

Toronto Secret Trials against Muslims

Secret trial detainee held four years without charge or bail

By [Matthew Behrens](#)

Global Research, August 21, 2005

21 August 2005

Region: [Canada](#)

Theme: [Police State & Civil Rights](#)

They Try and Block Your Every Move Mahmoud Jaballah Searches For a Court to Hear His Plea for Bail After Four Years of Detention Without Charge

Punishing Hunger Strikes Continue for Hassan Almrei (day 60) and Mohammad Mahjoub (day 45)

AUGUST 21, 2005 — It's a telling moment on the second day of a complicated legal hearing to determine whether Mahmoud Jaballah, a secret trial detainee held four years without charge or bail, will be granted an opportunity in the Superior Court of Ontario to hear his case.

It's nearing the end of the lunch break, and the government lawyers who do their best to make life hell for people like Mr. Jaballah and his family — including their spirited, unashamed efforts to deport him to torture — are sitting in a row of seats, chatting, laughing, waiting for court to begin. Three of Jaballah's six young children, aged 7 to 11, walk down the hallway and sit across from the lawyers in another row of seats.

The lawyers, who represent CSIS, Immigration, and "Justice," suddenly stop speaking and look away, mostly at their feet. "Are those the guys that are against us?" one of the young kids asks.

There is an embarrassed silence from the legal crew. These are three of the six children of a man who, never charged, they are nonetheless prepared to hand over to an Egyptian torturer or executioner, based entirely on secret "evidence" neither he nor his lawyer will ever be allowed to see. The kids look at them, as if expecting an answer, but the government lawyers cannot look at the kids. To do so would be to recognize their humanity, and that of their father. Perhaps moreso, it might force them to search deep inside themselves and question their own immorality for being part of such an abusive process.

The government lawyers eventually stand on their feet and beat a retreat into the now open court. The kids follow, settling into the hard wooden benches, from where they will write letters to their Dad expressing their love for him. One repeats what he has told the national media: if they do not let his dad out of jail, he wants to go in so they can play together.

As the lengthy proceedings drag on, the kids are subject to a rather over-the-top form of harassment. Tired, as they often have trouble sleeping at night, some drift off in their seats. A man in charge of courtroom decorum, who himself spends most of the afternoon nodding off, comes over to wake them, informing them that sleeping is not allowed. When the kids try and take a discreet sip of water from a bottle, they are chastised as well by a man who

spends his day constantly sipping from his own bottle. And when the kids quietly try and find something to do, like reading a book or doing a crossword, the decorum chief, who also reads a book, tells them not to.

The kids say it's not fair, that it's a double standard. Their experience of the court system is similar to their dad's, who also experiences the double standard of the Canadian judicial system, where, as with the cases of the other secret trial detainees — indeed, as it is for anyone without citizenship status— there is a lesser form of justice available, where indefinite detention without charge and deportation to torture apply ONLY to non-citizens.

While these little dramas in the gallery play out, a complicated-sounding legal debate is taking place before the judge.

In essence, Mr. Jaballah, who is not allowed to apply for bail under the Orwellian Immigration and Refugee "Protection" Act (IRPA) until 120 days after the judge has ruled on the "reasonableness" of the secret trial security certificate — which could take years to complete — has brought an application in the Ontario court to challenge this draconian provision of the act in an effort to seek release on bail pending the conclusion of all the legal matters before him. (By contrast, a permanent resident held on a security certificate is allowed a detention review 48 hours after arrest and every six months thereafter. While getting bail is extremely difficult under those conditions, which are far more severe than the standard 30 day review for most in immigration detention — Adil Charkaoui had to try four times before finally getting a very restrictive release last February — Jaballah, a refugee fleeing torture in Egypt, does not have access even to that regime).

But the federal government has filed a motion to stay the application, arguing the Federal Court of Canada is the best place to hear such a challenge. However, as the lawyers for Jaballah will eventually argue, this does not make sense. Under the IRPA, the Federal Court judge in charge of hearing a secret trial case (called the "designated judge") has a very limited mandate, which does not include hearing constitutional challenges. The role of the designated judge is to rule on the "reasonableness" of the certificate (a ruling that employs the lowest standard of "proof" of any court in Canada), the lawfulness of the federal government's decision on the detainee's application for protection, and the availability of bail.

As the complicated business of the secret trial process is partially explained to the Ontario Superior Court Justice Brian Trafford, there is a real feeling of discomfort. It's as if the lawyers for the government, who make a living from what is perhaps the most unsavoury "legal" proceeding in Canada, are embarrassed that their little secret is getting out.

Questioning from Justice Trafford indicates his disbelief that this is taking place, and that there appear to be no guidelines for making sure the process is carried out expeditiously.

"Does the scheme (of IRPA) lay out timeframes for this process?" Trafford asks.

A lawyer for the government stumbles, claiming "there are no guidelines, but there are tools."

This is most unhelpful.

Trafford's questions cut through the haze, and put the government lawyers on a very shaky

defensive.

What relief, if any, is allowed the detainee if the process is not proceeding as expeditiously as it's supposed to, he asks. Is it reviewable? "What if it is taking too long and the respondent [detainee] is in a place that's oppressive?" he asks.

Government lawyer Donald MacIntosh responds that the detainee "can always go back" to the country to which Canada is trying to deport him. Indeed, the secret trial five are repeatedly told that they are all "free" to return themselves to torture or murder if that's what they want. It's a sick way of saying they have no right to complain about their lengthy detention, because they would be released from behind bars if only they took that one-way plane ticket back to another country's dungeon.

"What if he doesn't want to go back and wants bail pending [completion of the matter]?" Trafford asks.

MacIntosh behaves like a little boy in front of the school principal, trying hard as he can to justify bullying behaviour that even he knows is unacceptable. "These hearings are conducted expeditiously," he claims, a surprise to someone like Mohammad Mahjoub, for example, whose application for bail has been ongoing since May, 2003.

MacIntosh says that the scheme under IRPA is "comprehensive" and well laid out by Canadian Parliamentarians.

Trafford says that it does not seem to matter to those legislators how long the process takes, all the while the detainee is "languishing under oppressive conditions."

It takes hours as the government lawyers jump through hoops trying to show how a broken process works, at least in their mind. But to no apparent success.

"So it doesn't really work, does it?" a frustrated Trafford complains at one point.

Tuesday morning begins with more pointed questions from the judge. Why can't there be a place to hear such an application, and why is everything so confrontational? It paralyzes the system, Trafford says.

"Do you have ANY instinct to get this to a hearing on the merits?" Trafford pointedly asks MacIntosh. "Here's a man who says, 'I want a hearing.' So surely our system can accommodate a man who wants bail. My concern is that the attorney general's spirit is to block a hearing on the merits," Trafford says, noting that such an obstruction has been done skillfully, but that "You, as counsel, should agree, 'yes, let's have a hearing'."

MacIntosh, in a corner, suddenly lets out that he is willing to allow such an uncontested hearing — if it is done in Federal Court before the designated judge. But of course, this gets us back to the reason why we are in Ontario court in the first place: the Federal Court will not hear such a challenge.

Lawyers John Norris, Barb Jackman and Andrew Brouwer appear for Jaballah.

"The attorney general has attempted to stymie every effort to raise constitutional issues," Norris begins, noting the attorney general has attempted to restrict jurisdiction of the designated judge as much as possible. Therefore, "this court has a perfect opportunity to

take a principled position” with respect to granting jurisdiction to hear Jaballah’s bail application.

Norris says that by having this sent back to the Federal Court, it is simply another “opportunity for futility,” as Justice Mackay of the Federal Court will no doubt look at the application and reply, “too bad,” because he won’t hear it.

Norris picks apart the government case, noting it rests on a number of very shaky foundations.

The government claim that the secret trial scheme is “comprehensive” is hopelessly naive, as Norris points out. Indeed, the statute provides a single offer: you apply for bail 120 days after [a security certificate has been found “reasonable”], but, “until then, you must be detained no matter how long it takes and no matter under what conditions. This is not comprehensive” with respect to issues like liberty.

Norris points out that this detention begins with an “opinion” based on a secret security intelligence report. Boom: arrest, detention without charge.

“Is there any mechanism for a hearing at that [initial] stage?” Trafford asks.

“Absolutely not,” Norris says, noting “detention is automatic without the usual criteria courts apply in asking whether that detention is justified.”

“So there is no way this is a comprehensive scheme,” Norris concludes. “The Act expressly forecloses even raising the issue.... At its core this is not a case about immigration, even though it arises under IRPA. In substance, it is a case about liberty, and whatever the Federal Court knows about immigration, it is NOT an expert on liberty. This court [Ontario Court] certainly is.”

Barb Jackman provides a timeline to the judge, noting that there have been innumerable unnecessary delays from the government in proceedings with respect to Jaballah, even to the point that the Federal Court found the government to be guilty of an abuse of process.

Part of the problem, she points out, is the government needs to make a final decision about a protection for application before an individual can have his security certificate hearing. “You can’t make [such an application] afterwards,” she notes. And so, as in the case of Jaballah and other secret trial detainees, the government has been making such decisions, after excessive delays, and the Federal Court, on judicial review, has found all of these decisions to be unlawful, patently unreasonable, and, in one case, perverse. And so the decision must be sent back for a new determination, all the while the individual remains detained, with no bail.

“And in all of these cases they are not protection decisions, they’re decisions to deport to torture,” she reminds the court.

The hearing ends with the judge promising a written decision very soon.

In the meantime, it is more waiting. For Jaballah, for his family, and for the other detainees and their families.

In another part of Metro West Detention Centre, two lengthy hunger strikes continue with no

apparent end in sight. Today marks day 60 of a hunger strike for Hassan Almrei, who is demanding the same rights as other federal inmates. Mohammad Mahjoub has not eaten for 45 days, protesting his general mistreatment at the facility. Both are in solitary confinement.

The Ontario government is refusing to budge on their demands, insisting that the matters be taken to court.

No one from the government has met with either man. It makes it easier to dismiss their humanity. Standard practice for the government and those who do its bidding.

(report from Matthew Behrens of the Campaign to Stop Secret Trials in Canada, PO Box 73620, 509 St. Clair Ave. West, Toronto, ON M6C 1C0, www.homesnotbombs.ca tasc@web.ca)

The original source of this article is Global Research
Copyright © [Matthew Behrens](#), Global Research, 2005

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Matthew Behrens](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca
www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca