

One law for all Canadians?



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What's the worth of Canadian citizenship and of the Canadian Charter of Rights and Freedoms? Do citizens' rights depend on which province they live in?

These questions are raised by the strange saga of Hassan Diab, 58, a Lebanese-Canadian who has been surrendered by the Canadian government for extradition to France – even though he hasn't formally been charged with a crime by the French authorities.



The former University of Ottawa and Carleton University sociology professor was arrested in Quebec in 2008 for his suspected role in a bomb blast outside a Paris synagogue on Oct. 3, 1980 that killed four people and injured more than 40.

On April 4, Justice Minister Rob Nicholson signed an order to send Hassan Diab to France after an Ontario court in June 2011 approved his extradition despite its concerns the case is "weak."

French authorities want Dr. Diab extradited for questioning. They claim he is a member of the Popular Front for the Liberation of Palestine who executed the attack after entering France with a forged passport in the name of Alexander Panadriyu. Dr. Diab denies the allegations. The finger and palm prints that RCMP took off him do not match those of the suspect.

If convicted, the likelihood that Dr. Diab would receive a fair trial in France is uncertain. That country is currently before the European Court of Human Rights for violating Article 6 of the European Convention on Human Rights – the right to fair trial – for running trials based on secret, anonymous intelligence.

The French base their case against Dr. Diab on information received from other countries, handwriting found at the hotel where "Panadriyu" stayed, statements of unknown people, and documents such as the false passport or sketches. Dr. Diab's lawyer Donald Bayne says much of this evidence rests on secret "intelligence" that is so vague, the French do not know who the sources are, how reliable the information is and how much of it was obtained under torture. While Canadian courts do not accept testimony given under torture, Canadian Crown prosecutor Jeffrey Johnston has acknowledged "concerns that evidence derived from torture has been used in French proceedings."

Kent Roach, one of Canada's leading legal authorities on terrorism, says the French evidence is "malleable enough to fit any scenario." He points out the French first said Dr. Diab entered France with his own passport

but later claimed he did so with a fake passport. The French submitted the opinions of two experts to show similarities between the writings of Dr. Diab and those of the terrorist but withdrew these too when they realized the handwriting purported to be Dr. Diab's wasn't actually his.

Nevertheless, a third French report remains as evidence despite having been discredited in a Canadian court by former RCMP forensic document examiner Brian Lindblom who termed the third French handwriting report "seriously flawed", "confusing and incomprehensible" and "patently unreliable", and Robert Radley, a respected British forensic examiner who described it as "frankly absurd -- totally misguided and totally incorrect."

In his ruling on the extradition, Superior Court Justice Robert Maranger admitted that found the French handwriting evidence "very problematic", and "very confusing" with "suspect conclusions." He added: "The case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction, in the context of a fair trial, seem unlikely."

But he said that he ruled in favor of extradition because he was bound by the Ontario Court of Appeal's interpretation of the extradition law, and because it would violate the Extradition Act if he applied Canadian standards of evidence admissibility to foreign evidence.

And yet if Dr. Diab had lived in British Columbia instead of Ontario, he might have found himself a free man. The B.C. Court of Appeal has said that judges have the discretion to disregard unreliable evidence. Furthermore, in the 2006 Supreme Court of Canada case *USA v. Ferras*, Chief Justice Beverley McLachlin found that a judge should not order extradition "if the evidence is so manifestly unreliable that it would be unsafe to rest a verdict on it."

Given the conflicting interpretations of extradition law by Ontario and British Columbia courts the matter will likely end up in the Supreme Court. According to Matthew Behrens of the group Justice for Hassan Diab, an appeal of both the original Ontario court extradition committal as well as a judicial review of the Justice Minister's surrender decision is expected later this year or early in 2013.

Meanwhile, Dr. Diab continues to languish under house arrest, unable to work or get on with his life while facing the terrible possibility that he could spend the next several years of his life in a French prison.

Mohammed Azhar Ali Khan is a retired Canadian journalist, civil servant and refugee judge. He has received the Order of Canada, the Order of Ontario and the Queen's Golden Jubilee Award. ■

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