictment from a grand jury, the Minister could not have refused to surrender the fugitive to the requesting state merely because the second *capias* was not before the extradition judge. Whether or not the superseding indictment had the legal effect of rendering the first *capias* null and void, as claimed by Mr. Larrinaga, is for the legal authorities of the requesting state to decide and not for the Canadian Minister of Justice.

It does not appear to us that this exercise of ministerial discretion is a matter of real substance or a discretion marked by an error of law or exercised upon an inadmissible basis. Articles 11(3) and 9(3) of the Treaty ought to be interpreted liberally so as to serve the Treaty's purposes.

The appeal must therefore be dismissed.

(Mark R. MacGuigan)
J.A.

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Judgment rendered from the Bench at Montreal, Quebec, on Wednesday, June 25, 1997.

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