

# Diab's lawyer calls case 'weak'

## Charged with bombing in France, Ottawa academic seeks bail

BY KATE JAIMET, THE OTTAWA CITIZEN MARCH 24, 2009

The French murder case against Hassan Diab is so weak that he would never be convicted in Canada, his lawyer argued in court Monday as he sought bail for the Ottawa academic who is being held at the Ottawa-Carleton Detention Centre pending his extradition to France.

"This is an extremely weak criminal case for the Canadian courts," Don Bayne told the Ontario Superior Court. "It would never support a criminal conviction in Canada because it is so bereft of evidence."

Diab, 55, is charged in France with murder, attempted murder and the destruction of property for his alleged role in the 1980 bombing of the Copernic Street synagogue in Paris. Four people died in the blast.

He taught at Carleton University and the University of Ottawa until his arrest in November.

Referring to the Record of the Case filed in Canada by French authorities, Bayne pointed out that neither Diab's fingerprints nor his DNA was found at the scene of the crime. He also argued that Diab did not match witness descriptions of any of the suspects connected to the bombing and that the handwriting analysis used to pinpoint him as one of the suspects was inconclusive.

"There is no evidence in law in this case that amounts to evidence in Canada of physical identification," Bayne said.

Since Diab has no valid passport with which to flee the country and is presumed innocent until proven guilty, Bayne urged Justice Robert Maranger to order him released.

"The Ottawa community may well wonder why a peaceful, respected academic ... would be detained when he's presumed innocent and when release is the norm," Bayne said.

The Crown will present its closing arguments when the hearing resumes Friday.

Diab's presumed innocence was a strong theme in court Monday. His common-law wife, Rania Tfaily, said she would be willing to let him live with her while on bail despite his marital infidelity.

"I believe he's innocent. Would I ever forgive myself if I let an innocent person stay in jail, just because I'm jealous that he had sex with another woman? No," Tfaily said.

"He is not here for marital infidelity. He is here on criminal charges," she added.

Tfaily, who married Diab in a religious, but non legally-binding ceremony in 2006, was the final witness to testify in his defence. They lived together in Tfaily's Ottawa condominium after their marriage, but Diab moved last summer to an apartment in Gatineau, where he lived until his arrest in November. During that time, the couple continued to see each other.

In her testimony, Tfaily said she no longer loved Diab, who carried on an affair behind her back and only confessed after she had read about it in newspaper reports during his first bail hearing in December 2008.

Diab was denied bail after that first hearing, but the decision was quashed by an appeals court because Diab could not read the French-language documents entered in evidence from France.

At the current bail hearing, Tfaily said she would be willing to supervise Diab and even would commit to staying home with him every evening and night if such curfew conditions were imposed as part of his bail.

She said she is willing to undertake this responsibility because she believes he is innocent, she disagrees with the tactics the RCMP used when they had him under surveillance from January to November 2008 and because what she called "horrible ... even inhumane" conditions at the detention centre.

"It is not out of love," Tfaily said several times on the stand. "He is a nice person, but I'm not in love with him."

In her cross-examination, Crown prosecutor Suzanne Schriek cast doubt on whether Diab could be trusted to be honest with Tfaily during his bail, given their rocky marital history.

Diab also retains close relations and some joint bank accounts with his first wife, Nawal Copty.

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