

# Diab hearing breaking new ground

Former professor accused of terrorism 'is at least getting a fair break,' expert says

BY CHRIS COBB, OTTAWA CITIZEN    JANUARY 8, 2011



The French say Hassan Diab was a key player in a bombing outside a Paris synagogue and want the Lebanon-born Canadian to stand trial in Paris for murder and attempted murder.

**Photograph by:** Wayne Cuddington, Ottawa Citizen, Ottawa Citizen

The extradition hearing that will decide the fate of former University of Ottawa professor Hassan Diab is at least eight weeks away from ending, but already it has set legal precedents that almost guarantees the case will be decided by the Supreme Court of Canada.

"Diab is at least getting a fair break," Victoria lawyer and extradition specialist Gary Botting, told the Citizen Friday. "His case defies comparison with all others."

The hearing, scheduled to end before Christmas, is now adjourned for almost three weeks to accommodate prearranged vacations.

The French say Diab was a key player in a terrorist bombing outside a Paris synagogue in 1980 and want the Lebanon-born Canadian citizen to stand trial in Paris for murder and attempted murder.

Extradition hearings in Canada typically last a day or two and 90 to 95 of the 100 or so cases heard each year involve sending Canadians to face justice in the United States.

The Diab case is distinctive, if not unique. It has already lasted two years and involves France, a country that does not extradite its own citizens.

According to extradition treaties Canada has with foreign countries, any evidence provided by the country requesting a Canadian citizen must be presumed reliable and normally cannot be challenged.

As Crown lawyers in the Diab case have said repeatedly, an extradition hearing is not a trial and typically is conducted without live witnesses.

"A complex case will usually last two days," said Botting, a longtime critic of the extradition system. "The defence will say we want to adduce evidence of our own, the judge says no and it's over. Even challenging bald statements of witnesses in documents doesn't happen. So yes, the Diab case is already precedent setting."

Since the 1999 Extradition Act, case law has opened a slight window of opportunity for Canadians sought by other countries. In certain circumstances they can challenge a foreign country's evidence as being "manifestly unreliable."

After weeks of argument and vigorous resistance from Crown lawyers, Judge Robert Maranger permitted Diab's lawyer Donald Bayne to challenge the twin pillars of the French case against Diab: Intelligence and handwriting evidence.

Maranger allowed Bayne to bring an intelligence expert and three internationally-renowned handwriting specialists to give evidence and be cross-examined by federal Crown lawyers Claude LeFrancois and Jeffrey Johnston.

The subsequent testimony, which has often seen experts and lawyers alike bristling with irritation and indignation, ended Friday with the cross-examination of British forensic document expert Robert Radley.

Botting, who characterizes extradition as "the least fair process in Canadian law," says Maranger's decision to allow Bayne's challenge is exceptional.

"He must have some concern about the evidence and how it was gathered."

Federal prosecutors, who have labelled handwriting evidence "the smoking gun," fought hard to keep Bayne's experts from testifying.

Based on witness statements taken shortly after the bombing, it is more or less accepted that the man who signed into a Paris hotel using the false name Alexander Panadriyu was the person who planted the bomb in a motorcycle saddlebag outside the synagogue.

Police compared that hotel card signature with Diab's writing on mid-1990s United States government

documents and it is those comparisons that are the centre of the handwriting analysis argument.

All three defence experts -- Radley, former RCMP forensic examiner Brian Lindblom and American John Paul Osborn -- were fiercely critical of the handwriting analysis commissioned by French prosecuting magistrate Marc Trevidic who is leading the case against Diab.

LeFrancois, who cross-examined all three, suggested the trio of longtime colleagues and friends, had colluded before they wrote their Bisotti critiques and questioned their credibility because none has experience of French forensic methods or the French language. The experts agreed they had discussed the Bisotti report on SKYPE calls and at a conference in Victoria, but only because they were equally confused by what the French analyst had written.

An angry Radley rejected LeFrancois' repeated suggestions of collusion and that the experts influencing each other.

"To suggest there is some form of collusion -- something underhand, I find very offensive. I have always been objective and fiercely independent."

Much of the handwriting evidence has focused on semantics, word definitions, minute aspects of handwriting and other specifics such as Diab's ability to write English when he was a 27-year-old Lebanese citizen in 1980.

LeFrancois ran afoul of Justice Maranger late Friday with one of the more testy exchanges with Radley over ballpoint pens.

After cautioning LeFrancois from repeating the same question, Maranger ordered him to change the subject.

"Move on to something else," said the judge, an order that led to LeFrancois to continue asking about pens.

"Move on," said a stern Maranger, crossing his arms. "If I have to say it again, I'm going to get really angry."

The hearing ended on more jocular terms with a smiling Maranger asking LeFrancois if written comments on one of the prosecutor's transcripts were "about me."

"No, your honour," replied LeFrancois, "and they would only be complimentary."

© Copyright (c) The Ottawa Citizen