

IN THE MATTER OF:

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

**NOTICE OF MOTION FOR STANDING,
OF RIPUDAMAN SINGH MALIK**

TO: The Honourable John C. Major, Q.C., Commissioner

TAKE NOTICE THAT Mr. Ripudaman Singh Malik of 6475 Marguerite Street, Vancouver, British Columbia (Mr. Malik), hereby moves pursuant to Rules 12 and 13 of the *Rules of Procedure and Practice* (“Inquiry Rules”) of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, established by P.C. 2006-293 (the “Inquiry”) for an Order that Mr. Malik be granted full standing as a party at the Inquiry under Rule 10.

AND TAKE FURTHER NOTICE THAT the following documents will be referred to in support of said motion:

- (a) Affidavit of Mr. Malik, sworn 6 July 2006 (“Malik Affidavit”); and
- (b) Such further and other materials as Counsel may advise and the Commissioner may permit.

AND TAKE FURTHER NOTICE THAT the said motion is made on the following grounds:

1. Mr. Malik was charged with various offences following a criminal investigation in relation to the Air India bombing. He was acquitted of all charges on 16 March 2005. The trial judge found that there was “simply no evidence tending to point” to Mr. Malik’s playing a role in the conspiracy to place bombs on the aircraft.

R. v. Malik (2005), 64 W.C.B. (2d) 420, 2005 BCSC 350 at para. 788; Malik Affidavit, paras. 4-6

2. The Order-in-Council establishing the Commission lists as amongst the Commissioner's tasks "to conduct the Inquiry as he considers appropriate with respect to accepting as conclusive or giving weight to the findings of other examinations of the circumstances surrounding the bombing of Air India Flight 182". Included as examples of these other examinations are (i) the 23 November 2005 report of the Honourable Robert (Bob) Rae, entitled *Lessons to Be Learned* (the "Rae Report"); and (ii) proceedings before the superior courts of British Columbia, which includes most notably *R. v. Malik, supra*.

P.C. 2006-293, Items (a)(i) and (ii), p. 1.

3. Mr. Malik's name features prominently in the Rae Report.
4. Mr. Malik is concerned that the testimony that is given before the Inquiry, as well as the Inquiry's ultimate findings, may have a direct impact upon his reputation. In this sense, Mr. Malik is directly and substantially affected by all of the proceedings before the Inquiry. He has a clearly ascertainable interest in being represented before the Inquiry in order to seek clarification of, or to respond to, any evidence put before the Commissioner.

Malik Affidavit, para. 8; Inquiry Rules, R. 12(c).

5. Generally, privilege (whether absolute or qualified) attaches to the testimony of persons in quasi-judicial or investigative proceedings, so as to block subsequent civil action for defamation. Similar protections exist for the publication or broadcasting of said testimony.

Watson v. McEwan, [1905] A.C. 480; *Halls v. Mitchell*, [1928] S.C.R. 125; *O'Connor v. Waldron*, [1935] 1 D.L.R. 260 (J.C.P.C.); *Libel and Slander Act*, R.S.B.C. 1996, c. 263, s. 3(1); *Libel and Slander Act*, R.S.O. 1990, c. L.12, ss. 3(1), 4(1).

6. The only protection available to persons whose reputation may be the subject of a witness's testimony is to permit such persons the opportunity to challenge the testimony through cross-examination.

7. It is only by having standing at the Inquiry that Mr. Malik will have the opportunity to confront any evidence that may impugn his character and to ensure that the testimony, and any subsequent report or broadcast thereof, is fair and accurate.
8. Moreover, it is only by having standing at the Inquiry that Mr. Malik may apply under Inquiry Rule 55 to have hearings conducted *in camera* where he anticipates prejudice to his reputation or other intimate matters. Circumstances may arise in which, in order to protect Mr. Malik in these ways, his counsel may seek to proceed *in camera* so that the media do not report or broadcast portions of testimony.

Inquiry Rules, R. 55.
9. The Order-in-Council also directs the Commissioner “to rely, to the greatest extent possible, on documents that have been previously identified for use in Canadian criminal proceedings arising from the bombing of Air India Flight 182”.

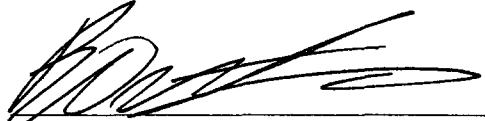
P.C. 2006-293, Item (k), p. 4.
10. Some of these documents will concern Mr. Malik. Mr. Malik is directly and substantially affected by any and all aspects of the Inquiry in which his name may be mentioned. He has a clearly ascertainable interest in having representation before the Inquiry in order to seek clarification of or respond to what is said about these documents.

Inquiry Rules, R. 12(c).
11. Mr. Malik’s experience of the criminal investigation and subsequent trial also makes him uniquely capable of assisting the Commission in preventing a future recurrence of a similarly flawed process. In this respect, he has a perspective that will clearly enhance the work of the Commissioner in each of the areas of the Inquiry.

Malik Affidavit, para. 7; Inquiry Rules, R. 12(c); P.C. 2006-293, Items (b)(i) through (vii).
12. Mr. Malik will be represented at the Inquiry by Messrs. Murray L. Smith and Brent B. Olthuis of Smith Barristers, the address of which is: Suite 1300 – 355 Burrard Street, Vancouver, BC, V6C 2G8. The firm telephone number is 604.689.4438 and the

facsimile number is 604.689.4451. Mr. Smith's electronic mail address is msmith@smithbarristers.com and Mr. Olthuis's is bolthuis@smithbarristers.com. Any communication to Mr. Malik can be made through counsel.

DATED: 6 July 2006



Solicitor for the Moving Party

This **NOTICE OF MOTION** is prepared and filed by Brent Olthuis, of **Smith Barristers**, whose place of business and address for delivery is Suite 1300 – 355 Burrard Street, Vancouver, British Columbia V6C 2G8 Telephone: 604 689 4438 Facsimile: 604 689 4451; E-mail: bolthuis@smithbarristers.com

AFFIDAVIT

I, **RIPUDAMAN SINGH MALIK**, businessman, of Vancouver, British Columbia,
MAKE OATH AND SAY THAT:

1. I am the applicant for standing before the Commission of Inquiry into the Investigation of the Bombing of the Air India Flight 182 (the "Inquiry"), and as such have personal knowledge of the matters hereinafter deposed to, save and except where same are stated to be made on information and belief, and where so stated I verily believe them to be true.

2. I am resident at 6475 Marguerite Street, Vancouver, British Columbia.

3. I am directly and substantially affected by the subject matter of the Inquiry and as such seek standing as a party to the Inquiry.

4. I was the subject of a criminal investigation in relation to the Air India bombing and can, therefore, assist the Commissioner and enhance and improve the ultimate findings of the Inquiry.

5. On March 16, 2005, Mr. Justice Josephson acquitted me of all charges in relation to the Air India tragedy and found that I had neither committed a criminal act nor conspired to commit a criminal act in relation to the Air India tragedy.

6. In the course of the criminal investigation, I spent over four years in custody because of the criminal charges, though the Judge ultimately found that there was "simply no evidence tending to point" my role in the bombing.

7. My experience of the criminal investigation and trial makes me uniquely capable of assisting the Commission in preventing a future reoccurrence of a similarly flawed process.

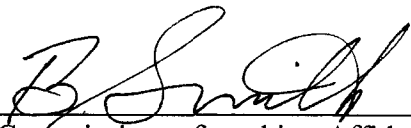
8. Further, the testimony given before the Inquiry, and the Inquiry's ultimate findings, may have a direct impact on my reputation in the community. I should be permitted an opportunity to seek clarification, or to respond to, any evidence put before the Commissioner.

9. For these reasons, I have a substantial interest in the subject matter of Inquiry and the ability to assist the Inquiry in preventing similar tragedies.

10. I will be represented at the Inquiry by Messrs. Murray L. Smith and Brent B. Olthuis of Smith Barristers, Suite 1300 - 355 Burrard Street, Vancouver, BC V6C 2G8.

11. I make this Affidavit in support for my application for standing at the Inquiry.

^{BWS}
^{100 Mile House} SWORN BEFORE ME at the ^{BWS District} City of ^{100 Mile House} in the Province of British Columbia, this day of July, 2006.


A Commissioner for taking Affidavits in British Columbia
BURDICK W. SMITH
BARRISTER & SOLICITOR
253 BIRCH AVE SOUTH
100 MILE HOUSE B.C.


RIPUDAMAN SINGH MALIK