



COMMISSION COMMUNIQUÉ

Information for Families of the Victims

Welcome to the *Commission Communiqué*, a regular newsletter that will keep you up to date on the activities of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. This first edition includes information on the Commission's progress since Justice John C. Major delivered his opening statement on June 21, 2006, and an update on the public hearings that begin on September 25, 2006.

It is important to ensure that family members are aware of our plans and that you are ready to participate in the first stage of public hearings. As you know, you will not be required to testify under oath. This is your opportunity to place your observations on the Commission's public record. All subsequent witnesses before the Commission will be required to present their evidence under oath.

This issue of the *Commission Communiqué* includes two short articles. The first explains basic elements of the public inquiry process in Canada, while the second summarizes the June 21 launch. In subsequent issues, we hope to provide summaries of the hearings and articles about the inquiry process. Our goal is to keep you informed of the path we plan to follow to ensure that the hearings are successful and finish on time. It is our hope that these and future articles will provide you with information that you find helpful.

Our Mandate and Work Plan

Here is a summary of the issues on which the Commission has been mandated to report, as specified by an Order in Council issued on May 1, 2006, under Part I of the *Inquiries Act*.

First and foremost, the Commission is required to hold hearings in order to provide a report on the extent to which various questions have been

resolved and to make recommendations on any legislative or procedural changes that may still be needed. Issues in the Terms of Reference include:

- Assessment of potential threats posed by Sikh terrorism prior to 1985;
- Systemic problems in the inter-agency cooperation in the investigation of the bombing of Air India Flight 182;
- How best to establish a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial;
- The adequacy of Canada's existing legal framework to constrain terrorist financing in, from or through Canada;
- The adequacy of existing practices or legislation to protect witnesses against intimidation in the context of terrorism cases;
- The sufficiency of our existing system to meet the unique challenges presented in prosecuting terrorism cases; and any changes that might be required, in particular the merits in having terrorism cases heard by a panel of three judges; and
- Any further changes that might be needed in practice or legislation to deal with specific aviation security breaches associated with the Air India Flight 182 bombing, particularly those relating to the screening of passengers and their baggage.

The Inquiry is not mandated to deal with unresolved issues in the criminal justice system related to the Air India bombing. Our mandate and our intention are to look forward and seek solutions to ensure that in the future such tragedies cannot be repeated within the Canadian system. Our system must be strong enough to prevent terror attacks against Canadians here or anywhere else.

Parties to the Hearings

On July 18 and 19, 2006, various individuals and organizations made presentations or submitted briefs for consideration to determine who would be granted Party or Intervenor standing. Justice Major made his decisions public on August 9, 2006. Here are the names of the individuals, groups and organizations granted Party or Intervenor standing by the Commission.

Granted Party Standing

A **Party** is an individual or organization entitled to participate in all aspects of the Inquiry or on issues of direct concern to them as specified in the Commissioner's ruling, which can be found on the Commission's website (www.majorcomm.ca). Once there, select "Rulings" from the left vertical menu followed by "Rulings on Standing."

Attorney General of Canada
Air India
Air India Cabin Crew Association (AICCA)
Air India Victims Families Association (AIVFA)
Family members of the crew member victims
of Air India Flight 182, and India nationals
(FMCMV/IN)
Sanjay Lazar
Lata Pada
Niraj Sinha

Granted Intervenor Standing

An **Intervenor** is a person or organization entitled to limited participation in the Inquiry. Further details can be found on the Commission's website under "Rulings."

B'nai Brith Canada
The Canadian Bar Association (CBA)
Canadian Civil Liberties Association (CCLA)
Canadian Coalition Against Terror (C-CAT)
Canadian Coalition for Democracies (CCD)
Canadian Council on American Islamic Relations
(CAIR-CAN) and Canadian Muslim Civil Liberties
Association (CMCLA)
Canadian Jewish Congress (CJC)
Canadian Resource Centre for Victims of Crime
(CRCVC)
Ripudaman Singh Malik
World Sikh Organization of Canada (WSO)
Criminal Lawyers' Association (CLA)

INQUIRY SCHEDULE

Here is the tentative schedule of public hearings for this Commission of Inquiry. A series of communiqués will be produced and distributed throughout the course of the Inquiry.

Public Hearings

September 25–28, 2006
October 3–5
October 10–13
November 6–9
November 14–17
November 20–23
November 28–December 1
December 4–8
January 8–26, 2007
February 5–23
March 5–23
April 2–20

Closing Statements

May 2007

Our Research Program

Concurrent with the hearings, the Commission's research staff will study all of the documents, reports and evidence from the hearings to deal with all issues within our mandate.

The research program will involve academics and other specialists from across Canada and elsewhere. They will provide studies that can be valuable when the Commission assesses the evidence and makes findings to be included in the final report.

A Formidable Challenge

In nearly three months, the Commission has completed its staffing process and now has in place a full complement of legal, research and administrative officials. All of our staff have been busy gathering material and making arrangements for the public hearings. Our legal team is working diligently to gather evidence and prepare dossiers. Our administrative team is working long hours to ensure that the hearings will run smoothly and that suitable arrangements will be in place for families and other witnesses who travel to Ottawa in order to participate. The coordination of all these events presents a formidable challenge, but one which we are all working together to address. Everyone is up to the task, and looking forward to the start of public hearings on September 25 in Ottawa.

A PUBLIC INQUIRIES PRIMER

Public inquiries in Canada date back to before Confederation. In fact they find their roots in British history with King Henry VII who ordered the first royal investigation in 1517. Modern day federal public inquiries in Canada are governed by the *Inquiries Act* as well as by Canadian administrative and judicial conventions and practices.

A public inquiry is established under the *Inquiries Act* through an Order in Council made by the federal Cabinet. While the setting and some procedures may resemble that of a courtroom, a public inquiry is **not** a trial. There are generally two types of public inquiries — investigative or advisory.

The Cabinet provides Terms of Reference for the inquiry, which include a general description of the mandate or purpose of the inquiry and a list of specific questions to be addressed. The Terms of Reference also identify the person or persons appointed to lead the inquiry. The Cabinet has broad discretion on the scope of the inquiry and can limit its mandate.

Once established, the key person in a public inquiry is the Commissioner, who establishes the format and schedule of the inquiry and provides overall direction. The Commissioner is also responsible for writing the final report, which includes the inquiry's findings as well as commentary, often accompanied by commissioned research.

For the purposes of financial management, inquiries are designated as departments under the *Financial Administration Act* and must adhere to the same standards of financial prudence and degrees of accountability as those that apply to public servants under that Act. Administratively, the Commission's budget is part of the Privy Council Office budget.

While a public inquiry does not exercise judicial functions, since its primary objective is fact-finding, it does have broad investigatory powers and it can make findings of misconduct. Specifically, a public inquiry can:

- Summon witnesses to appear;
- Require witnesses to testify under oath;
- Treat deliberate false answers by witnesses as perjury; and
- Require witnesses to produce specific documents.

To provide safeguards, persons giving sworn testimony before public inquiries have the right to be represented by legal counsel.

Because of their nature, public inquiries are generally open to the public. However, when matters of national security or privacy arise, certain testimony may be heard "in camera" (privately).

In its final report, a public inquiry can make findings of misconduct against individuals and/or organizations. However, findings must fall within the mandate of the public inquiry; the wording of the findings cannot reflect criminal or civil liability; and before making a finding, the Commission must notify the individual(s) or organization(s) and allow for a response. Findings of public inquiries can be appealed to the Federal Court of Canada for judicial review. The Terms of Reference for public inquiries can contain specific conditions unique to the particular inquiry. For example, the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 cannot find guilt nor make any award.

Because public inquiries often include as an objective informing and educating the public, they may sample public opinion, commission new research, and encourage direct public participation.

THE INQUIRY'S OPENING ON JUNE 21, 2006

With 80 relatives of the victims in attendance, Commissioner John C. Major formally opened the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 at 11:00 a.m. on June 21, 2006 in the Victoria Pavilion at 111 Sussex Drive in Ottawa.

Prior to the Commissioner's remarks, a special memorial ceremony took place. The names of all the victims scrolled across a screen as members of the audience watched in respectful silence. Once the list had been shown in its entirety, Justice Major began to speak.

He outlined the purpose of this public inquiry and provided highlights of its origins, including the history of the tragic bombing and what has transpired in the 21 years since. The Commissioner went on to describe how he will approach his mandate, the rules of procedure and practice, and the issues which must be studied and on which he intends to report.



Jean-Marc Carisse/Ottawa

Commissioner John C. Major greets Deepak Obhrai, M.P. (Calgary East).

He restated his commitment to deal with the Air India bombing as a Canadian tragedy. Since most of the victims were Canadian, this will be dealt with as a Canadian issue.



Jean-Marc Carisse/Ottawa

Commissioner John C. Major reads his opening remarks on the morning of June 21, 2006.

Justice Major stated that the Commission's overall mandate is to identify systemic errors that failed to prevent the bombing; consider changes in security measures and the way that investigations are conducted since 1985; and make recommendations on any remaining deficiencies that should be addressed.

The Commissioner concluded his opening statement with the introduction of key staff members who will be responsible for managing the Commission's activities and inquiry process. He introduced members of the administrative team as well the legal team, which will be directed by Mark Freiman, Commission Counsel, and Michel Dorval, Commission Co-counsel.

Justice Major's opening statement is available on the Inquiry website at www.majorcomm.ca.



Jean-Marc Carisse/Ottawa

The audience listens as the Commissioner delivers his opening statement on June 21, 2006.

DO YOU HAVE SOMETHING YOU WANT TO SAY?

The *Commission Communiqué* editorial team would be pleased to hear from you.

If you wish to comment on anything that appears in the *Commission Communiqué*, or if you have any questions or suggestions for future editions, please let us know. Perhaps you have a perspective of your own that you wish to submit for consideration.

All submissions become property of the Commission. We will not be able to respond to all questions or publish all submissions. If your submission is selected for publication, you will be contacted. Please include your full name, hometown and daytime telephone number with your submission. If selected, your submission may be edited for length and clarity.

We look forward to your feedback.

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