

OPINION

There should be a fully independent public inquiry to prevent any repeat of the injustice done to Hassan Diab

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Hassan Diab speaks in Ottawa following his return to Canada in January.

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Accused of being responsible for the bombing of a synagogue in Paris 34 years earlier, Dr. Hassan Diab, a Canadian citizen, was extradited to France in 2014. He was then held without charge in solitary confinement for more than three years. Eight times,

French judges sought to free him on bail. And eight times the French state prosecutor succeeded in overturning those decisions on questionable grounds. However, on January 12 of this year, the two French investigative judges responsible for his case issued their decision confirming that there was insufficient evidence for laying charges. Most important, the same two judges had found solid evidence that Dr. Diab was studying in Beirut at the time of the 1980 Paris bomb attack. Dr. Diab was immediately released from prison and was able to return to Canada and his family a few days later.

Deeply troubling questions remain. How was it that Canada's legal system totally failed to protect a Canadian citizen, exposing him to the loss of his fundamental rights and freedoms? It is now apparent that the evidence supplied by France in requesting Dr. Diab's extradition was both flawed and unreliable. The Canadian extradition judge, Justice Robert Maranger, acknowledged as much in 2011, when he declared that, on the basis of such evidence, Dr. Diab would not face conviction in a fair trial. Yet, because of the low threshold of proof required under Canada's Extradition Act, Justice Maranger felt that his only choice had been to order Dr. Diab's extradition.

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In a mockery of any presumption of innocence, it was apparent that Canada was sending Dr. Diab to France for purposes of investigation and not for trial. Extradition for the purpose of continuing investigation is inappropriate and legally questionable. Hearings conducted under Canada's Extradition Act make no provision for cross-examination of witnesses and, contrary to the practice in Canadian courts, secret unsourced intelligence may be admitted as "evidence" without question. Extradition from Canada

is thus possible on the basis of minimal due process or legal protection.

Documents obtained by the CBC and released on May 1 reveal that it was Canada's Department of Justice lawyers who advised French authorities to come up with "new" handwriting analysis evidence against Dr. Diab when the case was on the verge of falling apart, and without justifying reasons, requested multiple delays and adjournments. Despite such activity, the Department of Justice senior counsel subsequently denied in court any knowledge of the plans of the French. He also had advised French authorities to send him fingerprint evidence on a document signed by the suspect to compare with Dr. Diab's fingerprints as such evidence could be very powerful in getting Dr. Diab extradited. When the fingerprint analysis excluded Dr. Diab, the results were not disclosed to the court or the defence even though it was Canadian gathered evidence.

Justice Minister Jody Wilson-Raybould's office says Dr. Diab's case has left the government open to considering reforms. "The Minister of Justice and Attorney General of Canada always works to ensure that all federal laws are consistent with the Charter, the rule of law, and the highest standards of justice and fairness," the statement said. "The minister is seeking guidance from her officials regarding the effectiveness of existing protections in the Extradition Act, and has asked them to look at any lessons learned in relation to this case."

On May 30, the Minister announced "an external independent review." By its nature, a review looks backward. Clearly that is necessary to know what happened in the Diab case. But it is equally essential to look forward and identify what changes are needed in the practices of the Department of Justice or other agencies, to ensure adequate legal protection of Canadians who may find themselves in a similar situation in the future. Canadians

facing extradition deserve the full protection afforded by the Charter of Rights and Freedoms. That would be best achieved by a fully independent public inquiry, able to ensure full transparency and accountability, and provide objective and considered recommendations for reform.

Dr. Diab's torment should never have happened. Nor should it be repeated.

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