

Commission
of Inquiry into
the Investigation
of the Bombing of
Air India Flight 182



Commission d'enquête
relative aux mesures
d'investigation prises à
la suite de l'attentat à la
bombe commis contre
le vol 182 d'Air India

The opinions expressed in these academic studies are those of the authors; they do not necessarily represent the views of the Commissioner.

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**Commission of Inquiry
into the Investigation of the
Bombing of Air India Flight 182
Research Studies – Volume 1**

Threat Assessment and RCMP/CSIS Co-operation

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Introduction

Kent Roach

The Commission's Research Program

Shortly after the appointment of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, a decision was made by the Commissioner, commission counsel and the research directors to commission a number of research papers on matters relevant to the Commission's broad mandate.

Research studies have long been an important part of the commission of inquiry process in Canada. For example, the McDonald Commission of Inquiry that examined activities of the Royal Canadian Mounted Police's (RCMP) activities and made recommendations that lead to the creation of the Canadian Security Intelligence Service (CSIS) in 1984 issued a number of research papers and monographs as part of its process.¹ Other commissions of inquiry at both the federal and provincial levels have followed suit with at times ambitious research agendas.²

Research allows commissions of inquiry to be exposed and informed by expert commentary. Research papers can be independently prepared by academics and other experts. The parties and the public are free to comment on these papers and the Commissioner is free to reject or to accept any advice provided in the research papers. The traditional disclaimer that the research paper does not necessarily represent the views of the Commission or the Commissioner is true.

The Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 faced the challenge of a particularly broad mandate that spanned the issues of the adequacy of threat assessment of terrorism both in 1985 and today, co-operation between governmental

¹ For example, see the research studies published by the McDonald Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police. J. L. J. Edwards *Ministerial responsibility for national security as it relates to the offices of Prime Minister, Attorney General and Solicitor General of Canada* (Ottawa: Supply and Services Canada, 1980); C.E.S. Franks *Parliament and Security Matters* (Ottawa: Supply and Services Canada, 1980); M.L. Friedland *National Security: The Legal Dimensions* (Ottawa: Supply and Services, 1980).

² The Commission of Inquiry into the Activities of Canadian Officials in Relation to Maher Arar published a series of background papers. Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services, 2006).

departments including the RCMP and CSIS, the adequacy of restraints on terrorism financing including funding from charities, witness protection, aviation security and terrorism prosecutions. A broad range of expertise drawn from a variety of academic disciplines was needed to address this mandate.

A commission of inquiry's research program can help create or solidify a research foundation for continued thought and policy development in the area being examined. Canadian research into terrorism related issues has generally been relatively sparse.³ There is no dedicated governmental funding for research related to the study of terrorism and optimal counter-terrorism measures as there is in other fields such as military studies. One of my hopes is that the research program of this Commission will stimulate further investment in independent research related to terrorism and counter-terrorism.

The Commission of Inquiry was fortunate to be able to retain the majority of Canada's leading experts in many of these areas. The Commission was also able to retain a number of leading international experts to provide research of a more comparative nature. The comparative research was undertaken to determine if Canada could learn from the best practices of other democracies in many of the areas related to the mandate.

Researchers who conduct studies for a Commission of Inquiry do not have the luxury that an academic researcher normally has in conducting research and publishing their work. They must work under tight deadlines and strive to produce analysis and recommendations that are of use to the Commission of Inquiry.

A decision was made to ask our researchers to write only from public sources and indeed to write and complete papers long before the Commission's hearing process was completed. This means that the researchers may not always have had the full range of information and evidence that was available to the Commission. That said, the research papers, combined with the dossiers issued by commission counsel, provided the commissioner, the parties and the public with an efficient snapshot of the existing knowledge base.

³ On some of the challenges see Martin Rudner "Towards a Proactive All-of-Government Approach to Intelligence-Led Counter-Terrorism" and Wesley Wark "The Intelligence-Law Enforcement Nexus" in Vol 1 of the Research Studies.

Because of the importance of public and party participation in this Commission of Inquiry, a decision was made early on that the researchers retained by the Commission would, whenever possible, present and defend the results of their research in the Commission's hearings. A deliberate decision was made to reject the dichotomy of part one hearings focused on the past and part two processes aimed at the future. This decision reflected that much of the Commission's mandate required an examination of both the past and the future. There was also a concern that the Commissioner should be able to see the research produced for him challenged and defended in a public forum.

It is my hope that the research program will help inform the deliberations of the commission and also provide a solid academic foundation for the continued study in Canada of terrorism and the many policy instruments that are necessary to prevent and prosecute terrorism.

The Research Studies in this Volume

The research studies in the volume start with an attempt to understand both the nature of the threat of terrorism in 1985 when Air India Flight 182 was bombed killing 329 people and the contemporary threat environment. This dual orientation is required by the Commission's terms of reference which direct attention to both "the potential threat posed by Sikh terrorism before or after 1985" and "the assessment of terrorist threats in the future."⁴

This volume also contains two essays that examine the mandates and relationship between the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, two agencies that are specifically mentioned in the Commission's terms of reference.⁵ Again, there is a dual focus in these studies that include both a retrospective assessment of the relation between these agencies in both the pre and post bombing periods as well as what is publicly known about their contemporary relations.

⁴ Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 *Terms of Reference* b (i).

⁵ *Ibid* b (ii).

These studies also provide an introduction to both the role of terrorism financing and the relation between intelligence and evidence, important subjects that are examined in subsequent volumes of the research studies.⁶

Bruce Hoffman “Study of International Terrorism”

The Commission was fortunate to be able to retain the services of Professor Bruce Hoffman of Georgetown University, one of the world’s leading experts on terrorism. His wide ranging study situates the 1985 bombing of Air India Flight 182 in the context of major trends in both terrorism and counter-terrorism. Professor Hoffman notes that the bombing of Flight 182, combined with the simultaneous explosion of another bomb destined for another Air India plane in the Narita Airport, constituted the most deadly act of international terrorism until 9/11.

The first part of Professor Hoffman’s paper situates the Air India bombing in light of the evolving nature of terrorism. He describes how the Air India bombing cut against the conventional wisdom of the time which was that terrorists were more interested in publicity than in killing large numbers of people. He relates the growing lethality of terrorism to the rise of religiously inspired terrorism so that by the middle of the 1990’s, religiously inspired terrorist groups accounted for nearly half of all terrorist groups.

Professor Hoffman next examines the role of intelligence and law enforcement in preventing terrorism. He suggests that intelligence will play the lead role in preventing terrorism, but that this often involves a “delicate balancing act” with respect to the need to respond to the threat and the need to respect civil liberties. He points out that intelligence and police officers have different skills sets and concerns. Not all intelligence will be collected under conditions that will allow it be admitted in court. Although there are some parallels between law enforcement efforts aimed at organized crime and terrorism, Professor Hoffman warns that terrorism is a unique crime because it is intended to have effects beyond the act and the immediate victims.

⁶ Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 *Terrorism Financing and Charities* Vol 2 of the Research Studies; Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 *The Relationship Between Intelligence and Evidence* Vol. 4 of the Research Studies.

Professor Hoffman concludes his study with a survey of a variety of practices in the financing of terrorism. He stresses how suicide bombing can produce great human and financial costs with only modest investments. He concludes with a series of recommendations about the importance of both domestic and foreign intelligence in preventing terrorist acts, whether the 1985 bombing of Air India Flight 182 or some future terrorist attack.

Michael A. Hennessy “A Brief on International Terrorism”

Professor Michael Hennessy, the Chair of the Department of History at the Royal Military College of Canada, provides an historical overview of terrorism, noting that the term was first popularized by Edmund Burke as a pejorative term against French revolutionaries. He examines the multiplicity of causes and approaches to terrorism including some acts of terrorism that can be seen as an instrumental and rational tactic while others may be related to a desire for publicity or simply an expression of “groupthink” by a small number of individuals.

Professor Hennessy concludes that the Air India bombing could have been formulated instrumentally as retaliation against the Indian government, but that it could also have been an act to build cohesion and identity among a small group of individuals. His essay reminds us of the complexity of terrorism and its many different motivations.

Peter M. Archambault “Context is Everything: The Air India Bombing, 9/11 and the Limits of Analogy”

Dr. Peter Archambault who has served as a Research Director both for this Commission and for the Minister’s Monitoring Committee on Change within the Department of National Defence and as an adjunct associate professor at the Royal Military College of Canada, critically examines the idea that the Air India bombing was Canada’s 9/11 or the result of an intelligence failure.

Dr. Archambault warns that no intelligence agency is omniscient and that blaming terrorist attacks on intelligence failures may shift responsibility for terrorist attacks away from the terrorist themselves and discount the

often unknown successes of intelligence. He also argues that the Air India bombing likely fits better on the criminal end of a spectrum of threats to Canada whereas the threat of Al Qaeda is much closer to the war end of the spectrum. He argues that a criminal justice system response to Al Qaeda terrorism will not be sufficient.

Martin Rudner “Towards a Proactive All-of-Government Approach to Intelligence-Led Counter-Terrorism”

The next essay in this volume is authored by Martin Rudner, a Distinguished Research Professor Emeritus at the Norman Paterson School of International Affairs at Carleton University. He outlines a cycle of terrorism. The steps of the cycle are 1) strategic planning 2) recruitment of activists and operatives 3) training 4) communications 5) resourcing 6) financing including fund-raising and money transfers 7) procurement, preparation and delivery of materiel 8) creating an infrastructure for sleeper cells 9) propaganda and incitement 10) terrorist penetration into sensitive parts of government 11) tactical preparations and reconnaissance on targets and finally 12) terrorist assaults. Professor Rudner argues that each step of this cycle provides its own opportunities for counter-terrorism measures including the use of various human, technical and signals intelligence as well as the sharing of intelligence.

Professor Rudner proposes greater co-ordination of intelligence efforts by moving the Integrated Threat Assessment Centre (ITAC) created in 2004 into the Privy Council Office and having ITAC report to an enhanced office of the National Security Advisor to the Prime Minister. He proposes that the National Security Advisor should be able to dispense additional budgetary and personnel resources to operational agencies to allow them to focus more attention on particular counter-terrorism targets and objectives. These objectives would be informed by intelligence so that intelligence analysis would drive intelligence collection. The approach that he proposes can be contrasted with the traditional approach in which intelligence analysis follows intelligence collection. Professor Rudner also warns that more effective intelligence analysis will require increased education in the universities as well as attractive career paths in government.

Wesley Wark “The Intelligence-Law Enforcement Nexus”

Professor Wesley Wark of the Department of History and the Munk Centre at the University of Toronto provides an historical overview of relationships between CSIS and the RCMP as seen through the prism of the relation between law enforcement and intelligence. He stresses the limits faced by researchers working only with public documents including the inevitable reliance on judgments made by the Security Intelligence Review Committee, the body that has most frequently evaluated the relationship between the RCMP and CSIS.

Professor Wark suggests that the greatest energy in the early years of CSIS was devoted to the civilization project with both the 1987 report of the Independent Advisory Team and the five year Parliamentary review not directly examining the CSIS/RCMP relationship. To this extent, a conscious decision was made to separate CSIS and the RCMP. The 1992 SIRC report on the Air India investigation, as well as reports by SIRC in 1998 and 1999, revealed some tension between CSIS and the RCMP mainly stemming from their different mandates and CSIS's concern about disclosing sources and methods. Early memoranda of understandings and directives conceived of the relation between CSIS and the RCMP being based on a one-way flow of intelligence from CSIS to the RCMP with only some changes being made post 9/11 through the creation of joint management teams, the Integrated Threat Assessment Centre and recognition of the need for the RCMP to generate intelligence to inform its investigative function.

Professor Wark also examines the public record about Air India as an example of an intelligence failure. Failures to translate and retain wiretaps on Talwinder Singh Parmar and to conduct adequate surveillance are in his view clear indications of a failure of intelligence collection. He also finds evidence of intelligence failure with respect to the analysis of the specificity of the threat from Sikh terrorism while also warning that intelligence failures may be widespread.

Jean-Paul Brodeur “The Royal Canadian Mounted Police and the Canadian Security Intelligence Service: A Comparison Between Occupational and Organizational Cultures”

Professor Jean-Paul Brodeur, the Director of the International Centre of Comparative Criminology Centre at the University of Montreal, provides a wide ranging comparison of the organizational and occupational cultures of the RCMP and CSIS. Like Professor Wark he stresses the limits of working with public documents especially the public reports of SIRC. He stresses that CSIS as originally created in 1984 inherited most of its personnel and working assumptions from the former Security Service of the RCMP. The emphasis was more on short-term tactical analysis and case based operations than strategic intelligence. Based on his own research into detective work, Professor Brodeur also suggests that the failure to make arrests in the early stages of the bombing investigation was likely critical and more likely stemmed from transition issues and competition between the two agencies than any differences between the professional cultures of police and security intelligence agencies.

Professor Brodeur locates much of the competition and tension between CSIS and the RCMP in the relation between intelligence and evidence and the concerns of CSIS to protect their files, surveillance records, employees and human sources from disclosure in court. He focuses on human sources and informers as the most difficult area, noting that most good informers will play an active role. He suggests that security intelligence agencies need to become familiar with some of the techniques of witness protection used by the police, but also that disclosure requirements in criminal prosecutions should be clarified.

Professor Brodeur concludes by examining a number of points of contrast between the RCMP and CSIS including the former organization's orientation towards evidence and the courts and the latter's orientation towards secret intelligence and the executive. He suggests that these differences between the two organizations may require the RCMP to target the same individual or group as CSIS, but for its own evidentiary purposes. Such a process would be supervised by a senior level co-ordination committee.

Conclusion

The six essays in this volume taken together provide an introduction to the threat environment and the evolving nature of terrorism as well as an introduction to the different mandates of CSIS and the RCMP in responding to this threat environment. The essays also contain a number of interesting recommendations for possible reforms including the enhancement of the co-ordination function of the National Security Advisor within the Privy Council Office, greater co-ordination between the targeting decisions of CSIS and the RCMP and the use of witness protection programs by security intelligence agencies. The first essay in this volume also provides an introduction to the topic of terrorism financing that will be examined in volume 2 of the research studies. The last two essays in this volume also introduce the theme of the relationship between secret intelligence and public evidence that will be examined in greater detail in volume 4 of the research studies.

