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Canada's extradition law desperately needs reform

Opinion BY MICHELLE WEINROTH May 24, 2023

Canada's extradition law has been described as the [backwater](#) of our nation's legal system, scarcely known by most legal professionals and foreign to the average person. But the notorious Hassan Diab affair has [allowed](#) some Canadians to glimpse the law's [troubling features](#) and the reasons for which [parliamentary hearings](#) took place in February 2023 to start a process of extradition reform.

The impulse for change was signalled in 2011, when legal expert Gary Botting wrote: "Canada's *Extradition Act* (S.C. 1999 c. 18) is perhaps [the least fair statute](#) ever to be passed into Canadian law."

Why did Botting denounce the law so unabashedly? A [government-based statistic](#) offers the answer in a nutshell. Between 2008-2018, Canada received 798 extradition requests from the United States. Only eight of those requests were refused. The disparity between requests received and those rejected is staggering; it indicates that 99.75 per cent of requests were granted, and roughly one per cent of those who were apprehended (rightly or wrongly) and subjected to an extradition process were discharged. American extradition requests constitute [90 per cent of requests received overall](#).

This quasi-fated reality can be attributed to changes made to the extradition law in 1999. In the interest of "efficiency," an accelerated extradition process was promoted to supersede an "[antiquated](#)" [bureaucracy](#). But if the 1999 Extradition Act sped up the process, it also made it more authoritarian and unfair, wielding its power to run roughshod over the rights of the person sought.

In 2012, then-minister of justice Rob Nicholson stated: "The guilt or innocence of the person sought is not a relevant consideration in the extradition context." In other words, because extradition procedures are not trials, the integrity of the person sought is deemed inconsequential. But, in fact, the extradition process tacitly presumes their guilt from the start.

The requesting state, in contrast, suffers no such pre-judgment. A foreign state's allegations against the accused are deemed reliable, even if materials are cherry-picked or falsified by omissions of exculpatory evidence. The Hassan Diab case is a [textbook example](#) of this flagrant injustice. With the current extradition law, it would appear that the rights of the requesting state trump those of the person sought between 90 and 99 per cent of the time.

During a recent exchange between Conservative MP Michael Chong and Minister of Global Affairs Mélanie Joly, [Chong placed](#) the rights of the individual citizen above Canada's relations with foreign states. Would the honourable MP apply this same claim to the rights of citizens such as Hassan Diab? A Canadian citizen, Diab was [wrongfully extradited](#) to France on a [flawed handwriting report](#). On April 21, 2023, he [was convicted by a French court of no record](#) that relied on unsourced and unsworn foreign intelligence—unfit in a Canadian court—and incoherent accounts, bereft of material proof, save a [faded copy of a passport](#), of which there is no original. Over 15 years, French authorities repeatedly made [false claims](#) to ensure his conviction. Would [Chong](#) come to Diab's defence at a time when securing diplomatic relations with France threatens the liberty of a fellow Canadian citizen?

The core injustice of the 1999 Extradition Act can be seized in a simple statistic. Canada grants foreign states their extradition requests [90](#) per cent of the time, deferring to its state partners at the expense of its own nationals. Will extradition reform redress this grossly unfair law?

Prime Minister Justin Trudeau's recent [remarks](#) regarding Diab's case, saying that Canada will always stand up for its citizens, yields hope. His words signal the possibility of a much-needed [change](#) to the Extradition Act. Such a change would, among other things, [guarantee transparency](#) by prohibiting the suppression of exculpatory material and by disqualifying, from the start, extradition requests that submit unsourced and unsworn intelligence as evidence. In rejecting submissions that are tainted with secrecy and denial, a new extradition act would save innocent lives from the torment of wrongful surrender to a foreign state and wrongful conviction in a foreign court. This would mean that Diab's horrific ordeal should never, as [Trudeau put it](#), happen again.

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