

CANADA: Tory Government Introduces New 'Anti-Terror' Law

Khawaja Sentenced to 10½ More Years in Jail

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Mohammad Momin Khawaja, the first person to be sentenced under Canada's post-9/11 terrorism laws, was ordered March 12 to serve 10½ years in prison, with no eligibility for parole for 5 years. Under the Anti-Terrorism Act, this term will be consecutive to the more than 5 years he has spent awaiting trial and sentence.

The harsh sentence follows the 30-year-old Ottawa-area software developer's conviction in October on five charges of participating in a "terrorist group" and helping to build an explosive device which, the defence argued, was intended for use in fighting the foreign troops, including Canadians, now occupying Afghanistan. Khawaja's trial was the first major prosecution under the Anti-Terrorism Act. The prosecution was unsuccessful on its major charges that tried to link Khawaja to a bombing plot in England for which five individuals, all Muslims like Khawaja, were sentenced to life imprisonment.

The trial was notable for the judge's ruling, when convicting Khawaja, that the Afghan resistance is "terrorist" under Canadian law, and that "those who support and participate" in the armed resistance "are by definition, engaging in terrorist activity". See my earlier article on this: Afghan resistance is 'terrorist' under Canadian law, Khawaja trial judge rules.

In sentencing submissions, defence lawyer Lawrence Greenspon had argued that Khawaja should be released on the basis of jail time already served. The prosecution, however, sought to throw the book at him, urging the judge to hand down two life sentences. Political factors were clearly at work. The date of sentencing, originally set for November 18, was then postponed to mid-February and finally to March 12. On that very day, the Harper government introduced Bill C-19, new "anti-terror" legislation that will give police temporary powers of preventive arrest and the ability to compel witnesses to testify at closed hearings in front of judges.

The actual sentence, which could mean that Khawaja will be jailed more than 15 years, infuriated many commentators in the big-business media who bayed for more blood. Prof. Wesley Wark, who has fashioned a career for himself as an "anti-terror" expert, complained that the sentence "will leave some of our allies and friends shaking their heads, not for the first time, about Canada's approach to terrorist threats". Khawaja's "jihadist convictions", he protested, "will present a formidable challenge for any rehabilitation regime in prison". However, he congratulated Justice Douglas Rutherford for rejecting the "poisoned pill" argument of the defence that he ought "not to succumb to the popular passions of the

post-9/11 age”.

In an op-ed diatribe published in the Ottawa Citizen March 14, David B. Harris, the former chief of strategic planning at CSIS, the Canadian Security Intelligence Service, fulminated against “Islamist infiltration of our society and institutions”, complaining that “Our government resources, already overwhelmed by floods of unscreenable immigrants and domestically radicalized youth, might well be too busy to stop other Khawajas, and catastrophe.” The judge had cited pre-sentence reports by prison staff that Khawaja was a “model prisoner” with a positive influence on other inmates. But what if Khawaja were to be released on parole in five years, Harris asked. Was the judge unaware that Khawaja “represents a growing movement of Canadian dead-end Islamic extremists whose release into society could have repercussions of a sort generally unknown in more conventional criminal contexts”? And that “he is likely to be a menace for the hate he will spread in prison and, possibly, the more lethal hazards he could yet unleash upon society.”

The truth is, of course, that while CSIS has tracked and harassed hundreds of Canadian Muslims in recent years, convinced judges to jail a half-dozen of them without charge for more than five years, collaborated with the RCMP in sending others to foreign lands for horrendous torture and possible death, Khawaja’s conviction is the first major one under Canada’s anti-terror legislation. Similar prosecutions of a number of young people in Toronto have been falling apart as more and more evidence emerges that they were set up by police in a classic “sting”-type entrapment operation.

Yet the Tory government is forging ahead with its new repressive legislation. Bill C-19 is designed to re-introduce police powers that expired in 2007 when the Opposition parties, a majority in the House of Commons, refused to renew similar draconian provisions in the Anti-Terrorism Act that were subject to a “sunset” clause. Those powers were never used, in fact.

How will the Opposition deal with C-19 this time around? The Bloc Québécois says it will vote against the bill. Less clear is the Liberal position. The Anti-Terrorism Act was enacted in 2002 by a Liberal government. In 2007 a number of Liberal MPs joined with Tories on a parliamentary committee recommendation to support renewal of the controversial provisions.

And the NDP? It will probably vote against C-19. Law professor Michael Byers, a prominent supporter of the party (and unsuccessful candidate in the last federal election), told the Ottawa Citizen that he opposed it. But at the same time Byers praised the Khawaja sentence as “a balanced, reasonable, yet weighty outcome, one that shows our legal system, with all of its checks and balances, can deal responsibly and effectively with terrorism.” •

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