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June 6, 2018

The Honourable Jody Wilson-Raybould  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa, Ontario  
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On behalf of the Criminal Lawyers' Association I am writing to urge the Minister of Justice and Attorney General of Canada to recommend to the Governor in Council that a formal inquiry be conducted pursuant to section 2 of the *Inquiries Act*, R.S.C. 1985, c.I-11 concerning the Dr. Hassan Diab affair, which led to his extradition to France in 2014 and his lengthy incarceration prior to his return to his family in January of 2018.

I have had an opportunity to review the letter that was sent to the government by the British Columbia Civil Liberties Association and their many signatories on May 2, 2018. That letter details the circumstances of Dr. Diab's extradition, reliance on the provisions of the *Extradition Act* to facilitate his extradition, the role that members of the Department of Justice – International Assistance Group played in his return to France and serious concerns regarding representations made by senior government lawyers during the course of the extradition process to the Courts. I will not detail those circumstances again but adopt the request that that was urged upon you by them.

We are aware that you initially directed an internal review of what had happened but more recently committed to an external review. However, to date, there are no details concerning who is going to conduct that review, the parameters of any review or the scope and nature of any review. Although we recognize the government appears to recognize the need for some examination of what happened, the current means chosen will not shine the appropriate light on systemic and other concerns regarding the extradition process in Canada, the conduct of IAG lawyers during the extradition process and whether the Government should consider significant reforms to the extradition process. Transparent and meaningful review can only be accomplished in these circumstances through the formal inquiry process with the appointment of an independent Commissioner.

In the context of your role as Minister of Justice you have expressly recognized the need for transparency and change in the way the government works and in the way it litigates. Reflecting on your time as the Attorney General of Canada you recently noted that you undertook a comprehensive review of the Government's litigation strategy to ensure that it was "consistent with the Charter, our commitments and our values. Concrete examples of this litigation review include adopting a recognition of rights approach to litigation with Indigenous peoples; abandoning appeals in a number of Charter cases, and seeking to work collaboratively with litigants to explore policy and legislative changes." Ordering the independent public inquiry that as has been requested would be consistent with the mandate of your government.

Absent a full independent inquiry with an appointed Commissioner, transparency will not be fostered. Doubts will remain regarding the scope of any "independent" investigation particularly in the absence of an opportunity for various interested parties to advocate for change. Because one of the issues that needs to be explored is the conduct of your agents, anything less than a formal Inquiry will create an appearance of bias in favour of those lawyers in the IAG whose conduct is being impugned. Additionally, if there is a problem with the way in which IAG lawyers are litigating extradition cases or interpreting their obligations to the administration of justice in that context, the best way to examine that and correct the problem is by way of recommendations from a Commission of Inquiry. Unfortunately, as a result of the public revelations about the manner in which the Diab extradition was handled, the public's confidence in the role of your counsel and Canada's role as an extradition partner has been tainted. Lawyers, many of whom are members of our organization, that are dealing with the IAG or will be dealing with them in the future can no longer have the trust and confidence in assertions or representations that are made. This will only delay and frustrate legitimate extradition requests going forward and lead to more extensive litigation in an area that is already plagued with lengthy delay.

Being arrested on an extradition warrant, facing an extradition hearing and being rendered to a requesting state is a significant intrusion on the liberty and freedom of those whose surrender is sought. Although the Government of Canada has a responsibility to their treaty partners to respect international comity and to foster legitimate extradition requests in a timely manner, there is a corresponding duty to ensure that persons in Canada are not unjustly or unfairly taken away from their families and shipped away to foreign lands to face prosecution in a manner that is antithetical to the Canadian justice system or the innate sense of fairness that is the bedrock of our system of justice.

The Diab case demonstrates that the current *Extradition Act*, the manner in which it is interpreted and applied, and Justice lawyers' conduct vis-à-vis in the extradition context undermine rather than foster fairness. The Government of Canada cannot become a party or even complicit in a process that results in a miscarriage of justice in the name of International comity. It is for this reason that we join the growing

list of respected stakeholders and interested parties in asking that you do what is now long overdue: commission an independent inquiry into this matter and the extradition process in Canada and, in considering this request, be wary of those within Justice who advocate so strongly against the same.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Lacy". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Lacy".

Michael Lacy  
President