

Rubin: Government stonewalling on Hassan Diab shows why we need a full inquiry

KEN RUBIN Updated: August 15, 2018



Hassan Diab arrives home, earlier this year, from France. *ROGER CLARK / OTTWP*

Ottawa academic Hassan Diab, held for three years in France without charge over accusations of terrorism, had little choice but to boycott the

limited external review of his extradition case that Justice Minister Jody Wilson-Raybould has set up under former Ontario deputy attorney general Murray Segal.

Segal's review, with its narrow scope and powers, could end up hitting the same roadblocks and secrecy – and falling short of needed answers – that I am experiencing in my independent attempts over the last half-year to get data on Diab's behalf using Canada's Access to Information Act. That legislation exists to supposedly help members of the public not contain information from their government.

For starters, the justice minister wrote to Amnesty International in May that Diab “was afforded all the procedural safeguards under the Extradition Act and that his rights under the Canadian Charter of Rights and Freedoms were considered by all levels of Court.”

But when I requested Justice Canada documentation backing up the Charter impact analysis justice officials did, and their analyses of the evidence such as handwriting and fingerprints, I was met with “no record” responses, delays and highly censored records.

The minister also has stated several times that her officials have a “lessons learned” review underway but I have received no evidence of such a review.

Further, I have received only two highly “severed” memos (material released even when the rest was exempted from release) on what the justice minister back in January said was going to be a review of Canada's Extradition Act.

Critics claim that the Extradition Act's low evidentiary standards are discriminatory and out of step with model extradition legislation and that the Segal review is not mandated to examine changes needed to our extradition law. So just how will the Segal review, where no independent public inquiry process is in place, examine Justice Canada officials' activities helping get Diab extradited, or their biases?

One Justice Canada 2009 ministerial talking point I obtained, headed “France v. Hassan Naim Diab” indicates (the reliability of existing evidence aside) that “Canada remains committed to moving the extradition process forward in keeping with its obligations to its treaty partners.”

Heavily redacted e-mails, whose release was delayed by consultations with the RCMP, included a Justice Canada lawyer writing “great” after the Supreme Court refused on Nov. 13, 2014 to hear Diab’s lawyer’s request for leave to appeal his extradition to France.

In a Nov. 14, 2014 email exchange, an RCMP officer indicates to the Justice extradition lawyers “Diab is inside the airplane” and “calm” and the reply from the lawyers notes this information was “appreciated.” Another email from a Justice extradition lawyer is more euphoric, with the subject headline, “the airplane is up in the air!” That was the plane taking Diab from Montreal, before his wife could see him, to a French prison.

Diab has not ever been formally charged but was held in a Paris maximum security prison in near-solitary confinement for over three years until his mid-January, 2018 release and return to Canada.

French judges dropped his case in January due to a lack of reliable evidence tying him to a 1980 bombing outside a Paris synagogue that killed four and injured dozens, a case that a Canadian judge back in 2011 hearing Diab’s extradition case called “weak.” There is still an ongoing appeal in France of the case; evidence from Greek authorities has surfaced that needs translation and review.

Meanwhile, largely left out of the Segal review is the role of Canadian and foreign law enforcement and intelligence agencies in providing information, or misleading information, in the Diab case.

The Canadian Security Intelligence Service, in its replies to my requests for information, would neither confirm nor deny it holds data on Hassan Diab. CSIS indicated that if such records existed, national security and law enforcement exemptions would apply.

The question remains whether, before his extradition in November 2014, Diab was ever under surveillance. And whether CSIS or foreign

intelligence agencies played an active role in what appears to be a misinformation campaign about him.

The RCMP simply refuses to discuss the status of my requests to it for information. The RCMP's full role in the Diab case is not known.

Many of my access to information inquiries remain outstanding. So far, not much has been released. Will Segal, too, be stonewalled, and find censorship and difficulties getting information, or be free to publish findings? Segal has asked Diab to reconsider his boycott.

Without a full public inquiry, as happened after public pressure, events surrounding the rendition of Maher Arar to a notorious Syrian prison would not have been fully explored and reported on. That included the complicity of Canadian and foreign law enforcement and intelligence agencies and their dissemination of misinformation about Arar.

I had filed multiple access to information requests for Maher and his wife, Monia Mazigh. Some were severed or redacted, but revealed some data that helped get an inquiry called and were of use to the inquiry in its questioning and proceedings.

But this effort was no substitute for the work of an independent commission of inquiry, headed by a judge with powers to question witnesses and provide a public report and recommendations.

Right now, it looks like the only way Diab and the public are going to get fuller answers about his extradition ordeal is through a similar thorough public inquiry.

Ken Rubin is an award-winning access to information user and commentator and is reachable at kenrubin.ca

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