

Courts don't buy word of government

Jun 06, 2009 04:30 AM - The Toronto Star – Thomas Walkom

Canadian judges once deferred to government on questions of national security. No more. Federal Court Justice Russel Zinn's withering critique of Prime Minister Stephen Harper's government for refusing to let a Canadian citizen back into Canada is just the latest in a series of judicial decisions indicating that, on matters of terrorism, the courts no longer believe everything Ottawa says.

Zinn's decision orders the government to issue Abousfian Abdelrazik a passport and, within 30 days, ensure his return from Sudan. That's where the alleged terror supporter has been stranded for six years – at first in jail, latterly in the Canadian embassy.

The judge describes as "nonsensical" the government's reasons for refusing to let Abdelrazik return and says there is no compelling evidence of his being a terrorist.

Equally important, the judgment dismisses claims by Jim Judd, head of the Canadian Security Intelligence Service, that CSIS had nothing to do with Abdelrazik's imprisonment and alleged torture by Sudanese authorities.

The judge ruled that CSIS was clearly "complicit" in Abdelrazik's jailing if not his torture.

Wham, bam. Thursday's judgment comes just a week after Simon Noel, another Federal Court judge in another terrorism case, reamed out CSIS.

In that case, which involves Ottawa's attempts to deport Algerian refugee and alleged terror supporter Mohamed Harkat, Noel bluntly said that CSIS witnesses may have lied in court.

In April, yet another Federal Court judge, James O'Reilly, concluded that Ottawa was complicit in America's illegal treatment at Guantanamo Bay of teenaged Canadian terror suspect Omar Khadr. The judge ordered the government to try to repatriate Khadr.

So far, Harper has ignored the courts. The Prime Minister announced he would not obey the Khadr ruling even before he appealed it.

His government says it is studying the Abdelrazik decision.

If so, there's not much Ottawa will like. Zinn concluded that successive Liberal and Conservative governments have victimized Abdelrazik since July 2004. That, says the judge, is when a decision was made in Ottawa to ensure that the Canadian never came home.

Exactly why is unclear. Zinn concludes that the U.S. probably put Abdelrazik on the UN's international terror list, using a process the judge called Kafkaesque and blatantly unfair.

For the Federal Court, all of this is deliciously novel.

Traditionally a venue for tax and other dry administrative matters, it has been thrown into the public spotlight by the war on terror.

In the earliest terror hearings, judges tended to accept the word of government and CSIS.

But by 2004, there were rumblings that the judiciary was unhappy. This was followed in 2007 by a Supreme Court ruling that forced Ottawa to let so-called special advocates hear some of the secret evidence used to detain non-citizens accused of terrorism.

Now the front-line Federal Court is pushing back hard. Why? University of Ottawa law professor Craig Forcese says it's not so much that the judges are changing. It's that the government is becoming more obdurate.

"The court is ... following the law," adds Toronto lawyer Paul Copeland, a special advocate in the Harkat case.

"The reason there have been so many orders against the government is because this government, even more than previous ones, does not care about the rule of law."

Thomas Walkom's column appears Wednesday and Saturday.