

French Court of Appeal Decision Overruling Order of Dismissal of French Investigative Judges and Directing the Trial of Hassan Diab

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I. Context in Which to Assess the French Court of Appeal Decision

1. As the Canadian Extradition Judge, The Honourable Justice Maranger, noted and the French Record of the Case (ROC) made clear, the bomber is “The person who filled out this hotel registration card” on September 22, 1980. This was the person posing as “Alexander Panadriyu”. This is the person alleged by France to be Hassan Diab.
2. The hotel card was, according to the evidence of Mr. Maccario, the desk clerk, “personally” handled and filled out by the bomber Panadriyu. Panadriyu printed the 5 words “Panadriyu, Alexander, Larnaca, Cyprus, technician” AND wrote the date “22/09/80”; the only word written by hotel staff on the card was the word “imprevu” (unexpected).
3. The French Record of the Case, certified December 11, 2008, stated that no “usable fingerprint traces” could be found on the hotel card personally handled by the bomber. This was untrue. In May, 2007, nineteen months before the ROC was certified, French authorities had in fact located and exposed a usable fingerprint on the hotel card. On January 14, 2008, French forensic experts had compared that print with Hassan Diab’s fingerprints and conclusively excluded him as the source. France never disclosed this to Canada or to Canadian courts during the Canadian extradition proceedings. The French Investigative Judges reported this in their Order of Dismissal in January, 2018.
4. “Alexander Panadriyu” was arrested by Paris police September 27, 1980 for shoplifting wire cutters. French police took him to the 14th district police station where he was questioned and where he handled and signed a statement (confessing). The French Investigative Judges noted, in their Order of Dismissal of the case against Dr. Diab, that 17 usable fingerprints were identified on the bomber’s police statement; 7 of those prints belonged to the policeman (LeBorgne) who questioned “Panadriyu”. Hassan Diab, on April 17, 2015, was excluded as being the source of all 10 remaining fingerprints on the bomber’s police statement.
5. During the ongoing Canadian extradition proceedings, France’s lawyers in Canada (Canadian DOJ Lawyers) had France forward to the RCMP the fingerprints (4 usable and 2 unusable) identified at that point in time in 2009 on the “Panadriyu” police statement. France’s lawyers stated that a fingerprint comparison by the RCMP of Hassan Diab’s prints with the prints on the bomber’s statement would yield “powerful if not conclusive” evidence for the Canadian judge. When the RCMP comparisons (January 11, 2010, and February 25, 2010) during the committal proceedings scientifically eliminated Hassan Diab as the source of all identifiable prints, such “powerful if not conclusive” evidence was disclosed neither to the Canadian extradition judge whom they were asking to extradite Dr. Diab, nor to Dr. Diab’s counsel (nor, later, to the Court of Appeal or Supreme Court of Canada).

6. The Canadian extradition judge found as a matter of fact and law that extradition was justified only by the handwriting opinion of Ms. Bisotti (her opinion being that there was a “strong presumption” that Hassan Diab authored the 5 printed words and a “weak presumption” that he authored the written date on the hotel card). This opinion was the “smoking gun” justifying extradition (the creation of a *prima facie* case) according to France and the extradition judge. The Canadian extradition judge held that all other evidence in the French case (descriptions of “Panadriyu”, Hassan Diab’s passport, composite sketches of “Panadriyu”, alleged affiliation with Palestinian groups) failed to make out a case fit to go to trial. He stated that, “The evidence that tips the scale in favour of committal is the (Bisotti) handwriting comparison evidence.” [As is set out in greater detail below, that evidence has now been shown by the French Court of Appeal’s own experts to be wholly unreliable due to failure to follow accepted methodology for handwriting comparison. Five international handwriting experts had previously reached the same conclusion.]
7. The Canadian extradition judge stated that France’s first two handwriting reports (Barbe-Prot; Marganne) were potential examples of “manifestly unreliable” evidence that the court should disregard. France withdrew both of these unreliable opinion reports (they unwittingly compared the hotel card with a third person’s handwriting in forming their opinions) in recognition of their unreliability. French investigative judges agreed that these reports were “largely discredited”.

II. The Order of Dismissal

1. The 80pp decision of Investigative Judges Herbaut and Foltzer, dated January 12, 2018, was the result of 3+ years of additional investigation, building upon the initial 35 years of French investigation, during which 3+ years Hassan Diab remained in near-solitary confinement in a French prison.
2. The Order of Dismissal stated that a usable fingerprint had been discovered on the bomber’s hotel card and that it had in May, 2007 (a year and a half before France asked Canada to arrest and extradite Hassan Diab to France) been compared by French forensic experts (January 14, 2008) with the fingerprints of Hassan Diab. Dr. Diab was excluded as the source of the fingerprint. Therefore, not only on December 11, 2008, in certifying the Record of the Case, did France misrepresent to Canada the truth about the fingerprint on the bomber’s hotel card, but further during the period of almost 6 full years that the Diab matter was before all levels of Canadian courts, France never corrected the misstatement of critical fact. France’s was an ongoing serious misrepresentation for years that affected the liberty of a Canadian citizen. It was a continuing material misrepresentation to the Canadian Superior Court of Justice, the Court of Appeal for Ontario and Supreme Court of Canada.
3. The Order of Dismissal also showed that the French Record of the Case misstated the facts about additional fingerprints found inside the rented motor vehicle used by the bomber(s). The Record of the Case asserted on December 11, 2008 that “Only one usable palm print could be detected on the inner side of the window of the right rear door.” The Investigative

Judges revealed that the French forensic identification team had in 1980 “*discovered two traces (D958, D962, D963 to D965) (in fact there are three – see the expert report):*”

- *On the inside of the glass of the right rear door...*
- *On the inside of the window of the front left door”*

The Investigative Judges further revealed that a forensic fingerprint examination on June 29, 2011 “later compared” the “three exploitable traces” from the rented car with “the fingerprints and palm prints of Hassan Diab who is excluded.” These additional fingerprints (to the single palm print) and their exclusion of Hassan Diab was never disclosed to the Canadian courts or to Dr. Diab and counsel throughout the six years of Canadian extradition proceedings. Rather, France persisted in misrepresenting that only one palm print had been found in the car.

4. The Investigative Judges revealed on January 12, 2018, that on January 28, 2013, seventeen usable fingerprints were discovered by French forensic experts on the bomber’s (Panadriyu’s) police statement taken September 27, 1980. The January 28, 2013, forensic examination found that seven of the seventeen prints were those of the questioning officer, LeBorgne. Regarding the remaining ten fingerprints on “Panadriyu’s” statement, Hassan Diab was scientifically eliminated as the source.
5. Hassan Diab was interviewed by French Investigative Judges on January 7, 12 and 15, 2016, and on November 30, 2016, and November 17, 2017. Dr. Diab explained that in September and October of 1980 (and 1981) he studied for, sat and wrote his university sociology exams in Beirut. During this period, “Alexander Panadriyu” was in Paris, registering at the Celtic Hotel, buying a motorcycle, being arrested and questioned and building and planting a bomb on October 3, 1980.
6. The Investigative Judges conducted an investigation at the Lebanese University in Beirut. The University confirmed in writing that first and second-year sociology exams in 1980 and 1981 had been written in October of each year. Multiple independent witnesses confirmed that Hassan Diab was present in Beirut throughout the exam period, studying with them and writing the exams with them. All confirmed that Hassan Diab had not been absent from Beirut during that period. All provided “globally concordant” evidence with that of Dr. Diab.
7. Ms. N.C.’s evidence to the Investigative Judges was that Hassan Diab was present with her in Beirut up to September 28th, 1980, at which time he drove her to the Beirut airport for her flight to England with her father, to pursue her post-graduate studies. “Alexander Panadriyu” had been in Paris since at least September 22, 1980, had purchased a motorcycle in Paris on September 23, 1980, and had been in French police custody on September 27, 1980. Ms. N.C.’s Lebanese passport, presented to the Investigative Judges provided documentary confirmation that she left Lebanon for England on September 28, 1980. This evidence, independent of the Lebanese University evidence, was consistent with that evidence as to the whereabouts of Hassan Diab when the bomber was in Paris. An

independent university witness also confirmed that Hassan Diab was with N.C. in Beirut until she left for England (September 28, 1980) for post-graduate studies.

8. The Investigative Judges assessed the allegations of Y.K. and his wife, S.S. that Hassan Diab and his then girlfriend, N.C., had affiliation in 1980 with the Palestinian group PFLP-SO, suspected of violent activities. Y.K. and S.S. were detained in French police custody. Y.K. stated to French police, “Through my verbal exchanges with Hassan Diab it seemed to me that he belonged to the PFLP even though I have no evidence to that effect.” S.S. claimed that N.C. was active with the PFLP in 1975/76. S.S. was 14 years old living in Senegal, Africa in 1975/76 and N.C. was then a 16-year-old living with her parents in Greece. They lived continents apart. The Investigative Judges found the statements of Y.K. and S.S. to be “contradictory or unreliable and utterly inconsistent with the evidence of many witnesses of the Lebanese University that neither Hassan Diab nor N.C. had any apparent political commitment or affiliation with the PFLP”. Other witnesses “excluded the fact that Hassan Diab could have been part of a movement like the PFLP. One witness described him as “a nonviolent and moderate, having friends of all diverse religions”.
9. The Investigative Judges concluded that, given the consistent, independent evidence that Hassan Diab was in Beirut in late September and early October, 1980, and given that he is excluded as the source of the fingerprints on the bomber’s hotel registration card, police statement and the rental vehicle, “the charges that could be held against Hassan Diab are not sufficiently convincing and that they face too many acquittal evidences to justify sending the case to the Criminal Court”. They ruled, “In summary, it is likely that Hassan Diab was in Lebanon during September and October 1980, then in October 1981 and it is, therefore, unlikely that he is the man using the false identity of Alexander Panadriyu, who was in France as of September 22nd, 1980 and who then laid the bomb on Rue Copernic on October 3rd, 1980”.

III. The French Court of Appeal Decision dated January 27, 2021, Reversing the Investigative Judges’ Order of Dismissal of January 12, 2018

1. The French appeal involved 23 parties in addition to the prosecution counsel and Hassan Diab. Five French associations pleaded that the French appeal court should overturn the Order of Dismissal and send the case to trial. These associations were the Association française des Victimes du Terrorisme (AfVT), the Fédération Nationale des Victimes d’Attentats et d’Accidents Collectifs (FENVAC), the Ligue Internationale contre le racisme et l’antisémitisme LICRA (Ass.), the Mouvement contre le Racisme et pour l’Amitié des Peuples (MRAP) and UNION LIBÉRALE ISRAËLITE DE FRANCE.
2. The appeal was argued on April 11, 2018, and the case reserved for decision to July 6, 2018, then further to October 26, 2018. On October 26, 2018, in the face of withering international expert criticism of the Bisotti handwriting opinion, the French Court of Appeal ordered yet another French handwriting opinion to assess the Bisotti opinion, the evidence

of international defence experts who criticized the reliability of the Bisotti opinion and to provide an opinion as to whether Hassan Diab authored the 5 printed words and the written date on the hotel registration card. This Court of Appeal-ordered report is the Bizeul/Buisson-Debar report dated November, 2019. This report was available to the Court of Appeal before it rendered its January 27, 2021, decision.

3. The French Court of Appeal, in overturning the Investigative Judges' Order of Dismissal cited reliance on the Barbe-Prot and Marganne handwriting opinions originally offered as evidence by France that erroneously relied on the comparison handwriting of a person other than Hassan Diab to form their opinions (that Hassan Diab "is the author" of the hotel card – Marganne – and that his writing is "perfectly compatible" with being the author – Barbe-Prot). These two reports were in fact withdrawn by France during the Canadian extradition proceedings once the glaring comparison error was exposed by the International defence experts. The Canadian extradition judge identified these two reports as potential examples of "manifestly unreliable" evidence that the court should disregard. The Investigative Judges regarded these reports as "largely discredited". Yet the French Court of Appeal cites them both as factual evidence against Hassan Diab without addressing the fact that they constituted "largely discredited" evidence that should be disregarded.
4. The French Court of Appeal, in reversing the Order of Dismissal and ordering a French trial, cited reliance on the Bisotti handwriting opinion criticized as "totally unreliable" by five international handwriting experts (for failure to use accepted and appropriate handwriting analysis methodology). The Bisotti opinion the Canadian extradition judge had found to be based on "some questionable methods and on an analysis that seems very problematic". The Canadian judge further found that Bisotti's "analysis seems illogical" and "arguably raises the appearance of bias". The Canadian judge felt bound by current Canadian extradition law standards for "manifest unreliability" to allow the request for committal, but did so with obvious misgiving: the Bisotti opinion, he stated, was "highly susceptible to criticism and impeachment" and the French case dependent on it was "weak" rendering "the prospects of conviction in the context of a fair trial, seem unlikely."
5. The French Court of Appeal, in response to the international expert criticism of the Bisotti opinion (that there was a "very strong presumption" that Hassan Diab was the author of the hotel card printing/writing) on October 26, 2018, ordered the Bizeul/Buisson-Debar report to assess the Bisotti report and the criticism of it by five international experts, as well as to provide an opinion on authorship of the hotel card.
6. The Bizeul/Buisson-Debar handwriting analysis and opinion ordered by the Court of Appeal arrived at 3 principal conclusions:
 - (i) the Bisotti handwriting opinion that was the basis for the Canadian extradition of Hassan Diab was wholly unreliable because of the use of scientifically improper handwriting comparison methodology. Citing the "Scientifically inadequate methodology for assessing similarities and differences" detailed by the international defence experts, the

Bizeul/Buisson-Debar report states “we are in total agreement with the defence experts. Ms. Bisotti’s way of proceeding had a fundamental impact on her conclusions, as we argued above”;

- (ii) the date “22/09/80” written by the bomber “Panadriyu” on the hotel card was NOT written by Hassan Diab: “the results strongly support ... that Mr. Hassan Diab is not the writer of the date”;
- (iii) it is not possible to exclude Hassan Diab as the author of the five block-printed words “Panadriyu, Alexander, Larnaca, Cyprus, technician” on the hotel card. This is because the nature of the writing is block printing, is limited to only five words and the comparison materials were not contemporaneous, being separated by fifteen years.

7. Numerous additional conclusions were reached in the Bizeul/Buisson-Debar report:

- (i) The evidence of the International (defence) experts was to the effect “that the term ‘presumption’ often used by Ms. Bisotti, including her conclusions, is inappropriate in that it can only reinforce this biased approach (an approach lacking in objectivity)”. The Bizeul/Buisson-Debar report to the French Court of Appeal agreed: “we agree with the defence experts: the choice of the word ‘presumption’ is inappropriate”;
- (ii) Mme. Bisotti had opined in her report that the writing/printing on the hotel card “does not show any sign of disguise”. The defence experts disagreed, stating that there were signs of disguise. Bizeul/Buisson-Debar stated that “we concur” with the defence experts;
- (iii) The defence experts stated that Mme. Bisotti actually worked backwards in her attempted analysis. Bizeul/Buisson-Debar reported to the French Court of Appeal that “we fully agree with this comment. It is indeed the text under examination that must be compared with the samples provided for comparison and not the other way around.”

8. The French Court of Appeal decision of January 27, 2021, cited the Bizeul/Buisson-Debar report as evidence “incriminating” Hassan Diab, because the report stated that “it is not possible to exclude” Hassan Diab as author of the “writing in question”. This was a serious misrepresentation of the Court of Appeal’s own mandated report in many ways. First, this is not incriminating evidence because it ignores the fact that no positive evidence of authorship can be produced. When the questioned “writing” is block printing of only five words and there are no contemporaneous comparators (exactly as the defence experts had stated) Hassan Diab cannot be positively excluded or included as author of the hotel card. That is not “incriminating” evidence. Second, the Court of Appeal states that this report does “not exclude Hassan Diab as the person having filled the contentious hotel form”. The French Court of Appeal has misread its own mandated report – the alleged bomber/“Panadriyu”

printed the five words AND wrote the date on the hotel card. Bizeul/Buisson-Debar state conclusively that Hassan Diab did not write the hotel card date. One and the same person (“Panadriyu”) wrote the five words and the date. The Bizeul/Buisson-Debar evidence excludes Hassan Diab as author of the date. Given that the bomber wrote all, including the date, the evidence does indeed exclude Hassan Diab. Third, the Court of Appeal seems confused as to the simple facts of the hotel card: there are five printed words (“Panadriyu, Alexander, Larnaca, Cyprus, technician”) and a written date (“22/09/80”) on the face of the card that were written by the alleged bomber. The word “imprevu” was written by the hotel clerk. Four of the five words printed by the bomber (PANADRIYU, ALEXANDER, LARNACA, CYPRUS) were printed in capital letters and one (“technician”) in lower case. Yet the Court of Appeal states that “three of them written in capitals”. It is unsettling that the Court of Appeal does not even have the basic facts right. Is this sheer carelessness or evidence that the actual facts (and evidence) are not that important to the decision the court seeks to reach?

9. The French Court of Appeal’s treatment of the fingerprint evidence is even more troubling.
 - (i) The Investigative Judges had held that the fact that it was not Hassan Diab’s fingerprints that were on the bomber’s hotel card and police statement, nor in the rental car, was “unquestionably” an essential element of discharge. This was consistent scientific evidence of innocence.
 - (ii) The Court of Appeal deals with this important evidence by seeking to speculate it away and making up non-existent evidence. Regarding the hotel card, the Court of Appeal speculates that the fingerprint on the bomber’s hotel card “could very well have come from one of the hotel’s employees”. There is no evidence to this effect. It is pure speculation. The onus is on the prosecution to prove a case by evidence, not to shift the burden by speculating.
 - (iii) The Court of Appeal further speculates that “it is likely” that the bomber, Panadriyu, knowing he was going to be committing an attack in the following days, “was careful not to leave prints along the way”. Not only is there no evidence at all that the bomber was being careful not to leave prints (he handled and printed the hotel card, handled and signed a police statement), the actual evidence is that he was not a careful terrorist bomber at all. He carelessly committed a shoplifting of a small item, getting arrested in the process. This is hardly the mark of a careful criminal/terrorist. The actual evidence is contrary to Panadriyu being “careful” (including hiring a prostitute on his arrival at the hotel Celtic). Courts do an injustice speculating/making up evidence that does not exist and is contrary to actual evidence.
 - (iv) Regarding the multiple fingerprints left on the bomber’s police statement (that did not belong to officer LeBorgne, the interrogator), the French Court

of Appeal speculates that all of these “likely belonged” to other people, such as “the Prosecution, various secretaries and employees, public servants ... and those in the archives”. There is no evidence at all that such people handled the bomber’s police statement. There is evidence that the bomber handled it. The Court reverses the onus on the prosecution. Moreover, the Court then reverts to its “careful bomber” speculation saying that “Panadriyu must have been careful not to leave prints on the theft procedure [statement] when he was about to commit a more serious act”. But Panadriyu did handle the statement; he signed it, writing a false signature. He was the opposite of careful, committing and getting arrested for a shoplifting when about to commit a terrorist bombing. The Court of Appeal improperly speculates instead of adhering to the evidence and makes up a “careful” bomber contrary to the evidence of a careless one.

- (v) Regarding the rental car fingerprints and palm print, once again the French Court of Appeal simply resorts to speculation to make up evidence that does not exist in an effort to explain away exculpatory evidence. That court speculates that “the cleaning done between the different rentals of the car not always being thorough”, the fingerprints and palm print “might” belong to “other drivers or passengers of this rental car”. There is no evidence concerning other renters or the nature of cleaning between rentals. This is purely speculative fabrication.
- (vi) Further regarding the rental car and fingerprints, the Court of Appeal completely and erroneously makes up evidence that fingerprints were found on the rental contract for this rented car. The Court cites documents for this proposition that do not, in fact, relate to the rental contract at all. No fingerprints were discovered on the rental contract. The Court of Appeal, careless of the real facts, makes up false facts.

10. The French Court of Appeal’s treatment of the body of evidence showing that Hassan Diab was in Beirut, Lebanon, when the bomber/“Panadriyu” was in Paris demonstrates, once again, unacceptable reliance on sheer speculation and a determination to ignore the actual evidence.

- (i) The body of evidence exculpating Hassan Diab included multiple witnesses and documents from the Lebanese University of Beirut, the evidence and documents of N.C. and the evidence/statements of Hassan Diab, all of which were consistent and mutually corroborating, as noted expressly by the Investigating Judges. This body of evidence was further supported independently by all of the fingerprint evidence exonerating Hassan Diab.
- (ii) The French Court of Appeal conceded that Dr. Diab’s “presence in Lebanon at the time of the facts ... is the main exculpatory element ...”. The Court speculates, however, that this “in no way excludes a presence of a few days

in Paris or in Spain at the very beginning of the month of October” because Beirut is “a city only a few hours away from Paris by plane”.

- (iii) There is no evidence whatsoever that the bomber(s) came to France by plane. There is no evidence whatsoever that Hassan Diab flew from Beirut to Paris for “a few days at the very beginning of the month of October”. There is no passport evidence, no airline evidence, no witness evidence. This is pure, impermissible speculation. That it is resorted to repeatedly by the Court of Appeal in an obvious effort to explain away actual exculpatory evidence is deeply troubling and betrays an unreasonable, non-judicial approach.
- (iv) Furthermore, the Court’s speculation that Hassan Diab might have flown to Paris for only “a few days at the very beginning of the month of October” is utterly inconsistent with the actual evidence that the alleged bomber “Panadriyu” was in Paris from at least September 22, 1980 (hotel registration and night spent with a prostitute), that he bought a motorcycle (on which the bomb was later mounted) on September 23, 1980, that he was arrested and in Paris police custody September 27, 1980, that he assembled a bomb, mounted it on the motorcycle and detonated it on October 3, 1980. The evidence is that the bomber/“Panadriyu” was in Paris from at least September 22 to at least October 3, 1980, not that he was in Paris for only “a few days” at the start of October. The actual evidence proves that the Court’s speculation is an unsupportable fiction, contrary to the evidence. Why would any court of justice resort to such fictions?
- (v) The French Court of Appeal states that “a relevant alibi” relates “only to the day of the facts, and not to the surrounding days or weeks”. This statement willfully ignores “the facts” that the alleged bomber was in Paris from at least September 22, 1980, through to at least October 3, 1980, a total of a minimum of 13 key days. Relevant exculpatory alibi evidence was properly recognized by the French Investigating Judges as including “the surrounding days or weeks”. The French Court of Appeal ignores the evidence in seeking to refute what it concedes is a “main exculpatory element”.
- (vi) The French Court of Appeal misstates the evidence received from the Lebanese University. In a written document dated June 21, 2016 (signed by the Head of Student Affairs, the Secretary General and the Director of The Institute of Social Sciences) the University stated that regarding “examination dates in 1980” that “the dates of the social sciences first year exams ... were passed in October”. This was also the case for the social science exams in 1981 – the 1980 and 1981 Social Sciences exams, usually held in the Spring, were held in October owing to the ongoing civil war in Lebanon. Multiple students confirmed this evidence. Multiple witnesses confirmed that Hassan Diab had studied for the exams with them in

September and written the exams with them in October. In seeking to discredit the evidence that Hassan Diab was in Lebanon (studying for and writing university exams), the Court of Appeal stated that the university evidence was only that the 1980 (and 1981) exams “most likely” took place in October. That then enabled the Court of Appeal to speculate that the exams “possibly” took place in the Spring. The University letter was unequivocal – the 1980 Social Sciences exams took place in “October”, not the Spring. The Court of Appeal either negligently or deliberately misstated the university’s evidence.

11. The French Court of Appeal noted that physical descriptions of “Alexander Panadriyu” by various witnesses “evidently contain contradictory elements” and that this is not surprising given anyone “familiar with human testimony”. Yet the Court goes on to state that a “relatively coherent physical description” emerges “with there being “no major discrepancy”. The hotel clerk at the Celtic Hotel who signed Panadriyu into the hotel in broad daylight described him as being a man 40 – 45 years old. Hassan Diab was 26 in September, 1980. This is clearly a major discrepancy. Some witnesses say Panadriyu had “long, blond” hair; some say “short black hair”, some say “half long, light brown” hair. These are major discrepancies. As the Canadian extradition judge stated, the witnesses provided descriptions with “stark differences” that did not in law amount to identification of Hassan Diab, let alone anyone else. In addition, while relying on a general resemblance of Hassan Diab in 1980 to the composite sketches created with the assistance of witnesses from the hotel, the motorcycle shop, the rental car agency and the police who arrested and questioned “Panadriyu”, the Court of Appeal failed to mention that all of those witnesses were on October 2, 2000, shown a photographic lineup of 7 males. Hassan Diab was one of the 7 males. Not one witness identified him as “Panadriyu”. The Court of Appeal turns a blind eye to this critical evidence in trying to rely on evidence of descriptions and composite sketches as “incriminating”.
12. The French Court of Appeal has reversed the onus of proof in a criminal case. In addition to the troubling errors in dealing with consistently exculpatory alibi evidence (and fingerprint evidence) set out above, the Court concluded that Hassan Diab’s “presence in Lebanon at the time of the Copernic Street attack has not been confirmed in an accurate and indisputable manner”. It is never up to an accused person to “indisputably” prove innocence, an unreasonable, unfair, mostly impossible standard. Yet that is the standard unfairly imposed on Hassan Diab by the French Court of Appeal.
13. The serious multiple errors of fact, reliance on evidence so unreliable it should be disregarded, misstatement of its own mandated handwriting report, resort to sheer speculation in an effort to explain away “essential elements” of exculpatory fingerprint and consistent alibi evidence, willful ignorance of the actual evidence and imposition on Hassan Diab of an impossible onus to prove absolute innocence “indisputably” demonstrate that the decision of the French Court of Appeal to set aside the Investigation Judges’ Order of Dismissal and order that Hassan Diab be put on trial in France is an unjust decision and one that perpetuates over a decade-long miscarriage of justice.