

# A Canadian in Paris: Hassan Diab's indefinite jail journey

BY **MATTHEW BEHRENS** | FEBRUARY 23, 2015

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The long-running extradition saga of Ottawa sociology professor Dr. Hassan Diab -- sought by French authorities for a 1980 crime he did not commit -- took a dramatic turn when the Supreme Court of Canada refused to hear his final appeal to stay in Canada last November. Although Canada had 45 days to

forcibly remove him to France, Dr. Diab was hustled out of the Ottawa-Carleton Detention Centre and whisked away less than 48 hours later, denied a previously scheduled opportunity to bid goodbye to his pregnant wife, Rania, and baby daughter, Jena.

Diab's lawyer, Donald Bayne, a 43-year veteran of Canadian courts, appeared stunned at a Parliament Hill press conference the day of the Court decision, concluding: "We now have in my view a classic recipe for the wrongful conviction of a Canadian."

Originally arrested in 2008, Diab had spent the following six years under house arrest, forced to pay \$2,000 a month for the electronic monitoring device strapped to his leg, denied an opportunity to teach, and frustrated by an endless round of extradition hearings where, despite the very low judicial standards, the severe weakness of the alleged case against him was nonetheless clearly exposed. During that time, it was revealed that the physical description, palm and thumb prints, and handwriting of the 1980 rue Copernic bombing suspect did not match Dr. Diab's.

## Justice denied

Despite having the cards stacked against him, Diab had appeared hopeful that his case would be heard and justice served at the nation's highest court.

"It is beyond devastating that the Supreme Court of Canada would allow my extradition for a crime that I did not commit and based on a handwriting analysis report that was shown by world-renowned handwriting experts to be wholly unreliable, totally erroneous, and biased," Diab said in a statement released shortly thereafter. "I have been living a Kafkaesque nightmare for over six years, fighting false allegations against me, enduring detention, strict bail conditions, the loss of my employment, and enormous stress on my family."

Diab found it "shocking that this would happen in Canada, despite the numerous commissions on wrongful convictions based on faulty forensic evidence and the Court's vow to never let this happen again."

Rania Tfaily was equally amazed that the Supreme Court refused to hear a case that addressed the unbalanced interpretation of extradition law in different provinces. "If Hassan's case were heard in British Columbia, he would not have been torn away from his home and family and shipped to a jail in a foreign country, as the British Columbia Court of Appeal has recognized the utter unfairness of extraditing people based on unreliable evidence," she said.

### **Whisked away to indefinite detention**

No doubt aware of the controversy surrounding the surrender of Diab to the French, Canadian officials wasted no time in disappearing him from Ottawa. "The next day, once he got a chance to use the phone at the jail, he called me, and I had to tell him the devastating news," Tfaily recalled. But their scheduled visit, arranged with the approval of the detention centre's superintendent, was not to be.

"In the evening, a guard came and took photos of him," Tfaily said. "He was not told the reason at the time, but it turned out that this was to issue a temporary passport for him, and in less than a day, he was issued this passport. In the very early morning, he was taken away from the Ottawa-Carleton Detention Centre and driven to Montreal, where he was kept in a jail cell. An RCMP officer confiscated his eyeglasses, his jacket -- even though it was extremely cold -- and his French lawyer's phone number. Hassan protested this cruel treatment. Shortly before the departure of a commercial airplane to Paris, he was escorted to board the plane. French police accompanied him on the trip."

Upon his arrival in Paris, he was taken to a judge, who informed him he was "under investigation," and promptly detained. Under French law, an individual can be held without charge up to 2 years (under a process known as *mis en examen*) before deciding if they'll even hold a trial. Other jurisdictions do not permit such lengthy delays, which effectively constitute indefinite detention.

Diab now sits in a cell in the largest prison in Europe for 20 hours a day. This is directly due to the fact that in 2011, Ontario Court judge Robert Maranger upheld the extradition order, despite his conclusion that the case against Diab was "weak," "suspect," and "confusing," concluding "the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial, seem unlikely."

His supporters fear that he will not receive a fair trial in France's much-criticized anti-terrorism courts. Indeed, Human Rights Watch noted that French "decisions to arrest suspects and place them under formal investigation are based on a low standard of proof," and lawyers complain "that the way in which judicial investigations in terrorism cases are conducted seriously undermines the right of each defendant to an effective defense." The organization's critique of French anti-terror laws, *Preempting Justice*, also notes that "the prominent use of intelligence material in judicial investigations, in the context of the close links between judges and the intelligence services, raises concerns about procedural fairness and reliance on evidence obtained from third countries where torture and ill-treatment are routine."

### **A case defined by low standards, weak decisions**

Casual observers may wonder how Diab's life in Canada, where he has been a citizen since 1993, could be so violently uprooted: under Canada's extradition law, the rights of Canadian citizens, permanent residents,

and refugees are trumped by foreign policy considerations.

As in France, the standards in Canadian extradition law are low. In a scene that might be taken from a *Pink Panther* movie featuring the bumbling Inspector Clouseau, the French handwriting case against Dr. Diab was based on five words written in block letters from a Paris hotel register. France initially offered two supposed handwriting "experts" who compared these five printed words with the cursive writing from Diab's PhD admissions documents at Syracuse University. The French concluded that the writer of the 1980 block letters was the same man whose writings they discovered at Syracuse, even though most credible handwriting experts conclude block printing cannot be compared with cursive writing. Another problem, though, was that the Syracuse writings were not Diab's: they belonged to his then-wife, Nawal. Embarrassed French officials were allowed to withdraw their "expert" report and replace it with another. Experts hired by Diab found the new findings were fatally flawed and wholly unreliable because they failed to use standard, accepted methodology. Once that report was withdrawn, the French took another kick at the can with a third "expert" report that was finally accepted, even though Judge Maranger found it "susceptible to a great deal of criticism and attack," also calling it "illogical... convoluted, very confusing, with conclusions that are suspect."

When his case went to the Ontario Court of Appeal, Diab's factum reflected the Alice-in-Wonderland quality of the case, noting the allegations are "based largely on intelligence reports from unnamed foreign entities, who in turn obtained information from unknown sources in unknown circumstances." Given the impossibility of verifying the reliability of such information, it was difficult to determine how any court could proceed.

The Appeal judges, in a similarly weak decision, upheld the extradition, even though it was by then a matter of record that Diab could become the first person ever extradited to another country without being charged with a crime. They also dismissed concerns that torture-gleaned "intelligence" would be used against Diab even though, as his legal team pointed out, "France had a special intelligence sharing relationship with Syria [which was] shown to have regularly kidnapped Lebanese individuals and tortured them to extract information on national security and terrorism matters" and that there exists "no genuine ability to challenge intelligence in French terror trials." If a trial does go ahead, the secret intelligence, which was excluded even from the extradition hearing in Canada because it would have violated the Charter of Rights and Freedoms, will be part of the case.

Throughout this ordeal, Diab has denied the allegations, condemned the 1980 bombing, offered to be questioned by the French in Ottawa, and even accepted an offer from the RCMP (later withdrawn) to take a polygraph test.

### **Echoes of another wrongful conviction**

It is unlikely that the library at the prison where Diab is held has an extensive reading list, but it would be interesting to discover whether there are any books on another wrongful conviction case, one that shook the French Republic to its core more than a century ago. The case of Alfred Dreyfus was similarly based on fundamentally flawed and faulty handwriting analysis. In that case, the first expert consulted concluded that the suspect handwriting did not belong to Dreyfus; needless to say, that expert was dismissed and slandered, and the prosecutor shopped around until he could find a more "accommodating" expert, which led to a wrongful conviction driven by virulent French anti-Semitism.

Writing with the passion and honesty that belongs to the wrongfully defamed and detained, on December 5,

1894, Dreyfus wrote from prison: "The truth will out in the end. My conscience is calm and tranquil, and does not reproach me for anything. I have always done my duty and have never bowed my head. I have been overwhelmed, crushed in my dark prison, along with my mind; I have had moments of wild madness; I raved and rambled, but my conscience remained alert. It said to me: 'Keep your head up and look the world in the face. Strong in the knowledge that your conscience is clear, walk straight and get up again. It is an appalling ordeal, but it must be endured.'"

Over a century later, Diab faces the same outmoded judicial system that condemned Dreyfus -- an inquisitorial, Napoleonic-era creation that even former French President Sarkozy has said should be abolished given that it eliminates the presumption of innocence.

"I, my family, friends, and supporters, will continue to fight the false allegations that have been imposed on me, a Canadian citizen who is law-abiding, peaceful, compassionate, and who abhors violence," Diab writes. "I am grateful and heartened by the outpouring of support from thousands of individuals and organizations that recognize the injustice that I have experienced and the unfairness of Canada's extradition law. I vow to never give up, and I will always remain hopeful that I will eventually return to my home in Canada and be reunited with my wife and children."

The pain of separation for Diab and his young family -- which grew with the birth of a second child in January -- is beyond words. An extensive network of Canadian supporters is now working on building French support. Meanwhile, a series of activities is planned, from writing letters of support to fundraising to help defray significant costs of everything from new lawyers to long-distance calls from the overseas jail. For details on the Bring Hassan Home campaign, see <http://www.justiceforhassandiab.org/>

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*Photo: [www.justiceforhassandiab.org](http://www.justiceforhassandiab.org)*