

VOLUME ONE

THE OVERVIEW

CHAPTER III: HISTORICAL

3.0 Pre-Bombing: Assessment and Response to the Threat

As stated, the Air India Flight 182 tragedy was the result of a cascading series of failures. The failures were widely distributed across the agencies and institutions whose mandate it was to protect the safety and security of Canadians. There were structural failures and operational failures; policy failures, communications failures and human errors. Each contributed to, but none was the sole cause for, Sikh terrorists being able to place a bomb in the checked baggage loaded aboard Flight 182 without being detected. Some failures came to light almost immediately, but a number have lain undetected, or at least unacknowledged, for decades and have only come to light during the currency of this Commission of Inquiry.

The first question posed by the Terms of Reference of this Inquiry is whether Canadian institutions adequately understood and assessed the threat posed by Sikh extremism.

All of the institutions and agencies were theoretically aware of the potential threat to safety and security posed by terrorism in general. A few had some knowledge of the dangers of its Sikh extremism version in particular. Several were nominally aware of the threat of sabotage to passenger aircraft by means of timed explosive devices in checked baggage, and one agency was even aware of information indicating that Air India might be targeted by this method in June 1985. As a practical matter however, none of the institutions or agencies was adequately prepared for the events of June 22/23, 1985.

Indeed it is impossible to draw any conclusion other than that, almost without exception, the agencies and institutions did not take the threat seriously, and that the few individuals within these institutions who did, were faced with insurmountable obstacles in their efforts to deal with the threat.

There are a number of plausible ways to break down the failures that allowed the bombing of Flight 182 to occur. Each of the agencies and institutions that should have had a role in preventing terrorist attacks displayed structural flaws that impaired their performance in:

- a) detecting the threat
- b) assessing the threat, and
- c) putting in place reasonable counter measures to respond appropriately to the threat.

While each institution must be understood in terms of its own unique circumstances, there are general themes that weave their way through all the separate parts of the story.

3.1 Intelligence and the CSIS Investigation

The intelligence community has the primary responsibility for anticipating threats to national security. The primary responsible agencies at the time of the terrorist attack on Flight 182 were the Canadian Security Intelligence Service (CSIS), whose mandate is to collect, analyze and report information about threats to Canada's security, and the Communications Security Establishment (CSE), which monitors foreign electronic communication to provide intelligence to the Government of Canada and its agencies.

CSIS only came into being as an independent civilian agency in 1984. Before that, the national security intelligence was under the purview of the Security Service of the Royal Canadian Mounted Police. The circumstances surrounding the birth of CSIS had a deep and detrimental impact on its ability to detect the particular security threat posed by Sikh extremism and on its ability to provide useful advice to the agencies and institutions charged with protecting Canadian lives and property.

Although the notion that intelligence should be handled by a civilian agency rather than the police had been widely discussed and debated in Canada for over a decade, the *CSIS Act*, which brought about this transformation, was passed hurriedly as the last legislative act of the outgoing Liberal government in June of 1984. It was then left to be implemented in a very short time frame by a new Progressive Conservative administration with limited accumulated experience in the area of national security. The result was an uneven transition, marred by scarce resources and by bruised feelings: both at the RCMP, which felt wronged by the removal of its intelligence mandate, and at CSIS, which felt poorly supported in its new role.

While intelligence officers were aware of the existence of the phenomenon of Sikh extremism, the rise in the intensity, fervour and potential danger of this phenomenon was the result of events in the Indian sub-continent that took place in the same time frame as the transition from the Security Service to CSIS. These events included the occupation and fortification of the Golden Temple in Amritsar, Sikhism's central shrine, by armed Sikh separatists, the subsequent bloody storming of the Golden Temple by the Indian army, and the resulting massacres and intercommunal violence in the State of Punjab, all of which

culminated in the assassination of Indian Prime Minister Indira Gandhi by her own Sikh bodyguards. This chain of events led to a rise in anti-Indian sentiment within the Sikh diaspora, including the Sikh community in Canada.

Even in a relatively stable institutional environment, keeping up with the rapidly changing landscape of Sikh extremism in Canada would no doubt have proved challenging. The impact of the transition from the RCMP Security Service to CSIS made a difficult situation that much worse.

Although CSIS personnel were dedicated and hardworking, the institutional context was poorly geared toward dealing with terrorism in general – and with a terrorist threat arising from Sikh extremism in particular. Canadian intelligence gathering was stuck in a Cold War paradigm in which the primary threat to national security was assessed as emanating from espionage by hostile foreign governments. Most resources were allocated to counter-espionage, with comparatively few resources devoted to counter-terrorism.

Of the resources devoted to counter-terrorism, most were concentrated on the risks posed by Armenian terrorist attacks against Turkish interests in Canada. Even at the so-called “Sikh Desk” at CSIS headquarters, (which was a sub-unit of the “Western Europe and Pacific Rim” unit of the Counterterrorism unit) the arguably inadequate official complement, consisting of a unit head and four analyst positions, was in fact only partially staffed. Only the unit head and two analyst positions were actually filled, and that even smaller number was further reduced by the fact that, for the better part of the year leading up to the bombing of Flight 182, one of the incumbents was away on French language training. In the Regions, staffing was equally thin. In BC Region, where the most militant and most obviously dangerous elements of Sikh extremism in Canada were to be found, two investigators were responsible for the entire investigation of Sikh terrorism.

CSIS personnel assigned to this investigation received no additional training; investigators and analysts were expected to learn on the job.

CSIS appears to have uncovered little, if any, information on its own, with most of its information coming from the Government of India through the Indian High Commission. The full extent of CSIS’s knowledge in the summer of 1984 was that Talwinder Singh Parmar had been released from prison in Germany following a failed extradition attempt on murder charges by the Government of India, and had returned to Canada, where he was launching a public campaign of fiery rhetoric and communal intimidation to radicalize gurdwaras (Sikh temples) and to take over their direction and their revenues. CSIS was unable to provide confirmation of its existence in Canada, let alone the actual size of the extremist Babbar Khalsa movement that Parmar claimed to lead, and even referred to it as the “Barbara Khalsa group.” By the fall of 1984, CSIS had pieced together enough information to be able to identify Parmar as the most dangerous Sikh in Canada and to opine that his associate Ajaib Singh Bagri could be manipulated to carry out a terrorist attack.

Despite its awareness of the threat and of the identity of the potential protagonists who might carry it out, CSIS appears to have obtained little important new information of its own about the Sikh extremist threat or about the Babbar Khalsa or about Parmar from the fall of 1984 through to March of 1985. The major reason for this gap lay in the state of the warrant approvals process that had been put in place by the *CSIS Act* in June 1984.

On the ground, CSIS BC investigators were aware of the urgent nature of the threat from Sikh extremism and of the inadequacy of their information resources to deal with it. They simply had no information sources of their own and had been totally unsuccessful in recruiting sources within a Sikh community that was somewhat insular and vulnerable to intimidation by the extremists. They soon concluded that they needed surveillance and electronic intercepts in order to be able to understand and respond to the increasing threat.

The institutional response to the request to approve a warrant to intercept Parmar's communications demonstrates a fixation with form over substance and, despite protestations to the contrary at the time – and subsequently, suggests a lack of appreciation of the reality of the threat.

The civilianization of CSIS was in part a reaction to RCMP Security Service excesses in its investigation of the Front de Libération du Québec (the "FLQ") and extremist Quebec Separatists. Under the RCMP Security Service, while electronic intercepts had required approval, the process was informal, simply requiring a request to the Solicitor General, the Minister responsible for the RCMP (and later also for CSIS). With the creation of CSIS, as one of the means to protect civil liberties from unjustifiable intrusion by or on behalf of government, a new system of judicial supervision of certain intelligence operations was instituted, including a requirement for judicial approval for intercepting private communications. This new protocol was to apply prospectively but also was intended to cover existing intercepts that had been approved by the Minister. There was an explicit requirement that existing intercepts had to be reviewed internally and approved by the Solicitor General and then by a judge of the Federal Court, all within 6 months of the coming into force of the *CSIS Act*, i.e. by January 1985.

When added to the considerable stresses and strains that accompanied the rushed transition to CSIS from the RCMP Security Service, it was entirely foreseeable that this warrant conversion process would be the source of added pressure and potential misadventure. The foreseeability of the problems that might be caused by the requirement to devote considerable resources to the conversion process should have called for added care and attention to ensure that the process would be capable of meeting new needs that would arise and not just of preserving existing arrangements. Instead, the response of CSIS was to prioritize existing warrants and to defer new applications, with the exception of only those deemed most urgent. As CSIS understandably would want to avoid disrupting existing investigations, in theory, this process could be considered a

sensible policy; in practice, its effectiveness depended on the Service's ability to respect the new needs that were more urgent.

The evidence before the Commission indicates that, despite the priority afforded to the warrant conversion process, it was possible to secure a warrant in an extremely short timeline to respond to a perceived urgent priority, as occurred in an area other than the threat of Sikh extremism. The protracted wait for the processing of the Parmar warrant application either demonstrates an unthinking application of the concept of priority of existing warrants or, more likely, reflects the lack of appreciation of the true urgency of the threat of Sikh extremism.

Despite certification by the existing chain of command in BC as well as by the Headquarters counterterrorism hierarchy, and despite increasingly pointed memoranda from the front lines in BC, the application for the Parmar warrant lay dormant for months while the conversion process went forward. Then, after proceeding through multiple steps in the complicated, and still in flux, approval process, it was further delayed for an additional month by what turned out to be an irrelevant issue raised by the Minister's Office. Although the final steps leading up to the submission of the warrant to, and approval by, the Federal Court proceeded relatively quickly, the total time from the request for a warrant to the date of approval was over five months. This lengthy delay was entirely disproportionate to the heightened threat and the demonstrated lack of intelligence sources available to respond to it.

The subsequent course of the BC investigation confirms the theme of inadequate resourcing and indicates that execution on the ground was not sufficient for the seriousness of the threat being dealt with.

Eventually the BC investigators did get approval both for electronic intercepts and for physical surveillance coverage on Parmar. As will be seen, the story of neither effort is particularly edifying.

3.1.1 Physical Surveillance

The mobile surveillance of Parmar was carried out for 39 of the 72 days: between April 6 to June 16, 1985, including continuously for the first two weeks of June 1985 – an exceptionally long period for what was seen as a very scarce resource. Nevertheless, as has been widely reported, this surveillance was withdrawn on June 17, at precisely the most crucial time in terms of the terrorist preparations for the bombing. The stationary observation post (OP) near Parmar's residence was also withdrawn on the day of the bombing. The rumour that the OP withdrawal was to allow the investigators to participate in a social event appears to be based on a misunderstanding of the CSIS code name for the operation to which the surveillance team was reassigned. Nevertheless the fact that surveillance was redirected to shadow a counter-espionage target at the moment when the danger of an act of domestic terrorism was at its height, is a telling illustration of how poorly understood the threat was.

No less telling is the way the surveillance was conducted, and especially how it was (or was not) used. The conduct of the surveillance was marked by numerous low lights, with the surveillants unable to keep track of their targets, and often mistaking one traditionally-attired Sikh for another. This apparent inability to tell one Sikh from another continued into the post-bombing era as well.

The nadir of ineffectiveness of CSIS pre-bombing surveillance is arguably the moment of what perhaps might have been its greatest success: the monitoring of the "Duncan Blast." On June 4, 1985, a CSIS surveillance team followed Parmar as he traveled with a young man, misidentified by the surveillance team as Parmar's son Jaswinder, to the BC Ferry Docks. The lead surveillance car narrowly avoided missing the ferry, a fate the second car and its surveillance team was unable to avoid. The lead surveillance team followed Parmar's car to the Duncan, BC residence of Inderjit Singh Reyat, who would later be convicted of manslaughter for his role in the Narita, Japan, bombing, and would enter a guilty plea in connection with the terrorist attack on Flight 182. The surveillants followed Parmar's car from Reyat's house to a clearing off the highway in the woods near Duncan and saw Reyat and Parmar walk into the woods. Shortly thereafter, they heard a loud explosive sound coming from the woods which they misidentified as a shotgun blast. The team observed Parmar and Reyat emerge from the woods and put something in the trunk of Parmar's car. They then followed the car to Reyat's residence where the young man got out of the car and accompanied Reyat into his house.

Although they were on a surveillance mission, the surveillants did not have a camera and so were unable to photograph the unknown young man, who would later be referred to as "Mr. X." This individual was the subject of a long and unsuccessful search to discover his identity as one of the missing pieces in the Air India narrative. Although they remained on Vancouver Island for the night, the surveillants were, for unknown reasons, unable to secure permission to follow the young man the next day and thus lost a further chance to make the crucial identification.

Additional examples of such fumbling extended into the post-bombing investigation of the identity of Mr. X. When the RCMP obtained school records placing Parmar's son Jaswinder in school on the day of the Duncan Blast and began to raise questions with CSIS, CSIS did nothing to verify whether its team had misidentified the person accompanying Parmar and Reyat. In fact, even when one of the CSIS surveillants who had followed Parmar and his associates to Duncan began to work for the RCMP and, having there the opportunity to view Jaswinder at close range, realized with certainty that he was not the person she had seen on June 4th, CSIS still stubbornly maintained that Mr. X was Jaswinder. CSIS did not question the PSU team in light of the RCMP's expressed concerns. Even a cursory review of its surveillance records pertinent to this issue would have revealed that its surveillance team placed Jaswinder in two places at the same time: on Vancouver Island and at school in Vancouver on the day after the Duncan Blast.

In addition to the failure to identify Mr. X, there were further investigative dead ends resulting from the mis-transmission in the CSIS Report of the telephone number Parmar was seen to have dialed from the ferry.

Even the most important achievement of the surveillance, hearing the explosion in the woods, was marred by the misinterpretation by the surveillants of what they actually heard. The surveillants thought they heard a shotgun blast, when in fact they heard an explosion intended to test the detonation system for the bombs Parmar was building. Instead of leading to a realization that Parmar was planning to blow something up, the surveillants' belief that they heard a gunshot supported the mistaken conclusion by the CSIS BC Region that the primary danger from Parmar and the Babbar Khalsa was a possible assassination attempt or armed assault. But even this misinterpreted information, which at the very least appears to demonstrate that Parmar and his group posed a serious threat to commit a terrorist act, never made it into the formal CSIS threat assessment process. Likewise, a number of other significant pieces of threat information in various hands were also never reported, further compromising the ability of the CSIS HQ threat assessment process to put together the pieces of the puzzle in time to raise an effective response to the threat that was to crystallize into the terrorist attack on Flight 182.

3.1.2 Electronic Surveillance

The fate of the electronic surveillance on Parmar, finally approved in March 1985, was no less problematic, and arguably constituted an even more serious failure because of its consequences for the subsequent investigation of the bombing.

In this case too, resource issues were important. While listening devices can record conversations, it takes human resources to transcribe, to translate if necessary, and, ultimately, to analyze and interpret them. Each of these steps proved problematic. In order to safeguard security, CSIS, like the RCMP Security Service before it, adopted stringent security qualifications for its translators, including lengthy periods of Canadian residency as well as Citizenship.

As prudent as this may have seemed in the abstract, in practice it meant that there was only a very small pool of potential translators available for recruitment. In BC Region it meant that there were no Punjabi translators available at all. To cope with this problem, the tapes of the Parmar intercepts were shipped to Ottawa, where they were added to the workload of the already overburdened Punjabi translator at CSIS Headquarters. Delays were inevitable and a serious backlog ensued.

Shipping the tapes across the country meant that there was no meaningful possibility for the BC investigators to interact with the translator, who was essentially left to her own devices to extract, translate and summarize what was related on the tapes. Although a Punjabi translator for the BC Region was eventually recruited and began work on June 8, 1985, a significant backlog of translation work in BC remained throughout the pre-bombing period. There still

seems to have been little interaction with the investigators on the ground and there remains some doubt as to how many, if any, of the “transcripts” that were produced were in fact reviewed by the investigators.

The transcripts were prepared by a transcriber who reviewed and summarized what she thought relevant in the English language content, adding material from the Punjabi content based on the translators’ notes. The effectiveness of this disjointed process became further impaired by the vacation schedules of the transcriber and one of the investigators. One of the investigators was off duty in the two weeks leading up to the bombing and the transcriber was away just prior to, and for a week after, the bombing. Because the intercept tapes were erased shortly after they were processed, there was no opportunity to go back to the actual tapes for further analysis or to remedy any deficiencies in the transcription and translation process. Whatever information was not recorded in the transcription notes was lost permanently.

As discussed elsewhere in this Overview, disputes remain as to the actual content of the tapes that were reviewed and of those that were caught in the backlog, as well as about the adequacy and comprehensiveness of the review and analysis. What is beyond doubt is that no material from the Parmar intercepts made its way into the CSIS, or any other, threat assessment process in April – May or June of 1985.

3.2 The RCMP Response

In a Cold War environment, it was possible to conceptualize the worlds of intelligence gathering and law enforcement as being entirely distinct, and each function as better off divided from the other. The intention of the drafters of the *CSIS Act* was to separate the two functions. The idea was that CSIS would have a monopoly on intelligence gathering and the RCMP would have a monopoly on assembling evidence. CSIS would be proactive, attempting to anticipate security risks, while the RCMP would be reactive, responding to crimes and attempting to bring the perpetrators to justice.

Reality did not unfold in conformity with those early expectations. In the post-bombing period, and to the present day, the major stress on the original model would turn out to be the assumption that CSIS intelligence information would have no role to play in court proceedings or in the criminal justice system. In the pre-bombing era and immediately thereafter, however, the main area of contention between the agencies was precisely about CSIS’s presumed monopoly on intelligence gathering and assessment.

In part, this was a function of an unwillingness by the RCMP to let go of the notion of a unified investigative effort and of intelligence-gathering resources as a “Special Branch” of the RCMP. It also related to a perceived “gap” created when the Security Service was separated from the Force. The RCMP believed that CSIS intelligence gathering and its threat assessment process would not be sufficient to address the “criminal perspective” and that it would not be

able to make good use of the threat information incidentally obtained by the RCMP members in the conduct of their regular policing duties. These views found expression in the notion that the police needed “criminal intelligence” as distinct from the “security intelligence” gathered by CSIS. This notion was given a huge boost by the *Security Offences Act*, which was passed as Part IV of the Original *CSIS Act* and which specified that the RCMP mandate was to include the investigation of crimes that were “Security Offences.”

In fact, the *Security Offences Act* merely gave the RCMP jurisdiction to investigate criminal cases that would have traditionally fallen under the responsibility of provincial or municipal police forces in locations where the RCMP was not the police of jurisdiction. The RCMP, however, read more into the new provisions. Rather than depend on CSIS to provide for its intelligence needs, as intended in the 1984 Ministerial Directive issued by Solicitor General Robert Kaplan, the RCMP posited a relationship in which CSIS dealt with “security intelligence,” but in which intelligence relevant to a “security offence” would constitute “criminal intelligence” within the purview of the RCMP mandate.

Although the RCMP’s initial efforts to reconstitute a “criminal intelligence” function analogous to its lost Security Service mandate were denied funding or staffing approval, the RCMP nevertheless did manage to put together a rudimentary parallel structure designed to collect and analyze intelligence so as to allow the RCMP to engage in “threat assessment” from a “criminal” point of view.

Because of the deficiencies in the new RCMP structure and process, gaps in the threat assessment process were never adequately addressed. The structure proved incapable of addressing the pre-existing difficulties in incorporating threat information incidentally obtained by RCMP members. It also proved unable to deal with new problems that would emerge as a result of the creation of a separate civilian intelligence agency, including the difficulties down the road in using CSIS information for court purposes. The existing delay in transmitting information through cumbersome formal mechanisms for information exchange was left unaddressed, and was in fact aggravated by the new RCMP threat assessment process.

In the end, RCMP threat assessments usually contained no more, and often less, information than the assessments that CSIS, in parallel efforts, continued to produce. While the RCMP devoted resources to duplicating CSIS’s work, it still managed to deprive the new agency of important information, including information that CSIS needed to assess terrorism threats.

The newly created National Security Enforcement (NSE) units were intended to identify threat information, but had neither the mandate nor the capacity to conduct investigations that might unearth such information. On the other hand, the regular RCMP units who were expected to carry out these investigations had no training or experience in dealing with this sort of threat information.

The purpose of the new RCMP threat assessment process was not clearly defined or understood within the Force. The manner in which the new RCMP functions could be distinguished from those of the CSIS Threat Assessment Unit remained unclear. RCMP members received no clear instructions as to the type of information they were expected to identify, report and share. They received no special training about the threat assessment process and the impact of the creation of CSIS on their responsibilities. As a result, the individuals involved often failed to appreciate the significance and requirements of the threat assessment function, and a great deal of relevant threat information went unreported and was not shared – even internally.

Crucial information, such as the fact that Parmar's group was working on a "highly secret project" in the spring of 1985, and the information received from Person 1 in September 1984 about the November Plot to bomb an Air India aircraft, was not reported to RCMP HQ and, hence, was not taken into account in the RCMP threat assessment process.

RCMP failures to report information internally often also meant that the information was not shared with CSIS. Where the information was not otherwise available to CSIS, it was never included in *any* threat assessment process and the RCMP Protective Policing (P Directorate) was never advised.

The manner in which the RCMP processed information it received from CSIS also created obstacles. The liaison process put in place by the RCMP generally had limited success. Information continued to be shared informally, with members of each agency relying on personal contacts in the other agency. Because of tense relations between CSIS and the RCMP in the early years in British Columbia, CSIS at times used Vancouver Police Department (VPD) members as a conduit to pass information to the RCMP. Informal and indirect sharing between agencies meant that no consistent records were created. This lack of consistent records made it difficult for the RCMP, despite its repeated attempts at file review, to locate, let alone to analyse, all relevant information.

RCMP Divisions were supposed to obtain and report threat information from local police forces, but relations between the RCMP and local forces were also often tense. The RCMP insisted on being the first and only recipient of CSIS intelligence and reserved for itself the decision to pass the information to local forces as it saw fit, often invoking as a justification the fact that most local police officers were not security-cleared.

In British Columbia, where relations with local forces were less tense, the RCMP nevertheless failed to achieve sufficient integration and information sharing. The RCMP did not sufficiently share its own information with the VPD members of the Vancouver Integrated Intelligence Unit (VIU). The VPD members of VIU received a great deal of information from the VPD's Indo-Canadian Liaison Team (ICLT), which had managed to gain trust in the Sikh community. But the RCMP often did not access the VPD files, or it failed to recognize the significance of the information it received from the VPD.

The RCMP E Division NCIS terrorist/extremist unit had limited knowledge of the most important players in the Sikh extremist movement and had few resources to devote to developing this knowledge. The wealth of general intelligence gathered by the ICLT about local extremist organizations was not reported to RCMP HQ. Specific information, such as the comment made by a Sikh extremist leader in mid-June 1985 indicating that something would happen in two weeks, was also not reported to HQ, and was not taken into account in the RCMP threat assessment process. As a result, the RCMP HQ branch had little or no context to allow it to understand the significance of the threat information it did receive from the Divisions.

In BC, the Criminal Intelligence Service of BC (CISBC) was available to the RCMP. The CISBC was part of a program bringing together the intelligence units of provincial and municipal police forces with that of the RCMP to exchange information. The RCMP failed to access crucial information that was part of the CISBC holdings.

The fate of the Duncan Blast information demonstrates both the impact of the failure by RCMP personnel to utilize the channels that Headquarters had attempted to establish for purposes of information sharing, and the RCMP's inability to identify and report relevant threat information. The Duncan Blast information was provided by CSIS to RCMP members in E Division, but was not shared with the RCMP liaison unit. Because the information was not internally reported to the NSE unit, it could not be disseminated within the RCMP to all the units that might have needed it. The information also did not enter the RCMP threat assessment process. CSIS did provide the information to the VPD, which in turn shared it with the RCMP during a briefing, but again the information did not make its way to RCMP HQ. A report about the information was also available at CISBC, but was not accessed by the RCMP prior to the bombing.

Because records of the exchange of information that actually took place were not kept, CSIS and the RCMP are still debating to this day the sufficiency of the information that was shared about the Duncan Blast.

The RCMP failure to provide threat information to CSIS was essentially self-defeating, since its P Directorate largely relied on CSIS threat assessments to determine what security measures to implement. In the same way, the RCMP's failure to disseminate information to its own units, or to report threat information to HQ, meant that P Directorate was also deprived of the possibility of receiving the information through RCMP threat assessments.

The lack of communication up to HQ from the Divisions was mirrored by the lack of communication down from HQ to the divisional units. The failure to provide the Divisions with information and assessments about threats to Air India greatly impaired investigations at the local level. Not only did RCMP investigations have to proceed on the basis of incomplete information, but local police units that might have been of assistance could not participate.

The RCMP reporting structure was further ill-adapted to the threat assessment process because divisional units did not report directly to HQ. The HQ branch had no direct authority to command divisional investigators and was not kept sufficiently updated about the details of ongoing investigations to be able to provide useful suggestions in any event. It was left to divisional investigators, with no national security training and no appreciation of international issues, to decide which matters to probe further, and when.

The deficiencies in this structure were particularly apparent in the investigation of the November Plot, which involved information, originally obtained from two sources in the fall of 1984, that Sikh extremists were plotting to place bombs on two Air India aircraft. The Division provided insufficient information to HQ from the start, not immediately reporting crucial facts that would allow HQ to make its own assessment of the seriousness of the threat. Instead, the Division's scepticism about the validity of the information was relayed to P Directorate; a scepticism found to be unwarranted.

The Division provided few reports about the investigation, and those it did provide did not contain sufficient information. After the bombing, the Division ignored repeated requests for updates and, for over a year, failed to provide information it had promised HQ. A HQ member eventually turned to CSIS for the information, which it received three days later. Because of the Divisions' resistance to central direction or authority, the HQ branch was totally incapable of fulfilling its mandate to gather and analyse threat information.

There were other significant deficiencies in the flow of information. Intelligence regarding threats to national security was often not transmitted to the HQ threat assessment unit (NCIB/NSE) by other RCMP branches or directorates. Although P Directorate depended on CSIS and RCMP threat assessments to carry out its own functions, it often did not transmit information about threats to Indian interests that it received from External Affairs. Airport Policing detachments often did not transmit threat information about Air India, which they received directly from the airline, to the HQ Airport Policing Branch. Even when they did, the information was often not shared with NCIB or CSIS. In the pre-bombing period, RCMP airport detachments did not send to Headquarters information that had originated from Air India about the need to carefully examine "... cameras electronic equipments and parcels carried as hand baggage," nor the information about the threat of a terrorist group intent on exploding a device on an international airline in flight by placing an explosive inside a suitcase. Since RCMP HQ was not receiving comprehensive information, it could not properly advise other airport detachments that might be affected, such as those with flights connecting to Air India.

Since information was not provided to the divisional units, it could not be shared with local police forces. When E Division reported in April 1985 that it had no information from any sources indicating that any bombing of an Air India plane would occur, NCIB did not (and likely could not) take any steps to correct this impression, in spite of the fact that there was, indeed, information about threats

to Air India suggesting that hijacking or sabotage were possibilities and that the threat to Air India was considered high.

The HQ section in charge of threat assessment and the divisional units it relied on to gather information had limited analytical capability. In British Columbia, despite a mass of information indicating significant activity by Sikh extremists, the threat was sometimes assessed as non-existent or very low. HQ NSE members often simply passed information on to P Directorate without attempting to assess it and without asking further questions. Even worse was the inappropriate substitution of credibility assessments, based on criminal law evidentiary standards, for threat assessment. The RCMP treatment of the November Plot is a clear example of this phenomenon: RCMP investigators, suspicious about the motivations of the individuals who provided information about a possible bomb plot, failed to report this information to HQ or to share it appropriately with CSIS.

The crux of the matter is that the creation of a parallel RCMP threat assessment process precluded the establishment of a single location for the centralized assessment of all of the threat information in the Government's possession. CSIS and the RCMP collected and analysed their threat information separately, with neither agency able to conduct a complete analysis of the entirety of the available information. NCIB had access to CSIS threat assessments, but did not access them or incorporate them into its own analyses. CSIS was often not provided with the information in NCIB's possession. NCIB itself did not receive all the RCMP information. RCMP P Directorate received the most information, but had no central threat assessment mandate or capacity of its own and was fully dependent on CSIS and NCIB to assess the seriousness of threats.

In the end, the RCMP proved incapable of the effective collection and reporting of even its own information. When it did report information, its significance was often not recognized.

3.3 What Was Known

Perhaps the central unanswered question that Canadians, and especially the families of the victims of the bombing of Flight 182, have hoped a Public Inquiry might reveal is whether the Government and its institutions had information prior to the bombing that could have allowed the authorities to prevent it.

The answer is complex. There is no evidence that the Government was aware in advance of the details of the events of June 22, 1985. That is the basis for the oft-repeated statement that there was no knowledge of any "specific threat" against Flight 182.

To pose the issue in this form is, however, to miss the point. In 1985, "specific threat" was a technical term tied to emergency protocols put into place when the authorities received a call-in threat that identified a target, in circumstances

where there was not enough time to conduct a proper investigation or assessment of the threat. This sort of “specific threat” justified emergency measures because of the magnitude of potential consequences even if it wasn’t possible to assess the likelihood of their occurrence.

It is one thing to say that, had there been such a “specific threat,” detailing a time, place and method of a planned attack on Flight 182, emergency measures would have been implemented to hunt down the bomb. It is entirely something else to suggest that, in the absence of such a detailed, precise and “specific” threat, nothing further could or should have been done to prevent the bombing.

The claim that there was no “specific threat” to the June 22, 1985 departure of Flight 182 is accurate only in a limited and literal sense. No one source provided detailed information to any one agency in one place and at one time about the plan to blow up Flight 182 on June 23, 1985. On the other hand, various agencies of government had extremely important pieces of information that, taken together, would have led a competent analyst to conclude that Flight 182 was in danger of being bombed by known Sikh extremists.

Prior to the bombing, CSIS, the RCMP, the Department of External Affairs, local police forces and Transport Canada were collectively in possession of the following information about Sikh extremism and threats to Indian interests:

- A plot to bomb one and possibly two Air India planes was allegedly being hatched by Sikh extremists in British Columbia in the fall of 1984;
- In the fall of 1984, Ajaib Singh Bagri was allegedly nominated to a committee planning the hijacking of an Air India plane;
- Talwinder Singh Parmar’s group, the Babbar Khalsa, was reportedly working on a “highly secret project” in the spring of 1985, and Parmar had been assessed as the greatest threat in Canada to Indian diplomatic missions and personnel;
- In early June, Parmar and associates conducted experiments in the woods involving a loud explosion;
- During a June 12, 1985 meeting, a prominent Sikh extremist stated – in response to questions about the lack of attacks on Indian officials - that something big would happen in two weeks; and
- In late May and early June, Air India warned that sabotage attempts against Air India planes were likely to be made by Sikh extremists using time-delayed devices in registered baggage, that special vigilance was warranted on items like transistor radios, and that police should oversee the loading of registered luggage onto airplanes.

James Bartleman, who at the time he gave his evidence was Lieutenant Governor of Ontario, and in 1985 was Director General (DG) of the Intelligence Analysis and

Security Bureau at External Affairs, testified that shortly prior to the bombing, he saw, as part of the material he received electronically from CSE on a daily basis, information that indicated that Flight 182 would be targeted. He was not able to assess the reliability of the information but thought it important to ensure that the authorities were aware of the information and were dealing with it. When he brought the information to the attention of an RCMP official who was attending a security meeting in the building, he was met with a hostile reception and an indication that the RCMP was aware of the matter and had it in hand. On June 23, 1985, when he was informed of the bombing, he thought immediately that this was the materialization of the threat, and that the authorities had been unable to prevent it.

Counsel from the Department of Justice, on behalf of the Government and all its agencies, approached Bartleman's evidence as though it was the only pre-bombing indication of the danger to Air India Flight 182. In an entirely misguided approach, Bartleman was aggressively cross-examined and witnesses were called to attempt to call into question the details of his evidence.

Intelligence specialists often observe that an item of information, although apparently insignificant in itself, may in fact be the missing piece to a puzzle that helps a foreign or hostile group or agency see a pattern or draw conclusions that have profound intelligence value. This "mosaic effect" metaphor is typically used by intelligence agencies, sometimes excessively, to describe the potentially dangerous consequences that can result from the disclosure of their own information and to justify the need for secrecy. It is an equally apt description of how gathering and sharing information can help an agency's own intelligence effort.

The essence of good intelligence analysis is that it pulls together disparate facts and information from diverse sources to assemble a pattern in which one can have confidence. Once enough information has been assembled, even seemingly insignificant new additions can lead to new insights and deeper understanding.

However startling and important Bartleman's testimony may be, it is not, as the blistering assault on his credibility by some Government witnesses and the Attorney General of Canada's submissions would imply, the only evidence that suggests that the Government had enough knowledge of the threat to Flight 182 to warrant a different security response.

Even without the document that Bartleman described, there was more than enough disparate pieces of information that, had they been assembled in one place, would have not only pointed to the nature of the threat, but would have provided corroboration for the seriousness of that threat, thereby highlighting the need to implement measures aimed specifically at responding to the possibility of sabotage by means of explosive devices concealed in checked baggage.

Bartleman's evidence is best understood as simply one more piece in the mosaic.

In 1985, the institutional arrangements in place and the prevailing practices of Canadian information-gathering agencies were wholly deficient in terms of allowing the mosaic of the threat of Sikh extremism to be pieced together so as to make visible the pattern that clearly pointed to the high risk of a bombing of Flight 182.

The consequence of these deficient arrangements was that CSIS, the government agency that was given the primary responsibility for threat assessment, did not have sufficient access to facts about the threat of Sikh extremism. Lacking good access to sources of its own within the Sikh community, CSIS was heavily dependant on other agencies, both foreign and domestic, for the information it needed to understand the threat. CSIS had an abundance of threat information from the Indian government about the situation in India and about what was going on in the Sikh community in Canada, but it was unable to corroborate it. Without corroborating information, however, the large volume of information from the Government of India gave the impression that it was "crying wolf."

CSIS's lack of access to sufficiently detailed information, perhaps compounded by a lack of necessary technical skill, compromised CSIS's ability to identify the nature of the danger and to determine, with any degree of reliability, the likelihood that it might materialize. The result was the production of threat assessments that provided a qualitative assessment of the danger as "high" or "elevated," with little detail that would allow a recipient of the assessments to make intelligent decisions as to how to deploy, or how to prioritize the deployment of, scarce protective resources, which is, ultimately, the purpose of threat assessment.

In terms of the most important information regarding threats to Air India in the year leading up to the bombings, CSIS appears to have been provided with very few of the essential pieces of the mosaic possessed by other government agencies.

One of the most striking instances of the impairment of CSIS's ability to benefit from the mosaic effect is the June 1st Telex.

On June 1, 1985, Air India's Chief Vigilance and Security Manager in Bombay sent a telex to Air India offices worldwide, warning of "...the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage." The telex went on to set out specific security precautions to be implemented. These precautions included "explosive sniffers and bio-sensors [dogs]" as well as physical random checks of registered baggage, at least until June 30, 1985.

Air India forwarded the telex to the RCMP Officer in Charge at Pearson airport in Toronto, who sent it on to the Acting Officer in Charge in the RCMP HQ Airport

Policing Branch, requesting instructions on how to respond. The A/OIC sent a telex to CSIS, asking for an updated threat assessment in relation to Air India.

CSIS responded with a threat assessment indicating that it was unaware of any “specific threats” against Air India at the time.

In its submissions to the Honourable Bob Rae, the RCMP indicated that it had forwarded the June 1st Telex to CSIS along with its request for an updated threat assessment. The RCMP also told Rae that the heightened security measures it implemented included the use of explosives-sniffing dogs to check the passenger section of the aircraft prior to departure.

Both of these statements were incorrect.

The June 1st Telex not only was not sent to CSIS, it appears not to have been sent anywhere other than to HQ Airport Policing. It was not even sent to RCMP NCIB, the branch in charge of internal RCMP threat assessments.

The June 1st 1985 Telex was a key piece of the mosaic that never reached CSIS and was never integrated into the threat assessment process about Sikh extremism. The failure to forward the telex to CSIS eliminated any opportunity for CSIS to consider the information it contained about the threat of imminent attack in light of other information CSIS had received.

In his testimony, the former CSIS investigator in charge of the pre-bombing BC investigation into Sikh extremism stated that knowledge of the June 1st Telex would have given him a better understanding of the significance of the “loud noise” reported by CSIS surveillants when they followed Parmar, Reyat and an unknown person into the woods near Duncan on June 4, 1985. A Toronto CSIS investigator made precisely that connection shortly after the bombing when he zeroed in on the Duncan Blast surveillance report and identified the noise referred to as almost certainly being a test explosion rather than, as previously thought, a shotgun blast.

The November 1984 Plot is a similar instance of a pre-bombing failure to integrate important information into the mosaic of threats. In September 1984, the RCMP learned, through “Person 1,” that Sikh extremists were organizing to bomb an Air India plane but failed to share this information with its own HQ, with CSIS or with other agencies. CSIS did not learn of the existence of this plot until late October 1984, when the Vancouver Police Department received essentially the same information from “Person 2,” which it then shared with CSIS and with the RCMP. The RCMP, however, failed to inform CSIS that this information constituted corroboration of earlier information from another independent source, Person 1.

CSIS was aware of several threats against Air India during the month of October 1984 and, prior to learning of Person 2’s information, issued a threat assessment

noting that an attack in Canada was remote but could not be ruled out. After receiving Person 2's information, CSIS updated its assessment to a "real possibility" that Sikhs would damage an Air India plane.

It was not until March 1986, when the RCMP performed a post-bombing file review, that Person 1's statement to police in September 1984 about a man in Duncan who could manufacture "nitro" for blowing up an Air India flight come to light. If CSIS had received this information in the pre-bombing period, the significance of the excursion by Parmar and Duncan resident Inderjit Singh Reyat into the woods near Duncan would have undoubtedly been assessed in a more sinister light.

This chain of events dramatically illustrates the role that corroborating information can have on the threat assessment process. It also highlights how a lack of all relevant information can result in a serious potential threat being disregarded.

Quite aside from the information provided by Bartleman and intelligence about the June 1st Telex and the November Plot, there were other key pieces of the mosaic in the possession of government agencies that CSIS never received and therefore couldn't use in its threat assessment.

After the close of the hearings, the Commission became aware of relevant information in the possession of the Communications Security Establishment. CSE information is subject to rigorous National Security Confidentiality requirements, and little detail can be revealed about this information except that the information indicated that specific security measures, substantially similar to those listed in the June 1st Telex, were to be undertaken inside and outside of India for Air India flights due to threats of sabotage and hijacking by Sikh extremists. Furthermore, Indian airports were undertaking security audits in response to the threats and the Government of India had shown an increased interest in the security of airports against the Sikh terrorist threat in the month of June 1985. This latter fact would have clearly called into question RCMP and Transport Canada officials' view that threats, such as the June 1st Telex, were provided by Air India solely as a means to obtain additional security for free. This additional information might, in itself, seem unremarkable, but in the context of the June 1st Telex, as well as other information known to agencies of the Canadian government in June 1985, it should have suggested a significant risk of a bomb attack on an Air India flight in June 1985.

There is no record of the CSE information being provided to CSIS.

The June 1st Telex and the CSE information were more than enough, had they been assembled in one place and assessed by a skilled analyst, to have mandated an upgrading of security and the implementation of responsive measures at Pearson and Mirabel airports and, arguably, at airports with connecting flights to Air India, so as to respond to a high threat of sabotage by bombs concealed

in checked baggage. The Commission accepts the expert evidence given at the Inquiry that, even on its own, the June 1st Telex clearly should have led to this upgrade in security.

Bartleman's evidence is not essential to arrive at the conclusion that the Government knew enough about the pre-bombing threat to make its failure to implement responsive security measures inexcusable. However, the prominence given to the testimony of Bartleman by the Government makes it necessary to conduct an evaluation of his evidence. With an understanding of what was known by the Government in the pre-bombing period, Bartleman's evidence can now be assessed in its proper context.

Despite the aggressive insistence of the Government to the contrary, there is nothing implausible about the existence and subsequent disappearance of a document referring to a threat directed against a Canadian Air India flight. It is possible that the passage of over two decades may have blurred some details in Bartleman's recollection, but the essence of his testimony is credible. The Commission, applying the elements of common law assessment of evidence, finds him a credible witness. He had nothing to gain from coming forward with his evidence and he was fully aware that his evidence would be vigorously attacked.

The Commission accepts the possibility that a document such as that described by Bartleman would have been ignored and then subsequently could have gone missing from the Government's documentary holdings because:

The documentary holdings for the pre-bombing period are incomplete.

DFAIT archives have been purged with no index of destroyed documents.

CSIS, as a matter of policy, destroyed source documentation once it had been reviewed and any intelligence reports had been written.

Despite statements made in documents before the Commission and in corroborating testimony at the hearings that asserts that in the pre-bombing period the RCMP was in receipt of a large volume of threats to Air India forwarded by Air India itself, the number of RCMP documents produced to the Commission falls well short of that description.

The state of CSE documentary holdings from the pre-bombing period is unclear and the holdings themselves almost certainly incomplete.

Various government witnesses claimed that information about a threat against an Air India flight would have made an impression on them and that they would have raised an alarm immediately. This assertion, however, is inconsistent with what is known about the reaction to threat information received by the Government of Canada in the spring of 1985 for which documentary evidence remains. Such threat information, including the June 1st Telex, received little if any reaction.

A government witness who stated that he would have remembered and reacted to any bomb threat concerning Air India had to be reminded of the existence of an April 1985 threat against an inbound Air India flight. He defended his lack of response in that case on the basis that there were no security precautions necessary to deal with a threat against an inbound flight. Nevertheless, the failure to raise an alarm and the absence of documentary reference to this threat in any other material from the pre-bombing and post-bombing periods parallels what happened to the June 1st Telex.

A CSE witness who attempted to attack Bartleman's credibility asserted that he would have warned the Government of any threat against an Air India flight, as he had done months earlier when he saw a reference to the November Plot. He apparently was unaware, however, of the existence of the CSE information about security measures being mandated for Air India operations, inside and outside of India in response to threats of sabotage by Sikh extremists and information that Indian airports were conducting security audits in light of these threats. This is information whose relevance to the Air India bombings the Government disputes to this day. The very fact that the relevance of the CSE documents is disputed is illustrative. If past and current CSE officials cannot, even in hindsight, make the connection between this information and the threat to Flight 182, it should hardly be surprising that its relevance was unappreciated in 1985.

It remains unknown how accurate the threat information seen by Bartleman may have been. As he freely admitted, the information he saw merely suggested the existence of a threat and he had no way to assess its seriousness or credibility. The RCMP witness who testified that the Force received threats to Air India before every flight used that fact as justification for the RCMP's view of these threats as "floaters" – sent by Air India in the hopes that the Canadian Government would provide additional security without additional cost. This account of the RCMP's view of the credibility of threats to Air India issued at the time is consistent with Bartleman's account of the dismissive and even hostile reception he received when he sought to bring the information to the attention of the Force. It is also consistent with notations in earlier documentation about a seeming annoyance on the part of the RCMP with being "second-guessed" on security decisions by a member of External Affairs.

Even if Bartleman saw nothing more than what was contained in the CSE information unearthed by the Commission, it is likely that it would have been enough, given his knowledge of Sikh extremism in Canada, to convince him that the threat needed follow-up. The fact that Canada had the largest Sikh diaspora

in the world, that June was a time when there was a very high risk that some action would be carried out against Government of India interests and that Air India was a possible symbolic target, all would lead anyone with his knowledge and experience in the area to raise questions about what precautions had been taken. This was precisely what Bartleman did.

3.4 Response to the Threat

Prior to the bombing, the Government as a whole had the following information relevant to the risk that Sikh extremists could successfully carry out the bombing of an Air India plane:

It was aware that Sikh extremists were serious about a terrorist attack during June 1985 against a symbol of the Government of India. It knew the identity of the extremists likely to be involved in such an attack.

It was aware that Air India's flights were likely to be a target of Sikh extremists and that a likely means for such a terrorist attack was a time-delayed explosive concealed in checked baggage.

It was aware that the most serious threat to civil aviation was no longer hijacking, but sabotage.

It knew that Transport Canada's regulatory regime was inadequate to deal with this sort of threat and that the specific security measures currently instituted by Air India were inadequate and were based on unreliable technology and untrained screeners.

It was aware of rules and procedures that could have been prescribed by Regulation, and that would have been more effective in responding to security risks posed by interlined baggage and by baggage checked-in by passengers who did not show up for their flights.

It was also aware of more effective procedures, such as passenger-baggage reconciliation, and practices for screening baggage and identifying potential risks.

Nevertheless, because the Government did not address what was, by its own evaluation, a security regime wholly inadequate to identify and respond to known serious threats, it failed to prevent the bombing of Air India Flight 182.

3.5 The Bombing of Air India Flight 182: A Litany of Security Breaches

By June 1985, the threat of terrorists attempting to exploit vulnerabilities in the aviation security system by placing explosives in checked baggage had been well understood by Transport Canada for at least five years. The concern about the threat of sabotage was so great that in 1980, Canadian aircraft operators and manufacturers had requested that Transport Canada develop screening techniques and equipment for detecting explosives. Even so, as of June 22, 1985, the standard security procedures in place at Canadian airports were still oriented towards the prevention of hijacking. These measures were focused upon preventing potential hijackers from carrying weapons aboard an aircraft and there existed no screening requirement for checked baggage.

CP Air in Vancouver was operating at a “normal” threat level on June 22, 1985, despite the fact that Transport Canada and elements of the RCMP possessed voluminous information about the high threat to Air India and despite the fact that Transport Canada was aware that CP Air had flights connecting with Air India. “M. Singh” became disruptive and insisted that his luggage be tagged through to his final destination in India, ostensibly to save him from having to pick them up and check them in again when the CP Air flight arrived in Toronto. The CP Air agent violated CP Air’s own security protocol by tagging the luggage through to Air India 181/182 even though the passenger did not have a confirmed seat aboard these flights. CP Air also took no steps to remove the bag checked by “M. Singh” when he did not board the aircraft. Upon arrival in Toronto, this “unauthorized” bag was placed on board Air India Flight 181 by ground staff at Pearson Airport. Due to its own deficient protocols, Air India was unaware that this bag had been loaded.

Meanwhile, earlier that same day at Pearson Airport, Brian Simpson, an Air Canada summer employee at the time and now a lawyer, was curious about the very large *Kanishka* aircraft stationed outside the international departures area. Although he was not authorized to be inside the aircraft, he was able to walk to, and board, the plane; explore its interior for approximately 10 minutes and leave without being challenged by security officials or other airport staff. Simpson, who had observed numerous lapses in security in his time working at Pearson, was not surprised by this inattentiveness. He testified that, at the time, security doors that were meant to be locked were frequently kept open, and that doors secured by coded locks often had the access codes written on the wall nearby.

In that same period, similar lax security procedures had been observed at Vancouver and Montreal airports. Transport Canada was aware of the lax security culture prior to the bombing. Although annual security surveys were not conducted at Mirabel, they had been at Pearson in 1983, 1984 and in the spring of 1985 and at Vancouver airport in 1982 and 1985. A 1982 Transport Canada report noted that many aspects of Canada’s security program were cosmetic

and incapable of resisting a well-organized terrorist attack. Nevertheless, this situation was permitted to persist.

While RCMP HQ had assigned a level of security for the Air India flights in June that called for an RCMP explosives detection dog (EDD) team to search the passenger section of the aircraft, as well as any suspect luggage, prior to departure, the EDD teams were unaware of the state of alert at the time. On June 22, 1985, the EDD teams were all in Vancouver for training, leaving the Toronto airport without any trained dogs, and with only the RCMP Hand Search Team as backup. In case of a security alert, the role of the Hand Search Team (despite its name) was merely to search the interior of the aircraft and to oversee a process of passenger-baggage matching.

Although Montreal's Mirabel Airport had arranged for access to the Sureté de Québec dog team if necessary, this team was not at the airport prior to the flight's departure, and despite the identification of three suspicious bags that were not loaded, neither the passenger section of the aircraft nor the flight's checked baggage was searched.

Due to the constant high threat to Air India operations, Air India's security program called for the use of X-ray machines at both Pearson and Mirabel to examine checked baggage for explosives before any bags would be loaded aboard their aircraft. Air India also employed an electronic explosives detection device, the PD4, as a back-up when the X-ray was broken or not available. The PD4 device had been tested and proven totally ineffective by a member of the RCMP at Pearson in early 1985, in front of a group of representatives from Air India, Transport Canada, Peel Police and the RCMP. At the time, the RCMP told Air India that it had no confidence in the efficacy of the PD4 sniffer device. However, it did not intervene to prevent its use as part of Air India's security plan for flights in early 1985, prior to the arrival and installation of its X-ray machine, or thereafter, as a back-up to the X-ray. When Air India's X-ray machine at Pearson airport, which had malfunctioned at least once before in June 1985, and which had experienced reliability problems in the past due to mistreatment, broke down after scanning about 50-75 per cent of the luggage on June 22, 1985, the Air India security officer decided that the remaining bags would be examined for explosives with the PD4 sniffer device instead. Despite the high threat level assigned to Air India flights, neither Burns Security nor Air India informed the RCMP about the X-ray equipment breakdown on that day, and RCMP members did not monitor or even liaise with Air India or the screeners in the nearly 5 hours between the time the machine broke down and the time the plane departed.

The Burns Security employees, private security officers employed by Air India to conduct checked baggage screening, had no prior experience or formal training in the operation of the PD4. There was no supervision by Canadian government officials. Burns employees were not instructed about how to interpret the sounds the PD4 made, and no one informed the Burns supervisor or the Air India Security Officer that the device may have reacted to some of the bags it scanned. Then, without further contemplation of the potential danger they posed, the bags were loaded onto the aircraft.

Sometime before the check-in screenings at Mirabel were completed, Daniel Lalonde, now an Ontario Provincial Police officer, who in 1985 worked for Burns Security, was asked to leave his post at a security checkpoint to assist a number of other security officers in the X-ray scanning of checked baggage. Lalonde had never operated, nor even seen, the type of X-ray machine that was in the baggage room. The extent of his training to examine carry-on baggage with an X-ray machine was a one-hour video showing images of a handgun and a stick of dynamite as the types of dangerous articles he was to watch for, and on-the-job learning. In the course of screening the checked bags, he and the other Burns employees identified three bags whose contents appeared suspicious. The suspicious bags were placed on the floor next to the X-ray machine. The Burns supervisor notified an Air India representative about the bags, but the RCMP was not alerted until about 2 to 3 hours later. When RCMP officers arrived at the baggage area, they found that the suspect bags had been left unattended on the floor.

The Air India security officer had arrived from Toronto about 2 hours after the suspect bags were discovered and decided that they should not be loaded aboard the aircraft. Lalonde overheard the Air India security officer mention his concerns about the cost of delayed takeoff when he made the decision to clear Air India Flight 182 – which was running behind schedule - for takeoff. In 1985, the cost of delaying the takeoff of a wide-bodied jumbo jet like the *Kanishka* was between \$10,000.00 and \$18,000.00 an hour.

When the SQ dog handler was called in by the RCMP on the night of June 22, 1985, he believed he was being called to search the plane and its checked luggage. However, the aircraft had already departed prior to his arrival and he was only able to search the three bags that had been left behind.

On June 23, 1985, at 07:14 GMT, Air India Flight 182 disappeared from radar screens.

It has often been said that the failures that ultimately permitted the loading of the bomb onto Air India Flight 182 on June 22, 1985, were the result of a series of tragic coincidences and overlapping lapses. While this is true in some respects, the many deficiencies and errors that were observed on June 22, 1985, were also the predictable outcomes of poor regulatory and funding decisions and of a lack of leadership, which combined to create an environment ripe for exploitation by would-be terrorists. Air India's operations in Canada were known to be a "soft target" and little stress on that system was required to set off the chain of failures that ultimately led to disaster.

History has demonstrated the tragic extent of harm that can result from an ineffective aviation security regime. The risk to aviation security demands that there be a well-coordinated system of multiple, overlapping layers of security measures and a pro-active and responsive regulatory regime that is consistently reviewed for its effectiveness, in the context of past, present and future threats. This was not the type of security regime in place at Canadian airports in 1985.

3.6 Resources and Privatization

The 1980s was a period of deregulation, downsizing, and privatization.

Though the *Aeronautics Act*, the primary regime setting out authority for the regulation of civil aviation in Canada, gave the overall responsibility and authority to the Minister of Transport to “supervise all matters connected with aeronautics,” the regulatory regime in place put much of the responsibility for aviation security onto private actors. In this context, privatization could only work if the Government discharged its duty to take reasonable steps to protect its citizens through active monitoring and oversight of security operations. Profit-conscious carriers might be tempted to save money by reducing security expenditures, so it was reasonable to expect an increased level of Government intervention when it was aware of a heightened threat.

In the pre-bombing period, however, Government resources for airport security were scarce and thinly stretched. Transport Canada faced major budgetary constraints as the incidence of hijacking attempts and other criminal acts against civil aviation declined, and it became increasingly difficult to justify the costs of security expenditures. Transport Canada airport managers were under continuing pressure to reduce spending, which resulted in local constraints being applied to their budgets. This had an impact on RCMP airport policing resources which were negotiated locally with Transport officials at the airport level.

In 1985, the RCMP was mandated by contract with Transport Canada to perform specific police and security duties at designated airports, including: formulating, disseminating and auditing airport emergency procedures; collecting, evaluating and disseminating intelligence; and guarding against sabotage of airlines and the airport. The RCMP Airport Policing program had experienced progressive budgetary cutbacks for years. By 1983, the cutbacks had reached a level that made it impossible to meet its obligations to respond to threats to airlines in some locations. By June 1985, the RCMP’s presence had been downsized at most airports to include traffic control, a uniformed presence within and outside the airport and the occasional patrol of the perimeter.

Transport Canada inspectors were directed to monitor airports and to alert the carriers to any shortcomings in their security systems. There were, however, only 11 inspectors across Canada to conduct such reviews for the roughly 70 carriers operating across the country. By June 1985, inspectors had not completed more than 10 per cent of their workload for that year in any region, and in some regions no aviation security inspections had yet been conducted.

Entrusting vital security responsibility to the carriers themselves, in combination with the lax security culture at airports and the lack of resources for Government oversight and training, was a recipe for disaster. Without continual and thorough monitoring of the air carriers, airport personnel, and security staff within that system, carelessness and complacency flourished.

Both foreign and domestic air carriers were required to establish, maintain and carry out certain security measures at airports, including passenger and baggage screening. Private security officers were contracted by the air carriers to staff the security checkpoints and to conduct pre-board screening of passengers and luggage. In 1985, the *Aeronautics Act* limited the designation of “security officers” to properly qualified personnel. Security officers were required to complete Transport Canada’s passenger inspection training program with an average mark of 70 per cent and refresher training was also required within 12 months of any previous training. However security service contracts tended to be awarded by airlines to the lowest bidder. The security officers were paid minimum wage, and were unqualified to do their jobs, as many had either never taken the mandatory Transport Canada passenger inspection program or the required refresher training. Transport Canada was aware of these deficiencies but took no action to remedy them.

While Transport Canada required its own employees to undergo background and criminal record checks in order to obtain security clearance, the employees of the carriers working at airports across Canada were not subject to either criminal record checks or credit checks. They nevertheless had access to airport restricted areas and aircraft. Following the bombing, CSIS checked the names of the janitorial staff with access to the location where the bags containing the bombs were placed on the aircraft at Vancouver International Airport. CSIS found that multiple individuals among the airport janitorial staff, who had wide access to the airport and could move about virtually unnoticed, had connections to extremist Sikh organizations. The brother of Ajaib Singh Bagri, the latter of whom was suspected of a role in the Air India bombing, was among them.

Security companies were generally under the direct supervision of an air carrier’s customer service section, whose focus on keeping passengers happy by minimizing delays and inconvenience often conflicted with security priorities. Contracted screening companies were often urged to rush through screening as quickly as possible. Prior to the bombing, in March 1985, Air India’s acting airport manager for Mirabel and Pearson airports expressed concern about the numerous complaints that were being received about the delays of its flights leaving Toronto. Air India headquarters had set a “2 hours ground time” limit for delayed flights that was to be “strictly followed.” Simply put, customer service and other commercial concerns trumped aviation security.

In combination with the lack of resources for oversight, the privatization of airport security also led to a “hands off” approach towards oversight at Transport Canada. Transport Canada was aware of the potential value of passenger-baggage reconciliation and considered it an effective security measure for high threat situations. Confirming that all checked bags were matched with travelling passengers required additional time before a flight could depart and caused inconvenience to passengers.

Prior to the bombing, Transport Canada was tentatively considering a requirement for X-ray inspections as a viable alternative to the lengthy

passenger-baggage reconciliation process. Transport Canada appeared to view X-ray technology as something of a panacea, despite the poor resolution of the X-ray images and the high degree of skill required to appropriately interpret them.

Concerns about costs and delays influenced Air India's decision to use technological solutions to speed up security screening wherever possible. In 1985, Air India's security plan for operations in Canada included screening all passengers and their carry-on baggage by use of X-ray scanners and walk-through metal detectors as well as X-raying or using the PD4 explosives detection device on all checked baggage as a standard measure prior to its being loaded aboard aircraft. This plan was "informally" approved by Transport Canada with some minor modification. However, in spite of its international obligations to approve, monitor and comment upon air carrier security plans, monitoring was effectively non-existent.

Burns employees received practically no formal training in the examination of baggage with an X-ray machine. The utility of any screening technology necessarily depends on the skill of those employed to use it. Air India's X-ray machine was poorly handled and poorly maintained, had malfunctioned on several occasions, and ultimately broke down on the eve of the bombing. Given the state of X-ray technology at the time, the efficacy of the machine in detecting explosives was already quite limited, and these other factors further compromised its usefulness. Despite the high threat situation, the Government raised no objection to Air India's continued use of this machine or to the use of the proven-ineffective PD4 as a replacement.

The first Air India flight from Pearson took place on January 19, 1985. At that point, Air India's checked baggage X-ray had not yet been installed, and so the PD4 was used instead to examine the checked baggage destined for the flight, despite the advice from the RCMP not to rely on the device. The RCMP and Transport Canada did nothing to intervene, in spite of a second failed test conducted by the RCMP that day, and in spite of the fact that both agencies had been evaluating the progress of explosives detection technology through the late 1970s and early 1980s, and had been finding that such devices were generally unreliable. In light of the primitive state of explosives detection technology at that time, Air India's reliance on the PD4 was alarming.

The Government retained ultimate authority at the airport to decide whether or not to allow a flight to depart, and could detain a plane or take other action to ensure a flight would not depart in dangerous circumstances. In reality, however, the combination of the Government's laissez-faire approach and its lack of oversight ensured that, aside from obvious circumstances of inclement weather, the Government would almost never have the information nor the will required to exercise this power.

3.7 Lack of Sensitivity to Emerging Threats

In a dynamic environment in which new threats can emerge at any time, an effective aviation security regime requires a high degree of flexibility in order to identify emerging threats and then to tailor a coordinated response, sensitive to the relevant risk. Risk assessment requires a calibration of the vulnerabilities that make a system more susceptible to attack or exploitation by terrorists, and of the potential for harm in the context of a particular threat. In 1985, numerous discrete deficiencies aligned to create a situation in which Canada's state of aviation security was utterly unable to identify and respond to emerging threats.

3.7.1 Information Sharing and Coordination

The involvement of multiple actors in the protection of civil aviation – including Transport Canada, the RCMP, Air India and Burns Security – meant that a high level of coordination was required to ensure that those responsible for implementing security measures were aware of relevant threats and understood their responsibilities in terms of responding to any given threat. In 1985, each actor operated in its own silo, without an understanding of how any piece of information it obtained related to the broader picture of aviation security. Even within each agency, there was significant uncertainty about how information was to be shared internally and about how measures were to be implemented in response to it.

As stated earlier, the RCMP did not share the June 1st Telex with either CSIS or Transport Canada, which could have then taken steps to impose additional safety measures. Over two years later, in October 1987, a member of Transport Canada's HQ Civil Aviation Security Branch first learned of the existence of the June 1st Telex, and was alarmed by the many questions it raised as well as by the failure of both the RCMP and Air India to take proper action.

Transport Canada's ability to disseminate threat intelligence to airports was impeded by a lack of its own secure national communication system. Instead, it had to rely on the RCMP to transmit classified intelligence to personnel at airports. Multiple steps involved in sending intelligence reports in an emergency created a clumsy protocol and, as a result, major airports did not always receive classified security intelligence quickly, if at all. Transport Canada officials found that, even where an RCMP airport detachment received classified information well in advance of Transport Canada officials, the RCMP was often reluctant to pass such information on.

The lack of understanding of the phenomenon of Sikh extremism, and the failure to appreciate the symbolic significance of the Indian Government's ownership of Air India, complicated the situation further. As a result, when CSIS issued threat assessments indicating that the threat to Indian property and personnel was high, the relevance to Air India wasn't understood, and therefore, these warnings were not taken into account and shared with those charged with making decisions about the protection of Air India.

Excessive secrecy further compromised the ability to respond effectively to threats. The “need-to-know” principle prevented information from reaching the critical decision-makers on the front lines. In June 1985, when the RCMP received classified intelligence indicating that an incident was imminent, it took the position that this information could not be shared with Transport Canada officials. Without this information, it was impossible for Transport Canada to make its own assessment regarding the imposition of additional security measures and whether funding should be released to the RCMP for the extra manpower to respond to the threat.

Frontline workers such as Air India personnel and Burns Security agents were similarly deprived of information specifying what they should be alert for. The greater detail that security officers have about the nature of the threat, the better they will be able to direct their energy and tailor their response in a meaningful way. Providing detailed threat information to frontline workers would have been the optimal strategy.

With airports on a generalized “high threat” alert over long periods of time, even as security incidents in day-to-day work were extremely rare, threat fatigue as well as a lax security culture further eroded vigilance among airport workers.

Confusion regarding which organization held the ultimate responsibility for decision-making in a given threat situation further hindered responses. Some RCMP officials believed it was their responsibility to determine the threat level and the appropriate response; Transport Canada airport officials disagreed with this assertion. Confusion over responsibility led to acrimonious personal relationships between officials from Transport Canada and the RCMP Airport Policing detachment at Pearson.

Transport Canada had its own policies and protocols, and had the ability to impose additional security measures at the airport if warranted by the level of threat, but was not kept informed of the level of security the RCMP was applying at the airports or of the protocols the RCMP followed. The lack of coordination and understanding of other agencies’ protocols increased the risk of disagreements between them, and inflated the potential for security gaps to arise.

RCMP Airport Policing did not regularly inform others, including the individuals expected to implement security measures, of the security levels it was implementing in response to current threat information. The RCMP dog handler for Pearson was unaware that the Air India flights in June were operating under an increased level of security which required his presence, and that of his dog, at the airport to search the passenger section of the aircraft prior to departure and to check any suspicious luggage. Despite the heightened security level, RCMP dogs across Canada were on training that weekend. As a result, on June 22, 1985, Canada’s busiest airport was left without the security services of an explosives detection dog.

Even though the same weekly Air India flight stopped at Pearson and Mirabel, there was so little coordination between RCMP airport detachments that, despite threats preceding almost every Air India flight, throughout most of the first half of 1985, Air India was afforded different levels of security at each airport. While at Mirabel airport, Air India was given the second highest level of security, at the Pearson detachment, the same flight was provided only the minimum possible level of security. On May 31, 1985, External Affairs noticed this discrepancy and intervened to request that the level of security for Air India in Toronto be made consistent with that provided in Mirabel.

3.7.2 Lack of Risk Analysis and Misuse of “Specific Threat” Concept

In the aviation security context, a bomb threat that was assessed to be a “specific threat” would trigger an elaborate airport emergency protocol that involved the offloading of all luggage from an airplane, a search of the plane, passenger-baggage matching and the use of an explosives-sniffing dog to search all luggage. Had this protocol been employed on June 22, 1985, the bomb that ultimately brought down Flight 182 almost certainly would have been identified, but, on the eve of the bombing, the Government of Canada did not implement these or other search methods to identify bomb-laden luggage.

Given the numerous pieces of threat information received by the Government of Canada in the pre-bombing period, including warnings that specified the use of time-delay devices in registered luggage checked onto an Air India flight, the obvious question is: why did the Government not take appropriate, timely, responsive, and protective action?

The significance of a “specific threat” in the 1985 threat-response regime was limited to the circumstance of an emergency phone-in bomb threat. The definition of “specific threat” used by Transport Canada officials required details about the precise date, time, and even flight number. Importantly, the “specific” versus “non-specific” characterization, according to this definition, was to be made in time-sensitive circumstances, solely on the face of a particular threat without the need for additional or corroborative information. This narrow “specific threat” definition in use at the airport was never meant to apply outside of the emergency context.

In practice, the concept of specificity was inappropriately used. The quest for a “specific threat” impeded the proper analysis and response to threats. The “specific threat” concept was misapplied to threats received outside of the emergency context and was used in an all-or-nothing manner, often to deny additional security.

The “specific threat” concept had no relevance to the security that should have been implemented in relation to Air India Flight 182. The Government of Canada received many threats, including the June 1st Telex, well in advance of the flight. In these circumstances, there was sufficient time for an intelligence assessment, which could then have been relied on by officials to tailor an

appropriate response to the threat. Indeed, the RCMP had developed separate non-emergency security protocols to be implemented in response to CSIS's assessment of the threat. Misapplying Transport Canada's highly restrictive emergency definition, which was designed for a time-sensitive phone-in threat, to threats received outside of an emergency context, ensured that essentially no threat received by other means would ever be viewed as a "specific threat."

Despite the Government's awareness of the paradigm shift in aviation terrorism from hijacking to sabotage, its threat-response protocols remained targeted to the prevention of hijacking. The Government's continued focus on the concept of "specific threat" serves to distract from the real issue, which is that the applicable protocols in 1985 were not responsive to the risk of sabotage and were thus woefully inadequate in the circumstances.

When airport policing obtained a threat assessment from CSIS, the level of threat identified by CSIS was then used by the RCMP to determine the type of deployment with which to respond. A "security grid" set out five levels of security and the type of deployment to be effected at each level. A "high" threat, for example, would elicit a "level 4" response on the security grid, whereas "level 5" was reserved for a so-called "specific threat." To add to the confusion, in CSIS's lexicon, for a threat to be "specific" required not only a high degree of specificity, but also a degree of corroboration.

Whether the threat was "specific" or not, the actual difference in deployment between levels 4 and 5 was nearly insignificant, amounting to the use of an additional airline vehicle stationed airside, and another that would follow an RCMP patrol car while the escort of the aircraft was underway. Even at the highest level of security, the measures would have done nothing to prevent the loading of a time/delay device in registered luggage.

In mechanically translating threat levels into security deployment without even considering whether the measures dictated by the grid were at all responsive to the nature of the actual threat, the RCMP failed to appreciate the inherent need for risk analysis in order to appropriately translate threat information into operational deployment. This lack of understanding or appreciation for risk led to absurd situations.

The RCMP implemented additional security at Pearson airport in light of threat information received in late May 1985. However, due to an oversight, Transport Canada had not budgeted for overtime for that year. This increased level of security was maintained throughout June, but without Transport Canada's consent, additional funds would not be released to pay for the additional manpower. A dispute erupted at Pearson airport in June 1985 between Transport Canada and RCMP officials over the payment for this additional RCMP security. When additional, "highly classified," threat information was received by the RCMP in early June that left RCMP officials at Pearson with no doubt that "something was going to happen," the seriousness of this undisclosed threat was argued as an abstract concept and was used to justify payment for the security

already in place. There was never a consideration of whether or not the existing security was an appropriate response to this new threat. In fact, no adjustment to the existing security was made in light of this information. Similarly, when the June 1st Telex was received at Pearson, RCMP Airport Policing simply maintained the existing (non-responsive) “level 4” security already in place, given that CSIS (which was not provided with the Telex) was unaware of any “specific threats.”

In the context of this Inquiry, the Government continued to misuse the concept of “specific threat” in support of its argument that the June 1st Telex was not specific, thereby implying that additional security was not warranted. Dr. Leiss, an expert in the area of risk communication and risk management was shown the June 1st Telex and was astounded by its specificity. He stated that in the area of aviation security it would be extremely rare to get such a precise piece of information. In light of the high risk situation at the time, the June 1st Telex should have stood out and officials would have been justified in “basically pulling out the stops.”

In fact, the reason for the inadequate response to the June 1st Telex was not because it lacked specificity. The telex was sufficiently specific that, had anyone considered doing so, a sensitive response would not have been difficult to implement. Air India was operating only one flight out of Canada each week; the telex specified a narrow time period and suggested measures that would be responsive to the nature of the threat. Deficient protocols and a lack of understanding of the purpose of what it was doing resulted in the RCMP’s failure to understand the significance of the June 1st Telex and in its ineffective response as a consequence.

3.8 Ineffective Regulation

In addition to the requirement that the system have the flexibility to quickly identify and respond to individual threats, regular assessment of whether the legislative and policy framework was adequate to meet the nature of potential threats was essential. By 1985, such assessments had been undertaken and serious problems were thereby identified, but nothing was done to rectify them.

While Transport Canada had long been aware of the threat of sabotage as well as of the many weaknesses in its airport security, the ability to correct these weaknesses was hampered by deficiencies in its regulations. The problematic nature of the regulations was well understood prior to the bombing, yet the Government delayed bringing the *Aeronautics Act* and the accompanying security regulations up to date and to a level capable of meeting the threat of terrorism.

Perhaps surprisingly, regulations relating to observation, inspection, and searches of passengers, baggage, and cargo were already authorized under the existing *Act*. Draft regulations, most of which could have been passed under the *Aeronautics Act* then in force, and which could have remedied many of

the identified security problems, had been circulating since 1982. However, Transport Canada sat on them, preferring to await passage of a bill that was before Parliament at the time of the bombing and that would have significantly amended the Act and given the Minister of Transport broader powers to regulate with respect to aviation security. Though some officials recognized that the draft regulations were urgently needed, nothing was put into place until after the bombing.

Transport Canada generally took the position that as long as an airline's security plan met the basic and vague requirements outlined in the regulations, it was valid. In the words of one official, the regulations provided that a valid "security plan" required only that there be a "system" in place – whether that system was "good, bad, or indifferent." But even without the planned amendments to the Act, it would have been possible to update the regulations to require that air carriers provide specific details in their security plans. Such details could have included the designated security officers assigned to provide services for the air carrier, and a description of their required training, as well as the procedures and guidelines to be used by the carrier for screening persons, personal belongings, carry-on baggage, checked baggage and cargo. Regulations under the authority of the existing legislation could also have authorized the Minister of Transport to independently request changes to air carrier security plans where such changes were deemed necessary for civil aviation security.

Regulations under the then current Act also could have addressed numerous other deficiencies that had been recognized before the bombing. Regarding the threat of sabotage, regulations could have been passed to direct that air carriers take steps to prevent the carriage of explosives in checked baggage. Additional security measures to be implemented during a high threat situation, at a minimum, could have included matching all checked baggage to the passenger manifest prior to departure, X-raying or providing a manual search of all baggage using an explosive detection device or dog and handler or delaying the transportation of baggage on high-risk flights for a specified period of time.

Regulations could also have provided for more consistent and effective responses to the security risks posed by "unauthorized, infiltrated" baggage by requiring that checked baggage only be accepted from validly ticketed passengers and that all checked bags be personally identified by their owners. The level of training of airport workers could have been addressed by regulations stipulating that no personnel would be allowed to perform passenger, ticket, and baggage-related duties unless they had completed approved security training courses.

In light of the frequent security breaches that plagued many airports, a number of other remedial security provisions were also possible. Airport operators could have been required to keep records of all keys in their possession, to record the names of the individuals who were issued airport keys, and to prohibit anyone from entering or remaining in a restricted area without possessing and visibly displaying their identification card unless otherwise authorized.

All of these regulations would have been possible under the *Aeronautics Act* in the pre-bombing period. In fact, most were already contained in the 1982 draft regulations and could have been passed long before the bombing, but for Transport Canada's inaction.

What the *Aeronautics Act* in the pre-bombing period did not provide was sufficient authority to make regulations dealing with enforcement. One of the main deficiencies, identified long before the bombing, was that if an inspection of an air carrier uncovered a security issue, there was no authority for enforcement action other than either a written reprimand or a total revocation of the airline's landing rights at Canadian airports. There was nothing in between. There was no specified penalty for the failure of an air carrier to follow the requirements of its own security program. This was a fact that was highlighted when, after the bombing, Transport Canada concluded that no enforcement action could be taken against CP Air for interlining the "M. Singh" bag directly to Air India Flight 181/182 without the passenger having a confirmed seat.

While technically it was an offence to breach the regulations, the possible fines against carriers were not meaningful. Only after the bombing was the Act amended to authorize large fines (up to \$25,000) against corporations upon conviction of a breach of the Act, regulations, or orders.

Post-Bombing: RCMP/CSIS Cooperation

3.9 Human Sources: Approach to Sources and Witness Protection

3.9.1 A Lack of Effective Governance

Without a central informed decision-maker to direct the entire Canadian counter-terrorism landscape, CSIS and the RCMP were left to proceed according to their own lights and based on their view of the needs and best interests of their own institution. In the competition and mistrust that ensued there were no winners.

The Air India narrative is littered with lost opportunities where the value of potentially useful information was nullified in the fallout of the agencies' self-interested actions. Nowhere was this more apparent than in the approach of the agencies to human sources and in their competition for access and control in connection with these "assets." In the end, few positive results were achieved, while the relationship between CSIS and the RCMP continued to deteriorate and sour.

CSIS reserved for itself the decision about when and how it would turn over criminal information to the RCMP. At times, it delayed turning over information, with the goal of squeezing as much information out of a source as possible before relinquishing control, often without keeping the records necessary to allow for the eventual evidentiary use of that source's information. When Mr. Z disclosed to CSIS the identity of the two Sikhs who he had been told were responsible for checking in the luggage, CSIS made a decision to hold off on

passing this information to the RCMP so that its avenues of investigation were not “jeopardized.” CSIS ended up disclosing the information to the RCMP after about a month, but only because it learned that the RCMP was going to start a program of interviews that would turn up CSIS initiatives involving Mr. Z.

When CSIS investigator William Dean (“Willie”) Laurie met with Ms. E in 1987, she told him that the night before Air India Flight 182 crashed, Ajaib Singh Bagri had come to her door, asking to borrow her car to go to the airport and telling her that only the luggage would be travelling. CSIS made a conscious decision to hold off passing this astonishing statement on to the RCMP, despite its clear and potentially transformative relevance to the criminal investigation, based on the dubious rationalization that Ms. E’s information was mainly “historical” and incapable of being corroborated. In fact, the CSIS decision was motivated by a belief that the RCMP would bungle the approach to Ms. E and the result would be to end any hope of obtaining any further information from her. CSIS did eventually give the RCMP, verbally, enough information to discharge what it saw as its legal obligation, but did little if anything to ensure that the RCMP would be able to put together enough details to actually find her.

For its part, the RCMP appeared to live down to CSIS expectations and only began to pursue the Ms. E connection in 1990. Faced with RCMP allegations that it had withheld information about Ms. E in 1987, CSIS scrambled to uncover documentary corroboration that it had turned over the information. Though it failed to surface any such proof, CSIS nevertheless drafted a letter to the RCMP that provided assurances that all details had indeed been passed-on verbally, relying on cryptic internal RCMP telexes as justification.

The revelation that CSIS had withheld or delayed the passing of important criminal information only further fuelled the mistrust the RCMP had for CSIS and led it to feel justified in constantly questioning whether it had received all relevant information in relation to a source.

The case of Mr. A was equally unedifying. CSIS and the RCMP became aware of Mr. A at around the same time and both believed that he likely had key information about the Air India terrorist attack. The agencies met and agreed that CSIS would interview him first and would report the results of the interview to the RCMP. However, upon meeting with Mr. A, CSIS investigators realized that he was an extremely valuable source and that he had concerns about his safety that made him reluctant to share the details of his story. Despite the earlier agreement and the potential criminal relevance of his information, CSIS proceeded to provide Mr. A with assurances of confidentiality and turned him into a CSIS source. The information he had provided about Air India was subsequently provided to the RCMP, but without revealing that Mr. A was the source, relying for justification on the promise of confidentiality it should arguably never have made in the first place. Meanwhile, CSIS had no apparent problem in directly breaching its numerous assurances of confidentiality to Ms. E when it revealed her identity to the RCMP in 1990, once it became concerned about being blamed for not passing her information in the past.

Sources have rightfully been described as CSIS's lifeblood. CSIS's long-term investigation into Sikh extremism in the late 80's and early 90's depended on its ability to develop long-term relationships with individuals who could provide the Service with insight into what was happening in the Sikh community. Time and again, when CSIS did pass criminal information it received from a source to the RCMP, it ended up being forced to terminate its relationship with that source entirely. This was usually in order to protect the evidentiary value of the source's potential testimony from "contamination" and from allegations of "coaching" by CSIS, though at times it was simply the result of the source's refusal to cooperate further with anyone because of the RCMP's heavy-handed approach. The RCMP's concerns about the impact of CSIS involvement on eventual prosecutions were not unfounded, especially in light of CSIS's constant failure to preserve records of its dealings with its sources. On the other hand, the RCMP's bull-headed approach burned bridges for both agencies to the sources. The repeated loss of some of its most promising sources had, not surprisingly, a significant negative impact on morale among the CSIS investigators. CSIS's reluctance to pass information with potential criminal relevance over to the RCMP can accordingly be understood, if not condoned.

The combination of the RCMP's aggressive approach and its tendency to quickly discount sources often led to a lose/lose outcome: CSIS lost its source and the RCMP failed to gain any "evidence", or even any information, from the source. CSIS was ordered to hand Mr. A over to the RCMP as the result of RCMP lobbying for exclusive access. The RCMP dismissed Mr. A's utility after a 15 minute interview and left him fearing for his safety as a result of its unwelcome approach. Neither agency derived any benefit from the information he had to offer.

The result in connection with Ms. E was equally unsatisfactory. When the RCMP decided to approach Ms. E in 1990, CSIS Investigator Laurie warned that she would not be receptive to the police. The RCMP charged ahead regardless, with its usual aggressive approach. Laurie, the person with whom she had the best rapport, and who by then had transferred back to the RCMP, was excluded from the process as soon as possible and not re-involved until 1997. Ms. E was subjected to a long audio-taped interview at RCMP headquarters, during which she expressed considerable fear and reluctance. She was repeatedly approached by an ever-shifting cast of RCMP investigators who showed little concern for her feelings or her privacy. Ultimately Ms. E refused to cooperate with police any further and feigned memory loss when she was called to testify at trial.

It was not only the RCMP's aggressive approach to sources that caused CSIS concern. CSIS saw the RCMP place potential sources and witnesses in jeopardy by failing to implement adequate measures to protect them or to ensure that the confidentiality of their information was maintained. CSIS was shocked by the RCMP's failure to seal its Information to Obtain and thus to protect Ms. D's identity. It was similarly dismayed to learn about the RCMP's persistent aggressive approaches to Ms. E, often in public places or within earshot of others, which clearly placed her at risk. At times, even members within the RCMP took issue with the Force's handling of sensitive information. RCMP NCIS

Surrey investigators expressed concern that RCMP HQ had widely distributed correspondence within the RCMP that could identify Tara Singh Hayer as the source of information about an alleged confession by Bagri about delivering the bag to the Vancouver International Airport on the eve of the bombing.

The squabbling over sources was unremitting. CSIS complained of not being informed about RCMP plans to send Hayer to England to help gather evidence against Bagri, a plan it felt had potential to damage CSIS's operations, to harm CSIS's reputation and to put Hayer in danger by exposing CSIS's contacts with him. Despite these protests, when RCMP investigators travelled once more to England in 1988 for an "investigational trip" in relation to this scenario. CSIS was again kept in the dark and not told about the operation until a month afterwards, when the RCMP happened to need CSIS information for its own purposes.

Like opposing teams running in pursuit of the ball around a soccer field without goalposts, CSIS and the RCMP continued to actively pursue exclusive access to sources, without much clarity as to exactly what they thought they were trying to accomplish. A simplistic and inflexible view that CSIS was concerned with "intelligence" whereas the RCMP dealt with "evidence" led the agencies to approach their investigations mechanically. Without stopping to think about whether their "usual" methods made sense, both agencies as often as not ended up sabotaging their own interests as much as each other's.

3.9.2 CSIS: Refusal to Collect Evidence

The spectre of the abuses of civil liberties committed by the former Security Service and revealed publicly through the McDonald Commission continued to haunt the newly created CSIS. If nothing else, CSIS was determined to distance itself from scandal and keep within the four corners of its new mandate as it perceived it. There was a strong emphasis on limiting the information CSIS retained, as well as on avoiding the use of any "police-like" methods in collecting information. This strategy, which was plausible as a means to prevent repetition of past errors, soon became an end in itself as the new agency became mesmerized by the mantra that "CSIS doesn't collect evidence." This mantra was used to justify the destruction of raw material and information, even in cases where that material clearly implicated criminal activity and represented no more of an infringement of privacy than the summary reports CSIS did preserve.

At the same time, CSIS took an expansive view of its security intelligence mandate and seemed unable to resist the temptation of developing source "intelligence" – even when the information provided by sources was solely relevant to the question of who was responsible in the Air India case. The result was that throughout the Air India narrative, CSIS repeatedly took it upon itself to develop intelligence that went to the heart of the criminal investigation, with seemingly no regard for evidentiary requirements or thought for what would happen when the information ultimately ended up in a court of law.

CSIS continued to mechanically destroy its raw materials regardless of their content, a practice that came to have serious consequences for the Air India trial. When, in 1987, Ms. E told Laurie her story about Ajaib Singh Bagri's request to borrow her car the night before Air India Flight 182 crashed, Laurie followed the general practice at CSIS and destroyed the original notes and recordings he made in relation to his interviews. He did this, despite the fact that it was immediately clear to him and to his superiors that this was criminal information that would likely one day end up in court. Despite what he and his superiors may have believed, in doing so, he was not even going by the book. Up until 1990, the official CSIS policy dealing with retention of investigators' notes was still the old Security Service policy that required investigators to retain their notes where there was "reason to believe" that an investigation would "result in court appearances being necessary." Though still applicable, this was a policy that seems neither to have been known nor ever applied at CSIS.

At the Air India trial, Justice Josephson concluded that the destruction of Laurie's notes and audio recordings of his interviews with Ms. E violated Bagri's rights under the *Charter*. He then found that Laurie's reports about Ms. E's statements were admissible, but were not sufficiently reliable to support a conviction, since they were not meant to provide a complete record of his interactions with Ms. E or of all the statements she made, because CSIS "does not collect evidence."

CSIS's cavalier attitude towards the "evidentiary process" opened up the possibility that its investigations would ultimately compromise the RCMP's evidentiary position at trial. Even though CSIS appeared to recognize that the problem of "contamination" of the RCMP's Air India investigation could be an issue, it proved unable to take effective steps to avoid it. Laurie was instructed not to task Ms. E with any actions and not to question her specifically on criminal matters, but he was not told to stop meeting with her. Every time he did meet her, the topic of Air India ended up becoming the central issue discussed. Inconsistencies developed in the numerous reports Laurie created about what Ms. E told him during their meetings, and these ultimately served to weaken the Crown's case. The independence of Ms. E's recollection also became a concern, based on suspicion that Laurie may have provided information to her during their meetings - a suspicion that was difficult to refute at trial over ten years later in the absence of complete notes or recordings of the meetings.

Whether because of its more effective methods in approaching sources or because of the natural advantage it enjoyed in not being "the police," CSIS succeeded in obtaining a larger quantity of information, and more valuable information, from human sources than did the RCMP during the post-bombing period. It then proceeded to render that information essentially useless for the purpose of bringing the perpetrators for the bombing to justice as a result of its stubborn and unreflective insistence on not collecting "evidence."

3.9.3 RCMP: Refusal to Collect Anything But Evidence

Running parallel to CSIS's unhelpful insistence on not collecting evidence was the RCMP's insistence on not collecting anything but evidence. In relation to sources, this meant that the RCMP tended to assume that they were important only to the extent that they were willing and able to become witnesses and that their information was valuable only to the extent that it could be used as admissible evidence.

This attitude helps to explain the singular ineffectiveness of the RCMP in developing sources and its corresponding ability to squander the opportunity to elicit information from the sources that CSIS ended up turning over to the RCMP.

It should have been clear from the outset that if perpetrators of the bombing of Flight 182 were to be brought to justice, the authorities would have to rely on information from sources in the Sikh community. Though the forensic evidence about the bombing lay beneath the depths of the Irish Sea, there was a widespread belief that members of the tight-knit Sikh community knew who was behind the crime. These were circumstances that called for patient and sensitive approaches to members of the Sikh community, in the hope of drawing out the information that could piece together the conspiracy and point to the evidence that would be needed to make out the case in court.

The RCMP proved entirely incapable of meeting these challenges. Instead of emulating the successful methods of CSIS source handlers, the RCMP adopted an aggressive, insensitive and sceptical approach to potential sources of information which served to turn them away and render them uncommunicative rather than encouraging them to be forthcoming. Given this approach, it is not surprising that, when several of the CSIS source handlers who had developed promising sources in the Sikh community for CSIS transferred back to the RCMP, none were kept on in a parallel capacity at the Force, nor were they brought into the police investigation of the bombing.

The RCMP tended to take a linear approach. The predominant view was that, in light of the magnitude of the Air India tragedy, individuals with important criminal information were duty-bound to cooperate with police. This led the RCMP to approach sources in an aggressive manner, with a sense of entitlement. This approach was particularly ineffective in dealing with sources afraid for their safety. Members of the Sikh community were often reluctant to cooperate with police, both because of cultural assumptions about the police that were rooted in the Sikh experience in India and because they were fearful of the consequences of "collaboration" with the police for themselves and their relatives if their cooperation was discovered. It did not help that a man (Balbir Singh Kaloe) was believed to have been killed at the hands of Indian authorities as a result of information supplied to India by Canadian authorities. The RCMP's seeming blindness to the continuing threat of Sikh extremism, and the effect it had on the community, was in line with its narrow view of its role

and its lack of curiosity about the people or the culture it was dealing with. When CSIS investigators tried to explain to RCMP members the nuances of the Sikh community – including community attitudes towards the Sikh separatist movement, Sikh extremism and the bombing - they showed little interest, and a good deal of impatience with information they did not see to be relevant to their immediate criminal investigation.

This lack of understanding by the RCMP of the Sikh community compounded its problems in recruiting sources, and its approach turned sources into adversaries.

In the case of Ms. E, despite knowing that she was potentially suicidal and feared that if she cooperated with police, she and her children would be murdered, the RCMP made repeated, public, and aggressive approaches to her. Officers constantly dropped by her residence, where she worked with other employees, and spoke to her about Air India, at times within earshot of others. They made repeated suggestions about the “unpleasant things” that could happen if she did not disclose the full extent of her knowledge, even suggesting that if she failed to respond to a subpoena she would be arrested. They constantly referred to her alleged affair with Bagri in an accusatory manner, and even spoke to Ms. E’s common law husband in a manner that led him to believe that Ms. E had had an affair with Bagri while already living with him. Determined to obtain a useable statement from her, the RCMP asked Ms. E to come to RCMP HQ, where she was interviewed for almost six hours, leading her to believe, as she later claimed, that she would not be allowed to leave until she provided a statement.

The impact of this bull-headed approach was counterproductive. Ms. E eventually sought psychiatric help, alleging that “...the police were putting words in her mouth and making her sign documents,” a statement hardly likely to improve the credibility of any statements the police would subsequently seek to rely on in court. Undeterred, the police continued to drop in on her even after she retained a lawyer and required the RCMP to go through him.

While the safety of its sources should have been of the utmost concern to the RCMP, it often displayed a seemingly callous attitude towards its sources and resented their reluctance to help. In response to CSIS concerns about the inherent risk of the plan to send Tara Singh Hayer to England in order to have him gather evidence about Bagri’s purported confession, the RCMP retorted that Hayer was a “grown man” and could make his own decisions. When Hayer changed his mind about participating in the plan, deciding not to act as an agent for the RCMP, some RCMP members interpreted his decision as an indication of his being unreliable and opportunistic.

The RCMP’s approach to sources was heavily influenced by its hyper focus on “evidence”. In contrast to CSIS, which felt intellectually compelled to pursue each interesting piece of “intelligence”, the RCMP viewed its mandate as limited to the pursuit of “evidence.” In practice this meant that the RCMP tended to lose interest quickly in information that did not seem potentially useful as evidence for securing a conviction in court.

RCMP Officers flew to India to meet with Pushpinder Singh, the ISYF leader who, at the time of the bombing, had been described as “one of the most important Sikh terrorists in the world,” and who was alleged to have stated at the Khurana meeting two weeks before the bombing: “Wait two weeks and something big will happen.” Once there, they concluded that any statement Pushpinder Singh was likely to make would be “totally exculpatory.” On that basis they decided not to attempt to take a statement from him and for the time being to take no further action.

The deep suspicion of human sources, which was probably the result of the RCMP’s routine dealings with the criminals and jailhouse informants who made up its usual sources, could lead to a premature dismissal of information based on preliminary assessments of credibility. Human sources who were looking to exchange information for a benefit were treated with special disdain, in part perhaps because of the RCMP view that witnesses should come forward out of a sense of civic duty and in part, no doubt, because such information is potentially vulnerable to aggressive cross examination when tendered as evidence in court. On the other hand, the information might just be true.

Time and again in the Air India investigation, the RCMP came down on the side of scepticism based on a superficial assessment of credibility, which led them to dismiss information long before its truth could reasonably be assessed.

When Person 1 provided information to the RCMP in the pre-bombing period about a plot to bomb an Air India plane, his information was quickly discounted, as investigators assumed that he was providing it only to further his own personal interests. This suspicion persisted even after the bombing, and in spite of the fact that the same information had been reported independently by another individual. It took months before the RCMP finally followed up with Person 1, whose information was ultimately verified by a polygraph examination.

In the case of Ms. E, before finally deciding to pursue her remorselessly to get her to testify, the RCMP had repeatedly found reasons to discount her value as a source of possible evidence. At first, though they believed her to be Bagri’s mistress, the RCMP assumed that Bagri was unlikely to have discussed anything of importance with her. Later, officers cited her reluctance to admit her alleged affair with Bagri and her fear that it would be made public, as well as her unwillingness to testify as reasons to discount her. It was not until other RCMP investigators approached her by coincidence as part of a source development project in 1991 that the RCMP began to warm to the idea that she might be a useful witness. Despite the inconsistencies in her statements noted by the RCMP during its sceptical phase, she would ultimately become the Crown’s key witness against Bagri at trial.

In yet another example of the RCMP’s pursuit of “ready evidence,” after the RCMP fought for months with CSIS over access to Mr. A, RCMP officers finally got the opportunity to meet with him. Then, after speaking to him for 15 minutes, during which he claimed that he had no “direct knowledge” and said he was

concerned for his safety, the officers wrote him off as having no immediate value to the investigation and concluded that no further follow-up in relation to this source was required at E Division. The RCMP did not consider the possibility that using Mr. A to develop intelligence could open doors in the investigation that might allow the potential gathering of evidence in the future.

Part of the RCMP's reluctance to deal with Mr. A was also based on a perception that he was an "opportunist," as he would not disclose the full extent of his information without a benefit for himself. Whereas the RCMP often engages in negotiations with, and provides benefits to, informants involved in criminal activities, it seems that in the counter-terrorism context, the RCMP expected that sources with criminal information would act altruistically and freely disclose their information to police, without benefits to themselves and without regard to their personal safety.

A similar pattern can be seen in the RCMP dealings with Mr. G – an important figure in the Sikh extremist movement in 1985 – whom the RCMP suspected might have had information about the bombing. When Mr. G informed the RCMP he was willing to provide information, but not to testify, the RCMP decided that it could not consider providing any concessions to him unless he provided "...full and complete co-operation of an evidentiary nature." When in 1997, Mr. G agreed to testify, asking only for protection for himself and his family in exchange, the RCMP still held back, insisting that he first needed to provide a statement that could be evaluated by the Crown before any commitments would be made.

The RCMP's pursuit of "ready evidence," and lack of interest in what it viewed as "intelligence," seems to have led it to prematurely cut off avenues of investigation that could have led to a deeper understanding of the Air India conspiracy and the persons involved. On August 26, 1988, Hayer was the victim of a vicious attack that left him in a wheelchair for the rest of his life. Harkirat Singh Bagga visited the Indo-Canadian Times office and shot Hayer three times. Bagga initially identified Bagri as having put him up to the crime, but later retracted his statements and pled guilty to the crime. RCMP investigator Solvason, as well as the Hayer family, expressed the view that there were other extremists who had put Bagga up to the shooting and that the investigation had an important national security dimension. However, there was no willingness at the E Division Air India Task Force to take the case on. Following an investigation by the Surrey Detachment, Bagga was convicted of attempted murder. It was the family's view that, at that point, the RCMP simply closed the file in relation to this matter. They testified that this decision was emblematic of the Task Force's failure to see the bigger picture in relation to Sikh extremism. It was only in the late 1990s that the Air India Task Force finally got involved in the investigation of the Hayer shooting. Once the Task Force began looking to establish a motive for Bagri to have conspired with Bagga to murder Hayer, it discovered information showing that Hayer had publicly pointed to Bagri as responsible for the Air India bombing, even mentioning an alleged confession, shortly before the shooting.

3.9.4 Lack of Effective Source / Witness Protection

Not surprisingly, given the RCMP's failure to appreciate the continuing threat of Sikh extremism, it had a poor record in terms of responding to threats directed at both sources and potential witnesses in the Sikh community.

Of the three individuals who were to be the key witnesses at the Air India trial, one was murdered before the trial began, one feigned memory loss because she was too scared to testify about the knowledge she had previously claimed to have, and one was forced to enter the Witness Protection Program two years earlier than planned and felt that her life was ruined.

As with the other aspects of its dealings with Ms. E, the RCMP's response to her stated fears for her own safety and that of her family were insensitive and ham-handed. The RCMP had few effective strategies for dealing with reluctant witnesses who feared for their safety.

The RCMP speculated that Ms. E's reluctance to cooperate was more the result of concern that her alleged affair with Bagri would become publicized than of any genuine fear of a threat Bagri might pose to herself and her family. The irony of the RCMP's belief that Bagri was one of the key masterminds in the worst terrorist attack in Canadian history alongside its questioning of the genuineness of Ms. E's fears was apparently lost on its members. The same scepticism about her fears, combined with the familiar fear of compromising credibility by offering a "reward," would seem to explain the view expressed by the current head of the Air India investigation that discussing possible source or witness protection measures with Ms. E would have been premature until the RCMP had obtained statements about the full extent of her knowledge, since it was important to get the source's "evidence" prior to offering her any "incentives."

It was not until after the murder of Tara Singh Hayer, in November 1998, that Ms. E was informed of examples of specific safety measures that could be provided to her for protection, all of which she then declined.

At trial, Ms. E was ultimately left with the onus of personally applying for a publication ban on her name, with both Crown and defence taking no position in relation to the application. By this point in time, Ms. E was no longer on speaking terms with the RCMP. She was so concerned for her safety that she feigned memory loss, leaving the Crown with only the flawed reports written by Laurie through which to try to enter into evidence the information she had provided.

In some cases, the difficulty the RCMP experienced in appropriately responding to the threat to potential witnesses may have been the result of a lack of centralization in the RCMP investigation. This certainly appears to have been a factor in the lack of adequate protection for the identity of Ms. D, who was the Crown's key witness against Malik at trial. Ms. D initially approached CSIS with information about Malik in the late 1990s and was promptly turned over to the

RCMP. Some of her information related to frauds at Malik's Khalsa School, which the RCMP decided to refer to its commercial crime section while the Air India Task Force continued to stay in contact with her. The commercial crime section, perhaps unaware of the nature of Sikh extremism and seriousness of the threat faced by Ms. D, allowed Ms. D's name to be released when it inadvertently left a warrant application in connection with its investigation unsealed. Once the fact that she was providing information to the RCMP was revealed publicly, Ms. D had to enter into the Witness Protection Program over two years earlier than would have otherwise been necessary, exacerbating the disastrous impact that the Witness Protection Program has had on her life. Ms. D felt that her "whole life [was] ruined," as she lost the opportunity to watch her eldest son grow up and her youngest son lost the opportunity to be with his brother and father.

Serious as these failures undoubtedly were, nowhere are the RCMP's failures to protect its potential witnesses more dramatic than in relation to Tara Singh Hayer. Hayer's family testified as to the difficulty in getting the RCMP to take threats against Hayer seriously, even after two attempts had been made on his life. When Hayer provided the RCMP with a letter containing threats against him, the RCMP became fixated on an analysis of whether "overt threats" were being made as the basis for assessing the seriousness of these threats, an analysis reminiscent of the similarly undue and mechanical reliance placed by government agencies on the concept of "specific threat" to explain away the importance of pre-bombing threat information. Despite the statement "...[s]ometimes I think what a big mistake he did who just made you handicapped. Well that's okay there is delay but not darkness at God's house," and despite the reference to big "punishment", the RCMP concluded there were no overt threats in the letter and thus nothing further needed to be done. It took the intervention of the Ministry of the Attorney General of British Columbia (BC) to get the RCMP to take action.

This, apparently obtuse, initial response to the threat against Hayer may in part be explained by the fact that, because there was no centralized coordination of threat information, the unit that first dealt with the threat was unaware of previous threats to Hayer or of the fact that Hayer had in the past been the subject of a murder attempt. While this may serve in some measure to explain the response, it also demonstrates the inadequacy of RCMP information management about threats. Indeed it appears that, rather than centralize and coordinate such information, the RCMP practice was often to purge it from the records.

The RCMP had difficulty providing Hayer with protection while respecting his autonomy. Hayer was committed to continuing his journalistic work and thus he did not consider entering a witness protection program to be a viable option. The RCMP invoked resource constraints to explain its inability to provide Hayer with constant personal security, apparently believing that there was no other alternative that could have kept Hayer safer while allowing him to continue living his life as normally as possible.

After a period of escalation of threats, and after Hayer's name appeared on a "hit list," the RCMP finally installed video surveillance at Hayer's residence in July 1998. But the equipment installed was totally inadequate. Because of a unilateral RCMP decision not to drill holes in the residence, the equipment ceased working when its antenna was not kept in a particular position. To make matters worse the Hayer family was not informed of this fact, and was unaware of the steps necessary to ensure that the equipment would function properly. When Tara Singh Hayer was brutally murdered in his garage in November 1998, the equipment was not functional. Only "snow" was recorded on the video cassette and no footage could be recovered. Prior to appearing as witnesses before this Inquiry, Hayer's son and daughter-in-law were unaware that the video surveillance system had failed. When in the past the family had asked the police if they could view the surveillance tapes, they had been told that this was not possible due to the "ongoing investigation." The murder of Hayer occurred ten years ago. The individuals responsible have still not been identified and brought to justice.

The final accounting of what occurred in relation to these three key human sources of information about the Air India bombing is disturbing. In light of the RCMP's woeful failure to protect these and other individuals, along with its mechanical, aggressive and uncoordinated approach, it is no wonder that the RCMP experienced significant difficulty in penetrating the Sikh community. There is a reasonable limit to how much any individual citizen can be expected to sacrifice in support of the pursuit of justice.

3.10 RCMP Investigation

The RCMP has long insisted that, though the security intelligence function was transferred to CSIS, it had to maintain responsibility for, and control of, national security *criminal* investigations. The RCMP pointed to CSIS's lack of mandate and lack of expertise in the conduct of criminal investigations as a prime reason why the RCMP should be involved in cases involving potential criminality early on, and why the RCMP should take over the investigation of all criminal offences involving national security, such as terrorism.

However, when the RCMP did become responsible for the Air India criminal investigation, the challenge of uncovering and bringing to justice those responsible for this unprecedented act of terrorism proved more difficult for the Force than perhaps had been expected. Conducting this terrorism investigation with international ramifications necessitated working without the ready availability of forensic evidence about the crash of Flight 182, and required the gathering of intelligence in a community and about a phenomenon not well known to the RCMP or well understood by its officers.

Rather than adapting its approach and methods to the unique national security aspects of the case, the RCMP maintained its traditional focus on obtaining ready "evidence" and applied a rigid standard of credibility or evidentiary value to potential investigative leads.

The RCMP was unable to suspend the evaluation of the information it compiled until it had accumulated a meaningful amount of information from various sources and instead prematurely discounted information, such that it was never able to accumulate enough pieces to complete the puzzle. Very early on in the investigation, the RCMP developed a theory of the case, and from then on quickly discounted potential leads or pieces of the puzzle that did not appear to fit.

Overall, the RCMP was unable to incorporate an intelligence-based approach to the investigation.

3.10.1 National Security without Intelligence Gathering

From the outset of the Air India and Narita investigations, the RCMP's view was that there had been one plan to execute two concurrent acts of terrorism against the Indian government, in which the key participants were Parmar, Bagri, Gill, and Johal – with Inderjit Singh Reyat used in the plot for his bomb-making expertise and access to materials. Given the results obtained in Narita – which had a readily available crime scene and in which Reyat was ultimately convicted for manslaughter only – it should have been clear to the RCMP that in order to get to “the brains” of the operation, something more than a purely forensic or “yellow tape” crime scene-oriented type of investigation was needed.

However, challenges were encountered from the beginning. Even assembling the E Division Task Force to investigate the bombing was difficult. Not only did Federal operations RCMP members lack experience in homicide or other major crimes investigations, but investigators generally had no training in the area of terrorism/extremism investigations, no understanding of Sikh extremism, and only one or two members could speak Punjabi.

RCMP management was unsupportive of the type of investigative initiatives that would have been required to investigate such an exceptional case. When investigators suggested a re-orientation of the investigation towards a conspiracy approach or attempted to engage in intelligence-connected endeavours – such as source development and strategic prosecutions – management was unable to appreciate the value of these pursuits and actively discouraged the initiatives.

The perceived difficulties in solving the Air India bombing led the RCMP to devote fewer resources, rather than more, to the investigation, and it increasingly focused its resources and energy on Narita. By the late 1980s, the Air India file at E Division was being handled by a unit for which the investigation was one assignment among many others. At one point, it was assigned to a single person, who coordinated recovery attempts of the wreckage of Flight 182 and took care of file administration. There was a formal attempt by E Division management to shut down the Air India investigation. Not surprisingly, morale became a very serious issue and the work environment became “poisoned.”

Structurally, RCMP decentralization made it difficult for the Force to achieve central coordination of the investigation and to see the broader picture emerge. RCMP Divisions were not accustomed to involving HQ in operational decisions and HQ personnel had no formal line authority over members in the Divisions. "Directives" issued by HQ were generally taken as suggestions and were often unwelcome. The Divisions only informed HQ of what they thought HQ should know. Answers to HQ's questions, when and if they were provided, were often superficial.

With this structure and approach, the RCMP was frequently unable to recognize the value of the information in its possession. Often, RCMP investigators simply could not access all the pieces in the RCMP's possession because of the manner in which the information was filed. There were ultimately numerous and extensive file reviews, but no ongoing summary of the Air India file was created. Investigators could not easily gain an overview of the file. With the high rate of turnover on the Task Force, maintaining continuity in the investigation was difficult. The filing system itself did not help put information together. Due to the multiple filing systems across the country, investigators had to search multiple databases – sometimes in different geographic locations – to find all the relevant information. Given the difficulties in storing and retrieving information, important information was at times misplaced, lost, and even destroyed.

Even when information was accessible, the lack of an intelligence orientation in the investigation meant that no one even thought to access it. The information accumulated by the RCMP in the pre-bombing period about threats to Air India, about the individuals who were likely to attack Indian interests in Canada and about the modes of attack that were possible, was never accessed in the post-bombing period. As a result, the June 1st Telex – which provided information about the June 1985 threat of sabotage with time-delayed devices concealed in luggage – was never looked into by the Air India Task Force, nor were its origins investigated.

Even when RCMP investigators did find new information and began to examine it, the information was often discounted – precisely because so many other pieces of the puzzle which had been uncovered before had already been discounted, lost, or buried in files that were never reviewed.

Very little progress had been made in the investigation by the early 1990s. Current Deputy Commissioner Gary Bass was asked in 1995 to examine the investigation that had been done to date and to advise whether there was anything else that could be done in the investigation, which had seemingly reached an "impasse." He decided to re-orient the investigation towards a conspiracy approach, place experienced members on the file, create a dedicated task force, and implement new intelligence-led investigative strategies. The investigation, and the ultimate decision to take the matter to prosecutors, proceeded largely, and at times exclusively, on the basis of information that had been in the RCMP's possession all along, but which was finally being examined in a new light. What could have been done 10 years before was finally done in 1995. Some of the information

dismissed by the RCMP over the years in its pursuit of its primary theory of the case continues to raise questions to this day.

3.10.2 Premature Dismissal of Intelligence and Theory of the Case

The RCMP demonstrated an insufficient ability to recognize the significance of intelligence or to correlate all the relevant information. As a consequence, the RCMP deprived itself of a great deal of important additional information, as it made decisions to delay or not to follow up on leads and continued to discount the value of some of the information it was receiving. Assuming, as the RCMP has certified, that the Commission has been provided with all relevant documentation, the RCMP's follow-up investigation in relation to a number of leads raises questions.

Within the first few months of the investigation, the RCMP developed a theory of the case in terms of the main suspects, the motive, and the modus operandi of the crime. By August 1985, the RCMP's investigative efforts were focused on demonstrating that the Air India bombing had been perpetrated by the Babbar Khalsa (BK) – masterminded by Parmar, with the assistance of Bagri, Gill, Reyat and Johal.

However, immediately after the bombing, the RCMP suspected the involvement of members of the International Sikh Youth Federation (ISYF) – an historically violent organization that had been proscribed in India because of its bombing assassinations of Sikhs and Hindus. The ISYF was one of the three organizations that had claimed responsibility for the attack on Air India Flight 182. Members of the ISYF had been present at the June 12, 1985 meeting at the home of Sarbjit Khurana, where ISYF leader Pushpinder Singh was alleged to have commented that something big would happen in two weeks to show the Indian government that they were serious. Khurana reported the information about the “wait two weeks” comment allegedly made by Pushpinder Singh to Vancouver Police Department Detective Don McLean immediately after the meeting, approximately two weeks before the bombing, and McLean had no doubt that Khurana had been telling the truth.

The RCMP initially focused its efforts on the surveillance of ISYF members who had been present at the Khurana meeting. Extensive coverage of Lakhbir Singh Brar, another ISYF leader who accompanied Pushpinder Singh to the Khurana meeting, began by the RCMP in late June 1985. However, in mid-August 1985, the RCMP decided that its focus on Lakhbir Singh Brar should be discontinued and efforts re-focused on Parmar and associates since Lakhbir Singh had not demonstrated any involvement in criminal activity. The RCMP theory that the Air India bombing was an act of the BK alone soon became firmly entrenched. From that point on, information implicating other groups or individuals not seen to be directly connected to Parmar and his BK associates was often consigned to the RCMP's category of “alternative theories” and was not intensively pursued.

The view that the Air India bombing was an act of the BK alone appeared to affect the RCMP's follow-up on the Pushpinder Singh comment, in spite of its clear intelligence value and even though the involvement of the BK in no way excluded the possibility of ISYF involvement. In fact, Khurana had reported that, during the meeting at his residence, Pushpinder had praised Parmar, had said that he had met with him the previous week, and had indicated that he was using him to bring all Sikhs in the lower mainland together. The persistent refusal to explore the possibility that other organizations, such as the ISYF, had worked in conjunction with the BK is difficult to understand in light of the fact that, in the course of subsequent RCMP investigations into terrorist plots involving the Babbar Khalsa in 1986, the RCMP became seriously concerned that the BK and ISYF had been consolidating their efforts within Canada and had been working together in furtherance of their separatist goals.

When an RCMP HQ analyst showed interest in Pushpinder Singh and raised questions about the possibility that the BK and ISYF had worked together in relation to the Air India bombing, the response of E Division was dismissive and even hostile. E Division complained in effect that HQ was wasting its time with fanciful theories.

The RCMP's efforts to follow up on the Khurana information after the bombing were heavily and inexplicably focused on pursuing an exact translation of the Khurana tapes that would verify the alleged comment. Early RCMP translations of the Khurana tapes, which were based on extremely poor quality of recording, had revealed portions of conversations containing ominous remarks, including the comment that "...it may take two weeks, a few months, or a few weeks and then we will do something..." In spite of these early translations, which appear to support Khurana's statement, the RCMP seems to have simply accepted CSIS's view that the only conversation of interest on the tape was about the goal of bringing Sikh groups together. The RCMP later flatly told Rae that the "wait two weeks" comment had not been recorded. No mention was made of the early RCMP translations.

The pursuit of any possible ISYF connection had become so low a priority after the re-orientation that, aside from the early surveillance, no follow-up to determine Pushpinder Singh's possible involvement in the Air India bombing had been commenced by the RCMP over a year after the bombing. When the RCMP learned that Pushpinder Singh had been arrested in India in early 1987, no attempt was made to interview him at that time; on the basis that such action was deemed to be "premature." When an RCMP team traveled to India in January 1988, Pushpinder Singh was finally interviewed. The interview consisted of asking him, point blank, for information about his knowledge of, or responsibility for, the Air India bombing. When Pushpinder Singh, not surprisingly, displayed an apprehensive and defensive attitude, the Force concluded he was not forthcoming and stopped pursuing the matter. Pushpinder Singh offered to take a polygraph about his involvement in the Air India bombing, but the RCMP did not follow up because of the difficult logistical arrangements that would have been necessary in India and, remarkably, because it was felt that he might well

have passed the test. Very little investigation took place over the next seven years. It was not until 1995, when the file was reviewed in preparation for the 10-year anniversary of the bombing and a revived Task Force was constituted, that further investigation of Pushpinder Singh's possible role took place.

So complete was the RCMP's dismissal of a possible ISYF connection in relation to Air India that, prior to 2001, Lakhbir Singh Brar had never been interviewed as a potential witness or suspect regarding Air India, despite his frequent association with Babbar Khalsa suspects, despite the fact he had been involved in the Khurana meeting, and despite the RCMP's initial focus on his activities.

In May 1997, the RCMP received information that called into question the official version of the circumstances surrounding Parmar's death in India in 1992, which was originally reported to have been the result of a "shoot out" with Indian police. The new information revealed the existence of a confession that was purported to have been made by Parmar prior to his death. The RCMP received information from a number of sources that Parmar had died while in the custody of the Punjabi police who had interrogated him and extracted information about his activities, including some information about the Air India bombing. The sources told the RCMP that Parmar had indicated that the identity of Mr. X, the third individual who had accompanied Parmar and Reyat to the Duncan Blast site, was Lakhbir Singh Brar – a member of the ISYF, and that Lakhbir Singh had also purchased the ticket in the name of "L. Singh."

Lakhbir Singh was finally interviewed by the RCMP in 2001, when he surfaced as an applicant for Canadian immigration in Pakistan. The RCMP did not interview him solely because of the purported confession. Indeed, Lakhbir Singh was "... well on his way to elimination [as a suspect by the RCMP] before these interviews took place." Investigators felt that the information contained in the purported Parmar confession was problematic in that it did not accord with information the RCMP already had on file. Much emphasis was seemingly placed on information investigators had about Lakhbir Singh's age, which was felt to be incompatible with the observations that the CSIS surveillance team had made of Mr. X during the Duncan Blast. According to the RCMP's information, Lakhbir Singh would have been 33 years old at the time of the bombing. Information uncovered by the Commission called into question the RCMP conclusion about Lakhbir Singh's actual age. Certainly, the extent of reliance placed on conclusions arising from CSIS surveillance information was questionable given the multiple instances in the pre-bombing period of misidentification by CSIS of individuals of a different race from their own.

The RCMP's "evidentiary" focus also meant that the RCMP's initial assessment that Person 1 and Person 2 lacked credibility was used to justify its failure to follow up or even adequately to report information about the November Plot in the pre-bombing period. After the bombing, the scepticism continued, and this meant that the RCMP failed to follow up on the information in a timely way despite the potential connections with the Air India bombing. The RCMP viewed this matter as totally unconnected to the Air India case, and dealt with

inquiries about it as merely tying up “loose ends,” for purposes of confirming the main theory of the case. HQ sent information requests aimed at exploring the possibility of a connection, but E Division often simply failed to answer.

Of course, it was only by investigating the information as it presented itself that any connections with the Air India bombing could have been discovered. It was no surprise that such connections were later discovered when HQ finally received from CSIS the information E Division failed to provide about Person 2’s associates: at least one of whom had connections to the Babbar Khalsa. Telephone records reveal that calls had been made from the home of Person 1 to Inderjit Singh Reyat, the Air India bomb-maker, the day after Person 2 was arrested in October 1984.

It was not until media reports in 1986 described the November Plot information as a forewarning of the Air India bombing that the RCMP had received and ignored, that the investigation into this matter truly began in earnest. Even when RCMP analysts did begin to recognize the potential relevance of the November Plot information and the significance of the fact that the information had been provided by two separate sources prior to the Air India bombing, the follow-up investigation continued to be tainted by the initial RCMP assessment that the information lacked credibility and by the view that any November Plot connection did not fit with the RCMP’s theory of the case.

When the RCMP began to make inquiries about “Z”¹, who had been identified by Person 1 and Person 2 as having potential involvement in the November plot, it was learned that he had departed Canada for India and had not since returned. In 1988, “Z” was charged in an unrelated matter and arrangements were made for him to provide a polygraphed statement about the November Plot in exchange for a reduction in his sentence. He provided an exculpatory statement. Although the RCMP told Rae that “Z”’s polygraph “verified” his information, the Commission discovered in the course of this Inquiry that Z’s polygraph examination had, in fact, been inconclusive in part. Despite the fact that the test was incompatible with Person 1’s polygraph test, which he passed in its entirety, the RCMP concluded that “Z” was not involved in the Air India bombing.

When the RCMP began to investigate the possible involvement of “W”, an individual identified by Person 2 as having had possible involvement in the plot, and identified by Person 1 as likely having been responsible for the calls made from his home to Reyat, it emerged that “W” had been involved in the past with Parmar, Gill, and Reyat, the RCMP’s main suspects in the Air India bombing. “W” was a member of the ISYF and admitted to the RCMP that he would be willing to “do anything” to avenge the death of his relatives in the Punjab. He also told police that, in the past, he, Parmar and Gill had been planning on “doing something” in India. In spite of this startling information, it is not clear what, if anything, the RCMP did to further pursue the possibility of “W’s” involvement.

¹ This is not the same individual as “Mr. Z”, a CSIS source who also provided information to the RCMP.

Perhaps because of the difficulties it experienced in managing an investigation of this magnitude, the RCMP sometimes prematurely discounted or failed to follow up – even on information that was consistent with its principal theory of the case. When Tara Singh Hayer provided information in 1986 about Bagri’s alleged confession in England that he had been responsible for taking the bomb-laden luggage to the airport, Bagri became an important RCMP suspect. Nevertheless, the RCMP did not go back to pursue Ms. E, whom investigators had identified in 1985 as potentially being Bagri’s mistress. The RCMP also did not pursue CSIS’s cryptic references in 1987 to a Vancouver source who had been approached by Bagri to borrow her car and take it to the airport the night before the bombing. In 1989-90, during the Watt MacKay file review, this information was finally re-evaluated, leading the RCMP to understand that the person in question was Ms. E.

Information received from Mr. Z in 1986 about individuals connected to Bagri who were identified as potentially having involvement in the delivery of the luggage on Bagri’s behalf was not followed up until 1987. Even then, the follow-up was less than enthusiastic. The 1987 investigation of Mr. Z’s information consisted of having officers observe the individuals named by Mr. Z and compare their appearances to the composite of “M. Singh,” that had been created by the RCMP on the basis of information provided by Ms. Jeanne (“Jeannie”) Adams, the check-in agent for CP Air in Vancouver. They concluded that the suspects did not match the drawing.

The RCMP’s quick discounting of the Mr. Z information is puzzling for a number of reasons. The currently accepted theory is that two individuals, the so-called “M. Singh” and “L. Singh” were responsible for checking in the luggage containing the explosives on June 22, 1985. Adams was only able to recall the check-in of “M. Singh,” and thus could not provide information about L. Singh’s appearance. To discount the possible involvement of individuals on the basis of a composite for only one of the two suspects seems unusual. It’s also unclear how much reliance should have been placed on the “M. Singh” composite produced by the RCMP. Though Adams had provided a number of different descriptions to the RCMP, she also stated that she did not recall the suspect’s face. More importantly, she said the composite drawing that the RCMP had produced was not correct.

Even more remarkably, the factor used to rule out the suspect - two years after the events and on the basis of comparing his appearance to an imprecise drawing - was the observation that he was “different by his hair,” as it appeared to be combed straight back, and was “not wavy and not parted on the left side.” After making these observations, officers concluded that there would be no further investigation of the file unless CSIS provided further information to substantiate the Mr. Z information.

In early 1988, the RCMP met with some (but apparently not all) of the individuals identified by Mr. Z as having possible involvement. Again, the RCMP discounted the potential involvement of these individuals on the basis of the “M. Singh” composite, as well as on factors such as the level of English spoken by the suspects.

Though at least one suspect had indicated a willingness to be polygraphed, none was asked to undergo a polygraph test and these “interviews” apparently put an end to any follow-up investigation in relation to the Mr. Z information. The interviews were taped, but the tapes were destroyed for unknown reasons and no transcripts were ever made. No further investigation of this matter was conducted until close to a decade later, at which point some of the suspects were finally subjected to polygraph examinations.

The RCMP’s approach to its post-bombing investigation must be kept in mind when evaluating the Force’s strong criticism of CSIS and of its failures to share information post-bombing. The manner in which the RCMP conducted the investigation, both in terms of its relationship with sources and its follow-up on leads, might naturally be expected to have an impact on CSIS’s willingness to share information. At the same time, this consideration does not exonerate CSIS in its information-sharing practices.

3.11 The Sharing and Use of CSIS Information

The Air India investigation raised the question of the limits to the protection that CSIS information could legitimately receive in the face of the imperative of prosecuting those involved in the murder of 331 persons. Too often, information-sharing disputes prevented a proper balancing from being properly carried out, as CSIS and the RCMP debated everything except the real issues. The RCMP experienced frustration because of CSIS’s refusal to provide information based on legalistic distinctions between “raw material” and “information” and its practice of answering RCMP questions in the narrowest manner possible. CSIS, meanwhile, was unable to gain any comfort that its sensitive information would not be made public by the RCMP. Each agency exaggerated the public interest that corresponded to its particular interests, with the RCMP generally claiming that every piece of information was essential to the investigation and CSIS often taking the initial position that disclosing the requested information was too dangerous to its operations. Too often, no real analysis was conducted on either side and the agencies came to have little respect for each other’s broad claims and assertions.

3.11.1 Early Access to and Use of CSIS Information

CSIS did not, as a matter of policy, retain the tapes made from intercepted communications, and routinely erased them following translation and transcription. By July 1985, the RCMP was aware that CSIS had been intercepting Parmar’s communications since before the bombing, and the Task Force requested direct access to the materials at that time. Although the RCMP continued to seek access to the tapes, and the Crown counsel assigned to the investigation directed the RCMP to seek their retention, the Task Force did not make a written request to CSIS for the preservation of the tapes. The erasures of the pre-bombing intercepts continued. Indeed, CSIS continued to erase the tapes of its ongoing post-bombing intercepts of Parmar’s conversations until the Department of Justice ordered a stop to the erasures in February 1986.

While the RCMP Task Force obtained access to CSIS reports containing summaries of the available intelligence during the early days of the investigation, requests for raw data such as underlying surveillance reports, interview notes, or intercept logs were generally met with resistance by CSIS. Continuing policy debates at CSIS about the terms and extent of RCMP access resulted in a “revolving door” of changing rules, marked by intermittent access punctuated by abrupt interruptions and long periods without access to any information.

An RCMP affidavit in support of an application to intercept the communications of Parmar and other key Air India suspects was sworn on September 19, 1985. It made extensive use of CSIS information and also made reference to the problems experienced by the RCMP in gaining access to CSIS materials. Use of CSIS information in warrants raised the possibility that these warrants would be challenged in court in such a way as to expose the CSIS information publicly. CSIS reacted to the use of its information by revoking RCMP access to the Parmar logs and by placing additional restrictions on access to its information. When the RCMP wanted to use CSIS information in support of a search warrant application, CSIS stipulated that the RCMP had to hide the fact that CSIS was the source of the information, which raised concerns that the RCMP’s legal position in any eventual prosecution could be compromised, given the legal need to be forthcoming in warrant applications.

It was not until October 1985 that the RCMP learned that CSIS had erased the tapes on which its Parmar intercept logs were based. It was only in December 1987 that CSIS formally acknowledged that the Parmar tapes had been destroyed, and it would be years before the question of why the tapes were erased – and of whose responsibility it had been to ensure their preservation – would begin to be answered.

Over time, the back and forth recriminations between CSIS and the RCMP distorted perceptions and led the RCMP to take the position that, due to a lack of information about CSIS’s investigation, the Force focused its early investigation on, and obtained intercepts on, the “wrong targets.” According to this revision of history, without access to CSIS intercepts, the RCMP did not know that Parmar was to be a primary suspect. This is not the case. The RCMP was aware of Parmar as a prime CSIS target early in July 1985, and even had access to reports containing some of Parmar’s conversations, that it later viewed as providing key indications of his involvement in the conspiracy. The debate was not about a lack of awareness of CSIS information, but about the ability to access and use “raw” information contained in the CSIS translators’ notes and intercept logs in support of RCMP warrant applications or prosecutions. This confusion demonstrates precisely the muddling of the issues of access and use that plagued the agencies’ relationship throughout.

3.11.2 The Reyat Trial and Beyond

Between July 1985 and October 1991, James Jardine (now a judge of the Provincial Court of British Columbia) was the Crown Counsel involved in the

Air India and the Narita investigations. He was involved in the prosecution of Parmar and Reyat in connection with the Duncan Blast charges and later in the prosecution of Reyat in connection with the Narita bombing. He transmitted numerous requests to the RCMP for access to CSIS information, including requests for explanations about CSIS policies and procedures for the processing of the Parmar tapes as well as a reliable accounting of their destruction. Jardine testified that CSIS's relationship with him was not open or cooperative, and that CSIS was not forthright.

Jardine was worried about the possibility of defence challenges to the search warrant used to seize key items of evidence from Reyat's home, given that the warrant application relied on CSIS information but concealed CSIS's role as a source. He was also concerned about potential abuse of process arguments being made by the defence because CSIS's erasure of the Parmar tapes made it impossible to disclose this possibly relevant material to the defence. The Crown would need to show that the erasures had been done innocently, and Jardine believed he required more CSIS information in order to do that. Despite numerous high-level meetings intended to resolve the issues, Jardine did not obtain the totality of the information he sought from CSIS until 1991.

In his March 1991 decision in the case against Reyat, Justice Paris stated that it was clear that the tape erasures occurred strictly as a result of the routine application of administrative policy and that there was no question of improper motive. However, in the Air India trial, Justice Josephson found, following a concession on the point by the BC Crown prosecutors, that the CSIS erasure of the Parmar tapes was unacceptably negligent. The evidence before the Commission justifies the latter conclusion, even though CSIS did not repeat its concession regarding this negligence in these proceedings.

The Commission found no evidence that CSIS deliberately attempted to suppress evidence by erasing the Parmar tapes. Rather, CSIS personnel handling the Parmar intercepts seemed to have been operating in "default mode," erasing tapes regardless of their content and without any awareness of the applicable retention policies. Although these policies were somewhat vague, had they been applied they may have led to the preservation of at least some of the tapes.

With the tapes erased, only the translators' and transcriber's original notes were available to the RCMP. While CSIS continues to claim that there remains no reason to suspect that the erased tapes contained information about the planning of the Narita and Air India terrorist attacks, a review of the original intercept tapes would, at the very least, have yielded a better understanding of how Parmar employed coded language. Without the tapes, it is simply impossible to determine what information, if any, was lost due to the Parmar tape erasures or the potential importance of that information to the investigation and prosecution of the Air India and Narita bombings. It is clear that CSIS did not take the necessary steps to properly educate and train the translators and transcribers for this investigation, and this fact leaves the quality of CSIS's

analysis of the intercepts in a state of uncertainty. Even worse, as inadequate records were kept throughout the processing of the Parmar tapes, it remains uncertain whether all of the tapes were even listened to prior to being erased.

CSIS officials have pointed to the conviction of Reyat on manslaughter charges as a signal of success in the RCMP-CSIS relationship. If it was a cooperation success, it was one that was achieved only after a great deal of posturing and delay. Another success of sorts occurred at the Air India trial, where, despite the finding of “unacceptable negligence,” at least the trial itself was not cratered by disclosure issues, though in the end the prosecution failed on other grounds. These “successes” should not be mistaken for an indication that the information-sharing problems between CSIS and the RCMP in connection with criminal prosecutions have been resolved, since they largely resulted from CSIS’s view of the Air India prosecution as a special case, requiring it to derogate from its usual practices and policies.

In fact, problems of information sharing were present throughout the Air India narrative. CSIS failed to share information with the RCMP about important facts relevant to the police investigation, including, notably, its suspicions that Parmar – the RCMP’s main Air India suspect - may have died in October 1992, after being captured, allegedly tortured, and killed in custody by Indian authorities. Its failure to share information also had significant logistical implications for the investigation. The RCMP only discovered in early 1996 that CSIS possessed over 200,000 tapes containing the intercepted communications of Parmar, Bagri, and Malik, among others, recorded between 1985 and 1996. As a result of this disclosure, the RCMP had to delay submitting its new wiretap application until it had reviewed 60,000 pages of intercept logs.

3.12 Overall Government Response to the Air India Bombing

Government agencies, in both the pre-bombing and post-bombing eras, often followed policies and procedures blindly, with no real sense of the concrete impact of their conduct and with little reflection about the goals they were pursuing or the best manner of achieving them. The result was that individuals and units within the Government performed their functions mechanically, often without co-ordination and without the imagination or flexibility necessary to enable the system to work in an effective manner.

Ironically in its responses to the victims’ families, to external reviewers and to the public, the Government showed more coordination and a clearer sense of purpose than in its implementation of pre-bombing security measures and its investigation of the terrorist attack. Government agencies united to defend and justify their behaviour in order to avoid having to answer detailed enquiries about their processes, or to avoid having to make changes not of their own choosing. These goals were clear and were vigorously pursued with some success. As a result, an in-depth independent review of the terrorist attacks on Air India and an identification of deficiencies in the agencies’ performance were inordinately delayed. A great deal of information was revealed to the public for the first time during this Inquiry, more than twenty years after the terrorist attack.

Notwithstanding the resistance to review, it cannot be said that the government agencies were attempting to hide any specific “smoking gun.” In reality, although they reflexively adopted their defensive stances, for the most part the agencies did not know what they were hiding, or even whether there was anything to hide. They simply appear to have been trying to avoid public criticism, to avoid civil liability, and to avoid having to answer for their actions to independent or external reviewers whom they did not trust to pass fair judgment on their policies, practices and behaviour.

The positions taken by the government agencies over the years were effective in blocking a full public examination of the facts and circumstances that gave rise to the terrorist attacks on Air India as well as blocking any meaningful review of the investigation of the attacks. The families of the victims received practically no information or assistance, with the notable exception of the sensitive and elaborate mechanisms implemented by the RCMP Air India Task Force to liaise with and to provide support to the families of the victims over the course of the Air India prosecution. They received no answers from their Government and were often treated in a deplorable manner, while the government agencies continued to pursue the twin goals of deflecting public criticism and avoiding liability to pay compensation to the families.

3.12.1 The Government’s Past Response

Defensiveness

From the very outset, the Government adopted a defensive stance. Within days of the bombing, direction regarding the Government position to be taken on the bombing was passed from the public service to political staff in the Prime Minister’s Office. The result was that public statements were issued denying any mistakes and affirming the absolute adequacy of the security measures in place.

Defending the Government from potential civil liability to the victims’ families soon became a priority. Instructions were issued to avoid any acknowledgement that the crash of Flight 182 was caused by a bomb, a fact apparently evident to the seamen recovering bodies on the fateful day. A preoccupation with avoiding any statements that might compromise the Government’s ability to deny civil liability came to colour the interaction with the families of the victims who were treated more as if they were adversaries than victims.

Efforts were made to limit the funds expended to respond to their concerns. Families in financial need were essentially told to apply for welfare rather than expect compensation from Government. It was not until 1995 that the RCMP decided to hold meetings with the families to inform them about the status of the investigation. For its part, CSIS steadfastly refused to participate in such meetings until 2005, based on legal advice.

Eventually, the victims' families launched civil suits seeking damages. The government lawyers who were instructed to resist the families' claims were sent to the Coroner's Inquest in Ireland and to the Kirpal Inquiry in India. The Government instructed those lawyers to ensure that evidence about Canada was presented in the best light possible. Government counsel argued that there was no conclusive evidence that a bomb had caused the Air India crash, even while the RCMP was conducting a criminal investigation based entirely on the premise that the crash had been caused by a bomb and was gathering strong circumstantial evidence to support that premise.

The Government's position was that no finding could be made that Canadian security measures were inadequate. Underlying the position was an apprehension that a finding that Canada was blameworthy would bring about unavoidable political and financial costs, including an obligation to compensate the families, something the Government was fiercely determined to avoid. A decision was made to avoid filing a Canadian Aviation Safety Board (CASB) report that concluded that the crash had been caused by an explosion, not because the report was inaccurate, but because it implied that there may have been security failures at Canadian airports and because it linked the Air India and Narita bombings in a manner that would inevitably point to Canada as the location where the bomb was put on board the aircraft.

Defending the civil lawsuits was a matter of the highest priority to government agencies. CSIS finally stopped erasing the tapes for its intercept of Parmar's communications – not because of the criminal investigation, but at the express direction of the Department of Justice some nine months after the bombing – for purposes of civil litigation.

Media reports and their potential impact on the public image of the agencies also played a surprising role in the investigation. The RCMP only began actively to pursue certain aspects of its investigation in response to critical media reports or to deal with public relations concerns. The RCMP followed up on the November 1984 Bomb Plot information after allegations appeared in the media that the Force had been warned about the Air India bombing and had failed to act. The RCMP effort in 1995 to resolve all outstanding investigative issues was made with an eye to the ten-year anniversary of the bombing and with the purpose of being able to make a pre-emptive public statement, "...rather than reacting to media queries afterwards."²

The CSIS Director attempted to defend and justify the erasure of the Parmar tapes in a television interview, even while the BC Crown prosecutor was still waiting for answers from CSIS in this respect. In subsequent discussions, CSIS insisted that the erasure not be referred to as "destruction of evidence," in light of concerns about its reputation and potential civil liability.

² Exhibit P-101 CAF0391, pp. 1-2.

Resistance to Review

When the Security Intelligence Review Committee (SIRC) first attempted to conduct a review of CSIS's activities in connection with the Air India bombing in the late 1980's, government agencies united in successful opposition to the review, citing possible interference with the ongoing criminal investigation and the prosecution of Inderjit Singh Reyat. The government agencies were reluctant to invest resources to shed light on deficiencies in their response. They also cited a concern that a review could negatively affect the Government's position in the civil litigation, fearing that negative conclusions could be used against them and that the release of information unhelpful to the Government's case would mean the lawsuit would become more costly to the Government.

By the spring of 1991, Reyat had been convicted for his role in the Narita bombing, and calls for a public inquiry were once again mounting. The agencies again took an aggressive approach in their attempts to stave off external review. An Interdepartmental Working Group formed by the Solicitor General's office prescribed a common front against a possible SIRC review on the basis of potential damage to the ongoing RCMP investigation, even though the ongoing RCMP initiatives were limited to wreckage recovery. When the review finally did proceed, the RCMP consciously limited the amount of information provided to SIRC and avoided any criticism of CSIS. The RCMP justified its approach on the basis of its desire to protect the ongoing investigation, then in its sixth unsuccessful year.

The opposition to external review did not end with SIRC. When it appeared that the RCMP investigation had reached an impasse in 1995, the Government considered whether or not to call a public inquiry. Rather than admitting in public that its investigation was at an impasse, the RCMP asked Gary Bass to review the Air India file. As a result, a renewed investment in the investigation was made. Commendable as the re-investigation may have been, it is unfortunate that it was the spectre of a public inquiry that motivated this long-overdue development.

The need to protect the "ongoing investigation" has continuously been invoked by the RCMP to justify insulating its actions from review and to prevent public disclosure of information by external reviewers, including the Commission. In its aggressive invocation of the precept of police independence and in its accompanying warnings about the potential to harm ongoing investigations, the RCMP at times has been, in the words of current RCMP Commissioner William Elliott, "...more standoffish than independent and our standoffishness has not worked to our advantage."³

Once the review by the Honourable Bob Rae was announced in 2005, the RCMP and CSIS attempted to demonstrate that initiatives were now in place to address long-standing issues, including cooperation problems. Many of these issues had been left unaddressed since 1985. It is as if the prospect of an external,

³ Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11822-11823.

independent review moved the agencies to 'fix' problems so as to avoid the imposition of measures that would not be of their own choosing.

3.12.2 The Government's Voice

Throughout the post bombing period the Government has attempted to "speak with one voice", and thereby to avoid situations where its agencies would air their disputes and debates in public or reveal information that might lead to public criticism.

Counsel appointed to defend the civil litigation presented a unified position on behalf of Canada at the Coroner's Inquest and at the Kirpal Inquiry. In dealing with the SIRC review, the Air India Working Group took on the role of coordinating all Government agencies' briefings, with a mandate to ensure that the Government would present a consistent version of the facts, even at the expense of completeness and comprehensiveness. The RCMP briefing to SIRC took a particularly positive spin, with little or no criticism of CSIS and an emphasis on the good interagency working relationship. This position was in stark contrast with internal RCMP correspondence that emphasized failures in cooperation and was replete with criticism of CSIS.

Not surprisingly, SIRC took away from this briefing the view that issues of cooperation between CSIS and the RCMP had not had a significant impact on the RCMP investigation. The RCMP did not intervene to qualify or correct this perception, and chose not to comment on the SIRC report when it was released. The RCMP would come to regret these decisions years later and to view the findings in the SIRC report as potentially compromising the eventual prosecution of Malik and Bagri.

In the briefing it provided to Rae in 2005, the RCMP adopted an entirely different approach. Without Government-wide coordination, the briefing was more detailed (though unfortunately not always entirely accurate) and more critical. It even called into question the very SIRC findings that were based on the RCMP's briefing to SIRC. The RCMP provided a detailed list of its grievances about the behaviour of CSIS. CSIS responded in kind by noting that some information in the RCMP submission was "simply incorrect."

External review should be an opportunity for the institutions to reflect on possible past mistakes and on the measures that might be implemented to avoid repeating them. It should not be seen as an opportunity to head off changes that might be suggested by the reviewer. Nevertheless, the agencies' positions in their briefings to Rae, with all their defensiveness and finger-pointing, had at least the merit of constituting a more genuine representation of their respective institutional views, as opposed to the Government's "one voice".

3.12.3 That Was Then, This Is Now

The strategy adopted for two decades by CSIS and the RCMP when responding to external review has generally been to argue that any problems in interagency

cooperation that may have arisen in the past had since been resolved through initiatives that had been implemented to improve cooperation.

As revealed by the RCMP's submissions to Rae, the message of "that was then, this is now" was never particularly accurate, despite its repeated invocation. The RCMP explicitly admitted that many of the challenges faced in 1985 still remained in 2005, despite the earlier messages, including that given to SIRC in 1992, that all cooperation problems were resolved.

CSIS, on the other hand, did not refer to any ongoing problems in the current relationship in its briefing to Rae, and continued instead to point to the progress that had been made in the relationship and the fact the agencies were now working closely together.

3.12.4 The Present Inquiry

The Prime Minister called this Inquiry to request answers to seven difficult policy questions relating to the past and present practices of government agencies in relation to the Air India matter and to terrorism and aviation security more generally. The Inquiry was also meant to provide long-awaited answers to the families of the victims. The approach of the government agencies to this Inquiry has, in many ways, followed the pattern of reticence and defensiveness they adopted throughout the post bombing period.

Although a public inquiry sometimes looks like a trial, with examinations and cross-examinations conducted by lawyers, it is essentially quite different. Its purpose is not to find liability, but rather to get at the truth and to learn from past mistakes. As its name suggests, it is an examination (or, to use a word with negative connotations in the English language) it is an "inquisitorial" process rather than an adversarial one.

Since it is the Government that calls the Inquiry and sets its mandate, the Government's ultimate interest lies in having the Inquiry succeed in getting at the truth in order to allow it to make useful recommendations intended to resolve problems and to avoid the repetition of past mistakes. For that endeavour to succeed, and for the Inquiry to reach its goals, it is crucial that Government be as forthcoming, transparent and candid as possible in providing information.

The course of this Inquiry has demonstrated that old habits sometimes die hard. The same defensiveness and reflexive secretiveness that the Commission noted in the attitude of the government agencies in dealing with the aftermath of the bombing were at times evident during the course of this Inquiry.

Each of CSIS, the RCMP and Transport Canada have valid interests in preventing disclosure of any information that would threaten national security, ongoing criminal investigations and the security arrangements at Canada's airports. Those legitimate concerns made it inevitable that relevant documents and information held by Government would need to be reviewed and, where necessary, "redacted" (i.e. censored) prior to public disclosure so as to protect

these interests. In practice, however, the approach to redaction taken by the agencies proved to be overly broad and seemingly based on a mechanical application of a set of abstract rules with little, if any, attention paid to any actual harm that might ensue from disclosing information that was more than two decades old.

The initial position taken by the agencies resulted in hundreds of documents being largely, or even entirely, blacked out. The Government took extensive objection to the public disclosure of information, to the point where no meaningful public examination would have been possible. It was only after the direct and welcome intervention of the Prime Minister that these positions were reconsidered and it became clear that most of the information that was originally sought to be suppressed was capable of being disclosed with no risk to Canada's actual security or to its legal interests. This exemplified former RCMP Commissioner Zaccardelli's observation that federal agencies tend to "... over-classify... over-redact and then... ultimately get embarrassed by it being shown not to have been necessary so many times."⁴

While matters improved to the point where it became possible to hold public hearings after the Prime Minister's intervention, problems persisted.

In his evidence, former SIRC Chair Ronald ("Ron") Atkey noted that, in his experience, "CSIS were very good at responding to your questions, but only to your questions."⁵ The Commission experienced a number of examples of this reticence, which, when combined with continuing examples of overly aggressive claims for National Security Confidentiality, made telling the CSIS story more difficult than was necessary.

Transport Canada was undoubtedly justified in trying to prevent unnecessary disclosure of security details related to airports and aviation, but it did not always exercise appropriate restraint, particularly with regard to historical information of key importance to the Commission's Terms of Reference. Its unfounded claims of privilege regarding certain information not only unnecessarily delayed public disclosure, but also limited public debate and discussion of clearly relevant matters. The Government position was reminiscent of the Government-wide two decade long preoccupation with avoiding any potential admissions of error or of substandard performance in the destruction of Flight 182.

Most troubling, however, was the RCMP's reliance on the notion of the possible effects on the "ongoing investigation". The spectre of this danger was used in ways that were occasionally inappropriate and that had the potential to interfere with the work of the Commission.

In January 2007, the RCMP was contacted by an individual, Mr. G, who was an important figure in the Sikh extremist movement in 1985 and who was believed

⁴ Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11082.

⁵ Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5969.

to have knowledge about the Air India bombing. Mr. G wanted to testify in this Inquiry. Without advising the Commission about Mr. G's approach, the RCMP made the unilateral decision, that its "revived" investigative interest in Mr. G should have priority over the work of the Commission and that it should have the first and exclusive opportunity to investigate any information Mr. G might have. The RCMP proceeded to request additional redactions to the material that was to be entered into evidence about Mr. G, telling the Commission that Mr. G had recently demonstrated a newfound willingness to cooperate, and that the redactions were necessary to protect this "new initiative" in the ongoing investigation. The RCMP did not advise that Mr. G wanted to speak to the Commission.

The last time the RCMP had spoken to Mr. G before this Inquiry was in 2000. At that time, Mr. G had provided information, but the prosecution decided not to call him as a witness in light of the contradictions in his past statements. The RCMP always believed that Mr. G knew more, but for the past seven years had done nothing to pursue him.

Despite Mr. G's repeated requests to testify before the Commission throughout the following months, the RCMP did not advise the Commission. Instead the RCMP asked Mr. G to delay his plan to contact the Commission. During a formal interview with the RCMP in September 2007, Mr. G complained that he had not been able to contact the Commission. RCMP investigators told him that he could contact the Commission if he so wished, but that Commission staff "were not investigators" and that they would simply refer him back to the RCMP.

The RCMP had not been successful in the past in obtaining from Mr. G the additional information the Force believed he possessed and it was no more successful in 2007. Nevertheless, even after it had dropped its pursuit of Mr. G's information, the RCMP still did not advise the Commission of Mr. G's interest in testifying at the inquiry, nor did it take steps to allow lifting of the additional redactions it had sought on the basis of this new "ongoing investigation" initiative. It was only by accident that the Commission discovered that Mr. G was potentially interested in testifying. It was not until March 2008, months after the Commission had specifically asked whether Mr. G had expressed any interest in speaking with representatives of the Inquiry, that the RCMP finally advised the Commission, a month after the hearings were concluded, that Mr. G "...was at one point prepared to speak with representatives of the Commission."

All these lapses by the various agencies seem to the Commission to have been unnecessary and to have been the product of years of habit rather than of any intent to interfere with the work of the Inquiry. Taken together, they seem to fall in line with the defensiveness and reluctance to acknowledge error that characterized the reflexive and un-reflective responses of these agencies throughout the post bombing period.

It is notable that, perhaps because of this default defensiveness, no one who testified on behalf of any of the agencies of government thought it appropriate

to apologize to the families of the victims for the errors and omissions of the Government and its agencies or for the treatment to which the families have been subjected by the Government as a result of its apparent determination to avoid an obligation to provide them with meaningful compensation.

It is telling that the only Government witness who expressed regret about the quality of the information that had been provided to the families was a former CSE (and current CSIS) employee, who asserted bluntly that the families had been misled by Bartleman's testimony and by his implicit criticism of the Government's pre-bombing conduct. Interestingly, the witness also insisted that he would not feel responsible for the families' plight, based on what turned out to be his inaccurate conclusion that no CSE intelligence existed that could have forewarned of the bombing or led to a different security response.

While this particular incident stands out as a rather astonishing and extreme example of denying the negative, in general, government witnesses seemed nearly unanimous in emphasizing the positive in their testimony. With the exception of the thoughtful and balanced testimonies of former CSIS DG CT James ("Jim") Warren, of former High Commissioner to India William Warden, and of former RCMP Staff Sergeant Robert Solvason, government witnesses seemed loath to acknowledge that any errors at all had been made or that there were any deficiencies in performance by government agencies. This sunny attitude spilled over into the submissions of the Attorney General of Canada, through which the Government of Canada and all its agencies spoke with one voice during the Inquiry.

Notwithstanding the fact that the Government called this Inquiry, asking for recommendations to solve problems and deficiencies, and to prevent the recurrence of past problems, the final position presented on behalf of Government is that, without admitting that there were any serious deficiencies in the past, whatever problems there might have been are all in the past. That was then; this is now, and no significant change to legislation policy or practice is necessary or advisable.

The Commission disagrees. Errors were made. Each of the relevant agencies of government showed clear deficiencies in performance that were often related to, or accompanied by, deficiencies in policy and in the understanding or application of legislation.

Volume Three chronicles in detail some of the deficiencies in performance. Volumes Three and Four deal with specific recommendations to address a number of the systemic, regulatory and legislative deficiencies.