Air India Flight 182

A Canadian Tragedy

VOLUME ONE

The Overview

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Minister of Public Works and Government Services, 2010

Cat. No: CP32-89/2-2010E
ISBN: 978-0-660-19926-9

Available through your local bookseller or through
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario
K1A 0S5

Telephone: (613) 941-5995 or 1 800 635-7943
Fax: (613) 954-5779 or 1 800 565-7757
Publications@pwgsc.gc.ca
Internet: www.publications.gc.ca

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

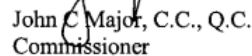
Commission d'enquête relative
aux mesures d'investigation prises
à la suite de l'attentat à la bombe
commis contre le vol 182 d'Air India

June 2010

To Her Excellency
The Governor General in Council

May it please your Excellency:

As Commissioner appointed by Order in Council P.C. 2006-293 issued on May 1, 2006 pursuant to Part 1 of the *Inquiries Act,* and in accordance with the Terms of Reference assigned therein, I respectfully submit this final report entitled "Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182". The report comprises: Volume I, an Overview and guide to the reader; and Volumes II to V covering the Commission's findings relating to all seven specific questions in the Terms of Reference. Associated with the report are four volumes of academic studies addressing various aspects of the Commission's work.



John C Major, C.C., Q.C.
Commissioner

P.O. Box 1298, Station "B", Ottawa, Ontario / C.P. 1298, succursale "B" Ottawa (Ontario)
K1P 5R3
Tel. / Tél. : 613 992-1834 Fax / Télécopieur : 613 995-3506

Canada

Volume One: The Overview

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2006-293
May 1, 2006

TERMS OF REFERENCE

Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable John C. Major, Q.C., as Commissioner to conduct an inquiry into the investigation of the bombing of Air India Flight 182 (the "Inquiry"), which Commission shall direct

a. the Commissioner to conduct the Inquiry as he considers appropriate with respect to accepting as conclusive or giving weight to the findings of other examinations of the circumstances surrounding the bombing of Air India Flight 182, including

   i. the report of the Honourable Bob Rae entitled *Lessons to Be Learned* of November 23, 2005,

   ii. proceedings before the superior courts of British Columbia,

   iii. the 1991-1992 Security Intelligence Review Committee review of Canadian Security Intelligence Service activities in regard to the destruction of Air India Flight 182,

   iv. the report of the Honourable Mr. Justice B.N. Kirpal of the High Court of Delhi of February 26, 1986,

   v. the Aviation Occurrence Report of the Canadian Aviation Safety Board into the crash involving Air India Flight 182 of January 22, 1986,

   vi. the 1985 report of Blair Seaborn entitled *Security Arrangements Affecting Airports and Airlines in Canada*, and

   vii. the reports prepared by the Independent Advisory Panel assigned by the Minister of Transport to review the provisions of the *Canadian Air Transport Security Authority Act*, the operations of the Canadian Air Transport Security Authority and other matters relating to aviation security;

b. the Commissioner to conduct the Inquiry specifically for the purpose of making findings and recommendations with respect to the following, namely,

   i. if there were deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985, or in their response to that threat, whether any changes in practice or legislation are required to prevent the recurrence of similar deficiencies in the assessment of terrorist threats in the future,

   ii. if there were problems in the effective cooperation between government departments and agencies, including the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, in the investigation of the bombing of Air India Flight 182, either before or after June 23, 1985, whether any changes In practice or legislation are required to prevent the recurrence of similar problems of cooperation in the investigation of terrorism offences in the future,

   iii. the manner in which the Canadian government should address the challenge, as revealed by the investigation and prosecutions in the Air India matter, of establishing a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial,

   iv. whether Canada's existing legal framework provides adequate constraints on terrorist financing in, from or through Canada, including constraints on the use or misuse of funds from charitable organizations,

   v. whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases,

   vi. whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, including whether there is merit in having terrorism cases heard by a panel of three judges, and

vii. whether further changes in practice or legislation are required to address the specific aviation security breaches associated with the Air India Flight 182 bombing, particularly those relating to the screening of passengers and their baggage;

c. the Commissioner to conduct the Inquiry under the name of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182;

d. that the Commissioner be authorized to adopt any procedures and methods that he may consider expedient for the proper conduct of the Inquiry, and to sit at any times and in any places in or outside Canada that he may decide;

e. that the Commissioner be authorized to conduct consultations in relation to the Inquiry as he sees fit;

f. that the Commissioner be authorized to grant to the families of the victims of the Air India Flight 182 bombing an opportunity for appropriate participation in the Inquiry;

g. that the Commissioner be authorized to recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting rates of remuneration and reimbursement and the assessment of accounts, to ensure the appropriate participation of the families of the victims of the Air India Flight 182 bombing;

h. that the Commissioner be authorized to grant to any other person who satisfies him that he or she has a substantial and direct interest in the subject-matter of the Inquiry an opportunity for appropriate participation in the Inquiry;

i. that the Commissioner be authorized to recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting rates of remuneration and reimbursement and the assessment of accounts, to ensure the appropriate participation of any party granted standing under paragraph (h), to the extent of the party's interest, where in the Commissioner's view the party would not otherwise be able to participate in the Inquiry;

j. that the Commissioner be authorized to rent any space and facilities that may be required for the purposes of the Inquiry, in accordance with Treasury Board policies;

k. the Commissioner to use the automated litigation support program specified by the Attorney General of Canada and to rely, to the greatest extent possible, on documents that have been previously identified for use in Canadian criminal proceedings arising from the bombing of Air India Flight 182, and to consult with records management officials within the Privy Council Office on the use of standards and systems that are specifically designed for the purpose of managing records;

l. that the Commissioner be authorized to engage the services of any experts and other persons referred to in section 11 of the *Inquiries Act*, at rates of remuneration and reimbursement approved by the Treasury Board;

m. the Commissioner, in conducting the Inquiry, to take all steps necessary to prevent disclosure of information which, if it were disclosed, could, in the opinion of the Commissioner, be injurious to international relations, national defence or national security and to conduct the proceedings in accordance with the following procedures, namely,

   i. on the request of the Attorney General of Canada, the Commissioner shall receive information *in camera* and in the absence of any party and their counsel if, in the opinion of the Commissioner, the disclosure of that information could be injurious to international relations, national defence or national security,

   ii. the Commissioner may release a part or a summary of the information received *in camera*, if, in the opinion of the Commissioner, its disclosure would not be injurious to international relations, national defence or national security, and shall provide the Attorney General of Canada with an opportunity to make submissions regarding international relations, national defence or national security prior to any release of a part or a summary of information received *in camera*,

   iii. if the Commissioner concludes that, contrary to the submissions of the Attorney General of Canada referred to in subparagraph (ii), disclosure of a part or a summary of information received *in camera* would not be injurious to international relations, national defence or national

security, he shall so notify the Attorney General of Canada, which notice shall constitute notice under section 38.0 of the *Canada Evidence Act*,

iv. the Commissioner shall provide the Attorney General of Canada with an opportunity to make submissions regarding international relations, national defence or national security with respect to any reports that are intended for release to the public prior to submitting such reports to the Governor in Council, and

v. if the Commissioner concludes that, contrary to the submissions of the Attorney General of Canada referred to in subparagraph (iv), disclosureof information contained in reports intended for release to the public would not be injurious to international relations, national defence or national security, he shall so notify the Attorney General of Canada, which notice shall constitute notice under section 38.01 of the *Canada Evidence Act*;

n. that nothing in that Commission shall be construed as limiting the application of the provisions of the *Canada Evidence Act*;

o. the Commissioner to follow established security procedures, including the requirements of the *Government Security Policy*, with respect to persons engaged pursuant to section 11 of the *Inquiries Act* and the handling of information at all stages of the Inquiry;

p. the Commissioner to perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization;

q. the Commissioner to perform his duties in such a way as to ensure that the conduct of the Inquiry does not jeopardize any ongoing criminal investigation or criminal proceeding;

r. the Commissioner to file the papers and records of the Inquiry with the Clerk of the Privy Council as soon as reasonably possible after the conclusion of the Inquiry;

s. the Commissioner to submit a report or reports, simultaneously in both official languages, to the Governor in Council; and

t. the Commissioner to ensure that members of the public can, simultaneously in both official languages, communicate with, and obtain services from it, including transcripts of proceedings if made available to the public.

Volume One: The Overview

AIR INDIA FLIGHT 182: A CANADIAN TRAGEDY

REPORT TABLE OF CONTENTS

VOLUME ONE
The Overview

Letter of Transmittal
Order in Council

Chapter I: Introduction
Chapter II: The Inquiry Process
Chapter III: Historical
Chapter IV: Intelligence and Evidence
Chapter V: Aviation Security
Chapter VI: Terrorist Financing
Chapter VII: Recommendations and Observations

ANNEXES

A: Commission Rulings
B: Parties and Intervenors
C: Commission Staff and Counsel
D: Witness List

VOLUME TWO
Part 1: Pre-Bombing

Chapter I: What Was Known about the Threat
Chapter II: Threat Assessment and Response
Chapter III: What Went Wrong
Chapter IV: Responding to the Threat
Chapter V: The Day of the Bombing

Part 2: Post-Bombing: Investigation and Response

Chapter I: Human Sources: Approach to Sources and Witness Protection

Chapter II: RCMP Post-Bombing
Chapter III: CSIS Post-Bombing
Chapter IV: CSIS/RCMP Information Sharing
Chapter V: The Overall Government Response to the Air India Bombing

VOLUME THREE
The Relationship between Intelligence and Evidence and the Challenges of Terrorism Prosecutions

Chapter I: Introduction
Chapter II: Coordinating the Intelligence/Evidence Relationship
Chapter III: Coordinating Terrorist Prosecutions
Chapter IV: The Collection and Retention of Intelligence: Modernizing the *CSIS Act*
Chapter V: The Disclosure and Production of Intelligence
Chapter VI: The Role of Privileges in Preventing the Disclosure of Intelligence
Chapter VII: Judicial Procedures to Obtain Non-Disclosure Orders in Individual Cases
Chapter VIII: Managing the Consequences of Disclosure: Witness and Source Protection
Chapter IX: Managing the Consequences of Disclosure: The Air India Trial and the Management of other Complex Terrorism Prosecutions
Chapter X: Recommendations

VOLUME FOUR
Aviation Security

Chapter I: Introduction
Chapter II: Responses to the Bombing of Air India Flight 182
Chapter III: Civil Aviation Security in the Present Day
Epilogue
Chapter IV: Recommendations
Appendices

VOLUME FIVE
Terrorist Financing

Chapter I: Terrorist Financing – An Overview
Chapter II: Canadian Legislation Governing Terrorist Financing
Chapter III: The Roles of Federal Departments and Agencies in Efforts to Suppress Terrorist Financing
Chapter IV: External Reviews of Canada's Anti-TF Program
Chapter V: Canada's Response to Reviews of its Anti-TF Program
Chapter VI: The Links between the Charitable Sector and Terrorist Financing
Chapter VII: Resolving the Challenges of Terrorist Financing

READER'S GUIDE
Acronyms and Key Names

Volume One: The Overview

VOLUME ONE
THE OVERVIEW

TABLE OF CONTENTS

CHAPTER I: INTRODUCTION 21

The Past 22

1.0 Pre-Bombing: Assessment of and Response to the Threat 22
1.1 Agencies' Preparedness for the Threat of Terrorism 22
1.1.1 CSIS 22
1.1.2 RCMP 23
1.1.3 Transport Canada 24
1.1.4 RCMP Protective Policing 24
1.1.5 Air India 25

1.2 The "Mosaic Effect": Did the Government Have Advance Warning of a Possible Bomb Attack on Flight 182 26
1.3 Conclusion: Pre-Bombing 28
1.4 Post-Bombing: CSIS/RCMP Cooperation 28
1.4.1 CSIS Does Not Collect Evidence 28
1.4.2 The Battle over Sources 29
1.4.3 The RCMP Investigation 30
1.5 Conclusion: Post-Bombing 31

The Future 31

1.6 Aviation Security 32
1.7 Terrorism and Criminal Prosecution 33
1.8 Terrorist Financing 34
1.9 The Government, the Families, and the Role of a Public Inquiry 34
1.9.1 The Present Inquiry 36
1.9.2 Racism 38
1.9.3 Treatment of the Families 38
1.10 Doing More for the Families 39

CHAPTER II: THE INQUIRY PROCESS 41

2.0 Introduction 41
2.1 Outline of the Inquiry Process 41
2.1.1 Mandate and Initial Process 44
2.1.2 Document Collection Process 45
2.1.3 National Security Confidentiality Claims and Redaction of Documents 45
2.1.4 Conduct of the Stage 2 Hearings 48
2.1.5 Section 13 Notices 50
2.1.6 Inquiry Report 50
2.1.7 Research Papers 51
2.2 Managing the Proceedings and Inherent Challenges 53
2.3 Special Procedural Challenges 56
2.3.1 The Importance of Public Hearings 56
2.3.2 The Impact of NSC Claims 59
2.3.3 The Nature of the Government's NSC Claims 61
2.3.4 Identification of Relevant Information 66
2.3.5 Resource Issues 72
2.3.6 Representation of Government Agencies 74
2.3.7 Ongoing Investigations 79
2.3.8 Witness Interviews 81
2.4 Conclusion 82

CHAPTER III: HISTORICAL 83

3.0 Pre-Bombing: Assessment and Response to the Threat 83
3.1 Intelligence and the CSIS Investigation 84
3.1.1 Physical Surveillance 87
3.1.2 Electronic Surveillance 89
3.2 The RCMP Response 90
3.3 What Was Known 95
3.4 Response to the Threat 103
3.5 The Bombing of Air India Flight 182: A Litany of Security Breaches 104
3.6 Resources and Privatization 107
3.7 Lack of Sensitivity to Emerging Threats 110
3.7.1 Information Sharing and Coordination 110
3.7.2 Lack of Risk Analysis and Misuse of "Specific Threat" Concept 112
3.8 Ineffective Regulation 114
Post-Bombing: RCMP/CSIS Cooperation 116

3.9 Human Sources: Approach to Sources and Witness Protection 116
3.9.1 A Lack of Effective Governance 116
3.9.2 CSIS: Refusal to Collect Evidence 119
3.9.3 RCMP: Refusal to Collect Anything But Evidence 121
3.9.4 Lack of Effective Source / Witness Protection 125
3.10 RCMP Investigation 127
3.10.1 National Security without Intelligence Gathering 128
3.10.2 Premature Dismissal of Intelligence and Theory of the Case 130
3.11 The Sharing and Use of CSIS Information 135
3.11.1 Early Access to and Use of CSIS Information 135
3.11.2 The Reyat Trial and Beyond 136
3.12 Overall Government Response to the Air India Bombing 138
3.12.1 The Government's Past Response 139
Defensiveness 139
Resistance to Review 141
3.12.2 The Government's Voice 142
3.12.3 That Was Then, This Is Now 142
3.12.4 The Present Inquiry 143

CHAPTER IV: INTELLIGENCE AND EVIDENCE 147

4.0 Introduction 147
4.1 Secrecy vs. Openness 147
4.2 Concurrent National Security Mandates and Information Sharing 150
4.3 Ineffective Responses to the Disclosure Dilemma 151
4.3.1 Informal Solutions 151
4.3.2 Proposed Legislative Changes 152
4.4 Towards the Effective Management of the "Intelligence into Evidence" Problem 155
4.5 Reforming Decision-Making 157
4.5.1 The National Security Advisor 157
4.5.2 Director of Terrorism Prosecutions 159
4.6 Determining National Security Privilege Claims 160
4.7 "Disclose or Dismiss": The Role of the Attorney General of Canada 161
4.8 Source and Witness Protection 162
4.9 Conclusion 163

CHAPTER V: AVIATION SECURITY 165

5.0 Introduction 165
5.1 The Bombing of Air India Flight 182: A Multifaceted Failure of Aviation Security 165
5.2 From Hijacking to Sabotage: Evolution of the Terrorist Threat 168
5.3 Domestic and International Responses to the Bombing 169
5.4 The Commission's Aviation Security Mandate 170
5.5 Passenger and Baggage Screening Today 171
5.6 The Long-Standing Inadequacy of Canada's Air Cargo Security Measures 174
5.7 Improving Airport Security 176
5.8 Identifying the Threat: Past, Present and Future 178
5.9 Use of Intelligence 179
5.10 Risk Management 179
5.11 Oversight of Aviation Security 180
5.12 Limits on Civil Aviation Security 182
5.13 Duty to Warn 182
5.14 Funding Aviation Security 183
5.15 Conclusion 183

CHAPTER VI: TERRORIST FINANCING 185

6.0 Introduction 185
6.1 The Importance of Legislating Against Terrorist Financing 186
6.2 The 2001 and 2006 Reforms 187
6.3 The Money Laundering Model 187
6.4 FINTRAC and its Private Sector Partners 188
6.5 Information Supplied to FINTRAC Voluntarily by Other Agencies 188
6.6 Information Sharing 188
6.7 Secondments, Joint Training and the Kanishka Centre 189
6.8 The Value of Continual Review of the Effectiveness of Anti-terrorism Measures 190
6.9 Charities and Terrorist Financing 190
6.10 Intermediate Sanctions 191
6.11 Non-Profit Organizations: A Gap in the System 191

CHAPTER VII: RECOMMENDATIONS AND OBSERVATIONS 193

ANNEXES 219

A: COMMISSION RULINGS 221
B: PARTIES AND INTERVENORS 243
C: COMMISSION OF INQUIRY STAFF AND CONSULTANTS 245
D: WITNESS LIST 247

VOLUME ONE
THE OVERVIEW

CHAPTER I: INTRODUCTION

On June 23, 1985, a bomb explosion killed the 329 passengers and crew of Air India Flight 182 in mid-flight. Fifty-nine minutes earlier, at Tokyo's Narita Airport, two baggage handlers were killed by an explosion from a bomb while offloading luggage from a Canadian Pacific Airlines flight. The luggage had been destined for an Air India flight. Both bombs were planted in suitcases by the same group of Sikh terrorists. Three hundred and thirty-one people were killed.*

There have been two criminal trials. At each, Inderjit Singh Reyat was convicted for manslaughter for his involvement in the explosions, which were found to be part of a criminal conspiracy. In 2005, two accused were acquitted of the crimes. No other persons have been charged.

This remains the largest mass murder in Canadian history, and was the result of a cascading series of errors.

***

This is a large report, covering seven substantive Terms of Reference, and events commencing over twenty years ago.

Its size reflects the ambitious mandate that has been assigned to this Commission, encompassing a review and evaluation of the performance and interactions of government agencies before and after the bombing, along with a request for recommendations in some of the most difficult and complex areas in relation to this country's response to the murderous phenomenon of terrorism.

The size of the report also reflects the Commission's view of its obligation to lay out in comprehensive detail the facts about the Government's preparedness for the possibility of the bombing and for the subsequent post-bombing investigation. At a minimum, this much is owed to the families of the victims and to the Canadian public at large.

Important new facts came to light during the hearings and the documentary review conducted by the Commission. The Commission viewed it as an important part of its mandate to establish the official public record of this event and the Report attempts to do so in a comprehensive fashion.

* The Boeing 747 "Kaniskha" flew into Montreal as Air India Flight 181 and departed as Air India Flight 182.

The Commission's mandate to provide realistic and pragmatic recommendations for complex policy issues means that the portions of the Report devoted to that endeavour must also be detailed, comprehensive and fully informed by the current state of expert understanding in these areas.

This volume is provided for those who want a quick and convenient 'bottom line' discussion of the issues. The Overview is not a substitute for the Report nor is it, strictly speaking, an Executive Summary. It is designed to function as a type of reader's guide to the Report, presenting, in an accessible form, highlights of the major observations and findings in the Report. It does not attempt to condense the Report, but rather to reflect on it, bringing together themes and conclusions based on the larger Report.

This first chapter of this volume is an introduction, to orient the reader to the discussion that follows. It is a high-level capsule summary of some of the findings and conclusions reached by the Commission. Most, but not all, of these conclusions are also discussed in the volume itself and detailed in the body of the Report.

The Past

1.0 Pre-Bombing: Assessment of and Response to the Threat

1.1 Agencies' Preparedness for the Threat of Terrorism

The Government of Canada and its agencies were not prepared for a terrorist act like the bombing of Flight 182.

1.1.1 CSIS

CSIS had been created less than a year before the terrorist attack. At the time, it was still primarily focused on Cold War priorities like counter-espionage. CSIS was poorly trained and under-resourced for counter-terrorism, and what resources existed were focused primarily on threats other than those emanating from Sikh extremism.

Although human sources are the lifeblood of intelligence, CSIS had few, if any, sources in the Sikh community in the pre-bombing period. Its ability to respond to Sikh terrorism was further impaired by unwieldy policies and procedures for wiretaps.

There seemed little sense of purpose to CSIS intelligence gathering in this area. The information gathered from the wiretap on Talwinder Singh Parmar,[1] obtained after months of delay, was not processed effectively or in a timely manner; it was ignored by CSIS investigators and, to compound the problem,

---

1 The person who, at the time, was thought to be the leader of a terrorist group.

the tapes of the wiretap were prematurely and unthinkingly erased, even after the bombing. Surveillance on Parmar was intermittent and ineffective. Even though a surveillance team was present when Parmar and his associates detonated a device in the woods near Duncan, causing a loud explosive sound, the sound was misinterpreted and the surveillance report was ignored. Despite the remarkable and unambiguously alarming behaviour witnessed by the surveillance team, further surveillance was called off on the very day of the bombing in order to follow a Cold War target.

Most importantly, however, the CSIS analysis of the threat posed by Sikh extremism was handicapped because it was not provided with key intelligence information in the possession of the RCMP and the Communications Security Establishment (CSE).

1.1.2 RCMP

In the wake of the creation of CSIS, the RCMP attempted to reconstitute its intelligence capacity on the basis of a misguided emphasis on its mandate to investigate "security offences" for criminal purposes. The decentralized RCMP structure was not easily adaptable to the needs of intelligence gathering and analysis. Little thought was put into the reporting relationships and requirements that would allow for effective collection and analysis of intelligence information. The result was that, at best, the RCMP duplicated CSIS intelligence gathering and, at worst, it failed to report important information that CSIS might have been able to use in its intelligence analysis.

Despite its aspirations to be an intelligence-gathering agency, the RCMP showed a surprising lack of understanding of the nature or purpose of intelligence gathering. The RCMP neglected to consider, let alone report or pass on to CSIS, important information to which it had access from local forces, such as the Khurana information about a comment by a Sikh extremist leader in mid-June 1985, that something would be done in two weeks to address the absence of attacks on Indian interests. The RCMP focused to such an extent on gathering information of evidentiary value or admissibility that it prematurely dismissed information that was useful intelligence. Often, the Force's subjective judgement of credibility for evidentiary use was inadequate even for criminal law purposes, let alone as a justification for failing to report threat information to other agencies.

The failure to understand the value of intelligence and the importance of reporting meant that, when information was received by the RCMP, CSIS was often not given a proper report. This is what happened with the November Plot information about Sikh extremists who were planning to bomb one, and possibly two, Air India planes in November 1984. This is also what happened when, unforgivably, the RCMP did not forward to CSIS the June 1st Telex that set out Air India's own intelligence, forecasting a June terrorist attempt to bomb an Air India flight by means of explosives hidden in checked baggage. This fact, which the RCMP did not reveal to the Honorable Bob Rae in 2005, was uncovered by the Commission.

1.1.3 Transport Canada

As of the late 1970s, Transport Canada was aware of a major gap in this country's civil aviation security regime.

It was aware that the security plans in place focused on hijacking, even though sabotage by means of concealed explosives was the greater and more urgent risk. It was aware that Air India's security plan was inadequate to deal with the risk of sabotage by means of explosives and had even prepared a series of draft regulations capable of responding to some of these problems, but did not push for regulatory change until after the bombing.

Under the regulatory scheme in place, the airlines had responsibility for implementing many of the key security measures. However, Transport Canada had few, if any, mechanisms by which to ensure that the airlines actually performed their functions effectively. It stood by, as a lax and ineffective security culture permeated both private security and RCMP protective policing security arrangements at airports.

On the day of the bombing, an unauthorized summer employee was able to get on board the ill-fated Air India plane and circulate throughout the aircraft unchallenged. Throughout the pre-bombing period, and even thereafter, security checks were so lax that persons with known associations to Sikh extremist groups had access to numerous highly sensitive areas at Vancouver International Airport.

1.1.4 RCMP Protective Policing

RCMP Protective Policing played an important role in maintaining the security of Canadian airports, but it was afflicted with poor morale and poor policies.

Protective policing was not valued within the structure of the RCMP, and was often left out of the loop in terms of threat information because of the RCMP's failures in gathering and reporting that information. Protective Policing had no analytical capability of its own to assess what information it did receive from the airlines and External Affairs. It was entirely dependent on CSIS and on the RCMP threat assessment processes, both of which regularly conducted their analyses on the basis of incomplete information. Security measures in response to possible threats to aviation were poorly thought-out and not tailored to meet the particular nature of the actual threat. An undue and unreflective reliance on the concept of "specific threat" meant that, in the absence of a same-day phone-in bomb threat, certain types of security responses, including those capable of detecting explosives in registered luggage, were not available. In other circumstances, security measures were mechanically applied to a notional "threat level" rather than being based on an analysis of the actual threat.

On the day of the bombing, despite the heightened threat environment, the RCMP canine bomb sniffing unit, the single most effective means to detect

explosives, was entirely unavailable at Canadian airports because all the police dogs and their handlers were at a training session in Vancouver. This occurred, despite the fact that the RCMP knew of the increased threat to Air India. Included in the intelligence at its command, was the June 1st Telex, which foretold a June attack against an Air India flight. Yet the RCMP permitted its entire canine unit to engage in a training session at the point when the threat was at its highest. The RCMP and Transport Canada concealed and misrepresented this fact, up to and including their submissions to the Honourable Bob Rae in 2005. In Montreal, where a back-up dog was available, it was not even called into the airport until after the plane had departed.

1.1.5 Air India

With the partial privatization of aviation security responsibilities at Canadian airports, Air India was left to devise its own security program. Customer service concerns often trumped security concerns, as Air India's security operations were heavily influenced by the need to speed up screening and to meet strict timelines imposed by management.

Air India subcontracted security duties to private security firms whose employees were poorly trained and poorly compensated. It placed its confidence in technology that was known to be unreliable. Its equipment was not well maintained and was poorly calibrated, with the result that its X-ray screening equipment at Pearson broke down on the day of the bombing after screening only a portion of the checked baggage.

The rest of the baggage was screened by use of a "PD4 sniffer" device. The PD4 sniffer equipment had been demonstrated in tests at Pearson airport to be ineffective in detecting explosives. On the day of the bombing the device was being operated by security staff unfamiliar with it and untrained in its operation.

Despite the detailed advice set out by the Air India intelligence bureau in the June 1st Telex as to the security measures necessary to meet the risk of a terrorist bombing, Air India did not deviate from its existing security plan. Specifically, it did not implement measures suggested in the Telex, such as random physical checks of registered luggage, that were designed to guard against the sort of terrorist plan that caused the bombing of Flight 182.

Neither Transport Canada nor Air India were prepared for the possibility of an unaccompanied interlined bag containing a bomb that could be placed on an Air India flight. On June 22, 1985, those who plotted the Air India bombing successfully used this means of placing the "unaccompanied, infiltrated" bag on Air India Flight 182. Passenger-baggage reconciliation – something that had been successfully implemented in Canada on an *ad hoc* basis prior to the bombing – would have prevented the bomb from being placed on the flight.

Despite the identification of several suspicious bags at Mirabel airport (the first stop after take off from Pearson), cost considerations motivated the decision to allow Flight 182 to depart. The plane was already late, and further delay would have added a cost to Air India in the form of additional airport fees.

1.2 The "Mosaic Effect[2]": Did the Government Have Advance Warning of a Possible Bomb Attack on Flight 182

At the hearings, the Government tried to frame this question in terms of whether government agencies had information about a "specific threat." A great deal of effort was expended in trying to demonstrate that pre-bombing threat information lacked particularity and specificity, as an attempt to provide justification for not employing measures tailored to meet the threat.

Nowhere did this strategy see greater expression and focus than in the Government's efforts to attack the credibility of James Bartleman, who, at the time of the bombing, was Head of the Intelligence Bureau at External Affairs, and subsequently became Lieutenant Governor of Ontario. Bartleman testified that, shortly before the bombing, he saw a highly classified CSE document that indicated that Flight 182 would be targeted by Sikh extremists.

Despite the vigour of the cross examination, Bartleman's testimony, namely that a document he saw led to the conclusion that the weekly Toronto to New Delhi Air India flight was a likely terrorist target remains, in its essence, credible. However, despite the Government's strenuous efforts to make the case, it is simply not accurate that other than Bartleman's testimony, there was nothing to suggest the existence of documents that should have led the Government to have anticipated the bombing of Flight 182 and to have acted to put in place security precautions to minimize the risk. To the contrary, Bartleman's testimony, was neither the only, nor even the most important evidence pointing to precisely that conclusion. The Government strategy and its attack on Bartleman were both misconceived.

The June 1st Telex was detailed and specific: as to the nature of the threat, as to the means likely to be used, and as to the time frame of the danger. It even provided a checklist of potential security measures capable of responding to the threat. The RCMP did not pass the June 1st Telex on to anyone and never did anything about it.

Given what else was known about Sikh extremism in Canada, the contents of the June 1st Telex would, on their own, be enough to justify the Commission's conclusion that the Government was in possession of enough information to

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2 The "mosaic effect" is the term used by intelligence agencies, often as an argument against the release of information to the public. It suggests that an individual piece of information, though seemingly insignificant on its own, may serve as the missing piece to a puzzle that allows a hostile group see a pattern or draw conclusions about sensitive government secrets. This same process of gathering and piecing together even seemingly insignificant information can equally be exploited to further an agency's own intelligence effort.

understand that there was a high risk of Sikh extremists trying to blow up an Air India plane by means of explosives concealed in checked baggage. Those contents would also, on their own, validate the further conclusion that it is impossible to justify the state of security at that time at Pearson and Mirabel airports, which was totally inadequate to deal with this threat.

But the June 1st Telex was not the only item of new intelligence to come to light in June 1985. After the close of the hearings, the Commission's review of CSE material revealed that CSE was in possession of additional information about threats indicating that during essentially the same time period, security measures substantially similar to those listed in the June 1st Telex were being mandated for Air India operations, inside and outside of India, in light of threats of hijackings and bombings by Sikh extremists. As well, there was information that Indian airports were undertaking security audits in response to these instructions and that the Government of India had recently shown an increased interest in the security of airports against the Sikh terrorist threat in June 1985. Knowledge of the CSE information could have helped dispel the perception of RCMP and Transport Canada officials that threats to Air India, such as the June 1st Telex, were provided to the Canadian Government as a means of obtaining additional security for free. The fact that the Government of India was pursuing anti-sabotage measures similar to those outlined in the June 1st Telex in June 1985 would seem to support the credibility of this threat. There is no record of this information being circulated anywhere within the Canadian Government.

The Commission concludes that, in the hands of a skilled intelligence analyst, the CSE information would, on its own, more than justify a review of the security measures in place at Pearson and Mirabel to determine whether they were adequate to deal with the risk identified in the information.

That, of course is exactly what Bartleman did as a result of the document he testified to having seen. The document he described had more detail, in some respects, than the June 1st Telex or the CSE information. But, even if it were no more detailed than either of those pieces of information, it would have justified Bartleman's reaction of turning to the protective authorities in order to make sure that they were aware of the threat information and had the response in hand.

However, even without Bartleman's document, there was enough information in the hands of various Canadian authorities to make it inexcusable that the system was unable to process that information correctly and ensure that there were adequate security measures in place to deal with the threat. The June 1st Telex, the November Plot information, the CSE information, the fact that the Sikh extremist community in Canada had issued threats against Indian interests and had engaged in violence, and the fact that CSIS suspected that Parmar would engage in terrorist activities, all combine to create a mosaic of information which clearly identified a particularised threat to Air India for the month of June 1985. This constellation of factors should have compelled the Government to tailor and implement security measures to meet this identified threat.

1.3 Conclusion: Pre-Bombing

The arrangements in place at the relevant government agencies in June 1985 were entirely inadequate to deal with the threat of Sikh extremism in general or to anticipate and prevent the bombing of Flight 182.

1.4 Post-Bombing: CSIS/RCMP Cooperation

In the post-bombing period CSIS and RCMP cooperation was poor. Each agency became unduly focused on its own mandate, and this prevented the development of a cooperative and pragmatic approach to the investigation of the bombing. Each agency relied on its inward-looking, silo-oriented understanding of its own mandate to justify its failure to cooperate with the other, and the "big picture" was lost.

1.4.1 CSIS Does Not Collect Evidence

In the aftermath of the bombing, it was CSIS that had the lion's share of information that might be relevant to the investigation of the bombing. Its approach ranged from sporadic attempts at cooperation to frequent retreats into its own independent mandate as a justification for non-involvement. There was a degree of defensiveness and self-justification and even an apparent attempt by CSIS to "solve" the bombing on its own.

Sharing by CSIS was never complete, and much of its reticence was expressed in its mantra: "CSIS does not collect evidence." This accurate statement of fact - that CSIS was not a law enforcement agency and that its mandate was to collect intelligence rather than to support prosecutions - soon lost its original meaning and became a justification for CSIS to withhold information and ignore its potential role as an aid to law enforcement. A variant of this formulation was used to justify CSIS's destruction of the Parmar tapes, though the evidence suggests that the destruction was a result of CSIS's automatic and unthinking application of its erasure procedure, rather than having been done for any ulterior motive. The same justification was invoked to explain the destruction of original notes and tape recordings by CSIS of interviews with "Ms. E", which was one of many failures that served to impair the usefulness of her statements as evidence at the Air India Trial.

On the other hand, CSIS did have some cause to be sceptical of the RCMP's ability to handle sensitive intelligence information. On one occasion, the RCMP included sensitive CSIS information in court documents without CSIS's permission, and thereby endangered CSIS's ongoing operations.

Ultimately, CSIS information was necessary to the prosecution in both the Narita and the Air India trials, for use as evidence and for purposes of disclosure to the defence. This led to ongoing disputes about the use of CSIS information, disputes in which CSIS interests in maintaining the confidentiality of its

intelligence constantly clashed with the needs of the criminal justice system for full disclosure. Each side had difficulty understanding the perspective of the other, and each agency frequently attributed bad faith to the other agency's position.

There is no evidence that CSIS ultimately withheld any relevant information from the RCMP. However, as outlined in the testimony of Crown Prosecutor James Jardine, who is now a provincial Court judge in British Columbia, the process of disclosure was slow, intermittent and acrimonious. CSIS waited until it had absolutely no other choice but to disclose, and the RCMP continued to harbour suspicions that CSIS had information that it had not disclosed.

1.4.2 The Battle over Sources

The most acrimonious disputes between the two agencies occurred in connection with questions of access to sources and the use of their information. CSIS considers human sources to be its most valued assets. The RCMP considers human sources as witnesses as well as informants, and evaluates their information in terms of its evidentiary value at a potential trial.

Despite having few human sources at the outset of the investigation, CSIS did eventually succeed in cultivating a number of sources in the Sikh community. "Mr. A", "Mr. Z", "Ms. D" and "Ms. E" were all sources from the Sikh community, who first spoke with CSIS and were willing to share information with the authorities but only on condition, at least initially, that they not be required to testify.

The RCMP took the position that the criminal investigation took priority, and wanted access to the sources. The RCMP used approaches more suitable to dealing with police informants with a criminal background than to speaking with frightened members of a close-knit ethnic community. Although RCMP investigators tended to discount the credibility of the sources, they nevertheless insisted on exclusive access so as to prevent "contamination" of the witnesses' potential evidence by CSIS. This fear was borne-out in the case of Ms. E, whose hearsay statements were found unreliable at the Air India trial, in part on this basis. As was the case with Mr. A, an equally frequent result was that both agencies lost out when CSIS's access to the source was cut off, but the source refused to cooperate with the RCMP.

Each of "Mr. A", "Mr. Z", "Ms. D" and "Ms. E", along with the publisher Tara Singh Hayer, who was a community contact for CSIS, was treated insensitively by the RCMP. This was especially true in the case of Ms. E, whose life was permanently altered for the worse by her contact with the RCMP – to the point where she refused further contact with the RCMP and feigned memory loss when forced to testify. In the case of "Ms. D" and Tara Singh Hayer, RCMP sloppiness led to disastrous results. For Ms. D, it meant premature entry into a witness protection program that cut her off from her family and that, from her perspective, ruined her life. For Hayer, the result was a failure on the part of the RCMP to provide adequate or effective protection. In 1998, he was murdered in his own garage.

CSIS reacted to the RCMP's mistreatment of CSIS sources with considerable bitterness and dismay. It became an additional reason cited for CSIS's wariness in sharing information with the RCMP. Several skilled CSIS source handlers left the Service in the wake of these episodes.

1.4.3 The RCMP Investigation

The RCMP post-bombing investigation was marred by a number of factors. The investigation was conducted by a task force made up of members seconded from federal units of the RCMP and was short on practical experience investigating serious crimes. The approach taken was a generally unimaginative one, more suitable to the investigation of an ordinary crime than of a terrorist conspiracy, with an overly narrow and premature focus on evidentiary issues.

The task force seemed stymied by the lack of a crime scene and the absence of other usual features of a criminal offence. The Narita bombing, which did have a crime scene and, through the excellent work of the Japanese police, had evidence to link the crime to a specific individual, soon became the focus.

In the late 1980's and early 1990's, RCMP management showed little interest in treating the investigation of the Air India bombing as a conspiracy. Little progress was made using conventional investigative approaches, and the efforts to turn CSIS sources into witnesses or to recruit RCMP sources came up empty. Morale was low and personnel changes were frequent, allowing for little continuity. At one point, the Air India investigation was assigned to a single RCMP investigator, whose focus was on the coordination of attempts to raise the wreckage of the plane from the ocean bottom and on file administration. In this time frame, an attempt was made at E Division to formally shut down the investigation.

Coordination between the investigators and Headquarters was poor and further hampered by dysfunctional lines of reporting. The B.C. investigators became defensive and spent much of their investigative effort attempting to justify their early dismissal of the relevance of episodes like the Khurana Tapes and the November Plot or their denial of the usefulness of potential sources of information like Mr. A, or Pushpinder Singh.

By the mid-1990's, the police investigation was at an impasse and serious consideration was again given to winding it up. Rather than admitting defeat, the RCMP decided in 1995 to review and reinvigorate the investigation, and charges were eventually laid. The investigation then proceeded largely, and at times exclusively, on the basis of information generated by CSIS in the pre-bombing and immediate post-bombing periods. Many of the most important witnesses at trial were CSIS sources who had been taken over by the RCMP. The prosecution failed because of credibility and evidentiary problems arising from the testimony of these witnesses.

1.5 Conclusion: Post-Bombing

In the wake of the bombing, each of CSIS and the RCMP became fixated on a restrictive understanding of its own mandate, to the detriment of a co-ordinated effort to investigate the bombing. CSIS's focus on keeping its intelligence out of the judicial process led to the loss of important evidence and needlessly complicated the Reyat and Air India prosecutions. The RCMP's unimaginative approach to the investigation, as well as its dysfunctional focus on self-justification and on the pursuit of ready "evidence," led to the premature dismissal of potential leads, compromised the utility of human sources, and drove a further unnecessary wedge between it and CSIS.

It is important to note that, the story of the investigation of the Air India bombing demonstrates that the problems that plagued the relationship between CSIS and the RCMP were not simply the result of misunderstandings or personality conflicts. They were primarily the result of each agency's principled but overly narrow focus on its own mandate.

There is no doubt that, on both a personal and an organizational level, relations between CSIS and the RCMP are more cordial at present. The channels of communication are more open and a measure of coordination in the area of "deconfliction" has been achieved. Nevertheless, on an operational level, the central issues have not been resolved. The structures adopted by CSIS and the RCMP, which seek to minimize the passage of CSIS information to the RCMP, exacerbate, rather than relieve, the problem. They continue to deprive the RCMP of CSIS intelligence without, at the end of the day, protecting that intelligence from disclosure at trial. It follows that the resolution of issues related to cooperation cannot rely solely on improving personal relationships.

Volume Three is directed at providing better resolutions for the remaining real problems in cooperation as they manifest themselves in the criminal trial process.

The Future

Peter Archambault, in a paper written for the Research Studies volumes of the Report, contends that the terrorism of 1985 is not necessarily the same as the terrorism of today[3]. He accurately depicts it as continuously changing. This view is supported by the growing variety of "home-grown" terrorist cells emerging in the Western World. While this subject is not included in the Terms of Reference, it became evident during the Commission's work that this particular sort of terrorism represents an increasing threat to Canada; media and government commentary from the United States and Britain reflect considerable concern with the same phenomenon. Nevertheless, despite these evolutionary changes to terrorism, the Air India narrative continues to raise issues and to give illustrative

3 Peter M. Archambault, "Context is Everything: The Air India Bombing, 9/11 and the Limits of Analogy" in Vol. 1 of Research Studies: Threat Assessment RCMP/CSIS Co-operation.

examples that are entirely sufficient to provide a comprehensive springboard for a discussion of the policy issues assigned to this Commission.

Important as it is to establish the facts about what happened in the past, it is equally necessary to look ahead. The Commission's mandate requires recommendations for future actions dealing with aviation security, with the prevention or limiting of terrorism financing, and with the criminal prosecution of terrorism; especially as it relates to the use of intelligence as evidence.

The issues to be tackled are complex. For purposes of this introduction, it will suffice to provide a few comments that will help orient the reader to the thematic presentation in this volume and the detailed discussions in the Report itself.

The actual recommendations of the Commission with regard to these issues are to be found at the end of this volume.

1.6 Aviation Security

Because of the high propaganda value offered by a successful terrorist attack on an aircraft, civil aviation will continue to present an appealing target for terrorists. As a consequence, Canada cannot afford a return to the complacency that marked its approach to civil aviation security in 1985. Just as importantly, specific steps must finally be taken to close gaps that have been known to exist for decades. Modern civil aviation security regimes rely on the concept of mutually reinforcing layers. At present, some of the layers in the Canadian regime are too thin, or too widely-spaced, with insufficient overlap.

History has taught that terrorists continually probe security systems, looking for gaps and weaknesses. Airport security and air cargo are obvious deficiencies in Canada's current civil aviation security regime. Airports provide a means of introducing bombs and hijackers onto aircraft and are themselves targets of opportunity. Yet, perimeter security is lax and access to airside and restricted areas is poorly controlled. The majority (i.e., at least 70 per cent) of air cargo in Canada is transported on passenger flights, but, in stark contrast to the multi-layered approach currently used to screen passengers and their baggage, air cargo is not routinely searched, X-rayed, or subjected to adequate screening measures. The time has come to address these deficiencies.

Paradoxically, the emphasis on screening passengers and their baggage – a focus that has resulted from the Air India bombing and the 9/11 attacks – has contributed to the perpetuation of these deficiencies by drawing resources away from other aspects of the Canadian aviation security regime. To its credit, the current Government has moved to address this problem, but much more will be required to ensure that civil aviation security becomes, and remains, a national security priority.

In addition to other recommendations, the Commission has recommended periodic reviews of Canada's aviation security regime so as to guard against

complacency, ensure compliance with international obligations, and assure adequate funding for the system.

1.7 Terrorism and Criminal Prosecution

Society has an interest in the effective prosecution of crime, and terrorism is clearly a crime. Terrorism, however, is not simply a crime. It is also an existential threat to the societies it attacks, and Government has a legitimate interest in preventing terrorism, above and beyond that of punishing terrorists as criminals.

The collection and analysis of intelligence is a central resource in responding to the threat of terrorism and in preventing terrorist acts. The current reality is that CSIS will almost always be the first repository of information about terrorist offences that may ultimately be dealt with in a court of law. Complex and vexing problems can arise when the requirements of the criminal justice system for openness, as part of its constitutional commitment to a fair trial, are confronted by the need for intelligence information to be kept secret for purposes of protecting national security.

The approach recommended by the Commission is for both the criminal justice system and the intelligence community to review their procedures and to practise self-discipline so as to minimize the occasions when there is a true conflict between the need to disclose and the need to keep a secret. Where the conflict cannot be avoided, the key to a proper resolution is not to be found in some abstract rule or guideline, but rather in having in place a decision-maker sufficiently removed from the immediate interests of the contending institutions to be able to make a decision in the public interest.

Volume Three follows this approach through a number of potential decision points and provides specific recommendations for improvements to help the intelligence community, the police and the criminal justice system deal with the challenges associated with terrorism prosecutions.

These recommendations include an expanded mandate for the National Security Advisor to the Prime Minister, the creation of a new position of Director of Terrorism Prosecutions within the Department of Justice and a reconfiguration of decision-making procedures related to witness protection issues in terrorism investigations and prosecutions. They also include a recommendation that, in the context of terrorism prosecutions, the responsibility for reconciling the competing claims of disclosure to ensure a fair trial and secrecy to protect national security should be consolidated and assigned to the trial judge, rather than, as is now the case, being bifurcated between the trial court and the Federal Court of Canada.

In addition, in light of all the evidence before it, the Commission believes that the RCMP is not properly structured to deal with the unique challenges of terrorism investigations. There is merit in considering structural changes to

allow for a greater degree of specialization and for a more concentrated focus on investigating and supporting the prosecution of national security offences. This may mean divesting the RCMP of its contract policing duties so as to simplify lines of communication and to clarify the national dimensions of its mandate as a pan-Canadian police force.

1.8 Terrorist Financing

Canada is under a number of international obligations concerning the detection and prevention of terrorism financing. Compliance with these obligations is extremely important, and there is room for improvement by Canadian authorities in this regard.

Most of the current mechanisms that governments have in place to deal with terrorism financing are based on a money laundering model. While there are good reasons for this approach, the analogy is not perfect and therefore the model is of limited usefulness. Money laundering, driven by profit, involves the transfer, of, usually, large sums of money gleaned from criminal or other illicit activities, with the intention of concealing those criminal origins. Terrorism financing, driven by ideology, involves the transfer, often of small sums of money, whose origin may well be perfectly legitimate, with the intention of concealing their ultimate intended use for the illicit and criminal purposes of terrorism. Stopping this flow will require additional creative approaches.

The Regulatory authorities currently dealing with terrorism financing follow policies and procedures whose origins are in the oversight and enforcement of the *Income Tax Act* and which are subject to strict requirements of confidentiality. The analogy is not perfect in this respect either, and consideration should be given to developing means to allow for a more analytic, "intelligence-oriented" approach that may require further loosening of restrictions on the information that can be shared, while continuing to respect the legitimate privacy rights of Canadians.

1.9 The Government, the Families, and the Role of a Public Inquiry

In the days immediately following the bombing of Flight 182, responsibility for coordinating the Government response was transferred from the public service and was assigned to a representative of the Prime Minister's Office.

The Government response soon became focused on public relations and on defending the reputation of the Government and its agencies in order to protect them from criticism and from any possible finding of liability or any obligation to compensate the families of the victims.

Instructions were issued to avoid referring to the crash as a "bombing." Canada took the singular position at the Coroner's Inquest in Ireland that there was no evidence of a bomb aboard Flight 182 and, based on this argument, the

Coroner instructed the jury that they should make no recommendations about the cause of the crash. The Canadian Aviation Safety Board was prevented from filing a separate brief with the Kirpal Commission, which had been established by the Government of India to investigate the crash. The purpose was to ensure a consistent and positive portrayal of the safety and security arrangements that were in place in Canada at the time of the bombing. In the result, Canada succeeded in keeping any conclusions about responsibility for the crash out of the Kirpal Report.

Issues of civil liability loomed large. The Government denied any obligation to compensate the families of the victims and treated the families as adversaries. The defensiveness increased once the families brought an action for compensation. The civil claim was settled by hard bargaining at an early stage, before the Government was obliged to disclose its documents. Thus key information, like the existence of the June 1st Telex, was not disclosed to the families. Even after the civil litigation was settled, the Government resisted disclosure of information about the bombing on the grounds that the police investigation was ongoing. When the authorities did disclose potentially embarrassing information, it was mainly as a result of a leak to the press. The police did not meet with the families of the victims as a group until 1995, and CSIS would not meet with them until 2006.

In response to calls by the families for a review or public inquiry, the Government consistently refused, citing the ongoing investigation. When in 1991, SIRC finally conducted a review of CSIS's activities in relation to the Air India bombing, including the erasure of the Parmar tapes, the Government responded by putting together a coordinating committee in order to ensure consistency in the submissions by government agencies. The RCMP chose to accentuate the positive and submitted an 11-page, double-spaced brief whose major message was that any problems in cooperation between CSIS and the RCMP were in the past and that CSIS's actions had not hindered the police investigation. This was done despite the existence of internal RCMP documents which portrayed a very different situation. SIRC's report reflected this manufactured message.

When the RCMP investigation hit a 'dead end' in the early-to-mid 1990s, consideration was given to shutting down the investigation. There were concerns in Government that, once the investigation was at an end, a public inquiry would have to be struck. The RCMP decided to give the investigation one last best attempt. For the next 10 years, the need to protect the ongoing investigation and then, after that, the integrity of the trial process, were cited as reasons to refuse an inquiry.

In the aftermath of the 2005 acquittals, there were renewed calls for a public inquiry. Despite growing public pressure, there were still arguments made, including by Ministers of the Crown, that nothing could be learned from a public inquiry and that the trial had canvassed all the issues.

In fact, nothing could have been further from the truth.

1.9.1 The Present Inquiry

Individuals and institutions who are called before an inquiry are entitled to the assistance of counsel to help them protect their reputations. Government should pay for this representation, but its interests in an inquiry are quite different.

It is Government that calls the inquiry and, as a result, its goal must be to get the most accurate, impartial and useful answers to its questions and to let the chips fall where they may. In this Inquiry, the Department of Justice, which is the Government's law firm, was retained to represent the reputation and interests of all government employees and institutions. An arrangement of this type raises a potential conflict because of the differing goals of the Government calling the Inquiry and of the government witnesses and institutions wanting to defend their reputation.

Even with the best of intentions and the utmost in probity, there is danger that one set of lawyers will act like the coordinating committee that oversaw the submissions of the various government agencies to the 1991 SIRC Review.

This Inquiry was called in response to the families' decades-long quest for meaningful answers, as undeniable deficiencies in the response of some government agencies have trickled out in reviews and prosecutions over the years. The evidence heard in the Inquiry left no doubt that many government witnesses unequivocally felt the response of certain government agencies was problematic or deficient.

Given that reality, it was disturbing that the Department of Justice, the lawyer for the Government that called this Inquiry, was put in the position of making submissions on behalf of its clients to the effect that there is no basis for any criticism of the actions of *any* government agency in connection with the investigation of the bombing of Flight 182. And further, it argued that *no* changes are needed in current policies and procedures dealing with interagency cooperation, aviation security, terrorism financing or the competing demands of security intelligence and the criminal justice system. In essence, the Department of Justice ended up taking one of two closely related, but equally unhelpful, positions: either that of claiming that there was no reason for this inquiry to have been called in the first place, or that of saying, in effect, "It wasn't broken, but we fixed it anyway."

That is the unfortunate result of the Government's multiple parties trying to "speak with one voice." Government ends up denying everything and saying nothing constructive. More than that is owed to families of the victims and the rest of the Canadian public.

The agencies of the Government have a duty to provide a commission of inquiry with full and frank disclosure of all relevant information in as timely a manner as possible. The "public" dimension of a public inquiry also requires that as much of this information as possible be made available in a form that can be disclosed to the public.

Claims to exemption from public disclosure, whether on the basis of National Security Confidentiality (NSC), the requirements of an ongoing criminal investigation or some other privilege or exception, must be carefully weighed before they are asserted. These should not be blanket claims. In each case a pragmatic assessment needs to be made as to the true harm disclosure is likely to cause as against the benefit of allowing the Commission to carry on its work in public.

The performance at this Inquiry in this regard by each of the relevant government agencies was mixed. The agencies initially took positions as to what should be protected from disclosure on the basis of National Security Confidentiality that would have made it impossible for this Inquiry to be conducted in public. It was only after the Prime Minister intervened directly that there was movement from this position by the agencies.

CSIS was over-zealous in its claims of NSC. This, combined with the Service's tendency to answer only the precise question asked and nothing more, made telling the CSIS story more difficult than necessary. Transport Canada's documentary disclosure was tardy and disorganized, making it difficult to deal with a number of aviation security issues in the public hearings. These difficulties were compounded by Transport Canada taking unhelpful, and ultimately untenable, positions on what could be disclosed to the public – positions that seemed aimed more at preventing embarrassment to the agency than at protecting any realistic interest in secrecy.

The conduct of the RCMP on disclosure issues was especially troubling to the Commission. There were several instances in which the Commission was discouraged from pursuing certain areas of investigation on a doubtful assertion of the requirements of "the ongoing investigation," assertions at times based on investigative initiatives that were revived by the RCMP after the Commission began making enquiries.

One incident in particular was especially troubling. "Mr. G," a person with potential knowledge of matters relating to the bombing of Flight 182, told the RCMP during the currency of the hearings that he wished to speak to the Commission and to testify. Rather than inform the Commission of the approach by this witness, the RCMP instead used the fact that Mr. G had contacted the RCMP as the basis for demanding further redaction of previously cleared documents, asserting that this was necessary in order to protect the ongoing criminal investigation. Even after the Commission by chance discovered Mr. G's attempts to make contact, the RCMP did not confirm this fact until after the close of the hearings, months after being asked directly by the Commission. The RCMP then continued to assert the need to protect the integrity of its ongoing investigation hoping to discourage the Commission from pursuing the matter, even after it had interviewed Mr. G and dismissed the utility of his information for police purposes.

1.9.2 Racism

A suggestion was made during the hearings that the Government's attitude to the bombing and its treatment of the families of the victims was a manifestation of "racism," though not perhaps of a conscious sort.

The Commission finds that the term "racism" is not helpful for purposes of understanding the Government response. "Racism" carries with it so many connotations of bigotry and intolerance that even the most careful definition that purports to focus on effects rather than on intent ends up generating a great deal more heat than light. This was amply illustrated on the hearing date devoted to evidence regarding this issue.

While the Commission does not feel that the term "racism" is helpful, it is also understandable that the callous attitude by the Government of Canada to the families of the victims might lead them to wonder whether a similar response would have been forthcoming had the overwhelming majority of the victims of the bombing been Canadians who were white. The Commission concludes that both the Government and the Canadian public were slow to recognize the bombing of Flight 182 as a Canadian issue. This reaction was no doubt associated with the fact that the supposed motive for the bombing was tied to alleged grievances rooted in India and Indian politics. Nevertheless, the fact that the plot was hatched and executed in Canada and that the majority of victims were Canadian citizens did not seem to have made a sufficient impression to weave this event into our shared national experience. The Commission is hopeful that its work will serve to correct that wrong.

1.9.3 Treatment of the Families

The families of the victims of the bombing were poorly treated by their Government. For the longest period of time the Government seemed dedicated to self justification and denial of fault that led it to cast a blind eye and a deaf ear to the suffering and the needs of the families.

The Government was too preoccupied with its international reputation to appreciate its obligations to the families of the victims. It was so keen on debunking any notion that the bombing was tied to deficiencies in Canadian safety and security that it alienated the very people who deserved support and empathy: the families of the victims.

It is hard to believe that a desire to avoid civil liability to the families of the victims – for an amount that, in the big picture, would not have constituted a rounding error in the budget of any of the Canadian agencies involved – would have motivated the Government of Canada to turn its back on the victims for so long.

In stark contrast to the compassion shown by the Government of the United States to the families of the victims of the 9/11 terrorist attacks, for all too long the

Government of Canada treated the families of the victims of the terrorist attack on Flight 182 as adversaries. The nadir of this attitude was displayed when the families' requests for financial assistance were met by the Government's callous advice to seek help from the welfare system.

Even after the modest settlement of the civil litigation, a settlement which, ironically, prevented the families from receiving disclosure from Government of the extent of the deficiencies in the pre-bombing period, the Government was slow to recognize any duty towards the victims or their families.

A notable exception to this past neglect is to be found in the elaborate and effective mechanisms implemented by the post-1995 RCMP Air India Task Force, which made it possible for them to liaise with, understand and provide support to the families of the victims over the course of the Air India prosecution.

The establishment of the present Commission of Inquiry is a further positive development, but the fact remains that, for over two decades, the Government of Canada and its agencies stood adamantly opposed to any public review.

The Government and its agencies have the right to defend themselves and to put their best foot forward, in the context of civil litigation and in public inquiries such as this one. However, the Government was indiscriminate in its denials, doggedly denying all potentially unflattering facts, even some that had been uncontrovertibly shown to be true. As well, the Government's constant over-claiming of privilege and its continued withholding of information have had a painfully negative impact on the vulnerable families of the victims of this immense tragedy.

Whatever "truth and reconciliation" may be generated by the present Inquiry, it remains the case that, long after the settlement of the civil litigation, important information continued to be withheld from the families. It took a decade for the RCMP, and two decades for CSIS, to appreciate the need to meet with the families.

1.10 Doing More for the Families

Although condolences to the families of the victims have been frequent and free-flowing during the course of this Inquiry, no one on behalf of the Government of Canada or its agencies has thought it appropriate to offer an apology. The record before the Commission demonstrates that there is a great deal to apologize for.

Some steps have been taken to correct the neglect of the past.

The erection of memorials and the annual ceremonies of commemoration on June 23 are excellent and tangible demonstrations of Canada's attempts to integrate the bombing of Flight 182 into Canadian history and consciousness.

The Commission believes that there is more that could be done.

As discussed in the Volume Five, the funding of an academic institute for the study of terrorism, – possibly to be called the "Kanishka Centre" to commemorate the name of the aircraft that was bombed on June 23, 1985 – could be an important step toward preventing future terrorist attacks while honouring the memory of those who perished in the bombing.

The Commission also believes, however, that there would be great merit in a demonstration of solicitude by the current Government, even at this late date, for the families of the victims of the bombing. There is nothing in the Terms of Reference to prevent the Commission from asking that the Government consider a one-time *ex gratia* payment to family members of the victims of Flight 182. To that end, an arm's-length independent body should be constituted to recommend an appropriate amount, as well as a formula for its distribution, and should remain in existence to oversee the payment process. Providing an *ex gratia* payment will go a long way to alleviating what is now over twenty years of alienation for those Canadian families.

The mandate of this Commission expires with the publication of the Report and its Recommendations. The families of the victims and the Canadian public will want to know whether the Recommendations have been accepted and how they have been implemented. The Government should provide a Report, perhaps through the Office of the Auditor General, on which Recommendations have been implemented and which have been rejected.