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# Canadian DIMENSION

## Articles

CANADIAN POLITICS, ECONOMY AND FOREIGN POLICY

### The Extradition Case of Dr. Hassan Diab

MATTHEW BEHRENS | October 15th 2013 | 3

Hassan Diab is a mild-mannered Ottawa university professor with a passion for history and culinary skills that surely the French would appreciate. In fact, the French government has invested much energy to have Diab brought to Paris, but not for his vegetarian kebbah.

Rather, Dr. Diab is sought for questioning about his alleged role in a 1980 Paris bombing that claimed four lives. Unfortunately for Diab, the process behind the allegations could almost be a French farce — worthy of Inspector Clouseau of Pink Panther fame. Indeed, even though Diab's fingerprints and palm prints, handwriting, and physical description do not match those of the suspect — and an Ontario Court judge has ruled that the case against him is "weak," "suspect" and "confusing," concluding "the prospects of conviction in the context of a fair trial, seem unlikely" — Canada has committed to extraditing him overseas to face a hearing that could be based on unsourced information gleaned from torture. Add the fact that Diab has yet to be charged with anything (apparently the first time in Canadian history someone would be forcibly removed under the Extradition Act on mere suspicion), and it's easy to understand why legal expert Gary Botting calls this process one of the least fair in Canadian law.

Diab, who condemns the 1980 bombing and is clearly a victim of mistaken identity, takes an important step forward in early November when his case lands in the Ontario Court of Appeal. Represented by lawyers Donald Bayne and Marlys Edwardh, Diab will raise significant issues, from the controversial use of unsourced, uncontestable intelligence as evidence, to the different provincial court interpretations of the Extradition Act and the serious flaws in the French judicial system that would prevent Diab, if charged, from receiving a fair trial.

#### International relations trumps basic human rights

Under Canada's extradition law, the duty of a Canadian court and the minister of justice is, first and foremost, to the government seeking an individual. That individual no longer enjoys the rights that are supposed to be accorded everyone else facing the deprivation of their liberty. Canadian standards of evidence disappear, and the case is presumed to be reliable, regardless of how many inaccuracies, errors, omissions and contradictions are contained within it. One cannot present evidence to show one's innocence, and the requesting state need not present any evidence of that innocence.

While the deck is clearly stacked, the Supreme Court in Canada has found that extradition is not a legal issue after all, but a political one. Is the government of Canada willing to risk its relations with one of its extradition partners, or will it sacrifice one of its citizens (or a refugee or permanent resident) in the name of maintaining happy diplomacy? In all extradition cases, the argument goes, an individual sought by another country can "sort out the mess" in the foreign legal system. It is a process fraught with danger: a foreign government can carry out a persecution by proxy using the extradition law, claiming it has a case against a political pain in the neck living in Canada, and presenting what amounts to a prima facie case without requirement to vouch for the case's accuracy.

#### Unsubstantiated, unidentified, yet presumed reliable

Diab's appeal factum reflects the Alice in Wonderland quality of the case, noting the allegations are "based largely on intelligence reports from unnamed foreign entities, who in turn obtained information from unknown sources in unknown circumstances." Given the impossibility of verifying the reliability of such information, it is difficult to determine how any court could proceed with the case.

But the suspension of disbelief is nothing new in this case. When Diab challenged French authorities' original handwriting reports as seriously flawed, the French withdrew them, preferring to start anew. Again, experts called by Diab declared the new report fatally flawed as well, and while the extradition judge found that such "scathing criticism" had "substantially undermine[d]" the report, it was nonetheless presumed to be reliable because anything submitted by a foreign government via extradition enjoys virtual immunity from reality.

Diab's lawyers argue that if sent to France and put on trial, he would face a system notable for the close working relationship between investigating magistrates and the intelligence services. As in other countries, intelligence-driven prosecutions in alleged terrorism cases have raised serious due process and human rights concerns. His legal team notes, "France had a special intelligence sharing relationship with Syria [which was] shown to have regularly kidnapped Lebanese individuals and tortured them to extract information on national security and terrorism matters" and that there exists "no genuine ability to challenge intelligence in French terror trials."

The French judicial system is an inquisitorial, Napoleonic-era creation. Even former president Sarkozy said it should be abolished, since it does not even include the presumption of innocence.

Diab himself is perpetually dumbstruck at the thought that his whole life should be upended, even more than it already has, because the French have some questions for him: "I have been clear — since these unfounded allegations against me surfaced in 2007 — that I am

willing to answer any questions that the French officials may have," Diab told a Parliament Hill press conference last year. "I have previously accepted the RCMP offer to take a polygraph test. I am anxious to clear my name, and I am willing to do whatever it takes to prove my innocence."

#### **Paying the cost of his own surveillance**

The RCMP withdrew their polygraph offer and the French have been silent on the idea of questioning Diab in Canada. Meanwhile the professor and his partner, Rania Tfaily, are saddled with the unprecedented, judicially sanctioned \$2,000 monthly bill in GPS monitoring costs that keep him out of the physical prison where he spent many long months following his 2008 arrest.

Since then, the bizarre circumstances of the case have inspired a growing community of support, including A Hundred for Hassan, who each pay \$20 a month to defray the cost of Diab's GPS bracelet. Diab and his supporters hope that the Ontario Court of Appeal will put a stop to his Kafkaesque journey that might be laughable were it not so tragic and dangerous, given that Diab could spend the rest of his life in a French prison if extradited, charged and convicted in Paris.

Remarkably, Diab remains hopeful, believing "that the Canadian legal system will give me a fair chance, will look at the facts, and realize that it would be a grave injustice to extradite me for a crime that even the evidence shows I did not commit."

For further information on the case or to join **A Hundred for Hassan**, visit: [www.justiceforhassandiab.org](http://www.justiceforhassandiab.org).

*Matthew Behrens is a writer and community organizer who coordinates the Homes Not Bombs nonviolent direct action network. He is presently working on a book about secret trials, rendition to torture, and Canadian human rights abuses committed in the name of "national security."*

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### **3 comments**

Let us all hope that the Ontario Court of Appeal puts an end to this travesty and ends the ordeal for Hassan Diab.

#1. Posted by Jo Wood in Ottawa, Canada on October 16th 2013 at 8:28am

Dr. Hassan Diab was a vital and well-liked sociology professor at Brandon University. He was liked by his students for his easy going style and excellent communication with students.

I remember when he left Brandon University, a student stated to me, "Well, I guess I drop that course, I was only taking it because Dr. Diab was teaching it." He is an excellent educator.

I hope, for Dr. Diab, that this macabre execution of justice, as seen by the French, is halted and that suspicion is expressly forbidden as a mechanism for which a foreign court/country can seek an extradition order.

The case of Dr. Diab has brought, to the forefront, the necessity of rewriting international agreements and protecting our rights under the Canadian Charter of Rights and the United Nations Declaration of Universal Human Rights. Opinions are not facts, and the opinion of French investigators is no verifiable with facts and therefore no Canadian citizen should be extradited on such specious allegations.

If Dr. Diab is extradited on suspicions? Then we must all ask ourselves, "What is the validity and value of Canadian Citizenship if we cannot be protected from the injustice of others?"

#2. Posted by Mary Jo Welch in Brandon, Manitoba on October 16th 2013 at 6:00pm

Regarding the need to have good relations with another state, That's weak in my opinion. Abusing one of it's own citizens in order to maintain good relations with France can't be something that Canada needs to do in order for that to happen. And states don't care about good relations with each other the way say family members care about good relations with each other. States are complex and consist of a political component and a corporate or business component. Relations are dynamic. States will treat each shabbily in heartbeat if the calculation is made that it can be accomplished without injury to important people and if they can gain from it, even if some sacrifices (and the people are certainly expendable) have to be made.

Now, If the abuse of a Canadian citizen is more than just that, then that's another matter. The only thing I can come up with is that the corporatocracy is always pushing to see how far it can go. It would be happy to add another weapon to it's arsenal for use in it's war against the people everywhere.

Or is there something we don't know? That's very possible. Calling Edward Snowden...

Hassan can't be very encouraged by the judgement-challenged judge who just ruled that we need to keep abusing Omar Khadr.

Matthew: Keep up the good work. I wish I could help somehow.

#3. Posted by Arby in Toronto on October 18th 2013 at 8:55pm