

**COMMISSION OF INQUIRY INTO THE INVESTIGATION  
OF THE BOMBING OF AIR INDIA FLIGHT 182**

IN THE MATTER OF ORDER OF COUNCIL P.C. 2006-293,  
MADE PURSUANT TO PART I OF THE INQUIRIES ACT:  
COMMISSION OF INQUIRY INTO THE INVESTIGATION  
OF THE BOMBING OF AIR INDIA FLIGHT 182

**NOTICE OF MOTION**

TAKE NOTICE that a motion is hereby made to the Commissioner pursuant to Rule 12 of the Rules of Procedure and Practice of the Commission of Inquiry for an order granting the Canadian Bar Association (CBA): (i) leave to extend the time to apply for leave to intervene; (ii) standing as an intervenor in Stage 2 of the Inquiry with full participatory rights; and (iii) such further or other order as the Commissioner may deem appropriate;

AND TAKE FURTHER NOTICE that in support of this application will be read the affidavit of Brian A. Tabor, Q.C., sworn on July 24, 2006 and such further or other materials as the Commissioner may permit;

AND TAKE FURTHER NOTICE that the said motion shall be made on the following grounds:

1. The Applicant for standing as an intervenor, the CBA, has long been an advocate of the legal profession;

2. As part of its mission, the CBA works to improve the law and the administration of justice, by promoting the rule of law, the independence of the legal profession, the independence of the judiciary, and the elimination of discrimination;

3. The CBA has frequently been granted leave to intervene in proceedings involving these issues before the Supreme Court of Canada, as well as presenting its views to Parliamentary Committees and Commissions of Inquiry;

4. The CBA has particular expertise relating to the issues raised in this Inquiry, including the practical application of practices and legislation relating to the investigation and prosecution of terrorism offences, the legal framework of criminal trials, and the constraints on terrorist financing;

5. If granted leave to intervene, the CBA will assist the Commissioner by providing a unique national perspective on application of the rule of law to the issues raised in this inquiry. The CBA is able to present arguments on these issues beyond the ambit of the private interests of the Families.

6. The CBA, representing the legal profession in Canada, has a substantial and direct interest in a number of issues before this inquiry, including but not limited to:

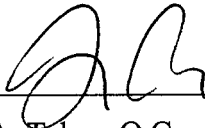
- (a) Adherence of policing and surveillance activities to the Rule of Law;
- (b) Limitations on the right to legal counsel;
- (c) Protection of confidentiality in the solicitor-client relationship;
- (d) Treatment of witnesses in the course of the investigation and prosecution of criminal cases;
- (e) Treatment of terrorism offences in the criminal context;
- (f) Fairness of trial procedures; and

(g) The right to judicial review and other principles of administrative fairness.

7. The CBA makes this motion in writing and does not seek to make oral submissions relating to its standing as an intervenor.

Dated at Halifax, Nova Scotia this 24<sup>th</sup> day of July, 2006.

SIGNED BY



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**for the Canadian Bar Association**

TO:

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**Counsel for the Commission**

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**AFFIDAVIT OF BRIAN A. TABOR**

I, Brian A. Tabor, Q.C., of the City of Dartmouth, in the Province of Nova Scotia, Barrister and Solicitor, MAKE OATH AND SAY:

1. I am the President of the Canadian Bar Association (CBA), and as such have personal knowledge of the matters below, except where I have relied on the information of others, which information I believe to be true.
2. This affidavit is in support of the CBA's motion for leave to intervene in Stage 2 of this Inquiry.
3. The CBA is a national professional organization established in 1896 and incorporated in 1921. The CBA's membership consists of approximately 36,000 lawyers, notaries, law students and teachers from across Canada, representing about two thirds of Canada's legal profession.
4. The CBA is the voice of the Canadian legal profession both nationally and internationally. Part of the mission of the CBA is to improve the administration of justice in Canada by promoting the rule of law, preserving the independence of the legal profession and of the judiciary, and eliminating discrimination.

5. The mandate of this Inquiry includes consideration of questions relating, *inter alia*, to the assessment and investigation of terrorist activities, terrorist financing, the relationship between security intelligence and evidence in criminal trials, and the prosecution of terrorism offences. These issues will have a significant impact on the rule of law, national security and fundamental justice throughout Canada. The Commissioner will consider the necessity and appropriateness of fundamental changes to Canada's system of justice with the goal of better addressing and preventing terrorist threats. These issues go to the heart of the preservation of the rule of law.

6. In 1996, the CBA adopted its Public Interest Intervention Policy, which states that the CBA will generally intervene only at the Supreme Court of Canada and only where its intervention "would constitute a significant contribution to the consideration of the issue". The issue on which the CBA proposes to intervene must also be of "compelling public interest" or "a matter of special significance to the legal profession".

7. The CBA has concluded that this Inquiry is important to the legal profession across Canada, is of compelling public interest, and that the CBA can make a significant contribution to the Commissioner's consideration of the issues. The CBA, representing the legal profession in Canada, has a substantial and direct interest in a number of issues before this inquiry, including but not limited to:

- (a) Adherence of policing and surveillance activities to the Rule of Law;
- (b) Limitations on the right to legal counsel;
- (c) Protection of confidentiality in the solicitor-client relationship;
- (d) Treatment of witnesses in the course of the investigation and prosecution of criminal cases;
- (e) Treatment of terrorism offences in the criminal context, including the right to trial by jury;
- (f) Fairness of trial procedures; and
- (g) The right to judicial review and other principles of administrative fairness.

8. The CBA can present the Commissioner with its unique expertise and perspective on the Constitutional and legal policy issues in the mandate of the Inquiry. If allowed standing to intervene, the CBA will draw on its expertise and membership to provide the Commissioner with a neutral, balanced statement of the legal profession's perspective on the issues involved.

9. The CBA has participated as an intervenor in several recent appeals before the Supreme Court of Canada concerning issues relevant to this Inquiry, including *Charkaoui, Harkat and Almrei v. Minister of Citizenship and Immigration*, SCC Files 30762, 30929 and 31178, decision pending (security certificates), *Re Application Under Section 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248 (investigative hearings), *Ontario Judges' Association v. Ontario (Management Board)*, [2005] 2 S.C.R. 286 (judicial independence); *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 3 S.C.R. 193 (independence of administrative tribunals); *Suresh v. Minister of Citizenship and Immigration*, [2002] 1 S.C.R. 3 (refugee deportation); and *Re Provincial Court Judges*, [1997] 3 S.C.R. 3 (judicial independence).

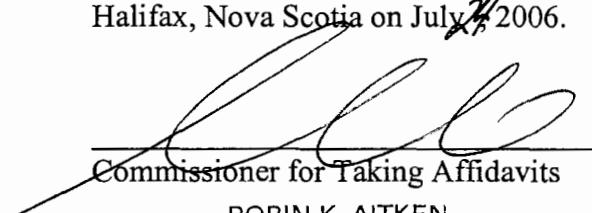
10. The CBA has taken a leadership role in analysing anti-terrorism legislation introduced after September 2001, commencing with submissions to the Senate and House of Commons Committees charged with reviewing *Anti-terrorism Act*. Most recently, the CBA made comprehensive submissions to both the Senate and House of Commons Committees for the three-year review of the legislation.

11. The CBA will retain counsel to represent it in the Inquiry once it knows the nature and scope of the standing the Commissioner sees fit to grant. Pursuant to its Public Interest Intervention Policy, the CBA normally intervenes at the appellate level and asks its counsel to act on a pro bono basis. I anticipate that the demands on counsel in this Inquiry will be much greater than in the usual appellate intervention and consequently much greater than counsel could reasonably undertake on a pro bono basis. If granted standing, the CBA intends to seek funding from the Inquiry, without which it would be unable to participate in a meaningful way.

12. The CBA respectfully requests an order granting it standing to intervene in Stage 2 before this Inquiry with full participatory rights, to file written materials in support of

our views, and to make oral submissions as invited during hearings scheduled by the Commissioner, or such other standing as the Commissioner deems appropriate.

SWORN BEFORE ME at the City of  
Halifax, Nova Scotia on July 7<sup>th</sup> 2006.



Commissioner for Taking Affidavits

ROBIN K. AITKEN  
A Commissioner of the Supreme  
Court of Nova Scotia



BRIAN A. TABOR, Q.C.