

Diplomacy must not trump justice

BY JO WOOD, OTTAWA CITIZEN OCTOBER 29, 2013

Few Canadians are aware that Canada's extradition law allows the forced removal of Canadians to other countries based on "evidence" that would be inadmissible in Canadian courts.

Canada's extradition law presupposes that any evidence submitted by the requesting state is reliable, thereby sacrificing fundamental standards of justice and due process to foreign policy considerations. A foreign state is only required to provide a summary of its case and does not have to disclose any evidence which supports the defendant's innocence. It is not surprising that Gary Botting, a leading expert on extradition, proclaimed Canada's extradition law "the least fair act." No other case in recent memory has exposed the unfairness of Canada's extradition law more starkly than the Diab case.

In 2008, French authorities requested the extradition of Hassan Diab, a Canadian sociology professor of Lebanese descent, for questioning regarding allegations of his involvement in a bombing outside a Paris synagogue in 1980. These allegations are based on an intelligence note that the French investigating judge received almost a decade earlier (in 1999). What is unusual is that the French investigating judge explicitly states that neither he nor others know how such intelligence information came about and whether or not it is reliable.

Despite literally thousands of pages related to the investigation, the Crown attorney (representing France) unequivocally stated that the extradition case against Diab "turns or falls" on a single handwriting analysis report that compares Diab's handwriting to a mere five words written by the suspect in 1980. Notwithstanding the dangers of relying on a "pseudo-science" as the basis of depriving someone of their liberty, the handwriting analysis report against Diab was appallingly lacking. The extradition judge described it as "very problematic," "convoluted, very confusing, with conclusions that are suspect" and "highly susceptible to criticism and impeachment."

Five world-renowned handwriting experts testified that the handwriting analysis report against Diab is based on a "fundamentally flawed" methodology and that it is "wholly unreliable" and "utterly biased." It is hard to imagine a more damning review. The experts also pointed out that the actual handwriting evidence tends to exclude Diab as the suspect.

This was in fact the French authorities' second attempt to produce a handwriting analysis report that links Diab to the bombing. Two previous reports against Diab were withdrawn after the defence revealed that they were based on comparison handwriting samples that were not written by Diab.

At the extradition hearing, Diab was not allowed to introduce evidence showing that his palm prints and finger prints do not match those of the suspect. The judge stated "whether I like it or not" such evidence which casts doubt on the prosecutors' case is inadmissible during an extradition hearing; only evidence and inferences suggestive of the defendant's guilt are permitted.

The judge noted that the case against Diab is “weak” and that “the prospects of conviction in the context of a fair trial, seem unlikely.” Despite his misgivings about the evidence, the judge ordered Diab’s extradition entirely on the basis of the “very problematic” and “suspect” handwriting analysis report. The judge ruled he is mandated to do so under Canada’s extradition law.

If extradited to France, Diab will spend years in detention as he is not charged, and the French authorities are still investigating the case.

If a trial is held in France, Diab will be tried on the basis of the faulty handwriting analysis report, and the anonymous and unsourced intelligence. Human Rights Watch has documented the use of intelligence — including that derived from countries with appalling records on torture — in terrorism trials in France. The use of such intelligence would be inconceivable in a criminal trial in Canada. The Supreme Court held that the use of such intelligence renders a trial unfair.

Diab has repeatedly denounced the heinous crime and asserted his innocence. Friends, mentors and colleagues who know him attest that he has never held any militant or anti-Semitic views. Many of them have filed character letters in the court attesting to his humanist and peaceful character.

Justice for the victims of the 1980 bombing is not served by imprisoning an innocent person. It is time for Canada to reform its extradition law and to stop sacrificing principles of fundamental justice and fairness at the altar of diplomacy.

Jo Wood is a (retired) professor of psychology at Carleton University. She is a member of the Hassan Diab Support Committee.

© Copyright (c) The Ottawa Citizen