

A Decade's Ordeal: The Case of Dr. Hassan Diab and the Need for Reform in Canada's Extradition Law

Posted on December 3, 2018 by Josh Paterson

As I write this, we await the decision of France's Court of Appeal, which is set to determine whether legal ordeal that has upended the lives of Dr. Hassan Diab, Dr. Rania Tfaily, and their family is finally over. Earlier this year, a lower court in France ordered that the case against Hassan Diab be dropped, determining that there was evidence that Dr. Diab was not in France at the time of a 1980 bombing, and that there was significant credible evidence excluding him as a suspect in the terrorist attack.

For years, the BCCLA has joined groups like Amnesty International and the Hassan Diab Support Committee in standing up against the unjust treatment of Dr. Diab and his family. Dr. Diab's decade long ordeals at the hands of Canada and France highlighted the deep flaws in Canada's extradition laws. These laws require Canadian courts to treat summaries of evidence provided by a foreign state as presumptively reliable, even if the evidence has not been tested or even disclosed to Canada or to the accused. As a result, exculpatory evidence that would have eliminated Dr. Diab as a suspect was kept hidden from Canadian courts. The court considering France's extradition request held that the case was so weak that he would never be sent to trial in Canada, and yet it had no choice but to extradite Dr. Diab due to our current extradition law.



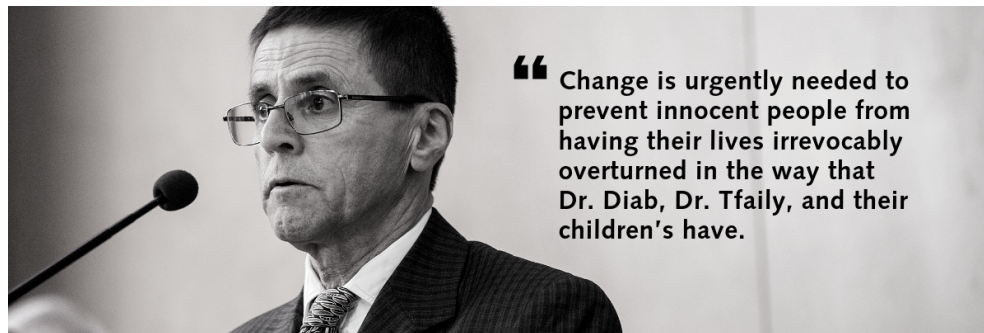
Dr. Diab, Dr. Tfaily, and their lawyer Don Bayne accepting the Reg Robson Award at the BCCLA's 2018 Liberty Awards Gala.

Dr. Diab has been home in Canada since January, after being held without trial in France for three years, much of it languishing in solitary confinement. France never had a solid case against Dr. Diab, and the government of Canada knew it. Despite knowing this, Canada played an active role in helping France's desperate attempts to bolster its flimsy and contradiction-riven case, and shockingly, in possibly misleading Canadian courts by failing to disclose the existence of exculpatory evidence.

That is why the BCCLA and Amnesty International called on the federal government to appoint an independent inquiry into Dr. Diab's case. The federal government responded by appointing an "independent external review" in the summer that unfortunately has a much more limited scope than we had asked for.

The review is likely to leave out a number of important issues that we think need to be investigated to ensure that Dr. Diab's ordeal is never repeated. Notably, the biggest issue is the lack of an examination of the weaknesses in the Extradition Act that permitted this miscarriage of justice to unfold. Nevertheless, we hope that the review will at least will

shed light on how our government abandoned its role as a protector of its own citizens and transformed itself into active collaborators in a deeply flawed prosecution.



The BCCLA supports Canada in cooperating with partner countries to combat transborder crime, and to ensure that fugitives from justice answer for alleged crimes committed abroad. But Canada's primary obligation is to protect the rights of people here, and that's why we are continuing to push for reform to the Extradition Act itself in order to ensure that individuals in Canada who are sought for trial in a foreign state benefit from a fair process, instead of their surrender being a virtual certainty. At a minimum, fairness requires that exculpatory evidence in the hands of the foreign government must be disclosed to Canada and the individual concerned, as well as to Canadian courts. Mere summaries of foreign evidence should no longer be presumed reliable – evidence-gathering in the foreign state should meet a baseline standard of reliability before they can be used to support an extradition request. Under no circumstances should unsourced evidence and evidence possibly derived from torture be used in extradition proceedings.

Scholars report that Canada's extradition laws provide the weakest procedural protections of any extradition law in the world. In September, I went to Halifax to meet with leading legal experts on extradition law from across Canada to discuss the reforms that are required. This fall we expect to travel to Ottawa to continue the conversation, aiming to develop a joint proposal for reform to the law that could be adopted in the next Parliament. The balance between Canada's duty to protect its citizens and residents, and its interest in cooperating with foreign states on extradition is severely out of whack. Change is urgently needed to prevent innocent people from having their lives irrevocably overturned in the way that Dr. Diab, Dr. Tfaily, and their children's have.

Donate today to Justice For Hassan Diab to help cover the cost of Dr. Diab's ongoing legal defence in France.
Your support is vital to protecting his rights.
(<http://www.justiceforhassandiab.org/donate>)

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