

# Diab loses evidence fight

## Writing analysis 'problematic,' but admissible

BY ANDREW SEYMOUR, OTTAWA CITIZEN FEBRUARY 19, 2011

An Ottawa judge has decided to allow handwriting evidence likened by a prosecutor to the "smoking gun" in the case against accused terrorist bomber and university professor Hassan Diab.

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

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 at the centre of the handwriting analysis argument.

Diab's lawyer, Don Bayne, had sought to have the handwriting evidence excluded from his extradition proceeding on the grounds that the expert the French authorities relied upon had done an improper job of comparing the old sample and the new one.

In his decision, Ontario Superior Court Justice Robert Maranger said he found the French handwriting evidence "very problematic" and "very confusing" with "suspect conclusions," but said it would violate the Extradition Act if he imposed Canadian standards of evidence admissibility to foreign evidence.

Canada's extradition law tells judges to accept evidence provided by foreign governments more or less at face value unless it's "manifestly unreliable" -an extradition proceeding is not a full trial, the argument goes, and it's only at a full trial that evidence can be properly examined.

For something to be manifestly unreliable it must be at the "extreme point" on the spectrum of reliability, which was not the case with the French handwriting evidence, Maranger ruled. The judge also said that three competing opinions by defence handwriting experts about the reliability of French expert Anne Bisotti's conclusions were a matter for trial and not the extradition hearing.

The three defence experts testified that Bisotti's report was biased and unqualified and used flawed methodology.

"When all is said and done, I find that the evidence amounted to very strong competing inferences which demonstrate some serious weaknesses in the Bisotti report, but in truth fell short of a finding of manifest unreliability," said Maranger to a courtroom packed with more than two dozen disappointed Diab supporters.

"While I find the Bisotti report very problematic, very confusing, with conclusions that are suspect, I cannot say that it should be rejected out of hand based on the expert evidence," he added.

Even though he didn't grant Diab's request to exclude the evidence, Maranger said there was some merit to the "forceful and compelling" arguments by Diab's lawyer, Bayne, that "flawed methodology results in manifestly unreliable conclusions."

Federal prosecutors Claude LeFrançois and Jeffrey Johnston argued 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. In testimony, one expert from Europe said there's no such thing as a specifically French forensic method.

Following the decision, Bayne said Diab and his wife were "devastated" but were not throwing in the towel, even though the decision is likely to make it considerably more difficult for Diab to avoid extradition.

"It's a real setback," said Bayne. He wondered what Canadians would think of extradition law in this country where a judge can express grave doubts about the reliability of expert evidence, but still find it admissible.

Bayne said it was especially concerning since France doesn't extradite its own nationals, "but Canada will extradite its nationals on unreliable evidence because the test for unreliability is so high no one can meet it."

Bayne said if Diab is ordered extradited, his advice would be to appeal. He suggested it is a case that should end up in the Supreme Court.

The lawyers are expected to return to court Wednesday to decide what happens next. Bayne had previously planned to argue about the admissibility of French intelligence evidence linking Diab to the bombings, although he conceded in court that may be unnecessary, given the tone of Friday's ruling.

However, Maranger told Bayne not to assume his ruling on handwriting indicates how he'd rule on the intelligence.

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