

VOLUME TWO

PART 1: PRE-BOMBING

CHAPTER IV: RESPONDING TO THE THREAT

4.0 Threat-Response Regime in 1985

An effective threat-response regime is one that accurately assesses and appropriately responds to the relevant risk. The likelihood of a given threat being carried out and the damage that could be caused as a result are the essential elements of risk.

The ability to assess the likelihood of a threat occurring depends on an understanding of all relevant threat information, including a calibration of the intent and capability of the source of the threat, as well as an understanding of the relevant operational factors. For example, an assassin with a rifle and a strong desire to shoot a particular politician might generally pose a “high” threat to that politician. However, factors such as the event that the politician will attend, including the size and accessibility of the venue, whether it is public or by invitation only, and the nature of access others will have to the politician, all factor into the probability of the threat being successfully carried out. This assessment requires the ability to gather information quickly, share it with those responsible for analyzing it, and provide the assessment and salient facts to those charged with implementing the necessary response.

In a context of limited resources, an efficient system will also target its resources strategically to minimize the harm that may occur in the eventuality that various threats are carried out. For example, it may be justified for officials to allocate resources to a moderate threat of bombing in priority to a high threat of vandalism. The ability to address the relevant risk will depend on the tools on hand that can be accessed to respond in an appropriate manner. For example, the ability to prevent a would-be terrorist from releasing toxic gas on a city subway will depend on a number of factors, including the technologies available to detect such gas, the sophistication of protocols in place to conduct effective searches for toxins, and the level of training of the individuals carrying out those searches.

Relative to intelligence, protective policing issues will necessarily intersect with issues of national security. The same factors, both symbolic and strategic, that make certain individuals, locations, and modes of transport important objects of protection, also make them attractive targets for terrorist attack. It is important that this is understood within the protective policing regime so that structures

are in place to support the sharing and collection of information, to enable all actors within the regime to contribute to and benefit from the collective understanding of the relevant threats. Further, as the nature and level of the threat in relation to any protective policing mandate are not static, the system in place must have built-in flexibility so that implementers can tailor the level and type of protective deployment to address the relevant risk.

The threat-response regime in 1985 did not adequately incorporate the concept of risk assessment into its operations. There were serious deficiencies within the protective security regime in the appreciation of the threat of Sikh extremism and its connection to the threat to Air India. This lack of appreciation was, in large part, due to a lack of understanding by personnel in the regime about the nature and value of intelligence and its relevance to their individual tasks and, more generally, its relevance to the efficacy of the system. Further impacting on this situation were inconsistent, insecure, and uncoordinated communications, excessive secrecy, and disagreements over expenses and over the question of which entity or organization had the ultimate decision-making authority in times of crisis. Moreover, the systems in place did not allow for a tailoring of the protective responses to the nature of the threats at issue. Measures were applied in an unthinking manner and with no purpose. There was no consideration of whether they were necessary or sufficient. The lack of awareness of risk allowed for a system to remain in place that was unresponsive to a serious and known threat – the threat of bombing.

The ability of the parties within the threat-response regime to share relevant information, coordinate their efforts, and implement a targeted response are integral functions for any such system, and these functions will be explored in detail in this chapter.

4.1 General Obligations and Relationship to the Threat Level

The government has a duty to keep its citizens safe and to protect them from those who would try to further their own political goals by causing harm to the innocent. While the government can create arrangements that allow for certain protective duties to be performed by private entities, circumstances of a greater known risk will logically require a greater involvement by the government, either directly, or by way of training, monitoring, and supervision of those involved, to ensure that appropriate measures to protect are being taken.

In 1985, the RCMP had protective security duties for domestic dignitaries, including the Prime Minister and Members of Parliament, as well as for foreign dignitaries who were internationally protected persons under the Vienna Convention and, later, under the *Criminal Code of Canada*.¹ In terms of aviation security, Transport Canada, and the RCMP by contract, had the responsibility for the security of the airport as well as a role, in conjunction with airlines more generally, for the protection of civil aviation security, including the protection

¹ Testimony of Lloyd Hickman, vol. 18, March 7, 2007, pp. 1680-1681.

of the aircraft, luggage and cargo. The duties varied with the level and nature of the threat posed to the airline.

The *Aeronautics Act* was, and still is, the primary authority for the regulation of civil aviation in Canada. The *Aeronautics Act* gives the Minister of Transport the overall responsibility and authority for the "...supervision of all matters connected with aeronautics."² Transport Canada, as owner and operator of Canada's major airports, with the responsibility for providing security services for air carriers, entered into agreements for service with the RCMP.³ The services of the RCMP in connection with airport policing were to be funded by the Ministry of Transport.

In 1985, the RCMP was mandated to perform specific police and security duties at designated airports, pursuant to the National Airport Policing and Security Program (NAPSP), which came into effect in 1972 with the signing of the Transport Canada/RCMP "Memorandum of Agreement."⁴ The main purpose of this agreement was the "...protection of civil aviation", and airport policing detachments were established at ten designated international and eight domestic airports, including Toronto's Pearson International Airport and Montreal's Mirabel Airport.⁵ Some of the main airport policing duties performed by the RCMP, pursuant to the Memorandum of Agreement, included:

- guarding against unauthorized entry, sabotage, theft, fire or damage⁶ – including the protection of, and security for, airlines landing at the airport, and also the physical facilities of the airport itself;⁷
- collection, evaluation and dissemination of intelligence information concerning national and international threats to civil aviation;⁸
- responding to requests for assistance respecting passenger and luggage check-in;⁹
- acting as first responders to criminal incidents;¹⁰ and

² *Aeronautics Act*, R.S.C. 1985, c. A-2, s. 4.2.

³ Exhibit P-101 CAA0335, p. 8.

⁴ A 1972 Memorandum of Agreement between the RCMP and Transport Canada set out the RCMP's roles and responsibilities for airport policing: See Exhibit P-101 CAA0001. This Memorandum of Agreement was amended in 1975 (Exhibit P-101 CAA0003) and again in 1979 (Exhibit P-101 CAA0005).

⁵ Exhibit P-101 CAC0528, pp. 6-8.

⁶ Exhibit P-101 CAF0014.

⁷ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3176. See also Exhibit P-101 CAA0182, which indicates that with respect to aircraft access, the RCMP had the responsibility to provide continuous 24 hour/7 days a week patrols, including continuous 24 hour/7 days a week vehicle and/or foot patrols of the airside area at Mirabel, Dorval, Toronto and Vancouver International Airports.

⁸ Exhibit P-101 CAA0335, p. 8.

⁹ Exhibit P-101 CAA0182.

¹⁰ Exhibit P-101 CAC0281.

- formulating, disseminating and auditing standard RCMP policy in such areas as the development and maintenance of airport emergency procedures, including those for bomb threats, and the use of police service dog teams at airports.¹¹

At RCMP Headquarters, the Airport Policing Branch, which was housed within the Protective Policing Directorate (P Directorate), served as the policy centre for airport policing. The Director of Protective Policing oversaw the VIP Security Branch and the Airport Policing Branch and other branches within the Protective Policing Directorate. The policy centre was responsible for resolving disputes with Transport Canada when such disputes could not be solved locally or regionally,¹² and for dealing with any policy that had to be written or changed.¹³

The HQ Airport Policing Branch was intended to be a central hub for CSIS threat assessments.¹⁴ Upon receipt of threat information, which could come from multiple sources, the Airport Policing Branch would request and receive threat assessments from CSIS in order to set security levels at affected airports.¹⁵ The Airport Policing Branch also had the role of liaising with both the RCMP airport detachments and with Transport Canada to ensure that all who had a stake in the security regime were apprised of pertinent threat information. Operationally, the airport detachments reported to the divisions.¹⁶

The security regime for the safety and security of passengers, baggage and cargo was premised on complementary roles for air carriers, the RCMP and Transport Canada. The regulations in place at the time imposed obligations on airlines to establish systems to carry out routine searching and surveillance of persons, baggage and cargo by mechanical or electronic devices.¹⁷ Air

¹¹ Exhibit P-101 CAA0182.

¹² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2764.

¹³ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2870-2871.

¹⁴ Final Submissions of the Attorney General of Canada, Vol. II, para. 28. See also Exhibit P-101 CAF0561: An example of Transport Canada requesting that RCMP Airport Policing Branch request from the Security Service an updated threat assessment respecting the political threat to Canadian civil aviation targets.

¹⁵ Final Submissions of the Attorney General of Canada, Vol. II, para. 95.

¹⁶ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2892.

¹⁷ *Foreign Aircraft Security Measures Regulations*, S.O.R./76-593, as am., s. 3(1) [*Foreign Aircraft Security Measures Regulations*]. Air carriers were also required to submit to the Minister a written description of the security measures they had established (*Foreign Aircraft Security Measures Order*, S.O.R./76-631; *Civil Aviation Security Measures Order*, S.O.R./74-227). But the AGC also argued that "...the *Aeronautics Act* contemplated that the onus for aircraft security would rest on the owners and operators of those aircraft", citing the provisions that authorized regulations requiring the owner or operator to establish security measures for, *inter alia*, the search of persons, baggage, and cargo: Final Submissions of the Attorney General of Canada, Vol. II, paras. 47, 49. However, the *Aeronautics Act* was at that time, in fact, neutral with respect to the onus for aircraft security. While sections 5.1(1) and 5.1(1.2) provided authority for regulations placing obligations on air carriers to carry out searches or other security measures, section 5.1(2) provided for regulations requiring that the Minister of Transport carry out such measures "...in lieu of or in addition to the security measures required pursuant to subsection (1) or (1.2)": *Aeronautics Act*, R.S.C. 1970, c. A-3, as am. by S.C. 1973-74, c. 20, s.1. Therefore, while there were regulations enacted pursuant to sections 5.1(1) and (1.2) placing some obligations on air carriers to provide for systems of searches for baggage, it is incorrect to state that the Act somehow contemplated that the onus for aircraft security would rest on owners or operators or to interpret the fact of the limited regulations that were enacted as somehow derogating from the overall obligation on the Minister for the "...supervision of all matters connected with aeronautics."

carriers were also required to control access to the airside of the airports, and to establish procedures to protect against unauthorized access to aircraft,¹⁸ as well as systems to ensure that no unauthorized baggage or cargo were loaded aboard aircraft.¹⁹

At the airport, Transport Canada's Airport Manager had the generalized responsibility to protect civil aviation operations from acts of terrorism,²⁰ and maintained overall jurisdiction at the airport.²¹ As the "...on-site minister's representative and 'landlord' [the airport Manager had] a responsibility to protect government property and users of the airport to the extent possible."²² Transport Canada was responsible for ensuring that there were resources available to respond to the needs of civil aviation, or to the requirements of air carriers.²³ It was to provide the security screening equipment used by air carriers to search persons, personal belongings and carry-on baggage, and to set out technical requirements and standards for screening equipment in internal departmental publications.²⁴ Transport Canada also provided guidelines to carriers to help identify items in a passenger's possession that could be dangerous.²⁵

While air carriers undertook routine passenger and baggage check-in duties, as well as cargo and aircraft loading, the RCMP would provide assistance with security where the need was identified,²⁶ with the response of the RCMP varying with the nature of the incident.²⁷ Thus, at Pearson and Mirabel airports, the RCMP provided the services of a police services dog, trained to identify traces of many different explosives with its keen sense of smell, to aid in the detection of explosive devices that might be concealed in suspicious luggage. Similarly, the RCMP had provided a police presence in the baggage room for the inaugural Air India flight at Pearson, which was operating under an increased security level,²⁸ and there would usually be an RCMP dogmaster in the baggage area at Mirabel for Air India flights.²⁹ The dogmaster would also be used to search the

18 Exhibit P-157, p. 23.

19 *Civil Aviation Security Measures Regulations*, S.O.R./74-226. Foreign carriers like Air India were required to "...establish, maintain and carry out" these security regulations under a parallel set of regulations: *Foreign Aircraft Security Measures Regulations*, s. 3(1).

20 Final Submissions of the Attorney General of Canada, Vol. II, para. 120.

21 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3087-3088.

22 Exhibit P-101 CAF0084, p. 3.

23 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3178.

24 Exhibit P-101 CAF0813, pp. 4-5.

25 Exhibit P-101 CAF0160, p. 23.

26 Exhibit P-101 CAA0335.

27 Exhibit P-101 CAA0182.

28 Exhibit P-101 CAA0148: At an April 18, 1985 meeting between representatives of the RCMP, Transport Canada, Air India and Peel Regional Police, an Air India representative "...advised that he would like RCMP presence the same as for inaugural flight, e.g. at check-in desks, at Bridge Head, on apron and in Baggage Room." [Emphasis added] See also Exhibit P-101 CAF0586, p. 2. The same presence was requested with respect to a threat received from the Assistant Indian High Commissioner indicating an unconfirmed report that Air India Flight 181 would be hijacked on April 13, 1985: Exhibit P-101 CAC0309, CAC0528, p. 36. However, the RCMP denied this request to maintain a presence in the baggage room but indicated to Air India that members would be ready to respond should they be summoned by Burns: Exhibit P-101 CAA0148.

29 Exhibit P-101 CAF0811, p. 6.

airplane and luggage when a “specific threat” was received by the airline.³⁰ While there were obligations on air carriers to establish systems to protect against unauthorized access to their aircraft, the RCMP, under a normal operating level of security, provided intermittent inspections of aircraft and activities on the surrounding apron. In circumstances of increased threat, the RCMP increased its involvement in aircraft protection and surveillance, providing services such as escorting the plane from the runway to the gate.³¹

While under normal conditions there were certain requirements placed on the air carrier for aircraft and baggage security, such requirements did not preclude or hinder a more active role for government in circumstances of heightened threat to an air carrier.

The regulations in place at the time confirmed that government airport officials retained an important overall discretion respecting the safety and security of a flight. In fact, section 813 of the *Air Regulations*³² specifically contemplated an override, whereby Transport Canada³³ had wide discretion to take any action necessary to ensure that an aircraft would not depart in circumstances considered by the government to be dangerous. Section 813 provides:

Where the Minister has reason to believe, upon complaint or otherwise, that an aircraft within Canada is intended or is about to proceed upon a flight in contravention of these Regulations or while in a condition unfit for flight, he may make such directions and take such action by way of the provisional detention of the aircraft or otherwise as he deems necessary, for the purpose of causing the circumstances relating to the flight to be investigated, or the aircraft to be detained until such time as he is satisfied that the Regulations are being complied with or until such alterations or repairs as he deems necessary to render the aircraft fit for flying have been made.³⁴

The ability to detain an airplane in circumstances in which there was concern for the safety of the flight meant that the government had the ability to override the will of the airline if circumstances warranted. A Memorandum of Understanding signed in November 1982 between Transport Canada and the RCMP confirms that the RCMP had delegated authority to enforce section 813.³⁵ Furthermore, it appears that the phrase “unfit for flight” was given a wide interpretation in terms

³⁰ See Section 4.3 (Pre-bombing), The Role of the “Specific Threat” in the 1985 Threat-Response Regime.

³¹ Exhibit P-101 CAA0025.

³² C.R.C. 1978, c. 2.

³³ Or the Minister’s designate: s. 838 specifies that “A reference in these Regulations to the Minister includes, in relation to any particular power, duty or function of the Minister under these Regulations, a reference to any person authorized by the Minister to exercise or perform such power, duty or function.”: *Air Regulations*, C.R.C. 1978, c. 2 [*Air Regulations*].

³⁴ *Air Regulations*, s. 813 [Emphasis added].

³⁵ Exhibit P-101 CAC0090, p. 6.

of the circumstances in which detention could be ordered. For example, Chern Heed, a member of the *CATSA Act Review Advisory Panel*, who had served as the General Airport Manager both at Vancouver International Airport and Pearson, testified that he had ordered that a plane be detained where he felt conditions were too icy for safe departure. He also confirmed that there were a number of persons in authority, including the pilot and RCMP and Transport officials, who could exercise their discretion to prevent the departure of a flight.³⁶

Air India, as part of its security plan, applied more security measures than did other foreign air carriers. Such measures, including the use of an X-ray machine and a PD4 sniffer device, were not required by the government³⁷ and compliance was not monitored.³⁸ The fact that Air India voluntarily took on additional measures cannot be taken to have lessened any obligations that would otherwise be placed on the government in response to a heightened threat situation.

4.2 Structural Issues in Protective Policing and Airport Security

4.2.1 RCMP-Transport Canada Relationship

Joint Responsibility for Airport Security

Airport security in 1985 was the joint responsibility of Transport Canada and the RCMP. Each depended upon the specialized functions of the other to establish a comprehensive security, intelligence, and operational structure capable of protecting major airports across the country, along with the airlines and millions of travellers. Unfortunately, the relationship between the organizations was imperfect at best, fraught with overlap and confusion over their respective duties, disagreements over questions of authority, budgetary disputes, and failures to effectively cooperate, coordinate, and share information. This flawed relationship would have significant repercussions for aviation security in general and Air India in particular.

Under Canada's National Airport Policing and Security Program (NAPSP),³⁹ the requirements and standards for the NAPSP were established by Transport Canada. Transport Canada negotiated with the RCMP to obtain the human resources needed to fulfill the policing and security requirements for Canada's major airports.⁴⁰ A Memorandum of Agreement (MOA) was signed between the agencies that set out their basic responsibilities.⁴¹ Transport Canada was responsible for ensuring that there were sufficient resources available to respond

³⁶ Testimony of the *CATSA Act Review Advisory Panel*, vol. 36, May 30, 2007, pp. 4383-4385.

³⁷ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3200-3201.

³⁸ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3198-3200. See Section 4.7 (Pre-bombing), *Transport Canada Policy Gaps and Implementation Deficiencies*.

³⁹ Exhibit P-101 CAF0638.

⁴⁰ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3242-3243.

⁴¹ Exhibit P-101 CAA0005.

to the needs of civil aviation and the air carrier requirements.⁴² The RCMP, in turn, provided Transport Canada with information regarding the threats facing aviation. Threats to aviation security were reviewed annually by the RCMP (later by CSIS), and submitted to Transport Canada as part of an annual RCMP report on policing and security at airports. RCMP members provided briefings on relevant threats at meetings of the National Civil Aviation Security Committee.⁴³ The RCMP Airport Policing Branch also liaised with Transport Canada on a regular basis and acted as a central locus for threat assessments.⁴⁴

MOA: Local Budgets and Local Realities

Airport Policing budgets, which set out the person-year requirements for the RCMP detachment at an airport, were negotiated annually at the airport level between Transport Canada and RCMP officials.⁴⁵ Dale Mattson, who was the Transport Canada Safety and Security Manager for Toronto's Pearson airport, said he negotiated the budget based on his understanding of the threat level and the security requirements of the day, which were relayed to him by the Civil Aviation Security Branch, as well as the Airports Branch at Transport Canada's Headquarters.⁴⁶ Through consultation with the RCMP, a level of security coverage was decided upon that was felt to be appropriate to address the security issues of the day and to meet all the elements of the MOA between the agencies.⁴⁷

In the pre-bombing period, there was significant pressure on local airport managers to control their spending, which resulted in local restraints being applied to their budgets.⁴⁸ Mattson testified that there were always requirements to "ensure efficiencies" in Transport Canada's programs and that "...we were always looking for opportunities to reduce costs."⁴⁹ The MOA between the RCMP and Transport Canada specifically addressed this issue and gave the RCMP a "trump card,"⁵⁰ namely section 12(b)(i), that could be used to override Transport Canada's discretion to increase or decrease RCMP personnel at the airport:

12. Numbers and locations of Airport Police and Security Details and established manpower requirements shall be as mutually agreed to by the RCMP and the Department:

a) for the purpose of this Agreement and subject to the terms herein, the RCMP shall provide and maintain police and security services at designated airports during the term of this Agreement;

⁴² Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3178.

⁴³ Final Submissions of the Attorney General of Canada, Vol. II, para. 94.

⁴⁴ Final Submissions of the Attorney General of Canada, Vol. II, para. 28.

⁴⁵ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3215-3216.

⁴⁶ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3178-3179, 3254.

⁴⁷ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3215-3216.

⁴⁸ Exhibit P-101 CAA0034.

⁴⁹ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3253.

⁵⁰ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3243.

b) police and security services at designated airports may be increased or decreased at the request of the Department, but:

i) a decrease shall not reduce the police and security service to a level less than necessary, in the opinion of the Commissioner, to carry out the duties required under this Agreement.⁵¹ [Emphasis added]

However, it is not clear whether the RCMP actively invoked this “trump card,” despite the fact that there was significant concern within the RCMP that airport policing personnel would be cut to a level where it would “...not have the resources to supply the extra security required/requested by the various foreign airlines.”⁵² In fact, in some areas, this level had already been reached.⁵³

Whereas budgets were negotiated locally, these negotiations were done within the framework of a single, generally worded MOA that governed the relationship between Transport Canada and the RCMP at all detachments in Canada.⁵⁴ As pointed out by Supt. Gary Clarke, who was the OIC at Pearson airport at the time, in his November 1984 memorandum to the OIC Protective Policing, the problem was that “...all Airports in Canada are not the same and requirements for each Airport are different.”⁵⁵ Of particular concern to Clarke was that local demands at Pearson airport, the “...largest and busiest in Canada,” were such that the actual duties performed by the RCMP detachment there were not reflected in the MOA at the time and, further, that officers were increasingly taking on police-like duties (as opposed to purely security duties) that were technically outside the scope of the MOA.⁵⁶ These duties included drug seizures, accident investigations, and Federal Statute cases that the forces with “...prime jurisdiction cannot or will not investigate.”⁵⁷ As a result, there was a need for ongoing training to “better equip” airport policing members at Pearson and to “increase their professionalism.”⁵⁸ It was felt that current agreements were open to “...wide interpretation and are too broad for today’s needs” and that they hindered “...the development of a good day to day working relationship” with Transport Canada.⁵⁹

Thus, the suggestion was made that the national program either be “...brought into line with the original intent or allowed to expand to meet today’s [sic] needs.”⁶⁰ Or, if such a change could not occur, Clarke suggested that there be a “local ‘Memorandum of Understanding’ or ‘Plan of Operation for Policing and

51 Exhibit P-101 CAA0005, p. 11.

52 Exhibit P-101 CAA0034.

53 Exhibit P-101 CAA0034.

54 Exhibit P-101 CAC0107, p. 2.

55 Exhibit P-101 CAC0107, p. 2.

56 Exhibit P-101 CAC0107.

57 Exhibit P-101 CAC0107, p. 5.

58 Exhibit P-101 CAC0107, p. 4.

59 Exhibit P-101 CAC0107, p. 6.

60 Exhibit P-101 CAC0107, p. 4.

Security' between the RCMP and Transport Canada at Pearson which would reflect the actual conditions and needs of that airport."⁶¹

In response to the suggestion that the MOA be adjusted to reflect the trends of the day, RCMP Headquarters responded that Legal Services had indicated that a more specifically worded MOA would be "too restrictive," and that the airport detachments were never meant to be investigative units and, therefore, any move to extend their roles should not be permitted.⁶² It is clear that in the pre-bombing period, the RCMP was concerned about the possibility of Transport Canada demanding a more restrictive MOA, and was concerned that the already limited role of airport policing could be further curtailed should the RCMP make any waves in terms of renegotiating the MOA.⁶³

The duties of the Airport Special Constables are anything but exciting and our Airport Detachment Commanders, 2 i/c's, etc. feel that by cooperating with local police forces and permitting the Special Constables to investigate certain occurrences that it improves their morale and gives them a feeling of worth. I will not argue with this from that point of view, however, it could end up in a situation where person years would be cut and Transport Canada demanding a more restrictive type MOA. We must prevent this from happening at all costs....⁶⁴

And further:

The Force's involvement in the NAPSP is indeed quite unique. We are bound by the terms of the MOT/RCMP Memorandum of Agreement and we must learn to live with this and the reviews of the program as long as Transport Canada is responsible for 100% of our costs. If it were possible to expand the role of the Airport Special Constables, it could have detrimental effects to the Force. A case in point being the requests of "H" and "J" Divisions to have Special Constables perform Highway Patrol Duties. The requests were turned down, however, the Province of New Brunswick now has their own Highway Patrol in place and our role is diminishing there.⁶⁵

The ability of the RCMP to respond to local needs was therefore somewhat hindered by a lack of flexibility in its formal arrangements with Transport Canada. However, the failure of the RCMP to address this issue head-on was also apparently caused, to some extent, by its own concern that by asking for more, it could end up with less.

61 Exhibit P-101 CAC0107, p. 5.

62 Exhibit P-101 CAC0281, p. 3.

63 Exhibit P-101 CAC0281.

64 Exhibit P-101 CAC0281, p. 3.

65 Exhibit P-101 CAC0281, p. 5.

Operational Decisions at Airports

Once the local budget had been agreed on by Transport Canada and RCMP officials, the RCMP was generally able to manage its own day-to-day deployment locally, without the input of Transport Canada.⁶⁶ That the operations of the RCMP detachment at the airport were to come under the exclusive direction of the member in charge of the airport detachment was specifically contemplated in s. 10 of the MOA at the time:

The Police and Security Detail at the airport will come under the exclusive direction of the member in charge of the Police and Security Detail, or the person acting in his place, who will instruct them as to their duties and responsibilities.⁶⁷

At the same time, s. 5 of the MOA provided that the RCMP was to keep local Transport Canada officials apprised of relevant information concerning the provision of police and security services:

On matters of policy pertaining to the provision of police and security services by the Police and Security Detail the following will apply:

(a) the member in charge of the Police and Security Detail will consult regularly with the Manager⁶⁸ or his designate to ensure harmonious interfacing between the Police and Security Detail and airport operations....⁶⁹

The RCMP detachment had flexibility to redeploy human resources from tasks of a lower to a higher priority. Responses to “specific” or heightened threats were usually handled within the resources that were at the airport,⁷⁰ and, as such, Transport Canada would not generally need to pay for the additional deployment with respect to, for instance, a “specific threat.” At times, however, the threat level necessitated additional local expenditure, beyond what was budgeted for overtime payment for RCMP airport personnel required to meet the local security needs, for example. In such cases, the agreement of Transport Canada was required to release the requisite additional funds to the RCMP.⁷¹ Thus, budgetary decisions, dependent on Transport Canada, could impact the operational ability of the RCMP to deploy resources as it saw fit. Later, in June 1985, when a dispute erupted at Pearson over the payment by Transport Canada for additional security in response to a heightened threat, RCMP officials

⁶⁶ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.

⁶⁷ Exhibit P-101 CAA0005, p. 10.

⁶⁸ “Manager” is defined in the MOA as “Airport Manager.”

⁶⁹ Exhibit P-101 CAA0005, p. 8.

⁷⁰ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3215-3216, 3253.

⁷¹ Exhibit P-101 CAA0240, p. 3.

would view the refusal by Transport Canada to release funds upon request to be a default from the MOA, s. 10, which provided the RCMP with the ability to exclusively direct the Police and Security Detail.⁷²

When a request for additional security was presented, local Transport Canada officials would pass their concerns up to the Civil Aviation Security Branch and ask whether these requirements were valid, and whether additional resources should be provided.⁷³ Mattson testified that he understood that this was a decision made through consultation between the RCMP and Transport Canada at the Headquarters level.⁷⁴ In the case of security decisions respecting Air India, Mattson said he relied on the advice that he received from his Headquarters, which is where the experts were who were charged with assessing the threat. In 1985, there were only two airlines, including Air India, that were the subject of ongoing security threats.⁷⁵

Mattson testified that the Civil Aviation Security Branch at Headquarters would inform officials on the ground about whether, from Transport Canada's perspective, the additional resources could be funded, and would indicate what was expected of officials at the site with respect to the introduction of security measures. It is important to note that Transport Canada Headquarters had the ability to impose additional procedures that were deemed necessary to address the relevant threat.⁷⁶ This fact underscores the importance of having structures in place to ensure the appropriate sharing of information within and among agencies. Unfortunately, deficiencies in that sharing of information resulted in significant impediments to implementing adequate, responsive measures that would meet the threat.

Transport Canada/RCMP Disputes Affect Aviation and Airport Security

The relationship between Transport Canada and the RCMP, although formalized in a written MOA, was nevertheless the subject of multiple disputes and misunderstandings in the period leading up to the bombing of Air India Flight 182. As this discussion and the following sections make clear, these disagreements would have profound implications for aviation security in general and airport security in particular.

4.2.2 RCMP Protective Policing

Mandate and Operations: Need for Centralization

In 1985, the RCMP's Protective Policing mandate involved, among other things, the protection of international VIPs, foreign missions, designated airports

⁷² Exhibit P-101 CAC0445, p. 7. See Section 4.5 (Pre-bombing), Failures in Coordination between Transport Canada and the RCMP.

⁷³ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3231-3232.

⁷⁴ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.

⁷⁵ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3248-3249.

⁷⁶ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3215.

and Canadian dignitaries. It was a mandate that necessarily intersected with national security issues, such as the threat of Sikh extremism or the Armenian-Turkish conflict. Threat information relevant to protective operations came from many sources. Protectees, including Indian diplomats and Air India, were often objects of threats, and were thereby a source of threat information for the RCMP. It is crucial that on-the-ground threat information be channelled into a central threat assessment regime, so that each threat can be assessed individually in the context of the broader threat and intelligence landscape, while at the same time adding to that knowledge base. The need for centralization also arises from the need for appropriate dissemination of threat and intelligence information. Threats or intelligence received in one locale may have important protective policing implications for another. It is therefore important that a central unit within Protective Policing, with an understanding of the operational need and of the larger threat context, have the ability to direct relevant information in order to properly sensitize those on the ground locally.

In order to be effective in collecting and disseminating threat information, it is necessary to have at least a basic appreciation of operational on-the-ground situations across the country. This, in turn, means that there must be some duty to report centrally on local protective policing conditions. At the same time, given that the central unit will necessarily have access to a significantly larger pool of information than the individual divisional units, and given the often highly sensitive political implications associated with protective policing operations, it is essential that the central unit have the authority to direct and redeploy resources, and to coordinate protective operations of individual units, should the need arise.

Failure to Centralize Protective Policing Adequately in the Pre-Bombing Era

In the pre-bombing era, RCMP Protective Policing had, notionally, a centralized structure for threat and intelligence reporting. In the case of Airport Policing, the airport detachments had direct interaction with the Headquarters Airport Policing Branch, to which they sent threat information, and through which they received intelligence assessments from CSIS and direction for the level of security to be applied in relation to these threats.

However, despite this notional structure, the structure actually in place was decentralized. The Airport Policing Branch, and the P Directorate more generally, were set up as non-operational policy centres, and fundamentally administrative.⁷⁷ The actual airport detachments were under the operational line command of the Criminal Operations Officer (CROPS) in charge of each Division.⁷⁸

⁷⁷ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2893. As stated by Commissioner Robert Simmonds, at the time, RCMP Headquarters was normally "...fundamentally an administrative headquarters": Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9365.

⁷⁸ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2892.

Similarly, the VIP security sections, responsible for protective operations in each division, were administered out of the division headquarters.⁷⁹ Each VIP security section had an officer in charge, who reported up through the Criminal Operations Officer.⁸⁰ The separation of operational matters from policy matters, combined with the *de facto* decentralized Airport Policing reporting structure, was ill-conceived and led to deficiencies in the implementation of protective security measures.

First, categorizing Headquarters' functions, including dissemination of threat information and setting of security levels, as "policy", as opposed to "operational functions", was simply a misunderstanding of their purpose and effect. What Headquarters did was translate threat information into operational directives, based on an application of the VIP or Airport Policing security grid, for implementation by those on the ground. This meant that Headquarters played an (unacknowledged) operational function, but did not actually have operational line authority. The result was that the detachments had no direct obligation to report back about how Headquarters' directives had been implemented, and Headquarters had no real authority to ensure that its directives were appropriately carried out. As a consequence, the Airport Policing Branch was not notified of breaches of its own directives. For example, Sgt. J.B. ("Joe") MacDonald, Acting OIC of Headquarters Airport Policing Branch, who ordered that level 4 security be put in place for Pearson airport, was unaware that the dogmaster had not been available at Pearson on the night of the bombing, despite the fact that the presence of the dogmaster was required to properly implement level 4 security.⁸¹ The absence of reporting obligations on the part of the detachments, and the disconnect between so-called policy and operational matters, meant that Headquarters could not tailor its directives, or modify its "policies," in line with operational realities.

The problem of the disconnect between policy and operational matters is illustrated by the episode of the PD4 sniffer test. On January 18, 1985, a meeting took place at Pearson airport involving RCMP S/Sgt Robin Ward and Sgt. Gary Carlson, the RCMP dogmaster for Pearson, along with a representative of Transport Canada, and officials from Air India and Peel Regional Police. The PD4 sniffer device was presented by a representative of Air India and Carlson tested its effectiveness using a vial of gunpowder. He found that the device was totally ineffective. He performed a second test of the device on the following day in the presence of Ward. Again, the device proved to be unresponsive.⁸² After the first test, Carlson informed Air India that the PD4 was not an effective method of checking suitcases for explosives.⁸³ Carlson had training and expertise in the detection of explosives.⁸⁴ His opinion that Air India was using a device that

⁷⁹ Testimony of Lloyd Hickman, vol. 18, March 7, 2007, p. 1690.

⁸⁰ Testimony of Lloyd Hickman, vol. 18, March 7, 2007, p. 1685.

⁸¹ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2863. See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.

⁸² Exhibit P-101 CAC0268.

⁸³ Exhibit P-101 CAC0268.

⁸⁴ Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2992.

effectively provided no protection in terms of the detection of explosives was clearly a significant piece of operational information directly relevant to the effectiveness of the protection in place for Air India. Not surprisingly, however, given the structures in place at the time, it does not appear that this information was ever communicated to RCMP Headquarters in the pre-bombing period. Given the role of Headquarters in translating CSIS intelligence about threats into operational directives, the information regarding the effectiveness of the tools on hand at Pearson, especially regarding their ability to respond to hidden explosives, should have been available to be taken into consideration by Headquarters in its security deployment directives, especially in light of the threat information about possible bombings at that time.

Another problem posed by the lack of centralization within Protective Policing was that threat and intelligence information was being directly communicated between the airport detachments (or the VIP security units at the divisions)⁸⁵ and Headquarters. This meant that the Divisional COs were not necessarily sensitized to the threat environment or to the needs of protective operations.

By June 1984, concern about the political implications of the threat level and the need for greater protection for Indian diplomats and missions had reached the highest levels of government. On June 12, 1984, Marcel Masse, Under Secretary of State for External Affairs, wrote to Henry Jensen, Deputy Commissioner Criminal Operations of the RCMP, to raise concerns about the need to protect, and to be seen to protect, Indian personnel and premises.⁸⁶ In response to this concern, the Director of Protective Policing instructed Supt. R.E. Muir, the OIC VIP Security Branch at the time, to take immediate action to increase the level of security for Indian diplomats and missions in Ottawa, Toronto and Vancouver, using armed RCMP personnel and marked vehicles.⁸⁷ On June 13, 1984, VIP Security Branch ordered that the divisions implement security in line with these instructions.⁸⁸ On August 20, 1984, Muir wrote to the divisions indicating that it was imperative that Headquarters be advised immediately of any incident relating to Indian property and personnel and, further, that "...this situation is now receiving attention at the highest levels of government and, therefore, we must be prepared to account for, at a moment's notice, any action we have undertaken."⁸⁹

Despite the extreme concern displayed at higher levels about the threat, it does not appear that a similar awareness or level of concern percolated down to the divisional level. On August 27, 1984, the Deputy Commissioner of Criminal Operations wrote to the Director of Protective Policing (with a copy to Muir) indicating:

⁸⁵ Final Submissions of the Attorney General of Canada, Vol. I, para. 84; Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3032.

⁸⁶ Exhibit P-101 CAC0131.

⁸⁷ Exhibit P-101 CAC0138.

⁸⁸ Exhibit P-101 CAC0135.

⁸⁹ Exhibit P-101 CAC0207.

It seems to me that we are under resourcing in our planning for the various public events at which Indian Diplomats are present. I wonder if our Divisions are sufficiently sensitized in this regard bearing in mind our new responsibilities under Part 4 of the *CSIS Act*.

He went on to specify:

I would like you to draft a letter to all divisions pointing out the implications for Canada if Indian diplomats, or for that matter, any diplomat is not adequately protected. The flag ceremony in Vancouver is a good example of where we should have had the Counsel General's home well protected.... I have the impression your VIP Branch communicates with VIP sections and divisions and in the process the CIBO and CO are not taking the interest and initiative that they should.

Written below this text is a direction, presumably to Muir, from the Director of Protective Policing, stating, "The message is clear – Protect. Please draft suitable letter."⁹⁰ [Emphasis in original]

On September 4, 1984, Jensen signed a letter that was sent to all divisions about the protection of foreign mission personnel and property in Canada, indicating concern with recent events in which a senior Indian diplomat was attacked and damage to Indian mission property was sustained. Jensen emphasized the importance of adequate security being put in place to protect, pursuant to the RCMP's Part IV duties under the *CSIS Act*, and also for diplomatic relations with India.⁹¹

The problem of the lack of sensitization of the divisions about the level of threat was further compounded by the fact that additional RCMP security requirements could be a drain on other federal units at the divisional level. The nature and seriousness of any local threat, and therefore the level of demand for Protective Policing services, would inevitably vary over time. As a result, in 1985, during high levels of threat, the need for Protective Policing personnel at times exceeded the permanent local complement at a given VIP section. When this occurred, additional personnel had to be drawn from other federal duties performed by the RCMP at the divisional level. In addition to being a drain on the resources available for other duties, the requirement to draw on other sections also had cost implications for the RCMP. The RCMP facilitated the placement of guards at missions and as escorts for foreign diplomats, but the cost of these private security guards was assumed by the Department of External Affairs. However, in situations of high threat, private guards were at times replaced by RCMP officers from other federal units. The cost of providing RCMP security

⁹⁰ Exhibit P-101 CAC0214; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5417-5419.

⁹¹ Exhibit P-101 CAC0216(i).

guards was borne by the RCMP.⁹² When additional personnel were needed for protective duties, since Headquarters did not have line authority, it was necessary for Headquarters to go through the divisional Commanding Officers to effect any additional mobilization. Drawing personnel from other areas of federal policing, and the long-term use of RCMP officers for security, could be disruptive and costly for divisions,⁹³ and at times "...caused friction between ... Headquarters branch setting that level and the field divisions who had to carry it out...."⁹⁴

This type of pressure, emanating from the divisions, may help explain why, less than a month after Muir was instructed to write a letter to the divisions about the level of concern for Indian diplomats and property and the need for adequate security, he wrote on October 1, 1984, to Michael F. Doyle, Deputy Chief of Protocol at DEA, recommending that security for Indian missions and personnel in Canada be decreased.⁹⁵ The memo stated that, for three months, since June 6, 1984, approximately 75 RCMP members had been providing accommodation/site security and escorts to Indian diplomatic personnel. He described the provision of additional security as being "...at considerable financial cost" and serving to "...severely [reduce] our human resources required for our other responsibilities." It appears that the request to decrease security was denied, but on October 30, 1984, VIP Security Branch again wrote to DEA to request permission to replace RCMP officers with private security guards in Ottawa, Toronto, and Vancouver.⁹⁶ Due to the assassination of Indira Gandhi on October 31, 1984, it was again decided that no lessening of security should occur.⁹⁷ Nevertheless, the request to decrease security was again repeated, just over one month later, on December 3, 1984.⁹⁸

Approximately five months later, on May 16, 1985, as the threats to Indian personnel and interests were rising, crescendo-like, to a peak,⁹⁹ the OIC for E Division (in British Columbia, the base of Talwinder Singh Parmar and other members of the BK) wrote a message to Headquarters:

Please be advised that efforts are being made in this division to comply with the instructions embodied in your telex. With a view to dealing with other operational requirements in this division, E Division is requesting knowledge as to the specifics regarding the threat, which has produced the need for this security upgrading. The reason for this request is that the assessment in this division at the present moment is at the nil or low threat level. Further, this Division requests specific

⁹² Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2981.

⁹³ Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2982.

⁹⁴ Testimony of Lloyd Hickman, vol. 18, March 7, 2007, p. 1696.

⁹⁵ Exhibit P-101 CAC0222.

⁹⁶ This request is referenced in Exhibit P-101 CAC0255.

⁹⁷ Exhibit P-101 CAC0241, CAC0243.

⁹⁸ Exhibit P-101 CAC0255.

⁹⁹ See Section 1.12 (Pre-bombing), A "Crescendo" of Threats.

instructions as to the implementation of special "O" counter surveillance. That is, is there a specific threat against the Indian consulate in Vancouver that demands that other Division, Special "O", priorities be abandoned or deferred for these purposes. Your reply is awaited prior to implementation of special "O" counter surveillance.¹⁰⁰

The reply from Headquarters came the next day:

Regret we cannot agree threat re Indian Mission & Personnel in ur [*sic*] Division is presently at "nil or low threat level." CSIS – NCIB/NSE plus several other reliable sources state otherwise and as a consequence you were asked to strengthen security by utilizing RCMP personnel until further notice. Re: Request for Special "O" counter-surveillance, although we appreciate you have other important priorities, we ask as a minimum selective counter-surveillance measure be instituted on the movements of consul general.... Your cooperation in this and like matters is appreciated.¹⁰¹

Clearly, there was a significant disconnect in the perception of the threat between Headquarters and the division. Equally clear is the fact that the divisions did not simply carry out directives of Headquarters. Instead, the local implementation of Headquarters directives was a matter of negotiation with the divisions, given Headquarters' lack of formal authority over the divisions. Those in charge of deciding at the divisional level were obviously not informed of the relevant circumstances, and Headquarters made little effort to correct the situation, as shown by the lack of explanation of the nature and seriousness of the threat requiring counter-surveillance.

Within airport policing, there is evidence of similar resistance to the deployment of additional resources at the divisional level. In June 1985, the O Division OIC Criminal Operations, C/Supt. D.H. Heaton, became involved in arranging for resources to meet the additional airport policing requirements for RCMP personnel due to the level 4 security ordered for Air India's protection at Pearson. On June 7, 1985, he wrote to the Director of Protective Policing at Headquarters:

Request clarification. To avoid any confusion, drug personnel were not/not used to provide security on 85-06-01. At my direction, Airport Policing personnel utilized on the understanding we would address overtime issue later. We cannot keep redeploying other personnel for such duties.

¹⁰⁰ Exhibit P-101 CAC0347.

¹⁰¹ Exhibit P-101 CAC0338.

In my view, Airport Security [is the] responsibility of Airport Policing and if we do not feel security necessary, then no personnel should be provided.... I possess no information on which to base decision on tomorrow's flight other than fact added security requested [by] external affairs.¹⁰²

It would appear that there were at least three structural disincentives to adequate divisional deployment of additional required personnel. First, the ultimate authority to decide on deployment decisions did not reside with those in charge of receiving threat information, and, therefore, deployment decisions would not necessarily reflect sensitivity to the seriousness of the threat. Second, deployment of additional RCMP personnel for protective policing, at least in the case of VIP security, was a resource drain on other federal units. To the extent that there were limited human resources within the RCMP at the time, divisional COs would have to draw on personnel already actively engaged in other duties. Finally, to the extent that additional RCMP personnel had to be drawn from other federal units, the Force would also suffer a financial drain.

Impact of Resource Constraints on the Effectiveness of Airport Policing

Without sufficient resources, any commitment to effective aviation security will be severely curtailed. In 1985, the Airport Policing program was under considerable financial strain. There had been cutbacks to airport policing at Headquarters,¹⁰³ and the Airport Policing program was "...constantly being bombarded with reductions in staff."¹⁰⁴ Jensen testified about his perception of the state of airport policing at the time:

MR. JENSEN: ...you must know what the limited mandate of airport policing was in those days. It involved a ramp patrol to keep traffic moving, taxis in order and so on; a special and constant uniform presence within the terminal itself; and then, there would be a patrol car unit outside on the apron to make sure that nobody is tampering externally with aircraft that are going to depart. And then the occasional stroll around the perimeter.

Now that was the extent of airport policing within the RCMP that had been downsized by government over three successive years – I don't know '76, '78 and beyond.

¹⁰² Exhibit P-101 CAA0202. In this vein, it is significant that deployment decisions respecting the RCMP police service dogs also fell to the divisional OIC Operations: Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3245. One situation in which this structure could have had important consequences is in the context of an emergency bomb threat. The RCMP Emergency Manual in force at the time for Pearson Airport provided that when the Toronto explosives detection dog was unavailable, the RCMP should consider the use of the Montreal Airport's police dog team, upon approval of the OIC Ops. NCO: Exhibit P-101 CAC0310, p. 16.

¹⁰³ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2869.

¹⁰⁴ Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3078.

MR. SHORE: '84 (eighty-four.)

MR. JENSEN: Yes. So, you know, it wasn't a very effective means of dealing with very much; it was designed as an anti-hijacking measure.¹⁰⁵

According to an internal Transport Canada document dated April 23, 1985, the resources allocated to RCMP Airport Policing had been decreased by 57 per cent over a 12-year period.¹⁰⁶ In 1973, there were approximately 118 passengers travelling per day per RCMP member deployed; by 1983 that number had risen to 262 passengers per day per RCMP member.

Yet further cutbacks were being contemplated at this time. Paul Sheppard, the Director of Civil Aviation Security for Transport Canada, forcefully argued against a proposal from the Office of the Auditor General to save costs by further reducing the police "visibility" at federal airports. He emphasized that Canada was already viewed as a "weak link" in aviation security by the international community. In his view, other alternatives should have been examined, including questioning why the RCMP was not mandated to police federal facilities directly rather than under contract, which is paid for out of the budget of each airport manager. In his view, these accounting practices had led to "difficulties over the years."¹⁰⁷

The type of "difficulties" that arose from the nature of the relationship between RCMP and Transport Canada is alluded to in a May 1983 memorandum, written by the OIC of the Airport Security Branch, in which he expressed concerns that the reductions in staff would affect security and safety levels:¹⁰⁸

One of the biggest problems facing Airport Policing is our diminishing human resource levels. The problem is more enhanced by the present budgetary restraints which effects [*sic*] all levels of government. Continuous pressure on local Airport Managers to control their spending, results in local restraints being applied to adjust their budgets. One of the unfortunate results of such measures is that our Airport Detachment resources levels are continuously being scrutinized. The end result of cutting our personnel is that a level will eventually be reached where we will not have the resources to supply the extra security required/requested by the various foreign airlines. When this happens, any airlines requesting "extra" security measures will be required to hire private security guards to perform that function and our personnel will "respond" to requests for assistance. In some areas, these levels have already been reached.¹⁰⁹

¹⁰⁵ Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5460-5461.

¹⁰⁶ Exhibit P-101 CAF0660.

¹⁰⁷ Exhibit P-101 CAF0660.

¹⁰⁸ Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3078.

¹⁰⁹ Exhibit P-101 CAA0034.

The dynamic created in this climate was such that Transport Canada, which was responsible for payment for the RCMP's protective security services, was under continuing pressure to cut spending. At the same time, the RCMP, which had the information necessary to understand the threat and the necessary response, could not independently determine its own resource allocation for this function.

The under-resourcing of airport policing was likely a symptom of government's failure to appreciate the real threat posed by terrorism to aviation security at the time. This was also a possible cause of the scant attention paid to airport policing by other branches within the RCMP, and by other agencies, in 1985.

A comparison between the staffing of Headquarters Airport Policing Branch and the resources allocated to the VIP Security Branch is telling.¹¹⁰ Whereas the OIC of the VIP Security Branch held the rank of Superintendent, and the Branch was staffed by seven to nine members, the OIC of the Airport Policing Branch held the lower rank of Inspector, and presided over a two-man operation. Indeed, when the OIC was away, the position of Acting OIC was held by a Sergeant – a rank several grades lower than that of Inspector. Decisions on the rank attached to the OIC of a particular branch were, in fact, significant for resource allocation because a lower-rank position was less expensive, and because lower-ranked officers were able to command fewer subordinates.

The decisions about the staffing and rank for the Branch would also have an effect on the ability to ensure its directives were carried out. The effect of the RCMP's paramilitary rank structure on internal RCMP behaviour was very significant in 1985. As S/Sgt. Robert Wall explained:

In a paramilitary organization you do as you're told by your superiors, and that's sort of where it lay and that's the way we operated.¹¹¹

It is interesting to note that, in fact, Sgt. MacDonald was outranked by individuals working at the airport detachment.¹¹² This, combined with the lack of official line authority over the detachments, may have had further implications for the ability of Headquarters to have its directives enforced.

The low profile of Airport Policing in 1985, combined with the RCMP's failure to appreciate its potential role in national security issues, may help to explain some of the deficiencies of information and intelligence flow into Airport Policing Branch, including failures of flow within P Directorate itself.¹¹³ They may also have contributed to the failure to consult or involve Airport Policing in pressing national security issues, including the failure to involve Airport Policing in the work of the Ad Hoc Committee on Sikh Extremism.¹¹⁴

¹¹⁰ Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2978.

¹¹¹ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9671.

¹¹² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2877.

¹¹³ See Section 4.4 (Pre-bombing), Failures in Sharing of Information.

¹¹⁴ Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2973.

The view within the RCMP of the limited effectiveness or utility of the airport detachment, combined with the perception of the duties of airport special constables, described by MacDonald as, "...anything but exciting,"¹¹⁵ could only have added to the morale problems alluded to in RCMP correspondence.¹¹⁶ Indeed, the RCMP special constables, who performed airport policing functions, were not generally held in high esteem, and were often referred to as "security guards" by airport workers.¹¹⁷ While they were peace officers, took the same written exam as regular constables and had the same qualifications regarding firearms, special constables were differentiated from regular members in a number of ways that seemed to lower their prestige. They underwent less demanding physical training than regular constables, did not get to wear the red serge, and were generally older.¹¹⁸ Low morale caused by such factors may, in turn, help explain some of the performance deficits observed in 1985, including a lack of initiative and lax approach to security duties.¹¹⁹

Failure to Coordinate Effectively

Headquarters Airport Policing Branch did not ensure that all affected detachments had access to all relevant threat/intelligence information, nor did it attempt to harmonize the security provided across the country in relation to a particular threat. Thus, even though Air India was being afforded level 4 security at Mirabel Airport for most of the first half of 1985, at the Pearson detachment only routine security patrols were in place, except when additional security was provided on April 6, 1985 and in June. The same weekly Air India flight stopped at Pearson and Mirabel. There was simply no intelligence-based justification for such different levels of protection at the two airports.¹²⁰

The failure to coordinate is also illustrated by Headquarters' failure to disseminate important intelligence to those who needed it. The June 1st Telex, which had been forwarded to HQ Airport Policing Branch by the Pearson detachment, does not appear to have been shared with detachments at other airports, including Mirabel. This is difficult to understand or justify, because Mirabel was the first destination of Flight 182 after it left Pearson. Nor was the June 1st Telex sent to other RCMP detachments at airports that may have had flights connecting with Air India in Toronto, including, of course, the detachment at Vancouver airport, the originating point for CP Air Flight 060, onto which the bomb was first placed, and which was the connecting flight to Air India Flight 182, onto which the bomb was ultimately loaded.

Failure to Monitor

The Airport Policing Branch appears to have made no effort to monitor the implementation of its directives. MacDonald testified that he did not think such

¹¹⁵ Exhibit P-101 CAC0281.

¹¹⁶ See, for example, Exhibit P-101 CAC0281, p. 3.

¹¹⁷ Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3692.

¹¹⁸ Testimony of Bob Stubbings, vol. 33, May 24, 2007, pp. 3940-3941.

¹¹⁹ See Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.

¹²⁰ See further discussion of this incident in Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.

monitoring was necessary, stating "...we have an inspector at both places and staff sergeants and men who are doing the job and I don't think that I have to go down and make sure they do what I tell them. We at least hope they do it."¹²¹ Headquarters, as the "policy centre," was simply not concerned with on-the-ground operations, even though it was expected to make operational decisions about the security level. Because this role was not understood and the structure gave no actual authority to Headquarters, such decisions were neither enforced nor enforceable by Headquarters Airport Policing. While there is no evidence to suggest that the detachments generally ignored the directives of Headquarters, it is clear that there were significant instances where detachments did derogate without notice to Headquarters.¹²²

4.2.3 Transport Canada Structural Issues

Clearance Issues

An integral component of a successful aviation security partnership between Transport Canada, the RCMP, CSIS, and the air carriers would naturally be the ability to share information and coordinate a response quickly. Impeding this relationship, unfortunately, was the lack of secure means of communication, along with security clearance issues, that served to block effective communication and cooperation between Transport Canada and the RCMP.

As discussed in Section 4.4 (Pre-bombing), Failures in Sharing of Information, Transport Canada did not have a secure means of disseminating classified information to the regions and airports. Transport Canada was aware of the need for a centralized analysis and communications hub, along with national alert standards and measures to rectify these problems. Transport Canada's alert levels system had been developed for terrorist threats for the 1976 Olympic Games in Montreal, and there were "...no standard terms or definitions for a government alert system."¹²³ Creating a national standard would have eliminated much of the confusion that existed when a threat was received,¹²⁴ and would have greatly reduced the need to transmit classified documents. An airport that received notice that a maximum or high alert threat existed could take the action or actions prescribed by uniform airport and airline security programs.¹²⁵

In addition to the lack of a secure structure for distributing security information, it was also noted in the report of the CATSA Act Review Advisory Panel that "...no formal arrangements for the exchange of intelligence on aviation security between Transport Canada headquarters and its airports, air carriers, and law enforcement agencies, existed in 1985."¹²⁶ Even with proper channels of

¹²¹ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2877.

¹²² See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.

¹²³ Exhibit P-101 CAF0084, p. 1.

¹²⁴ Exhibit P-364, pp. 2-3.

¹²⁵ Exhibit P-364, p. 3.

¹²⁶ Exhibit P-101 CAF0160, p. 45.

communication, the Panel concluded that intelligence failures, such as the failure to properly disseminate the June 1st Telex,¹²⁷ might still have persisted, due to excessive secrecy and the “need-to-know” principle, which prevented information from reaching those on the front lines who would be making critical decisions.¹²⁸

In that vein, a Transport Canada briefing document from August 1985 stated that “...the dissemination of classified intelligence to non-security cleared personnel like airline officials and contracted security screening guards presents a major problem and requires ‘sanitation’ of the material.”¹²⁹

Transport Canada required its own employees to undergo background and criminal record checks in order to obtain security clearance. At Pearson International Airport in Toronto, the airport manager, Ed Warrick, held Top Secret clearance in 1985. Dale Mattson, the airport’s Safety and Security Manager, held the lower Secret clearance.¹³⁰ Transport Canada had also considered it important to ensure that the air carriers’ representatives had security clearance, so that they would be entitled to see classified materials pertaining to airport security. In 1984, Transport Canada contacted the air carriers through the industry’s agency, the Air Transport Association of Canada (ATAC), to inquire whether they would be interested in obtaining new security clearances in order to receive classified threat assessments directly.¹³¹ Unfortunately, this offer was declined.

On the other hand, the front-line employees and contractors of the air carriers, working at airports across Canada, were not subject to criminal record checks or credit checks, and were not granted any form of security clearance. This included the private security officers responsible for screening the travelling public and their baggage,¹³² as well as the aircraft groomers, catering staff, and others with access to aircraft and sensitive airport areas.¹³³ Without official security checks for these airport workers, it was almost impossible to screen out potential employees with a history of theft or other fraudulent criminal behaviour, with severe financial difficulties which could leave them susceptible to bribery, or who had links to extremist organizations. As noted in Section 2.4 (Pre-bombing), *Security Culture at Canada’s Airports*, for example, an investigation of the janitorial staff at Vancouver International Airport, which was conducted after the bombing of Air India Flight 182, revealed that a number of individuals with almost unlimited access to the airport had links to extremist Sikh organizations, such as the Babbar Khalsa and the International Sikh Youth Federation.

In the 1970s, Transport Canada gave consideration to creating a program to conduct security checks for all private airport and airline employees with

¹²⁷ See Section 1.2 (Pre-bombing), June 1st Telex.

¹²⁸ Exhibit P-157, p. 50.

¹²⁹ Exhibit P-364, p. 2.

¹³⁰ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3236.

¹³¹ Exhibit P-101 CAF0083, p. 1.

¹³² Exhibit P-157, p. 55.

¹³³ See, for example, Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3649.

restricted area passes and access control passes.¹³⁴ In 1979, however, Transport Canada concluded that it lacked the authority to require fingerprints and personal history forms from airline and airport personnel, and that the RCMP (including the Security Service) lacked the authority to provide Transport Canada with information obtained through security checks. As such, it was decided that the aviation industry companies themselves would bear responsibility for any reliability checks.¹³⁵ Paradoxically, access to the airport's restricted areas was frequently denied to government officials with Top Secret clearance, but access to these same areas was regularly granted to "...sometimes quite transient [airport] workers who could have any type of questionable background."¹³⁶

Despite the fact that airports were high-security environments under an increasing threat of sabotage in the 1980s, it was not easy to obtain security clearances for even those few airport personnel required to have them. According to the testimony of Henry Jensen, even the process for basic clearances was difficult and time-consuming and "a major problem" due to the volume of requests and the turnover of personnel.¹³⁷ Professor Reg Whitaker testified about the obstacles caused by these clearance issues, noting that the "overtime dispute" between Transport Canada and the RCMP that was precipitated by a request from Air India for increased security coverage in June 1985, was exacerbated by the fact that the RCMP possessed intelligence that, due to its classified nature, could not be shared with Transport Canada officials at Pearson.

Whitaker told the Commission that, because officials at certain airports lacked the appropriate security clearance in 1985, the situation was essentially "... trust us, but we can't tell you the specifics."¹³⁸ He went on to say that there are means today to convey intelligence in an unclassified but usable form to front-line workers even if they lack clearance to see the original documents.¹³⁹ The difficulty in obtaining security clearance for officials at airports was endemic in this period, and generally precluded the transmission of information. This created a substantial barrier to the effective and timely dissemination of threat intelligence to personnel concerned.

At a meeting of the National Aviation Security Committee that was convened a few months after the bombing, the problem of access to security information was revisited. The ATAC representative recommended that ATAC and the air carriers be provided with regular threat assessments every three months.¹⁴⁰ He was concerned by the delays in receiving intelligence encountered by those with a need to know that resulted from constraints on disseminating classified information. He also stressed that it was important that security managers for the air carriers be advised immediately of threats, and that assessments try to pinpoint where the threat was likely to materialize.¹⁴¹

134 Exhibit P-364, p. 5.

135 Exhibit P-364, p. 6.

136 Exhibit P-364, p. 5. See also Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.

137 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5404-5405.

138 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4365.

139 Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4364-4365. See also Volume Four of this Report: Chapter III, Section 3.4, Use of Intelligence in Aviation Security.

140 Exhibit P-101 CAF0162, p. 3.

141 Exhibit P-101 CAF0162, p. 3.

The August 1985 Transport Canada briefing note also had new-found emphasis on the need to screen and clear airport staff. Recognizing that previous Transport Canada studies had resulted in the decision not to run subversive indices and fingerprint checks on staff with airside access, because of high turnover and lack of perceived legal authority, it stated "...this might have been a good decision during periods of low threat but now it must be challenged."¹⁴²

Of course, this was never a "good decision." As established in Section 2.3.1 (Pre-bombing), Recognition of the Threat of Sabotage and Weaknesses in the Ability to Respond, the emerging threat of sabotage was well-understood by authorities in the early 1980s. The incidence of hijacking, which had been the predominant threat in the 1960s and early 1970s, had dramatically declined because the security measures that were put into place to address that threat were so effective. The changing threat environment did little to focus attention on the next looming threat (sabotage, including bombing of aircraft), however, and the lack of hijacking incidents in Canada contributed to growing complacency on the ground and increased difficulty in justifying the expenditure of additional resources. The lack of a purposive approach to security and the underutilization of intelligence-based threat assessments resulted in a general misunderstanding of risk at this time. As a result, there was an enduring perception that the level of risk did not warrant the time and expense required to implement security measures like background, credit and criminal record checks for airport staff as a condition of employment. The Air India disaster and the subsequent investigation proved that, in fact, the threat was so high and security so porous at airports that this and many other measures were badly overdue.

What is also apparent is that the communication, threat assessment, and airport security structures in place in 1985 were not designed with the need for rapid, national responses to intelligence-based threats to civil aviation in mind, and were therefore inadequate for the task.

Resource Issues

Like other government agencies, Transport Canada did not have limitless resources in the years leading up to the bombing of Air India Flight 182, and faced constraints with respect to budgets and person-years. Transport Canada obtained its annual budget from the Treasury Board, and a significant concern was that, as acts of unlawful interference with civil aviation continued to decrease in Canada, it would become increasingly difficult to justify increases in its security expenditures.¹⁴³ Even existing funding levels for Transport Canada's security expenditures were expected to come under growing scrutiny in a fiscal climate of cost-cutting; they would be seen as a prime candidate for savings in the "...continuing absence of a clearly perceived threat."¹⁴⁴ Mattson testified that managing the National Airport Policing and Security Program was a major expenditure for Transport Canada, and there was always an expectation that

¹⁴² Exhibit P-364, p. 6.

¹⁴³ Exhibit P-101 CAF0774, p. 41.

¹⁴⁴ Exhibit P-101 CAF0774, p. 22.

officials and other personnel would work to ensure efficiency and reduce costs in implementing this and other programs.¹⁴⁵

The cost-cutting pressure included a spring 1985 recommendation, in an audit report from the Office of the Auditor General, to save money by reducing the RCMP contingent at Canada's major airports by 50 per cent and replacing them with commissionaires and private security guards.¹⁴⁶ The Auditor General's Office urged this 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." Transport Canada was put in the position of having to forcefully argue against such cuts from an aviation security perspective, noting that, at the time, Canada was seen as a "weak link" internationally,¹⁴⁷ and that the RCMP members projected professionalism in a way that private security guards did not.¹⁴⁸

The department was aware, of course, that with the decreasing threat of hijacking, there was a "...tendency to relax and say 'it's all over,'" and look for cost-cutting opportunities.¹⁴⁹ Transport Canada asserted, in its defence, that it had already been able to effect a "significant reduction" in the RCMP staff at Canadian airports,¹⁵⁰ saving some \$7 million and considerable person-year expenditures over the previous 10 years, including the elimination of all 40 RCMP members from Canada's eight major domestic airports.¹⁵¹ Despite these cuts, Canada had an obligation to maintain certain basic security levels, as part of its international commitments to the International Civil Aviation Organization (ICAO). Transport Canada's Director of the Civil Aviation Security branch suggested to the Audit Director in his reply that, if cutting costs was a concern, he should instead examine the feasibility of having the RCMP police airports directly out of its own operating budget.¹⁵²

At that time, the RCMP provided its services at the airports under contracts which were funded by the operating budgets of each airport manager, a practice which the official pointed out "...led to difficulties over the years."¹⁵³ In June 1985, it was discovered that Transport Canada had actually neglected to include any funding for RCMP overtime security costs in that year's budget for Pearson Airport.¹⁵⁴

Another specific resource issue facing Transport Canada in the pre-bombing period was that it lacked the capital funds to build hold-room facilities, and to enable air carriers to screen passengers with electronic equipment at all

145 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3253.

146 Exhibit P-101 CAF0655, pp. 5, 23.

147 Exhibit P-101 CAF0660, p. 1.

148 Exhibit P-101 CAF0659, p. 1.

149 Exhibit P-101 CAF0659, p. 1.

150 Exhibit P-101 CAF0660, p. 2.

151 Exhibit P-101 CAF0661, p. 1.

152 Exhibit P-101 CAF0660, p. 2.

153 Exhibit P-101 CAF0660, p. 2.

154 This oversight, and the ensuing dispute between the agencies over a request from Air India for increased RCMP protection, is discussed in Section 4.5 (Pre-bombing), Failures in Coordination between Transport Canada and the RCMP.

airports.¹⁵⁵ Adequate facilities were also not always available for small carriers and general aviation, meaning that the unscreened passengers from these aircraft would arrive and then mix with screened “sterile” passengers at airports.

Additionally, Transport Canada lacked the resources to staff a sufficient number of Dangerous Goods and Civil Aviation Inspectors. As a result, it had almost no ability to inspect air carriers to ensure their compliance with Canadian security regulations and the carriers’ own security programs. As discussed in Section 4.7 (Pre-bombing), Transport Canada Policy Gaps and Implementation Deficiencies, there were so few inspectors that a 1984 report revealed that there were no security inspections conducted at all in three out of Canada’s six regions, and, in the remaining three regions, inspectors had only managed to complete between zero and ten per cent of the expected workload.¹⁵⁶

No company or agency will likely ever have limitless resources. The financial constraints faced by Transport Canada, including the pressure to cut costs and expenses wherever possible, necessitated budgetary choices that had an adverse impact on security. However, an effective threat-response regime utilizes finite resources in a manner that prioritizes its targets based on the greatest need. This requires comprehensive intelligence-gathering, appropriate sharing and sound threat analysis – functions which, as discussed throughout this chapter, were hindered by resource allocation, infrastructure, policy, and personality issues. As a consequence, fundamental security functions, such as the inspections conducted by the Dangerous Goods and Civil Aviation Inspectors, were severely under-resourced. It was not until this work ground to a halt, as a direct consequence of the inspection workload, that additional funds were made available to hire more personnel.

4.3 The Role of the “Specific Threat” in the 1985 Threat-Response Regime

Specificity and Threat Response

Given the significant volume of threats received by the Government of Canada in the pre-bombing period, many of which related to threats against Air India,¹⁵⁷ and some of which even specified the mode of sabotage that ultimately brought down Air India Flight 182,¹⁵⁸ the obvious question that has been raised time and again is: why was more not done to prevent the bombing? The answer consistently provided by the Government of Canada, in the immediate aftermath of the bombing, and stretching through to this Inquiry, was that there was no “specific threat” to Air India. But is the existence of a “specific threat” really a relevant factor in assessing the pre-bombing security response?

¹⁵⁵ Exhibit P-101 CAF0774, p. 21.

¹⁵⁶ Exhibit P-101 CAF0654.

¹⁵⁷ See, for example, Exhibit P-101 CAA0084, CAA0149, CAC0339 and Exhibit P-120(c): November 1984 Plot – Chronology.

¹⁵⁸ See, for example, Exhibit P-101 CAA0161 and CAA0185.

The concept of the “specificity” of threats is an important one for intelligence and protective security. There exist innumerable possible situations in which terrorists could attempt to exploit vulnerabilities in our society in order to carry out their designs. Against this backdrop is the reality of the finite resources available to intelligence and law enforcement agencies to detect and prevent these plans from actually being carried out. The greater the ability to pinpoint the intended time, place and means by which a threat may be carried out, the easier it is for appropriate resources to be deployed for a sensitive and rapid protective response. At the same time, while specificity can indicate to officials how to tailor their protective response to meet the threat, the effectiveness or sensitivity of that response will depend on the tools available to protective officers.¹⁵⁹

As well, the specificity of a given threat is not necessarily tied to the probability that a threat will, in fact, be carried out and is unrelated to the extent of harm that could result. While the specificity of a threat is a useful and necessary tool for protective decisions, these decisions cannot be made rationally without a consideration of the underlying risk, which will dictate the justification for the extent and nature of deployment in relation to the specificity of the threat. For example, if intelligence and circumstances dictate that there is a very high risk that a nuclear power station, somewhere in Canada, will be sabotaged at some time in the next month, given the extent of harm that could result, the fact that the precise reactor and date is unknown would hardly be a justification for anything less than an extremely robust level of protective security deployment at all stations in Canada. On the other hand, a threat that a named individual in a particular location was going to point a laser at the moon at 8 PM next Tuesday for the purpose of blowing it up, while very specific, would not likely cause officials much concern.

At the same time, even in circumstances of high risk, in the face of a very diffuse and undefined threat it may be impossible for a meaningful protective deployment response to be implemented. For example, if information was received that indicated a high risk that terrorists would undertake to injure a significant number of innocent people in Canada in the next month, the lack of specificity would make it very difficult to implement any manner of useful response. Should authorities deploy resources to guard schools? Malls? Trains? Water supplies? In this context, the most sensitive response is to investigate to find out more about the threat.

“Specificity” was a prominent concept within the protective intelligence and security regime in Canada in 1985. In the VIP Security context, threats identifying a target and a time frame would allow officers to target resources to a particular embassy or VIP, in order to provide responsive protection.¹⁶⁰ In the aviation security context, the concept of specificity, or “specific threat,” also played a very significant role. The term “specific threat” in the aviation security context is

¹⁵⁹ For further explanation of this concept, see Section 4.0 (Pre-bombing), Threat-Response Regime in 1985.

¹⁶⁰ See Testimony of Lloyd Hickman, vol. 18, March 7, 2007, pp. 1699-1700.

rooted in the European experience and the significant terrorist activity that had been taking place there. The European airlines were receiving phone-in bomb threats with a high frequency and, at the time, needed a rational way to sort out hoaxes and pranks from threats that required further consideration. Recipients of these phoned-in threats were trained to try to get as much information as possible from the caller so that the veracity of the threats could be assessed. Management would then assess the information and make a decision about what action to take. They were looking for specificity.¹⁶¹ However, the concept of “specific threat” was never intended to be, and should never be, applied pursuant to a strict definition, and by its nature, the concept is not easily reduced to a single coherent set of criteria. The appropriate response, with regard to the specificity of the threat, will naturally depend to a certain extent on numerous context-specific factors not easily reducible to a succinct definition.

In the pre-bombing era, the concept of “specific threat” was used pervasively, but inconsistently, with the result that there was no shared understanding of the concept across government. Moreover, it was often used in practice as an all-or-nothing trigger, whereby if a particular threat was not found to be “specific” enough, no protective action was taken – regardless of the risk involved. The concept was also applied mechanically, as a trigger for non-responsive measures. Ultimately, the use of the concept of specificity was not appropriately used as a device for sensitive protective deployment. Actors in the system became slaves to the tool – where the quest for a “specific threat” impeded the proper analysis and response to the threat.

From the date of the bombing, the concept of “specific threat” has been taken out of context and has served as an alibi for the lack of appropriate response in relation to Air India Flight 182. Under the actual regime in place, the “specific threat” concept had very limited formal importance and was often used because of a misunderstanding of the concept and of the regime. The continued use of the “specific threat” concept as an alibi perpetuates this misunderstanding and must be abandoned to allow for a true critical assessment of the threat-response regime that was actually in place.

The lack of sensitive protective response for Air India Flight 182 was not due to a lack of detail, or specificity, in the threats that were received by the Government of Canada. The problem was an ill-conceived threat-response regime that wrongly substituted a rigid notion of specificity for a true analysis of the risk and a tailored response.

Use of the Term “Specific Threat” Across Government

The claim that there had been no “specific threat” to Air India Flight 182 was repeatedly emphasized in various forums by government officials, past and present. At this Inquiry, RCMP members involved in threat assessment and in airport security stated categorically that the RCMP never received any information about a “specific threat” to Air India.¹⁶² Witnesses from other

¹⁶¹ Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4425-4426.

¹⁶² Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2719, 2737, 2741; Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3083.

government agencies repeated this assertion. Robert (“Bob”) Burgoyne, Glen Gartshore and Russ Upton, formerly with CSIS, and Gordon Smith, formerly with the Department of External Affairs, were all asked by Attorney General of Canada counsel whether they knew of a specific threat to Air India Flight 182. All witnesses replied that they had no knowledge of such a threat. This position of there having been no “specific threat” to Air India was reiterated numerous times in the Attorney General of Canada (AGC) Final Submissions. For example:

- “At no time prior to the bombing did CSIS obtain information about a specific threat to an Air India flight.”¹⁶³
- “As expressed elsewhere in these submissions, contrary to the testimony of Mr. Bartleman no information was received by DEA indicating a specific threat to the June 22, 1985 Air India flight.”¹⁶⁴
- “The CATSA Panel correctly determined that at the time of the bombing of Flight 182, neither Transport Canada nor the RCMP were aware of any specific threat against Air India.”¹⁶⁵

Despite their forceful insistence that there had been no “specific threat,” Government witnesses were unable to provide any consistent definition of that term.

According to Sgt. Warren Sweeney, who had been a member of the RCMP Security Service before joining the RCMP National Criminal Intelligence Branch (NCIB) at the creation of CSIS, a “specific threat” meant a threat specifying a date, a time and an event that would happen. He distinguished such a “specific threat” from a “general high threat,” which he said meant information from sources within the community that something *may* happen and the protected person or interest *may* be targeted. According to Sweeney, in order to qualify as “specific,” a threat would have to specify not only the date and time, but the specific plane targeted (or other specific target), as well as some indication of the identity of the authors of the planned attack, though this indication could be as vague as “Sikh extremists.” The threat would also have to be “...backed with other information and other intelligence.” The information had to be independently confirmed and not originate from a “single source,” no matter how specific it appeared on its face.¹⁶⁶

In contrast, Supt. Gary Clarke, who in 1985 was the OIC RCMP Protective Policing at O Division and, prior to that, the OIC at Pearson Airport detachment, considered the information that “...an unknown male with an Iranian voice warned that the

¹⁶³ Final Submissions of the Attorney General of Canada, Vol. I, para. 105.

¹⁶⁴ Final Submissions of the Attorney General of Canada, Vol. I, para. 147.

¹⁶⁵ Final Submissions of the Attorney General of Canada, Vol. II, para. 124.

¹⁶⁶ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2564 and Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2716-2717, 2742-2743. See Exhibit P-101 CAA0149 and Sgt. Sweeney’s explanation that the threat level and protection level would have been raised if the RCMP had other sources confirming the information: Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2716.

Air India Flight 181, 1984 September 01, would be hijacked,"¹⁶⁷ to be "...specific because it gives a time, a location, an aircraft number and a plane."¹⁶⁸ From his perspective, a threat could be "specific" on its face, without the requirement for any corroboration.

CSIS also made use of the concept of "specific threat." For CSIS, a "specific threat" required "specific intelligence," indicating the existence of a "very definite plot." "Specific threats" were to be distinguished from "General Ongoing Threats," which related to threats existing, and likely to continue, over time. CSIS documentation explains that "specific threats" could arise in an area of General Ongoing Threat, but would be distinguished because "...something definite [was] planned." Using this system to characterize threats was said to be advantageous because, in time, "...certain elements [would] automatically fall into the 1st category [i.e. that of General Ongoing Threats]."¹⁶⁹ Also, according to John Henry, who was with the CSIS Threat Assessment Unit (TAU) in 1985, for a threat to become a "specific threat," both specificity¹⁷⁰ and corroboration¹⁷¹ were required. He admitted that the specificity threshold was extremely high; it would have to be "no ifs, ands, or buts," rather information outlining when, where, to whom and how. It had to be something that CSIS could pass on and the RCMP could act upon.¹⁷²

"Specific threat" is a concept also used by Transport Canada. According to its 1984 Manual entitled "Policy, Standards, and Guidelines for the Development of an Airport Disaster/Emergency Plan and the Conduct of Exercises at Transport Canada Airports," a "specific threat" is "...a statement giving time of activation, location, type of bomb, or even complete details."¹⁷³ Dale Mattson, Transport Canada's Manager of Safety and Security at Pearson Airport in 1985, confirmed that this definition was used, but added that it does not cover all the elements because "...there [was] other criteria that was also used, and because you are not always going to get these items, but there may be other components that you evaluated and said yes, that meets our understanding of [what] the specific threat is."¹⁷⁴

A somewhat more relaxed definition, found in the RCMP's Emergency Procedures Manual for Pearson, states that a "specific threat" means "...detailed information will be supplied by the perpetrator regarding the target and possible detonation."¹⁷⁵ These Transport Canada and RCMP definitions depend on the level of detail provided on the face of that particular threat and mean that a threat can be deemed to be "specific" based on a single source. For that reason, they are incompatible with the definitions supplied by Sweeney and Henry with their added requirement of corroboration.

¹⁶⁷ Exhibit P-101 CAA0234, p. 3.

¹⁶⁸ Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3060.

¹⁶⁹ Exhibit P-101 CAC0275, p. 4.

¹⁷⁰ Testimony of John Henry, vol. 25, May 8, 2007, p. 2538.

¹⁷¹ Testimony of John Henry, vol. 25, May 8, 2007, p. 2516. See also Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3460.

¹⁷² Testimony of John Henry, vol. 25, May 8, 2007, pp. 2512, 2538.

¹⁷³ Exhibit P-101 CAF0077, pp. 7-8.

¹⁷⁴ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3220-3221.

¹⁷⁵ Exhibit P-101 CAC0310.

Because of the lack of a uniform definition of “specific threat” within the Government of Canada, information about threats to Air India was sometimes characterized differently by the different individuals involved in the threat assessment process and the implementation of security measures. For example, the Department of External Affairs transmitted information to the RCMP about a plan to hijack Air India Flight 181 to Toronto on Saturday, April 13, 1985.¹⁷⁶ This threat information was deemed not to be “specific” in internal RCMP documents,¹⁷⁷ though some limited additional security measures were implemented in response.¹⁷⁸ Sweeney also indicated this was not a “specific threat,” because the information came from only one source.¹⁷⁹ However, Clarke indicated, “I would consider that a specific threat; absolutely.”¹⁸⁰

Henry stated that the April 13, 1985 threat was “...leading in the direction” of being a specific threat. However, corroboration would be required before it would be classified as specific.¹⁸¹ Meanwhile, Gordon Smith, who was the Deputy Minister, Political Affairs at the Department of External Affairs, considered the April 13th threat to be specific, but discounted its importance to the Government of Canada, as it was an inbound flight for which there was little they could do.¹⁸²

Though witnesses before the Inquiry have indicated that the RCMP “...took every threat seriously” and “...took the appropriate action on each and every flight,” the existence of intelligence that an airline *may* be targeted and that something *may* happen was excluded from the “specific threat” category and included in the “general high threat” category,¹⁸³ which was believed to require less extensive security measures. Also, throughout the Government documents relating to threats against Indian interests prior to the bombing, there is language such as “...intelligence has not surfaced a specific threat” but “...there is a very distinct possibility of violence” and a “definite threat.”¹⁸⁴ These types of “definite” threats, involving a “distinct possibility of violence,” were treated like all other general high threats, requiring no special, additional security measures because they were said to constitute “non-specific threats.”

Essentially, it appears that, regardless of how much intelligence there was from “sources within the community” that Air India *may* be a target and that something *may* happen, if the information was not seen to meet the rigid criteria of “specific threat,” the additional security measures which were believed to be available in such cases would not be applied. In effect, the “specific threat” concept was used as a trigger, or an assumed trigger, for deployment decisions, without any consideration or analysis of the underlying risk.

176 Exhibit P-101 CAA0149.

177 Exhibit P-101 CAA0169.

178 Exhibit P-101 CAC0517, p. 3.

179 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2716.

180 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3058-3059.

181 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2515-2516.

182 Testimony of Gordon Smith, vol. 24, May 7, 2007, p. 2456.

183 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2740, 2742-2743.

184 Exhibit P-101 CAC0285.

“Specific Threat” and the June 1st Telex

The narrowness of the Government position is aptly illustrated by its application to the June 1st Telex.¹⁸⁵ That document from Air India warned of time-delayed devices being used to bomb an Air India flight in June 1985. Both Sweeney¹⁸⁶ and Clarke¹⁸⁷ denied that this information constituted a “specific threat,” even though it provides information on the target, the means, the time frame and the perpetrators. Mahendra Saxena, Air India’s Senior Security Officer, on the other hand, thought that the telex was a “specific threat,” and the fact that no specific flight was identified was not relevant, since Air India only had one flight in and out of Canada each week.¹⁸⁸ This would seem to be a much more common sense view, especially in light of the harm that could be caused by the sabotage of a flight, and the fact that, in June 1985, participants in the protective regime had no doubt that “...something was going to happen.”¹⁸⁹ Along these lines, the need for a response was also supported by Rodney Wallis who argued:

In 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.¹⁹⁰

Dr. William Leiss, an expert in the area of risk communication and risk management, testified before the Inquiry. During his testimony, he was provided with certain facts in relation to the June 1st Telex and was asked for his opinion on how he would classify the June 1st Telex with reference to a risk matrix, a tool that is used to classify the level of risk on the basis of probability and consequence of a threat.¹⁹¹

¹⁸⁵ Exhibit P-101 CAA0185.

¹⁸⁶ Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2732, 2752-2753. Sweeney stated on numerous occasions that the RCMP had no information indicating a “specific threat” to Air India: See, for example, Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2719, 2737, 2741.

¹⁸⁷ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3054-3056.

¹⁸⁸ Exhibit P-365, p. 3.

¹⁸⁹ See Exhibit P-101 CAA0240, p. 2, CAC0445, p. 5 and Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040-3046, 3085-3086.

¹⁹⁰ Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4426-4427.

¹⁹¹ Exhibit P-361, Tab 1, Appendix D.

Leiss expressed the view that the information contained in the June 1st Telex "... should have leapt off the page." Leiss put particular emphasis on the fact that the June 1st Telex was received in circumstances of a "risk situation," such that it would "...put you actually off the end of the scale in terms of the use of the risk matrix," given the fact that the threat "...of an attack on Air India specifically of this kind would have been certainly elevated by that point given everything you knew." Leiss testified that in the business of airline security, it is "...extremely rare to get such a specific piece of information," and would "...raise your level of concern to the highest possible level," so that in terms of response "...you would be at that point basically pulling out the stops." The June 1st Telex "...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.¹⁹²

Leiss said he would be "amazed" if this had been viewed as "...just another piece of information." In light of the specificity and high-risk situation, Leiss wanted to know, "Why didn't the alarm bells go off everywhere and what did the RCMP do with the information? Do we know? Did they share it?"¹⁹³ As the Commission heard during the course of the hearings, the RCMP did not share the June 1st Telex with either Transport Canada or with CSIS.¹⁹⁴ Furthermore, in light of this information, there were no adjustments to the security measures already in place at the time this telex was received.

Leiss clarified that he viewed the deficiencies in relation to the sharing and response to the June 1st Telex to be failures in "shared responsibility," which included failures in terms of Air India's "corporate responsibility." For Air India to simply pass on the June 1st Telex without making efforts to find out what would be done with the information seemed "bizarre."¹⁹⁵ A reasonable course of action, in his view, would be to:

...insist on having an immediate meeting, a further dialogue of trying to see whether you could actually work out a common plan and ... say "what can Air India and the Canadian Government and police forces do together to lower the risk that's involved. Or, what other options do we have to control the risk involved?"¹⁹⁶

In cross-examination, counsel for the Attorney General of Canada pursued a line of questioning that involved highlighting additional documents Dr. Leiss was unaware of prior to his testimony, as the documents had not previously been shown to him. Leiss fairly conceded that he had not seen other documents pertaining to the June 1st Telex and had not seen the document itself. He would therefore need to understand the pattern of information flow in order to properly

¹⁹² Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11981-11983.

¹⁹³ Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11981-11983.

¹⁹⁴ See Section 1.2 (Pre-bombing), June 1st Telex.

¹⁹⁵ Testimony of William Leiss, vol. 91, December 7, 2007, p. 12024.

¹⁹⁶ Testimony of William Leiss, vol. 91, December 7, 2007, p. 12025.

assess the impact of the June 1st Telex.¹⁹⁷ In the exigencies of the moment, re-examination on these issues was not practicable. In its Final Submissions, the Attorney General of Canada submitted that, given the fact that Leiss had testified without the benefit of these additional materials, his opinions in relation to the June 1st Telex should therefore be accorded little weight.¹⁹⁸

Subsequent to his testimony, Leiss was provided with significant background material in relation to the June 1st Telex and the threat environment at the time. Such materials included, among other documents, the Air India disclosure documents pursuant to subpoena,¹⁹⁹ the June 1st Telex and associated documents, and Air India telexes received by Canadian authorities relating to the period of June 1984 to June 1985.²⁰⁰ Allowing Dr. Leiss the opportunity to acquaint himself with the body of relevant historical information and asking him whether and how it changed his view was, in the view of this Commission, a practicable and fair way to address the concerns expressed by the AGC in cross-examination and in its Final Submissions. After a thorough review of these documents, Leiss provided the Commission with an Affidavit, sworn on August 20, 2008, reaffirming all of his opinions expressed in his original testimony, without modification. Particularly, he reconfirmed his statements in relation to the June 1st Telex.²⁰¹

The AGC strongly opposed the entering of the Leiss Affidavit into evidence and was provided with the opportunity to provide further submissions or documentation in response. However, no further response or documentation in relation to the Leiss Affidavit was received by this Commission until the AGC responded to the Supplementary Submissions of Families Groups, AIVFA, Family Interests Party and Air India Cabin Crew Association et al, on December 23, 2008.

Use of “Specific Threat” by Participants in Airport Policing

The extent to which the distorted use of the concept of specificity interfered with rational decision-making in the protective security regime is aptly illustrated by the way participants within Airport Policing used the concept in 1985. In 1985, the RCMP aviation security threat-response system contemplated five levels of security, with each level corresponding to specified RCMP deployment at the airport level.²⁰²

Only Mirabel Airport was operating at level 4 security throughout 1985, contrary to the RCMP Submission to the Honourable Bob Rae, which implied that level 4 security was being applied for all of Air India’s Canadian operations.²⁰³ In fact, until June 1985, Air India in Toronto was only being provided with level 1 security measures, the minimum possible level of security that the RCMP could provide.

¹⁹⁷ Testimony of William Leiss, vol. 91, December 7, 2007, pp. 12035-12037.

¹⁹⁸ Final Submissions of the Attorney General of Canada, Vol. II, paras. 469-470.

¹⁹⁹ Exhibit P-284.

²⁰⁰ See Exhibit P-433: Affidavit of William Leiss and Two supporting Tabs (Tab 3 and 7).

²⁰¹ Exhibit P-433: Affidavit of William Leiss and Two supporting Tabs (Tab 3 and 7).

²⁰² Exhibit P-101 CAA0025.

²⁰³ Exhibit P-101 CAA0335, p. 8.

The only exceptions, prior to June, were for the inaugural flight on January 19, 1985, and the April 6, 1985 flight.²⁰⁴ During this period, as noted in Government documentation, almost every Air India flight was preceded by a threat.²⁰⁵ It was only when External Affairs intervened on May 31, 1985, to request that the level of security for Air India in Toronto be made consistent with that provided in Montreal,²⁰⁶ that the RCMP finally increased Air India security at Pearson to the same level as at Mirabel.²⁰⁷ In his evidence, Supt. R.E. Muir, who was the Officer in Charge, VIP Security Branch, admitted that he would have expected, given the fact that the same Air India flight stopped at both Pearson and Mirabel, that the airline would have been afforded the same level of security at both locations, and that it was likely that at the end of May, Air India in Toronto was operating at an inadequate level of security.²⁰⁸

A partial explanation for this inadequate security at Pearson may lie in the inappropriate use of the “specific threat” concept by local officials. For example, on May 29, 1985, Air India provided the RCMP Pearson detachment with a telex, dated May 25, 1985, indicating that “...terrorist in Punjab reportedly planning violent activities for a week from June one 1985. Possibility of their making civil aviation as target in Punjab and elsewhere cannot be ruled out.”²⁰⁹ The memorandum contended that “...items like [transistors] two-in-one cameras cakes tinned [items] of food should not repeat not be allowed until and unless checking staff fully satisfied about their contents,” and that “...airlines must keep utmost vigilance on registered baggage.”²¹⁰ A handwritten note on the cover letter, likely written by the OIC of the Pearson detachment, states:

“This seems a non-specific threat.... It does not seem to warrant extra security.” [Emphasis in original]²¹¹

The author of this handwritten note was applying an all-or-nothing threshold, and using a rigid concept of specificity to deny the provision of *any* additional security – this, despite the fact that this threat indicated a narrow time period, that measures were suggested that would be responsive to the nature of the threat, that Air India was only operating one flight out of Canada a week, that local personnel had access to information that the Montreal flight was operating at level 4 security,²¹² and that this threat was received at a time when the threat to Indian missions and personnel was considered by CSIS and the RCMP to be high.²¹³

204 Exhibit P-101 CAA0169, CAF0010, p. 1.

205 Exhibit P-101 CAC0517.

206 Exhibit P-101 CAA0166.

207 Exhibit P-101 CAA0169.

208 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2946.

209 Exhibit P-101 CAA0161, CAA0164.

210 Exhibit P-101 CAA0161.

211 Exhibit P-101 CAA0164. While the same handwritten instructions indicated that S/Sgt Ward was to send the telex to RCMP Headquarters, there is no indication that CSIS was provided with it.

212 Exhibit P-101 CAA0335, p. 8.

213 See Exhibit P-101 CAB0851, CAC0331, CAC0338.

The narrow and strict understanding of the “specific threat” concept by airport officials interfered with their ability to properly assess threat information. Believing that the sole criterion of importance for deployment decisions was the specificity of the information in an individual threat, local personnel, at least at Pearson, often assessed each individual threat as discrete and without connection to the larger phenomenon of Sikh extremism. They were under the impression that it was appropriate for them to make protective security decisions based solely on individual threats. For example, dealing with the June 1st Telex, Inspector William Dawson wrote to Headquarters that he did not think that extra security was warranted on the strength of the information in the telex.²¹⁴ However, when threats were received by the RCMP from Air India, DEA, or other sources, officials were supposed to channel the information to CSIS, so that the information could be analyzed and assessed against CSIS’s entire database, and attempts could be made to corroborate any threat information.²¹⁵ When threat information is corroborated, this logically increases the likelihood, and therefore the risk, that the actual threat will be carried out. This type of information would be of obvious relevance to those people attempting to make deployment decisions in relation to any given threat.

While the exercise of analyzing a threat to determine whether or not it was “specific” was always meant to be a purposive and contextual one, in practice, the concept fell victim to rigid and unthinking application. The misunderstanding is well illustrated by the dispute that occurred between the RCMP and Transport Canada in June of 1985 over payment of overtime for additional RCMP security. The security level for Pearson airport had been raised by the RCMP to level 4 for the June 1st flight, and this level had been maintained throughout June. However, due to an oversight, Transport Canada had not budgeted for overtime costs for additional security. A resolution could not be arrived at between officials at the airport level. In an attempt to convince Transport Canada to authorize payment for overtime, Supt. Clarke, who was working at the Divisional Protective Policing policy centre at the time, met with Transport Canada officials at Pearson airport. While Clarke had received significant intelligence that, in the RCMP’s view, warranted the additional security, he could not share this information because of its classification²¹⁶ Transport Canada declined payment for the use of extra RCMP personnel, citing the fact that they considered the threat to be “non-specific.” In noting the explanation he received with respect to Transport Canada’s classification of threats, Clarke wrote:

At the present time, Transport Canada has categorized threats as being “specific” or “non-specific.” Their interpretation of “specific” is when a threat is received indicating that Air India Flight 123, scheduled to arrive on 85-06-01 has a bomb

²¹⁴ Exhibit P-101 CAA0208.

²¹⁵ See Testimony of John Henry, vol. 25, May 8, 2007, p. 2516 and Final Submissions of the Attorney General of Canada, Vol. II, para. 189. In fact, CSIS incorporated the criterion of corroboration into its own definition of “specific threat.”

²¹⁶ Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3046.

planted on board and will go off when the aircraft reached 15,000 feet or so. The “non-specific” nature of this threat, bearing in mind that Transport Canada was not privy to the intelligence on file, was such that Transport Canada did not see the need to employ extra security staff.²¹⁷

Clarke disagreed with the Transport Canada decision, but not with the appropriateness of the “specific threat” criterion (though perhaps defined differently) used to arrive at it. He tried to convince Transport Canada to pay for the overtime needed to implement level 4 security for Air India flights by pointing out that in the case of the June 1st flight, “...the threat [had been] considered specific enough to employ three (3) off duty airport special constables.”²¹⁸

Eventually, the issue of overtime payment was settled, and Transport Canada Headquarters apparently agreed to pay for the additional security. However, while this dispute was elevated to the highest levels of the RCMP and Transport Canada, it does not appear that at any point officials gave real consideration to what exactly they were fighting about. This led to the absurd situation where the “specificity” of the undisclosed threat was the subject of arguments in the abstract – which is in complete contradiction to the actual purpose of the concept. The lamentable result was that the additional security the RCMP expended so much energy arguing for turned out to be increased protection against hijacking. This, despite the fact that the late May/early June intelligence, on which security staffing decisions should have been made, indicated that there was a significant threat of bombs being placed in registered luggage.²¹⁹ Similarly, when the RCMP received additional intelligence, after the increased security was already in place, that “...something was going to happen,”²²⁰ this intelligence was used to resolve the pre-existing conflict about payment, but does not appear to have led to any substantive analysis of whether the extra security already in place was sufficient to meet the new, or enhanced, threat.

As though there was not already enough confusion about the meaning and implications of the “specific threat” concept, matters were further muddled by the fact that CSIS had its own, independent use of this term in the intelligence context. In CSIS’s view, for a threat to be categorized as “specific,” a certain degree of corroboration was required as an element of its specificity.²²¹ Therefore, in order to achieve the designation of “specific threat,” the analysis had to go outside the context of an individual threat, and examine the wider context for verification. Sgt. J.B. (“Joe”) MacDonald, who was responsible for setting the security level on the basis of CSIS intelligence assessments, was under the impression that the CSIS concept of “specific threat” had relevance to his enterprise. In explaining his decision to implement level 4 security for Pearson in June, MacDonald stated

²¹⁷ Exhibit P-101 CAC0445.

²¹⁸ Exhibit P-101 CAC0445, p. 4 [Emphasis added].

²¹⁹ See, for example, Exhibit P-101 CAA0161, CAA0185.

²²⁰ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040, 3044-3047, 3085-3086.

²²¹ See Final Submissions of the Attorney General of Canada, Vol. I, p. 49, note 97.

that in his view, this level, as opposed to level 5, the highest RCMP level, was appropriate, as he had received information from CSIS that the threat was “high,” or “serious,” but that there was “nothing specific.” MacDonald then implied that, in his view, level 5 security would be reserved for instances in which CSIS gave an indication that there was a specific threat, where CSIS gave some indication “...that a hijacking, a bombing or whatever would happen here, then, and they gave us that.”²²²

The difference in deployment between levels 4 and 5 was nearly insignificant, amounting to the use of an additional airline vehicle stationed airside, and another that would follow an RCMP patrol car when the escort of the aircraft was underway.²²³ MacDonald agreed that this was not a “big difference.”²²⁴ What this points to, however, is not that an appropriate test was applied, because it was not, but rather that no level of specificity would have helped, given the inadequate regime and the failure of the regime to adjust to the real threat – the threat of bombing. In adopting a mechanical translation of the category of threat into security levels, using the degree of specificity as the criterion without regard to the protective purpose of the exercise or to whether the measures related to operational need, the RCMP demonstrated a failure to appreciate the inherent risk analysis necessary to translate threat information into operational deployment.

What the foregoing shows is that the use of the “specific threat” concept in the pre-bombing period was “...ill-adapted for a terrorist situation.”²²⁵ As explained by Dr. Jacques Bourgault, “...not many terrorist groups tell that they will blow a plane on a given date, with a given flight number.”²²⁶ While an analysis of specificity is useful in that it allows for a better prioritization and tailoring of the protective response to the threat, the concept was often used as an unreasonably high threshold for totally non-responsive measures.

The Limited Relevance of “Specific Threat” in the 1985 Threat-Response Regime

The Government’s insistent focus on the concept of “specific threat” has served as a significant distraction, and has further perpetuated the confusion surrounding the actual regimes in place in 1985. It has also made the critical assessment of their adequacies more difficult. The reality is that under the regime in place in 1985, “specific threat” was not a relevant criterion for the appropriate protective security response to the types of threats that were being received in relation to Air India. In some cases, decisions about increases in security (or not) were made on the basis of this inapplicable criterion. Worse, even where the threat intelligence was properly interpreted as requiring a heightened protective response, the security measures dictated by the existing “threat level” protocol

²²² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2774-2776.

²²³ Exhibit P-101 CAA0025.

²²⁴ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2791-2792.

²²⁵ Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4355.

²²⁶ Testimony of Jacques Bourgault, vol. 36, May 30, 2007, p. 4355.

simply did not provide for any level of deployment that would have been sensitive to the threat of a bomb in registered luggage.

“Specific Threat” Applied Only in an Emergency Bomb Threat Context

A “specific threat,” as the concept was formally defined in the regime, was generally received on the day of the flight, and often by phone.²²⁷ If it was determined that the threat was “specific,” an emergency protocol was put into action, which involved moving the aircraft to a secure zone, and then offloading the passengers and taking them to a secure terminal. The dogmaster would then enter the aircraft with his dog to search the interior, and during that period the airline crew would offload the luggage and the RCMP Hand Search team would assist in setting the bags out on the tarmac to facilitate the search of the luggage by the RCMP explosives sniffer dog. The RCMP Hand Search team would also search the aircraft in areas where the dogmaster was unable to reach, and would oversee a process of passenger-baggage matching.²²⁸ At the end of the passenger-baggage matching process, any leftover bags were then considered suspect bags, to be removed to an isolation area.²²⁹ Eventually, claimed luggage would be reloaded onto the plane and passengers would reboard for resumption of their departure. This emergency protocol was highly effective in its ability to detect luggage containing bombs.²³⁰

In the emergency protocol, the assessment of whether or not a call-in threat was “specific” depended on the degree of detail in relation to the intended target and detonation time that was provided by the caller. Generally this assessment had to be done on the spot, so that an immediate decision could be made about whether or not to implement the emergency measures.²³¹ Transport Canada’s 1984 Manual provides a definition of the term “specific threat” in relation to a bomb threat:²³²

Bomb Threat – normally divided into two categories:

- a) a specific threat – a statement giving time of activation, location, type of bomb, or even complete details;

²²⁷ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3195; Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3052. See also the Transport Canada guidelines setting out standards for the development of emergency procedures: Exhibit P-101 CAF0077, p. 32. In relation to call-in bomb threats, the manual states, “It is crucial that there be an immediate assessment of a bomb threat.”

²²⁸ Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3020-3021.

²²⁹ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3222-3223.

²³⁰ This procedure was consistent with the RCMP’s assessment of the most effective means at the time to secure baggage against explosives. CATSA concluded that had this protocol been employed at Pearson Airport in June 1985, the bomb would likely have been detected: Exhibit P-101 CAF0160, p. 41.

²³¹ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3221.

²³² Exhibit P-101 CAF0077. The Attorney General of Canada submitted that the meaning of “specific threat” in the aviation security regime is “further delineated” by this definition: Final Submissions of the Attorney General of Canada, Vol. II, para. 118.

b) a non-specific threat – in which the caller makes a single statement that there is a bomb on an aircraft, in the terminal building, or on airport property.²³³

The emergency context²³⁴ in which this definition is relevant explains the lack of a requirement for corroboration in the “specific threat” definitions set out in the Transport Canada and RCMP emergency procedures manuals. This protocol and the application of the “specific threat” criterion were only relevant in such a time-sensitive situation, where circumstances did not allow for the engagement of the intelligence assessment process.²³⁵

When a threat was found to be “specific,” RCMP and Transport Canada officials would take over.²³⁶ While the air carrier played an important role in assessing the threat in such situations, the assessment of the threat was done with the involvement of RCMP and Transport Canada officials. When the airline received a call-in bomb threat, RCMP and Transport Canada representatives would assess the information based on threat assessment criteria in use at the airport. The definition of “specific” and “non-specific” as set out above was not meant to be exhaustive of the actual criteria used to gauge the veracity of the threat – for example, overheard laughter on the phone might be an indicator of a prank.²³⁷ Measures were taken either to initiate a complete bomb threat search procedure or, if the information was deemed to be “non-specific,” for government officials to “...stand back and let the air carrier make the final decision as to the action that they were going to take.”²³⁸

To ensure that air carriers, who often were the recipients of the call-in threats, reported relevant threat information to Government officials, section 812 of the *Air Regulations* imposed certain obligations on air carriers:

²³³ Exhibit P-101 CAF0077, pp. 7-8 [Emphasis added]. A similar, though not identical, definition is also provided in the RCMP Emergency Procedures Protocol for Pearson Airport: “a) Non-Specific: A general type of threat to which no specific information is given in relation to the target or detonation time. b) Specific: 1. Detailed information will be supplied by the perpetrator regarding the target and possible detonation; 2. Bomb threats are usually projected at commercial aircraft and property; and 3. The best method of search is an organized, combined effort utilizing the PSD Unit and the trained Hand Search Team.”: See Exhibit P-101 CAC0310, p. 13 [RCMP Emergency Protocol for Pearson].

²³⁴ The RCMP Emergency Protocol for Pearson, which outlines the protocols to be implemented when a “specific threat” is received, sets out the following possible scenarios in which this protocol could be triggered: when the aircraft is in the air or taxiing away from the terminal, when the aircraft is at the finger with passengers and cargo onboard, and when the aircraft is already in flight. All of these situations are clearly time-sensitive emergencies, where passengers and luggage are already onboard the aircraft. See Exhibit P-101 CAC0310: RCMP Emergency Protocol for Pearson.

²³⁵ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3221.

²³⁶ Exhibit P-101 CAA0118; Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3221.

²³⁷ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3194-3195, 3220.

²³⁸ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3194-3195. The assessment would also be done in consultation with the airline. The Transport Canada standards manual states that “...the air carrier has the responsibility to determine whether the bomb threat is or is not against a specific aircraft or flight.”: Exhibit P-101 CAF0077, p. 31. Dale Mattson’s testimony clarifies that the threat assessment responsibility did not derogate from Government officials’ overriding responsibility in this respect.

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

a) in every case, advising the appropriate police and aerodrome authorities and the pilot-in-command of the aircraft of the circumstances of the threat; and

b) in the case where the aircraft is on the ground, ensuring that

i) the aircraft is moved to a place of safety on the aerodrome, as directed by the aerodrome authorities, and

ii) the aircraft, the passengers and their personal belongings and the baggage, goods and cargo on board the aircraft are examined.

Section 812 was a safeguard. It was not intended to derogate from the overall supervisory and decision-making authority of Transport Canada and its delegates. For example, wide discretion was given to Transport Canada to take any action necessary, including detention of the aircraft, where an aircraft intended to depart while in contravention of the Regulations or while it was “unfit for flight.”²³⁹ This discretion could be exercised by the Government to ensure that section 812 was properly implemented, including to ensure that an air carrier had appropriately assessed or responded to a threat. The Government was often in the best position to understand and assess a given threat: it was responsible to collect, assess, and disseminate threat information,²⁴⁰ and had more access to intelligence channels. Because of classification issues, there was significant relevant information that the airline could not know. In 1985, threat information flowed in through many sources, including CSE, CSIS or the Department of External Affairs. Such information would often be “caveated” (meaning that it could not be utilized for certain purposes or disseminated without the consent of the originating party) or highly classified.²⁴¹ This led to situations like the dispute over payment for overtime for additional security at Pearson airport, where the RCMP was unable to share the highly classified intelligence it received with Transport Canada (and therefore presumably with airline) officials.²⁴² It would make little sense if government officials did not have a responsibility to intervene where they had important information that the air carrier could not possess.

²³⁹ See *Air Regulations*, s. 813.

²⁴⁰ Exhibit P-101 CAA0335, p. 8.

²⁴¹ See Exhibit P-101 CAF0083.

²⁴² Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3044.

In any event, section 812 only had application in the limited emergency circumstance of a call-in or time-sensitive bomb threat. It had no relevance to the threats that Air India and the Government of Canada received in relation to Air India in the immediate pre-bombing period. The RCMP used a separate protocol for threats received outside these emergency circumstances.

The “non-emergency” protocol was intended for circumstances when threat information was received, for example, from DEA, Air India, or other sources, where there was sufficient time to engage the threat assessment process. In these circumstances, RCMP headquarters Airport Policing Branch would transfer the information to CSIS for assessment. Based on CSIS’s assessment of the level of threat, the OIC, Airport Policing Branch would apply a security grid, originally developed at Mirabel and applied at Pearson and Mirabel in 1985,^{243, 244} to set a level of security, from level 1 to 5, to be applied by the local RCMP airport detachments for a particular flight.²⁴⁵ Security level 1 was always in effect.²⁴⁶ At increasing levels of security, additional measures came into play. For example, at security level 1, the RCMP provided, among other things, continuous patrol of the apron, intermittent inspections of the aircraft and patrolled sterile zones in the departure and arrival areas and the mezzanine. At level 3, the grid called for the RCMP to “...use the services of the dogmaster” and to provide a “...constant watch of passenger screening check point used by the airline during the time the counter is open.”²⁴⁷ Importantly, the protocol itself²⁴⁸ did not mention “specific threat” criteria. To the extent that the “specific threat” concept was used by those involved in implementation, this was due to a misunderstanding of the regime.

Threat-Response Protocols Non-Responsive to the Nature of the Threat

Deficiencies in the Emergency Protocol

While the RCMP manual in use at Pearson indicates that the optimal method of search for an emergency bomb threat was a combination of the RCMP police

²⁴³ Exhibit P-101 CAA0025. In 1985, this grid was applied at both Mirabel and Pearson airports: Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3112. While there is correspondence indicating that it was decided in May 1983 not to use this grid as a national policy at that time (Exhibit P-101 CAA0034), Sgt. MacDonald, who was the acting OIC of the Airport Policing Branch responsible for setting security levels in 1985, confirmed that in fact, the grid was adopted and used nationally: Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2765-2766. This is also consistent with the RCMP Submission to the Honourable Bob Rae, which suggested that the five-level security protocol was an RCMP-wide policy: Exhibit P-101 CAA0335, p. 8.

²⁴⁴ During cross-examination, Supt. Clarke appeared to accept Government counsel’s suggestion, based on the 1983 correspondence, that there was no national policy, even in 1985, and he therefore concluded that the grid must have been only a guideline: Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3098-3099. He also stated that this particular document was not a national policy since it was labelled “Mirabel,” and “...[i]f it was a national policy, it would show Headquarters Ottawa on it.” Nevertheless, and regardless of the characterization of the particular document, Supt. Clarke did confirm that this very security grid was applied for “...all other airports, right across Canada” (Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3099) and reiterated that the grid was, in fact, applied at Pearson (Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3112).

²⁴⁵ Once Headquarters set the level of security, the corresponding measures, as set out in the grid, were considered by Headquarters to be the mandatory minimum deployment to be effected by the airport detachments: See Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2770-2771.

²⁴⁶ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2767.

²⁴⁷ Exhibit P-101 CAA0025.

²⁴⁸ Exhibit P-101 CAA0025.

dog and the trained Hand Search Team,²⁴⁹ the manual does contemplate the situation in which the Toronto Police Service Dog (PSD) is not available. The Pearson Emergency Manual provides:

- When PSD not reasonable [*sic*] available and conditions warrant an immediate search, commence searching without PSD Team.
- When PSD not available, commence search with Hand Search Team only.
- When Toronto PSD (Explosives) not available and PSD required, consider use of Montreal Airport PSD Team upon approval of O. i/c/ Ops. NCO.²⁵⁰

Where there was no available explosives sniffer dog, as was the case on June 22, 1985, this meant that the RCMP Hand Search Team would be used alone and, if the emergency protocol was triggered, the Team would oversee the process of baggage-passenger matching, and conduct a search of the aircraft as described above.

The Final Submissions of the Attorney General of Canada argue that use of the RCMP Hand Search Team alone was a “sufficient back-up.”²⁵¹ As discussed in Section 2.3.3 (Pre-bombing), Over-Reliance on Technology, we now know that the use of passenger-baggage reconciliation would have almost certainly identified the luggage containing explosives on June 22, 1985. This does not mean that the use of the Hand Search Team was sufficient backup for a trained explosives detection dog, however, because as Mattson noted, the technique of passenger-baggage matching was premised on the assumption that “... anyone who was getting on board that flight was not going to jeopardize their own life.”²⁵² This is the reason that the optimal method was to use the RCMP dogmaster, in addition to the Hand Search Team, since that would provide a safeguard against would-be suicide bombers. Both Mattson and Carlson confirmed that it was not the role of the Hand Search Team to actually open and hand search luggage; nor was the Team trained to do so.^{253, 254} This fact is significant in light of the existence of important threat information in June 1985, suggesting that saboteurs could effect their plan by means of suicide bombing. The June 1st Telex, provided to the RCMP by Air India in early June 1985, states:

249 Exhibit P-101 CAC0310, p. 13.

250 Exhibit P-101 CAC0310, p. 16.

251 Final Submissions of the Attorney General of Canada, Vol. II, para. 242.

252 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3223.

253 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3222, 3224, 3261-3263; Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3000-3001. Carlson stated that in 1985 he estimated that he would be called into the airport in relation to bomb threats an average of 100 times per year, and in his two years at Pearson, his team never hand searched luggage.

254 Exhibit P-101 CAF0160, p. 52. There was some confusion arising out of the testimony of Gary Clarke, who testified that he thought the role of the Hand Search Team was to open and search the luggage. However, this testimony is contradicted by persuasive evidence from both RCMP and Transport officials, as well as common sense (in light of the training and equipment provided to RCMP airport personnel).

It is also learnt that Sikh extremists are planning to setup suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or carry-on baggage.²⁵⁵

Accordingly, passenger-baggage reconciliation by the Hand Search Team would not have been enough to respond to the threat of suicide bombing. It was a clear deficiency, given the threat information in circulation at the time, for the RCMP protocol not to provide for effective back-up protection against suicide bombing in the event that explosives sniffer dogs were unavailable. A protocol calling for members to open luggage and to perform hand searches²⁵⁶ of the contents would have gone some way in helping to identify explosives or suspicious items that were known to be used to conceal explosives – including radios, cameras and other electronic equipment.²⁵⁷

In any event, none of these measures – including passenger-baggage reconciliation, dog search, or hand search – were even attempted, since the relevant intelligence at the time, including the June 1st Telex, was not viewed as relating to “emergency threats” or “specific threats”.

Deficiencies in the Non-Emergency Protocol

The security levels grid itself was rigid and provided no scope to tailor the deployment to the nature of the threat. The measures contemplated by the grid were essentially oriented towards the prevention of hijacking – for example, providing escort and surveillance of the plane, patrol of passenger departure and arrival areas, and identification of all armed guards. In 1985, this orientation, combined with the rigidity of the grid, was particularly problematic, given the fact that particular threats of sabotage by checking luggage containing bombs aboard aircraft had been received, and that the threat of sabotage in general was by that time understood to have surpassed the threat of hijacking as the most pressing threat to aviation security.²⁵⁸ Regardless of the content of the threats and of CSIS intelligence assessments, RCMP Headquarters mechanically applied the grid, based on the CSIS categorization of the threat, to effect security deployment directives, without in any way tailoring the response to the actual nature of the threat.

The inadequacy of the regime is highlighted by the fact that a prank caller, who happened to call into an airline office with very specific details, could trigger

²⁵⁵ Exhibit P-101 CAA0185 [Emphasis added].

²⁵⁶ The technique and limitations of the method of hand searching are discussed in Chapter V (Pre-bombing), *The Day of the Bombing*.

²⁵⁷ See, for example, Exhibit P-101 CAA0161, which contains a telex from Air India Headquarters dated May 21, 1985, warning that “...items like [transistors] two-in-one cameras cakes tinned [items] of food etc. should not repeat not be allowed until and unless checking staff fully satisfied about their contents.” See also Air India telex dated April 22, 1985 indicating that “...weapons, explosives and other dangerous devices ... may be cleverly hidden, particular attention should be paid to cameras, electronic equipment and parcels”: Exhibit P-284, Tab 50.

²⁵⁸ See Section 2.3.1 (Pre-bombing), *Recognition of the Threat of Sabotage and Weaknesses in the Ability to Respond*.

extensive mobilization of resources, including highly sensitive anti-sabotage measures. But a threat passed through the intelligence stream and assessed as “high” by CSIS – as the result of a more rigorous analysis based on a large body of contextual threat information and open to checks such as corroboration²⁵⁹ – would essentially result in no effective anti-sabotage deployment or protection by the RCMP. The effect of this scheme was that RCMP protective measures implemented at the airport increased in relation to the level of threat, but what was offered was increasing protection against hijacking, regardless of the nature of the relevant threat. Moreover, the use of the level of “threat” as the determining factor in protective deployment decisions obscured the relevance of “risk.” Risk did not form a part of the analysis in responding to non-emergency threats – a clear deficiency in the regime.

Post-Bombing – “Specific Threat” Becomes the Alibi

Immediately after the bombing, the Government of Canada took a defensive stance, arguing publicly that there had been no “specific threat” to Air India. On the very day of the bombing, June 23, 1985, the Department of External Affairs sent a telex to Delhi which set out Transport Canada’s already-formed position on security measures connected with Air India’s baggage handling, with the notation “...you may wish to draw on following points to answer GOI [Government of India] or Indian Press enquiries.”²⁶⁰ The telex went on to state:

Had the air carrier deemed there was a specific threat to that flight, Air Regulation 812 calls for them to notify Transport Canada and the police. Had there been a specific threat, the aircraft would have been moved 150M from the terminal bldg and all bags would have been opened i.e. the emergency procedures would have been followed.

Leaving aside the issue of the correctness of this statement in terms of its description of responsibilities and procedures,²⁶¹ the statement does fairly situate the concept of “specific threat,” making it clear that the context is that of an emergency – that is, the aircraft is already on the tarmac with boarded luggage and passengers. With time, any such nuances became blurred and the Government’s constant reiteration of this concept became the defensive response of the Attorney General of Canada to the lack of protection afforded to Air India. For example, a Transport Canada briefing note, dated June 27, 1985,²⁶² reads:

²⁵⁹ See Final Submissions of the Attorney General of Canada, Vol. I, p. 49, note 97.

²⁶⁰ Exhibit P-101 CAE0209. See also Exhibit P-101 CAF0057, p. 43: On June 23, 1985, C Division responded to a request from Headquarters for an explanation of the “three bags” incident at Mirabel Airport and indicated that there had been “no special information” about a “specific threat.”

²⁶¹ As noted earlier, the RCMP protocol at Pearson did not call for the opening of luggage as part of the emergency procedures.

²⁶² Exhibit P-101 CAF0809.

Transport Canada Security Manual calls for full hand baggage inspections when a specific threat to a flight is received. Air India did not indicate a specific threat to Flight 182. RCMP confirm that they received no special request for special security because of specific threat to Flight 182. Additional assistance was requested for the month of June for all Air India flights. Additional assistance was provided by Transport Canada and the RCMP.²⁶³

This statement begins to blur the distinction between the two regimes in place, using the concept of “specific threat” as though it were the trigger for “special security,” a term used to describe measures put in place in the context of the non-emergency regime.²⁶⁴ Special security for Air India was, in fact, requested for the month of June in response to non-emergency threats received through the Indian High Commission and through Air India Headquarters in Bombay.

The exact text quoted above was copied verbatim in daily briefing notes throughout June and July,²⁶⁵ and this repetition and reinforcement may help explain how the notion of “specific threat” became so quickly and firmly embedded in the Government of Canada position.

The overall defensive stance taken by the Government in the immediate aftermath of the bombing is reflected in internal documents that increasingly point to the lack of “specific threat” to explain away security failures. At a meeting that was held on January 7, 1986, attended by Ivan Whitehall, Counsel for the Government of Canada in the civil litigation action launched by the families, Bruce Stockfish, Counsel for the Ministry of Transport, and government officials from the RCMP and the Ministry of Transport, a number of issues pertaining to the security regime in place on June 22, 1985, were discussed. The memorandum describing the discussion notes:

Whitehall asked what powers the government i.e. MOT/RCMP had to prevent an aircraft from departing if it was judged that conditions on board were unsafe. Bruce Stockfish stated that Section 812 of Air Regulations empowers the government to detain an unsafe plane, however, there must be a specific threat to that plane. There was no/no specific threat to Air India 181/182 on 85-06-22.²⁶⁶

²⁶³ Exhibit P-101 CAF0809, p. 4 [Emphasis in original].

²⁶⁴ See, for example, Exhibit P-101 CAA0240, p. 2, where Supt. Clarke wrote “...specific intelligence was received by the RCMP which indicated that special security precautions should be taken on all Air India Flights to and from Canada” [Emphasis added] and Exhibit P-101 CAA0229, pp. 2-3, where in an internal DEA telex written just after the bombing it is written: “In discussions with Indians CDA fully acknowledged that a series of requests for special security measures for Air India flights had been received over recent weeks.” [Emphasis added].

²⁶⁵ See, for example, Exhibit P-101 CAF0810, CAF0811 and CAF0812.

²⁶⁶ Exhibit P-101 CAC0517, p. 3.

In reality, the Government of Canada was not powerless to intervene in the aircraft's departure absent a "specific threat." There was nothing in section 812 of the *Air Regulations* that required a "specific threat" before an unsafe plane could be detained.²⁶⁷

The same lines that were used within Government and with the media were also used with the families of the victims. On July 22, 1985, just one month after the bombing, at a meeting of government officials with representatives of the families, Paul Sheppard, Director of Civil Aviation Security in the Ministry of Transport, told the families:

With respect to Air India flight 182, there was no threat to that specific flight on June 22nd in relation to sabotage. Had there been a specific threat to that flight, additional security measures would have been imposed on Air India by Transport Canada and law enforcement authorities.²⁶⁸

In its Final Submissions, the Attorney General of Canada continues the confusion. Dealing with the June 1st Telex,²⁶⁹ which stated²⁷⁰ that "...assessment of threat received from intelligence agencies reveal the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage," the Attorney General of Canada Submissions argue:

The June 1st telex was tragically accurate, but warning as it did all Air India operations for an entire month, it was not a specific threat to Flight 182.²⁷¹

...

The June 1st telex did not contain a specific threat against Flight 182. As these submissions have already canvassed, a "specific threat" is information that points to a certain flight as an identifiable target. The June 1st telex was not directed solely against the weekly Air India flight from Canada – rather it was sent from Bombay to all Air India offices worldwide. It was directed to all Air India flights operating in June 1985.²⁷²

The discussion of whether the June 1st Telex was "specific" is entirely beside the point. Under the 1985 aviation security regime, in response to a "specific threat," the airplane was to be moved to a place of safety, the luggage and passengers

²⁶⁷ See above in this chapter: s. 813 of the *Air Regulations* provided that the Government had wide discretion to take any action necessary to ensure that an aircraft would not depart in circumstances considered by the Government to be dangerous.

²⁶⁸ Exhibit P-101 CAF0819, p. 11.

²⁶⁹ Exhibit P-101 CAA0185.

²⁷⁰ Exhibit P-101 CAA0184.

²⁷¹ Final Submissions of the Attorney General of Canada, Vol. II, para. 198.

²⁷² Final Submissions of the Attorney General of Canada, Vol. II, para. 192.

offloaded, the explosives sniffer dog was to search the luggage and a process of passenger-baggage matching was to be conducted. Consider now, taking the Attorney General of Canada approach, how this would play out if the telex were “specific” as to the June 22nd date. Given that the threat was received well in advance of the flight, and knowing this information, would the proper RCMP response have been to have the passengers and luggage loaded, then to have the plane moved to a place of safety, and then to have implemented the emergency protocol? The characterization of the telex as not “specific” does not answer the question of whether the security measures implemented were adequate to respond to this threat.

Over time, it appears that “specific threat” has become a malleable concept, whose contours have been adjusted to fit the need to justify the deficiencies in the response to individual threats, as well as to the cumulative body of pre-bombing threats. At its furthest reach, the focus on “specific threat” has allowed a conclusion that the lack of a “specific threat” – however defined – meant that there was no intelligence at all about threats to Air India. In a “lessons learned” document written in 1986 by a member of the HQ Air India Task Force,²⁷³ the RCMP maintained that prior to the bombing, it had “...no intelligence of a direct threat to Air India or Indian missions/personnel” and “...no indications that Air India would be the target” in the context of the general high threat in June 1985.²⁷⁴ This statement flies in the face of the wealth of pre-bombing information about threats to Air India and Indian interests in Canada in evidence before the Inquiry. In his testimony at the Inquiry, the author of the document, Sgt. Sweeney, explained that he made the statement because there were no “specific threats” against Air India.²⁷⁵

Conclusion

In spite of the Government’s insistence throughout this Inquiry that there was no “specific threat” to Air India, it appears that no coherent definition of the concept, at least as used within government, could be provided. Further, the concept was irrelevant to the actual protection of Air India Flight 182 in the aviation security regime in place. Where the concept was used, it was because of a misunderstanding of the regime, and it was turned into an all-or-nothing trigger that was inappropriate in a non-emergency context. Post-bombing, the Government continued to rely on the concept as an alibi for the deficiencies in security at Pearson and Mirabel and, over time, it became the basis for an even broader allegation that the security community had no threat information about Air India. The failure of the Government to adequately respond to the threats it received had nothing to do with their specificity. The problem was a threat-response regime that failed to incorporate any manner of risk analysis to assess adequately or respond to the actual threat at issue – the threat of bombing.

²⁷³ Exhibit P-101 CAF0055; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2706-2707.

²⁷⁴ Exhibit P-101 CAF0055, p. 3.

²⁷⁵ Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2708, 2719.

4.4 Failures in Sharing of Information

A Failure to Communicate Critical Information

A recurrent theme in the evidence presented at the Commission hearings, and in this Report, is the failure to pass on critical information when it was needed. Among the most striking examples was the fact that, prior to the bombing, both the RCMP and Transport Canada received information about threats but often did not see the need to advise each other, or other agencies or carriers, of the pertinent information. Transport Canada recognized this potential deficiency, but did not advocate for the creation of a centralized and consistent system for sharing information. Air India, similarly, had committed to sharing all threat information with all of the relevant agencies but failed to distribute some of the most important information about the risk to its flights with key partners in security. The *CATSA Act Review Advisory Panel* found that the poor communication among officials of the RCMP, Transport Canada personnel at Pearson and Air India was one of many human failures leading up to the bombing of Air India Flight 182.²⁷⁶

The failures to share information appropriately between agencies and to coordinate effectively were exacerbated by the fact that there were significant deficiencies in the agencies' internal handling of information, as well as in their systems for directing and processing such information. These interagency and intra-agency information-sharing failures greatly impeded their capacity to make quick decisions and implement sensitive operational responses to the threat.

Transport Canada's Internal Communications Structure

Deficiencies in Formal Structures for Sharing of Information

Prior to the bombing, there were no formal agreements "...for the exchange of security information and intelligence between Transport Canada headquarters, airports and airlines with intelligence and law enforcement agencies." Security information was passed along informally, with Transport Canada and RCMP officials relying on an "old boys' network," built on personalities and past relationships.²⁷⁷

With regard to intelligence and threat assessments in civil aviation security, the RCMP Security Service was originally responsible for analyzing intelligence and providing threat assessments. These were then cleared at Transport Canada HQ and disseminated to other Transport Canada officials, air carrier employees and RCMP airport detachments. After July 1984, the threat assessment responsibility moved to CSIS, but the RCMP Airport Policing Branch retained a role in requesting and disseminating threat assessments.

²⁷⁶ Exhibit P-157, p. 45.

²⁷⁷ Exhibit P-364, p. 1.

In the early 1980s, Transport Canada recognized that it required a central point for the analysis and dissemination of security intelligence. A report describing the office of a new National Civil Aviation Security Coordinator emphasized that "...the prompt and orderly transmission of threat information to all concerned is vital to the success of any programme for the prevention of Acts against Civil Aviation." The hub of the inward and outward flow of information would be the Director General of Civil Aeronautics. The Deputy Coordinator would be the Director of the Civil Aviation Security Branch of Transport Canada. The scope of interest was to be the collection, evaluation, and dissemination of information concerning any planned activity or indicated threat against civil aviation, and the identification of activities and groups who might be suspected of planning to hijack or place a bomb or incendiary device on an aircraft, or commit an act of sabotage.²⁷⁸

According to this Transport Canada report, "...persons who become knowledgeable of information of the type described above should report it by the fastest means available to the National Civil Aviation Security Coordinator" or, alternatively, to the nearest Transport Canada facility. Transport Canada HQ would then analyze the information and, "...if appropriate, the information will then be forwarded to the local airport, airline and law enforcement authorities who have an active interest."²⁷⁹

Transport Canada received intelligence and intelligence assessments from many different sources.²⁸⁰ While the RCMP Security Service had been the sole agency analyzing threat intelligence between 1973 and 1984, the advent of CSIS added another layer of complexity.²⁸¹ The dissemination of information by the Director of Civil Aviation Security would be determined "...by judgment and experience as to those people who have a 'need-to-know'."²⁸² Urgent matters were to be handled by telephone calls.

Unfortunately, in practice, these links did not provide the smoothly-functioning central point of contact originally envisioned by Transport Canada. In the absence of clearly defined channels and procedures, networks remained informal, vague, and haphazard. Communications were susceptible to misunderstandings and personality conflicts – an acknowledged weakness of the often informal and personality-driven relationships between the law enforcement and security intelligence communities that continues to this day.²⁸³ With respect to the sharing of intelligence between the RCMP and Transport Canada, the problems

²⁷⁸ Exhibit P-101 CAF0551, pp. 1-2.

²⁷⁹ Exhibit P-101 CAF0551, p. 3.

²⁸⁰ Exhibit P-364, p. 1. These sources included CSIS, the RCMP, the Communications Security Establishment (CSE), the Intelligence Advisory Committee, External Affairs, the Solicitor General, the United States Federal Aviation Administration (FAA), and "...other foreign government civil aviation security officials, Canadian and Foreign air carrier security officials and Transport Canada Regional and Airport officials." They communicated with the Director of Departmental Security and the Director of Civil Aviation Security at Transport Canada.

²⁸¹ Exhibit P-157, pp. 45-46.

²⁸² Exhibit P-364, p. 1.

²⁸³ See, for example, Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6251-6252.

multiplied because, as was emphasized by the *CATSA Act* Review Advisory Panel in its Report, "...in the absence of clear lines of authority and responsibility, mistrust and misunderstanding caused breakdowns."²⁸⁴ This meant that two-way sharing of pertinent security information between the agencies was inconsistent.

Lack of Secure National Communications System

As a further complicating factor, Transport Canada lacked a secure national communications system, requiring it to rely on the assistance of the RCMP in disseminating classified intelligence to personnel at airports.²⁸⁵ In a memorandum dated March 19, 1985, Paul Sheppard, the Director of Civil Aviation Security, commented that this weakness posed a significant problem.²⁸⁶ If it was necessary to disseminate classified intelligence in hard copy, the message would need to be sent through the RCMP telex system to an airport such as Mirabel or Pearson, where the Transport Canada security officers would be contacted by telephone and told the information was on its way.²⁸⁷ Sheppard wrote that a secure network was needed to link Transport Canada HQ to each region and major airport, but no steps had been taken to implement such a system before the bombing.

As a consequence, major airports sometimes lacked timely access to security intelligence, and Transport Canada's unstructured relationship with the RCMP did little to remedy the matter. An April 1985 security exercise review at Pearson airport highlighted the fact that Transport Canada could not send classified information to Pearson because there was no secure telephone or telex system in place. According to the Transport Canada officials at Pearson, "...the RCMP Airport Detachment have a secure communications system and are often in receipt of such information well in advance; however, RCMP are often reluctant to pass this type of information on to us."²⁸⁸

In the assessments conducted after the bombing, Transport Canada recognized that a national standard for aviation alerts, which defined the measures to be implemented for a given threat level, would eliminate much of the confusion that was encountered whenever a threat to civil aviation was received.²⁸⁹ A national system would also have the advantage of eliminating the need to transmit classified documents. When a high or maximum alert threat was declared, airport managers and air carriers would know what action to take.

Deficiencies in Sharing of Information with Airports

The problem created by the absence of consistent national alert levels and security measures was exacerbated by the absence of policies, prior to the

²⁸⁴ Exhibit P-157, p. 70.

²⁸⁵ Exhibit P-364, p. 1.

²⁸⁶ Exhibit P-101 CAF0083.

²⁸⁷ Exhibit P-364, p. 1.

²⁸⁸ Exhibit P-101 CAF0585, p. 5.

²⁸⁹ Exhibit P-364, pp. 2-3.

bombing of Air India Flight 182, about sharing threat information with airports. Information was compartmentalized and segregated, without consideration for the fact that passengers, baggage and cargo across the country would be connecting to high-risk flights and airports from low-risk ones. The danger presented by interlined bags simply went unseen. The *CATSA Act Review Advisory Panel* referred to this lack of vision as “the myopia syndrome.”²⁹⁰ For example, neither CP Air nor any officials at Vancouver International Airport were advised of the high threat situation facing Air India in June 1985, and no thought had been given to doing so. CP Air’s security measures for high threat situations were therefore not in force at Vancouver International Airport on June 22, 1985.

Examining a case study of the threat assessment communication system from this period, the *CATSA Act Review Advisory Panel* concluded that “...a number of observations can be drawn from this case study, none of them particularly flattering to the principals.” In particular, the lack of secure communications channels led to potential delays in response during threat situations, and the interface between Transport Canada HQ and the air carriers, the airports, and the intelligence and policing agencies “...seemed uncertain, ad hoc.”²⁹¹ That uncertain system was made even more problematic because the “need-to-know” principle governed dissemination, resulting in officials having inconsistent access to important threat information that could significantly impact the state of security and the ultimate response to a threat.

Even after the bombing, communications remained as chaotic and uncoordinated. In July 1985, CSIS informed senior Transport Canada officials at headquarters that it would be distributing important threat intelligence information.²⁹² This information was picked up by the officials from the CSIS office and forwarded to the RCMP Director of Protective Policing. The threat related to four airports, but the intelligence was to be passed on further to the RCMP Airport Policing detachments at all 10 Class 1 airports. Unfortunately, only two of these airports had secure telex terminals. The four affected airports were therefore contacted by telephone and told that the RCMP had details of a threat warranting elevated security, and it was recommended that the airports call emergency meetings of their respective airport security committees. Representatives of two airlines were also contacted and told to contact the RCMP regarding the threat.

When CSIS obtained additional information concerning the threat, Transport Canada officials at the four affected airports were contacted by telephone and told that their respective RCMP Airport Policing detachments had further details.²⁹³ Although the local Transport Canada officials were told that the messages would be available for pickup at specific locations, the messages were not received, and in the ensuing confusion a flurry of telephone calls were made back and forth among the airports, Transport Canada HQ and the RCMP.

²⁹⁰ Exhibit P-157, p. 69.

²⁹¹ Exhibit P-157, p. 47.

²⁹² Exhibit P-364, p. 3.

²⁹³ Exhibit P-364, p. 3.

The following day, some of Transport Canada's regional headquarters and some airports were still in the dark about the threat, and local RCMP detachments were reluctant to divulge the details.²⁹⁴ Meanwhile, at one of the four affected airports, an emergency meeting of the airport security committee was convened, and air carrier representatives, with no security experience, attended the meeting. Although the RCMP Inspector in attendance warned those present about the need for security to safeguard the intelligence, one of the air carrier representatives forwarded messages containing extremely sensitive details onwards.

Similarly, in a September 1985 meeting of the National Civil Aviation Security Committee in Ottawa, John Cook, Transport Canada's Manager of Policy and Intelligence for the Civil Aviation Security branch, highlighted communications problems that had resulted in poor coordination and cooperation among members of law enforcement agencies, the air carriers, and Transport Canada. The major problem areas causing the breakdowns were the lack of a secure communications system, and new and inexperienced personnel who were unfamiliar with their duties.²⁹⁵

Deficiencies in Coordination and Sharing of Information between the RCMP and Transport Canada

Transport Canada was very concerned about unilateral decisions made by the RCMP to relay intelligence to airports and airport personnel. In an April 1985 memorandum, Sheppard noted that due to the RCMP's distinguished reputation, foreign government and air carrier officials often approached it directly with threat information. The RCMP would then frequently act without any discussion of the situation with Transport Canada, as it considered such information to be a purely police matter.²⁹⁶ Airport managers, on the other hand, felt that they should be informed of potential threats by Transport Canada HQ, and not by the RCMP.²⁹⁷

Sheppard's memorandum raises issues both in terms of the appropriate sharing of information, as well as the coordination of security measures. The RCMP, as part of its obligations to collect, evaluate and disseminate intelligence information concerning national and international threats to civil aviation,²⁹⁸ was to ensure that Transport Canada was made aware of all relevant threat information. As well, pursuant to the Memorandum of Agreement (MOA) between the agencies, the RCMP was required to consult regularly with the Transport Canada Airport General Managers.²⁹⁹ It was important for Transport Canada to be aware of relevant threat information so that additional measures or procedures could be imposed, if necessitated by the nature of the threat.

²⁹⁴ Exhibit P-364, p. 3.

²⁹⁵ Exhibit P-101 CAF0162, p. 10.

²⁹⁶ Exhibit P-101 CAF0084, p. 2.

²⁹⁷ Exhibit P-364, p. 2.

²⁹⁸ Exhibit P-101 CAA0335, p. 8.

²⁹⁹ "Manager" is defined in the MOA as "Airport Manager."

At Pearson airport, in particular, these local breakdowns in communication and sentiments of mistrust between the two agencies appeared to occur frequently. Supt. Clarke testified that when an engine failed on Air India's June 8, 1985, flight from Pearson,³⁰⁰ the Airport General Manager did not notify the RCMP of this breakdown.³⁰¹ As he explained:

...there was a little bit of a breakdown in communication as well because – when the engine on the aircraft went out of service, the airline had to come back to Lester B. Pearson International Airport. Unfortunately, the General Manager didn't convey that to the RCMP. We didn't know the aircraft was coming back because of the engine. The engine [*sic*] had to be taken to a hangar and the engine removed. We weren't told that.

...

Maybe he didn't consider it important.³⁰²

In actual fact, an RCMP internal document indicates that neither Transport Canada nor the RCMP were notified by Air India about this incident.³⁰³ Nevertheless, the misperception and ill will regarding this incident (which still persists within RCMP folklore today) is a reflection of the level of tension and the perception of a lack of cooperation in 1985.

In its Final Submissions, the Attorney General of Canada argued that the evidence before the Commission demonstrates that the various players in aviation security "...cooperated and communicated with each other continuously about the threats to civil aviation in general, and against Air India specifically."³⁰⁴ It is not disputed that there was ongoing communication and cooperation between the RCMP and Transport Canada. The problem that emerges is the failure to have a formal and consistent method of communication and dissemination of information to all relevant parties as needed. Structures were simply not in place to enable this to occur. Transport Canada and the RCMP had access to different pools of intelligence and did not always effectively share information. Their ability to provide a coordinated operational response to aviation security threats was correspondingly compromised.

RCMP Internal Information Sharing Failures

The complex communications arrangement between Transport Canada and the RCMP suffered from a lack of clear policy and procedure, and resulted

³⁰⁰ Exhibit P-101 CAF0010, p. 3.

³⁰¹ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3065-3066.

³⁰² Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3065-3066.

³⁰³ Exhibit P-101 CAF0586, pp. 6-7.

³⁰⁴ Final Submissions of the Attorney General of Canada, Vol. II, para. 90. Dale Mattson's testimony regarding the threat assessment process was cited as an example of this continuous communication.

in confusion. These communications failures were exacerbated by the fact that, even within the RCMP, there appeared to be little in the way of a formal structure for reporting and disseminating threats to aviation security. This was exemplified by the fact that threat information concerning aviation security was not consistently reported to the Airport Policing Branch when relevant threats were received by other branches of the RCMP.

Information Sharing Failures within Airport Policing

Air India shared significant threat information with RCMP airport detachments. These threats were often transmitted from Air India headquarters in Bombay to local Air India representatives in Toronto and Montreal, who would in turn forward the threats to RCMP airport detachment officials. On receipt of such information, the airport detachments often failed to transmit it to the RCMP Headquarters Airport Policing Branch. From the perspective of Headquarters, if a request for extra security in response to a threat could be resolved locally, it was not necessary for Headquarters to be informed of the threat.³⁰⁵ For example, the fact that the airport detachments did not send Headquarters information from Air India about the need for attention to be paid to "...cameras, electronic equipments and parcels carried as hand baggage,"³⁰⁶ or about a terrorist group in Europe intent on exploding a device on an international airline in flight by placing an explosive inside a suitcase,³⁰⁷ was not of concern to the acting OIC of the Airport Policing Branch as, in his view, the issues could be dealt with locally.³⁰⁸

Similarly, a July 1984 telex noting that an individual had "...volunteered to carry a bomb in his accompanied baggage with a view to blowing up an Air India plane in order to draw attention to the demands of the Sikhs,"³⁰⁹ was apparently never forwarded to RCMP Headquarters; nor was an October 1984 telex indicating that a statement had been made, at a meeting organized by the All India Sikh Student Federation, that there would be "...one hijacking of an Indian aircraft every month," and that a committee, including Ajai Singh Bagri, had been formed to draw up the plans for the hijacking;³¹⁰ nor was a June 7, 1985 telex, indicating that "...enforcement of special measures to deal with increased threat of hijacking and sabotage at airports by extremists should be continued till the end of June 85."³¹¹

The Airport Policing Branch acted as the trigger for the production of CSIS threat assessments, which the Branch requested upon receipt of threat information.³¹²

³⁰⁵ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2839.

³⁰⁶ Exhibit P-101 CAA0024 (February 1983).

³⁰⁷ Exhibit P-101 CAA0045 (May 1984).

³⁰⁸ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2826-2828.

³⁰⁹ Exhibit P-101 CAA0083, CAA0084.

³¹⁰ Exhibit P-101 CAA0096, CAA0097. Note that both of these telexes were, in fact, passed from Air India to Transport Canada Headquarters. Again, there is no evidence of this threat being forwarded to CSIS, so it is not possible to determine whether CSIS would have received this information through channels other than the RCMP.

³¹¹ Exhibit P-101 CAC0419.

³¹² Final Submissions of the Attorney General of Canada, Vol. II, para. 28.

If the Airport Policing Branch was not receiving relevant threat information, and was therefore not passing it on to CSIS, the entire process was weakened and its potential usefulness was compromised.³¹³ The Airport Policing Branch also performed a number of other functions that required a free flow of relevant threat information, including its specific mandate to set security levels for implementation at Canadian airports in relation to threats.³¹⁴

Just as important was the fact that, because RCMP Headquarters was not receiving all threats, it could not properly disseminate relevant threat information to other airport detachments that might be affected, such as those with flights connecting to Air India. The general threat information provided by Air India, such as information that a terrorist group in Europe intended to place an explosive inside a suitcase on an international flight, would have been relevant to all detachments at airports with international flights.

The more long-term response role of the Airport Policing Branch was affected by the fact that it was not receiving all relevant threats. This would have been significant in terms of its ability to expand knowledge of the threat environment respecting aviation security, which would in turn affect its ability to create responsive policies and protocols in line with the airport policing mandate. RCMP protocols at the time were targeted towards the prevention of hijacking, even though the RCMP recognized that there were strong indications that the most significant threat to aviation security was moving towards sabotage.³¹⁵ There was nothing to prevent the RCMP from modifying the existing protocols in light of this new reality.

Failures in Sharing between VIP Security Branch and Airport Policing Branch

In 1984/85, CSIS produced a number of types of threat assessments. Many threat assessments were created in response to a particular threat, but CSIS also produced threat assessments of a more long-term, or strategic, nature, such as those that gave an overview of the climate of Sikh extremism in Canada. CSIS would produce this type of threat assessment periodically and send it to a number of clients, including the RCMP VIP Security Branch. A significant number of each type of threat assessment did not get passed by VIP Security Branch to the Airport Policing Branch, despite the potential relevance to its mandate.

On October 26, 1984, a CSIS threat assessment, sent to VIP Security Branch but not forwarded to Airport Policing, cited press reports alleging that: a Sikh extremist leader was planning to organize “suicide squads” in Canada and the United Kingdom in order to “get even” with Indian Prime Minister Gandhi;³¹⁶ that Ajaib Singh Bagri had been assessed as someone who could be easily manipulated into committing a terrorist act; and that there were reports that

³¹³ See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS.

³¹⁴ Final Submissions of the Attorney General of Canada, Vol. II, para. 102.

³¹⁵ Exhibit P-101 CAF0163, p. 5.

³¹⁶ Exhibit P-101 CAA0110, para. 7.

he was planning to hijack an Air India jetliner during October 1984.³¹⁷ Sgt. J.B. ("Joe") MacDonald testified that, if he had been in the process of setting a security level, this information would have been helpful to him.³¹⁸

An April 1, 1985, threat assessment³¹⁹ that was sent from CSIS to VIP Security Branch, but not forwarded to Airport Policing, indicated that the threat against Indian missions in Canada was "high," and detailed an incident at Vancouver International Airport where a member of the Sikh Student Federation was found to have hidden the barrel of an Uzi machine gun, along with ammunition, in his suitcase.

An important June 18, 1985 threat assessment, also apparently not forwarded to Airport Policing, indicated that: "...militant Sikh factions are quietly arming themselves," and that "...two Windsor Sikhs are known to have purchased an Uzi machine-gun in Detroit which it is believed was brought back to Canada," that at a meeting in early June, a Sikh activist indicated that in two weeks they would "...show the community they are serious," and that the threat was only slightly less serious than at the time of the last assessment.³²⁰ Along the same lines, Airport Policing did not receive significant information about the BK or the ISYF.³²¹

Significant threat information from other sources was similarly not shared with Airport Policing. Information originating with Air India that "...20 Sikhs planning suicide attack on Air India at Mirabel on Saturday 84.06.16," was received by officials at DEA, Transport Canada, and the RCMP VIP Security Branch, but not sent to Airport Policing Branch.³²² On August 7, 1984, a letter was sent from A Division to VIP Security Branch, quoting a letter to the Prime Minister of Canada, stating that Boeing planes leaving Montreal, London and the USA could be bombed.³²³ MacDonald confirmed that he had not seen this information before. When Supt. Muir was asked at the Inquiry whether he would have expected the August 1984 threat to blow up Air India aircraft departing from Montreal, London and the United States to have been delivered down the hall to Airport Policing, he could only reply "...it seems to me it should have."³²⁴

³¹⁷ Exhibit P-101 CAA0110, para. 11.

³¹⁸ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2842-2843.

³¹⁹ Exhibit P-101 CAB0207.

³²⁰ Exhibit P-101 CAA0180.

³²¹ For example, a December 12, 1984 TA (Exhibit P-101 CAB0173) sent to VIP indicates that the October 26, 1984 TA (Exhibit P-101 CAA0110) is still valid and that CSIS is zeroing in on the main individuals. (The October TA was the telex indicating Bagri, Parmar and Gill are the most dangerous Sikh extremists in Canada). In addition, Exhibit P-101 CAB0221, dated April 25, 1985, indicates that Parmar is the most important threat to Indian missions and personnel. This TA was received by VIP Security Branch and was also quoted in full and sent out in an NCIB/NSE TA: Exhibit P-101 CAC0317 (which was also not sent to Airport Policing Branch).

³²² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2831. It is notable that in response to this threat, though the Security Service and DEA were unable to corroborate this information, the Air India Station Manager at Mirabel implemented additional safety measures, including the hand search of all checked luggage. Transport Canada officials also ensured that RCMP at the Mirabel detachment were aware of this information and would implement additional security measures, including ensuring the availability and use of the explosives sniffer dog: Exhibit P-101 CAF0161.

³²³ Exhibit P-101 CAC0193.

³²⁴ Testimony of R.E. Muir, vol. 27, May 14, 2007, p. 2914. See also Testimony of R.E. Muir, vol. 28, May 15, 2007, pp. 2958-2960.

Information from the Indian High Commission regarding "...recent incidents involving explosions in the public transport system in Delhi and a few other places in India,"³²⁵ appears to have been seen by VIP Security Branch, but not Airport Policing.³²⁶ Such information, which pointed to the fact that Sikh extremists were increasingly targeting modes of transportation and using sabotage by bombing, would have clearly been important for Airport Policing's understanding of possible targets and modes of attack.

Finally, while VIP Security Branch and Airport Policing were located on the same floor at Headquarters and misdirected correspondence and other "glitches" could ostensibly have been avoided if officers "...walked down the hall,"³²⁷ nevertheless, significant information was frequently not shared. In the absence of formal protocols for sharing,³²⁸ decisions about whether information should be shared and with whom, were left to personal discretion³²⁹ or "judgment calls."³³⁰ Even in the absence of any bad intent, the appropriate exercise of such discretion would necessarily depend on an ability to identify the relevance of information to the mandate of other branches or participants. The evidence is overwhelming that a pervasive lack of understanding of the nature of the threat severely compromised the ability of recipients to make this analysis.

Passing on information in this discretionary and casual manner requires extensive knowledge of the subject matter in order to decide what will be important to share. Despite Muir's past experience with Airport Policing, however, there were gaps in his knowledge. He did not know that Air India was owned by the Government of India and that, accordingly, it could be a surrogate target for terrorism. Moreover, the VIP Security Branch did not have an ongoing dialogue or relationship with Transport Canada.³³¹

The security levels for airports such as Pearson were set by the OIC of the Airport Policing Branch at RCMP headquarters – in June 1985, this was MacDonald's responsibility.³³² This meant it was vital for MacDonald to have access to all relevant information concerning aviation security.

In its Final Submissions, the Attorney General of Canada contended that the informality demonstrated by the evidence regarding the communication of threat information "...may seem lax by today's standards, but it is important to bear in mind that the state of communications and office functionality was very different in 1985 than it is today. There were no facsimile machines, limited

³²⁵ Exhibit P-101 CAC0325.

³²⁶ Exhibit P-101 CAC0327.

³²⁷ Testimony of R.E. Muir, vol. 27, May 14, 2007, pp. 2910-2913. Muir testified that "[I]nformation coming to the VIP Security Branch would be shared with the Airport Policing Branch if there was a perceived need" and "...[t]he desk officer, the desk NCO would just walk down the hall and if he didn't, I would be very concerned and surprised."

³²⁸ Testimony of R.E. Muir, vol. 27, May 14, 2007, p. 2914.

³²⁹ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2867.

³³⁰ Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2933.

³³¹ Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2979.

³³² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2767.

computer use, and paper files.³³³ However, at the time, before the proliferation of the email and facsimile transmissions that dominate today's means of telecommunications, telexes were in wide use, and these provided quick connections, while allowing for direction on the classification and intended distribution of the information within.

What is clear is that this "informal" method was an imperfect process, frequently resulting in misdirected and missing information. It lacked clarity, consistency, and accountability. It was reliant on relationships rather than sound procedure and practice. The consequence for all the agencies involved was that the picture of the threat to aviation security was frequently incomplete.

Failures in Sharing between National Criminal Intelligence Branch and Airport Policing

In the same way that failures in information sharing within P Directorate appear to have been rooted in a lack of understanding of the relevance of Sikh extremism, or of the national security dimension to the work of airport policing, a similar dynamic may account for the failures of National Criminal Intelligence Branch (NCIB) to direct relevant threat assessments to Airport Policing.

When NCIB received information about the November Plot, it was sent to VIP Security,³³⁴ but not to the Airport Policing Branch, even though the information explicitly referred to a plot to bomb an Air India plane. Sgt. Warren Sweeney, from NCIB, indicated that, from his perspective, getting information into the hands of Airport Policing was a "...P Directorate issue to deal with."³³⁵ By contrast, even though it generally did not send its general threat assessments about Indian interests in Canada to Airport Policing, CSIS did nevertheless send the November Plot information to both Airport Policing and VIP Security.³³⁶ On May 27, 1985, CSIS sent a threat assessment to VIP Security Branch as well as to NCIB (NSE).³³⁷ That same day, NCIB forwarded this CSIS threat assessment, in full, to the COs of all the divisions, but notably, did not send a copy to the Airport Policing Branch – and there is no indication that Airport Policing ever received a copy of this telex. The assessment contained information of potentially crucial relevance to Airport Policing, including: that a prominent Sikh activist had made statements that the names of Sikhs who refused to boycott Air India flights would be put on a "hit list"; that a member of the ISYF was recently arrested at the Vancouver International Airport and that a search of his luggage had revealed the barrel of a sub-machine gun and 100 rounds of ammunition; and that there was an unsubstantiated report that a leading member of the ISYF was involved in a conspiracy to hijack an aircraft.³³⁸

333 Final Submissions of the Attorney General of Canada, Vol. II, para. 99.

334 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).

335 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2596.

336 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p. 5).

337 Exhibit P-101 CAB0236.

338 Exhibit P-101 CAA0160, pp. 4-5.

The protective focus within the RCMP was heavily, and almost exclusively, directed to Indian diplomatic missions, largely precluding any real appreciation of the potential threat of sabotage to Air India planes. On May 31, 1985, NCIB sent a telex to VIP Security Branch and the divisions indicating that information had been received from the Winnipeg Police Department on that day, from a source who had allegedly spoken with the persons involved, that Sikh terrorists were going to plant bombs at the office of the High Commissioner in Ottawa and the Indian consulate in Vancouver on June 6, 1985.³³⁹ On June 3, 1985, the RCMP met with the source in Winnipeg, who alleged that a conversation was overheard indicating that "...there could be a bombing or other retaliatory action on 6 June 1985." The RCMP officer, in his report on the interview, wrote:

It is our belief that info supplied by this subject could very possibly be correct however what actions/if any are not known or persons involved are not known. Necessary precautions should be taken around Indian Embassy and High Commission's office.³⁴⁰

When NCIB reported on the results of the Winnipeg interview, the information was reported to VIP Security Branch, and not to Airport Policing.³⁴¹ This omission makes no sense in light of the intelligence then circulating about bomb threats to Air India, the information that Sikhs could increasingly direct attention to "softer targets," including Air India, due to the high security around mission property and personnel,³⁴² and the incidents of weapons transported by Sikh terrorists through airports. It does, however, confirm the widespread myopia of the law enforcement community as discussed throughout this chapter.

Information Sharing between Air India and Government Agencies

Air India did not apprise the companies providing its security and ground handling services of the severe risk to its flights in June 1985. Transport Canada and the RCMP did not alert other airports or carriers that would be feeding passengers and baggage to Air India at Pearson and Mirabel from other parts of the country. This problem was undoubtedly exacerbated by the fact that Transport Canada lacked a secure national communications system and that the air carriers and members of the Air Transport Association of Canada (ATAC) did not have the necessary clearance to receive classified information. Transport Canada asked ATAC and selected Canadian air carrier officials whether they wanted security clearances, but the offer was declined.³⁴³

³³⁹ Exhibit P-101 CAC0364.

³⁴⁰ Exhibit P-101 CAC0383.

³⁴¹ Exhibit P-101 CAC0397. Prior to the involvement of NCIB, the officer in Winnipeg who received an initial call from the source reported that the bomb threat was in relation to the Indian Embassy in Ottawa and Vancouver: Exhibit P-101 CAC0364. This may also help account for the RCMP's later seemingly exclusive focus on mission properties.

³⁴² Exhibit P-101 CAC0133.

³⁴³ Exhibit P-367, p. 2.

At the local airport detachment level, Air India representatives were inconsistent in transmitting threat information to RCMP and Transport Canada officials. At a meeting in January 1985, Air India's Senior Security and Safety Officer had promised that both Transport Canada and the RCMP would be provided with notices of all threats received by Air India,³⁴⁴ but there were a number of instances in which threat information was not properly relayed.

When Air India received threat information from sources such as the Indian High Commission or its head offices abroad, it was normally forwarded to the RCMP airport detachment and Transport Canada officials at Mirabel by Ashwani Sarwal, Air India's Assistant Airport Manager.³⁴⁵ Once Air India commenced operations at Pearson Airport in January 1985, however, that opened a secondary line of communications, which also received intelligence and threat information that needed to be passed on to a second RCMP detachment and Airport General Manager. The threat itself expanded as well. At the January 1985 meeting with Transport Canada and the RCMP, Mahendra Saxena noted that Air India responded to roughly three threats a day in New York, and expected even more security problems in Toronto due to its larger Sikh population.³⁴⁶ These factors meant that communications became increasingly decentralized and, as will be demonstrated, as information passed back and forth, Air India did not always keep all parties properly apprised of each new threat.

Up until 1985, Sarwal had been Air India's primary contact with Transport Canada and RCMP officials. In the spring of 1985, as the Assistant Airport Manager for both Mirabel and Pearson airports, he continued to correspond with officials in Ottawa, Toronto and Montreal. But, starting in May and June 1985, threat information was also being relayed by Herbert Vaney, the Area Sales Manager for Toronto. Vaney disseminated a number of remarkable threat intelligence reports from his office in this short period. It is unclear why Vaney was required to do so. His official duties involved dealing with travel agents, promoting tourism in India, providing public relations to the East Indian community, and administering the Toronto office. Although he was not involved in airport management or security, Vaney testified that he would act as a conduit for threat information. He forwarded messages and attended security meetings when this was requested of him, but according to Vaney, his role was a very passive one.³⁴⁷

Vaney testified that, to the best of his recollection, he would have passed on any intelligence relating to threats to Air India in June 1985:

³⁴⁴ Exhibit P-101 CAA0118, p. 5.

³⁴⁵ A standard example is Exhibit P-101 CAF0587, where RCMP and Transport Canada officials are sent copies of a letter from the Indian High Commission by Sarwal. See also Exhibit P-101 CAF0564, CAF0568, CAF0573, CAF0574, CAF0575, CAF0577, CAF0578, CAF0579 and CAF0580, in which telexes are seemingly routinely forwarded to these authorities by Sarwal.

³⁴⁶ Exhibit P-101 CAA0118, p. 5.

³⁴⁷ Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11624, 11630.

This is based on standing instructions to me, acting as a conduit. Whenever the information came in on threats, it would be passed on to various people. For example, there is a list of addressees, and there must have been standing instructions on file to pass on the information.³⁴⁸

On May 27, 1985, Vaney sent a letter to the Metropolitan Toronto Police to advise that Air India had received information that "...extremist elements might try to indulge in sensational acts such as hijacking of Air India aircrafts etc."³⁴⁹ Vaney enclosed an earlier letter that had been sent by Sarwal to authorities at Mirabel and Pearson airports as well as to local police and Transport Canada headquarters.³⁵⁰ He requested that the security coverage of Air India's offices around Toronto, including at Pearson, be increased. He sent copies of the message to a number of other agencies, including Peel Regional Police, the RCMP Airport Policing Detachment at Pearson, the Transport Canada Airport General Manager at Pearson, and the Transport Canada Security Manager at Pearson. Vaney testified that he had sent this message based on his standing instructions, and the addressees were from a list on file.³⁵¹

There is some indication that Vaney would wait for instructions from Saxena before forwarding a given piece of intelligence or at least before he forwarded the intelligence to additional recipients beyond the RCMP. This meant that other critical parties to Air India's security efforts, such as Burns International Security or Transport Canada, would not necessarily be advised of threats to the airline. On May 29, 1985, Vaney forwarded a telex to the RCMP Airport Policing Detachment at Pearson, as well as to Burns International Security and Sarwal.³⁵² The telex warned of potential acts of hijacking or sabotage against aircraft in the week following June 1st, and directed strict security measures for all Air India flights. When asked why he forwarded that particular message to Burns, Vaney replied, "I can assume only that Mr. Saxena asked me to copy it to them."³⁵³ When asked why the June 1st Telex, which also directed very strict and specific security measures, was not copied to Burns when Vaney had sent a copy to the RCMP Airport Policing Detachment on June 3rd,³⁵⁴ he replied that, in general, Burns was not copied on such communications, and that he did so only on Saxena's instructions.³⁵⁵ Doing so would actually be an exceptional case. This is a troubling omission, as Burns International Security provided the guards who screened passengers, examined baggage, and guarded Air India's aircraft.

³⁴⁸ Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11632.

³⁴⁹ Exhibit P-101 CAA0159.

³⁵⁰ See Exhibit P-129.

³⁵¹ Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11632.

³⁵² Exhibit P-101 CAA0164. The telex itself is at Exhibit P-101 CAA0161. According to handwritten notes on the forwarding letter, a request was made to share it with Mattson.

³⁵³ Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11641.

³⁵⁴ See Exhibit P-101 CAA0184. This letter, dated June 3, 1985, was written by Vaney and forwarded the June 1st Telex to the RCMP.

³⁵⁵ Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11641.

On June 7, 1985, Vaney sent another letter to the OIC of the RCMP Airport Policing detachment at Pearson.³⁵⁶ This message forwarded a letter from May 15th from Air India's Chief Vigilance and Security Manager in Bombay, as well as a June 6th telex received from their Bombay headquarters, indicating that the stringent security measures directed in the June 1st Telex should continue being implemented until the end of June.³⁵⁷ No other addressees were included on this correspondence.

At a January 1985 meeting, Saxena made a commitment to ensure that all threat information would be relayed to both Transport Canada and the RCMP.³⁵⁸ In a letter to Air India's Regional Director for the USA and Canada shortly afterwards, he repeated that "Transport Canada expects that threats of any type received by airlines should [be sent] to Transport Canada to help proper evaluation and suitable action."³⁵⁹ In light of this responsibility, the fact that the documents forwarded by Vaney were not consistently shared with both entities is clearly a breakdown in communications. Intelligence was no longer being appropriately disseminated. Thus it was nearly impossible for the key parties to accurately and consistently assess the severity of the threat to Air India.

A Singular Miscommunication: The June 1st Telex

The saga of the document that came to be known as the June 1st Telex is a key example of a critical intelligence failure.³⁶⁰ Despite Air India's high threat status and the strict imposition of tight security measures by its headquarters, the airline neglected to provide this information to either Transport Canada or Burns International Security. The document was provided only to the RCMP, who did not disseminate it further. Consequently, the most vital threat information regarding Air India in 1985 did not reach many of those most concerned with it.

The document, sent to all Air India stations on June 1, 1985, contained a threat advisory from Air India's Chief of Vigilance and Security Manager in Bombay. It was based on intelligence obtained by the Government of India, and reported that Sikh extremists were likely to sabotage Air India aircraft by means of time-delayed explosives being placed in the cabin or in checked baggage. It directed all Air India stations to ensure the "...meticulous implementation of counter-sabotage measures for flights at all airports."³⁶¹ These measures included the random physical inspections of checked baggage, and the inspection of checked baggage using explosives detection dogs or explosives detection devices.

On June 3, Vaney forwarded a copy of the same document to the RCMP Pearson detachment.³⁶² Despite Saxena's assurance that both the RCMP and Transport

³⁵⁶ Exhibit P-101 CAA0204.

³⁵⁷ Exhibit P-101 CAA0205.

³⁵⁸ Exhibit P-101 CAA0118, p. 5.

³⁵⁹ Exhibit P-284, Tab 13, p. 2.

³⁶⁰ See Section 1.2 (Pre-bombing), June 1st Telex.

³⁶¹ Exhibit P-101 CAA0185.

³⁶² Exhibit P-101 CAA0184.

Canada would be advised of all threats, Vaney did not send a copy to any Transport Canada officials. No one at Air India appears to have forwarded the telex to Air Canada or Burns International Security, despite the fact that Air India had contracted with these companies to handle its baggage and to provide security.

Vaney testified that since the June 1st Telex had been sent to all of Air India's stations, he assumed that Air India's officials at Montreal or New York would follow up on the security matters themselves. For his part, he was not involved in any of the discussions about obtaining additional security from the RCMP or imposing security measures. He had no knowledge of Air India's security plan, and strenuously denied he acted in any security capacity other than as a conduit of information.³⁶³

According to Vaney, security matters were discussed on a strict need to know basis within Air India in 1985, and this approach obviously limited who was kept informed about the threats to the airline.³⁶⁴ It is profoundly unfortunate that the information contained in the June 1st Telex was not more widely shared. It is difficult to conceive of a decision-making process that would conclude that Air Canada, Burns International Security, and Transport Canada would not have a need to know, although it is highly likely that Vaney was not alone in assuming that someone within Air India would follow up on the threat information received that month. In any event, neither Air India nor the RCMP shared a copy of the June 1st Telex with Transport Canada officials.³⁶⁵ The result of these failures was that throughout June 1985, Transport Canada was completely unaware of this threat and of the extreme security measures called for in response. As discussed in Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS, neither agency shared the June 1st Telex with CSIS either.

On June 5, 1985, Inspector Bill Dawson, OIC of the Pearson detachment, sent a message by telex to the RCMP Headquarters Airport Policing Branch.³⁶⁶ He did not provide it to any Transport Canada officials at the airport or at their headquarters. Sgt. MacDonald, the senior non-commissioned officer (NCO) and acting OIC of the Airport Policing Branch of P Directorate at RCMP Headquarters, responded by requesting a threat assessment from CSIS on June 6.³⁶⁷ He noted that the last threat assessment, received in October 1984 following a request from the RCMP VIP Security Branch of P Directorate,³⁶⁸ had indicated that the threat was high, but non-specific.³⁶⁹ He did not provide a copy of the June 1st Telex to CSIS,³⁷⁰ nor did he provide a copy to any of the other RCMP airport detachments, or to Transport Canada.

³⁶³ Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11644-11649.

³⁶⁴ Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11649.

³⁶⁵ See Section 1.2 (Pre-bombing), June 1st Telex.

³⁶⁶ Exhibit P-101 CAF0589.

³⁶⁷ Exhibit P-101 CAA0198.

³⁶⁸ See handwritten notes at the bottom of Exhibit P-101 CAA0099.

³⁶⁹ Exhibit P-101 CAA0198.

³⁷⁰ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2817-2818.

Although it was provided to the RCMP on two occasions, the June 1st Telex simply did not go where it was needed, because of a lack of formal information-sharing policies and protocols. As a result, it was not part of any assessment of the threat in June 1985. The Attorney General of Canada also admitted that "... the dissemination of information was imperfect."³⁷¹ This is an understatement. There were no policies or procedures in place for sharing such information. Because CSIS did not obtain a copy of the June 1st Telex at this time, the subsequent threat assessment was both incomplete and misleading.³⁷² The result of these decisions was that, throughout June 1985, Transport Canada was completely unaware of this threat and the extreme security measures called for in response.

The *CATSA Act* Review Advisory Panel noted that, among the failures in the sharing of information in the pre-bombing period, the failure to keep relevant air carriers apprised of relevant threat information was key, and noted:

This somewhat tangled tale highlights a crucial chain of intelligence communication. Even where intelligence was available in advance that gave warning of the kind of threat that tragically materialized on June 23, 1985, the linkage to those bodies with capacity to take appropriate security measures remained problematic.... If all carriers in Canada with flights connecting to Air India had been warned that Air India was under special security alert, the CP Air Agent [who permitted the fatal bag to be interlined to Air India Flight 182] might have exercised more caution.³⁷³

The latter point – failure to warn other carriers that were interlining passengers and baggage to Air India Flight 182 – is an important one. Clearly, Air India itself bears some of the responsibility for this striking failure to share information.

The problems illustrated by the manner in which Air India shared the information contained in the June 1st Telex with interested government officials was also a function of Air India's own internal structural problems. As discussed in "Air India Personnel – Confusion about Duties", in Chapter V (Pre-bombing), *The Day of the Bombing*, many of Air India's local communications and security decisions were made in the context of an organization that lacked clear lines of authority amongst its officials. The events that took place at Pearson and Mirabel airports on June 22, 1985, and the conflicting claims made by Air India officials as to who had final authority for the decisions made that day, are a good illustration of these difficulties.

³⁷¹ Final Submissions of the Attorney General of Canada, Vol. II, para. 92.

³⁷² The CSIS threat assessment can be found at Exhibit P-101 CAA0199. It reads: "Currently, CSIS assess the threat potential to all Indian Missions in Canada as high. This is also intended to include Air India. CSIS, however, is not/not aware of any specific threat to the airline."

³⁷³ Exhibit P-157, p. 50.

Conclusion

Discussing the intelligence failures that led up to the bombing of Air India Flight 182, Professor Reg Whitaker testified that:

When you get down to the front line, that is to the airport and the air carriers and the question of whether there were specific or non-specific threat[s] against a particular airline such as Air India, it did become clear in our analysis of how the decision was made not to declare Air India 182 as a specific threat that, there really was a serious lack of clear authority and clear lines of communication to bring the various threat assessments that were out there and to bring them to bear right there at the airport where the decision had to be made. That there was far too much ad hoc and a sense that – and in the aftermath, of course, that there could be a great deal of passing of responsibility and blame off on others because there had not been a clear delineation of authority.³⁷⁴

In its Final Submissions, the Attorney General of Canada submitted that "... the developing state of technology led to a greater reliance on relationships, the telephone and verbal briefings."³⁷⁵ What the evidence demonstrates, however, is that reliance on informal methods of communication introduces frailty and volatility into a system that requires consistent, efficient and reliable communication. The evident communications failures leading up to and following the bombing of Air India Flight 182 were often directly caused by this entrenched informality.

Without well-defined communications and reporting structures for relaying critical threat information, the ability to analyze, assess, and respond to intelligence regarding danger to civil aviation is severely weakened. In 1985, this weakness abounded, due to the informal, relationship-driven, and ad hoc channels linking Air India, the RCMP, Transport Canada, and CSIS to one another and to their other vital partners in aviation security, such as airports, airlines, and Burns International Security. These structural and organizational deficiencies were unacceptable in light of the magnitude of the threat at the time. Combined with excessive secrecy, personality conflicts, organizational chaos, and a climate of security myopia, the communications failures could only continue to increase.

4.5 Failures in Coordination between Transport Canada and the RCMP

Introduction

Operating and protecting Canada's major airports requires the joint efforts of all the involved parties, including government, police, the airlines, and the

³⁷⁴ Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4311-4312.

³⁷⁵ Final Submissions of the Attorney General of Canada, Vol. II, para. 99.

travelling public. As it functioned in June 1985, aviation security depended on the collaboration of Transport Canada and the RCMP. Transport Canada owned and operated Canada's major airports and was Canada's aviation authority, regulating airlines and air travel; the RCMP provided law enforcement services with respect to aviation security matters, as well as intelligence and information distribution services. It was essential, therefore, that each agency clearly understood these roles and responsibilities, and had the ability to work with the other in an effective and efficient manner in order to maintain effective aviation security and the capacity to respond quickly to emerging threats. There were, unfortunately, numerous problems in the relationship between Transport Canada and the RCMP that hindered this collaboration, including excessive secrecy, personality conflicts, confusion over duties, and miscommunication. These difficulties, illustrated by the sad example of the June 1985 "overtime dispute," compromised the ability of these agencies to effectively coordinate and respond to threats to the safety of airlines like Air India.

Airport Officials' Understanding of Duties and Authority

A high degree of cooperation between RCMP and Transport Canada officials was required to ensure that the aviation security threat-response regime functioned effectively. However the effective coordination between these two large bureaucratic agencies posed significant challenges to airport policing in the pre-bombing period. Supt. Gary Clarke, as the OIC at Pearson airport, wrote:

This Detachment serves two masters, that is the RCMP and Transport Canada, as do all Airport Policing Detachments, and this creates more than the usual management problems. The regular changing policy, procedures and guidelines of the Force can differ from the needs and expectations of Transport Canada and this sometimes defaults us from the provisions of the MOA.³⁷⁶

At times, there was also confusion about the responsibilities for decision-making, as well as formal impediments to the ability of RCMP and Transport Canada officials to share all relevant threat information. These issues led to deficiencies in the harmonious implementation of security measures prior to the Air India bombings. Not all RCMP officials understood the important role of Transport Canada in assessing and responding to a threat. For example, Sgt. J.B. ("Joe") MacDonald testified that he understood that the determination of the appropriate level of security was entirely an RCMP responsibility. From his perspective, the Airport Policing Branch set the level of security to be implemented on the ground, and Transport Canada paid for that deployment.³⁷⁷ Similarly, Clarke testified that it was an RCMP responsibility to determine the threat levels, though RCMP officers could speak to Transport Canada officials, in

³⁷⁶ Exhibit P-101 CAC0107, p. 6. The "MOA" was the memorandum of agreement between the RCMP and Transport Canada in relation to airport security.

³⁷⁷ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2857.

general terms, as to why additional security was required.³⁷⁸ Clarke testified that he was not aware of whether Transport Canada itself did threat assessments or provided threat assessments to his Transport Canada counterpart at the airport.³⁷⁹

Transport Canada did not share the opinion that security levels and responses were entirely an RCMP responsibility. Indeed, Transport Canada officials seemed to bristle at the RCMP's efforts to take such unilateral steps. In the minutes of an April 1985 meeting at Pearson airport, it was noted that Dale Mattson, Manager for Safety and Security at Pearson:

...reiterated the fact that the RCMP and [Peel Police] jointly prepared a security plan for PIA without consulting Transport Canada. This situation was not acceptable as Transport Canada is responsible for the escalation of security procedures on the Airport Site. [Mr. Mattson] will write directly to Inspector Dawson of [*sic*] RCMP, clearly indicating Transport Canada's position with respect to the security or policing of the Airport Facility.³⁸⁰

At the meeting, Mattson also remarked that during a recent emergency situation, the RCMP had "...attempted to take control of the situation entirely and on several occasions escalated security measures without prior consultation with Transport Canada."³⁸¹ He insisted that since Pearson was a Transport Canada facility, it was, in fact, Transport Canada's sole responsibility to implement emergency measures, and that Transport Canada did not need to take any direction from police or any other outside agencies. The Transport Canada officials present agreed that they would investigate the question as to who had authority in emergency situations, and determine to what extent Transport Canada was required to take orders from the police during terrorist incidents.

The fact that neither Transport Canada nor RCMP officials understood the complementary role played by the other in terms of responding to the threat, may explain some of the deficiencies in terms of the sharing of information that occurred between the RCMP and Transport Canada. This lack of understanding, combined with the fact that caveats and security clearance issues prevented RCMP officials from freely sharing relevant threat information with Transport Canada officials, led to local conflict at the airport and created the potential for gaps in security.

June 1985 Dispute between the Agencies

In the late May/early June 1985 period leading up to the bombing, there were a number of significant failures in terms of the sharing of relevant intelligence and

³⁷⁸ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040-3041.

³⁷⁹ Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3041.

³⁸⁰ Exhibit P-101 CAF0585, p. 6.

³⁸¹ Exhibit P-101 CAF0585, p. 2.

the coordination of security measures with respect to airport policing between Transport Canada and the RCMP. Communications difficulties also arose between Transport Canada and the RCMP as a consequence of jurisdictional disputes. These disputes were fueled by the absence of a formal communications structure, by personality conflicts and by difficulties encountered in sharing and accessing intelligence and classified information.

Viewed against the backdrop of the already-brewing issues relating to the sharing of information and to the coordination of security measures between RCMP and Transport Canada officials, the events that unfolded in the immediate pre-bombing period were not entirely unpredictable. Most of these failures are simply illustrations of problems that had been identified earlier by the agencies themselves.

In June 1985, Air India requested increased protection from the RCMP at Pearson during the month of June. A dispute arose between Transport Canada and RCMP over the payment of the necessary overtime to the RCMP members required. Transport Canada felt that insufficient intelligence existed to justify the concern and the expense. On the other hand, the RCMP felt that the security classification of the intelligence it possessed prevented it from sharing that information with Transport Canada officials.

Meanwhile, the Department of External Affairs requested an increase in Air India's security coverage.³⁸² In response, RCMP headquarters had ordered that level 4 security³⁸³ be implemented for Air India's flights out of Pearson during the month of June.³⁸⁴ As noted below, it does not appear that Transport Canada Headquarters was involved in, or was even aware of, this decision. A subsequent CSIS threat assessment confirmed a high threat to Air India.³⁸⁵ The implementation of level 4 security at the time meant that the operational resources for the RCMP airport detachment would not be sufficient to maintain regular security for the airport as well as the enhanced security coverage for Air India flights. Additional off-duty officers would be required on an overtime basis. Overtime funding for RCMP members deployed at airports was the responsibility of Transport Canada, and the RCMP relied entirely on these funds for such deployments.³⁸⁶ The matter quickly reached an impasse.

Chief Superintendent D.H. Heaton, OIC of Criminal Operations for the RCMP O Division, had growing concerns that Transport Canada officials were too closely involved in the daily operational direction of the RCMP at the airport.³⁸⁷ He believed that Transport Canada's Manager for Safety and Security at Pearson

382 Exhibit P-101 CAA0166.

383 Exhibit P-101 CAA0025. This document is an RCMP checklist setting out the applicable security measures for given levels for major airports like Pearson and Mirabel. Level 4 was the second-highest airport security level, demanding measures such as the use of the RCMP explosives detection dog team, a constant watch at the affected airline's passenger screening checkpoint whenever it was open, and surveillance of the aircraft during boarding and departure.

384 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2787-2789.

385 Exhibit P-101 CAA0199.

386 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3037.

387 Exhibit P-101 CAC0407.

was unduly interfering with security operations. Gary Clarke, who in June 1985 was the OIC of Protective Policing at the O Division in Toronto, was charged with resolving the dispute. Clarke had previously been the OIC of the Security and Policing detail at Pearson airport, and continued to be responsible for VIP travel and federal security at Pearson, as well as policies and procedures for the Airport Policing Program.³⁸⁸ On cross-examination, Clarke agreed with the characterization of level 4 security measures as a high level of security that would not be in effect on many flights; it was in response to a rare and dangerous situation.³⁸⁹ It was not something that would be imposed simply because an airline requested it.³⁹⁰

On June 14, 1985, Clarke met with Inspector Dawson to discuss the difficulties encountered with Transport Canada's representatives at Pearson. Given this high and unusual security level, it was seen as essential to resolve the overtime dispute at Pearson.³⁹¹ In his notes, Clarke described the essence of the matter:

Transport Canada is adamant that with the knowledge they are privy to, they do not consider it necessary to place extra RCMP security personnel on Air India flights. Unfortunately, the Airport General Manager is not aware of the serious threat against Indian people and property at this particular time.³⁹²

According to Clarke, one reason for the impasse was that it was unlikely that Transport Canada was aware that the RCMP was operating at an elevated security level for Air India's flights in June 1985.³⁹³ Moreover, based on his conversations with Dale Mattson and Ed Warrick, the Airport General Manager, Clarke concluded that Transport Canada did not even consider the threat against Air India to be very high. The RCMP on the other hand had received a communiqué from External Affairs requesting additional security for Air India flights, and possessed intelligence that pointed to a heightened threat against Air India.³⁹⁴ The classified nature of the security intelligence in the RCMP's possession meant that Clarke was unable to share it with the Transport Canada officials at Pearson.³⁹⁵ All that Clarke would do was inform Warrick that in relation to the June 1st flight "...the threat was considered specific enough to employ three (3) off-duty airport special constables."³⁹⁶

Further compounding the difficulties between Transport Canada and the RCMP was the fact that the RCMP felt that Transport Canada was reneging on the terms of the memorandum of agreement between the two agencies in refusing

388 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3030.

389 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3064.

390 Exhibit P-101 CAC0445, p. 4.

391 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3036.

392 Exhibit P-101 CAC0439, p. 2.

393 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3039.

394 Exhibit P-101 CAC0445, p. 4.

395 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3040.

396 Exhibit P-101 CAC0445, p. 4.

to authorize overtime funding.³⁹⁷ From the perspective of the RCMP, the deployment of its own personnel to provide airport security was fully justified, based on the intelligence in its possession, and any decision on how to deploy those members was for the RCMP alone to make.

Clarke met with Warrick on June 19, 1985. He felt that it was essential that Warrick agree to pay out the overtime needed for the additional officers providing security for Air India. According to Clarke:

It was essential that he know where we were coming from and why we were doing the things that we were doing. I didn't want to be specific and tell him about the threat assessments that we were receiving and it seemed to be, at that time, they were almost on a daily basis, these threat assessments that were coming in. The one just prior to this, and I am talking about the threat assessment prior to the 19th, it left no doubt in our mind that something was going to happen. Where or when or what, it was not that definite. But I wanted to let him know that if we are going to do our job at the Airport, then you have to listen to us on matters of this type of security.

We had to have the personnel. I told him about the differences of opinion with the Safety & Security Officer [Mr. Mattson] in our daily operations. And I know it was a – it was almost a one-on-one situation with our Detachment and the Safety & Security Officer.³⁹⁸

The Attorney General of Canada submitted that this problem was resolved once Clarke met with Warrick,³⁹⁹ but this is a simplistic view of the situation. While Warrick agreed with Clarke's rationale in principle, he personally was unable to authorize any overtime pay at that time. Warrick informed Clarke that, through an oversight, Transport Canada had failed to provide for emergency overtime costs in that year's annual policing budget.⁴⁰⁰ Warrick would require approval from Transport Canada headquarters in Ottawa, and directed Mattson to contact headquarters with the request. He agreed that, for the time being, the added detail of RCMP members should continue to provide enhanced security to Air India flights; but what remained unresolved were the organizational failures that had given rise to the dispute in the first place.

Security Clearance Issues

It is apparent from this episode that a number of obstacles hindered good relationships and effective communication between Transport Canada and the

³⁹⁷ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3042-3043.

³⁹⁸ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3044-3045.

³⁹⁹ Final Submissions of the Attorney General of Canada, Vol. II, para. 172 (citing the testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3045).

⁴⁰⁰ Exhibit P-101 CAC0445, p. 5. See also Exhibit P-101 CAA0239, p. 3.

RCMP. Clarke noted that the chain of command for the matter of deployment rested with a subordinate of Warrick, namely Mattson, who, in his opinion, failed to recognize the seriousness of the threat.⁴⁰¹ According to the Attorney General of Canada, this dispute may have been exacerbated by the fact that Mattson did not have the security clearance to view the assessments that were used by the RCMP in setting the security level. The Attorney General of Canada maintains, however, that “Transport Canada officials at headquarters could view the document, and they would assess Transport Canada’s response.”⁴⁰²

The assertion by the Attorney General of Canada that Transport Canada officials at headquarters could view such classified documents is not completely consistent with the facts. Mattson was testifying specifically about why he did not see the June 1st Telex. He was not referring to the highly classified intelligence possessed by the RCMP during the overtime dispute. In point of fact, there is no indication in the evidence that officials at Transport Canada had access to, or were provided information concerning, that classified intelligence. As a matter of fact, Transport Canada headquarters itself was also not provided with a copy of the June 1st Telex.⁴⁰³

The above contention only raises further questions. The RCMP was unwilling or unable to share the “highly classified” intelligence it possessed with Mattson; but his superior, Warrick, had Top Secret security clearance.⁴⁰⁴ It is therefore puzzling why Transport Canada officials “at headquarters” would be in a position to view this intelligence, but Warrick would not. The contradiction is resolved by Clarke’s testimony that the information was subject to a restriction that prevented it from being shared outside the RCMP.⁴⁰⁵ In actual fact then, no one at Transport Canada could be given this information, even those who possessed the highest security clearances, because the intelligence caveats prevented dissemination. These communications barriers do not support the conclusion that officials at Transport Canada headquarters were necessarily better informed about security intelligence than those who worked at the airports.

Could the Dispute Have Been Avoided by Sharing the Information?

In its Final Submissions, the Attorney General of Canada noted that the *CATSA Act Review Advisory Panel* “...stated that sharing this information likely would not have avoided the dispute.”⁴⁰⁶ That may be, but the Panel’s conclusion is based on faulty information. The *CATSA Act Review Advisory Panel* assumed that the intelligence in question was a CSIS threat assessment included in a telex dated June 18, 1985, marked as “Secret.”⁴⁰⁷ That telex discussed a general threat to

401 Exhibit P-101 CAA0239, p. 2.

402 Final Submissions of the Attorney General of Canada, Vol. II, para. 173 (citing the testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3243).

403 See Section 1.2 (Pre-bombing), June 1st Telex.

404 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3236. Mattson had a Secret security clearance level in 1985.

405 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3039-3040.

406 Final Submissions of the Attorney General of Canada, Vol. II, para. 173 (citing Exhibit P-157, p. 43).

407 Exhibit P-157, p. 43. The telex in question can be found in evidence at Exhibit P-101 CAA0220.

Indian interests relating to the anniversary of the attack on the Golden Temple, and Indian Prime Minister Rajiv Gandhi's visit to the United States. Both events had passed without incident, but the signs that this threat had not significantly abated included the observation that "...militant Sikh factions" were "...quietly arming themselves for reasons we can only speculate at this time."⁴⁰⁸

The telex also noted that, at a meeting of Sikh extremists in Vancouver in early June, an attendee had complained about the lack of aggressive action being taken against India, and that another attendee had reportedly replied "...that they should wait two weeks to see something."⁴⁰⁹ There was no mention of Air India in the threat assessment. Overall, the assessment suggested that the heightened security imposed for these events would mean that terrorist acts might have been deferred until security returned to normal, and that the threat was "...only slightly less serious than at the time of our last assessment."⁴¹⁰

If this was the highly classified intelligence Clarke referred to, then it is doubtful that Transport Canada's position would have been changed by seeing it. For a number of reasons, however, it is highly unlikely that the intelligence possessed by the RCMP in question consisted of this simple threat assessment. For one thing, Clarke's notes of the dispute begin with his briefing with Dawson on June 14, 1985, four days before the CSIS threat assessment was distributed, and even then he refers to knowledge of "...a serious threat against Indian people and property."⁴¹¹ Moreover, the CSIS document was only classified as Secret, a security clearance level that Mattson possessed in 1985. Accordingly, both he and Warrick would have been cleared to see the document. Finally, the June 18th telex had been distributed to Transport Canada headquarters along with a number of other agencies, whereas Clarke wrote in his notes and provided testimony that only the RCMP was privy to the intelligence concerning the threat to Air India.

Since the Panel's assumption about the intelligence that the RCMP possessed and could not divulge to Transport Canada is erroneous, its conclusion about the potential importance of that information is similarly flawed.

The CATSA Act Review Advisory Panel also concluded that the overtime dispute was irrelevant with respect to the Air India disaster. This conclusion is also open to question. The overtime dispute was undeniably a symptom of the larger difficulties in RCMP-Transport Canada relations, which were caused by confusion and conflict over their respective responsibilities and an unclear strategy for effectively and consistently sharing intelligence information. The Attorney General of Canada, in fact, quite fairly conceded that the overtime issue exposed difficulties in the way Transport Canada and the RCMP communicated about

408 Exhibit P-101 CAA0220, p. 2.

409 Exhibit P-101 CAA0220, p. 3.

410 Exhibit P-101 CAA0220, p. 4.

411 Exhibit P-101 CAC0439, p. 2.

threat levels in 1985.⁴¹² With respect to the larger issue of the dynamic between Transport Canada and the RCMP, the *CATSA Act Review Advisory Panel* was generally very critical of this problematic relationship and commented that:

There was something quite wrong with a system that failed to make clear the final authority on interpreting threats and setting appropriate security measures, while at the same time denying two key participants in the process – Transport Canada and the air carriers – full access to the available intelligence.⁴¹³

The *CATSA Act Review Advisory Panel* did correctly suggest that the overtime dispute seemed to be "...more of a pretext for a deeper difference of opinion over who was in charge of security at the airport."⁴¹⁴ These disputes may have played a large role in the RCMP's failure to share the June 1st Telex with Transport Canada, and there can be no question that this failure in particular was extremely relevant to the Air India disaster.

The Impact of Interpersonal Conflicts

Acrimonious personal relationships significantly impeded the relationship between Transport Canada and the RCMP Airport Policing Detachment at Pearson. Days after the bombing, Clarke noted that, immediately following his meeting with Warrick, Mattson continued to reject the notion that Air India required any additional security in June 1985, and "...became quite agitated when confronted with the breakdown in communication between himself and Insp. Dawson."⁴¹⁵ Clarke's memorandum added that he got the distinct impression that Mattson "...had more important matters to worry about than [*sic*] placing extra policemen on a non-specific threat detail. This meeting was curt and totally non-productive."⁴¹⁶

Although Warrick believed relations between Transport Canada staff and the RCMP were very good, Clarke obtained the opposite point of view from Dawson. He learned that "...the relationship between the Airport Safety and Security Manager and the [OIC of] T.L.B.P.I.A. Detachment is rather tense at this particular moment,"⁴¹⁷ and that the situation had interfered with the development of a good working relationship. The level of communication was not seen as compatible with the level of safety and security required at Pearson. In particular, it was important that top security officials meet regularly, but such meetings had not been occurring due to the "...impasse which has prevented the development of good interpersonal relations..."⁴¹⁸

⁴¹² Final Submissions of the Attorney General of Canada, Vol. II, para. 175.

⁴¹³ Exhibit P-157, pp. 43-44. See also Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4310-4311.

⁴¹⁴ Exhibit P-157, p. 52.

⁴¹⁵ Exhibit P-101 CAA0239, p. 3.

⁴¹⁶ Exhibit P-101 CAA0239, p. 3.

⁴¹⁷ Exhibit P-101 CAA0239, p. 4.

⁴¹⁸ Exhibit P-101 CAA0239, p. 5.

Conclusion

Transport Canada and the RCMP had a flawed and, at times, tumultuous relationship, marked by disputes, which were fueled by questions of authority over decision-making, as well as budgeting, intelligence sharing, and personality conflicts. The agencies frequently failed to coordinate, communicate, and work together at the operational level on matters of airport security. They could not even reach a consensus on the question of whether to escalate the security coverage for Air India in June 1985 without repeated discussions – an impasse which was the fruit of these overarching failures, and which was exacerbated by disagreements over the severity of the threat and by the agencies' differing access to pertinent intelligence. Transport Canada officials also tended to inflexibly discount threats that they did not regard as sufficiently specific. These difficulties, caused by structural, bureaucratic, and personality-driven conflicts, compromised the ability of the RCMP and Transport Canada to provide thorough and effective security at Canada's airports, and diminished their capacity to quickly and decisively respond to changing intelligence and heightened threats to the air carriers.

4.6 RCMP Implementation Deficiencies in the Threat-Response Regime

Lack of Knowledge of Applicable Measures by Those Involved

Even today, confusion remains about the actual security regime in place in 1985 and how it was meant to function. In its Final Submissions, the Attorney General of Canada was unable to state whether or not the security grid, the document that outlined the nature of the RCMP response in relation to a given level of threat, was policy, and claims that there is ongoing uncertainty as to the meaning of certain measures dictated by the grid.⁴¹⁹ There can be no doubt that, at the time, there was a general vagueness surrounding the aviation security regime in place. This lack of clarity and the corresponding lack of training provided for individuals in the interpretation and implementation of the protocols mark important deficiencies in the aviation security regime in the pre-bombing era.

The security grid had important implications for RCMP security deployment at Mirabel and Pearson airports. However, the purpose and effect of this protocol were not well understood by participants in the aviation security regime.⁴²⁰ Sgt. J.B. ("Joe") MacDonald, the officer responsible in the spring of 1985 for actually setting the security levels at Headquarters, was unable to explain the meaning of the very directives he issued. He was, for example, unable to explain what was meant by the security level requirement to "...use the services of the dogmaster,"⁴²¹ though he speculated that it might be so that "...they'd make sure he wasn't off training somewhere else or that he would be close by if they needed him."⁴²²

⁴¹⁹ Final Submissions of the Attorney General of Canada, Vol. II, paras. 107-114, 248.

⁴²⁰ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.

⁴²¹ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2861. See measures in Exhibit P-101 CAA0025, level 3 and above.

⁴²² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2863.

Headquarters considered the implementation, by the detachments, of security levels set by Headquarters to be mandatory. MacDonald explained that the measures associated with a particular level, which he would set, would be the minimum deployment that the detachment would do.⁴²³ However, it is not clear whether the detachments understood the directives as having the same effect. For example, Supt. Gary Clarke, who had worked as the OIC at the Pearson detachment, was under the impression that the measures outlined in the grid might only have the effect of being “guidelines.”⁴²⁴

In addition to those who knew about the RCMP security levels system but had misunderstandings about its status and effect, there were many key participants in the system who were not even aware of the existence of this protocol. S/Sgt. Gary Carlson, who was the dogmaster responsible for Pearson airport, testified that he was not familiar with the security levels set by Airport Policing Branch.⁴²⁵ He was away on training with his dog, Thor, on June 22, 1985, despite the fact that level 4 security required the presence of the dogmaster at the airport. The direction for Carlson to attend the training in Vancouver would have come from his supervisor at the divisional Headquarters.⁴²⁶ It seems probable that, like Carlson, his supervisor would have been unaware of the security level system, or of the fact that the dogmaster was required to be available because of the level 4 security in effect at the time, and that no one saw fit to notify the division of this requirement.

Equally troubling was the fact that Transport Canada was not routinely informed of the security level at which the RCMP was operating,⁴²⁷ and did not itself use the five-level RCMP security system. In his testimony, Dale Mattson stated that he was not familiar with the RCMP security grid and that he saw it as an operational document confined to the RCMP.⁴²⁸ This disconnect had obvious consequences for the ability of the RCMP and Transport Canada to take a harmonized approach to their complementary roles, and could only have increased the risk of security gaps. In fact, Clarke, who was the OIC Protective Policing, O Division, testified that his impression was that, in June 1985, Transport Canada may have been operating at a lower level of security than was the RCMP.⁴²⁹

Clarke also testified that the RCMP supervisor at the airport would speak with the airline supervisor prior to the flight to inform him or her of the level of security that had been put into effect for that particular flight. But it would not be the RCMP’s responsibility to explain to the airline what the levels meant or the services that the RCMP could provide, since they “...should have known what

423 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2770-2771.

424 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3098-3099.

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

426 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3057. Carlson testified that he had been advised probably a month to six weeks in advance that he had to go for this training. He booked his flights and made arrangements for travel himself. His arrangements were made at a time, therefore, prior to level 4 security being in effect.

427 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3213.

428 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.

429 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3039.

the levels were.” Given the extreme confusion about security levels even within the RCMP itself, the assumption that the airline would understand this internal RCMP policy seems, at best, questionable. Clarke also indicated that the RCMP would not generally speak to the individuals inspecting the bags for a particular at-risk flight to let them know that they should be extra vigilant. Nor, according to Clarke, would the RCMP inform the airline ticket counter about the level of the threat, as the airline would be presumed to know that information – information that in his view was of the sort that should have been communicated through Air India staff. As Clarke stated, “...that was not our mandate to tell them what their job was.”⁴³⁰

Failure to Adopt an Analytical or Strategic Approach

The setting of security levels at Headquarters was conducted as a mechanical, largely unreflective, exercise. The Airport Policing Branch did not attempt to understand the phenomenon of Sikh extremism, nor did it make attempts to situate the threats received in this broader context:

MR. KAPOOR: Okay. Now as a general proposition in this time frame as I say, marking it in '84 to '85 until the flight is bombed, what was your understanding or appreciation of Sikh extremism relative to other extremist movements? How much of your time was spent dealing with this problem?

MR. MacDONALD: Well, as I stated before, we – and you did as well, we’re not analytical there. It would just be what we received or received from CSIS or whatever. Then there would be probably an immediate requirement as in the case of – it wasn’t CSIS, but the information External Affairs was asking for it and we put it on the 1st and then the threat assessment to cover the last four weeks.⁴³¹

At the same time, the Airport Policing Branch made no effort to analyze the intelligence assessments provided by CSIS in order to tailor its directives to the nature of the particular threats:

MR. KAPOOR: ...would you analyze and do any work-up from a threat assessment, as an officer in charge?

MR. MacDONALD: It was pretty well done when you got it. It outlined the threat and then you just had to take the action from that. In this case, do you have to bring in a particular level here to give complete coverage concerning the level of the threat?⁴³²

⁴³⁰ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3079-3080, 3089.

⁴³¹ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2832.

⁴³² Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2772.

The non-analytical approach taken by the RCMP in turn relates to the broader lack of appreciation for the value or use of intelligence. An April 1, 1985, threat assessment,⁴³³ sent by CSIS to VIP Security Branch, classified the threat against Indian missions in Canada as “high,” and specifically detailed an incident at Vancouver International Airport where a member of the Sikh Student Federation was found to have hidden the barrel of a Uzi machine gun, along with ammunition, in his suitcase. This information was not sent to Headquarters Airport Policing, and consequently was also not transmitted to airport detachments. MacDonald indicated that this information would not have been of particular use for him, and further, that he did not see how it could be of value to those on the ground at the airport detachments:

MR. KAPOOR: Now sir, I appreciate this doesn’t go directly to an airport or an airline, but given what we’ve learned about Sikh extremism and the connection to transporting a weapon in luggage, would this be the kind of thing you would expect to receive or not?

MR. MacDONALD: If received, it would be basically as an information.

MR. KAPOOR: Okay. And again, to be clear, that’s because it doesn’t refer to a present threat or a future threat. It refers to a past event.

MR. MacDONALD: Yes, – it’s just giving some information on this individual being picked up with a part weapon and the other guy having the other half.

MR. KAPOOR: Okay. Would it be the kind of piece of information though, that would be useful to get to the ground level for the detachment, so that they can notify the carrier, that is Air India, of this situation so that they can be more vigilant in assessing and checking baggage?

MR. MacDONALD: I don’t know if it would help them. No, I don’t know exactly if that would help them or not.⁴³⁴

On the ground, the airport detachments did not seem to understand the value of a coordinated or centralized structure, and often failed to send up relevant threat information that was received locally, thereby depriving CSIS and all others who depended on CSIS intelligence.⁴³⁵ As MacDonald’s comments indicate, the RCMP Airport Policing Branch did not see that it had a role in monitoring threat

⁴³³ Exhibit P-101 CAB0207.

⁴³⁴ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2844.

⁴³⁵ See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS and Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

trends. Headquarters did not see that an analysis of past events, or threats, would have value in terms of predicting future events. The fact that the RCMP non-emergency protocol was oriented towards anti-hijacking was a product of the threat trends at the time it was initially created. The failure of Airport Policing to see itself as having any analytical role meant that the RCMP was limited in its capacity to use information strategically to understand changing threat trends and to adopt more responsive policies.

Headquarters did not have a clear understanding of the actual tools or local protocols at the airport detachments in place to respond to threats, and this further limited its ability to issue directives calibrated to the particular threat. MacDonald testified that he had no personal knowledge of what the backup provisions would have been, for either Mirabel or for Pearson, in the absence of a dogmaster.⁴³⁶ This only makes sense if, as was the case in 1985, the role of Headquarters as a “policy” unit, was seen as divorced from operational functions.

Failure to Recognize that Air India was a Government-Owned Airline

In 1985, the implications of Sikh extremism for aviation security were not well understood within the Government of Canada. This lack of understanding may explain some of the key failures in the flow of information within the RCMP, as well as the misperception at the time of the seriousness of the threat to Air India. Officers within the Protective Policing Branch were unaware that Air India was owned by the Indian government and was, therefore, an important potential target for Sikh extremists. From the CSIS perspective, this connection was clear and important. As early as March 1984, the RCMP Security Service provided Airport Policing with an overview of threats to civil aviation, stating in part:

The threat to Air India and its facilities in Canada is dependent upon the Sikh communities’ perception of political events in India. A number of demonstrations against the Indian government in Canada have taken place and a spillover of the violence in India against the Sikhs may impact on Air India and/or its facilities in Canada.⁴³⁷

The Security Service was quite clear that the threats to “Indian interests,” discussed in its assessments, were also meant to apply to Air India. Thus, a June 1984 threat assessment from the Security Service, sent to VIP Security Branch and to Airport Policing Branch, states that “...Indian interests in Canada including Air India offices and flights remains high.” The assessment continues that “... there is possibility that Sikh extremists might now direct their attentions to Air India offices and flights,” due to the perception that these are “softer target[s],” as compared to the visible security afforded to mission property and personnel.⁴³⁸

⁴³⁶ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2895.

⁴³⁷ Exhibit P-101 CAC0105.

⁴³⁸ Exhibit P-101 CAC0133 (June 12, 1984).

Despite this intelligence, MacDonald testified that he would not have drawn a connection between Indian interests and the security of Air India flights:

MR. KAPOOR: We have heard evidence from in particular, a fellow named Henry, that Indian interests or Indian missions, when used in a CSIS or Security Service threat assessment, were meant to include Air India, the airline. Does that accord with your recollection of how you read those documents back in '84 and '85?

MR. MacDONALD: That's not my understanding ... they would have to specify.

MR. KAPOOR: ...and when you say that, you mean if a threat assessment would use the language of Indian missions or Indian interests, from your perspective sir, would that include Air India?

MR. MacDONALD: I wouldn't expect I'd see it. I wouldn't think it would include Air India.⁴³⁹

When MacDonald requested a CSIS threat assessment about threats to Air India on June 6, 1985, he wrote:

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 have had a number of requests from the airline for extra security.⁴⁴⁰

CSIS replied to MacDonald's request, indicating that:

CSIS assess the threat potential to all Indian missions in Canada as high. This is also intended to include Air India.⁴⁴¹

MacDonald's reference to "...last threat assessment October 84" appears to refer to an October 26, 1984, threat assessment, where CSIS indicated the potential for Sikh extremists "...damaging an Air India aeroplane is real."⁴⁴² There were, however, a significant number of CSIS threat assessments after October 1984 that continued to indicate that the threat to Indian interests remained high,⁴⁴³

⁴³⁹ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2809.

⁴⁴⁰ Exhibit P-101 CAA0198.

⁴⁴¹ Exhibit P-101 CAA0199.

⁴⁴² Exhibit P-101 CAB0154.

⁴⁴³ See, for example, Exhibit P-101 CAA0142, CAB0156, CAB0218.

including a CSIS assessment dated April 12, 1985, that the possibility of action being taken against an Air India airplane could not be ruled out, though CSIS had no information to suggest there would actually be an incident.⁴⁴⁴ At the very least, this would suggest that relevant threat assessments were not reaching airport policing on a regular basis, or that the relevance to the security of Air India of whatever intelligence did make it through was not clearly appreciated. Indeed, MacDonald testified that he would not have expected to receive CSIS threat assessments that did not specifically mention airports.⁴⁴⁵

Superintendent R.E. Muir, the OIC VIP Security Branch, testified that he too was unaware of the fact that Air India was government-owned:

MR. KAPOOR: Did you appreciate in those days that Air India was a government-owned airline?

MR. MUIR: No, I did not.

MR. KAPOOR: Did you have any sense that from the perspective of the material that you saw, the perspective that Air India at least was closely aligned to the Government of India as far as the extremists were concerned?

MR. MUIR: I can't say that that was my perception.⁴⁴⁶

There were a number of other instances where the connection was explicitly made in CSIS correspondence.⁴⁴⁷ It seems clear that the significance of CSIS threat assessments to the security of Air India was not clearly appreciated. Hence, important information/intelligence did not get passed from VIP Security to Airport Policing and/or its relevance on the ground was not understood.

Failure to Adjust to Individuals as Source of Threat

The RCMP also does not appear to have appreciated the significance of information from CSIS about individual Sikh extremists whom CSIS believed to pose significant protective security threats within Canada. In the pre-bombing period, CSIS provided RCMP Protective Policing with information about

⁴⁴⁴ Exhibit P-101 CAB0218.

⁴⁴⁵ Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2840.

⁴⁴⁶ Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2921.

⁴⁴⁷ A June 7, 1984 CSIS threat assessment that was copied to VIP Security Branch indicated that the Secretary of State for External Affairs indicated that there was serious concern "...over the need to safeguard the security and functioning of the Indian diplomatic apparatus in Canada. The Indian government has also, at the highest level, expressed its concern to our High Commissioner in New Delhi. We will thus press the police forces for very extensive security protection for Indian facilities, including not/not only the High Commission and consulates but also the homes of vulnerable Indian diplomats and certain other obvious targets, e.g. Air India offices.": See Exhibit P-101 CAC0118. In addition, a report that was provided to the Canadian government on June 19, 1985 indicated that "...the pattern of threats and attacks by Sikh extremist[s] in the past include *inter alia* Air India aircraft and facilities.": See Exhibit P-101 CAE0223, p. 3.

individuals it considered to be the main protagonists in the Sikh extremist threat. However, Protective Policing appears to have made no attempt to track these individuals, nor did Protective Policing appear to understand how information about these individuals could be of value to its operations. Ajaib Singh Bagri and Talwinder Singh Parmar travelled extensively in the months leading up to the bombing. Bagri, in particular, had also been identified as a potential hijacking threat.⁴⁴⁸ In an October 22, 1984 threat assessment sent to Airport Policing and VIP Security, CSIS expressed concern that:

...two of the principals one of which was mentioned in your message, (Bagra) [*sic*] cannot be presently located. Latest information indicated that they were in Eastern Canada (Toronto) as late as 1984 10 14, but to date have not been located. In summary, we believe that the possibility of a hijacking in Canada is remote but knowing the character make-up of Sikhs, we can not rule out this possibility.⁴⁴⁹

Nothing, however, was done by Protective Policing or Airport Policing in relation to the travel of these individuals. There were no efforts to connect with CSIS or RCMP surveillance so as to alert Airport Policing when individuals, identified as posing a protective security threat, were passing through the airports. Similarly, the Airport Policing Branch did not take steps to inform or educate the airport detachments about the identity of individuals identified by CSIS as posing such threats.

These failures are particularly significant when viewed in the light of CSIS's understanding of the importance of information about these individuals. In internal CSIS correspondence, dated October 26, 1984, just prior to their providing RCMP VIP Security Branch with a comprehensive threat assessment, it is stated:

We are specific in our information to "P" Directorate to give them some sense of the point we have reached in this matter – that is that we are now looking to specific individuals as the source of the threat to Indian diplomatic interests.

...

Basically, we continue to assess the threat as high as a result of the actions of the individuals mentioned.⁴⁵⁰

And similarly, in an April 25, 1985, threat assessment⁴⁵¹ sent to the VIP Security Branch, CSIS indicated:

⁴⁴⁸ Exhibit P-101 CAA0097, CAA0110.

⁴⁴⁹ Exhibit P-101 CAB0148.

⁴⁵⁰ Exhibit P-101 CAA0105.

⁴⁵¹ Exhibit P-101 CAB0221.

One of the leaders of the Babbar Khalsa, Talwinder Singh Parmar is the subject of an international warrant issued by the Indian Government for murder and is considered to possess the greatest threat in Canada to Indian diplomatic missions and personnel.⁴⁵²

In CSIS's view, the greatest threat was posed by Ajaib Singh Bagri, Talwinder Singh Parmar, and Surjan Singh Gill. The disconnect between CSIS's understanding of the importance of particular individuals as the source of the threat, and the utility of this information as perceived by the RCMP, is evident from Muir's testimony. He was asked about the October 26, 1984, CSIS threat assessment⁴⁵³ sent to his Branch, which provides an overview of the major Sikh extremist groups in Canada and identifies Parmar, Bagri, and Gill as advocates of violence. While agreeing that it was important to have a general understanding of who the players were, Muir stated:

I did not sort those out to be very honest with you. There may have been mention of certain individuals, but those individuals really were not the people that – I was particularly concerned with.⁴⁵⁴

Similarly, when asked about threat information relating to Ajaib Singh Bagri's purported involvement in drawing up plans to hijack an Air India flight, MacDonald, A/OIC of Airport Policing Branch, did not see any need to be personally alerted to this type of information. He was also unable to recall whether, in 1984/85, he had a working understanding of what the Babbar Khalsa was, and could not recall whether the Babbar Khalsa and/or the ISYF had prominence in the work that he was doing, apart from other groups.⁴⁵⁵ The lack of importance that Protective Policing placed on the identity of individuals who posed threats was at odds with CSIS's approach to the threat, and meant that there would inevitably be important gaps or missed opportunities in the RCMP's protective policing response to the threat identified by CSIS.

In the VIP Security context, the VIP Security Branch had developed a mechanism by which it could track certain individuals who posed threats to VIPs. This system was called the VIP Surveillance Subject Program. The program was described in a document referred to in the hearings as the "Purdy Report".⁴⁵⁶

VIP Security branch maintains a monitoring system of persons considered potential threats to foreign representatives posted in Canada.

...

452 Exhibit P-101 CAB0221, p. 2.

453 Exhibit P-101 CAA0110.

454 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2922.

455 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2845.

456 Exhibit P-130.

Upon identifying an individual as a potential VIP Security threat, the reporting member forwards an assessment report, Form 975, and photograph to Division headquarters. The CIB officer reviews the report and if in agreement, forwards report to VIP Security branch. If the branch concurs with the Division's recommendation the subject is entered in the CPIC observation category.

According to Inspector Lloyd Hickman, this system was designed in such a way that, if a police officer anywhere in Canada happened to check this person for a driver's license, or otherwise review him or her on the system, a notation would show up that the VIP Security Branch had an interest in him or her. However, the system was designed so that nothing of a confidential nature could be placed on the system and, generally, intelligence about serious "terrorist-type threats" always came in a classified form. The system was not designed to track individuals under investigation, but rather it was an open system, meant mainly to track letter writers or "unbalanced" individuals. The rationale for not entering individuals like Parmar into the system was that, since all police officers in Canada would have had access to that information, "...there was a lot more chance of that getting out."⁴⁵⁷

In effect, the insistence on secrecy, and a lack of imagination as to an alternative tracking system for security threats, meant that information about individuals who were known security threats was unavailable to those whose role it was to protect individuals and property from precisely those sorts of threats. The system in place was very limited, using only CPIC checks, and no other databases, and had no links of any sort to, for example, CSIS threat assessments, let alone CSIS or RCMP surveillance, even of a declassified nature. Therefore, despite the significant body of threat information that was passed through Protective Policing about individuals who posed security threats, including Talwinder Singh Parmar, Ajaib Singh Bagri, and Surjan Singh Gill, there were no adequate mechanisms in place to make any practical use of this information to enhance protective policing measures.

Failures in Implementation of RCMP Security Measures

RCMP Breached Policy by Authorizing Travel of Dogmaster

The fact that Carlson, the RCMP dogmaster for Pearson airport, was authorized to go on training without providing for a backup dog and dogmaster team is illustrative of multiple policy failures. What little policy existed was not only inadequate, but was frequently not properly understood or properly applied by the RCMP. At the time of the bombing (and for the entire month of June 1985), the Air India flights were subject to RCMP level 4 security.⁴⁵⁸ The RCMP security level grid that was provided to the Commission by the Attorney General of Canada indicates that, at level 3 security and above, the RCMP was to "...use the

⁴⁵⁷ Testimony of Lloyd Hickman, vol. 34, May 28, 2007, pp. 3983, 3986.

⁴⁵⁸ Final Submissions of the Attorney General of Canada, Vol. II, para. 115.

services of the dogmaster.”⁴⁵⁹ Carlson, however, testified that on June 22, 1985, and contrary to what is implied in the RCMP Submission to the Honourable Bob Rae,⁴⁶⁰ there was no dogmaster available for duty at Pearson airport, as he had been sent to Vancouver with his dog, Thor, for training.

In its Final Submissions, the Attorney General of Canada argued that it is “... unclear to this day” what the grid signifies by “...use the services of the dogmaster.”⁴⁶¹ RCMP documentation entered into evidence at this Inquiry contradicts this claim and clearly explains the meaning of this requirement. An internal Montreal RCMP document, dated July 12, 1984, describes the measures mandated for level 4 security, pursuant to the security grid.⁴⁶² The measures employed at Mirabel in relation to level 4 security are described as follows:⁴⁶³

As described in Appendix “A”, level 4 security calls for increased surveillance of the plane parked on the apron and of activities in the arrival, departure and airline ticket counter areas. Moreover, the supervisor of the team on duty must meet the airline representative before the arrival or departure of the aircraft for information regarding ongoing security operations. This security level also means that a police dog and his master will usually check any suspect luggage or package and will search the passenger section of the aircraft before takeoff.

In fact, the safety measures mandated by level 4 security were reiterated in the RCMP Submission to the Honourable Bob Rae as follows:

From June 16, 1984 to June 22, 1985, as a result of escalating violence in India, the security measures for Air India were increased to level four. These measures included:

- Increased RCMP surveillance of the Air India aircraft on apron area;
- RCMP monitoring of the Air India arrival, departure and ticket counter area;
- RCMP supervisor liaison with Air India representative regarding security operations prior to the arrival or departure of the aircraft; and

⁴⁵⁹ Exhibit P-101 CAA0025.

⁴⁶⁰ Exhibit P-101 CAA0335, pp. 8-9.

⁴⁶¹ Final Submissions of the Attorney General of Canada, Vol. II, para. 248.

⁴⁶² Exhibit P-101 CAA0061.

⁴⁶³ This memorandum is a typed document with handwritten corrections. The document is cited with the corrections. The corrections made to the original are stylistic and do not alter the meaning or scope of the described duties in relation to level 4 security.

- RCMP dog master checking any reported suspect luggage or package and searching the passenger section of the Air India aircraft before departure.⁴⁶⁴

It seems quite clear that level 4 security required at a minimum that the dogmaster be present at the airport in order to search the passenger section of the Air India aircraft prior to departure, as well as to check any suspect luggage. The authorization by the RCMP of Carlson's absence from Pearson airport during a period in which level 4 security was in place without provision of a backup dog, was inconsistent with the RCMP security grid protocol.

The Attorney General of Canada submitted that the authorization of Carlson's absence from Pearson was not a breach of RCMP policy, as training was necessary to keep the dog effective.⁴⁶⁵ While training was clearly an important duty, the RCMP manual guiding security operations addresses the issue directly and states: "These security duties must be considered on a priority basis among our operations. In case where other similar duties must be carried out simultaneously, distribute your personnel according to the most vulnerable and priority basis posts and duties."⁴⁶⁶ Clarke confirmed that when operating at level 4 security, personnel should be placed on security duties mandated by level 4 in priority to other duties, including training.⁴⁶⁷

The Attorney General of Canada also submitted that the meaning of the security grid obligation to "...use the services of a dog master" is unclear, since dogs were used (and the presence of the dogmaster was required) whenever there was a specific threat and not in other circumstances. This assertion is not accurate. There were a number of distinct circumstances in which use was made of the services of the dogmaster.⁴⁶⁸ Of particular significance in the context of this Inquiry are the following three circumstances: in the context of a call-in "specific" bomb threat;⁴⁶⁹ when suspicious luggage was identified;⁴⁷⁰ and in response to level 3 security (or above).⁴⁷¹ The Attorney General of Canada

⁴⁶⁴ Exhibit P-101 CAA0335, pp. 8-9.

⁴⁶⁵ Final Submissions of the Attorney General of Canada, Vol. II, para. 242.

⁴⁶⁶ Exhibit P-101 CAA0026.

⁴⁶⁷ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3073-3074.

⁴⁶⁸ The report of the CATSA Act Review Advisory Panel states "[Canine units] were primarily employed to search for explosives in the terminal building following a bomb threat, search aircraft for bombs, and check unattended bags left in the terminal building. Their use for screening regular checked baggage was limited to screening suspect bags. On the rare occasions when a specific threat was made against an aircraft with passengers already on board, the aircraft would have been directed to an isolated area of the airport, emptied of both passengers and luggage, and a dog would be brought in to sniff all the bags lined up on the tarmac": Exhibit P-101 CAF0160, p. 15. In addition, Gary Carlson specified that his "...responsibilities were to assist the members of the detachment with my expertise being a bomb-dog handler. I would respond to any bomb threats, suspicious packages, anything to do with explosives and very seldom did I ever get the opportunity to use my dog as a general duty dog, but I was available if that so came about as well. Some of my duties also, I assisted other agencies with my dog as he was a bomb dog": Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 2988-2989. See also Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3190-3191.

⁴⁶⁹ See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.

⁴⁷⁰ Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2996.

⁴⁷¹ Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2672-2673.

blurs the distinction among these three situations. Further, Mattson confirmed that the RCMP had discretion to use the dog in whatever capacity they felt was appropriate.⁴⁷²

There should have been a dogmaster available at both Pearson and Mirabel. The dogmaster and his dog should have searched the passenger section of the aircraft, the suspicious luggage identified at Mirabel and/or any bags that triggered a response from the PD4 sniffer at Pearson and, arguably, all bags at Pearson that could not be X-rayed. None of this happened.

Sûreté du Québec (SQ) Dogmaster at Mirabel did not Search Passenger Area of Aircraft

Level 4 security was in effect for Air India at Montreal's Mirabel airport. While the RCMP dogmaster usually on duty at Mirabel was away on training, Mirabel employed Serge Carignan of the SQ to cover the regular dogmaster's duties. Despite level 4 being in effect, and contrary to the RCMP Submission to the Honourable Bob Rae,⁴⁷³ it is clear that Carignan "...never did search the passenger section of the Air India aircraft before departure,"⁴⁷⁴ as Flight 182 had departed before the arrival of Carignan and his dog. The failure of the RCMP to ensure the presence of Carignan at the airport to perform this function was another implementation failure with respect to the RCMP security levels.

RCMP Failed to Check Up on Airline Security Measures and Operations Continuously

The RCMP security grid provides that at levels 2 and above, "An RCMP supervisor meets with the airline representative for each operation in order to obtain any additional information pertinent to each security operation."⁴⁷⁵ In terms of the nature of the obligation imposed by this measure, Clarke confirmed that at level 4, it would be the duty of the RCMP supervisor to meet with the Air India representative on a continual basis to see if operations were running smoothly.⁴⁷⁶

Clarke confirmed that the RCMP supervisor should be aware of breakdowns in equipment and had an obligation to check from time to time before the plane left to find out what was going on.⁴⁷⁷ This obligation makes sense in light of

⁴⁷² Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3191.

⁴⁷³ Exhibit P-101 CAA0335, p. 9.

⁴⁷⁴ Testimony of Serge Carignan, vol. 26, May 9, 2007, p. 2672.

⁴⁷⁵ Exhibit P-101 CAA0025.

⁴⁷⁶ Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3062-3064.

⁴⁷⁷ Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3067. When Sgt. MacDonald was asked about this obligation, he stated that on the one hand, he thought that the supervisor would likely have had contact with Air India "quite often," but he also stated that he thought that the RCMP likely had to meet with Air India only before the operation and that it was Air India's responsibility to let the RCMP know if anything went wrong. However, MacDonald also stated that he didn't know what the process was and he thought that someone who had worked at the airport could explain it. Given that Clarke had been the OIC at Pearson Airport, he was in a better position to understand how the obligations were interpreted on the ground: Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2901-2902.

the overall discretion that RCMP and Transport Canada officials had at the airport, even to detain a plane if there were concerns about it embarking in unsafe circumstances, or where the air carrier may have failed to comply with air regulations then in place. In order to exercise this discretion appropriately, officials would need to be able to assess on an ongoing basis what an air carrier was doing to ensure safety and security.

Seen from this perspective, the insistence in the Attorney General of Canada's Final Submissions that the RCMP was unaware of various June 22nd security failures attributed to Air India or Burns International Security, does not absolve the RCMP of its responsibility. Rather, it provides confirmation that it failed in its monitoring obligations. For example, baggage screening for Air India Flight 181 in Toronto started at approximately 2:30 PM local time. The X-ray machine reportedly operated intermittently for some period before it became unserviceable, at approximately 4:45 PM,⁴⁷⁸ at a point where only about 50 to 75 per cent of the baggage had been screened.⁴⁷⁹ The screening was completed using the PD4 sniffer device about an hour later, but the flight did not depart Pearson airport until 8:15 PM.⁴⁸⁰ Clearly therefore, during the two-hour period before the X-ray machine broke down entirely, there were already indications of issues with its efficacy. After the shutdown, there was one hour during which Burns security was using (or misusing) the PD4 sniffer, and approximately two and a half hours more prior to the plane's departure. Had the RCMP been monitoring Air India's security operations, it would have had several hours during which to become aware of the failure of the X-ray machine and the use of the ineffective PD4 sniffer. Nevertheless, with respect to the breakdown of the X-ray machine at Pearson, the Attorney General of Canada argued:

When the x-ray machine broke down, Mr. Desouza of Air India instructed Burns staff to continue screening using only the PD-4 sniffer. He did this notwithstanding the RCMP's warnings that the PD-4 was ineffective. No one from Burns or Air India informed the RCMP that there were problems screening luggage. Mr. Vaney, Mr. Yodh and Mr. Desouza were all present, but it is unclear who was ultimately in charge. There does not seem to have been any discussion about what back-up procedures to adopt.⁴⁸¹

and

The Air India and Burns employees who were screening the luggage for Flight 182 never requested the dogmaster's assistance or informed the RCMP that the x-ray had broken down. It was their responsibility to do this since their role was "...to design and implement security systems for passenger and baggage screening."⁴⁸²

⁴⁷⁸ Exhibit P-101 CAF0160, p. 37.

⁴⁷⁹ Exhibit P-436: Civil Aviation Security Dossier.

⁴⁸⁰ Exhibit P-101 CAF0160, p. 37.

⁴⁸¹ Final Submissions of the Attorney General of Canada, Vol. II, para. 230.

⁴⁸² Final Submissions of the Attorney General of Canada, Vol. II, para. 256.

In the circumstances, it is not a proper conclusion to vindicate the RCMP on the basis of its ignorance. Similarly, with respect to the three suspect bags that were identified at Mirabel airport, the Attorney General of Canada argues:

Air India did not notify the RCMP (or Transport Canada) about the suspect luggage, despite the fact that Air Canada advised them to do so. Finally, at 10:00 pm, Air Canada informed the RCMP that there were 3 suspect bags. A few minutes later, an RCMP officer came to the baggage area and requested to speak with an Air India official, who asked him to wait 10-15 minutes. When the Air India officer arrived, he informed the RCMP officer that Flight 182 had departed already.⁴⁸³

Here again, the timeline does not exonerate the RCMP. The first suspect suitcase was identified at some time between 7:00 to 7:50 PM, and Air India was notified approximately 15 to 20 minutes afterwards. This suitcase, and the two others that were subsequently identified, were left in the baggage area next to the X-ray machine without supervision. This means that, prior to Air Canada informing the RCMP of the suspect bags, there was a space of over two hours during which the RCMP could have learned of the existence of the suspect luggage had it conducted any sort of patrol of the baggage area, or liaised with Air India officials.⁴⁸⁴

4.7 Transport Canada Policy Gaps and Implementation Deficiencies

Weak monitoring and enforcement of airport and air carrier security compromised Canada's civil aviation security in the 1980s. The evidence indicates that, despite there being no legislative requirements to do so, Transport Canada had committed to policies mandating that it approve and thoroughly monitor air carrier security plans. Unfortunately, the inspection and enforcement regime itself was so under-resourced and toothless that carriers such as Air India were given little guidance regarding serious flaws in their security programs.

Obligations Respecting Air Carrier Security Measures

As a member state of the International Civil Aviation Organization (ICAO) and a signatory to Annex 17 to the *Chicago Convention on International Civil Aviation*,⁴⁸⁵ Canada was required to appoint an authority responsible for the development, implementation and maintenance of its national civil aviation security program.⁴⁸⁶ As the responsible aviation authority for Canada, Transport Canada was obliged to ensure that airports and air carriers developed and implemented security programs.

⁴⁸³ Final Submissions of the Attorney General of Canada, Vol. II, para. 238.

⁴⁸⁴ Exhibit P-101 CAF0087.

⁴⁸⁵ Exhibit P-152: *International Standards and Recommended Practices – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference – Annex 17 to the Convention on International Civil Aviation* – Second Edition – October 1981 [Exhibit P-152: Annex 17, 2nd ed.].

⁴⁸⁶ Exhibit P-152: Annex 17, 2nd ed., p. 8.

At the time of the bombing, the regulations made pursuant to the *Aeronautics Act* required both foreign and domestic air carriers to establish, maintain and carry out certain security measures at airports. The onus was on the air carrier to implement systems for passenger and baggage screening.⁴⁸⁷ As discussed in detail in Section 2.3.2 (Pre-bombing), Failure to Push Through Responsive Regulations, the air carriers were required to file written descriptions of their security measures under the *Civil Aviation Security Measures Regulations* and the *Foreign Aircraft Security Measures Regulations* in place in 1985.

This regulatory scheme was significantly flawed, due to oversight and enforcement failures. The regulations did not include a process for approval of these air carrier security plans by the Minister of Transport. While Transport Canada was ultimately responsible for the safety of airline operations in Canada and enforcing the security provisions of Annex 17, it seemed that, from Transport Canada's perspective, as long as the security plan met the basic and vague requirements outlined in the regulations, it was a valid security program.

Neither the *Aeronautics Act* nor its regulations made it an offence for an air carrier to fail to comply with its own filed security program. Instead, as the owner and operator of Canada's major airports, Transport Canada could set policies regarding screening and provide facilities and equipment in the expectation that they would be used by the air carriers. In keeping with ICAO recommendations that passenger and baggage screening be aided by inspection equipment wherever possible,⁴⁸⁸ Transport Canada purchased and maintained metal detectors and X-ray machines that were used to screen passengers and carry-on baggage prior to boarding. Nevertheless, the *Aeronautics Act* and its regulations afforded Transport Canada no more ability to force an air carrier to screen its carry-on baggage by X-ray than to screen its checked baggage – which, as is discussed later, Transport Canada considered to be a completely voluntary measure. These measures were not prescribed by law. An air carrier that did not comply with its security program could be warned in writing, or its right to fly into and out of Canadian airports could be suspended, but there was no formal sanction in-between. This meant that a carrier's compliance with any of the terms of its security programs was, effectively, voluntary.⁴⁸⁹ These weaknesses were identified when the aviation security regulations were drafted in the 1970s,⁴⁹⁰ but it would not be until after the bombing that expanded regulations would be enacted to remedy these deficiencies.

The *CATSA Act* Review Advisory Panel found that the Minister of Transport had no formal legal authority to approve or reject an air carrier's security plan, and the Attorney General of Canada also emphasized the absence of an explicit mandate within the legislative scheme to "...approve, monitor, or enforce security programmes."⁴⁹¹ There is, however, ample evidence that Transport

487 Exhibit P-157, p. 19.

488 Exhibit P-152: Attachment to Annex 17, 2nd ed.: Extracts from Annex 9, p. 15.

489 Exhibit P-101 CAF0593, p. 6.

490 Exhibit P-101 CAF0774, p. 18.

491 Final Submissions of the Attorney General of Canada, Vol. II, para. 55.

Canada took an active role with respect to the air carrier security plans, and that it was obliged to do so because of its international commitments to aviation security.

Pursuant to the standards established by Annex 17 (2nd ed.), Transport Canada was required to ensure that air carriers applied their security plans "...in proportion to the threat to international civil aviation and its facilities as known to the State," and also to "...ensure that such a programme is compatible with the prescribed aerodrome security programme."⁴⁹² Canada's security program requirements for foreign and domestic air carriers were imposed as a result. It should be noted that the ICAO standards were imposed upon the member states by virtue of their status as signatories, and not upon the individual air carriers within those states. Among other standards and obligations, Canada was required to designate an authority to develop, implement and maintain a national civil aviation security program. Transport Canada was, and is, Canada's aviation authority, with oversight over the national civil aviation security program and obligations to ensure safe air travel through regulation. Accordingly, even though Canada's legislation did not provide for an explicit mandate to approve the air carrier security measures, Transport Canada was nevertheless obliged under Annex 17 to review and comment upon the security programs in a meaningful way once they were received, and to monitor the carriers' implementation of those programs to ensure that the measures were properly applied in proportion to the threats of the time.

Approval of the Air India Security Program

Following a request from the National Civil Aviation Security Coordinator, Air India first submitted its security plan to Transport Canada in December 1982, as it prepared to commence weekly flights in Canada based out of Mirabel International Airport.⁴⁹³ The *Foreign Aircraft Security Measures Regulations* were subsequently updated to include Air India in the schedule of affected air carriers required to submit written descriptions of their security measures to Transport Canada. In the spring of 1983, following a thorough review, Paul Sheppard, the Director of Transport Canada's Civil Aviation Security branch, wrote to Ashwani Sarwal, Air India's Assistant Manager, regarding the security program. Although in most respects the plan more than satisfied the minimal requirements set out in the regulations, Sheppard pointed out a number of small problem areas that needed to be addressed in a revised version of the plan. For example, Sheppard directed Air India to remove a reference to searches of visitors entering the sterile area of an airport, as Canadian regulations only provided for searching passengers.⁴⁹⁴ There were also problems with a section discussing the transportation of firearms, weapons and other dangerous articles in an aircraft cargo hold, which Sheppard sought to correct. Finally, Sheppard pointed out that the security plan suggested that Transport Canada officials had the power to authorize diplomatic bodyguards to carry firearms aboard an aircraft, which was incorrect.

⁴⁹² Exhibit P-152: Annex 17, 2nd ed., s. 5.1.1.

⁴⁹³ Exhibit P-101 CAF0778.

⁴⁹⁴ Exhibit P-101 CAF0779, p. 1.

Sheppard concluded:

Upon receiving the amendments concerning these paragraphs, I am sure that the remainder of the security program will be considered satisfactory and meet the requirements of Canadian law.⁴⁹⁵

In February 1984, Air India amended its security program and advised Transport Canada of the changes that had been made.⁴⁹⁶ Sheppard sent a letter to Sarwal stating that following a detailed review of the plan, "...we have concluded that it is a commendable program that meets the requirements of Canadian legislation."⁴⁹⁷ In its Final Submissions, the Attorney General of Canada conceded that this represented an "informal approval" of Air India's security program by Transport Canada.⁴⁹⁸

As Air India prepared to expand its operations to Toronto's Pearson International Airport, its security plan was again the subject of discussion at Transport Canada. Dale Mattson, then the Transport Canada Safety and Security Manager at Pearson, chaired a meeting of the Airport Security Committee at Pearson airport, where it was noted that Air India would be implementing secondary security measures for its checked baggage in light of the threat.⁴⁹⁹ Mattson testified that this referred to X-ray screening of checked baggage prior to it being loaded aboard aircraft.⁵⁰⁰ This was not a widely practiced aviation security measure at the time, but airlines, such as El Al, that faced high-risk threats had successfully implemented it at other Canadian airports⁵⁰¹ in the past.⁵⁰² Air India was also required to submit another copy of its security plan to Mattson and, through him, to Transport Canada headquarters before its flights to and from Toronto commenced in January 1985.⁵⁰³ On January 11, 1985, a copy of Air India's 1982 security plan was sent to Mattson, along with a list of additional security measures that Air India proposed to implement as part of its Toronto operation.⁵⁰⁴ The updated security plan confirmed that Air India would be examining its checked baggage by X-ray or by means of the PD4 explosives detection device, or by both.

Several Transport Canada policy documents refer to the approval of air carrier security plans. For instance, following the 1973 amendments to the *Aeronautics Act* which instituted a wave of new aviation security requirements, Transport Canada's Director General of Civil Aeronautics circulated an aviation notice that

495 Exhibit P-101 CAF0779, p. 2.

496 Exhibit P-134.

497 Exhibit P-134.

498 Final Submissions of the Attorney General of Canada, Vol. II, para. 154.

499 Exhibit P-101 CAF0082, p. 5.

500 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3184.

501 Exhibit P-101 CAF0552, p. 5.

502 Exhibit P-101 CAF0082, p. 5.

503 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3181.

504 Exhibit P-101 CAA0119.

provided some guidance to the carriers, who were "...asked to produce a detailed Security Program in writing for the approval of the Minister."⁵⁰⁵ The guidance material was relatively general in nature, as it was nothing more than a list of topics that should be addressed in the security programs, but the emphasis on Ministerial approval is significant.

Another Transport Canada policy document, describing the Aircraft and Transport Protection System, set out the minimum acceptable security requirements for airports.⁵⁰⁶ The first version of this document was released in October 1981, and an amended and updated version was released in December 1984. The document discussed the classification of Canadian airports, and the airport and air carrier security requirements for each. A Class I airport, for example, included international and major national airports. What is especially remarkable about this document is its discussion of air carrier requirements in the context of their security programs for each airport classification.

With respect to Class I airports, the minimum air carrier security requirements were:

a) Each enplaning passenger except transfer passengers to other Canadian destinations that have been satisfactorily screened in accordance with Canadian standards and deplaned into a sterile area must undergo search by persons or electronic devices in accordance with procedures described in the air carrier's approved security program.

...

d) Prevent checked baggage and cargo from being loaded aboard its aircraft unless handled in accordance with procedures described in the air carrier's approved security program.⁵⁰⁷

For each subsequent airport class, this document also makes explicit reference to the requirement that these searches be handled in accordance with "...the air carrier's approved security program."⁵⁰⁸

The implication of these documents is clear. Given Canada's legal obligations to the ICAO, Sheppard advising Air India of problems with its security plan, and the documents that expressly speak of Ministerial approval for air carrier security plans, it is safe to say that Transport Canada was not merely a passive recipient of these plans, or, at least, that it was not meant to be. Just as Transport Canada made it a policy to actively monitor the carriers' compliance with their written

⁵⁰⁵ Exhibit P-165, Tab 8.

⁵⁰⁶ Exhibit P-101 CAF0650.

⁵⁰⁷ Exhibit P-101 CAF0650, p. 4.

⁵⁰⁸ Exhibit P-101 CAF0650, pp. 4, 6-8, 10.

security plans, despite the fact that the legislative scheme did not contain a mandate for enforcement (as discussed later), it also evidently had a policy of actively reviewing and approving the carriers' security plans when they were filed. This suggests that the written security plans, like the one filed by Air India in 1982 and amended in 1985, were in fact endorsed by Transport Canada.

This prospect raises important questions in light of some of the most problematic aspects of Air India's security plan, such as its decision to rely on the ineffective PD4 explosives detection device as the sole backup for its checked baggage X-ray machines. If Transport Canada approved Air India's security plan, but subsequently concluded that the PD4 was unreliable, why did it not take any steps to recommend Air India amend its security plan and ensure that the device was not used at all? This was a matter that required both oversight and enforcement.

Monitoring Air Carrier Security

Transport Canada's Civil Aviation Security Branch was responsible, on behalf of the National Civil Aviation Security Coordinator, for overseeing the airport and air carrier security systems in place in Canada. It had also committed to a program of comprehensive audits of air carrier security plans on a system-wide basis.⁵⁰⁹ Among the audits was a spring 1984 review of CP Air's security program.⁵¹⁰ The audit examined matters such as the carrier's contracts for security services, the training of CP Air's security personnel and flight crews, and its procedures and responses for bomb threats, and made a number of recommendations for both the airline and Transport Canada to consider and act on.

The audit report included considerable discussion of CP Air's checked baggage security measures during high threat situations. Bomb threats had increased in number in 1984 and were of growing concern.⁵¹¹ CP Air was aware of the threat of sabotage to aircraft, and had implemented passenger-baggage reconciliation systems for use at large airports such as Toronto's Pearson airport.⁵¹² The audit report noted that the CP Air system worked very well and that it ensured that no bag was put aboard the aircraft unless the passenger was aboard. The report went further, concluding that "...it caused some slight delay but it would not be an impossible situation in the event that we did run into high threat situations in Canada."⁵¹³ Among its recommendations was a suggestion that Transport Canada develop means to improve threat management procedures, including faster but more thorough searches and the development of electronic devices at airports for use by air carriers in searching.⁵¹⁴

The fact that Transport Canada concerned itself so thoroughly with the various aspects of CP Air's security operations, including passenger-baggage

⁵⁰⁹ Exhibit P-101 CAF0654, p. 9.

⁵¹⁰ Exhibit P-101 CAF0637.

⁵¹¹ Exhibit P-101 CAF0637, p. 1.

⁵¹² Exhibit P-101 CAF0637, p. 18.

⁵¹³ Exhibit P-101 CAF0637, pp. 18-19.

⁵¹⁴ Exhibit P-101 CAF0637, pp. 2-3.

reconciliation, is a good indication of its broad aviation security responsibilities and priorities, legislated or not. Although Transport Canada and the carriers placed great emphasis on the threat of hijacking in the 1970s and 1980s, the recognition that sabotage was a growing threat was reflected in the audit, which was not limited to anti-hijacking measures such as pre-board screening of passengers and carry-on baggage. Unfortunately, when it came to Air India, there was little such monitoring, auditing or oversight, despite Transport Canada's clearly stated intentions to do so.

Air India's first flight out of Pearson airport departed on January 19, 1985. On January 21, 1985, Mattson met with RCMP S/Sgt. Ward for a debriefing on Air India's security operations for the flight.⁵¹⁵ No Air India or Burns International Security representatives were present at this meeting. The minutes of the debriefing indicated that Air India's secondary security screening of passengers and carry-on baggage had been carried out as outlined in the security plan, but secondary screening of checked baggage by X-ray was not done because the X-ray machine had not yet been delivered. Instead, the PD4 was deployed, and the minutes included a note that, when tested, the device proved to be "totally ineffective" in the opinion of the RCMP explosives detection dogmaster and members of the Peel Regional Explosives Detection Unit. With respect to X-ray searches of checked baggage, it was decided that "...a further analysis of this procedure will be carried out once the X-ray is installed and in operation." The minutes of the debriefing ended with the note that, "We will continue to monitor Air India's operations over the next month, after which we will carry out another analysis of their operation to ensure that the measures and procedures which they have established remain appropriate."⁵¹⁶

On February 14th, John Cook, the Acting Director of Civil Aviation Security for Transport Canada, wrote to Sarwal regarding Air India's security requirements at Pearson.⁵¹⁷ Cook noted that Air India, RCMP and Transport Canada officials met at Pearson and agreed on the security plan for Air India's Toronto operations. Cook also stated that, with respect to Air India's security plan:

Mr. Dale Mattson, Transport Canada's Manager of Safety and Security at the airport has confirmed that Air India's operations are being monitored to ensure the measures and procedures established are appropriate to meet the perceived threat. You will be advised at once should any changes be deemed necessary.⁵¹⁸

These documents can only be taken to mean that Transport Canada officials were to be actively observing and analyzing Air India's security measures. The continuing high threat to the airline was well understood, as was the ineffectiveness of the legislated civil aviation security regime in reducing the

⁵¹⁵ Exhibit P-101 CAA0121.

⁵¹⁶ Exhibit P-101 CAA0121, pp. 2-3.

⁵¹⁷ Exhibit P-101 CAF0032.

⁵¹⁸ Exhibit P-101 CAF0032.

risk posed by terrorist acts of sabotage. Mattson testified, however, that he monitored Air India's security measures for the first flight on January 19th, but no others.⁵¹⁹ According to Mattson, the Transport Canada staff at Pearson airport had no capacity or instructions to inspect or monitor Air India's security:

The airport managers did not have security officers to perform that function. We were very limited in resources. I had myself and one security officer, one policing officer. We were totally committed at the time to administrating the overall program as we have discussed over the last day.

...

And the only time that we were able to assist in the monitoring process was if there had been an event or if we'd be especially requested to do so by the Civil Aviation Security Branch at Headquarters.⁵²⁰

There was, in fact, considerable inconsistency and uncertainty in the day-to-day interaction of the Transport Canada security officials and the air carrier security programs at Canada's major airports. Some security staff would monitor passenger screening systems and other major activities such as air carriers' handling of checked baggage and cargo on a daily basis, but no formal roles or responsibilities had been set in this regard, and thus actual monitoring of air carrier security by airport officials varied widely.⁵²¹

Mattson testified that he believed any monitoring that did occur did not include any examination of whether Air India was complying with its security plan. He believed that Transport Canada's monitoring of an air carrier's security operations extended only to those requirements set out in the aeronautics legislation. According to Mattson, any measures other than those prescribed by the regulations were not challenged or monitored, as they were merely optional measures.⁵²² Indeed, if Air India had not updated its security plan in 1985 to include screening checked baggage, or had subsequently decided to stop X-raying checked bags altogether, Mattson testified that he would have nevertheless viewed the program as sufficient.⁵²³

On January 21, 1985, Mattson was informed that the PD4 had failed a second test conducted by the RCMP, while it was being used to inspect checked baggage for Air India's inaugural flight.⁵²⁴ The RCMP officers also informed Transport Canada HQ of the failure, although no one at Air India was advised of the results of the second test. Mattson testified that he was aware that after two failed tests the

519 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3199-3200.

520 Testimony of Dale Mattson, vol. 30, May 17, 2007, p. 3387.

521 Exhibit P-101 CAF0654, p. 4.

522 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3199-3201.

523 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3201.

524 Exhibit P-101 CAC0528, pp. 33-34.

RCMP lacked faith in the ability of the PD4 to successfully detect explosives, but he did not see it as his role to warn Air India against using it.⁵²⁵ There is also no evidence that Transport Canada informed Air India that the PD4 had failed a second test, or that Transport Canada recommended Air India amend its approved security plan in light of the device's severe flaws:

MR. SHORE: Do you recall at anytime between January 19th, 1985 and the bombing of Air India Flight 182, that at anytime there was a notice with respect to a deficiency that may had been addressed at the regional level of the problems that we obviously have now heard more about?

MR. MATTSON: And you're saying directly towards Air India?

MR. SHORE: Yes.

MR. MATTSON: I am not aware of any.⁵²⁶

Mattson was asked the question why, if Transport Canada was wholly unconcerned with Air India's "optional" security measures such as X-ray examination of checked baggage, did the January 21st debriefing make extensive reference to Air India's checked baggage security? Mattson's response to this question was that:

We had an interest in that we felt it necessary to advise our Headquarters of the fact, again, that the equipment that Air India had said they were going to use to carry out checked baggage inspection, did not seem to be performing as per the RCMP view of what was needed to check bags.

But as far as being in a position to say that they couldn't use it, we were not, because it was not part of the CIV AV Security Plan that had been approved by Civil Aviation at Headquarters. They were aware. We brought it to their attention again and we received no direction with respect to increasing or directing Air India to carry out any other type of screening procedure.⁵²⁷

Mattson reiterated his opinion that, as the use of devices like the PD4 to search checked baggage was a measure above and beyond what was called for by the minimum standards set by the security regulations, the matter was entirely within Air India's purview.⁵²⁸ He conceded, however, that where an airline like Air India relied on a device that Transport Canada believed to be manifestly unfit for its intended security function, "...it would matter in that we would want to bring

⁵²⁵ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3205.

⁵²⁶ Testimony of Dale Mattson, vol. 30, May 17, 2007, p. 3389.

⁵²⁷ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3211.

⁵²⁸ Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3212-3213.

it to their attention that what they felt was meeting their requirements, from our evaluation, was falling below their expectations.⁵²⁹ Nevertheless, Mattson did not recall ever relaying this concern to Air India.⁵³⁰

The contention that air carriers had to meet certain minimum standards, and that Transport Canada was powerless to enforce (and thus monitor and comment upon) any “optional” measures that exceeded these standards, is something of a red herring. In reality, there was very little that Transport Canada could do to ensure that an air carrier complied with any part of its security plan, due to the absence of civil enforcement mechanisms. Most of Transport Canada’s security requirements and standards for aviation security measures at airports, such as passenger screening, were set out in internal policy and administrative publications rather than in regulations.⁵³¹

There were no detailed “minimum standards” for matters such as baggage searches contained within the legislation beyond the requirement that carriers have in place “...systems of surveillance of persons, personal belongings, baggage, goods and cargo by persons or by mechanical or electronic devices.”⁵³² This requirement applied equally to Air India’s decision to screen carry-on baggage by X-ray and to its decision to screen checked baggage by X-ray or PD4. Transport Canada had as much ability and obligation to approve, comment upon, or monitor checked baggage screening as carry-on baggage screening. As such, any suggestion that Transport Canada had no role in “...monitoring those extra measures”⁵³³ requires an acknowledgment that Transport Canada also had no legislated role in monitoring any other aspect of a carrier’s security plan. Because this gap in Canada’s aviation security regime was well-recognized at the time, hindsight is not necessary to conclude that this reveals a strikingly poor policy framework.

In January 1986, a meeting was convened at the Department of Justice to discuss Air India’s security at the time of the bombing. The minutes indicate that Sheppard was asked about Transport Canada’s enforcement abilities. His responses should be noted:

1) Was there a systematic check of airlines adhering to MOT security plans?

- No.

2) Was there any monitoring of Air India’s security plan?

- No.

⁵²⁹ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3212.

⁵³⁰ Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3213.

⁵³¹ Exhibit P-138, p. 11.

⁵³² *Foreign Aircraft Security Measures Regulations*, s. 3(1).

⁵³³ Final Submissions of the Attorney General of Canada, Vol. II, para. 161.

3) What happens if something is found wrong?

- Notify airline of deficiency, but there is no authority to take any action (nothing between written reprimand and death penalty).⁵³⁴

The “death penalty” refers to the revocation of an air carrier’s operating privileges in Canada, meaning its aircraft could no longer take off or land at Canadian airports.

Notwithstanding the notable security requirements that could not be enforced at all, failing to obey a regulation made under the authority of the *Aeronautics Act* in June 1985 was an offence punishable by a fine of up to \$5000, or one year of imprisonment, or both. For the airlines, however, such penalties were unrealistic. The fines were not substantial enough to have a punitive impact on such large businesses, and the airlines as corporate “persons” were obviously not liable to imprisonment. In contrast, the modern *Aeronautics Act* can impose significant fines against corporations as well as individuals, and also provides for the possibility of punishments, such as forfeiture of aircraft, on conviction for certain indictable offences.

This simplistic and anemic regulatory scheme, within a civil aviation security regime premised upon voluntary compliance, made enforcement all but impossible. It underscored the vital importance of good relationships and communications between government, industry, and law enforcement, as well as frequent and thorough inspections. Nothing less would ensure that air carriers were living up to their commitments to the public, and that Canada was living up to its own commitments to the international civil aviation community.

Civil Aviation Inspection

In February 1984, Sheppard sent a letter to Sarwal regarding Air India’s security program, which had recently been amended by Air India and approved by Transport Canada.⁵³⁵ Sheppard reminded Sarwal that Air India should be continually reviewing its own security program in order to ensure that it appropriately reflected the security of the airports it operated out of, and asked that Air India report any proposed changes to Transport Canada. Sheppard also highlighted Transport Canada’s intended oversight mechanism, adding:

In an effort to attain standardization of security procedures in Canada, as well as to confirm that requirements are being met, Transport Canada officials will be monitoring, from time to time, and evaluating the air carrier security programs. Any matter requiring corrective action by your company will be brought to your attention.⁵³⁶

⁵³⁴ Exhibit P-101 CAC0517.

⁵³⁵ Exhibit P-134.

⁵³⁶ Exhibit P-134.

Transport Canada made it a policy under the National Civil Aviation Security Program to conduct semi-annual security reviews of all the air carriers that were required to file a security plan under the regulations.⁵³⁷ The policy called for Transport Canada's regional Dangerous Goods and Civil Aviation Inspectors to conduct reviews at each airport, focusing on the air carrier security programs and assessing the adequacy of the measures that had been established by the programs. In doing so, the inspectors were to conduct operational evaluations of the measures established by the programs, as well as an evaluation of the techniques employed and the skill of the personnel carrying out the security functions of the program.⁵³⁸ The inspections also extended to an evaluation of the training programs for screening personnel employed by the carriers.

The inspectors used the two-part Civil Aviation Security Inspection Checklist to evaluate airport security plans and air carrier security plans. The checklist included security aspects that were to be examined, and required the inspector to indicate whether the measure was or was not being performed. In the course of their duties, the inspectors would direct the airport or air carrier's attention to any security deficiencies or recommendations. If a concern could not be resolved at the regional level, Transport Canada required that a copy of the security checklist be forwarded to the National Civil Aviation Security Coordinator at headquarters in Ottawa.⁵³⁹

Unfortunately, these security inspections did not proceed as intended. The resources that were allocated for aviation security from the inception of the National Civil Aviation Security Program were fundamentally inadequate to meet the program requirements.⁵⁴⁰ According to a Transport Canada report, "...the major impact from the lack of resources was felt in areas of monitoring/inspections of airports and air carriers to ensure compliance with security regulations and policies, the investigation of security incidents/infraction [*sic*] and the related training support."⁵⁴¹ The *CATSA Act Review Advisory Panel* noted that, during the period of 1972 to 1985, Transport Canada employed only 11 security inspectors across its six regions to enforce both aviation security regulations as well as regulations governing the transportation of dangerous goods. The inspectors were, not surprisingly, "thinly stretched" during this period, as their duties required monitoring of roughly ten Canadian air carriers and 60 foreign air carriers at the approximately 100 airports⁵⁴² spread across the country.⁵⁴³

A study conducted in the early 1980s found that "...there was too much workload in any region for one person to cover the Dangerous Goods areas let alone the civil aviation security responsibilities."⁵⁴⁴

537 Exhibit P-101 CAF0151, p. 26.

538 Exhibit P-101 CAF0151, p. 26.

539 Exhibit P-101 CAF0151, pp. 26, 39-42, 43-45.

540 Exhibit P-101 CAF0593, pp. 5-6.

541 Exhibit P-101 CAF0593, p. 6.

542 Exhibit P-101 CAF0593, p. 1.

543 Exhibit P-157, pp. 21-22.

544 Exhibit P-101 CAF0593, p. 7.

In the fall of 1984, Transport Canada's Evaluation Branch conducted an assessment of Canada's civil aviation security program which indicated that, in three regions, the regulatory inspectors had conducted no security inspections. In three other regions, there was only limited testing using the headquarters checklist, and the inspectors spent little time testing the system in order to see where faults lay.⁵⁴⁵ Moreover, in June 1985, A.B. McIntosh, Transport Canada's Manager of Air Carrier Security, reported that the lack of inspection resources was such that, for each region, the inspectors were only able to complete "...0% to 10% of the estimated workload."⁵⁴⁶ Transport Canada had obtained resources to provide an additional inspector for each region before the end of 1985, but its inspection targets remained modest in light of the magnitude of the task. McIntosh stated that the goal was to achieve 100% inspection of all air carriers in each region by 1990.⁵⁴⁷

According to Mattson, what security monitoring of the air carriers there was at Pearson tended to be reactive rather than regular or preventive:

The regional security officer would come out and carry out an inspection or he would receive information either from the airport management group or we would get information from operations or observe something ourselves or a complaint from another source may be issued that the carrier was not complying. We would raise this with the regional civil aviation security officer and his first initiative would be to come out and meet with the air carrier, identify the problem, verify that it was valid and at that point get a commitment from them that they would correct their procedure and resolve it locally.

If, in fact there was objection to doing that, then he would escalate it to the Civil Aviation Branch at Headquarters level where it may go to a level where they decided that they were either going to take some sanctions to get some financially or otherwise, and I'm not sure just what criteria they use to make that determination.⁵⁴⁸

In light of these facts, it is not at all surprising that Professor Reg Whitaker, of the *CATSA Act Review Advisory Panel*, testified that Transport Canada's oversight of the carriers was "essentially nonexistent"⁵⁴⁹ prior to the bombing of Air India Flight 182, and that "...despite the fact that [Transport Canada] had made certain undertakings, ... to monitor from time to time, they simply did not."⁵⁵⁰

545 Exhibit P-101 CAF0654.

546 Exhibit P-101 CAF0593, p. 1.

547 Exhibit P-101 CAF0593, p. 1.

548 Testimony of Dale Mattson, vol. 30, May 17, 2007, p. 3389.

549 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4366.

550 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4366.

The lack of resources for inspections meant that it was difficult to achieve uniform monitoring and inspections from region to region, to conduct investigations of security incidents, and to provide security training, assistance, and advice. Given that many air carriers operated in more than one region in Canada, Transport Canada was concerned about these deficiencies resulting in air carriers adopting inconsistent and inappropriate security measures and, worse, compounding enforcement difficulties. Transport Canada also lacked any resources to conduct security inspections at foreign airports from which air carriers departed for Canada,⁵⁵¹ meaning that there was no way to confirm that the carriers were complying with Canadian security regulations when outside Canada or that information provided by the carriers in their security programs was accurate.

Today, civil aviation safety inspectors and security inspectors conduct reviews at foreign airports before Transport Canada will issue a Foreign Air Operator Certificate to a foreign carrier seeking to operate in Canada; and the Offshore Inspection Security Program periodically follows up by sending teams of security specialists to verify that the measures remain in practice.⁵⁵² Canada also sends inspection teams to airports in other states prior to allowing air carriers to conduct new flights between Canada and that state.⁵⁵³ These audits are essential components of Canada's bilateral operating agreements with other states. In 1985, however, Transport Canada was forced to rely on third parties to provide this information due to its limited resources – a circumstance that it considered to be inappropriate.

With the air carriers continually balancing security against the competing interests of customer satisfaction and cost-effectiveness, Transport Canada's inability to regularly inspect air carrier security, or to enforce penalties for violations of either the legislation or the carrier's own security programs, could hardly encourage either vigilance or competence at Canada's airports. For example, in 1984, McIntosh distributed a memorandum to the regional inspectors advising that recent observations of security checkpoints at major airports revealed a number of security breaches caused by carelessness or inattentiveness. Individuals were entering air screening checkpoints and proceeding into sterile areas without being checked to verify that they were actually *bona fide* passengers, and airline and flight crew personnel were passing through security checkpoints without displaying their identification cards.⁵⁵⁴ McIntosh stated that an attitude of complacency was extending into areas of aviation security, and that these were but a few examples of how it would emerge. Reflecting the necessary compromises inherent in a voluntary security regime that lacked any enforcement mechanisms, McIntosh requested that the inspectors target the larger airports in their regions "...and draw the responsible air carriers [*sic*] attention to any shortcomings in the agreed upon

551 Exhibit P-101 CAF0593, pp. 9-10.

552 Testimony of Jean Barrette, vol. 37, May 31, 2007, pp. 4540-4541.

553 Testimony of Jim Marriott, vol. 39, June 4, 2007, pp. 4737-4738.

554 Exhibit P-101 CAF0570, p. 1.

security system that are observed.”⁵⁵⁵ Section 2.4 (Pre-bombing), *Security Culture at Canada’s Airports*, addresses in detail the woeful security culture of this period.

Enforcement Failures Following the Bombing

The bombing of Air India Flight 182 was a tragedy that placed a renewed scrutiny on aviation security in Canada and around the world, and raised many questions about checked baggage security, the threat of sabotage, and Canada’s readiness to meet the threat of terrorism. As officials, experts and investigators examined the incident, in an effort to uncover the causes of the disaster and identify solutions to prevent such acts from occurring again, the weaknesses in Canada’s aviation security regulation and monitoring systems were quickly laid bare.

A prominent flaw was Transport Canada’s lack of meaningful oversight over air carrier security programs, and Air India’s security program in particular. An RCMP report concerning the preliminary investigation of the security measures in place at Pearson airport on June 22, 1985 remarked that “...it appears that Air India did meet the requirements of the Foreign Aircraft Security Measures Regulations at [Lester B. Pearson International Airport] on the 22 June 1985. There are obvious weaknesses in the system i.e., lack of training evident in regards to Burns Security Personnel however, it is still a system, good, bad or indifferent. Our Regulations simply require a ‘system’ with no measure of quality.”⁵⁵⁶

In the same vein, Transport Canada investigated the possibility that the airlines had failed to comply fully with their security plans, and that this had contributed to the failure to prevent the bombing. It was concluded that CP Air had violated its own security plan by interlining the checked bag belonging to “M. Singh” to Delhi.⁵⁵⁷ Despite this finding, any breaches by Air India or CP Air of their own security plans were under the voluntary compliance regime.⁵⁵⁸ Therefore, no enforcement action was possible.⁵⁵⁹ The only action that could be taken against CP Air following the bombing was the writing of a letter “...pointing out their responsibility in complying with established security measures.”⁵⁶⁰

Although in many respects the bombing represented a sea change in terms of aviation security, and shook government and industry alike into taking a comprehensive and purposive approach to preventing acts of sabotage, there was nevertheless some resistance to the security measures called for immediately after the bombing. Transport Canada issued ministerial directives on June 23, 1985 that called upon international carriers to implement thorough baggage searches and holds on cargo for each flight. The measures caused delays, and the delays were expensive.

⁵⁵⁵ Exhibit P-101 CAF0570, p. 2.

⁵⁵⁶ Exhibit P-101 CAF0143, p. 17.

⁵⁵⁷ Exhibit P-101 CAF0611.

⁵⁵⁸ Exhibit P-101 CAF0612.

⁵⁵⁹ Exhibit P-101 CAF0554, p. 3.

⁵⁶⁰ Exhibit P-101 CAF0612.

In a meeting of the National Civil Aviation Security Committee in September 1985, the representative of the Air Transport Association of Canada expressed his great concern about the “costly measures” that were being implemented “...in spite of the record in Canada in the last 10 years,”⁵⁶¹ arguing that Canada should focus on correcting what went wrong on June 22, 1985 rather than trying to close “...all the holes.” One airline put its cost concerns into direct action. In October 1985, Lufthansa refused to comply with the requirement to search checked baggage for its flights at Mirabel.⁵⁶² Although the *Aeronautics Act* was amended days after the bombing, Transport Canada remained utterly unable to sanction this flagrant breach of security as the measures were not part of any regulation or order. Until the new aviation security regulations were imposed, Transport Canada remained powerless in fundamental security matters as a direct consequence of short-sighted policy choices.

Conclusion

Vigilance is the cornerstone of any successful security regime, and it is required of both those providing the security within that regime, and those overseeing it. Without continual and thorough monitoring of the air carriers, airport personnel, and security staff within that system, carelessness and complacency can flourish. Errors that occur will propagate unchecked without review, testing, and corrective feedback and, worse, any deliberate decisions to cut corners or ignore specific components of the security system may go unnoticed. The evidence indicates that prior to the bombing of Air India Flight 182, Transport Canada had a duty to approve and oversee air carrier security programs as part of its obligations as Canada’s representative at the ICAO, and that it had developed policies obliging it to do so. Unfortunately, no legislation empowered it or required it to meet that duty. Transport Canada also made it a policy to conduct inspections of airport and air carrier security, but failed to provide sufficient resources to follow through with that commitment. As a result, air carriers such as Air India were not subject to critical oversight, and worrisome components of Air India’s security program, such as its unwarranted reliance on the useless PD4 to inspect checked baggage for explosives, were allowed to pass without comment.

⁵⁶¹ Exhibit P-101 CAF0162, p. 4.

⁵⁶² Exhibit P-101 CAF0608, p. 5.