

# Case against accused synagogue bomber flawed, defence says

## Handwriting analysis, intelligence not reliable, Diab's lawyer argues

BY DAVE ROGERS, THE OTTAWA CITIZEN    OCTOBER 23, 2009

A lawyer for an Ottawa man accused of a Paris synagogue bombing told court Thursday that the French government's case against his client is based on flawed handwriting analysis and unreliable intelligence reports.

Donald Bayne said France's effort to extradite his client is based on handwriting analysis that links the Lebanese Canadian citizen to the 1980 bombing that killed four people and injured dozens of others.

Bayne said five words on a hotel registration card that are said to implicate Hassan Diab were really written by his former wife.

The defence submitted nine exhibits, including opinions from Canadian, British and U.S. handwriting experts and a document from a French expert saying intelligence reports are often unreliable and should not be used as evidence.

The hearing was held to determine whether the evidence French investigators submitted should be considered at an extradition hearing scheduled for Jan. 4.

Bayne said there are significant differences between intelligence and evidence because the sources and circumstances of the information that intelligence agents provided are shrouded in secrecy.

"There is a profound and fundamental problem with the evidence," Bayne said. "Not only does it rely on Hassan Diab's handwriting -- it is demonstrably false.

"The French are looking at the printing on a hotel registration card from 30 years ago. They stated erroneously that the handwriting was that of Dr. Diab. It is appalling procedure for the French to have followed that kind of assumption without evidence."

One defence expert said he had never seen such inferior work in 30 years and added no competent handwriting expert could have come to the same conclusion.

"There are fundamental flaws in the intelligence posing as evidence," Bayne said afterward. "In the criminal process in Canada, intelligence is not evidence.

"There is a litany of recent experience of relying on intelligence reports in Canada. There is the Maher Arar case, the Mohamed Harkat case involving CSIS intelligence, the case of Adil Charkaoui and the Iacobucci inquiry involving men detained and tortured overseas."

Charkaoui, a Moroccan-born father of three, won his liberty after federal lawyers withdrew much of the evidence against him, most of it collected through wiretaps and foreign intelligence sources.

Three years ago, the government apologized to Arar, an Ottawa communications engineer, paying him \$10.5 million. Arar was deported from the U.S. to Syria -- partly on the strength of faulty Canadian intelligence -- where he was tortured.

Former Supreme Court Justice Frank Iacobucci examined Canada's role in the cases of three Arab Canadians, Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin. In his report published in 2008, Iacobucci found that the RCMP repeatedly failed to accurately identify the men in shared intelligence reports, contributing to their torture in Syria.

Assistant Crown attorney Claude LeFrançois told the court it is a "generous interpretation" to argue that French investigators mistook a woman's writing for Diab's. He added it is not obvious that the French intelligence reports are wrong.

LeFrançois said he would try to get an English translation of the reports that is acceptable to Diab's lawyers.

Diab and his common-law wife, Rania Tfaily, are appealing a ruling to send the contents of two of his computers to France.

A Nov. 30 and Dec. 1 hearing in Gatineau will determine whether the French government will receive other evidence seized while Diab was living there.

The Ottawa hearing on the admissibility of evidence is to resume in Superior Court on Dec. 2 and 3.

Diab remains free on bail under strict conditions that include electronic monitoring, a curfew, and a promise not to leave his Dynes Road home unaccompanied.

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