Remarks by Don Bayne
at "Welcome Hassan Home" Reception
3 February 2018, Ottawa, Canada

It was 2008 when Rania first appeared in my office to ask me, "Mr. Bayne, what are our chances?" Hassan at the time was in jail on an extradition warrant. To give her heart a spark of hope, I inflated what I really thought to say, "Five percent, at best." It was extradition, after all, and I really thought it was one percent.

Then in 2009, Hassan was finally released on bail at great cost. Think about it. He had to pay for his own freedom, a guaranteed Charter right. Extradition does that to you. It reverses all the normal presumptions of innocence; [instead] you're presumed guilty.

A picture was painted hysterically in the CBC—I'll never forget seeing it—that convicted Hassan before a trial. Between the CBC and the Department of Justice, a picture was painted of a mass-murdering terrorist. In the years 2009 and 2010, I traveled in search of evidence and witnesses to France, to the scene of rue Copernic, up and down Lebanon, to the UK, and America, trying to demonstrate the unreliability of the French assertions. Thousands of miles, hundreds of hours, in an uphill battle that any lawyer faces against the extradition laws of Canada, trying to improve on the one percent.

Many of you traveled with us through the long and really quite strange extradition hearing in 2010 and 2011, prosecuted most zealously by the Department of Justice lawyers, even after the French case was exposed as comedically unreliable—comedic not given the stakes but given what they were offering as evidence. The handwriting samples were actually from another person. And so a woman was identified as having been the 40- to 45-year-old man. The case should have collapsed at that point, but it didn't. Who urged the French to produce yet another handwriting comparison attempt, and one that ended up in the opinions of the world's leading handwriting experts [as being] "totally, wholly, completely unreliable"?

The extradition hearing led to many correct evaluations of the French case [as], "convoluted, confusing, illogical, suspect," but [to] a critically incorrect conclusion as well: "not manifestly unreliable." Totally, wholly, completely unreliable is not manifestly unreliable? Was this then a rule of law proceeding in 21st century Canada, or the Queen of Hearts trial of Alice in Wonderland where nothing made sense?

On April 4, 2012, the Canadian Minister of Justice had discretion to decide whether it was just to surrender a Canadian to a country that does *not* surrender its nationals to Canada on a case that was suspect, illogical, and completely unreliable. Well, that minister stated that it was appropriate and sensible to do so, that the defence was being—and these are his exact words—"overly technical", in saying France was not ready to try him, that it was illegal and impermissible to extradite a Canadian for investigation in a foreign country, that it had to be for trial. Three years and two months in solitary confinement is being overly technical? And that in

complaining that the use of unreliable, unverifiable, unchallengeable secret intelligence as evidence was, “finicky”. Fundamental justice was reduced from a constitutional guarantee to a “finicky” demand. About the plausibility that the unsourced intelligence came from torture the Minister told us, “Take it up with the French authorities or the European Court of Human Rights.” Does the phrase “abdication of responsibility” spring to mind?

By May 15, 2014, after two more years of Hassan [being] a prisoner in his own house at his own expense, the Ontario Court of Appeal had the opportunity to right the injustices of this case. Instead, the court ruled that the basis for the extradition, this last-minute replacement jerry-rigged handwriting report, although “completely methodologically unsound” and “illogical” and “suspect”, was not manifestly unreliable. That’s the Court of Appeal. Manifestly unreliable now became the absurd catch-22 creation of our appeal courts. That is to say, the only key to your freedom, and the key we will never let you have.

Worse, more heartbreaking, the *most* heartbreaking phrase in the history of this case was uttered by this court. The [court’s] answer to our argument that the Minister’s surrender would be illegal because there was no French case ready for trial, and investigation for foreign trial was prohibited, and a breach of the Parliamentary promise that no one should ever be extradited from Canada to languish in a foreign prison during a foreign investigation [was]: “The record in this case clearly demonstrates that the appellant, if extradited, will not simply languish in prison.” Were more untrue words ever spoken? Totally heartbreaking. What do you call three years and two months of solitary confinement if not languishing? How horribly wrong is that statement. Has anyone said, “We’re sorry”? What’s the remedy for a man so badly wronged? For a predictive judgment like that, that is so awfully wrong and with such awful consequences? Do those judges ever [re]read that line?

Ah, but there was still the Supreme Court of Canada, which in 2006 had (in a case called *Ferras*) promised all of us as Canadians [that] none of us could ever be extradited on unreliable evidence. Surely, they would rescue this case from obvious injustice. Nope. To them, it didn’t even merit granting leave. They didn’t even take time to hear the case. That means, “No sufficient injustice here, folks, move along. No national interest in just extraditions, move along.” One sentence, unreasoned refusal even to hear the case, a case that cried out, “Unreliable!” A case that the French had to tell us was too unreliable for them to take to trial. The Supreme Court upheld the impossible catch-22 of the Canadian extradition law and enabled the dark-of-night surrender of Dr. Diab for three years and two months of solitary confinement. Do those judges ever have a second thought about that?

We’re grateful for the courage of the French investigative judges, who bucked enormous political and social pressure in terror-plagued France, for finally doing justice and pointing out that the evidence showed complete innocence, not enough even to justify a trial. But it begs the question for Canadians: How could Canadian courts and our Minister of Justice have concluded otherwise? Why did it take foreign investigators to render the justice that Canadian judges and our Minister of Justice failed to deliver to a Canadian? How could all of this have happened? The answer is: It’s extradition folks, Canadian extradition. That’s the problem.

So, while we happily celebrate Hassan's return and the reuniting of the family, we can't rest. This battle's only half over. If we do, it's all going to stay the same. Nothing meaningful will change. There will be more Hassan Diabs.

The Prime Minister has promised to examine the lessons learned from the Hassan Diab case. He's asked the Minister of Justice to examine that issue together with her Department of Justice. These are the wrong people to ask. They're the very [same] people responsible for the system. They will go to the wall to defend and justify this system because their lawyers can walk into court (as happened in Hassan's case on Day One) […] and say "I've never lost a case." (And I thought to myself, "That's because you do extraditions.")

If we allow simple tweaking and cosmetic changes all of this will not have delivered real justice for all Canadians. All the effort that you folks put in—the wonderful, heroic efforts that you've made—will be for naught for the future. You have to contact your MPs, write to newspapers, use social media, make your voices heard, and demonstrate to demand better, broader, deeper consultations from defence lawyers, from defence lawyers' associations, from the criminal lawyers' association, from the Defence Counsel Association of Ottawa [and other defence counsel associations across the country], from law professors, from text writers like [Gary] Botting and La Forest, from ex-judges. There must be *meaningful* change. We all have a chance now to change this law, truly change it.

This is [a] wonderful reuniting [with] Hassan. In Canadian terms, it's an even bigger moment in legal history because the government for the first time is now predisposed to think [that] there was a major injustice on our watch, under these laws. So now is the time. You've achieved so much. The least fair law in Canada [as Gary Botting calls extradition law] has to be changed. A law that cost a man unjustly, not only three years and two months of solitary confinement, [but also] untold thousands in expenses and legal fees, *ten lost years of a normal life*, that can't happen again. You all have done it once. You can do it again.

We thank you for what you've done and we hope that you will let the legacy of the case of Hassan Diab be meaningful change in Canada's extradition law.

Thank you.