

Government should listen to the courts

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Conservatives smarting over having their knuckles rapped hard so deservedly by the Federal Court over their government's deplorable conduct toward citizens in trouble abroad would find it instructive to revisit some sage words from Edmund Burke.

"It is not, what a lawyer tells me I may do; but what humanity, reason and justice, tell me what I ought to do," he opined.

Although those words were spoken 234 years ago, the father of conservatism could have been presciently addressing the comments directly to federal Justice Minister Rob Nicholson and Foreign Affairs Minister Lawrence Cannon over their obduracy over the case of Abousfian Abdelrazik and a few other citizens whose rights this government is treating as dispensable.

Federal Court Judge Russel Zinn didn't mince any words last week when he ordered the government to return Mr. Abdelrazik within 30 days to Canada from Sudan, where the man has been languishing in legal limbo for six years -- the past 18 months in the lobby of the Canadian embassy in Khartoum. And apparently lacking confidence that a general directive would suffice to have the government comply, Justice Zinn stipulated that Mr. Abdelrazik be presented in his court on July 7 at 2 p.m.

The judge didn't simply reject the government's weak arguments -- they basically amounted to the minister saying "trust me" in continuing the abuse of a citizen's charter rights -- but he demolished the rationalizations and justifications proffered by lawyers, bureaucrats and senior politicians.

"He is as much a victim of international terrorism as the innocent persons whose lives have been taken by recent barbaric acts of terrorists," Judge Zinn said of Mr. Abdelrazik, who was arrested in Sudan six years ago on suspicion that he had links to al-Qaida.

His travails since then have involved being placed on a UN international no-fly list, ostensibly at the behest of the U.S., and the reluctance of the former Liberal government and the Conservative administration of Prime Minister Stephen Harper to act in good faith to ensure that the basic rights of a Canadian citizen were protected.

In fact, Judge Zinn found that Canadian officials, having decided they wouldn't issue Mr. Abdelrazik emergency travel documents to return him to Montreal, then went about erecting barriers to prevent him leaving Sudan. Although both the RCMP and CSIS in 2007 cleared Mr. Abdelrazik of having any connections to al-Qaida, Judge Zinn found CSIS complicit in the man's initial troubles in Sudan.

Even though Mr. Abdelrazik has access to a paid-up ticket to return home this week, Minister Nicholson has been hiding behind the excuse that he needs to carefully study Judge Zinn's ruling before the government acts on it. Given the army of lawyers and the retinue of minions at the minister's disposal to do his hard-slogging, even if that involves reading a 106-page ruling and supplying him with a précis, it's taking the minister a ridiculously long time to digest and respond to the ruling.

Judge Zinn sensibly notes that if the government believes Mr. Abdelrazik poses a terrorism threat, the onus is upon it to prove its case. "One cannot prove that fairies and goblins do not exist any more than any other person can prove that they are not an al-Qaida associate," he wrote.

He then reiterates a point that seems to elude the Harper government but has been obvious to anyone with a modicum of intelligence, including other governments that have repatriated citizens placed on a no-fly list: That it's "nonsensical" to interpret the rules as preventing a country from returning a citizen home from a foreign land if the trip involves flying over or through other countries.

In what is becoming a reassuring trend of courts to try to return a measure of accountability to governments that have used the post-9/11 security concerns to abrogate basic rights, Judge Zinn noted: "It is frightening to learn that a citizen of this or any other country might find himself on the (UN no-fly) list, based only on suspicion."

As Judge Zinn's colleague Judge Simon Noel did this month in castigating CSIS officials for lying in the case of Ottawa's attempt to deport terrorism suspect Mohamed Harkat, and Justice James O'Reilly did when he held Ottawa complicit in the abuse of Omar Khadr and ordered the repatriation of the prisoner from Guantánamo Bay, the Federal Court is sending a clear message to the government about the need to respect charter rights.

This isn't the case of an activist court trying to usurp the power of elected officials. It's a case of judges putting into practice the "humanity, reason and justice" Edmund Burke advocated. Perhaps they remember another pithy comment attributed to the founder of conservatism but goes ignored by modern Tories such as Mr. Nicholson: "All that is needed for evil to triumph is for good men to do nothing."

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"Democracy cannot be maintained without its foundation: free public opinion and free discussion throughout the nation of all matters affecting the state within the limits set by the criminal code and the common law."

-The Supreme Court of Canada, 1938

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