

# HASSAN DIAB EXTRADITION CASE TO BE HEARD AT COURT OF APPEAL

October 31, 2013

On June 6th, 2011, the Honourable Justice Maranger of the Ontario Superior Court ordered Ottawa professor Hassan Diab, committed for extradition to France. France requested Professor Diab's extradition in connection with the bombing of a Paris synagogue in October 1980.

Professor Diab has denied any involvement with the bombing, stating that he was not even in France at the time, and denouncing violence of any kind. French officials claim Professor Diab was present in France on a false passport, and have put forward handwriting records allegedly matching his handwriting to that on a hotel registration card. Professor Diab's lawyers countered these assertions with international handwriting experts' testimony that the handwriting did not match.

The extradition of an individual affects his or her s.7 Charter rights to life, liberty and security of the person, and the right not to be deprived of these rights "except in accordance with the principles of fundamental justice".

Given the high stakes to the individual, an extradition judge must engage in a limited qualitative assessment of the evidence — if the evidence is "so unreliable that the judge would conclude that it would be dangerous or unsafe to convict, then the case should not go to a jury and is therefore not sufficient to meet the test for committal." (*United States of America v. Ferras*, [2006] 2 S.C.R. 77).

In his decision, the Honourable Justice Maranger noted that France had put forward a "weak case", and that the "prospects of conviction in the context of a fair trial seem unlikely." At paragraph 121 of his decision, Justice Maranger states "I found the French report convoluted, very confusing, with conclusions that are suspect. Despite this view, I cannot say that it is evidence that should be completely rejected as "manifestly unreliable"". As such, Justice Maranger found that he was required to order Professor Diab's committal.

The CCLA is concerned that an individual could be ordered for committal on the basis of evidence characterized as "weak", "confusing", "convoluted", and "unlikely" to result in conviction in a fair trial. How can committal based on such evidence be reconciled with the rights to liberty, due process and fair trial — protected in our *Charter* and in international law?

Furthermore, allegations that the French judicial process may not permit the individual sought to challenge this evidence in a trial, and may permit reliance on 'secret evidence' that will not be disclosed or permit a full answer and defence or challenge, raise concerns about due process and fair trial. We reiterate that the right to fair trial is protected in Canadian law and in international law — the 'UN Special Rapporteur on the protection of human rights and

fundamental freedoms while countering terrorism' has stated that extradition to the risk of a manifestly unfair trial can violate the principle of *non-refoulement*.

Professor Diab is appealing the decision, on several grounds, including that his committal is wrongly based on manifestly unreliable evidence, contrary to the test for extradition set out by the Supreme Court of Canada in *Ferras*. His lawyer Maryls Edwardh obtained his release on bail, and will be representing him in the appeal.

This case is extremely important, both in the impact upon Professor Diab's rights to liberty and justice, as well as the broader impact upon the test for extradition. We believe the test set out in *Ferras* should be applied: the judicial phase of the extradition process must operate to ensure that an individual is protected against extradition if there is not an adequate case presented against the person — i.e. the evidence must be sufficient to put the person on trial.

The CCLA remains concerned that if the test for extradition in *Ferras* is undermined, it may lead to unfair processes and injustices for persons suspected of crimes by foreign states.

Professor Diab's case will be heard by the Ontario Court of Appeal, and CCLA will intervene to argue that Supreme Court of Canada jurisprudence requires the extradition judge to engage in a limited weighing of evidence to assess the sufficiency of evidence for committal to extradition. Anything less, we will argue, would violate section 7 of the *Canadian Charter of Rights and Freedoms*.