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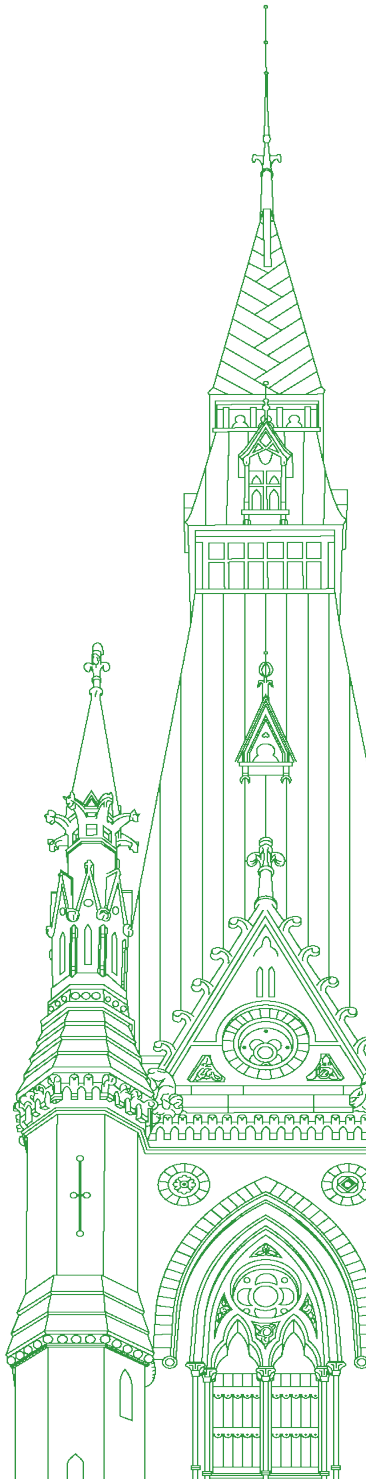

Chair: Mr. Randeep Sarai

Standing Committee on Justice and Human Rights

Monday, February 6, 2023

● (1540)

[*English*]

The Chair (Mr. Randeep Sarai (Surrey Centre, Lib.)): I call this meeting to order.

Welcome to meeting number 47 of the House of Commons Standing Committee on Justice and Human Rights. Pursuant to Standing Order 108(2) and the motion adopted on January 30, 2023, the committee is beginning its study on extradition law reform.

Today's meeting is taking place in a hybrid format pursuant to the House order of June 23, 2022. Members are attending in person in the room and remotely using the Zoom application.

I would like to take a few moments for the benefit of the witnesses and members. Please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your microphone, and please mute yourself when you are not speaking. For interpretation for those on Zoom, you have the choice at the bottom of your screen of floor, English or French. For those in the room, you can use the earpiece and select the desired channel.

All comments should be addressed through the chair. For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will manage the speaking order as best we can, and we appreciate your patience and understanding in this regard.

Before we begin, the technical difficulties we experienced at the last meeting will have minimal repercussions on our agenda, which I wish to manage in the following way. First, the officials from the Department of Justice with us last week agreed to come back to complete their appearance in front of committee on Wednesday, February 8. They will be with us during the second hour of the meeting. Also, you may have realized from today's notice of meeting that we are able to welcome again all of our second panel from last Wednesday. They will appear today for the second hour of this meeting.

For the benefit of the witnesses and members, I have cue cards, so when you have 30 seconds remaining, I will raise this yellow card. When you are out of time, I will raise the red card. I just ask that you end it, so I don't have to interrupt your speech.

Finally, we will hear witnesses on our extradition study on Monday, February 13 for the first hour. The second hour will be drafting instructions for our analysts. On February 15, we will begin the study on the bail system with the Minister of Justice in the first hour. For the second hour, we will have officials with us for more questions.

Without further delay, let me welcome our witnesses today. We have Mr. Matthew Behrens and Rania Tfaily. From the World Sikh Organization of Canada by video conference, we have Balpreet Singh, legal counsel.

Each of you will have five minutes for your opening statements followed by questions from the rest of the members.

I will begin with you—

[*Translation*]

Mr. Rhéal Fortin (Rivière-du-Nord, BQ): Mr. Chair, before we begin, can you confirm that the tests have been done with the witnesses and that the results were positive?

● (1545)

[*English*]

The Chair: Thank you, Mr. Fortin. They were carried out, and I've confirmed that they are effective and positive.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

[*English*]

The Chair: Thank you.

Mr. Behrens, five minutes go to you.

Mr. Matthew Behrens (As an Individual): Thank you.

My name is Matthew Behrens. I represent the group Women Who Choose to Live, which works with women who are criminalized and punished for trying to survive male violence. I've worked on extradition cases for over 20 years, largely with the families and those who have been victimized by a process that is fundamentally flawed and violates the Charter of Rights and Freedoms on many levels.

Today I'm very honoured to be here with Rania. We're here to talk about the human face of extradition and the consequences of this fundamentally flawed Extradition Act.

This act has been used as a bludgeon to batter abused women, as in the cases of M.M. and K.T. It has led to the potential for and actual torture of Canadian citizens, as in the Boily case. Mr. Boily was recently awarded $500,000 for the minister's complicity in his torture in an extradition to Mexico case. It's also been a back door to forcibly remove people who are in need of protection to states where they had fled from persecution.

I'm happy to address broader issues related to the case, but I'd specifically like to tell you the story of one of the most significant extradition cases in the last 20 years.

This is Michele Messina. She can't be here today because she took her life at the age of 58 in a Quebec prison in November 2019 after having spent nine years fighting extradition. Michele is not here because she lost her life in that prison. She took her life because she was so afraid of being extradited back to Georgia, where she knew she would not get a fair trial for the charges of rescuing her children from clear signs of abuse from a very abusive man.

In 2010 she rescued her three dual-citizen children from Georgia and brought them here for safety. All the children are now adults. Over a decade ago they were sleeping in an abandoned garage to escape their father's abuse. Now they've been orphaned, because Canada chose to decide that it would criminalize Michele in the same way the State of Georgia had as well.

Her initial extradition was quashed in the Superior Court of Quebec. On appeal, it was reinstated. Then we went up to the Supreme Court, where Michele lost in a 4:3 decision, which the dissenting judges actually said was Kafkaesque.

We initiated a campaign for reconsideration. There was a new government in 2015. Jody Wilson-Raybould actually brought in a reconsideration, but after seven months, she signed what turned out to be the death writ for Michele. The minister's reasons were infused with a complete lack of knowledge about the consequences and dynamics of violence against women. She asked questions in these reasons, such as, “Why didn't Michele report to the police?” How many times have survivors been asked that ridiculous question?

In the end, Wilson-Raybould said that, far from saving these children, what had happened was she had taken away the abusive father's rights to visit them. That was the conclusion of the justice minister. That tells us where the real fault lines are with respect to gender-based violence and the Extradition Act.

Justice Rosalie Abella wrote the dissenting opinion in that Supreme Court decision. She pointed out that “the defence of rescuing children to protect them from imminent harm does not exist in Georgia, the mother will not be able to raise the defence she would have been able to raise had she been prosecuted in Canada.”

This contradiction violates a cornerstone of extradition law, the double criminality requirement that the Supreme Court acknowledges is a process that ensures that Canada is “not embarrassed by an obligation to extradite a person who would not, according to its own standards, be guilty of acts deserving punishment.”

I think part of the problem we're facing here is that we are dealing with government departments, and especially the so-called international assistance group, which works on the extradition cases at the Department of Justice, that have failed to enter the 21st century when it comes to gender-based analysis. They were mandated to do so in 2010. In 2021 the supplementary mandate letters to the minister specifically spoke about something called “gender-based analysis plus”. Gender-based analysis plus would involve “critical consideration of the historical, social, and political contexts and the systems of power, privilege, discrimination and oppression that create inequities as well as applying a meaningful approach to address them.”

● (1550)

If that had been meaningfully applied in Michele's case, she might be here today to testify about extradition instead of being in a grave that her children can only visit.

It's critical, I think, when we're looking at extradition that we recognize what gender-based analysis plus is about because, as you're probably familiar with, there's that wonderful quote from Anatole France, where he said, “The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”

The Chair: Thank you, Mr. Behrens.

Unfortunately, your time has run out. You are going to have to flesh it out in the questions that may arise.

Mr. Matthew Behrens: I'm sorry. Are my five minutes up?

The Chair: Yes.

Next we will go to Ms. Tfaily.

You have five minutes.

Ms. Rania Tfaily (As an Individual): Thank you for inviting me to appear as a witness regarding your study of extradition law reform. As you may know, my spouse, Hassan Diab, was extradited to France in 2014. I have brief remarks based on our experiences.

While there is concern in our legal system about the issue of wrongful convictions, in my experience there is no such concern about wrongful extraditions. The current law is premised on the assumption that the extradited person would receive a fair trial in the requesting state and that extradition is not a trial. However, extradition to a foreign country is not a mere inconvenience. Rather, it is generally a horrific experience.

In Hassan's case he was extradited to France, where he spent over three years without trial confined to a small cell in which he did not see or interact with anyone for 20 to 22 hours per day. He rarely received visitors as we would only travel a couple of times per year given the cost. As a result, he rarely saw his children and family. He also faced a legal system that he was not familiar with, while at the same time, he was isolated, deprived of meaningful social interactions and in a precarious mental state.

In extradition the presumption of innocence is turned upside down. First, the record of the case, which is a document submitted by the requesting state, is held to be presumptively reliable and the burden is on the person sought to demonstrate that the evidence is manifestly unreliable. The threshold is so extremely high that it is unattainable no matter how flimsy the evidence is.

Second, the person sought is not entitled to disclosure of the evidence.

Third, the person sought has no automatic right to call evidence. In Hassan's case the key evidence, which the Crown attorneys referred to as the smoking gun, is handwriting analysis based on just five words written in block letters. Two French handwriting analysis experts had compared what they thought to be Hassan's handwriting from the late 1980s and 1990s with five words on the hotel card written by the suspect in 1980. Neither of the French handwriting analysis experts had to testify or be cross-examined. In fact, the law does not allow the defence to cross-examine them. Rather, their opinions, even though handwriting analysis is commonly believed to be junk science, was considered presumptively reliable. The burden was on Hassan to prove that these two reports were utter nonsense and that they were based on many documents that were not even written by Hassan but by someone else.

It is a fundamental principle of justice that the state should bear the burden of showing that its evidence is reliable. I find that shifting the burden of proof and limiting the ability of the person sought to defend himself or herself and denying them disclosure of evidence is a travesty of justice.

The current extradition law is justified by the need for expediency. However, expediency should not trump fairness. In addition, extraditions in Canada are not expeditious at all. They last years.

The other issue that is often used to defend the current extradition law is the claim of reciprocity and the need to honour Canada's international obligations. However, having an extradition law that is more just and fairer does not undermine Canada's international obligations and the rule of law. While some of those sought for extradition are guilty, the same can be said for those charged with a crime in Canada. However, this does not prevent us in Canada from demanding reliable evidence before the accused stands trial in Canada. We should have the same care and concern regarding extradition so that innocent people don't suffer needlessly.

In reforming the extradition law, I believe that four issues are critical. The evidence submitted by the requesting state should not be presumed reliable. There should be full disclosure of all relevant evidence. The person sought should be allowed—as of right—to call evidence. Extradition judges should be permitted to consider issues of fairness.

Thank you.

● (1555)

The Chair: Thank you, Ms. Tfaily. You had a few more seconds, but you were on time.

Next, we will go to Balpreet Singh from the World Sikh Organization of Canada.

You have five minutes.

Mr. Balpreet Singh (Legal Counsel, World Sikh Organization of Canada): Thank you.

The issue we're talking about today touches on both our mandates, which are to advocate on behalf of Canadian Sikhs as well as to protect human rights for all individuals.

In short, Canada's extradition process is deeply flawed and needs urgent reform.

At the outset, I'd like to say that our organization supports and endorses the Halifax colloquium's proposals for law reform. Specifically, it's our position that human rights considerations must be at the core during extradition processes. While charter protections apply only to Canada and not to foreign states, where there's a causal connection between the abuse of human rights of an accused in a foreign country and Canada’s decision to extradite, charter protections must be in force.

While in the current process human rights are contemplated, those considerations are tempered by considerations of reasonableness and deference by the court to the minister in matters of foreign affairs and international co-operation. This is based on the court's assumption that Canada does not enter extradition treaties with countries not worthy of its trust. For this reason, the Minister of Justice's decision to extradite is largely a political one. We believe that leaves the extradition process open to misuse and abuse.

Specifically, with regard to the concerns of the Sikh community, Canada’s extradition treaty with India is highly problematic. That treaty was entered into in 1987. According to Joe Clark, who was then foreign affairs minister, the key consideration between the negotiating countries was India's desire to extradite Canada-based Sikh “extremists”.

What makes this treaty especially problematic and surprising is that while Canada has [*Technical difficulty—Editor*].

The Chair: Mr. Singh, could you go back 30 seconds? There was a technical issue with your sound. You probably didn't get interpreted either.

I'll give you extra time for the 30 seconds that might have been lost.

Mr. Balpreet Singh: Do you know whereabouts that was? What was the last thing that was heard?

The Chair: You had started with the 1987 extradition treaty with Joe Clark.

Mr. Balpreet Singh: Got it.

Foreign affairs minister Joe Clark had admitted at the time that the key negotiating issue behind the treaty was the Indian desire to extradite Sikh "extremists". What makes this treaty particularly problematic and surprising is that Canada has ratified and is party to the UN convention against torture as well as the International Covenant on Civil and Political Rights, both of which prohibit removal to the danger of torture.

India hasn't ratified the convention against torture, and has long neglected its obligations and reporting duties under the ICCPR. India is not bound by the convention against torture's prohibitions against torture and is not subject to monitoring and review by the UN Committee against Torture. As a result, according to the Asian Human Rights Commission, "Torture is practiced as a routine and accepted as a means for investigation. Most police officers and other law enforcement officers consider torture as an essential investigative tool".

There is a lot of evidence to suggest that torture is routine and very common in India. It is common knowledge among Sikhs that Sikh political activists taken into custody in India are brutally tortured as a matter of routine.

Given the context within which the India-Canada treaty was negotiated, specifically with a desire to target members of the Sikh community, and the fact that during almost every bilateral meeting between Canada and India for well over a decade Indian officials have made unsubstantiated allegations of extremist activity in the Canadian Sikh community, there is a real fear that Sikhs in Canada may be extradited to India and face false charges and torture. On several occasions over the past few years, India has in fact presented Canada with lists of Sikhs in Canada it wants to have extradited.

What India deems as extremism is in fact Sikh advocacy on various issues India finds objectionable. All are protected under Canada's right to freedom of speech, but India has nevertheless repeatedly demanded that Canada crack down on Sikh activists in the country.

Specifically now, in light of the Indo-Pacific strategy launched by Canada, the India high commissioner has said that, in order to improve ties, Canada must crack down on "segments of the Sikh community in Canada [that] are offering support and money to secessionists who want to separate Punjab from India". There is no evidence to substantiate that allegation, but we are afraid that Canada may be pressured by India to extradite Sikh activists in return for closer ties with the country.

It wouldn't be the first time that Canada buckled to Indian political pressure. In the past, where visas to members of Indian security forces have been denied due to suspected involvement in human rights violations, Indian protests have in fact resulted in those visas being issued. It's also felt that, in the aftermath of the Prime Minister's 2018 trip to India, the term "Sikh (Khalistani) extremism" was added to the public safety report on terror at the insistence of the Indian government.

It's our firm position that if extradition is a political consideration that does not have human rights as a central consideration, that's not right. Diplomatic assurances are also not a solution, because they're unenforceable. Where in fact there is a violation, both countries have very little incentive to bring that breach to light.

We submit that Canada should not have an extradition treaty with a country that has human rights abuses or that has failed to ratify human rights treaties. As such, the India-Canada extradition treaty does not meet the necessary standards.

That is my submission.

● (1600)

The Chair: Thank you, Mr. Singh.

We'll now go to our first round of questions. We'll begin with Mr. Brock for six minutes.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): I think it's me.

The Chair: I'm sorry.

Go ahead, Mr. Caputo

Mr. Frank Caputo: Thank you.

I wish I was nearly as handsome as Mr. Brock, but you'll have to put up with me, Mr. Chair.

An hon. member: You have a better hairline.

Mr. Frank Caputo: Mr. Naqvi, no jokes about hairlines, especially from you.

Thank you very much.

Mr. Behrens, you didn't finish your time speaking. I'm prepared to cede the floor to you if you want to finish up your comments, please.

Mr. Matthew Behrens: That's wonderful of you. Thank you.

Where I left off was talking about the gender-based analysis plus and why we need that.

I would like the committee to consider, in addition to the Halifax proposals, which you've either heard about or will be hearing about tonight with Professor Currie, looking at the creation of a body that is independent of the international assistance group.

Right now, a foreign jurisdiction makes a request to the Minister of Justice. It goes to the international assistance group, which makes a recommendation. Then we go to a judicial review and there are final submissions, which go back to the people who initiated the process. We need some kind of independent oversight in there.

As part of that independent oversight, we need to have a real, transparent, intelligible and justificatory analysis, especially in cases that involve women and children who are fleeing violence and for racialized individuals who would clearly face discrimination if they were sent back, even to a jurisdiction like the United States. George Floyd, Breonna Taylor, Tyre Nichols—that's all you need to know.

The problem is that in the Extradition Act itself—and this has been confirmed by the Supreme Court—ultimately the surrender decision is not a legal one; it's a political one. Basically, the Minister of Justice is tasked with deciding whether or not he's going to piss off the United States or piss off the Government of France if they do not receive the requested individual.

That's the problem, where they have this massive discretionary authority to essentially say that someone's charter rights are secondary to their concerns about state-to-state relations. That, I think, is something we really need to look at.

The other thing that's a real concern is that often, when we do present evidence to the Minister of Justice about the risk of torture or the risk of other human rights abuses, they come back at us and say that, if going they're to Chicago, which has one of the highest rates of police torture of Black detainees, there's always a remedy. They can make a complaint to Amnesty International or go to a federal court.

However, redress for harm done is not protection of fundamental human rights. It's an after-the-fact remedy. You should be entitled to human rights protection in the first instance. It shouldn't be payment for damages after the harm has been inflicted.

The other thing I just wanted to share—and I do appreciate not only your beautiful hairline, but also that you're sharing your time with me—is that in the M.M. case, Justice Abella wrote, “At the end of the day, there is little demonstrable harm to the integrity of our extradition process in finding it to be unjust or oppressive to extradite the mother of young children she rescued, at their request, from their abusive father.” She recognized that at the Supreme Court, as did two other justices. The fact that it was split right down the middle by gender is very interesting as well.

If I do have about 30 seconds, one other thing I think really needs to be on the agenda here is the way in which the Extradition Act intersects with the Immigration and Refugee Protection Act. We have seen in a number of instances, especially when it comes to Roma refugees coming from European countries such as Hungary or the Czech Republic, whereby after years of being here as protected Roma persons, suddenly there is an extradition request. Based on the low standards, they then face losing their refugee protection.

We have a number of cases where the Minister of Justice has gone to the Minister of Immigration and asked for a new opinion about the risk, allegedly, that may befall that person if they are sent back to a state where they fled from persecution in the first place.

● (1605)

Mr. Frank Caputo: Thank you.

Ms. Tfaily, you brought up disclosure. This is really a cornerstone of Canadian criminal law.

My question is this: Is somebody who is going to be extradited entitled to the disclosure that is in the possession of the Canadian government?

Ms. Rania Tfaily: This issue has been debated in Hassan's case. The Department of Justice currently says that, no, they are not entitled to disclosure of the evidence that is with Canada. For example, there was a fingerprint analysis that was done in Hassan's case, comparing his fingerprints to fingerprints that were found on documents that were handled by the suspect, and these fingerprints were negative. However, Hassan was not told about that—nor was his lawyer—or about the extradition charge during the committal phase of the extradition hearing. The rationale of the Department of Justice is that Hassan is not entitled to know such evidence because the extradition law allows this.

Mr. Frank Caputo: Was that fingerprint analysis possessed by the Department of Justice at the time?

Ms. Rania Tfaily: Yes, it was done in Canada. It was the Department of Justice that asked France to send the material that it had so they could do the fingerprints in Canada. The RCMP did the fingerprints here. Yes, the Department of Justice had this evidence.

Mr. Frank Caputo: That's interesting. Just so I'm clear—

The Chair: Thank you, Mr. Caputo.

Next we'll go to Ms. Dhillon for six minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Mr. Chair.

Thank you to our witnesses for being here.

I would like to maybe ask a general question. I'll start with Mr. Behrens, Ms. Tfaily and then Mr. Singh.

Can you please comment on the experience of racialized Canadians with the Extradition Act?

Mr. Matthew Behrens: I would be happy to do that. I will give you an example of one Canadian citizen who was sought in a Chicago cold case in 1969. It's called the Freeman case. This is an African American man who came to Canada because his life was at great risk. He lived here peaceably for 35 years. The extradition request was based on the officer who was allegedly injured in the incident being the investigating officer.

When the so-called record of the case was put before the Ontario superior court—I'm going to quote the judge here—it was so full of holes and inaccuracies. There was one account by this police officer in which he said there were seven shots fired. There was another account in the same record of the case, which is presumed to be reliable, of 13 shots. The judge said that, factually, there was a significant difference between the two accounts. You don't have to be a mathematician to know that seven is different from 13. Twelve is about 13 or 14 is about 13, but not seven. What it meant was that the ultimate result may have been another matter quite altogether. Suppose both were included in the record of the case. What's the extradition judge going to do about it? It's very interesting.

It's very interesting that they upheld that extradition and that Mr. Freeman spent years in custody here in Canada. In the end, he was able to settle for an agreement and did 30 days in the Cook County Jail, but he certainly had fear for his life because anyone who has studied Chicago knows that the Chicago police have a very well-documented record of torture of African Americans.

● (1610)

Ms. Anju Dhillon: Thank you so much.

Ms. Tfaily.

Ms. Rania Tfaily: Thank you.

There is this assumption that the justice systems in all countries that have extradition treaties with Canada are fair and are fair for all of the people, regardless of their gender, race, ethnicity and so on. However, this is often not the case. If we look at Muslims in particular, we know that in many countries they are treated unfairly under the law and that there are certain rules of evidence that are eliminated when we have Muslims who are accused. This is the case in France. Human Rights Watch, and there are other organizations, have documented France's use of torture or France's use of secret intelligence that cannot be tested in court. That is rejected in Canada, for example. It is used in order to convict people. I have been working on this case for so much of my life—I think I've spent maybe all of my thirties on Hassan's case—and when talking to people, I find that it is hard to convince them that a country like France is unfair to some segments of people.

I mean, I don't know why. If we look at the U.S., we see that there is racial discrimination. If we look at the history of Canada, we see that there has been discrimination against different people—for example, francophones and indigenous people. This assumption that the justice system is fair to everyone—I don't think it is based on solid evidence.

Ms. Anju Dhillon: Thank you, Ms. Tfaily.

Mr. Singh, I think our time is going to run out, so please take the rest of it to give your statement. Thank you.

Mr. Balpreet Singh: I will just say that it's rather disturbing for my community when India-Canada relations are sometimes dominated by the question of what Sikhs in Canada are doing or not doing. The potential of Sikhs being extradited to a country that routinely tortures, based on a desire to improve ties, that's very scary for our community. That's something that the current system allows. It really shouldn't.

Ms. Anju Dhillon: What would you like to see improved in the current system?

Mr. Balpreet Singh: I think overall, the Halifax colloquium's submissions on reform to the system are very persuasive. I would direct you to them. I think your next witnesses in further sessions will be talking more about that. Specifically, human rights has to be at the core of things. Countries that have not signed onto human rights treaties or that have records of human rights abuses, Canada should not be extraditing people to those countries.

Ms. Anju Dhillon: I thank you so much.

The Chair: Thank you, Ms. Dhillon.

Next, we'll go over to Mr. Fortin for six minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Thank you to the three witnesses with us this morning.

I will begin with Mr. Behrens, if I may.

There is one thing I understand from all the testimony. Clearly, we are nearly all in agreement that Canada must not—

[*English*]

The Chair: Mr. Fortin, could you just pause. Apparently there is an interpretation issue.

[*Translation*]

Mr. Rhéal Fortin: Do you hear me now? Okay.

Mr. Chair, I assume I can resume speaking.

Thank you to the witnesses for being here today. As I said, Mr. Behrens, I would like to begin with you.

Your proposal that Canada must not have treaties with countries that engage in torture or that do not uphold human rights seems self-evident. I do not wish to speak for my colleagues, but I think we pretty much all agree on that. What I am interested in is the proposals.

Under the current system, Canada does not in principle extradite anyone to a country that does not uphold human rights. I think that is already in place. Have there been cases in which persons were extradited nonetheless, as a result of legal errors, for instance? That is possible. You can surely attest to that.

What do you think needs to be changed in the current process or in the legislation to ensure that this does not happen again?

● (1615)

[*English*]

Mr. Matthew Behrens: We recently had a Federal Court case in which the judge found that the extradition gave rise to a substantial risk of torture that had not been assessed by the minister, despite the information that had been put forward to show clear risk of torture. This was with the Government of Mexico.

According to Suresh, the Suresh decision, his extradition was therefore contrary to section 7 of the charter unless there were countervailing exceptional circumstances. Again, I think in addition to the Halifax proposals, which you will be hearing about this evening, we have to look at this law up and down in terms of how it complies with international fair trial standards. Right now, there is so much discretion with respect to the minister's role here and whether or not he orders a surrender it's just not happening. As the Supreme Court has pointed out, ultimately, the minister's concerned about whether or not he's going to antagonize another nation.

We saw this in the Arar inquiry, which was also looking at Canada's complicity in torture. At that time, we learned that the Department of External Affairs kept its human rights records on other countries secret for the specific purpose of protecting Canadian commercial transactions abroad. We have to step back from this and ask, ultimately, are we about upholding charter rights? Are we about compliance with the United Nations Convention against Torture, or are we not?

We see this consistently in the immigration system, where the risk of torture is routinely dismissed by immigration officers in attempts to engage in deportations. We see the same thing with respect to extradition.

[*Translation*]

Mr. Rhéal Fortin: If I understand correctly, you propose that the justice minister should no longer have any discretionary power and that we should ultimately rely on the courts to determine whether a person should be extradited.

Is that correct?

[*English*]

Mr. Matthew Behrens: It would seem to me that a court would be far more independent than the individual who has decided to proceed with the extradition. The minister has already made his position clear by proceeding with the extradition, so he has a bias. He's decided this is a case that needs to be pursued. He fights it in court, even though the court process itself is completely neutered by the Extradition Act. We need to beef up the role of the judiciary in this process, because that's the only oversight mechanism that will ensure the sought individual's rights are going to be upheld and respected.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Behrens.

Ms. Tfaily, do you also think that it should henceforth be up to the courts and not the minister?

[*English*]

Ms. Rania Tfaily: Yes, I agree, because in our experiences, as well, in other extradition cases, generally speaking the Attorney General is not going to take a difficult decision and have a conflict with other countries. However, if judges were to take this decision, we feel the Attorney General can justify this and say, “Canada applied the rule of law. This is what our judiciary has ruled, and we would abide by this.”

[*Translation*]

Mr. Rhéal Fortin: Thank you, Ms. Tfaily.

Mr. Singh, can you confirm that this is also your position and that it should be up to the courts to decide whether an individual is extradited, and that the minister should have no say after having made the initial request?

[*English*]

Mr. Balpreet Singh: That makes a lot of sense. I would suggest that the judiciary needs to have a greater role. There needs to be the review of evidence. The presumption of innocence has to be a part of it. If the minister is to be involved, then the standard of review of the minister's decision has to be on a higher standard. Right now, the lowest standard is used to review the minister's decision, and that's unacceptable.

I'll just go back to your opening point. It's actually not taken for granted that for countries that haven't signed, for example, the convention against torture, we shouldn't be deporting there. We are in fact doing that. For example, the Badesha case was all about sending someone to India, which has not ratified that convention. That's shocking to our conscience. That really shouldn't be happening.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Singh.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Next we'll go to Mr. Garrison for six minutes.

● (1620)

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Mr. Chair.

Thank you to all three witnesses for being with us today.

I'm going to ask one question of each of you if I can get through my six minutes.

Mr. Behrens, in the beginning when you talked about the gender-based problems in the extradition laws, one thing that struck me was the concept of double criminality, and the fact that we proceed on the very narrow grounds that something would be illegal in both countries without considering that the way gender operates in those countries would be quite different, and without considering, I think, what the B.C. Court of Appeal called an alignment test—the possible consequences of this double criminality, and whether they are quite different in the two countries.

Can you say a little bit more about how gender impacts that issue of double criminality? You mentioned child abduction for safety, for instance.

Mr. Matthew Behrens: In the case of M.M., and also in the case of K.T., the ability to actually present evidence of abuse was dismissed as irrelevant to the proceedings. The judge doesn't want to hear about that, because the judge's hands are tied with respect to how the Extradition Act.... They say, “This is not a trial. I'm just trying to look at whether or not there's a prima facie case against you.”

In the case of M.M., we went to leading experts in Georgia—lawyers, university clinics—and got expert opinions to show that, if M.M. had been charged here in Canada, she would have had the right to a full defence. She did not have that right in Georgia, and under the Extradition Act you cannot proceed if that is the case. Unfortunately, the minister just disagreed and went ahead. Any good judge looking at that would have said that cannot stand.

Mr. Randall Garrison: Thank you.

Ms. Tfaily, on the question of whether someone being surrendered will be tried within a reasonable time, certainly the poster of bad surrender is your husband's case—three years without a trial. Do you see any way that Canada could refuse a surrender under the current circumstances if there's not an assurance already to go to trial?

Ms. Rania Tfaily: I think that the threshold for assurance is very low. The state would only have to say that it is going to take the case to trial.

In Hassan's case, his lawyer argued in front of the court of appeal that France was not ready for trial and that it was still investigating the case. The Minister of Justice said that France had charged him and was ready for trial. Hassan went there and it was for an investigation. The investigation took three years and two months, and then he was released because the two investigative judges found that the evidence supported his innocence rather than his guilt. That's why he returned to Canada.

Under the current system, the requesting state can say that it's ready for trial. That's all it takes and the Minister of Justice would believe that.

Mr. Randall Garrison: Can you tell us briefly what's happening with your husband's case now in France?

Ms. Rania Tfaily: In France, there has been this back and forth between different investigative judges. Hassan was ordered to be released on bail seven different times, I think, but the court of appeal would quash it every time even though different judges would order his release. For his release from detention and return to Canada, the court of appeal kept postponing the decision over two years. Eventually, a new panel of judges overturned the previous investigative judge's decision. Now France plans to proceed with a trial in April.

Mr. Randall Garrison: There is a risk that there might be a further request for extradition.

Ms. Rania Tfaily: Yes.

I do want to mention, if I can have 30 seconds, that Hassan was extradited on the basis of handwriting. It's not just because I'm his spouse, but I'm still shocked that this happened based on five words. Imagine that in this age we would say we can identify a person based on the handwriting analysis of five words.

We had about five experts from different countries who all said that this is utter nonsense. In France, two more experts were hired and they said they agreed with the defence experts in Canada that this was utter nonsense. Here we are, after 15 years, still in this.

Thank you.

● (1625)

Mr. Randall Garrison: Mr. Singh, I'd like to talk again about the treaties.

What you've highlighted in your testimony is that we not only have a very dated and faulty extradition law, but we don't have any process for reviewing the extradition treaties. Many of them are also quite old.

Do you think that there should be some process for reviewing on a periodic basis the extradition treaties we have? In that process, we could also check for the convention on torture and those kinds of things.

Mr. Balpreet Singh: Absolutely, I would suggest that there needs to be a regular review of our treaties. We need to make sure that the countries we have these treaties with are living up to their obligations under the treaties.

Like I said, India is a signatory to but has not ratified the torture convention. Even with the ICCPR, which it has ratified, it has not been meeting its obligations and has not been reporting for, I think, 20 years.

Even though it is [*Technical difficulty—Editor*] not living up to its obligation [*Technical difficulty—Editor*] a review of our treaties is very important, as is actually seeing whether they're living up to their human rights obligations.

Mr. Randall Garrison: Who would be—

The Chair: I'm sorry, Mr. Garrison. You're out of time.

Before I go to the next round, I wanted to use my liberty as chair to ask a couple questions.

Ms. Tfaily, I think Mr. Garrison asked you a similar question, but can you tell us how long it took for the trial of your husband to actually commence? Do you know of other similar cases that might have taken a long time that were extradited from Canada?

Ms. Rania Tfaily: In Hassan's case, he was extradited in November 2014. He was in prison in France until January 2018. During all this period, the investigative judge was still investigating the case. In January 2018, he said that he was not going to order a trial and Hassan was released. It took three years and two months.

I didn't review other cases regarding how long they stayed.

I wanted to mention that in Hassan's case, the case started in 2007 by a leak to a journalist, so he was under surveillance by the RCMP for a year. After a year, France requested his extradition. This is from 2008 until 2014, which was his extradition hearing. Then from 2014 to 2018, he was in prison. From 2018 until now have been the appeals in France.

This is not over, so it's going to take 20 years or so of one's life and the lives of children and other family members.

The Chair: It's going against the principles of fair and quick access to justice.

Mr. Singh, in the last 10 years—if you can recall—how many extraditions have happened to India, and if so, did they go up against any court challenges or have they all been quashed? You had a lot of concern about the fact of India's extradition requests. I'm just trying to understand how many might have happened in the last 10 years.

Mr. Balpreet Singh: The main one, of course, is the Badesha and Sidhu one. That case was an interesting case in the sense that it was an honour killing. The accusations and, basically, the proof that was being submitted were quite convincing. Sometimes I say that bad facts make bad law. I would suggest that the emotional considerations in that case allowed for the extradition to India, but the fact is that any extradition to India should not be happening, based on their refusal to abide by human rights norms. Second, I would suggest that, where prosecution could take place here in Canada, that should be our first choice as opposed to sending people somewhere else to have that done.

What's also quite concerning is the fact that India regularly and publicly talks about lists that it's submitting to Canada of Sikh activists that it wants to be extradited, and that's definitely a concern. It's not that any of them have been extradited. However, the possibility that this could happen, and that Canada has the channels open to have that happen, is very concerning.

The Chair: Thank you, Mr. Singh.

I'll go to our next round of questions.

We'll begin with Mr. Van Popta for five minutes.

● (1630)

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for being here.

Mr. Singh, I will start with you. Thank you for your evidence.

Your website expresses concern that, in India, state criticism and dissent are labelled extremist and antinational, and that Indian security and intelligence agencies have been cracking down on those exercising what, quite frankly, here in Canada is quite lawful.

Is that a serious concern? Doesn't the double criminality test requirement prevent us from extraditing people from Canada to India on those types of charges?

Mr. Balpreet Singh: What we're seeing are concocted charges. India is an outlier in the fact that putting up a poster or graffiti outside of your own home, in fact, is now being cracked down on. For example, people have been arrested for writing “Khalistan” on the walls of their own homes. Having said that, these individuals aren't necessarily charged with [*Technical difficulty—Editor*]. There are concocted charges—“support of terrorism” or “funding of terrorism”—and that's what we're seeing here. Activists who are talking about Khalistan or human rights abuses in India are being accused of funding terrorism.

The fact is that Canada's system does not allow for an in-depth examination of that evidence. Often just the accusation itself and the superficial summary of that so-called evidence would be enough to allow for an extradition if the minister wanted to do so. Given that India is saying that closer ties are dependent on Canada's cracking down on Sikh activists, it makes us very nervous.

The last time Canada granted visas to human rights abusers—Punjab police officers who were accused of human rights abuses and were long-denied visas—was right before Prime Minister Trudeau's 2018 trip to India. Four of them were granted visas at that time. That was clearly a political decision. What scares us is that a political decision could happen in the future to extradite Sikh activists, and there would be nothing we could do about it.

Mr. Tako Van Popta: Thank you.

I believe you said that India did not ratify the UN treaty against torture. If it had, would that make a difference to you?

Mr. Balpreet Singh: Not just ratifying.... For example, it has ratified the International Covenant on Civil and Political Rights. The fact is that for over 20 years it has neglected its obligations and reporting requirements under the ICCPR, so just signing it is not enough. There has to be a demonstrable adherence to those norms. What we're talking about is routine torture.

I have an article from December 2021 by a Dr. N.C. Asthana, former director general of police from India, who writes that “torture and fake encounters came to be regarded as...in 'national interest', [and] rewarded with medals” where people are accused of being separatists.

This is a serious problem, and just ratifying a treat is not enough. You have to demonstrate that you're following those obligations.

Mr. Tako Van Popta: Do you see any way at all for Canada to have an extradition treaty with India?

Mr. Balpreet Singh: Of course. Any country that demonstrates that it is adhering to human rights norms should be a country that we can consider entering into these things with.

Now, of course, what we are submitting is not just about India. We're talking about the whole extradition process, which needs serious reforms. There needs to be, once again, a presumption of innocence, greater analysis of the evidence and the removal of political considerations. The standard of review needs to be higher. It's not just the lowest standard of review.

Is it possible? Yes, but the path to get there would be incredibly long, especially for India.

Mr. Tako Van Popta: Just so I'm clear, a country like India—and we could talk hypothetically about other countries as well—would, as a bare minimum, be required to have adopted the United Nations declaration against torture or some other similar international agreement, but that is not enough. It's a necessary condition but not sufficient for us to have an extradition relationship with this country. Is that your evidence?

Mr. Balpreet Singh: That's right. I would suggest that meeting the obligations underneath the treaty, for example, reporting obligations and, where you have the convention against torture, having the Committee against Torture doing the reviews....

Unfortunately, we feel that, even if there were a ratification, there would be a bar on the UN Committee against Torture doing the reviews. Amnesty International is barred from operating in India, because they don't want any review of their human rights record. All of this is very disturbing.

● (1635)

Mr. Tako Van Popta: Time is up. Thank you very much.

The Chair: Thank you, Mr. Van Popta.

Next we'll go to Mr. Naqvi for five minutes.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Thank you very much, Mr. Chair.

I'm going to be directing some of my questions to Ms. Tfaily.

In light of full disclosure, I just want to let everybody that I know Ms. Tfaily personally and that our children have played together quite often in the past. I know the family and their circumstances quite well.

Thank you for being here. I know that this is a very difficult topic for you because of what you have lived through and continue to live through due to Mr. Diab's case. I was particularly interested in the four recommendations you made at the end of your presentation. I felt that you may have run out of time. You were going through those four recommendations a little quickly.

Do you want to take some time to talk about those four recommendations, Ms. Tfaily, and explain to us why you feel they're important and why this committee should consider those recommendations in their report?

Ms. Rania Tfaily: Yes.

The first recommendation was that the requesting state's evidence should not be presumed to be reliable. With the current system, all the requesting state has to do is a summary of the evidence. They don't have to disclose the evidence. In Hassan's case, they didn't even have to provide the handwriting analysis report. They only had to say that French expert X had come to this conclusion. That is presumed reliable. This shifts the burden onto the person sought to try to rebut it.

We had to have handwriting experts from different countries. We hired ones who worked for the FBI and the RCMP, and some who were Swiss. All of that not only cost money, with extra legal fees and was extremely expensive and unaffordable, but our system is based on the premise that the state should provide evidence of the reliability of its evidence, rather than the other way around. That's why shifting the burden to the person sought is not fair.

The second one is that when a person is going to be deprived of his or her liberty by going to prison for so many years, they should be allowed a chance to defend themselves. There should be disclosure of relevant evidence. We are not saying tons or all evidence that has been collected, but at least relevant evidence.

In Hassan's case, France did not disclose much relevant evidence. For example, they had done analysis on the hotel card. In France, this was done in 2008 and it's different from the one that was done by the RCMP. It showed that the fingerprint on the hotel card that was signed by the suspect was not Hassan's fingerprint. This was suppressed from the Canadian court. Actually, the Canadian court said that no fingerprint existed on the hotel card. We found out later, after Hassan was in France, that this was not truthful. If we had disclosure of the relevant evidence, Hassan would have known this and it could have made a difference in his extradition.

The other point is that Hassan was not allowed to call evidence. This is common to all people facing extradition. We had to convince the judge that the evidence Hassan was presenting was really relevant and it could knock the case out. The bar was very high. Hassan's lawyer had to argue for so many days in court for Hassan to be allowed to call the handwriting experts, for example.

The last one was mentioned by others. Extradition judges are not allowed to consider issues of fairness. In Hassan's case, the extradition judge would say things in court like, if this were in Canada, he would have done something different. He would say that, whether he liked it or not, this is the law and he has to abide by what the law says, even if he does not like it. When issues about fairness were mentioned, he would say that it was not under his domain, but that it was up to the Minister of Justice.

Again, I think we should empower the judges because they are more independent. I think judges in Canada are more likely to take difficult decisions than a Minister of Justice.

● (1640)

Mr. Yasir Naqvi: Thank you.

The Chair: Thank you, Mr. Naqvi.

We will next go to Mr. Fortin for two and a half minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Ms. Tfaily, you are correct in saying that, at present, the court that evaluates a request must presume the reported evidence to be reliable. The goal is not to determine whether the person is guilty, but rather to determine whether they should be extradited.

If it is decided, however, not to extradite the person on the basis of the minister's good will, but rather on the basis of a Canadian court's decision, in your opinion, should that court then have to conduct a trial with due process to determine the individual's guilt?

What do you propose?

[*English*]

Ms. Rania Tfaily: I don't think it's going to happen, but if this were my personal decision, I think prosecutions should happen in Canada. If there is going to be a trial, I think it should happen in Canada, rather than Canada extraditing to other countries where there might be torture or long imprisonment. The rules of evidence might be very different from here. I think for fairness and to ensure that those who are guilty are brought to justice, prosecutions should happen in Canada. With Zoom—which we have been doing through the pandemic—I think this is achievable, in order to have witnesses who don't want to travel to Canada to appear by video conference.

If this is difficult to implement, then I believe that judges should be empowered and the extradition law should be changed to allow the person sought a meaningful chance to defend themselves.

[*Translation*]

Mr. Rhéal Fortin: In the case of extradition, however, we assume that the crime was committed in a third country, not in Canada. So it is a crime under the laws of that country. In principle, a Canadian judge cannot and should not rule on a case involving another country and its laws.

Do you not think it is problematic in terms of procedural fairness and justice for a judge who is not familiar with the applicable law to determine an individual's guilt?

[*English*]

The Chair: Go ahead very quickly, Ms. Tfaily.

Ms. Rania Tfaily: There are many countries that Canada has extradition treaties with, and they don't extradite to Canada. France, for example, does not allow its citizens to be extradited to Canada. Rather, it holds the trial in France for them. Why can France do that whereas Canada does not? France is trying to protect its citizens, while Canada often tries to leave them without protection.

[*Translation*]

Mr. Rhéal Fortin: Thank you.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Mr. Garrison, you have two and a half minutes.

Mr. Randall Garrison: Thank you, Mr. Chair.

I know we started a bit late, and we're going to run into time problems with our next panel.

I'll just close by thanking the witnesses once again, particularly Ms. Tfaily, whose family has gone through enormous struggles with this. I think that the strength of her presentation today is a testimony to the strength of the family. Thank you, once again.

The Chair: Thank you to the witnesses. I want to thank Ms. Tfaily, Mr. Behrens and Mr. Singh for their time.

We're now going to suspend for a minute or two while we do sound checks for our next panel.

Thank you.

● (1640)

_____(Pause)_____

● (1645)

The Chair: We'll resume.

Hopefully all of you on Zoom and Mr. Neve here learned my protocol on 30-second cards. I give a red card when your time's up. I don't like interrupting.

Make sure that you have your interpretation on the right channel so that we don't have any challenges with interpretation. For those on Zoom, you can pick floor, English or French. In the room, you can do the exact same thing.

We'll begin by having opening statements from our witnesses for five minutes.

We have, as individuals, Mr. Robert Currie, professor of law, Schulich school of law, Dalhousie University; Dr. Joanna Harrington, professor of law, faculty of law, University of Alberta, by video conference; and Alex Neve, senior fellow, graduate school of public and international affairs, University of Ottawa.

Thank you for returning. I think you guys were all scheduled the other day. Unfortunately, because of technical difficulties, we had to reschedule you. Thank you for your consideration in that regard.

I'll begin with Mr. Currie, for five minutes.

Mr. Robert J. Currie (Professor of Law, Schulich School of Law, Dalhousie University, As an Individual): Would it be okay if I ceded my spot to Mr. Neve? I think it would be better if he set things up.

The Chair: We'll go with you first, Mr. Neve, for five minutes.

Mr. Alex Neve (Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual): Thank you very much, Mr. Chair. Yes, we have a bit of a game plan for you.

You have just heard about Hassan Diab's labyrinth of injustice from his wife, Rania Tfaily. I want to begin by really acknowledging what a courageous and remarkable woman she is and, as I think many of you said in your comments, the incredible injustices that the family has been through.

I, too, want to highlight key lessons from that case, which begins on October 3, 1980, when four people were killed and 40 others injured in a terrorist bombing outside a synagogue in Paris, a harrowing crime for which there must be justice. Twenty-eight years later on November 13, 2008, Hassan Diab, a Canadian citizen, was arrested on a French extradition request, accused of carrying out that attack. Over the next six years, he went through lengthy extradition proceedings but ultimately was extradited to France.

You've heard about the debacle of the handwriting evidence in his case, which Ontario Superior Court Justice Maranger described as “highly susceptible to criticism and impeachment.” Nevertheless, Justice Maranger concluded that he had no choice but to order extradition even though, in his words again, “the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial, seem unlikely.” That was the outcome because the threshold for extradition is that low.

Hassan Diab was imprisoned in a maximum security prison in Paris for three years and two months, in solitary confinement almost the entire time. It's worth reminding ourselves that international human rights standards recognize that prolonged solitary confinement beyond 15 days constitutes torture or cruel treatment. He was held that long because, despite French assurances that they were ready to go to trial, they clearly were not.

The weak case against against Dr. Diab collapsed further. Judges eventually corroborated his long-standing claim that he had been in Lebanon writing his university exams at the time of the bombing.

Finally on January 12, 2018, French judges concluded there was insufficient evidence to charge him and ordered his release. He returned to Canada, but this was not over. The French prosecutor appealed. The appeal was upheld, and as you've heard, a trial against him will now take place in Paris in April. His extradition has not been sought a second time. Instead, he is being tried in absentia, which of course raises further fair trial and justice concerns. To call his experience Kafkaesque would be a dramatic understatement.

Further concerns have emerged about the earlier extradition proceedings, including revelations that Canadian government lawyers did not disclose exculpatory evidence that Dr. Diab's fingerprints did not match fingerprints on record and that government lawyers were actively advising the French government about how to strengthen its collapsing case against Dr. Diab.

In a 2019 external review report, former Ontario deputy attorney general Murray Segal found that the Diab case had been handled ethically, in a manner that was consistent with Canadian law. He noted, however, that he had not been tasked with reviewing Canadian extradition law and policy more broadly, and it is that qualification that makes your study of extradition reform so important.

Hassan Diab was extradited because the obvious misgivings and unease of the presiding judge that this was a weak case and that he was unlikely to be convicted in a fair trial didn't matter. He was extradited even though the extraditing state was clearly nowhere near ready to go to trial. He was held without going to trial for over three years, almost the entire time in solitary confinement, a clear violation of international human rights. Exculpatory evidence was withheld, and Canadian government lawyers appeared more intent on assisting the French government than upholding the rights of a Canadian citizen.

A Canadian citizen can be extradited to France in such spurious circumstances as this while French law does not allow any French citizen to ever be extradited to Canada. All of this happened even though Dr. Diab was represented by some of the most experienced defence lawyers in the country. If that human rights travesty is consistent with Canadian extradition law, there is something woefully wrong with extradition law.

You're going to hear a tremendous proposal for reform from Professor Currie.

● (1650)

Thank you.

The Chair: Thank you, Mr. Neve.

Now we'll go to Professor Currie for five minutes.

Dr. Joanna Harrington (Professor of Law, Faculty of Law, University of Alberta, As an Individual): No, I think it's going to be me, if that's okay.

The Chair: We'll let you do whatever you want. You can go for five minutes, and then we'll go to Mr. Currie after.

Dr. Joanna Harrington: Thank you very much for the opportunity to be here today.

I'm going to comment on three areas that need extradition law reform. My first area of focus concerns the need for greater transparency and government disclosure of extradition-related data.

One lesson learned from the media coverage of several contentious extradition cases is that the public needs to more clearly understand the extradition process, the role of the courts, the role of the minister and the timelines involved. In the Meng Wanzhou extradition, the Department of Justice did eventually publish an infographic, a fact sheet and some statistical information, but more is needed.

Extradition law and practice are not well understood widely, and if we are to improve extradition, we need the data held within government. I suspect that this data will show that extradition is often not the speedy, efficient process it is pitched as being. We need to understand why, and to do that we need the disclosure of information.

There are statutes that require designated ministers to prepare an annual report to Parliament on the implementation of a treaty and the enforcement of an act. The Corruption of Foreign Public Officials Act provides an example. It requires the ministers of foreign affairs, international trade, and justice to jointly prepare a report on the implementation of the Anti-Bribery Convention and on the enforcement of the related legislation.

In my view, a similar reporting obligation is needed in the Extradition Act so as to require the regular public disclosure of the number of extradition requests Canada receives, from which countries and for what crimes. This annual report to Parliament should provide some information on what evaluation was undertaken of the requests received, the reasons for any delay and the end result.

It would also be helpful to indicate whether the individual to be extradited is a Canadian citizen or a permanent resident. I make this last point as the cases that have taken many years in the Canadian courts so often have involved requests for the extradition of Canadian citizens.

There's also a need to require the public disclosure of the assurances provided by a foreign country that are used to secure an individual's extradition. With Canadian jurisprudence supporting the use of diplomatic assurances to alleviate any potential human rights risks arising, there is a rule-of-law rationale for making these assurances publicly available. Secrecy does not build trust in the rule of law, and publicity would add strength to any assurance provided by a foreign state.

My second area of focus concerns the siloed nature of extradition practice and its centralization within the Department of Justice. By its very nature, extradition involves and has implications for both international law and international relations. It's for this reason, I submit, that extradition needs the involvement of both the Minister of Foreign Affairs and the Minister of Justice.

The Extradition Act imposes a consultation obligation for the Minister of Immigration but no consultation obligation for the Minister of Foreign Affairs, despite the expertise available to the foreign affairs minister to assess a foreign state in terms of its human rights record, the fairness of its trials and the conditions of its prisons. A foreign affairs ministry also has the capacity to undertake the post-surrender monitoring recommended by an Australian parliamentary committee.

Foreign affairs considerations should also be addressed at an earlier stage in the process, upon receipt of an extradition request. Justice Canada could be obliged to work with Global Affairs Canada on the consideration of all possible grounds for refusal of an extradition request at the preliminary stage rather than many years later in controversial cases. Alternatively, the evaluation of an extradition request could be made the responsibility of the Attorney General of Canada as the chief law officer without the political responsibilities of the job of the justice minister.

The third area for reform is the role of the extradition judge. Since extradition involves the loss of an individual's fundamental right to liberty, a rational basis exists for a more robust role to be accorded to the extradition judge. Indeed, in Victorian times it was the role of the judge to consider whether extradition in the circumstances was unjust or oppressive. Today Canadian extradition law directs that the justice minister make that call. Enabling a more robust role for the extradition judge would allow an individual's circumstances, the values of the Canadian legal system and the human rights record of the requesting country to be considered directly and openly by a court.

● (1655)

On that note, I cede the floor to my colleague, Professor Robert Currie.

The Chair: It's over to you, Mr. Currie.

Mr. Robert J. Currie: Thank you, Mr. Chairman. I hope that I will have been worth waiting for.

I am honoured to be invited to address this committee and of course would be very pleased to answer any questions that members have after my opening remarks.

From the beginning, concerns were raised about the legal processes that were put in place under the Extradition Act, and specifically about the fairness of those procedures.

The Supreme Court of Canada itself raised concerns in its 2006 decision in the United States v. Ferras and put in place legal tests that were meant to ensure fairness. However, concerns remained, demonstrated most poignantly by Dr. Diab’s case, as you've heard.

In 2018 I had the honour of chairing a colloquium, hosted by the MacEachen Institute at Dalhousie University in Halifax, on the topic of reforming Canada’s extradition laws, policies and practices. The colloquium was attended by people from across Canada who had expertise in extradition, international law, constitutional and criminal law, policy and human rights. It included Professor Harrington and Mr. Neve, who are also appearing here today.

We produced a draft document that highlighted problems with extradition in Canada and proposed solutions, on which we received further input during a subsequent meeting hosted by Professor John Packer at the University of Ottawa.

The end result was a document entitled “Changing Canada’s Extradition Laws: The Halifax Colloquium’s Proposals for Law Reform”, which I will refer to as the Halifax proposals. It was published in 2021, and it is in materials that were circulated to you in advance of this hearing today.

The document is 20 pages in length and covers a lot of ground, and I wouldn't be able to review it in detail for you. What I want to flag for the committee, however, is that the Halifax proposals are a serious and detailed plan for the reform of Canada’s extradition regime, formulated by people whose motivation is to improve the way these laws work and to protect the fundamental rights of Canadians.

I and the other authors of the report sincerely hope that it can be a helpful part of meaningful parliamentary scrutiny into this issue, as begun by this committee today in these hearings.

The idea is not that tinkering is required but rather that a broad inquiry be made. At the heart of it is the proposition that Canada's laws, policies and practices around extradition need to be scrutinized and reformed in accordance with three general principles: first, fundamental fairness; second, transparency; and, third, a rebalancing of roles. By a rebalancing of roles, I mean that the roles of the courts and the government need to be rebalanced, and that we also need a rebalancing of charter protections and administrative efficiency.

I want to emphasize that, while much of the reform agenda that we propose would involve amendments to the Extradition Act, the ambit is much wider than that. The Halifax proposals dig into pretty much the entire scope of extradition matters in which Canada plays a part. You've heard a selection of proposals that are included within the report and very much resonant of it from Professor Harrington, who was of course one of the attendees at the Halifax colloquium.

The Halifax proposals, though, look at the court procedures for the extradition hearings that take place here in Canada, as well as the process by which the Minister of Justice makes the final decision on extraditing each case. However, they also make recommendations on the international aspects of extradition, including Canada's practices in signing and administering treaties with other countries; Canada's role in ensuring fair treatment of individuals once they are extradited; and how the entire process needs to adhere to Canada's international human rights law obligations. They further look at the role of the international assistance group and make suggestions for how that office could play its role differently and how it could be restructured to facilitate that different role.

I will conclude by suggesting that the world of extradition has traditionally been quite murky and below the public's radar, and troubling problems have been allowed to grow. The more Canadians have heard about cases like Dr. Diab's, the more disturbed they have become. This committee's inquiry represents a historic opportunity for Canadians to have input into a process that affects the rights of Canadians and others and to ensure it's administered in a way that is fair and that comports with the principles of fundamental justice.

● (1700)

Thank you.

The Chair: Thank you.

I want to thank all three of you.

We'll begin our first round of questions. Since we started late, I'm going to do five-minute rounds and then four minutes and then two minutes, so we can be back on track.

We'll begin with Mr. Brock for five minutes.

● (1705)

Mr. Larry Brock (Brantford—Brant, CPC): Thank you, Chair.

I'd like to thank all of the witnesses for your attendance and your participation in this study.

Turning matters over to you, Professor Currie, with respect to the Halifax conference, were any members of the federal government in attendance?

Mr. Robert J. Currie: They were not. This was.... I guess you'd call it a gathering of like-minded people who had previously expressed an interest in extradition reform. I don't think it was a secret. It was publicly known about meeting, but there were no attendees of the Crown.

Mr. Larry Brock: Following the conference and prior to release of the recommendations in 2021, were there any consultations with any members of the federal government with respect to the details of those proposals?

Mr. Robert J. Currie: Not prior to its publication, no.

Mr. Larry Brock: Following publication, can you elaborate on what discussions you had with the federal government?

Mr. Robert J. Currie: We sent a copy of the report to the Prime Minister, and that report was copied to a number of ministers, certainly the Minister of Foreign Affairs and the Minister of Justice. I can't bring the rest to mind, but there were several.

A number of us had conversations with interested parties, certainly with politicians, I think, federally and provincially. I'm certainly one who talks about extradition to anybody who will listen.

Mr. Larry Brock: Thank you for that.

Did any member of the federal government express a willingness to advance any of these proposals for improving the Extradition Act?

Mr. Robert J. Currie: Advance them...? In what sense, sir?

Mr. Larry Brock: In terms of accepting the recommendations and making suggestions to the department.

Mr. Robert J. Currie: No. Certainly, the Minister of Justice was aware, and it was really an awareness-raising exercise. Any conversations that we had, to the best of my recollection, were along the lines of "Here is a proposal. We think law reform is called for." The response was always, thank you very much.

Mr. Larry Brock: All right.

In an ideal situation, the government may or may not move forward with all of your recommendations, or this committee itself may ultimately produce a study that makes those recommendations on your behalf. Failing that, if you had to identify, say, your top three proposals that would significantly alter the landscape of the existing Extradition Act—bearing in mind the principles you've touched upon and elaborated upon, and also the issue of charter compliance—what would you suggest would be those top three proposals that this committee and this government should seriously look at?

Mr. Robert J. Currie: I think changes to the committal process are the number one priority. That is really where Dr. Diab's case rests in terms of the demonstrable problems. I'd highlight that as part number one.

There are a number of changes that could be made. Certainly, any exculpatory evidence in the hands of either the Canadian Crown or the foreign state should be disclosed to the defence. We propose that the presumption of reliability around the record of the case that's sent by the foreign state be removed. There's a package, I guess you'd say, of issues there.

Second, a number of the bases for refusal in the act are allocated through the Minister of Justice. The minister is empowered to refuse on certain grounds, such as if the person will face double jeopardy or undue oppression. Some of those questions are inherently legal questions, and we think are not necessarily appropriately allocated to the minister, who's acting in an explicitly political capacity as well as a legal capacity.

I guess that would be number two.

Number three would be a look at restructuring the international assistance group and dividing up the functions in terms of which staff, which lawyers, are allocated to fight the case on behalf of the requesting state in our adversarial system. There's nothing inappropriate about doing that, but that branch of the office should be separate from the branch wherein the minister makes the surrender decision, so that's it's not all sort of emerging from a black box.

I would say those would be my top three.

Mr. Larry Brock: Thank you.

The Chair: Thank you, Mr. Brock.

We will now go to Ms. Lena Metlege Diab for five minutes.

● (1710)

Ms. Lena Metlege Diab (Halifax West, Lib.): Thank you very much, Mr. Chair.

Welcome to all of our witnesses. I want to say a special welcome to Professor Currie, who is a constituent of mine. Although I've not spoken to him with regard to his testimony today, I did receive a message that he was appearing today.

Let me just thank you and all of the witnesses for all of the work you did in 2021 in the MacEachen Institute to bring forth this very important deficiency in some of the laws we have.

Extradition is poorly understood by the general public in Canada. I have your report here. There are 12 points. Let me go to number nine, in which you say:

> There should be government/Parliamentary oversight of the activities of IAG, and the ability for meaningful public scrutiny of its activities and of the extradition process generally. This should involve appropriate transparency and publication of data and information.

Where do you think the proposed oversight should live? How should our committee play that role? Obviously, by your bringing this forward today and our bringing it here, we're starting to play a role, but what else can we as parliamentarians do?

Mr. Robert J. Currie: I'm sorry, Ms. Diab, but are you directing that question to me?

Ms. Lena Metlege Diab: Yes, Professor.

Mr. Robert J. Currie: Thank you.

Professor Harrington covered a couple of the answers to your question in her remarks.

I wouldn't presume to tell Parliament how to do its job, but there are mechanisms that are already used. I think of the Security Intelligence Review Committee, which oversees the Canadian intelligence apparatus and is the receiver of annual reports on the kinds of activities engaged in by the particular departments and particular government entities.

To echo what Professor Harrington said, I think that's a good starting point. The IAG could be mandated in the Extradition Act to produce an annual or biannual report that provided statistics about the kinds of extradition requests that were made and the status and consideration of cases, naturally removing any privileged and confidential information.

We all know that state-to-state communications are privileged, and I'm certainly not suggesting that the entire thing needs to be blown wide open. I know that's a concern the IAG has. There is a distinction between the communications themselves and the fact of communications. There's a lot information that could be provided there.

As well, I think this committee could certainly recommend to Parliament that the Extradition Act be amended to insert a requirement that data be published on a website. When I say data, I mean not just statistics in this sense but also internal policies and practices. I'll draw the example of the Government of the United Kingdom, which publishes its governmental policies around the international co-operation techniques in which it engages. It openly says, “Here are the things that the home secretary considers”, and that kind of thing, with lists of considerations.

That's the kind of thing I'm talking about and that we are proposing in the Halifax proposals when we say transparency and publication of data and information. It's very helpful and democratically appropriate for Canadians to be able to access this information, again, subject to national security, privilege and international relations.

Ms. Lena Metlege Diab: I have another quick question. I know the previous witnesses dealt with this, and so did the witnesses here.

The Extradition Act sets out a series of mandatory or discretionary grounds for refusing extradition.

Which one of you three would be able to comment a little bit, in whatever time I have left, about what you think would be appropriate grounds? I know that's been commented on already, but I would like to have a bit more of that on the record.

Mr. Robert J. Currie: I'll toss one in.

I'll simply say that I think one ground for refusal should be extreme disparity of sentencing between Canadian criminal law and the foreign state's criminal law. That has been a problem in numerous cases since the new act was brought in.

I'll leave it there and see if my colleagues have other proposals.

● (1715)

Mr. Alex Neve: I'll build on that and add into the mix any concerns that the extradition is going to lead to a violation of Canada's international human rights obligations.

The Chair: Thank you.

Ms. Lena Metlege Diab: Thank you very much.

The Chair: We'll next go to Monsieur Fortin for five minutes.

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Chair.

Thank you to the witnesses with us.

Mr. Currie, your report on the Halifax proposals appears to be exhaustive and we will certainly draw on it.

I would like to hear your thoughts on how we should proceed. In extradition cases, for instance, we focus on determining whether there is a reasonable possibility that the person subject to the extradition request will be found guilty of the crimes of which they are accused in another country.

That is not clear to me. From what I understand, at this time, it is assumed that the report provided is reliable.

In your opinion, should the individual be tried here, in Canada, to be sure of their guilt before they are extradited, or at least to ensure that it is beyond a reasonable doubt that they will be found guilty?

[*English*]

Mr. Robert J. Currie: Thank you for the question. We do deal with that in the report.

There are some cases in which that's an option, where Canada could prosecute but also the foreign state could prosecute. It's not an option in every case simply by way of the international law of jurisdiction and the way Canada conducts criminal prosecutions, but there are some cases—and I'll specifically mention those dealing with Canadian citizens—where, if there's a cross-border aspect to the case, it may be that Canada has the option of prosecuting as well as the foreign state.

What we're proposing is not that it be an automatic prosecution in Canada in such cases, although that's not a bad idea. What we're proposing is that it would be a presumption. It would be presumed that Canadians would be prosecuted here in Canada if that was a legal option, unless the government can show that it would be the interest of justice for that person to be prosecuted in the foreign state. The Government of the United Kingdom brought in a rule of this sort about a decade ago. It's called the forum bar rule. It dealt with cases that caused a lot of public disturbance in the U.K., where people were threatened to be extradited to the U.S. for activities that were mostly related to the United Kingdom.

We think a rule that operated similarly could be brought in here. It would fully flesh out the rights of Canadian citizens under section 6 of the Charter of Rights and Freedoms.

[*Translation*]

Mr. Rhéal Fortin: In that case, however, that means that there would be a trial here, in Canada, before a Canadian court, to determine the guilt of an individual accused of breaking the law in a foreign country, whose laws and offences are not necessarily the same as in Canada. The degree of evidence could be different.

Many situations come to mind in which it could be complicated to hold a trial in Canada before a court or a judge who is completely or quite unfamiliar with the rules that apply in the other country.

Does such a proposal not pose too many procedural obstacles?

[*English*]

Mr. Robert J. Currie: Okay. I think I understand your question a little better.

In principle, extradition is an important tool and a necessary tool in order for Canada to meet its international obligations and in order to ensure that people who break the law face justice. There may be more situations in which it's appropriate to hold trials in Canada than is currently the case, but there are always going to be lots of cases where it's appropriate to extradite the individual as well.

In making the Halifax proposals, we were sensitive to the issue that the extradition hearing in Canada is not a substitute for a trial in the foreign country. We fully anticipate there will always be extradition. There will always be people sent for trial in foreign countries. What we would like to see is a fairer way of making the determinations about whether or not to extradite and, yes, it may involve more consideration of what the foreign state's criminal law system looks like, but that evidence is available out there and it's available to be put before the court.

When you combine that with closer attention by the government to the state of affairs in the foreign state, both generally and with respect to particular cases, I think we could get an extradition process that works just as well, just as effectively and smoothly, but works in a more fair manner and prevents miscarriages of justice, such as what is happening to Dr. Diab.

● (1720)

[*Translation*]

Mr. Rhéal Fortin: Thank you, Mr. Currie.

[*English*]

The Chair: Thank you, Monsieur Fortin.

Next, we have Mr. Garrison for five minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I want to thank the witnesses not only for their testimony today—each of them, I know, has been a powerful advocate in extradition cases in other situations—but also for bringing together the Halifax colloquium, which has presented this committee with a very comprehensive and, I must say, a very persuasive report about the need for action. My sincere thanks go to the witnesses today.

I want to ask about a couple of specific things.

One of those is the about the 2SLGBTQI+ community, in particular the possible fate of transgender Canadians who might be facing extradition processes. My understanding is that there's no requirement in the current extradition law that the safety of those persons be considered in the surrendered decision.

I wonder if any of the three might be able to comment on that.

Mr. Alex Neve: Go ahead, Joanna.

Dr. Joanna Harrington: Yes, I can comment to say that I think this is where we feel that there's a reason for a strong human rights approach to extradition. All sorts of human rights bases need to be considered with respect to a surrender decision.

There is the past example in Canada of the Hurley case, where the Minister of Foreign Affairs and the Minister of Justice did actually discuss what conditions should be placed on the surrender to a country where there was a concern of systemic discrimination against, in that case, a gay man.

I think the continued use of conditional extradition, which we are seeing more often, does require this consideration. It's not just a "yes or no, shall we surrender?", but surrender on conditions to address the risk to the individual. There is some past practice on that. Of course, if the concern in the other country is of such a high risk, then I think there's a situation where conditions won't address that, and that's an example where one should refuse extradition.

Over to you, Alex.

Mr. Alex Neve: I will build on that by saying that I think your concern is well placed.

I think, as Professor Harrington is saying, it's reflective of a broader weakness about ensuring there are strong human rights protections and safeguards. I think what you're highlighting—the concern about how transgender individuals would be, faced with an extradition context—is a very serious and very real example of where those concerns could arise.

We do need something more reliable. We do need to see, for instance, the whole range of Canada's international human rights obligations enshrined in the Extradition Act and, as the Halifax proposal suggests, perhaps shifting the responsibility for making those decisions out of the minister's hands and have that be part of the judicial process, where we can have more assurance about the right decisions being made.

Mr. Randall Garrison: That's really my second question. The report talks about shifting some things from the surrender decision to the committal process.

Just so I understand what we're really saying if we do that, that would be giving more responsibility to the extradition judge to make decisions on things that are essentially legal or human rights considerations and, if you made that transfer, leaving the minister with more solely political considerations and perhaps follow-up considerations.

Mr. Alex Neve: I think that's exactly right. International human rights concerns need to be taken very seriously and not be just part of a political discretionary process, which is why we feel those need to be with a judge.

Professor Currie may want to build on that as well.

Mr. Robert J. Currie: Yes, that would be the heart of my comment as well.

Human rights questions, to my mind, are not political questions. They're legal questions, because rights are legally cognizable under law. They are meant to be affirmed, recognized and protected under Canadian law and under international law. Canada has obligations in both those regards.

Fundamentally, human rights-oriented issues...and we're really talking about the criminal process type of issues such as incarceration, such as facing double jeopardy and so on. These are, fundamentally, legal questions that should be answered by the courts, which are uniquely empowered and able to do so. Frankly, in our adversarial decision-making system, both the parties—the individual sought and their counsel, and the government—are able to put forward evidence upon which those decisions can be made, so I think the courts are just a better place for many of those questions.

● (1725)

Mr. Randall Garrison: Chair, you can cut me off there.

Thank you.

The Chair: I want to thank all of the witnesses.

Unfortunately, we're not going to get another round, but I want to thank you for your time, and thank you, once again, for coming back despite our technical difficulties last time. Your testimony today has been very informative, and I look forward to reading some of your submissions as well.

We have a bit of committee business that we'll go to right away. I want to remind everyone that witness lists for our next study on Canada's bail system should be submitted by end of day Friday at the latest. Every party should submit its lists.

Lastly, you've been sent the draft budget for our request for travel. It's almost identical to the last one, barring a few dollars that might be different due to timing. We have a timeline deadline to resubmit, which I believe is tomorrow.

I can see Mr. Garrison's extreme pleasure with this study, so we'll make a note of that. I'm kidding.

Mr. Randall Garrison: Seriously, I'd like it noted that I do oppose the expenditure.

The Chair: Duly noted.

Are we okay with resubmitting this for the next cycle?

Some hon. members: Agreed.

The Chair: Thank you.

The meeting is adjourned.