



FINAL SUBMISSIONS OF AIR INDIA

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CLOSING SUBMISSIONS OF AIR INDIA

Introduction

1. On June 23rd, 1985 the worst terrorist attack in Canadian history took place. Air India was the target of that attack. On that day, Air India lost 307 passengers, 22 employees, and a Boeing 747. Air India also suffered immeasurable damage to its reputation and goodwill. In the aftermath of the incident, Air India suspended its Canadian operation as a result of concerns of inadequate security measures afforded to Air India.

2. In setting up its operations in Canada in the fall of 1982, Air India had relied on Canadian companies to service its operations. Security was outsourced to Burns International Security Services Limited (Burns); Air Canada was its ground handlers; Mega International handled cargo. Air India also leased an x-ray machine from a North American company called Scanray. At a time when most Canadian airports did not have x-ray machines to handle checked baggage, Air India had its own. Despite extra security precautions and despite the fact that Air India communicated all threat information; it received little in return. Like every other airline, Air India expected that the Canadian governmental authorities would provide the support necessary to carry out its operations safely and securely. That did not happen. An airline has no powers, resources or infrastructure to deal with issues involving airport security, policing, criminal intelligence gathering, or governmental affairs which are all integral to dealing with terrorism. Moreover, an airline does not have jurisdiction over those matters.

3. Air India has participated in this Inquiry in the hopes of understanding why the law enforcement agencies were not able to protect the airline and its passengers from the biggest act of terrorism committed on Canadian soil. It is also our hope that the work of this Commission will inform and empower the war against terrorism, and that finally it will bring closure for the

families of the victims of Flight 182. We thank the Commissioner for providing us the opportunity to participate and to provide written submissions.

4. Air India's submission will be limited to two topics.

(1) Civil Aviation Security; and

(2) Systemic Discrimination as it applies to the deficiencies in the assessment by the Canadian government agencies in making threat assessments and the delivery of law enforcement services prior to the bombing.¹

PART I: CIVIL AVIATION SECURITY

Background: Canada was Exposed to International Terrorism and Violence from Sikh Extremism

5. Aircraft, airports and airlines off-airport facilities have been targets for terrorists in the mid-twentieth century with hijackings, armed assaults and bombings being the main modes of attack.² In the 1960s and 1970s, ethnic separatism and national liberation movements gained momentum with terrorist movements being largely directed against governments to promote their causes, which included independent homelands for Armenians, Basques and Palestinians.³

6. In the mid-1960s Canada saw significant Sikh immigration from India. In the 1960s and 70s, demands began to emerge among some Sikhs for a separate, politically independent Sikh state. During the 1970s and 80s, a radical terrorist movement within the Sikh community

¹ This submission is pursuant the commitment made to contribute to this topic.

² Commission Dossier, *Civil Aviation Security (October 23, 2007)* at p. 4 ("*Civil Aviation Security Dossier*").

³ *Civil Aviation Security Dossier* at p. 2.

emerged. The movement sought to create an independent Sikh state named Khalistan. Elements within the Sikh community in Canada, the United States, the United Kingdom and Germany supported the secession movement.

7. In June 1984, the Indian government took control of the outer precincts of the Golden Temple in Amritsar, in the Punjab, to flush out the terrorist elements and seize stored weaponry. The already inimical relations between Sikh militant groups and the Government of India deteriorated further. In Canada, there were rallies and calls for revenge, with significant protests in Vancouver.⁴

8. In October 1984, Prime Minister Indira Gandhi was assassinated by Sikh militants who were in fact enrolled in her guard complement. The actions taken by the Indian law enforcement authorities successfully brought under control the activities of these extremists in India.

9. The Canadian arm of the Sikh separatist movement known as Babba Khalsa was still committed to an independent Sikh state, Khalistan, and their methods included terrorist acts. The Canadian authorities had substantial information about the activities of these extremists within Canada whose targets were, amongst others, Air India and the Indian High Commission.

10. Air India was operating in Canada and was expecting that the Canadian insurgency would be fully controlled by the law enforcement authorities. With that view in mind, Air India had sent several communications and requests for help. The response from the authorities was inadequate. They failed to provide any suggestions which would have enabled Air India to rethink its procedures. The authorities further did not share information that may have prevented the loss of Canadian lives and irreparable harm to Air India.

⁴ *Commission Summary of Facts* at p. 1.

11. According to Rodney Wallis, the Air India tragedy underlined the link between terrorism directed against civil aviation and political activists and confirmed that such terrorism is transnational in character.⁵ In the absence of any dispute with Canada, the fact that Air India was owned by the Government of India and, as such, was targeted by Sikh terrorists as government property and an enterprise of the Indian Government, confirmed that criminal acts by such groups can extend beyond the geographic location of the original conflict.⁶

Canadian Law and the Air India Security Program: Air India Developed a Security Program that Exceeded Canadian Legislative Requirements

12. The *Aeronautics Act*⁷ was the primary statute governing civil aviation in Canada. Canadian aviation security provisions set out in the Act authorized regulations imposing air security requirements. Under the regulations and orders in place in 1985, all foreign and domestic air carriers were responsible for developing and maintaining security procedures at airports, including systems of surveillance and systems of searching persons, belongings, baggage and cargo by manual, technical or electronic means. Air carrier security programs were required to provide, among other things, a system of identification to prevent unauthorized baggage, goods and cargo from being loaded on aircraft. Air carriers were also required to restrict access to their own premises on the airside of airports and to protect against unauthorized access to the aircraft. Checked baggage was to be protected from unauthorized access before loading, and was only to be accepted by designated agents or representatives of the carrier.⁸ As

⁵ Rodney Wallis, *Combating Air Terrorism* (Washington: Brassey's, 1993), at p. 8.

⁶ *Combating Air Terrorism*, at p. 7.

⁷ R.S.C. 1970, c. A-3.

⁸ *Civil Aviation Security Measures Regulations*, SOR/74-226, as amended, s.3(1); *Foreign Aircraft Security Measures Regulations*, SOR/76-593, as amended, s. 3(1).

well, air carriers were required to submit to the minister a written description of the security measures established.⁹ In 1985, Transport Canada was aware that two foreign air carriers providing international air services to Canada under bilateral air services agreements entered by the Government of Canada were at a higher risk of terrorist attacks, namely EL AL Airlines and Air India.

13. Although air carriers were required to submit a written description of their aviation security programs to the Minister of Transport, they were given little guidance in designing the programs. The onus was on the air carrier to implement its own system for passenger and baggage screening.¹⁰ In Canada and internationally the emphasis was on the threat of hijacking. Thus, screening procedures were focused on preventing weapons, such as guns and explosive devices, from boarding aircraft in hand luggage.¹¹ According to the CATSA Panel, the screening of checked baggage and passenger-baggage reconciliation were not normally being conducted in Canada or elsewhere, as systems were primarily designed for preventing hijackers from boarding aircraft.¹²

14. In the case of a specific threat to an aircraft or flight, *Canadian Air Regulation 812* outlined the measures to be taken by air carriers as follows:¹³

⁹ *Civil Aviation Security Measures Order*, SOR/72-227, s. 3; *Foreign Aircraft Security Orders*, SOR/76-594, s. 3.

¹⁰ Canada, *Air India Flight 182: Aviation Security Issues* (Ottawa: CATSA Act Review, 2007) (Chair: Reg Whitaker), at p. 9 ("*CATSA Air India Report*").

¹¹ *Lessons to be Learned: The Report of the Honourable Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness, On Outstanding Questions With Respect to the Bombing of Air India Flight 182* (Ottawa: Air India Review Secretariat, 2005) at p. 8 ("*Rae Report*").

¹² *CATSA Air India Report*, p. 10.

¹³ *CATSA Air India Report*, p. 10.

812(1) Where the owner or operator of an aircraft receives or is informed of a threat considered to be against the safety of a specific aircraft or flight, he shall immediately take all such measures as are reasonably necessary to ensure the safety of the aircraft and the protection of the passengers and crew members, including:

- (a) in every case, advising the appropriate police and aerodrome authorities and the pilot-in-command of the aircraft of the circumstances of the threat; and
- (b) in the case where the aircraft is on the ground, ensuring that
 - (i) the aircraft is moved to a place of safety on the aerodrome, as directed by the aerodrome authorities, and
 - (ii) the aircraft, the passengers and their personal belongings and the baggage, goods and cargo on board the aircraft are examined.

The regulation only applied in a situation in which there was a threat against a specific aircraft or a specific flight.

15. In 1982 Air India began operating a scheduled international air service between India and Canada into Montreal. It had submitted a copy of its security program to Transport Canada for review as required by the *Foreign Aircraft Security Measures Regulations* promulgated under the *Aeronautics Act*. Mr. P. B. Sheppard, Director of Civil Aviation Security, Transport Canada, sent a letter to Air India on February 21, 1984, stating that it was a "commendable program" that met the statutory and regulatory requirements. The Director also stated that "Transport Canada officials will be monitoring, from time to time, and evaluating the air carrier security programs. Any matters requiring corrective action by your company will be brought to your attention."¹⁴ In 1984-1985 Air India was under an ongoing threat from Sikh militants and had been communicating all threat information received from the Indian government and Air India headquarters to Transport Canada, the RCMP, and the police authorities at Toronto and Montreal. Air India asked for extra resources and attention from these public authorities to assist them in

¹⁴ *Civil Aviation Security Dossier* at p. 21.

protecting their flights. Moreover, it expected to receive from Transport Canada warnings regarding changes to its security programs if any were necessary. No recommendations, comments or warnings were given by Transport Canada prior to the bombing.

16. In January, 1985, Air India extended its India/Canada international air service to Montreal by adding Toronto as an additional Canadian stopping point. By letter dated January 11, 1985, Air India outlined proposed additional security measures for its operations in Toronto. Five additional security measures were to be implemented including:

- passengers to be frisked by hand held metal detector and hand baggage to be physically checked by hand at the boarding gate by six hired security agents from Burns,
- close supervision of the checked transit passengers' baggage by two Burns security agents to prevent any unauthorized baggage being transported to baggage room,
- the inside of the aircraft to have two Burns security agents, one stationed at the entrance and the other patrolling the interior to prevent the entry of unauthorized persons or items, and
- checked baggage to be screened by two to four Burns security agents using an x-ray machine and/or a PD4 explosive sniffing device.

Air India advised Transport Canada that if the x-ray machine was not installed prior to its first Toronto flight on January 19, 1985, it would use the PD4 device to examine the checked baggage.¹⁵

¹⁵January 11, 1985 letter from A.K. Sarwal of Air India to D.K. Mattson of Transport Canada (Document CAA0119).

17. Air India's security program met the regulatory requirements without these additional measures.¹⁶ The additional measures included the examination of checked baggage using x-ray and the PD4 equipment, which were not required by Transport Canada to comply with the statutory and regulatory provisions.

18. In January, 1985, it was not standard practice for any of the air carriers in Canada to carry out checked baggage screening or x-raying.¹⁷ On February 14, 1985, John Cook, Acting Director of Civil Aviation Security at Transport Canada sent a letter to Mr. A.K. Sarwal, Air India's Assistant Manager,¹⁸ responding to Air India's letter of January 11th and stated that Transport Canada would be monitoring Air India's operations "to ensure that the measures and procedures established are appropriate to meet the perceived threat". The letter further confirmed that Air India "will be advised at once should any changes be deemed necessary".¹⁹ Air India did not receive any further letter or documents from Transport Canada regarding its security program prior to June 22, 1985. None of the governmental authorities including the RCMP, Transport Canada and CSIS advised or informed Air India of the information available to each of them to enable Air India either to cancel its flight or do something else to ensure the safety of its flight and passengers.

19. In the period from January to June of 1985, there were no Canadian security regulatory requirements for x-ray or manual inspection of checked baggage or for baggage

¹⁶ Testimony of Dale Mattson, Transcript: Vol. 29, May 16, 2007 at p. 3200, lines 16-25, p. 3201; lines 1-7 ("Mattson").

¹⁷ Mattson at p. 3184, lines 8-18.

¹⁸ Letter from J. Cook, Acting Director, Civil Aviation Security, Transport Canada, to A.K. Sarwal, Assistant Manager, Air India (February 14, 1985).

¹⁹ Mattson at p.3199, lines 6-25, p. 3200, lines 1-10.

identification/matching to passengers (passenger/ baggage reconciliation) procedures.²⁰ Canadian Pacific even failed to conduct a passenger “no show” check to determine whether any passengers who had checked-in had failed to show at the departure gate for boarding the flight, thereby enabling it to remove from the aircraft the checked baggage of passengers who failed to board the flight. Although in 1985 there were procedures using x-ray machines to security screen passenger carry-on hand baggage at Canadian airports, even in the period between the early 1990s and 2005 there were no Canadian requirements for the systematic x-ray of all checked baggage.²¹

Air India Faced Threats and Requested Assistance from Transport Canada and the RCMP

20. At a meeting between representatives of Air India and Transport Canada on January 8, 1985, Air India had requested that baggage for the Toronto flight be checked by an RCMP dog prior to each flight and that police surveillance be increased during Air India's operations on-ground 3:00 to 5:00 p.m. local time. Transport Canada decided that it was not prepared to call in a police dog to check baggage on all flights. Transport Canada did agree that if a bag was determined by Air India or its agents to be suspect, the Dog Master would be asked to respond. Transport Canada described the RCMP protocol and procedures for using a police dog in the event of an identified suspect bag or, if the flight itself had been identified as a specific bomb threat flight, being a particular flight on a particular day against which a bomb threat had been received.²²

²⁰ Mattson at p. 3260, lines 5-10.

²¹ Testimony of Jean Barrette, Transcript: Vol. 39, June 4, 2007 at p. 4785, lines 19-24.

²² Mattson at p. 3189, lines 19-25; p. 3190, lines 1-25; p. 3191, lines 1-2.

21. Transport Canada also advised Air India that any additional requirements for police assistance could be provided at cost to Air India, but that dogs were not available on an "at cost" basis because of their limited availability.²³

22. At a meeting on January 7, 1986 in the office of Ivan Whitehall, the Department of Justice lawyer handling the defence of the civil proceedings against the Government of Canada following the bombing of the Air India Flight 182, a derogatory and unjustifiable comment was made by persons employed by Transport Canada and the RCMP that Air India sought "increased security for their flights at no extra cost to them". In the memo this comment was said to be based on Air India having brought threats to the airline to the attention of the RCMP and Transport Canada through letters outlining a threat to Air India preceding almost every flight.²⁴ The memo noted that Air India had operated flights to Canada since 1984 whereas in fact Air India's flights to Canada started in October of 1982. There had been a total of twenty-one threats reported to the RCMP and Transport Canada from 1982 to June of 1985, a period during which Air India had operated more than 125 flights.

23. Long after the bombing and at this Inquiry Air India has been criticized for reporting too many threats and "crying wolf". At the same time, before the Inquiry, Air India has also been criticized for failing to pass on and report threats to proper governmental authorities. Air India submits that the evidence received by the Commission supports that it reported in a full and comprehensive manner all information it received on the threat of Sikh terrorists to its aircraft and operations in Canada and elsewhere.

²³ Mattson at p. 3192, lines 4-18.

²⁴ Production No. CAC0517: *Resume of a Meeting Held on January 7, 1986 on Security in place on June 22, 1985, prepared by RCMP Sargeant Warren Sweeney.*

24. Air India was not "crying wolf". It was not seeking to have government security services at no cost that it was not entitled to receive. Air India was taking the proper steps to advise Transport Canada, the RCMP, and police authorities of the information it received on the threat of Sikh terrorism and other terrorist activities. Air India, like any other airline, has limited resources, power and information to deal with a comprehensive terrorist threat brewing in a local jurisdiction. It relied like every other airline on law enforcement to deal with matters involving criminal laws and conspiracy issues in Canada.

Air India Security Operations: Air India Followed Checked Baggage Inspection Procedures Using State of the Art X-Ray and Explosive Detection Equipment

25. There has been criticism about the effectiveness of the PD4 explosive detection device used by Air India. This was based on ad hoc tests carried out on two occasions at Pearson International Airport in January, 1985. These tests consisted of RCMP officers using the device to determine the presence of two specific explosive substances, namely gunpowder in a wastebasket and something described as a plastic explosive. Air India had representatives present at only the first testing on January 18, 1985. It was never advised by Transport Canada of the subsequent testing on January 19, 1985, nor was it informed by Transport Canada that the PD4 was not an acceptable explosive detection device to be employed in its security program. To the contrary, Air India received a letter dated February 14, 1985, from John Cook, Acting Director Security, Transport Canada, acknowledging receipt of its letter of January 11th which set out that it would be screening checked baggage with x-ray and the PD4 equipment. Mr. Cook's letter stated that Air India's plan would be monitored and that the airline would be advised should any changes to its plan be necessary²⁵.

²⁵ J. Cook letter, footnote 16.

26. Air India Security at its headquarters in India had selected the PD4 device for security operations at various airports based on information provided to it from the manufacturer, a British company named Graseby Dynamics, which described the device as having been developed for the British Ministry of Defence for anti-terrorist work to detect explosive vapours emitted by explosive devices used by Irish nationalist terrorists. The PD4 and its predecessor were used in Europe and elsewhere by governmental authorities, airports and airlines for explosive vapour detection, particularly for nitroglycerine-based explosives. The device had been provided to Air India's North American security employees by Air India security headquarters. There was no suggestion that a one time informal test should cause Air India or Transport Canada to conclude that the device was useless or ineffective and its use should be discontinued. The technology and equipment for the detection of explosive vapours was in its infancy in 1985.²⁶ Neither Transport Canada nor the RCMP were familiar with the device and its use elsewhere and neither Transport Canada nor the RCMP suggested Air India should discontinue its use as part of its security program. In addition, at that point in time there was no other practical handheld device available to detect explosives.

27. Air India also used large Scanray X-Ray machines imported from U.S.A. in each of Toronto and Montreal to screen all checked baggage. The x-ray machines were larger but similar to machines to those used by Burns employees at Canadian airports to scan hand baggage carried by passengers on board flights. The same type of large x-ray machines were used by Air India in New York. In all locations they had been reliable in continued operation and were not subject to regular breakdown.

²⁶ Testimony of Chern Heed, Transcript: Vol. 36, May 30, 2007 at p. 4336, lines 1-4 ("Heed").

28. Criticism of the explosive detection devices used by Air India are now being made long after the bomb exploded and with the full benefit of hindsight.

June 1, 1985 Telex: This Threat Information was Disseminated from Air India Security Headquarters to All Air India Stations Worldwide, Not Just Canada

29. A telex dated June 1, 1985 (June 1 Telex),²⁷ from the Chief Vigilance and Security Manager of Air India in Bombay was sent to all Air India stations in city offices and at airports worldwide. It was to alert all stations of the risks facing the airline internationally from Sikh terrorism in the month of June, 1985. It was passed to the RCMP by Mr. A.K. Sarwal, Canadian Operations Airport Manager of Air India, and warned of:

...the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time-delay devices, etc. in the aircraft or registered baggage. It is also learnt that Sikh extremists are planning to set up suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or carry-on baggage or any other means. This calls for meticulous implementation of counter sabotage measures for flights at all airports.

30. The CATSA Panel placed emphasis on additional security measures found in the June 1 Telex. It outlined five specific steps to prevent attacks by extremists:²⁸

1. Physical identification of registered baggage of passengers should be ensured at the time of check in
2. Supervision of registered baggage in baggage make-up area and also until it is loaded into the aircraft should be strengthened.

²⁷ Telex from Chief Vigilance, Bombay (1 June 1985) ("June 1 Telex"); The CATSA Panel refers to the telex as being dated May 29, 1985.

²⁸ June 1 Telex.

3. Proper supervision should also be exercised in the loading of catering/food articles into the aircraft.
4. All service personnel like sweepers and other employees performing any job in the aircraft should be thoroughly checked and a record of their movements should be maintained. Close supervision should be exercised by the responsible officer over the personnel of various services performing the duties in the aircraft.
5. Explosive sniffers and bio-sensors (dogs) may be used to check the registered baggage in view of the threat mentioned above. Arrangements should be made to conduct physical random check of all registered baggage at the time of check-in at least until June 30, 1985, particularly in places where explosive sniffers are not available.

Air India added additional Burns security personnel in Toronto and Montreal. It considered and complied with the directives contained in this telex, including the item 5 use of the "explosive sniffer" to check registered baggage. These directives were applicable to airport operations in Toronto and Montreal during the month of June, up to and including the June 22nd flight. North American airports, including Toronto and Montreal, had an explosive sniffer and also had x-ray machines for use in screening checked baggage, unlike airports in other locations in the worldwide network, where only a physical random search was possible and continued with its approved program using these devices. It is important to note that random physical searches of baggage do not necessarily detect explosive devices hidden within bags or their contents nor was it practical as a security measure.

31. Air India had delegated the responsibility for conducting checked baggage screening to Burns, a security firm recommended by Air Canada and permitted by Transport Canada to conduct pre-boarding passenger and hand baggage security screening at the airports in Toronto and Montreal. Burns' obligation to Air India under the contract was to provide properly trained employees experienced in passenger and checked baggage security screening who would perform their duties diligently.

32. Despite being provided with the June 1, 1985 telex, Canadian authorities did not take any steps to have special precautions applied to connecting flights to Air India's flights. According to the CATSA Panel, if all air carriers with connecting flights had been advised of the threats to Air India, and if Transport Canada had directed all airlines not to interline any baggage to Air India's flights, perhaps the bombing could have been prevented at Canadian Pacific Airlines check-in counter.²⁹

Events Leading Up to the Loss of Air India Flight 182: Canadian Pacific Airlines Failed to Follow Interline Checked Baggage Procedures

33. On June 19, 1985, a reservations agent from Canadian Pacific Airlines received a phone call from a man arranging flights for two passengers traveling on separate flights.³⁰ The agent made one reservation for Mohinderbal Singh for a round trip from Vancouver to Bangkok, Thailand, connecting at Narita Airport, Tokyo. The scheduled departure from Vancouver for this

²⁹ *CATSA Air India Report*, at p. 40.

³⁰ *Malik* at paras. 7-9.

flight was on June 22, on Canadian Pacific Airlines Flight 003. The connecting flight was Air India Flight 301, scheduled to depart from Narita on June 23.³¹

34. The agent booked a second reservation for Jaswand Singh for travel from Vancouver to Delhi, connecting in Montreal, and London, England. The trip was to begin with a departure from Vancouver on June 22, on Canadian Pacific Flight 086 to Montreal (Dorval), connecting to Air India Flight 182, departing from Montreal (Mirabel) that same day. This part of the trip from Montreal to Delhi was sold out at the time the reservation was made.³²

35. The electronic ticketing record for the Delhi flight indicated that the Vancouver – Montreal itinerary was changed early in the morning of June 20, 1985. The trip was changed to begin with a departure from Vancouver on June 22, on Canadian Pacific Flight 060, to Toronto. From Toronto, the connecting flight on Air India to Montreal (Mirabel) was scheduled to depart on June 22. The flight was then due to leave Montreal later on June 22 for London. The seat from Vancouver to Toronto on Canadian Pacific Flight 060 was confirmed, but the continuation of the flight from Toronto to Delhi on Air India Flights 181/182 was not.³³

36. On June 20, 1985, the day after the initial reservations were made, an unidentified East Indian man appeared at the Canadian Pacific Airlines office in downtown Vancouver to pick up the two tickets. The man made some changes to the reservations, changing the names for the tickets from Mohinderbal Singh to L. Singh, and from Jaswand Singh to M. Singh.³⁴

³¹ *Commission Summary of Facts* at p. 3.

³² *Commission Summary of Facts* at p. 3.

³³ *Commission Summary of Facts* at p. 4.

³⁴ *Commission Summary of Facts* at p. 4.

37. On June 22, 1985, an unidentified East Indian man appeared at the Canadian Pacific Airlines check-in desk at Vancouver Airport. He brought with him M. Singh's ticket for Canadian Pacific Flight 060 to Toronto. He had one bag to check. In accordance with the airlines' standard procedures and practices, the Canadian Pacific agent checked this bag to Toronto but not to Delhi. The man wanted his bag to be transferred to Air India. However, since the Air India sector was not confirmed, the agent told him his baggage could not be transferred in this manner. Instead the agent told the passenger he would have to retrieve his bag following the arrival of his flight in Toronto, and then, if Air India had space on Flight 181/182, he would have to check-in and re-check his bag with Air India. The agent ended up in an argument with the passenger, who became increasingly insistent that his bag not be off-loaded in Toronto. The agent finally relented and agreed to tag the bag to be transferred in Toronto to "interline" onto the Air India flight from Toronto through to Delhi.³⁵

38. The Canadian Pacific Airlines Security Program required a passenger checking baggage to present a valid ticket to the destination to which the bag is to be checked. A valid ticket is one which indicates that the passenger has a confirmed seat on the flight. In the absence of a confirmed seat the ticket is not valid for the flight and does not entitle the ticket holder to board the flight. M. Singh did not have a valid ticket for the Toronto to Delhi flight on which he requested the bag to be checked. Because M. Singh did not have a confirmed seat on the Air India flight from Toronto to Delhi, the Canadian Pacific agent initially and properly denied the request that the bag be interlined to the Air India flight.

³⁵ *Malik* at para. 19.

39. Canadian Pacific Airlines failed to comply with the provisions of its security plan and failed to remove the bag from its aircraft when Mr. M. Singh checked in for CP Flight 060, but failed to board the flight.³⁶ Air India expected that Canadian Airlines would have followed a “no show” procedure at the departure gate and removed such a bag.

Air India Check-In at Toronto on June 22, 1985: Air India had No Information that an Unauthorized Renegade Bag had been Interlined to Flight 181/182

40. Canadian Pacific Airlines also failed to follow standard procedures by failing to advise Air India that passenger M. Singh had not shown up for the flight.³⁷ It also failed to comply with the IATA Interline Traffic Agreement – Passenger (766 at page 47) that onward carriers be notified of no shows on a prior flight.³⁸

41. Canadian Airlines also failed to advise Air India that it had interlined a bag to Delhi for a person without a confirmed seat on the Toronto to Delhi flight. Unfortunately the decision to interline the bag to Air India and the failure to provide any information to Air India on either the M. Singh or the bag was later to prove disastrous to AI Flight 182.

42. On June 22, 1985, Air India Flight 181 arrived in Toronto from Frankfurt, Germany at 2:30 p.m. local time. Air Canada employees, as the handling agents of Air India, removed all baggage from the flight. Air Canada had a contract with Air India to handle passenger check-in, baggage unloading, checking and loading and aircraft ground handling services

³⁶ Heed at p. 4358, lines 3–21.

³⁷ Heed at p. 4352 at lines 4–12.

³⁸ Exhibit P-159.

43. Air India's departure check-in system provided a listing of confirmed passengers expected to board in Toronto. This list made no reference to M. Singh. Nor was there an M. Singh on "stand-by" status; he was a complete unknown to the Toronto personnel of Air India and to Air Canada, its handling agent, as Canadian Pacific had failed to report the matter. The check-in passengers to board the flight were numbered using a security control check sheet in accordance with instructions from Air India, but neither check-in nor interline baggage was numbered, and there was no procedure to correlate passengers with baggage.³⁹ The security control check sheet was used to conduct a passenger "no show" procedure at the departure gate. If a passenger who had checked in failed to board the aircraft, his checked baggage was removed from the aircraft. Interline baggage moving without a passenger would not have been and was not detected.⁴⁰ Canadian Airlines had also not informed Air India that it had interlined the M. Singh bag to transfer to the Air India flight in Toronto and be carried to Delhi.

44. Air India check-in desks at Toronto and Montreal received the Passenger Name Lists containing the names of all passengers holding confirmed seat reservations on its flights departing from Canada. Air India did not have a "stand-by list" nor any list of stand-by status passengers names at its check-in desks.⁴¹

45. The fact that a person had requested a confirmed seat reservation and might have paid for a ticket without a confirmed seat reservation was information electronically recorded in the Passenger Computer Reservation System, but this system was not linked to the manual Departure

³⁹ *CASB Report* at p. 8.

⁴⁰ *CASB Report* at p. 8.

⁴¹ Testimony of R .B. Chopra, Transcript: Vol. 37, May 31, 2007 at p. 4398, lines 1-4, ("Chopra").

Control System and the information was not provided to personnel handling departing flights at airports.⁴²

46. M. Singh was a complete unknown to the Toronto personnel of Air India and to its passenger handling agent Air Canada. Air India did not have a "stand-by" passenger procedure and did not issue to non-confirmed passengers "stand-by" boarding passes. Non-confirmed passengers without boarding passes were not permitted to go through security to the departure gate..⁴³

47. M. Singh was a ghost passenger to Air India's check-in and departure control system in Toronto on June 22, 1985.⁴⁴ His name appeared nowhere.

48. The bag, which had been checked-in with Canadian Pacific Airlines in Vancouver and interlined to Air India, was an unauthorized bag that had infiltrated the system. There was no passenger, no reservation, and no authorization for the bag: it was a renegade bag.⁴⁵

49. The only persons aware of an interlined bag having been received in the baggage area from Canadian Pacific Flight 060 were employees of Air Canada, the baggage handling agents for Air India. These employees actually unloaded the interline baggage carts, and employees of Burns, the security agents for Air India, worked in the baggage area and actually screened the checked baggage by x-ray machine and/or PD4 device.

⁴² Chopra at p. 4398, lines 9-12.

⁴³ Chopra at p. 4398, lines 12-17.

⁴⁴ Chopra at p. 4398, line 20.

⁴⁵ Testimony of Rodney Wallis, Transcript: Vol. 37, May 31, 2007 at p.4408, lines 20-25, p. 4409, lines 9-10 ("Wallis").

Toronto X-Ray Machine Breakdown: Air India Followed the Procedures Set Out in its Security Plan

50. Air Canada employees as handling agents for Air India were responsible for moving all checked baggage within the baggage area to the x-ray machine and then from the x-ray machine to the baggage containers to be filled and transferred to the aircraft. Burns security agents were in charge of the actual screening of all checked baggage through the Scanray x-ray machine provided by Air India. Screening of checked baggage for Air India Flights 181/182 started at about 2:30 p.m. local time. The x-ray machine ceased working altogether at 4:45 p.m. local time. At that point, between 50 and 75 per cent of the baggage destined for the aircraft had been screened.⁴⁶ About 50 to 70 pieces of checked baggage remained to be examined⁴⁷.

51. The Burns employees operating the x-ray machine were unable to fix it and the company which provided servicing for the machine was not available for weekend service calls, so the x-ray could no longer be used for screening.

52. The Air India Security Officer supervising security operations then authorized the Burns security agents to use the handheld PD4 explosive detection device to screen the remaining baggage. The Air India Security Officer instructed them that when they screened luggage, they should listen for a beeping sound. He made the device produce the sound by holding a match near it.⁴⁸

⁴⁶ *Rae Report* at p. 10.

⁴⁷ *Kirpal Commission Report* at p. 34.

⁴⁸ *Malik* at paras. 27-28.

53. The bag checked by the person identifying himself as M. Singh in Vancouver was the only bag transferred from Canadian Pacific Flight 060 to Air India Flights 181/182. No baggage was set aside as being suspicious, and all screened baggage was placed on board.⁴⁹ No physical examination of the bags took place, other than by the x-ray machine before it broke down and by the PD4 device.⁵⁰ It is not known whether the x-ray machine or the PD4 device was used to screen the bag. The RCMP sniffer dogs were not available to check baggage on June 22, 1985 because they were all on a training program in Vancouver.

54. Except for any on the spot training on the use of the PD4 explosive detection device, Burns was to provide all training for the security agents it provided to Air India under its contract to provide security services. For the PD4, which accompanied an Air India security employee from New York to Toronto and on to Montreal, training was provided by the Air India Security Officer on the spot, demonstrating the use of the device after he had calibrated and tested it.

Events in Montreal Were Totally Irrelevant: Air India Followed Appropriate Security Procedures in Montreal for Three Pieces of Suspicious Checked Baggage

55. The aircraft operating as AI Flight 181/182 departed Toronto for Montreal to offload passengers destined for Montreal and to accept passengers joining the flight for Delhi.

56. During check-in of Montreal departing passengers, x-ray screening of the checked baggage by Burns security agents identified three suspect suitcases. The suitcases were placed on the floor next to the machine for further scrutiny. Burns security agents informed Air India staff

⁴⁹ *Malik*. at para. 31.

⁵⁰ *Lessons to be Learned: The Report of the Honourable Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness, On Outstanding Questions With Respect to the Bombing of Air India Flight 182* (Ottawa: Air India Review Secretariat, 2005) at p. 10 ("*Rae Report*").

when the initial suspect bag was identified and were advised to wait for the Air India Security Officer who would be arriving on the flight from Toronto. When the Air India Security Officer examined the three bags with both the x-ray machine and a PD4 explosive detection device, the Security Officer decided to detain the three suitcases for further examination.⁵¹

57. Air Canada, the handling agent for Air India, contacted the airport RCMP detachment regarding the suspect bags. After the RCMP member arrived in the baggage room, he requested the presence of an Air India representative. The Air India Security Officer advised that he could not come to the baggage room immediately. When the Air India Security Officer later arrived in the baggage room, he informed the RCMP member that the flight had already departed.⁵² According to the Kirpal Commission, the three suspect suitcases were later examined with the aid of a police explosive detection dog with negative results.⁵³ The suitcases were kept overnight in the decompression chamber and when they were opened, no explosive items were found.⁵⁴ The passengers who had checked the three suspicious bags boarded the Air India flight in Montreal.

58. The remainder of the checked baggage had been security-cleared by Burns security agents and forwarded to Air Canada personnel who loaded the baggage into containers and then placed them on board the aircraft.

⁵¹ *CATSA Air India Report* at p. 28.

⁵² *Canadian Aviation Safety Board, Aviation Occurrence Report into the crash involving Air India Flight 182 on 23 June 1985* (1986) at p. 10 ("*CASB Report*").

⁵³ *India, Report of the Court Investigating Accident to Air India Boeing 747 Aircraft VT-EFO, "Kanishka" on 23rd June 1985 by Honourable Justice B.N. Kirpal* (Delhi: High Court of Delhi, 1986) at p. 40 ("*Kirpal Commission Report*").

⁵⁴ *Kirpal Commission Report* at p. 40.

59. Detaining the suspicious bags and not loading them on the aircraft in the ultimate security protection of the aircraft and its passengers from any flight risk presented by the suspicious bags.

60. The events that occurred in Montreal were not relevant to the bombing of the aircraft. None of the security procedures in Air India's security program employed in Montreal would have detected the unauthorized renegade bag already in the hold of the aircraft.⁵⁵

Was there a Blind Spot? Passenger-Baggage Reconciliation Became the Solution

61. According to the CATSA Panel, the loss of Air India Flight 182 resulted, in part, from a failure of regulatory enforcement. Transport Canada had advised Air India that its security program would be monitored and that any matters requiring corrective action would be brought to the attention of Air India, but no monitoring in fact took place.⁵⁶ Only eleven inspectors were in the employ of Transport Canada at that time for approximately 70 air carriers operating in Canada.⁵⁷

62. An RCMP investigation following the bombing of Flight 182 into possible violations of air carrier security regulations by Air India concluded that Air India had met the regulatory requirements.⁵⁸

63. The Air India bombing was the worst encounter with terrorism that Canada has ever experienced.⁵⁹ Despite a general awareness of a high level of threat against Air India by Sikh

⁵⁵ Wallis at p.4420 and 4423 at line 22.

⁵⁶ *CATSA Air India Report* at p. 56.

⁵⁷ *CATSA Air India Report* at p. 44.

⁵⁸ *CATSA Air India Report* at p. 57.

⁵⁹ *Rae Report* at p. 2.

extremists, and despite the precautions and protections that had been put in place to deal specifically with this and other threats, "...almost everything that could have gone wrong did go wrong."⁶⁰

64. The failure to prevent a suitcase that contained a bomb from being carried on board Air India Flight 181/182 was the culmination of a series of failures. The CATSA Panel found that an overall failure of intelligence, a failure of the existing civil aviation security regulatory regime, and a failure in human judgment⁶¹, in particular by the Canadian Pacific check-in agent, led to the mid-air explosion off the west coast of Ireland, resulting in the loss of 329 lives, most of whom were Canadian.

65. The CATSA Panel noted that the legislation, regulations and orders outlined the minimum security aspects to be covered,⁶² but did not specify the type of program to be established.⁶³ Although air carriers were required to submit a written description of their aviation security programs to the Minister of Transport, they were given little guidance in designing the programs, and no formal approval process was in place. The onus was on the air carrier to implement its own system for passenger and baggage screening.⁶⁴ Nonetheless, Air India had submitted its security program to Transport Canada, was commended for its program by Transport Canada. Air India was informed by Transport Canada that its program would be monitored and that was not done.

⁶⁰ *Rae Report* at p. 11.

⁶¹ *CATSA Air India Report* at p. 31.

⁶² *CATSA Air India Report* at p. 13.

⁶³ *CATSA Air India Report* at p. 9.

⁶⁴ *CATSA Air India Report* at p. 9.

66. According to the CATSA Panel, the screening of checked baggage and passenger-baggage reconciliation were not normally being conducted in Canada or elsewhere, as systems were primarily designed for preventing hijackers from boarding aircraft.⁶⁵

67. In 1986, Air India was the first airline to implement a complete passenger-baggage reconciliation procedure following the Air India tragedy. The Canadian government quickly followed suit, requiring passenger-baggage reconciliation for all international flights, except for those to the United States.⁶⁶

Was there a Duty to Warn Passengers and the Public of Threats from Sikh Terrorists?

68. In 1985 there was neither a regulatory requirement under the *Aeronautics Act* or regulations nor a recognized common law duty to warn potential passengers or the public of terrorist threats on the part of either governmental authorities or international air carriers operating to Canada.

69. In July 1989, in response to increased international terrorism, and especially the bombing of Pan Am Flight 103 on December 21, 1988, the Federal Aviation Administration in the USA issued a final rule regarding notification of threats against civil aviation.⁶⁷ The purpose of the rule was to establish mandatory countermeasures for airlines to follow and prohibit unauthorized disclosure of terrorist threats to the public. The FAA was required to issue Information Circulars notifying airlines of nonspecific threats. In the event of specific credible threats, the FAA was required to issue Security Directives to airlines setting out mandatory

⁶⁵ *CATSA Air India Report* at p. 10.

⁶⁶ *CATSA Air India Report* at p. 51.

⁶⁷ *Security Directives and Information Circulars*, 54 Fed. Reg. 28,982 (1989)(codified at 14 C.F.R. 108.18) (1990).

countermeasures to be followed. The dissemination of the Information Circulars and Security Directives was restricted to airlines and personnel with an operational need to know, and prohibited any release beyond these personnel without prior written authorization of the Director of Civil Aviation Security.

70. The rationale for the restriction in the distribution of such threat information arises from the usual hazy nature of threat information, which, if disseminated and publicized can create copycat threats and senseless panic. Many successful attacks on airlines occur without any specific warning at all, as was the case for the Air India bombing. Providing public warnings or warnings to all passengers booked to travel would be counter to the interests of security and safety of civil aviation.

PART II: SYSTEMIC DISCRIMINATION AS IT APPLIES TO THE DEFICIENCIES IN THE ASSESSMENT BY THE CANADIAN GOVERNMENT AGENCIES IN MAKING THREAT ASSESSMENTS AND THE DELIVERY OF LAW ENFORCEMENT SERVICES PRIOR TO THE BOMBING OF FLIGHT 182

71. Air India believes one of the key areas where lessons truly can be learned and where this Inquiry can have the most impact is the issue of systemic discrimination. Today's majority population may very well be tomorrow's minority. Air India's fight against terrorism in the 1980's may tomorrow be Air Canada's concern. It has become abundantly clear at this Inquiry that airlines cannot fight terrorism by themselves. The fight against terrorism must be lead by the institutions of government. Given the growing diversity of Canada's population, the issue of systemic discrimination must be examined; otherwise, no effective solutions can be found. The lack of knowledge of the geo-political issues involving the Sikh community and the lack of representation of South Asians within the institutions of government in 1985 played a significant role in the bombing of Air India Flight 182.

72. The Air India tragedy provides a number of examples of a demographic/cultural/linguistic gap leading to institutional failures. Some of those examples are:

- (a) CSIS failed to translate tapes of the suspects' conversations in a timely manner due to a lack of Punjabi-speaking manpower within both its BC offices and nationally.
- (b) CSIS failed to get warrants on key suspects in a timely fashion, because the threats were not taken seriously.
- (c) Problems with identification of one Sikh from another impacted prosecutorial effectiveness.
- (d) Failure to effectively protect Indian governmental interests and personnel emboldened the extremists.
- (e) Policing problems with understanding the need to protect moderate members of the Sikh community from violence committed by extremists victimized that community and allowed extremism to grow within its midst.
- (f) Transport Canada's refusal to provide Air India with sufficient support including sending sniffer dogs away from Toronto and Montreal on the weekend of the bombing effected security measures.
- (g) Categorizing Air India's request for additional governmental security measures as "crying wolf" and "seeking freebies" diminished the appreciation of the threat information passed on by Air India.

73. In Canadian law the pattern of systemic and institutional failures is understood as systemic discrimination when experienced by a racialized minority group. It is important that we use the appropriate legal construct to define the experiences of the families and Air India who collectively were the biggest victims of terror in Canadian history. Without doing so, we cannot tackle the human links of terrorism and develop representation and policy which is reflective of Canada's growing divergent population and the socio-political issues that arise from that diversity.

The Law

74. Discrimination can generally take three forms: direct discrimination; adverse effect discrimination;⁶⁸ and systemic discrimination.⁶⁹ Canada as one of the world's leading human rights jurisdictions has developed the concept of systemic discrimination as a way to define and ameliorate negative and disparate experiences of minority groups. One of the key tenets of systemic discrimination is that one is not required to prove intention. In fact, scenarios where well meaning individuals within institutions of government tried their best; implemented policy initiatives but the impact of the delivery of services was negative or harmful to a racialized group, still qualifies as systemic discrimination.

⁶⁸ Adverse effect discrimination typically occurs when a policy neutral on its face has a discriminatory effect on a particular protected individual or group.

⁶⁹ Systemic discrimination involves examination of patterns and the impact of policy and or behaviour.

Intent to Discriminate is Not Necessary for a Finding of Discrimination, Particularly Systemic Discrimination

75. Systemic discrimination is often not intentional⁷⁰ and an intention to discriminate is not a necessary condition for a finding of discrimination.⁷¹ What is of significance is the effect or impact of policy or procedure on disadvantaged groups. It is about consequences of conduct and not punishment.

76. The Supreme Court of Canada in *Canada (Canadian Human Rights Commission) v. Taylor* has explained the focus on effects rather than the motive or intent behind discriminatory conduct in the following way:

An intent to discriminate is not a precondition of a finding of discrimination under human rights codes (Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536, at pp. 549-50; Bhinder v. Canadian National Railway Co., [1985] 2 S.C.R. 561, at p. 586). **The preoccupation with effects, and not with intent, is readily explicable when one considers that systemic discrimination is much more widespread in our society than is intentional discrimination.** To import a subjective intent requirement into human rights provisions, rather than allowing tribunals to focus solely upon effects, would thus defeat one of the primary goals of anti-discrimination statutes...[emphasis added].⁷²

77. In *Ontario Human Rights Commission et al. and Simpsons-Sears Ltd.*, the Supreme Court of Canada has stated the following about the absence of the intent requirement:

...To take the narrower view and hold that intent is a required element of discrimination under the Code would seem to me to place a virtually insuperable barrier in the way of a complainant seeking a remedy. It would be extremely difficult in most circumstances to prove motive, and motive would be easy to cloak in the formation of rules which, though imposing equal standards, could

⁷⁰ *C.N.R. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 at para. 40, 40 D.L.R. (4th) 193.

⁷¹ *Ontario (Human Rights Commission) v. Simpsons Sears Ltd.*, [1985] 2 S.C.R. 536, 23 D.L.R. (4th) 321.

⁷² *Canada (Canadian Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, [1990] S.C.J. No. 129 at para. 67.

create, as in *Griggs v. Duke Power Co.*, 401 U.S. 424, (1971) injustice and discrimination by the equal treatment of those who are unequal (*Dennis v. United States*, 339 U.S. 162 (1950) at p. 184). Furthermore, as I have endeavoured to show, we are dealing here with consequences of conduct rather than with punishment for misbehaviour. In other words, we are considering what are essentially civil remedies. The proof of intent, a necessary requirement in our approach to criminal and punitive legislation, should not be a governing factor in construing human rights legislation aimed at the elimination of discrimination...⁷³

78. In 1985, as it does today, the *Canadian Human Rights Act* (“the Act”)⁷⁴, applied to the Government of Canada and its agencies and promised to protect all Canadians no matter their race, colour, religion etc. Sections 3, 5 and 63(1) of the *Canadian Human Rights Act*, 1976-77, S.C., c.33, as amended to June 22, 1985, provide as follows:

3.(1) For all purposes of this Act, **race, national or ethnic origin, colour, religion**, age, sex, marital status, family status, disability and conviction for which a pardon has been granted are prohibited grounds of discrimination.

5. It is a discriminatory practice in the provision of goods, **services**, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, **service**, facility or accommodation to any individual, or

(b) to differentiate adversely in relation to any individual,
on a prohibited ground of discrimination.⁷⁵

63. (1) This Act is binding on Her Majesty in right of Canada, except in matters respecting the Government of the Yukon Territory or the Northwest Territories.⁷⁶
[emphasis added]

⁷³ *Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 at para. 14, 23 D.L.R. (4th) 321.

⁷⁴ 1976-77, S.C., c. 33, as amended to June 22, 1985.

⁷⁵ For consideration of the application of section 5 of the 1976-77 Act to the Royal Canadian Mounted Police, see *Hum v. Canada (Royal Canadian Mounted Police)*, [1986] C.H.R.D. No. 10, 8 C.H.R.R. D/3748 at 13 (C.H.R.T.).

⁷⁶ As of June 22, 1985, this formulation of the provisions did not yet apply in respect to the Government of the Yukon Territory.

79. In the seminal decision on systemic discrimination, *C.N.R. v. Canada (Human Rights Commission)*,⁷⁷ the Supreme Court of Canada noted that the Act applied to systemic discrimination:

...the Supreme Court in the *Simpsons-Sears* and *Bhinder* decisions has already recognized that Canadian human rights legislation is directed not only at intentional discrimination, but at unintentional discrimination as well. In particular, the prohibition of discrimination in the Canadian Human Rights Act has been held to reach situations of "adverse effect discrimination": *Bhinder*. **But unintentional discrimination may occur in another form, with potentially greater consequences in terms of the number of people who are disadvantaged.** Section 15(1) of the Act and, by extension s. 41(2)(a), was designed to meet this second problem of "**systemic discrimination**" [emphasis added].⁷⁸

80. A great deal of the government's response with respect to the systemic issue has been to suggest that there were lots of well meaning people and law enforcement personnel who were trying to assist. These submissions are not intended to attack the hard work of those people. However, malicious intent is not necessary to a finding of systemic failures and systemic discrimination. The Federal Court of Appeal has stated the following about the requirement of "malicious intent" within the context of the human rights legislation:

...it should be mentioned that being held responsible for a violation of the *Canadian Human Rights Act* **does not necessarily imply any conscious wrongdoing or malicious intent.** The legislation seeks not to punish wrongdoers but to reduce discrimination in our society. Such discrimination can occur inadvertently. **Some individuals and organizations are not even aware that their views and practices have the effect of discriminating** against women or others. Old attitudes die slowly. Timeworn practices do not alter overnight. Time is needed to transform a society's values and customs...[emphasis added].⁷⁹

⁷⁷ [1987] 1 S.C.R. 1114, 40 D.L.R. (4th) 193.

⁷⁸ *C.N.R. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114 at para. 33, 40 D.L.R. (4th) 193.

⁷⁹ *Canadian Broadcasting Corp. v. O'Connell*, [1991] F.C.J. No. 1045 at 4-5, 136 N.R. 226 (C.A.).

Systemic Discrimination Different from Individual Complaint

81. To find systemic discrimination, we only need to examine the pattern or impact experienced by the South Asian community. A complaint of systemic discrimination is different from an individual complaint in so far as it requires showing practices, policies, procedures or attitudes that have a disproportional impact on a certain protected group.⁸⁰ Consequently, the type of evidence required to establish a claim of systemic discrimination will not necessarily be the same as the evidence required for an individual claim: “Whereas a systemic claim will require proof of patterns, showing trends of discrimination against a group, an individual claim will require proof of an instance or instances of discriminatory conduct”.⁸¹

Scope of Systemic Discrimination

82. Systemic discrimination has largely been developed in two specific areas: 1) employment law, resulting in initiatives such as pay equity and employment equity legislation; and 2) criminal law regarding such things as challenge for cause/juror bias and sentencing. However, it applies to treatment of minority groups by law enforcement agencies. In a leading case on the topic, the Supreme Court of Canada adopted the following statement about systemic discrimination from the *Report of the Commission on Equality in Employment*,⁸² 1984 by Justice Abella:

Discrimination...means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities

⁸⁰ *British Columbia v. Crockford*, [2006] B.C.J. No. 1724, 271 D.L.R. (4th) 445 at para. 49 (C.A.).

⁸¹ *British Columbia v. Crockford*, [2006] B.C.J. No. 1724, 271 D.L.R. (4th) 445 at para. 49 (C.A.).

⁸² Abella, Rosalies *Report of the Commission on Equality in Employment*. Ottawa: Ministry of Supply and Services Canada, 1984.

generally available because of attributed rather than actual characteristics...It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory.

This is why it is important to look at the results of a system...⁸³ [emphasis added].

Systemic Discrimination and the Air India Inquiry

83. As discussed above, systemic discrimination is often unintentional and is simply measured by its impact on a group; not by the intent of the institutions or individuals involved. The facts disclosed at this Inquiry has revealed a plethora of incidents of violence against Indian interests in Canada and against moderate members of the Sikh community dating several years prior to the bombing of Flight 182. The authorities, however, failed to provide effective protection to stop the violence. The Inquiry has also revealed a number of circumstances where law enforcement agencies were either unprepared or unable to deliver effective protection. This pattern and its negative impact culminating in the bombing of Air India Flight 182 is systemic discrimination because the pattern or the impact affected a racialized group and a foreign carrier.

⁸³ *C.N.R. v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 1114, 40 D.L.R. (4th) 193 at para. 34.

84. As examples of this pattern of growing violence within the South Asian community, the Criminal Intelligence Directorate⁸⁴ noted the following events prior to the bombing of Flight 182 by Sikh extremists.

(a) *Toronto Courtroom Shootings – 1982*

In 1982 Kuldip Singh Samra petitioned the court to block temple elections. The court turned him down and after the judgement was read he drew a handgun and began shooting and killing two people and wounding another.

(b) *Shooting of Toronto Metro Police Officer – 1982*

In 1992 Cst. Christopher Ferandes attended a demonstration at the Indian Consulate. Violence broke out in the crowd and suddenly there was the sound of gunfire. Cst., Ferandes gave pursuit and tackled the gunman. Cst. Ferandes' holster was hit by a bullet which than lodged in the ankle of another demonstrator.

(c) *Winnipeg attack of Indian Diplomat – 1984*

Five Sikhs were arrested and charged as a result of an April 1984 assault on the street of the Acting Indian High Commissioner.

(d) *Vancouver Attack on Lawyer Ujjal Dosanjh – 1985*

In February 1985 a Vancouver lawyer, Ujjal Singh Dosanjh, was beaten extensively with a large metal pip-like object. Mr. Dosanjh was an outspoken opponent of the Sikh extremist movement. He received extensive injuries and was hospitalized.

⁸⁴ Largely summarized from SRR0001 – Tab 64 – *Major Sikh Extremist Events*.

(e) *October 1984 Plot to Bomb Air India Flight*

In September 1984, a confidential source provided the RCMP with information concerning an alleged plot to bomb an Air India aircraft leaving from Mirabel International Airport.

(f) *FBI Investigation into several issues involving Sikh extremism including:*

- The June 1985 Gandhi Visit to United States
- The May 1985 Attempt to Kill an Indian Diplomat
- The Frank Camper Mercenary Training School

(g) *Khurana Tapes*

On June 12, 1985 a meeting of several Sikh extremists was held at Sarbjit Singh Khurana's residence in Vancouver. Mr. Khurana was a victim of an unlawful confinement. The purpose of the meeting was to persuade Mr. Khurana to drop the charges against the culprit. After the meeting Mr. Khurana debriefed the police and stated that Manmohan Singh told Mohan Inder Singh Sachdeva that they had not succeeded in killing any consuls or ambassadors and had not been effective in doing anything. Sachdeva replied to the effect something will be done in two weeks.

(h) *Paul Besso Information to Place Bomb on Air India – Fall 1984*

Besso advised the RCMP that Sikh extremists were willing to pay him to put a bomb on an Air India Flight⁸⁵

(i) *Weapons, Illegal Immigrants, Demonstrations, Violence*

After the 1984 Golden Temple complex incident to flush out the militants, there was an increase in weapon related activity along with increased demonstrations at the Indian High Commission and Consulates. Threats against Indian diplomats were on the increase. Disputes between extremists and moderates were also increasing and led to violence at the temples and assaults on people who spoke out against the extremists.

85. The large number of incidents noted above should have signalled an emerging terrorist threat if not a law enforcement issue. Despite attempts by the Indian government to sound the alarm, very little was happening to protect Indian interests in Canada effectively. The pattern or impact of systemic failures to understand or develop effective tools to protect Air India, Indian interests and the South Asian community was noted at the time. Mr. Warden, the Canadian High Commissioner in New Delhi from 1983 through 1986 expressed his concern as follows:

⁸⁵ Testimony of Paul Besso, Vol. 20, April 30, 2007.

MR. WARDEN: ...

...I have to say that I had no difficulty empathizing with Indian anger and frustration over the situation, and for a good deal of the period from June of '84 right through until the disaster, I myself experienced fairly strong feelings of frustration and anger.⁸⁶

And further:

MR. WARDEN: ...

But, although there were a number of instances where people apparently had been charged, quite frankly, I'm not aware of a single instance where anyone was convicted.

...

But I'm speaking with respect to the government machinery as a whole. It seemed absolutely impossible for the machinery to get together and to make a determined show of political will or whatever it took, to, shall we say, to make a statement to the militants in Canada and to ensure that they were aware that we were going to pursue these matters and that we were going to enforce the law with full rigor...⁸⁷

86. The lack of political will to send a message to the terrorists also led to a lack of convictions for criminal activity and ultimately resulted in emboldening the terrorists. Mr. Dosanjh, currently a member of parliament and at the time a lawyer described the effect and the impact of systemic failures on the Sikh community in the 1980's as follows:

MR. KAPOOR: Was it a factor that there had been threats in the community; people had been assaulted, yourself, viciously assaulted and some of those attac[k]ed had gone unsolved where people had not been prosecuted for. To what impact does that have in empowering the, if I can use this phrase, gangsters and terrorists in chilling the community.

MR. DOSANJH: Well, it has obviously at least dual effect. One, it has the effect of emboldening of those that do violence or what to continue to violence. It has also the impact of those that might want to testify or fight against the gangsters and assist the institutions of our society. They are afraid to assist

⁸⁶ Testimony of William Warden, Transcript: Vol. 24, May 7, 2007 at p. 2382, lines 3-6 ("Warden").

⁸⁷ Warden at p. 2383, lines 2-4, 11-15.

because they know that the perpetrators: (a) either they wouldn't be a prosecuted successfully or apprehended even successfully and then prosecuted; (b) that they will come out when they are released even after convictions and serving their time and will do damage to the individuals that might want to assist the institutions.⁸⁸

87. The impact on the Sikh community was in effect a reign of terror perpetrated by the terrorists culminating in the bombing of Air India Flight 182. Part of the problem was that the threats to Indian interests and community members were not taken seriously. Mr. Hovbrender, a member of the Vancouver Police Department in 1985, described his reaction to intercepted information provided by Mr. Khurana (a moderate member of the community who was willing to assist the police) about killings of Indians counsel and diplomats etc. in two weeks time, namely in mid June of 1985 as follows:

MR. HOVBRENDER: ...Given the context of that conversation, I spoke to Constable Ram, and there was obviously a lot of people that were over -- that were talking. I have no doubt of Mr. Khurana's veracity in reporting it.

My first instinct, in relation to that comment, was another hothead beating his chest and saying, "You watch." And we were hearing a lot of that, within the community. There was a lot of threats; intimidation; talks about hit lists. So my first reaction was, "It's somebody beating their chest saying, 'Oh, you watch in two weeks' time.'"⁸⁹

88. This is not to say that Mr. Hovbrender was intentionally discriminating. Often those who were involved with attempting to assist were also victims of the same systemic failures.

89. The systemic failures to understand, accept and effectively react to the surging violence perpetrated by the militants was partially a result of systemic gaps in representation. There was an intellectual, linguistic and cultural gap in understanding the issues surrounding the extremist

⁸⁸ Testimony of Ujjal Dosanjh, Transcript: Vol. 80, November 21, 2007 at p. 10182, lines 6 – 18 ("Dosanjh").

⁸⁹ Testimony of Supt. Axel Hovbrender, Transcript: Vol. 33, May 24, 2007 at p. 3921, lines 4 -11.

elements. Mr. McLean, a police officer with the Vancouver Police Department, testified to this lack of understanding:

MR. BOXALL: Okay. And we're dealing with 1984 and 1985. Was the problem of Sikh extremism generally understood within -- I'll say, within the Vancouver Police Department at that time.

MR. McLEAN: No.

MR. BOXALL: Okay. And do you have any reason, or explanation that you can think of, why it wasn't understood at that time.

MR. McLEAN: The majority of the department was Caucasian. They did not understand the degree of the cultural diversity that was within the community itself.⁹⁰

90. This lack of understanding meant the community members were at the mercy of the terrorists. While the *Canadian Charter of Rights and Freedoms* promised every Canadian the fundamental right to life, liberty and security of the person;⁹¹ members of the South Asian community were left to fend for themselves as noted by Mr. Dosanjh:

MR. DOSANJH: ...And let me say at the outset many of us felt at that time, in '84, '85, that the institutions of our society, be they government, police or others, had a bit of a blind spot, to put it mildly, where we felt those of us who were in the thick of these issues, we felt that many people a) didn't have the knowledge or the experience to deal with the issues; b) the fact that they cared, and they may have, didn't come through at all. And so one was left with the impression that there wasn't much caring, and that may have been for many reasons.⁹²

And further,

But June '84 was the real explosive beginning, no pun intended, of our difficulties here. You had the situation at the Temple in Golden Temple in India and then suddenly a wave of hatred, violence, threats, hit lists, silencing of broadcasters,

⁹⁰ Testimony of Don McLean, Transcript: Vol. 21, May 1, 2007 at p. 2022, lines 2 – 10.

⁹¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, s. 7, which came into force and effect on April 17, 1982.

⁹² Dosanjh at p. 10167, line 25; p. 10168, lines 1-6.

journalists, activists happened, and I believe that the institutions of our society were unable to understand or comprehend it to any great degree at that time and were not able to deal with it. So we were left to fend for ourselves.⁹³

91. The systemic failures also included inadequacies in the law enforcement process including a lengthy delay in getting a warrant for Mr. Talwinder Singh Parmar. Mr. Parmar is widely acknowledged as leader of the conspiracy to bomb Air India⁹⁴ and was in fact seen as the key suspect at the time. This was corroborated by Ray Kobzey, an investigator with CSIS.

MR. KAPOOR: ...

Sir, as an investigator on the ground, at that time,...As an investigator, what concerns did you have about the five-month delay?

MR. KOBZEY: ...

...All were of the opinion that the urgency justified having the warrant approved in a timely fashion.

My attitude about the delay; I felt it was unreasonable. I felt it was unacceptable that it was taking five months to put through a document. I also felt personally that as an investigator, if you deem the document to be urgent because you could see the potential, and we had seen escalating acts of violence in the community, assaults and intimidation taking place, there should be some substance to -- that to me meant that there was some substance to the point that we considered it urgent, and it should be respected by the headquarters area and treated accordingly. And to be put on the back burner when I learned about the delay, due to the conversion of the other warrants, I felt that we have an emergent situation taking place here in the field and housekeeping matters with respect to converting *Official Secrets Act* warrants to CSIS section 21(1) warrants, taking priority over an emergent terrorist-extremist activities in the field, I didn't feel personally that was a wise way to go.⁹⁵

⁹³ Dosanjh at p. 10168, lines 15-20.

⁹⁴ Commission Dossier 2, *Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism*, February 19, 2007, p. 6.

⁹⁵ Testimony of Ray Kobzey: Vol. 33, May 24, 2007 at p. 3780, lines 7, 10, 11, 15-25; p. 3781, lines 1-3.

92. In addition, Mr. Russell Upton, Staff Sergeant, noted at the time that the investigation by CSIS on Sikh extremists was “piss-poor”.⁹⁶

93. In addition to delays, warrants were not processed against others because Sikh extremism was not seen as a significant issue. For example, despite assessing Mr. Bagri as one who was likely to commit a terrorist act, no warrants were issued at the time.

MR. KAPOOR: ...It’s a reference to Mr. Bagri, a close consort of Parmar; indicates that he has been assessed as one who could easily be manipulated into committing a terrorist act. Do you see that there, sir.

MR. SWEENEY: Yes.

MR. KAPOOR: He has made several heated verbal attacks on the Hindu religion, and the particular line, sir, is:

that the (redacted) reported that Bagri was planning to hijack an Air India jetliner during 1984/10 in order to demand the release of seven hijackers arrested on 1984/08/25 in the United Arab Emirates.⁹⁷

94. CSIS Investigation was lack lustre. For example, members of CSIS followed Mr. Parmar without the aid of a camera, and had difficulty identifying one Sikh suspect from another. Lynn Jarrett agreed that her investigation was lacking when she testified before the Commission.

MR. SHORE: there were no photographs?

If I may, Mr. Commissioner, I’m raising these questions because I think that there are a number of gaps. Certain things that were not done that perhaps should have been done in the normal course of professional activity...

...

⁹⁶ Testimony of Russell Upton, Transcript: Vol. 31, May 22, 2007 at p. 3580, lines 3-5; 13-15.

⁹⁷ Testimony of Warren Sweeney, Transcript: Vol. 26, May 9, 2007 at p. 2694, lines 11-20.

MS. JARRETT: In my current duties and my experience now over 20 years, that is something that surveillant lives by, is having a camera almost literally attached to their hand.⁹⁸

95. In addition, the lack of culturally trained individuals effected the surveillance and ultimately effective prosecutions. This has been noted in Dossier 2, relying on transcripts of *R. v. Malik*.⁹⁹

CSIS officers occasionally had difficulty identifying the suspects observed during surveillance. During the Air India trial, the Crown invoked instances of misidentification of suspects in some of the CSIS surveillance reports in its efforts to establish that an unidentified male who was seen entering the Parmar residence on June 21, 1985, was Bagri, in spite of an admission of fact to the contrary that had been based on a CSIS surveillance report indicating that the unidentified male was not Bagri.¹⁰⁰ The Crown pointed to the absence of factual underpinnings for the CSIS agent's opinion respecting the identity of the person entering the Parmar residence.¹⁰¹

96. Moreover, Inderjit Reyat, later convicted of manslaughter for his role in making the bomb for the Narita incident had been observed meeting with Mr. Parmar and then testing a bomb in a wooded area near Duncan on June 4, 1985. The CSIS agent concluded the noise was a rifle. Later the RCMP found evidence of a bomb. Sherene Razack in her report, *The Impact of Systemic Racism on Canada's Pre-bombing Threat Assessment and Post-bombing Response to the Air India Bombings*, dated December 12, 2007 noted that all the mistakes cannot be explained away as human error.

The mistake made about the gun, and later the failure to find evidence of a bomb could perhaps be written off as due to the inherent difficulties of this kind of work

⁹⁸ Testimony of Lynn Jarrett, Transcript: Vol 22, May 3, 2007 at p. 2197 lines 11-14; p. 2198, lines 1-3.

⁹⁹ [2005] B.C.J. No. 521 (S.C.).

¹⁰⁰ *R. v. Malik*, [2005] B.C.J. No. 521 at para. 1145-46 (S.C.).

¹⁰¹ *R. v. Malik*, [2005] B.C.J. No. 521 at para. 1146 and 1237 (S.C.).

where human error is always a factor. When these incidents are put into the context of the overall CSIS and RCMP understanding of the threat of Sikh terrorism as a low one, and we consider that the officer on surveillance duty that day in Duncan did not trouble to bring a camera with her, mistakes seem less benign...¹⁰²

97. In addition, while a Sikh Desk was set up to deal with the issue, information was not being passed on from one governmental agency to another including the important June 1 telex.

MR. BOXALL: All right, but one of the questions I would ask of you would be this, the June 1st Air India telex appears not to have got to the Sikh Desk, but there was a request that came into your Unit for a Threat Assessment. When that's received, would you enquire of the RCMP, or other Government agencies, to make sure that they had sent you all their information, or say, "You're asking for a Threat Assessment now. Why are you asking for it now? Have you received new information? What's going on?" Would there be that type of information going back and forth?

MR. HENRY: There may, or may not, have been. On some occasions, yes, it would be challenged as to -- I've seen a document somewhere, I don't know if it's coming up today, where I had to -- the routine for such requests would come from the Mission, to the External Affairs Protocol Division, to VIP Security Branch, to us. And that was the normal channel. If things stayed in channels, it made it a lot simpler for us.

...

MR. BOXALL: And so that would -- that would, I suggest, then create a responsibility for those other agencies who are gathering information and who are ultimately going to rely on threat assessments of the RCMP to send the data so that your unit will have it.

MR. HENRY: One would hope so.¹⁰³

98. The CSIS investigation was further hampered by the lack of Punjabi speaking translators within its ranks. At the time of bombing, approximately 100 tapes remained untranscribed.¹⁰⁴ In

¹⁰² *The Impact of Systemic Racism on Canada's Pre-bombing Threat Assessment and Post-bombing Response to the Air India Bombings*, Sherene H. Razack, December 12, 2007, p. 16.

¹⁰³ Testimony of John Henry, Transcript: Vol. 25, May 8, 2007 at p. 2540, lines 24 and 25; p. 2541, lines 1-11, 23-25; p. 2542, lines 1 and 2.

addition, a number of recordings of wiretaps of Mr. Parmar had been erased.¹⁰⁵ Sherene Razack noted the following with respect to governmental responses to Air India's request for assistance.

...The airline noted the possibility of a terrorist attack from Sikh extremists (Ibid). Air India updated the RCMP on the threat of sabotage of its aircraft on June 6, 1985 (Inquiry, Dossier 2, p.11). What, then were the institutional responses to the information received about the possibility of a terrorist act, and specifically to the bombing of an aircraft?

Canadian security and airline officials were remarkably inattentive to Air India's warnings, given the intensity of the warnings...“I don't think that Canadian airport security or Transport Canada or any of our security people were ready for Air India. And in fact, when it happened they didn't even think it was Canadian. They thought it was Indians from India” ...

...

Ironically, although Transport Canada advised Air India in 1984 and in February 1985 that it was actively monitoring and evaluating the airline's security programme, the CATSA advisory panel found that no such monitoring was undertaken (Commission dossier on civil aviation security, p.38) For example, Air India proposed the use of the PD-4 explosive scanning device but in a test at which a Transport Canada official was present, the device did not work. As former RCMP security officer Mattson testified at the inquiry, at no time did regional civil aviation officials register a concern with Air India's security arrangements (Inquiry transcripts, p.3389, May 15, 2007, Dale Mattson).

...

Decisions made to send most dog handlers away to a conference on June 22, 1985 for instance, may well have been influenced by the idea that Indians were not to be believed and that no real threat against Canadians was imminent...¹⁰⁶

99. Mr. Dosanjh explained this institutional bias as one that was seen by law enforcement and government departments as “tribal rivalries” instead of criminal

¹⁰⁴ SIRC Air India Report, p. 75.

¹⁰⁵ Commission Dossier 2, *Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism*, February 19, 2007, p. 30.

¹⁰⁶ *The Impact of Systemic Racism on Canada's Pre-bombing Threat Assessment and Post-bombing Response to the Air India Bombings*, Sherene H. Razack, December 12, 2007, pp. 11 and 12.

behaviour and acts of terror. Like many, he went on to state that the Air India was treated differently than an Air Canada flight.

MR. DOSANJH:

...

We believe that if it had been Air Canada, in one of their regular flights going to Europe say, we believe it would have received a different treatment. Not because anybody deliberately set out to not deal with Air India seriously but I think there was a perception, there was a feeling that we had, and I still have sometimes and I'll tell you – I'll give you an example.

If I and some other Indo-Canadian disagreed on a very serious issue, vehemently disagreed, the outside world sometimes simply say, "Well, you know, there must be some tribal rivalries here. We don't understand that."

If two white guys stand up and argue vociferously, well that's a difference of opinion. Therefore, you diminish the importance of that argument that I may be having vis-à-vis the argument that others are having and it is that diminishment of that significance that we saw all the way through in the mid-'80s.¹⁰⁷

100. With respect to the issue of whether things would have been different if this was an Air Canada flight, the Commissioner raised the concern as follows:

THE COMMISSIONER: ... What you describe as a reaction among the families is one that is hard not to share with them; that is the fact that if it had been an Air Canada plane, and Anglo-Saxons, things would have been different.

You concluded that, after reviewing all that and being as aware of that as I am, and others that you were satisfied that there was not conscious racism...

HON. BOB RAE: I just saw -- I saw no evidence of it...

...but what I did find was that there is this issue of cultural insensitivity and that that is something we have to address in the work that we do. I mean, I think the agencies are very aware of it, but it doesn't mean that there isn't work to be done. There is still a lot of work that needs to be done and understanding the fact that by becoming the kind of country we have become, by virtue of the extent of immigration, the extent to which we are an open country, we are home to a great

¹⁰⁷ Dosanjh at p. 10194, lines 12-23.

many people from a great many countries, and from a security and intelligence point of view and from a policing point of view, we have to understand better who everybody is and what they are really talking about, what they are saying and what is really going on. If we don't, we're not doing our job.¹⁰⁸

101. It is not suggested that Air India or its passengers were subjected to racism or direct discrimination. Rather, it is the pattern of neglect, minimalization of threats, ineffective and lacklustre delivery of protection that is collectively understood in Canadian law as systemic discrimination when experienced by a racialized group. For example, it has been suggested by some at the time that Air India's attempts to get assistance was essentially a matter of crying wolf. Mr. Warden, Canada's High Commissioner to India, however, dismissed outright any such behaviours.

MS. RAY-ELLIS: In essence, sir, what they're saying is that Air India and the Indian government was crying wolf. You were there. You were on the ground. You understood the politics. The Indian government and Air India was not crying wolf about Sikh terrorism, were they?

MR. WARDEN: I expressed my view earlier to the effect that I did not believe they were crying wolf.

...

MS. RAY-ELLIS: Did it appear to you sitting in India that perhaps the Canadian agencies responsible for protecting the embassies and personnel were not being effective?

...

MR. WARDEN: Well, certainly, I mean I think the evidence is shown in the, shall we say, the repeated representations from the Indian authorities transmitted from me and from the Indian High Commissioner here. I think they showed ongoing Indian concern over the level of protection that was being afforded, so one can assume that certainly in their view they did not consider the level to have been sufficient.

¹⁰⁸ Testimony of Hon. Bob Rae, Vol. 6, October 4, 2006 at p. 560, lines 23-25; p. 561, lines 1-2, 5 and 25; p. 562, lines 1-9 ("Hon. Bob Rae").

MS. RAY-ELLIS: What did you think, sir?

MR. WARDEN: I could only go on the basis of what was provided to me. Obviously, I was the -- shall we say the cog in the transmission belt of sending this material back -- these representations back to Ottawa and from the response I got, I did feel -- and the fact that, shall we say, on a regular basis, I kept seeing these references from Canadian sources to the need to upgrade. You know, in June we're going to upgrade, in November we're going to upgrade, in May of '85 we're going to upgrade. Well, I had to assume that obviously we hadn't upgraded enough to begin with.¹⁰⁹

102. In fact, after the tragedy, the initial assessment of the event was not even seen as a "Canadian" event. Bob Rae explained it as follows:

HON. BOB RAE: ...

...I can say after my experience that everybody talks about 9/11 and how the world came of age in 9/11 and we lost our innocence in 9/11. We should have come of age on June the 23rd, 1985. We should have realized what this meant in 1985. We should have woken up as a country...¹¹⁰

103. Rodney Wallace, an international civil aviation security consultant noted that the Air India bombing did not receive the focused attention as the 1988 bombing of Pan Am Flight 103 because it did not involve Anglo-Saxons:

MR. WALLACE:

...And of course, in the Anglo-Saxon world, there were Anglo-Saxons who had died. You know, it's the fact of life that that in the Anglo-Saxon world created a bigger news story than people dying perhaps from a different heritage. One can only speculate, but certainly the media made great play on the various stories surrounding the bombing of Pan Am Flight 103...¹¹¹

¹⁰⁹ Warden at p. 2419, lines 21-25; p. 2420, line 1; p. 2421, lines 3-5 and 8-20.

¹¹⁰ Hon. Bob Rae at p. 559, lines 4-7.

¹¹¹ Testimony of Rodney Wallace, Transcript: Vol. 37, May 31, 2007 at p. 4527, lines 8-12.

Conclusion

104. The Air India tragedy has provided us with an opportunity to recognize that the institutions of government must be reflective of Canada's population if the fight against terror is to be an effective one. Governmental institutions work better when they reflect the populations they serve. The new face of terrorism cannot be revealed and reduced without the assistance of all Canadians as fully integrated and invested members of Canadian society and that cannot happen unless further positive measures are taken by governmental institutions to actively welcome qualified members of various communities to its ranks in government, policing, judiciary, criminal intelligence and all other law enforcement related activities.

105. The aviation industry relies on mutual cooperation and trust. A foreign carrier relies and necessarily depends on the domestic law enforcing authorities for security cover and protection from crime. It has no ability to take action to detect, manage and punish terrorists. As a result, it is absolutely necessary that the Canadian aviation authorities provide comprehensive information and protection.

Recommendations

106. It is respectfully submitted that the Commissioner consider recommending the implementation of a human resource plan in governmental institutions which would enable law enforcement authorities to effectively deal with terrorism including sufficient translators, from various linguistic groups, and representational membership in all aspects of government including policing, RCMP, CSIS, judiciary and other law enforcement related agencies.

107. Air India recommends that comprehensive terrorist threat information be disseminated by the Canadian governmental authorities to airlines operating in Canada in the form of regular circulars notifying airlines of nonspecific threats and terrorist activities in order to maximize information about the terrorist risks and security measures to manage the risks. The level of disclosure should be adequate to enable airlines to implement protective security measures designed to meet to *modus operandi* actually used by terrorists to penetrate security systems.

108. Air India recommends that Canadian governmental authorities continue to strengthen Canadian civil aviation security through the layered approach that goes beyond airport screening and includes intelligence gathering by governmental agencies at all levels that is collated, analyzed, shared and used to anticipate risks as well as respond to them. It should include police, other law enforcement authorities, airport operators and airlines in a strategy that shares the information developed and strives to stop terrorist activities. That strategy should also include an educational component that brings to every adult and child the risks of terrorist activities to civil and democratic societies in Canada and abroad.