

# In Sudan, a disturbing case of déjà vu

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This week's revelation that "senior intelligence officials" warned against allowing Canadian citizen Abousfian Abdelrazik to return from Sudan because it could upset George W. Bush's administration is very disturbing. Indeed, for those of us who worked on Maher Arar's behalf, it's a case of déjà vu.

We have seen this attitude before. Through documents obtained during Mr. Justice Dennis O'Connor's inquiry, it was revealed that while Mr. Arar was in Syria, senior officials at the Canadian Security Intelligence Service urged the Solicitor-General not to intervene because it would not be well received by Washington.

As a result of the revelations during the commission of inquiry, we learned that the intelligence community had stood in the way of interventions by consular officials and sowed confusion about the government's official position. Through the commission's work, we came to appreciate the importance of Canada speaking with one voice on these issues. We realized that when a Canadian is abroad facing allegations of terrorist activity, our first priority must be to ensure that citizen's protection.

When Judge O'Connor released his report, we were relieved to see his recommendation that the government "should develop a protocol to provide for co-ordination and coherence ... in addressing issues that arise when a Canadian is detained in another country in connection with terrorism-related activity." He called for Canadian agencies to develop "a coherent and unified approach in addressing the issues, and political accountability for the course of action adopted."

Given this, it is very surprising to see that two years after the release of the Arar commission's report, the government has not taken the lesson to heart. How else can we explain the conduct of these intelligence officials? Their conduct has certainly undermined the efforts of consular officials, whose job it is to assist Mr. Abdelrazik. It is hardly surprising that his efforts to return to Canada have been unsuccessful while senior intelligence officials oppose his repatriation.

While we all agree that we need protection from terrorist attacks, why should those concerns dictate a policy that demands making our obligations to protect Canadians in distress subservient to concerns that our actions not upset the United States? Surely there is a difference between co-operating with the United States on national security

matters and allowing them to dictate our policy on intervening on Canadians' behalf. Surely intelligence interests shouldn't take priority over protecting a Canadian at risk.

This latest revelation demonstrates again that changing the mentality of our intelligence agencies is easier said than done. It is yet another example of an instance where these agencies prioritize intelligence-gathering and relationships with foreign agencies over the rights and interests of our citizens.

There is no doubt that the fine balance between national security and individual rights is difficult to maintain. Indeed, Canadian courts have released two landmark decisions this year highlighting how difficult and important maintaining that balance is. In both decisions, they made it clear that protecting national security can not be used to justify violating the most basic individual rights.

In the first, *Charkaoui*, the Supreme Court of Canada dismissed CSIS's claim that preserving the evidence from investigations would undermine its effectiveness, holding that the agency had an obligation to ensure it preserved all that it gathered in its targeted investigations in order to ensure that those implicated are able to properly defend themselves. In the second, *Khadr*, the Federal Court of Canada ruled that the intelligence agencies were in this case subject to the Charter of Rights and Freedoms while working outside Canada. The court ruled that agents had violated Omar Khadr's rights when they interrogated him at Guantanamo Bay, and ordered the government to turn over tapes of their interrogations to his counsel.

The courts have drawn a clear line in the sand. It is no longer acceptable to maintain that protecting our national security must be done at all costs. If intervening on behalf of a Canadian at risk upsets our U.S. friends, this is a price we will have to pay. Our government must do everything possible to bring Mr. Abdelrazik home.

\* Lorne Waldman represented Maher Arar at the commission of inquiry by Mr. Justice Dennis O'Connor. \*