



## Canada helped France dig up evidence to extradite Ottawa man later freed on terror charges

Justice Department's 'smoking gun' evidence led to Hassan Diab's extradition, but case didn't hold up

David Cochrane, Lisa Laventure · CBC News · Posted: May 01, 2018 4:00 AM ET | Last Updated: May 1



Hassan Diab with his daughter, Jena, in the family's Ottawa home. Diab did not get a chance to wish Jena a happy second birthday before he was extradited to France in 2014, where he spent three years in prison on terrorism charges that were later dropped. (Lisa Laventure/CBC)

Newly obtained documents reveal the efforts Canada made behind the scenes to ensure the extradition of Hassan Diab, the Ottawa university professor who spent more than three

years in a French prison while being investigated for terrorism charges that were later dropped.

An internal memo obtained by CBC News reveals that the "smoking gun" evidence that secured Diab's extradition to France in 2014 was obtained at the direction of a senior Canadian Department of Justice lawyer at a time when it appeared the French extradition case was falling apart.

Diab spent 38 months in near solitary confinement in France's largest prison without ever being charged. French authorities tried for years to link him to a 1980 bombing targeting a Paris synagogue before the French courts ordered his release and return to Canada due to lack of evidence. The French government is still pushing to put him on trial.

The confidential memo obtained by CBC News suggests that Diab — a Canadian citizen — never would have been extradited if not for the efforts of a specialized division of Canada's Department of Justice known as the International Assistance Group.

Claude LeFrançois, senior counsel with the IAG, not only wrote the memo, he also obtained a series of court delays that gave France the time it needed to find the evidence.

- [\*\*LONG READ | Hassan Diab on the toll 3 years in a French prison took on his life\*\*](#)
- [\*\*Extradition could happen to anyone, says professor fighting for change in law\*\*](#)

While that hunt for case-saving evidence continued, court transcripts show LeFrançois repeatedly told the court he had no direct knowledge of what France was doing — despite having directed France to find the evidence.

The specifics of the renewed investigation weren't the only information kept from the court. When the French efforts turned up fingerprint analysis that could have helped clear Diab, it was never shared with the defence or shown to the Canadian judge who made the extradition order.

"My first reaction is to question, is that Canada's role?" said Donald Bayne, who has represented Diab during this decade-long legal battle. "Should the Department of Justice be doing this? This is France's case. Canada has no case against Dr. Diab, never did. Canada is not the investigators for France."



Donald Bayne, Diab's lawyer, speaks during a news conference in Ottawa last June. 'Canada has no case against Dr. Diab. Never did,' Bayne says. (Adrian Wyld/Canadian Press)

The secret process started in the fall of 2009, when it became clear that Diab's defence team had undermined key evidence in the French case connecting Diab to the bombing that killed four and injured dozens.

France was leaning heavily on analysis by two handwriting experts who claimed there was a link between Diab's writing and that of the Paris bomber.

But in October 2009, Diab's legal team produced contrary reports from four international handwriting experts. The defence experts questioned the methods and conclusions of the French experts, and they proved that some of handwriting samples used in the French analysis didn't even belong to Diab. They were his ex-wife's handwriting.

The potential loss of that evidence posed an enormous threat to the French case. So on Nov. 21, 2009 LeFrançois sent an urgent memo to France.

“ A significant element of the overall evidence required for a court decision to allow extradition would be lost.”

— Justice Department lawyer Claude LeFrançois

LeFrançois warned the defence findings "would jeopardize the reliability of one of the only elements of direct evidence" linking Diab to the bombing. If it were thrown out — which seemed likely — he warned "a significant element of the overall evidence required for a court decision to allow extradition would be lost."

LeFrançois urged French authorities to find a third handwriting analyst on "short notice, given the proceedings underway."

## Fingerprint evidence not presented

But the Canadian government lawyer also asked the French to send fingerprints of the bombing suspect to Canada for comparison with prints of Diab, which would be analyzed by the RCMP.

LeFrançois wrote that the fingerprint evidence "could be extremely persuasive and perhaps conclusive."

But when the fingerprint evidence didn't match, it was never presented to the Canadian court. Under Canada's extradition laws, the prosecution is under no obligation to present evidence that points to a suspect's innocence.



Diab and his wife, Carleton University professor Rania Tfaily, at home with daughter Jena and son Jad. (Lisa Laventure/CBC)

"The RCMP did the comparison and had the results on Jan. 11, 2010," Bayne said in an interview.

"And it was conclusive, every identifiable fingerprint ... excluded Dr. Diab. It was not him. It was conclusive. That was never told to the court."

## 'Important to advise' France: Justice Department

LeFrançois did not respond to multiple requests for an interview. In a statement, a Department of Justice spokesperson said it is normal practice for Canadian government lawyers like LeFrançois to provide extradition-requesting states such as France with advice on how to strengthen their case.

The spokesperson said Canada doesn't disclose confidential communications with its foreign partners to the court.

"Discussions about the strength of the evidence and the possibility of further evidence being produced are confidential communications subject to a series of privileges," the spokesperson said.

During question period Tuesday in the House of Commons, however, Foreign Affairs Minister Chrystia Freeland said she was aware of the role government officials played in his extradition and said the government is looking into Diab's transfer to France.

Foreign Affairs Minister Chrystia Freeland answered an NDP question about the Diab case in Question Period on Tuesday 0:26

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As for directing France to find specific evidence, the spokesperson said, "It is important to advise the requesting state and give them the opportunity to provide additional evidence if they choose to do so."

So while Canada was advising France on how to strengthen its case, Bayne and the presiding judge were unaware that a new handwriting analysis was being prepared, which the prosecution would call its "smoking gun."

A CBC News review of court transcripts covering appearances from 2009 and 2010 show multiple attempts by Bayne and Ontario Superior Court Justice Robert Maranger to discover what new evidence France might be considering against Diab.

Diab's full extradition hearing was originally set for Jan. 4, 2010. But on Dec. 18, 2009 LeFrançois successfully argued for an adjournment to allow France to consider "whether and what evidence they might wish to submit" in response to the defence's rebuttal of their handwriting analysis.

LeFrançois told the court, "I can't be more precise than that," even though this was nearly a month after he sent the request to France for a new handwriting analysis and fingerprint comparison.

- [Canada to reconsider Extradition Act in wake of Diab case](#)

This pattern repeated itself in a follow-up hearing on Feb. 8, 2010.

By March 29, 2010, four months after LeFrançois had sent his private memo to France, and with the clock ticking down to Diab's extradition hearing, tentatively set for June, Bayne was getting impatient.

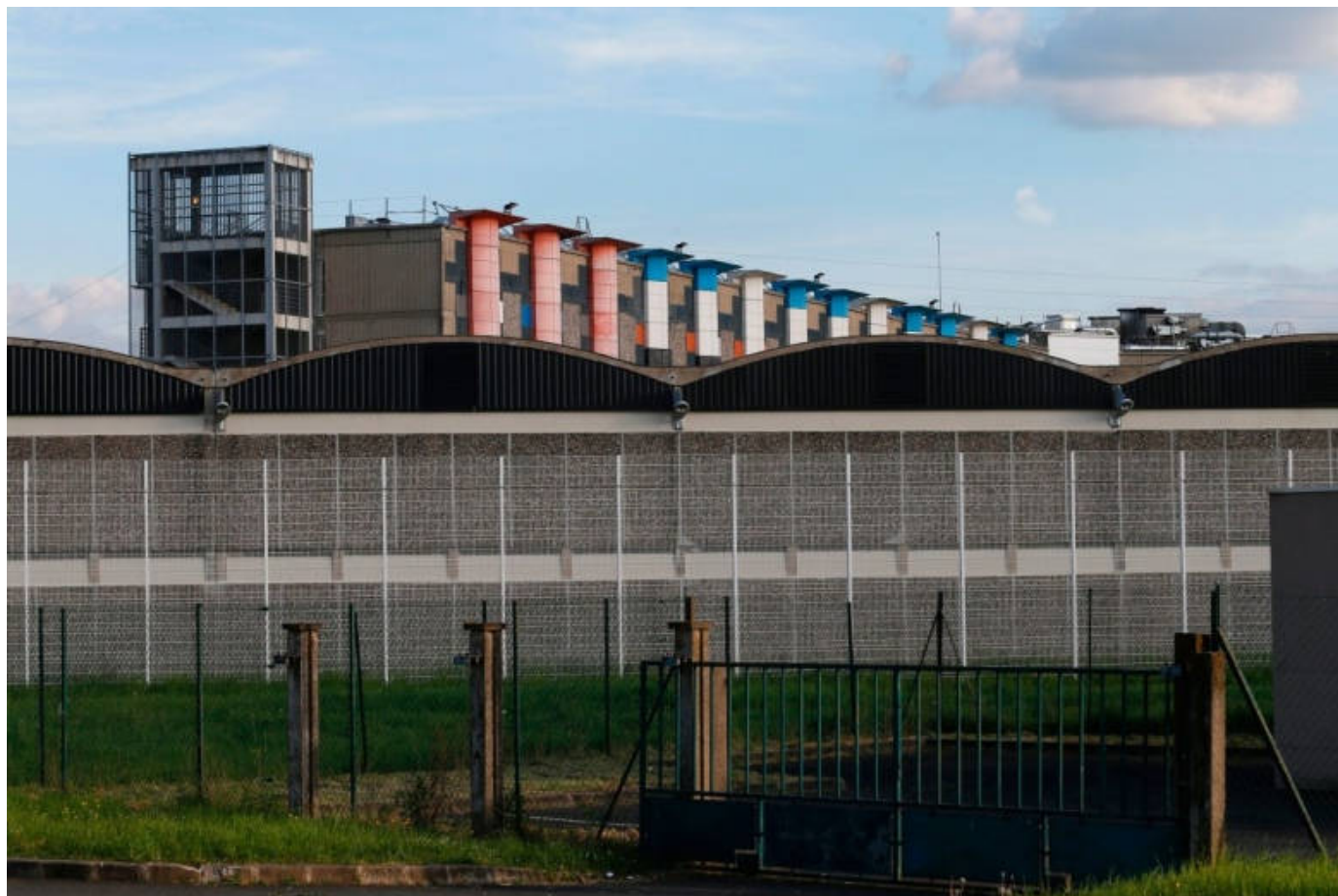
“ Is there anything the attorney general or France can reasonably foresee will be tendered? ”

— Donald Bayne , Diab's lawyer

"Surely, France by now knows if it is working on something that may not be ready yet," Bayne said at the March 29 hearing. "Is there anything the attorney general or France can reasonably foresee will be tendered?"

Pressed by Justice Maranger to elaborate "as an officer of the court," LeFrançois conceded there had been communication with France — but offered little else.

"It's somewhat useless to guess at whether it will be evidence and whether it will be evidence that we might want to lead," LeFrançois replied. "So I'm afraid we're at a loss."



Diab was held for three years in Fleury-Mérogis prison in the southern suburbs of Paris. (Geoffroy van der Hasselt/AFP/Getty Images)

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But at this point France had already delivered fingerprint samples that didn't match Diab. It had also hired the new handwriting expert on Dec. 15, 2009 — three days before LeFrançois asked for his initial adjournment.

By the time that March 29 appearance had ended, Diab's extradition hearing was set to begin on June 14. But on May 17, LeFrançois withdrew the tainted handwriting reports that were core to France's initial case and tabled the new one he had privately requested more than five months earlier.

Jeffery Johnston, LeFrançois's co-counsel, would later call this third analysis the "smoking gun" against Diab.



That description proved true. In his June 2011 decision ordering Diab's extradition, Maranger wrote, "The evidence that tips the scale in favour of committal is the handwriting comparison evidence."

That third report carried enormous weight, even though three defence experts found significant problems with the French analysis.

Ottawa man Hassan Diab was extradited to France for his alleged involvement in a 1980 bombing. He spent more than three years in prison, despite little evidence to prove the charges. Now one expert argues it's time to change the law to prevent this from happening to innocent Canadians again. 24:34

## 'Wholly unreliable'

The defence experts concluded the third French expert was "biased, unqualified, and based her conclusions on flawed methodology." They each concluded that the results in the "smoking gun" report were "patently unreliable," "wholly unreliable" and "fatally flawed."

Even the judge called the French report "convoluted, very confusing with conclusions that are suspect." Maranger wrote that France has presented "a weak case; the prospects of conviction in the context of a fair trial, seem unlikely."





France has appealed Diab's release. Prosecutors are determined to try him for the 1980 attack, even if they have to do it in absentia. A decision is set for July 6 in Paris. (Lisa Laventure/CBC)

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But none of that mattered.

Under Canada's extradition laws, any evidence France submitted to the court had to be considered "presumptively reliable." That means that no matter how many holes the defence experts poked in the analysis, the "smoking gun" report was legally bulletproof.

## Lack of evidence

For the next three years, Bayne used a series of legal challenges and appeals to try to keep Diab in Canada. By 2014 he appealed to the Supreme Court, which refused to hear the case.

On Nov. 14 of that year Diab was taken into custody and extradited to France. He was never charged with a crime. He never went to trial. He spent 38 months in his cell for 20 to 22 hours a day while France tried to strengthen the case the Canadian judge had called "weak."

In January this year, judges in France ordered the case dropped due to lack of evidence. Diab didn't match the fingerprints left by the perpetrator of the Paris bombing. University records proved Diab was in Beirut writing exams on the day of the attack.

- [Hassan Diab, Canadian university professor once charged with terrorism in France, is back in Canada](http://www.cbc.ca/news/politics/hassan-diab-france-terrorism-investigation-1.4614855)

French judges concluded the "smoking gun" handwriting analysis that tipped the scales in the extradition hearing was unreliable.



Diab enjoys a meal at home in Ottawa with his kids. (Lisa Laventure/CBC)

[During his incarceration](#) Diab missed the birth of his son Jad and his first and second birthdays. He missed his daughter Jena's second, third, fourth and fifth birthdays. His father died before the case was dropped and he was returned to Canada. He hasn't been able to work since his arrest in 2008.

- [Read more about Hassan Diab's ordeal and the toll it took on his body, mind and family](#)

France has appealed Diab's release. Prosecutors are determined to try him for the 1980 attack, even if they have to do it in absentia. A decision is set for July 6 in Paris. Canada's

Department of Justice has launched an internal review to see what lessons can be learned from the Diab case.

"If it's limited to an internal review they are asking the wrong people. This has to be a broad-based inquiry," says Bayne. "Canada failed him."

Canada's role in an innocent man's imprisonment is the focus of an exclusive report by CBC News, who obtained documents revealing the efforts made behind the scenes to ensure the extradition of Hassan Diab. The Ottawa university professor spent more than three years in a French prison while being investigated for terrorism charges that were later dropped. A confidential memo obtained by CBC News suggest that Diab, a Canadian citizen, never would have been extradited if not for the efforts of a specialized division of Canada's Department of Justice known as the International Assistance Group. 10:31

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