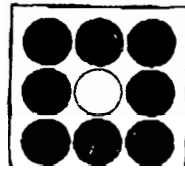


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394 Bloor Street West, Suite 200
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Telephone (416) 363-0321
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ASSOCIATION CANADIENNE DES LIBERTES CIVILES

394 rue Bloor Ouest, Suite 200
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Télécopieur (416) 861-1291
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July 14, 2006

By mail and fax

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Commission of Inquiry into the Investigation of the Bombing of
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Dear Commissioner:

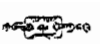
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This is to request standing for the Canadian Civil Liberties Association at the appropriate hearings of the Commission. For these purposes, we would hope that the Commission could benefit from our years of experience in attempting to strike a reasonable balance between the interests of national security and those of civil liberties. An affidavit fleshing out certain details of our involvements will be sent to you shortly.

Director of Education & Administration
Directrice, Éducation et Administration
D. S. McLAUGHLIN

Director, Freedom of Information Project
Directrice, Projet de la Liberté d'Information
NOA BRNDLSOHN AVIV

Director, Public Safety Project
Directrice, Projet de Sécurité Publique
ALEX NICOLI WOOD

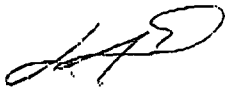


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The issues we would expect to address include possible changes in legislation and practice bearing upon the investigation of terrorist offences, the creation of a workable relationship between security intelligence and evidence for use at criminal trials, the fairness of such trials in the age of terror, and the functioning of agencies such as the Royal Canadian Mounted Police and the Canadian Security Intelligence Service.

Thank you for your consideration.

Sincerely,



A. Alan Borovoy
General Counsel

AFFIDAVIT OF A. ALAN BOROVOY

I, A. ALAN BOROVOY, of the City of Toronto, in the Province of Ontario,
Barrister and Solicitor, **MAKE OATH AND SAY:**

1. I am General Counsel to the Canadian Civil Liberties Association (the "CCLA") and as such have knowledge of the matters to which I depose or have received the information from others, in which case I do verily believe it to be true.
2. The CCLA seeks standing pursuant to Rule D of the *Rules of Procedure and Practice* of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.

The CCLA

3. The CCLA is a national organization with more than 6,500 paid supporters drawn from all walks of life, seven affiliated chapters across the country, and some 20 associated group members which themselves represent several thousand Canadians.
4. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend, extend, and foster the recognition of those rights and liberties. The major objectives of the CCLA include the protection of civil liberties and the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority and the protection of procedural fairness.

The CCLA's Knowledge and Expertise Regarding Civil Liberties Generally

5. The CCLA's contribution to the development of the law in relation to civil liberties has been recognized on numerous occasions by the courts. For instance, in *Corporation of the Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1988), 64 O.R. (2d) 577 at 583 (Div. Ct.), Mr. Justice Watt commented:

The C.C.L.A., a national organization created in 1964, actively promotes respect for and the observance of fundamental human rights and civil liberties.

6. Similarly, in *Canadian Newspapers v. A.G. Canada* (1986), 55 O.R. (2d) 737 at 739 (H.C.), which involved the *Charter* guarantee of freedom of expression, the Court stated of its decision to allow the CCLA's intervention:

[The CCLA] had a genuine and substantial interest in the proceedings and had unique experience to bring to bear as a result of its role as watchdog of police powers and long and sustained consideration of the issues involved.

7. The CCLA possesses a distinct awareness and understanding of many aspects of civil liberties, having argued for and defended the rights of individuals on many occasions. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Charter*. It has frequently been granted intervener and party status before courts and tribunals across Canada and has presented oral and written argument on civil liberties issues. A list of many of the cases in which the CCLA was granted intervener status is attached as Exhibit "A".

The CCLA's Particular Interest in the Application

8. As noted above, the CCLA's principal mandate is to promote and protect fundamental rights and liberties. Arising out of this mandate, the CCLA has a special interest and concern in promoting legal protections against unreasonable invasion by public authority of the freedom and dignity of the individual. As described more fully below, the CCLA has concluded that the mandate of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 raises serious civil liberties issues that merit its intervention in the Inquiry.

9. In my role as General Counsel to the CCLA, I have written extensively in newspapers and books and have spoken before Parliament and in the media concerning the balance between national security and civil liberties. These publications and presentations include the following:

- (a) Alan Borovoy, "Anti-Terror Laws", *Globe and Mail Update* (5 July 2006), discussing the overbreadth of the current anti-terrorism legislation;
- (b) *Submissions to the House of Commons Subcommittee on the Public Safety and National Security Re Review of the Anti-Terrorism Act* (20 September 2005), including a call for the provision of special security-cleared public interest advocates who would have access to relevant evidence – particularly that which has national security implications – and who would be mandated to represent the interests of impugned persons at *in camera* hearings;
- (c) *Testimony at the Proceedings of the Special Senate Committee on the Anti-Terrorism Act* (16 May 2005), including suggestions that certain provisions in the anti-terrorism law be subjected to sunset clauses and that there be a narrowing of the law's over-broad definition of "terrorist activity";
- (d) *Submissions to the Commission of Inquiry into Actions of Canadian Officials in Relation to Maher Arar* (February 2005), including commentary on the necessity of providing an independent and impartial

- audit agency to oversee the exercise of the government's national security activities;
- (e) *Address to Symposium on Police/Government Relations, Co-Sponsored by the Ipperwash Inquiry and Osgoode Hall Law School (28 and 29 June 2004), including comments on executive-police relations;*
 - (f) *Submissions to the Honourable Wayne Easter, Solicitor General of Canada, entitled "The Adoption of Special Safeguards for the Anti-Terrorist Legislation" (20 October 2003), including the need for independent auditing of the RCMP;*
 - (g) *Testimony at the House of Commons Standing Committee on Citizenship and Immigration on the Subject of Bill C-18 (10 February 2003), including comments on security certificates, the need for a special advocate at in camera hearings, and enhanced rights to appeal;*
 - (h) Alan Borovoy, "Anti-Terror Law - One Year Later", *The Calgary Herald* (9 September 2002), a critical analysis of certain provisions in the anti-terrorism legislation, including the provision allowing for individuals to be placed on the government's list of suspected terrorist entities;
 - (i) "To Protect Civil Liberties, Limit Police Power", *The National Post* (2 April 2002) A17, a commentary raising concerns about new anti-terrorist and anti-gang legislation and proposing guidelines for police so as to reduce, as much as possible, any infringement on civil liberties;
 - (j) "Police and Politicians: This Alliance Needs Rules, Not a Divorce", *The Globe and Mail* (23 August 2001) A15, a commentary on the Hughes Report regarding the APEC protests, and illusory elements in the distinction between policy and operations in regard to ministerial supervision of police;
 - (k) "Don't Give the Police Carte Blanche", *The Globe and Mail* (8 May 2001) A19, a commentary questioning the wisdom of legislation which granted a number of designated police officers the power to commit a wide range of otherwise unlawful acts while investigating indictable offences;
 - (l) "Who Will Police the Police?" *The National Post* (30 September 2000) B3, a commentary on the need for increased ministerial and independent oversight of police activities;
 - (m) "Tories Out of Excuses on Ipperwash Affair", *The Toronto Star* (11 July 1997) A25, a commentary on the necessity for a public inquiry into the Ontario Provincial Police handling of the 1995 native protests at Ipperwash and the nature of the supervision of police;

- (n) *Submissions to Special Committee on the Review of Canadian Security Intelligence Service (CSIS) Act, House of Commons: The Five-Year Review* (16 January 1990), including recommendations for standards related to intrusive surveillance techniques;
- (o) "National Security Intelligence," ch. 3 in my 1988 book, *When Freedoms Collide*, which discusses the powers, functions, and techniques of Canada's spy agency and proposes safeguards;
- (p) "The Ambit of Police Powers," ch. 4 in my 1988 book, *When Freedoms Collide*, which discusses the breadth of police power and the need to adopt more viable safeguards in relation to it;
- (q) "Discretionary Law Enforcement," ch. 5 in my 1988 book, *When Freedoms Collide*, which discusses the interests of leniency versus the standards of equity;
- (r) *Submissions to the Special Committee of the Senate on The Canadian Security Intelligence Service* (12 September 1983), including recommendations for statutory provisions specifying the circumstances under which informants may be deployed, guidelines for regulating informant behaviour, and criteria governing surveillance practices;
- (s) *Submissions to The Honourable Mark McGuigan on The Prosecution of RCMP Wrongdoers* (25 January 1983), including an attempt to avoid double standards with respect to the prosecution of RCMP wrongdoers;
- (t) *Submissions to The Honourable Robert Kaplan on Security, Intelligence, and The Report of the McDonald Commission* (15 February 1982), including comments on additional measures that are needed with respect to the permissible scope of preventive intelligence gathering;
- (u) *Submissions to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police: Toward A Charter for the Royal Canadian Mounted Police* (McDonald Commission) (17 April 1980), including recommendations addressed to specific techniques of surveillance and actions employed by the RCMP (e.g. electronic bugging power, the power of search and seizure, guidelines concerning access to income tax records, and certain measures in the training and treatment of RCMP officers);
- (v) *Submissions to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police: Public Disclosure and The Official Secrets Act* (McDonald Commission) (3 October 1979), including

recommendations concerning the unauthorized disclosure and classification of government information; and

- (w) *Submissions to the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police: Emergency Powers and The War Measures Act* (McDonald Commission) (3 October 1979), including comments on proposed additional peace-time emergency legislation.

10. The CCLA has appeared before courts and tribunals in cases that raised policing and national security issues. These cases include the following:

- (a) *Charkaoui v. Canada*, S.C.C. File Nos. 30762, 30929, 31178 (decision pending), which examined, *inter alia*, the constitutionality of "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);
- (b) *R. v. A.M.*, [2006] O.J. No. 1663, which concerns the legality of police-guided drug dog searches in public schools in light of the *Charter's* protection against unreasonable searches and seizures (the CCLA intervened in the Ontario Court of Appeal);
- (c) *O'Neill v. Attorney General of Canada*, Ontario Superior Court of Justice File No. 11828 (decision pending), which concerns the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);
- (d) *R. v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infra red technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);
- (e) *R. v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);
- (f) *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated section 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada); and
- (g) *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was the exclusion of evidence for the purposes of protecting the personal privacy

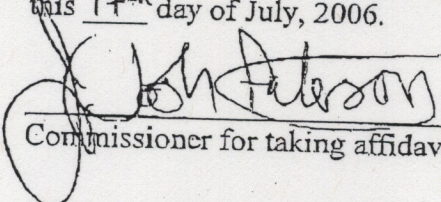
of complainants and balancing that with the right of the accused to make full answer and defence (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada).

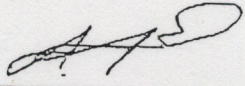
Assistance to be Provided by the CCLA

11. I believe that the CCLA's submissions will be of assistance to the Inquiry in deciding the important issues before the Inquiry. Made from a perspective different from those of the immediate parties, these submissions will be uniquely grounded in the CCLA's mandate to promote and protect fundamental rights and liberties, and its extensive experience in addressing the difficult issues that arise when those rights and liberties come into conflict with the legitimate security and safety interests that the government is mandated to protect.

12. I make this affidavit in support of the CCLA's application for standing and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on this 17th day of July, 2006.


Commissioner for taking affidavits


A. Alan Borovoy

JOSHUA STEVEN PATERSON,
a Commissioner for taking affidavits,
Province of Ontario.