

CANADIAN  
CIVIL LIBERTIES  
ASSOCIATION



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LIBERTES CIVILES

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Toronto, ON M4S2Z2

4 October 2023

**The Right Honourable Justin Trudeau, P.C., M.P.**

Prime Minister of Canada  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, ON K1A 0A2  
Via email: [pm@pm.gc.ca](mailto:pm@pm.gc.ca)

**The Honourable Arif Virani, P.C., M.P.**

Minister of Justice and Attorney General of Canada  
House of Commons  
Ottawa, ON K1A 0A6  
Via email: [arif.virani@parl.gc.ca](mailto:arif.virani@parl.gc.ca)

Dear Prime Minister and Minister:

**Re: Justice for Dr. Hassan Diab**

The Canadian Civil Liberties Association calls upon the government of Canada to ensure that Dr. Hassan Diab, a Canadian citizen, does not face a second extradition to France. It would be unconscionable to subject Dr. Diab to a second extradition process after enduring a deeply flawed and unfair prosecution based on discredited evidence in France. Canada must refuse a second extradition request from France in relation to Dr. Diab.

**Prime Minister, you have in the past stated that what happened to Dr. Diab “never should have happened,” and vowed that efforts would be made to ensure that something like this “never happens again”.<sup>1</sup> Canada can and must prevent a grave injustice from taking place.**

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<sup>1</sup> Richard Raycraft. (2023, April 21). *French court finds Hassan Diab guilty of involvement in 1980 bombing* | CBC News. CBC. <https://www.cbc.ca/news/politics/diab-verdict-in-absentia-1.6817944>

## Dr. Diab's Previous Extradition - Weak Evidence and an Unlikely Chance of Prosecution

As you know, Dr. Diab was previously put through the excruciating experience of being extradited to France, in 2014, on the basis of “weak” evidence and an “unlikely” chance that he would be prosecuted if the trial were fair, according to the extradition judge in Canada.<sup>2</sup> The extradition process and Dr. Diab's subsequent ordeal in France was well documented in the Independent Review of the Extradition of Dr. Hassan Diab commissioned by Canada's Attorney-General at the time, and conducted by Murray D. Segal.<sup>3</sup>

The Independent Review expressed deep concern over Dr. Diab's lengthy detention in France stating that “[p]erhaps the most troublesome issue in Dr. Diab's matter is that he was in jail for 34 months after his extradition by Canada – only to be freed by the investigating magistrates.”<sup>4</sup>

Dr. Diab was subjected to serious rights violations including extended periods of solitary confinement during his over two and a half years in pre-trial custody in France.<sup>5</sup> Justice demands that this does not happen a second time.

After Canada surrendered Dr. Diab to France in 2014, a three-year long investigation by French investigative judges concluded there was *no evidence* to support a trial.<sup>5</sup> Dr. Diab was released from French custody and returned to Canada in 2018. However, the French government appealed this decision, and a new trial was ordered.

## Unfair Prosecution and Flawed Trial in France

In April 2023, the French Special Assize Court proceeded with the trial. Dr. Diab's prosecution was conducted *in absentia*, as France chose not to seek his extradition at the time and following advice from his Canadian and French lawyers, Dr. Diab choose not to voluntarily return for the trial. Dr. Diab was convicted and sentenced to life imprisonment.

There are compelling reasons why Canada should not extradite Dr. Diab due to the deeply flawed trial in France.

According to legal advocates and international human rights organizations that monitored the French trial, Dr. Diab was convicted under a deeply flawed process that relied on discredited evidence and did not take into account sufficient consideration of exonerating evidence. Such discredited evidence included handwriting evidence that the Ontario Superior Court Justice who committed him had found to be “convoluted, very confusing, [and] with conclusions that are

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<sup>2</sup> *Attorney General of Canada (The Republic of France) v. Diab*, 2011 ONSC 337, at para. 191 < <https://canlii.ca/t/flqqb> >

<sup>3</sup> Segal, M. D. (2019). *Independent review of the extradition of Dr. Hassan Diab*. [Independent Review] Available: [https://www.justice.gc.ca/eng/rp-pr/cj-jp/ext/01/review\\_extradition\\_hassan\\_diab.pdf](https://www.justice.gc.ca/eng/rp-pr/cj-jp/ext/01/review_extradition_hassan_diab.pdf)

<sup>4</sup> The Independent Review, p 109.

<sup>5</sup> David Cochrane, Lisa Laventure, “Decision in Hassan Diab appeal delayed after sudden appearance of new evidence” *CBC News* (6 July 2018), online: <https://www.cbc.ca/news/politics/diab-terror-verdict-france-1.4735097>

suspect.”<sup>6</sup> Indeed, the three week-long French trial relied entirely on evidence that had previously been discredited by the French investigating judges.<sup>7</sup>

Legal advocates and human rights organizations who monitored the French trial have also raised serious concerns about the lack of transparency in the proceedings including the fact that, to date, there is *no recording or transcript* of the proceedings and *no written reasons* have been provided. There is also *no right of appeal* of a decision of the French anti-terrorism court.

### **Justice for Dr. Diab**

In light of all the above, the CCLA strongly urges the Canadian government to utilize provisions of the Extradition Act<sup>8</sup> and the Extradition Treaty<sup>9</sup> to refuse to commit Dr Diab to a second extradition process should France make such a request. We are not aware of another case in Canada where there has been a second extradition process. As the Independent Report in Canada concludes: “we have expectations that our citizens will not be extradited without due process, deprived of their liberty without a meaningful hearing or languish in a foreign jail”.<sup>10</sup>

As you so aptly stated previously, Prime Minister, what happened to Dr. Diab should not happen again.

### **Canada should make a public commitment that it will not submit Dr. Diab to a second extradition.**

In addition, the injustices that Dr. Diab has faced, demonstrate the critical need for Canada to re-examine the *Extradition Act*, including important recommendations that stemmed from the Independent Review. While the extradition process is an important legal tool to ensure international cooperation and justice, it should not be utilized to deprive individuals of their fundamental human rights.

Yours sincerely,



Noa Mendelsohn Aviv  
Executive Director and General Counsel  
Canadian Civil Liberties Association

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<sup>6</sup> *Supra* note 2, at para 121.

<sup>7</sup> The Independent Report, p 50.

<sup>8</sup> s 44(1)(a) *Extradition Act*, SC 1999, c 18 s 44(1)(a)

<sup>9</sup> *Extradition Treaty Between the Government of Canada and the Government of the Republic of France*, E101343 - CTS 1989 No. 38: <https://www.treaty-accord.gc.ca/text-texte.aspx?id=101343#>

<sup>10</sup> *Ibid* at p 112.