

Expert tells Diab extradition hearing that French intelligence doesn't meet Canadian standards as evidence

BY CHRIS COBB, THE OTTAWA CITIZEN NOVEMBER 25, 2010



Hassan Diab, right, and his lawyer, Donald Bayne, stand outside the Elgin Street courthouse Oct. 22, 2009. Diab, who was arrested by the RCMP in 2008, is fighting extradition to France on terrorism charges dating back almost 30 years.

Photograph by: Mike Carrocetto, The Ottawa Citizen

OTTAWA — Intelligence information from unknown sources can be used as a starting point to gather evidence but it does not meet Canadian legal standards as evidence itself, the extradition hearing of Ottawa university professor Hassan Diab heard Thursday.

In a painstaking cross-examination of Kent Roach, one of Canada's leading legal authorities on anti-terrorism, Crown prosecutor Jeffrey Johnston repeatedly emphasized the point that controversial French information from unknown intelligence sources had been sufficiently corroborated by reliable evidence from other sources.

Diab, a 57-year-old former University of Ottawa professor, is fighting extradition to France where he would stand trial on accusations he killed four people during the 1980 attack the French say carried out by a branch of the the Popular Front for the Liberation of Palestine.

The French say Diab made and planted the bomb.

Defence lawyer Donald Bayne told the extradition hearing last week that it is possible some of the French intelligence was gleaned from torture.

French authorities have said they do not know the source of some of the intelligence they have used to build the extradition case against Diab.

In one of numerous oral jousts between Johnston and Roach, the prosecutor said evidence in the Diab case had been gathered according to French law.

"I'm also aware of concerns that evidence derived from torture has ... been used in French proceedings."

"Just as it has been used in many other proceedings around the world," countered Johnston.

"That doesn't make it right," said Roach, who was called to testify by Bayne.

Johnston and his Crown colleague Claude LeFrançois have said repeatedly that there is enough actual evidence in the French case against Diab to meet the standards required by Canada's extradition law, which is why the federal Justice department agreed to carry the French request forward.

Roach conceded that unsourced intelligence gathers legal strength if it can be corroborated by human witnesses or other reliable sources but generally stuck to his basic opinion that with Diab's liberty at stake, aspects of the French case are "dangerous."

Roach said Wednesday he sees similarities between the Diab case and that of Maher Arar, the Ottawa man deported to Syria where he was tortured.

Roach testified that aspects of the French case against Diab set off "alarm bells" for him, particularly intelligence reports in the French record of the case that changed over a one-month period in 2008 to suggest first that Diab entered France from Spain using his own passport, then suggesting Diab had actually entered France using a fake passport.

"It would suggest to me the intelligence record is unreliable because it is malleable enough to fit any or both scenarios. Because it is not sourced, because it is not circumstanced, it is very difficult to go behind their suppositions and to challenge the intelligence," said Roach, who added that relying on the intelligence as evidence to extradite Diab is especially concerning since his liberty is at risk.

Roach also worried that French investigators had developed "tunnel vision" — when investigators interpret ambiguous evidence as evidence of guilt, even when completely different behaviour could also support guilt — particularly when it came to assessing the stamps, or lack thereof, in Diab's passport.

Roach, the first defence witness in the extradition hearing, systemically labeled nearly every piece of

intelligence in the French case against Diab as unsourced and uncircumstanced.

That included the 1999 intelligence report that Diab, using the alias Alexander Panadriyu, bought the motorcycle used in the bombing and built the bomb.

"At first glance you say, 'This is terrible, this is very, very specific,' but there's nothing there to substantiate it," said Roach.

The hearing continues on Monday with key arguments to come about handwriting and translation.

With files from Andrew Seymour

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