

Air India Flight 182  
**A Canadian Tragedy**

VOLUME TWO  
Part 1: Pre-Bombing

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**VOLUME TWO**  
**PART 1: PRE-BOMBING**

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Volume Two: Part 1: Pre-Bombing

## **VOLUME TWO**

### **PART 1: PRE-BOMBING**

#### **CHAPTER I: WHAT WAS KNOWN ABOUT THE THREAT?**

##### **1.0 Introduction**

The first issue in the Commission's mandate<sup>1</sup> is to decide whether there were "... deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985."<sup>2</sup> The first question is: were there intelligence failures prior to June 22, 1985?

In answering this question it is important to look at all the stages of threat assessment, commencing with the development of intelligence.

There are four phases in the intelligence cycle: tasking, collection, analysis and distribution. A significant failure in any of these will lead to what is called an intelligence failure.<sup>3</sup>

To help answer the question of what took place during the pre-bombing period (events prior to June 22, 1985), the Commission has focused on a series of "critical incidents" – real, but singularly dramatic, episodes that serve to illustrate gaps that occurred in the recognition of responsibility, the development of an intelligence plan, the assignment of resources and the recognition, handling, assessment and dissemination of information.

A word of caution is required. Hindsight always makes it easier to notice gaps, identify errors and point out failures. The reader is urged to digest the details of the following events. Each description may contain clues about the ways in which systems, structures and individual actions could have triggered a better or different response to pieces of information that arose in various contexts.

In the critical incidents that follow, a series of seemingly unrelated clues appear that may fit together to solve a puzzle. At the time these events took place, there was no awareness that such a puzzle existed. Thus, the Commission has a retrospective advantage.

The puzzle pieces take the form of possible leads, tips and warnings: some coming from human informants, some coming from intercepted conversations,

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<sup>1</sup> Adapted from Remarks by Mark Freiman, Lead Commission Counsel, Transcript vol. 20, April 30, 2007, pp. 1867-1870.

<sup>2</sup> Terms of Reference, P.C. 2006-293, para. b(i).

<sup>3</sup> Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1442-1443.

others coming from the intelligence community in other countries, still others coming from direct observation by domestic security and intelligence personnel. The pieces provide evidence of what the Canadian security and intelligence community were looking for, what they thought they knew, what they believed they did not know and how they planned to fill in information gaps.

These critical incidents are presented as a series of episodes, each illustrating a single bit of information, a potential clue or a proposed response to a known information gap. They identify potential issues with respect to the intelligence cycle and the flow of information during the period leading up to the bombing. Serving as markers for specific issues and possible difficulties in the intelligence cycle, these critical incidents also underpin the Commission's more detailed inquiry into the larger question of intelligence flow in its historical, institutional and practical contexts.

These fragments combine to form a mosaic; a larger picture that gives the reader a better appreciation of what happened. At the same time, they identify specific details that underlie the Commission's conclusions and recommendations.

References to these critical incidents appear often in the chapters that follow, and will help the reader understand the overall context in which decisions and actions were taken.

## 1.1 November 1984 Plot

### The November 1984 Plot Revealed by Two Independent Sources

By October 1984, the RCMP had learned from two independent sources about a plot to bomb two Air India flights. Here, they are identified as Person 1 and Person 2.<sup>4</sup> In 1984, these two individuals, who had known each other since 1977, moved in shadowy circles in the Vancouver area. They both had extensive connections to a web of criminal activity within, and extending beyond, the BC region. Person 1 told the Inquiry of his dubious past, with a criminal record dating back to 1956 and approximately 16 convictions including theft, break and enter, armed robbery, and false pretences. For the past 15 years, however, he has had no criminal charges or convictions.<sup>5</sup>

On June 23, 1985, when Constable Rick Crook<sup>6</sup> of the Vancouver Police Department (VPD) learned of the fate of Air India Flight 182 and of the explosion

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<sup>4</sup> The individuals and locations associated with this "critical incident" have been provided with aliases in agreement with the Government of Canada. Though Commission counsel do not accept the Government of Canada's position that the individuals associated with this story are "informants," the individuals involved are at some risk and summaries of the relevant documents were created and assembled in an agreed chronology for the purpose of entering the content into the public record before the Commission.

<sup>5</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1932-1974.

<sup>6</sup> Crook is currently a temporary civilian employee with the RCMP and the Integrated Proceeds of Crime Section in Vancouver: Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1879.



that had taken place in Narita, his thoughts immediately returned to his October 1984 interview of Person 2,<sup>7</sup> and the information Person 2 had provided about a terrorist plot to bomb Air India planes. The fact that there had been two bombs, that the origin of the plot appeared to be out of Vancouver, and that there was thought to have been a connection to Sikh extremism led Crook to suspect that the plot he had learned about in 1984 was, in fact, related to the plot that had been carried out that day.<sup>8</sup>

The RCMP apparently had the very same suspicion.<sup>9</sup> Early on the morning of the bombing, Sgt. Wayne Douglas, of the RCMP's E Division National Criminal Intelligence Service (NCIS) Terrorist/Extremist unit in Vancouver, received a phone call at home from RCMP HQ in Ottawa<sup>10</sup> instructing him to go and speak with Person 2, who was at a remand centre in the lower mainland at the time, about the information that Person 2 had provided to police in the fall of 1984 about a Sikh extremist plot to bomb an Air India plane departing from Canada.<sup>11</sup>

In spite of CSIS's concern in 1984 that there was "... a real possibility that Sikhs will damage an Air India plane,"<sup>12</sup> and in spite of information indicating that the plot was continuing even if it could not proceed in the time frame initially planned, the RCMP, from late November 1984 up to the date of the bombing, had taken no further steps to investigate the alleged plot.

### **Person 1 Forewarns of Plot: Sikh Extremists to Bomb Air India**

In the fall of 1984, Person 1 was approached by, and met three times with, Person 2 and a third man called "Z"<sup>13</sup> to organize and actually put a bomb on an Air India plane. He was offered approximately \$200,000, which included payment for the Air India bombing, as well as for his involvement in a separate plot to target Indira Gandhi. Person 1 was asked to find explosives to make a bomb with either a remote device or a time clock. He was told that the bombing was intended as revenge against the Indian government for the invasion of the Golden Temple. He was to go to Montreal to try to obtain access to the area where the maintenance work for Air India was conducted.<sup>14</sup> During his second meeting with Person 2 and with Z, Person 1 was shown a briefcase full of cash.<sup>15</sup> He said

<sup>7</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1880.

<sup>8</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1879-1881.

<sup>9</sup> Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2615; Exhibit P-120(c) pp. 3-4, (entry for June 23, 1985: doc. 526-3, p. 13).

<sup>10</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4096.

<sup>11</sup> Exhibit P-120(c), entry for June 23, 1985, pp. 3-4; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p.4096.

<sup>12</sup> Exhibit P-120(c), p. 2: (entry for Oct. 26, 1984: doc 229-3, p.5

<sup>13</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1931. This Z is not the same person as Mr. Z referred to in Section 2.5.5 (Post-bombing), Mr. Z.

<sup>14</sup> The above evidence comes from Testimony of Person 1, vol. 20, April 30, 2007, pp. 1937-1958.

<sup>15</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1940-1941. An internal RCMP report dated in 1999 states, "If Person 1 was being truthful about Z being at all 3-4 meetings with Person 2 and Z actually carried the briefcase full of money to the second meeting and departed with it, then Z certainly was not totally forthcoming during his 1988 interview": Exhibit P-120(c), pp 10-11 (entry for Feb. 12, 1999: RCMP.SUPERTEXT.0001

that "...when they showed me the money and the equipment they want, I knew they were serious." Person 1 said that he had never met the masterminds of the plot and that Z was acting as the middleman, bringing Person 2 and Person 1 into the plot, but that someone behind Z was making the decisions.<sup>16</sup>

In 1984, Person 1 met a number of times with members of the RCMP's Vancouver Drug Squad (VDS). During these meetings, he provided information about criminal activity in the Vancouver area, including within the Sikh extremist community. In September 1984, two days after his first meeting with Person 2 and Z,<sup>17</sup> Person 1 provided information to the RCMP VDS about a plot to bomb Air India. An RCMP Investigation Report indicates that Person 1 told police that a group of East Indians was planning to plant a bomb on an Air India flight in Montreal that would detonate on arrival in India.<sup>18</sup> The RCMP Report does not contain the level of detail about the meetings recounted by Person 1 in testimony, and does not mention by name the individuals referred to in this Report as Person 2 and Z.

From the documents provided to the Commission by the Government of Canada, the identity of Z does not appear in police reports in the pre-bombing period.<sup>19</sup>

The information from the RCMP's VDS September 1984 interview with Person 1 was apparently passed by telephone to the Montreal Drug Squad on September 20, 1984.<sup>20</sup> There is no indication that it was shared with RCMP Protective Policing or with anyone in the RCMP or CSIS involved in the investigation of national security offences or in the threat assessment process. No investigation or further action was taken with this information until over a month later when strikingly similar information was received and passed to the RCMP by Rick Crook and Bill Warwick of the VPD.

### **Person 2 Forewarns of Plot: Two Bombs. Two Planes.**

Rick Crook, then on the Strike Force Surveillance Team,<sup>21</sup> was told by the regional Crown counsel of an individual in custody, Person 2, who wanted to speak to the police. In early October 1984, Person 2 was arrested by the VPD on charges unrelated to Air India and was subsequently released on bail.<sup>22</sup> A week later,

<sup>16</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1941.

<sup>17</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1939-1972.

<sup>18</sup> Exhibit P-120(c), p. 1 (entry for Sept. 1984: doc 1)

<sup>19</sup> Z is first named in a July 10, 1985, report by Detective Dave Randhawa of the VPD. Randhawa interviewed Person 2 who identified Z as the individual who left India around the time of the attack on the Golden Temple and brought back a plan to hijack an Air India aircraft. According to Person 2, the attack was cancelled because too many people were involved. This is when the plan was raised to bomb rather than hijack an aircraft. See Exhibit P-120(c), p. 4 (entry for July 10, 1985: doc 493-3), Person 1 identified Z's possible involvement when he was interviewed by Sgt. Douglas in March 1986: Exhibit P-120(c), p. 7 (entry for March 1986: doc 16),

<sup>20</sup> Exhibit P-120(c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p. 26).

<sup>21</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1879.

<sup>22</sup> Exhibit P-120(c), p.1 (entry for Oct. 5, 1984: doc 23); Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.

Person 2 was arrested again, this time for conspiracy to commit murder (again, unrelated to Air India)<sup>23</sup> and was held without bail.<sup>24</sup>

Crook was directed to speak with Person 2 and was given instructions not to make any promises, but to get details about the alleged plot to bomb an Air India plane.<sup>25</sup> At the time, his general duties did not include dealing with Sikh extremism, so his understanding of the issue was limited. He and his partner, Detective Bill Warwick, interviewed Person 2 in the presence of Person 2's lawyer, and the interview was recorded. Prior to commencing, Person 2 signed a disclaimer (witnessed by the officers and Person 2's lawyer) indicating that he understood that the police had no authority to make any arrangements now, or in the future, in exchange for his information and that he was providing information about an alleged bombing of an airplane of his own free will and accord.<sup>26</sup> A transcript was produced from the recording. Early on in the interview, Person 2 reveals details of the alleged plot, which involved the potential use of a back-up bomb and two planes:

**Officer:** O.K. Let me just get it straight. They're, if I understand correctly  
**Person 2:** Yah  
**Officer:** There's a plot to put a bomb on an airplane right?  
**Person 2:** They said yeah.  
**Officer:** O.K.  
**Person 2:** Maybe two.  
**Officer:** Maybe two airplanes?  
**Person 2:** Well is it two, two, two, yeah. I heard their problem, they say if it doesn't blow ... what happens. They said ... some extra when ....  
**Officer:** Back up, back up  
**Person 2:** I \_\_\_\_\_  
**Officer:** A back up bomb?  
**Person 2:** Yeah.  
**Officer:** What kind of airplane?  
**Person 2:** Air India 747.  
**Officer:** Air India 747. Is this going to be leaving from Montreal?  
**Person 2:** Yes.  
**Officer:** And it's going to be, when?  
**Person 2:** Well I don't know the exact date, you know, the time. A flight leaves only from Montreal in Canada.<sup>27</sup>

Because Air India was to release flight schedules on October 15<sup>th</sup>, there was not yet a proposed date for the bombings. Once the change in schedule was known, it would take 10 days to organize the bombing, at which point the "O.K." could come "any day."<sup>28</sup> Person 2 stated that no Sikhs were travelling on Air India

<sup>23</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.

<sup>24</sup> Exhibit P-120(c), p. 1 (entry for Oct. 12, 1984: doc. 23); Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.

<sup>25</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1880-1881.

<sup>26</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1882-1884.

<sup>27</sup> Exhibit P-121, pp. 3-4. This is the original record of the transcript.

<sup>28</sup> Exhibit P-121, pp. 37-38.

flights at the time<sup>29</sup>, and that the purpose of the bombing was to “...strike at the government” of India and to get back at Indira Gandhi.<sup>30</sup> Person 2 felt that this plot was serious and would be carried out.<sup>31</sup>

Person 2 reported having met three to four weeks prior to the interview with a small group of people who talked about the planning and financing of the bombing.<sup>32</sup> Crook’s impression was that the actual genesis of the plot was to be found with other unnamed individuals who were Sikhs of East Indian origin.<sup>33</sup> During the interview, Person 2 was asked if he would disclose the names of the individuals involved in the plot.<sup>34</sup> Crook said that he felt that Person 2 would provide those names, but his lawyer stopped him and requested that something be done for his client in exchange for the names.<sup>35</sup>

Person 2 identified Person 1 as being involved in the plan in return for financial compensation of “...more than hundred thousand.”<sup>36</sup> Person 2’s lawyer said that Person 1 had contacted him to act as a receiving agent and that a hundred thousand dollars would be put into the lawyer’s trust fund on the Monday or Tuesday of that week.<sup>37</sup> Crook’s impression was that this money was “...more-or-less proof that some money had been paid in furtherance of the plot,” or was at least forthcoming.<sup>38</sup> At the time, Crook was unable to ascertain whether Person 2 was an integral part of the plot and whether keeping him in custody could prevent the plot from being carried out.<sup>39</sup> Person 2 said there was a possibility that the plot could go ahead without his involvement.<sup>40</sup>

Crook was unaware that Person 1 had previously and independently gone to the police with similar information about the plot. He testified that if he had known about Person 1’s earlier discussions with police, he would have viewed this as a confirmation of the existence of the plot and his approach to the interview of Person 2 would have been different. He suggested that he might have stayed in the room until he obtained the names of the people involved.

After the interview, Crook met with his immediate supervisor at the VPD to brief him on what they had learned from Person 2. He also prepared a report about the interview indicating that he found Person 2 to be less than truthful but was concerned that the plan “...is a reality and may be accomplished at some time.”<sup>41</sup>

<sup>29</sup> See Exhibit P-101 CAC0109, pp. 1,3 and Exhibit P-101 CAD0180, p. 106 .

<sup>30</sup> Exhibit P-121, p. 4. See also Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1891.

<sup>31</sup> Exhibit P-121, p. 6.

<sup>32</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1892-1893; Exhibit P-121, p. 9.

<sup>33</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1900.

<sup>34</sup> Exhibit P-121, p.6.

<sup>35</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1894; Exhibit P-121, pp. 7, 13-14.

<sup>36</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1911-1912; Exhibit P-121, p. 21.

<sup>37</sup> Exhibit P-121, pp. 21, 26.

<sup>38</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1911. The Attorney General of Canada maintains in its Final Submissions that “No tangible steps were taken in support of the plot”: Final Submissions of the Attorney General of Canada, Vol. I, para. 156.

<sup>39</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1909-1910.

<sup>40</sup> Exhibit P-121, pp. 25-26.

<sup>41</sup> Exhibit P-120(c), pp. 1-2 (entry for October 1984: doc 231-3, pp 2-4).

Crook testified that what gave him concern that the plot could be factual was "...the absolute magnitude of what he was talking about" and that "...if this was even being spoken about that it needed to be explored as fully as possible to see if it was a factual or potential reality." Crook wanted to continue to pursue the matter himself but could not do so because the VPD did not have the ability to handle an investigation of such national scope and magnitude. After he passed on the information, Crook had no further involvement in the matter.<sup>42</sup>

### **Person 1's Attempts to Obtain Further Details of Bomb Plot from Person 2**

Before Person 2 was arrested a second time and interviewed by the VPD, Person 1 met with Detective Brian Sommerville of the VPD Strike Force. Person 1 testified that he begged Sommerville not to arrest Person 2 because he "...wanted to get the final information regarding the bombing of Air India."<sup>43</sup> Person 1 felt that Sommerville did not take his request seriously, and Person 2 was arrested the next day.<sup>44</sup>

An internal RCMP report confirms that Person 1 spoke to Sommerville about the bomb plot just prior to the arrest. Sommerville reported that Person 1 told him that they wanted to get a bomb on the plane, and that he had said that he would do nothing unless \$80,000 was deposited in trust in his lawyer's office.<sup>45</sup> According to the internal RCMP report, a tape was made by the investigator of the interview containing these comments as well as information about other investigations.<sup>46</sup>

Of some note, Person 1 was not shown the police reports about his dealings with Sommerville prior to his testimony at this Inquiry. In fact, that information was not declassified until a considerable time after his testimony.

Person 1's statement that Person 2 insisted on the money being put into trust is also consistent with the information relayed by Person 2 and his lawyer. This further corroborates the likelihood that the plot discussions were serious and that steps had been taken to secure a transfer of funds.

Despite the obvious national security aspect to Person 1's information, the systems in place at the time did not allow for any RCMP input at the pre-arrest stage of the VPD's investigation. It is impossible not to wonder what would have happened if CSIS or the RCMP had been involved earlier. Had the national security implications been recognized earlier, the arrest and the charges against Person 2 might have been seen as opportunities to learn more information about the alleged bombing plot.

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<sup>42</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1914-1920.

<sup>43</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.

<sup>44</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1942-1944.

<sup>45</sup> Exhibit P-120(c), p. 1 (entry for Oct. 12, 1984).

<sup>46</sup> Exhibit P-120(c), p. 1 (entry for Oct. 12, 1984).

### RCMP Assumes Responsibility for Investigation of Plot

According to a notation made on the VPD report summarizing the results of the interview with Person 2, the information was discussed with CSIS (Jim Francis and David Ayre) and with Sgt. Wayne Douglas, then head of the RCMP E Division NCIS Terrorist/Extremist unit.<sup>47</sup> Although both the RCMP and CSIS initially showed interest in this plot, it took some time before it was decided that the RCMP E Division NCIS would take responsibility for the follow-up.<sup>48</sup>

From the very outset of its involvement in the investigation, the RCMP approached the alleged plot with extreme skepticism.<sup>49</sup> An RCMP analyst wrote later that, at the time, investigators did not believe Person 2's story about his alleged involvement in the plot, and were suspicious and reluctant to act on the information.<sup>50</sup> This reluctance continued even after the bombing.

The RCMP skepticism is evident from comparing the ways in which CSIS and RCMP E Division reported information about the plot. On October 26, 1984, CSIS reported to the RCMP Airport Policing Branch and to the VIP Security Branch on the basis of the VPD's interview of Person 2. The report stated that "...while in presence of lawyer, person 2 disclosed knowledge of plans to blow up an AI 747 aircraft in November en route to India from Montreal", and noted that CSIS felt that "...there is a real possibility that Sikhs will damage an Air India plane."<sup>51</sup> In contrast, on October 26, 1984, E Division sent a telex to RCMP Headquarters, reporting that information had been received of "...totally unknown reliability" that an Air India 747 would be the subject of a November bombing. The telex stated that the information had been reported in September to Montreal authorities, but had "resurfaced", thus necessitating the current message.<sup>52</sup> By then, NCIS knew that there were two independent sources, Person 1 and Person 2. However, NCIS did not appear to recognize any significance in this corroboration and did not inform Headquarters of this fact.<sup>53</sup> Four days after CSIS initially reported the Person 2 information to the Airport Policing Branch and to VIP Security, National Criminal Investigation Branch (NCIB) forwarded the NCIS telex to VIP Security (but not to Airport Policing), downplaying the importance or urgency of its contents: "...in the event you may have an interest or other information."<sup>54</sup> But, NCIB noted, "...since receipt of telex, further information has surfaced casting serious doubts on the validity/reliability of the information. Appears info may be fabricated."<sup>55</sup>

<sup>47</sup> Exhibit P-120(c), pp. 1-2 (entry for Oct. 1984: doc 231-3)..

<sup>48</sup> Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p.5) and entry for Nov. 1, 1984: 526-3, pp. 26-27).

<sup>49</sup> See, generally, Exhibit P-120(c), pp. 2-3.

<sup>50</sup> See Exhibit P-120(c), p. 6 (entry for Feb. 26, 1986: doc 518-3).

<sup>51</sup> Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p. 5).

<sup>52</sup> Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc. 239-3).

<sup>53</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4087.

<sup>54</sup> Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).

<sup>55</sup> Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29). This notation likely reflected the view of E Division as conveyed to Headquarters, because, in an internal RCMP memo, Sweeney noted that "E division felt Person 2 may be fabricating the story": Exhibit P-120(c), p. 3 (entry for Nov. 7, 1984: doc CivLit1).

### Person 1 Meets Person 2 at the Remand Centre

Person 1 met twice with Person 2 at the remand centre.<sup>56</sup> After his first meeting with Person 2, Person 1 met with Douglas, who reported to RCMP Headquarters Person 1's confirmation that individuals were attempting to obtain materials to manufacture a bomb on behalf of interested Sikhs and that he had learned that the plan was on hold.<sup>57</sup> Person 1 also stated that the plans for the bombing were to be completed in November because Air India had made schedule changes in mid-October and the plotters had to be sure the flights were continuing from Montreal, Frankfurt and India.<sup>58</sup> The level of detail, including information about the timing of Air India's schedule changes, in the information conveyed by Person 1 is markedly similar to the detail that Person 2 gave in his interview with Crook and Warwick, which would be subsequently repeated to Douglas in his later interview. Also significant is that, in accordance with the information provided by Person 2, Person 1's statement was not that the plot would necessarily take place in November, but rather that the plans would be finalized in November.

Copies of the summary report on the interview of Person 2 had been given to CSIS and to CIS BC,<sup>59</sup> an agency that was at the time co-located with NCIS and staffed entirely by RCMP members.<sup>60</sup> The report stated that the interview had been taped, and that "two bombs" could be involved. It also said that the plot might still go ahead even though Person 2 was in custody, a fact of which Douglas was unaware.<sup>61</sup> Nothing indicates that this report was accessed or requested by RCMP NCIS investigators in the pre-bombing period. There is no evidence prior to, or in the years immediately following the bombing, that RCMP investigators requested a transcript of the taped interview from the VPD.<sup>62</sup> That transcript contained important information that was not known to Douglas until the Inquiry hearings, such as the potential involvement of two planes in the plot,<sup>63</sup> which undoubtedly would have led the RCMP to take a more serious approach to its investigation of the November Plot in the period after the bombing.<sup>64</sup>

When asked by Douglas to visit Person 2 again to seek more information about the plot,<sup>65</sup> Person 1 reported that Person 2 expected to be contacted in the next few days about the status of the bomb plot.<sup>66</sup> It should be noted that in Person

<sup>56</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1945-1946.

<sup>57</sup> Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984; doc 526-3, pp. 26-27).

<sup>58</sup> Exhibit P-120(c), p. 3 (entry for Nov. 6, 1984; doc. 526-3, pp. 36).

<sup>59</sup> Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1912-1915; Exhibit P-120(c), pp. 1-2 (entry for October 1984; doc 231-3, pp. 2-4) and p. 2 (entry for Oct. 23, 1984; doc 7).

<sup>60</sup> Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3929.

<sup>61</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4085, 4094.

<sup>62</sup> See statements of Sgt. Douglas in 1999 where he advised that he never received any reports, notes or tapes from the VPD: Exhibit P-120(c), p. 11 (entry for April 14, 1999; doc RCMP.SUPERTEXT.0001)..

<sup>63</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4085, 4094. Sgt. Douglas was quite certain that he had not seen the transcript of the VPD interview, and indicated that had he seen something such as this, given its detail, he would have remembered: Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4092.

<sup>64</sup> Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2639.

<sup>65</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1949.

<sup>66</sup> Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984; doc 526-3, pp. 26-27).

1's testimony, his version of what occurred in the two meetings with Person 2 while in custody was reversed from the version as noted in Douglas's internal RCMP report.<sup>67</sup> Given the passage of time, it is more likely that the RCMP report contains a more accurate chronology of events. Regardless, a review of this information would certainly have cast doubt on any inference that the danger had passed.

There is no evidence of any RCMP follow-up.

The NCIS report to Headquarters notes that there were "several differences" between Person 1 and Person 2's versions of the plot (though it does not specify what these differences were) and that the information was to be considered of unknown reliability. It further notes that there was no record of Person 2 being connected to any extremist group.<sup>68</sup>

After Person 1 left the remand centre, he went to Person 2's house to speak with the latter's wife. She confronted him with a transcript of a taped telephone conversation between Person 1 and Brian Sommerville of the VPD. According to Person 1, the transcript had been disclosed to Person 2's lawyer at the preliminary hearing on the charges against Person 2. Understanding that his cooperation with police had been revealed to Person 2 and his family, Person 1 severed all ties with Person 2 and the other conspirators.<sup>69</sup>

In the pre-bombing period, Person 1 was not contacted further about his information.<sup>70</sup> He was not asked to submit to a polygraph examination on the information he had provided, nor was he asked about any contacts he had with other known extremists. He was also not asked to attempt to find out more about the status of the plot. The police clearly had concerns about Person 1's motivations that led them to approach his information with extreme skepticism.<sup>71</sup>

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<sup>67</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1945-1946.

<sup>68</sup> When asked what checks he would have done to determine if Person 2 had any connections to Sikh extremists, Douglas indicated that he would have looked at any information that was available on him, through his background and his former dealings, and that this would have been done with the assistance of his Corporal. At this time, Douglas indicated that he had never encountered Person 2 before and stated that, at this time, he was unaware of who the other participants were, beyond Person 1 and Person 2. He indicated, "...there were no names, it was just generalities, no specifics":  
Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4089-4090.

<sup>69</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1946-1948.

<sup>70</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1951; Exhibit P-120(c).

<sup>71</sup> For example, in reporting Person 1's information to Headquarters, Douglas notes that "Person 1 is hard pressed for monies and has attempted to gain same from Sgt. Douglas on two occasions": Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27). See also Final Submissions of the Attorney General of Canada, Vol. I, para. 156: "Each of the individuals had extensive criminal records as well as motivation to provide information to the police in return for some form of benefit" and Testimony of Person 1, vol. 20, April 30, 2007, p. 1964.



### Douglas Meets with Person 2 for the First Time

Three weeks after Douglas's last meeting with Person 1 and after he had reported to Headquarters that Person 2's story could be fabricated, Douglas met with Person 2 for the first time on November 23, 1984 in the presence of Dave Ayre of CSIS and Person 2's lawyer. A brief summary of the meeting by Douglas notes that Person 2 relayed facts similar to those he had earlier conveyed to Detectives Crook and Warwick. Person 2 said that he had been contacted approximately two months earlier by East Indians who wanted a bomb assembled and placed on an Air India plane. He was told that the plane "...would depart from Montreal in November," as changes to Air India's flights were occurring in mid-October and the plotters had to be sure of the Air India routes. Person 2 said that another individual at the meeting had consented to place the bomb on board for a fee. Person 2 would not identify the East Indians, except to say that they lived in what, for purposes of this Report, must be referred to as "x town" in "y province", and that he considered them to be financially stable.<sup>72</sup> A check of the individuals who visited Person 2 while in custody identified three persons who had phone numbers listed in y province. Douglas wrote to Headquarters that the identity of the subscribers would be forwarded to Headquarters once received.<sup>73</sup> After the interview, Person 2's lawyer told Douglas that he believed Person 2 "...knows a lot more than Person 2 is willing to discuss."<sup>74</sup>

There is no indication that the RCMP attempted to follow this up with Person 2's lawyer.<sup>75</sup>

### RCMP Investigation Stalls

About four months later, on March 20, 1985, Headquarters wrote to the Divisional Intelligence Officer for E Division, pointing out that the last correspondence from E Division regarding this investigation was on November 26, 1984, and requesting a "full update", with a note that "...Your early attention and response is requested."<sup>76</sup>

Three weeks later, on April 10, 1985, Douglas informed Headquarters that "very little action on the November plot investigation has occurred" and "[t]here has been no further information received from any sources that would indicate *this*

<sup>72</sup> Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40),

<sup>73</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4094-4095; Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40), A few days later, Headquarters wrote to Douglas stating that x town NCIS was to be brought into the investigation once the identities of the x town subscribers were identified. The subscriber information was relayed to x town police in December 1984, but not to Headquarters NCIB: Exhibit P-120(c), p. 3 (entry for Dec..4, 1984: doc 526-3, p. 42),

<sup>74</sup> Exhibit P-121;P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40),

<sup>75</sup> In fact, many years after the bombing, in 1999, as part of a file review, it was discovered that deBruijn, who conducted a file review in 1986, had suggested that someone follow up with Person 2's lawyer about this statement, but it was not clear from the file whether this had, in fact, ever been done: Exhibit P-120(c), p. 11 (entry for April 27, 1999 doc: RCMP.SUPERTEXT.0001).

<sup>76</sup> Exhibit P-120(c), entry for March 20, 1985, p. 3.

*or any bombing of an Air India plane will occur.*<sup>77</sup> [Emphasis added]  
This is a strong indication that E Division NCIS was out of the loop or not paying attention.<sup>78</sup>

### **The Significance of November Plot Recognized Post-Bombing**

Even after the Air India bombing, there was significant resistance and delay at E Division NCIS about a follow-up investigation of the November Plot and continuing skepticism about any possible connection between the November 1984 Plot and the bombing. Despite repeated requests by Headquarters that it be updated on the state of the investigation,<sup>79</sup> it was not until nine months after the bombing that E Division took steps to pursue the issue seriously. Early in 1986, as part of a Headquarters review of the November Plot tip, the significance of the fact that two independent sources had come forward with the same information was finally recognized.

In the spring of 1986, almost a year after the bombing, the RCMP again contacted Person 1 and asked him to take a polygraph on the information he had provided about the November Plot. He agreed and passed the test a few weeks later.<sup>80</sup> Person 1 stated that after he took and passed the polygraph there was "...a complete turn around" in terms of how the police looked at his information. Person 1 also agreed that much more attention was being paid to what he was saying after the bombing and said, "Yes. I think everybody woke up."<sup>81</sup>

After Person 1 passed his polygraph test in May 1986, Cpl. Donald DeBrujin concluded that "... information provided by person 1 and person 2 has been substantiated."<sup>82</sup> In June 1986, Chief Superintendent Norman Belanger sent a telex listing the main suspects in the RCMP Air India investigation as including "... Parmar, Johal, Gill, Bagri and *Person 2*."<sup>83</sup> [Emphasis added]

The post-bombing investigation of this plot uncovered disturbing information, not only that the November Plot was a real threat, but that there were, in fact, significant links in the plot narrative to the conspirators thought to be involved in the June 23, 1985 bombing of Air India Flight 182. Information uncovered post-bombing includes the following:

- Person 1 had made statements to police in September 1984 about a man in Duncan who could manufacture "nitro" for blowing up an Air India flight;<sup>84</sup>

<sup>77</sup> Exhibit P-120(c), entry for April 10, 1985, p. 3 (entry for doc 526-3, p. 45).

<sup>78</sup> This is elaborated in Section 1.12 (Pre-bombing), A Crescendo of Threats.

<sup>79</sup> Exhibit P-120(c), pp. 4-5 (entries from Sept. 9, 1985, until Dec. 17, 1985). There was a string of seven telexes to E Division requesting responses to previous unanswered enquiries from Headquarters.

<sup>80</sup> Testimony of Person 1, vol. 20, April 30, 2007, p. 1954; Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).

<sup>81</sup> Testimony of Person 1, vol. 20, April 30, 2007, pp. 1964, 1974-1975.

<sup>82</sup> Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23),.

<sup>83</sup> Exhibit P-120(c), p. 9 (entry for June 6, 1986: doc April 23 DOJ doc),.

<sup>84</sup> Exhibit P-120(c), p. 6 (entry for March 10, 1986: doc 521-3),.

- The day after Person 2 was arrested, two phone calls were made from the residence of Person 1 to the residence of Inderjit Singh Reyat;<sup>85</sup>
- Person 1 later reported that these calls may have been made by “W”, who was staying at Person 1’s home during the relevant time. W was an individual reported to be associated with the ISYF. According to one police report, W was “... totally committed to the Khalistan cause and would do anything within his power to avenge the deaths of his/her relatives in the Punjab.”<sup>86</sup> Telephone logs show contacts between W and the residence of Person 1 in September, October and November of 1984. Logs also show a call from the residence of Person 2 to W in July of 1984;<sup>87</sup>
- It was reported that at some point, Talwinder Singh Parmar, W, and an unnamed Sikh from x town were planning on “doing something” in India,<sup>88</sup> and Person 2 told the police that W was connected to Surjan Singh Gill, Talwinder Singh Parmar, and Inderjit Singh Reyat;<sup>89</sup>
- RCMP Constable Manjit Singh “Sandy” Sandhu said that he had seen Person 2 in association with Surjan Singh Gill, in or around late 1983;<sup>90</sup>
- According to Person 1, in October 1984, W and an associate intended to travel to Vancouver Island to visit someone. The associate was apparently from x town and matched the description of “Z”<sup>91</sup> – an individual named by both Person 1 and Person 2 as being involved in the plot;<sup>92</sup>
- In 1986, W independently provided information to another police force (the identity of which cannot be disclosed) that two individuals had approached Person 2, along with two white, unknown males, and had offered Person 2 a sum of money to put a bomb on an Air India plane. This would appear to be a third independent source corroborating the existence of the November Plot;<sup>93</sup> and

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85 Exhibit P-120(c), p. 7 (entry for April 6, 1986: doc 523-2).

86 Exhibit P-120(c), pp. 7-8 (entry for April 10, 1986: doc 523-3).

87 Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).

88 Exhibit P-120(c), pp. 7-8 (entry for April 10, 1986: doc 525-3).

89 Exhibit P-120(c), p. 9 (entry for May 26, 1986: doc 529-3).

90 Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).

91 See Exhibit P-120(c), p. 8 (entry for April 25, 1986: doc 2).

92 Exhibit P-120(c) p. 4 (entry for July 10, 1985: doc 493-3) and p. 7 (entry for March 1986: doc 16). It is not clear that Z was identified to police in the pre-bombing period as his name does not appear in reports from the interviews of Person 1 or Person 2.

93 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7822-7823.

- While Person 2 was in custody, he had phone contact with an individual from x town who was identified as being affiliated with the terrorist group, Babbar Khalsa.<sup>94</sup>

These and other details about the November Plot were not recognized or discovered until long after the actual bombing of Flight 182. They support the conclusion that there were numerous missed opportunities for intelligence-gathering in the pre-bombing period that, had they been pursued, would at a minimum have provided valuable insight into important Sikh extremist participants, activities and methods of destruction contemplated.

In 1999, the RCMP noted that Person 1 was connected with individuals "...who are very likely to have been involved with one or more of our suspects in the early planning stages of placing bombs on Air India planes. These individuals are Person 2 and W."<sup>95</sup> Despite this statement by the RCMP, and despite the information and connections discovered after the bombing, the RCMP told the Honourable Bob Rae in a briefing that "...[t]his incident has not [*sic*] connection to the June 1985 disasters and the investigation failed to substantiate any actual plot. The RCMP was satisfied that the information provided in this regard was, and is, totally unrelated to the current ongoing criminal investigation surrounding the Air India crash."<sup>96</sup>

This conclusion defies reasonable explanation.

Undue skepticism on the part of RCMP investigators prevented them from looking seriously into the alleged plot. Divisional investigators continued to maintain that "...Person 2 concocted [the] story of possible bombing in order to obtain release from custody"<sup>97</sup> and never seemed to waiver from that belief despite seemingly independent corroboration from Person 1, who, in fact, passed a polygraph examination on his information.

Douglas testified that the RCMP file on the November Plot "...has been examined, reviewed a thousand different ways by a hundred different people", without conclusively linking the information to the bombing of Flight 182 - a fact that, in his view, "...substantiates [his] decision back then to say that [he] did not believe this information from [Person 1] and [Person 2] to be credible."<sup>98</sup>

This is not a conclusion that the state of the investigation in 1986 could plausibly have justified.

<sup>94</sup> Exhibit P-120(c), p. 5 (entry for December 6, 1985: doc 526-3, p. 56).

<sup>95</sup> Exhibit P-120(c), pp. 10-11 (entry for February 12, 1999: doc RCMP.SUPERTEXT.0001).

<sup>96</sup> Exhibit P-101 CAA1099, p. 2. This position has been maintained by the Government to this day. In its Final Submissions, the AG writes "The investigation into these allegations was pursued vigorously both before and after June 23, 1985. Although analysis of telephone records showed that one long distance call had been made to Reyat's home by an unknown acquaintance of one of the individuals, no evidence has been found to link this plot to the bombings": Final Submissions of the Attorney General of Canada, Vol. I, para. 157.

<sup>97</sup> Exhibit P-120(c), p. 6 (entry for March 5, 1986: doc 526-3, p. 86).

<sup>98</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4107.

## Observations

- In the pre-bombing period, the RCMP received information about a plot to bomb an Air India plane from two independent sources. Despite this corroboration, the RCMP viewed the intelligence with extreme skepticism and was reluctant to follow up on the lead.
- There were important deficiencies in the manner in which the RCMP reported the November Plot information internally as well as in the manner in which it shared relevant information with other agencies.
- These failures posed challenges for the agencies in terms of their assessment of the significance of this threat.
- When the November Plot issue was eventually followed up post-bombing, a number of important connections between the alleged conspirators and the RCMP's main suspects in the bombing of Air India Flight 182 were recognized.
- Despite seemingly clear connections to presumed participants in the bombing, the RCMP continued to deny, up to and including its submissions to Bob Rae and its testimony at this Inquiry, that there was any substance to the November bomb plot, and to maintain that there was no link to the bombing of Flight 182.

### 1.2 June 1<sup>st</sup> Telex

In the spring of 1985, as the string of threats against Indian interests was coming to a “crescendo”,<sup>99</sup> officials had an impending sense that “...something was going to happen.” But the answers to the questions: “[w]here or when or what [?]” were not known.<sup>100</sup> The mishandling of the “June 1<sup>st</sup> Telex”, as it came to be known during the hearings, demonstrates deficiencies in the threat communication and response system that was in place in 1985. These failures illustrate the dangers of compartmentalization of duties and the need for shared responsibility in aviation security.

On June 1, 1985, Air India's Chief Vigilance and Security Manager in Bombay sent a telex to Air India offices worldwide indicating that the assessment of threats received by its intelligence agencies revealed “...the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage”, as well as the fact that “...Sikh extremists are planning to set up suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or [carry-on baggage] or any other means...”<sup>101</sup>

<sup>99</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2104.

<sup>100</sup> Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3044.

<sup>101</sup> Exhibit P-101 CAA0185, p. 1.

The telex directed all Air India stations to ensure the "...meticulous implementation of counter-sabotage measures for flights at all airports."<sup>102</sup> It then went on to suggest five counter-sabotage measures to be implemented in order "...to prevent extremists [from] carrying out their designs." These measures included "explosive sniffers and bio-sensors (dogs)", which may be used to "...check the registered baggage" as well as "...physical random [sic] check of all registered baggage at the time of check-in at least till [sic] June 30, 1985 ..."<sup>103</sup> The telex conveyed Air India's position that airlines had the basic responsibility for counter-sabotage measures.

When Air India's Assistant Airport Manager arrived on Air India's scheduled flight at Gate 103 in Toronto's Pearson Airport on June 1<sup>st</sup>, he provided a copy of the June 1<sup>st</sup> Telex to an RCMP member there.<sup>104</sup> This telex was also received by Herbert Vaney, the Toronto Area Sales Manager for Air India, who forwarded it on June 3, 1985 to RCMP Inspector William Dawson, the Officer in Charge at Toronto's Pearson Airport, and requested that "suitable action" be taken in relation to this information.<sup>105</sup> No one at Air India forwarded the June 1<sup>st</sup> Telex to any Transport Canada officials at the airport or at headquarters, despite assurances made by Air India's Senior Security Officer that all threat reports would be forwarded to both the RCMP and Transport Canada.<sup>106</sup>

When Dawson received the June 1<sup>st</sup> Telex, he sent a telex to the RCMP Headquarters Airport Policing Branch, quoting the June 1<sup>st</sup> Telex in full, but stating that, in his opinion, there was no "...need for extra security by this Force on the strength of information contained in the message." From his point of view, the counter-sabotage measures suggested in the June 1<sup>st</sup> Telex were within the purview of Air India and Burns Security. He requested instructions from Headquarters about what action should be taken at the airport in response to this threat.<sup>107</sup> Dawson also indicated that "...this matter has not yet been discussed with local Transport Canada Safety and Security Manager but we expect his position will be similar to that of last week when they refused to authorize extra manpower or security."<sup>108</sup> It is unclear when, or indeed whether, this topic was ever discussed with Dale Mattson, who was the Transport Canada Safety and Security Manager at Pearson in 1985.

In response to Dawson's request, Sgt. J.B. ("Joe") MacDonald, the Acting Officer in Charge of the Headquarters Airport Policing Branch, wrote to CSIS requesting an updated threat assessment in relation to Air India. MacDonald noted that the "...last threat assessment Oct 84 indicating threat level high but no specific threat to Air India in Canada. Plse advise by telex ASAP if there is any change. We

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102 Exhibit P-101 CAA0185, p. 1.

103 Exhibit P-101 CAA0185, p. 1.

104 Exhibit P-101 CAF0586, p. 5, CAF0784.

105 Exhibit P-101 CAA0184, p. 1.

106 Exhibit P-101 CAA0118, p. 5.

107 Exhibit P-101 CAA0208, p. 2.

108 Exhibit P-101 CAF0589, p. 2.

have had a number of requests from the airline for extra security.”<sup>109</sup> It should be noted that, in fact, there had been CSIS threat assessments received by the Airport Policing Branch subsequent to October 1984, including an April 12, 1985 assessment indicating that the possibility of action against Air India flights could not be ruled out.<sup>110</sup>

CSIS replied to the RCMP that the “...threat potential” to Air India was “high”, but that it was not aware of any “specific threats” at the time.<sup>111</sup>

The RCMP briefing to the Honourable Bob Rae stated that MacDonald had forwarded the telex sent by Dawson, which contained the June 1<sup>st</sup> Telex information, to CSIS.<sup>112</sup> This was not the case. The request sent by MacDonald contained no reference to the actual content of the June 1<sup>st</sup> Telex, and CSIS never received the information. MacDonald testified that, in his view, “...there was no need” to share that information with CSIS.<sup>113</sup> The Attorney General of Canada conceded in its Final Submissions that, in general, CSIS should have been given all information pertaining to threats.<sup>114</sup>

The June 1<sup>st</sup> Telex was also not shared by Headquarters with other RCMP airport detachments. It was not sent to the Vancouver airport, the point of origin for CP Air Flight 060 onto which the luggage containing the bomb was boarded and interlined to Air India Flight 182. There was no record of this telex having been shared with local RCMP officials at the Mirabel detachment, nor does it seem that the content was shared with Burns Security officials who provided security screening services for Air India’s Toronto and Montreal flights.<sup>115</sup>

The June 1<sup>st</sup> Telex was not sent to National Criminal Intelligence Branch (NCIB), the RCMP Branch in charge of analyzing threat information and producing threat assessments. The first time Sgt. Warren Sweeney, who was in charge of the terrorist/extremist desk at the National Security Enforcement (NSE) Section of NCIB, saw the telex was in preparation for his testimony before this Inquiry.<sup>116</sup> Nor was the June 1<sup>st</sup> Telex shared with Transport Canada officials, even though one of the obligations of the RCMP under the RCMP/Transport Canada Memorandum of Agreement was to disseminate intelligence information concerning national and international threats to civil aviation.<sup>117</sup>

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<sup>109</sup> Exhibit P-101 CAA0198, p. 1.

<sup>110</sup> Exhibit P-101 CAA0147, p. 1.

<sup>111</sup> Exhibit P-101 CAA0199, p. 1.

<sup>112</sup> Exhibit P-101 CAA0234, p. 8.

<sup>113</sup> Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2865.

<sup>114</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 189 (citing the Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2818).

<sup>115</sup> See generally Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3115-3167. Also, Holger Kordts, who was the Branch Manager for Burns Security, he stated that the only special directions given to the guards on any occasion were in relation to a May 27th letter from Herbert Vaney (see Exhibit P-101 CAA0159, p. 1), referring to some acts of terrorism in the Punjab, and where it was requested that armed guards be placed at the aircraft and for them to pay extra attention and take measures to protect property: Exhibit P-101 CAF0538, p. 7.

<sup>116</sup> Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732.

<sup>117</sup> Exhibit P-101 CAA0335, p. 8.

In October 1987, John Cook, who was stationed at the Civil Aviation Security Branch at Transport Canada Headquarters, learned of the existence of the June 1<sup>st</sup> Telex for the first time. Cook recognized that it was a very important document, but there was no record to indicate when the RCMP had finally provided a copy to any Transport Canada personnel.<sup>118</sup>

Cook wrote: "...the information contained in [the June 1<sup>st</sup> Telex] raised many questions and suggested the lack of proper action and sound judgment by Air India and the RCMP", adding "...[i]t is unbelievable that Air India officials did not distribute this document immediately to Transport Canada and other police officials and request a meeting to discuss the necessary measures to meet the perceived threat."<sup>119</sup> Transport Canada's Headquarters had the ability to apply "...additional procedures that were needed to address the relevant threat."<sup>120</sup>

Cook's reaction suggests that the content of the June 1<sup>st</sup> Telex may have warranted implementing and coordinating additional procedures beyond those that Transport Canada and the RCMP had in place on June 23, 1985. In this vein, Mattson testified that if he had seen the June 1<sup>st</sup> Telex, he would have immediately contacted the Civil Aviation Security section at Transport Canada's headquarters to see if they were aware of it, and he would have then ascertained whether the airport should introduce further security measures.<sup>121</sup>

A briefing document provided by Transport Canada states that on June 22, 1985, "...the threat to Air India movement was considered ambient, as Transport Canada had not received intelligence to indicate an imminent or specific threat to Air India 182."<sup>122</sup> While the threat in the June 1<sup>st</sup> Telex may not have fit the definition of "specific threat", as it was understood by Transport Canada, the fact that the threat applied only to the four remaining Saturday flights in June would seem to have made it an "imminent"<sup>123</sup> one. Cook's reaction to the document weighs in support of that conclusion, and it suggests he would have considered it appropriate to take swift action and expand the security response for these flights accordingly.

In the past, Transport Canada had taken steps to implement and ensure the coordination of additional measures in response to an uncorroborated threat of bombing directed at Air India. In June 1984, Transport Canada received threat information through Air India that Sikhs in Canada were planning to become

118 Exhibit P-367, p. 1.

119 Exhibit P-367, p. 2.

120 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3215.

121 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3232.

122 Exhibit P-101 CAF0615, p. 2.

123 Whereas there were particular emergency protocols triggered at the airport in relation to a "specific threat" which itself had a particular and restrictive meaning (see Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime), the term "imminent threat" does not appear to have a particular meaning or to be a trigger for specific protocols in the 1985 threat-response regime. However, the context in which this concept is discussed implies that Transport Canada had the ability to take measures to address a perceived "imminent" threat. A colloquial understanding of the term would seem to imply a perception that the threat would likely manifest within a short time frame.



martyrs by blowing up an Air India aircraft. Measures taken by Transport Canada included contacting Air Canada and RCMP officials to confirm that effective security safeguards were in place and, specifically, ensuring the availability of the explosives detection dog "...for search duty to detect any explosives in lockers, baggage, cargo and aircraft." Further, after consulting with Transport Canada about this 1984 threat, the Air India Station Manager at Mirabel implemented hand-searching of all checked luggage. Transport Canada also undertook to maintain close contact with RCMP, External Affairs, and airport officials to ensure the "...rapid exchange" of intelligence and the "... adoption of any security measures required to meet the alleged threat."<sup>124</sup> In June 1985, in spite of the steps called for in the June 1<sup>st</sup> Telex, physical checks of registered baggage were not conducted and, in fact, there was no RCMP explosives detection dog available for the June 22<sup>nd</sup> flight at the Toronto Pearson airport.<sup>125</sup>

At the time that the June 1<sup>st</sup> Telex was being received by the RCMP, Headquarters had already ordered that "level 4 security" be implemented for the Air India flight in response to previous threat information which referred mostly to the possibility of hijacking.<sup>126</sup> When the RCMP Headquarters Airport Policing Branch received the June 1<sup>st</sup> Telex, it did not order any adjustment to the nature of the security that was already in effect.<sup>127</sup> This was particularly problematic because the anti-hijacking measures implemented as part of level 4 security did not address the concerns set out in the June 1<sup>st</sup> Telex, including, importantly, the threat of time-delay devices being placed in registered luggage.<sup>128</sup> In the opinion of a leading expert in risk analysis, the unusual specificity of the information in the June 1<sup>st</sup> Telex, combined with the already very high-risk situation in which it was received,<sup>129</sup> "...would have justified almost any risk-control measure you can imagine, including grounding those flights" until investigators had the chance to consult with authorities in India about their source of information.<sup>130</sup>

The June 1<sup>st</sup> Telex was an Air India document, and one possible explanation for what looks like a half-hearted Canadian response and follow-up is that Air India threats were generally viewed with skepticism by Government of Canada officials. At a meeting held post-bombing, which included representatives from Transport Canada and the RCMP, it was noted that almost every Air India flight was preceded by a letter outlining a threat to Air India and that this was thought to be an attempt by Air India to obtain increased security for its flights at no extra cost.<sup>131</sup> One RCMP official thought the June 1<sup>st</sup> Telex was a "floater";<sup>132</sup> meaning

124 Exhibit P-101 CAF0161, p. 2.

125 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2999.

126 Exhibit P-101 CAA0168, p. 1; Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2798; Exhibit P-101 CAC0349, p. 3.

127 Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2862.

128 Exhibit P-101 CAA0025, p. 1.

129 See Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11982-11983. Leiss's testimony with respect to the June 1<sup>st</sup> Telex is discussed in detail in Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.

130 Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11982-11983.

131 Exhibit P-101 CAC0517, p. 1.

132 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2736-2737.

that it was information that was provided “...in the hopes that security would be increased” or of “...gaining more security around the aircraft.”<sup>133</sup> He came to this conclusion, even though he had no knowledge of the intelligence Air India relied on from its sources as the basis for the telex.<sup>134</sup>

In its Final Submissions, the Department of the Attorney General maintained the view that it is “...not clear whether the June 1<sup>st</sup> Telex would have actually enhanced CSIS’s knowledge of the dangers of Sikh extremism.”<sup>135</sup> The testimony of CSIS employees at this Inquiry was somewhat different. John Henry, who was at the CSIS HQ Threat Assessment Unit, testified that the June 1<sup>st</sup> Telex would probably have been useful to the individual writing the threat assessment, and that it contained “...more detail than [he] had seen before.”<sup>136</sup> In the CSIS BC Region, the telex could have been an “extremely helpful” additional piece of information that might have enabled investigators to obtain more resources for the surveillance of Sikh extremist targets.<sup>137</sup> Such additional coverage might have avoided some of the CSIS surveillance errors at Duncan and elsewhere in British Columbia.<sup>138</sup> CSIS investigator Ray Kobzey testified that he would have taken the June 1<sup>st</sup> Telex seriously “[w]hen viewed in the context of the assassination of Indira Gandhi” and that it would have led CSIS to treat the Duncan Blast “...loud noise” a lot differently.<sup>139</sup>

In terms of the RCMP’s post-bombing investigation, while all threat information received by P Directorate, which included the June 1<sup>st</sup> Telex, was filed in central records at HQ,<sup>140</sup> there is no evidence that anyone at Headquarters or at the E Division Air India Task Force ever took steps to access this information in the post-bombing period.<sup>141</sup> This failure, in turn, explains why there is no evidence of any follow-up investigation of the June 1<sup>st</sup> Telex information.

## Observations

- There were significant deficiencies in the manner in which Air India and Canadian government agencies shared the June 1<sup>st</sup> Telex. It is likely that, had Transport Canada received the telex, it would have taken steps to implement additional safety measures for Air India Flight 182. In addition, the telex would have been useful for CSIS’s investigation into Sikh extremism and possible threats to the security of Air India and other Indian interests in Canada.

<sup>133</sup> Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2745. See also, pp. 2745-2746, where Sweeney explains that such “floaters” were also received from other airlines and other countries and could relate to attacks on missions or personnel.

<sup>134</sup> Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732.

<sup>135</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 191.

<sup>136</sup> Testimony of John Henry, vol. 25, May 8, 2007, pp. 2539, 2523.

<sup>137</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3810-3811.

<sup>138</sup> See Section 1.4 (Pre-bombing), Duncan Blast and Section 1.5 (Pre-bombing), Mr. X.

<sup>139</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3810-3811.

<sup>140</sup> Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2653.

<sup>141</sup> Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9672. See also Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2653-2655.

- The June 1<sup>st</sup> Telex, given its specificity and the nature of the threat it described, made the situation inherently high-risk. That fact, combined with the fact that it was received by the RCMP during a very high-risk period, should have led authorities to take swift and deliberate action to respond to the threat. The fact that there was no investigative or security-related response to the June 1<sup>st</sup> Telex was a clear deficiency.
- Because no known attempts were made to follow up on or to corroborate the June 1<sup>st</sup> Telex information in the pre- or post-bombing periods, the original source of the information and the nature of the ultimate connection of the information to the Air India bombing remain unknown to this day.
- Following the bombing, the relevance and importance of the June 1<sup>st</sup> Telex to the post-bombing investigation should have been self-evident. The failure to follow up on it is difficult to understand.

### 1.3 Parmar Warrant

When CSIS was created on July 16, 1984, there were in place 250 RCMP Security Service warrants, issued under the *Official Secrets Act* (OSA) and authorized by the Minister. Prior to a December 31, 1984 deadline for the “conversion process”, 110 of the RCMP Security Service warrants were selected and approved by the Federal Court as CSIS warrants. There was, in fact, no real “conversion”, but rather a fresh, time-consuming multi-step warrant approval process.

Before the creation of CSIS, warrants were generally simple, two to six pages in length and approved only by the Solicitor General rather than any judicial officer. After the creation of CSIS, the process changed substantially. Jacques Jodoin, the Director General, Communication Intelligence and Warrants (CI&W), who was responsible for developing the process to ensure that the warrants would proceed to court the fastest way, said: “The process became very legalistic, very bureaucratic and very cumbersome, but we went through it.”<sup>142</sup>

In the new process, the affidavits ballooned in size to 50 or 60 pages and took months to complete. By 1987, the warrant process consisted of 24 steps. Some of these steps were of questionable value in light of the delay they introduced. Nevertheless, the steps were developed during the conversion process, and applied to the Parmar warrant. However, the system was still in flux as CSIS seemed to muddle through trial and error as to what procedures were required.

Jodoin said that the field investigator would send a rough résumé of the case through his chain of command. A justification was required for whatever power

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<sup>142</sup> The source for much of the information on the history of the CSIS warrant process comes from the Testimony of Jacques Jodoin, vol. 23, May 4, 2007, pp. 2245-2269.

was wanted. For the Parmar case, the important questions involved the level of resources required to implement the power, and whether they had the capability to do it.

At HQ, warrant coordinators would choose, from their individual sections, the analysts best capable of finishing the affidavit. The rough affidavit would come back to CI&W. There, on the basis of having seen hundreds of warrants, its sustainability in court would be assessed.

More work was seemingly always required, so the draft would go back through the channels, which could sometimes take weeks. When the final copy was ready, it had to go back through the chain of command, so that their senior officer could sign it before going to the Warrant Review Committee (WRC). Finally, after the WRC, the document would go to the Deputy Solicitor General for approval before being presented in court.

In 1987, for the first time, CSIS agreed to have one of its warrants used in court proceedings in *R v. Atwal*,<sup>143</sup> a case dealing with Sikh extremists who were allegedly involved with the shooting of Malkiat Singh Sidhu, an Indian cabinet minister, on Vancouver Island. However, the prosecution had to withdraw the Atwal warrant because of errors in the affidavit prepared by CSIS in 1985 with respect to the warrant application. The case against four alleged conspirators collapsed. This caused the resignation of the CSIS Director and brought the CSIS warrant process under considerable scrutiny. A few additional steps, predictably lengthening the process, were added to the warrant process to deal with the perceived problems with the Atwal warrant. The warrant procedure for 1987 to 1992 is shown in the Addendum to this critical incident. Although there are a few extra steps, it is basically the same as that followed for the Parmar warrant and demonstrates its flaws for an agency dealing with national security where time is invaluable.

### **Obtaining the Parmar Warrant**

Talwinder Singh Parmar was incarcerated in West Germany in 1983, but was released on July 6, 1984 and immediately returned to Canada.<sup>144</sup>

Parmar had been arrested on the strength of an International Warrant issued by India for murder. It is believed that the German authorities felt that, due to the recent events in the Punjab, Parmar would not receive a fair trial in India, and thus discontinued extradition hearings.

CSIS HQ and, in particular, BC Region were concerned about the effects of Parmar's return to Canada. As soon as he arrived back he embarked on a cross-country tour in an effort to establish himself as the leading pro-Khalistani Sikh and holy leader in Canada.<sup>145</sup> During that tour, at a stop in Calgary on July 15,

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<sup>143</sup> (1987), 36 C.C.C. (3d) 161 (F.C.A.).

<sup>144</sup> Exhibit P-101 CAB0139, p. 2.

<sup>145</sup> Exhibit P-101 CAB0114, p. 1, CAB0139, p. 2.

1984, Parmar strongly urged Sikhs to “...unite, fight and kill” in order to revenge the attack on the Golden Temple in Punjab.<sup>146</sup>

Because Parmar was seen as a leader in the escalating tension within the pro-Khalistani movement and was uttering threats of violence, BC Region wrote to headquarters on July 13, 1984, to suggest that they might want to seek a warrant on Parmar.<sup>147</sup> On July 27, 1984, CSIS HQ concurred with the suggestion, encouraging that warrant coverage be initiated against Parmar.<sup>148</sup>

It was not until September 17, 1984 that the BC Region was able to complete all the detailed preparatory steps required and to apply for authorization permitting a full investigation (level 4), a prerequisite for applying for a judicial warrant.<sup>149</sup>

### **Urgency of the Warrant**

On October 17, 1984, a request for a warrant to intercept Parmar prepared by Ray Kobzey, investigator in BC Region, and supported by his Unit Head and Chief, was submitted to the Director General of CI&W,<sup>150</sup> noting that the CT Section and HQ CT desk considered this to be urgent.<sup>151</sup>

The word “urgent” was used throughout the warrant request which also included information to support the belief that Parmar presented a threat and was inciting violence in the Sikh community.<sup>152</sup>

Daryl Zelmer, the warrant coordinator for the Counter Terrorism (CT) branch, was responsible for coordinating the preparation of the affidavits for the acquisition of Section 21 warrants with the relevant Desk, Legal Affairs and CI&W. On October 18, 1984, on receipt of the warrant request, despite the statement that it was urgent, Zelmer responded, asking to know the urgency of the application. Indeed, in testimony Zelmer commented that the use of the word “urgent” in the original proposal was “...standard usage in terms of the lexicon of the day”. Zelmer noted that a CSIS memo dated October 1, 1984, set out the category of new warrants that would be allowed during the conversion process. The memo surprisingly stated that all regions should refrain from submitting new applications for warrants until all existing OSA warrants had been converted. The only exceptions were “...applications of justifiably urgent nature involving the potential threat or use of acts of serious violence against persons or property.”<sup>153</sup>

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<sup>146</sup> Exhibit P-101 CAB0114, p.1, CAB0139, p. 3.

<sup>147</sup> Exhibit P-101 CAF0719, p. 2.

<sup>148</sup> Exhibit P-101 CAF0119, p. 1, para. 3.

<sup>149</sup> Exhibit P-101 CAB0139, pp. 1-5.

<sup>150</sup> Exhibit P-101 CAB0144, pp. 1-11.

<sup>151</sup> Exhibit P-101 CAB0144, p. 1.

<sup>152</sup> Exhibit P-101 CAB0144; Testimony of Daryl Zelmer, vol. 23, May 4, 2007, pp. 2328-2330. Much of the following information comes from the same testimony, pp. 2312-2328.

<sup>153</sup> Exhibit P-101 CAB0145, pp. 1-2.

On October 19, 1984, Zelmer wrote a memo to Glen Gartshore, Head of the HQ CT Sikh Desk, commenting that, although the threat of terrorism and violence regarding this warrant application was a definite possibility, an immediate assessment of the probability of such acts occurring was important. He sought Gartshore's comments and the recommendation of the Chief, Europe and Far East (E&FE) to determine whether to proceed or wait until completion of the renewal process.<sup>154</sup>

Russell Upton, Chief of E&FE<sup>155</sup> in his handwritten response on that same document, replied that the warrant must proceed on a "Priority basis" and that the application should be given "Top Priority". He concluded by stating that, "We should be able to table this for legal consideration early next week."<sup>156</sup>

This seems to have answered Zelmer's concerns as to the urgency. He testified that this signalled to him that this matter required urgent attention.<sup>157</sup>

On the same day, Gartshore sent another memo to Zelmer. He noted that Upton and his superior, the Director General CT, Mel Deschenes, were completely in agreement with moving urgently to have the warrant application for review the following week. The memo also informed Zelmer that the separate request for level 4 coverage of Parmar had been granted that morning.<sup>158</sup> On the same date, October 19<sup>th</sup>, a corrected copy of the warrant application was resubmitted.<sup>159</sup>

### **Warrant Application Delayed**

The next correspondence referring to the Parmar warrant was dated nearly two weeks later. In the interim, Prime Minister Indira Gandhi had been assassinated, and tensions in the Indo-Canadian community were rising dramatically.

In his November 9, 1984 memorandum, Upton wrote to Deschenes noting that Vancouver region had applied for technical coverage on October 19<sup>th</sup> and that the warrant application had been with Zelmer for over a week and a half, "... no doubt caught up in the pile of renewals".<sup>160</sup> Upton requested that the warrant be expedited or the field would need some kind of explanation regarding the delay.

In response, Deschenes wrote to Zelmer the same day, invoking the authority of the Deputy Director National Requirements (DDR), Archie Barr. Deschenes noted some urgency in moving the new warrant application through, and

<sup>154</sup> Exhibit P-101 CAB0146, pp. 1-2.

<sup>155</sup> Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3568-3569. The unit was also called Western Europe and the Pacific Rim. The Sikh Desk (also known as the Far East unit) was part of Upton's section.

<sup>156</sup> Exhibit P-101 CAB0146, pp. 2-3.

<sup>157</sup> Testimony of Daryl Zelmer, vol. 23, May 4, 2007, p. 2337.

<sup>158</sup> Exhibit P-101 CAB0147, p. 1. However, Exhibit P-101 CAB0162, p. 1 notes that level 4 coverage was granted by the Director on October 25, 1984, six days later. Level 4 coverage was a requirement before a warrant could be obtained.

<sup>159</sup> Exhibit P-101 CAF0144.

<sup>160</sup> Exhibit P-101 CAB0162, p. 1.

pointed out that the DDR had agreed to treat it as a priority. He asked for Barr's help in expediting the process.<sup>161</sup>

The memo contains a notation, likely by Zelmer, stating that on November 16<sup>th</sup> the application was "... returned to Desk for rewrite".<sup>162</sup> No explanation was given as to why the application was returned to the desk for a rewrite, considering its urgent nature and the delay that had already occurred.

On November 27, 1984, Gartshore again wrote to his superiors concerning the delay in the Parmar warrant. Upton replied that, "... there seems to be some hesitancy to give this application priority attention". In comments forwarded to Zelmer, Deschenes also noted the priority and said he would appreciate "... getting it through ASAP".<sup>163</sup>

The next day, Dick Wallin, the Chief CI&W BC Region, made a request for a progress report. In response, Upton noted that the file was subject to high priority tasking from HQ and that the application was "of some urgency". He also noted that the desk was advised of the tremendous backlog due to the conversion process, but would like to know when the application would be considered. Two handwritten notes at the bottom of this document are of importance. The first was written by Zelmer to Gartshore and reads:

The affidavit can possibly be ready to go in 2 days max. The question to be resolved is when to proceed. In light of renewal [illegible] is a decision that will require consultation between Mr. Deschenes and Mr. Jodoin.<sup>164</sup>

The second handwritten note addressed to Zelmer from D. Burke, Warrant Acquisition Control and Requirements (WAC & R, CSIS HQ) notes:

Can't see how we can process same with current workload – unless extremely important we won't handle until early in new year.<sup>165</sup>

A week later, on December 3, 1984, Gartshore wrote to Upton to pass on a message from BC Region investigators regarding the delay in receiving judicial authorization to start intercepting Parmar.<sup>166</sup> He repeated and underscored BC Region's concern that there was "... almost non-existent source coverage on Parmar and the Babbar Khalsa and this warrant is required in order to adequately investigate their terrorist threat."<sup>167</sup> Upton responded on the face of this memo

<sup>161</sup> Exhibit P-101 CAB0160, p. 1.

<sup>162</sup> Exhibit P-101 CAB0160, p. 1.

<sup>163</sup> Exhibit P-101 CAB0170, p. 1.

<sup>164</sup> Exhibit P-101 CAB0166, p. 1.

<sup>165</sup> Exhibit P-101 CAB0166, p. 1.

<sup>166</sup> Exhibit P-101 CAB0171, pp. 1-2.

<sup>167</sup> Exhibit P-101 CAB0171, p. 2.

that Deschenes had asked for priority attention to be placed on obtaining the warrant. All this information was duly passed to Zelmer who, on the face of the same memo, noted a "... problem of timing in introduction through Communication Intelligence [CI&W] brought to attention of Mr. Deschenes, who will take matter up with Mr. Jodoin."

In testimony, Jodoin had no recollection of the meeting or a discussion between himself and Deschenes in regard to the Parmar warrant.<sup>168</sup>

On December 13, 1984, an executive summary in support of the warrant application was prepared by Robert ("Bob") Burgoyne, an analyst on the Sikh desk, and signed by Deschenes. The underlying application, however, was not approved by Barr until March 8, 1985.<sup>169</sup>

Meanwhile, on December 13<sup>th</sup>, Upton wrote to Wallin, advising that the affidavit had been completed and reviewed by legal counsel and that it had received tentative approval. He further stated that, "...with the completion of the renewal warrant process, we expect this warrant will be given immediate consideration." The latter sentence, however, was bracketed, presumably by the recipient. A handwritten note at the bottom of the document adds a comment about the bracketed sentence, noting that someone had spoken with Upton, and clarifying that the court process would not happen until about the 20<sup>th</sup> of that month. The note goes on to state that the writer had phoned the Desk to correct the "...wrong impression" and that "...he understands."<sup>170</sup> It is a shocking display of ineptitude – that it took our security service approximately five months to obtain a warrant on the known and dangerous Parmar.

### **Disagreement over Cause of Delays**

In early 1997, the RCMP requested that CSIS provide them with a general overview of the warrant approval procedures in place in 1985. In their response, CSIS documented the procedures for obtaining the Parmar warrant based almost entirely on employee statements. The memo states that, "...[d]ue to the fact that the application to obtain a warrant against Parmar was made during the warrant conversion period following transition from the RCMP Security Service to CSIS, a decision was made at Headquarters to hold the request until the new system was in place."<sup>171</sup> This explanation for the delay is irresponsible. Jodoin rejected the accuracy of that statement during testimony. He claimed that while the process slowed down to ensure that it met the criteria they had established for this type of urgency, the warrant application was processed. He suggested that somebody might have misread or misinterpreted the file years later. He maintained that the warrant was pushed through the system in spite of the conversion process.<sup>172</sup> If that is so, why was the elapsed period from the time of the request to the time of obtaining the warrant five months?

<sup>168</sup> Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2273.

<sup>169</sup> Exhibit P-101 CAA0115, p. 1.

<sup>170</sup> Exhibit P-101 CAB0174, p. 1.

<sup>171</sup> Exhibit P-101 CAD0184, p. 21.

<sup>172</sup> Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2277.



Ray Kobzey certainly felt the conversion process was the reason for the delay in obtaining the warrant and that a five-month waiting period was unacceptable. He said that an investigator's determination of "urgency" due to a serious emerging situation should have been respected by the headquarters area and treated accordingly.<sup>173</sup>

### **Warrant Portability Issue**

The Warrant Review Committee (WRC) finally signed off on the Parmar warrant on January 28, 1985.<sup>174</sup> However, this only signalled the start of yet another difficulty. The following day, concerns were raised by Patrick Ansell, on behalf of the Ministry of the Solicitor General, about, among other things, portability issues in the Parmar warrant.

On February 26, 1985, the Chief, WAC & R filed an aide-memoire which addressed the inaction on the Parmar warrant during the month since the Warrant Review Committee had signed off on the warrant. Essentially, it discussed withdrawing the Parmar application from the ministerial consultation process until the entire issue of portability could be fully discussed with the Minister and his officials.<sup>175</sup> That discussion did not take place, but the aide-memoire noted that Jacques Courteau, the CSIS Legal Counsel, would be prepared to discuss this issue at the March 4<sup>th</sup> Solicitor General/Director meeting if it were decided to proceed.<sup>176</sup>

The aide-memoire had attached to it another document addressing the points raised by the Ministry. The issues Ansell and the Ministry were concerned about related to the provisions in the proposed warrant that would have allowed CSIS to target Parmar's work environment. Parmar described himself as a mechanic, but at the time he was said to be unemployed. More worrying to the Ministry was that the portability provision could lead to wire-taps at a gurdwara, as Parmar was calling himself a priest. Ansell was advised that portability provisions were intended to be used solely for unexpected situations where Parmar met with individuals at a location away from his residence and for a short-term duration. However, Ansell replied that the concerns of J. Michael Shoemaker, Senior Assistant Deputy Solicitor General, Police and Security Branch, might not be satisfied, and that some discussion might take place with the Minister on this issue when this warrant application was considered.

Throughout the month of February 1985, the Sikh Desk (Gartshore and Burgoyne) continued to be concerned. On February 12<sup>th</sup>, Zelmer inquired about the warrant delay and was advised of the portability issue which had yet to be discussed with the Solicitor General.<sup>177</sup> On February 21<sup>st</sup>, Zelmer again wrote to the WAC&R to inform them that fresh copies of the Parmar affidavit had

<sup>173</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3780-3781.

<sup>174</sup> Exhibit P-101 CAA0122, p. 1.

<sup>175</sup> Exhibit P-101 CAB0188, p. 1: On January 30, 1985, the warrant application was put on hold due to the concerns raised regarding portability.

<sup>176</sup> Much of the following discussion on portability is from Exhibit P-101 CAA0138, pp. 1-3.

<sup>177</sup> Exhibit P-101 CAB0191, p. 1.

been submitted, incorporating some requested changes. He noted pointedly, though, that there had been no notable developments and that “Indeed, the lack of this intercept represents the dominant deficiency to the advancement of our investigation.”<sup>178</sup>

Eventually, the portability issue was resolved, with the Solicitor General accepting the original proposed language on portability, and on February 26<sup>th</sup> the affidavit was given to Barr. However, the required Ministerial consult, which had been expected for March 4<sup>th</sup>, was postponed due to the illness of John Sims, Legal Counsel for CSIS, who was away and unable to attest to the affidavit.<sup>179</sup>

### **Warrant Finally Approved – Over Five Months after Original Application**

The affidavit in support of the warrant was finally signed on March 8, 1985 by Barr.<sup>180</sup> Three days later, on March 11<sup>th</sup>, the Honourable Elmer MacKay, the Solicitor General, signed the Minister’s approval required for the warrant.<sup>181</sup> The notice of application for warrant was signed by the Deputy Attorney General on March 12<sup>th</sup>, scheduling the warrant to be heard before the Federal Court two days later.<sup>182</sup> On March 14<sup>th</sup> the warrant, including the portability provisions, was approved by the Federal Court and deemed valid from that day until March 13, 1986.<sup>183</sup> BC Region was notified of the success of the warrant on March 18, 1985.<sup>184</sup> Interestingly, a handwritten note (author unknown) attached to the notice to BC Region, completes the warrant portability story. It states:

At a meeting with the Solicitor General on Monday March 11, 1985 (Mr. Finn, Barr, Gibson, Shoemaker, Marbury, Ms. Huntington and myself present) the question of restrictions on portability being included in draft warrants and ministerial approvals was raised. The Solicitor General agreed with my submission to the effect that ministerial policies and guidelines ought not to be incorporated into the documents; CSIS is bound by such policies and guidelines and therefore can only execute warrants subject to such policies and guidelines. The judge always has the option of adding conditions re: matters of public interest, pursuant to s. 21(3) (f) *CSIS Act*.<sup>185</sup>

In short, the upshot of the debate that held back the warrant application for about a month was a consensus that the debate was about a non-issue. This latter pointless delay attributable to the Ministry of the Solicitor General extended the needless earlier four-month delay at CSIS. A five-month delay in dealing with the

<sup>178</sup> Exhibit P-101 CAB0194, p. 1.

<sup>179</sup> Exhibit P-101 CAF0623, p. 1.

<sup>180</sup> Exhibit P-101 CAA0333, p. 12.

<sup>181</sup> Exhibit P-101 CAA0129, p. 1.

<sup>182</sup> Exhibit P-101 CAA0130, p. 2.

<sup>183</sup> Exhibit P-101 CAD0024, p. 2.

<sup>184</sup> Exhibit P-101 CAA0133, p. 1.

<sup>185</sup> Exhibit P-101 CAA0133, p. 3.

activities of a terrorist is inconsistent with competence, providing time enough to permit the terrorist to complete the act of terror he had planned.

Finally, on March 28, 1985, the BC Region Chief of CI&W wrote to the DG CI&W to inform him that the intercept on Parmar had been installed on March 25, 1985 – over five months after BC Region submitted an urgent application for a warrant.<sup>186</sup>

Kobzey told the Inquiry that this was frustrating and disappointing. He said that “...what was lost in terms of information or knowledge and what could have been done with that knowledge we’ll never know, but that’s one of the heartbreaks of this entire investigation, is that time delay, from a personal perspective.”<sup>187</sup>

Wesley Wark, who appeared as an expert witness on security and intelligence, agreed, noting that “...it’s an intelligence failure which is made that much more regrettable by the fact that we were probably fairly close to an intelligence success.”<sup>188</sup>

The “what ifs” are numerous:

- What if the translators had had the benefit of listening to Parmar for a greater amount of time? Would they have developed a keener sense of their target and been able to tell when code words were being used or when secretive plans were being made?
- What if the warrant had been in place five months earlier? Would it have resulted in information that could have been used to support warrants on other key targets such as Ajaib Singh Bagri and Surjan Singh Gill?
- What if the intelligence gleaned from the wiretaps had given CSIS the ability to assess Parmar’s close colleagues and perhaps approach one to be a human source to provide information even more valuable than that from the wiretaps?
- What if additional intelligence had allowed Kobzey and Ayre to make a stronger case for ongoing surveillance coverage of Parmar?<sup>189</sup>
- Finally, what if there had been an additional five months of intelligence? Would the combined impact of the above additional insights have provided CSIS with sufficient intelligence to prevent the bombing?

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<sup>186</sup> Exhibit P-101 CAB0206, p. 1.

<sup>187</sup> Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3751.

<sup>188</sup> Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1495-1496.

<sup>189</sup> Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3775.

## Observations

Several important observations arise from the Parmar warrant application process.

- The Parmar warrant delay was a key process and communications failure at CSIS.
- Despite Jodoin's testimony before this Inquiry, the documents show that the Parmar warrant was delayed until the conversion process was over. Whether this meant it was "put on hold" or "delayed" is irrelevant and borders on irresponsibility considering the stakes. In any event, the warrant did not go forward until the conversion process was complete, despite BC Region and HQ requesting urgent, priority and ASAP action on the warrant on practically every piece of correspondence.
- The delay in processing the Parmar warrant resulted in a vital loss of opportunity for CSIS to obtain intelligence and in an equal loss of opportunity to obtain potential evidence that would be needed by the RCMP.
- The frustration one feels by the delays caused by this Byzantine process are exacerbated when one considers that a police warrant to search a suspect's residence, arguably a greater invasion of privacy than a telephone intercept, can be obtained by a brief but effective affidavit within hours.

## Addendum: CSIS Warrant Procedure 1987 to 1992

- Step 1:** The regional field investigator identifies a need for a warrant and consults with Regional Communications Intelligence Production (CIP), Special Operations Security (SOS) and Scientific and Technical Service (STS).
- Step 2:** The regional unit head reviews the application for completeness and accuracy.
- Step 3:** The regional chief reviews and considers existing coverage.
- Step 4:** The regional DDG Ops or regional OPS chief reviews and considers existing coverage, translation capabilities and position vacancies.
- Step 5:** The regional warrant coordinator reviews the process and confirms consultation with SOS, STS, and CIP.

- Step 6:** The regional DG reviews the application and recommendations and forwards to HQ.
- Step 7:** HQ Warrant Acquisition Control and Review (WAC&R) unit reviews the application and the requested powers.
- Step 8:** The branch warrant coordinator assists the analyst in preparation of the affidavit.
- Step 9:** The HQ desk analyst assesses the application, consults with legal, prepares the affidavit, and certifies accuracy of the facts.
- Step 10:** The HQ desk head reviews the affidavit and certifies that the facts and the analysis are supported by the information.
- Step 11:** The HQ Chief reviews the affidavit and certifies that the powers are necessary and the resources are available.
- Step 12:** The HQ DG reviews the affidavit and certifies it is consistent with the intelligence requirements and the priorities of the branch.
- Step 13:** The human source branch certifies that any source identity in the affidavit is protected and reviews the reliability assessment of human sources.
- Step 14:** The ADR reviews the application and ensures that the request is necessary and fits within priorities and plans for the service.
- Step 15:** Independent counsel reviews the application and, as required, meets with the affiant (i.e., who swore the affidavit) and with legal to assess the reliability of facts.
- Step 16:** The WAC&R reviews and prepares legal documents and affidavit packages.
- Step 17:** The Secretariat reviews and disseminates the packages and schedules the Warrant Review Committee (WRC).
- Step 18:** The WRC considers the application and rejects or approves it.
- Step 19:** The affiant makes the attestation.
- Step 20:** The Deputy Solicitor General (DSG) considers the application and the Solicitor General's Police and Security Branch (PSB) prepares a memo to the Minister for the DSG.
- Step 21:** The Solicitor General considers the application and approves or rejects it.

- Step 22:** The WAC&R prepares the court documents and establishes the Federal Court date and time. They also file the documents with the court.
- Step 23:** The Federal Court considers the application and approves or rejects it.
- Step 24:** The WAC&R receives the signed court documents and ensures that the affidavit and warrant and any conditions are disseminated.<sup>190</sup>

## 1.4 The Duncan Blast

The Duncan Blast incident occurred three weeks prior to the bombing of Air India Flight 182. Two CSIS surveillants followed Talwinder Singh Parmar, Inderjit Singh Reyat and a third unidentified person into the woods near Duncan, British Columbia, where they heard a large explosion. The senior surveillant believed it was the sound of a gun being discharged, although the younger surveillant thought it to be a much greater noise that literally lifted her out of her car seat. A cursory search of the area was fruitless. Parmar and Reyat were allowed to continue on their way and the third person was never identified. The issue of this person's identity continues to be a major line of investigation today (see Section 1.5 (Pre-bombing), Mr. X).

### Surveillance Request

In April 1985, CSIS investigators Ray Kobzey and David Ayre requested ongoing surveillance of Parmar<sup>191</sup> to complement the newly acquired warrant to intercept Parmar's conversations. Kobzey had previously been granted level 4 authorization which allowed him to obtain the warrant and ask for surveillance. As well as complementing the warrant, Kobzey requested ongoing surveillance due to the rising concerns over the attempted assassination of an official of the Government of India in New Orleans and the impending June visit of Prime Minister Rajiv Gandhi to the United Nations in New York.<sup>192</sup>

While there had been sporadic coverage of Parmar during April and May, ongoing daily coverage only began June 1, 1985.<sup>193</sup> On June, 4<sup>th</sup>, CSIS surveillance teams were covering Parmar. On that date, CSIS surveillants, Larry Lowe<sup>194</sup> and Lynne Jarrett witnessed what has come to be known as the "Duncan Blast".

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<sup>190</sup> See Exhibit P-101 CAF0725: Study of, Report on, and Recommendations Relating to Process for Acquisition of Warrants by CSIS, April 1992, by the Honourable George Addy, pp. 102-109.

<sup>191</sup> Exhibit P-101 CAB0209, p. 1.

<sup>192</sup> Testimony of Ray Kobzey, vol.33, May 24, 2007, pp. 3793-3794.

<sup>193</sup> Testimony of Ray Kobzey, vol.33, May 24, 2007, p. 3795.

<sup>194</sup> Larry Lowe was not called to testify before the Commission due to health reasons. Instead, his testimony at the Reyat trial in September 1990 is relied upon for his observations (Exhibit P-101 CAD0007).

## The Duncan Blast

On June 4<sup>th</sup>, the CSIS physical surveillance unit (PSU) set up in the vicinity of Parmar's house. However, at 9:48 AM, the surveillance team lost their targets and did not pick them up again until 2 PM.<sup>195</sup> In the early afternoon, Jarrett and Lowe followed a maroon car driven by Surjan Singh Gill with Parmar and a person they believed at the time was his son<sup>196</sup> (later referred to as Mr. X), to the Horseshoe Bay Ferry terminal. When they reached the terminal, only Parmar and his "son" boarded the ferry. According to Jarrett:

[W]hen Parmar and the young man got out of the vehicle and headed for the walk-on passenger area, I also got out and headed into the ferry walk-on passenger area with them to board the ferry...Parmar and the young man that he was with and myself were essentially the last three people [on]. The young man actually held the door for me as we went into the walk-way to head to where you purchase the tickets.<sup>197</sup>

Only two of the surveillance cars were able to make it onto the ferry in time—just half of the surveillance team's usual complement.<sup>198</sup>

During the ferry trip, Jarrett observed Parmar attempting to make a phone call, first trying to charge it to his home phone. He could not do so because there was nobody home to approve it. Parmar told the operator that he just wanted to leave a message with Mr. Singh at 746-4918. Parmar paid \$2.90 and called someone for about a minute.<sup>199</sup>

The ferry docked at Departure Bay in Nanaimo. Agent Lowe had also made it on board with his car and met Jarrett at the passenger pick-up where they continued to follow Parmar and his "son" who were picked up by another individual. Jarrett and Lowe then followed them to the residence of Inderjit Singh Reyat. The driver who took them there then left. At 6:30 PM, Reyat got into his car with Parmar and his "son" and drove to Auto Marine Electric in Duncan.<sup>200</sup> At 7 PM they left Auto Marine Electric and drove out of town at a high rate of speed, reaching speeds up to 120 km/hr.<sup>201</sup>

Reyat's car stopped in a wooded area and then backed south off Highway 18 along a dirt road that ended in a cement barrier. The surveillance team of Lowe and Jarrett parked their car a distance, north off Highway 18 on Hillcrest Road,

<sup>195</sup> Exhibit P-101 CAB0250, p. 2.

<sup>196</sup> It was later determined that the youth was not Parmar's son. He has since been referred to as Mr. X. See Exhibit P-101 CAB0803, p. 5; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191.

<sup>197</sup> Exhibit P-101 CAB0250, p. 3; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2163-2164.

<sup>198</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3833.

<sup>199</sup> Exhibit P-101 CAB0250, pp. 3-4.

<sup>200</sup> Exhibit P-101 CAB0250, pp. 4-5; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2171-2175.

<sup>201</sup> Exhibit P-101 CAB0250, pp. 5-6.

and out of sight.<sup>202</sup> At that point, Lowe got out of the car and instructed Jarrett to remain in the car. He then began walking back through the woods to have a clear view of the car carrying Parmar. Jarrett remained in the car as Lowe had instructed. Lowe got within 150 to 200 yards from the Reyat car.<sup>203</sup>

Lowe saw the “son” return to the car and sit in the back seat. Soon after, there was a very loud bang. The sound was so loud that Lowe jumped behind a tree, believing a shot had been fired at him.<sup>204</sup>

Jarrett told the Commission that the passenger window was down about six inches. The “very sharp, very clear” bang was “extremely loud” and startled her so much that she swore and jumped off the car seat.<sup>205</sup>

Lowe described the sounds as follows:

...a loud explosion or bang, or rifle shot or whatever, I’m not – I couldn’t describe it at that time. I thought it was a rifle shot at the time.... And it scared the hell out of me, to be honest with you, and I was hiding behind a tree and climbed further down behind the tree because I didn’t know what was going on.... It was a matter of about a minute or two minutes after the sound the two individuals appeared back to the car.... The young fellow got out of the car and all three were around the back. Mr. Reyat’s head disappeared as if he was putting something in the back of the trunk .... All three got back into the car at that particular time.<sup>206</sup>

Shortly thereafter, Lowe returned to the vehicle. He was an experienced hunter and identified the sound as a “rifle report” (i.e., the sound of a rifle being fired).<sup>207</sup> He requested that Jarrett radio that information, and then drove with her to the area where Reyat’s car had been. Once they reached that site, Lowe instructed Jarrett to search the area for gun casings, which they did for less than a minute. They found nothing.<sup>208</sup>

Lowe and Jarrett then drove off to rejoin the surveillance team and to be relieved by the afternoon shift.<sup>209</sup> Parmar was followed by members of the CSIS afternoon shift as he returned alone to Vancouver via ferry. Once there, he was picked up by Surjan Singh Gill. CSIS BC Region had made plans to have the RCMP stop Gill’s

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202 Exhibit P-101 CAB0250, p. 6; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2179, 2181.

203 Exhibit P-101 CAD0007, p. 42.

204 Exhibit P-101 CAD0007, p. 29.

205 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2181.

206 Exhibit P-101 CAB0250, p. 6, CAD0007, pp. 10-11.

207 Exhibit P-101 CAB0250, p. 6.

208 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2182-2183; see also Exhibit P-101 CAB0250, p. 6 and CAD0007, p. 16.

209 Exhibit P-101 CAB0250, p. 7.



vehicle and search it for a weapon, but CT Chief Robert Smith called off the plan when the surveillants reported that Parmar was not carrying anything, such as a bag, which could conceal a weapon.<sup>210</sup>

Meanwhile, Lowe's team remained on Vancouver Island. Lowe explained in a will-say statement that they missed the ferry back to Vancouver, so they all stayed overnight in Nanaimo. The team compiled surveillance notes and Lowe phoned the Vancouver office to provide an update. They were advised that the "son" did not return on the ferry, and the team began to arrange for rental vehicles to look for the "son" on Vancouver Island. Lowe was called the next morning and told that they should return to Vancouver without completing the surveillance follow-up on the son that they had planned. Lowe commented, "I don't know whose decision that was but I guess that's hindsight."<sup>211</sup>

Had CSIS continued its operation on Vancouver Island they could have gathered a great deal more information on the person they believed to be the son of Parmar. The next day in Vancouver, other CSIS surveillants noted that both of Parmar's sons were dropped off at school.<sup>212</sup> At a minimum, the surveillants would have had to come to the conclusion that the person they were following on Vancouver Island was not Jaswinder Parmar. The identity of the young man who accompanied Parmar and Reyat to the test blast has remained a key question and an active part of the police investigation.<sup>213</sup>

### **What Information Did CSIS Pass on to Law Enforcement?**

There have been complaints through the years about the completeness of the information that CSIS provided to the RCMP regarding the Duncan Blast and the sufficiency of its cooperation. As the Honourable Bob Rae succinctly put it in his report:

Messrs. Reyat, Parmar and others were involved in the building of at least two bombs and they tested a device while under surveillance by members of CSIS on June 4, 1985.... There are differing accounts from the RCMP and CSIS as to the level of co-operation between the two services with respect to the surveillance of Parmar and his associates on that day.<sup>214</sup>

In addressing the issue of how much information actually reached the RCMP, and when it began to come in, Deputy Commissioner Gary Bass told the Inquiry that "...the issue is how much detail was provided, and for what purpose and with what caveats."<sup>215</sup>

<sup>210</sup> Exhibit P-101 CAB0250, p. 7, CAB0902, p. 31, CAD0130, pp. 15-16.

<sup>211</sup> Exhibit P-101 CAA1089(i), p. 6.

<sup>212</sup> Exhibit P-101 CAF0343(j): The Watt MacKay Report, p. 83

<sup>213</sup> See Section 1.5 (Pre-bombing), Mr. X.

<sup>214</sup> *Lessons to be Learned: The Report of the Honourable Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness, on outstanding questions with respect to the bombing of Air India Flight 182* (Ottawa: Air India Review Secretariat, 2005), p. 8.

<sup>215</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11241, 11243.

Indeed in the RCMP's Submission to the Honourable Bob Rae, "Air India Flight 182 Disaster", dated October 2005, the RCMP stated:

Corporal Henderson was not provided with any additional details to indicate the seriousness of this information. In particular, he did not know about the guarded manner that Parmar spoke on the telephone intercepts.<sup>216</sup>

CSIS replied stating:

The Service's report...the day after the Duncan test blast does not support the notion that Cpl. Henderson was not provided with any additional detail to indicate the seriousness of this information. It is clear in the CSIS report that Sikh extremism was discussed between the Service and the RCMP in respect of the event, as evidenced by the information Cpl. Henderson provided on Reyat's involvement with the local *gurdwara*.

The RCMP paper notes that Parmar's identity was revealed to the RCMP later ("later identified as Talwinder Parmar"). Parmar's identity appears to have been provided **at the time** of the initial Reyat inquiry made by the Service on June 4, 1985, given that the RCMP Occurrence Report [CAA0193] states that CSIS requested "...we supply any local intelligence *on them*." In any event, the RCMP was made aware of Parmar's involvement in the Duncan incident, in the briefings made by the Vancouver Police and CSIS to the RCMP on 11 June, 1985.... The RCMP were aware of Parmar's history and the threat he presented...given the ongoing Interpol interest around him, the failed extradition attempt by India and his stay in a German jail. To state that the significance of the event was not known is further belied by the visit by US Secret Service and RCMP members on 12 June 1985, in anticipation of the Rajiv Gandhi visit to the United States.<sup>217</sup>

To this the RCMP replied:

CSIS states that the Service alerted the RCMP of this event on the same date of the occurrence. This is misleading. Although CSIS did state they heard a gunshot, they only requested indices checks over the phone on Reyat. They provided no background information on their investigation of Parmar.<sup>218</sup>

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<sup>216</sup> Exhibit P-101 CAA0335, p. 19; Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8301.

<sup>217</sup> Exhibit P-101 CAA1088, p. 2. [Emphasis in original]

<sup>218</sup> Exhibit P-101 CAF0814, pp. 1-2.

The following is an attempt to trace exactly what information was shared with the RCMP:

- Early on the morning of June 5<sup>th</sup>, the CSIS surveillance team manager contacted RCMP Cpl. Henderson by phone to advise him of what the team had witnessed in Duncan.<sup>219</sup> He indicated that CSIS was "...conducting surveillance of some of their targets who met Reyat" the previous day. It was then stated that "...Reyat and the target" went up a logging road and "...a gunshot was heard." The two parties were then followed back into Duncan. The CSIS member requested that the RCMP "...supply any local intelligence on them." Henderson found information about weapons registered to Reyat and advised accordingly.
- Later on the same morning, upon receipt of the surveillance report, Kobzey contacted Henderson by phone to advise him further on what CSIS had witnessed.<sup>220</sup> Kobzey indicated that the CSIS inquiries and surveillance at issue "...centres around radicals of the East Indian community."<sup>221</sup> Henderson provided Kobzey with some background information on Reyat and his involvement in Sikh issues in Duncan.<sup>222</sup>
- The report prepared by Henderson states that when he was first contacted by CSIS he was requested to provide "...any local intelligence *on them*."<sup>223</sup> However, when Henderson was questioned about the events in 1989, he indicated that "...the only request made by CSIS for any action was for Detachment records checks for Reyat";<sup>224</sup> and that his 1985 report, which did not mention Parmar's name,<sup>225</sup> contained "...the complete information provided to the Duncan Detachment by CSIS" on June 5, 1985.<sup>226</sup> Indeed, it appears from both Henderson's report and the CSIS report respecting this interaction, that Henderson only provided information about Reyat, including his address, employment, firearms and involvement with a new Sikh temple in Duncan.<sup>227</sup>

When Kobzey contacted Henderson, he requested that the information provided by CSIS be classified as secret. Henderson also noted in his report that "If further

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219 Exhibit P-101 CAA0193, p. 1. See also Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3797, 3801.

220 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3801. See also Exhibit P-101 CAA0188, p. 2 and CAA0193, p. 2.

221 Exhibit P-101 CAA0193, pp. 1-2.

222 Exhibit P-101 CAA0188, p. 2.

223 Exhibit P-101 CAA0193, p. 1. [Emphasis added]

224 Exhibit P-101 CAA0751, p. 1.

225 Exhibit P-101 CAA0193, pp. 1-3.

226 Exhibit P-101 CAA0751, p. 1.

227 See Exhibit P-101 CAA0188, p. 2, CAA0193, pp. 1-3.

assistance is required, they will advise.”<sup>228</sup> Henderson later explained that his understanding was that CSIS had requested that the file be classified, and that the RCMP provide “...no follow-up assistance unless specifically requested to do so by CSIS.”<sup>229</sup>

It seems the RCMP interpreted this to mean that they could not investigate further. D/Comm Bass told the Commission that the RCMP were asked not to do anything with information about the blast and to treat it as secret.<sup>230</sup> However, in cross-examination by the Attorney General of Canada, Bass conceded that this did not preclude the force from investigating further and that there was likely a presumption that this event was associated at the time with the potential assassination of Rajiv Gandhi.<sup>231</sup>

It was not only the RCMP Duncan Detachment that received information from CSIS about the events of June 4, 1985. A CSIS report on the Duncan Blast, dated June 5<sup>th</sup>, notes that the information was shared with RCMP VIP and E Division NCIS. This report identified Parmar as the target of the surveillance and Surjan Singh Gill as the person driving Parmar to the ferry terminal and picking him up on his return. It also referred to the sound heard as “a single, loud explosion” which was believed to have resulted from the discharge of “a large calibre handgun.”<sup>232</sup>

At the time Kobzey and Ayre noted:

It is difficult [at] this point to determine exactly what happened vis-à-vis the handgun. A number of scenarios come to mind, none of which are appealing. Given this, BC region is providing optimum coverage on Parmar and we are bearing in mind the investigations taking place in the Toronto/Hamilton area.<sup>233</sup>

Aside from the reference in the CSIS report that the information was sent to E Division VIP and NCIS, there appears to be no other record to confirm a direct transfer of information from CSIS to NCIS. It is, however, clear that the information was transmitted, at least indirectly, to NCIS in early June 1985. CSIS provided complete details of the Duncan Blast surveillance to Vancouver Police Department (VPD) members of the Vancouver Integrated Intelligence Unit (VIU) in the days following the incident, and a VIU report was prepared on June 6, 1985. The report contained a clear indication of Parmar’s identity as the initial target of the surveillance and provided full details about his participation in the events surrounding the Duncan Blast, as well as the involvement of Surjan

<sup>228</sup> Exhibit P-101 CAA0193, p. 2.

<sup>229</sup> Exhibit P-101 CAA0751, p. 1.

<sup>230</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11249-11250.

<sup>231</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11310.

<sup>232</sup> Exhibit P-101 CAA0188, pp. 1-3. Kobzey noted that the information shared with the RCMP would have included the surveillance of Parmar and the events observed at the Duncan blast itself: Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3801.

<sup>233</sup> Exhibit P-101 CAA0188, p. 3, para. 6.

Singh Gill in driving him to and from the ferry terminal. It stated that, during the surveillance in the woods, "...the sound of a high-calibre handgun was heard (1 shot)."<sup>234</sup> There was additional information provided by Kobzey, that a meeting may have been held on June 3, 1985 at the house of Surjan Singh Gill.<sup>235</sup> At the meeting, a number of Sikhs were alleged to be plotting to assassinate Gandhi.<sup>236</sup> This led Kobzey to conclude at the time that the meeting might relate to Parmar's trip to Duncan the next day and, based on the apparent test-firing, Parmar was likely involved in buying or selling a weapon.<sup>237</sup>

The VIIU report provided no indication of any uncertainty surrounding the nature of the sound heard by the CSIS surveillants, but did provide a clear indication of the surrounding context and players involved. The report was accessible to the RCMP E Division NCIS members who worked at VIIU, and the information was most likely discussed with them in the days after the VPD received it.<sup>238</sup> The report was also received by the Criminal Intelligence Service BC (CISBC) on June 10, 1985 and was then available to the RCMP.<sup>239</sup>

A week after the Duncan Blast, the US Secret Service (USSS) and the RCMP began conducting "diffusion interviews"<sup>240</sup> of Sikh extremists in advance of the US visit of PM Rajiv Gandhi to dissuade them from taking any action against him. The USSS was paying close attention to Canadian Sikhs, due to a recent attempted assassination in the US of a visiting Indian minister.<sup>241</sup> The conspirators had ties to Sikhs in Southern Ontario and Vancouver.<sup>242</sup> Parmar and Gill were likely included because of information passed to the USSS by CSIS.<sup>243</sup> According to CSIS, Parmar was a high-profile leader with links to the Sikh communities across Canada. He travelled frequently, and had in the past entered (or attempted to enter) the US.<sup>244</sup>

The USSS, together with the RCMP, interviewed both Parmar and Gill on June 11, 1985.<sup>245</sup> Prior to that, the VPD members who authored the VIIU report briefed Cpl. B. Montgomery, Cst. M. Sandhu and the USSS agents on the reported discharge of a "high calibre handgun" in the Duncan area, and asked them

<sup>234</sup> Exhibit P-101 CAA0200, p. 2.

<sup>235</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3808; Exhibit P-101 CAA0200, p. 2.

<sup>236</sup> Exhibit P-101 CAA0200, p. 2.

<sup>237</sup> Exhibit P-101 CAA0200, p. 2, CAB0264, p. 2.

<sup>238</sup> Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3907; Testimony of Wayne Douglas, vol. 34, May 28, 2007 pp. 4033-4034. All VPD VIIU files were searchable and fully accessible to the RCMP members of VIIU: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3874; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4030.

<sup>239</sup> Exhibit P-101 CAA0862, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2222-2223.

<sup>240</sup> Diffusion interviews refers to a procedure by which persons of interest are interviewed by the police in order to make them aware that they are on the police radar, so to speak, in the hopes that they will not proceed with whatever action they had planned.

<sup>241</sup> Exhibit P-101 CAA1099, p. 2.

<sup>242</sup> Exhibit P-101 CAC0438, p. 2.

<sup>243</sup> Exhibit P-101 CAB0286, p. 1.

<sup>244</sup> Exhibit P-101 CAB0114, p. 2, CAB0139, p. 2.

<sup>245</sup> Exhibit P-101 CAA0871, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2228; Exhibit P-101 CAA0214.

not to jeopardize the ongoing CSIS investigation by revealing specifics of the Duncan incident or other details from the report. The USSS investigation related to the pending Rajiv Gandhi visit to Washington, DC, and there were questions for Parmar and Gill relating to that subject as well as to weaponry. The specific intent was to dissuade Parmar, Gill and their associates from any action against Gandhi, who appeared to be their target at that time.<sup>246</sup>

CSIS also intended to brief the RCMP and USSS prior to the diffusion interviews, but this did not occur.<sup>247</sup> However, CSIS did do a post-briefing session on June 13, 1985, where it was determined that "...no information was used that would place our own sources at risk".<sup>248</sup> Since CSIS had requested that the Duncan Blast information remain secret, it is clear that the fact that CSIS had witnessed the Duncan Blast and had surveillance on Parmar was not revealed to Parmar or Surjan Singh Gill during the diffusion interviews.<sup>249</sup>

### **CSIS Secrecy May Have Limited Threat Assessment Information to the RCMP**

This CSIS concern for secrecy might explain why the Duncan Blast surveillance information, though it related to an incident occurring shortly before the Golden Temple attack anniversary and the Gandhi visit to the US and, though it involved a Sikh extremist recognized as highly dangerous,<sup>250</sup> was not mentioned in any of the CSIS threat assessments sent to RCMP HQ VIP Security and Airport Policing in June 1985.<sup>251</sup>

The Duncan Blast information was relevant from a threat assessment perspective, whether it involved firearms or explosives testing. Exercising caution to ensure the targets of surveillance are not made aware of the operations in order to be able to continue the surveillance is often necessary. However, if the CSIS policy of secrecy extended to sheltering the surveillance operations by not revealing information relevant to protective operations in threat assessments to the RCMP or other appropriate government agencies, the very purpose of the CSIS surveillance and operations was defeated.

By the same token, the RCMP itself had the information about the Duncan surveillance in its possession, through various channels, and had its own threat assessment process, but could also not include the information in the threat assessments sent to Airport Policing and VIP Security because it failed to report it internally.<sup>252</sup>

<sup>246</sup> Exhibit P-101 CAA0876, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2226.

<sup>247</sup> Exhibit P-101 CAB0290, pp. 1-2; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2228; Exhibit P-101 CAA0214, p. 1.

<sup>248</sup> Exhibit P-101 CAA0214, pp. 1-2; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2230-2231.

<sup>249</sup> Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2231.

<sup>250</sup> Exhibit P-101 CAA0110, p. 3.

<sup>251</sup> See the following CSIS threat assessments: Exhibit P-101 CAB0249, CAA0190, CAA0199 and CAB0321, sent respectively on June 4, June 5, June 6 and June 18, 1985.

<sup>252</sup> See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

Even though the information was passed from CSIS to the RCMP, it was not passed appropriately through the RCMP CSIS liaison process. Sgt. Michael (“Mike”) Roth, the head of the RCMP Liaison Unit, testified that he was not informed about the Duncan Blast until after the bombing of Flight 182. He indicated that the information in the CSIS report about the incident was precisely of the type that ought to have been received by his Unit. Had Roth received a copy of the report, he explained, he would have been able to check various RCMP intelligence files on Parmar, Gill and the BK to enable the RCMP to contextualize the information and better understand it.<sup>253</sup>

Bass said he understood why CSIS might not have recognized the significance of the information about the Duncan Blast because the thinking at that time was all about a potential assassination attempt on Gandhi. Given the environment at that time, he generously does not fault CSIS for making the assumptions it did.<sup>254</sup>

### **Lack of Camera Leaves Mr. X a Mystery**

Bass did wonder about what might have happened had Mr. X been properly identified.

It was the surveillants’ task to identify those persons who interacted with Parmar – that was part of the intelligence they were supposed to collect. In this case, the third person was not identified nor photographed, and the mystery as to who Mr. X was has remained ever since. Bass called this “...a real missed opportunity here that we’re still chasing 22 years later that where we might have identified him during that week, because the theory ... is that he helped, right or wrong, that he helped Reyat build the bombs.”<sup>255</sup>

The key question is why no photos were taken by the surveillance team on June 4, 1985. The general purpose of the surveillance was to ascertain “...the associates, contacts, movements, and activities of Parmar to obtain photographs of Parmar and all those he comes in contact with.”<sup>256</sup> Despite the fact that one of the key goals was to obtain photos of Parmar and his associates, Jarrett was not given a camera and was only supplied with a two-way radio.<sup>257</sup>

**MR. GOVER:** Now, I’ve touched on the general purpose or objective of the surveillance, which included “obtaining photographs of Parmar and all those he comes in contact with”, and I have quoted that verbatim. What equipment were you given to allow you to carry out your duties?

**MS. JARRETT:** A radio.

**MR. GOVER:** And in particular, were you given a camera?

<sup>253</sup> Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5600-5606.

<sup>254</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11248.

<sup>255</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11248.

<sup>256</sup> Exhibit P-101 CAB0250, p. 1.

<sup>257</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2157.

**MS. JARRETT:** No, I was not.

**MR. GOVER:** When we speak, as we will, of your observations of June 4th, 1985, were you able to take any photographs of Mr. Parmar?

**MS. JARRETT:** No, I was not.

**MR. GOVER:** Do you recall whether there was a camera in the car that you were in at times in the course of conducting your surveillance?

**MS. JARRETT:** I don't believe there was.<sup>258</sup>

While the Attorney General rather optimistically speculated that it "...is entirely possible that the PSU team would have had a camera in one of the cars"<sup>259</sup>, no evidence was provided to support this defensive view. Indeed, the record shows that it was unlikely that any of the surveillance units took photos that day.<sup>260</sup>

**MR. GOVER:** Constable Jarrett, do you have any recollection of taking any photographs while conducting mobile surveillance with CSIS?

**MS. JARRETT:** Mobile surveillance?

**MR. GOVER:** Yes.

**MS. JARRETT:** Me, personally, I don't recall that happening.

**MR. GOVER:** And have you ever seen a photograph taken by any other member of the physical surveillance unit on June 4, 1985?

**MS. JARRETT:** No.<sup>261</sup>

It is plausible, but not understandable, that the lack of cameras was the result of the resource constraints affecting CSIS at the time.<sup>262</sup> Jarrett stated that she did not see a camera throughout the entire time she conducted mobile surveillance until she moved to conducting stationary surveillance at the observation post (OP) in July of 1985.<sup>263</sup> As Jarrett had been conducting mobile surveillance for CSIS since July 16, 1984,<sup>264</sup> this indicates that it was nearly a year before she was provided with a camera. The lack of cameras for CSIS surveillance work dealing with potential terrorists cannot adequately be excused by appealing to resource constraints.

In its Final Submissions, the AGC also relies on a statement by Kobzey, suggesting that taking photographs would not have been practical.<sup>265</sup> However, this statement is speculation on the part of Kobzey, who was not a member of the surveillance team and was unaware of the fact that, at least according to the evidence before the Commission, the team did not possess cameras.

Whatever the cause, the failure to obtain a photo of Mr. X was a significant missed opportunity, with the result that, to this day, the identity of Mr. X remains a key mystery in the Air India narrative.

<sup>258</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2157.

<sup>259</sup> Final Submissions of the Attorney General of Canada, Vol. para. 162.

<sup>260</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2210.

<sup>261</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2210.

<sup>262</sup> See CSIS-related portions of Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.

<sup>263</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2208.

<sup>264</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2151-2153.

<sup>265</sup> Testimony of Ray Kobzey, vol 33, May 24, 2007, pp. 3814-3817; Final Submissions of The Attorney General of Canada, Vol. I., para. 162.



### The Taking of Notes

Aside from the lack of a camera, a second clear deficiency in the surveillance operation involved the notes taken by the CSIS surveillants. At the time, the general procedure was for the entire surveillance team to collectively write its surveillance report at the end of the day.<sup>266</sup> Jarrett stated that when she first started, CSIS surveillants did not make handwritten notes because they were not expecting to be in court, but shortly before the Duncan Blast they did start taking notes, albeit without any guidelines or training. In her testimony, Jarrett stated that the notes should have been more inclusive of the day from beginning to end rather than of one specific time frame. She acknowledged that the notes would have been much different had she expected to end up in a court of law.<sup>267</sup>

### The Phone Number Dialed on the Ferry: Compounding Errors Affect the Investigation

Further error occurred with regard to the analysis of the phone number which Jarrett noted Parmar attempting to dial on the ferry. Jarrett recorded the number 746-4918, but was not sure about the last four digits. The number Jarrett thought she heard was recorded in the surveillance report.

However, a further note in the surveillance report states:

Note: the phone book was checked, it was found that the 746 exchange is for Duncanm [*sic*], B.C. and a call to the operator revealed that it would cost \$2.90 to call Duncan. Thge [*sic*] Duncan phone book shows that there is a Mr. T. M. Singh listed. As a lawyer [*sic*] and the phone number is 746-7121. Address: 170 Craig, Duncan, B.C.<sup>268</sup>

When Ayre and Kobzey received the surveillance report and wrote their report on the incident for entry into NSR, the information they included simply noted that they believed the number dialled belonged to a Mr. T. M. Singh. The report stated:

During the trip to Nanaimo Parmar was noted making a telephone call to a lawyer in Duncan. (Note: we believe he called T.M. Singh (604) 746-7121, 110 Craig St. Duncan, BC).<sup>269</sup>

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<sup>266</sup> See Exhibit P-101 CAB0250 for the surveillance report written on June 4, 1985.

<sup>267</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2157-2159.

<sup>268</sup> Exhibit P-101 CAB0250, pp. 3-4.

<sup>269</sup> Exhibit P-101 CAA0188, p. 1.

Significantly, later in the report, they note the information given to them by Henderson, including Inderjit Singh Reyat's telephone number (604) 746-4918.<sup>270</sup>

It seems that nobody noticed that this was exactly the same number noted by Jarrett.

Unfortunately, original surveillance reports at the time were not entered into NSR. Only the investigator's report was entered, and in this case it omitted Reyat's phone number. This affected the analysts at CSIS HQ and any other CSIS employees who relied on the report in NSR, since only the investigators in BC Region would have had access to the original surveillance report. Additionally, when the RCMP asked for information from CSIS, it was the reports, not the raw data (e.g., surveillance reports) that were shared. This is a concrete illustration of the pitfalls that can arise from a reliance on summaries and other modes of indirect reporting without access to the original raw data.

The consequences of this specific error are largely unknown. Certainly it appears that some CSIS employees still believe that Parmar called T. M. Singh. Was valuable time wasted tracking down why Parmar may have called "Mr. Singh" when in fact no such call took place?

Furthermore, the error shows a clear lack of knowledge about Sikhs in general. There was only one "Mr. Singh" listed in the phone book, but had the surveillance team known more about Sikhs, they would have realized that all male Sikhs go by the name "Singh", even though they may use other last names. Instead, the surveillance team relied on their flawed search of the phone book rather than the direct observations of one of their team members, an error which was repeated and compounded by the CSIS investigators who received the surveillance report.

With the most modest of hindsight, had it been known that the number Parmar called was that of Reyat, the intercept logs could have been checked and the discovery made that Parmar and Reyat had had previous contact. Parmar had arranged for other visits to Duncan in the previous month. This information was, in any event, unavailable to the investigators as the backlog of intercepts meant that the May tapes were not translated until late June and September 1985 after the destruction of Air India Flight 182.<sup>271</sup>

Finally, and most damaging, the phone call information was not known by the RCMP until March 1986, when Jarrett was interviewed for the expected Duncan Blast trial:

It will be noted that [redacted] recalls the details of a telephone number and call made by Parmar from the B.C. ferry to the telephone number of Inderjit Singh Reyat. This information was previously unknown to us.<sup>272</sup>

<sup>270</sup> Exhibit P-101 CAB0188, p. 2, para. 4.

<sup>271</sup> Exhibit P-101 CAD0184, pp. 40-52.

<sup>272</sup> Exhibit P-101 CAF0213.

Whether or not this information could have been of use to the RCMP's investigation throughout the preceding year, it should have been available to law enforcement, especially when criminal charges were being pursued in connection with the Duncan Blast and a detailed review of the evidence was to be expected.

This incident shows the errors that can be made when information is converted into intelligence summaries, and the dangers that can therefore result from subsequently relying on such summarized intelligence. That was the consequence in this case, and it is a practice that more often than not will be inadequate with disastrous results.

### **A Case of "Tunnel Vision"**

The Duncan Blast is an example of how narrow thinking can affect an investigation. Prior to the bombing, no one questioned the source of the loud explosion heard by Lowe and Jarrett. Their interpretation of it as a gunshot, as reported, was accepted as factual and no critical examination of the facts took place until after the tragedy.

Jarrett testified that she had little experience with guns and accepted Lowe's assumption that it was a gun.<sup>273</sup> Kobzey offered similar testimony:

Basically it stemmed from his language. He's a trained observer. He's a man who is a hunter. He's familiar with weapons. He was of the opinion, at the time, that it was a weapon. Now, had he phrased it differently, it would have triggered a different response. However, we were looking at an assassination attempt on Mr. Gandhi and the focus was on that kind of an event and it was just perhaps a case of tunnel vision.<sup>274</sup>

Burgoyne, the analyst on the Sikh Desk at HQ, was similarly focused:

...over the year, we had seen a lot of Sikh activity with firearms. We had the Uzi parts being transported out of Canada to England. I was currently working on the Windsor project, where they were trying to import Uzis into Canada that same week ... so Parmar, Reyat, discharging a firearm perhaps with plans of attacking during genocide week or during the Gandhi visit to bring distraction to his visit. I think the possibility was quite real.<sup>275</sup>

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<sup>273</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2200.

<sup>274</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3806.

<sup>275</sup> Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3483.

Though there was information available that bombs were being used in India and that bomb threats had been made in Canada, the prevailing wisdom at the time among Canadian authorities was that an assassination was the most likely course of action for the Sikh extremists. The Duncan Blast, rather than forcing CSIS to think more broadly, was merely taken as confirmation that they were on the right track. This tunnel vision and lack of imagination may also have been reinforced by a lack of information at the local level on current threats, including those to Air India.

### **The June 1<sup>st</sup> Telex and Other Threat Information**

The June 1<sup>st</sup> Telex<sup>276</sup> was sent by Air India to its various operations worldwide, warning of Sikh extremists placing time-delay devices in checked baggage. It provided a series of security steps that should be taken in order to prevent such an occurrence. This information was shared with the RCMP at Toronto Pearson Airport and transmitted to HQ Airport Policing but the information was never shared with CSIS (see Section 1.2 (Pre-bombing), June 1<sup>st</sup> Telex).<sup>277</sup> If the information had been shared with CSIS, it would likely have been transmitted to the regions through the NSR. Kobzey and Ayre would likely have been alerted.

Kobzey commented on the significance of the lack of this information at CSIS and how that related to the Duncan Blast:

A document like this would have broadened my options with respect to discussing the need for surveillance with Mr. Osborne. I believe that if I had seen this, I would have been a little more emphatic. I would have had two types of threats that we could deal with ... and it would have given me an opportunity to ask for extended surveillance for the entire month, and ... we would have treated that loud noise a lot differently.<sup>278</sup>

Perhaps the June 1<sup>st</sup> Telex would have been enough to jolt CSIS out of its belief that it was an assassination that was being planned. Or perhaps it would have been enough to make someone think twice about what was heard in Duncan prior to the bombing.

Had the RCMP been able to report the information in its possession centrally, it would have been in a position to at least analyze the Duncan Blast surveillance information in light of the threats against Air India and the possibility of bombing raised by the June 1<sup>st</sup> Telex. Further, the RCMP had additional information which could have provided useful context for the Duncan Blast surveillance. According to intelligence received by the Duncan Detachment on June 10, 1985, following

<sup>276</sup> Exhibit P-101 CAA0174.

<sup>277</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3809. See also Section 3.6.2 (Pre-bombing), RCMP Failures in Sharing with CSIS.

<sup>278</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3810-3811.

a split in the local Sikh temple, extremists started a new temple whose leader, an associate of Inderjit Singh Reyat, was advocating "...selling homes and property to buy guns and 'get strong'; *cut off all travel with Air India*, cut off all business with Vancouver, take revenge for any allegations."<sup>279</sup> Back in September 1984, an RCMP source who provided information about a plot to bomb an Air India plane (Person 1) had also referred to a man in Duncan who could manufacture "nitro" for blowing up an Air India plane.<sup>280</sup> As the information was not reported to the RCMP unit in charge of gathering threat information, it was neither transmitted to CSIS, nor included in an RCMP threat assessment.<sup>281</sup> This information would have provided further indication of the possible links between Reyat and the Duncan Blast incident, on the one hand, and threats to Air India and the risk of bombing, on the other hand.

As it was, the agencies did not appreciate the significance of the Duncan Blast in time and, on June 23, 1985, Air India Flight 182 was blown out of the sky. Once the plane went down, the critical thinking that should have occurred prior to the blast began to take place. At that point, the first thing that jumped into everyone's mind was the series of events known as the Duncan Blast.

### **Advance Warning of Trip to Duncan**

A number of witnesses throughout the hearings testified that CSIS had advance warning of Parmar's trip to Duncan. CSIS agent, Bill Turner, testified that CSIS had advance notice of Parmar's trip to Duncan on June 4, 1985, because the agency was following his moves through wiretaps, which enabled them to see the test blast.<sup>282</sup> Bass also confirmed in testimony that the wiretaps provided forewarning of the Duncan Blast.<sup>283</sup>

Don McLean also testified that Kobzey contacted him in advance of the Duncan Blast and asked if he was aware of where Parmar had been going and whether he would be travelling to Vancouver Island.<sup>284</sup>

This was disputed, however, in a written response filed by Kobzey,<sup>285</sup> in which he stated that he and the PSU units were caught by surprise when Parmar went to Vancouver Island and, had he known in advance, the PSU would have been briefed and prepared. Instead, Jarrett was one of the last foot passengers to board the ferry and Lowe was lucky to get his car on board.

### **Information from Wiretap Intercepts**

The AGC also submits that "...CSIS had no forewarning about the trip to Duncan, and the Parmar intercept provided no further information in respect of Parmar

<sup>279</sup> Exhibit P-101 CAA0276, p. 2 [Emphasis added], CAA0307, p. 3.

<sup>280</sup> Exhibit P-120(c), p. 6 (entry for 521-3). See Section 1.1 (Pre-bombing), November 1984 Plot.

<sup>281</sup> See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

<sup>282</sup> Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8351.

<sup>283</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11197.

<sup>284</sup> Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4138-4139.

<sup>285</sup> Exhibit P-403: Response of Raymond Kobzey to Evidence of Don McLean, May 29, 2007.

and Reyat's activities on that day."<sup>286</sup> The AGC states that the CSIS intercept for June 4, 1985, was transcribed on June 11, 1985 and that there was nothing significant reported from any days of the Parmar intercepts on or around the time of the test blast.<sup>287</sup>

However, the wiretaps reveal ongoing contact between Reyat and Parmar throughout the month of May, including plans for two other trips to Duncan prior to the Duncan Blast trip. Had the tapes been transcribed in a timely fashion, CSIS would have had much more information, such as:

- On May 6, 1985 (translated/reported on September 11, 1985)<sup>288</sup> at 9:35 PM, CSIS intercepted a phone call between Parmar and Reyat. Parmar told Reyat that Surjan Singh Gill would be coming to see him tomorrow. Reyat was to meet Gill at the ferry terminal between 4:00 and 5:00 PM. Parmar also advised Reyat to come alone.<sup>289</sup>
- On May 7, 1985 (translated/reported on September 11, 1985)<sup>290</sup> at 5:13 AM, Parmar called to inform Reyat that the ferry would be docking at 4:30 PM. Later the same day, at 8:17 AM, Reyat spoke to Parmar's daughter who informed him that Talwinder was asleep, at which point Reyat asked for Surjan Singh Gill's telephone number.<sup>291</sup> At 8:54 AM another call was intercepted, this time from Gill (presumably calling from Parmar's house) to Reyat's father. During the conversation Gill requests that Reyat's bows and arrows be delivered to Gill as he was going to go to Duncan and needed to take them along.<sup>292</sup>
- On May 19, 1985 (translated/reported June 21, 1985)<sup>293</sup> at 6:42 PM, Reyat advised Parmar that their plan of coming to Vancouver had changed. Parmar said that they would instead go to Duncan. Reyat gave his phone number: "746-4918".<sup>294</sup> At 7:42 PM a second call between Reyat and Parmar was intercepted in which Parmar advised that he and Gill would meet Reyat in Nanaimo at 10:30 PM.<sup>295</sup>

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<sup>286</sup> Final Submissions of the Attorney General of Canada, Vol. I, para. 162.

<sup>287</sup> Final Submissions of the Attorney General of Canada, Vol. I, p. 73, Footnote 193.

<sup>288</sup> Exhibit P-101 CAD0013, pp. 150, 154.

<sup>289</sup> Exhibit P-101 CAD0180, pp. 52-58.

<sup>290</sup> Exhibit P-101 CAD0184, p. 44.

<sup>291</sup> Exhibit P-101 CAD0180, pp. 59-60.

<sup>292</sup> Exhibit P-101 CAD0180, pp. 61-64.

<sup>293</sup> Exhibit P-101 CAD0159, p. 40.

<sup>294</sup> Exhibit P-101 CAD0013, p. 184.

<sup>295</sup> Exhibit P-101 CAD0180, p. 74.

- On May 24, 1985 (translated/reported June 20, 1985)<sup>296</sup> at 6:30 AM, Reyat spoke to Surinder Kaur Parmar. He requested that Parmar call him back soon.<sup>297</sup>
- On May 31, 1985 (translated/reported either June 14 or June 17, 1985)<sup>298</sup> at 7:25 PM CSIS recorded another conversation between Parmar and Reyat in which Reyat asked Parmar to call him the next day at work.<sup>299</sup>

More timely translation and reporting of the wiretap intercepts would have given CSIS a good idea about whom Parmar was going to visit in Duncan.<sup>300</sup> Second, the CSIS investigators would have been aware of Reyat's phone number and would not have made the error they did make in thinking a lawyer named Singh was being called. Finally, knowing this was a somewhat frequent contact of Parmar, CSIS may have returned to Duncan the week following the blast, if not to investigate the test site, at least to photograph Reyat and Mr. X, who was staying with him.

### **Post-Bombing Investigation of the Duncan Blast**

While CSIS was not able to appreciate the significance of the Duncan Blast at the time, after the Air India bombing it was CSIS, not the RCMP, which first realized the potential significance of the events observed on June 4<sup>th</sup>. Kobzey explained:

One of the first things we discussed amongst ourselves was the blast noise that was heard; the loud noise, the report, the explosion, however it's been phrased here. And it was recommended by us investigators and our supervisors – unit heads - that the Mounted Police should endeavour to get to that site as soon as possible to look for any evidence of residue or, material indicative of an explosion having taken place there.<sup>301</sup>

An analyst in the Toronto Region who had been going over the files also came to the same conclusion in a memo dated June 27, 1985:

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<sup>296</sup> Exhibit P-101 CAD0159, p. 45.

<sup>297</sup> Exhibit P-101 CAD0180, p. 78.

<sup>298</sup> Exhibit P-101 CAD0159, p. 51.

<sup>299</sup> Exhibit P-101 CAD0180, p. 83.

<sup>300</sup> Exhibit P-403, Response of Raymond Kobzey to Evidence of Don McLean, May 29, 2007, indicating that Kobzey first became aware of the existence of Reyat on June 4, 1985.

<sup>301</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3812-3813.

Although Reyat has a .357 Mag S&W revolver registered to his name, it has not been established if the explosion heard by the BCR PSU member was a large calibre handgun or a blasting cap which would sound similar. There exists a probability that the explosion may well have been a blasting cap on a timing device being tested by Parmar and Reyat, hence the fast drive to the country, Jaswinder returning to the vehicle, and the single explosion. It would appear more probable that if Reyat and Parmar were testing a firearm that they would fire multiple rounds and not a single round or explosion as heard.<sup>302</sup>

That same day, CSIS recommended to the RCMP that they visit the Duncan Blast site with one of the CSIS surveillants. The RCMP Explosives Detection Unit (EDU) was requested to conduct a search<sup>303</sup> and did so on June 28, 1985, with the CSIS surveillant, but nothing was found.<sup>304</sup> It was not until a later visit on July 2, 1985 that the RCMP first uncovered objects of interest:

Search resumed in Duncan Area. Robertson located one paper tape bundle wrapper, commonly used to secure a blasting cap, leg wires, ident., attended and photographed and fingerprinted item. S/CST Townsend locates one aluminium foil shunt. Both items indicate that a blasting cap was handled at this location. Both items discovered in the exact location of the suspect's vehicle.<sup>305</sup>

On July 4, 1985, the RCMP returned to the site and located "...one blasting cap shunt, approximately 7 m north, where the bundle wrapper was located."<sup>306</sup>

The RCMP concluded that the paper tape bundle wrapper and the two "blasting cap wire" shunts found<sup>307</sup> pointed to the handling of "...at least two electric blasting caps ... where suspect's automobile was reported to have parked." There was a possibility, however, that while "...coincidentally, suspects may have caused a small explosion, perhaps to test a timer", and then "...removed the evidence, i.e. blasting cap, leg wires, etc", that the explosion would not have been "...of the magnitude reported" by the CSIS surveillants. The RCMP speculated that the explosion described by the surveillants "...could have been from a blasting operation in the area."<sup>308</sup>

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<sup>302</sup> Exhibit P-101 CAB0363, p. 5; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2235-2236.

<sup>303</sup> Exhibit P-101 CAA0276, p. 2; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2238.

<sup>304</sup> Exhibit P-101 CAA0261, p. 5, para. 41, CAA0276, p. 2, CAB0371, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2237-2238.

<sup>305</sup> Exhibit P-101 CAA0276, p. 3; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2238.

<sup>306</sup> Exhibit P-101 CAA0276, p. 3; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2238.

<sup>307</sup> See Exhibit P-101 CAA0324(i), p. 5, para. 19.

<sup>308</sup> Exhibit P-101 CAA0276, p. 3; Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5699-5700.



### Court Proceedings Related to the Duncan Blast

In November 1985, charges were laid against Parmar and Reyat in relation to the Duncan Blast events.<sup>309</sup> Related to those charges, on March 17, 1986, nearly a year after the bombing, Jarrett and Lowe visited the Duncan Blast test site with an explosives expert and Jim Jardine (the BC Crown prosecutor for the Duncan Blast trial and Reyat's Narita bombing trial) to conduct a sound line up test which would allow them to identify the sound actually heard during the Duncan Blast.<sup>310</sup> At the test, both Lowe and Jarrett identified the sound they heard as similar to that of the detonation of a blasting cap and one dynamite stick hanging from a tree.<sup>311</sup>

In the end, the blasting cap remnants found by the RCMP in the days following the bombing were of little assistance to the Crown in making its case against either Parmar or Reyat.<sup>312</sup> Jardine indicated from the beginning that the testimony of the CSIS surveillants would be necessary to go ahead with the prosecution, regardless of the use which could be made of the physical evidence.<sup>313</sup> Negotiations with CSIS were necessary to obtain authorization for the members of the surveillance team to be interviewed by the RCMP and to testify in court.<sup>314</sup> CSIS remained involved throughout the process in approving the testimony and disclosure of will-says for individual members of the surveillance teams.<sup>315</sup>

The physical evidence uncovered by the RCMP in July 1985 was mentioned in an "Information" to obtain a search warrant for the residence of Reyat.<sup>316</sup> This search, conducted four months later on November 5, 1985, discovered some of the physical evidence ultimately used to convict Reyat of manslaughter in the 1991 Narita bombing trial. When he was arrested during the November search, Reyat admitted to setting off an explosive device with Parmar on the day of the Duncan Blast, explaining that Parmar wished to "...blow up something in India", though Reyat denied that dynamite was detonated, claiming it was only gunpowder which was set off.<sup>317</sup>

In the end, Jardine was of the view that, even with the testimony of the CSIS surveillants, there was no evidence admissible against Parmar to show that he was in physical possession of explosives on the day of the Duncan Blast or to show his purpose in jointly possessing explosives with Reyat, since Reyat's statement to police could not be used against Parmar.<sup>318</sup> At trial, no evidence was called to support the one count of possession of explosives against Parmar

309 See Exhibit P-202: Information sworn on November 7, 1985.

310 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5695-5696.

311 Exhibit P-101 CAB0669, pp. 4-5.

312 See Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5699-5700.

313 Exhibit P-101 CAA0390, CAF0187.

314 See Exhibit P-101 CAA0375, CAA0390, p. 3, CAA0391, pp. 1-2, CAA0392, CAA0393.

315 Exhibit P-101 CAA0417, pp. 1-3, CAA0425(i), pp. 1-3, CAB0669(i), pp. 1-8, CAF0215, pp. 1-2.

316 Exhibit P-201, p. 23, para. 24.

317 *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.), at 4-9, 11.

318 Exhibit P-101 CAF0168, p. 4.

in connection with the Duncan Blast, and the charge was therefore dismissed.<sup>319</sup> Reyat pled guilty to two of the four counts against him: possession of explosives and possession of an unregistered weapon. He was ordered to pay a \$2000 fine.<sup>320</sup>

In the Narita bombing trial, Justice Raymond Paris found that he could not be certain, on the basis of the evidence, that it was dynamite which caused the noise heard during the Duncan Blast surveillance. He concluded, however, that Reyat's admission that he was experimenting with explosive devices for some illicit purpose was relevant evidence of conduct consistent with "...that of a person interested in the fabrication of a bomb or explosive device". This evidence was taken into account, along with the forensic evidence, to reach the final conclusion that Reyat fabricated or aided others to fabricate the bomb which exploded in Narita.<sup>321</sup>

Neither CSIS nor the RCMP uncovered physical evidence of a blast in Duncan prior to the Air India bombing. The items which were finally recovered at the Duncan site by the RCMP after the plane went down could not tie the key suspects to the Narita and/or Air India bombs, though they were still used to further the police investigation.

The RCMP only officially requested permission to interview the CSIS surveillance team in December 1985,<sup>322</sup> though it is not known what other discussions took place between the agencies on that issue. By the time the surveillants were interviewed and participated in the sound identification test in March 1986,<sup>323</sup> their memories of the event were undoubtedly not as fresh, and, without detailed notes, it would be even more difficult for them to recall the events.

### Observations

- The Duncan Blast was an intelligence failure that reinforced CSIS's misdirected actions, which arose from the belief that the threat from radical Sikhs was the possibility of an assassination attempt.
- A continuation of the CSIS operation on Vancouver Island could have yielded much more information on the person believed to be the son of Parmar. Had the surveillants continued their investigation on Vancouver Island, they would have had to come to the conclusion that the person they were following (Mr. X) was not Jaswinder Parmar.

<sup>319</sup> Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5707-5708. See also Exhibit P-101 CAA0421, where the RCMP indicated its agreement with the prosecution's decision not to call evidence against Parmar.

<sup>320</sup> Exhibit P-101 CAF0168, p. 7; Testimony of James Jardine, vol. 47, September 18, 2007, p. 5686; Exhibit P-102; *Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism"*, p. 11.

<sup>321</sup> *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.) at 9-15.

<sup>322</sup> Exhibit P-101 CAA0391, pp. 1-2.

<sup>323</sup> Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5696-5697.

- While debate is ongoing as to whether CSIS passed on enough information for the significance of the Duncan Blast to be recognized by the various enforcement agencies, it is clear that CSIS itself did not recognize the significance of the Duncan Blast, especially after the assumption was made that it was a gun that had been discharged. It is clear that, though CSIS was able to witness the Duncan Blast, the impact of that observation was lost on the intelligence service.
- Though it was clearly relevant, CSIS did not include information about the Duncan Blast in any of the threat assessments sent to Protective Policing. The RCMP was aware of the information through various channels but did not include it in its threat assessments. As a result, Protective Policing could not put any security measures in place to respond to the threat.
- Had information about the June 1<sup>st</sup> Telex been shared with CSIS, Kobzey and Ayre would have been alerted to the threat of bombing, as it had to do with Sikh extremism. Had they seen the document and been aware of such potential, there would have been no justification to focus exclusively on the gun/assassination theory.
- The Duncan Blast incident shows the potential for errors when information is converted into intelligence summaries, as well as the dangers that can result from reliance by law enforcement agencies on summaries without direct access to raw data.
- An analysis of the wiretap evidence shows that CSIS did not have advance warning of Parmar's trip to Duncan because there was a significant backlog in the translation of the tapes. The impact of delayed availability of the wiretap information was significant and its detrimental consequences are obvious.
- Had the intercepts been translated and reported promptly or even within a few days, CSIS investigators would have been aware of Reyat's existence before June 4, 1985.
- The agencies did not appreciate the significance of the Duncan Blast in time and the critical thinking that should have occurred prior to the blast only began to take place after the Air India bombing tragedy.

- CSIS struggled with a lack of appropriate surveillance equipment, a lack of timely intercept product, a lack of available information suggesting that Air India was being targeted, and a slew of erroneous assumptions made by both the surveillance team and the investigators. The inability to look beyond the physical clues resulted in a failure to recognize the seriousness of what the agents witnessed, and was part of the lost opportunity to prevent the Air India disaster.

### 1.5 Mr. X

On June 4, 1985, CSIS surveillants followed Parmar, Reyat and an unidentified male to Duncan, BC where they witnessed what has now become known as the Duncan Blast.<sup>324</sup> At the time of the surveillance, CSIS believed that the unidentified youth was Parmar's eldest son, Jaswinder Parmar. It was many months before both the RCMP and CSIS concluded that the third person they had seen was not Jaswinder. Better attention to detail, more effective internal and external communication and proper analysis should have enabled the authorities to take advantage of the apparently numerous opportunities during the days following the Duncan Blast to identify the third person correctly.

Instead, the identity of the third person, dubbed "Mr. X",<sup>325</sup> has never been determined. It has been one of the most important areas of ongoing investigation for more than 20 years. As noted in the Duncan Blast episode, senior RCMP officers continue to wonder what the result might have been if there had been a proper identification of the people and the event during the week following the Duncan Blast, and properly regard this as a "real missed opportunity" because the belief is that this person helped Reyat construct the bombs.<sup>326</sup>

#### The Initial Erroneous Assumption

It is unknown who first identified Mr. X as Jaswinder Parmar. Lynne Jarrett believed it was the son on the basis of what she had been told. Ray Kobzey, in his oral testimony, stated that a surveillant made the initial assumption. He confirmed that the request for surveillance included authority to take photos of Parmar and whomever he contacted. The surveillance began with an incorrect assumption about the identity of one of Parmar's associates and the surveillants did not have a camera.<sup>327</sup>

#### The Description of Mr. X

On June 4<sup>th</sup>, the surveillance team recorded the following description of the unidentified youth:

<sup>324</sup> See Section 1.4 (Pre-bombing), Duncan Blast.

<sup>325</sup> No one knows who originally dubbed the unidentified person "Mr. X", but it is a name widely used by the RCMP from very early on and indeed, also used by Justice Josephson in the Bagri and Malik trial, in the books written about the Air India disaster and at the Air India Inquiry.

<sup>326</sup> Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11247-11248.

<sup>327</sup> Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3814.

The son is at Parmar's side ... still carrying the Adidas bag and briefcase.... Parmar's son wears black pin striped slacks, a white jacket with a stripe down one arm, a rust coloured turban and a curved knife by his side.<sup>328</sup>

In her testimony, Jarrett confirmed the above description of Mr. X, noting as well that he had a beard that was "...very short, almost like peach fuzz, like it wasn't fully grown." Her description was consistent with the descriptions provided by other members of the surveillance team. The question was not one of differing opinions regarding Mr. X's appearance, but of misidentification of who he was in the first place.

### **Discovering that Mr. X was not Parmar's Son Jaswinder**

The background to this episode can be found in the Duncan Blast event. Jarrett and Lowe took the ferry from Vancouver to Nanaimo with Parmar and Mr. X and followed the targets to a wooded area where the surveillants heard a loud explosion. No photographs of Mr. X were taken.

In the weeks following the bombing of Air India Flight 182, RCMP investigators went back to the blast site with Lowe to search for evidence of explosives. It took several months before the RCMP had access to other members of the Duncan surveillance team.

Jarrett, the surveillant who got closest to Mr. X, had applied to "bridge back" to the RCMP prior to the Duncan Blast through a process, agreed upon when CSIS was created, which gave CSIS employees two years to apply for a transfer back to the RCMP if they so chose.<sup>329</sup> After the bombing of Flight 182, knowing that she would soon transfer back to a surveillance unit within the RCMP, Jarrett was moved from mobile surveillance, her function during the events of the Duncan Blast, to the observation post (OP) where static surveillance on Parmar's house took place. She stayed there from June 23<sup>rd</sup> until her transfer on August 16, 1985.

At the OP, Jarrett had ample opportunity to observe the comings and goings of the Parmar family, including two young men. She began to question whether she had misidentified the young man who went to Vancouver Island on June 4, 1985:

I thought perhaps there was more than just the two sons in the residence, because by looking at them, I knew – or I was suspecting that it wasn't who had gone to the Island on June the 4<sup>th</sup>. But initially, I thought I was misidentifying the people. I didn't realize that it was the two sons that I was actually seeing.

<sup>328</sup> Exhibit P-101 CAB0250, p. 3.

<sup>329</sup> The following section is based on the Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2187-2189.

Notwithstanding Jarrett's assumptions, documentary evidence shows that it is likely that Jaswinder Parmar left Vancouver for a summer job in Ontario on June 22, 1985 and did not return again until sometime between August 16 and 31, 1985.<sup>330</sup> That would mean that Jarrett never did have the opportunity to view him from the OP. Indeed, other CSIS surveillants admitted that they had difficulty distinguishing the two sons and often confused them.<sup>331</sup> Whomever Jarrett saw going in and out of the Parmar residence, whether it was a few young men as she believed, or perhaps, as seems likely, only one, her initial conclusion was correct: she never did see the person identified at the Duncan Blast as Jaswinder. Nonetheless, Jarrett did not at that time communicate, either to CSIS or to the RCMP, her correct concern that the man she saw in Duncan was not Parmar's son.

Following Jarrett's return to the RCMP, she was again deployed in surveillance of Sikh targets. Her focus continued to be on Sikh extremism, particularly in relation to the Air India bombing.<sup>332</sup> Within the RCMP, except in the surveillance unit, there was no knowledge of Jarrett's previous CSIS experience in the Sikh extremism context because that information was treated as confidential. Incredibly, the RCMP Air India Task Force did not know that their new surveillant had been one of the two CSIS employees who witnessed the Duncan Blast and a person who could identify Mr. X.

In November 1985, while conducting surveillance for the RCMP, Jarrett came close to Parmar's two sons while following Jaswinder inside the Vancouver International Airport. At that moment, she realized without question that neither son had accompanied Parmar to the Duncan Blast and that the youth who was there was an unidentified person. Jarrett testified to these events at the Inquiry. At the airport, when she walked between Jaswinder Parmar and his brother, it struck her "...at that moment I knew that it was not Jaswinder that was in Duncan on June the 4<sup>th</sup>."

Following her discovery, Jarrett returned to the vehicle immediately and informed the team leader and Const. Brian MacDonald of the investigational unit about what she had observed and offered her conclusion that Parmar's son was not in Duncan when the explosion took place. MacDonald made a phone call immediately.

MacDonald told Jarrett that CSIS was still maintaining that it was the son who went there, but that the RCMP had already checked the school records, and knew that Jaswinder was in school.<sup>333</sup>

Jarrett made a formal statement to the RCMP in December and helped create a composite drawing of the young man who accompanied Parmar on the ferry to Duncan, on June 4, 1985.

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<sup>330</sup> Exhibit P-101 CAF0343(i): Watt MacKay Report, pp. 18, 76.

<sup>331</sup> Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 76.

<sup>332</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2188.

<sup>333</sup> Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191.

In December 1985, the RCMP finally interviewed other members of the surveillance team who had worked on June 4, 1985 and showed them photos of Parmar's sons. At least one other surveillant confirmed that neither son was Mr. X.<sup>334</sup>

### **Delay to Interview Surveillance Team**

It took five or six months following the bombing before the RCMP showed photos to the surveillance team in order to identify Mr. X. Only a few days after the bombing, the RCMP became aware of Lowe, who had accompanied the Explosives Detection Unit that had searched the Duncan Blast site shortly after the bombing. The Force was not aware of the identity of other members of the CSIS surveillance team for many months.

The RCMP needed CSIS consent to interview the surveillants. The Force belatedly made an official request from CSIS for this permission on December 5, 1985.<sup>335</sup> Following discussions between RCMP and CSIS Headquarters, CSIS then quickly authorized the interviews and instructed its BC Region accordingly.<sup>336</sup>

Some time before Jarrett made her comments on November 18<sup>th</sup>, the RCMP had conducted its own checks of school records and had concluded that the third person at the Duncan Blast was not Parmar's son.<sup>337</sup> The evidence provides no indication of the time when the RCMP conducted these checks, but it was before Jarrett observed Jaswinder Parmar on November 18<sup>th</sup>, as MacDonald mentioned the school records to her at that time. Further, the RCMP eventually did obtain the CSIS surveillance information, which indicated that Parmar's two sons were dropped off at school on the day following the test blast, as was mentioned in the Watt MacKay Report, but there is no indication as to when the RCMP received the information.<sup>338</sup>

After this information was uncovered, CSIS was approached and continued to deny stubbornly that there had been a mistake in stating that it was Parmar's son who was present.<sup>339</sup> At that time, the RCMP had no indication that the members of the CSIS surveillance team had any uncertainty about the identity of Jaswinder Parmar as the person present on June 4<sup>th</sup>. In fact, CSIS remained "adamant" that the person was Jaswinder until one of the surveillants was shown a picture by the RCMP on December 19, 1985.<sup>340</sup>

It is not known exactly why the RCMP waited until December 1985 to make a formal request for permission to interview the surveillants after it found out

<sup>334</sup> Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 75.

<sup>335</sup> Exhibit P-101 CAA0391, pp. 1-2.

<sup>336</sup> Exhibit P-101 CAA0390, pp. 3-4, CAA0392, CAA0393.

<sup>337</sup> Exhibit P-101 CAB0803, p. 5. See also Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191.

<sup>338</sup> Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 83.

<sup>339</sup> See Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191, about her conversation with Cst. MacDonald.

<sup>340</sup> Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 75.

that the identification of Jaswinder may have been mistaken. It is possible that the Force simply assumed that CSIS, once advised of the RCMP school records checks, would consult with its own employees prior to denying that the third person was not Jaswinder. Whatever the case, too much time elapsed before the surveillants were interviewed and shown pictures.

### CSIS Failures

CSIS failed to engage in reasonable follow up. CSIS did not question its Physical Surveillance Unit (PSU) team in light of the RCMP's concerns nor, it seems, did it review its own records. Certain pieces of CSIS information should have called into question the identification of Mr. X as Jaswinder Parmar. For example, while observing Parmar on the ferry, Jarrett overheard Parmar attempting to make a collect call charged to his home phone number with Mr. X standing at his side. Jarrett overheard Parmar tell the operator that:

He was the owner of the house, the phone was in his name, and that he was Talvinder [*sic*] Singh Parmar. His *children were at school* and his wife was not at home.<sup>341</sup> [Emphasis added.]

While it is possible that Parmar was not being truthful, what purpose would that have served? The surveillants might have considered this information to be a clue that the youth at his side was not his son.

Nor do the CSIS errors end here. At the end of the day on June 4<sup>th</sup>, CSIS continued surveillance on Parmar back to Vancouver and noted that "Jaswinder" stayed behind on Vancouver Island. A number of the CSIS operatives, including Lowe and Jarrett, did not make it back to Vancouver, but rather stayed on the Island. They initially made arrangements to continue following "Jaswinder Singh" the following day, June 5<sup>th</sup>. For reasons that have not been explained, CSIS cancelled these arrangements on the morning of June 5<sup>th</sup>.<sup>342</sup> That same morning, CSIS surveillants in Vancouver, still following Parmar, noted that his two sons were dropped off at Burnaby North High School at 8:37 AM.

Someone in CSIS ought to have noticed that their own surveillance placed "Jaswinder" in two places at once – on Vancouver Island and at school in Vancouver! As the RCMP correctly stated in an internal review, "...[this] should have convinced CSIS that Mr. X could not have been one of Parmar's sons."<sup>343</sup>

It is also clear that the CSIS PSU failed in its overall task which was "...to ascertain the associates, contacts, movement and activities of Parmar, to obtain photographs of Parmar and all those he comes in contact with."<sup>344</sup> Indeed, the record clearly demonstrates CSIS's inability to accurately distinguish between Parmar's sons.

<sup>341</sup> Exhibit P-101 CAB0250, p. 3.

<sup>342</sup> Exhibit P-101 CAA1089(i), p. 6.

<sup>343</sup> Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 83.

<sup>344</sup> Exhibit P-101 CAB209.



The same RCMP 1989 internal review notes as follows:

NOTE: on 85-06-23 Parmar is under surveillance with Surjit Singh Gill (and a priest from India, Bab Joginder Singh, Jetheda of Nanded, his wife, Sadhu Singh, his assistant, Joginder Singh, and his wife – see E Tip 2309). Reference is made to both Parmar's youngest and oldest son, with the oldest son observed with Parmar at Gill's residence. Jaswinder left for Toronto for the summer the previous day....

On 85-07-10 CSIS surveillance is still referring to Parmar's older son, although he is in Toronto, and refer to the younger son the next day....

**ANALYST'S COMMENTS:**

Previous E2255 information indicated that Jaswinder Parmar was going to Toronto to work for the summer. It was then reasonable to assume that Jaswinder Parmar left Vancouver for Toronto on 85-06-22. [Redacted] of CSIS admits that they were mixing up Narinder and Jaswinder Parmar when making identification and with that in mind that is probably the case on 85-06-23 and 85-07-10. Although the description of the son at Vicki Manor is brief, it appears to match that of Narinder noted earlier in the day.<sup>345</sup>

**Observations (See also Section 1.4 (Pre-bombing), Duncan Blast)**

- CSIS failed to identify accurately persons coming into contact with Parmar, to the point that its surveillance teams were not even able to distinguish family members whom they would presumably have been seeing daily, if not more frequently.
- CSIS did not provide proper equipment to enable its surveillance teams to take photos and hence to be able to identify the persons at the Duncan Blast.
- CSIS did not analyze the information provided by the surveillants on both June 4<sup>th</sup> and June 5<sup>th</sup>, which would have raised questions as to the misidentification of Mr. X as Jaswinder Parmar. CSIS also did not re-examine its information in light of RCMP questions regarding the identification of Mr. X and Jaswinder Parmar.

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<sup>345</sup> Exhibit P-101 CAF0343(j): Watt MacKay Report, p. 76.

- Except for Larry Lowe, the RCMP did not have access, and may not have sought access, to the members of the surveillance team who went to Duncan on June 4<sup>th</sup> until many months later. This lack of access proved to be crucial in misidentifying Mr. X.
- CSIS did not allow its surveillants who bridged back to the RCMP to inform the RCMP of their past experience as it related to the Air India investigation. As a result, Lynne Jarrett's surveillance experience within the Sikh community and her involvement in the Duncan incident were unknown beyond her surveillance unit at the RCMP. Even the RCMP Air India Task Force was unaware that she had witnessed the Duncan Blast and could possibly identify Mr. X.
- The PSU surveillance team was only interviewed by the RCMP five or six months after the bombing. The time that had elapsed before the surveillants were interviewed and shown pictures likely hindered their ability to remember the events clearly and, in particular, to recall the physical appearance of Mr. X.
- CSIS and the RCMP did not communicate effectively in order to clarify ongoing confusion regarding the identity of Mr. X.

## 1.6 Khurana Information

### Advance Indications of an Extremist Attack: The Benefits of Hindsight

When former Vancouver Police Department (VPD) Constable Don McLean found out about the Air India bombing on June 23, 1985, he immediately thought about information he had received approximately two weeks earlier from one of his sources in the Vancouver Sikh community, Mr. Sarbjit Khurana. At the time, Khurana had agreed to set up and allow the VPD to record a meeting with Sikh extremists who were attempting to intimidate him. During the debriefing immediately after the meeting, he advised that a Sikh extremist leader had stated that "...something would be done in two weeks", in response to a complaint by another extremist about the lack of attacks against Indian officials. Now aware of the bombing, McLean understood that the event that was referred to in the "wait two weeks" comment was, in fact, the bombing of Air India Flight 182. He realized "that's what they meant" and regretted that he could not have found out more information earlier, largely because he was unaware that numerous threats against Air India existed at the time.<sup>346</sup>

When RCMP Sgt. Warren Sweeney, head of the terrorist desk at the Headquarters NCIB NSE section, was first advised of the Khurana information, he also believed that it could be connected to the Air India bombing, since the extremists were discussing plans that were to be put into action within the time frame of the actual

<sup>346</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1985, 2017-2018.

bombing.<sup>347</sup> The CSIS Toronto Region was also of the view that the information could be connected to the bombing, as it indicated in internal correspondence a few days after the bombing that HQ's attention should be drawn to a previous message from the BC Region reporting the Khurana information.<sup>348</sup>

McLean subsequently learned that one of the participants in the Khurana meeting had made statements after the bombing indicating that he had known about the crash in advance and that "...he knew it was about to be blown up."<sup>349</sup> McLean then concluded that there was a clear connection between the Air India bombing and the "wait two weeks" statement.<sup>350</sup>

### The Taped Khurana Meeting

In 1984, McLean met Khurana in the course of his work with the VPD's Indo-Canadian Liaison Team (ICLT). Khurana was a Vancouver businessman, a turbaned Sikh who did not support the creation of a separate Sikh state of Khalistan and was opposed to any violence.<sup>351</sup> Khurana had dealings with the ICLT as a member of the Business Association for the Punjabi market.<sup>352</sup> He then began to provide information to the ICLT regularly about Sikh extremist organizations and their relationship with the community, as well as about political debates in the Sikh temples.<sup>353</sup>

Khurana was often the victim of threats and intimidation.<sup>354</sup> He became a complainant in a criminal matter<sup>355</sup> as a result of a group of Sikhs coming into his business and threatening him with a weapon because of his views about Sikh extremism and about the Ross Street Sikh temple.<sup>356</sup> Those charged were associated with the International Sikh Youth Federation (ISYF), a Sikh extremist organization with a significant membership which was heavily involved in acts of violence and intimidation in the community.<sup>357</sup> After the incident, ISYF members attempted on numerous occasions to pressure Khurana to drop his criminal complaint.<sup>358</sup> On June 9, 1985, he was approached by Manmohan Singh, the spokesperson for the ISYF, to set up a meeting to discuss the charges.<sup>359</sup> Khurana advised McLean of the proposed meeting.<sup>360</sup> Since the purpose of the meeting was to attempt to convince Khurana to drop criminal charges, the ICLT

<sup>347</sup> Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2572, 2641-2642.

<sup>348</sup> Exhibit P-101 CAB0363, pp. 5-6.

<sup>349</sup> Exhibit P-101 CAA1108, p. 2; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2018-2019.

<sup>350</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2031.

<sup>351</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1985, 1990.

<sup>352</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 1988. The ICLT liaised with business leaders in the Vancouver Sikh community as part of its community policing approach: Testimony of Don McLean, vol. 21, May 1, 2007, vol 21, p. 2023.

<sup>353</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989.

<sup>354</sup> Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3910.

<sup>355</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3910.

<sup>356</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1989-1990.

<sup>357</sup> Testimony of Don McLean, vol. 35, May 29, 2007, p. 4129; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3887.

<sup>358</sup> Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3911.

<sup>359</sup> Exhibit P-101 CAC0487, p. 6; Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989.

<sup>360</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989.

and VPD members of the Vancouver Integrated Intelligence Unit (VIU) liaised with the VPD criminal enforcement section in order to investigate a potential obstruction of justice charge.<sup>361</sup> Khurana agreed to set up the meeting and have the VPD record it to obtain evidence of any interference with the criminal investigation into his original complaint.<sup>362</sup>

Khurana provided a one-party consent for the monitoring and recording of the meeting to VPD Detective Ken McKinnon, the officer in charge of the criminal investigation into the original charges.<sup>363</sup> The meeting was to be both recorded and live-monitored, which meant that VPD officers would be listening in on the meeting and translating it as it was happening.<sup>364</sup>

ICLT members were participating in the operation to obtain information about the projected actions of the Sikh extremists who would be attending, especially the ISYF members. This was the first time the VPD had had the opportunity to intercept the actual conversations of Sikh extremists and in some ways it was viewed as the VPD's "first look inside" a Sikh extremist organization.<sup>365</sup>

On the evening of June 12, 1985, the meeting took place at the Khurana residence. Microphones had been installed and McKinnon and Cst. Jas Ram were present in a secure room at the rear of the residence listening to the meeting as it was being recorded. McLean and his ICLT partner were in their vehicle, watching and identifying those arriving at the residence. VPD VIU members were also present in the area. The meeting lasted over one hour and thirty minutes.<sup>366</sup> Seventeen ISYF members participated, including suspected terrorists Pushpinder Singh and Lakbir Singh Brar,<sup>367</sup> ISYF "enforcer" Harjit Atwal, ISYF spokesperson Manmohan Singh, as well as a "major orchestrator" for the ISYF, Sukdev Sangha.<sup>368</sup>

Once it was ascertained that all participants had left, ICLT members and some of their VPD colleagues went into the residence and held an immediate debriefing session with Khurana to find out what had taken place during the meeting.<sup>369</sup> Here the ICLT learned about the activities and plans of the ISYF in June 1985.

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<sup>361</sup> Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3911.

<sup>362</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1991-1992; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3911.

<sup>363</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 1992; Exhibit P-101 CAC0487, p. 6.

<sup>364</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1993, 2024.

<sup>365</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1990, 1996.

<sup>366</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1996-1999.

<sup>367</sup> Also known as Lakbir Singh Rode.

<sup>368</sup> Exhibit P-101 CAC0487, pp. 4-5; Testimony of Don McLean, vol. 21, May 1, 2007, p. 1999.

<sup>369</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1999-2000.

## The Khurana Information

### *ISYF Plans and the “Wait Two Weeks” Comment*

During the debriefing, Khurana reported that the participants in the meeting first attempted to convince him to drop his criminal charges, including a promise to have good articles about him published in the local media and to have “...their ladies shop at his Sari stores so he could make more money”. The participants then turned to discuss plans to further ISYF’s extremist goals. They agreed that only one member at a time would fight those who opposed their pro-Khalistan views, in order to ensure that, if caught, only one person would be charged.<sup>370</sup> Manmohan Singh then pointed an accusing finger at Pushpinder Singh and said:

No counsel have been killed, no Ambassadors have been killed!! What are you doing? Nothing!!

Pushpinder Singh replied:

You will see! Something will be done in two weeks!<sup>371</sup>

The two men then agreed to meet later to discuss the matter. Pushpinder Singh and the other ISYF members present also indicated that they intended to visit the Sikh Temple of Akali Singh to “...teach the temple a lesson” for taking down the picture of Sant Bhindranwale, the Khalistan movement leader who had died in the storming of the Golden Temple and whose picture had then been put up in Sikh temples across Canada.<sup>372</sup>

### *The Parmar/Pushpinder Singh Connection*

The VPD learned from Khurana that during the meeting, Pushpinder Singh voiced “...a great deal of praise” for Talwinder Singh Parmar. He indicated that he had been to a meeting in Toronto with Parmar during the previous week. He claimed that he was using Parmar to bring all Sikhs in the Lower Mainland together.<sup>373</sup> Based on this information and information from other sources, McLean concluded that the Babbar Khalsa (BK) led by Parmar and the ISYF intended to make all Sikh temples in Vancouver, and eventually in Canada, support Sant Bhindranwale and the quest for an independent state of Khalistan.<sup>374</sup>

Prior to the Khurana meeting, the ICLT suspected that there might have been a connection between the BK and the ISYF and that Parmar and Pushpinder Singh might have been meeting on occasion, but had no precise knowledge of

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<sup>370</sup> Exhibit P-101 CAC0487, p. 4; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2003-2004.

<sup>371</sup> Exhibit P-101 CAC0487, p. 4; Testimony of Don McLean, vol. 21, May 1, 2007, p. 2004.

<sup>372</sup> Exhibit P-101 CAC0487, p. 4; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2006-2007.

<sup>373</sup> Exhibit P-101 CAC0487, p. 4.

<sup>374</sup> Exhibit P-101 CAC0487, p. 3; Testimony of Don McLean, vol. 21, May 1, 2007, p. 2007.

a connection between the organizations.<sup>375</sup> Through Khurana, there was now evidence of a direct connection between Pushpinder Singh and Parmar and the alignment between the BK and the ISYF.<sup>376</sup> The information was confirmed in part by CSIS and RCMP surveillance which showed that Parmar was, in fact, in Toronto shortly before the Khurana meeting, between June 8<sup>th</sup> and 10<sup>th</sup>, and that Pushpinder Singh was believed to have been in Toronto at the time as well. Further analysis showed, however, that the person who travelled back from Toronto to Vancouver with Parmar on June 9, 1985 was not Pushpinder Singh, but Bagri, as per Ms. E's statements to police.<sup>377</sup> On June 5<sup>th</sup>, the CSIS Toronto Region indicated that ISYF types from BC were present in the Toronto area.<sup>378</sup>

### ***The Khurana Tapes***

The recording of the Khurana meeting was turned over to MacKinnon because a direct translation had to be obtained to determine whether obstruction charges could be brought.<sup>379</sup> Immediately after the meeting, the VPD officers present listened to a portion of the tape in Khurana's absence to ascertain the quality of the recording. According to McLean, the quality was average. Depending on their location in the room, some participants could be heard better than others.<sup>380</sup> Some portions of the recording were unintelligible.<sup>381</sup> McLean himself did not review the recording of the meeting or the notes, if any, made by the live-monitor, to see whether he could discern the "wait two weeks" comment.<sup>382</sup>

McLean was advised that Cst. Ram, the Punjabi-speaking VPD member who acted as a live-monitor and interpreter during the meeting, had not heard the "wait two weeks" comment.<sup>383</sup> However, Khurana was always adamant that the conversation had occurred as he stated.<sup>384</sup> Since he had proven to be a very reliable source in the course of his dealings with the ICLT, McLean was fully prepared to rely on Khurana's word.<sup>385</sup> The VPD members of VIIU also dealt with Khurana and confirmed that he was a "...credible source, of known reliability." Supt. Axel Hovbrender (then a constable) had no doubt about the veracity of the information reported by Khurana. There were many persons present and talking at the same time during the meeting.<sup>386</sup> Further, the initial conversations

<sup>375</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1997-1998. There was some information in a VIIU report dated June 6, 1985 about a meeting at Surjan Singh Gill's residence involving representatives of the BK and the ISYF: Exhibit P-101 CAA0196, p. 2.

<sup>376</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2005-2006.

<sup>377</sup> See Section 1.3 (Post-bombing), Ms. E.

<sup>378</sup> Exhibit P-101 CAA0281, p. 1. See also Exhibit P-101 CAA0188, p. 3, CAA0383(i), p. 3 and CAA0528, pp. 1-2.

<sup>379</sup> Exhibit P-101 CAC0487, p. 3; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2007-2008.

<sup>380</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2008.

<sup>381</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2013. See also Exhibit P-101 CAD0180a, p. 1.

<sup>382</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2013, 2034.

<sup>383</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2024, 2035.

<sup>384</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2014. Khurana also subsequently recounted the same information in a police statement provided to an RCMP officer in connection with the Air India investigation: Exhibit P-101 CAD0180a, p. 2.

<sup>385</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2014.

<sup>386</sup> Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3910, 3921.

were not recorded because the VPD members had not been aware of the commencement of the meeting.<sup>387</sup> As a result, it was entirely possible that the “wait two weeks” comment could have been made exactly as stated by Khurana, but simply could not be heard on the recording.

For the RCMP, however, despite Khurana’s known reliability, the exact translation of the Khurana tapes was to become a major focus in the subsequent investigation of the Air India bombing.<sup>388</sup>

### **The VPD Khurana Report**

The day after the Khurana meeting, on June 13, 1985, McLean prepared a report summarizing the information provided by Khurana, making reference to the notes taken by MacKinnon during the debriefing.<sup>389</sup> The report was prepared solely on the basis of the statements made by Khurana and not on any translation of the surveillance tapes. A copy of the report was provided to MacKinnon and another copy was sent to Hovbrender, a VPD member of VIU, so that the information could be disseminated to the RCMP and CSIS.<sup>390</sup>

The same day, McLean also advised CSIS verbally of the information received from Khurana.<sup>391</sup> He did not communicate directly with the RCMP however, because he assumed that the information would be transmitted to them through VIU,<sup>392</sup> given that RCMP E Division members worked in this integrated unit alongside the VPD members.<sup>393</sup> McLean believed that those who received his report would be in a position to respond to the threat revealed by the Khurana information.<sup>394</sup> However, neither the RCMP nor CSIS investigated the information and neither of them reported it in a timely manner with sufficient detail.

### **The CSIS Threat Assessment: Too Little Too Late?**

The CSIS BC Region received the Khurana information from McLean on June 13, 1985, and included it in an internal report sent to CSIS HQ the following day. The report contained detailed information about the participants in the meeting and about the possible connection between Pushpinder Singh and Parmar, even specifying that Pushpinder Singh had returned to Vancouver with Parmar after meeting with him in Toronto. The Pushpinder Singh exchange about future plans was reported by McLean as follows:

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387 Exhibit P-101 CAD0180a, p. 1.

388 See Section 2.3.4 (Post-bombing), The Khurana Tape. In fact, some of the early RCMP translations of the Khurana tapes listed comments very similar to what was reported by Khurana.

389 See Exhibit P-101 CAC0487, pp. 3-6; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2000-2001.

390 Exhibit P-101 CAC0487, p. 3; Testimony of Don McLean, vol. 21, May 1, pp. 2008-2009, 2026.

391 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2009-2010; Exhibit P-101 CAB0306, p. 1.

392 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2011.

393 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4029, 4034; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3870-3872.

394 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2025-2026.

Source reported that a minor confrontation occurred between Pushpinder Singh and Manmohan Singh. Manmohan stated to Pushpinder (source's recall), "You haven't done anything yet. You have not killed any Ambassadors or Consulate officials". Pushpinder was reported to reply: "You must wait for 2 weeks and then you'll see something. We will show the community we are serious."<sup>395</sup>

This information demonstrated an expressed intent by a Sikh extremist leader to take action within a short time to remedy the lack of killings of Indian officials. At a minimum, it should have been assessed and investigated and conveyed to those in charge of protecting Indian diplomats in order to allow them to take necessary security precautions. At the time, CSIS was in charge of providing threat assessments to the RCMP Protective Policing Directorate (P Directorate). However, CSIS did not advise P Directorate of the Khurana information received on June 13<sup>th</sup> until it was included in a general threat assessment dated June 18, 1985.<sup>396</sup>

The CSIS threat assessment was intended for broad dissemination to a number of agencies, including Transport Canada, the Department of External Affairs and the RCMP. As a result, it provided very little detail. The assessment reported the "wait two weeks" conversation, indicating only that it occurred between two Sikhs illegally in Canada, during a Vancouver meeting with several Sikhs in "early June."<sup>397</sup> No information was provided about the identity of the Sikhs involved in the conversation and, most importantly, nothing was said about their leadership role in the ISYF.<sup>398</sup> No information was provided about the possible connection between the ISYF and the BK which had been revealed during the Khurana meeting. In fact, the CSIS assessment did not even mention the actual date of the meeting, making it impossible for those in charge of responding to the threat to identify the "two weeks" time-period during which security might be increased.

As with most CSIS threat assessments in the pre-bombing period, the June 18<sup>th</sup> document was heavy on narrative and light on analysis. The lack of detail would have made it difficult for either the RCMP members in charge of implementing protective measures or for the NCIB members in charge of collecting "criminal intelligence", who also received a copy of the assessment, to draw conclusions about the significance of the information and the seriousness of the threat.

### **RCMP Failure to Report or Respond to the Threat Prior to the Bombing**

On June 13, 1985, the Khurana information was available to the RCMP E Division members working at VIIU. Yet, it was not reported to RCMP Headquarters

<sup>395</sup> Exhibit P-101 CAB0306, p. 2.

<sup>396</sup> Exhibit P-101 CAB0321, pp. 1, 3.

<sup>397</sup> Exhibit P-101 CAB0321, pp. 1, 3.

<sup>398</sup> Testimony of Don McLean, vol. 35, May 29, 2007, p. 4129; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3887.



prior to the bombing.<sup>399</sup> Sgt. Sweeney, who was in charge of reviewing RCMP information and preparing threat assessments,<sup>400</sup> did not learn about the Khurana information until the day of the bombing from McLean.<sup>401</sup> The RCMP also did not investigate this matter until after the Air India bombing. On June 25<sup>th</sup>, E Division reported the Khurana information to HQ for the first time and indicated that it was beginning to investigate local factions of the ISYF.<sup>402</sup>

Because the information was not reported, P Directorate was not advised through the RCMP threat assessment process.<sup>403</sup> When P Directorate received the June 18<sup>th</sup> CSIS threat assessment referring to the information, albeit without detail, no further precision was requested. On the basis of the CSIS assessment that the threat to Indian interests was “only slightly less serious” than before the anniversary of the attack on the Golden Temple and before the Gandhi visit to the US,<sup>404</sup> the RCMP concluded that it could not justify a decrease in the level of protection afforded to Indian missions.<sup>405</sup> For the Vancouver Consulate, this meant that the heightened security level implemented on May 30, 1985 in response to the then upgraded threat assessment was simply maintained. Pursuant to this security level, all Indian diplomats were provided with RCMP escorts.<sup>406</sup> Since May 17<sup>th</sup>, security guards had also been replaced with RCMP members who guarded the Consulate 24 hours per day.<sup>407</sup> As for the Khurana information, the P Directorate made no attempt to determine the beginning and end points of the announced two-week period. The general security measures implemented were not tailored to the nature of this particular threat which remained largely unknown to P Directorate.

### **No Pre-Bombing Connection Made to Air India**

When the ICLT members found out about Pushpinder Singh’s “wait two weeks” comment, they felt that the information was significant and required further investigation.<sup>408</sup> McLean canvassed his sources in the community to find out more about the planned ISYF action. He was not, however, specifically tasked to conduct this follow-up investigation, nor was he required to report the results to the RCMP. In fact, he was never informed about any follow-up investigation conducted by VIU, CSIS or the RCMP and he remained unaware to the date of his testimony of whether anyone was ever tasked to follow up on the Khurana information.<sup>409</sup>

399 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

400 See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

401 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2641; Exhibit P-101 CAF0035, p. 28.

402 Exhibit P-101 CAA0249, p. 1.

403 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

404 Exhibit P-101 CAB0321, pp. 3-4.

405 Exhibit P-101 CAC0449, pp. 1-2, CAC0455, pp. 1-2, CAE0223, p. 3.

406 Exhibit P-391, document 255 (Public Production # 3388), pp. 4-5.

407 Exhibit P-101 CAE0177, pp. 1-2.

408 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2004-2005, 2014, 2025. VPD VIU member Cst. Hovbrender viewed the “wait two weeks” comment as more akin to the general threats, intimidation and boasting which were prevalent in the community at the time: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3921.

409 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2027-2028.

When he initially received the Khurana information, McLean saw the “wait two weeks” comment as a warning or signal that the ISYF would take violent action within a short time. However, based on his experience and on the information available to him about the ISYF, he believed that the comment related to an intention to attack Indian missions or personnel.<sup>410</sup> He had never been provided with any information about threats to Air India at the time.<sup>411</sup> Even the November 1984 Plot information from Person 2 was not transmitted to McLean by either the RCMP or the VPD.<sup>412</sup> Because McLean was not informed, it did not occur to him that the intended violent action Pushpinder Singh was referring to could relate to Air India.<sup>413</sup> As a result, he did not think to explore a number of possible avenues of investigation.

McLean testified that had he known about the existence of threats to Air India in June 1985, he would have conducted his debriefing with Khurana and his subsequent investigation differently. He would have asked different questions, contacted different sources and involved Khurana more directly in attempts to obtain more information.<sup>414</sup> He did not think to take these steps because the RCMP did not keep the VPD informed of the existence of numerous threats to Air India in 1985.<sup>415</sup>

### Observations

- No connection was made from the Khurana information to a potential bombing of an Air India plane.
- The federal agencies in charge of investigating threats to national security neglected to report and investigate the information in a timely manner and were in no position to provide sufficient detail to Protective Policing.
- The RCMP also failed to provide threat information to the VPD, which prevented that police force from conducting necessary follow-up investigation, particularly about the possible connection to Air India.
- The information obtained through Khurana was significant because it indicated that a Sikh extremist leader intended to take action within a short time to remedy the lack of killings of Indian officials. It also provided evidence of a direct connection between Pushpinder Singh and Parmar and indicated that the BK and the

<sup>410</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2004-2005, 2017-2018, 2025, 2036-2038.

<sup>411</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2012.

<sup>412</sup> The information was included in a VPD analytical document reporting VIIU and ICLT information: See Exhibit P-391, document 124 (Public Production # 3254), p. 64; Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

<sup>413</sup> Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2017-2018.

<sup>414</sup> Testimony of Don McLean, vol. 21, May 1, 2007, p. 2017.

<sup>415</sup> See, generally, Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

ISYF were aligning themselves. At a minimum, this information could have been assessed and investigated and those in charge of protecting Indian diplomats could have been advised to take necessary security precautions.

## 1.7 Testimony of James Bartleman

The Honourable James K. Bartleman testified that he saw a Communications Security Establishment (CSE) document that indicated that “Air India was being targeted the weekend of June 22<sup>nd</sup>, 23<sup>rd</sup>, 1985.”<sup>416</sup> The Attorney General of Canada, in its Final Submissions, called Bartleman’s testimony the most inaccurate testimony at the Inquiry, and categorically stated that “...the fact is the CSE document that Mr. Bartleman believes he saw never existed.”<sup>417</sup>

The Attorney General of Canada’s firm position against Bartleman’s testimony is best understood in light of its long-standing claim that there was no “specific threat” to Air India Flight 182. Bartleman’s testimony compels one to carefully assess the Government’s claim. The lack of a “specific threat” has been an important concept, relied upon by the Government, to justify the lack of government response to the crescendo of threats against Indian interests in the spring of 1985. Accepting Bartleman’s testimony would call into question the sufficiency of the government response in a way that, prior to this Inquiry, had never been done before.

### The Testimony of the Honourable James K. Bartleman

At the time of his appearance before the Commission, Bartleman was nearing the end of his term as the 27<sup>th</sup> Lieutenant Governor of Ontario. Prior to assuming this position, Bartleman had had a 35-year diplomatic career in the Department of External Affairs.<sup>418</sup>

As noted in his evidence, it was a chance meeting with Commission counsel that ultimately led to Bartleman’s appearance to testify before the Commission.<sup>419</sup> Initially, Bartleman was hesitant about testifying, as he felt that he might have been in a conflict situation as a result of his position as Lieutenant Governor of Ontario. After the Commission was underway, and in light of evidence heard of there being “no specific threat” to Flight 182, Bartleman decided it was his moral duty as a citizen to testify.

### Lead Role in Canada’s Foreign Intelligence Mandate

At the time of the Air India bombing, Bartleman held a key position within Canada’s foreign intelligence and security community as the Director General

<sup>416</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2108.

<sup>417</sup> Final Submissions of the Attorney General of Canada, Volume I, paras. 184, 205.

<sup>418</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2091-2092.

<sup>419</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2094.

(DG) of the Intelligence Analysis and Security Bureau in the Department of External Affairs,<sup>420</sup> a position he had held since September 1983. He came to that position with extensive experience in security and intelligence matters, particularly in relation to terrorism. Previously, he had been a desk officer analyst for international terrorism in the Intelligence Analysis Division of External Affairs and an Arms Control Negotiator at NATO. He spent four years following international terrorist trends, particularly in relation to Nicaragua and Grenada, as the Director of the Caribbean and Central American Division and subsequently as the Ambassador to Cuba. In his role as DG of the Intelligence Analysis and Security Bureau, he had worked to create legislation and procedures for the new civilian intelligence agency, CSIS, and prepared the Minister (Secretary of State for External Affairs) for Senate appearances on the issue of intelligence activities overall.<sup>421</sup>

External Affairs was the lead agency responsible for ensuring that Canada fulfill its obligations to provide adequate protection to foreign missions and personnel in Canada.<sup>422</sup> Bartleman's Bureau was the organization within External Affairs responsible for the implementation of this lead role.<sup>423</sup> The Bureau was the primary unit responsible for the collection, analysis and dissemination of foreign intelligence within the Government of Canada.<sup>424</sup> As DG of the Bureau, Bartleman necessarily received a broad range of intelligence items each day. His daily intelligence package would include 100 to 200 telegrams from missions abroad, copies of memoranda being sent to the Minister on various subjects, copies of intelligence reports and a pack of intercepted communications from the CSE.<sup>425</sup> Bartleman, with his extensive experience in intelligence issues, was uniquely equipped to evaluate the significance of this large quantity of information effectively.

The central role of Bartleman's Bureau in the foreign intelligence community was apparent by the fact that it housed the only CSE registry at External Affairs. Notably, neither the RCMP nor CSIS had an on-site CSE registry at the time.<sup>426</sup> Bartleman was one of the few government officials that received CSE materials from daily "bulk pull"<sup>427</sup> printouts directly from a CSE registry.

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420 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11925.

421 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2098-2099.

422 This obligation originates from the *Vienna Convention on Diplomatic Relations*. See Exhibit P-101 CAF0063, p. 5.

423 The Intelligence Analysis and Security Bureau was divided into three divisions: Political Analysis, Security and Emergency Planning. The Political Analysis division had the primary responsibility for analysis of foreign political intelligence. It also collected intelligence from persons entering Canada from Communist countries. The Security division was responsible for the security of posts abroad and headquarters, as well as security clearances. The Emergency Planning division operated the Operations Centre and tracked transient international terrorism in cooperation with the Political Analysis division. See Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2094-2096.

424 Exhibit P-101 CAF0063, p. 3.

425 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2094-2096, 2101.

426 Exhibit P-101 CAF0063, p. 4.

427 A "bulk pull" was a keyword query run on the CSE database. William Sheahan testified that these queries "...would produce quite big piles of material, huge piles of paper." See Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11904.

Senior government officials, including Deputy Ministers and Assistant Deputy Ministers in Bartleman's own department, relied on a Customer Relations Officer (CRO) to deliver only material that was "terribly relevant"<sup>428</sup> to their specified information requirements. Lower-level personnel in agencies without CSE registries (including CSIS and the RCMP) were serviced by CSE liaison officers, who brought relevant materials from CSE headquarters to their offices for review and immediate destruction.<sup>429</sup> In contrast, Bartleman's package of CSE materials from the registry was not filtered or vetted by CSE personnel. He had specifically requested that he receive raw, unevaluated, background information from the CSE, and noted that few higher-level officials would have asked for this kind of material, as they would not have had the time to review it all.<sup>430</sup>

By May of 1985, Bartleman's daily intelligence package revealed a "crescendo" of threats against Indian diplomatic and commercial interests apparent in his daily intelligence package. He took steps to prevent a repetition of the Turkish Embassy attack<sup>431</sup> by establishing an *ad hoc* interdepartmental working group in his Bureau to deal with the flood of threats to Indian interests. He wanted to ensure that everything possible was done, at least at External Affairs, to make sure critical intelligence information was passed on in a timely fashion to operational personnel in the RCMP. As a result of a review of the Government's response to the Turkish Embassy incident, in early June 1985 the lead responsibility for maintaining contact with the RCMP and CSIS in relation to protection of foreign assets and persons shifted from the Protocol Division to the Emergency Preparedness Division within Bartleman's Bureau.<sup>432</sup> This shift further solidified Bartleman's Bureau as the foreign intelligence centre within External Affairs, responsible for the analysis and dissemination of foreign intelligence to the appropriate responding agencies.

### ***Evidence of a Threat to Air India Flight 182***

Bartleman testified that, during the week before the bombings, when going through his daily intelligence intercept package from CSE, he saw an intercept which indicated that Air India was being targeted the weekend of the 22<sup>nd</sup> and 23<sup>rd</sup>. He stated that the document was raw, unevaluated information. He took it seriously, despite the many previous alarms that might have caused others to diminish the seriousness of the threats and to view each threat as another "cry wolf" incident.

<sup>428</sup> Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11905.

<sup>429</sup> Testimony of William Sheahan, vol. 90, December 6, 2007, pp. 11900, 11902; Testimony of Pierre LaCompte, vol. 90, December 6, 2007, pp. 11913-11914.

<sup>430</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2101-2102.

<sup>431</sup> Bartleman testified that he was particularly concerned about the adequacy of the Government of Canada's counterterrorism measures in the spring of 1985 because of the experience of the attack on the Turkish Embassy in Ottawa by Armenian terrorists on March 12, 1985. The event was of particular significance to him as he had learned that the Turkish Embassy had sent a diplomatic note to the DEA Protocol Division in advance of the attack warning of a possible attack and no action had been taken on it. He noted that even though his department was not responsible for receiving and transmitting diplomatic notes, he made efforts to ensure that his department did not allow a repetition of the intelligence failure that happened in the Turkish Embassy incident. See Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2102-2104.

<sup>432</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2105-2106.

He brought the document to an interdepartmental meeting taking place in the Operations Centre. He carried the document in a secure folder, walked down to the meeting and asked the senior RCMP officer present if they could speak privately. Bartleman recalled that the RCMP officer was either a superintendent or inspector, but he could not remember the officer's name.<sup>433</sup>

Bartleman pulled out the document and asked the RCMP officer whether he had seen it and whether the RCMP was taking any action. Bartleman testified that he distinctly remembers the response of the RCMP officer because it startled him. The RCMP member flushed and "hissed" at him, telling him that of course he had seen it and he did not need Bartleman to tell him how to do his job.<sup>434</sup>

Bartleman testified that he took no further action on this information up to the time he discussed the matter with Commission counsel in 2006. He testified that he had had full confidence that CSIS and the RCMP had done their job and that the tragedy had occurred despite their best efforts. Bartleman testified that he had the highest respect for CSIS and the RCMP and that he did not doubt for a minute that they had taken the necessary action beforehand. In terms of the police investigation after the tragedy, Bartleman said he felt that there was no point in going to the RCMP because he had nothing new to add.

It was not until he approached the Commission that he learned that the Government's position had been, throughout the years and at this Inquiry, that it had no knowledge of a specific threat targeting the Air India flight on June 22, 1985. As there was only one Air India flight each week from Canada, specifically via Toronto and Montreal, the threat seen by Bartleman would have to have been directed at Flight 182.<sup>435</sup>

### **The Attorney General of Canada's Response**

The Attorney General of Canada urges a rejection of Bartleman's evidence. CSE searched its database, both immediately after the bombing and in the aftermath of Bartleman's testimony, and reported that in neither instance was it able to locate a specific threat such as that described by Bartleman. William ("Bill") Sheahan and Pierre LaCompte, both formerly with the CSE, testified that the "specific threat" document described by Bartleman did not exist and could not have existed. Several witnesses testified that had they seen such a document, they would have treated the information very seriously and would have been "... running all over the place with it"<sup>436</sup> to bring it to the attention of others.

The claims by Bartleman, on the one hand, and that of Messrs. Sheahan and LaCompte, on the other, about whether the document described by Bartleman could have existed are incompatible. The conflict on this issue necessitates a determination of the credibility of the witnesses and an assessment of the

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433 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2108-2109.

434 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2109-2110.

435 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2111-2112.

436 Testimony of William Warden, vol. 24, May 7, 2007, p. 2429.

reasonableness of the evidence. The Commission was impressed by Bartleman's calm and consistent demeanour, even in the face of an aggressive cross-examination by the Attorney General of Canada. Bartleman never prevaricated. There was no doubt that he was testifying truthfully to the best of his recollection.

However, while demeanour is an important factor to take into account in assessing witness credibility, demeanour alone is not determinative. It is also necessary to consider whether the testimony is in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in light of all the surrounding circumstances and evidence.<sup>437</sup> As such, what is necessary is not simply to declare an outright preference for one claim over the other, based solely on credibility, but rather to review the totality of the evidence to assess the probability and reasonableness of each purported claim.

After reviewing the evidence with these considerations in mind, the Commission concludes that there is nothing improbable or unreasonable in Bartleman's testimony, while the argument of the Attorney General of Canada is based on a number of flawed assumptions.

The Attorney General of Canada's position, and the assumptions on which it is based, can be tested by asking the following questions:

- Is the fact that CSE has not been able to locate a copy of the document described by Bartleman proof that no such document ever existed?
- Is the fact that the intelligence and security communities did not raise a general alarm proof that no information, such as that described by Bartleman, was available to them prior to the bombing? To put this latter question somewhat differently, in terms of the Attorney General of Canada's assumptions, is Bartleman's testimony, in fact, the only evidence of a "specific threat" to an Air India flight in Canada in June 1985?

The Inquiry evidence shows these questions can be answered in the negative.

### ***The Failure to Find the Bartleman Document***

Is Bartleman's evidence undermined by the inability of CSE to locate the document that he saw within their database? In the Commission's opinion, the fact that the document was not found does not undermine Bartleman's evidence because the Commission's investigation has shown that searching the CSE database is not a reliable measure of the entirety of its contents.

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<sup>437</sup> *Faryna v. Chomy* (1952), 2 D.L.R. 354 (B.C.C.A.).

***Searching the CSE Database***

The document described by Bartleman would not necessarily turn up in a response to a keyword search for reasons relating not only to the potential content of the document, but also to the background, knowledge and contextual understanding of those conducting the search.

The difficulty of searching the CSE database is illustrated by that fact that LaCompte had difficulty locating a known document that he believed Bartleman (mistakenly) had in mind. LaCompte searched for a specific document that referred to a possible bombing of an Air India flight, namely an intercept concerning the November 1984 bomb plot. Like Bartleman, he had a distinct recollection of the document, as he had raised an alarm at the Department of Transport upon reading the intercept. Yet, he had difficulty finding the document during his search immediately after the bombing despite the known “specificity” of the document. The document mentioned an Air India plane, a Canadian point of departure, a plan to bomb and a time frame. LaCompte searched during an entire afternoon, but was unable to locate the document until the following morning, because he initially searched within the wrong time frame. It was only after several attempts that he finally located the document he was looking for (though not, evidently, any other documents relevant to threats to Air India that did not fit the narrow parameters he used in his search). This establishes the unremarkable proposition that the retrieval system is only as good as the inputted search parameters.

The same difficulty arose recently when, in response to Bartleman’s testimony, the CSE attempted, but was also initially unable, to locate the November 1984 Plot document until LaCompte himself suggested more specific search terms.<sup>438</sup>

Commission counsel reported a similar result for a controlled CSE search conducted at their request. Commission counsel requested that CSE search its database in order to find three CSE intercepts referred to in the documentation produced for the Inquiry (though the references were redacted in the public documents). Two members of the Commission team obtained the requisite additional security clearance and attended several times at CSE to review the results. The first search attempts by CSE personnel turned up results that Commission counsel believed failed to correspond to the descriptions in the Commission documents. Only on subsequent attempts, using additional keywords in the search parameters provided by Commission counsel based on their own background knowledge of the Air India narrative, was the CSE able to locate the last of the documents.

These experiences demonstrate the sensitivity of CSE searches to the relevancy of the search terms chosen. It is easy to understand why it would be difficult for those unfamiliar with the document described by Bartleman to locate it within the CSE database.

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<sup>438</sup> Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11949.



### ***Completeness of CSE Documentary Record***

Other complexities present themselves in terms of reconstructing the CSE documentary record as of June 1985. While CSE document retention protocols have been clarified over the years, those in place in 1985 were unclear and did not appear to be rigorously followed.<sup>439</sup>

The CSE claims that all CSE reports have been retained since prior to 1985. However, a test of the database initiated by Commission counsel indicates otherwise. Commission counsel reviewed a 1997 index of CSE documents on which two documents were listed as “cannot locate.” The CSE admitted that the two documents could not be found in 1997, but were now available through its efforts to reconstitute all relevant files from allied agencies.<sup>440</sup> However, the need for the reconstitution effort, on its own, indicates that the CSE documentary record is less than complete.

The issue is further complicated by the nature of the document as described by Bartleman. Bartleman testified that the material he saw was “...raw and unevaluated.”<sup>441</sup> This description suggests a document different from the summary reports that Messrs. Sheahan and LaCompte delivered to their clients and different from the reporting that CSE claims to have retained from that period. Sheahan testified that raw traffic intercepted by CSE in 1985 would most likely have been destroyed; only final reports were retained.<sup>442</sup> As such, if the material viewed by Bartleman had been raw traffic, no record of the document would be expected to exist to this day.

Regardless of whether the material viewed by Bartleman was a summary report or raw intercept traffic, the Inquiry evidence shows that retention for both types of documents is not complete. Thus, the inability to locate the Bartleman document within the CSE records fails to serve as proof that it did not exist.

### ***The Lack of an Intelligence and Security Response***

The Attorney General of Canada contends that, had the Canadian security and intelligence community seen information of the sort described by Bartleman, it would have reacted in a determined and forceful way to raise a general alarm and would have taken protective measures appropriate to the threat. It follows from the Attorney General of Canada’s argument that, since there was no general alarm and no special protective steps proposed or instituted, no such information was available and Bartleman’s evidence must be mistaken.

This argument does not stand up to scrutiny. Once one gets beyond the confusion caused by the continuous insistence on the terminology of “specific

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<sup>439</sup> Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11944.

<sup>440</sup> In an attempt to ensure CSE had all files potentially relevant to Bartleman’s testimony, the CSE reconstituted its database by requesting all relevant reports from its allied agencies and reloading them onto the CSE database. See Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11945.

<sup>441</sup> Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2108.

<sup>442</sup> Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11944.

threat”, it becomes clear that the Bartleman information is not the only example of what might less confusingly be termed a “direct threat” to an Air India flight in Canada in June 1985. The response or, more accurately, lack of response, to these other threats demonstrates that the lack of general alarm or anti-bombing security precautions prior to the June 22/23 Air India flight is no proof at all that the Bartleman document did not exist.

### ***The Concept of “Specific Threat”***

The Attorney General of Canada’s response assumes that the information seen by Bartleman was obvious on its face as a “specific threat” to Air India and thus, by virtue of its content, would have triggered a widespread government response. The concept of a “specific threat” occupies a central, organizing and crucial place in the position urged by the Government of Canada. However, the evidence called at the Inquiry has shown that the Government has had no consistent definition of what constitutes a “specific threat.”<sup>443</sup> Witnesses offered various understandings of the concept, resulting in a situation where, in the final analysis, it is unclear what is meant by the Government’s claim of “no specific threat.”

The “specific threat” concept was a term of art in the aviation security context in 1985 that was solely relevant as an all-or-nothing threshold for the implementation of emergency protocols at airports. The concept was relevant for threats received on the day of the flight, generally by phone, sometimes when the aircraft was already loaded with passengers and luggage. If it was determined that such a threat was “specific,” an emergency protocol was put into action. This involved moving the threatened aircraft to a place of safety, offloading the passengers and the luggage already onboard, conducting a search of the aircraft and luggage using the RCMP dogmaster and undertaking a process of passenger-baggage matching. The assessment of whether or not a call-in threat was “specific” depended on the degree of detail about the threat that was provided by the caller – for example, the timing, intended target, and means of attack. This assessment normally had to be made on the spot, without the benefit of thorough intelligence analysis, so that an immediate decision could be made about whether or not to implement the emergency measures.

As would be expected, when information was received through channels, in circumstances that allowed enough time for the engagement of the intelligence analysis process, an entirely different protocol (though one ultimately ineffective for the prevention of the loading and detonation of time/delay devices in registered baggage) was to be engaged. Those assessing the threat would examine it in the light of other relevant intelligence on file and attempt to corroborate it in order to assess its veracity and the consequent need for a response. While CSIS utilized the “specific threat” term in its threat assessments

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<sup>443</sup> For a detailed discussion of the “specific threat” concept, refer to Section 4.3 (Pre-bombing), The Role of the “Specific Threat” in the 1985 Threat-Response Regime.

(TAs), there appeared to be no consistent understanding of the term.<sup>444</sup> CSIS would call a threat “specific” only if the “...information [indicated] that something was going to happen, period, no ifs, ands, or buts”<sup>445</sup> and independent corroboration was available. This high threshold failed to correspond to a particular risk level, or responsive action, and was rarely met, if ever, in the year before the bombing, making the “specific threat” term of limited utility in the CSIS TAs.<sup>446</sup>

After the bombing, government officials immediately claimed there had been no “specific threat”<sup>447</sup>, borrowing a term that was of limited relevance in a threat assessment context and most applicable to the narrow circumstance of an emergency call-in threat situation at an airport. As such, the Government and its agencies have excused their lack of responsive action by taking the “all-or-nothing” position that:

- unless the threat was “specific,” there was no need to take heightened security measures beyond those already in force at Pearson and Mirabel Airports; and,
- that a threat was not to be understood as “specific” unless it contained details of the time, place and means of the alleged plots as well as of the identity of the alleged perpetrators.

The Commission has found numerous flaws in this approach, outlined in detail in Section 4.3 (Pre-bombing), The Role of the “Specific Threat” in the 1985 Threat Response Regime. For present purposes, it is sufficient to note that employing this overly technical approach obscures the most important questions about the adequacy of the assessment of, and response to, the known threats in the period leading up to the bombing.

### ***The Bartleman Document: A Specific Threat Recognized***

Would the threat seen by Bartleman have been considered “specific,” according to the Government’s restricted definition? The Attorney General of Canada’s argument is based on the assumption that the document to be found is one that even a lay person would explicitly interpret to be a “specific threat.”

Bartleman testified that the document was raw, unevaluated information that indicated that Air India was being targeted the weekend of June 22 and 23, 1985. Bartleman knew that there had been many alarms raised in the previous year about potential attacks and so others might view the threat as another “cry wolf” incident. Given his position, his experience and his unique familiarity with Sikh extremism, it would hardly have been necessary for all the “i”s to be dotted or the “t”s to be crossed in the CSE intercept.

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<sup>444</sup> Testimony of John Henry, vol. 25, May 8, 2007, pp. 2515-2516, 2537.

<sup>445</sup> Testimony of John Henry, vol. 25, May 8, 2007, p. 2538.

<sup>446</sup> Testimony of John Henry, vol. 25, May 8, 2007, p. 2538.

<sup>447</sup> Exhibit P-101 CAF0825, pp. 2-3, which documents the statements of Transport Minister Don Mazankowski in reply to questions during the House of Commons Question Period on June 25, 1985.

However, the information in the Bartleman document would not have satisfied the strict definition of a “specific threat” established by the Government. Although the document contains information regarding the time and place, it did not reveal details about the means of the alleged attack nor the identity of the alleged perpetrators. As such, it does not appear that other government officials, relying on the “specific threat” concept, would have considered the threat to be specific.

The Attorney General of Canada, in its Final Submissions to the Commission, admits that “[...]here were a number of *non-specific* threats to Air India flights from Toronto and Montreal in the spring of 1985”, and posits that, over time, Bartleman may have confused one of these documents for something else; something more specific.<sup>448</sup> Rather it appears that Bartleman’s document may have been one of a number of *direct* threats to Air India flights in the spring of 1985 that the government agencies mischaracterized as being *non-specific*.

This possibility is made apparent when one considers the reaction of key government agencies to a threat considered to be “non-specific,” the June 1<sup>st</sup> Telex.<sup>449</sup>

### ***The June 1<sup>st</sup> Telex: A Specific Threat Ignored***

As discussed in Section 1.2 (Pre-bombing), the June 1<sup>st</sup> Telex, the Chief Vigilance and Security Manager in Bombay sent the June 1<sup>st</sup> Telex<sup>450</sup> to Air India offices worldwide, including offices in Canada. Air India advised that it had received intelligence revealing “...the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage,” as well as the fact that “...Sikh extremists are planning to set up suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or [carry-on-baggage] or any other means ....”<sup>451</sup> Air India went on to suggest five counter-sabotage measures that should be undertaken to ensure passenger safety in light of the threat. Specifically, it called for the continued use of explosives sniffers and explosives-sniffing dogs until at least June 30, 1985.<sup>452</sup>

From an abstract, definitional point of view, the June 1<sup>st</sup> Telex might appear to be lacking all the elements of specificity that Sgt. Sweeney testified were required to make a threat “specific,” including date, location, particular target, particular means and identity of perpetrators.<sup>453</sup> Yet from a functional point of view, and on any reasonable reading, the telex was “sufficiently specific” that a

448 Final Submissions of the Attorney General of Canada, Vol. I, para. 205.

449 See Section 1.2 (Pre-bombing), June 1<sup>st</sup> Telex.

450 Exhibit P-101 CAA0185.

451 Exhibit P-101 CAA0185.

452 Exhibit P-101 CAA0185. A subsequent telex sent from Air India to its worldwide offices revealed that the measures indicated in recent correspondence to deal with the heightened threat of hijacking and sabotage were to continue until the end of June 1985: Exhibit P-101 CAC0419, p. 3.

453 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2716.

trained intelligence professional would be able to understand the nature of the threat, as well as the need to assess the risk involved and to take appropriate measures in response.

### ***Elements of Specificity***

Some elements of specificity in the telex are beyond dispute. The information is specific in terms of the means, namely “time-delayed explosives” hidden in checked baggage. It is also specific as to the target, namely “an Air India plane”.

What about the parameter of date?

The June 1<sup>st</sup> Telex did not indicate a particular date for the attack, but did clearly set out the month of June as the heightened period of alert. This narrowed the focus for a potential response to definite dates and times within a quite narrow time frame, namely the four days in the month of June 1985 on which Air India had its weekly flights between Canada and India. An intelligence professional, whether at CSIS, the RCMP or External Affairs, would have known that June 1985, in particular, was considered by Canadian and American officials to be a period of extremely high risk for an attack on Indian interests by Sikh extremists because of the US visit of Indian Prime Minister Rajiv Gandhi and the anniversary of the Golden Temple storming that month.

In early May 1985, a senior-level *ad hoc* interdepartmental committee on Sikh extremism was formed with representation from the RCMP, CSIS, DEA and the Solicitor General.<sup>454</sup> In mid-May, the Security and Intelligence Bureau at DEA held consultations with Canada’s mission in Delhi about the Sikh terrorist threat in Canada and India.<sup>455</sup> As a result of upgraded threat assessments, by the first of June, the RCMP was affording a high level of protective security for all Indian diplomatic missions and personnel in Canada.<sup>456</sup> On May 31<sup>st</sup>, as a result of concerns expressed by the interdepartmental committee, External Affairs contacted RCMP Protective Policing to request that the level of security for Air India in Toronto be made consistent with that provided in Montreal.<sup>457</sup> In the month of June, officials involved in protective policing received “highly classified” intelligence that left them with no doubt that “...something was going to happen,” though what, when and where were not known.<sup>458</sup> All of these facts combined would lead any well-informed recipient to pay particular notice to a threat to Indian interests targeted for the month of June 1985.

What about the parameter of “identity of perpetrators”?

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<sup>454</sup> Exhibit P-102: Dossier 2, “Terrorism, Intelligence and Law Enforcement – Canada’s Response to Sikh Terrorism”, p. 9.

<sup>455</sup> Exhibit D-1: Dossier 1, “Background and Summary of the Facts”, pp. 2-3.

<sup>456</sup> Exhibit P-101 CAC0334, p. 2, CAE0177, p. 1, CAE0223, p. 2.

<sup>457</sup> Exhibit P-101 CAA0166.

<sup>458</sup> Exhibit P-101 CAA0240, p. 2, CAC0445, p. 5; Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040, 3044-3046, 3085-3086.

The June 1<sup>st</sup> Telex does not identify any specific person or persons as being involved in the plot. It does, however, refer to Sikh extremists as the source of the threat. Canadian government officials were aware of the identities of the prominent Sikh extremists domiciled in Canada. Just days prior to the June 1<sup>st</sup> Telex, CSIS had issued a threat assessment which was distributed widely across government agencies,<sup>459</sup> warning about the threat potential of the Babbar Khalsa (BK) and the International Sikh Youth Federation in Canada. CSIS reported that BK individuals in Vancouver had recently hosted a prominent UK Sikh extremist, who had warned in May 1985 that the names of Sikhs who refused to boycott Air India flights would be put on a hit list. BK members in Canada were connected to several threats against Air India. Parmar was assessed as the single most dangerous Sikh extremist at large,<sup>460</sup> and had publicly pledged in the past that Air India planes would "...fall from the sky".<sup>461</sup> Bagri, who had been implicated in an earlier plan to hijack an Air India plane, was assessed as easily capable of being manipulated to commit a violent terrorist act.<sup>462</sup> There is no doubt that the leaders of the Sikh extremist movement in Canada were well known to Canadian authorities.

What about the parameter of "place"?

The June 1<sup>st</sup> Telex did not specify "Canada" as the intended target of would-be extremists. Indeed, when pressed about the "specificity" of the June 1<sup>st</sup> Telex during his testimony, Sgt. Sweeney based his conclusion – that the telex was not "specific" – on the fact that it did not indicate a particular location.<sup>463</sup> Again, this observation makes little sense when applied to the broader threat assessment context in which there is time to develop a broader threat response strategy.

Canadian intelligence professionals would have known that Canada contained the second largest Sikh population outside of India, many of whom had demonstrated their agitation over the events in the Punjab over the previous year. It was also well known that within the Sikh population there existed extremist elements who had threatened bloody revenge against India and Indian interests. Moreover, Canadian officials were aware of concerns at the time that the foiling of an assassination attempt<sup>464</sup> on the visiting Indian Prime Minister in June could result in extremists redirecting their efforts to a less high-profile target in Canada,<sup>465</sup> and that, in the past, Air India in Canada had been flagged by CSIS as a "softer target."<sup>466</sup>

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459 Exhibit P-101 CAB0236(i), pp. 1-6.

460 Exhibit P-101 CAB0114, p. 2, CAF0132, p. 5.

461 Exhibit P-101 CAF0160, p. 33.

462 Exhibit P-101 CAA0110, pp. 2-3.

463 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2752-2753.

464 And unsuccessful weapons raids by the RCMP on the homes of two Sikhs in the Windsor/Detroit area, in connection with the upcoming Gandhi visit: Exhibit P-101 CAB0312, pp. 1-2.

465 Exhibit P-101 CAB0312, p. 2, CAC0459, p. 2. See also Exhibit P-101 CAC0356, p. 3, where in late May there were concerns expressed by RCMP Protective Policing that the Sikh extremists in the Windsor/Detroit area who were purchasing weapons might not be targeting the upcoming Gandhi visit, but could be targeting other Indian interests in Canada.

466 Exhibit P-101 CAC0133, p. 2.

In this context, it is difficult to see how an intelligence officer would not understand a threat to bomb an Air India plane in June 1985 as being at least as likely to refer to the weekly Air India flight from Toronto and Montreal as to any flight from any other location in the world. Regardless of the probability of the attack happening in Canada, in the context of the tense climate among Canadian-domiciled Sikh extremists, the threat ought to have caused a more refined operational response from the Canadian government.

Indeed, this common sense view was supported by world-class aviation security and risk management experts who testified at the Inquiry hearings. Dr. Rodney Wallis, an international civil aviation security expert,<sup>467</sup> argued that, given the circumstances, the June 1<sup>st</sup> Telex was specific enough to warrant extreme concern and response, in line with what would have been afforded in the case of a “specific threat” as understood by the regime in 1985:

[I]n the case of Air India, which was operating under a high threat situation, operating with a once-a-week service out of Canada where there was a known element at war with the Indian government and anything that represented the Indian government and I have mentioned before the symbol on the tail of the airplane. We will say that’s an Indian government.

So they were operating under this high risk situation with a once-a-week flight and the difference between that operation and specific threat becomes blurred. It becomes merged. You could argue it becomes one and the same thing.

...

Specific threat or high risk, I would expect it to be the same response under those circumstances.<sup>468</sup>

Dr. William Leiss, an expert in risk communication, risk perception and risk management,<sup>469</sup> stated that the June 1<sup>st</sup> Telex was as specific a warning as is possible in civil aviation security. He felt that the information should have “...leapt off the page”. In light of the specificity of the information and the high-risk situation at the time, Dr. Leiss wondered “...why didn’t the alarm bells go off everywhere?”<sup>470</sup>

From the perspective of protecting Canadians, it is clear that the information in the June 1<sup>st</sup> Telex should have satisfied all the parameters of specificity: means, target, date, identity of perpetrators and place. Contrary to the submissions of

<sup>467</sup> See Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4204-4205.

<sup>468</sup> Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4426-4427.

<sup>469</sup> See Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11955-11956.

<sup>470</sup> Testimony of William Leiss, vol. 91, December 7, 2007, p. 11982; P-433: Affidavit of William Leiss and Two Supporting Tabs (Tabs: 3 and 7).

the Government of Canada, any reasonable and responsible reading of the June 1<sup>st</sup> Telex should have resulted in an operational response to better safeguard the weekly Air India flights emanating out of Canada for the month of June 1985. Instead, the information was immediately discounted, not shared beyond the RCMP and subsequently forgotten after the bombing.

***The CSE Information: Threat of Bombing Inside and Outside India***

The lack of reaction to the June 1<sup>st</sup> Telex is made even more relevant by the fact that subsequent searches of the CSE database requested by Commission counsel disclosed CSE information from essentially the same time period as the June 1<sup>st</sup> Telex warning of the threat of sabotage to Air India aircraft by Sikh extremists and indicating specific security measures to be taken at all Air India stations in light of the threat. This establishes that the type of information in the June 1<sup>st</sup> Telex was known (and discounted) by at least two separate government agencies, the RCMP and the CSE.

There are strict limitations as to what may be revealed about CSE intercepts. The information is highly classified, and only a very narrow range of individuals with a need to know are given the relevant clearance. This makes discussion of the content of CSE intercepts a very delicate and sensitive issue. Accordingly, it is not possible to describe the material in much detail in this public report.

Witnesses from various government agencies testified at this Inquiry that they never saw the *information* in the June 1<sup>st</sup> Telex. It follows that these witnesses also never saw the CSE information. There is no indication that the CSE information was ever identified by CSE officers to be passed to any of the key personnel working on the assessment and response to Sikh extremist threats. It appears that CSE personnel, like the RCMP, also failed to recognize the significance of the nature of the warning in the June 1<sup>st</sup> Telex. After the bombings, when Pierre LaCompte was asked whether there had been any advance warning of a possible bombing in the CSE holdings, he recalled a November 1984 bomb threat but not the more recent CSE information.<sup>471</sup>

It is regrettable that two separate government agencies, the CSE and the RCMP, received critical pre-bombing information about the threat of sabotage and security measures to be implemented in response and, yet, this important information apparently went nowhere because it was reviewed by personnel without the requisite expertise to properly assess its significance. No alarms were raised. In fact, it appears that no one outside the CSE and the RCMP was notified about the receipt of this critical threat information, either before or after the bombing. For the 21 years between the bombings and the commencement of this Inquiry, the full significance of the June 1<sup>st</sup> Telex and the CSE information has gone unappreciated.

This conclusion is made even more acute when one considers that, as discussed in greater detail in Section 3.6 (Pre-bombing), Lack of Government-Wide

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<sup>471</sup> Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11921.



Coordination in the Threat Assessment, the CSE information from the same period uncovered by Commission counsel provided corroboration of the seriousness of the threat. While each piece of information may have seemed relatively inconclusive or ambiguous on its own, when pieced together by a trained analyst, a much clearer and undoubtedly alarming pattern might have been discerned. That, in fact, appears to be exactly what Bartleman did when he saw the CSE information that so concerned him, which may well have been a variant of the CSE information discussed above.

### ***A Multitude of Direct Threats***

In light of the treatment of the June 1<sup>st</sup> Telex and of the CSE information, Bartleman's testimony that he saw a document relating a threat to an Air India flight that was largely ignored is hardly surprising. It is, rather, compatible with the general government reaction to *direct* threats of this nature at the time. The Attorney General of Canada's argument is flawed in that it denies the existence of the Bartleman document on the basis that there was no "specific threat" to Air India Flight 182, while admitting that members of all government agencies were aware of a multitude of direct threats against Air India flights in Canada in June of 1985.

Gary Clarke, the Officer-in-Charge of Protective Policing at the Toronto RCMP Division in 1985, testified that, in June of that year, the RCMP had "highly classified" information in the form of a communiqué from the Department of External Affairs that indicated special security precautions should be taken on all Air India flights to and from Canada.<sup>472</sup>

Mel Deschenes, the Director General of Counter Terrorism at CSIS headquarters, on June 19, 1985, days before the bombing, expressed his fear that rogue elements of the Indian Secret Service would take a plane out of the sky.<sup>473</sup>

Warren Sweeney, a Sergeant in the National Criminal Intelligence Branch of the RCMP in 1985, testified that he was aware of a threat of a general nature for nearly every Air India flight leaving Canada, including the ill-fated flight on June 22, 1985.<sup>474</sup>

Sgt. Sweeney's testimony that the RCMP was in receipt of threats to Air India before every flight,<sup>475</sup> coupled with the fact that no record of these threats has been included in the documents produced to the Commission, may also

<sup>472</sup> Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3044-3047; Exhibit P-101 CAA0240, p. 2, Exhibit P-101 CAC0445, p. 5.

<sup>473</sup> See Section 1.8 (Pre-bombing), Rogue Agents (Deschenes).

<sup>474</sup> Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2754, 2757.

<sup>475</sup> Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2585; Exhibit P-101 CAC0517, p. 2.

be relevant. Bartleman testified that, based on his extensive experience in intelligence matters, he took the threat information that he saw seriously, but was unable to evaluate whether the threat was in fact credible. The threat he saw could have been one of the many undocumented threats before every flight.

The Inquiry evidence does not support the Attorney General of Canada's assertion that government officials at the time would have treated the information very seriously and been "...running all over the place with it". Rather, it appears that direct threats that were sufficiently specific to indicate that Air India would be targeted in Canada were routinely discounted and subsequently forgotten.

### Conclusion

Bartleman testified that, shortly before the bombing, he saw an intercept that he interpreted as intelligence indicating that the Air India flight departing Toronto and then Montreal was targeted. He showed the document to an RCMP officer, who indicated that the RCMP was aware of the underlying information. Bartleman recalled that the RCMP officer made it clear that he did not welcome Bartleman telling the RCMP how to do its job.

There is nothing inherently unlikely in any of Bartleman's testimony. To the contrary, there is a measure of confirmation on all points. The June 1<sup>st</sup> Telex and the CSE information demonstrate that information "sufficiently specific" to indicate that an Air India flight in June was being targeted for sabotage was in circulation, but that its significance was not appreciated by those who saw it. The fact that this key information disappeared from the post-bombing investigation (except for a brief mention in a document being considered for production to the families in the civil litigation<sup>476</sup>), not to re-emerge until its circulation was inaccurately described to the Honourable Bob Rae,<sup>477</sup> gives credence to the notion that the significance of such information was seemingly no clearer in the post-bombing period than it had been in the pre-bombing period.

The fact that none of the recipients of the information in the June 1<sup>st</sup> Telex actively pursued the information post-bombing shows that Bartleman was not alone in his belief that there was no use in repeating information that the relevant authorities already had and, presumably, had acted on.

Finally, the May 24, 1985 RCMP memorandum,<sup>478</sup> reflecting the RCMP's displeasure at being "second guessed" by External Affairs in terms of its security levels, appears to corroborate the tone and content of the subsequent confrontation described by Bartleman.

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<sup>476</sup> Exhibit P-101 CAC0528, p. 40.

<sup>477</sup> Exhibit P-101 CAA0234, p. 8, where the document implies in error that the content of the June 1<sup>st</sup> Telex was passed to CSIS.

<sup>478</sup> Exhibit P-101 CAC0355, pp. 2-4.

On balance, the evidence cited by the Attorney General of Canada to discredit James Bartleman was not persuasive. Bartleman was a unique consumer of intelligence who had exceptional access to CSE materials. It was a well-accepted fact that there were many threats to Air India flights from Canada and these threats were generally discounted. In light of these surrounding circumstances, it is reasonable to conclude that James Bartleman saw a document with a direct threat to Air India Flight 182 on June 22, 1985 that other witnesses do not recollect seeing.

The Commission accepts the evidence of Bartleman, and finds that he delivered a message to the RCMP identifying a direct threat to Air India 182 the weekend of the June 22, 1985 flight. In accepting Bartleman's testimony, it is significant to note that he had nothing to gain by coming forward with his testimony, and stood only to suffer a loss to his reputation in facing government-wide efforts to impugn his credibility.

Contrary to the argument advanced by the Attorney General of Canada, the importance of Bartleman's evidence is not that it, and it alone, points to a "specific threat" to Air India Flight 182. Rather, Bartleman's evidence is important because it reveals one more direct threat in a crescendo of threats that, like the others, was neither noticed nor understood as information that should be taken seriously. The threat seen by Bartleman – like the other direct threats before it – could, and should, have led the intelligence and security communities to anticipate the outcome and to adopt appropriate anti-sabotage measures to respond to precisely the events that occurred on June 23, 1985. Clearly, they did not do so.

## **1.8 Rogue Agents (Deschenes)**

### **Did CSIS Have Advance Knowledge of a Specific Threat to Air India?**

To determine whether CSIS appropriately assessed the threat to Air India prior to the bombings and whether their actions after the bombings were reasonable, particularly in relation to the Parmar tape erasures, it is important to know if they had advance knowledge of a specific threat to Air India for the weekend of June 22, 1985. Michael Anne MacDonald and Graham Pinos testified before the Commission that CSIS did have such advance knowledge.

### **Separate Statements by CSIS DG of Counter Terrorism**

During the week of June 17, 1985, Ms. MacDonald and Mr. Pinos were in the Los Angeles area in connection with a rogatory commission set up to take evidence in a case related to the shooting of the Commercial Attaché of the Turkish Embassy in Ottawa. Mel Deschenes, then the Director General of the Counter Terrorism Unit at CSIS, was also in attendance at the commission.<sup>479</sup>

<sup>479</sup> Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, pp. 3270, 3278.

Both MacDonald and Pinos testified that Deschenes made separate statements to each of them, indicating that he had advance notice of a serious threat to Indian interests in Canada. After the bombing, the gravity of these statements shocked MacDonald and Pinos,<sup>480</sup> who believed that CSIS had advance warning of, but was unable to prevent, the Air India and Narita bombings.

**Statement #1: Urgent Problem in Vancouver with Sikh Extremists**

MacDonald was at the rogatory commission as Counsel for the Ontario Ministry of the Attorney General. Her responsibilities included setting up and facilitating the taking of evidence in the commission. The evidence was taken before two Commissioners, Ontario Supreme Court Justice Eugene Ewaschuk and District Justice Fred Lacey, District of New Jersey. The commission commenced on June 13, 1985 dealing with preliminary matters, and evidence was taken starting the week of June 17<sup>th</sup>. On Wednesday, June 19<sup>th</sup>, Justice Ewaschuk called counsel into chambers to inform them that Justice Lacey was ill and that, accordingly, the hearings would be postponed until the following day.<sup>481</sup>

Some time before she returned to court on June 20<sup>th</sup>, MacDonald had a hurried conversation with Deschenes in the hotel lobby – one she has never forgotten. MacDonald recalls that Deschenes advised her that he had to leave and gave the following reason for his departure “...all of a sudden, in the middle of things.”<sup>482</sup>

He had received a call from Canada. There was an urgent problem with Sikh extremists in Vancouver, and he had to leave to go to Vancouver, immediately. And he gave his apologies.<sup>483</sup>

At the time, MacDonald felt it was a fairly innocuous conversation. Since she was the commission facilitator, it made sense that attendees who had to leave would tell her about their departure.<sup>484</sup>

On June 20<sup>th</sup>, the commission hearings reconvened. Justice Ewaschuk announced that Justice Lacey had returned to New Jersey and the hearings would be adjourned *sine die* (without a specified date to reconvene).<sup>485</sup>

When MacDonald learned about the Narita and Air India explosions later that weekend, she immediately reflected back on her last conversation with

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480 Testimony of Graham Pinos, vol. 66, October 25, 2007, p. 8182.

481 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, pp. 3273-3281.

482 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3283.

483 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3282. See also Exhibit P-101 CAF0114, p. 2 in which a consistent recollection of Deschenes’s explanation for his departure is reported by MacDonald in Jardine’s minutes of an October 3, 1988 meeting.

484 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007 pp. 3282-3283; Exhibit P-101 CAF0114, p.

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485 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3284; Exhibit P-137, p. 6.

Deschenes. She remembers thinking "...even when they know something is going to happen, they can't stop it."<sup>486</sup> To her, it was clear that CSIS had advance knowledge of the threat to Air India on the weekend of June 22, 1985.

**Statement #2: "Rogue Elements" to Bring Down a Plane**

Pinos was at the rogatory commission acting as Counsel for CSIS. He was responsible for overseeing CSIS witnesses and raising objections where necessary to protect the interests of the Service. He did not attend the proceedings regularly, but rather was given a pager and would be called to attend court if issues arose or a witness testified on matters related to Canadian national security.<sup>487</sup>

Pinos befriended Deschenes, who was also on a similar "watching brief". On June 19<sup>th</sup>, Pinos and Deschenes were having a casual chat over drinks at the hotel pool.<sup>488</sup> Pinos recalls Deschenes speaking in a way that was totally out of character for an intelligence officer. Pinos had been a Crown criminal prosecutor for 10 years and had learned that intelligence officers only told you what you needed to know. Deschenes was telling Pinos things that he had no need to know.<sup>489</sup>

Deschenes spoke about the nature of the Armenian terrorist threat. He then said, "They aren't our real problem, our real problem is something else."<sup>490</sup> The "real problem" according to Deschenes was:

[T]here are rogue elements of the Indian Security Service operating in Canada in the ... Sikh community.... they were non-responsive; they were out of control.... and [Deschenes] perceived them as being dangerous, you know, likely they'd ... take a plane out of the sky.<sup>491</sup>

The next morning, June 20<sup>th</sup>, Pinos knocked on Deschenes's room door for their regular breakfast meeting, but discovered that Deschenes had checked out unexpectedly. Later that day, Pinos learned that the commission hearings had been adjourned *sine die* that morning due to Justice Lacey's illness.<sup>492</sup>

When Pinos learned about the Air India and Narita bombings later that weekend, he was greatly upset. He recalls saying, "Holy expletive, they knew, they knew." He had no doubt in his mind that Deschenes had prior knowledge of the Air India and Narita tragedies.<sup>493</sup>

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<sup>486</sup> Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3286.

<sup>487</sup> Testimony of Graham Pinos, vol. 30, May 17, 2007 pp. 3343-3353.

<sup>488</sup> Testimony of Graham Pinos, vol. 30, May 17, 2007, pp. 3347-3354.

<sup>489</sup> Testimony of Graham Pinos, vol. 66, October 25, 2007 p. 8182.

<sup>490</sup> Testimony of Graham Pinos, vol. 30, May 17, 2007 pp. 3347-3348.

<sup>491</sup> Testimony of Graham Pinos, vol. 66, October 25, 2007, pp. 8181-8182.

<sup>492</sup> Testimony of Graham Pinos, vol. 30, May 17, 2007, p. 3349.

<sup>493</sup> Testimony of Graham Pinos, vol. 30, May 17, 2007, pp. 3350-3351, 3362.

### Response by Mel Deschenes

Mel Deschenes did not testify at the Air India Inquiry. However, the allegations of advance knowledge were raised with Deschenes several times over the course of the Air India investigation. Deschenes's responses to these allegations are recorded in several documents, which were reviewed and entered into evidence during the Inquiry hearings.<sup>494</sup>

Deschenes is recorded as stating that he was not feeling well and left Los Angeles as soon as his attendance at the commission was no longer required. He claimed that the commission had suspended the hearing of witnesses on June 19<sup>th</sup> and he returned to Ottawa via Toronto on June 20<sup>th</sup>. He admitted that he may have made up a work-related excuse for his departure so that the prosecution team would not feel abandoned.<sup>495</sup> At another interview, he claimed that he made up the excuse to get out of a social event.<sup>496</sup> He insisted that his return to Ottawa was not sudden and claimed that he would have checked with Pinos before leaving.<sup>497</sup> He maintained that he was not aware of any advance specific or immediate threat to Air India.<sup>498</sup>

### Timing of the Deschenes Departure

The Attorney General of Canada sought to bolster the credibility of Deschenes's narrative by attempting to undermine conflicting evidence as to the timing of Deschenes's departure offered by MacDonald and Pinos.<sup>499</sup> It is therefore useful to pinpoint whether Deschenes's comments to MacDonald and Pinos occurred before or after the proceedings were officially adjourned.

The most reliable record of the proceedings are the contemporaneous notes of Mac Lindsay, who was Lead Counsel representing the Attorney General of Ontario at the rogatory commission.<sup>500</sup> Notably, Lindsay's notes contradict Deschenes's claims and confirm the recollections of MacDonald and Pinos.

Deschenes stated that the commission suspended the hearing of witnesses on June 19<sup>th</sup> and he returned to Ottawa via Toronto on June 20<sup>th</sup>.<sup>501</sup> Lindsay's notes show that the proceedings on June 19<sup>th</sup> were simply adjourned until the

<sup>494</sup> Exhibit P-101 CAF0115, p. 1.: Letter from Deschenes dated November 25, 1988 to the Director General of Counter Terrorism at CSIS Headquarters in response to a letter from Jardine; Exhibit P-101 CAD0003, p.10: Notes of RCMP interview with Deschenes on December 17, 1990; Exhibit P-136, pp. 2-4: Notes by Corporal Best on April 24, 2002 phone interview with Deschenes.

<sup>495</sup> Exhibit P-136, pp. 3-4

<sup>496</sup> Exhibit P-101 CAD0003, p. 10.

<sup>497</sup> Exhibit P-136, pp. 3-4.

<sup>498</sup> Exhibit P-101 CAF0115, p.1.

<sup>499</sup> See the Final Submissions of the Attorney General of Canada, Volume I, paras. 208-209. The Attorney General of Canada entered Corporal Douglas Best's notes on a 2002 interview of Pinos that stated "Pinos was never told by Deschenes that there was going to be a bomb", calling this a critical omission. In fact, Pinos testified about "planes being taken from the sky" not "bombs." Best admitted that he could not attest to whether the questions asked would have elicited a response about "planes taken from the sky." Another inconsistency about the timing of a subsequent conversation between Pinos and Deschenes is immaterial to the substantive statement made by Deschenes in Los Angeles.

<sup>500</sup> Exhibit P-137, pp. 1-6.

<sup>501</sup> Exhibit P-101 CAF0115, p. 1.

next day. Contrary to Deschenes's claim that the hearing of witnesses had been suspended, MacDonald testified that the hearings would have continued with evidence for the following week if Justice Lacey had been well enough.<sup>502</sup> In fact, MacDonald testified that Lindsay spent the remainder of the day on June 19<sup>th</sup> preparing witnesses. Furthermore, Lindsay's notes show that the commission reconvened on June 20<sup>th</sup> at 10:05 AM. Only then did Justice Ewaschuk announce that Justice Lacey had returned to New Jersey and the official adjournment.<sup>503</sup> Both MacDonald and Pinos testified that they did not learn this news until June 20<sup>th</sup>. Meanwhile, Deschenes claimed that he knew this information on June 19<sup>th</sup> and left Los Angeles on June 20<sup>th</sup>. The flight from Los Angeles to Toronto left daily at 12:30 PM.<sup>504</sup>

It is difficult to conceive how Deschenes could have learned about the adjournment on June 20<sup>th</sup>, sometime after 10:05 AM, and have had sufficient opportunity to speak to MacDonald in the hotel lobby about his intention to leave (particularly as she was in attendance at the proceedings downtown), change his airline ticket and travel to the airport in time for the flight to Toronto departing at 12:30 PM. This sequence of events is even more implausible considering Deschenes's insistence that his departure was not sudden.

The reasonable conclusion from the evidence is that Deschenes made his comments to MacDonald and Pinos before the announcement of Justice Lacey's departure and the official adjournment of the proceedings and that both MacDonald and Pinos are correct in their recall.

### Observations

- Two witnesses testified that they believed that the Director General of Counter Terrorism for CSIS had advance notice of a serious threat to Indian interests in Canada on the basis of statements made to them separately.
- The Inquiry evidence does not support Deschenes's documented explanation for his early departure from Los Angeles: that it was known the hearings would not continue on June 19<sup>th</sup> and his attendance was no longer required. Nevertheless, the Attorney General of Canada continues to rely on this explanation. Its Final Submissions even incorrectly contend that MacDonald herself supports this point.<sup>505</sup>
- It seems bizarre that Deschenes would concoct an excuse to leave if he had a valid reason for his departure. Even more difficult to comprehend is the fact that the "excuse" he gave foreshadowed

<sup>502</sup> Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3337.

<sup>503</sup> Exhibit P-137, pp. 2-3, 6.

<sup>504</sup> Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, pp. 3335-3336.

<sup>505</sup> Final Submissions of the Attorney General of Canada, Volume I, para 209.

tragedies that actually occurred days later. The improbability of such a coincidence suggests that there must have been some truth to Deschenes's excuse; it is likely that concerns about the threat of Sikh extremists were prominent in his mind. Did he leave because of these concerns or did these concerns simply provide a needed alibi?

- It is not essential to determine whether Deschenes went back to deal with a "specific threat" to Air India. At a minimum, Deschenes was troubled by a threat to Air India, a threat he attributed to renegade elements of the Indian secret police who were "non-responsive" and "out of control."<sup>506</sup> Deschenes, the head of CSIS's Counter Terrorism Unit at the time, indicated that this threat was the "real problem" and accordingly, addressing this threat should also have been the top priority for the CSIS Counter Terrorism Unit.

If the sudden departure of Deschenes was to respond to a "real problem," the safety of Air India Flight 182, the overall result was a failure. We can speculate but cannot reach a conclusion about the reason for his departure. The question still remains: Did CSIS commit sufficient resources and significance to the "real problem"? It is obvious that CSIS did not.

### 1.9 Mr. Simpson's Visit to the Air India Aircraft

Brian Simpson testified about the security culture at Pearson International Airport in June 1985.<sup>507</sup> He worked at the airport at that time and witnessed a number of significant shortcomings in the airport security regime. Simpson said he came forward to the Commission in 2007 because he was frustrated about the lack of attention paid to the extremely lax security of the 1970s and 1980s.<sup>508</sup>

Simpson's testimony and other evidence supports the conclusion that carelessness and complacency at the Toronto airport were widespread, this in spite of the fact that RCMP special constables and private security officers were deployed to protect aircraft, screen passengers, and search baggage prior to boarding.

#### Increased Security for Air India Flights

At the request of Air India, the RCMP provided increased security for Air India flights in June 1985 because of the high threat level.<sup>509</sup> On June 22, 1985, one RCMP officer was in a marked patrol car and monitored the apron area where aircraft were stationed. Another RCMP officer in a marked patrol car was

<sup>506</sup> Testimony of Graham Pinos, vol. 66, October 25, 2007, p. 8181; Exhibit P-101 P-136, pp. 3-5.

<sup>507</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3638-3714.

<sup>508</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3651-3652.

<sup>509</sup> Exhibit P-101 CAC0528, p. 46.



stationed under the starboard wing of the aircraft.<sup>510</sup> A further RCMP officer, Special Constable Jurma Tulikorpi, was at the passenger check-in counter. At 3:45 PM, RCMP Special Constable Leo Anderson began to monitor the gate and the secondary screening of carry-on baggage. Between 5:00 PM and 6:00 PM, Anderson covered for Tulikorpi, monitoring two positions 30 feet apart.<sup>511</sup>

Air India had also contracted with Burns International Security to provide security guards on a regular basis. Five Burns security guards were assigned to search passengers and carry-on baggage,<sup>512</sup> and six others were deployed around the airport to provide other security functions. One guard was supposed to be stationed at the inside of the aircraft door and another was assigned to watch the door to the bridge leading to the aircraft.<sup>513</sup> Three other security guards were in the international baggage make-up room, using the X-ray scanner to examine the checked baggage destined for the flight. A final Burns guard was posted at a baggage conveyor belt to ensure that only approved baggage was placed onto it.

### **Simpson Boards the Air India Aircraft Unchallenged**

Perhaps in an attempt to minimize his testimony, the Final Submission of the Attorney General of Canada (AGC) referred to Simpson as a “part-time janitor”.<sup>514</sup> This is an error that must be addressed. Simpson was, in fact, an aircraft groomer in 1985. He cleaned and serviced aircraft cabins as a student member of the Cabin Services Department for Air Canada while he worked on his MBA at the University of Toronto. After obtaining his Master’s Degree, he practiced law as a barrister and solicitor in Ontario for fourteen years,<sup>515</sup> and is presently Vice-President and CEO of a digital media company.

During the spring of 1985, Simpson and other members of the student team would assist the regular cleaning crews in servicing the flights as they arrived. At the start of each shift, Simpson would find out which flight he was supposed to work on, and then walk through the terminal along the airside corridor to the gate where the aircraft in question was located.<sup>516</sup> The airside corridor ran the full length of the airport and passed between the entrances to the bridges, on the one side, and the departure lounge on the other.

Simpson was working at Pearson on June 22, 1985. He initially testified that he might have started work at 1:30 PM, but subsequently conceded he more likely started at 3:30 PM. On starting his shift, he determined that he was assigned to an international flight and that he would have some time before the flight was unloaded and he could go on board.

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<sup>510</sup> Exhibit P-101 CAF0143, p. 1.

<sup>511</sup> Exhibit P-101 CAC0528, p. 45.

<sup>512</sup> Exhibit P-101 CAF0143, p. 2.

<sup>513</sup> Exhibit P-101 CAF0143, p. 2.

<sup>514</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 214.

<sup>515</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3638.

<sup>516</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3640-3641.

Simpson set out for the international terminal in no particular rush. He testified that he invariably travelled on foot at the airport. Along his way from the domestic terminal, Simpson saw the tailfin of an Air India aircraft through a window in the airside corridor, which aroused his curiosity. He had never been aboard an Air India flight, and he knew that the aircraft had come to the airport after a flight halfway around the world.<sup>517</sup> Simpson was interested in taking a look at the cabin of the Air India 747, and since he had time to spare, he decided to go aboard. He had a general interest in airplanes and airports, as his father worked for Air Canada, and his family had travelled extensively.

Additionally, Simpson pointed out that the student groomers were generally interested in knowing which flights and planes would be the dirtiest and the most unpleasant to work on, in order to avoid them.<sup>518</sup>

Simpson walked to the international area where the Air India 747 was located. He walked to the bridge door from the airside corridor. He testified that the secure area doors, such as bridge doors, were subject to some alarming security lapses. For example, although the bridge doors were supposed to be kept locked, they were in fact frequently left open.<sup>519</sup> Worse, the doors were supposed to be secured by coded locks, but these access codes were often written down on the wall near the lock. The door codes themselves were easy to guess: the common practice was to use the three-digit gate number and add the prefix "four" to it. Thus, the combination to the bridge door for gate 101 would be 4101. The codes were also widely known.<sup>520</sup> Finally, the door codes were not changed frequently. In fact, they had apparently not been changed since at least 1979.<sup>521</sup>

Simpson's observations are confirmed by an August 1985 letter written by Ed Warrick, the Airport General Manager at Pearson. In his letter, Warrick cautioned that these deficiencies were "...totally unacceptable from a security viewpoint."<sup>522</sup>

Simpson encountered no difficulty going through the bridge door and onto the aircraft even though he had no business being on board. The *Kanishka* was a jet belonging to Air India, an airline that operated under very high threat levels. Accordingly its aircraft were to be protected by enhanced security measures. He testified that he entered and descended the bridge and boarded the aircraft. He found it dark, quiet, and empty. It had already been groomed. Simpson testified that he spent approximately ten minutes aboard.<sup>523</sup> He went to the galley and looked into the washrooms. He ascended the stairs on the right-hand side of the aircraft into the first class section. Finally, he went to the cockpit and sat in the captain's chair for a few moments to enjoy the view. He had access to the entire plane.

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<sup>517</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3641-3642.

<sup>518</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3641-3642.

<sup>519</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3676; Exhibit P-101 CAF0141, p. 1.

<sup>520</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3643, 3676-3677, 3691.

<sup>521</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3682; Exhibit P-101 CAF0555, p. 5.

<sup>522</sup> Exhibit P-101 CAF0141, p. 1.

<sup>523</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3643, 3645.

Simpson testified that he saw no one aboard the aircraft, and was not challenged at any point as he entered or exited the Air India jumbo jet. He saw no one near the aircraft or at the door of the aircraft where it met the bridge, though there may have been personnel in the departure lounge. He testified that posting someone to monitor the aircraft at the head of the bridge would not cover any traffic coming up from the ramp, halfway down the bridge. For the best security, there would have had to have been someone at the aircraft door.<sup>524</sup>

Simpson emphasized that he would have avoided the aircraft altogether had he seen police or security guards nearby. He described his entry as a matter of acting on a whim – had he been challenged, he would not have gone aboard the plane. Nevertheless, such forays were a relatively common occurrence for airport personnel. There was little to deter someone from boarding any aircraft, whether motivated by curiosity, mischief, or criminal intent. There was no systematic record-keeping of who boarded or left an aircraft or why they were going aboard in the first place. As Simpson put it, “[t]here was nothing stopping you.”<sup>525</sup>

### **Lack of a Security Culture at Pearson**

As discussed in detail in Section 2.4 (Pre-bombing), Security Culture at Canada’s Airports, the culture of security at Pearson airport was lacking in many respects. Aircraft groomers and other airport staff were not briefed on security issues or otherwise encouraged to see themselves as a distinct line of security in and of themselves. Simpson, by admission, was frequently “delinquent” when it came to displaying his identification pass at the airport. He invariably put it in his pocket because it could easily be lost during work if it were clipped to his uniform.<sup>526</sup> He recalled that, in the period of time between his first summer working part-time at the airport while still in high school in 1974, and 1993, when he finished working at the airport, he had only been asked for his pass twice. The Air Canada personnel with whom he worked did not hold airport security in very high esteem. They saw it “as a joke”<sup>527</sup> and gave little respect to private security guards and RCMP special constables.

### **The Attorney General of Canada Challenges Simpson’s Story**

Simpson was subjected to an aggressive cross-examination, which challenged both his recollection of the events he described and his credibility. The AGC also forcefully asserted that Simpson was mistaken when he testified that he boarded Air India Flight 182 on June 22, 1985, and challenged the credibility of Simpson’s testimony in four major areas:

**Challenge 1:** Simpson was uncertain as to the time he was on board the aircraft;

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<sup>524</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3644, 3648.

<sup>525</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3645-3649, 3684.

<sup>526</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3650, 3681.

<sup>527</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3684, 3697.

- Challenge 2:** Simpson would have been seen by the duty guards if he had been present;
- Challenge 3:** Simpson's memory of the events was unclear after so many years; and
- Challenge 4:** Simpson did not tell anyone about his experience.

### ***Simpson's Time on Board the Plane***

The AGC Final Submissions maintain vigorously that Simpson's story lacks credibility<sup>528</sup> including claims of inconsistencies in his evidence as to when his shift started and a negative inference drawn from his inability to say precisely when he boarded the aircraft, as well as a claim that it was a chronological impossibility that Simpson could have visited the aircraft when he did based on the timing in his testimony. Counsel for the RCMP suggested on cross-examination that Simpson was mistaken about his observations, putting it to him that the Burns personnel were present during the cleaning of the aircraft cabin and that the cleaning took place for two hours, from approximately 2:30 to 4:30 PM.

There is a great deal of ambiguity as to how long the cleaners were aboard the aircraft, or even as to when they started. The lead station attendant for Air Canada stated that he came aboard the Air India flight at approximately 2:30 PM.<sup>529</sup> Others stated they came aboard at 3:00 PM,<sup>530</sup> and others at "about" or "approximately" 3:30 PM.<sup>531</sup> In all, 26 individuals gave statements to the RCMP about their presence that day.<sup>532</sup> Neither Simpson nor Commission counsel had access to all of these statements prior to his testimony. Only three out of the 26 individuals cleaning the aircraft stated they finished at 4:30 or 4:40 PM, and stated these times only in approximate terms.<sup>533</sup> Furthermore, a review by Commission counsel indicated that of the 26 interviews, 20 made no mention at all of how long they were aboard the aircraft or at what time. Given the size of the cleaning crew and the inconsistent estimates of the times involved that day, these written statements do little to rebut Simpson's evidence that he was able to board the aircraft sometime around 4:00 PM and that he found it empty.

Simpson maintained that two hours would be an unusually long time to clean an aircraft, and that one and a half hours (ending at 4:00 PM) was more likely

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<sup>528</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 215.

<sup>529</sup> Exhibit P-101 CAF0153, p. 1.

<sup>530</sup> Exhibit P-101 CAF0154, p. 1.

<sup>531</sup> Exhibit P-101 CAF0145, p. 1 and CAF0147, p. 1.

<sup>532</sup> All 26 statements were disclosed and entered into evidence. Many of these statements were entered on December 13, 2007 as a compendium of documents on DVD as Exhibit P-391. A list of the 26 Air Canada groomers interviewed by the RCMP is available at Exhibit P-391 document 158 (Public Production # 3291). Their statements can be found at Exhibit P-101 CAF0144, CAF0145, CAF0146, CAF0147, CAF0148, CAF0153, CAF0154 and Exhibit P-391 (Public Production # 3292, 3293, 3294, 3295, 3296, 3297, 3298, 3299, 3300, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3325, 3326). These are part of an omnibus disclosure on DVD in P-391 and were assigned no CAF Tab Numbers.

<sup>533</sup> Exhibit P-101 CAF0144, p. 1, CAF0147, p. 1, CAF0153, p. 1.

for the usual deployment of 12 to 16 people.<sup>534</sup> The fact that there were actually 26 cleaners aboard the aircraft on June 22, 1985 potentially reduces that time requirement. Among the widely varying estimates of time provided by the cleaning crew were statements from Air Canada supervisors that their duties required only one hour – or even just half an hour.<sup>535</sup>

Paul Gawronski worked at Pearson on the day of the bombing as an Air Canada station attendant foreman for cabin services. He indicated in a statement that he is "...normally on flight for one hour but it only took one-half hour to do flight 181. Notice[d] one male and one female security guard."<sup>536</sup>

The evidence about time aboard the aircraft is taken from witness statements from the cabin cleaners and other personnel who were present at Pearson that day. As noted, some of the 26 witness statements were not produced prior to the hearings. The AGC cross-examined Simpson on the basis of documents he had never seen.

Although the AGC Final Submissions repeated the assertion that Simpson's testimony was contradicted by statements made following the bombing, no reference was ever made to a document that corroborated Simpson's testimony. Among 11 of the 37 documents submitted as evidence on December 13, 2007<sup>537</sup> was a witness statement given by Vincent Ezoua to the RCMP in October 1985 in the course of their investigation of the bombing. Ezoua was a checker for CP Air Flight Kitchens, and was responsible for stocking the aircraft galley.<sup>538</sup> He worked at Pearson on June 22, 1985, and arrived at the aircraft at approximately 3:30 PM.<sup>539</sup> He stated that when he arrived, he was told there was no room in the galley for the wet bar. He decided to check for himself, and found that there was no space. Instead, he loaded the sandwiches and juice and left the wet bar behind.

When asked if he observed anything out of the ordinary, Ezoua stated that he saw a stranger coming down from the first class section of the aircraft. He described the stranger as a young man who appeared to be about 20 years old and someone he had never seen before. Significantly, Simpson testified that he had gone up to first class during his visit to the aircraft.<sup>540</sup> Ezoua frequently serviced Air India flights and he was sure the stranger was not an Air India agent.<sup>541</sup>

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<sup>534</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3707.

<sup>535</sup> Exhibit P-101 CAF0148, p. 1, CAF0154, p. 1.

<sup>536</sup> Exhibit P-101 CAF0148, p. 1.

<sup>537</sup> Exhibit P-395. Commission counsel subsequently requested that the outstanding 26 documents be produced in redacted format for public disclosure in order to complete the evidentiary record.

<sup>538</sup> Exhibit P-395, p. 74.

<sup>539</sup> Exhibit P-395, p. 74. It should be noted that the CP Air Flight Kitchens drivers, Ralton and Dalton Lawrence, indicated in their statements that they were at the aircraft starting at 3:30 PM (see Exhibit P-395, p. 72) or 4:00 PM (see Exhibit P-395, p. 61). Ezoua noted seeing the drivers in his statement and they stated they did not see him, so he probably arrived at the aircraft somewhat later than 3:30 PM. The statements of all three were taken several months after the bombing, so these times should be considered approximate.

<sup>540</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3644.

<sup>541</sup> Exhibit P-395, p. 75.

Ezoua did not get a good look at the young man. Given that he did not recognize the stranger, however, it is unlikely he was someone Ezoua would expect to see on the aircraft, such as a member of the regular cleaning crew or a security guard. It would appear almost obvious that the stranger was Simpson. It is certainly significant that Ezoua saw an unfamiliar young man aboard the aircraft during the afternoon of June 22, 1985, the time when Simpson testified he was aboard. In any event, Ezoua did not challenge the stranger, and carried on with his work.

Moreover, the AGC submits that had Simpson attempted to board after 4:40 PM, he would have encountered "...several Burns guards and RCMP officers."<sup>542</sup> Although the AGC insisted during cross-examination that there was an RCMP officer in the departure lounge, Simpson replied that while this may have been the case, he did not recall this. He testified that there was no single lounge for the Air India gate. There was a very large lounge for all international flights, and there could very well have been Burns personnel and RCMP present.<sup>543</sup> It does not necessarily follow that Simpson noticed them, or that they took any notice of him.

The written statements do not contradict Simpson's evidence. Special Constable Anderson provided a statement on June 30, 1985, indicating that on June 22, 1985, he was posted in the lounge area watching gate 107, which led to the bridge to the aircraft, and stated he checked the identification of anyone entering.<sup>544</sup> One cleaner out of the 26 who provided statements indicated that his identification pass was checked by an RCMP officer.<sup>545</sup> Simpson testified that, although posting someone at the bridge between the lounge and the aircraft would be effective, that person would miss anyone coming up the ramp which is halfway down the bridge.<sup>546</sup>

The statement of Special Constable Tulikorpi indicated that he joined Anderson at 3:45 PM, and until 6:50 PM they watched Burns security personnel hand search carry-on baggage while guarding the bridge.<sup>547</sup> This means that, for a time, the attention of the officers would have been away from the aircraft and the interior of the bridge where Simpson would have been. As stated earlier, in the hour between 5:00 PM and 6:00 PM, Anderson was covering for Tulikorpi, working alone and monitoring two positions 30 feet apart.

According to Burns guard Peter Zammit's statement, prior to the arrival of the cleaning crews, he and Rae Ann Belasco had completed their checks and were positioned at the aircraft door and the L-shaped area on the bridge to the plane. He stated that they would switch back and forth, relieving one another. Subsequently, the cleaning crew would be allowed on. Zammit stated the guards were flexible in their deployment and sometimes both he and Belasco

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<sup>542</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 221.

<sup>543</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3708.

<sup>544</sup> Exhibit P-101 CAF0140, p. 2.

<sup>545</sup> Exhibit P-101 CAF0145, p. 1.

<sup>546</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3648.

<sup>547</sup> Exhibit P-101 CAF0152, p. 1.

were on the aircraft monitoring the cleaners.<sup>548</sup> It is therefore entirely possible that they were away from the aircraft at some point during these movements, whether before the cleaning crew arrived or after they left, even if only for a brief time. Simpson could well have accessed the aircraft from airside during such a window.

Counsel for both the AGC and Air India suggested during cross-examination that Simpson was able to go aboard the Air India aircraft because he was wearing an Air Canada uniform. As such, Simpson did not draw attention to himself because he "...looked like everybody else working in the airside of the airport."<sup>549</sup>

This line of reasoning reinforces, rather than undermines, the issues raised in Simpson's testimony. The key points were that he went aboard Air India Flight 181/182 on the afternoon of June 22, 1985, that he did so without being challenged and saw no one aboard the plane. Had he been challenged or had there been a visible police or security presence, he would not have gone aboard. Simpson testified that he often put his security pass in his pocket and had only been asked for it twice in all his time working at the airport. He evidently blended into the background and people took no notice of him, including those charged with maintaining security. Despite this, he had no business boarding the Air India aircraft, and yet there is no evidence to suggest that he was ever challenged.

### ***Memory of the Event***

The Attorney General of Canada also stated that Simpson had no documents to refresh his memory 22 years after the fact.<sup>550</sup> It should be noted, however, that Simpson has an independent recollection of the event, and that he provided testimony as to why the day stayed firm in his memory. Conversely, it is unrealistic to expect Simpson to have precision about these time periods after 22 years, particularly without any notes or written statement.

Simpson firmly rejected the assertions that he was mistaken and that there was no period of time when the plane would have been empty. He insisted that he had a strong recollection of the day for a number of reasons. He explained that his family had a strong connection to aviation because of his father's work, and they had lived through the aftermath of prior accidents. These disasters stayed with them. They were among the last people to see the victims alive. Simpson also testified that as soon as he got out of bed on the morning of June 23, 1985, his father told him the flight had been lost.<sup>551</sup>

There is another aspect of Simpson's testimony that stands out. He testified that later in his shift on June 22, 1985, he ran into a passenger agent with whom he used to work. She had in her care a number of unaccompanied minors and was escorting them to connecting flights. He had some free time, so he walked

<sup>548</sup> Exhibit P-395, p. 49.

<sup>549</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3689, 3698, 3705.

<sup>550</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 224.

<sup>551</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3685, 3709.

with them to the international departures area. One girl in that group, about 12 years old, was going to fly to India aboard the Air India flight. Simpson recalled talking to her about her flight, and about how brave she was for flying such a long distance on her own. He was struck by how mature and polite she seemed. They eventually parted ways, and the next day he learned that Air India Flight 182 had been lost. He met his friend the passenger agent the next day, and she confirmed that the girl had been on the flight. The image of the little girl's face would haunt him forever.<sup>552</sup>

### ***Simpson's Alleged "Silence"***

Another challenge made to Simpson's credibility is the Attorney General of Canada's submission that Simpson did not recall sharing his experiences with anyone in the aftermath of the bombing.<sup>553</sup> When asked why he did not think to call the RCMP after the bombing to report what he saw, Simpson replied that the fact that he got on board the aircraft was a non-event. He had not seen anything or anyone that struck him as suspicious.<sup>554</sup> If he had seen anything out of the ordinary, or even a suspicious package, he would have taken this action.

From his perspective, the ease of getting aboard an aircraft was absolutely normal; he felt he could have stepped aboard any given aircraft that day without anyone batting an eye.<sup>555</sup> Simpson testified that, in the security climate of the time, there was no stigma or sanction for going aboard an aircraft without authorization, and such forays were commonplace. This evidence was uncontradicted.

In any case, there is evidence that Simpson did not remain silent. He testified that he contacted the *Toronto Sun* about his story during 1986 or 1987, and he contacted defence counsel in Vancouver during the Malik and Bagri trial. Nothing came of these efforts. He also testified, on cross-examination, that he "must have" told one of his supervisors the day after the bombing.<sup>556</sup> He finally came forward, in 2007, to Jacques Shore, Counsel for the Air India Victims Families Association, and was put in contact with Commission counsel.

### **Observations**

- The Commission accepts Brian Simpson's evidence that he boarded Air India Flight 181/182 without permission on June 22, 1985, explored the interior, and was not challenged at any point in doing so, in spite of the futile and misdirected cross-examination or maybe because of the cross-examination of the Attorney General of Canada that focused on Simpson's credibility, wanting to leave the impression that the incidents Simpson described had not happened at all, that he intended to mislead the Commission. The Commission does not accept any of this.

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<sup>552</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3646-3647, 3685.

<sup>553</sup> Final Submissions of the Attorney General of Canada, Vol. II, para. 224.

<sup>554</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3693-3694, 3710.

<sup>555</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3694.

<sup>556</sup> Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3651, 3701.



- Simpson was a candid and credible witness who presented himself as an intelligent, articulate, and highly educated individual. He was honest and frank in his testimony, even when discussing his own lapses in security as an airport worker. As a lawyer who practiced law for fourteen years, and who remains a Member in good standing of the Law Society of Upper Canada, Simpson was well aware of the need to be truthful and accurate when testifying under oath.
- Although he did not have written notes to aid his memory with respect to specific times and observations (and who in his position would have made notes of what until the subsequent event was a murder event?), there are good reasons for him to have a reliable recollection of the events of June 22, 1985. The destruction of the aircraft was a shocking and saddening event, and would have been close to the hearts of those who worked at airports and aboard aircraft on a daily basis. Simpson spoke with a young woman just before she boarded that fateful flight, and found out the next day that she had died in an act of terrible and senseless violence. He also remembers lying in bed, thinking about the aircraft's voyage and his exploration aboard, only to hear of its destruction hours later.
- Simpson evidently blended into the background and people took no notice of him, including those charged with maintaining security. Nevertheless, he had no business aboard the Air India aircraft: but there is no evidence that he was ever challenged.
- Even if Simpson had general access to aircraft, the evidence he gave was that aircraft access was frequently abused by airport personnel. While such unsanctioned activities did not contribute to the bombing of Air India Flight 182, it is clear that such free access to aircraft could result in numerous opportunities – terrorist or otherwise – by airport employees who were not highly paid, nor routinely subject to criminal record checks, and not integrated into the security culture of the airport.
- Although it was the duty of the RCMP Special Constables and Burns Security officers to challenge individuals seeking to access the aircraft, and check their identification, they kept no records of who boarded the Air India flight or for what reason.
- Despite the fact that Air India's operations were under heightened security in June 1985, there were apparently no measures in place to ensure that only those with legitimate business aboard the aircraft actually came aboard.

- On the basis of testimony from Simpson and other evidence, the inevitable conclusion must be that there was widespread carelessness and complacency at the Pearson airport in June 1985.

### **1.10 Serge Carignan and Arko the Explosives Detection Dog**

Elsewhere in this report is a detailed discussion of the handling of the “three suspect bags” incident at Mirabel International Airport (Mirabel).<sup>557</sup> An important factor in this story is the immense value of “bomb-sniffing” explosives detection dogs and the tragic failure to use these resources effectively on June 22, 1985. This failure resulted from poor communications and from neglecting to implement measures that were called for in light of the malfunctioning of the checked baggage X-ray scanner and the unreliability of the baggage screening equipment at Lester B. Pearson International Airport (Pearson).

#### **Three Suspicious Checked Bags Removed from Air India 182**

Three suspicious checked bags were located at Mirabel on the evening of June 22, 1985. The first bag was found between 7:00 and 7:30 PM, and the remaining two were found shortly afterwards.<sup>558</sup> Although the Burns supervisor notified an Air India representative of the discovery shortly after the first bag was flagged, the RCMP was not alerted to this fact until 10:00 PM. Air Canada’s operations supervisor had contacted Air India at 9:10 PM and again at 9:45 PM regarding the bags.<sup>559</sup> At approximately 10:00 PM, he contacted the RCMP directly, as Air India had not done so.<sup>560</sup> The RCMP was barely aware of the situation when Air India Flight 182 departed at 10:13 PM.<sup>561</sup>

When two RCMP officers arrived at the baggage area at approximately 10:00 PM, they found to their surprise that the suspect bags had been left unattended on the floor.<sup>562</sup> The bags were X-rayed again and isolated.<sup>563</sup> The RCMP explosives detection dogs were not available at either Montreal or Toronto as they were away with their masters at a training session. As discussed in Section 5.0 (Pre-bombing), The Day of the Bombing, serious consideration must be given to the question of why all of the RCMP dogs were away at the same time during a period of high threat to Air India.

#### **SQ Explosives Detection Team Called after Flight Departure**

The RCMP had an agreement with the Sûreté du Québec (SQ) specifying that the SQ would provide explosives detection dog services at Mirabel in the event that the RCMP coverage was not available. It was SQ Sgt. Serge Carignan’s

<sup>557</sup> See Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.

<sup>558</sup> Exhibit P-101 CAF0089, p. 11.

<sup>559</sup> Exhibit P-101 CAE0249, p. 8.

<sup>560</sup> Exhibit P-101 CAE0249, p. 8, CAF0087, p. 14.

<sup>561</sup> Exhibit P-101 CAF0091, p. 2.

<sup>562</sup> Exhibit P-101 CAA0226, p. 1, CAF0095, p. 3.

<sup>563</sup> Exhibit P-101 CAF0095, pp. 3-4.

responsibility to assist at Mirabel in the event that the RCMP team could not.<sup>564</sup> Carignan and his trained explosives detection dog, Arko, were the SQ explosives detection dog team at Montreal.

Carignan and Arko had trained together to detect explosives since 1980 when Arko was ten months old. Arko was trained to detect a wide variety of explosives, such as dynamite, TNT, black powder, C-4, Detasheets, and RDX. The dog had been trained to give a passive response when he smelled explosives – he would sit down in front of the item containing the explosives. Carignan and Arko had been deployed on a number of occasions, for example, during the 1984 Papal visit to Montreal, and were even sent to Toronto in April 1985 because of a subway bombing scare. Carignan, now retired, clearly had a high opinion of Arko. He described Arko as extremely adept at detecting explosives, to the point of being capable of detecting very minute quantities.<sup>565</sup>

Carignan had experience searching aircraft, including Boeing 747s. It would take approximately one hour to search the baggage of a 747, and two hours to search the cabin. However, an explosives detection dog required a five to ten minute break for every 30 minutes of searching.<sup>566</sup>

Carignan was contacted at his home by his supervisor in the late evening of June 22<sup>nd</sup> and was asked to report to Mirabel to assist in searching an aircraft and some luggage. Preparation and travel to Mirabel took approximately 65 minutes. He arrived at the Mirabel RCMP office, expecting that, once there, he would find the baggage and cargo from the aircraft spread out on the tarmac for Arko to sniff. This had been his experience in prior aircraft searches. He also expected that he and Arko would inspect the aircraft's passenger compartment. Instead, Carignan was surprised to learn that the plane had already departed, and that he and Arko would only be required to search the three suspect bags.<sup>567</sup>

The dog handler and the explosives detection dog went to the bunker area and conducted the inspection at approximately midnight.<sup>568</sup> No explosives were detected, and after spending approximately 45 minutes at the airport, Carignan drove home.<sup>569</sup>

### **Lack of Adherence to Security Policies**

In 1985, the RCMP employed a threat response system which designated a set of security responses for a given alert level. There were five threat levels in all, with level 1 always being in effect.<sup>570</sup> As the threat level increased, the required security responses increased as well. The RCMP had imposed level 4 security

<sup>564</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2662, 2664.

<sup>565</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2662, 2669, 2673-2674.

<sup>566</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2666, 2673-2674.

<sup>567</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2665-2667; 2682.

<sup>568</sup> Exhibit P-101 CAF0091, p. 2, CAF0094, p.3.

<sup>569</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, p. 2669.

<sup>570</sup> Exhibit P-101 CAA0025, p. 1.

measures at Pearson and Mirabel airports for the month of June 1985.<sup>571</sup> Level 4 was the second-highest threat level, and mandated the use of a dogmaster at the airport.

The evidence points to RCMP policies that assigned a more active role to the explosives detection dog team than was actually in practice at Mirabel on June 22, 1985. A document prepared by the RCMP Airport Policing Division in April 1986 entitled "Airport Security Measures in Relation to Air India Operations in Canada" stated that level 4 security procedures included the requirement that the "RCMP dogmaster will check any suspect luggage or package and will search the passenger section of the aircraft before departure."<sup>572</sup> Moreover, a June 1985 Transport Canada Operations Centre briefing paper on the incident stated that in accordance with the security arrangements provided by the RCMP, there would normally be an RCMP dogmaster in the baggage area.<sup>573</sup>

The active presence and use of the explosives detection dog was called for at this security level, especially given that the dog would be called upon to inspect baggage and identify suspicious baggage no matter what security level was in place. The RCMP should have been contacted upon discovery of the first suspicious bag. With both its own and the Pearson-based explosives detection team away, the RCMP should have called in the SQ explosives detection team to inspect the baggage and the aircraft interior immediately. The aircraft should not have been permitted to leave before these checks were completed, particularly given the unusual break down of the X-ray machine and the inadequate PD4 used as a substitute. Collectively, these events, coupled with the incident at Mirabel, mandated greater scrutiny of all checked luggage while the plane was at Mirabel. The only explanation for the urge by Air India to depart Mirabel quickly was the cost of keeping the plane longer.

### **Communications and Planning Failures Lead to Tragedy**

Carignan has been haunted by this tragedy and by the decision made by others to release the aircraft. He believes that, had he and Arko been able to search the unaccompanied baggage on the flight as he had wanted to on the night of June 22, 1985, they would have found the explosives.<sup>574</sup>

When shown a briefing document<sup>575</sup> provided by the RCMP to the Honourable Bob Rae which claimed that an RCMP dogmaster checked any suspect baggage and searched the passenger section of the Air India aircraft before departure, Carignan stated that this was incorrect. He had not been given the opportunity to search any part of the aircraft.<sup>576</sup> On its face, however, this document provides a good indication of what the RCMP evidently considered to be the

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<sup>571</sup> See Exhibit P-101 CAA0335, p. 8.

<sup>572</sup> Exhibit P-101 CAC0528, p. 11.

<sup>573</sup> Exhibit P-101 CAE0249, p. 6.

<sup>574</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2671, 2678.

<sup>575</sup> Exhibit P-101 CAF0335, pp. 8-9.

<sup>576</sup> Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2671-2672.

correct response to the situation at Mirabel. Similarly, Carignan described a document provided by Transport Canada<sup>577</sup> as incorrect because it too stated that the flight had been screened by an explosives detection dog prior to its departure.<sup>578</sup> A further Transport Canada briefing document shown to him by Commission counsel stated that there was generally an RCMP dogmaster in the Air India baggage area, but that the RCMP dog unit was away on June 22<sup>nd</sup> and had been replaced by a dog unit from the Quebec Police Force (QPF).<sup>579</sup> Carignan testified that this statement was also inaccurate, as he had not been posted to the baggage area and had only searched three bags. The plane had departed before he had even arrived at the airport.

Sgt. J.N. Leblanc, an RCMP member who was on duty at Mirabel that evening, directed a special constable to contact Carignan after learning that Flight 182 was airborne.<sup>580</sup> Although the RCMP did have the authority to recall or deny takeoff to an aircraft if they determined a threat existed,<sup>581</sup> Leblanc decided not to call the aircraft back given that the three suspicious bags were not aboard.<sup>582</sup>

### **Could the Bombing Have Been Prevented?**

The obvious question is whether there was anything more that could have been done at Mirabel to prevent the bombing of Air India Flight 182, even allowing for hindsight. The Commission believes the answer is yes.

When the *Kanishka* departed from Pearson airport for Mirabel, the bomb was already on the plane. It was concealed within a piece of checked baggage and loaded onto a CP Air Flight at Vancouver International Airport flying to Toronto, where it was delivered to Air India. Air India scanned checked baggage for explosives using a large X-ray machine, but the machine malfunctioned on June 22, 1985, and only 50 to 75 per cent of the bags had been inspected when it ceased to operate. John D'Souza, an Air India security officer overseeing the security for the flight at Pearson and then at Mirabel, was advised of the malfunction. He instructed the Burns Security guards at the baggage handling area to use an electronic explosives detection device, the PD4, to screen the remaining bags. As discussed elsewhere in this report, the PD4 was a singularly flawed device. Tests conducted by the RCMP in January 1985 revealed that the device was so unreliable that the RCMP and Peel Regional Police Force members present at the tests concluded that they had no faith in its effectiveness whatsoever. Air India officials were aware of one of the test failures,<sup>583</sup> but continued to use it as a backup for the X-ray machine.

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577 Exhibit P-101 CAF0070, p. 2.

578 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2672-2673.

579 Exhibit P-101 CAF0071, p. 5. It should be noted that the document refers to a QPF dog unit, when in fact Carignan was a member of the SQ.

580 Exhibit P-101 CAF0095, p. 4.

581 See Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4384. The Transport Canada management at the Airport also had the ability to prevent an aircraft from departing.

582 Exhibit P-101 CAF0095, p. 4.

583 Air India was not informed of a second test failure conducted with a sample of plastic explosives by either Transport Canada or the RCMP.

Both Pearson and Mirabel airports had dedicated RCMP explosives detection dog teams, but they were unavailable. Carignan provided backup explosives detection dog services to Mirabel, but Pearson had no other team to call on. The RCMP emergency procedures manual for Pearson airport indicated that normally the RCMP explosives detection dog team at Mirabel would be used if the Pearson dog was unavailable.<sup>584</sup>

Dr. Reg Whitaker of the CATSA Act Review Panel said it would have been reasonable to hold back the flight's departure from Mirabel until security issues had been resolved, considering the failure of the X-ray scanner at Pearson and the quantity of baggage that had been scanned by the ineffective PD4 explosives detection device, and given the absence of any explosives detection dogs at Pearson. Such measures were especially prudent in light of the high state of alert in June 1985 and the specific measures Air India had been directed to implement meticulously in the June 1<sup>st</sup> Telex.<sup>585</sup> According to Whitaker, it was within D'Souza's authority to insist on checking the baggage again or implementing full passenger-baggage reconciliation. It was within his power to prevent the flight's departure. The RCMP and the Transport Canada airport management also had similar authority.<sup>586</sup>

On the other hand, although the use of an explosives detection dog at Mirabel would have been an effective means of addressing the security gaps that had been encountered at Pearson, Rodney Wallis, an international civil aviation security consultant to many governments, airlines and legal entities, and who was Director of Security for the International Air Transport Association (IATA) in 1985, testified that he did not believe that the use of the SQ explosives detection dog team to inspect all the checked baggage would have been called for, based on the information available to airport officials. More information would have been required to prompt officials to deplane all the passengers, unload the baggage from its containers, and place it on the ground for the dog to inspect. Once the plane departed Pearson, there was nothing more to be done. By the time it arrived at Mirabel, it was too late.<sup>587</sup>

Wallis felt that the best and most realistic solution would have been to ensure at Pearson that every bag was matched to a passenger aboard the flight through proper reconciliation. Had thorough passenger-baggage reconciliation been conducted at Pearson (meaning that every bag was linked back to a verified boarding passenger before it was loaded onto the aircraft), the suitcase bearing the bomb would have been identified because it would not have been matched to a passenger and would have sat alone. Air India's practice, however, was only to match the number of boarding passes issued to the number of passengers who boarded.<sup>588</sup> At Mirabel, once the three bags had been isolated and the decision

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<sup>584</sup> Exhibit P-101 CAC0310, p. 16.

<sup>585</sup> See Exhibit P-101 CAA0185, p. 1.

<sup>586</sup> Testimony of Dr. Reg Whitaker, vol. 36, May 30, 2007, pp. 4370, 4383-84.

<sup>587</sup> Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4420, 4423-4424.

<sup>588</sup> Testimony of Rajesh Chopra, vol. 37, May 31, 2007, p. 4405.

had been made not to load them aboard, there was no passenger-baggage reconciliation, but instead there was a check on the number of passengers boarding the aircraft against the tally of boarding passes issued.<sup>589</sup>

Even with hindsight, it is incomprehensible that Air India officials at Mirabel were aware of the problems at Pearson and yet declined to call in the RCMP and the available explosives detection dog team at the first opportunity to ensure that no explosives had slipped past the malfunctioning X-ray machine or the useless PD4. The June 1<sup>st</sup> Telex pointed to a special threat to Air India flights during the month of June, and Air India had been directed to implement anti-sabotage measures meticulously for the entire month. The RCMP too had implemented heightened security for all Air India flights at Pearson and Mirabel in the month of June, based in part on the airline's urging. They too could have recalled the aircraft based on the threat it faced. At a time when no security measure should have been overlooked, few of the authorities responsible for the safety of Air India Flight 182 responded with any sense of purpose to the numerous failures and warning signs that day. Had the officials on the ground at Mirabel been alert to the threat level and the security failures of the day, they might have been motivated to take the additional precautions referred to by Wallis. Such information could have led to actions that the RCMP told the Hon. Bob Rae had been taken.

### Observations

- In January 1985, Air India had revised its security program to include additional measures which provided whenever a suspicious bag was located, the passenger to whom it belonged would be contacted and asked to open the bag. If the passenger could not be located, the bag would be isolated, and the RCMP and an explosives detection dog would be brought in to examine the bag in question.<sup>590</sup> No Air India representative at Mirabel took any of these steps once the suspicious checked bags were identified. The aircraft was allowed to depart with those passengers on board and without any attempt to alert the RCMP.
- The RCMP had imposed level 4 security measures at Pearson and Mirabel airports. In 1985, the RCMP employed a five-level threat response system which designated a set of security responses for a given level of alert. Level 4 was the second-highest threat level, and mandated the use of a dogmaster at the airport.
- The RCMP should have been contacted upon discovery of the first suspicious bag. With its own explosives detection dog units away, the RCMP should have called in the SQ explosives detection dog unit to inspect the baggage and the aircraft interior.

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<sup>589</sup> Testimony of Jainul Abid, vol. 89, December 5, 2007, p. 11699.

<sup>590</sup> Exhibit P-101 CAA0118, p. 2.

- Compounding failures at Pearson and Mirabel resulted in a decision to allow the flight to depart without the use of an explosives detection dog. In light of the failure of the X-ray scanner at Pearson, the ineffective PD4 sniffer device, and the absence of an explosives detection dog at Pearson, Air India should have taken swifter and more decisive action at Mirabel both in contacting the authorities and following the prescribed procedures.
- Air India failed to take decisive action and contact the RCMP once the suspicious checked bags were identified. Concern about further delaying the already off-schedule flight and incurring further expense immediately closed the minds of the Air India personnel at Mirabel to the possibility of seriously contemplating any extra security measures.
- With knowledge that shortcuts had been taken at Pearson airport and that security may have been compromised through a failure to conduct proper passenger-baggage reconciliation, the identification of three suspect bags gave the authorities at Mirabel a second chance to do the right thing. Had they followed the required procedures, it is probable that Carignan and Arko would have detected the bomb. By ignoring procedure and delaying contact with Carignan, the aircraft was allowed to depart, and with it the last opportunity to thwart the bombing.

## 1.11 The Cost of Delay – Testimony of Daniel Lalonde

### A Burns Security Officer Comes Forward

Daniel Lalonde approached the Commission to offer his perspective on the level of security readiness on the ground at Mirabel in June 1985. He worked for Burns International Security at Mirabel that summer. He was 18 years old, and it was his first job. Lalonde became an Ontario Provincial Police officer in 1991, and at the time of testifying held the rank of sergeant.<sup>591</sup>

As a security officer charged with the responsibility of protecting the travelling public and using an X-ray scanner to search carry-on baggage for weapons and other dangerous objects, Lalonde was paid the minimum wage of \$4.00 an hour. He had no prior work experience, let alone security experience. His formal training for that role consisted of watching a one hour video on the operation of the X-ray scanner showing images of the types of dangerous articles to watch for, specifically a handgun and a stick of dynamite. Lalonde was then put to work and learned on the job. To his knowledge, there was no follow-up on this training, and no evaluation or testing of skills.<sup>592</sup>

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<sup>591</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3117.

<sup>592</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3116-3117, 3131.



Lalonde testified that he paid attention to the trials and reports connected to the bombing of Air India Flight 182, knowing that he had made a statement and might be called to give evidence. Having followed testimony about the events at Mirabel, particularly that of Serge Carignan, Lalonde came forward to the Commission.<sup>593</sup> Carignan, as noted, was the Sûreté du Québec dogmaster who ultimately inspected the three suspicious bags found at Mirabel with his bomb-sniffing dog, Arko, and determined they did not contain explosives. Lalonde felt that his evidence would help complete the picture of events at Mirabel on June 22, 1985.

### **Suspicious Bags Found During Lalonde's Shift**

There was a great deal of security and police activity at Mirabel when Lalonde began his shift that day.<sup>594</sup> He had never before seen so many security guards posted for a single flight. Lalonde was assigned to work at a security checkpoint. He and the other guards knew there was a high alert level for the Air India flight, but he was surprised to be asked to hand-search carry-on bags even after they had been run through the X-ray scanner.<sup>595</sup>

Sometime before the check-in screenings were completed, Lalonde's supervisor, Réal Gagnon, directed him to assist a number of other security officers in the X-ray scanning of checked baggage.<sup>596</sup> Lalonde had never done this before. In fact, he had never before seen nor operated the type of X-ray machine that was in the baggage room. He had no training in screening large items like checked baggage and did not know how the images of their contents might differ from smaller bags, or what to do in the event he noticed something unusual. In responding to the events that unfolded next, he had to improvise without any instructions.<sup>597</sup>

During the examination of checked baggage, several bags caught the attention of the security officers. When these bags were scanned, the machine's display indicated dark, opaque areas which could not be penetrated by X-rays.<sup>598</sup> Such opaque areas were suspicious because they could indicate the presence of dense materials such as the metal, wiring, and explosives that make up a bomb. X-ray technology used to screen baggage in 1985 was described as primitive and "...cosmetic more than effective" by the experts who testified at this Inquiry.<sup>599</sup>

One suspicious bag was found between 7:00 and 7:30 PM<sup>600</sup>, and two others were found shortly afterward. Each time such a bag emerged, Lalonde and the other Burns personnel would gather around the image on the X-ray machine's display screen and discuss their opinion of what the image indicated. Lalonde

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<sup>593</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3128-3129.

<sup>594</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3118.

<sup>595</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3118-3119.

<sup>596</sup> Exhibit P-101 CAF0090, p. 1. See also Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3119.

<sup>597</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3120, 3136, 3139.

<sup>598</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3120.

<sup>599</sup> Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4256-4257.

<sup>600</sup> Exhibit P-101 CAF0089, p. 11.

testified that he concurred with the opinion that the bags were suspicious.<sup>601</sup> Once flagged, these suspicious bags were held aside and not loaded into baggage containers. They were placed on the floor next to the X-ray machine.

### **The Cost of Delay**

The aviation security regime in place in 1985 placed considerable responsibility upon airlines such as Air India to ensure that commercial air travel was safe. They bore the costs of measures such as employing private security guards and any screening of checked baggage, including the cost of the X-ray scanner used for such screening. This meant that the airlines would weigh their security expenses against the need to remain profitable. Any delay was expensive. Rodney Wallis testified that, in 1985, the cost of delaying the takeoff of a wide-bodied jumbo jet like the *Kanishka* was between \$10,000 and \$18,000 an hour.<sup>602</sup>

The *Kanishka* was significantly delayed at Pearson because of difficulties encountered in loading its unusual payload, a fifth engine pod mounted to its wing. The engine had failed on a previous Air India flight and had been stored in a hangar until it could be returned to India for servicing. On June 22, 1985, Air Canada mechanics at Pearson began the installation of the engine pod onto the aircraft's left wing next to its own two engines. Several crates of engine parts were also to be loaded into the aircraft's rear cargo bay, but owing to the size of the parts, it took longer than expected to load all the components and to complete the installation of the engine pod.<sup>603</sup>

When Air India Flight 181/182 arrived at Mirabel at 9:10 PM on June 22, 1985, it was already one hour and twenty-five minutes behind schedule.<sup>604</sup>

### **Air India Advised of Presence of Suspicious Bags**

Gagnon advised Air India's Traffic and Sales Representative, Jainul Abid, after the first bag was found.<sup>605</sup> Abid told Gagnon to wait for Air India's security officer, John D'Souza, who would be on the Air India flight from Toronto. D'Souza arrived at Mirabel at 9:10 PM and was met by Abid at the Air Canada counter at 9:30 PM. Abid then informed D'Souza that three suspicious bags were being held.<sup>606</sup>

In January 1985, Air India had revamped its security program and had included additional measures, which provided whenever a suspicious bag was located, the passenger to whom it belonged would be contacted and asked to open the bag.<sup>607</sup> Neither Abid nor D'Souza took this step. The plan also provided that if the passenger could not be found or did not respond after being paged, the

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<sup>601</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3137.

<sup>602</sup> Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4481-4482. See also Exhibit P 101 CAF0441, p. 6. Wallis explained that this figure was for opportunity costs alone. It did not include additional costs such as putting passengers up in hotels if the plane were delayed overnight.

<sup>603</sup> Exhibit P-101 CAF0089, p. 7.

<sup>604</sup> Exhibit P-101 CAB0434, p. 4.

<sup>605</sup> Exhibit P-101 CAF0088, p. 1 and CAF0089, p. 12.

<sup>606</sup> Exhibit P-101 CAF0093, p. 4.

<sup>607</sup> The Air India security procedures, as well as those of the RCMP, are described in more detail in Section 1.10 (Pre-bombing), Serge Carignan and Arko the Explosives Detection Dog.

bag would be isolated, the RCMP would be advised, and an explosives detection dog would be brought in to examine the checked baggage in question. Again, neither Abid nor D'Souza took these steps.

D'Souza proceeded into the baggage area once he learned of the three bags. Lalonde testified that he was alone in the baggage room when D'Souza entered, as the other security officers had gone on to perform other duties and he had agreed to stay behind with the bags.<sup>608</sup>

D'Souza asked Lalonde to operate the X-ray scanner and run the three bags through it. He showed D'Souza the images of the bags and ran the bags at different angles in an attempt to obtain a clearer image of their contents.<sup>609</sup> As the possibility that the bags contained explosives could not be ruled out by this examination, D'Souza confirmed that the bags should not be loaded onto the aircraft.

### **Cost Becomes a Factor in Air India 182 Takeoff**

According to a written statement provided by Lalonde after the bombing, D'Souza then wanted to speak to someone at the Air Canada office.<sup>610</sup> Lalonde showed him the way, leaving the baggage room unattended. At the Air Canada office, D'Souza discussed the situation with an Air Canada representative. Although D'Souza would subsequently attempt to minimize his role in the security decisions made respecting Air India Flight 182, Lalonde's impression was that he was an imposing man with a military demeanour who appeared to be firmly in charge. Lalonde remained nearby to assist D'Souza, but did not participate in the discussion, as he was young, inexperienced, and not in a position of any authority.<sup>611</sup>

Lalonde did overhear their discussion. He testified that it concerned time, money, and the cost of keeping an airplane on the ground. At the end of that discussion, D'Souza made the decision to clear Air India Flight 182 for takeoff. Lalonde testified that the high cost of keeping the aircraft on the ground was the deciding factor.<sup>612</sup>

In a statement to the RCMP three days after the bombing, Lalonde did not mention the details of the D'Souza conversation with the Air Canada representative.<sup>613</sup> Instead, he indicated that he had not paid attention, explaining that due to his youth, inexperience, and his inability to recall what was said in the conversation word for word, he felt nervous about giving the RCMP officers imprecise information. The officer taking his statement had grown impatient,

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<sup>608</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3120. See also Exhibit P-101 CAF0090, p. 1.

<sup>609</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3121.

<sup>610</sup> Exhibit P-101 CAF0090, p. 2.

<sup>611</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3121-3122, 3129.

<sup>612</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3122, 3129.

<sup>613</sup> Exhibit P-101 CAF0090, pp. 1-4.

having being forced to rewrite a half a page of notes due to Lalonde's inability to provide exact times. Consequently, Lalonde decided that he would speak only on matters about which he could give precise details.<sup>614</sup>

Lalonde testified that he was absolutely certain about the subject matter of the conversation. He explained that the impact of such a large tragedy cemented the events of June 22, 1985 in his memory. Lalonde's shift ended at 1:00 AM on the morning of the bombing, and he remembered his parents waking him up only a few hours later and telling him about the crash. He can still replay the day's events in his head.<sup>615</sup>

Other evidence also indicates that Air India personnel, including D'Souza, were concerned with the costs of delay. Michael Ciuffreda, the Burns International Security supervisor for the guards providing security for Air India at Pearson in Toronto, made a statement to the RCMP on June 25, 1985.<sup>616</sup> He was clear that D'Souza wanted him to commence passenger and carry-on bag screening as quickly as possible. According to Ciuffreda's statement, the Air India Security Supervisor named "John" had authorized the use of the PD4 sniffer device when the X-ray scanner used by Air India to examine checked baggage at Pearson had failed. There is no doubt that the individual named "John" is John D'Souza.

Ciuffreda's statement indicates that D'Souza "...was concerned about not having the flight delayed by security." He wanted to know whether it would be possible to have the baggage examined more quickly. Ciuffreda refused to instruct the Burns guards to speed up their searches.<sup>617</sup> Ciuffreda reported this in a subsequent RCMP interview, stating that D'Souza had asked him to hurry up hand-searching of carry-on bags and that "...[D'Souza] didn't want a delay."<sup>618</sup>

For his part, D'Souza indicated in his statement to the RCMP that it was, in fact, a different Air India employee who was concerned about delays. D'Souza stated that Abid (the first Air India official to learn about the three bags) had made up his mind in advance not to delay the flight any further by taking any additional measures such as searching the flight.<sup>619</sup>

Air India itself had a strict policy concerning delays. In a letter dated March 15, 1985 to Air Canada's general manager at Pearson, Air India's acting airport manager for Mirabel and Pearson airports wrote about a number of problems concerning the flights to and from Toronto. He indicated that "Our Headquarters in Bombay are very perturbed ... that we are getting numerous complaints from our inbound passengers into Toronto for the lack of service received on arrival, and no flights from Toronto are departing on schedule." Following a meeting held

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<sup>614</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3127.

<sup>615</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007 pp. 3217-3218.

<sup>616</sup> Exhibit P-101 CAF0139, pp. 2-4.

<sup>617</sup> Exhibit P-101 CAF0139, p.3.

<sup>618</sup> Exhibit P-101 CAF0142, p. 3.

<sup>619</sup> Exhibit P-101 CAF0093, p. 14.

at Pearson to “iron out” the problems leading to delays, Air India was pleased to note that the most recent flight had been trouble-free and on schedule. The Air India manager emphasized that all flights arriving on schedule would depart on schedule, and all delayed flights would depart within two hours of the time from which the aircraft checked in at the airport. He wrote: “This 2 hours ground time for delayed flight is set by our Headquarters and is strictly followed by our network world-wide.”<sup>620</sup>

When Air India commenced its operations from Pearson in January 1985, it immediately began to complain about the rate of pay charged by Burns for security personnel, stating it was too high. The airline sought to renegotiate, threatening to investigate what was being paid to outside security agencies.<sup>621</sup> Burns replied that Air India was being treated exactly the same as any other carrier.

Air India’s contract with Burns also included a “no charge” policy if Burns was given three hours’ advance notice of a delayed or cancelled flight.<sup>622</sup> In the absence of such notice, however, Burns would charge Air India a minimum of four hours for each security officer who reported for duty. This meant that if a flight was delayed without considerable advance warning, Air India would be required to pay the four-hour minimum plus any additional hours of work caused by the delay. Knowing Air India’s schedule changes, Burns seemed sensitive to the carrier’s monetary concerns, and assured Air India that “...all efforts will be made to cancel Security Officers in case of a delay or cancellation so as to avoid any undue financial burden on Air India.”<sup>623</sup>

In May 1985, Air India’s strict policy against delays caused some embarrassment. Some passengers complained that five pieces of their baggage had been left behind during a recent flight. Air India expressed its concerns to the Burns branch manager, who explained to Air India that the delay was a direct consequence of Air India’s strict budgeting and scheduling for security matters. The security officer examining checked baggage with the X-ray machine at Pearson before the flight’s departure encountered a ten-minute period when no baggage had come down the conveyor belt to the X-ray. He attempted to call Air India to see if the flight had been closed and was ready to depart, but received no answer. He contacted a second Air India representative, who said that the flight had departed. Nonetheless, the security officer waited a further ten minutes. The Burns manager explained that “...[b]eing quite aware of the client’s close scrutiny and questions [concerning] unwarranted extra hours, Security Officer Noble then packed up the X-ray machine and left the baggage area .... ” Sometime later, the remaining bags arrived and there was no one to inspect them or have them loaded aboard the plane. Intent on avoiding further incidents, Air India subsequently agreed to allot additional funds to pay the security officers to

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620 Exhibit P-283, Tab 29, pp. 1-2.

621 Exhibit P-283, Tab 27, p. 3.

622 Exhibit P-284, Tab 39, p. 1.

623 Exhibit P-284, Tab 39, p. 1.

remain at their posts until the estimated time of the aircraft's departure.<sup>624</sup> That this was an issue at all is certainly indicative of the budget-conscious mentality of the airline and the times.<sup>625</sup>

The June 22<sup>nd</sup> evidence supports the conclusion that D'Souza was very concerned about further delay to the flight, pushed behind schedule as it was by the installation of the fifth engine pod. He asked Ciuffreda, the Burns International Security supervisor, to have his employees rush through the hand-searching of carry-on bags. Also worth considering is the question of whether D'Souza's decision at Pearson Airport to authorize the use of the PD4 sniffer device to examine checked baggage when the X-ray scanner failed may also have been influenced by his desire to eliminate further delays, especially in light of the very cursory manner<sup>626</sup> in which he demonstrated the scanners' use to security officers who had not operated them before.<sup>627</sup>

### **Balancing Security against Efficiency and Profitability**

The balancing of security concerns against efficiency and profitability was not unique to any one airline or agency.

As the *CATSA Act* Advisory Panel noted in their report, the 1980s were a period of deregulation, downsizing, and privatization. Resources for airport security were scarce, an example being the "thinly stretched" 11 regional inspectors responsible for inspecting the approximately 70 air carriers operating at dozens of airports across Canada, and for enforcing the regulations governing both aviation security and the transportation of dangerous goods. As the report stated, "All planning for security measures was taken within this framework of cost limitation and reduction."<sup>628</sup>

The cost-cutting mentality prevalent in aviation security circles in the 1980s included a 1985 proposal by the Office of the Auditor General to reduce the RCMP presence at Canada's 10 major airports by up to 50 per cent and to replace them with commissionaires and private security guards, for a savings of approximately \$4.5 million per year. The Auditor General's Office urged this

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<sup>624</sup> Exhibit P-284, Tab 60, pp. 1-2.

<sup>625</sup> An Air Canada "Memogram" dated May 26, 1985 recounts a slightly different version of this chain of events. According to the handwritten document, the five Air India bags were refused by security when they arrived at 6:15 PM, some 20 minutes prior to the departure of the flight. The document indicated that the guards "only get paid until 1800." The guards, who by that time were no longer being paid, evidently failed or refused to examine the bags by X-ray, and Air India refused to load unscreened baggage. The flight departed without them, causing some consternation on the part of Air Canada, and the author of the note expressed the concern that "...to-day we have five bags next time it could be 25." See Exhibit P-283, Tab 30, p. 1.

<sup>626</sup> Exhibit P-283, Tab 35, p. 1. The statement of A.D. Coutinho of Burns Security indicates that D'Souza explained how the hand scanner worked and demonstrated its use with a match.

<sup>627</sup> Exhibit P-101 CAF0142, p. 6. Ciuffreda indicated in his statement that to his knowledge James Post, the Burns employee who used the PD4 sniffer to examine checked baggage for the Air India flight when the X-ray scanner failed, had never used the device before. He did not train Post in its use.

<sup>628</sup> Exhibit P-157, pp. 21, 54.

measure, arguing that "...these challenges have to be met to reduce security costs to a level closer to aviation industry's standards and maintain them in balance with security risks to civil aviation."<sup>629</sup>

A 1983 draft report prepared by Transport Canada's Management Systems Branch, reporting on the findings of the Aircraft Cargo/Baggage Security Measures Study, made the following observations concerning the relationship between the air carriers and other parties along with their security procedures and methods of enforcement:

Security costs money and delays service. As a result, profit-conscious carriers are tempted to reduce the level of effort involved in maintaining preventative security measures, the effect of which would be a general lowering of one's guard. This would be a very dangerous policy to follow, for the ability to cope with an extreme condition if and when it should arise would be eroded to such a degree that overkill decisions would be made when an emergency arose which would cost more, cause more disruption, delays to services and bad publicity than the emergency warrants.<sup>630</sup>

In July 1984, Transport Canada prepared a position paper on security baggage checks at airports. In the discussion of current challenges, the paper noted problems associated with the use of private security officers to carry out the carriers' security responsibilities. In particular, the reduced incidence of hijackings, the small number of weapons found by private security guards during baggage searches, "...plus poor pay, frequent turnover of staff and lack of support or recognition by air carrier personnel, make it difficult to maintain a well-trained, motivated and competent group." The paper emphasized the need for continuous training and noted that carriers were "...being reminded of their responsibilities in this area."<sup>631</sup>

Lalonde testified about his general observations of security at Mirabel International Airport in the summer of 1985. He pointed out that security was in the hands of inexperienced employees who earned minimum wage and who were not necessarily focused on their jobs, or who likely did not fully understand how critical their job was to the safety of passengers. This was despite the fact that tasks such as screening passengers and baggage and properly operating X-ray scanning equipment required attention, skill, and diligence. He testified that:

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<sup>629</sup> Exhibit P-101 CAF0655, pp. 5, 23. This followed the decision by Transport Canada to phase out the RCMP presence at eight major "Class II" domestic airports. For its part, however, the response by Transport Canada's Director of Civil Aviation Security to the recommendations of the audit report was unequivocal: "Had you checked with the security and intelligence community, I am sure you would have been convinced that now is not the time for such a move as Canada is seen as a 'weak link' internationally and recent reports to Cabinet say that we must be increasing the visibility of the police presence." See Exhibit P-101 CAF0660, p. 1.

<sup>630</sup> Exhibit P-101 CAF0565, p. 20.

<sup>631</sup> Exhibit P-101 CAF0644, p. 5.

Certainly it could have been done by more experienced, better trained, more focused people who paid more attention to what they were doing no doubt, and I include myself in this.<sup>632</sup>

The investigation of the bombing of Air India Flight 182 revealed that many Burns Security personnel were unqualified to do their jobs. Low pay, minimal training, and high staff turnover evidently created a situation where employees were poorly motivated and failed to perform well.<sup>633</sup> The Canadian Air Safety Board submissions to the Kirpal Inquiry stated that "...[t]he statements taken from Burns Security personnel in Toronto indicated that a significant number of personnel, including those handling passenger screening, had never had the Transport Canada passenger inspection training program or, if they had, had not undergone refresher training within 12 months of the previous training."<sup>634</sup>

Where tight budgets and increasing expenses collide, tradeoffs result. Lalonde's testimony was candid and credible. He strongly suggested that the expense of further delaying the flight's departure was a significant factor in the decision to clear Air India Flight 182 to depart Mirabel.

### Observations

- Neither Air India nor Burns Security officials at Mirabel Airport followed the steps required by Air India's updated security program with respect to suspicious bags.
- It is possible that monetary considerations, such as the expense caused by delay, along with related concerns such as "strict" ground time policies, were being balanced against the diligent provision of security to the passengers of Air India Flight 182.
- It is troubling that an aviation security regime would have entrusted the implementation of many security measures to profit-minded entities operating in an environment with limited regulation and severely constrained inspection and enforcement.
- Many Burns Security personnel were not qualified to do their jobs. They were both poorly trained and poorly motivated, and provided security of dubious quality.
- The lesson to be learned is that when corners are cut in the interests of expediency and cost-effectiveness, the consequences can be devastating.

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<sup>632</sup> Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3129.

<sup>633</sup> Exhibit P-157, p. 24.

<sup>634</sup> Exhibit P-101 CAF0089, p. 9.



## 1.12 A “Crescendo” of Threats

### Numerous Warnings of Impending Violence

The evidence heard at the Inquiry demonstrates that CSIS, the RCMP, the Department of External Affairs (DEA), local police forces and Transport Canada were collectively in possession of the following information about threats to Air India and Sikh extremism:

- A plot to bomb one and possibly two Air India planes was being hatched by Sikh extremists in the fall of 1984 (see Section 1.1 (Pre-bombing), November 1984 Plot). One conspirator was arrested for other reasons, but there was information suggesting the plot was not abandoned;
- In the fall of 1984, Ajaib Singh Bagri, a member of the Babbar Khalsa (BK), a radical Sikh extremist organization, was allegedly nominated to a committee to plan the hijacking of an Air India plane;<sup>635</sup>
- In January 1985, a prominent UK Sikh activist visited the BK in Vancouver. In the past, this person had said that the names of Sikhs who did not boycott Air India would be put on a “hit list”;<sup>636</sup>
- In February 1985, outspoken moderate lawyer Ujjal Dosanjh was beaten with a pipe and nearly killed. He subsequently wrote to the Prime Minister to warn him of the potential for violence in the Sikh community;<sup>637</sup>
- In March 1985, a member of the International Sikh Student Federation (ISYF), another Sikh extremist organization with significant membership and involvement in acts of violence, was arrested at the Vancouver airport with part of an Uzi machine gun;<sup>638</sup>
- In the spring of 1985, it was reported that Talwinder Singh Parmar’s group, the BK, was working on a “...highly secret project.”<sup>639</sup> Parmar was considered by CSIS to be “...the greatest threat in Canada to Indian diplomatic missions and personnel”;<sup>640</sup>

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<sup>635</sup> Exhibit P-101 CAA0099, CAA0103. See also, Exhibit P-101 CAA0101, p. 2 and CAA0110, p. 3.

<sup>636</sup> Exhibit P-101 CAB0851, p. 6.

<sup>637</sup> Exhibit P-101 CAA1099, p. 1; Testimony of Ujjal Dosanjh, vol. 80, November 21, 2007, p. 10173.

<sup>638</sup> Exhibit P-101 CAB0207, p. 2, CAB0851, p. 6, CAC0290, p. 3. Note that the Sikh Student Federation was the same organization as the ISYF: Testimony of Don McLean, vol. 21, May 1, 2007, p. 1992.

<sup>639</sup> Exhibit P-101 CAC0290, p. 3.

<sup>640</sup> Exhibit P-101 CAB0221, p. 2.

- On June 1, 1985, Air India warned of the likelihood of sabotage attempts against Air India planes by Sikh extremists using time-delayed devices, which could be placed in registered baggage (See Section 1.2 (Pre-bombing), June 1<sup>st</sup> Telex ),<sup>641</sup>
- In early June 1985, Vancouver area Sikh extremists, Parmar and Inderjit Singh Reyat, conducted suspicious explosives experiments in the forest, resulting in a loud blast, at the time (mistakenly) believed to involve firearms (See Section 1.4 (Pre-bombing), Duncan Blast);
- During the same period, Reyat was involved in a new temple in Duncan whose leader was advocating cutting off all travel on Air India,<sup>642</sup>
- In early June 1985, an unknown number of Sikhs from Vancouver and Toronto were planning to attend a meeting in New York to establish policy for the violent resolution of problems,<sup>643</sup>
- During a June 12, 1985 meeting involving ISYF members, a prominent Sikh extremist stated, in response to questions about the lack of attacks on Indian officials, that something would happen “in two weeks” (See Section 1.6 (Pre-bombing), Khurana Information);
- Throughout the month of June 1985, Parmar was involved in suspicious conversations with his associates about “mailing letters.” He specifically instructed an associate to obtain cash a few days before the tickets for the June 22<sup>nd</sup> Air India flight 181/182 and the C.P. Air Flight to Narita were picked up and paid for in cash;<sup>644</sup>
- In June 1985, the RCMP received “highly classified” intelligence that left officials with no doubt that “...something was going to happen”, and led to the conclusion that special security precautions for all Air India flights to and from Canada were necessary,<sup>645</sup>
- Three days before the bombing, CSIS Counter Terrorism Director General Mel Deschenes indicated that his biggest fear was that rogue Indian agents would take a plane out of the sky (See Section 1.8 (Pre-bombing), Rogue Agents (Deschenes)); and

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<sup>641</sup> Exhibit P-101 CAA0185.

<sup>642</sup> Exhibit P-101 CAA0276, p. 2.

<sup>643</sup> Exhibit P-101 CAB0269(i); Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3893-3894.

<sup>644</sup> See, generally, Exhibit P-101 CAD0180 and Exhibit P-102: Dossier 2, “Terrorism, Intelligence and Law Enforcement – Canada’s Response to Sikh Terrorism”, pp. 38-41.

<sup>645</sup> See Exhibit P-101 CAA0240, p. 2, CAC0445, p. 5; Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040, 3044-3046, 3085-3086.

- Shortly before the bombing, DEA received highly classified information about a threat to target an Air India flight (See Section 1.7 (Pre-bombing), Testimony of James Bartleman).

### Continuous Threats to Indian Interests in Canada

In addition to this information, government agencies received numerous warnings and significant information about threats to Indian interests in Canada, including threats to Air India, throughout the lengthy period preceding the bombing. The threat information came from all sources, including individuals in the community,<sup>646</sup> official warnings from the Government of India,<sup>647</sup> warnings issued by Air India Headquarters,<sup>648</sup> and ongoing police and intelligence investigations.<sup>649</sup>

The situation became increasingly alarming, especially after the June 1984 attack on the Golden Temple by the Government of India. For RCMP officers involved in protecting foreign missions and airports, there was a sharp increase in concern, and a “flurry” of reports from various sources about the threat of Sikh extremism, in the year after the invasion of the Golden Temple.<sup>650</sup> Between June 1984 and June 1985, Air India was the subject of more threats than any other airline.<sup>651</sup> For the Terrorist/Extremist unit of the RCMP National Criminal Intelligence Section (NCIS) in British Columbia, dealing with Sikh extremism became the “...predominance of the workload”<sup>652</sup> after June 1984. The level of concern at CSIS had already risen, and authorization was sought for the highest level of investigation.<sup>653</sup> CSIS ultimately was to give “Top Priority attention” to Sikh extremism in the spring of 1985.<sup>654</sup> The intelligence agency prepared numerous threat assessments about Indian interests and Sikh extremism during the year preceding the bombing.<sup>655</sup> Of the 70 threat assessments issued between July 14, 1984 and June 1, 1985, 13 either mentioned, or were devoted entirely to, the threat to Air India.<sup>656</sup>

<sup>646</sup> See, for example, Exhibit P-101 CAC0164, CAC0168, CAC0359, CAC0364, CAC0383, CAC0397. See also Section 1.6 (Pre-bombing), Khurana Information.

<sup>647</sup> See, for example, Exhibit P-101 CAA0211, CAB0097, CAB0244, CAC0262, CAC0279, CAC0293, CAC0316, CAC0325, CAC0337, CAC0401,

<sup>648</sup> See, for example, Exhibit P-101 CAA0083, CAA0084, CAA0161, CAA0164, CAA0185.

<sup>649</sup> See, for example, Exhibit P-101 CAB0169, CAC0220, CAC0312, CAC0405 (RCMP investigations), Exhibit P-101 CAC0269, p. 3 (Metro Toronto Police investigation), Exhibit P-101 CAA0147, CAB0205, CAB0243 (CSIS investigations).

<sup>650</sup> Testimony of R.E. Muir, vol. 27, May 14, 2007, pp. 2909-2910, Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3033-3034.

<sup>651</sup> Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2833; Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3248-3249.

<sup>652</sup> Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4028-4029.

<sup>653</sup> Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3521.

<sup>654</sup> Exhibit P-101 CAF0124(i), p. 1.

<sup>655</sup> See, for example, Exhibit P-101 CAA0110 (October 26, 1984), CAC0235, Exhibit P-101 CAA0113 (December 6, 1984), Exhibit P-101 CAC0267 (January 18, 1985), Exhibit P-101 CAC0276 (February 21, 1985), Exhibit P-101 CAB0197 (February 27, 1985), Exhibit P-101 CAB0205 (March 28, 1985), Exhibit P-101 CAB0207 (April 1, 1985), Exhibit P-101 CAA0147 (April 12, 1985), Exhibit P-101 CAB0221 (April 25, 1985), Exhibit P-101 CAB0851, pp. 3-8 (May 24, 1985), Exhibit P-101 CAA0165 (May 30, 1985), Exhibit P-101 CAB0249 (June 4, 1985), Exhibit P-101 CAA0190 (June 5, 1985), Exhibit P-101 CAA0199 (June 6, 1985), Exhibit P-101 CAB0321 (June 18, 1985).

<sup>656</sup> Exhibit P-101 CAB0902, p. 36. Already in March 1984, the Security Service wrote about the threat to Air India: Exhibit P-101 CAC0105, pp. 3-5.

The information received by Canadian agencies warned of possible attacks on Indian missions,<sup>657</sup> assaults against Indian diplomats and kidnappings of Indian officials,<sup>658</sup> as well as threats against Hindus or moderate Sikhs in general.<sup>659</sup> Information was provided about the threat posed by particular individuals, including Talwinder Singh Parmar, and about possible plots hatched in Canada to attack Indian high officials outside of Canada.<sup>660</sup> There were indications that extremists were arming themselves or formulating plots to acquire weapons.<sup>661</sup> Government agencies were informed about numerous threatening letters sent from Canada to Indian officials in Canada and abroad.<sup>662</sup> Canadian agencies were also advised of the threats issued by Sikh extremists, such as the BK threat to kidnap or kill the Vancouver Indian Consul General in June 1984,<sup>663</sup> Parmar's public warning to the Indian Government that "...they'll pay a price for attacking the temple,"<sup>664</sup> his invitation to "...unite, fight and kill" and his resolution that Sikhs would "...kill 50,000 Hindus."<sup>665</sup>

### Possibility of Bombing

The Government was informed early on of the possibility that Sikh extremists might resort to bombing. In 1984, Sikh extremists were reported to be organizing "suicide squads" in Canada and the UK.<sup>666</sup> There were frequent threats of bombing aimed at Indian missions in Canada.<sup>667</sup> Parmar vowed that

<sup>657</sup> See, for example, Exhibit P-101 CAC0364, pp. 1-2, CAB0243 (May 31, 1985: plot to bomb Indian High Commission in Ottawa and Indian Consulate in Vancouver on June 6, 1985); Exhibit P-129, p. 2 (May 17, 1985: possible attack on Indian mission during Gandhi visit).

<sup>658</sup> See, for example, Exhibit P-101 CAC0205, p. 3 (August 1984: threat that car of armed Sikhs was coming to make trouble for the flag-raising ceremony at the Indian Consul residence), CAC0290, pp. 3-4 (April 3, 1985: possible attacks on Vancouver Consul General), CAC0293, p. 3 (April 4, 1985: possible assault on Vancouver Consul General), CAC0316, p. 3 (May 1, 1985: plot to attack Vancouver Consul General).

<sup>659</sup> See, for example, Exhibit P-101 CAB0048, pp. 1-2, CAC0104, p. 3 (March 1985: threats to moderate Sikhs and Hindus), CAC0312, p. 3 (April 23, 1985: possibility that "hit groups" will be sent to Canada), CAC0359, p. 3 (May 29, 1985: broadcast that hit squad already in Canada to kill Sikhs).

<sup>660</sup> In 1982, the Security Service warned that Parmar was connected with terrorist groups: Exhibit P-101 CAB0024, p. 1. The threat posed by Parmar was discussed in numerous subsequent threat assessments: See, for example, Exhibit P-101 CAA0110, pp. 2-3, CAB0221, p. 2, CAC0235, p. 3. In June 1985, information was received about meetings held to plan the assassination of Gandhi: See Exhibit P-101 CAA0196, p. 2, CAC0401, p. 2.

<sup>661</sup> See, for example, Exhibit P-101 CAB0081, p. 1 (June 1984: seizure in Bombay of weapons that originated in Canada), CAC0220, pp. 2-3 (September 21, 1984: identity of Winnipeg Sikhs believed capable of killing and possibly arming themselves), CAC0356, p. 3 (May 28, 1985: Sikh extremists in Windsor/Detroit buying weapons to target Gandhi visit or Indian interests in Canada).

<sup>662</sup> See, for example, Exhibit P-101 CAB0221, pp. 1-2, CAB0851, p. 6 (in 1981 and 1984, threatening letters from the BK, postmarked in Vancouver, received by officials in India; in April 1985, threatening letter signed by the BK received by the Indian High Commission in Canada), Exhibit P-101 CAC0262, pp. 2-3 (January 9, 1985: letter sent from Toronto threatening to assassinate Gandhi), Exhibit P-101 CAC0279, pp. 2-4 (March 1, 1985: letter sent from Ottawa to High Commission of India with Gandhi photo and "target next" note), Exhibit P-101 CAC0312, p. 3 (April 23, 1985: letter sent to the Indian High Commission in Canada).

<sup>663</sup> Exhibit P-101 CAC0112, p. 2 (June 5, 1984: telephone threat indicating that the Acting Consul General in Vancouver or his family would be kidnapped by the BK and that the ACG would be "liquidate[d]"). See also Exhibit P-101 CAB0221, p. 2.

<sup>664</sup> Exhibit P-101 CAB0103.

<sup>665</sup> Exhibit P-101 CAA0110, p. 2.

<sup>666</sup> Exhibit P-101 CAA0110, p. 2.

<sup>667</sup> See, for example, Exhibit P-101 CAB0243, CAC0187, p. 2, CAC0364, p. 2, CAC0397, pp. 2-3.

Sikhs would, among other things, “...blow up embassies.”<sup>668</sup> CSIS investigator Ray Kobzey was concerned that Parmar, because of his contacts, could “...have had access to people within the Sikh community elsewhere who had the expertise to put together the technical drawings, manual, what have you, to enable these explosive devices ... that could be used.”<sup>669</sup>

### Direct Threats to Air India

Canadian agencies also received information about threats to Air India. The Government of India issued numerous warnings of threats to Air India flights in Canada.<sup>670</sup> Air India also regularly reported threats to its flights.<sup>671</sup> In 1984, Air India offices received bomb threats by telephone.<sup>672</sup> Throughout the period preceding the bombing, the threat information about Air India included numerous references, not only to possible hijackings,<sup>673</sup> but to the possibility that Sikh extremists or other terrorists would attempt to bomb Air India planes.<sup>674</sup> There was specific mention of “suicide squads”<sup>675</sup> and explosives concealed in luggage.<sup>676</sup> Air India regularly requested that anti-sabotage measures be

<sup>668</sup> Exhibit P-101 CAA0110, p. 3.

<sup>669</sup> Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3754.

<sup>670</sup> See, for example, Exhibit P-101 CAA0149 (April 12, 1985: plan to hijack Air India Flight 181 to Toronto on April 13, 1985), CAA0152, (April 16, 1985: possible hijacking of any major airlines to pressure Kuwait to release prisoners), CAC0263, p. 3 (January 9, 1985: threats of hijacking of Air India flights out of Montreal and Toronto), CAC0339, p. 2 (May 17, 1985: possible hijacking of Air India aircraft during Gandhi visit).

<sup>671</sup> See, generally, Exhibit P-101 CAC0517, p. 2, which reports that *almost every flight* was preceded by a threat information letter from Air India. According to RCMP Sgt. Sweeney, this would have included the June 22, 1985 flight: Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2591-2592, Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2757. However, such a threat was not mentioned in the airport policing chronology prepared by the RCMP for the Rae review: See Exhibit P-101 CAA0234, pp. 8-9.

<sup>672</sup> See Exhibit P-101 CAA0050 (June 1984: phone threat indicating that the Saturday, June 16<sup>th</sup> flight would be sabotaged), CAA0147, para. 5 (referring to threats received in summer 1984).

<sup>673</sup> See, for example, Exhibit P-101 CAA0042, CAA0043 (April 1984), Exhibit P-101 CAA0088, CAA0089 (late August 1984), Exhibit P-101 CAB0902, pp. 21-22 (September 1984), Exhibit P-101 CAA0096, CAA0097 (October 1984: information that there would be one hijacking of an Indian aircraft every month), Exhibit P-101 CAC0263, p. 3 (January 9, 1985), Exhibit P-101 CAA0146, CAA0149 (April 12, 1985: possible hijackings), Exhibit P-101 CAA0152 (April 16, 1985: any major airline). Exhibit P-101 CAC0419, pp. 4-5 (April 25, 1985); Exhibit P-129, p. 2; Exhibit P-101 CAA0159, p. 1 (late May 1985).

<sup>674</sup> See, for example, Exhibit P-101 CAC0129, p. 2, CAB0076, p. 1 (June 12, 1984: information that 20 Sikhs were planning to launch a “suicide attack” against Air India); CAA0083, CAA0084 (July 1984: information that Sikh terrorist volunteered to carry a bomb in his baggage with the intent of blowing up an Air India aircraft), CAC0143, p. 3 (July 1984: threat letter to Indian consulate with threat of “blowing of Boeing”), CAC0193, pp. 2-3 (July 1984: threat letter listing threats to Gandhi and plan to explode a plane leaving Montreal, London and the USA), CAA0088, CAA0087 (August 1984: Syrian and Lebanese terrorists planning to place an explosive device on board an international aircraft), CAA0101, p. 1 (October 10, 1984: Sikh extremists planning spectacular violent activity, including blowing up an Air India plane), Exhibit P-101 CAA0035, CAA0045 (terrorist group in Europe intended to place an exploding device in a suitcase on board an international aircraft to detonate in flight). See also Section 1.1 (Pre-bombing), November 1984 Plot.

<sup>675</sup> See, for example, Exhibit P-101 CAB0076, p. 1, CAC0129, p. 2.

<sup>676</sup> See, for example, Exhibit P-101 CAA0035, CAA0045, CAA0083, CAA0084,.

implemented.<sup>677</sup> The airline warned specifically of the need to exercise special care in checking registered baggage<sup>678</sup> and electronic items like transistors, tape recorders and two-in-one cameras.<sup>679</sup>

Canadian agencies were otherwise aware of both the increased likelihood of sabotage of airplanes and of the possibility that Air India might increasingly attract the attention of extremists as a target. In 1983, the RCMP Security Service had warned that hijackings were less of a threat to civil aviation than bombings.<sup>680</sup> In 1984, the Security Service indicated that Air India could be perceived by extremists as a “softer target,” than more high-profile and well-protected diplomatic targets.<sup>681</sup>

### Escalating Violence in Canada

Not only was a vast amount of information received about the Sikh extremist threat, but violence could be observed on the ground in Canada.<sup>682</sup> Violent demonstrations were held regularly. Indian missions were attacked and the safety of Indian officials was threatened many times.<sup>683</sup> In some cases, the protests resulted in events being disrupted or cancelled,<sup>684</sup> in property damage being caused,<sup>685</sup> in police officers being assaulted<sup>686</sup> and even shot,<sup>687</sup> and in Indian diplomats being physically assaulted.<sup>688</sup> After the Golden Temple attack, members of the BK began “...to speak very vocally about the need for revenge.”<sup>689</sup>

<sup>677</sup> See, for example, Exhibit P-101 CAA0053, CAA0054 (June 1984: unspecified threat requiring anti-hijacking and anti-sabotage measures), Exhibit P-101 CAA0161 (May 1985: vigilance on electronic items and registered baggage), Exhibit P-101 CAA0185 (June 1, 1985: special measures for registered baggage in light of time-delayed explosive devices threat), Exhibit P-101 CAC0419, pp. 2-3, CAA0205 (June 7, 1985: anti-sabotage measures to continue to the end of June 1985).

<sup>678</sup> See Exhibit P-101 CAA0161, CAA0185.

<sup>679</sup> See Exhibit P-101 CAA0024, pp. 1-2, CAA0028, CAA0037, CAA0161, CAA1093.

<sup>680</sup> Exhibit P-101 CAB0902, p. 36.

<sup>681</sup> Exhibit P-101 CAB0071, pp. 1-2.

<sup>682</sup> Exhibit P-101 CAA1099, p. 4.

<sup>683</sup> See, for example, Exhibit P-101 CAB0207, p. 2 (1984 attacks by the ISYF on Vancouver Consulate and Consul General residence), Exhibit P-101 CAC0271, pp. 2-4 (January 29, 1985: security increased to level 5 for Dhar visit – the situation would have become physical and dangerous without the increase and help of local police).

<sup>684</sup> See Exhibit P-101 CAB0197, p. 2, CAC0208, p. 4.

<sup>685</sup> See, for example, Exhibit P-101 CAC0111, pp. 1-2 (June 4, 1984: two Sikhs entered the Vancouver Consulate with swords and caused damage to property), Exhibit P-101 CAB0067, p. 1 (June 9, 1984: Sikh extremists removed a flag from the window of the Indian Consulate in Vancouver and attempted to burn it), Exhibit P-101 CAC0205, pp. 2-3 (in August 1984: demonstrators entered into the Vancouver Consul General’s residence and ultimately broke windows on his vehicle).

See also Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3885-3886.

<sup>686</sup> Exhibit P-101 CAC0205, p. 3, CAC0208, p. 4.

<sup>687</sup> Exhibit P-101 CAA1099, p. 1 (in November 1982: officer shot when violence broke out at a demonstration at the Indian Consulate in Toronto).

<sup>688</sup> The Indian Acting High Commissioner was assaulted during a demonstration in Winnipeg: Exhibit P-101 CAC0285, p. 2, CAE0065, p. 1. The Toronto Indian Consul General complained that a member of his staff was assaulted during a demonstration when his turban was knocked off, but the Toronto police decided not to pursue the matter further: See Exhibit P-101 CAC0203, p. 2, CAC0205.

<sup>689</sup> Testimony of Ray Kobzey, vol. 33, May 23, 2007, p. 3730.

There was an “...increase in weapon-related activity” among Sikh extremists.<sup>690</sup> In the Vancouver Sikh community, extremist groups engaged in “...vicious attacks against moderate Sikh leaders.”<sup>691</sup> “Violence at the temples and assaults on people who spoke out against extremists” were increasingly frequent.<sup>692</sup>

### Threat of Violence Reaches a Peak in June 1985

The situation escalated as June 1985 approached. In the months preceding the bombing, Sikh extremist groups in Canada were “...continuing to organize and ... enjoying success and increased membership.”<sup>693</sup> In April 1985, prominent Sikh extremists were making plans for the anniversary of the storming of the Golden Temple and were discussing the strategy to be followed during Prime Minister Rajiv Gandhi’s visit to the USA in June.<sup>694</sup> In the Vancouver Sikh community, acts of violence and intimidation became even more frequent, and more threat information was received.<sup>695</sup> In May 1985, a radical Sikh extremist faction in the US was discovered to have been planning the assassination of Prime Minister Gandhi, a fate suffered by his predecessor and mother, Indira Gandhi, and then falling back to a plan to attack an Indian Minister of State convalescing in New Orleans.<sup>696</sup> The FBI was still searching for two of the Sikhs involved.<sup>697</sup> Vancouver, Toronto and Windsor Sikhs were discovered to be involved in the plot.<sup>698</sup> Windsor/Detroit Sikh extremists were trying to smuggle Uzi machine guns into Canada and there was concern they could be targeting Indian interests here.<sup>699</sup> On June 17<sup>th</sup>, CSIS expressed concern that despite recent disruption efforts, the BK would simply regroup and strike at a “...less high-profile target.”<sup>700</sup>

In the spring of 1985, Canadian agencies received information about a “...wave of terrorist bombings” by Sikh extremists in India.<sup>701</sup> The incidents involved explosions in public transportation facilities or on street corners, often caused by the detonation of “...crude radio bombs.”<sup>702</sup> As of late May, CSIS was greatly concerned about “...the terrorist potential” of Sikh extremists.<sup>703</sup> CSIS and police investigators in Canadian communities had reason to believe that local Sikh

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690 Exhibit P-101 CAA1099, p. 4.

691 Exhibit P-101 CAB0207, p. 2.

692 Exhibit P-101 CAA1099, p. 4.

693 Exhibit P-101 CAB0207, p. 1.

694 Exhibit P-101 CAB0902, p. 27.

695 Testimony of Axel Hovbrender, vol. 32, May 24, 2007, p. 3914.

696 Exhibit P-101 CAB0851, p. 8, CAB0902, p. 28.

697 Exhibit P-101 CAB0851, p. 8.

698 Exhibit P-101 CAC0438, p. 2.

699 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3434; Exhibit P-101 CAC0356, p. 3.

700 Exhibit P-101 CAB0312, pp. 1-2.

701 See Exhibit P-101 CAB0230, p. 1, CAB0321, p. 2, CAB0851, p. 8, CAC0325, p. 2, CAC0328, p. 2, CAC0364, p. 4. See also Exhibit P-101 CAC0327, p. 2, for the RCMP assessment that those bombings and other events in India caused the personnel in Indian missions to be concerned about the current security measures in place to protect them.

702 Exhibit P-101 CAB0851, p. 13, CAC0325, p. 2.

703 Exhibit P-101 CAF0124(i), p. 1.

radicals were planning violent actions.<sup>704</sup> “[T]he possibility of violence within the international Sikh community appeared imminent.”<sup>705</sup>

Air India indicated that the threat to its flights would be heightened during the month of June 1985.<sup>706</sup> The airline specifically warned of the threat of bombing using time-delayed devices,<sup>707</sup> and requested that anti-sabotage measures be applied throughout the month of June.<sup>708</sup> At that time, Air India was the object of a boycott by most Sikh temples in Canada.<sup>709</sup>

As of June 18, 1985, when CSIS wrote its last threat assessment prior to the bombing of Air India Flight 182, Sikh factions were “...quietly arming themselves”; the “...incidence of terrorist attacks in India had not abated” and the “...extremists / terrorists [were] no less determined to realize their ambitions.”<sup>710</sup> On June 17<sup>th</sup>, the RCMP requested that the “bomb squad” conduct an explosives vapour detector sweep at the Indian High Commission.<sup>711</sup> By late June 1985, RCMP officials involved in Protective Policing had concluded, based on the intelligence at the time, the situation in India and Canada, and the general “vibes”<sup>712</sup>, that the threat was “...reaching a peak,”<sup>713</sup> and that they had “...better be careful.”<sup>714</sup>

## Findings

All this information was available, but the Government of Canada failed to prevent the Air India tragedy. The evidence heard at the Inquiry reinforces the view that information was not adequately reported, analyzed or shared among the agencies involved. As a result, a proper security response was not implemented. Whether the bombing would have been prevented, had this not been the case, is a matter for speculation. The deficiencies in the threat response are clear and not subject to any speculation.

Individually, the various critical incidents and threats to Indian interests in Canada, including Air India, present an array of clues leading up to the deadly attack on Air India Flight 182. When taken together, these clues would lead even the most casual observer to conclude that the Government of Canada, Air India,

<sup>704</sup> See Exhibit P-101 CAB0902, p. 32 (the CSIS Edmonton office reported local radicals to be planning something, probably violent); Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2017-2018, 2036 (McLean knew the ISYF was planning violent action and that this was confirmed when he received the Khurana information: See Exhibit P-101 CAC0487, p. 4).

<sup>705</sup> Exhibit P-101 CAB0321, p. 2.

<sup>706</sup> See Exhibit P-129, pp. 1-2; Exhibit P-101 CAA0159, p. 1, CAA0161, CAA0164.

<sup>707</sup> Exhibit P-101 CAA0185. See Section 1.2 (Pre-bombing), June 1<sup>st</sup> Telex.

<sup>708</sup> Exhibit P-101 CAC0419, pp. 2-3.

<sup>709</sup> Exhibit P-404, p. 3.

<sup>710</sup> Exhibit P-101 CAB0321, pp. 3-4. Similarly, on that same day NCIB issued a threat assessment indicating that the threat to Indian missions remained high and that a “...lesser figure could possibly be targeted”:

Exhibit P-101 CAC0459, p. 2. See also Exhibit P-101 CAC0444, p. 2.

<sup>711</sup> Exhibit P-101 CAC0441, p. 2; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2717-2719.

<sup>712</sup> Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3047.

<sup>713</sup> Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3047-3048.

<sup>714</sup> Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3048.



and others had a wealth of knowledge and a myriad of opportunities to discover and prevent the bombing. Clearly, crucial policies, systems and organizations must have failed. The questions that need to be answered are:

- **Who was responsible for threat assessment and response?**
- **Were they prepared to handle the threat? and**
- **What went wrong?**

These questions will be analyzed in the sections that follow and, where possible, answers will be provided or observations will be made on those incidents that may cause doubt to linger.

