

# Keep evidence derived from torture out of Canadian courts

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In a letter issued today to Attorney General Robert Nicholson, the BCCLA calls on the Department of Justice to ensure that a strong rule is maintained against evidence derived from torture being used in proceedings here in Canada or in proceedings abroad to which persons in Canada may be extradited.

French courts apply the law differently than Canadian courts do. They do not prohibit the use of evidence derived from torture. Canadian law does prohibit such evidence. The issue arises in extradition proceedings in Canada undertaken at the request of the French government in relation to Hassan Diab, a Canadian citizen. Mr. Diab has no criminal record in Canada. He has taught at Carleton University and the University of Ottawa. His extradition is being sought in connection with a bombing in Paris in October, 1980. The chief allegations for his extradition are from unsourced intelligence provided by the French government. Neither the judge in Mr. Diab's extradition case nor the Crown counsel making the extradition application knows the source of this intelligence. France has not confirmed that the unsourced intelligence was obtained by means other than torture. No assurances have been sought by Canada or provided by France that evidence derived from torture would not be used in French court proceedings involving Mr. Diab if he was extradited to France.

Robert Holmes, President of the BCCLA: "Canada has adopted a firm rule against using evidence derived from torture in our courts. We should not countenance use of such evidence against someone extradited from Canada to a foreign country in foreign courts. Whether it is the rack, thumbscrews, deprivation of food and water or any other medieval torture or the more modern use of waterboarding, sensory deprivation and sleep deprivation, torture is unacceptable. The only effective way to police those in authority from engaging in it or seeking to benefit from it is to prohibit use of evidence derived from it. Absent assurances from France that they have and will respect this rule, Canada should not proceed with an extradition hearing at all."

France's use of evidence derived from torture in terrorism proceedings is documented. As recently as June 2010, Human Rights Watch stated that the French judiciary uses foreign intelligence derived from torture in terrorism prosecutions, both in the investigative phase and at trial. If extradited, Mr. Diab may be prosecuted based on evidence derived from torture. Carmen Cheung, Counsel for the BCCLA: "Evidence derived from torture has no place in Canadian courts. Canada should refrain from submitting unsourced intelligence to our courts unless it can be satisfied that the intelligence information is not the result of torture. The prohibition against torture requires that all incentive to commit to torture be eliminated; Canada simply cannot rely on evidence derived from torture under any circumstances."

[Read the BCCLA letter to Robert Nicholson, Minister of Justice and Attorney General of Canada \(http://bccla.org/wp-content/uploads/2012/03/2010-BCCLA-Letter-Nicholson.pdf\)](http://bccla.org/wp-content/uploads/2012/03/2010-BCCLA-Letter-Nicholson.pdf)

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