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Will There Be Justice For This Canadian Citizen Living a Nightmare?

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Let's do a thought experiment.

Imagine that a foreign government suspects you of committing a horrible crime thirty years ago based on unsourced intelligence which could have been derived from torture.

Then imagine that your government decides to hand you over to this foreign government despite the fact that your fingerprints, palm prints, and physical description do not match those of the suspect.

And now imagine that the 'smoking gun' of the case is a handwriting analysis of five words on a hotel registration card that has been discredited by some of the world's top handwriting analysis experts.

And imagine that you learn, years after this process begins, that the foreign government actually hasn't yet charged you with a crime, but wants you under its detention in order to pursue a case against you later.

Tragically, this is not a hypothetical scenario but is the living nightmare of a Canadian citizen, Dr. Hassan Diab, a former sociology professor at Carleton University in Ottawa.

In November 2008, Diab's life was turned upside-down when the RCMP arrested him at the request of the French government, which wanted to extradite him in connection with a bombing in Paris in 1980 that claimed four lives. He spent the next six months in jail, but was eventually released in April 2009 under extremely invasive bail conditions: he could only leave his house when accompanied by a surety, and had to begin paying \$2,000 per month out of pocket for a GPS monitoring bracelet that he continues to wear around his ankle 24 hours a day.

Tomorrow morning, following a court process that has now lasted some six years, the Ontario Court of Appeals will render its judgement on whether or not to extradite Dr. Diab to France for questioning and possible trial.

Dr. Diab and his supporters hope that this appeals decision will overturn a Ontario Superior Court ruling from 2011, which, bizarrely, approved extradition while characterizing the evidence in the French case against Dr. Diab as "weak," "very problematic", "illogical", "suspect," and "very confusing," as well as observing that "the prospects of conviction in the context of a fair trial seem unlikely."

This contradictory ruling was made possible by Canada's flawed extradition law, under which Canadian standards of evidence are thrown out the window. With extradition law, the case against a defendant is deemed presumptively reliable, regardless of the errors and contradictions contained within it, and defendants are legally barred from presenting evidence demonstrating their innocence.

This has led Canada's leading legal scholar on extradition law, Gary Botting, to describe the Extradition Act as "perhaps the least fair statute ever to be passed into Canadian law."

Dr. Diab, to be clear, has categorically denied any involvement in the 1980 bombing, and accepted a (now rescinded) RCMP request to take a polygraph test. Moreover, he has stated his willingness to answer any questions that French officials have for him from Canada.

Now, some critics have argued that instead of fighting extradition, Dr. Diab should simply go to France to clear his name. In such a scenario, however, Dr. Diab would likely face years of imprisonment in addition to hefty legal bills as his case would make its way through the French system.

Furthermore, there is a good reason to be concerned about the fairness of the French system in the post 9/11 era. For instance, Human Rights Watch has studied the French system extensively and concluded that "French counterterrorism laws and procedures undermine the right of those facing charges of terrorism to a fair trial."

During the appeals process, in fact, the Canadian Civil Liberties Association, Amnesty International, and the British Columbia Civil Liberties Association have all expressed reservations with the case, particularly the potential use of intelligence derived through torture in a future trial in France.

Indeed, in this context, how could one reasonably expect Dr. Diab to acquiesce to France's extradition request in order to clear his name?

Given the crimes Dr. Diab is accused of committing, one might think that he is an isolated man, spurned by colleagues and the community at large. But this could not be further from the truth.

When he was first arrested back in 2008, Diab's former faculty colleagues from the Sociology and Anthropology department at Carleton were quick to come to his defence, calling for his immediate reinstatement, while his union, CUPE 4600, also condemned his dismissal. And since then, as people across the country have learned more about this case and the broader problems it highlights with Canada's extradition law, public support for Dr. Diab has steadily grown.

Throughout the lengthy hearings at the Ontario Superior Court, dozens of supporters sat in the courtroom day after day, showing their solidarity with Dr. Diab against this kafkaesque process. Moreover, over a hundred supporters from across Canada have pledged their support for the Hundred for Hassan campaign, which aims to help Dr. Diab pay for the outrageous costs of his ankle bracelet.

As Dr. Diab, his family and supporters await the Court's ruling, a man's life hangs in the balance, as do basic notions of justice. A horrible crime was committed against innocent people over thirty years ago in France. Let's hope that the Ontario Court of Appeals does not compound this injustice with a crime against another innocent man tomorrow.

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