

# Diab lawyer cites "fatal flaws"

BY ANDREW SEYMOUR, THE OTTAWA CITIZEN    DECEMBER 1, 2009

OTTAWA — The work of a French document examiner contained “fatal” flaws and the conclusion that suspected synagogue bomber Hassan Diab penned a key piece of evidence in the case against him is “wholly unreliable” and “grossly inadequate,” his lawyer argued Tuesday.

Citing the work of four separate internationally renowned document examiners, Donald Bayne argued that a judge should allow Diab to call evidence at his January extradition hearing that shows the French examiner failed to follow proper procedure, made incorrect assumptions and arrived at “dangerous” conclusions that Diab had written five words on a 30-year-old hotel registration card that the French allege implicates him in the deadly 1980 Paris bombing that killed four.

Bayne said one British examiner, Robert Radley, offered an “absolutely scathing opinion” that the French examiner failed to follow basic principles relied upon by qualified document examiners and concludes the findings were “wholly unreliable, unreasonable and unacceptable.”

According to the examiners, at least three of the reference samples used to identify Diab’s writing on the hotel registration card were not even written by him, but his ex-wife, Bayne said.

Bayne added that the extradition hearing would be the only opportunity Diab gets to have the evidence heard, since French courts only allow expert evidence to be introduced by the prosecution.

“The court is a gatekeeper. The extradition judge is the sole protection a person has against being snatched and sent to a foreign jurisdiction where his liberty will be denied,” Bayne said during the hearing before Ontario Superior Court Justice Robert Maranger, who will decide whether the defence evidence will be heard.

Bayne hopes to call nine witnesses, including experts who will also call into question the intelligence evidence Bayne said is at the “heart” of the French case against the one-time Carleton University professor.

Federal Crown prosecutors oppose the motion.

“Absent the intelligence, there’s no evidence assigning responsibility for this crime to Hassan Diab,” said Bayne, adding the “unreliable, dangerous and defective” intelligence conclusions would not be allowed in Canadian court but can be relied upon in French court.

Unlike the handwriting evidence, Bayne said there is simply no way to challenge the intelligence findings since the source of the information is “by its very nature to be secret and unknowable.”

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