

**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

**MOTION RECORD OF THE FEDERATION
OF LAW SOCIETIES OF CANADA
(MOTION FOR LEAVE TO BE GRANTED STANDING TO INTERVENE)**

FASKEN MARTINEAU DUMOULIN LLP
Barristers and Solicitors
P.O. Box 20, Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Peter A. Downard (LSUC#25754W)
David J. Halasz (LSUC#46892V)
Tel: 416 366 8381
Fax: 416 364 7813

Counsel for the Federation of Law Societies of
Canada

TO: **COMMISSION OF INQUIRY INTO THE INVESTIGATION OF
THE BOMBING OF AIR INDIA FLIGHT 182**
222 Queen Street
Ottawa, ON
K1P 5V9

Mark J. Freiman
Tel: 613 277 4077

Counsel for the Commission

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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 Federation of Law Societies of Canada:

- (1) leave to extend the time to apply for leave to intervene;
- (2) standing as an intervenor in Stage 2 of the inquiry with full participatory rights; and
- (3) such further or other orders as the Commissioner may deem appropriate;

AND TAKE NOTICE that in support of this application will be read the affidavit of Michael W. Milani, Q.C., sworn on April 4th, 2007 and such further or other materials as the Commissioner may permit;

AND TAKE NOTICE that the grounds for this motion are:

1. The Federation of Law Societies of Canada (the "Federation") is the national coordinating body of the 14 law societies in Canada that have the responsibility of regulating in the public interest Canada's 95,000 lawyers and Quebec's 3,500 notaries.

2. As part of its mission, the Federation expresses views of the governing bodies of the legal profession on national and international issues in accordance with the directions of its members.

3. The Federation has particular expertise relating to the issues raised in this inquiry, including the investigation and prosecution of terrorism offences, the legal framework of criminal trials, the constraints on terrorist financing, and anti-terrorism legislation.

4. The Federation has frequently been granted leave to intervene in proceedings involving these issues before the Supreme Court of Canada, and has presented its views to Parliamentary and Senate Committees;

5. The Federation has a substantial and direct interest in a number of policy issues before this inquiry, including but not limited to the issues of:

- (a) limitations on the right to legal counsel;
- (b) protection of the confidential nature of the solicitor-client relationship;
- (c) solicitor-client privilege;
- (d) the independence of the judiciary; and
- (e) the ability of counsel to perform their duties on behalf of their clients.

6. If granted leave to intervene, the Federation will seek to assist the Commissioner by representing the views of the governing bodies of the legal profession in Canada in the public interest;

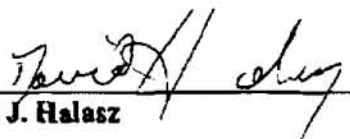
7. The Federation makes this motion in writing and does not seek to make oral submissions relating to its request for standing as an intervenor.

Dated at Toronto, Ontario, this *16th* day of April, 2007.

SIGNED BY



Peter A. Downard



David J. Halasz

FASKEN MARTINEAU DUMOULIN LLP
Barristers and Solicitors
Toronto Dominion Bank Tower
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario
M5K 1N6

Tel: 416 366 8381
Fax: 416 364 7813
Counsel to The Federation of Law
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NOTICE OF MOTION

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Barristers and Solicitors
Toronto Dominion Bank Tower
P.O. Box 20
Toronto-Dominion Centre
Toronto, Ontario
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David J. Halasz (LSUC#46892V)
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**AFFIDAVIT OF MICHAEL W. MILANI, Q.C.
SWORN APRIL 4, 2007**

I, **MICHAEL W. MILANI, Q.C.**, of the City of Regina, in the Province of Saskatchewan, Barrister and Solicitor, **MAKE OATH AND SAY:**

1. I am the President of the Federation of Law Societies of Canada (the "Federation"), 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. I swear this affidavit in support of the Federation's motion for leave to intervene in Stage 2 of this inquiry.
3. The Federation is a national organization with its origins dating to 1926, and which was incorporated in 1972. The Federation is the coordinating body for the governing bodies of the legal profession throughout Canada, whose mandates include the regulation in the public interest of approximately 95,000 lawyers throughout Canada, and the approximately 3,500 notaries in Quebec. The Federation's affairs are conducted by a Council comprised of members representing each of the 14 law societies throughout Canada, as well as an executive.

4. Part of the Federation's mission is to express and advocate the views of the governing bodies of the legal profession on national and international issues that are related to the mandates of law societies.

5. The mandate of this inquiry includes consideration of questions relating, *inter alia*, to the 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 public, the legal profession, and the administration of the justice system throughout Canada.

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

- (a) limitations on the right to legal counsel;
- (b) protection of the confidential nature of the solicitor-client relationship;
- (c) solicitor-client privilege;
- (d) the independence of the legal profession; and
- (e) the ability of counsel to perform their duties on behalf of their clients.

7. The Federation has concluded that this inquiry raises issues that relate to the mandates of the law societies. The Federation is of the view that it can make a significant contribution to the Commission and that it should be before the Commission to represent the views of the governing bodies of the legal profession in Canada in the public interest.

8. If allowed standing to intervene, the Federation will draw on its expertise to provide the Commissioner with a neutral, balanced statement of the perspective of the governing bodies of the legal profession on the issues raised by the inquiry.

9. The Federation has participated as an intervenor in several appeals before the Supreme Court of Canada concerning issues relevant to this inquiry, including:

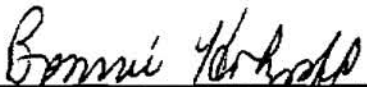
- (a) *Charkaoui, Harkat and Almrei v. Minister of Citizenship and Immigration*, 2007 SCC 9 (security certificates);
- (b) *Re Application Under Section 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248 (investigative hearings);
- (c) *Ontario Judges' Association v. Ontario (Management Board)*, [2005] 2 S.C.R. 286 (judicial independence);
- (d) *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 3 S.C.R. 193 (independence of administrative tribunals); and
- (e) *Re Provincial Court Judges*, [1997] 3 S.C.R. 3 (judicial independence).

10. The Federation has participated in analyzing anti-terrorism legislation introduced after September 2001. For example, the Federation made submissions to the Senate and House of Commons Committees charged with reviewing the *Anti-terrorism Act*. The Federation also made submissions to both these Committees for the three-year review of that legislation.

11. The Federation respectfully requests that it be granted standing to intervene in Stage 2 of the inquiry with full participatory rights for the primary purpose of assisting the

Commissioner with respect to issues relating to terrorism and the justice system. In further particular the Federation requests standing to file written submissions and materials, and to make oral submissions as invited during hearings scheduled by the Commissioner, and to participate in such further or other manner as the Commissioner may deem appropriate.

SWORN BEFORE ME at the City of)
Regina, Saskatchewan on April 4,)
2007.)
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A COMMISSIONER FOR OATHS in
and for the Province of Saskatchewan.
My commission expires: October 31,
2007



MICHAEL W. MILANI, Q.C.

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