

Hassan Diab fights extradition to France with Supreme Court appeal

Lawyers say France's reliance on secret information raises constitutionality issues

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An Ottawa man facing extradition to France in a bombing case says the Supreme Court of Canada should hear his appeal due to crucial questions about the use of untested intelligence in a criminal prosecution.

In arguments filed with the Supreme Court, lawyers for sociology professor Hassan Diab say France's reliance on secret information raises fundamental issues of constitutionality and procedural fairness.

- [Hassan Diab's extradition to France upheld by appeal court](#)

The Canadian government says Diab's request for a high-court hearing "raises no issue of public importance" and should be dismissed.

Paris synagogue bombing

French authorities suspect Diab, 60, was involved in the anti-Semitic bombing of a Paris synagogue in 1980 that killed four people and injured dozens of others — an allegation Diab denies.

The RCMP arrested Diab, a Canadian of Lebanese descent, in November 2008 in response to a request by France. He had worked as a contract instructor at two Ottawa universities before his world was turned upside-down.

In June 2011, Ontario Superior Court Justice Robert Maranger committed Diab for extradition despite acknowledging the case against him was weak.

The following April, then-justice minister Rob Nicholson signed an extradition order surrendering Diab to France.

The Ontario Court of Appeal upheld the decisions of the lower court and the minister, prompting Diab's lawyers to ask the Supreme Court to hear the case.

"There can be no debate that the concerns raised about the use of intelligence in terrorism trials are pressing ones demanding serious consideration," says their filing.

"Canadians deserve that this issue be addressed head-on."

Diab's lawyers note the Supreme Court has dealt with issues of constitutionality when it comes to disclosure of information in the use of a national security certificate — an immigration tool for deporting

non-citizens suspected of terrorism or espionage.

Facing criminal prosecution

But they say Diab faces a much different scenario in France:

— a true criminal prosecution, not an administrative immigration proceeding;

— a trial judge who is not permitted to look behind the intelligence reports, unlike the judge in a Canadian certificate proceeding who sees all sensitive material;

— no equivalent of Canadian special advocates — security-cleared lawyers appointed to review and test federal evidence.

"The question this case poses is whether the criminal law can ever accept a prosecution based on truly untestable intelligence?" Diab's lawyers ask.

In its submission to the Supreme Court, the federal government says Diab's concerns about unsourced intelligence amount to an argument that he will not get a fair trial in France. But the high court has already decreed that trial fairness in the requesting state shouldn't be lightly questioned.

"Surrender should only be refused owing to trial fairness concerns if it is demonstrated that the criminal laws or procedures in the requesting state shock the Canadian conscience," says the federal brief.

Courts across Canada differ on extradition

Another key issue in the case is the reliability of evidence that has been disclosed — including handwriting on a hotel registration card allegedly penned by Diab.

Diab's lawyers contend that courts in Ontario and British Columbia have widely differing interpretations of what extradition judges must do to ensure constitutional protections for someone sought for extradition.

They say in their submission to the Supreme Court that it should "make no difference whether a person sought for extradition is apprehended in Ottawa or Vancouver" and, all other things being equal, "the result of the request for surrender should be the same."

One of Diab's counsel, Donald Bayne, flagged the issue last May immediately after the Ontario Court of Appeal ruled against his client.

"There is clearly now no uniformity in approach across Canada."

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