

Air India Flight 182
A Canadian Tragedy

VOLUME TWO
Part 2: Post-Bombing

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**VOLUME TWO
PART 2: POST-BOMBING INVESTIGATION
AND RESPONSE**

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VOLUME TWO

PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

CHAPTER I: HUMAN SOURCES: APPROACH TO SOURCES AND WITNESS PROTECTION

1.0 Introduction

The RCMP: Difficulty Recruiting Sources in the Sikh Community

When Air India Flight 182 exploded off the coast of Ireland on June 23, 1985, much of the key forensic evidence settled hundreds of metres under the sea. At the same time, there was a widespread view that numerous members of the tight-knit Canadian Sikh community held key knowledge about the perpetrators of the crime.¹ If the RCMP could get them to talk, it could begin to build a case against the perpetrators. Thus it was crucial for the RCMP to make active efforts to gain access to the Sikh community and build trust.² However, the difficulty recruiting sources and witnesses in the Sikh community is often cited by the RCMP as one of the main challenges faced by the Force in the Air India investigation.³

The RCMP began its investigation at a significant disadvantage. Prior to the bombing, the RCMP did not have access to many sources who could provide information about Sikh extremism and threats to Indian interests.⁴ After the bombing, members of the Task Force were essentially starting at “ground zero” in terms of their understanding of the Sikh community and culture.⁵ According to retired RCMP Commissioner Norman Inkster, when the investigation got underway there were “...perhaps one maybe two, but certainly not more” people in the RCMP who actually spoke Punjabi. Officers could not communicate with the community in a language that they were comfortable with, and there was “...a significant lack of understanding of the culture.”⁶ While many in the Sikh community held strong views about the Air India bombing, they were afraid to cooperate with police, believing that they would end up being forced to participate in a court proceeding, endangering themselves and their families in Canada and in India.⁷

¹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7825-7826; Exhibit P-101 CAF0411, p. 4.

² Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7826.

³ See, for example, Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2705, confirming that gaining access to the Sikh community was an issue for the RCMP in its investigation of Sikh extremism.

⁴ Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2728-2729.

⁵ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11587.

⁶ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10314.

⁷ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7396-7397.

Early on in the Air India investigation, the RCMP found that it had difficulty obtaining information from the Sikh community. In August 1985, the RCMP stated, in an affidavit in support of an application for authorization to intercept private communications, that the wiretap was necessary because conventional investigative methods had been unsuccessful to date, and were "...likely to be unsuccessful, due to the nature of the East Indian community and their peoples' unwillingness to co-operate with this investigation," noting that "...other efforts to infiltrate this community have failed at the outset."⁸

Many members of the community were specifically concerned about the possibility that the Government of India could become aware that they were providing information to police and that there could be ramifications for their relatives in India.⁹ In a briefing to the RCMP, a CSIS investigator who provided information about Sikh extremism and the Sikh culture noted that, in some cases, members of the community could resort to dishonesty when questioned by police because of past experiences with Indian police and fear of reprisals against family members in India.¹⁰ In this context, the "full-scale liaison" the RCMP sought to establish with Indian authorities to "...coordinate the timely flow of pertinent information" relating to the Air India case¹¹ could negatively impact the RCMP's ability to gain trust in the community. For instance, following the "Kaloe incident" in 1986, a perception took hold in the Sikh community that the death of Balbir Singh Kaloe at the hands of Indian authorities was a result of information supplied to India by Canadian authorities. This had a significant impact on the Sikh community's trust of Canadian authorities.¹²

The CSIS Approach versus the RCMP Approach

CSIS investigators were often more successful than the RCMP in obtaining information from individuals in the community during the post-bombing period. They could tell community members clearly from the start that they were not the police. When individuals agreed to speak with CSIS, they often did so on the condition – explicit or implicit – that their information not go to the police.¹³

CSIS investigators adjusted their approach, depending on the person they went to meet. At times, they would use an approach intended to resemble that of the police, which CSIS investigator William Dean ("Willie") Laurie described as having "two large male[s]" impress upon the individual that they were from the government and that there was something the individual could do to assist. More often, however, they stressed that they were not the police and explained that they wanted to obtain information so that "...at least somebody in government

⁸ Exhibit P-101 CAA0310, p. 7.

⁹ Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3897.

¹⁰ Exhibit P-101 CAA0313, pp. 2-3.

¹¹ Exhibit P-101 CAF0057, p. 38.

¹² See Section 2.3.3 (Post-bombing), The Purported Parmar Confession, where the "Kaloe incident" is discussed.

¹³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7396-7397.

knows what actually transpired, and so that we can develop information that will prevent another event like this from happening.” They tried to empathize with individuals who genuinely wanted to help.¹⁴

CSIS investigators were not under as much time pressure as the RCMP to obtain information and could afford to be patient with sources. They approached sources one-on-one, as opposed to the RCMP, which generally had two officers meeting individuals.¹⁵ Laurie felt this could have a significant impact on the sources’ willingness to talk:

MR. BOXALL: [I]t may be that when persons are ready to talk that can be just as much a factor as to [whom they are] talking to?

MR. LAURIE: Yes. And I would add to that the method that the people go to talk.

...

If two of me had gone, it might very well be that I wouldn’t have been as successful as I was.¹⁶

Laurie also explained that he generally did not take notes during his interviews, unlike “...the way the police might do it”, because “...if I have notes it is going to cramp and ... no one is going to open up if they see me taking a record.”¹⁷

Another CSIS investigator, Neil Eshleman, testified that his approach – which was similar to that of others in CSIS – was first to be relatively informed on the issues of the community. To that end, CSIS investigators made significant efforts to educate themselves about issues of concern to the community, reading as much as they could from both public and classified information. They learned about the views of the community regarding the Government of India, and about Sikh extremism in general.¹⁸

In the experience of CSIS investigators, this was not the approach taken by the RCMP officers involved in the Air India investigation. Eshleman testified that when he tried to explain to the RCMP investigators the nuances of community attitudes towards the Sikh separatist movement, Sikh extremism and the bombing, they showed little interest, not viewing the information as relevant to their immediate criminal investigation.¹⁹ Indeed, the RCMP often failed to

¹⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7402-7403.

¹⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7404.

¹⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7534.

¹⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7414.

¹⁸ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9383.

¹⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9383. See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

appreciate the overall value of more general CSIS intelligence. A member of the RCMP HQ Task Force who prepared a report about the difficulties encountered during the first year of the Air India investigation wrote:

Anything [CSIS] gave us was of no value to this investigation, i.e. we do not need to know the historical background of the Sikhs or the reasons why they are waging terrorism, to solve a criminal act. Nice to know does not equal need to know.²⁰

It also appeared to other observers that the RCMP did not take into account the sensitivities of the community or modify its standard approach when attempting to gather information from individuals in the Sikh community. Cst. Don McLean, who worked in the Vancouver Police Department's (VPD) Indo-Canadian Liaison Team and gained the community's trust prior to the bombing, stated that, from what he could observe, the RCMP used the "usual police methods" of knocking on doors and simply requesting information. He commented that this approach met with some resistance from the community, and that most community members therefore preferred to speak with his unit. He felt that the RCMP approach to the community was not very successful in terms of source development and he advised the RCMP of the problem. McLean himself continued to receive information from his sources in the community after the bombing, even though he was a police officer, and he indicated that he observed no change in the community's willingness to cooperate with him.²¹

In light of the magnitude of the Air India tragedy, the RCMP often took the view that individuals with important criminal information were duty bound to cooperate with police.²² Inkster commented that if a source with important criminal information is someone who is "in Canada":

...that Canadian has an obligation to be helpful to law enforcement and, if necessary, appear before court as a witness and I'm not sure that one should get the choice as to whether or not you could do that and say "No, I'm not prepared to do that."²³

Many CSIS investigators felt that the RCMP approach was overly intimidating:

²⁰ Exhibit P-101 CAF0055, p. 7.

²¹ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4147-4148, 4161-4162.

²² See, for example, the RCMP approach to Ms. E after 1995, discussed in Section 1.3 (Post-bombing), Ms. E.

²³ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10366.

MR. LAURIE: ...sometimes we were familiar with people who had been interviewed by the RCMP, ostensibly for the same purpose, and they were so intimidated that they could – even if they wanted to help, they were convinced that they shouldn't help because they didn't want to be involved with people who treated them that way.

MR. KAPOOR: Which way?

MR. LAURIE: As though they had to participate, that they were being forced into it, that they were being pushed under duress perhaps to assist because you must know something and we are the police after all, and we can make trouble for you perhaps, or something like that. You know, we know somebody in your family who has had trouble with the law, blah, blah, blah, that sort of thing. It's not something that ever worked for people on my desk.²⁴

RCMP S/Sgt. Bart Blachford, who is currently the lead Air India investigator at RCMP E Division, explained that the differences in approach between the agencies often related to the different goals pursued:

Well CSIS has a different end goal. They are looking for a long-term relationship and continuing flow of intelligence. We are trying to develop a witness for a criminal prosecution....²⁵

He added that the RCMP, when approaching a person as a potential witness, would never promise complete anonymity, because "...if you're going to be a witness, you will have to testify."²⁶ On the other hand, S/Sgt. Robert Solvason, who had experience in source development for the RCMP, explained that confidential informants, even if they never testify, can also be of assistance to the RCMP in obtaining evidence through other means.²⁷

The difference in approach may also have been influenced by the experience each agency had in dealing with its "usual sources." Inkster testified that CSIS works in a "...very, very different milieu in terms of their sources." According to him, CSIS sources are often "...business people, well-established individuals," whom CSIS wants to "develop" and use "...over the very long term, years; years and years." It is therefore "extraordinarily important" to CSIS that their sources not be exposed because it could do "...real harm to them," particularly if those individuals come from small communities where they can be "...easily identified and perhaps harmed", and this is why CSIS is so "...extraordinarily protective of their sources."²⁸

²⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7403-7404.

²⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7840-7841.

²⁶ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7841.

²⁷ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11556-11557.

²⁸ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10364.

According to Inkster, the RCMP, by contrast, deals in the “criminal domain,” “... oftentimes with a very different person.”²⁹ He explained that an informant:

...could be someone who is just trying to put the competition out of business; trying to get even or settle a vendetta – or to make more money so – they’re providing information relative to crime and those involved in crime for a whole variety of interests, some of them oftentimes self-serving.³⁰

The work of both CSIS and the RCMP was also complicated by the fact that there were many organizations conducting investigations and attempting to obtain information from the community, including the RCMP, CSIS, the VPD and even the Government of India intelligence agency, RAW.³¹ This overlap created confusion for community members about the agency with which they were supposed to speak.³² CSIS witnesses testified that their work in the community became more difficult when the RCMP began to conduct its own community interviews. The CSIS investigators would often try to interview someone, only to be told “...your people were here the other day,” referring to the RCMP. The community saw the RCMP and CSIS as one and the same and, despite explanations, had “...extreme difficulty sorting the reality of that out.”³³ As a result, the community’s fear of being exposed in a court process if they provided information to the authorities at times hindered CSIS’s ability to obtain information, and not just the RCMP’s.

Air India Sources and Witnesses: The Consequences of Overlap

For a number of reasons, many of the key Air India sources (and, in some cases, eventual witnesses) initially spoke to CSIS and not to the RCMP. As a logical consequence of the RCMP’s focus on prosecution, the Force often took the view that CSIS was required to turn over these sources to the RCMP and to cease contact with them. Inkster testified that, in his view, where there has been a serious crime and there is a CSIS source with information about that crime, the needs of law enforcement should take precedence and “...it has to go into the hands of the police, in my judgment.”³⁴ His predecessor, Robert Simmonds, held similar views, indicating that if a source had information pertaining to a criminal offence and was willing to talk, “...clearly somehow or other ... it should be exploited by the Crown to use that evidence....”³⁵

One reason for this position was the RCMP’s concern that a source might become “contaminated” as a result of prolonged exposure to CSIS. What this means is that, as the source is questioned, “...he or she will become more wise and competent – in terms of what it is that they are going to say.” Therefore,

²⁹ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10364.

³⁰ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10364.

³¹ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4148, 4161. RAW stands for Research and Analysis Wing.

³² Testimony of Don McLean, vol. 35, May 29, 2007, p. 4161.

³³ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9458.

³⁴ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10367.

³⁵ Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9349.

from a police perspective, a “law enforcement officer” needs to speak with that individual about what she or he knows in the light of an ongoing criminal investigation and eventual prosecution. This is something you “...can’t have someone else do” for you. In Inkster’s view, “...the sooner the police get access to that witness to have that discussion, the better.”³⁶

Similarly, the RCMP was concerned about CSIS’s ability to recognize and appropriately deal with criminal information. Inkster testified that if someone is going to investigate that crime, “...presumably that person has to have peace officer status,” and therefore “...it’s got to get into the hands of the RCMP or some other police department in an expeditious and usable way.” Inkster stated that his concern was “...who’s going to make that determination; one, that this is a crime and secondly, how does that concern about the crime balance off with the security interests of CSIS and the informant?”³⁷

For its part, CSIS had concerns about the impact of the RCMP’s approach on CSIS’s own goals and mandate. For example, RCMP attempts to approach individuals of interest to CSIS, or individuals who had already provided information to CSIS, could create problems for the Service. Laurie explained that, in some cases, his work in trying to approach a source was made more difficult because the police had discovered his plans and made the approach first.³⁸ Individuals were then more reluctant to speak with CSIS. Also, if the RCMP approached a source immediately after CSIS had visited, the source might think that CSIS had reported their information to the police, a belief that would then cause them to become less willing to cooperate.³⁹ If the RCMP simply took over relations with a CSIS source on the basis of a possibility that criminal information might be obtained, CSIS might never be in a position to obtain any intelligence in the source’s possession.

As will be illustrated in the six stories that follow, the issue of potential sources or witnesses having contact with, and value for, both CSIS and the RCMP, was a problem that arose numerous times in the Air India investigation. This overlap brought to the fore some of the problems posed by each agency’s perceptions and assumptions about its own mandate and the manner in which it was to carry out that mandate.

As these stories illustrate, some of the most vexing issues arose in circumstances where individuals who became RCMP witnesses had prior dealings with CSIS that compromised the evidentiary value of their testimony or created difficulties for the Crown in carrying out its disclosure obligations. Equally frustrating from the point of view of CSIS was the fact that, in most cases, if not all, the consequence of CSIS sources becoming potential witnesses was to deprive the Service of any future intelligence from these individuals, whether or not they were ultimately witnesses at trial.

³⁶ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10367.

³⁷ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10364-10365.

³⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7400.

³⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7400-7401. See discussion of this issue in Section 1.1 (Post-bombing), Mr. A and Section 1.3 (Post-bombing), Ms. E.

1.1 Mr. A

Introduction

“The purposes of the two agencies in attempting to speak to Mr. A were fundamentally at odds: CSIS was interested in his long term potential as someone well-connected to a world that they need to develop intelligence in; the RCMP was interested in developing evidence that would be admissible in a court of law.”¹

Were these two “purposes” necessarily in conflict?

Mr. A was an individual who came to be considered, by both agencies, as an extremely promising lead in the Air India investigation. He was very important for CSIS’s long-term investigations, as he claimed he could get close to Talwinder Singh Parmar and Ajaib Singh Bagri, and was willing to be tasked by CSIS.² For the RCMP, he offered potentially crucial information with regard to the Air India bombing. The agencies wrangled for primary control of Mr. A – to the detriment of all. In the end, neither agency was able to benefit from Mr. A’s information.

The Mr. A story is seen through the testimony of Neil Eshleman of CSIS and S/Sgt. Robert Wall of the RCMP, along with the assistance of documents – in particular an Agreed Statement, which summarizes key documents related to Mr. A.³

RCMP and CSIS Both Have an Interest in Mr. A

Mr. A simultaneously came to the attention of CSIS and the RCMP through third party sources, including an institution which, by agreement with the Government of Canada, has been termed the “Third Party” for the purpose of this Inquiry. The Third Party had previous direct dealings with Mr. A, who had offered to provide the Third Party with information about the Air India bombing, contingent on certain conditions being met. A deal had been worked out, but the deal expired and the detailed information Mr. A claimed to have was not provided to the Third Party.⁴

Some of the information gleaned by the Third Party was shared with CSIS and the RCMP. Shortly after that, a meeting was held between the RCMP and CSIS, where the agencies realized they had received the same information about Mr. A, and each wanted to pursue an interview with him. An initial agreement was reached whereby CSIS would interview him first, and then the RCMP would provide questions to CSIS to ask Mr. A on the RCMP’s behalf. RCMP investigators were to be privy to the results of the CSIS interview, and it was agreed that if the RCMP investigators still felt that it was necessary to interview Mr. A, they would do so.⁵

¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 273.

² Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9423.

³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9375-9453; Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9656-9716; Exhibit P-291.

⁴ Exhibit P-291, items 1, 3, 34.

⁵ Exhibit P-291, item 1.

The key question that the RCMP wanted answered was: “what information was Mr. A trying to give to other authorities regarding Air India?”⁶

CSIS Reports on the Information it Learned from Mr. A

Shortly afterwards, CSIS investigator Neil Eshleman, who was a specialist in the area of source handling and had considerable experience with CT human sources,⁷ met with Mr. A. During the interview, Mr. A was asked the questions suggested by the RCMP.⁸ As well, in order to prove his *bona fides*, Mr. A offered some information which he stated could be verified by the Third Party, and which, in fact, was ultimately verified.⁹

CSIS wrote back to the RCMP about Mr. A’s answers to the RCMP’s questions. In relation to the information he had tried to provide to other authorities about Air India, CSIS reported that Mr. A provided a “...vague outline without names, dates or places which he was using as bait. A deal was then worked out with other authorities but the deal expired and the authorities were given nothing.” CSIS did not pass the information to the RCMP for corroboration.¹⁰

In further correspondence to the RCMP provided soon after this, CSIS clarified that Mr. A had supplied the “...same vague information to CSIS that was in the possession of the Third Party. CSIS is in the process of analyzing the information,” and that the information was all “hearsay and circumstantial,” but that Mr. A appeared to be telling the truth. By the time CSIS had provided this second, clarifying correspondence to the RCMP about Mr. A’s information, CSIS had received caveated correspondence from the Third Party which indicated that some of the Mr. A information had been corroborated.¹¹ Due to the caveat placed on the information by the Third Party, this information was again not shared with the RCMP.

In internal CSIS correspondence detailing the information CSIS learned from Mr. A, it was recorded that the source had provided CSIS with “detailed information” in relation to the Air India bombing “without naming names.”¹² However this information was not reported to the RCMP at this time.

CSIS Reports Detailed Information but Hides Mr. A’s Identity from the RCMP

After the first interview, Eshleman was tasked by CSIS management to develop Mr. A as a source, and through their meetings Eshleman developed a “reasonable comfort factor” and “rapport” with Mr. A.¹³ However, from the outset of his interaction with Canadian authorities, Mr. A expressed concerns about

⁶ Exhibit P-291, item 1.

⁷ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9376.

⁸ Exhibit P-291, item 2.

⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9418-9419.

¹⁰ Exhibit P-291, item 3.

¹¹ Exhibit P-291, items 5, 6.

¹² Exhibit P-291, item 2.

¹³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9420.

his personal safety. Mr. A wanted to know what guarantee CSIS could provide that everything he said would be kept confidential and that he would not be exposed. He was concerned about being double-crossed by CSIS and by the Government of Canada, and felt that cooperating with Canadian authorities could get him killed. He wanted an agreement with the Government of Canada that the information would not be used against him and that he would not have to appear in court to give evidence. It appears that Mr. A's concerns were not unreasonable, as these concerns were shared by CSIS. Further, there were ultimately indications that, due to the involvement of various agencies, Mr. A's identity had been compromised.¹⁴

To further complicate the matter, Mr. A indicated to Eshleman that he was not willing to give up his information without a benefit for himself. He asked for certain considerations, including "...assistance from the government with certain problems that he had";¹⁵ before he would provide further information. In light of the value of his information, Eshleman felt that Mr. A's demands were reasonable, but needed approval from further up the chain of command. In fact, Eshleman quickly came to believe that Mr. A "...had the single most potential of all sources" that CSIS had come into contact with up to that point.¹⁶ For CSIS, Mr. A was the most valuable kind of human source: one who had access to a closed group, the Babbar Khalsa, and who was willing to be tasked by CSIS. Not only that, but Mr. A claimed to have particular information relating to the bombing. Despite the agreement that had been reached earlier with the RCMP, CSIS gave Mr. A its usual assurances of confidentiality, and proceeded to treat him as a confidential human source. No other agreements were made.¹⁷

The result of this assurance was that, while CSIS shared some of the details of these meetings with the RCMP, CSIS did not reveal to the RCMP that certain Air India information was coming from Mr. A, and instead referred to the information as coming from a "...source of unknown reliability." CSIS reported that it was negotiating with the "source," in an effort to reach an agreement to have him disclose further information. This left the RCMP speculating about whether this information had, in fact, come from Mr. A, or whether this information was from another independent and corroborative source. An RCMP analyst who reviewed the information provided by CSIS sent inquiries to CSIS in relation to this information.¹⁸ The confusion over the source led to friction between CSIS and the RCMP. The RCMP wanted to clarify the identity of the source and to be provided with greater detail about the information.¹⁹

Three weeks after the information was provided by CSIS, RCMP analysts Margaret Purdy and Terry Goral met with CSIS to discuss the status of the RCMP's inquiries related to Air India. The RCMP had done its own analysis of the "source"

¹⁴ Exhibit P-291, items 4, 10, 23, 42, 63.

¹⁵ Final Submissions of the Attorney General of Canada, Vol. I, para. 265. The assistance was also referred to throughout the Mr. A chronology as a "reward."

¹⁶ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9420, 9447.

¹⁷ Exhibit P-291, items 54, 82.

¹⁸ Exhibit P-291, items 4, 9.

¹⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9420.

information and the RCMP provided this report to CSIS. CSIS was unwilling to divulge the source's identity and indicated that the Director General of Counter Terrorism at CSIS Headquarters was reconsidering his stance on providing information in relation to the Third Party's involvement and on revealing the source's identity. The RCMP felt it was "essential" that CSIS divulge the source's identity and provide a full assessment of its dealings with the source. Purdy also requested permission to contact the Third Party. CSIS replied that it would have to check whether this would be possible.²⁰

The RCMP complained that its inquiries were "stymied" due to a lack of access to the source or to the Third Party information. It is clear that the RCMP, at least in part, blamed CSIS for the fact that there was not more information forthcoming. At the same time, the Third Party expressed to CSIS its extreme concern for the protection of its information. This led to an internal CSIS directive that no information should be passed from the Third Party without the Third Party's express written consent.²¹

Internal requests were made within CSIS that consent be requested from the Third Party to release information to the RCMP. CSIS recognized the "definite criminal aspects" of the case and the "...need for a thorough police investigation," and cited these factors as making it important that relevant Third Party material be released to the RCMP. In the meantime, CSIS began an analysis of information received from the Third Party.²²

CSIS was apparently successful in urging the Third Party to lift its caveats, as some time after meeting with representatives of the Third Party, CSIS passed the Third Party information to the RCMP. However, the telex conveying the information, consistent with CSIS's earlier correspondence about its own interactions with Mr. A, indicated that the information was from a "source," without naming Mr. A or providing the details regarding how the Third Party came into possession of the Mr. A information. When the RCMP was provided with the original Third Party information a few months later, they complained that a considerable amount of information contained in the original had been deleted from CSIS's sanitized version.²³

RCMP and CSIS Argue for Control

Competition between CSIS and the RCMP

After CSIS passed the sanitized version of the Third Party information to the RCMP, CSIS Headquarters advised the BC Region that CSIS and the RCMP had agreed that CSIS would take the lead role in developing intelligence related to Air India.²⁴ However, it does not appear that this agreement, if it ever existed, lasted long.

²⁰ Exhibit P-291, item 9.

²¹ Exhibit P-291, items 14, 16, 18.

²² Exhibit P-291, items 7, 8, 11.

²³ Exhibit P-291, items 5, 11, 12, 48.

²⁴ Exhibit P-291, item 17.

One week later, a meeting was held between RCMP and CSIS members to discuss the Mr. A information, during which the RCMP expressed the view that it should take the lead, as the Air India bombing was a criminal investigation. CSIS disagreed and felt that it had to protect "their source." While CSIS provided assurances to the RCMP that any information it had developed on its own had been passed on to the RCMP and that anything passed by the Third Party that was not protected by caveats had also been shared, the RCMP had doubts that it had received all relevant information and wanted to know why information was being withheld. It was agreed at the meeting that the RCMP and CSIS would jointly develop questions to be sent to the Third Party through CSIS. However, the Third Party complained about the questions posed by the RCMP and indicated that it was not prepared to lift caveats to pass information to a police force at the time. The Third Party also felt that the RCMP questions "...had little background or reasons to support them."²⁵

Shortly after the meeting, and contrary to the agreement that had been reached at that time, the RCMP made a direct approach to the Third Party in order to uncover sensitive CSIS information.²⁶

The climate of distrust and competition between CSIS and the RCMP that had been brewing over the Mr. A issue came to a head in the lead-up to a multi-agency conference that was organized to discuss the Mr. A information. The conference was to include CSIS, the RCMP and other agencies, including the Third Party. In advance of the conference, CSIS and the RCMP were both conducting analysis on their information in relation to Mr. A to be presented at the conference.²⁷

CSIS wrote that it was intending to prepare an analysis of the information since "...[we] control most of the intelligence." In internal correspondence, Michael Gareau, Head of the Sikh Desk at the time, indicated that he wanted CSIS information removed from an RCMP analytical report which was to be presented at the conference, and that CSIS wanted to use the CSIS information in its own analysis, in order to present it itself.²⁸

At the same time, the RCMP expressed concern that CSIS's forthcoming major analytical report not be presented at the upcoming conference as "...it would put RCMP in an awkward position of having to disagree with some of the analysis." One RCMP analyst expressed the view that "...CSIS have interpreted certain things to suit themselves." It was stated that the "...RCMP should not let CSIS put [its] theories forward at the conference if the RCMP does not support or cannot sanction the follow-up inquiries at the field level." The analyst wrote that it was anticipated that any criticism voiced by the RCMP regarding the CSIS report, or suggestions that there was too much speculation, would be met with CSIS's "standard reply": "...we're in the speculation business."²⁹

²⁵ Exhibit P-291, items 19, 21.

²⁶ Exhibit P-291, item 25.

²⁷ Exhibit P-291, items 20, 32.

²⁸ Exhibit P-291, items 20, 26.

²⁹ Exhibit P-291, items 27, 29.

The CSIS analysis, presented by Bill Dexter, an analyst on the Sikh Desk, provided a timeline and names of individuals suspected of involvement in the Air India bombing, based on information from Mr. A and other sources. The report concluded by suggesting the “weakest links” in the conspiracy. This analysis was provided to the RCMP. Rather than disseminating the CSIS report within the RCMP, along with any caveats about its concerns about CSIS’s analysis, the RCMP made a decision to suppress the CSIS report entirely until the RCMP “...had a chance to examine it thoroughly,” as the RCMP did not want to “...send the field units off on false leads.”³⁰

An account of what occurred at the conference indicates that the climate of competition that was seen in the lead-up to the conference had not abated. According to CSIS correspondence, the proposed agenda was not followed at the conference, CSIS was not asked to present its paper, and at no time did the RCMP even refer to CSIS. CSIS quickly realized that its comments were not to be heard.³¹

At the end of the conference, it was agreed that two RCMP officers who were familiar with the file would be selected to review the information in possession of the Third Party to search for leads and for any information that could further the RCMP’s investigation. Cpl. Les Hammett and Sgt. Mike Atkinson were selected to do the review. Atkinson, in his report, noted that the information had been provided by Mr. A to the Third Party in circumstances that did not require Mr. A to give specific details or names. He further noted that the Third Party’s information lacked sufficient detail to allow for appropriate follow-up. He felt that the source himself could provide considerably more detailed information – such as the identification of the parties to conversations and meetings – which would facilitate the necessary follow-up investigation.³²

Two days later, RCMP Headquarters complained to CSIS Headquarters that information had been withheld for two months – a criticism that CSIS denied. CSIS countered that it had needed the Third Party to lift the caveats on the information and “...furthermore, it had taken CSIS that long for Mr. Dexter to put his analysis together.” CSIS further commented that, while the RCMP is CSIS’s main client, “...RCMP needs should not be placed above CSIS’s need to advise the Government of Canada about threats.”³³

The RCMP was also dissatisfied with the type of information it received from CSIS in relation to Mr. A, stating that it needed “raw data” and not “opinions and profiles” from a “...CSIS point of view.” It was decided that RCMP E Division would “go locally,” meaning that it would request information from the CSIS regional level, rather than Headquarters, to try to get access to the raw data, including actual surveillance notes.³⁴

³⁰ Exhibit P-291, items 29, 32, 40.

³¹ Exhibit P-291, item 37.

³² Exhibit P-291, items 35, 51.

³³ Exhibit P-291, item 37.

³⁴ Exhibit P-291, item 46.

In particular, the RCMP wanted the raw data for the interview conducted the previous winter. Consequently, a new request was initiated and a meeting was held between local RCMP and CSIS members to discuss the issue. CSIS said that it had "...given over all their information regarding the source." Eventually, the RCMP's local inquiries with CSIS resulted in the passing over of one additional document, a verbatim transcript of CSIS's last interview of Mr. A, which was the only material left in CSIS's possession available to the RCMP. It was subsequently learned that CSIS had destroyed its notes from its interviews of Mr. A.³⁵

Frustrated by the manner in which information had been shared by CSIS and the Third Party, an RCMP analyst wrote to the OIC Special Projects to complain about the lack of access to the Mr. A information. The analyst wrote that the reports that had been received the week before showed that a large amount of information had been withheld by CSIS and the Third Party and that they had been "unduly circumspect" in their sharing of information. The analyst wrote that this had created difficulties for the RCMP in its attempt to confirm the information related to Mr. A. The RCMP analyst calculated that the RCMP had lost three months of investigation time due to the caveats imposed by other agencies and due to the negotiations regarding those caveats.³⁶

In CSIS's view, the RCMP's perception that there was a lack of cooperation was a matter of its own faulty internal reporting. For example, early in the Mr. A narrative, E Division received the information about the interviews of Mr. A from CSIS at the local level but did not send the information to Headquarters until two months later. In internal CSIS correspondence, CSIS Headquarters requested to be informed of any requests from the RCMP so that it could brief RCMP Headquarters of CSIS's continuous cooperation, as it was felt that RCMP E Division was not informing RCMP Headquarters of CSIS's cooperation, but was informing RCMP HQ of perceived problems that were "non existent."³⁷

CSIS to Turn Over Investigation to the RCMP

The RCMP was of the view that it was "imperative" that the RCMP gain direct access to Mr. A,³⁸ and felt that he could provide "significant information."³⁹ Though CSIS refused to divulge Mr. A's identity to the RCMP, Eshleman did receive instructions to "...convince Mr. A of the necessity for him to have direct contact with the RCMP because of the nature of his information." Mr. A rebuffed Eshleman's attempts, repeating, "...in no uncertain terms," that he "...was not going to be involved in the court process, he was not going to be a witness, and he did not want to have contact with the RCMP."⁴⁰

The RCMP's insistence on exclusive access was, from their perspective, an "...attempt to preserve Mr. A and his information as potential evidence in a

³⁵ Exhibit P-291, items 54, 56, 63.

³⁶ Exhibit P-291, item 48.

³⁷ Exhibit P-291, items 22, 54.

³⁸ Exhibit P-291, items 34, 45, 58.

³⁹ Exhibit P-291, item 49.

⁴⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9422.

courtroom.”⁴¹ Eshleman understood that if a source had direct evidence, CSIS’s involvement could contaminate the witness due to the fact that, at times, CSIS provided information to its sources when it tasked them. Contamination may also occur where sources are offered benefits, which may be seen by courts as an inducement. However, CSIS never made any promises with regard to the benefits Mr. A was seeking, as that approval never came. As a consequence, Mr. A never fully revealed his information to CSIS. However, it was a CSIS tactic and policy to promise confidentiality. As Eshleman stated, “I think the only promise I really deliver, and do my very best to keep my word on it and gain that person’s trust, is the promise of confidentiality.” This approach enabled Eshleman to extract what information he could in the first place. However, Mr. A’s identity was now at the heart of the RCMP-CSIS conflict. According to Eshleman, if he could convince Mr. A to deal directly with the RCMP, then that would solve the dilemma of confidentiality. But if Mr. A persisted in shunning the RCMP, then Eshleman felt he could not reveal the source’s identity.⁴²

Ultimately, a decision was made at the very senior levels of management to have Mr. A turned over to the RCMP. Eshleman’s hands were tied; the decision to hand over Mr. A to the RCMP and to break the CSIS promise of confidentiality, despite concerns for the source’s safety, the long-term viability of the source, and the source’s distinct desire to avoid contact with the police, had been made. It was a “done deal.”⁴³ CSIS BC Region was to facilitate an introduction of RCMP E Division to Mr. A.⁴⁴

The RCMP’s Approach to Mr. A

The RCMP Operational Plan

E Division investigators liaised with local CSIS members to discuss the approach that would be made to Mr. A. Ray Kobzey, a CSIS BC Region investigator, spoke with Hammett and indicated that CSIS planned to “pre-programme” Mr. A, rather than having the RCMP approach Mr. A cold – meaning that CSIS would meet with him first to try to encourage him to speak with the RCMP. It was felt that this approach might allow CSIS to continue its association with Mr. A after the RCMP approach.⁴⁵

In preparation for the introduction, E Division was asked to identify members who would be responsible for handling and interviewing Mr. A. The RCMP felt that it was “imperative” that Atkinson, one of the members who had reviewed the Third Party files, be part of the interview team, given his knowledge of the file. Headquarters agreed that Atkinson should be an integral participant in the interview of Mr. A, and requested that the CO of O Division authorize his travel to Vancouver.⁴⁶

41 Final Submissions of the Attorney General of Canada, Vol. I, para. 264.

42 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9425, 9447.

43 Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9446.

44 Exhibit P-291, item 42.

45 Exhibit P-291, item 52.

46 Exhibit P-291, items 49, 56, 57.

The OIC Operations officer stressed that the RCMP investigators responsible for the initial interview of Mr. A must have an understanding of all previous discussions held between the source and CSIS and, in particular, with respect to the source's ultimate purpose, which was to secure a reward. E Division was directed to submit an operational plan regarding how the RCMP would approach the source and to indicate the questions that would be put to the subject. A continuation report by S/Sgt. Robert Wall indicates that the instructions were for the RCMP to treat the meeting with Mr. A as an "opening interview." Officers were to put questions to Mr. A and to "...allow him to do as much talking as possible."⁴⁷

CSIS provided the RCMP with an assessment of Mr. A. It was felt that the RCMP would have "...only one shot at Mr. A" and that the approach should be "...mature and professional." In a similar assessment, the Third Party indicated that if the RCMP was to go ahead with an interview of Mr. A, it was probably a "one-shot effort," and that it would therefore be important for the RCMP to review all information, including assessments of Mr. A prior to the interview.⁴⁸

When CSIS contacted Mr. A, he advised that he would only be available on a specific date,⁴⁹ as after that date he would be moving out of the E Division jurisdiction.⁵⁰ Atkinson would not be available to participate in the interview of Mr. A in the time frame laid out by Mr. A. However, Assistant Commissioner Norman Belanger directed that Wall fill in for Atkinson and that he and Hammett proceed with the interview on the specified date,⁵¹ despite the fact that Wall had very limited knowledge about Mr. A.⁵² Hammett expressed concern that the RCMP would be losing an advantage by not having Atkinson there, and that the RCMP was "stampeding" itself into doing something it was not "...prepared to do." The result of this directive was that, the night before the attempted introduction to Mr. A, Hammett had to rush to try to get Wall ready for the interview.⁵³

It was agreed that CSIS would arrange a meeting with Mr. A and "...impress upon him" the role of the RCMP in the criminal investigation of the Air India bombing. If Mr. A refused to speak to the RCMP, he would be put under surveillance overnight and the RCMP would then approach him the next day. RCMP Headquarters also indicated that E Division was to attempt to confirm Mr. A's truthfulness through a polygraph which would be "...conducted immediately after Mr. A has agreed to be examined." Mr. A was to be approached on the basis of the Third Party information. It was agreed that the RCMP would delay its approach to Mr. A after CSIS's meeting with him to help preserve his viability as a long-term source for CSIS.⁵⁴ The agreement assumed that an interval might

47 Exhibit P-291, items 58, 59.

48 Exhibit P-291, items 31, 38.

49 Exhibit P-291, item 61.

50 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9689; Exhibit P-291, item 66.

51 Exhibit P-291, items 60, 61.

52 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9680-9681.

53 Exhibit P-291, item 63.

54 Exhibit P-291, items 49, 60, 63, 65.

preserve CSIS's good reputation with Mr. A. However, Eshleman did not believe this would salvage their reputation once Mr. A refused to speak with the police and was approached anyway.⁵⁵

CSIS's Meeting with Mr. A

As planned, Eshleman met with Mr. A and explained to him that CSIS wanted to maintain a long-term relationship with him, but that the bombing of Air India was a criminal investigation and was a matter within the RCMP's responsibility.⁵⁶ However, this meeting did not have the desired consequences, and the results proved dire for CSIS's ability to profit from its relationship with Mr. A. Mr. A once again refused to cooperate with the police, and Eshleman told Mr. A that if this was his position, his instructions were to "...cease [his] contact with him." Mr. A maintained his position and Mr. A "...walked out the door and that was the end of all potential with that source."⁵⁷

Indeed, that was the last contact Eshleman ever had with Mr. A.

The order to transfer Mr. A to the RCMP had a significant and negative impact on CSIS morale. As "...CSIS lives through sources of information," it was "exasperating" and harmful to motivation to have developed Mr. A and then to have been ordered to relinquish him. This was especially so because, while Eshleman initially thought that Mr. A could be a witness, he believed that it was the intelligence he offered that was of real value.⁵⁸

As well, the manner in which the transfer occurred placed considerable stress on the CSIS handler. The RCMP, skeptical of Eshleman's intention to "relinquish control" and to actually convince Mr. A to speak with the police, asked to be provided with corroboration that he had indeed used his best efforts to do so. Eshleman felt this showed that certain members of the RCMP lacked trust in Eshleman.⁵⁹ The RCMP, though, was satisfied that its case had been well presented by CSIS.⁶⁰

The RCMP's Meeting with Mr. A

While the RCMP knew of Mr. A's extreme fear for his personal safety and consequent reluctance to speak with police, its rushed pursuit of "evidence" led to an approach to Mr. A in a manner that was not sensitive to these concerns and that ultimately compromised its own goals. As well, the RCMP itself had noted well before its interview of Mr. A that it "...will have to be in a position to meet or negotiate [Mr. A's] conditions in order to obtain the necessary information

⁵⁵ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9427.

⁵⁶ Exhibit P-291, item 63.

⁵⁷ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9426.

⁵⁸ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9421, 9436.

⁵⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9428.

⁶⁰ Exhibit P-291, item 63.

to carry this investigation further.”⁶¹ Nevertheless, E Division was instructed by Headquarters that “no promises or threats” were to be used in the approach to Mr. A.⁶²

Following the Eshleman interview, Mr. A was placed under surveillance overnight⁶³ and, at 9:25 AM the next morning, Wall and Hammett approached Mr. A’s home, unannounced. The approach taken by the RCMP significantly differed from CSIS’s view of the appropriate course of action. Approaching Mr. A at his home would put Mr. A in an uncomfortable position, as there were other people in the residence who would not likely have approved of his cooperation with police. According to CSIS, such an approach would run counter to the objective of developing a good rapport with Mr. A. Indeed, Mr. A’s own subsequent statements confirmed similar concerns about the manner in which he had been approached by the RCMP.⁶⁴ In his testimony, Eshleman commented on the advisability of a cold approach to Mr. A. Eshelman stated that, given Mr. A’s “significant ego” and sense of “self-importance,” this may not have been the “wisest undertaking.”⁶⁵

Wall and Hammett approached the home of Mr. A in an unmarked van. When they knocked on the door, a young man came to the entrance and Hammett asked to see Mr. A.⁶⁶ When Mr. A came to the door, the officers identified themselves by showing their ID badges. Mr. A advised that he was not interested in speaking with the RCMP and indicated that he was busy. However, after some persuasion, he finally agreed to meet with the RCMP at the RCMP station, but told the officers to come back in an hour as he needed time to get ready.⁶⁷

The officers picked up Mr. A at 11 AM in the van.⁶⁸ Wall’s recollection was that Hammett was driving with Mr. A in the middle seat and Wall in the rear seat, or the reverse thereof. The drive from Mr. A’s home to the RCMP’s provincial Headquarters took approximately 20 minutes, and during the drive, there was not much conversation.⁶⁹

Mr. A was brought to the rear of E Division Headquarters and led into an interview room for “a conversation” with the officers. Wall’s agreement with Belanger was that the officers would try and get Mr. A to the point where Mr. A could be taken “...on the fast elevator upstairs” into Belanger’s office.⁷⁰ But the officers would not make any promises “...until they were sure what [Mr. A] had to offer was of value.”⁷¹ Mr. A was not to be promised anything, but if Mr. A put forth a package with “...specific details, dates/times etc,” Wall would take it to his superiors.⁷²

⁶¹ Exhibit P-291, item 34. This contrasts with the belief of the AGC that it was only with “hindsight” that it became “...clear that unless his demands were met Mr. A would not be forthcoming” with further information: Final Submissions of the Attorney General of Canada, Vol. I, para. 271.

⁶² Exhibit P-291, items 34, 49, 58.

⁶³ Exhibit P-291, item 65.

⁶⁴ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9430-9431.

⁶⁵ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9432.

⁶⁶ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9683.

⁶⁷ Exhibit P-291, item 63.

⁶⁸ Exhibit P-291, item 63.

⁶⁹ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9684.

⁷⁰ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9685-9686.

⁷¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 266.

⁷² Exhibit P-291, item 65.

The interview commenced at 11:20 AM. Mr. A asked for some water, which was provided. Wall began with a formal introduction, telling Mr. A that he was there on a voluntary basis. Hammett indicated that he wanted to put specific questions to Mr. A.⁷³ Mr. A stated that he was not prepared to comment, and that CSIS already knew everything. After some questioning, Mr. A attempted to explain his motivation and outlook, and the RCMP “interrupted” him to “...bring him back to the main issue” – this despite the earlier plan to allow Mr. A the freedom to “...do as much talking as possible.”⁷⁴

Mr. A refused to talk and, a mere 15 minutes later, the RCMP decided to drive Mr. A home. On the way home, Mr. A “...had a change of heart,” and began to speak to the officers. He said that the RCMP should have called ahead to make an appointment. He had concerns that people were going to ask him what he was doing talking to the police. He said that he did not want to lie, but that he could be “an outcast.” He indicated that he feared that if he did talk to police, his life would be in jeopardy.⁷⁵

Mr. A claimed that he had provided valuable information to the Third Party. When pressed for specifics, he would not say what it was that he had given. Wall suggested that Mr. A did not tell the RCMP anything because he “...didn’t have any knowledge.”⁷⁶ It is unclear from the evidence whether this was said to Mr. A for the purpose of provoking him into disclosing more information, or if this was the officer’s actual assessment of the source’s potential.⁷⁷ If the reason was the former, it did not produce the desired result. The RCMP interview report concluded that “Mr. A doesn’t have specific information that would assist the investigation. He definitely would not be a witness. He fears that if he talked his life would be in danger.” The officers went on to conclude that Mr. A was of “... no [immediate] benefit” for the RCMP at that time, though perhaps he had some use for CSIS.⁷⁸

Mr. A’s lack of candour may have been a result of the tactics used by the RCMP. Picking Mr. A up at his residence, taking him to a police station, and interviewing him as if he were a suspect were all tactics that were likely to backfire when trying to build a rapport. Similarly, if Mr. A had wanted to start talking about his motivation and outlook, then he should have been encouraged to speak. As Eshleman stated, in this sort of interview, “...what you’re really trying to do is simply get him to talk, and the more he talks, the better it is.”⁷⁹ Cutting him off and “bringing him back” to the subject at hand could only have been damaging to the development of a good rapport.

When Mr. A moved a few days after the RCMP’s interview with him, E Division took the view that “...nothing further needs to be done in E Div,” with respect to the Mr. A issue.⁸⁰

⁷³ Exhibit P-291, item 63; Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9686.

⁷⁴ Exhibit P-291, items 58, 63, 65.

⁷⁵ Exhibit P-291, items 63, 65.

⁷⁶ Exhibit P-291, item 63.

⁷⁷ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9687.

⁷⁸ Exhibit P-291, item 65.

⁷⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9432, 9434.

⁸⁰ Exhibit P-291, item 66.

At the Hearings, Wall was asked why there was no attempt to try to secure intelligence from Mr. A, even if no “evidence” could be obtained. While he could not specifically recall his rationale, his explanation is revealing of the mindset at the time: “We were conducting a criminal investigation, and we needed evidence as opposed to intelligence, I guess.”⁸¹

Once again this view contrasted greatly with that of CSIS. Eshleman stated:

[Y]ou’re talking about a person who has potential and access to individuals that certainly the RCMP were interested in as far as Air India [was concerned], and CSIS was definitely interested in him in regards to the access that he had to the extremist milieu. So I wouldn’t have reached that conclusion that he would be of no benefit to the RCMP. That’s premature. There was just – it was too soon to say that, regardless of his attitude.⁸²

RCMP Analysts Question E Division’s Conclusions

The view that Mr. A was not of use to the RCMP, based on Wall and Hammett’s interview, was communicated to Headquarters and was also shared with other agencies. For example, the Third Party, which evidently relied on this RCMP assessment in its own report, stated that “...after a thorough interrogation by [Sgt. Wall and Cpl. Hammett], Mr. A finally admitted that he did not have any direct knowledge of the AI incident, nor possible involvement by the Sikhs he had identified.”⁸³

However, Eshleman’s view of the prematurity of the RCMP investigators’ conclusion was also shared by some within the RCMP. RCMP analysts familiar with the issue had some difficulty accepting the investigators’ conclusions in light of the very cursory interview that had been conducted. Margaret Purdy wrote to the OIC National Security Offences Task Force (NSOTF) indicating that, despite E Division’s assessment of Mr. A, she did not think that the RCMP could “...abandon all avenues of investigation associated with Mr. A.” While she was hesitant to comment on the investigators’ assessment without seeing the full interview report, she had some “...difficulty understanding how they could pass judgment on his claims when he refused to discuss these claims with RCMP investigators.” Years later, as part of the file review conducted when Gary Bass took over the Air India investigation in 1995, Cpl. Robert Ginn formed a similar opinion: the information he reviewed “...did little to dispel the notion that Mr. A’s information was accurate.” His view was that officers Wall and Hammett “... basically wrote Mr. A off during a fifteen minute interview.”⁸⁴

81 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9688.

82 Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9435.

83 Exhibit P-291, item 73.

84 Exhibit P-291, items 64, 82.

Despite E Division's conclusions about the usefulness of Mr. A to the Force, at the RCMP's request, CSIS refrained from contacting Mr. A. When the RCMP indicated that it would again attempt to interview Mr. A after Mr. A had moved from E Division jurisdiction, CSIS agreed to continue to refrain from contacting him until the RCMP informed CSIS that it no longer had an interest in Mr. A.⁸⁵

The Second RCMP Interview with Mr. A

A second interview of Mr. A, conducted by Atkinson and Cpl. Larry Cottell, was conducted more in line with the original plan – i.e., treating the meeting as an “opening interview” and allowing Mr. A to speak freely. The interview was lengthy, and Mr. A was permitted to discuss criminal and non-criminal matters.⁸⁶ Given that the move of Mr. A was obviously not an impediment to the RCMP's ability to meet with him, it is difficult to understand why the first interview of Mr. A had to be conducted under such rushed and far-from-ideal circumstances – especially when the potential for negative consequences was so high and so clearly foreseeable.

In his second interview, Mr. A indicated that he could identify all those involved in Air India, and would cooperate if given anonymity and a reward. He also named individuals involved in Sikh extremism. Again, he emphasized that he would not be a witness, as his testimony was “indirect” and he feared for his life.⁸⁷

Atkinson's assessment was that Mr. A “...appears honest and did not seem to exaggerate the facts.” Atkinson concluded that his information “...is not going to put people in jail,” but “...it may be of value in answering questions and providing further leads.” He stated that it was difficult to judge the value of his information until such time as more of it was disclosed.⁸⁸

Mr. A never wavered from his demands – anonymity and a reward. Mr. A's conditions were sent to Headquarters for consideration.⁸⁹

The Government Debates the Issue of a Reward

Internal RCMP correspondence indicates that HQ's opinion was that Mr. A had potential as a source of information “vital to the file” and that the RCMP should not be put off by his negotiation tactics.⁹⁰

Ultimately, however, the RCMP took the position that it would not “...buy a pig-in-a-poke,”⁹¹ meaning that it would not make any promises until they were sure

85 Exhibit P-291, item 67.

86 Exhibit P-291, items 58, 68.

87 Exhibit P-291, item 68.

88 Exhibit P-291, item 68.

89 Exhibit P-291, item 68.

90 Exhibit P-291, item 69.

91 Exhibit P-291, item 69.

that what Mr. A had to offer was of “value.”⁹² It is clear that the RCMP’s view of “value” was narrow: evidence admissible in a court of law. Intelligence which could possibly provide new avenues of investigation was not a consideration for the RCMP. According to the AGC,

If it turned out that Mr. A did indeed have evidence which could potentially be used in a criminal prosecution, it was the responsibility of the RCMP to ensure that the viability of that evidence be preserved for the future. Making promises, providing rewards, and accepting the word of a source of unknown reliability would be ideal conditions for an abuse of process application, or at the very least a finding by the trier of fact that the evidence is unreliable and incredible and must be rejected.⁹³

Not surprisingly given the position taken, and in light of the fact that the RCMP knew in advance that Mr. A would not divulge his information without concessions, the RCMP ended up with neither intelligence nor evidence to advance its investigation.

With regard to the benefit sought by Mr. A, one of the government agencies stated that they would reluctantly support the reward, but only after a thorough consideration of whether the information provided by Mr. A was “vital.” However, that agency also asked other government agencies to note that the Third Party had “...already rejected Mr. A’s information” prior to his coming to the agencies’ attention. This view of events may be due to incomplete interagency reporting. There is considerable uncertainty surrounding Mr. A’s initial “agreement” with the Third Party. According to the Inquiry’s record, a deal had been worked out with other authorities, but the deal expired and the Third Party was not given the detailed information Mr. A purported to have. It is not known why the deal was allowed to expire, but there is no indication that it reflected a decision on Mr. A’s part to withhold his information. RCMP officers who reviewed the Third Party files noted that Mr. A was not required to provide details to the Third Party as a condition of the agreement, and they had the impression, based on this review of the Third party information, that the source could provide “...considerably more detailed information.” Indeed, the RCMP felt that any dismissal by the Third Party of Mr. A’s information would have been premature.⁹⁴ It appears that, at the time the benefit was being considered, the government agencies may have erroneously relied on the belief that the Third Party had already rejected Mr. A’s information. In the end, the government agencies never approved the benefit sought. When asked at the Inquiry whether the requests made by Mr. A were reasonable, Eshleman replied:

⁹² Final Submissions of the Attorney General of Canada, Vol. I, para. 266.

⁹³ Final Submissions of the Attorney General of Canada, Vol. I, para. 268.

⁹⁴ Exhibit P-291, items 3, 48, 51, 70.

Yes, I think they were reasonable and, yes, I think that – he would have moved this investigation forward significantly and it was simply a lost opportunity; pretty tragic, actually.⁹⁵

The RCMP Rejects Mr. A's Further Offer of Information

Fourteen months after the second RCMP interview, Mr. A came forward to CSIS with new information about recent Sikh extremist activity and with new information on Air India. Mr. A asked that his identity as a source not be revealed to anyone by CSIS. CSIS responded that it would protect information he provided that was not of a criminal nature, but that Mr. A had already established a relationship with the RCMP of his own volition. Given the way in which the Mr. A narrative unfolded, this is a questionable statement. In any event, CSIS passed information about this offer to the RCMP.⁹⁶

According to internal RCMP correspondence, Mr. A had information in relation to another Sikh extremist event, as well as information suggesting that the same people responsible for the Air India bombing were planning something in Canada. Mr. A offered to involve himself in conversations with other people which the RCMP could tape and to involve himself in conversations with individuals, which would show their involvement in Air India. However, the RCMP declined this offer. In correspondence from an RCMP analyst to the OIC of the National Security Offences Task Force, it was suggested that "...before this line of investigation takes place that Mr. A must be more forthcoming with his knowledge, impressions, unidentified persons and unidentified conversations." The analyst felt that the RCMP had "...dealt with Mr. A in the past with poor results," stating further that Mr. A was "...an opportunist and his motivation always seems to be personal."⁹⁷ It appears that the RCMP passed up this opportunity to uncover potentially significant information about the Air India bombing.

Conclusion

The Mr. A story is, in the words of Eshleman, one of "...lost opportunity that shouldn't have occurred and it was detrimental to both organizations."⁹⁸ Not only did the RCMP fail to benefit from Mr. A's information, but the manner in which Mr. A was dealt with by Canadian agencies – first by CSIS, who promised him anonymity and then reneged on that agreement, and then by the RCMP, who insisted on direct and exclusive access to Mr. A and then prematurely discounted his value – meant that the benefit of Mr. A's information was lost to the Canadian government as a whole. The perceived conflicting "purposes" of the two agencies reveals a more fundamental problem at hand. In the counterterrorism context, the purpose of any institution's involvement must be to contribute to a safer Canada. This point is missed when agencies act in

⁹⁵ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9447.

⁹⁶ Exhibit P-291, items 77, 78.

⁹⁷ Exhibit P-291, item 79.

⁹⁸ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9436.

isolation and in furtherance of their own perceived mandates to the exclusion of all others, which is what occurred in the Mr. A narrative.

The Mr. A story is an illustration of how the differences in the agencies' perception of their mandates led to their markedly different approaches to sources. CSIS viewed human sources as one of its greatest assets, to be relied upon for long-term quality intelligence, and therefore to be nurtured and protected to the greatest extent possible. The RCMP was focused on the prosecution imperative and expected sources to be turned into witnesses who would appear in public before a court of law. Further, while the RCMP had a certain level of comfort dealing with informants facing criminal charges who, it was felt, provided reliable information,⁹⁹ the RCMP expected its sources, outside of this penal context, to act with a complete lack of self-interest. The result was an overly skeptical approach to sources which led the RCMP to miss opportunities to gain intelligence and to further its investigation.

The RCMP's rigid view of its own mandate paralyzed its investigation with respect to Mr. A. Mr. A was an individual who would not help authorities without certain assurances, which CSIS was unable to give and which, in the RCMP's view, posed difficulties for his utility as a witness. The RCMP could not see a way out of this dilemma: Mr. A would not assist the RCMP without his requirements being met, and if his requirements were met, his value as a witness – in the RCMP's view – would be nullified. Whether or not this "nullification" was a necessary consequence, the RCMP did not even seem to consider the possibility that the "intelligence" Mr. A could offer might add value to its investigation apart from any immediate evidentiary purpose.

The RCMP also showed disregard for CSIS's interest in Mr. A. Its public and aggressive approach to Mr. A illustrated a certain indifference to the potential long-term utility of Mr. A toward the fulfillment of CSIS's mandate. In demanding sole and direct access to Mr. A, the RCMP missed an opportunity to capitalize on the goodwill that CSIS had garnered with Mr. A, which might have enabled them to benefit from further information he could have provided through CSIS. The RCMP's aggressive all-or-nothing approach to Mr. A is also indicative of its approach to sources as criminals and not as assets.

In the case of CSIS, it stayed squarely focused on its own intelligence-gathering imperative. Despite its earlier agreement with the RCMP to share information learned in the course of its interview with Mr. A, and in spite of the fact that the criminal importance of Mr. A's information was obvious to CSIS,¹⁰⁰ CSIS turned Mr. A into a source and withheld information, including information about Mr. A's identity. In addition, CSIS failed to modify its usual practices and, for example, continued to destroy its interview notes, which could have led to problems later if Mr. A's information had ultimately been used in the prosecution.

⁹⁹ Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5450-5451.

¹⁰⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9421.

The AGC submissions state that all reasonable steps were taken "...to get Mr. A's evidence, to investigate his claims, to attempt to corroborate the little information he did provide."¹⁰¹ To the contrary, the Mr. A narrative shows that these efforts, on an institutional level, were greatly lacking.

The ultimate value of Mr. A's information is an open question, since he would not disclose the entirety of his information without being awarded the benefit he sought. However, after a review of all the available information, including information not available to Eshleman, and classified information that cannot be discussed here, what can be said is that the information he did provide has never been contradicted.

1.2 Tara Singh Hayer

Introduction

Tara Singh Hayer was a Canadian newspaper publisher. He was a "Sikh by religion" and was born and raised in the Punjab state of India. He immigrated to Canada in 1970 at 34 years of age. In Canada he worked as a miner, teacher, truck driver and manager of a trucking firm before becoming a full-time journalist. In 1978, he established a community newspaper, the *Indo-Canadian Times*, and built it into the leading Punjabi-language newspaper in North America. The weekly newspaper was printed in Surrey, British Columbia, and distributed in Canada, the United States and England.¹⁰²

Throughout his career, Hayer often reported about "...tensions between the Government of India and Sikhs both in Canada and abroad who promote a separate country status for the Punjab area of India which would be called Khalistan." He was described at various times as a "...strong supporter of the Khalistan movement," "...a harsh critic of the Indian Government" and "...a constant critic of the Sikh community's leadership." His criticism also extended to leaders of extremist organizations "...promot[ing] Khalistan through violent means", such as the Babbar Khalsa (BK).¹⁰³ Hayer was outspoken in his rejection of violence and never wavered in his commitment to tolerance, peace and understanding between cultural communities. He consistently railed against members of the Sikh community who would use violent means to further their goal of a separate state of Khalistan in India.¹⁰⁴

In 1992, Hayer was honoured with the commemorative medal on the 125th Anniversary of Canada, and received a certificate of appreciation from the RCMP. He also received the Journalist Award from the Municipality of Surrey for his courageous and outstanding contribution to Punjabi journalism in Canada, as well as the International Award of Distinction for Journalism from the International Association of Punjabi Authors and Artists. In 1995, he received the Order of British Columbia.

¹⁰¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 270.

¹⁰² Exhibit P-431, p. 1.

¹⁰³ Exhibit P-431, p. 1; *HMTQ v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 24.

¹⁰⁴ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9528-9530.

After the Air India disaster, Hayer had contact with both CSIS and the RCMP. He provided information about an admission which Ajaib Singh Bagri was said to have made in England about his involvement in the bombing. After many years, Hayer finally agreed to become a witness in the Air India case. However, he was murdered before the prosecution began.

Hayer had long been the victim of repeated threats, violence and intimidation. In January 1986, a bomb was left at the print shop for the newspaper run by Hayer. Still, he was unwilling to stop speaking out in support of his beliefs. This, according to one of the RCMP members who interacted with Hayer, made it difficult to provide protection for him. Hayer did not want “hands-on protection.” He wanted to continue to be free “...to publish his articles and run his newspaper and carry on his life” in as normal a manner as possible. There was a constant threat to Hayer at the time, as his articles drew negative attention from the groups he criticized.¹⁰⁵

In August of 1988, Hayer survived an attempt on his life that left him paralyzed in a wheelchair. On November 18, 1998, Hayer was shot to death while getting out of his car in the garage of his home in Surrey, BC.¹⁰⁶

Another publisher, Hayer’s friend Tarsem Singh Purewal, who owned the British newspaper *Desh Pardesh* (DP), and who was also believed to be aware of Bagri’s admission about his involvement in Air India, was murdered in England in 1995. To this date, neither murder has been solved.

David (“Dave”) Hayer, son of the late Tara Singh Hayer, and a sitting member of the BC Legislature for the riding of Surrey-Tynehead and the Parliamentary Secretary for Multiculturalism and Immigration, testified at the Inquiry with his wife, Isabelle (Martinez) Hayer. Their testimony took place on what would have been Tara Singh Hayer’s 71st birthday.¹⁰⁷

Tara Singh Hayer’s story illustrates some of the CSIS/RCMP cooperation issues that arose in the Air India investigation when both agencies received information from the same individual. Most importantly, the history of Hayer’s and his family’s dealings with police demonstrates serious deficiencies in the RCMP’s ability to deal with, and protect, an individual who was in possession of information that was vital to the Air India investigation, and who was willing to assist the RCMP, though not necessarily on the RCMP’s terms. The Force was unable to take full advantage of the help Hayer could offer. It also failed to ensure that those involved in his protection and in the investigation into his attempted murder had a sufficient understanding of the full context, and this, in turn, impacted on their ability to respond properly to the threats to Hayer and to coordinate protection with the investigation.

¹⁰⁵ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9530, 9653-9654.

¹⁰⁶ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9529.

¹⁰⁷ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9528-9529.

Contacts with CSIS and Initial Sharing of Information

After the bombing of Air India Flight 182, Hayer became a community contact for CSIS.¹⁰⁸

Neil Eshleman was an investigator at the CSIS BC Region who was assigned to the task force formed by CSIS in the months immediately following the bombing to assist the RCMP in its investigation. His responsibilities there included conducting community interviews and developing sources. Eshleman spoke to Hayer on a number of occasions.¹⁰⁹ He testified:

Mr. Hayer was one of many individuals that we had approached. He was, from a community contact point of view, an ideal individual. He was a newspaper person; he was informed on the community; he understood the dynamics of the community; he had reasonable general insight into the various factions of the Sikh extremism issues that were reported in his newspaper; he was an interesting person to talk with.¹¹⁰

Eshleman explained that community contacts were "...really just members of the community, be it executive in the temples, be it well-informed businesspersons within the community." In order to acquire information about the Sikh community, CSIS investigators first spoke to community members to obtain general information, and to send a message to the community about CSIS's interest and role. Those "community contacts" could be distinguished from CSIS sources, whose level of reliability or credibility had been established through CSIS procedures and who might be tasked by CSIS to take certain actions. Community contacts could provide insight about what was happening in the community, and they could direct CSIS to other knowledgeable individuals who might have insight or information.¹¹¹

Because of his profession as a reporter, Hayer not only agreed, at times, to have informal discussions with Eshleman about the dynamics of the community, but also he was interested in reporting about the CSIS investigations. This caused Eshleman to be "particularly careful" in his discussions with Hayer.¹¹²

Eshleman made it clear to Hayer that their discussions would remain confidential. He maintained a level of trust and developed a rapport such that, eventually, Hayer felt comfortable enough to reveal information, which he had learned during a trip to England, that had "...a direct bearing on the Air India incident." Eshleman explained that the information was then "...passed to the RCMP to develop as they saw fit."¹¹³

¹⁰⁸ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9380, 9405.

¹⁰⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377, 9408.

¹¹⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9405.

¹¹¹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9379-9380, 9407, 9409-9410.

¹¹² Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9405-9407.

¹¹³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9408-9409.

However, CSIS initially received Hayer's information second hand, and was not aware at first that Hayer was the individual in possession of the information.

On March 14, 1986, CSIS HQ wrote to RCMP HQ with news that the Service had obtained information about the Air India crash.¹¹⁴ Russell Upton, the Chief of the South Asia CT Desk, reported that, according to the information, Ajaib Singh Bagri, the "...leader of the Babbar Khalsa in the Kamloops BC area, would have informed associates that he was responsible for delivering the bag to the Vancouver International Airport." Upton indicated that Bagri was reported to have said that he "...turned the bag over" to someone who worked at the airport "...who in turn checked it in through CP Air." Bagri was also alleged to have said that Surjan Singh Gill was initially designated to take the bag to the airport but, because he had changed his mind, Bagri had to do it. The information received by CSIS indicated that, after the bombing, Parmar had considered killing Gill because he was a "weak link," but decided against doing so to avoid unwanted attention.¹¹⁵

Upton's message concluded that the information, if accurate, raised "...many possible scenarios that could explain how the luggage was boarded and who was involved." Upton asked for RCMP HQ's "analysis and views" on the information. He added that the CSIS BC Region would provide a full briefing to the RCMP E Division Air India Task Force, and noted that CSIS was prepared "...to extend the fullest cooperation on this matter." He stated, however, that "...the source of this information is a delicately placed one and no action should be taken to endanger this source."¹¹⁶

On the same day, March 14, 1986, RCMP HQ forwarded the CSIS message to the E Division Air Disaster Task Force and asked that the Task Force provide its views. In the evening, Eshleman and his colleague J. Richard ("Dick") Redfern presented the information to Supt. Les Holmes, the OIC of the E Division Task Force and other members.¹¹⁷

On March 19, 1986, Eshleman and Redfern visited the E Division Task Force again and provided a report to Holmes.¹¹⁸ The report elaborated on the details of the information already presented on March 14th and provided CSIS's analysis.¹¹⁹ It stated that CSIS had received information on March 9, 1986, indicating that Bagri was the "...individual primarily responsible" for dropping off at the airport the bag that caused the Air India explosion. According to the information, Bagri had admitted this during a trip to London, England. He reportedly said that he had to deliver the bag because Gill had changed his mind suddenly and resigned from the BK. Bagri apparently added that Parmar and his associates decided after the bombing that Gill was a liability who had to be killed, but "...it was

¹¹⁴ Exhibit P-101 CAA0418(i).

¹¹⁵ Exhibit P-101 CAA0418(i), pp. 1-2.

¹¹⁶ Exhibit P-101 CAA0418(i), p. 2.

¹¹⁷ Exhibit P-101 CAA0420(i).

¹¹⁸ Exhibit P-101 CAA0436(i), p. 1.

¹¹⁹ Exhibit P-101 CAF0444.

then voiced" that "...killing Gill would bring unwanted attention on the Babbar Khalsa at a most inopportune time."¹²⁰

The CSIS report indicated that the individual in possession of the information received it while in England in November 1985. At the time, CSIS still did not know that this person was Tara Singh Hayer. The report then provided an analysis of the importance of Bagri's admission of using someone at the airport to check in the bag in light of the existing information available. The statement from Jeanne ("Jeannie") Adams, the CP Air ticket agent who had checked in the suspect luggage, was summarized, and it was noted that the Unidentified Male (UM) who insisted that the bag be interlined had mentioned that he would "... go get [his] brother" when the agent initially refused.¹²¹ CSIS then noted that Bagri had a brother, Amrik Singh Bagri, who was "...believed to be a janitor / cleaner" at Vancouver International Airport, whose description was close to the description provided by Adams of the UM who checked the bag, and whose photo was similar to the sketch prepared on the basis of Adams' recollection.¹²² CSIS also reported that, according to its information, Ajaib Bagri was absent from his work from the afternoon of Friday, June 21st to the afternoon of Monday, June 24th and that his vehicle was seen at Parmar's residence in the evening of June 21st. The description of driver and passengers was not recorded on that occasion, however, but simply noted as "UM, UF [unidentified female] and child." CSIS added that Ajaib Bagri was in London, England in October 1985, a few weeks before the individual in possession of the information was there, and that this would have made it possible, in terms of time frame, for the individual to have heard about the statements made by Bagri.¹²³

CSIS noted that "...one of the major questions that has remained unanswered throughout [the Air India] investigation" was the identity of the persons who checked the suspect bags. Given the new information and the information previously available, including Bagri's "probable presence" in Vancouver on June 22nd, his brother's employment and the comment by the UM about getting his brother, CSIS concluded that it was "...very likely that Ajaib and Amrik S. Bagri are the individuals who were responsible for delivering and checking in at least one of the bags responsible for the aircraft disasters." If Amrik Bagri was the UM that Adams dealt with, he would be specifically responsible for the downing of Air India Flight 182. CSIS speculated that Ajaib Bagri and his brother "...may also be responsible for the delivery [later that morning] of the second bag" which caused the Narita explosion, but noted that there was "...no information at this time to substantiate this." Further, if Amrik Bagri was the person who checked the first bag, CSIS felt he most likely did not personally check the second one, as Adams would have remembered him, and therefore it may have been Ajaib Bagri himself who checked it – if he was involved in delivering it.¹²⁴

¹²⁰ Exhibit P-101 CAF0444, p. 2.

¹²¹ Exhibit P-101 CAF0444, pp. 2-3.

¹²² Exhibit P-101 CAF0444, pp. 3, 5. It should be noted, however, that Adams provided several different descriptions, was never certain about her recollections of the UM's appearance and indicated that the composite drawing prepared was wrong: See Section 2.3.2 (Post-bombing), Mr. Z.

¹²³ Exhibit P-101 CAF0444, p. 3.

¹²⁴ Exhibit P-101 CAF0444, pp. 3-4.

CSIS noted that the "...weakness of this scenario," which had already been discussed with the RCMP during the March 14th briefing, was that it would not make sense for the BK to use someone working at the airport, who could easily be recognized by the ticket agent, to check the bag. However, since CSIS surveillance had observed Gill visiting Parmar on the morning of June 21st and handing him an envelope, it was possible that Gill backed out within a few hours, and that since only "...a select few [were] in the know," this forced Parmar to select Ajaib Bagri as an alternative. Since Bagri spoke broken English, he may not have been comfortable checking in the bag himself and may have asked his brother's assistance, without his brother having been involved in the earlier planning stages. In fact, CSIS felt that it was likely that Amrik Bagri did not know what was in the bag, but was simply told by Ajaib Bagri to interline it on Air India, and that this would explain why he was not concerned about having an argument with the ticket agent and thereby bringing attention to himself, and also why he was not worried about mentioning that he would go get his brother.¹²⁵ The CSIS report cautioned:

It is stressed that this noted scenario is speculation, however it does fit the limited pieces of information we currently possess.¹²⁶

CSIS added that it was also possible that Amrik Bagri was "...in on the planning of these bombings," in which case he made a "...great mistake by arguing with Adams, thus inviting attention to himself."¹²⁷

In conclusion, CSIS listed the "...areas that must be addressed," including trying to have Adams identify Amrik Bagri in a photo lineup, making inquiries about Amrik Bagri's work schedule and activities on June 22nd, making inquiries to his co-workers about his attitude and about whether he had shaved his moustache during the relevant time period, and conducting interviews of Gill and the Bagri brothers "...in the manner most conducive to success." CSIS added that it had a "...certain insight into Gill and his attitudes due to various sources targeted against him," and that Gill did appear to be a "weak link" with knowledge of the events. The Service offered to provide its opinion on Gill's "attitude and approachability" prior to RCMP investigators approaching him.¹²⁸

Eshleman and Redfern transmitted a copy of the report and analysis to CSIS HQ, noting that it was "...very well received by Supt. Holmes, with favourable comments on the information and analysis."¹²⁹

On March 20, 1986, RCMP HQ advised the E Division Task Force that a meeting had been held at CSIS's request on the previous day to "explore the possibilities" created by the new CSIS information. CSIS representatives Archie Barr and Chris Scowen had met with RCMP D/Comm. Norman Inkster, D/Comm. Henry

¹²⁵ Exhibit P-101 CAF0444, pp. 4-5.

¹²⁶ Exhibit P-101 CAF0444, p. 5.

¹²⁷ Exhibit P-101 CAF0444, p. 5.

¹²⁸ Exhibit P-101 CAF0444, pp. 5-6.

¹²⁹ Exhibit P-101 CAF0444, p. 9.

Jensen and C/Supt. Norman Belanger, in charge of the national RCMP Air India Task Force, and had advised that CSIS was not yet aware of the identity of the individual who was actually in possession of the information about Ajaib Bagri. A "direct meeting" between CSIS and this individual could be possible, but only if "...a guarantee of complete anonymity" was extended. The CSIS representatives explained that the individual wanted "...no contact with police" at the time.¹³⁰

During the HQ meeting, it was agreed that CSIS would extend the guarantee of anonymity to the individual. This would facilitate the identification and first contact. It was also agreed that the first meeting would be "...carried out by CSIS alone." If the "...knowledge and credibility" of the individual met "reasonable expectations," the initiative of introducing an RCMP investigator at the second meeting would be developed. If the initiative was successful, the second meeting could then involve both CSIS and the RCMP. RCMP HQ advised E Division that the CSIS BC Region Director had already been tasked accordingly.¹³¹

After the HQ meeting, CSIS conducted its interview with the individual in possession of the information, Tara Singh Hayer. CSIS HQ then wrote to RCMP HQ to report the results of the interview. At that time, CSIS did not disclose Hayer's identity, but only reported the information that was learned during the interview. CSIS advised that the individual interviewed was friends with Tarsem Singh Purewal, a Sikh separatist who owned the British newspaper *Desh Pardesh* (DP) and who gave coverage to "...a wide spectrum of militants and groups advocating a separate state," including the Babbar Khalsa. The BK had for some time frequented the DP offices, and the individual interviewed advised CSIS that, in late October or early November 1985, Bagri visited the DP and attended a small drinking party where he sat with four or five others and engaged in conversation. When the topic of the Air India/Narita bombings came up, Bagri admitted his involvement and told of a meeting at Parmar's home, where the "...material was laid out." The meeting involved Parmar, Bagri, Gill and a person who worked at the airport. The person interviewed did not know when the meeting took place or who the airport employee was. He thought that the "material" which was laid out referred to the explosive devices, but it could have been the plans.¹³²

Bagri was also alleged to have said that Gill was the person designated to "...transport the explosives, hidden in luggage, to the airport" but who had gone home after the meeting and, "...soon after, if not immediately," had resigned from the BK. Bagri commented that Gill was "...too scared to participate" and that he had to deliver the luggage himself in his car. Bagri was said to have also admitted that he wanted Gill killed because he was the "weak link," but that Parmar had "...vetoed the idea after some consideration," not wanting to bring undue attention to themselves. The person interviewed explained that Purewal was not in on this conversation with Bagri as he was in other parts of the DP offices, and that Bagri's comments were repeated to him by an Unidentified Male unknown to him.¹³³

¹³⁰ Exhibit P-101 CAA0424(i).

¹³¹ Exhibit P-101 CAA0424(i).

¹³² Exhibit P-290, Admission 1, p. 1.

¹³³ Exhibit P-290, Admission 1, p. 1.

CSIS reported that the person interviewed understood that his knowledge “was hearsay,” and did not want to get involved in the court process, though he was willing to tell CSIS about the information. CSIS added that the individual had stated that if his name was released after the interview, he would not discuss the information again, as he felt that “...his personal safety would be jeopardized if it became known that he had provided information to the authorities.” In fact, CSIS reported that, in order for the interview to continue, the Service had to reiterate “on several occasions” that the individual’s “security and confidentiality” were important to CSIS. CSIS wrote that the individual interviewed said that he did not want to speak to the RCMP, in part because of a belief that “...Canadian police and courts would not be able to effectively solve the crime,” but that CSIS could transmit to the RCMP “...what information was necessary about what he learned in England.”¹³⁴

As it turns out, Hayer was already in contact with the RCMP and provided his information directly to the Force during the same period.

Contact with the RCMP – Attempted Bombing of Modern Printing in 1986

In January 1986, a bomb was left at the offices of Modern Printing House, where Hayer’s newspaper the *Indo-Canadian Times* was prepared for mailing.¹³⁵ The RCMP Surrey Detachment initially took charge of the investigation into this incident, which could have been an attempt on Hayer’s life.¹³⁶ On January 26, 1986, members of Surrey’s Explosive Detection Unit went to Modern Printing and disarmed the explosive device. Later that morning, officers from the Serious Crimes Unit of the Surrey General Investigation Section (GIS) took over the investigation. When questioned, Hayer told police that he was often criticized by readers for the various articles he printed and that, as a result of an article he had reproduced in December 1985 dealing with the infiltration of Indian agents into the ISYF, he had received phone calls threatening to murder him and to blow up his house. These threats had not been reported to the police.¹³⁷

The investigation into the attempted bombing of Modern Printing was eventually transferred to two members of the Surrey Detachment National Crime Intelligence Section (NCIS): Corporal Robert Solvason and his partner, Constable Laurie MacDonell. The officers became the “...main point[s] of contact” between the RCMP and Hayer.¹³⁸

Solvason had begun to work at the Surrey Detachment in 1978, and in 1980 he was transferred to NCIS. As a result of his previous experience in general investigations and intelligence units in the RCMP, he had developed “...considerable experience and expertise in the development and handling of

¹³⁴ Exhibit P-290, Admission 1, pp. 1-2.

¹³⁵ Exhibit P-101 CAF0464; Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11559, 11608-11609.

¹³⁶ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11559.

¹³⁷ Exhibit P101 CAF0464, pp. 2-3.

¹³⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11557, 11559; Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9608, 9611-9613, 9616.

sources.” He was seconded to the Air India Task Force in 1985, but also continued to carry out his duties at the Surrey Detachment NCIS. After the Modern Printing incident, Solvason was released from the Air India Task Force back to Surrey NCIS to work on the *Indo-Canadian Times* investigation. He assisted the investigators with the matter, and ultimately took over the investigation and began communicating with Hayer.¹³⁹

Over time, Solvason and MacDonell built up a good rapport with Hayer and had frequent contact with him. MacDonell explained that he looked to Hayer as a resource to help educate him in the “...ways of the community and situations that were arising.”¹⁴⁰ Solvason testified that, throughout his dealings with him, Hayer never asked for money or any reward or other favours.¹⁴¹ He explained that Hayer was never an agent for the RCMP, and described his relationship with him and his perception of Hayer’s motivations:

MR. FREIMAN: Did you consider him to be under your control, an agent for you?

S/SGT. SOLVASON: No. No, he’s – Mr. Hayer was a – I spent a lot of time talking to him and I had respect for him because he was motivated by his ideologies. He never got anything from the RCMP. He didn’t ask for anything and if something was offered, he’d probably refuse it. He believed strongly in Canada and Canada as a place for old problems didn’t – had no place. In other words, things from India – we had to start fresh and make it a better place to live and that it was everybody’s duty to assist in that. He had principles. He was a very brave man. He paid the price for it.¹⁴²

Solvason emphasized that Hayer “...didn’t receive anything from the RCMP or anybody else I’m aware of.”¹⁴³

Eventually, Hayer told Solvason and MacDonell about some information that he had obtained from Tarsem Singh Purewal, the “...owner/operator of a Sikh weekly newspaper called the *Desh Pardesh* in Southall, England.” Hayer said that Purewal informed him that Bagri had been in England after the Air India disaster and, in speaking with “...a number of individuals at the *Desh Pardesh* office,” had “...admitted to his role or his responsibility for the Air India disaster.”¹⁴⁴

MacDonell confirmed during his testimony before the Inquiry that the information received by Solvason and himself from Hayer was similar to the information provided to the RCMP by CSIS in the spring of 1986. MacDonell,

¹³⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11545, 11559.

¹⁴⁰ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9616-9617, 9653.

¹⁴¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11560.

¹⁴² Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11560-11561.

¹⁴³ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11593.

¹⁴⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11559-11560.

however, was never advised that CSIS had received the information, and he had no knowledge of the ongoing dialogue between the agencies about this matter.¹⁴⁵

Sorting Out the Confusion: RCMP Takes the Lead

It took some time for the RCMP to sort through its own information and to realize that it was receiving separately the same information that was being provided by CSIS. In the meantime, acrimonious debates took place between the agencies because of CSIS's initial reluctance to reveal the identity of Hayer, in light of his insistence on confidentiality during the interview. As it turns out, the RCMP was fighting for access to an individual who had already developed a good rapport with its own officers and provided them with the same information he gave CSIS, and CSIS was fighting to protect the identity of an individual already known to the RCMP.

To complicate matters, the RCMP also received information similar to the Hayer information from another source, only a short time after CSIS provided the RCMP with its report on its interview with Hayer, at the time refusing to identify him. On April 15, 1986, Insp. John Hoadley and Cpl. Don Brost of the E Division Task Force received information from a "casual source," who advised that Surjan Singh Gill had been "...part of the planning and purchase of the tickets for L. and M. Singh," but had backed out at the last minute.¹⁴⁶ As a result, according to the casual source, Parmar had Ajaib Bagri deliver the baggage to the airport, where he turned it over to his brother Amrik Bagri, a janitor at the airport. The casual source even pointed out that Amrik Bagri's description matched the description given by Jeannie Adams.¹⁴⁷ The RCMP did not immediately make the connection between this information and the information it was receiving from CSIS.

Meanwhile, in Surrey, Solvason and MacDonell were continuing their contacts with Hayer. It is not known exactly when he revealed his information about Bagri's alleged admissions in England. In testimony, MacDonell could only confirm that the information was received at some point prior to May 16, 1986, since officer notes showed that Solvason discussed it with Air India Task Force members on that date.¹⁴⁸ Other references in the documents produced before the Inquiry tend to indicate that the information was, in fact, received in April. On April 9th, a meeting had been held between the Surrey Detachment and CSIS about this matter,¹⁴⁹ and on April 24th, a Surrey NCIS report referred to information "...that Bagris[*sic*] had been informing people that he placed the bomb himself."¹⁵⁰ MacDonell explained in testimony that, at Surrey NCIS, the information provided by Hayer was immediately recognized as "...quite significant for the Air India investigation." The officers would have immediately

¹⁴⁵ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9618, 9625, 9629.

¹⁴⁶ Exhibit P-101 CAA0436(i), p. 4, CAF0445, p. 7.

¹⁴⁷ Exhibit P-101 CAF0445, p. 7.

¹⁴⁸ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9620-9621; Exhibit P-101 CAF0507, p. 3.

¹⁴⁹ Exhibit P-101 CAA0443(i), p. 1.

¹⁵⁰ Exhibit P-101 CAA0440(i), p. 2.

advised their line officer, who, in most cases, would have contacted the District Intelligence Officer (DIO) and then the Air India Task Force. MacDonell recalled preparing a report about the Hayer information, and he explained that the DIO would have been in charge of disseminating the report.¹⁵¹

Because MacDonell was not aware of the discussions that were taking place with CSIS about information very similar to Hayer's information, he could not advise the Air India Task Force directly that the identity of the person providing the information to CSIS might already have been known to the Force. However, he felt that, given the urgency and importance of the information, it would have been passed verbally within the Division before a report was even prepared.¹⁵² Sgt. Robert Wall, second-in-command at the Task Force, could not recall exactly when he was advised that Solvason and MacDonell had received information from Hayer about admissions made by Bagri while in England, and recalled "... only in general terms" that he eventually obtained the information.¹⁵³

Whether it was because of an ineffective information flow between HQ and the Division, difficulties in disseminating the information within the Division, or a failure to recognize the connection between the information received from various sources, the RCMP did not understand in April that its investigators were already speaking with the individual interviewed by CSIS, or that the Force was also receiving similar information from a separate, "casual source."

On April 23, 1986, RCMP HQ wrote to the E Division Task Force and advised that, since CSIS had provided information about its interview, "...numerous discussions between the highest levels of both services" had taken place. The Force had adopted the position, and was "insistent," that RCMP investigators required direct access to the individual that CSIS had interviewed. This direct contact was said to be necessary for the following reasons: the seriousness of the "...allegations and crimes involved"; the need to "...neutralize the filtering effect" which was felt to result from the information being received through CSIS; the RCMP's intention to "...explore the first possible penetration" into the groups believed to be responsible for the bombings; the need to "...assess from a police perspective" the validity of the information; and the need to subject the individual "...to a complete police debriefing with the aim of probing and clarifying all pertinent issues and assessing the motivation, knowledge and credibility" of the individual. HQ advised the Division that, in its discussions with CSIS, the RCMP had extended a guarantee to protect the individual's identity, unless he turned out to be "...criminally involved as a participant or witness to the incidents being investigated."¹⁵⁴

CSIS took the position that the consent of the individual was required before an RCMP introduction could be undertaken. The RCMP responded that, should the Service not obtain the individual's consent, "...other options would be pursued," based on the RCMP's own knowledge of this matter. Following those discussions,

¹⁵¹ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9618-9620.

¹⁵² Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9619-9620, 9629.

¹⁵³ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9690-9691, 9694.

¹⁵⁴ Exhibit P-101 CAA0434(i), pp. 1-2.

CSIS met with Hayer to discuss the "RCMP access," but felt that the meeting "... was not conducive to discussing this issue." As a result, CSIS planned to address the matter again with the individual during an upcoming meeting.¹⁵⁵

In the meantime, RCMP HQ asked the E Division Task Force in its April 23rd message "...not/not to initiate any divisional action based on the CSIS information." HQ reported that the issue of direct RCMP access to the individual in possession of the information was expected to be resolved soon at the HQ level. Depending on the response received from CSIS, the "...possible investigative options" would be examined, and appropriate action would be taken.¹⁵⁶

On April 30, 1986, the E Division Task Force wrote to HQ to advise of the receipt of the CSIS analytical report which had been provided to Supt. Holmes on March 19th. The Task Force provided a summary of the report, and advised that RCMP investigators had confirmed Amrik Bagri's employment as a janitor at Vancouver Airport, but had also learned that he was suspended from work between June 2nd and July 3rd, 1985. Task Force investigators had also observed similarities between photos of Amrik Bagri and the composite sketch prepared on the basis of Jeannie Adams' description.¹⁵⁷ The Task Force reported:

To date, we have not been able to substantiate any further information provided by C.S.I.S. or account the movements of Amrik Bagri during June 1985. This aspect is still being investigated; we are not hopeful in gaining any further info.¹⁵⁸

The Task Force further noted that CSIS surveillance and RCMP long distance tolls confirmed frequent contact between Parmar and Ajaib Bagri, including around the time of the bombing. It then advised HQ, apparently for the first time, that Hoadley and Brost had received information from a "casual source" that was "... very coincidental to the information provided by CSIS BC Region."¹⁵⁹

The Task Force noted that its review of the information available created "...considerable concern as to the validity and accuracy" of the recent CSIS information. The investigative unit complained that it was "...regrettable that little progress has been permitted to further the possibilities initially demonstrated when CSIS surfaced their information" and added that "...as recent as 86-04-23," Eshleman of CSIS had been requesting copies of various statements obtained during the investigation. To the Task Force, the information it was reporting to HQ demonstrated "...in some way the difficulty in establishing sound, well-thought-out investigative initiatives and strategies." The Task Force concluded that it now had "...considerable information to reassess" before "...determining what investigative initiatives can be pursued to further this investigation."¹⁶⁰

¹⁵⁵ Exhibit P-101 CAA0434(i), p. 2.

¹⁵⁶ Exhibit P-101 CAA0434(i), p. 2.

¹⁵⁷ Exhibit P-101 CAA0436(i), pp. 1-2.

¹⁵⁸ Exhibit P-101 CAA0436(i), p. 2.

¹⁵⁹ Exhibit P-101 CAA0436(i), pp. 2, 4.

¹⁶⁰ Exhibit P-101 CAA0436(i), p. 5.

On May 2, 1986, RCMP HQ wrote to the E Division Task Force that, "...given the situation here in HQ," there was an "urgent requirement" for the Task Force "...to supply, in clear and concise terms," a comprehensive account of the information received by Hoadley and Brost from the casual source. HQ asked a series of detailed questions about the information. HQ noted that there were "substantial differences" between the information obtained by Hoadley and the CSIS information about allegations that Bagri was involved in the bombing. HQ also specifically asked the Task Force to elaborate on the "...Surrey NCIS information that Bagri has been informing people that he placed the bomb himself." HQ asked the Division to explain "what action" it was planning to take to substantiate or refute Bagri's claim, and requested an urgent reply.¹⁶¹

On May 6, 1986, HQ wrote to the divisional Task Force again, asking it to provide the information previously requested, as it was "urgently required."¹⁶²

On May 8, 1986, the casual source who had provided information to Hoadley and Brost was questioned again by Brost about the information.¹⁶³

On May 10, 1986, the Division wrote to HQ and advised that on May 6th, a meeting had been held with Messrs. Randil Claxton, Ken Osborne and Joe Wickie of the CSIS BC Region. Several "related aspects" of the Air India investigation had been discussed, but the main purpose was to obtain additional details from CSIS about the information indicating that Bagri was involved in the bombing. The Division reported that CSIS "...were unable to provide any further information," but confirmed that the original source of their information was "...one and the same" as the person met by Hoadley and Brost. CSIS also confirmed that the individual actually in possession of the information, whom they had finally interviewed (i.e. Hayer), was "...insistent in not meeting with the RCMP." No additional information could be obtained from CSIS. The Task Force reported that they discussed with the CSIS BC Region representatives their intention "...to vigorously pursue" additional information or evidence through the RCMP casual source.¹⁶⁴

In response to HQ's May 2nd questions, the Division advised that the identity of the person in possession of the information (referred to as the "sub-source" in the HQ telex) was unknown, as well as the association between that individual and the person met by Hoadley and Brost, or whether either of them personally knew Bagri. It was also not known how the information was obtained by these individuals or when, but the Task Force noted that CSIS had indicated having initially received the information on March 9, 1986.¹⁶⁵ Finally, about the information from Surrey NCIS, indicating that Bagri had been saying that he placed the bomb himself, the Task Force simply advised that the information was included in the Surrey NCIS report dated April 24th and provided the reference for the report.¹⁶⁶

¹⁶¹ Exhibit P-101 CAA0437(i).

¹⁶² Exhibit P-101 CAA0438.

¹⁶³ Exhibit P-101 CAF0445, p. 7.

¹⁶⁴ Exhibit P-101 CAA0440(i), p. 1.

¹⁶⁵ Exhibit P-101 CAA0440(i), p. 2.

¹⁶⁶ Exhibit P-101 CAA0440(i), p. 2. This Surrey NCIS report was not produced before the Inquiry.

On May 16, 1986, C/Supt. Belanger, the OIC of Special Projects at RCMP HQ (which included the national Air India investigation), met with Scowen of CSIS HQ. At that time, Belanger informed Scowen of the "...latest developments in Surrey," which had given the RCMP direct access to the individual in possession of the information originally obtained by CSIS about Bagri's admissions in England. It was now known, by both agencies, that this individual was Tara Singh Hayer.¹⁶⁷ Belanger explained to Scowen that the RCMP E Division Task Force had also received information similar to the Hayer information (from the casual source), except that the England incident had not been mentioned. Scowen indicated that the CSIS BC Region had confirmed, as was suspected by the RCMP, that the initial information received by CSIS, in fact, had the same origin as the information received by the Task Force.¹⁶⁸

Now that this was sorted out, and since Hayer was "now willing" to assist the RCMP, Belanger requested that CSIS "...withdraw to preserve the integrity of the criminal investigation" as well as to "...minimize the physical security consideration" for Hayer. Scowen agreed, indicating that he would instruct the CSIS BC Region to withdraw after a concluding interview with Hayer.¹⁶⁹

On the same day at the E Division Task Force, Wall noted that "...CSIS accepted our proposal re: Solvason's source." Solvason then went to the offices of the Task Force in Vancouver and was advised of the agreement struck with CSIS about his source. Wall made some notes about the Hayer information, indicating that "[Purewal] in England knows everything," and noted the names of the *Desh Pardesh* employees who allegedly heard the Bagri admissions according to the CSIS information. He then noted that Solvason would proceed with his dealings with Hayer.¹⁷⁰

MacDonell testified that, after the information was received from Hayer, Solvason "...worked closely with the Air India Task Force" and personally communicated directly with the Task Force on a regular basis.¹⁷¹

As for CSIS, Eshleman testified that this was the end of his involvement with Hayer as a community contact. He explained:

It became very apparent that that information was potentially very significant to the Air India investigation, and the RCMP stepped in, if you may, and through agreement, if you wish to describe it as that, had us cease our contact with Mr. Hayer and they developed that contact on their own.¹⁷²

¹⁶⁷ Exhibit P-101 CAA0443(i), p. 1.

¹⁶⁸ Exhibit P-290, Admission 2.

¹⁶⁹ Exhibit P-101 CAA0443(i), pp. 1-2.

¹⁷⁰ Exhibit P-101 CAF0507, pp. 2-4.

¹⁷¹ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9625.

¹⁷² Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9409.

On June 4, 1986, RCMP HQ sent a telex to the E Division Task Force and to Solvason, the Non-Commissioned Officer (NCO) in charge of Surrey NCIS. The telex reproduced in full two of CSIS's earlier messages about the Hayer information, and asked for clarification about a number of differences identified between the information received from CSIS and the information which Surrey NCIS had received from Hayer.¹⁷³ HQ inquired about the number of individuals present when Bagri made his admissions and the identity of those individuals, and asked about the fact that, according to the CSIS information, Hayer had learned about Bagri's comments from an UM recently arrived from India, whereas the Surrey NCIS reports stated that Hayer had obtained the information from Purewal himself. HQ requested an urgent response, to be received within two days.¹⁷⁴ The documentary record produced to this Inquiry is silent as to what response was provided by the Division.

On July 23, 1986, Solvason and the Operations Support Officer of the Surrey Detachment, Insp. R.E. O'Connor, provided a report to the OIC of the E Division National Security Offences Task Force (NSOTF), which was the unit now in charge of the Air India investigation. The officers referred to two previous RCMP HQ telexes, and indicated they were submitting their report "...for clarification of our position" with Hayer.¹⁷⁵ Hayer was not identified in the report, since the RCMP had decided, because of the nature of the information he provided about Air India and in order to protect his security, to take all necessary measures to ensure that his identity was not revealed to anyone but the few RCMP members directly involved with him.¹⁷⁶

O'Connor and Solvason described Hayer as "...a practicing Sikh, whose interests and motivations are the well-being of the Sikh community." They indicated that Hayer recognized that terrorist activity in the community did not further the cause of Sikhs in Canada or elsewhere, and that "...with this premise being established," he "...resolved to improve the circumstances of the Sikh people" and was "...highly motivated towards finding a solution to terrorist activity."¹⁷⁷

However, O'Connor and Solvason noted that Hayer, while very eager to assist the RCMP approximately two months earlier, had since become "...increasingly withdrawn and disillusioned" about the possibility of combating terrorism and improving the circumstances of Sikh people through cooperation with the police. A "...general frustration with the Canadian system of laws and immigration" was cited as contributing to Hayer's sentiment. He "optimistically perceive[d]" the Canadian Government as a "lame duck," in part because of recent cases where bail had been granted to terrorists and charges withdrawn, as well as because of the legal restrictions on police investigations of terrorist incidents generally. Hayer was described as having a "limited understanding" of the Canadian system, as it was a "radical departure" from the Indian system.

¹⁷³ Exhibit P-101 CAA0448; Exhibit P-290, Admission 3.

¹⁷⁴ Exhibit P-290, Admission 3.

¹⁷⁵ Exhibit P-101 CAF0751, p. 1.

¹⁷⁶ Exhibit P-408, Admission 9.

¹⁷⁷ Exhibit P-101 CAF0751, p. 1.

He suggested that the Government had been "...ineffective in dealing with the terrorist problem." O'Connor concluded that Hayer had "...observed the course of action taken and as a result, arrived at his current opinions."¹⁷⁸

O'Connor and Solvason reiterated that Hayer was not motivated "...by financial or other considerations," and noted that it was "unlikely" that he was "...making any effort to manipulate events or invent material." They noted that he was "...a very powerful and influential Sikh leader in his own right," and that he perceived himself as "...a major figure in the Khalistan or Punjab government," leading him to believe that he had to "...maintain credibility for future diplomatic status." The officers reported that it was more likely that Hayer considered the police "...ineffective in any circumstances" and that he could withhold knowledge he had "...because of frustration or perceived incompetence on the part of the police."¹⁷⁹

Finally, the officers expressed concern about the two RCMP HQ telexes referred to at the beginning of the report because the identity of Hayer could have been "...determined by examining the substance of these Telexes" which had been distributed broadly to E Division and O and C Divisions. O'Connor specified that he had concerns that "...the manner in which the information is analyzed and reported" in the HQ telexes left "no doubt" as to who Hayer was. He was concerned that this was directly contrary to the RCMP decision to protect Hayer's identity at all times.¹⁸⁰

On September 27, 1986, Solvason and MacDonell met with Hayer and obtained additional details about his information on Bagri's admissions in England.¹⁸¹ The investigators noted in their report that Hayer appeared to be withholding information about the Air India disaster. They stated that they had pointed out to him that it was "...not difficult to theorize as to who may be responsible, however at this point we're in the position of seeking information of a [*sic*] evidentiary value."¹⁸²

The First Plan for Travel to England with Hayer

After Solvason began speaking regularly with Hayer and, after he had provided his information about Air India, Hayer expressed a willingness to consider providing assistance to the RCMP. He said that he was going to England, where he would be talking to Purewal again. Solvason asked him if he would be willing to wear a recording device or body pack during this conversation, and Hayer agreed.¹⁸³

178 Exhibit P-101 CAF0751, pp. 2, 4.

179 Exhibit P-101 CAF0751, pp. 2-3.

180 Exhibit P-101 CAF0751, pp. 2, 4.

181 Exhibit P-101 CAF0445, p. 6, CAF0752, p. 2.

182 Exhibit P-101 CAF0752, p. 6.

183 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11559-11560.

On May 22, 1986, Solvason visited the offices of the E Division Task Force, and Wall noted that Solvason had a "...proposal put together suggesting [Hayer] go to London England re: [Purewal]."¹⁸⁴

At the Inquiry, Solvason testified that he did not receive the response he hoped about his plan to travel to England with Hayer:

MR. FREIMAN: Do you remember, sir, whether you received authorization in a timely fashion to allow you to coordinate with Mr. Hayer's plans?

S/SGT. SOLVASON: No, I didn't. They just seemed to – I don't know what happened to the plan, there was just – no decision had been made yet. That's what I was told....¹⁸⁵

Solvason could not recall the details of how the events unfolded, but he felt that there was not "...too much enthusiasm for this in ranks above [him] or in people in a position to make it happen." He added that "...perhaps beyond the local management there could have been a different perception of that."¹⁸⁶ MacDonell was present when Solvason discussed the possible trip to England with Hayer, and he also recalled that organizing the trip was "a long process."¹⁸⁷

Solvason testified that after initially submitting his plan, he did not hear back for a long time, and then received "...two or three phone calls" at his residence on a weekend from Belanger, the OIC of the Task Force at RCMP HQ.¹⁸⁸ At that time, not only was the RCMP prepared to grant authorization for the travel, but Solvason explained that the Force wanted the plan to happen immediately:

Well, he wanted [me] to go immediately to England ... as in that day and I told him that I didn't think that the – Mr. Hayer was prepared to go that day. He had his plans and we would have to be flexible in terms of accommodating those plans and – so I think he wanted me to contact Mr. Hayer and confirm that and I may have done that.¹⁸⁹

When Solvason advised that Hayer was not prepared to simply "...drop everything and travel on that day," Belanger was "disappointed." According to Solvason, Hayer essentially said he was willing to help, but that he was not be willing to travel instantly on the RCMP's schedule, and that if the RCMP did not want his help, "...well then that's your problem sort of thing."¹⁹⁰

¹⁸⁴ Exhibit P-101 CAF0507, p. 6.

¹⁸⁵ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11562.

¹⁸⁶ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11562-11563, 11585.

¹⁸⁷ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9621-9622.

¹⁸⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11562.

¹⁸⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11562.

¹⁹⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11562-11563, 11592-11593.

After Solvason's testimony, the Attorney General of Canada (AGC) provided additional documents to the Commission, which neither Solvason nor MacDonell had an opportunity to review prior to their testimony. The AGC argued that the documents contradicted Solvason's testimony that he had not received approval for travel with Hayer in a timely fashion, and showed that, to the contrary, approval was granted within days.¹⁹¹ In fact, the additional documents confirmed Solvason's testimony, and provided further details consistent with Solvason's impressions about the impact of the RCMP's lack of scheduling flexibility on Hayer's willingness to travel. While RCMP HQ did grant approval for the travel plan a few days after the request was sent, the divisional authorities took months before sending the request to HQ. The documentary record provided to the Inquiry indicates that, in September 1986, the E Division Task Force had not yet provided a response to Solvason's travel proposal, although it was aware of the plan since May 1986.

A September 1986 E Division internal memorandum noted that Hayer was planning a trip to England, and that the RCMP was hoping that he would agree to assist the Force "...by meeting with [Purewal] and possibly carrying a bodypack." The memorandum stated that Solvason had advised members of the Task Force that Holmes, the OIC of the Task Force, was aware of the project "...but had not yet made a decision on whether it could go ahead." The memorandum also noted that the RCMP was in possession of independent information that indicated that Purewal had been talking to others about Bagri's involvement in Air India. The entire matter was to be discussed with Holmes.¹⁹² A handwritten note in the margin indicated:

Wall will see2.
Holmes on Monday,
86-9-29. Does
not feel Hayer
is reliable.¹⁹³

It is not known who at E Division had doubts about Hayer's reliability or why. Wall testified that he did not personally believe that Hayer was unreliable, but rather felt that Hayer's assistance could be useful to the RCMP investigation.¹⁹⁴ Solvason emphasized that he had "...no problems with the reliability of Mr. Hayer's statements or his commitment to assist [the RCMP]."¹⁹⁵ MacDonell also thought that Hayer was "very reliable" and added that "...he was, in my opinion, a very honest man and very committed to his beliefs."¹⁹⁶

As of September 27, 1986, Hayer was still planning to travel to England. In return for his willingness to assist the RCMP, Hayer indicated that he expected the RCMP to be diligent in its duties, in particular with respect to Harpal Singh

¹⁹¹ Supplemental Submissions of the Attorney General of Canada, October 29, 2008, paras. 2-4.

¹⁹² Exhibit P-290, Admission 4.

¹⁹³ Exhibit P-290, Admission 4.

¹⁹⁴ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9700.

¹⁹⁵ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11564.

¹⁹⁶ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9623.

Nagra, an individual who was later prosecuted on the basis of evidence gathered by Solvason for a conspiracy to bring a known Sikh extremist into the country under a false identity.¹⁹⁷ Hayer stated that he was "...definitely going to England within the near future." He suggested that audio devices could be implanted in his hotel room and he could then bring Purewal to his room "...for the purpose of extracting information relative to the Air India disaster." Solvason and MacDonell suggested that Purewal should be encouraged to provide information of evidentiary value, since he seemed to have direct evidence linking Bagri to the Air India bombing.¹⁹⁸

The Division eventually approved Solvason's plan for travel. An official request for authority to travel was sent to HQ,¹⁹⁹ indicating that Hayer was willing to meet with Purewal "...in an effort to learn intimate details concerning the Air India disaster" and had agreed to using a transmitter or audio devices in a hotel room. Solvason was to accompany Hayer to England to coordinate the operation, obtain evidence of Bagri's admissions and identify unknown participants such as the "...persons delivering the explosives." An interview with Purewal, to "...gain information by conventional means" and to assess his potential as a future witness was also planned.²⁰⁰ The plan had received the support of E Division senior management²⁰¹ and the request sent to HQ stated that Hayer had been found to be reliable.²⁰² It mentioned that Purewal had in the past been interviewed "...on an unofficial basis," and had then confirmed that he had met with Bagri in England and had a "confidential discussion" about Air India, the details of which he would not divulge. The request noted that this clearly supported the intelligence from Hayer.²⁰³

The Acting RCMP Commissioner approved the request for "...permission to perform police duties outside of Canada" on October 10, 1986. The form submitted by the OIC of the RCMP HQ Task Force, Belanger, in order to obtain this approval, stressed that the "...investigative advances that the proposed travel could yield cannot be overestimated," as little direct evidence in support of criminal accusations against the perpetrators of Air India had been accumulated during the last 15 months of "intense investigation." While other avenues were being pursued in the case, the investigation of Bagri's inculpatory statements was "...deemed to have the greatest potential evidentiary value." The form also mentioned that the RCMP's efforts so far tended to support the theory that Bagri was directly implicated.²⁰⁴

Because of the "critical nature" of the travel and because of the need to obtain the "...full cooperation of British law enforcement officials," the HQ travel request proposed that Belanger be authorized to travel with Solvason and Hayer. The

197 See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

198 Exhibit P-101 CAF0752, pp. 5-8.

199 Exhibit P-290, Admission 5.

200 Exhibit P-101 CAF0732, p. 1.

201 Exhibit P-101 CAF0732, p. 2.

202 Exhibit P-290, Admission 5.

203 Exhibit P-101 CAF0732, p. 2.

204 Exhibit P-101 CAF0714, pp. 1-2.

travel dates were listed as October 15th or 16th, but it was noted that they were contingent upon Hayer's "...availability and travel plans" and, as a result, could "vary slightly."²⁰⁵

On October 14, 1986, Solvason wrote to HQ following two telephone conversations he had with Belanger, one on Friday, October 10th, and the other on Monday, October 13th. Solvason reported that he had contacted Hayer on October 14th to finalize travel arrangements. Hayer had then explained that his primary purpose in travelling to England was to obtain affidavits from two individuals in support of his position in civil proceedings launched by Harjinder Pal Singh Nagra. He added that because his solicitor had been unable to review the file and prepare the materials, his travel plans were now delayed. However, Solvason reported that Hayer "...re-affirmed his commitment towards the proposed meeting with Tarsem Singh [Purewal]" and discussed his travel arrangements.²⁰⁶

In his message to HQ, Solvason noted that Hayer, though he agreed to contact his solicitor to expedite the process, appeared "...sensitive towards urgings to press forward and make firm travel dates." Solvason recommended that it was "...advisable to remain flexible" and to accommodate Hayer in order to achieve "full exploitation" of the planned operation. He emphasized that Hayer had reaffirmed his commitment to the operation, though he could not provide a firm date for its implementation.²⁰⁷ He noted that Hayer was "...sensitive towards what he views as undue pressure in this regard."²⁰⁸ Solvason wrote that he would be trying to "tactfully" encourage Hayer to pursue his course of action "...with firm travel plans at his earliest convenience."²⁰⁹

Also on October 14, 1986, RCMP HQ transmitted Solvason's update to the RCMP Liaison Officer (LO) in London, and advised of the "86-10-21 (tentative)" travel plans for Belanger, Solvason and Hayer. The LO was told he would be given as much advance notice as possible and was asked to inquire about potential problems with the suggested "technical coverage" (i.e., recording) for Hayer's conversation with Purewal. HQ noted that Solvason had been requested to provide "...an investigational appreciation" of the tasks he planned to pursue during the trip, and that this would be forwarded to the LO.²¹⁰

The LO in London replied that day, indicating that "...before discussing in depth" the HQ revised plan for travel with the RCMP's contacts at New Scotland Yard Special Branch (NSY SB), it was necessary to clarify a number of points. The LO explained that it was "very important" for the RCMP to "...firmly commit ourselves to specific proposals" before presenting them to NSY SB, because of "...past experiences of numerous last minute changes in operational plans which led to some embarrassments to us." He added that, in the case of the Hayer project, the

²⁰⁵ Exhibit P-101 CAF0714, p. 2.

²⁰⁶ Exhibit P-101 CAF0728, pp. 1-2.

²⁰⁷ Exhibit P-101 CAF0728, pp. 1-2.

²⁰⁸ Exhibit P-101 CAF0728, p. 2 [Emphasis added].

²⁰⁹ Exhibit P-101 CAF0728, p. 2.

²¹⁰ Exhibit P-101 CAF0733, pp. 1-2.

RCMP was "...breaking new ground with the UK authorities."²¹¹ He reported that he had advised NSY SB that, "...for reasons beyond our control," the operation had been delayed.²¹² Before holding further discussions with NSY SB, the LO requested additional information about a series of questions relating to the conduct of the operation.²¹³ He also asked that Solvason "immediately" submit his outline of the tasks to accomplish, as it was vital to the LO's discussions. The LO noted that he anticipated "full co-operation" from NSY SB, but that answers to his questions were required to enable him to respond to the questions that would "undoubtedly arise" during his discussions with the UK authorities.²¹⁴

Belanger then spoke with the LO and noted that it was understood that the Purewal/Hayer initiative "...fell within the criminal intelligence gathering mode," but that if that was successful, a direct interview with Purewal and others could be attempted "...within the evidence gathering mode," with the "blessing and participation" of NSY SB. From his conversation with the LO, Belanger understood that the LO would "...do nothing else" until he received the E Division operational plan.²¹⁵

The RCMP LO telex was then forwarded to Solvason for "urgent attention." HQ requested answers to the LO's questions, and, in particular, asked for the "...complete operational plan to include all investigational initiatives which are to be pursued in the U.K." HQ suggested content for the operational plan²¹⁶ and explained that:

The requirement of being extremely meticulous in our preparation for dealing with the UK authorities is based upon a particularly delicate situation involving our working in concert with various sectors of the British Services involved (NSY and BSS).²¹⁷

Solvason responded on October 15, 1986.²¹⁸ He cautioned that Hayer had expressed a concern about "...protecting his involvement," and would therefore be reluctant to expand knowledge of the operation to individuals other than those directly involved, "...without demonstrated cause and justification."²¹⁹ Solvason addressed the LO's questions where possible,²²⁰ but concluded his message by indicating that:

211 Exhibit P-101 CAF0735, p. 1.

212 Exhibit P-101 CAF0734, p. 1, CAF0735, p. 1.

213 Exhibit P-101 CAF0734, pp. 1-2, CAF0735, p. 2.

214 Exhibit P-101 CAF0735, p. 3.

215 Exhibit P-101 CAF0736, pp. 1-2.

216 Exhibit P-101 CAF0734, pp. 1, 3.

217 Exhibit P-101 CAF0734, p. 3. BSS is the abbreviation for the British Secret Service.

218 Exhibit P-101 CAF0737.

219 Exhibit P-101 CAF0737, pp. 1-2.

220 Exhibit P-101 CAF0737, p. 1.

Because of the very tenuous nature of this initiative it is not/ not possible to be definitive beyond the foregoing. Any action other than that outlined will be dictated by the result of the initial interview and the decision to conduct subsequent interviews can only be made after consultation with 'E' Div NSOTF in concert with NSY (SB).²²¹

The response was transmitted to the LO on October 16th.²²²

On October 17, 1986, O'Connor advised HQ that Hayer had reported that his solicitor had still not prepared his case, and that as a result, Hayer would not be able to "...forecast travel dates" before October 23rd or 24th. O'Connor added, "...as comment on these developments," that it was natural to have "...some scepticism or reservations towards [Hayer]'s statements regarding delay," but that "...it would not be prudent to assume this in absence of evidence to support that and without circumstances making this more apparent." He concluded that, "...at this point, [Hayer] re-affirms his commitment to co-operate," and that "... this will ultimately be put to the test within a relatively short period of time."²²³ HQ forwarded a copy of the telex to the RCMP LO in London.²²⁴

The E Division Task Force transmitted to HQ a Surrey NCIS "investigational planning report" about the planned trip to England during the following days.²²⁵ The start date for the operation was listed as "A.S.A.P."²²⁶

On October 22, 1986, during a meeting between CSIS HQ and RCMP HQ, Belanger stated that Hayer was "...showing some reluctance" to be involved in the projected travel to England, but that Solvason felt that he would agree to go to London within the next two weeks. Belanger explained that if Hayer did not "...make up his mind" by then, the RCMP would likely abort the plan, travel to the UK without Hayer and conduct "...whatever interviews can be carried out."²²⁷

On October 24, 1986, the OIC of the Surrey Detachment advised HQ that Hayer had indicated the day before that he had "...re-considered his proposed role for travel to England." The OIC reported that Hayer "...was critical of police," and that it was apparent that he had had "...second thoughts regarding the travel" and did not wish to be placed "...in the position of being an agent or informant for the RCMP." As a result, the OIC noted that consideration would have to be given to implementing the "...revised operational plan, as suggested by C/Supt. Belanger."²²⁸

²²¹ Exhibit P-101 CAF0737, p. 2.

²²² Exhibit P-101 CAF0738.

²²³ Exhibit P-101 CAF0739.

²²⁴ Exhibit P-101 CAF0740.

²²⁵ Exhibit P-101 CAF0741, CAF0742.

²²⁶ Exhibit P-101 CAF0741, p. 2.

²²⁷ Exhibit P-101 CAB0680, p. 2. This document, unlike the other documents reviewed here, was available and entered into evidence before the Inquiry prior to Solvason's testimony.

²²⁸ Exhibit P-101 CAF0727.

In November 1986, the RCMP attitude towards Hayer changed. During a meeting with CSIS, the RCMP stated that the agencies had to “compare notes” to determine “...what kind of game Mr. Hayer was playing” with respect to the information he provided to CSIS and the RCMP about the Air India disaster.²²⁹ During another meeting, the RCMP stated that Hayer “...got ‘cold feet’ and decided against going to London for the RCMP,” and that “...since then ... they have had little to do with him.” The Force added that “Mr. Hayer is an opportunist and that he is motivated by his own personal interests.”²³⁰

Solvason strongly disagreed with this interpretation of the events:

MR. FREIMAN: Do you accept the accuracy of the statement that Mr. Hayer got cold feet and decided against going to London for the RCMP?

S/SGT. SOLVASON: No, I don’t think that’s accurate at all. There seems – perhaps somebody misunderstood but Mr. Hayer was not an agent; he was not an employee; he’s not going to take orders and do whatever, whenever at our direction. But he would assist us concurrent to his own interests. He’s not an opportunist and he’s only motivated to his own personal interests the same way as we all are. He had a business to operate, and he had family concerns, and things like that.²³¹

Solvason was never advised that RCMP management questioned Hayer’s motivations because the travel plan did not proceed, nor was he involved in any meetings where this was discussed. He continued to feel that Hayer was reliable because he would “...do what he said he would do,” but he was not going to be “...somebody else’s guy and do whatever somebody wanted at their whim.”²³²

MacDonell found the statement – that Hayer was an opportunist and that the RCMP had very little to do with him since he got “cold feet” about going to England – “surprising.” He explained that, at the time, he was still in Surrey and he was still maintaining regular contact with Hayer, as was Solvason.²³³

In December 1986, Solvason forwarded a report about Hayer to HQ and to the E Division Task Force. He noted that the information provided by Hayer was reliable, but that Hayer was “...subject to radical mood changes” and that his “...dependability was limited in terms of being tasked.”²³⁴

On December 16, 1986, the E Division Task Force advised HQ that Hayer had told MacDonell that he had again made plans to travel to the UK, this time in

²²⁹ Exhibit P-408, Admission 10.

²³⁰ Exhibit P-290, Admission 7.

²³¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11563.

²³² Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11564, 11593.

²³³ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9624.

²³⁴ Exhibit P-408, Admission 11.

January 1987. The Task Force reported that Hayer provided detailed information about his intended itinerary and indicated that he was prepared to assist the RCMP in attempting to gather information about Air India and to report it to the RCMP upon his return. The E Division Task Force noted that, because of Hayer's "...radical mood changes and unpredictability," he had to be considered "of questionable reliability," and therefore the Task Force had "no intention" of reactivating the original plan for travel with Hayer.²³⁵

On February 3, 1987, Solvason and MacDonell prepared a report about information provided to them by Hayer on January 31, 1987. They indicated that Hayer had advised that, during his recent trip to England, he had attended the *Desh Pardesh* offices to meet with Purewal in order to "...learn more information from Purewal as to the conspiracy centering about the Air India disaster." However, he could not "...steer the conversation in the intended direction," mostly because many employees stayed overnight at the office because of inclement weather, and the lack of privacy "...precluded sensitive topics of conversations." Hayer told the officers that he might consider returning to England in April, "...at which time conditions may be more favourable for a meeting with Purewal." Solvason and MacDonell transmitted this report to HQ and to the E Division Task Force. They both commented that it had been their experience that the information provided by Hayer was reliable.²³⁶

In April 1987, E Division again requested authorization to have Solvason travel to England with Hayer. When the Division first wrote to HQ about the new proposed trip, it noted that a "similar proposal" had been approved by HQ in October 1986, but that it was not carried out "...because of scheduling difficulties."²³⁷ At HQ, the OIC who had oversight over the national Air India investigation prepared a memorandum detailing the history of the previous attempt to arrange travel with Hayer. He noted that the need for the cooperation of NYB SB was "...the cause of some confusion" at the time of the October 1986 plan. He recounted the position adopted by E Division when Hayer travelled in January, and added that Hayer had provided "nothing new" after that trip.²³⁸ In conclusion, the memorandum stated:

We [at RCMP HQ] do not know why 'E' Div now considers [Mr. Hayer] reliable enough to be tasked when Dec last they determined he was not and considered him self serving.²³⁹

E Division provided an explanation and additional information to answer the HQ concerns.²⁴⁰ The DIO for E Division wrote that the "questionable reliability" mention in the December 1986 telex was "...a poor choice of words." In fact, he explained that it was used simply to describe Hayer's "...reluctance to become

²³⁵ Exhibit P-101 CAF0755.

²³⁶ Exhibit P-101 CAF0754, pp. 3-5.

²³⁷ Exhibit P-101 CAF0746.

²³⁸ Exhibit P-101 CAF0748, pp. 1-3.

²³⁹ Exhibit P-101 CAF0748, p. 3.

²⁴⁰ Exhibit P-101 CAF0747, CAF0748, p. 3.

involved as an agent under our continual direction.” He added that the events leading up to the “questionable reliability” assessment “...revolved around dates in October 1986 when then C/Supt. Belanger was available to travel to London, however were not convenient to [Hayer].” Ultimately, the DIO explained, Hayer “...decline[d] his offer of assistance because of scheduling difficulties,” but later did travel to London, though he was precluded from having discussions with Purewal “...because of a severe snow storm.” The DIO added that Hayer had “...a certain reservation about the Canadian justice system, because of its inability to move quickly,” but that “recent developments” in the case had “...renewed his faith.”²⁴¹

CSIS Concerns Left Unaddressed

The RCMP plan to travel to England with Hayer raised concerns for CSIS. The Service was not advised immediately, and felt that the RCMP was putting Hayer’s safety at risk, as well as compromising his potential usefulness for both agencies, and that the Force was not consulting CSIS sufficiently about its dealings with foreign agencies.

On October 14, 1986, RCMP HQ wrote to the RCMP LO in London that “...in the spirit of continued cooperation,” it was HQ’s intention to advise CSIS and the British Secret Service (BSS), within the next few days through the CSIS Security Liaison Officer (SLO), of the “pertinent details” relating to the RCMP’s proposed travel with Hayer.²⁴² On October 15th, Belanger had a telephone conversation with the LO. Because the projected trip to England involved plans which fell “...within the criminal intelligence gathering mode,” and others which fell “...within the evidence gathering mode” and were to involve law enforcement authorities, it was agreed that the LO would advise British law enforcement (NSY SB), and that NSY SB would then inform the BSS.²⁴³ Only after HQ received confirmation that the BSS had been advised through this channel would HQ “officially inform” CSIS. In the meantime, however, HQ could bring CSIS into the picture “informally.”²⁴⁴

On October 16, 1986, RCMP HQ member Rick Phelan attended a meeting with Chris Scowen and Mike Gareau of CSIS HQ. Scowen and Gareau were informally made aware of the RCMP plan to travel to England with Hayer and “...undertook to guard the information until they receive formal notification from [the RCMP], so Brits can be properly brought in through L.O. Ldn.” In general, the CSIS members expressed the view that the RCMP had had “...great success with whatever it was ‘E’ Div. used to convince [Hayer] to cooperate with [the RCMP] in the first place, given that he was originally adamantly opposed to dealing with RCMP.” The information that Hayer had provided to CSIS and to the RCMP was discussed and some differences were noted, particularly about the identity of

²⁴¹ Exhibit P-101 CAF0747.

²⁴² Exhibit P-101 CAF0733, p. 3.

²⁴³ Exhibit P-101 CAF0736.

²⁴⁴ Exhibit P-101 CAF0736, p. 3.

the persons who overheard Bagri's admissions and told Hayer about them. CSIS was invited to submit questions it would like asked of Hayer, which were "...to be pursued on an opportunity basis only and at [the RCMP's] discretion."²⁴⁵

On October 22, 1986, James ("Jim") Warren, the CSIS HQ Director General Counter Terrorism, met with RCMP D/Comm. Inkster "...to discuss a range of issues in respect of RCMP/CSIS cooperation."²⁴⁶ During this meeting, Warren told Inkster that "...the manner in which the RCMP was handling Mr. Hayer's case was a matter of concern to CSIS." Warren first reminded Inkster that "...it was CSIS who had first brought Mr. Hayer to the attention of the RCMP," and indicated that the Service "...continued to have an interest in Mr. Hayer as a community contact," though he acknowledged that the RCMP had an interest in him "...from the point of view of the criminal investigation surrounding Air India." Warren then explained that CSIS had found out about the RCMP intentions to have Hayer travel to London, and that this raised concerns. According to Warren, this was "...the sort of case" that CSIS "...would have expected to be raised in the forum of the Liaison Committee" since both agencies had an interest in Hayer, and since "...the project to have him travel to London could jeopardize any future potential for either agency to obtain any more information from him." Warren indicated that CSIS was "in the dark" about the manner in which the RCMP intended to use Hayer, and specifically about "...whether the fact that he had provided information could be exposed in the process."²⁴⁷

Inkster agreed that the RCMP intentions should probably have been "...discussed before hand," but added that it was "...the obligation of the RCMP to pursue the criminal investigation vigorously." Warren explained that CSIS only wanted "...the opportunity, in such cases, to flag any damage which could be done" to its future operations, and perhaps to "...raise the issue to a higher level for resolution" in "...a particularly difficult case."²⁴⁸

Another concern discussed by Warren related to the fact that CSIS was under the impression that the RCMP had had "...direct discussions with the British Secret Service (BSS)" in furtherance of its intentions to have Hayer travel to England. Inkster confirmed that the RCMP had had discussions with another agency, but had to verify whether it was, in fact, the BSS. Warren explained that, if the RCMP did have discussions with the BSS, it would "appear strange" for the Force to discuss projects about Hayer without involving CSIS. Warren mentioned the RCMP/CSIS agreement to coordinate their dealings with other agencies, and indicated that CSIS's position was that the Hayer matter should have been "...left with CSIS to raise directly with the BSS if necessary." He warned that "...if it turned out that the RCMP did have contacts with the BSS, he expected the DDR would want to raise that whole issue again at the next Liaison Committee meeting."²⁴⁹

²⁴⁵ Exhibit P-101 CAF0753, pp. 1, 3-6.

²⁴⁶ Exhibit P-101 CAA0504, p. 1.

²⁴⁷ Exhibit P-290, Admission 6.

²⁴⁸ Exhibit P-290, Admission 6.

²⁴⁹ Exhibit P-290, Admission 6.

Later on the same day, Belanger and other RCMP HQ members went to CSIS HQ and met with Gareau and Scowen to discuss their "...intended use of [Mr. Hayer] in furtherance of the Air India investigation." Belanger was aware of the earlier discussions between Warren and Inkster. He went "...right to the issue" of RCMP contacts with other agencies, and "...stated categorically that there had been no 'direct' contact between the Force and the [REDACTED]." Belanger explained that the RCMP had simply forwarded questions to a British law enforcement agency and that some of the questions had been forwarded elsewhere. He added that the RCMP LO in London had kept the CSIS SLO there informed, because of their "close relationship."²⁵⁰

The RCMP then explained that the intention in sending Hayer to London was to "...engage [Purewal] in a taped conversation during which it is hoped [Purewal] will go over the Air India information." Scowen, who wrote a memorandum about the meeting, discussed some of the differences between the information Hayer provided to CSIS and the RCMP, and noted that it was "not known" whether the version Hayer reported to CSIS was correct or whether Hayer had been protecting Purewal, his "long time associate," by not revealing to the Service that he had learned the information from him. The RCMP explained that, if Purewal repeated the Bagri information in conversations with Hayer, it was the intention of Belanger and Solvason "...to interview [Purewal] and anyone he may implicate."²⁵¹

CSIS was concerned about the RCMP plan and warned:

It was pointed out to Belanger that the use of [Mr. Hayer] in this manner would compromise any confidential relationship that existed between [Mr. Hayer] and the RCMP and additionally, perhaps more importantly, place [Mr. Hayer] at considerable risk.²⁵² [Emphasis added]

To this, Belanger responded that "...this was indeed the case," and that the RCMP would "...endeavour to protect" Hayer, but that he "...would be going to London with full knowledge of what was required and thus, of his own volition." Belanger added that Hayer was "...a grown man and could make his own decisions."²⁵³ On this point, MacDonell testified that the risk inherent in the plan, to have Hayer travel to England and wear a body pack, was a "real concern." Hayer saw the trip as a potentially dangerous endeavour, and MacDonell also felt that it was "inherently dangerous" to be participating in a covert operation abroad which might later require attendance in court and the necessity to make this participation known.²⁵⁴

²⁵⁰ Exhibit P-101 CAB0680, p. 1.

²⁵¹ Exhibit P-101 CAB0680, pp. 1-2.

²⁵² Exhibit P-101 CAB0680, p. 2.

²⁵³ Exhibit P-101 CAB0680, p. 2.

²⁵⁴ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9633.

Following the November 1986 “comparing of notes,” when the RCMP advised CSIS that it now had “...little to do” with Hayer because of his decision not to go to London, CSIS was “...satisfied to leave the present situation of a direct ‘hands off’ attitude as is,” and this was agreed upon between the agencies.²⁵⁵

The RCMP Travels to England – More CSIS Cooperation Issues

The RCMP finally did carry out its plan to travel to England with Hayer in April 1987, but the usefulness of the initiative was limited in the end because no recording of Hayer’s conversation with Purewal was obtained. CSIS was again not advised in advance of the RCMP travel plans. During another trip to England, in 1988, the RCMP interviewed Purewal and his associates, but was unable to obtain any information. CSIS was only told about these interviews over a month later when the RCMP began to request CSIS information.

On April 13, 1987, the E Division DIO wrote to the HQ Task Force to request authorization for Solvason to travel to London to pursue “...intelligence initiatives centering around Tarsem Singh [Purewal].” It was noted that Solvason would be directing Hayer, who would attempt to “...extract these details” from personal contact with Purewal. Solvason was also to liaise with the UK investigators to plan an interview with Purewal. The telex explained that Hayer was already in England, and was planning to stay five more days and to meet Purewal in two days.²⁵⁶

When it received the request, HQ noted that “no technical surveillance” (i.e., intercepts or body packs) was proposed during this trip, as opposed to the 1986 plan, but that no one in England had as yet been advised. It was not known whether the UK authorities would still be prepared to cooperate.²⁵⁷ E Division, after explaining the previous unfortunate mention that Hayer was of “questionable reliability,”²⁵⁸ pointed out that Hayer had now approached the RCMP voluntarily, and that the Division was “...presented with an avenue of investigation we cannot afford to overlook.”²⁵⁹

On April 14, 1987, a memorandum was prepared at HQ, evaluating the E Division request. HQ found that there was urgency because of the “...costs expended to date” and the “...possible investigational advances which could be gained.” HQ agreed that it would be preferable to have an RCMP member travel to the UK “for tasking/briefing,” even if Hayer could simply be debriefed after he returned to Canada (and would be in any event). HQ contacted the RCMP LO in London, who foresaw no problems.²⁶⁰

²⁵⁵ Exhibit P-290, Admission 7.

²⁵⁶ Exhibit P-101 CAF0746.

²⁵⁷ Exhibit P-101 CAF0748, pp. 2-3.

²⁵⁸ Exhibit P-101 CAF0747, CAF0748, p. 3.

²⁵⁹ Exhibit P-101 CAF0747.

²⁶⁰ Exhibit P-101 CAF0731.

The "...permission to perform police duties outside of Canada" request that had been prepared for the October 1986 travel was reapproved, but new conditions were added. There was to be "...no technical or other surveillance," Hayer's safety was not to be jeopardized, all arrangements were to be discussed and authorized by the appropriate British authorities and the RCMP LO had to make the arrangements.²⁶¹ The LO was then requested to contact the appropriate British authorities to "...solicit their concurrence with our intended course of action and their willingness to render the required assistance."²⁶²

In testimony before this Inquiry, Solvason recalled that Hayer eventually did take a trip to London, and cooperated with the RCMP in an attempt to obtain information about the Air India bombing. At that time, Hayer did not wear a body pack, but he met with Purewal. Solvason travelled to England and interviewed Hayer there about his conversation with Purewal. Solvason was not involved in the decision to not have Hayer wear the body pack, but thought the decision was based mostly on security issues. There were also concerns relating to intercepts in a foreign country.²⁶³

On April 27, 1987, Solvason transmitted a report to HQ and E Division about the travel to London. The report stated that, once in England, Solvason met with Hayer, who had met with Purewal the day before. Hayer reported that Purewal told him that, during his November 1985 trip to England, Bagri had met him and *Desh Pardesh* employees and discussed "...details relative to the Air India incident" for approximately six hours. According to Purewal, Bagri said that the bombings were "...the results of a \$10,000 contract which was paid to an unknown Caucasian person, employed as a baggage handler at Vancouver International Airport." Bagri was also reported to have explained that Surjan Singh Gill was supposed to deliver two bags of explosives to this unknown person at the airport, but because he backed out at the last minute, Bagri himself had to deliver the bags.²⁶⁴

Hayer reported that Purewal told him that Bagri had provided him with the name of the unknown baggage handler, but that he could not recall it. Hayer added that Purewal said that a short time before the bombing, Bagri, Parmar, Gill and the unknown Caucasian person met at Parmar's house to make the "final arrangements," and that it was at that time that Gill "...declined to participate." Finally, Purewal was reported to have said that Bagri had indicated that the baggage "...did not go on to the aircraft in the normal manner," and that having a Sikh insist on interlining baggage through CP Air was "...designed as a diversion to frustrate the investigation."²⁶⁵

Before Solvason's meeting with Hayer, consideration had been given to interviewing Purewal and others, but the initiative was "...held in abeyance" as

²⁶¹ Exhibit P-101 CAF0714, p. 2.

²⁶² Exhibit P-101 CAF0750, p. 2.

²⁶³ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11564-11565, 11613-11614.

²⁶⁴ Exhibit P-290, Admission 8.

²⁶⁵ Exhibit P-290, Admission 8.

it was believed that conducting interviews immediately after Hayer's meeting with Purewal could "reflect negatively" on Hayer's security.²⁶⁶

Despite the concerns voiced earlier by CSIS about not being advised in advance of RCMP plans to travel with Hayer, CSIS received no advance notice, and perhaps no notice at all, of the April 1987 trip. RCMP HQ noted that, as of April 14th, the day when Solvason was scheduled to depart for England if authorization was granted,²⁶⁷ CSIS was not aware of Hayer's travel or of the RCMP plans to send Solvason to meet him in England.²⁶⁸ It is not known whether the Service was ever advised of the April 1987 travel. The plan for this trip was elaborated at the last minute, while Hayer was already in England, and it is possible that the RCMP overlooked CSIS's concerns because of the haste surrounding the planning of this initiative.

In early 1988, Solvason went to England again for an "investigational trip." RCMP members were travelling to England in connection with the Reyat arrest and extradition, and it was decided to interview Purewal and his associates at the same time, since the RCMP investigation had provided "strong evidence" that Bagri did in fact admit his involvement in Air India in his presence. However, Purewal and the other individuals interviewed were found to be "...non-cooperative in the sense that they denied [being privy to the conversation] when questioned."²⁶⁹

In March 1988, Solvason and Wall wrote a memorandum discussing the efforts made during the investigational trip. They explained that since "conventional methods" were unsuccessful in terms of obtaining information from Purewal, they were now hoping to generate "...some communications from [Purewal] to Bagri or from Bagri to others in a manner by which we or the Canadian Security Intelligence Service might be in a position to monitor." For this purpose, the investigators asked that CSIS be approached to find out whether the Service was intercepting the communications of Bagri during the investigational trip and since then. They also wondered whether CSIS had any information "...relating to the matter." If there were intercepts, they asked that CSIS be requested to retain the tapes "...as possible evidence in future criminal prosecutions." Finally, they asked whether CSIS had any other intercepts "...relating to either [Purewal] or Inderjit Singh Reyat or in any other way relating to the Air India / Narita incidents," and if so, they requested to be informed of their existence and provided with the transcript of the conversations "...for intelligence and possible evidentiary purposes."²⁷⁰

The investigators' memorandum was transmitted to CSIS on March 22, 1988. The cover letter indicated that, on March 3rd, the matter had been discussed with a CSIS representative who indicated that he would be clarifying "some

²⁶⁶ Exhibit P-290, Admission 8.

²⁶⁷ Exhibit P-101 CAF0750, p. 3.

²⁶⁸ Exhibit P-101 CAF0731, p. 1.

²⁶⁹ Exhibit P-101 CAB0770(i), pp. 1-3.

²⁷⁰ Exhibit P-101 CAB0770(i), p. 2.

points” about conversations between Parmar and Bagri “...where Bagri made some reference to [Purewal] being interviewed by [the RCMP] in England.”²⁷¹

In response to the RCMP request, CSIS indicated that it was not its policy to identify the persons whose communications it was intercepting, but that since this was a “special case” which was “unique” because it related to the Air India investigation, the Service was willing to advise that it was not currently intercepting Bagri’s communications nor had it been during the investigational trip. As for the other information requested, the Service noted that it was “...subject to the Third Party rule,” but advised that if it had been in possession of information relevant to the Air India investigation which emanated from “any allied Service,” it would have requested release and provided the information to the RCMP. However, CSIS advised that it was “...not in possession of any such information.” CSIS also stated that it was not “...conducting other technical intercepts” in relation to Purewal or Reyat and that, should it receive any information “...that impacts on [Purewal], Reyat, Air India or Narita incidents,” it would continue to inform the RCMP. If the information was to come to CSIS from technical intercepts, “...same will be [referred] to the RCMP via established procedures.”²⁷²

CSIS further advised that it was in possession of a telephone conversation between Parmar and Bagri from March 2nd, where the fact that Purewal received a visit from “...two from Canada and one from Scotland Yards” was mentioned. CSIS attached a copy of the tape and advised that the original had been secured.²⁷³ Unlike the pre-bombing Parmar intercept tapes, this tape had been retained because of a directive issued in 1986 in connection with the Air India civil litigation.²⁷⁴

CSIS noted that, although it had been aware that the RCMP was travelling to England in connection with the Reyat arrest and extradition, it had not been notified that the Force intended to conduct other interviews. Now that it was aware, CSIS indicated that the content of the Parmar/Bagri conversation “becomes clear.”²⁷⁵ Because the RCMP had not notified CSIS of its intention to conduct interviews relating to Hayer’s information, the Service was prevented from understanding the meaning of a conversation it intercepted. If the RCMP had not needed to obtain information from CSIS after the Purewal interview, it may never have notified CSIS at all. In that case, the Parmar/Bagri conversation could never have been understood, nor its relevance to the Air India investigation recognized by CSIS.

There was also discontent at CSIS about the manner in which the RCMP was following up on and investigating the Hayer information, and the analysis initially provided to the RCMP by the Service. In January 1988, BC Region investigators

²⁷¹ Exhibit P-101 CAB0770(i), p. 1.

²⁷² Exhibit P-101 CAB0770(i), p. 3.

²⁷³ Exhibit P-101 CAB0770(i), p. 3.

²⁷⁴ See Section 4.3.1 (Post-bombing), Tape Erasure.

²⁷⁵ Exhibit P-101 CAB0770(i), p. 3.

wrote to CSIS HQ that they "...had in the past provided investigative leads to the RCMP;" specifically and "most substantially" referring to the Hayer information and analysis, and that the leads provided "...were not given exhaustive follow-up" by the RCMP. The BC Counter Terrorism Chief, Mervin Grierson, agreed that, "...based on the local RCMP's response," it appeared that some of the leads provided by CSIS were "not exhausted."²⁷⁶ In testimony before the Inquiry, Grierson explained that there was a fear at CSIS that opportunities would be missed because of this lack of follow-up by the RCMP. He commented that this situation was "...sort of like same old, same old," with the RCMP asking CSIS not to get involved, and that the issue was never successfully resolved.²⁷⁷

Hayer Agrees to Testify

Solvason explained in testimony at the Inquiry that it was often difficult for the RCMP to obtain information in the Sikh community because many "...were of the view that, 'nothing is going to happen anyways; the police don't do anything and can't do anything.'" Hayer was one of those who held that view; he "...mentioned that almost daily, that he wanted to see things happen and wanted to see if the Canadian system would work."²⁷⁸

Solvason focused a great deal of effort on gathering evidence in support of prosecutions involving Sikh extremists, to show the community that the police were addressing the issues.²⁷⁹ Though he received little support from the E Division Task Force management,²⁸⁰ Solvason went ahead and gathered evidence in support of a prosecution in the case of Harjinderpal Singh Nagra, which related to a conspiracy to allow a known Sikh extremist to enter Canada under a false identity. The prosecution was successful, and, as a result, the RCMP's "...stature in the community" was elevated.²⁸¹ Solvason explained:

...it made an impact upon Tara Singh Hayer, and I believe it was instrumental in eventually convincing him to be a witness on the Air India disaster.²⁸²

Indeed, in 1995, Hayer provided a signed statement to Solvason in which he acknowledged that he was aware that he might be called to testify in court, and was prepared to do so.²⁸³ Before that, in June 1989, Solvason had obtained a one-party consent to intercept Hayer's communications, and had had Hayer telephone Purewal in England.²⁸⁴ Solvason felt that the conversation intercepted

²⁷⁶ Exhibit P-101 CAA0627(i), pp. 5-6.

²⁷⁷ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9494-9495.

²⁷⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11568.

²⁷⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11568.

²⁸⁰ See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

²⁸¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11568-11569.

²⁸² Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11569.

²⁸³ Exhibit P-101 CAF0443, p. 9.

²⁸⁴ Exhibit P-101 CAF0443, p. 5; Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11593.

"basically confirmed" Hayer's information.²⁸⁵ Purewal and Hayer talked about the conversation that Purewal had had with Bagri in London. Hayer asked Purewal whether he thought that Bagri had told the truth when he had told Purewal about his involvement in Air India, and Purewal replied that he did and that he had "...completely trusted him in that regard." Purewal added that "...when Surjan Singh Gill saw the bombs, he got a little scared." Hayer said that Gill must have thought "...the blame would have fallen on him," and Purewal agreed that "...it must have been something like that." It was also mentioned during the conversation that Gill and Bagri were together "...at the time the bombs were viewed."²⁸⁶

In January 1995, Purewal was murdered in Southall, England.²⁸⁷

On October 15, 1995, Hayer provided his statement to Solvason.²⁸⁸ He then stated for the first time that he had personally heard the confession made by Bagri in England.²⁸⁹ He revealed that, when he visited Purewal in 1985, Bagri "...showed up by himself" at the *Desh Pardesh* offices. Bagri and Purewal had a conversation alone at the other end of the room, but the other persons present, including Hayer himself, could hear the conversation clearly, because they were separated only by office dividers. Bagri spoke with Purewal for approximately one hour and, at some point, "...the subject of the Air India Disaster came up." Purewal asked Bagri "...how he managed to do that," and Bagri explained that "...they (the Babbar Khalsa) wanted the Government of India to come on their knees and give them Khalistan." Bagri added that the original plan was to have the plane explode at Heathrow airport with no passengers, but "...because the flight was a half hour or three quarters of an hour late, it blew up over the ocean."²⁹⁰

According to Hayer's statement, Purewal then asked Bagri "...how he managed to have the bomb inside the plane," and Bagri explained that Surjan Singh Gill was supposed to have taken the device to the airport, but when it was ready and when it was shown to him, Gill "...got scared and resigned from the Babbar Khalsa." Bagri explained that he then suggested to Parmar that they kill Gill, but Parmar decided against it "...because that would bring suspicion on them and so they just warned Gill not to say anything." Bagri then said that he had personally gotten "...someone else to take the bomb inside a suitcase to the Vancouver airport and put it on the plane."²⁹¹

Hayer went on to state that all of the persons present in the room with him (*Desh Pardesh* employees) heard Bagri's admission and that he had personally asked Purewal about it. Hayer asked Purewal why he was "...a friend of these

285 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11593.

286 Exhibit P-101 CAF0443, p. 5.

287 Exhibit P-431, p. 1.

288 Exhibit P-101 CAF0443, p. 9; Exhibit P-431.

289 *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 9.

290 Exhibit P-431, pp. 1-2.

291 Exhibit P-431, p. 2.

people who blow up 329 people,” and Purewal responded that the BK were “...very dangerous people and he has to be careful.” Purewal also added that the BK were paying him well “...and so he prints things that they want.” Hayer also indicated that he had discussed the topic again with Purewal on “several occasions,” including during the telephone conversation which was recorded by Solvason with his consent.²⁹²

Hayer provided additional statements to the same effect in June 1996 and May 1997, though “...some of the surrounding circumstances he recounted differed slightly.”²⁹³

Protecting Hayer

As time progressed, Hayer received a number of threats on his life.²⁹⁴ From early on, the RCMP was involved in providing some protection, but the various units the Hayer family dealt with did not always have a good understanding of Sikh extremism issues and the threats to Hayer were not always taken seriously. As a person who had revealed that he possessed information crucial to the Air India investigation, and who eventually agreed to testify, Hayer did not always receive a sufficient response from the RCMP when he sought the assistance of its members to protect him.

After the 1986 attempted bombing at Modern Printing, the threat to Hayer was constant. The RCMP Surrey Detachment had him as “a priority,” meaning that in the event a call came in from either his business or home, he would receive a priority response.²⁹⁵

Dave Hayer testified that the period after the 1986 attempted bombing was a very difficult time for the entire family, which continued to receive many threats.²⁹⁶ More generally, it was a time of extreme intimidation in the Sikh community. According to his wife, Isabelle Hayer, this was a time when members of the community received phone calls and were told that, if they did not support the Khalistan movement, something would happen to their children or to their families in India.²⁹⁷

At the time, “...everybody was afraid” of the small group of people who were trying to promote an independent State of Khalistan by violent means. Those who spoke out against terrorism were threatened at Sikh temples that had been taken over by extremists. There were also beatings in the community. Extremists had their own radio station, which was used to broadcast threats against those who spoke out against violence or protested the damage to the reputation of Sikhs that was occurring as a result of the extremists’ activities.²⁹⁸

²⁹² Exhibit P-431, p. 2.

²⁹³ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 9.

²⁹⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11609.

²⁹⁵ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9653-9654.

²⁹⁶ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9530.

²⁹⁷ Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, pp. 9534-9535.

²⁹⁸ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9533-9534.

On a number of occasions the family questioned whether Tara Singh Hayer ought to maintain his outspoken positions and continue his writing. But Hayer refused to be intimidated, and saw it as his duty to speak out against what he saw was going on in the community.²⁹⁹

The 1988 Attempt on Hayer's Life

On August 26, 1988, Tara Singh Hayer was the victim of a vicious attack that left him in a wheelchair for the rest of his life. A young man named Harkirat Singh Bagga went to the offices of Hayer's newspaper under the pretence of inquiring about advertising rates.³⁰⁰ He met with an employee and engaged in general discussion. When Hayer walked into the room, Bagga asked who the editor of the *Indo-Canadian Times* was.³⁰¹ The employee pointed to Hayer, and Bagga pulled out a handgun and shot Hayer three times.³⁰² Bagga then fled the building. The employee, along with another employee, pursued him. A businessman who became aware of the situation was able to grab Bagga and detain him. Shortly after, the police were called and came to the scene.³⁰³ Hayer survived the attack, but was rendered paraplegic.³⁰⁴

Following an investigation by the Surrey Detachment, Bagga was charged with attempted murder.³⁰⁵ He pled guilty and was sentenced to imprisonment for ten years.³⁰⁶ However, Solvason explained that there were "...a lot of details behind that" and "other persons" possibly involved. Solvason felt that the Air India Task Force should have had primary responsibility for the investigation into the shooting.³⁰⁷ He explained:

...all of these things are interrelated and when you start investigating one thing you're really investigating the others as well because most of the time, it's done by the same people for related reasons and that was just my opinion, but I was just a Corporal there....³⁰⁸

At the Air India Task Force, however, there was no willingness to assume responsibility for this investigation, and it was left to the Serious Crimes Section of the Surrey Detachment General Investigation Section (GIS).³⁰⁹ In Solvason's view, the GIS, which was the police of jurisdiction for the municipality, was overworked, and most importantly did not have the resources or the insight to

299 Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9530-9531.

300 *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7; Exhibit P-101 CAF0466.

301 Exhibit P-101 CAF0466.

302 *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7; Exhibit P-101 CAF0466.

303 Exhibit P-101 CAF0466.

304 *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7.

305 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11609-11610.

306 *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 7.

307 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11566-11567, 11610.

308 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11567.

309 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11567; Exhibit P-101 CAF0466, p. 5.

"...look at these things long-term." He felt that the investigation of the Hayer shooting should not have been left to local police, but that a more national focus was warranted. He commented that "...those [investigations] should be focused in a central place and worked on together because one thing may quite often lead you into another."³¹⁰

When Bagga was apprehended by police after the shooting, he initially indicated that he had been directed and had conspired with two other East Indian males in Toronto to plan the murder of Hayer. It was "quite evident" from the interview that Bagga's "...sole purpose in coming to Vancouver was to assassinate Hayer."³¹¹ Subsequently, Bagga told police that he had obtained the gun that he used to shoot Hayer from Bagri, and had been given money and instructed by Bagri to shoot Hayer.³¹² However, when Bagga pleaded guilty, he claimed that he had acted alone, and shot Hayer for personal reasons.³¹³

The Hayer family was under the impression that the RCMP simply closed the file on the attempted murder investigation after Bagga's conviction. Hayer's daughter-in-law, Isabelle Hayer, commented: "...we thought that the investigation was ongoing, but basically the RCMP felt that they caught the young kid and that was it. Case closed kind of a situation." In the family's view, this was consistent with a failure on the part of the RCMP to see how crimes such as this one fit into the larger Sikh extremism context. Isabelle Hayer said it was clear that "...there was more to this investigation than what was apparent to the RCMP at the time." The family felt that the RCMP failed to see that there was a "bigger picture," and that the plot was part of the extremist movement's attempt to "...shut [Tara Singh] Hayer up from speaking for [the] Sikh community and speaking against terrorism."³¹⁴

After his arrest in connection with the Air India and Narita charges in 2000, Bagri was charged in a separate indictment with the 1988 attempted murder of Tara Singh Hayer.³¹⁵ The evidence uncovered, whatever its strength in terms of obtaining a conviction, certainly tends to confirm Solvason's and the Hayer family's view that there was more to the case than the isolated act of an angry youth. It is unfortunate that the approach suggested by Solvason was not adopted by the RCMP in the years immediately following the shooting. This meant that some of the most important possible links between the Air India bombing and the shooting were not discovered until many years later.

In the late 1990s, the Air India Task Force finally got involved in the investigation of the Hayer shooting. In 1997, while he was assembling a report for Crown Counsel in connection with the 1988 attempted murder, Sgt. Bart Blachford

³¹⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11567, 11596-11597.

³¹¹ Exhibit P-101 CAF0466, p. 5.

³¹² Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 49; Exhibit P-101 CAF0896, p. 3.

³¹³ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 49. See also *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 24.

³¹⁴ Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, pp. 9537-9538.

³¹⁵ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 10.

of the Task Force requested from Hayer copies of articles that he had written about Bagri, Parmar and the Babbar Khalsa, in order to establish a motive for Bagri to conspire with Bagga to murder Hayer.³¹⁶ Hayer provided a number of articles in Punjabi.³¹⁷ Not all of the articles were translated immediately by the RCMP, but once they were, the RCMP and the Crown learned that, in addition to taking issue in his writings with Bagri's and Parmar's management of the BK, and to referring to Bagri in "unfavourable terms," Hayer had published a number of articles between September 1987 and August 1988 which implied that Bagri was involved in the Air India/Narita incidents. In an article published on August 19, 1988, one week before the attempted murder, Hayer made reference to an "alleged confession" by Bagri in 1985 regarding his involvement in the Air India incident.³¹⁸

Further, after Bagga was arrested, police found a piece of paper in his bus depot locker with the name and phone number of two individuals from Kamloops, including Bagri's brother-in-law. A forensics expert subsequently concluded that "...the handwriting on the paper 'could' have been that of Mr. Bagri." There was also an individual, named Saini, who could provide evidence of an association between Bagga and Bagri in Pakistan in the fall of 1987. In addition, the gun used to shoot Hayer was traced to Yuba City, California, a place Bagri had visited (though the gun was apparently no longer there by the time of Bagri's trip). It was also discovered that Bagri had visited Bagga in prison a number of times after his arrest for the shooting of Hayer, though he had previously denied knowing him when questioned by the RCMP in October 1988.³¹⁹

Finally, a witness named Sukhminder Singh Cheema was prepared to testify that, during a meeting in Surrey in 1992, Bagri had stated that he had met Bagga in Pakistan and had convinced him "...to come to Canada to assist the Sikh community by shooting Mr. Hayer." This witness, however, was admittedly "problematic." He had a criminal record for two offences; had been the subject of 10 serious RCMP investigations; had only made this revelation known to police in 1998, in exchange for receiving police assistance to obtain landed immigrant status and citizenship (something which was not "forthcoming" in spite of police efforts); and had received over \$100,000 from police.³²⁰ Interestingly, the RCMP had, in the past, discounted other potential witnesses or sources with seemingly more promising information, such as Mr. A, Mr. G and Ms. E, for much less problematic issues, and yet offered rewards and assistance to Cheema. In the end, Cheema never testified, since the Hayer attempted murder charges never proceeded to trial.

There was an alternate possible motive for the shooting, since Hayer had published a number of "unflattering articles" about Bagga's father. The two interviews conducted by the RCMP with Hayer following the shooting focused

³¹⁶ Exhibit P-101 CAF0502, p. 1; *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at para. 15.

³¹⁷ Exhibit P-101 CAF0502, p. 1.

³¹⁸ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 6.

³¹⁹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at paras. 10, 24.

³²⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at paras. 10, 17, 24.

on his dealings with Bagga and another individual about these articles. At the time, Hayer had not yet revealed to the RCMP that he had been the one who had overheard Bagri's confession in England.³²¹ It appears that during the investigation conducted immediately following the shooting, the RCMP focused only on the possible motive for the shooting as being related to the unflattering articles about Bagga's father, and did not begin truly investigating the possibility of Bagri's involvement, despite the clues already available, until many years later when the Air India Task Force became involved.

Continuing Threats to Hayer and the RCMP Response

After the 1988 shooting, the Surrey Detachment was in charge of investigating the offence, but the security measures for the protection of Hayer were coordinated by Cpl. Ted Burbridge of the E Division National Security Offences Section (NSOS), which later became NSIS, the Section in charge of the Air India investigation.³²²

NSOS implemented strict protective measures at the hospital where Hayer was recovering immediately after the shooting. Twenty-four-hour guards were provided by the RCMP Customs and Excise section until September 19th, at which time security resources were provided by the Immigration and Passport and Federal Enforcement Sections.³²³ Officers ensured that they were in possession of updated threat assessments on Hayer and they tightly regulated access to his room.³²⁴

Sgt. Don Brost of NSOS requested a history of prior threats to Hayer to assist in determining the need for security. In September 1988, Burbridge prepared a report summarizing the previous threats, and pointing out the connection between those threats and the pro-Khalistan movement, as well as the fact that escalating threats against Hayer seemed to have coincided with the Indian Government's raid on the Golden Temple. Hayer was described in the report as having become "...a very vocal, powerful and influential person within the Indian/Canadian ethnic community." The report found that his "...opinions and (moderate) non-violent approach to the Khalistan movement, have become at odds with the Sikh extremist (ISYF/BKhalsa) factions [redacted] Bagri & Parmar and their ethnic newspaper." His views had generated serious and continuing threats to his life and property by Sikh extremists.³²⁵ It was noted that:

Previous threats directed at Hayer in the past by components of the pro-Kalistan [*sic*], Sikh extremist faction, with the notable exception of the recent 88-08-26 shooting by Harkirat Bagga, have not, more by accident than design, resulted in bodily injury.³²⁶ [Emphasis added]

³²¹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 8.

³²² Exhibit P-101 CAF0470.

³²³ Exhibit P-101 CAF0465.

³²⁴ Exhibit P-101 CAF0467, CAF0469.

³²⁵ Exhibit P-101 CAF0471, pp. 2-3.

³²⁶ Exhibit P-101 CAF0471, p. 2.

The document chronicled nine threats (most of them redacted), and concluded that they were indicative of an escalation in violence directed against Hayer. Notwithstanding the absence of a specific known threat to him at the time, it was recommended that security at the hospital continue.³²⁷

In late September 1988, Solvason spoke with Hayer's family. Hayer's son and son-in-law both indicated that no additional threats had been received.³²⁸ Hayer was advised that the security he was being provided by the RCMP would be terminated on October 21, 1988, and he expressed no concern.³²⁹ The family members were made aware that, should they require immediate assistance, they would have to contact the Vancouver Police Department (VPD), which in turn would advise NSOS via their intelligence officers.³³⁰

Hayer continued to publish controversial articles and to speak out against violence. Not surprisingly, he also continued to be the target of many serious threats.

In 1992, after information was received in the NSIS office suggesting that there was an imminent threat to the life of Hayer, MacDonell recalled spending the night shift in Hayer's basement over the weekend as part of the protective services then being provided by the RCMP.³³¹

MacDonell was also involved in the investigation and subsequent prosecution of an individual who had made threats against Hayer in 1990. MacDonell had become a member of the NSIS Unit at the time, and was informed that the Surrey Detachment had received a complaint from Hayer about a telephone threat. He took it upon himself to take over that investigation.³³² Sukhminder Singh Cheema (the same individual who was later prepared to testify against Bagri in the 1988 attempted murder case and who received payment from the RCMP) was subsequently charged and convicted.³³³

In December 2000, Cpl. Glen Little of the Air India Task Force contacted the Surrey Detachment on behalf of Crown Counsel Richard Cairns in order to retrieve information in relation to the 1990 incident. He was advised that there was no record of this threat against Hayer, as "...the file in its entirety was purged as well as the PIRS³³⁴ entry."³³⁵ MacDonell explained in testimony that every file had a period of "purged time" to it. A file like this, unless it was specifically protected,

327 Exhibit P-101 CAF0471.

328 Exhibit P-101 CAF0471, p. 7.

329 Exhibit P-101 CAF0475.

330 Exhibit P-101 CAF0474.

331 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9639-9640.

332 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9640.

333 Exhibit P-101 CAF0500; Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9652.

334 PIRS was the "Police Information Retrieval System." Information from documents was recorded electronically and coded into a computerized database that was searchable by investigators: See Testimony of Jim Cunningham, vol. 87, December 3, 2007, p. 11321.

335 Exhibit P-101 CAF0500.

would be purged in the normal course – usually after five years.³³⁶ Insp. Jim Cunningham, who had acted as the file coordinator for the post-1995 renewed Air India investigation under D/Comm Gary Bass, explained that this file was destroyed in keeping with "...policy and legislation," and that it was only at a later date that it "...would come to be recognized as possibly being relevant."³³⁷ In defending the decision to have purged this file, Cunningham opined:

INSP. CUNNINGHAM: If we took it in terms of looking at certain things, we would have to maintain every single one of our files to see whether or not at a point down the road it became relevant to something else. And I think that would be an impossible system as well.

MR. FREIMAN: Sort of reminiscent about the problem of destroying the surveillance tapes by CSIS?

INSP. CUNNINGHAM: Surveillance or intercept, I'm sorry?

MR. FREIMAN: Intercept, I'm sorry.

INSP. CUNNINGHAM: Intercept, absolutely.³³⁸

MacDonell continued to have regular contact with Hayer up to and throughout 1995, after which his duties changed significantly and he no longer worked in the area of national security and Sikh extremism.³³⁹ Solvason also left the Air India Task Force in 1996. The result was that by early 1996, the two individuals who had been Hayer's main contacts at the RCMP, and who probably had the best understanding of his file, were no longer directly involved.

In February 1996, Hayer received on his office fax machine a letter written in Punjabi containing what he considered to be serious threats.³⁴⁰ He forwarded a copy of this letter to the Attorney General of BC. On April 22, 1996, the Director of Legal Services at the Ministry of the Attorney General, Peter Ewert, forwarded the letter to the RCMP OIC of Operational Support at E Division, C/Supt. M.J. Johnston, asking that the letter be translated and investigated to determine if it contained threats considered appropriate for investigation. The translated letter contained statements such as "...[s]ometimes I think what a big mistake he did who just made you handicapped. Well that's okay there is delay but not darkness at God's house," and made reference to big "punishment."³⁴¹

On May 8, 1996, Johnston replied to Ewert that he had had the letter translated, and that, in his opinion, there were no statements he would consider to be

³³⁶ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9641.

³³⁷ Testimony of Jim Cunningham, vol. 87, December 3, 2007, p. 11334.

³³⁸ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11334-11335.

³³⁹ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9639-9640.

³⁴⁰ Exhibit P-101 CAF0484.

³⁴¹ Exhibit P-101 CAF0481, p. 2.

threatening. He attached the translation. Johnston wrote that "...in view of the fact that there are no overt threats in this letter, I see no need for any further action in this matter."³⁴²

Dave Hayer recalled his father talking about this letter and feeling that the police were very dismissive of his concerns. He stated that the focus on the requirement for "overt threats" was problematic, given the nature of the Punjabi language. He explained that in Punjabi, the meaning of the words may have different significance depending on who reads them. He said that "...if you know the whole picture, you know the culture, then you can go back and say, yes, they are very definite threats."³⁴³

Isabelle Hayer had worked with Tara Singh Hayer as his communications assistant. She helped him draft letters to the police about the threats he received, and she felt that there was a "deep frustration" at the time that the "...police didn't seem to understand what the community was going through," or "...have a real sense of the extent of danger" posed to individuals who received such threats. The police "...didn't seem to make enough effort to understand the community dynamic and didn't seem to understand ... the threats."³⁴⁴

The Ministry of the Attorney General of BC was also dissatisfied with the RCMP response. Ewert met with Johnston and pointed out the passages in the letter that he and others in the Ministry considered to be threats towards Hayer.³⁴⁵ For example, Ewert felt that the statement "Sometimes I think what a big mistake he did who just made you handicapped," constituted a death threat. The reference to "...punishment is very big," was also felt to be "...referring to Hayer being killed."³⁴⁶ In reporting the results of his meeting with Ewert to the OIC of the Vancouver General Investigation Section (GIS) on May 22, 1996, Johnston, who had seemingly just learned of this information, noted:

It appears that Hayer was severely injured several years ago in an attack that was politically motivated and now sees the letter as again threatening him.³⁴⁷

Johnston advised Ewert that Vancouver GIS would take a look at the letter and investigate it. He went on to suggest that someone sit down with Hayer to determine "...if he is threatened by the letter and exactly what the threats are – in his opinion."³⁴⁸

The case finally landed at the Surrey Criminal Intelligence Section (CIS) (formerly NCIS) and follow-up was commenced by Cpl. Larry Wilkinson in early June,

³⁴² Exhibit P-101 CAF0482.

³⁴³ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9556.

³⁴⁴ Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, p. 9559.

³⁴⁵ Exhibit P-101 CAF0483.

³⁴⁶ Exhibit P-101 CAF0481, p. 2, CAF0483.

³⁴⁷ Exhibit P-101 CAF0483.

³⁴⁸ Exhibit P-101 CAF0483.

over four months after the threat was received by Hayer. At this point, the investigator took steps to review the file and history of complaints by Hayer. On June 5, 1996, Wilkinson went to the *Indo-Canadian Times* office and interviewed Hayer about this incident. Hayer indicated that he did not know the culprit, nor had he received any other letters of this nature. Wilkinson also contacted E Division NSIS and was told that there was "...some evidence of increased activity by Sikh extremists of late," but nothing to suggest that Hayer was at "particular risk." Wilkinson contacted MacDonell, who was now at the Immigration and Passport Section. MacDonell was "...well aware of the numerous threats over the years against Mr. Hayer," but was not aware of any "recent threats." It was noted that Hayer maintained "excellent security," both at his office and personal residence, and was fully aware of the proper procedure to get "...immediate police response."³⁴⁹

Further inquiries were made with members of the E Division Air India Task Force, who also stated they were unaware of any threats to Hayer. Inquiries were conducted with the CSIS Liaison Officer, who advised on July 3rd that he had not received any details from CSIS that would indicate that CSIS was aware of any threats, or an increase in violence, directed towards Hayer or the *Indo-Canadian Times* staff. On June 18th, a request was made for the RCMP HQ – Interpol to contact American authorities. The author of the threat letter signed the letter "Avtar Singh, Sanhoje," which investigators believed could be San Jose, California. At that time there had still been "no concrete" information to verify this threat, and Hayer had not received any further threats. Wilkinson requested a "...diary date extension" for the case, which was still under investigation. In late June, Wilkinson's Interpol request was forwarded to Washington Interpol "for action." It was noted that, at that time, "...nothing has surfaced to indicate that this threat is real," and that Surrey CIS would continue to monitor the "local situation" by liaising with Hayer on a monthly basis.³⁵⁰

By August 8, 1996, Surrey CIS, CSIS, and NSIS were all reporting that their efforts to monitor Hayer indicated that there were no further threats or criminal incidents to note. Wilkinson requested permission to extend the diary date on the file to allow for a response to be received from American authorities. This request was renewed on September 19, 1996 and October 3, 1996. On October 8, 1996, a reply was received indicating that American authorities were unable to identify the original sender. As no concrete evidence was found to suggest the threat was real, the investigation was concluded in early October. CSIS and NSIS, who had been monitoring the threat surrounding Hayer, had no suspects, and Hayer advised that he was satisfied with the RCMP's efforts and had not received any further threats of that nature.³⁵¹

By early 1998, the threats to Hayer were once again escalating. Isabelle Hayer described the frustration that the family experienced in trying to convince the

³⁴⁹ Exhibit P-101 CAF0484, p. 1.

³⁵⁰ Exhibit P-101 CAF0484, pp. 2-4.

³⁵¹ Exhibit P-101 CAF0484, pp. 5-7, 9.

Government to clamp down on threats such as these, as well as those that were being broadcast by community ethnic stations.³⁵²

In March of that year, Isabelle Hayer helped her father-in-law draft a letter to the RCMP Surrey Detachment, addressed to C/Supt. Terry Smith, OIC of the Surrey Detachment, titled "Serious Threats to my life," that implored the RCMP to investigate the threats against Hayer's life that were appearing in Punjabi newspapers and on the radio, and which were "...escalating and becoming more severe in nature".³⁵³

I respectfully request your assistance in the investigation of these threats, which I hope will cease as a result. The Sikh community can pose significant difficulties to the non Sikh. As you know, they are not very open to discussing in-depth details with non Indians. It would be of great benefit if you could assign a Sikh officer to this task who understands the community and its problems. I would be pleased to help in any way.³⁵⁴

Isabelle Hayer testified that the suggestion to use a Sikh officer was born out of the sense that the police did not have a grasp of the Indian community. She stated that Hayer thought that if more Indian officers were brought in, they would understand the culture and how "...language is translated and how words can be manipulated,"³⁵⁵ and would take the threats more seriously – acting on complaints before "...somebody points a gun and shoots you."³⁵⁶

In his letter, Tara Singh Hayer wrote that he had in his possession "...the clippings and radio tapes" containing the threats for use by the RCMP. He requested that the RCMP:

...take immediate action with this regard; time is of the essence. I am not capable of defending myself as easily as I used to when I could walk. I look forward to your response.³⁵⁷

On March 24, 1998, Smith responded to Hayer:

³⁵² Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, p. 9560. She testified that these radio stations transmitted from the US into Canada but their offices were in Canada. The American authorities would state that they had no jurisdiction as the offices of the radio station were in Canada, and Canadian authorities claimed no jurisdiction because the signal was coming from outside of Canada.

³⁵³ Exhibit P-101 CAF0486.

³⁵⁴ Exhibit P-101 CAF0486.

³⁵⁵ Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, p. 9562.

³⁵⁶ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9582.

³⁵⁷ Exhibit P-101 CAF0486.

I note you have stated that time is of the essence. I am concerned that you have not brought these matters to our attention previously, given that there seems to be an ongoing series of these incidents. We view these circumstances as most serious and, if they are ignored and not reported, it makes our job exceedingly more difficult to complete. Secondly, if you fear for your life and you feel you are in immediate danger, you should be contacting our complaints line ... or, if more urgent, you should be contacting us through our 9-1-1 emergency centre.³⁵⁸

Dave Hayer, in his testimony before the Inquiry, expressed surprise that, given the extensive history of threats and interaction with police, Smith would have thought that these threats were something new. In his view, it seemed at times that there were so many RCMP departments involved that "...the right hand doesn't know what the left hand is doing."³⁵⁹

As for Tara Singh Hayer's suggestion that a Sikh officer be assigned to investigate this matter, there was such an officer – Cst. Baltej Dhillon, working since 1995 at the E Division Air India Task Force (which was also investigating the 1988 attempt on Hayer's life). However, it was the Surrey Detachment that responded to Hayer and that requested to be advised through its "complaints line" of any threats. There is no indication that Dhillon or the Task Force were involved in responding to the threats against Hayer at this time.

Dave Hayer testified that his father felt that the failure of the police to take any action led to a greater and greater escalation of the threats.³⁶⁰ He was of the view that, if the police had laid even minor charges against the perpetrators, it might have helped to prevent this escalation.³⁶¹ Instead, he felt, police did not understand the culture and just "dismiss[ed] it."³⁶²

Information about a "Hit List"

In July of 1998, *Vancouver Sun* journalist Kim Bolan received information from some of her contacts about the existence of a "hit list," which listed targets including the temple heads and priests from the Ross Street Temple in Vancouver and the Guru Nanak Temple in Surrey. She also heard from sources that a person from the USA was coming here to "...take care of the hit list" with the use of AK-47s. Another individual reported that the "hit list" consisted of seven individuals, including Tara Singh Hayer and Kim Bolan, as well as members of the Surrey Guru Nanak and Ross Street Temples.³⁶³

³⁵⁸ Exhibit P-101 CAF0487.

³⁵⁹ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9564-9565.

³⁶⁰ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9565-9566.

³⁶¹ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9565-9566. See also Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

³⁶² Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9565-9566.

³⁶³ Exhibit P-101 CAF0485, p. 3.

This time, the Air India Task Force got involved. Bolan reported to S/Sgt. John Schneider of the Task Force that she felt that the subject from the United States with the AK-47s was already in town "...to carry out the hit list contract." Bolan had also spoken to Jim Good of the Surrey Detachment and had provided him with the same information. Schneider informed Good that the AITF and NSIS would conduct an investigation into Bolan's allegation and liaise with Surrey concerning the findings.³⁶⁴

On July 23, 1998, Dhillon advised Schneider that he intended to meet with a contact who had provided a tip a few weeks earlier that Tara Singh Hayer would be shot at a community event (the Miri Piri Parade).³⁶⁵

Schneider went to the residence of a source who reported that she had been approached by an ISYF member who told her about a hit list containing the names of Tara Singh Hayer and Kim Bolan.³⁶⁶

On July 24, 1998, Schneider went to the *Indo-Canadian Times* and spoke with Hayer about recent threats and the "hit list" he was said to be on. Hayer explained "...that he had been the target of many attacks because of his moderate beliefs." Schneider ordered the installation of video surveillance at the residence of Hayer, as well as extra patrols for his residence and work site.³⁶⁷ Two days later, the video equipment was installed.³⁶⁸

Implementation of Video Surveillance

One camera was installed at the rear of Hayer's residence and another was installed on the second floor, providing a view of the driveway area of the residence.³⁶⁹ In ordinary circumstances, a video camera would be attached by cables to the video recording equipment. However, in order to make this connection, several holes needed to be drilled through the exterior and interior walls of the residence. Instead of drilling these holes, the RCMP decided not to use cables, but instead to use a video radio frequency transmitter system that transmitted the signal from the camera to the recorder. There is some uncertainty in the documents as to the reasons for this decision. According to one RCMP document, the use of cables caused concern because there was no way to hide the cables from family members or from persons visiting the residence.³⁷⁰ According to an RCMP email, the members of Special "I" (the unit in charge of technical surveillance) who installed the video unit decided to use the antenna in order to prevent damage to Hayer's finished basement.³⁷¹ The radio frequency antenna was very sensitive, and "...any movement, after it was installed, would result in a loss of video signal and therefore no picture."³⁷²

³⁶⁴ Exhibit P-101 CAF0485, pp. 3-4.

³⁶⁵ Exhibit P-101 CAF0485, p. 4.

³⁶⁶ Exhibit P-101 CAF0485, pp. 4-5.

³⁶⁷ Exhibit P-101 CAF0485, p. 5.

³⁶⁸ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9570.

³⁶⁹ Exhibit P-101 CAF0461, CAF0499, p. 1.

³⁷⁰ Exhibit P-101 CAF0499.

³⁷¹ Exhibit P-101 CAF0462.

³⁷² Exhibit P-101 CAF0499, p. 2.

When asked about the installation of the equipment, Dave Hayer stated that his family left decisions about security matters to the experts, and that the need to drill holes or have wires showing would not have concerned them. He also indicated that the family was not advised of the importance of ensuring that the video antenna stayed in position, or told that the signal could be lost if the antenna was moved. The equipment had been placed in a particular section of the house and the family stayed away from that area. The only people who had access to the equipment in the box were the police.³⁷³

While RCMP notes indicate that a video monitor was left connected to the video recorder so that the occupants of the residence could view persons approaching the residence along the walkway, the family did not make use of this monitor. Rather they used their own separate monitor, which had been installed by a private alarm company in 1997.³⁷⁴

According to Dave Hayer, the police would generally come by every two to three weeks to check the equipment and change the tapes in the recorder, though the last time the RCMP had come to check the equipment was on October 22, 1998, four weeks prior to the murder of Tara Singh Hayer.³⁷⁵

By October of 1998, there were already signs that the system was not working as it should have. On October 8, 1998, members of the RCMP went to the residence to investigate a problem with the video equipment. It was determined that when persons in the home walked between the video transmitter and the receiver system, it created interference and caused problems with the video recordings. However, as renovations to the house were being planned at the time, a decision was made to postpone the repair of the video surveillance system until that work was completed. It is not clear whether the family was aware that the system was malfunctioning or whether they were involved in the decision to let it remain in a state of disrepair at the time. The system was said to have been corrected on October 22, 1998.³⁷⁶

The Murder of Tara Singh Hayer and the Failure of the Video Surveillance

Tara Singh Hayer was brutally murdered in his garage in November 1998.

At approximately 5:00 PM on November 18, 1998, Hayer's daughter-in-law and two grandsons went to his residence to walk the family dog. After walking the dog, the three left the residence at approximately 5:30 PM. Fifteen minutes later, Hayer's wife saw Hayer's vehicle arrive in the driveway. She then returned to the kitchen and continued with her activities. She was unable to confirm how much time had passed, but estimated that it was shortly thereafter when she heard what she believed to be a loud explosion coming from the garage area of the

³⁷³ Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9572-9573.

³⁷⁴ Testimony of Dave Hayer and Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, pp. 9597-9599.

³⁷⁵ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9597.

³⁷⁶ Exhibit P-101 CAF0499, p. 2.

residence. She went to the garage and found her husband leaning over, seated in his wheelchair. She approached him and noted blood on his body. At this point, she ran to a neighbouring residence and requested assistance.³⁷⁷

On the evening of Hayer's murder, RCMP members came to check the condition of the video surveillance equipment. It was found that the antenna was in a horizontal position, and that only "snow" had been recorded on the video cassette.³⁷⁸ As a result, no footage was recorded on the day of the murder.

Hayer's widow was asked by an investigator from the RCMP GIS unit whether the family had recently been the subject of any forms of threats or intimidation. She replied that she did not know about such matters, but did know that her husband had been contacted by authorities approximately five months earlier and told to exercise greater caution about his personal safety.³⁷⁹

S/Sgt. I.F. MacEwen of the RCMP Vancouver "Special 'I'" Section wrote a report that was sent to the Surrey Serious Crime Section chronicling the events that had led up to the failure of the video recording equipment. He reported that it was "...indeed unfortunate that the technical equipment did not function as the installation was programmed to do." He believed that the problem was caused by the video receiver antenna being moved "...at some time after the installation by Special 'I' personnel." He noted that video recordings had not been viewed on the video monitor after video cassettes were changed to ensure that a proper video signal was being received and recorded.³⁸⁰

Despite the complete failure of the camera setup, and the RCMP's view that there was no "investigative value" to the equipment, the RCMP left the system in place as protection for the Hayer family members. The Air India Task Force decided that the equipment, which was noted to have broken down once again on December 17, 1998, would be repaired and would remain at the location until the family moved a few weeks later.³⁸¹

The RCMP again went to the Hayer residence on December 22, 1998, and found that the outside power source had failed completely, and that there was no way to re-establish power to the camera. It was only at this point that "...the whole setup of front yard camera" was re-evaluated. The next day, holes were drilled through the frame of the patio door and cables were installed to replace the transmitter. The RCMP report stated that the equipment was "...tested and adjusted to suit client needs" and produced a "good picture."³⁸²

RCMP Investigation and Response to the Hayer Murder

Shortly after Hayer's murder, the Canadian Association of Journalists (CAJ) wrote to RCMP Commissioner Philip Murray expressing its alarm at the lack of police

³⁷⁷ Exhibit CAF0491, p. 1.

³⁷⁸ Exhibit P-101 CAF0499, p. 2.

³⁷⁹ Exhibit P-101 CAF0499, p. 3.

³⁸⁰ Exhibit P-101 CAF0499, p. 3.

³⁸¹ Exhibit P-101 CAF0498.

³⁸² Exhibit P-101 CAF0498.

protection, and its concerns about the implications this crime had for freedom of expression and the press. Dave Hayer was aware of this letter and testified that the Association had contacted the family prior to sending the letter.³⁸³ The Association issued a demand for a full and complete inquiry to consider, among other topics, the circumstances surrounding Hayer's assassination and the lack of police protection.³⁸⁴

The CAJ letter was forwarded by Murray to the Surrey Detachment for response. An unsigned letter, marked "draft" and dated December 4, 1998, responded to the CAJ letter, indicating that this case "...has been given the highest priority", and that investigators were doing everything possible to charge the person (or persons) responsible. The draft noted that Hayer had been the subject of "... non-specific threats of death and harm over the past 12 years", and that there had been two known attempts to take his life, with the last attempt resulting "...in the arrest and conviction of a 17 year-old youth." The letter noted that "... by his own words, Mr. Hayer was a man who had made many enemies in the community as a result of his strident views on political, religious and social issues." It went on to state that the RCMP had assessed the security concerns associated with Hayer and had made recommendations to him on how to minimize risks, and that "...Mr. Hayer chose to adopt some of these measures and to disregard others." The draft letter also stated that "...additionally, extraordinary technical security measures had been instituted in cooperation with Mr. Hayer and his family."³⁸⁵ Presumably, this was a reference to the video surveillance system that had failed on the day of the murder.

Resource limitations were also cited in the draft response as an impediment to more robust security coverage for Hayer:

Surrey Detachment is not sufficiently staffed in any event to provide the continuous level of personal security that would address the many obtuse and obscure threats that were both actual and rumoured. Virtually all of the threats had been vague and general in nature and always anonymous. While there have been boastful comments by a few, there has been nothing that provides the police with legal authority to take any action whatever. As noted, these threats have spanned some 12 years. It is simply not practically possible to provide personal security for any one person over such a protracted time frame. Mr. Hayer also knew that the RCMP has no legal mandate or capacity to provide continuous personal bodyguard protection for anyone who is not considered a head of state or foreign dignitary, as defined by our international treaty obligations.³⁸⁶

383 Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9602.

384 Exhibit P-101 CAF0493.

385 Exhibit P-101 CAF0494, p. 1.

386 Exhibit P-101 CAF0494, pp. 1-2.

The draft noted that in July of that year, rumours had circulated that Hayer and others were potential targets for overt confrontation and violence during the planned Miri Piri parade, and that the Mayor of Surrey, in cooperation with the Surrey Detachment, had cancelled that event and accommodated a scaled-down event, which was provided with security to the extent possible. Hayer chose not to attend the public events and festivities that were held, despite a large police presence. The letter went on to state that, while there "...have been continuous 'rumours' regarding the existence of a so-called 'hit list,'" the "...existence of such a list has never been confirmed," despite "extensive efforts" to do so. The "...parties who were the subject of the rumours" were nevertheless "...notified of the security concerns by the police agencies in their respective jurisdictions." That was the last known threat to Hayer, "...and 'the police investigation' conducted at the time did not" bring to the "...surface any 'substantive evidence' to support criminal charges against any person or persons." The draft noted that there was "...much being said by many people which seems to get embellished in the telling. Most of what is being repeated is based on past events, which are being assumed to relate to Mr. Hayer's demise," and that "...[w]hen analyzed, it only clouds the picture and is based almost solely on rumour, innuendo, or assumption."³⁸⁷

The draft concluded by stating that when Hayer "chose" to report threats to his security, "...the RCMP took these threats seriously and conducted a thorough and complete investigation to the fullest extent possible." It noted that the impact of the murder of Hayer, as a journalist, was "...not lost upon the RCMP," adding that "...the same Charter of Rights that enshrines the freedom of the press" also dictated "...how the police must lawfully proceed in such sensitive investigations." The author of the draft committed that the case would not be closed until those responsible had been brought to justice.³⁸⁸

The murder of Tara Singh Hayer occurred more than ten years ago. The individuals responsible have still not been identified and brought to justice.

Meanwhile, fear and intimidation continue to be a problem in the Sikh community and, as Dave Hayer explained, have actually increased since the conclusion of the Air India trial in 2005.³⁸⁹ Dave and Isabelle Hayer expressed concern that the attendance of government officials at events where terrorists and banned organizations such as the BK and the ISYF are glorified – such as occurred at the 2007 Baisakhi Day Parade in Surrey³⁹⁰ – can serve to raise the

³⁸⁷ Exhibit P-101 CAF0494, p. 2.

³⁸⁸ Exhibit P-101 CAF0494.

³⁸⁹ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9582.

³⁹⁰ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9540. At the parade, all three levels of government officials were represented and on floats, and there were plaques honouring individuals who were believed to have been involved in the Air India bombing, including Talwinder Singh Parmar, and banned organizations, including the BK and the ISYF, had representation there as well: Testimony of Dave Hayer, vol. 76, November 15, 2007, pp. 9540-9542. The RCMP also participated in the parade, and in testimony, Deputy Commissioner Bass was asked about the participation of the RCMP in the parade and he conceded that perhaps the RCMP "...shouldn't have been participating in that parade": Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11303-11304.

profile of the terrorists and of those supporting terror.³⁹¹ This increased profile, in turn, may enhance the ability of these organizations to recruit members and to maintain their campaigns of intimidation.

Video Surveillance Failure Revealed at the Inquiry

Before they appeared as witnesses at the Inquiry in November 2007, Dave and Isabelle Hayer had not been advised that the video surveillance system installed at the Hayer residence had failed. They only learned that no image had been recorded on the day of the murder when, in preparation for their testimony, they reviewed the documents that had been disclosed by the RCMP to the Commission pursuant to Commission Counsel's document requests. Isabelle Hayer testified that nobody from the RCMP had come "...back to us and explained this is what had happened."³⁹² The family had requested access to the tapes and other information, but the police told the family that "...because of the investigation actually they can't provide it." Isabelle Hayer went on to say, "We respect that."³⁹³

Isabelle Hayer indicated that finding out about the video surveillance failure in this manner was difficult. She commented:

...we placed a lot of trust in the RCMP ... they would tell us continually, "Don't worry, Mrs. Hayer." Like, "don't worry" to Mom ... and to the family. "Everything is fine. We'll take care of him. We have cameras placed properly and everything is working and everything is fine and don't worry about your security."

So to find this information out is really tough because like Dave said, even until today, until we read [this] documentation, we had some hope that they would have caught, captured, an image of the person somehow even if it was not as clear as they would have liked, that there would have been something. And the same thing with the vehicles that perhaps were in the driveway or on the street outside the house....³⁹⁴

Charges against Bagri for the 1988 Attempted Murder

While Harkirat Singh Bagga pleaded guilty to the 1988 attempted murder of Tara Singh Hayer, no one else was ever convicted in connection with the planning and orchestration of the attack. When Ajai Singh Bagri was finally charged 12 years later, the indictment was held in abeyance pending the conclusion of the Air India trial. At the Air India trial, the Crown attempted to introduce evidence

³⁹¹ Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9540.

³⁹² Testimony of Dave Hayer, vol. 76, November 15, 2007, p. 9577.

³⁹³ Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, p. 9578.

³⁹⁴ Testimony of Isabelle (Martinez) Hayer, vol. 76, November 15, 2007, pp. 9578-9579.

of Bagri's involvement in the Hayer attempted murder. The Crown argued that Bagri's participation in the attempted murder was evidence of Bagri's motive in the Air India/Narita bombings, as both acts were aimed at achieving Bagri's "...twin goals of exacting revenge on the Hindu people and of establishing an independent Khalistan." Further, the Crown argued that the Hayer attempted murder evidence was relevant to show that, after the bombings, Bagri acted in a manner indicating that he was guilty ("...post-offence conduct constituting circumstantial evidence capable of supporting an inference of guilt"), seeking to "...eliminate Mr. Hayer because he was able to implicate him and was publicly identifying him as one of the perpetrators."³⁹⁵

The evidence the Crown proposed to lead, to show Bagri's involvement in the Hayer attempted murder, included the articles written by Hayer about Bagri, and specifically about Bagri's involvement in Air India. However, the RCMP's failure to have the articles translated and disclosed in a timely manner led to a finding that Bagri's *Charter* rights had been violated.

Disclosure Issue

In September 2001, the Crown first advised the defence that it intended to present the Hayer attempted murder evidence in the Air India trial. The date of March 18, 2002 was fixed for the hearing on the admissibility of evidence of Bagri's alleged involvement in the 1988 attempt on Hayer's life. It was agreed that the Crown would file their materials by March 4th, and the defence by March 11th.³⁹⁶

On March 5, 2002, the Crown "...contemplated advancing a new legal theory regarding the admissibility of the Hayer evidence." As a result, the Crown asked Sgt. Bart Blachford of the RCMP E Division Air India Task Force whether there were additional Hayer articles. Blachford located a small number of additional articles and, by coincidence, he was approached at the same time by another RCMP member, Cst. John Green, who gave him a "...small binder full of such articles that had been sitting in his office." The total of the materials which had not been previously provided to the Crown by the RCMP amounted to "...a stack of articles between one and two inches thick."³⁹⁷ This "stack" included the August 19, 1988 article where Hayer specifically alleged that Bagri had confessed his involvement in Air India.³⁹⁸

The new articles had been obtained by the RCMP in 1997 and, "...inexplicably, [were] never provided to the Crown," except for one of the "...key undisclosed newspaper articles" which Hayer had specifically brought to Blachford's attention in May 1997, after which Blachford passed on Hayer's information about the existence of the article to the Crown.³⁹⁹

³⁹⁵ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at paras. 1-2, 11, 14-15.

³⁹⁶ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at paras. 5, 14.

³⁹⁷ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at para. 14.

³⁹⁸ Exhibit P-101 CAF0502, p. 2.

³⁹⁹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at para. 15.

In a letter to the Crown prosecutor, Blachford explained that, when he had initially “put together” the RCMP report to Crown Counsel for the 1988 attempted murder, he had requested that Hayer, who was still living at the time, provide articles he had written about Bagri, Parmar and the BK, in order to “...establish a motive for why Mr. Bagri would have conspired with Harkirat Bagga to murder Tara Singh Hayer.” At that time, Hayer had provided two packages of articles, one labelled “Bagri” and one labelled “Parmar”. The RCMP requested a translation of those articles which “...would have given cause for Mr. Bagri to be angry with Mr. Hayer,” and also attempted to obtain a “random sampling” of the articles, since some seemed to indicate that Hayer was supportive of Parmar and the BK. A number of articles were translated and included in the court brief sent to the Crown by the RCMP. It was felt that they were sufficient to show that “... Mr. Hayer was definitely a thorn in the side of Mr. Bagri.” After the court brief was sent, the RCMP continued to have the remaining articles translated, but the task was “...reduced in priority” and done “...on a ‘fit in’ basis” or “...around other tasks.” Translated articles that had not been used in the court brief to the Crown were put in a binder, which ended up in Green’s office.⁴⁰⁰

On March 6, 2002, Blachford advised the Crown of the existence of the new materials, promising to provide copies. The Crown then filed their submissions about the admissibility of the Hayer evidence four days late, on March 8th, due to the illness of counsel. At that time, no mention was made of the new materials, which had not yet been received from the RCMP. On March 12th, the RCMP provided the Crown with copies of the articles. On March 13th, the defence filed their submissions in preparation for the hearing. Later the same day, the Crown advised the defence of the existence of the previously undisclosed articles.⁴⁰¹

On March 13, 2002, when the “...additional relevant *Indo-Canadian Times* articles authored by Mr. Hayer” were first disclosed, the Crown wrote to the defence that the new articles changed the “...complexion of the question of the admissibility of the Hayer evidence.” The Crown then submitted an additional brief which advanced a new basis to support the admissibility of the Hayer attempted murder evidence in the Air India trial. Before the additional articles were discovered, the Crown sought to present the Hayer attempted murder evidence to show that it proceeded from the same motive as the bombings. As a result of the new articles, the Crown added “...a new theory for the admissibility of the Hayer evidence,”⁴⁰² the one based on the post-offence attempt to eliminate Hayer because he could implicate Bagri in the bombings.

After the hearing to consider the Hayer attempted murder evidence had been rescheduled to April 3rd because of the new materials, further new disclosure was provided before the commencement of the hearing on April 3rd, and yet more material was provided on April 4th, during the second day of the hearing. These new materials were RCMP notes and continuation reports regarding a

⁴⁰⁰ Exhibit P-101 CAF0502, p. 1.

⁴⁰¹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at para. 14.

⁴⁰² *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at paras. 5, 11, 12, 14.

“significant witness” in the hearing. A “large portion” of the material related to contacts with the RCMP in 2001-2002. Sgt. Schneider explained that he had kept the Crown informed of his dealings with the witness, but that he had not provided the notes and reports until he received a request from the Crown in late March 2002. The Crown had asked for the materials after receiving a specific request from the defence.⁴⁰³

Bagri brought an application to the Court, alleging that the untimely disclosure of the additional Hayer materials breached his rights under the *Charter*. A separate hearing was held where affidavit evidence and the testimony of Blachford were presented to explain the “...circumstances which led to the discovery and production” of the materials.⁴⁰⁴

Having heard the evidence, Justice Josephson found that Bagri’s *Charter* rights had been breached because of the failure by the Crown and the RCMP to provide disclosure in a timely manner. Justice Josephson recognized that the *Air India* case involved “...a massive amount of disclosure already provided,” but found that the fact that the articles were in the RCMP’s possession, in part simply sitting on a constable’s desk, and had not been provided to the Crown, involved “...a level of carelessness” which resulted in the breach. He found that if “reasonable mechanisms” had been in place at the RCMP “...to track disclosure and the work of the interpreters translating the articles,” the material would “almost certainly” have been identified and provided to the Crown earlier, and then disclosed to the defence in a timely manner. Josephson also found that the late disclosure of the notes and reports about the RCMP’s dealing with the witness violated Bagri’s rights, as the materials should have been provided to the defence “...well in advance.” In light of a previous order that the Crown make continuous disclosure to the defence in the case, Justice Josephson found that a breach resulted from the fact the “...relevant documents created over a six months period simply sat in police files without being provided to the Crown or the defence.”⁴⁰⁵

Overall, Justice Josephson concluded that the violation of Bagri’s right in this case was “relatively serious.” He noted that “...the mechanisms in place to ensure timely disclosure of relevant material were obviously inadequate.” As a result, a new schedule for disclosure and filing of materials in the trial was ordered to be followed, and the Crown was ordered to advise the defence of the existence of new materials.⁴⁰⁶

Admissibility of the Hayer Attempted Murder Evidence

Justice Josephson found that the evidence relating to Bagri’s alleged involvement in the 1988 attempted murder of Hayer was not admissible in the trial on the *Air India/Narita* charges. He concluded that, even if Bagri’s participation in the

⁴⁰³ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at paras. 14, 17.

⁴⁰⁴ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at paras. 1, 13.

⁴⁰⁵ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at paras. 35-36, 41.

⁴⁰⁶ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 484 at paras. 58, 63.

attempted murder could be shown, it could not constitute evidence of Bagri's motive to commit the Air India bombing. At most, it would be evidence that Bagri "...may have acted on a similar or related motive some years subsequent" to the bombing. Justice Josephson also found that the Hayer attempted murder evidence could not constitute evidence of post-offence conduct which would show Bagri's guilt in the Air India bombing. He explained that the only piece of evidence indicating that Hayer made it known that he was capable of implicating Bagri in Air India was an article dated August 19, 1988, a few days before the shooting. However, the conspiracy which was alleged to have been formulated between Bagri and Bagga to attempt to end Hayer's life would have begun many months earlier. Further, there was no evidence that Hayer was "...a witness in relation to Air India/Narita" at the time of the 1988 shooting or that Bagri believed him to be one.⁴⁰⁷

Justice Josephson also noted that the evidence, even if "...some relevance had been established," still could not have been admitted because it was overly prejudicial in the case, given the "chilling" nature of the Hayer attempted murder. He added that the evidence of Bagri's participation in the attempted murder was "not strong." It was "circumstantial" and contained "...numerous apparent weaknesses," particularly with respect to the evidence of Cheema, which was "...crucial to the Crown's theory" but "...fraught with reliability problems."⁴⁰⁸

There was no admissible evidence of a confession by Bagri in his trial for the Air India charges.⁴⁰⁹ Hayer was deceased and could not testify about what he had heard. The Crown did not seek to have his previous statements entered into evidence the way it had with Ms. E's prior statements. None of the evidence against Bagri was found to be credible or sufficient, and, as a result, he was acquitted of all charges in connection with the Air India and Narita bombings.⁴¹⁰

Bagri was never prosecuted for his alleged involvement in the attempted murder of Tara Singh Hayer, even after the Air India trial was completed.

Deficiencies Revealed

CSIS/RCMP Cooperation

CSIS felt bound by the assurances of confidentiality it gave to Hayer when he first spoke to the Service about the Bagri confession. Though CSIS did not take this position in all cases (see Section 1.3 (Post-bombing), Ms. E), this was consistent with CSIS's general approach of protecting the individuals who agreed to provide information. The RCMP, on the other hand, took a hard-line approach, and threatened to use its own information to approach the person CSIS spoke to, even after agreeing that the Service could extend an initial guarantee of anonymity. Meanwhile, the RCMP was unaware for some time that its own officers had already obtained the information directly from Hayer.

⁴⁰⁷ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at paras. 56-58, 63.

⁴⁰⁸ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 60.

⁴⁰⁹ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 60.

⁴¹⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1244-1249.

Once the RCMP took the lead in the case, the Force did not keep CSIS advised of its initiatives. CSIS investigators could no longer use Hayer as a community contact to obtain information because of the RCMP involvement, but they felt that the RCMP was not properly following up on the Hayer information.

The RCMP Approach to Hayer and Witness Protection

The RCMP appeared to have difficulty accepting the fact that Hayer would not take direction or act as an agent for the Force. After delaying approval of the first plan for travel to England while the Division made a decision, the RCMP began to pressure Hayer to make travel plans which suited the schedule of its officials and which conformed to RCMP administrative requirements in dealings with British authorities. When Hayer refused to participate in the RCMP plan, harsh comments about his motivations were made, and conclusions about his reliability were drawn which were contrary to the assessment of the officers who dealt with him directly.

Meanwhile, the RCMP was not always taking all measures necessary to protect Hayer's security. His identity was not protected in some of the correspondence that was widely disseminated within the Force. When CSIS raised concerns that the plan to travel to England with Hayer involved serious risks, the RCMP appeared to be unconcerned.

When Hayer was the victim of an attempt on his life in 1988, the Air India Task Force did not take over the investigation, in spite of the fact that he was providing information about the case, and that it was suspected that there could be links between the attempt and the Air India suspects. The investigation was approached as a regular police matter, and it took years before the Task Force finally got involved and attempted to make the connection between the 1988 offence and the broader context.

Because of perceived inaction on the RCMP's part, Hayer did not always place his full confidence in the police. He complained about what he saw as the lack of global understanding of the community on the RCMP's part, and he felt that nothing was being done to prosecute Sikh extremists. The RCMP was apparently not immediately able to ease Hayer's concerns, and it was not until 1995, after he saw the RCMP pushing the prosecution of an extremist and laying charges against an individual who had threatened him, that he agreed to become a witness in the Air India case.

Once Hayer became a witness, the RCMP was often unable to respond to his security concerns or to provide him with adequate protection. Rather than having one central unit with knowledge of the entire history of threats against Hayer and of his involvement with police, Hayer had to deal with numerous RCMP sections or units – none of which had a complete picture of the situation. At times, those units did not recognize obvious threats and had to be pressured to take action. Hayer had to explain his situation over and over again to the

various RCMP members with whom he dealt in relation to his security. As was the case with the investigation of the 1988 attempted murder, the units assigned to respond to subsequent threats to Hayer did not always have an understanding of the larger Sikh extremist phenomenon. Not only did they, at times, lack prior experience with these types of investigations, but also few investigators with an understanding of the Punjabi language and Sikh culture were involved; this further hindered the RCMP's ability to recognize the gravity of the threats to Hayer.

As a witness in the Air India case and as a person who had already been the victim of two attempts on his life, serious protective measures should have been available for Hayer. The RCMP had difficulty in providing protection to Hayer while also respecting his autonomy. It would not have been viable for someone like Hayer to enter a witness protection program – to relocate and assume a new identity – since he insisted on remaining involved in the community and on continuing his journalistic work. The RCMP invoked resource constraints to explain its inability to provide Hayer with constant personal security, apparently believing that no alternative could have kept Hayer safer while allowing him to continue living his life as normally as possible.

Even with its resource constraints, the RCMP was able to install a proper video surveillance system at the Hayer residence *after* Hayer's murder. Inexplicably, this was not done before, and the family was not advised, before or after the murder, of the inherent frailties of the system which had been installed.

Records Issues at the RCMP

The CSIS handling and erasure of the Parmar tapes has often been raised as a major issue that impeded the Air India investigation. It appears that the RCMP also had issues of its own in terms of preserving and translating materials.

Hayer had already been the victim of two attempts on his life, which were, and still are, largely unsolved. He continued to receive threats and to be in need of protection on an ongoing basis. Yet, the RCMP was unable to preserve the files recording the history of the threats to Hayer. Instead, the RCMP simply applied its five year "purge" policy, destroying a file about threats by Cheema, an individual who would ultimately be proposed as a Crown witness against Bagri in the 1988 attempted murder case. Because the history of threats to Hayer extended for 12 years and files could be "purged" after five years, information about earlier threats might not have been available to investigators working on the file in later years. This would pose challenges for investigators who needed to get an appreciation of the history and context of any new threats emerging in order to respond.

The RCMP waited many years before it thought to ask for the articles written by Hayer at the time of the 1988 attempted murder. Once it did, the Force was unable to obtain and review the translation of a crucial article until the very eve

of trial, when the Crown requested additional information. The article showed that Bagri might have been aware that Hayer had information about his alleged admission that he was involved in the Air India bombing. This possible link between the Air India investigation and the 1988 attempt on Hayer's life was only discovered by the RCMP in 2002.

Conclusion

The manner in which the RCMP handled the entire Hayer affair leaves much to be desired. An important chance to advance the investigation was squandered through the unnecessary delays in approving the initial plans to accompany Hayer on a trip to England for purposes of securing important information from Tarsem Purewal, and then the undue pressure put on Hayer to travel on the RCMP's schedule, which led to Hayer eventually making the trip alone and without result. Tragically, the murder of Tara Singh Hayer, while he was supposedly under the watch of the RCMP, not only snuffed out the life of a courageous opponent of terrorism, but permanently foreclosed the possibility of his assistance in bringing the perpetrators of the bombing of Flight 182 to justice.

1.3 Ms. E

Introduction

The story of Ms. E illustrates the counterproductive, and potentially serious, results of the strict separation of the mandates of CSIS and the RCMP which followed the McDonald Commission. The *CSIS Act* requires that all intelligence collected be kept strictly confidential. Only at the point when that intelligence demonstrates criminal activity will the RCMP be advised. The decision as to when this point is reached is left to CSIS. CSIS, though often successful in recruiting sources, follows a "non-evidentiary" approach, in which information is not gathered or preserved in a manner that allows it to be used as evidence. The RCMP, in its quest to gather admissible evidence, often adopts an approach to potential sources and witnesses that has been shown to be inefficient and counterproductive.

The clashing of the two agencies' perspectives and their inability to share information effectively contributed to the loss of evidence that could have led to a different outcome in the Malik and Bagri trial in BC for the bombing of Air India Flight 182. In the end, systemic information failures like those described in this section, if left uncorrected, could seriously impact Canada's ability to combat terrorism.

The consequences of juxtaposing the differing approaches of CSIS and the RCMP in an atmosphere of discretionary interagency cooperation are both negative and regrettable. The end result achieved in Ms. E's case served no one's interest:

Ms. E's life was turned upside down and she came to live in fear and anguish; her information had no intelligence value for CSIS; and the RCMP was unable to use it to prosecute those it believed responsible for the Air India bombing.

Ms. E

Ms. E came to Canada for an arranged marriage in 1974, at age 16. She was originally from the Punjab, where she had lived in the same village as Ajaib Singh Bagri. She knew him as a child in school. In Canada, Ms. E married as planned and had two children. She then found that her husband was mentally ill and violent, and ultimately divorced him. In the late 1970s and early 1980s, Bagri began to visit her at her home. He had learned that she was living alone with her children and offered her comfort and financial assistance. He brought his wife and children to stay with Ms. E, sometimes for weeks or months.⁴¹¹

After the Air India bombing, CSIS and the RCMP began to have contact with Ms. E, and eventually she was called to testify against Bagri.

1985: Ms. E Questioned by the RCMP

In 1985, the RCMP received information from CSIS about surveillance which indicated that Parmar had dropped off an East Indian unidentified male (U/M), who was wearing a yellow beehive turban, at a certain address on June 9, 1985, after both men had been picked up at the airport at 11:06 PM.⁴¹² The information, as initially received by the RCMP, indicated that Pushpinder Singh, the ISYF leader who had made the comment about something happening in two weeks at the Khurana meeting,⁴¹³ was believed to have returned to Vancouver with Parmar and then to have been dropped off at the address in question, where he stayed with the individual who resided there.⁴¹⁴ On October 24, 1985, the RCMP conducted an initial interview with this individual.⁴¹⁵ On November 28th, the RCMP interviewed him again, this time to find out the identity of the U/M dropped off by Parmar. The individual indicated that he had never met Parmar or Reyat, but recalled that an U/M with a beehive-style turban had visited the lady who had been renting his downstairs suite. The tenant had told him that the U/M was a relative who was a Sikh activist and that she was afraid of him and wanted nothing to do with him. The individual provided the RCMP constable who interviewed him with sufficient information to allow him to track down the former tenant, Ms. E.⁴¹⁶

411 Exhibit P-101 CAA0553(i), pp. 1-2.

412 Exhibit P-101 CAA0383(i), p. 6.

413 See Section 1.6 (Pre-bombing), Khurana Information.

414 Exhibit P-101 CAA0513, p. 1.

415 Exhibit P-101 CAA0513, pp. 1-2: The content of this interview remains redacted.

416 Exhibit P-101 CAA0383(i), pp. 1-2.

On November 29th, Cst. Brent Barbour of the E Division Air Disaster Task Force interviewed Ms. E.⁴¹⁷ He learned that she had a “Canadian lifestyle,” that she associated mainly with Canadian friends and did not believe in the Sikh cause.⁴¹⁸ Barbour asked Ms. E about the person “...dropped off by Parmar at [redacted] avenue Vancouver on 85-06-09 at approximately 23-06hrs” and she indicated that it was Ajaib Singh Bagri. She did not remember Bagri arriving at 11 PM and said she “...would not let anyone in her home if they came late at night.” She did say, however, that Bagri occasionally visited and always wore a beehive-style turban. Ms. E explained that she was from the same town as Bagri in India. She said she did not want to associate with him because he often questioned her failure to practice the Sikh religion. She recounted a late May 1985 visit from Bagri and his family and another visit after she moved into a new home. She said she had not seen Bagri in approximately four months. She discussed briefly what she knew about Bagri’s employment and relatives and explained that he stayed with Parmar when he was in Vancouver. Finally, Ms. E said that Bagri did not discuss Khalistan with her, though she knew him to be a strong supporter, and that she did not know Parmar, but had seen him at the Temple.⁴¹⁹

In his report, Barbour commented that Ms. E was cooperative and that her information was consistent with the RCMP’s knowledge of Bagri. He added that it was reasonable to think that he was the person dropped off by Parmar since the two were “...known to travel together.”⁴²⁰ In asking Ms. E about the person dropped off at her home, Barbour implicitly revealed that the RCMP had information indicating that someone was dropped off on that date and at that time.

On December 3rd, another member of the Task Force, Cpl. Bruce Montgomery, added a continuation report to the file, which noted that Ms. E “...might be Ajaib Singh Bagri’s Vancouver mistress alluded to in line [i.e., intercepts] information...” Montgomery concluded that if this was so, Ms. E was lying about their association and “...possibly knows more about Bagri’s activities.” He noted that follow-up investigation and consultation with CSIS were necessary in preparation for a possible re-interview of Ms. E. In response, Cpl. Shane Tuckey of the Task Force asked Barbour to recontact Ms. E.⁴²¹

On December 16, 1985, Barbour and Cst. Giesbrecht re-interviewed Ms. E at her residence. She told them that Bagri had visited her a few weeks before, on a Wednesday evening around 9 or 10 PM, but that she had told him it was too late to visit and that he would have to leave. She said he had returned briefly the next morning and told her that he had just returned from England, but “...did not discuss any of his activities” with her. She further explained to the officers that Bagri generally did not discuss his business with her.⁴²²

⁴¹⁷ Exhibit P-101 CAA0383(i), p. 2, CAA0387(i).

⁴¹⁸ Exhibit P-101 CAA0383(i), p. 3, CAA0387(i), p. 3.

⁴¹⁹ Exhibit P-101 CAA0387(i), pp. 3-5.

⁴²⁰ Exhibit P-101 CAA0387(i), p. 6.

⁴²¹ Exhibit P-101 CAA0400. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7739-7740.

⁴²² Exhibit P-101 CAA0397(i), p. 1.

The investigators noted that the information provided by Ms. E about Bagri's recent visit was "somewhat supported" by surveillance. Approximately two weeks prior, on Wednesday, December 4th, Bagri was observed arriving at the Vancouver airport and was lost to surveillance at 10 PM near Ms. E's residence. Her residence was checked at 11:20 PM, but Bagri's vehicle was not spotted, making it possible that he attended and left her residence during the interval. The RCMP officers noted that during the interview, Ms. E was "again co-operative" but she mentioned that this was the second visit to her home from the police and that "...she does not wish it to continue."⁴²³

During the December 1985 interview, the RCMP Constables asked Ms. E about her alleged liaison with Bagri. She denied "...any relationship with Bagri beyond a casual friendship." The investigators continued to feel that she might be Bagri's mistress, but nevertheless concluded that it was "unlikely" that Bagri discussed "anything of importance" with her. As a result, after CSIS was contacted and advised that it had no information on Ms. E, all officers and supervisors involved concluded that no further action was required with respect to Ms. E.⁴²⁴

The RCMP did not attempt to approach Ms. E again until many years later.⁴²⁵

1986: The RCMP Fails to Follow Up

In February 1986, members of the E Division Air Disaster Task Force noted in a "subject profile" on Bagri that surveillance indicated that Bagri "quite often" visited Ms. E while in Vancouver and that Parmar and "...other key members of the Babbar Khalsa are aware of this relationship and are noticeably concerned." The officers noted that "a perimeter interview" of Ms. E was conducted, in which she said that she did not believe in the Sikh cause and that Bagri did not discuss Babbar Khalsa (BK) business with her, this obviously referring to the November 29, 1985 interview by Barbour. They noted that the RCMP "...may want to pursue this relationship at a later date."⁴²⁶ No further action was taken during the following months.

In August 1986, Task Force members were following up on CSIS surveillance information in an attempt to identify the persons associating with Parmar around the time of the Duncan Blast and the persons who accompanied him to Toronto on June 8, 1985. They noted in their report that "...upon checking the records, it was found that all the required information on this Tip was followed up" between October and December 1985. It was again concluded that no further action was required.⁴²⁷

In September 1986, Tuckey of the Task Force reviewed the RCMP Tip on Bagri and concluded that "several points" could be pursued. He strongly recommended a

⁴²³ Exhibit P-101 CAA0397(i), pp. 1-2.

⁴²⁴ Exhibit P-101 CAA0397(i), p. 2.

⁴²⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7745.

⁴²⁶ Exhibit P-101 CAA0411.

⁴²⁷ Exhibit P-101 CAA0491.

number of initiatives, including interviewing Ms. E “at length.” He noted that Bagri was “a good suspect” and that Ms. E had not been pursued as a possible source of information.⁴²⁸ Following discussions between Tuckey and Sgt. Robert Wall, who was the second-in-command as Non-Commissioned Officer (NCO) of Operations at the Task Force, it was decided that Ms. E would be interviewed and approached as a potential source or informant for the RCMP.⁴²⁹ In 2005, an RCMP analyst who reviewed the file noted that “...later on in 1986 it is documented that [Ms. E] should be pursued as a source of information, however, this was not done and there is no documentation as to why.”⁴³⁰ In fact, it appears the RCMP decided not to pursue the matter after another file review was conducted in December 1986.⁴³¹

The RCMP sergeant who reviewed the file, Sgt. Donald de Bruijn, noted that the information about the CSIS June 9th surveillance had “...resulted in this lengthy investigation” of Ms. E’s landlord. He summarized the two interviews with the landlord, noting that he provided “useful information” when the RCMP officers revealed the “...true purpose of their visit,” which was to find out who was dropped off at his address on June 9th. Donald de Bruijn summarized the two 1985 interviews with Ms. E, noting that during the first interview, she provided information about Bagri and his associates which was “...consistent with the Task Force information.” He noted that during the second interview, Ms. E repeated her previous information and provided information about a recent visit by Bagri which was consistent with observations made by CSIS surveillance.⁴³²

From his review of the materials, de Bruijn concluded that CSIS had been mistaken in believing that the U/M dropped off by Parmar was Pushpinder Singh, since the Task Force investigation “...strongly suggest[ed] that Parmar’s travelling companion was Ajaib Singh Bagri, and not Pushminder [*sic*] Singh.” The investigation also revealed that it was Ms. E, and not her landlord, who had received the visit on June 9th, as she had acknowledged being visited by Bagri. Donald de Bruijn was of the view that the answers provided by Ms. E and her landlord during the RCMP interviews were “...consistent with someone telling the truth.” He noted that both individuals, aside from the CSIS June 9th surveillance and this follow up investigation, were “...unknown to the Task Force investigation.”⁴³³ He stated that:

Bagri’s association with [Ms. E] appear[s] to be social in nature, and of no apparent interest to this investigation.⁴³⁴ [Emphasis added]

⁴²⁸ Exhibit P-101 CAA0498(i), pp. 1-2.

⁴²⁹ Exhibit P-101 CAA0498(i), pp. 2-3, CAA0499(i), p. 2. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7825, where he confirms that the word “source” refers to a confidential informant, as opposed to a potential witness.

⁴³⁰ Exhibit P-101 CAA1045(i), p. 2.

⁴³¹ Exhibit P-101 CAA0513.

⁴³² Exhibit P-101 CAA0513, pp. 1-3.

⁴³³ Exhibit P-101 CAA0513, pp. 1, 3-4.

⁴³⁴ Exhibit P-101 CAA0513, p. 4.

In the end, de Bruijn concluded that "...it would appear pointless to pursue this matter further."⁴³⁵ As a result, the RCMP did not interview Ms. E again or attempt to recruit her as a source. This decision was made in spite of the fact that, as someone who had some type of relationship with Bagri, which the RCMP clearly suspected was an affair, Ms. E was in a class of persons who often can become "...very important witnesses or sources for a police investigator."⁴³⁶ In fact, S/Sgt. Robert Solvason, who had "...considerable experience and expertise in the development and handling of sources," testified that approaching the girlfriends of suspects is a "classic" approach to source development.⁴³⁷

Meanwhile, Ms. E was not entirely "...unknown to the Task Force investigation." In June 1986, the RCMP had obtained evidence that Ms. E's name was included on a BK application form. A search of Bagri's home was conducted in connection with the investigation of a conspiracy unrelated to the Air India bombing.⁴³⁸ BK application forms with the names of Sikhs from BC, Ontario and the United States were seized. The forms had been completed in 1985, before the bombing and less than a year after the attack on the Golden Temple.⁴³⁹ Ms. E's name was included on one of the forms.⁴⁴⁰ Cst. Shane Tuckey provided CSIS with the list of the names found on the forms on October 25, 1986,⁴⁴¹ and also included the information about Ms. E's application for membership in an RCMP report dated October 3, 1986.⁴⁴² Yet, when the Ms. E issue was reviewed in December 1986, this information was apparently not located.⁴⁴³ RCMP Cst. Bart Blachford, who began to work on the Air India investigation later, explained that in 1985-86 the Task Force was still using "...three-by-five inch cards to card individuals, track individuals" and without the help of Tuckey, who was working in a file coordinator role, it was difficult to gather all of the relevant information.⁴⁴⁴

It was only as a result of a 1996 "tip" review that the RCMP finally put all of its information together and actually noticed the contradiction between Ms. E's statements to the RCMP, that she did not believe in the Sikh cause or discuss Khalistan with Bagri, and the fact that her name was found on a BK application form.⁴⁴⁵ While the signature on such a form, in a time frame when most Sikhs were upset about the Golden Temple attack and many were willing to sign forms or petitions, may not have been that significant on its own,⁴⁴⁶ it could have allowed the RCMP to see that it was not in fact "pointless" to pursue Ms. E further, given her association with Bagri and the apparent contradiction with some of the statements she had made to the RCMP.

435 Exhibit P-101 CAA0513, p. 4.

436 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7825.

437 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11545, 11616.

438 Exhibit P-101 CAF0414, p. 1. See also Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," section about "The Hamilton Plot," p. 46.

439 Exhibit P-101 CAF0414, pp. 1, 12.

440 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7405; Exhibit P-101 CAF0414.

441 Exhibit P-101 CAF0414, p. 1.

442 Exhibit P-101 CAA0925(i), p. 1.

443 Exhibit P-101 CAA0513, p. 4.

444 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7749.

445 Exhibit P-101 CAA0925(i), p. 2.

446 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7747.

Further, in 1986, the RCMP had other information about Bagri which made Ms. E worth following up on. As early as October 1984, CSIS had advised that Bagri was a close consort of Parmar and that he could easily be manipulated into committing a terrorist act. He had been named as allegedly having been involved in a plan to hijack an Air India plane in October 1984.⁴⁴⁷ In August 1985, the RCMP was aware of Bagri's speech to the World Sikh Organization (WSO) in 1984, where he said that "...until we kill 50,000 Hindus, we will not rest!"⁴⁴⁸ This speech was part of the Crown's evidence of motive at trial almost 20 years later.⁴⁴⁹ Finally, in 1986, Tara Singh Hayer had provided information to both CSIS and the RCMP indicating that Bagri had confessed his involvement in Air India during a trip to London.⁴⁵⁰ The investigation of Bagri's inculpatory statements was "...deemed to have the greatest potential evidentiary value," and the RCMP felt that its own efforts tended to support the theory that Bagri was directly implicated.⁴⁵¹

1987-1989: Ms. E Speaks to CSIS

William Dean ("Willie") Laurie joined the RCMP in 1972 and became a member of the Security Service in 1975. He joined CSIS at its creation in 1984. He worked mostly in counter-subversion, but also did some counter-intelligence and counterterrorism.⁴⁵² He received training and had experience in the area of source development.⁴⁵³ In 1986, he joined the Counter Terrorism Section at the CSIS BC Region and began to work in the Babbar Khalsa (BK) unit, where he remained until 1989.⁴⁵⁴ His role was to collect intelligence about the BK, mostly by developing human sources.⁴⁵⁵ He had never developed sources in the Sikh community before.⁴⁵⁶

In September 1987, Laurie approached Ms. E to get information about Bagri, and possibly Parmar.⁴⁵⁷ He had found her name on a list of individuals who had donated money to the BK.⁴⁵⁸ The list was compiled based on the BK application forms that the RCMP had seized at Bagri's residence in June 1986 and provided to CSIS in October 1986.⁴⁵⁹ Laurie explained that he only had time to actually approach Ms. E in September of the following year because of the heavy workload in the Section at the time. He could only develop new sources when his other tasks involving existing sources were completed.⁴⁶⁰

447 Exhibit P-101 CAA0110, p. 3, CAC0235.

448 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1009; Exhibit P-101 CAA0307, p. 1.

449 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1009-1015.

450 See Section 1.2 (Post-bombing), Tara Singh Hayer.

451 Exhibit P-101 CAF0714, p. 2.

452 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7392-7393.

453 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7394-7395; Exhibit P-101 CAF0399, p. 1.

454 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7393-7394, 7396.

455 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7394; Exhibit P-101 CAF0399, p. 1.

456 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7395.

457 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7397-7398.

458 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7398, 7405; Exhibit P-101 CAA0553(i), p. 1, which indicates that Ms. E was "listed as a member of the BK."

459 Exhibit P-101 CAF0414, p. 1; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7405-7406.

460 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7406-7407.

Before meeting with Ms. E, Laurie was also informed that CSIS surveillance had observed her at both Bagri's and Parmar's residences.⁴⁶¹ In March 1987, other CSIS investigators had met with Ms. E's former landlord to inquire about the surveillance information indicating that Bagri had visited his residence in July 1985. Ms. E's landlord had explained that if Bagri had visited his address, he must have been visiting Ms. E. He advised CSIS at the time that he had already provided this information to the RCMP. The investigators who conducted the interview found the explanation provided by the landlord to be entirely believable. They noted that the BK desk had revealed that Bagri and Ms. E were involved in an extramarital affair.⁴⁶² Laurie was not aware of this previous CSIS interview with Ms. E's landlord when he approached her in September 1987.⁴⁶³ Laurie may also not have been aware that the RCMP had previously interviewed Ms. E.⁴⁶⁴ He did not access any RCMP materials about the prior interviews.⁴⁶⁵

Laurie's First Interview with Ms. E

Early in the afternoon on September 10, 1987, Laurie knocked on Ms. E's door. He explained that he worked for the Solicitor General and wanted to talk to her about the Sikh community. He said he was looking for information about issues the government needed to know about. Ms. E said that the police had already been there and that she did not know anything. Laurie explained that he was not the police and that he was interested in finding out about what was being said in the community, about Ms. E's opinion, and about whether there was anything she knew that he would find interesting. Ms. E invited him in.⁴⁶⁶

Once inside the residence, Laurie began to talk to Ms. E about the need to provide answers for the families of the victims of the Air India bombing.⁴⁶⁷ He could see that Ms. E was moved:

MR. LAURIE: I held those feelings myself that something needed to be done and I could see from her reaction that she was starting to become moved by it. It was obvious to me that not only did she know something, but she was actually dying to find some safe way to deliver this information.⁴⁶⁸

Seeing that Ms. E was becoming emotional, Laurie continued to talk about the victims' families. He also explained that he was not a peace officer and did not have the power to compel her to go to court. He did say that he could send her information to "...whoever needs the information in Ottawa," but that he could communicate the information without revealing her name.⁴⁶⁹

⁴⁶¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7407.

⁴⁶² Exhibit P-101 CAF0415, pp. 1-3.

⁴⁶³ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7408.

⁴⁶⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7420: Laurie did not recall whether he was aware or not. See also Exhibit P-244, vol. 3 (January 6, 2004 Transcript), pp. 11-12.

⁴⁶⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7420.

⁴⁶⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7408-7409.

⁴⁶⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7409.

⁴⁶⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7409.

⁴⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7411-7413.

Within a few minutes, Ms. E was on the floor, sobbing and in “complete disarray.”⁴⁷⁰ She revealed to Laurie that, the night before Air India Flight 182 crashed, Bagri had come to her home to borrow her car.⁴⁷¹ She said she had refused because they were not on good terms at that time.⁴⁷² She was “...quite afraid of [him] and sensed his intentions.” Bagri then told her that he needed the car to go to the airport with two others.⁴⁷³ When she refused again, saying she needed her car, he told her that only the baggage would be making the trip and he would return her car. Ms. E continued to refuse to lend her car to Bagri and closed the door.⁴⁷⁴

Ms. E told Laurie that when she learned about the Air India crash, she knew Bagri was the one who did it. She was quite afraid of him.⁴⁷⁵ She told him he was no longer welcome in her home. Ms. E said Bagri returned twice after the bombing. Once he requested the use of her car again and she refused.⁴⁷⁶ The second time, he told her that they shared secrets and that “...she knew what he could do” if she told anyone. Ms. E indicated that it was clear to her that Bagri meant that he would kill her and her children if she ever revealed her information.⁴⁷⁷ She believed the “secrets” related to his previous statement about the use of the car to take baggage to the airport.⁴⁷⁸ Since then, she had had no more contact with Bagri, but was always afraid he would return into her life.⁴⁷⁹

Ms. E related that, after the bombing, she confronted Mrs. Bagri on one occasion, telling her that “...the community all feel the BK did this thing and what did she (Mrs. Bagri) have to say.” Mrs. Bagri replied that Sikhs had been warned since the storming of the Golden Temple not to use Government of India airlines or transportation and that “...if they chose to fly Air India, it was their own fault if they got killed.” Ms. E thought the response to be out of character for Mrs. Bagri and interpreted it as an admission that Bagri was involved.⁴⁸⁰

Ms. E also told Laurie about some of Ajaib Singh Bagri’s previous visits. She said that while Parmar was in prison, Bagri often stayed with her and used her telephone extensively. After Parmar’s return, he continued to use her telephone on occasion to speak to Parmar. Ms. E believed that Bagri used her phone because he thought it would not be bugged. She overheard Bagri speaking with Parmar about violent acts several times. She referred to an occasion when Mrs. Bagri prepared a spare set of clothes for Bagri and Parmar to conceal their

470 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7411.

471 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7411. The report prepared by Laurie after the interview indicated that Ms. E said this occurred the night before the Air India/Narita violence: Exhibit P-101 CAA0553(i), p. 2.

472 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7411.

473 Exhibit P-101 CAA0553(i), p. 2.

474 Exhibit P-101 CAA0553(i), p. 2; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7411.

475 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7411.

476 Exhibit P-101 CAA0553(i), p. 2.

477 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7411-7412; Exhibit P-101 CAA0553(i), p. 2.

478 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7411-7412.

479 Exhibit P-101 CAA0553(i), p. 3.

480 Exhibit P-101 CAA0553(i), pp. 2-3.

identities. She said that Mrs. Bagri complained at length about her marriage, saying that Bagri did not tell her what he was doing. Eventually, Ms. E said she "...realized that Bagri was crazy." Her family advised her to stay away from him "...because of the trouble his BK membership would bring."⁴⁸¹

Laurie's interview with Ms. E lasted approximately three hours. She revealed her information about Bagri's request to borrow the car early in the meeting and they then "...had quite a bit of time to discuss it." After going over the information twice, Ms. E made it clear that it was painful to her and that she wanted to talk about something else. Laurie was eager to report the information obtained and to make sure that Ms. E would be willing to see him again.⁴⁸²

At the end of the interview, Ms. E seemed very relieved that she had finally told her information to someone. Laurie was pleased. He recognized that the information he received was significant and that it was "...perhaps new intelligence that I had not seen before and I knew it was directly related to one of my targets." He hoped that other meetings would provide more details.⁴⁸³ Before he left, he made arrangements for subsequent visits.⁴⁸⁴ Laurie transmitted the information he had just received to CSIS Headquarters in a report dated the following day, September 11, 1987.⁴⁸⁵

Laurie recognized while Ms. E was giving him her information that it related to Bagri's involvement in a crime and that the matter would end up in court:

MR. LAURIE: I had the misfortune to make that statement in court, sir, where as she is telling me and she is on the floor ... there was a moment during a pause where I just sort of shook myself and I said, "Oh boy, I'm going to wind up in court, I just know it."⁴⁸⁶

He commented in his report: "Obviously, we recognize the significance of this new and important intelligence concerning the Air India/Narita issue." Laurie intended to obtain more detail about Ms. E's information during subsequent visits, but had not wanted to press for too much while she was emotional and volunteering information during the first interview.⁴⁸⁷

In subsequent interviews, Laurie went over the information previously provided by Ms. E many times. He wanted to ensure that she was consistent.⁴⁸⁸ Also, CSIS HQ, when they received the information, specifically asked Laurie to inquire about certain matters, like the exact date when Bagri borrowed her car, in order to verify the degree of Ms. E's certainty and consistency.⁴⁸⁹

481 Exhibit P-101 CAA0553(i), p. 2.

482 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7414-7415.

483 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7412.

484 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7412; Exhibit P-101 CAA0553(i), p. 3.

485 Exhibit P-101 CAA0553(i); Testimony of William Laurie, vol. 61, October 15, 2007, p. 7413.

486 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7413.

487 Exhibit P-101 CAA0553(i), p. 3; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7415.

488 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7422.

489 Exhibit P-101 CAF0347, p. 1; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7422.

Laurie's Second Interview with Ms. E

Laurie's second interview with Ms. E was held two weeks after the first, on September 24, 1987.⁴⁹⁰ Laurie phoned Ms. E in advance to schedule a meeting. His purpose at the time, not yet having received the questions that CSIS HQ wanted asked, was to verify Ms. E's consistency in telling her story and to ask other questions which he had thought about since the last interview.⁴⁹¹ Initially, Ms. E was reluctant to discuss Bagri's request to borrow her car because of how painful the subject was for her. She again had a very emotional reaction to Laurie's questions:

MR. LAURIE: I found it necessary to guide her emotionally into that state where she was sobbing and crying and again so dishevelled that it just started to come out and we went through it that way again. Only this time when I'm comforting her with questions, my questions are more detailed.⁴⁹²

Laurie asked Ms. E to clarify her earlier information. She said that she was "100% certain" that it was "...on the night prior to the Narita explosion," after 8 PM, that Bagri showed up to borrow her car. Laurie noted that Ms. E was "...most antagonistic toward Bagri" at the time because she knew he was involved in violent activities. Ms. E clarified that the persons who were to accompany Bagri to the airport were not there when Bagri asked for her car, but that he might have said they were from Toronto.⁴⁹³

Ms. E gave additional information about Bagri during this second interview. She told of his bragging statements that the BK could easily have anyone killed, in India or in Canada, and of his travelling to the US at Parmar's request to participate in a conspiracy to kill Indian Prime Minister Gandhi during his visit there. She explained that Bagri purchased western clothes for this purpose and that she hemmed his pants for him. Ms. E provided some details of Bagri's travels to Pakistan, explaining that he had visited her on his return from one of those trips in October 1986 and brought medicine for her, which she discarded because their relationship was "quite sour" by that point. Ms. E also said that she heard Bagri speak to Parmar and to Malik while using her telephone, with one conversation sounding as if Malik was providing \$50,000 to Bagri. Laurie asked her about Reyat and Surjan Singh Gill and she said she had met them both at Bagri's residence.⁴⁹⁴

The second interview only lasted one hour because of Ms. E's schedule,⁴⁹⁵ but her relations with Laurie remained good and he felt that "...the sincerity of

⁴⁹⁰ Exhibit P-101 CAA0562(i); Testimony of William Laurie, vol. 61, October 15, 2007, p. 7425.

⁴⁹¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7425.

⁴⁹² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7426.

⁴⁹³ Exhibit P-101 CAA0562(i), pp. 1-2.

⁴⁹⁴ Exhibit P-101 CAA0562(i), p. 2.

⁴⁹⁵ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7428-7429.

the source in providing [this] information is, in my mind, impressive."⁴⁹⁶ After this interview, Laurie conducted some research in the CSIS database and found information which he felt confirmed some of what Ms. E had told him about Bagri's travels to Pakistan and his possible involvement in the plot to assassinate Gandhi.⁴⁹⁷ Although Ms. E was positive that the date he brought her the medicine was October 1986, Laurie wondered whether it was 1985, since Bagri did not go to Pakistan in October 1986 (but could have told Ms. E that he did, nevertheless). Laurie noted in his report that he intended to pursue with Ms. E in future interviews some of the questions suggested by HQ, as well as his intention to obtain details about Bagri's whereabouts during his visits to Vancouver, details about his trips to Pakistan and "...specific details about 1985 06 21." He concluded: "...in short, this source's potential will be examined for intelligence of all sorts in this important investigation."⁴⁹⁸

During his initial meetings with Ms. E, Laurie had agreed to purchase an item from her. He explained that this was an example of the "very not police-like" behaviour he adopted, which was part of the reason why he was successful in obtaining information from her.⁴⁹⁹ During the second interview, Ms. E had explained that her common-law husband had expressed concerns about her conversations with Laurie.⁵⁰⁰ He had seen her getting very emotional while speaking with Laurie. He was concerned for her and generally opposed to her involvement with CSIS.⁵⁰¹ The next day, Ms. E's common-law husband came to Laurie's home to deliver the item he had purchased from Ms. E, and at that time, Laurie met with him for about one hour and a half.⁵⁰² Laurie explained the differences between CSIS and the police. Ms. E's husband only knew that she was providing information "...somehow related to the Air India investigation" and about "...a dangerous Sikh who he once met, from Kamloops."⁵⁰³ Laurie indicated that his investigation was about the Air India bombing and that it was important.⁵⁰⁴ He discussed the purpose of CSIS's work in a general manner. He had to impress upon Ms. E's husband, not only that CSIS was not the police, but that the CSIS approach to Ms. E was more than a "fishing trip."⁵⁰⁵

Laurie's Third Interview with Ms. E

On October 7, 1985, Laurie interviewed Ms. E again.⁵⁰⁶ He arranged the meeting in advance by telephone. Ms. E did not show resistance.⁵⁰⁷ She advised that, after Laurie's conversation with him, her husband now supported her assistance

⁴⁹⁶ Exhibit P-101 CAA0562(i), pp. 2-3.

⁴⁹⁷ Exhibit P-101 CAF0418.

⁴⁹⁸ Exhibit P-101 CAF0418, p. 2.

⁴⁹⁹ Exhibit P-244, vol. 2 (January 5, 2004 Transcript), pp. 47-48.

⁵⁰⁰ Exhibit P-101 CAF0424, pp. 1-2

⁵⁰¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7444; Exhibit P-101 CAF0424, p. 2.

⁵⁰² Exhibit P-244, vol. 2 (January 5, 2004 Transcript), pp. 47-48; Exhibit P-101 CAF0424, p. 2.

⁵⁰³ Exhibit P-101 CAF0424, p. 2.

⁵⁰⁴ Exhibit P-244, vol. 1 (December 19, 2003 Transcript), p. 18; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7444, 7448-7449.

⁵⁰⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7444.

⁵⁰⁶ Exhibit P-101 CAA0579(i).

⁵⁰⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7439.

to CSIS.⁵⁰⁸ Laurie prepared questions in advance of this interview and provided the responses to these and to HQ's questions in his report. He had Ms. E discuss the night of June 21, 1985 "...with as much detail as possible." She felt that it was on that date, a Friday night, that Bagri asked for her car. She did not know how he got to her residence or where he stayed after she refused his request. She said that when the RCMP had interviewed her after the bombing, they had implied to her that it was Parmar who had brought Bagri to her residence. However, she was "so rattled" "...when stonewalling the RCMP" that she was not entirely clear on what they had actually said to her.⁵⁰⁹

Ms. E explained that Bagri did not make long distance calls while using her phone, but told her directly that the BK telephones were recorded and that he had to use "safe telephones" like hers.⁵¹⁰ She promised to verify her records and provide more information about the date when Bagri departed for the US in connection with the plot to assassinate Gandhi, and therefore agreed to another interview.⁵¹¹ She indicated that Bagri had told her that he had met with an individual, identified as Mr. C during the Air India trial, during this trip. In response to questions suggested by CSIS HQ, Ms. E indicated that Bagri had never discussed "...explosives, stereo equipment or VCR tuners" with her.⁵¹² Laurie agreed that these questions related directly to the Air India bombing and were aimed at finding out whether more information could be obtained about the crime.⁵¹³

During this third interview, Laurie and Ms. E discussed popular rumours that Parmar was an agent of the Government of India (GOI). Ms. E expressed the view that he worked either for the GOI or the American Central Intelligence Agency (CIA), but admitted that most of what she knew about Parmar and the BK was learned from her relatives who were concerned about her and warning her. Ms. E was not aware of any falling-out between Surjan Singh Gill and the BK but perceived the Parmar-Bagri-Gill relationship as strong.⁵¹⁴

The third interview lasted approximately two hours.⁵¹⁵ Ms. E continued to be willing to answer Laurie's questions,⁵¹⁶ though she still became "very emotional." When discussing the friends she had lost in the Air India bombing, she even said that "...she hopes there will be more that she can do to help us catch the guilty."⁵¹⁷

Subsequent Interviews with Ms. E

After the third interview, a long period of time elapsed without Laurie meeting with Ms. E. Because of the RCMP request not to contaminate the Air India

508 Exhibit P-101 CAF0424, p. 2.

509 Exhibit P-101 CAA0579(i), pp. 1-2.

510 Exhibit P-101 CAA0579(i), p. 2.

511 Exhibit P-101 CAA0579(i), pp. 2-3; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7440-7441.

512 Exhibit P-101 CAA0579(i), p. 2.

513 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7438.

514 Exhibit P-101 CAA0579(i), p. 3.

515 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7442.

516 Exhibit P-101 CAA0579(i), p. 3.

517 Exhibit P-101 CAF0424, p. 2.

investigation, Laurie could neither task Ms. E with taking any actions nor even specifically question her on “matters related to criminal things.”⁵¹⁸ During the subsequent interviews which he eventually did conduct, Laurie attempted to discuss topics other than Air India. However, if Ms. E brought up Air India, as she often did, he did not stop her.⁵¹⁹ In fact, that topic ended up being the most important one they discussed in practically every interview:

MR. BOXALL: With respect to your meetings with Ms. E, would you agree with me that generally, although there were other topics discussed, it appears that your interviews with her really were an investigation of the Air India bombing?

MR. LAURIE: In a word, yes.

MR. BOXALL: All right. And in fact, she must have viewed it as an investigation of that also because I think this is close to a quote, if not certainly a paraphrase. She wanted to help catch the guilty.

MR. LAURIE: Yes.

MR. BOXALL: So it wasn't just that she was supplying information to somebody from the Solicitor General's for some abstract purpose; she wanted to see the guilty persons caught.

MR. LAURIE: She definitely wanted the guilty persons caught. Her perception was that we were all – the Canadian public, you know, the RCMP and the CSIS, we were all the government, if you will, and we were all interested in bringing this to a successful resolution. She preferred us over them because she perceived us as a way to do it without having to go to court.⁵²⁰

On November 30, 1988, over a year after the third interview, Laurie met with Ms. E again. In the meantime, he had telephone contact with her at least once, when she explained she could not find the personal records she had thought would help with the date of Bagri's travels to the US. He then arranged the November 30th meeting in advance, by telephone.⁵²¹ When he went to Ms. E's residence, she appeared "...genuinely pleased to renew contact" with him. She explained that Parmar had come to her business, but that she had put him off by pretending that an order would take months. He had called a few times (which

⁵¹⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7457; Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 35-36.

⁵¹⁹ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), p. 36.

⁵²⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7538-7539.

⁵²¹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7453-7454.

was verified by a reliable source), and his wife then had come to the business, but Ms. E always rebuffed them. Ms. E also advised that she had been visited by Bagri's wife, who complained that Ms. E was no longer associating with the family or inviting them into her home. A heated argument followed, and Ms. E told Mrs. Bagri that she "...wanted to avoid any involvement with any BK people," now that she knew enough about the BK. Laurie noted that Ms. E continued to be cooperative, but that he only maintained infrequent contact with her to see if she had contact with any of the CSIS targets.⁵²²

Laurie met with Ms. E again on January 19, 1989. The meeting took place at Ms. E's home and lasted nearly two hours.⁵²³ Laurie wanted to check on Ms. E's well-being and he also wanted some biographical information about Bagri.⁵²⁴ During the interview, they ended up discussing the issues previously covered, including Bagri's request to borrow Ms. E's car and his subsequent threat to her.⁵²⁵ This time, Ms. E did not get emotional when discussing Bagri's request – she had been confiding in Laurie for a long time and felt more secure.⁵²⁶ The meeting took the form of a "friendly chat." Laurie was then convinced that there was no additional intelligence which could be obtained from Ms. E which might have been overlooked.⁵²⁷

On April 24, 1989, Laurie met with Ms. E again at her home.⁵²⁸ His main purpose was to find out whether any of his targets had contacted her and whether the police had made contact.⁵²⁹ In both cases, there was no contact.⁵³⁰ Laurie then proceeded to ask Ms. E questions "...in order to develop a character profile of Ajaib Singh Bagri." As a result of the "...considerable new and interesting intelligence" provided by Ms. E in response,⁵³¹ Laurie was able to prepare an assessment of Bagri which described his early years in India and some of his associates.⁵³² The information provided by Ms. E was consistent with what was observed by CSIS and partly corroborated by other sources.⁵³³ After this interview, Laurie noted that his relationship with Ms. E continued to be "...very friendly, albeit professional." Ms. E had even stated that "...she now likes to meet to discuss these matters and she expects that [Laurie] will return."⁵³⁴ Laurie explained that, when he visited Ms. E, he "...was always armed with a box of sweets" and she would make tea. After a year and a half, Ms. E no longer expressed concern about his visits.⁵³⁵ In his report about this last interview, Laurie indicated that he intended to contact Ms. E again in six months, unless she had contact with

522 Exhibit P-101 CAF0406, pp. 1-2.

523 Exhibit P-101 CAF0377, p. 1.

524 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7457-7458.

525 Exhibit P-101 CAF0377, pp. 1-2.

526 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7458.

527 Exhibit P-101 CAF0377, pp. 1-2.

528 Exhibit P-101 CAF0379, p. 1.

529 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7459-7460.

530 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7459; Exhibit P-101 CAF0379, p. 1.

531 Exhibit P-101 CAF0379, p. 1.

532 Exhibit P-101 CAF0378.

533 Exhibit P-101 CAF0378, p. 3.

534 Exhibit P-101 CAF0379, p. 1.

535 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7460.

his targets before that time.⁵³⁶ By then, however, he already knew that he would not be with the CT Section six months later.⁵³⁷ During the same year, he was moved to work on counter-intelligence investigations and Ms. E's source file was closed.⁵³⁸ On February 14, 1990, Laurie left CSIS to rejoin the RCMP.⁵³⁹

Delay in Sharing Information with the RCMP

Initially, CSIS decided not to share the Ms. E information with the RCMP immediately.

During his first interview with Ms. E, it became clear to Laurie that her biggest fear was that the police might get involved. As Laurie put it, "...she did not want that at any cost."⁵⁴⁰ When she was visited by the RCMP after the bombing, she did not tell them what she told Laurie.⁵⁴¹ Laurie was not surprised:

It seems to me that when I was told that the police had been there and been dismissed – I don't remember that being shocking news because I come across that many times. There are people who say to me in plain English, oh, I had told the police I don't speak English. Oh, okay.⁵⁴²

Ms. E told Laurie that she was "rattled" by the RCMP's visits.⁵⁴³ She was convinced that cooperating with the police would put her and her children in danger and she said that she would never assist the police in any way.⁵⁴⁴ She made it clear that she did not want her information or her identity revealed to the police:

MR. LAURIE: She couldn't have made it more clear. She stressed it over and over again that she would not, for the reasons stated, ever cooperate with the police and that if the police came she would deny everything...⁵⁴⁵

Ms. E's fear of having the police involved remained constant throughout her dealings with Laurie:

MR. LAURIE: Well, she is still [during the second interview] consumed with fear about the police. For the entire time that I knew Ms. E, if I had to pick one thing about her that was constant, it was the fear of the police and the fear of her children being killed.

⁵³⁶ Exhibit P-101 CAF0379, p. 1.

⁵³⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7460.

⁵³⁸ Exhibit P-101 CAF0399, p. 3.

⁵³⁹ Exhibit P-101 CAF0399, p. 3; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7469.

⁵⁴⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7410.

⁵⁴¹ Exhibit P-101 CAA0553(i), p. 2.

⁵⁴² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7420.

⁵⁴³ Exhibit P-101 CAA0579(i), p. 1.

⁵⁴⁴ Exhibit P-101 CAA0553(i), p. 2.

⁵⁴⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7412.

MR. KAPOOR: And to be correct, it is not the police particularly but it is the fear that going to the police will reveal her such that she will be placed in jeopardy at the hands of others?

MR. LAURIE: Yes. And one time I was told that if Bagri has me killed that's one thing, but if he kills my children, it will be a bad thing. So she was really, really concerned about the children.⁵⁴⁶

...

MR. KAPOOR: And through this, again, she makes it clear the police are not – she does not want to deal with the police?

MR. LAURIE: Yes. When I discussed the police aspect, it was usually her telling me that she would commit suicide before she would assist the police – or before she went to court she would kill herself to protect her children. That is reported once or twice.⁵⁴⁷

Years later, when he drafted a statement in preparation for Bagri's trial in 1999, Laurie noted that his relationship with Ms. E was still friendly, but that "...she profoundly wishes she had never confided in me."⁵⁴⁸

On September 11, 1987, in the report he transmitted to his superiors at the BC Region and to CSIS HQ about his first interview with Ms. E, Laurie indicated that he was convinced that Ms. E's cooperation with him would cease immediately if she were contacted by police.⁵⁴⁹ Based on her "repeated comments," he felt that she would deny all knowledge and "...perhaps even her contact with CSIS."⁵⁵⁰ Laurie noted that, if Ms. E's information had to be passed to the police "...because of policy or legal requirement," "...considerable effort will be required to protect [her] identity in order to prevent the source from walking away." Since the RCMP knew of Ms. E's relationship with Bagri, Laurie felt that "...even a sanitized version" of his report would allow the RCMP to identify her. He specifically requested that CSIS HQ allow him to recontact Ms. E and obtain additional information before disclosing the information already obtained to any other agency.⁵⁵¹

Laurie explained in testimony that "...it was clear to all of us, both my supervisors and I and to the people who received [the information] in Ottawa, that this is police information and it will go to the police."⁵⁵² Laurie never had doubts on this point:

⁵⁴⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7427.

⁵⁴⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7440.

⁵⁴⁸ Exhibit P-101 CAF0399, p. 3.

⁵⁴⁹ Exhibit P-101 CAA0553(i), p. 3.

⁵⁵⁰ Exhibit P-101 CAA0553(i), p. 3. In the source report he prepared about this interview with Ms. E, Laurie indicated that Ms. E "...stated emphatically that she will not co-operate with the police" and that she had refused their questions in the past: Exhibit P-101 CAF0376, p. 1.

⁵⁵¹ Exhibit P-101 CAA0553(i), p. 3.

⁵⁵² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7416.

MR. BOXALL: Okay. But in this particular case, it was obvious to you from the first time you met her that what she was supplying was criminal information, criminal intelligence, a potential witness in a criminal case?

MR. LAURIE: Yes.

MR. BOXALL: And, in fact, the value of that was clear?

MR. LAURIE: Very clear and I said so just about every time I report it.⁵⁵³

This was difficult because the source, Ms. E, did not want to cooperate with the police. The question for Laurie then became whether he could further develop the information before it was passed on, especially given that the RCMP had already interviewed Ms. E and obtained no information. Laurie decided not to request the information in the RCMP's possession as a result of their interviews with Ms. E, since that could expose his interest and cause the RCMP to attempt contacting Ms. E again. Laurie explained that, by his comments in his report, he was asking his HQ for guidance about whether he could go see Ms. E again as he wished, or whether it would all "end now" with an immediate transfer of the information to the RCMP.⁵⁵⁴

The Dilemma: Protecting an Intelligence Source with Potentially Criminal Information

The Unit Head for the BC Region Counter Terrorism Section, John Stevenson, supported Laurie's request to be allowed to recontact Ms. E "...prior to CSIS HQ disseminating any details to the RCMP." He noted: "...we have everything to gain by a cautious empathetic approach to this source."⁵⁵⁵ At the Inquiry hearings, Stevenson explained that "...there was nothing life-threatening here." Since Laurie appeared to have established a rapport with Ms. E, he felt the best approach for CSIS was "...softly, softly, let's go back and go back and go back and get as much as we can." This was not necessarily because CSIS expected Ms. E to have intelligence about present threats to Canada's security, as opposed to information about the possible perpetrators of the Air India bombing, but simply because, since she was not willing to speak to the police, it was better for CSIS to "...see what we can get" rather than rush to pass the matter over to the RCMP, in which case "...the RCMP may not have gone anywhere." Stevenson explained that there was no "formula" to determine when a source with information about past criminal activity would be "turned over" to the RCMP. The decision would be made by CSIS HQ and would depend on all circumstances, including the benefit to CSIS's investigations of the source's information, and whether the source could be "...more easily utilized in the criminal side."⁵⁵⁶

⁵⁵³ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7531.

⁵⁵⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7416-7417, 7421.

⁵⁵⁵ Exhibit P-101 CAA0553(i), p. 3.

⁵⁵⁶ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7680-7682, 7685-7686.

The Deputy Director General Operations at the BC Region, Ken Osborne, agreed with his colleagues, indicating that "...once our information is more complete then a decision can be taken on the best method of dissemination to the RCMP."⁵⁵⁷ He asked for direction from CSIS HQ, clearly recognizing the implications of the information:

Once again we find ourselves in a position where a source who demands anonymity has provided information which has a direct bearing on a serious criminal matter.⁵⁵⁸

Laurie explained that his supervisors' attitude, upon learning about the information he received from Ms. E, was "...let's see if headquarters will give us authority to not pass it yet."⁵⁵⁹

On September 13, 1987, Michael Gareau of CSIS HQ wrote in an internal Transit Slip that he agreed that Laurie should be allowed to recontact Ms. E for more details, but that this had to be done prior to September 18th. He then provided a list of questions about the information found in the BC Region report, and suggested that Ms. E be shown photographs to identify the individuals who were to accompany Bagri to the airport.⁵⁶⁰ Surprisingly, he appeared to disagree with Laurie's comment that the information obtained was "...new and important intelligence concerning the Air India/Narita issue."⁵⁶¹ He wrote: "Para 11. information not new, but does support CSIS's premise."⁵⁶² About Osborne's comment that the decision concerning the "...best method of dissemination to the RCMP" could be made when more information was obtained,⁵⁶³ Gareau noted that the decision was not yet reached at HQ and that answers to his questions and the "source's future potential" would be taken into account. He addressed this Transit Slip only to Bill Dexter, another CSIS HQ member, and asked him to add other points requiring clarification.⁵⁶⁴

Dexter did not send a message to the BC Region until September 24, 1987. He reproduced Gareau's questions about the Ms. E information and advised the Region that the decision on dissemination had not yet been made by HQ. He also suggested a manner of compiling photo albums, similar to police photo lineups, for the purpose of having Ms. E identify the other individuals involved.⁵⁶⁵ Laurie had never prepared photo lineups since he joined CSIS and did not follow this last suggestion, since Ms. E had not indicated that she had seen the individuals who were to accompany Bagri to the airport.⁵⁶⁶

557 Exhibit P-101 CAA0553(i), p. 4.

558 Exhibit P-101 CAA0553(i), p. 4.

559 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7420.

560 Exhibit P-101 CAF0346, pp. 1-2.

561 Exhibit P-101 CAA0553(i), p. 3, para. 11.

562 Exhibit P-101 CAA0346, p. 2.

563 Exhibit P-101 CAA0553(i), p. 4.

564 Exhibit P-101 CAF0346, p. 2.

565 Exhibit P-101 CAA0347, pp. 1-2.

566 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7423-7424.

Because the HQ message to the BC Region was dated September 24th, Gareau's directive that Ms. E be recontacted before September 18th could not be communicated in time to the Region. Further, Laurie conducted his second interview with Ms. E on September 24th⁵⁶⁷ before he received the HQ message, so he could not address the HQ questions during the interview. In his report about this interview, he reiterated the request that CSIS HQ advise of any questions they had, and again asked that HQ wait until his next interview with Ms. E before "...taking any action with respect to the passing of this information to police agencies."⁵⁶⁸ Laurie wanted to be allowed to speak to Ms. E again before the police found out about her information.⁵⁶⁹ He noted that Ms. E was still adamant in her reluctance to assist the police and was "...now living in fear of exposure." He reiterated his earlier views that all assistance provided by Ms. E would stop if she was approached by any police.⁵⁷⁰

The BC Region Director General, Randil Claxton, and the Chief of Counter Terrorism, Mervin Grierson, commented on the dilemma faced by CSIS as a result of the nature of the information provided by Ms. E. They wrote that her information could implicate Bagri and others in the Air India bombing, but had yet to be substantiated. They said the BC Region would try to corroborate Ms. E's information with the data in their possession. They noted that Ms. E had previously refused to cooperate with the RCMP, but now wanted to speak to Laurie.⁵⁷¹ They wrote:

Again, we are faced with the problem of a developing source in possession of information vital to a criminal investigation. The dilemma of source confidentiality continues.... It is realized that we cannot shelter this information but must strive for a working relationship, i.e., (joint operation) with the RCMP to maximize this information as this arrangement is at the best tenuous at this time.⁵⁷²

The Chief CT and the Director General also wrote that while Laurie was aware of CSIS HQ's suggested questions for Ms. E, "...you will no doubt appreciate the dilemma we face in advancing the dialogue with source without impinging on the responsibilities of law enforcement authorities."⁵⁷³ Laurie explained in testimony that the BC Region was facing a dilemma because going back to Ms. E and asking for more information about Bagri's request to borrow the car was "...very much what law enforcement should be doing, not what the Service should be doing at this stage." Since Ms. E would not speak to police, it appeared as though only CSIS could get her information.⁵⁷⁴

⁵⁶⁷ Exhibit P-101 CAA0562(i).

⁵⁶⁸ Exhibit P-101 CAA0562(i), p. 3.

⁵⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7436.

⁵⁷⁰ Exhibit P-101 CAA0562(i), pp. 2-3. See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7436.

⁵⁷¹ Exhibit P-101 CAA0562(i), p. 3.

⁵⁷² Exhibit P-101 CAA0562(i), p. 3.

⁵⁷³ Exhibit P-101 CAA0562(i), p. 3.

⁵⁷⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7437.

Grierson explained in testimony before the Inquiry that the BC Region wanted to continue developing this information on its own because "...there was no immediacy in terms of disclosing right away."⁵⁷⁵ He added:

MR. GRIERSON: So the deal is, if we pass it right away, we know what the dilemma is going to be, it's going to turn the tap off. So what we're proposing is, in consultation with Headquarters, we've got to find a way to basically see if we can maximize this without losing the benefit that's potentially there.

...

I mean, quite clearly it's very significant but it's not immediate and it's not life-threatening so we've got some time to deal with this.⁵⁷⁶

Again, BC Region requested guidance from HQ about this issue.⁵⁷⁷

After the third interview with Ms. E on October 7th, when the questions suggested by HQ were asked of Ms. E, Laurie again asked for more time before her information was passed to the RCMP:

The source is presently searching records for the date of Bagri's travel (para 4) and another meeting is assured. It is hoped that this Region may complete these inquiries prior to a decision on which, if any, information, should be passed to other agencies.⁵⁷⁸

He explained that Ms. E continued to maintain the posture that "...co-operation with the police is out of the question," but was now opening up more and more when she saw that she was not "...summarily handed over to the police" after speaking to Laurie. As Ms. E felt that "...her biggest worry is over," Laurie could approach almost any topic with her.⁵⁷⁹

Laurie did recognize, however, that Ms. E's information would eventually have to go to the police, and that she would eventually become less and less useful to CSIS as a source. He even proposed to help convince her to approach the police:

⁵⁷⁵ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9490.

⁵⁷⁶ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9490-9491.

⁵⁷⁷ Exhibit P-101 CAA0562(i), p. 3.

⁵⁷⁸ Exhibit P-101 CAA0579(i), p. 3.

⁵⁷⁹ Exhibit P-101 CAF0424, p. 1.

While I am convinced that bringing the police to see her would end all co-operation I now wonder whether I would be able to convince her, over time, to approach the police herself, offering limited (no court) co-operation. In this way, a gradual transfer could take place and police assurances of protection etc. could be laid on her. The source is now checking personal records in order to provide me with needed dates but her usefulness to us will have limits. If she ever could be brought 'on side' by the police then possibly she could be used by the police to elicit some sort of evidentiary confession from Bagri suitable for court. Naturally time hangs in the balance and we must make a decision on which way to go with this source. I have developed a relationship with her which, if developed, I feel can lead to her offering co-operation to the police. If such an effort failed, then I feel we would have lost little, and the police may still then be brought in to make their own efforts to woo her. Your views are sought.⁵⁸⁰

Laurie explained that, like other colleagues at his level in CSIS, he wanted not only to gather information but also "...to see things resolved successfully." If Ms. E was summarily passed to the RCMP, then Laurie felt that no one would be successful with her. After his third interview with Ms. E, except for the verifications she was to make about Bagri's dates of travel, Laurie felt that he had gotten all the information from her that was relevant to the CSIS mandate about the BK and his targets. There was little long-term benefit that could be gained for CSIS in continuing to develop Ms. E as a source. The benefit she could bring would be to the police.⁵⁸¹

Grierson noted that the good relations established between Ms. E and Laurie were "...a good indication that this source may be of great benefit in helping solve Air India." He added that "...the old dilemma still remains [as] to how do we introduce this source to the authorities without jeopardizing the investigation or this source's development." Grierson noted that the Region's decisions about Ms. E's future development as a source would depend on CSIS HQ's response to the Grierson/Claxton comments formulated after the second interview, asking about the passing of information to the RCMP.⁵⁸²

CSIS HQ Makes a Decision

Laurie did not receive a response from CSIS HQ about his suggestion to attempt to convince Ms. E to cooperate with police. He never received instructions to make this attempt.⁵⁸³ From the time of its September 24th message indicating that no decision had yet been made about the dissemination of Ms. E's information, CSIS

⁵⁸⁰ Exhibit P-101 CAF0424, p. 2.

⁵⁸¹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7445, 7449.

⁵⁸² Exhibit P-101 CAF0424, pp. 2-3.

⁵⁸³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7446-7447.

HQ provided no further guidance to the BC Region until October 23, 1987, when HQ finally provided a response to the Region's questions. HQ decided that Ms. E would remain under CSIS control until it was deemed necessary to turn her over to the RCMP and that, in the meantime, she would not be interviewed by the RCMP. HQ noted that, as the handler was gaining Ms. E's confidence, it was in the interest of all agencies to not alter this situation. HQ recognized that Ms. E's potential for CSIS was short-term and that, for the most part, the "...intelligence gathered to this point has concerned Air India/Narita." This type of information was said to put CSIS in the "familiar position" of having to decide when to pass the source and her information to the RCMP. It was decided that this would be done "...sooner rather than later," but that, for now, CSIS would handle the source independently.⁵⁸⁴

CSIS HQ also added:

We are of the opinion that source has provided us with historical information only and any information which is of a criminal matter can not be corroborated.⁵⁸⁵

In the same telex, HQ went on to caution Laurie against possible interference with the criminal investigation by counselling Ms. E in relation to appearing as a witness. Finally, HQ indicated that CSIS had been "...cooperating with the RCMP by providing relevant information to them."⁵⁸⁶

Laurie disagreed with HQ's assessment of Ms. E's information as "historical" and with the notion that none of the information provided could be corroborated. He viewed the HQ telex as "...an excuse to not pass it." According to Laurie, "historical information" was meant to designate information that did not need to be passed immediately.⁵⁸⁷ He explained:

MR. LAURIE: I had said in my previous messages that I believe this is information that needs to be passed. It is true that I said that, you know, I would like to corroborate or get further details and that sort of thing, but up to this point it seems to me that everyone is in agreement that this was information that needed to be passed. I mean, after the very first interview in my report, my management in British Columbia agreed with the assessment that this was material that would be passed. The dilemma was when and how and all those sorts of things, but this all of a sudden indicates that maybe that is not the case in their view.⁵⁸⁸

584 Exhibit P-101 CAF0348, pp. 1-2.

585 Exhibit P-101 CAF0348, p. 1.

586 Exhibit P-101 CAF0348, pp. 1-2.

587 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7450-7451.

588 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7451.

Overall, Laurie felt that the HQ telex was contradictory in that it seemed to indicate in one paragraph that the information was historical and did not need to be passed and, in another paragraph, that it needed to be passed sooner rather than later. As Laurie had not tasked Ms. E with taking any actions, he could easily put the matter on hold after receiving the HQ instructions.⁵⁸⁹ He explained that during this period, it was not unusual to receive contradictory and changing instructions from HQ about the Air India investigation:

MR. LAURIE: You have to remember also that during this period in October of '87, this is when we are in that period where one day we are aggressive and the next day we are not, and the next day we re doing this and the next day we are not. And, you know, we would get messages like this that seemed to be conflicting from paragraph to paragraph. And so if the solution for this particular file is to do – just put it on hold for a few days, hey, I'm happy with that. I've got lots of other things that I am doing.⁵⁹⁰

However, Laurie did need to know whether and when Ms. E's information would be passed to the RCMP and whether her identity would be revealed, as this could have a serious impact on his future meetings with Ms. E and on his ability to continue receiving information.⁵⁹¹ Having received this telex, he still did not know what was, or would be done.

On November 7, 1987, Gareau of CSIS HQ wrote an internal note asking a colleague to review the information provided by Ms. E and to send questions to BC Region, where clarification was needed. Gareau expressed particular interest in Bagri's trip to New York. He did return the Ms. E material to the Human Sources Branch, and he indicated that Ms. E did not have any future potential as a source for CSIS, but that he nevertheless wanted to make sure that BC Region obtained all the information they could about Bagri and the early 1980s.⁵⁹²

Information from A "Vancouver Source" Revealed to the RCMP

A little over a month later, on December 17th, the RCMP HQ National Security Offences Task Force (NSOTF), in charge of coordinating the Air India investigation, wrote the following to the E Division NSOTF investigating Air India in British Columbia:

Further to our request of CSIS for description of two UMs to accompany Bagri to airport on 85-06-22 provide in their HQCT/9064/438 the following response.⁵⁹³

589 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7452.

590 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7453.

591 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7453.

592 Exhibit P-101 CAF0349.

593 Exhibit P-101 CAA0610, p. 1.

Attached was a telex from Gareau to the RCMP HQ NSOTF, also dated December 17th, indicating that, in response to RCMP Insp. Terry Hart's request the same morning, CSIS's "Vancouver source" could not identify the two persons who would accompany Bagri to the airport because the source had not seen them – Bagri visited the source on his own to borrow the source's car.⁵⁹⁴

Having received a copy of this CSIS telex, the E Division Task Force replied that it had "...no record or knowledge" of an incident where Bagri attempted to borrow a vehicle to go to the airport on June 22, 1985. The Division asked HQ to elaborate.⁵⁹⁵ HQ explained that CSIS had advised the RCMP of the intelligence about Bagri's request to borrow the car of one of their sources, during a meeting with RCMP HQ members, Supt. Pat Cummins and Insp. Terry Hart. RCMP HQ indicated that no "hard copy" of the information had been provided.⁵⁹⁶ On December 17, 1987, the day when Hart made his verbal request for a description of the UMs who were to accompany Bagri to the airport, Gareau and Dexter of CSIS HQ met with Cummins and Hart and discussed recent (unrelated) information about Bagri which the RCMP was to investigate.⁵⁹⁷ Obviously, it was at that time that Hart requested information about the two UMs. It was also at that time, or sometime before then, that CSIS had provided the RCMP with some of the Ms. E information, without identifying Ms. E.⁵⁹⁸

Because no written record of this passage of information was prepared, it is difficult to know exactly what information was passed verbally by CSIS. In its 1987 message to E Division, RCMP HQ noted that it was "...not clear how many people accompanied Bagri however source cannot identify them not having seen them."⁵⁹⁹ HQ added:

There may have been a mention of luggage however source does not clearly recall.⁶⁰⁰

Finally, HQ advised that it had "no further info" other than that contained in their previous telex about the request to CSIS for the identification of the two UMs.⁶⁰¹

⁵⁹⁴ Exhibit P-101 CAA0610, p. 2, CAF0356, p. 2.

⁵⁹⁵ Exhibit P-101 CAF0350.

⁵⁹⁶ Exhibit P-101 CAA0615.

⁵⁹⁷ Exhibit P-101 CAF0420, p. 3.

⁵⁹⁸ Final Submissions of the Attorney General of Canada, Vol. 1, para. 240. The AGC states that the Ms. E information was provided verbally "...at a meeting in Ottawa on another matter in the late fall of 1987." It appears that the meeting would have occurred sometime between Laurie's early interviews with Ms. E in September and October and the December 17th request by Hart or even on the day of the request. The AGC also states that CSIS did not identify Ms. E at that time, which is consistent with the evidence where she is referred to only as "the source" in 1987. Finally, the AGC claims that CSIS advised the RCMP that she refused to meet the Force. This is unsupported by the evidence, which provides no information about whether such a statement was made or not.

⁵⁹⁹ Exhibit P-101 CAA0615.

⁶⁰⁰ Exhibit P-101 CAA0615.

⁶⁰¹ Exhibit P-101 CAA0610, CAA0615.

Subsequent CSIS Contacts with Ms. E

Laurie was not advised of the discussions held between CSIS and RCMP at the HQ level. After his October 1987 interview with Ms. E, and HQ's cryptic telex about the "historical information" and the eventual need to pass it to the RCMP, he was never informed of whether Ms. E's identity or information had been disclosed to the RCMP. He testified that he kept enquiring about whether the information was passed, but could not get an answer from CSIS HQ.⁶⁰²

At some point, – Laurie does not recall exactly when – Gareau visited the BC Region and Laurie asked him, "directly face-to-face did he pass it."⁶⁰³ Gareau said that the material had been passed. When Laurie asked "which of it" was passed, Gareau responded "all of it." At first, Laurie assumed that this meant that Ms. E's identity had been disclosed to police. He was surprised that this had been done without his knowledge and without even advising him. Later, Laurie felt confused because Ms. E did not say anything about being contacted by the RCMP and her attitude towards him did not change.⁶⁰⁴ In fact, after he interviewed her in January 1989, Laurie noted:

The source admitted that after the first time she told me what she knew, she was afraid, despite my assurances, that I would not exercise caution and that our meetings would become publicly known. She also feared the police would get involved and she would be forced to deny everything. Now, the source says that she feels more secure and she expressed gratitude [REDACTED] that her security has been safeguarded.... I still feel that the source will never co-operate with the police or give evidence in court.⁶⁰⁵

Ms. E did not say that she was contacted by the RCMP and rather indicated the opposite. During his subsequent interview with Ms. E in April 1989, Laurie ascertained that the police had not contacted her.⁶⁰⁶

After he received the HQ telex in October 1987, Laurie did not meet with Ms. E again for over a year. A decision was made at the BC Region level that it would be "prudent" for CSIS not to make contact with Ms. E for a time, "...in order that we not contaminate any investigations."⁶⁰⁷ However, Laurie was never instructed to stop all contact with Ms. E.⁶⁰⁸ He was told that he was not to use her "...

⁶⁰² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7453, 7470-7471.

⁶⁰³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7470-7471. See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7455.

⁶⁰⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7455-7457, 7470-7471.

⁶⁰⁵ Exhibit P-101 CAF0377, p. 2.

⁶⁰⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7458-7460.

⁶⁰⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7453.

⁶⁰⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7528; Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 51-52.

for criminal information or intelligence,” but that he could use her for other information, which is why he focussed more on biographical information about Bagri during subsequent interviews with her.⁶⁰⁹

When Laurie interviewed Ms. E for the fourth time, in November 1988, he found that she was cooperative because she could see that “...no one has learned of our discussions.” He reported to HQ that, even if HQ had suggested in October 1987 that he continue to gain Ms. E’s trust to obtain more information of value to CSIS and the RCMP, that she was “not pursued vigorously” because it was assessed that she “...did not have any more valuable information,” that she was “...still determined to resist co-operating with the police” and that she “...did not want to get involved with members of the BK.”⁶¹⁰

Other BC Region members, including the Assistant Chief of the CT Section, reminded HQ that Ms. E had “...supplied information which may have relevance to the RCMP Air India/Narita investigations.” They explained that, because HQ had said that the information was passed to the RCMP, because the RCMP had requested that CSIS make no inquiries that could “...contaminate their investigation,” and because Ms. E was not willing to get involved with BK members, contact with her was “...reduced to periodic telephone calls to check on source’s well being.” According to the BC Region, this was not a problem because “...pursuant to Headquarters instructions, we are not investigating Air India/Narita.” Ms. E was willing to maintain contact, but BC Region thought it was unlikely that any information of value could be learned, so they decided to see her only occasionally and to consider her in the “dormant category” as a source.⁶¹¹ Yet, two other interviews were conducted subsequently.

After the November 1988 interview, the BC Region Deputy Director General of Operations, Grierson, further explained that it was now the Region’s understanding that Ms. E’s identity had not been revealed to the RCMP, only her information. He suggested HQ might want to address the issue of passing on her identity, since her value as a source to CSIS operations was “now limited.” He added that, as requested in HQ’s October 1987 telex, Laurie had never counselled her not to cooperate with police.⁶¹²

After his January 1989 interview with Ms. E, Laurie continued to be convinced that Ms. E could not provide new information because she did not have contact with CSIS targets. He reported to HQ that his contact with Ms. E would be “... limited to those occasions when she calls me or there is a specific reason to see her.” His supervisors at BC Region all agreed.⁶¹³

Deficiencies in the 1987 Sharing of Information about Ms. E

During his time at CSIS, Laurie was never shown the CSIS/RCMP Memorandum of Understanding which governed the transfer and sharing of information

⁶⁰⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7528.

⁶¹⁰ Exhibit P-101 CAF0406, p. 2.

⁶¹¹ Exhibit P-101 CAF0406, pp. 2-3.

⁶¹² Exhibit P-101 CAF0406, p. 3.

⁶¹³ Exhibit P-101 CAF0377, p. 2.

about the RCMP investigation of Sikh extremism dubbed “Project Colossal.”⁶¹⁴ He agreed that the information provided by Ms. E appeared to qualify as information relating to the RCMP investigation that was to be fully disclosed to the RCMP. However, this was not his decision to make, and the only way the MOU could have an impact on his work was through the directions he would receive from his supervisors.⁶¹⁵

CSIS HQ, which had the responsibility for deciding whether and how to pass on the Ms. E information, initially allowed for two more interviews of Ms. E before a decision was even made. As will be shown later, some of those interviews were likely recorded by Laurie, and the tapes and transcripts destroyed according to CSIS’s usual practice at the time, steps that at trial were found to constitute a violation of the accused’s *Charter* rights. When HQ finally made a decision, it provided no clear indication to its BC Region of what the decision was, leaving the source handler in the dark about what would happen to his source. HQ provided no instructions to stop contact with Ms. E, with the result that the Laurie interviews, and the destruction of tapes and transcripts, continued. HQ also provided no instructions about the types of records of the interviews which were to be prepared and maintained, given the criminal nature of the information.

In 1987, CSIS HQ provided only verbal information about Ms. E to the RCMP, and did not preserve any record of the nature of the information passed. No written documents were provided. The interview reports were not provided, even in edited or redacted form. No indication of the number of interviews conducted with the source or of their timing in relation to the events related by the source was provided. The source was not identified, with the result that the RCMP could not interview her itself to obtain more information while CSIS contact with the source continued.

On the other hand, the RCMP failed to follow up on what little information was provided. Having received information indicating that Bagri sought to borrow a car to go to the airport the night before the bombing, the RCMP took no further action once it was told the source could not identify the persons accompanying Bagri. When the file was reviewed many years later, it was noted that “...no documents could be found to indicate that anything was done with this information during 1988 and 1989” and there was no indication about “... why someone did not ask more questions of CSIS in 1987.”⁶¹⁶

1990: The RCMP “Discovers” the Ms. E Information

The Watt MacKay Report

In the late 1980s, the RCMP Deputy Commissioner of Operations ordered that a review of the Air India investigation be conducted to ensure that “...all

⁶¹⁴ Exhibit P-101 CAA0500; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7465.

⁶¹⁵ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7464-7466.

⁶¹⁶ Exhibit P-101 CAA1045(i), pp. 1-2.

appropriate avenues of this investigation have been explored to the extent possible.”⁶¹⁷ Insp. B.G. Watt and Insp. R.E. MacKay reviewed the files held in the Divisions and at HQ, and in 1989 they produced a report referred to as the Watt MacKay report.⁶¹⁸ A draft of the report was circulated to all the Task Forces involved in 1989, and then comments and suggested actions from the divisional analysts were added to the final version of the report. The Watt MacKay report identified issues that were viewed as still outstanding in the investigation. It was organized according to the suggested priority to be afforded each outstanding issue: first, items which required initial or follow-up investigation; second, items which “should be considered” for investigation or follow-up; third, items of “minimal investigative value”; and finally, information of interest. Under the second group – issues which “should be considered” for action – issue (w) was devoted to Ms. E.⁶¹⁹

Watt and MacKay mentioned the “...undocumented CSIS information” about Bagri visiting a Vancouver CSIS source to borrow a car on June 22, 1985, and asked how much detail was available about Bagri’s arrival, his appearance, his travel companions, his vehicle, etc. They asked whether the “material witness” aspect should be pushed with CSIS. Interestingly, they also asked whether this was the “...same incident where Bagri arrived late at night and asked to leave some suitcases for a while?” The E Division analyst commented that efforts to obtain more information about the RCMP HQ information about the request to borrow the car “...were not successful.” The analyst noted that no direct inquiry had been made of the CSIS BC Region, where the information likely originated, and that this avenue could be pursued. Finally, he noted that, according to his research, he could identify no late night visit where Bagri asked to leave suitcases. He added that the only late night visit on file involving Bagri was to his friend, Ms. E, but that there was no information indicating that he had asked to leave suitcases. The “anticipated action” included in the Watt MacKay report for this issue was to contact the CSIS BC Region and request “complete details” about the request to borrow the car.⁶²⁰

The RCMP Approaches CSIS about the Ms. E Information

Cpl. Rick Rautio and Cst. Bart Blachford were members of the E Division National Security Investigations Section (NSIS), which was then in charge of the Air India investigation, and were tasked with following up on the Watt MacKay report recommendations.⁶²¹ They prepared a list of questions for CSIS which was transmitted to CSIS BC Region on July 9, 1990, in a letter signed by Insp. Ron Dicks, Officer in Charge of E Division NSIS.⁶²² Further to issue 2(w) in the report, paragraph 6 of the letter requested “...complete details of the incident on 85

617 Exhibit P-101 CAF0343(i), p. 8.

618 Exhibit P-101 CAF0343(i); Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7566.

619 Exhibit P-101 CAF0343(i), pp. 8, 9, 35.

620 Exhibit P-101 CAF0343(i), p. 35.

621 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7735. See also Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7568.

622 Exhibit P-101 CAA0773; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7735.

JUN 22 when Ajaib Bagri approached a CSIS source in Vancouver to borrow a car.⁶²³ The CSIS BC Region forwarded the request to CSIS HQ with a note that the Region would be writing separately about paragraph 6 and requesting HQ's input about the response.⁶²⁴ Shortly afterwards, John Stevenson, the BC Region CT Unit Head, reviewed the information on file about Ms. E.⁶²⁵

On July 25th, Rautio and Blachford went to the CSIS offices and perused records about the questions asked in Dicks's letter. Records about paragraph 6 of the letter were not made available however, as BC Region "...left the dissemination of that information to HQ."⁶²⁶ In the following week, the CSIS BC Region wrote to HQ and advised that the Ms. E information relevant to paragraph 6 of the RCMP request was "...not passed to the RCMP locally," and that the decision of whether to pass it would be left to HQ. Other questions were to be answered directly by the BC Region, but the RCMP was told that paragraph 6 would be addressed by CSIS HQ. The Region reminded HQ that the investigator who used to deal with Ms. E, Laurie, was now an RCMP member.⁶²⁷

In a letter dated September 27, 1990, addressed to RCMP HQ, CSIS HQ provided answers to the RCMP questions, including paragraph 6 of the RCMP request.⁶²⁸ The letter contained a two-paragraph summary of the Ms. E information, extracted from Laurie's reports about his interviews with Ms. E. The information provided included a detailed description of Bagri's request to borrow the car, limited information about his previous association with Ms. E (simply stating he used her car regularly), and information about Bagri's visits to Ms. E after the bombing, including the threat he uttered when discussing the "secrets" they shared.⁶²⁹ Ms. E's identity was not provided, nor were any details about her interaction with CSIS, her previous interviews with the RCMP, nor any of the additional information she provided about Bagri and Parmar.

On October 9, 1990, RCMP HQ transmitted the CSIS response to E Division NSIS.⁶³⁰ On the same day, Blachford compared the information found in the 1987 RCMP HQ correspondence about this matter, which simply stated that "...there may have been a mention of luggage but the source does not clearly recall,"⁶³¹ with the two paragraphs now sent by CSIS, noting that a "lot of new details" were provided, and concluding: "...question of course is where was all this info before?"⁶³² Blachford was of the view that the information passed in 1987 was "...scant and contained very little content or context" when compared to the information now provided in response to the Watt MacKay questions.⁶³³

623 Exhibit P-101 CAA0773, p. 2. See also Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7568-7569.

624 Exhibit P-101 CAB0838, p. 3.

625 Exhibit P-101 CAF0351.

626 Exhibit P-101 CAF0432, pp. 1-2.

627 Exhibit P-101 CAF0352, pp. 1-2.

628 Exhibit P-101 CAA0777.

629 Exhibit P-101 CAA0777, pp. 4-5.

630 Exhibit P-101 CAF0353.

631 Exhibit P-101 CAA0615.

632 Exhibit P-101 CAA0781(i), p. 1; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7733-7735.

633 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7737.

Later in the day on October 9th, Dicks wrote to RCMP HQ about this matter.⁶³⁴ He attached the three pieces of correspondence between HQ and E Division from 1987, in which HQ first transmitted CSIS's response that their source could not identify the UMs who were to accompany Bagri to the airport,⁶³⁵ and indicated that there was "...no hard copy record" of the CSIS intelligence.⁶³⁶ Dicks explained that item 6 of the latest CSIS response to the Watt MacKay questions was analyzed in light of the 1987 correspondence. He commented, "...you will readily discern considerable material difference between what was reported in 1987 to what is now reported on pages 5 + 6 [item 6]." Dicks advised that he asked Cummins about his recollection. Cummins explained that, at the time, RCMP HQ had wanted to have the CSIS source identify the individuals Bagri took to the airport by viewing photographs. He said that, because the source had not seen anyone and "...in the absence of any additional information, the matter was not pursued further."⁶³⁷

Dicks pointed to the information in the latest CSIS response, which indicated that the source "...was quite afraid of Bagri and sensed his intentions" by the time Bagri made the request to borrow the car. He noted that now that such specific information was provided by CSIS, E Division would "...eventually want to vigorously investigate what CSIS source felt, were Bagri's 'INTENTIONS.'" Dicks indicated in conclusion that he did not want CSIS approached about this at that time, but requested that HQ files be researched and that Hart be canvassed for "...any light he may be able to cast on the developments as they occurred in 1987."⁶³⁸ Dicks explained in testimony that he felt that the information just received from CSIS was significant and could have a material impact on the Air India investigation, but that he wanted to understand clearly what information the RCMP already had before seeking additional information from CSIS.⁶³⁹

On the next day, October 10, 1990, RCMP HQ replied to Dicks' message.⁶⁴⁰ HQ said they concurred with E Division's interest in the CSIS information, and that a review of HQ files had revealed no additional information. HQ reported that Hart recalled receiving the information during a meeting at CSIS HQ on another subject. He indicated that "...it was the position of this HQ at the time given the fact source did not see the other two UMs that source could not identify them and given the fact source did not wish to meet with RCMP members this issue could not be further pursued." HQ then noted that both Hart and HQ Supt. Neil Pouliot were now of the view that, given the information provided by CSIS in response to the Watt MacKay questions, the issue "...deserves further examination." HQ finally noted that CSIS would not be approached for the time being, but that consideration should be given "in the near future" to making a request to CSIS for access to the source "...for a full police interview" as "...it may well be that source could provide missing link in this investigation."⁶⁴¹

634 Exhibit P-101 CAA0779.

635 Exhibit P-101 CAA0610, CAF0356, p. 2.

636 Exhibit P-101 CAA0615.

637 Exhibit P-101 CAA0779, pp. 1-3.

638 Exhibit P-101 CAA0779, p. 3.

639 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7576-7577.

640 Exhibit P-101 CAF0421.

641 Exhibit P-101 CAF0421, pp. 2-3.

Before the HQ message was sent to the Division, Dicks spoke with Pouliot and Hart of HQ.⁶⁴² As a result of those discussions, a modified version of the HQ message was sent to E Division.⁶⁴³ It contained only part of Hart's explanation about why the information was not pursued in 1987, cutting out the passage about the source's unwillingness to speak to the RCMP, and then mentioning that the issue should be further examined and that the E Division request that CSIS be approached would be adhered to "...re: access to the source for full police interview."⁶⁴⁴ E Division replied on the same day, indicating that Dicks would approach CSIS the next morning to discuss the "revelation" contained in the letter responding to the Watt MacKay questions. Dicks was to point out to CSIS the need for the RCMP to have direct contact with the source handlers and "related material" in order to have "...an absolutely clear understanding of the information as it currently exists." Dicks also intended to make it clear that he expected CSIS "...to use any persuasion possible to convince the source of the importance of speaking with the RCMP." The Division requested that HQ also raise the issue with CSIS HQ "...to co-ordinate with the E NSIS approach."⁶⁴⁵

The following morning, on October 11, 1990, Dicks and Wall of E Division met with members of the CSIS BC Region.⁶⁴⁶ At the time, the RCMP did not know the identity of the CSIS source or source handler.⁶⁴⁷ Stevenson, who was present at the meeting and prepared a note summarizing the discussions, noted that the "main thrust" of the RCMP's interest was the recent CSIS correspondence about the "...source from whom Ajaib Singh Bagri wished to borrow a car on or about the time of Air India (85/06)."⁶⁴⁸ At the Inquiry hearings, he explained that both the RCMP officers "were angry" and were accusing CSIS "...of holding back of information." According to Stevenson, the exchanges during the meeting were "...spirited and bordering on hostile."⁶⁴⁹ He said:

...by this time I'm a little rusty on that source, Ms. E, we were just talking about, because I had been off doing other things, and to be holding back information on that particular source and it's information that they felt they should have had. They were a bit – perhaps it's fairly strong, but I think there were intimations that CSIS was obstructing justice.⁶⁵⁰

In his note about the meeting, Stevenson indicated that the RCMP request on this issue had been received by the BC Region in July, but that the Region "...purposefully refrained from addressing or discussing the sensitive [redacted]

⁶⁴² Exhibit P-101 CAA0782, p. 1.

⁶⁴³ Exhibit P-101 CAA0783; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7580-7581.

⁶⁴⁴ Exhibit P-101 CAA0783.

⁶⁴⁵ Exhibit P-101 CAA0782, pp. 1-2.

⁶⁴⁶ Exhibit P-101 CAF0404; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7584-7585.

⁶⁴⁷ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7585.

⁶⁴⁸ Exhibit P-101 CAF0404, p. 1.

⁶⁴⁹ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7688.

⁶⁵⁰ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7688.

issue but left that to our HQ colleagues to address with RCMP HQ.” He explained that the current meeting was the result of the CSIS HQ response having been received by E Division. He wrote that Dicks advised that a message had been sent to RCMP HQ about this issue and, in particular, the need to “...explore further the particular relevance of the info that the source had become ‘aware of his intentions’ i.e. Bagri’s intentions.” He noted that the RCMP asked permission to talk to the source handler, as they were interested in “...learning about what exactly the source knew and when the source knew about it.”⁶⁵¹

Stevenson also reported that the RCMP members stated that “...it would be foolish to think that [RCMP] discussion with the source automatically mean[s] that the source is going to court.” Stevenson commented, “I quite frankly don’t believe them.”⁶⁵² Dicks did not have a specific recollection of the CSIS members raising the issue of possible court proceedings, but explained that this issue became a concern in all cases where CSIS information coming from a human source was received.⁶⁵³ Stevenson explained that “...my take on it at that time was that the RCMP would eventually have that individual in court” because of her link with Bagri.⁶⁵⁴

Stevenson noted that “...reservations about this source’s willingness to meet with the RCMP were expressed by CSIS” during the meeting, and that the RCMP was told that CSIS HQ would be the route to channel RCMP correspondence in this respect.⁶⁵⁵ He explained:

What I indicated to the two gentlemen during that meeting, I remember saying to them – I’m pretty sure I remember saying to them – the source doesn’t want to meet with you. The other thing I found strange at the time and I don’t know if Murray Nicholson told me, but someone had told me they don’t realize that they have already spoken to this individual. So in other words, it has kind of come full circle.⁶⁵⁶

Dicks had no recollection of CSIS raising the fact during the meeting that their source had already been interviewed by the RCMP.⁶⁵⁷ Wall showed CSIS the 1987 telex about the source’s inability to identify the UMs accompanying Bagri, and Stevenson noted the file number for this previous reference “surfaced by Wall.” Dicks discussed the need to understand the “level of knowledge” of the source at the time of Air India. Stevenson noted that RCMP correspondence would be received by the CSIS BC Chief CT on the same day.⁶⁵⁸ Finally, Stevenson commented in his note:

⁶⁵¹ Exhibit P-101 CAF0404, pp. 1-3.

⁶⁵² Exhibit P-101 CAF0404, p. 3.

⁶⁵³ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7586-7587.

⁶⁵⁴ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7690.

⁶⁵⁵ Exhibit P-101 CAF0404, p. 4.

⁶⁵⁶ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7690.

⁶⁵⁷ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7588-7589.

⁶⁵⁸ Exhibit P-101 CAF0404, p. 4.

My feeling is that we are in all likelihood going to be involved in a similar situation in terms of source [redacted] & these individuals will not rest, or desist until they have interviewed the source & satisfied their curiosity as to the source's identity. As I mentioned to you, I believe they did interview this individual after Air India, however did not follow up on it. One of these days, they will surprise us & develop a source or an asset of their own.⁶⁵⁹

Stevenson explained before the Inquiry that the "similar situation" he was alluding to referred to another individual that the RCMP wished to interview despite indications that the individual was unwilling to speak to the RCMP rather than CSIS.⁶⁶⁰

After the meeting, Dicks wrote to the CSIS BC Region Chief of CT. He commented that the information recently provided in item 6 of the CSIS response to the Watt MacKay questions was "far more elaborate" than the information provided in the December 1987 CSIS message, which advised that their source could not identify the UMs who were to accompany Bagri.⁶⁶¹ He emphasized the "absolute necessity" that the RCMP ascertain the extent of the source's knowledge, "direct and indirect," "at the time and now."⁶⁶² He pointed out that "...this need, although high at all times, is particularly acute in light of the ongoing Reyat trial." Dicks requested permission to discuss the matter "at length" with the source handler and indicated that it could subsequently become necessary to discuss the matter directly with the source. If the source was unwilling, Dicks noted that "special considerations" could be arranged in advance. He reminded CSIS that it was "...obviously within the interest of CSIS and the RCMP, that CSIS should use whatever persuasion possible, to convince the source of the importance of speaking with the RCMP."⁶⁶³ Dicks explained in testimony before the Inquiry that the considerations he had in mind at the time related to witness protection. He understood that these matters would have to be organized in advance, and he was prepared to consider making the necessary arrangements.⁶⁶⁴

Dicks transmitted a copy to RCMP HQ of his letter to CSIS, advising that the Reyat trial was shut down until October 22nd and that he hoped to "...have a handle on this situation before then." He asked HQ to advise of the outcome of their discussions with CSIS HQ.⁶⁶⁵

On the following day, October 12, 1990, Blachford reviewed a package of CSIS surveillance information received in June 1990. He noted that according to this information, an UM was dropped off in Vancouver late at night on June

⁶⁵⁹ Exhibit P-101 CAF0404, p. 5; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7692.

⁶⁶⁰ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7691-7692.

⁶⁶¹ Exhibit P-101 CAA0786, p. 1.

⁶⁶² Exhibit P-101 CAA0796, p. 1.

⁶⁶³ Exhibit P-101 CAA0786, pp. 1-2.

⁶⁶⁴ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7591.

⁶⁶⁵ Exhibit P-101 CAA0785.

9, 1985. A review of RCMP tip 2155 confirmed that the UM was in fact Bagri, and that he visited Ms. E on that evening. Blachford noted the link between this information and the Watt MacKay issue 2(w).⁶⁶⁶ Since the Watt MacKay report mentioned that the only late night visit by Bagri in June 1985 was to his friend Ms. E, the possible link between the CSIS source behind the information which was now being obtained from CSIS and Ms. E was finally becoming clear to the RCMP. Based on the information already in the RCMP's possession, the Task Force inferred that the CSIS source behind the information provided in response to the Watt MacKay questions was Ms. E. From his review of tip 2155, Blachford learned that there had been at least two approaches to Ms. E by the RCMP in 1985.⁶⁶⁷ He reviewed the documents detailing the 1985 interviews with Ms. E and her landlord as a result of the CSIS June 9, 1985 surveillance information.⁶⁶⁸ However, he did not remember seeing the information about Ms. E's BK application form in the file.⁶⁶⁹

On October 15, 1990, Cpl. Pete Goulet of RCMP HQ wrote to E Division in response to Dicks's October 11th message transmitting a copy of his letter to CSIS.⁶⁷⁰ He reported that, along with C/Supt Thivierge and Supt. Pouliot of HQ, he met with CSIS HQ personnel, including Dexter, about Dicks's request for access to the source handler and, eventually, to the source. The CSIS members explained that they had first learned of Bagri's request to borrow the source's car in 1987 and that, at that time, "...the details were provided to C/Supt. Cummins and Insp. Hart during a verbal conversation at CSIS HQ." They said that the source was "only under development" in 1987 and that the source handler only had a few meetings with the source before putting an end to all contact because of a transfer of the handler to another unit. The CSIS members further advised that the relationship between Bagri and the source was "...of a sexual nature" and that no meetings were held at the source's residence and no other individuals were seen by the source when Bagri asked for the car. Goulet explained that the information from CSIS's source could prove to be invaluable, especially since Bagri was "...in a bind as to how to get the luggage delivered to the airport following reconsideration by the initial mules." The CSIS members agreed, but felt that the source would be of "...little use already having refused to talk with any police officer." In any event, they agreed to have the RCMP interview the source handler, and advised that it was Laurie, now an RCMP member stationed in Richmond, BC. They asked, however, that the RCMP make no immediate direct contact with the source. They wished to seek a legal opinion prior to agreeing to the RCMP approach, but were optimistic that it would be possible and intended to recommend this course of action.⁶⁷¹

Goulet asked that E Division keep HQ advised of the results of their interview with Laurie so that HQ could be up-to-date in their future discussions with CSIS.

⁶⁶⁶ Exhibit P-101 CAA0781(i), pp. 2-3.

⁶⁶⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7738-7739, 7750.

⁶⁶⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7739-7745. See, in this section, "1985: Ms. E Questioned by the RCMP."

⁶⁶⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7747.

⁶⁷⁰ Exhibit P-101 CAA0787(i).

⁶⁷¹ Exhibit P-101 CAA0787(i), pp. 1-3.

He also noted that the Director of the RCMP National Security Investigations Directorate (NSID) at HQ was “quite pleased” with the cooperation received from CSIS in this matter and that HQ was expecting a favourable reply shortly about direct contact with the source.⁶⁷²

The following morning, Blachford began his work shift by reviewing Goulet’s telex report on the latest meeting with CSIS at the HQ level.⁶⁷³ His colleague, Rautio, spoke with Goulet to clarify some of the information contained in the HQ message.⁶⁷⁴ About the “details,” which CSIS alleged were conveyed to Cummins and Hart in 1987, Goulet explained that “...very little info was committed to paper about the info that was received.” However, Hart “...vaguely recalls that there was some mention of luggage being delivered to the airport and the vehicle being returned.” According to Goulet, this information was passed on September 17, 1987.⁶⁷⁵ Goulet also advised that his statement that Bagri was “in a bind” to get to the airport because of “...reconsideration by the initial mules”⁶⁷⁶ was simply based on his own opinion as a result of analyzing the file, and not confirmed by additional information in HQ’s possession.⁶⁷⁷

CSIS Tries to Prove that It Passed the Information in 1987

Also on the morning of October 16th, Dexter, the head of the BK Unit at CSIS HQ,⁶⁷⁸ called Stevenson at the CSIS BC Region.⁶⁷⁹ Dexter said that HQ was “...most anxious to surface documentation which indicates that info relating to source [REDACTED] (developed by Willie Laurie of Richmond Detachment) was passed to the RCMP,” in addition to “...the short paragraph which was passed at the HQ level in 1987.” Dexter added that he was told at CSIS HQ that Ms. E’s identity and her information about Bagri’s request to borrow her car had been passed to the RCMP in British Columbia in 1987. Apparently, James (“Jim”) Warren of CSIS HQ had informed RCMP Deputy Commissioner Donald Wilson of E Division, while he was visiting BC at the time. Dexter asked Stevenson to contact Laurie to find out what he could remember about the events and, in particular, the passing of information to the RCMP.⁶⁸⁰

Indeed, Laurie recalled that in October 1990, after he had rejoined the RCMP and had not heard about the Ms. E issue since, he received a phone call from Stevenson, one of his former supervisors at the CSIS BC Region.⁶⁸¹ Stevenson told him that the RCMP would be contacting him about Ms. E, that they knew about her information, and that his name had been provided to the RCMP as the handler. Laurie was told that he should cooperate with the RCMP “...in any way

⁶⁷² Exhibit P-101 CAA0787(i), p. 4.

⁶⁷³ Exhibit P-101 CAA0781(i), p. 4.

⁶⁷⁴ Exhibit P-101 CAA0781(i), p. 4, CAA0792(i), pp. 1-2.

⁶⁷⁵ Exhibit P-101 CAA0792(i), p. 1.

⁶⁷⁶ Exhibit P-101 CAA0787(i), p. 2.

⁶⁷⁷ Exhibit P-101 CAA0781(i), p. 4, CAA0792(i), pp. 1-2.

⁶⁷⁸ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7694.

⁶⁷⁹ Exhibit P-101 CAF0355.

⁶⁸⁰ Exhibit P-101 CAF0355, pp. 1-2.

⁶⁸¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7469; Exhibit P-101 CAF0355, p. 3.

that [he] could” when they contacted him. Laurie recalled that there seemed to be a sense of urgency surrounding the whole matter: “...for some reason, this information appeared to be new to [the RCMP] and they wished to develop what they could quickly.” He could not recall with certainty whether Stevenson explicitly said that the RCMP was aware of Ms. E’s identity. However, it was what he understood, given the context of the conversation and the urgency. To him, it was clear that the purpose of Stevenson’s call was to authorize him to assist the RCMP in any way, including revealing Ms. E’s identity.⁶⁸² Stevenson testified that the purpose of his call was first to find out what Laurie could recall about who might have passed the Ms. E information to the RCMP in 1987. He was also tasked to “...advise Laurie to cooperate with the RCMP;” but indicated that he did not advise Laurie that he was authorized to divulge the identity of the source.⁶⁸³ He explained:

MR. STEVENSON: I had no authority and no one that I was aware of would have had authority for Willie to tell or reveal the identity. Section 18 of the Act doesn’t allow that.

MR. FREIMAN: And just to remind us, section 18 of the Act says what?

MR. STEVENSON: That one is not allowed to divulge the identity of sources and covert employees of the Service, if my memory serves me correctly.⁶⁸⁴

Stevenson reported to his HQ that he managed to reach Laurie prior to his interview with the RCMP.⁶⁸⁵ He noted that Laurie informed him that his recollection was that Gareau had passed the information about Bagri’s request to borrow the car to the RCMP, but without revealing Ms. E’s identity.⁶⁸⁶ Stevenson noted:

Willie said that at the time he (Willie) was opposed to the passing of any information, however, Gareau was visiting the Region at the time, and indicated that he as chief would do it if he wanted to. Willie’s recollection is that Gareau said he had done it himself.⁶⁸⁷

According to Stevenson’s note, Laurie also said that he was under the impression that the information had been passed to an RCMP Inspector at the HQ level and that he did not recall Warren passing the information to Wilson.⁶⁸⁸

682 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7469, 7472.

683 Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7695-7697, 7701.

684 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7697.

685 Exhibit P-101 CAF0355, p. 3.

686 Exhibit P-101 CAF0355, p. 3.

687 Exhibit P-101 CAF0355, pp. 3-4.

688 Exhibit P-101 CAF0355, p. 4.

Stevenson discussed this with Dexter of CSIS HQ, who was apparently worried about the uncertainty surrounding the passing of the information. Stevenson noted:

Bill's [Mr. Dexter] fear is that we as a Service are going to finish up with egg on our face over this one, since we cannot surface the documentation to substantiate our claim to the RCMP that the info was passed.⁶⁸⁹

Stevenson explained in testimony that, for Dexter, "...there seemed to be something missing in this loop here as to who had passed the information." It was assumed that Ms. E's information about Bagri's request to borrow the car had been passed, but neither Dexter at HQ, nor the CSIS BC Region could surface specific documentation demonstrating this. There was a sensitivity or concern that, as a result of this lack of "...paper or verbal trail," the RCMP might be able to claim that CSIS had not been forthcoming with its information.⁶⁹⁰

Laurie Interviewed by RCMP Officers

While CSIS was busy trying to reconstruct the 1987 events, Laurie was being interviewed by Rautio and Blachford about Ms. E's information.⁶⁹¹ Laurie testified that he received a call from Rautio shortly after Stevenson's call on October 16th.⁶⁹² A meeting with the E Division NSIS members was arranged for 9:30 AM and the interview proceeded until 11:20 AM.⁶⁹³ Laurie was shown the 1990 two-paragraph CSIS response to the RCMP inquiries about the Ms. E information and he confirmed that the contents were extracted from the reports he authored about his source.⁶⁹⁴ At the time, however, Laurie did not have his reports with him. He had not requested a copy when speaking to Stevenson and no one from CSIS offered him a copy prior to his meeting with the RCMP.⁶⁹⁵ Blachford testified that the RCMP officers were already aware that Laurie did not have notes of his interviews with his source and he could not recall any discussions about attempting to gain access to the reports Laurie had prepared while at CSIS.⁶⁹⁶ Nevertheless, Laurie was questioned about the Ms. E information and confirmed that the contents of the CSIS response to the Watt MacKay questions were accurate.⁶⁹⁷ He explained that his source was "positive" that the request to borrow the car was the night before the Air India/Narita incidents,⁶⁹⁸ that his source had not seen the UMs who were to accompany Bagri to the airport and that the source had been "...quite afraid of Bagri" by the time he had made his

689 Exhibit P-101 CAF0355, p. 4.

690 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7699.

691 Exhibit P-101 CAA0781(i), p. 4.

692 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472.

693 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472; Exhibit P-101 CAA0781(i), pp. 4-7.

694 Exhibit P-101 CAA0781(i), p. 4, CAA0792(i), p. 2; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7473-7474.

695 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7474.

696 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7759-7760.

697 Exhibit P-101 CAA0781(i), p. 5; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7752.

698 Exhibit P-101 CAA0792(i), pp. 2-3.

request,⁶⁹⁹ as she knew that he was violent and he had told her "...he could have anybody killed if he wanted to." Laurie explained the comment about Ms. E "sens[ing]" Bagri's intentions as relating to a strong feeling that Bagri was "...up to no good," but indicated that the source had no information about specific actions Bagri was going to take. Laurie said that when his source refused her car, Bagri told her that only the luggage was going on the plane, implying that he would return her car. Immediately after the Air India/Narita incidents, Laurie said the source had "no doubt" that Bagri was directly involved in putting the bags on the plane.⁷⁰⁰

Laurie also provided additional information, such as the fact that his source thought that Bagri arrived in a "big blue car," which Laurie said during the interview would have been the description of the vehicle Parmar was driving at the time.⁷⁰¹ He specified that Ms. E did not let Bagri in when he requested her car, but spoke to him "...through the door with a chain across it."⁷⁰² Laurie said that Ms. E did not see who else was in the vehicle, or even how many others were in the vehicle, that dropped off Bagri, but that Bagri may have told her that "...the two guys are from Toronto." He added that Ms. E told Bagri that she needed her car for work.⁷⁰³ During his testimony at the trial of Malik and Bagri, when he finally had an opportunity to compare this information with what he had written in the reports he prepared for CSIS shortly after the interviews, Laurie admitted that Ms. E had never in fact told him that she had said to Bagri that she needed her car for work and had never in fact indicated that she saw a blue car.⁷⁰⁴

During the interview with the RCMP, Laurie told the officers how emotional Ms. E was about the whole matter and said he feared for her safety and felt that she would be suicidal if her information got out. He explained that Bagri came back twice after the June 1985 visit, once to borrow her car, and another time to tell her that they shared "a couple of secrets" or "two secrets," one being "... the knowledge that Bagri was involved with A.I./Narita" and another possibly referring to the relationship between Bagri and Ms. E. Laurie also discussed the information about Ms. E assisting Bagri in getting "normal" or western-looking clothes and in hemming a pair of pants shortly before he travelled to the United States. On his return, Bagri commented that it was a "close call." Laurie explained that he had researched the time period and that it coincided with a conspiracy to murder the Indian Prime Minister which was then focussed on an Indian minister who was in New Orleans for eye surgery. Laurie said that a number of individuals had been arrested but that "about three" had escaped.⁷⁰⁵

According to Laurie, it was clear during the meeting that the RCMP members involved already knew Ms. E's identity.⁷⁰⁶ Blachford testified that going into the

⁶⁹⁹ Exhibit P-101 CAA0777, p. 5. See also Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7474-7475.

⁷⁰⁰ Exhibit P-101 CAA0553(i), p. 2, CAA0792(i), pp. 3-5.

⁷⁰¹ Exhibit P-101 CAA0781(i), p. 5, CAA0792(i), p. 4.

⁷⁰² Exhibit P-101 CAA0781(i), p. 5.

⁷⁰³ Exhibit P-101 CAA0792(i), p. 4.

⁷⁰⁴ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 47-49.

⁷⁰⁵ Exhibit P-101 CAA0781(i), pp. 5-7, CAA0792(i), pp. 4-6.

⁷⁰⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472.

interview, they suspected the source was Ms. E, but this was not confirmed.⁷⁰⁷ Eventually, the RCMP officers advised Laurie that "...we were aware of the source's identity already."⁷⁰⁸ After the interview, Laurie told Stevenson that the identity of the source was known to the RCMP and "...he [Laurie] may have said" also that "...he confirmed it for them."⁷⁰⁹ During his testimony at the Inquiry hearings, Laurie was of the view that he had, in fact, confirmed Ms. E's identity for the RCMP, based on the notes of the meeting he had subsequently seen.⁷¹⁰ Blachford's notes for the interview with Laurie initially refer to Ms. E only as "the source," in a gender-neutral manner. Then, when reporting Laurie's answers about the content of the information and on several occasions thereafter, "the source" is described as a "she" or "her."⁷¹¹ However, the notes do not state that Laurie confirmed the source's identity.

At the trial of Malik and Bagri, Rautio testified that Laurie did not, in fact, confirm Ms. E's identity during the interview. Immediately after the interview with Laurie, E Division did indicate that they were ready to approach the source, but Rautio explained that they were referring to the person interviewed by the RCMP in 1985, whom they suspected was Laurie's source.⁷¹² He said that, while Laurie agreed to provide an introduction, it was always the RCMP's intention to interview the person they had interviewed in 1985 and ask her directly if she was the CSIS source.⁷¹³ Blachford also indicated, in testimony before the Inquiry, that Laurie did not reveal his source's identity during the interview.⁷¹⁴ He explained that when he and Rautio told Laurie they knew who the source was, they may have alluded to her name, but they were "...aware of the restrictions that were on Laurie" and did not ask him to confirm or deny Ms. E's identity. According to Blachford, the RCMP investigators were not to obtain the name of the source from Laurie during this first interview with him. Had they gone and interviewed Ms. E without CSIS's permission, he felt that they would not have been able to use the information learned in the interview with Laurie, but only the information already in the RCMP's possession and that, in that sense, "...it would simply be another cold approach on Ms. E," though they could have asked her if she had provided information to "any other agency."⁷¹⁵

During Laurie's interview with Rautio and Blachford, it was clear that the Ms. E information was not previously known to the RCMP members. At the beginning, Laurie said they went as far as to suggest that he had committed "some sort of offence" by not revealing his knowledge of the Ms. E information, especially now that he was an RCMP member. Laurie responded that he disagreed, but was

⁷⁰⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7750.

⁷⁰⁸ Exhibit P-101 CAA0781(i), p. 6. See also Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 49; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7755.

⁷⁰⁹ Exhibit P-101 CAF0357, p. 1.

⁷¹⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472.

⁷¹¹ Exhibit P-101 CAA0781(i), pp. 4-6.

⁷¹² Exhibit P-244, vol. 6 (January 9, 2004 Transcript), pp. 45-46.

⁷¹³ Exhibit P-244, vol. 6 (January 9, 2004 Transcript), p. 46. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7756.

⁷¹⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7755.

⁷¹⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7755-7759.

willing to cooperate with the RCMP now. He felt the officers were not satisfied with his response and continued to be "...unhappy that the CSIS had withheld this information."⁷¹⁶ He commented:

MR. LAURIE: This concerns me because in the initial stages, the RCMP weren't focussed on Ms. E, or even the information. They were focussed on me.

MR. KAPOOR: Sorry. When you say the initial stages, you mean the initial stages of the interview?

MR. LAURIE: Of the interview.

MR. KAPOOR: They were pointing a finger at you?

MR. LAURIE: At me, for not passing it.

MR. KAPOOR: Okay. And what does the – can you help me with what the comment "dangerous world out there" has to do with you?

MR. LAURIE: There's lots of bad things that happen. You know, at this point in my service, I'm a constable again in the RCMP. I'm driving a marked police car and I'm carrying a gun all the time, and for 12 hours a day I'm going from one dangerous thing to another. There's lots of things to me that are more dangerous than this particular episode.

MR. KAPOOR: Okay.

MR. LAURIE: I think when the RCMP raise their tone to me and start intimating that I could be perhaps in trouble, I think they were really intending that comment for somebody who was junior and could have been afraid of them, but frankly, I was interested in pursuing a positive aspect of what's going on.⁷¹⁷

According to the RCMP notes, Laurie explained to the officers that he always thought the information was related to Air India/Narita and should "go to the police," while protecting the source's identity, but, at the time, this was not done because "...it would not prove the offence."⁷¹⁸ Laurie said that after further discussions in September or October 1987, it was decided that "...something to the effect of that the luggage was making the trip but the people were not"

⁷¹⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7478.

⁷¹⁷ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7480-7481.

⁷¹⁸ Exhibit P-101 CAA0781(i), p. 5: These are Blachford's notes about the interview with Laurie.

would be passed to the RCMP.⁷¹⁹ He advised that he had been told that the information was passed verbally by Gareau in HQ.⁷²⁰ He confirmed that Gareau had told him that "...he passed the info that only the luggage would go."⁷²¹ He added that he was told by Stevenson that it was probably Warren of CSIS who in fact passed the information.⁷²² In testimony, Laurie explained that he had always been under the impression that the Ms. E information had been passed in late 1987, because of what Gareau had told him, but that the RCMP officers interviewing him had clearly not been previously aware of the information.⁷²³ It was "very much" a "revelation" for Laurie when he found out in 1990 that the RCMP did not previously have all of his Ms. E information.⁷²⁴ Blachford testified that, when he interviewed Laurie, he understood him to say that he had personally wanted the information passed to the RCMP, but that CSIS would not agree to pass it. Laurie's statement that information was passed verbally by CSIS accorded with his review of the file, but he indicated that the nature of the information which was passed as revealed by the file was not as extensive as what Laurie thought had been passed.⁷²⁵

The RCMP officers noted that, during their interview with Laurie, he explained that he had been required to stop developing Ms. E as a source "...because she was only providing criminal info ... not intelligence" and that he had not talked to her in approximately two years.⁷²⁶ At the Inquiry hearings, Laurie specified that he was not in fact instructed to stop contacting Ms. E, but simply to stop using her "...for criminal information or intelligence," as opposed to other information which he could and did continue to elicit from her.⁷²⁷

Laurie also explained during his interview with Rautio and Blachford that Ms. E was afraid of Bagri. She was convinced he had put the bomb on the plane; she believed him to be violent; he had told her that he had had people beaten up and could have people killed; and she believed him.⁷²⁸ At the end of the interview, the RCMP officers told Laurie that E Division would "most likely" approach his source for an interview and that they might be requesting that Laurie "...be available to provide an introduction."⁷²⁹

CSIS/RCMP Debates about the Information Passed in 1987

After his interview with the RCMP, Laurie spoke to Stevenson again. He told him that he "...would not be surprised" if there was further dialogue, probably

719 Exhibit P-101 CAA0781(i), pp. 5-6.

720 Exhibit P-101 CAA0781(i), p. 6; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7475. See also Exhibit P-101 CAA0792(i), p. 6.

721 Exhibit P-101 CAA0781(i), p. 7.

722 Exhibit P-101 CAA0792(i), p. 7.

723 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7475.

724 Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 13.

725 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7754-7755.

726 Exhibit P-101 CAA0781(i), p. 6. See also Exhibit P-101 CAA0792(i), p. 7.

727 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7528; Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 51-52.

728 Exhibit P-101 CAA0781(i), p. 6; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7475.

729 Exhibit P-101 CAA0792(i), p. 8.

“negative dialogue,” between the RCMP and CSIS as a result of the information obtained by the RCMP about Ms. E. He said that the RCMP asked him a series of questions, and that he would probably have to return once his information was further analyzed by the Force.⁷³⁰ Stevenson noted:

He [Laurie] is not overly concerned about this info coming to light now and commented that it is “a dangerous world out there”. While he was circumspect in his account, I believe he was indicating that he had told the RCMP that it was his belief that the info from source [REDACTED] had been passed to the RCMP at the HQ level by Mike Gareau of CSIS.⁷³¹

Laurie explained in testimony that, given the comments made by the RCMP officers about what they perceived as CSIS’s failure to pass on the Ms. E information, he expected the RCMP would “...go back to CSIS and say ‘why didn’t you provide this information to us earlier?’” He knew, however, that the RCMP were not really going to charge him with anything, because he had received the information in the course of his functions at CSIS. While the RCMP thought there was an oversight on CSIS’s part in not disclosing the information, Laurie knew that the information had been passed.⁷³²

Stevenson told Dexter of CSIS HQ about his conversation with Laurie the following day. Dexter said that CSIS HQ had still not found documentation confirming that the RCMP was advised of the Ms. E information, but that HQ was nevertheless drafting a letter to the RCMP “...giving them the assurance that it was passed verbally to them.”⁷³³ Stevenson noted:

He is hoping that they will then let the issue die and they will get on with their investigation.⁷³⁴

In his testimony before the Inquiry, Stevenson confirmed that his understanding was that, even if CSIS HQ did not know the details and could not find confirmation that the materials had been passed in 1987, they intended “...to write a letter to say we can assure you it was passed verbally in 1987 and just hope that the matter dies.”⁷³⁵

On October 18, 1990, CSIS was still busy reviewing its files and trying to sort out the facts about the passing of the Ms. E information in 1987. The BC Region Deputy Director General of Operations wrote to Stevenson that he had reviewed the materials relating to Ms. E and indicated that, about the reference from Gareau that Warren had passed the information to the Commanding Officer of E

⁷³⁰ Exhibit P-101 CAF0357, p. 1.

⁷³¹ Exhibit P-101 CAF0357, pp. 1-2.

⁷³² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7478-7480.

⁷³³ Exhibit P-101 CAF0357, p. 2.

⁷³⁴ Exhibit P-101 CAF0357, p. 2.

⁷³⁵ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7702-7703.

Division during a trip to BC, he remained of the view that Gareau was "...mixing this one up" with a meeting Warren had had with the RCMP on another matter. He asked to be kept informed of CSIS HQ's "...efforts to satisfy the RCMP."⁷³⁶

On October 22nd, CSIS HQ transmitted to RCMP HQ an official written response to the original RCMP message sent by Dicks on October 11th, which complained about the lack of details in the 1987 information compared to the new information received, and which requested access to the source handler and the source.⁷³⁷ CSIS indicated that, having reviewed their holdings "...and corroborated our findings by questioning those persons who were involved in the investigation," they were "certain" that the information contained in the response to the Watt MacKay questions had been "...passed verbally to your Force in 1987." CSIS stated that "...all the details of Bagri's approach to the source were provided, with the name of the source being protected due to the sensitivity of the handler/source relationship and the source's insistence on anonymity."⁷³⁸ At the Inquiry hearings, Stevenson testified that, to his knowledge, CSIS never did discover from its holdings who had passed information to the RCMP verbally in 1987 and never found confirmation that information other than the "short paragraph" found in the 1987 telex to the RCMP was passed verbally.⁷³⁹

In its report to the Honourable Bob Rae in 2005, the RCMP noted that the Ms. E information "...was not relayed to the RCMP in a timely manner" by CSIS and that this affected the "rules/admissibility of evidence."⁷⁴⁰ CSIS took issue with this statement, and produced a response indicating that the RCMP statement was "simply incorrect." CSIS first noted that the RCMP had failed to mention that the Force itself had interviewed Ms. E twice shortly after the bombing in November and December 1985. Ms. E was not pleased with the RCMP visits and asked them to stop. CSIS then interviewed her in September and October 1987. She was adamant that she did not want to deal with the RCMP. CSIS maintained that it had informed the RCMP verbally in October 1987 of the information provided by Ms. E and had also responded to a related RCMP request for information in December 1987. CSIS concluded: "RCMP HQ decided not to pursue the issue, given that she would be a reluctant witness."⁷⁴¹

In response to the CSIS position, which was shared informally with the RCMP, that the Ms. E information had indeed been passed to Cummins and Hart during a meeting at CSIS HQ, the RCMP conducted file research and confirmed that this was the case. However, the RCMP analyst noted that, from the 1987 documents, it appeared that "...only 'certain' information was passed verbally." The analyst concluded that, because "...other information was not provided," the field investigators may not have appreciated the significance of the information "... which in the end pertains to perhaps the most significant witness against Bagri at trial."⁷⁴² He wrote:

⁷³⁶ Exhibit P-101 CAF0358.

⁷³⁷ Exhibit P-101 CAA0786.

⁷³⁸ Exhibit P-101 CAA0794(i), p. 1.

⁷³⁹ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7703.

⁷⁴⁰ Exhibit P-101 CAA0335, p. 29.

⁷⁴¹ Exhibit P-101 CAA1088, pp. 3-4.

⁷⁴² Exhibit P-101 CAA1045(i), p. 1.

The documentation does not give any indication why someone did not ask more questions of CSIS in 1987. Could have Cummins & Hart been of the belief that the CSIS source would not cooperate as a witness or that CSIS would never allow their source to be used in this manner? Therefore, the only way to further this evidence was through the occupants who were waiting in the vehicle while Bagri talked to the source.⁷⁴³

The 1987 documents only recorded that "...there may have been a mention of luggage however source does not clearly recall." HQ also wrote to E Division at the time that it had "no further info" about this matter.⁷⁴⁴ The RCMP analyst noted that this could have "...misled field investigators into believing this could not be pursued further."⁷⁴⁵

In fact, when Hart was asked in 1990 about his recollection of the information passed verbally by CSIS, he indicated that he "...vaguely recall[ed] that there was some mention of luggage being delivered to the airport and the vehicle being returned."⁷⁴⁶ This recollection, combined with the 1987 documents, demonstrates that CSIS did pass on verbally the essentials of the Ms. E information in 1987, including the request to borrow the car to go to the airport the night before the bombing and the comment that only the bags would be travelling. RCMP HQ did not document all of the information received verbally in its correspondence to E Division, and decided that the matter could not be pursued further because Ms. E could not identify the individuals accompanying Bagri and was not willing to speak to police.⁷⁴⁷

In 1987, the Ms. E issue was perceived as "a dead-end" by the HQ members in place at the time,⁷⁴⁸ while in 1990, the same information was now viewed as deserving "further examination"⁷⁴⁹ and needing to be "vigorously investigat[ed]".⁷⁵⁰ Dicks could not explain why more was not done by the RCMP in 1987. He acknowledged, however, that the handling of the Ms. E information in 1987 was something which would have been done "very differently" if given the opportunity to "redo this."⁷⁵¹

Blachford, currently a Staff Sergeant acting as the lead investigator in the continuing Air India police investigation, felt that the 1987 verbal passing of information should have been followed up by written correspondence from CSIS, given the significance of the information, rather than Hart having to go back to CSIS to ask about the identification of the individuals accompanying

743 Exhibit P-101 CAA1045(i), p. 2.

744 Exhibit P-101 CAA0615.

745 Exhibit P-101 CAA1045(i), p. 2.

746 Exhibit P-101 CAA0792(i), p. 1.

747 Exhibit P-101 CAF0421, pp. 2-3.

748 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7582.

749 Exhibit P-101 CAF0421, p. 3.

750 Exhibit P-101 CAA0779, p. 3.

751 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7630-7631.

Bagri.⁷⁵² Indeed, CSIS did not pass on the Ms. E information with complete details when it was received in 1987 and, even when the issue surfaced in 1990, CSIS did not provide access to the reports which were the only remaining records of the information provided by Ms. E. It is also troubling that CSIS made a decision to reassure the RCMP that complete details had been passed in 1987, when verifications in its own records and with its own present and former employees, in fact, had provided little clarity about what information and details were passed, and by whom.

The 1990 RCMP Interviews of Ms. E

While the interagency debates about the 1987 situation unfolded, the RCMP was also getting ready to conduct its own interview of Ms. E. Dicks sent a message to RCMP HQ on October 16, 1990, reporting on the interview with Laurie. He related that Laurie had explained that the CSIS response to paragraph 6 of the Watt MacKay questions contained “direct quotes” from some of the reports he had submitted when he was the handler for the source.⁷⁵³ He also reported that Laurie clarified that his source “...was positive that Bagri made the approach for the vehicle the evening before the Air India/Narita incidents.”⁷⁵⁴ As for the mention in the CSIS response that the source sensed Bagri’s intentions, Dicks reported that Laurie clarified that this related to a general strong suspicion on the part of the source that “...Bagri was up to something no-good” or wanted to use the source’s car for “...unspecified purposes which were disagreeable to the source.” Dicks added that after Air India, the source “was convinced” that Bagri was involved, and that that was the reason why Bagri threatened the source.⁷⁵⁵ Dicks concluded by stating that E Division would now “...be directly approaching the source for an interview” and asked that CSIS be directed not to approach the source before this was done.⁷⁵⁶

On October 17, 1990, RCMP HQ informed E Division that CSIS had advised that Laurie was the last person to have had contact with the source on behalf of CSIS and that CSIS had no intention of approaching the source again. HQ added that they “would be interested” in finding out Laurie’s opinion about the chances that the source would cooperate with the RCMP.⁷⁵⁷ Finally, HQ reminded E Division that “...no/no approach is to be made to the source prior to direction by this HQ following receipt of CSIS approval expected in very near future.”⁷⁵⁸

On the same day, Dicks received a call from Thivierge of RCMP HQ, who advised that CSIS had no objection to E Division approaching the source.⁷⁵⁹ CSIS eventually confirmed this in writing in a letter dated October 22nd, indicating

⁷⁵² Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7731, 7738.

⁷⁵³ Exhibit P-101 CAA0790.

⁷⁵⁴ Exhibit P-101 CAA0790 [Emphasis in original].

⁷⁵⁵ Exhibit P-101 CAA0790.

⁷⁵⁶ Exhibit P-101 CAA0790 [Emphasis in original].

⁷⁵⁷ Exhibit P-101 CAA0791.

⁷⁵⁸ Exhibit P-101 CAA0791 [Emphasis in original].

⁷⁵⁹ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7599. See also Exhibit P-244, vol. 6 (January 9, 2004 Transcript), pp. 47-48.

that its Legal Services Branch had advised that there was "...no problem in granting access to the source at this time."⁷⁶⁰ RCMP HQ transmitted the letter to E Division with a note indicating that it related to the "C/Supt. Thivierge Insp. Dicks telecom of 90-10-18[sic]" and that it would "...serve as a paper trail and confirm that [redacted] of CSIS HQ has agreed to NSIS investigators contacting their source."⁷⁶¹ According to Rautio's review of his notes during his testimony at the trial of Malik and Bagri, it would have been during telephone conversations after the authorization was received from CSIS on October 17th that Laurie finally confirmed his source's identity and took steps to arrange an introduction.⁷⁶²

After his interview with Rautio and Blachford, Laurie understood that the RCMP members would discuss the "revelation" of the Ms. E information among themselves while he was to remain available to provide further assistance. The notion of having Laurie introduce the police to Ms. E was soon adopted. Laurie was willing to assist in this manner, but warned the RCMP in no uncertain terms that obtaining Ms. E's cooperation would be very difficult. He explained that he himself had been successful probably because he was not intimidating and had met with Ms. E alone. For the RCMP, "...that was a non-starter.... They were absolutely going to do it their way. All they wanted from me was to make an introduction and stand back." Laurie understood that he was not to be an "active participant" in the eventual RCMP interview of Ms. E, even if he provided an introduction.⁷⁶³

Laurie did not get an opportunity to review his CSIS reports about Ms. E in preparation for the introduction he was about to provide for the RCMP. The RCMP did not attempt to obtain the reports from CSIS, nor did CSIS offer to provide copies.⁷⁶⁴ At the time, Laurie did not even know whether accessing his former reports "...was legal or possible."⁷⁶⁵

On October 19, 1990, three days after his interview with the RCMP, Laurie accompanied Rautio to visit Ms. E. Both men wore civilian clothes and they used an unmarked car.⁷⁶⁶ It was apparent that Ms. E knew Laurie and was comfortable in meeting with him. Laurie introduced Rautio to Ms. E and explained the difference between his role as a CSIS investigator and the role of RCMP investigators.⁷⁶⁷ He explained that he was now a member of the RCMP and that the person accompanying him was an RCMP member who was involved in the collection of evidence about Air India.⁷⁶⁸ He told Ms. E what he thought would be her worst nightmare: that even though he had assured her that her

⁷⁶⁰ Exhibit P-101 CAA0794(i), p. 2.

⁷⁶¹ Exhibit P-101 CAA0793.

⁷⁶² Exhibit P-244, vol. 6 (January 9, 2004 Transcript), pp. 47-49.

⁷⁶³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7475-7476.

⁷⁶⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7476-7477. See, generally, Exhibit P-101 CAA0781(i), for the notes of the RCMP interview which make no mention of attempting to obtain the reports.

⁷⁶⁵ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7476-7477.

⁷⁶⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7481-7482.

⁷⁶⁷ Exhibit P-244, vol. 5 (January 8, 2004 Transcript), pp. 52-53.

⁷⁶⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7473.

information would remain confidential, the situation had now changed. Her information had now gone to the RCMP because it was criminal, and the police now knew who she was and what information she had provided.⁷⁶⁹ Rautio told Ms. E about the RCMP role in investigating criminal offences, and told her that she might be required to attend court if she had valuable information or evidence.⁷⁷⁰ Ms. E was shocked and dismayed and she became fearful.⁷⁷¹ She stated that she would not go to court, that she would commit suicide and that she was afraid for her children and herself.⁷⁷² Her attitude was consistent with Laurie's warning to the RCMP that Ms. E might be suicidal if her information got out.⁷⁷³

During his first interview with Ms. E, Laurie had "assured" her, "...prior to her providing criminal information," that he would treat her information "in a confidential manner."⁷⁷⁴ Though he made "no explicit promise" to not tell the police, Laurie gave Ms. E the clear impression that he would not give her information to the police.⁷⁷⁵ It was clear to him that she chose to speak to him because she believed her identity would not be revealed.⁷⁷⁶ The RCMP also concluded later that Ms. E's motivation in providing her information to Laurie was "...the guarantee of absolute confidentiality."⁷⁷⁷ In a report about his first interview with Ms. E, Laurie had noted:

Clearly though, the source chose to release herself of this enormous burden, by telling us what she would not tell the police. If the police are provided with her identity she will cease co-operation with us and provide absolutely no assistance to the police.⁷⁷⁸

Ms. E had no confidence in the ability of the police to protect her identity or her safety:

MR. BOXALL: I don't know if you had any discussions with her in this regard, but you would know from your police experience also that police also use sources and keep them confidential and don't reveal their identity to the public?

⁷⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7483; Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 54.

⁷⁷⁰ Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 54.

⁷⁷¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7483.

⁷⁷² Exhibit P-101 CAF0381, p. 1; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7483-7484.

⁷⁷³ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7772-7773.

⁷⁷⁴ Exhibit P-101 CAF0376, p. 1.

⁷⁷⁵ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), p. 50.

⁷⁷⁶ Exhibit P-101 CAF0376, p. 1.

⁷⁷⁷ Exhibit P-101 CAF0383, p. 3.

⁷⁷⁸ Exhibit P-101 CAF0376, p. 1.

MR. LAURIE: And her understanding of that, that it didn't meet the threshold of what her personal security goals were, she did not trust that avenue. Later, when her identity was known to the police and when I introduced her to the police, there was a discussion about source protection and witness protection program and all that and, really, she just scoffed at that. I mean – that was not compelling for her.

MR. BOXALL: But she did find it compelling that speaking to a CSIS agent – would protect her?

MR. LAURIE: Yes.⁷⁷⁹

When Ms. E first revealed her information, Laurie immediately knew that it would eventually have to be disclosed to the police, but he initially believed that her identity would be protected. However, it was always his understanding that, should CSIS decide to pass on Ms. E's identity to the RCMP, her consent would not be required.⁷⁸⁰ His CSIS BC Region superiors apparently shared that view when they realized in 1988 that the RCMP still did not know who Ms. E was and when they suggested that HQ "address this aspect."⁷⁸¹ In fact, in 1990, CSIS eventually authorized the RCMP to approach its source, after seeking legal advice. Laurie confirmed Ms. E's identity when he agreed to introduce Rautio to her (or possibly earlier, during his interview with the RCMP), as authorized by CSIS. Ms. E was not consulted before CSIS granted this authorization and before Laurie revealed her identity. From her reaction towards the RCMP, it appears that she would not, in fact, have consented.

Having interviewed Laurie, Rautio and Blachford were aware that Ms. E "...had been told that she was going to have complete confidentiality," but viewed this simply as a factor that the RCMP was "...going to have to overcome." They did not know, and apparently did not attempt to find out, whether Ms. E had given her consent prior to Laurie's "introduction" of the RCMP to her. Before the Inquiry, Blachford confirmed that, had Ms. E been a confidential informant for the RCMP, "...her identity could not [have been] revealed without her consent" as was done by CSIS in this case.⁷⁸² However, CSIS clearly did not view Ms. E as a confidential informant and did not feel bound by its own representations that her information would be treated confidentially.

After Laurie and Rautio finished explaining to Ms. E the difference between CSIS and the RCMP and telling her that she might have to testify, Rautio proceeded to ask her questions about her information.⁷⁸³ In response, she related the manner in which she met Bagri and began to associate with him while in Canada. She then recounted the incident where she hemmed pants for Bagri prior to his

⁷⁷⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7533-7534.

⁷⁸⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7417, 7457, 7462.

⁷⁸¹ Exhibit P-101 CAF0406, p. 3; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7462.

⁷⁸² Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7771-7772, 7823-7824.

⁷⁸³ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7484.

travel out of the country – at a time when Mrs. Bagri could not do it because of an accident in Ms. E’s car. She then explained how she wanted to get away from Bagri after the Air India bombing, because of rumours she heard about the involvement of Parmar, Surjan Singh Gill and Bagri in the bombing, and because of Mrs. Bagri’s reaction when she discussed the crash with her while she was staying at Ms. E’s for a few weeks.⁷⁸⁴

Ms. E then went on to explain that, while she was still living in her rented basement suite, Bagri came to borrow her car at 10:30 or 11 PM. She did not open the door and he kept knocking. When she opened the door and asked how he got there, he said someone dropped him off. When she told him that she would not lend him her car anymore, he told her that the thing he needed to do that day was very important, that he was going to the airport with two others, but only the bags would be travelling and that if they got caught, Ms. E would not see him anymore. Ms. E believed she did not give him her car and he said he would walk to Ross Street, but she was not 100 per cent certain. Ms. E then said that the next day, she heard of the “CP Air crash” and understood what Bagri had meant “...about the bags going to the airport.” She recounted her subsequent encounters with Bagri, including the following Halloween, when he visited her upon returning from India or Pakistan and left a letter which stated that Ms. E was the only one to know Bagri’s secret, that she could put him “in big trouble” and that he would “...never leave it up to [her].” Ms. E finally recounted her last fight with Mrs. Bagri about the fact that she was not visiting the Bagris anymore, and shared her views that the “secret” Bagri was referring to was the mention that only the bags would be travelling. She then said that she had to go and she put an end to the interview.⁷⁸⁵

Laurie explained in testimony that while Ms. E did provide information in response to Rautio’s questions, she did not speak as freely as she had in the past:

MR. LAURIE: Well, I think we needed to extract quite a bit of it. The will to cooperate was not as strong as one might guess from reading the information that came forth, but I think that the reason we got as much as we did was because of the caveat that she supplied that yeah, this is what I told him and this is what happened, but don’t ever ask me to go to court with it because I won’t.⁷⁸⁶

Though this was not recorded in Rautio’s notes, Laurie recalled that at the end of the interview, Rautio told Ms. E that “...another investigator would soon follow up with more questions.”⁷⁸⁷

⁷⁸⁴ Exhibit P-101 CAF0381, pp. 1-2.

⁷⁸⁵ Exhibit P-101 CAF0381, pp. 2-3.

⁷⁸⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7485.

⁷⁸⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7485.

The RCMP investigators had decided to have Laurie do the introduction to Ms. E because he had established a relationship with her and obtained the sensitive information on a topic which made her very emotional and possibly even suicidal.⁷⁸⁸ However, they did not involve Laurie in their second interview with Ms. E.⁷⁸⁹ In fact, the RCMP made a decision not to involve Laurie any further at all:

MR. KAPOOR: I take it you never had any follow-up conversations with her by telephone or otherwise; you wanted out of the piece.

MR. LAURIE: I didn't want out of it; they wanted me out of it.

MR. KAPOOR: They being the RCMP?

MR. LAURIE: Yes. Even though I'm back into the RCMP, because of my background I am a contaminating factor.

MR. KAPOOR: Explain that.

MR. LAURIE: I can't.

MR. KAPOOR: Or explain what you mean by contaminated factor is what I mean to say.

MR. LAURIE: If I involve myself in the file, then I may gather some information or for some reason find myself in a court case and once I'm on the stand and people can ask questions of me, then all of a sudden I have all this other information that I either have to respond to or not respond to based on secret things.

MR. KAPOOR: So by getting you involved in the piece, it also brings in all of the CSIS information which could create problems for the investigation.

MR. LAURIE: Yes, but I can't – not being a lawyer, sir, I really can't explain it any more logically than that.⁷⁹⁰

Blachford explained that they wanted to make it clear to Ms. E that "...this was no longer a CSIS operation, it was clearly RCMP only." Involving Laurie, even if he was now with the RCMP, may not have made it as clear that "...this was a police investigation" now. Blachford recognized that the RCMP could have

⁷⁸⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7763.

⁷⁸⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7485-7486.

⁷⁹⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7486-7487.

adopted a different investigative technique and had Laurie lead the interviews, especially since it was clear from the beginning that Ms. E did not want to talk to the police. However, a decision was made within E Division NSIS that the RCMP would “take that over” completely and not involve Laurie any further. The RCMP wanted to move into an “evidentiary” or “policing role, separate from CSIS” and felt that keeping Laurie involved, given that he had interviewed Ms. E a number of times for CSIS, could have been problematic in this respect.⁷⁹¹

Laurie viewed the decision to exclude him from the case in 1990 as related to problems in the CSIS/RCMP relationship at the time, especially since the RCMP ultimately asked him to get involved again years later. He explained:

MR. LAURIE: At that point, I think the relationship was not a good relationship between the agencies and although I was in the RCMP in 1990, the recency of my employment with the CSIS left me a little bit suspect.⁷⁹²

On October 22, 1990, it was Blachford who accompanied Rautio to interview Ms. E for a second time. The interview began at 2 PM and lasted almost two hours.⁷⁹³ In the summary that the officers prepared on the basis of Blachford’s notes, they noted first that the interview was “...a continuation of the interview of 90-10-19.”⁷⁹⁴ Ms. E’s demeanour was composed throughout the interview, but, as Blachford indicated, “I don’t think she was very happy that we were there right from the get-go.”⁷⁹⁵

Ms. E began by discussing how she became reacquainted with Bagri in the early 1980s after moving to Canada. She was then asked about the night when Bagri visited her and “immediately stated” that it was after the Air India crash. She explained that Bagri came to her door and when she asked how he got there, he told her that he came with someone. When asked by the officers whether this was the night before Air India, she was “...very emphatic that no it was not before Air India, it was the night before the CP Air crash or the thing that crashed in Tokyo.” Ms. E was uncertain about exactly what had happened in Tokyo, but had heard about it on the radio or from others and remembered that an unknown flight, she thought it was CP Air, was involved in a crash which resulted in “not many people” getting hurt, and which was caused by something that was on the plane.⁷⁹⁶

Ms. E then described her conversation with Bagri on that evening. After asking how he got there, she asked why he was there so late and he said he needed a car. When asked where he was going, Bagri said that he was going to the

⁷⁹¹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7763-7764.

⁷⁹² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7543.

⁷⁹³ Exhibit P-101 CAF0428, pp. 2, 5; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7770.

⁷⁹⁴ Exhibit P-101 CAF0428, p. 2.

⁷⁹⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7770.

⁷⁹⁶ Exhibit P-101 CAF0428, p. 2.

airport, that he knew she did not want him to visit or use her car, that "...our bags are going but we're not going anywhere" and that Ms. E may not see him anymore, as they "might get caught." Ms. E explained that she told Bagri he could not use her car anymore and that he got angry and left. She thought he went to the Ross Street Temple. She did not see him get dropped off and did not see anyone else, but she thought he said there were three of them going to the airport and he may also have said that Talwinder [Parmar] dropped him off, but she was not sure. She added that Laurie had told her it was probably Parmar who dropped off Bagri.⁷⁹⁷

Ms. E discussed the period which followed the Air India crash with the officers. At times, she confused the date that she had moved out of her basement suite and she provided slightly different accounts during the interview of her interactions with the Bagris after the crash.⁷⁹⁸ Ms. E initially stated that Mrs. Bagri stayed with her during the period immediately following the bombing, but not after Bagri's request to borrow the car, and that during this time, she only saw Bagri himself on a few occasions.⁷⁹⁹ She then said that the Bagris had in fact stayed with Parmar and only visited her during the day. Ms. E reiterated her information about Mrs. Bagri's comment about the Air India crash along the lines that: "...we told them not to fly Air India." She said that Mrs. Bagri had made that comment while staying in her home after the bombing and had appeared proud of the crash. After this, Ms. E maintained that she did not want "...anything to do with the Bagris" and that this was when Bagri tried to borrow her car. Ms. E stated that she did not see Bagri for "quite a while" after his request to borrow her car, but that he visited her between 7 and 8 PM on an evening around Halloween and "...gave her the letter about the secret." Asked if there could be "another secret," she stated that nothing came to mind aside from the fact that "...Bagri was going to the airport and just the luggage was going."⁸⁰⁰

Ms. E initially denied having frequent contact with Bagri after Air India and after his request to borrow the car. The RCMP officers showed her long distance tolls indicating contact between Bagri's and her residence, including after the period when she stated she stopped having contact. Ms. E said she only had infrequent contact, and explained that most of the calls were with Mrs. Bagri about financial issues, including a \$10,000 loan she had received from the Bagris and a \$10,000 lottery win which she had let the Bagris keep.⁸⁰¹

Ms. E then discussed again her conversation with Bagri when he visited her. She said that after he said he was headed to the airport, she asked him where he was going and he stated, "my bags are going, I am not." She added that Bagri had once told her that he would not tell women about the matters he discussed with Parmar and that, indeed, Bagri's wife often complained to her about the fact that Bagri was not keeping her informed of his whereabouts. Ms. E stated

⁷⁹⁷ Exhibit P-101 CAF0428, pp. 2-3.

⁷⁹⁸ Exhibit P-101 CAF0428, pp. 3-5.

⁷⁹⁹ Exhibit P-101 CAF0428, p. 3.

⁸⁰⁰ Exhibit P-101 CAF0428, pp. 3-5.

⁸⁰¹ Exhibit P-101 CAF0428, p. 4; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7777.

that Bagri often bragged about Parmar and thought he was a God. She said that she did not hold Parmar in high regard herself, as she had been asked to provide him with merchandise free of charge, but had heard that he was "...a government man and already had lots of money."⁸⁰²

Rautio and Blachford were surprised by Ms. E's claim that Bagri had visited her after Air India and that the Narita and Air India bombings had not occurred at the same time.⁸⁰³ They asked her about her perception of the timing of the Air India crash. Ms. E said there was only one crash in June 1985 and that "...everything went into the ocean" somewhere. She volunteered that she thought Laurie had "explained everything" to her common-law husband about three years ago. She remembered that when Air India crashed, she was still living in her basement suite and was planning a party. She believed the date of the tragedy was around June 10th but when told it was June 22nd, she speculated she may have planned her party two weeks later.⁸⁰⁴ The officers told Ms. E that "...CP Air and the Air India crash were the same day," but she maintained that Bagri's request to borrow her car was after Air India.⁸⁰⁵ She recalled finding out about Air India because a relative phoned her, and she cancelled her party.⁸⁰⁶

Rautio and Blachford asked Ms. E about her 1985 interviews with the RCMP and, in particular, why she had not revealed her information about Bagri's request to borrow her car at that time. She explained that the officers who interviewed her then had not specifically asked about the incident. She added that she had been comfortable telling Laurie "...because she was promised that the information would stay confidential between the two of them."⁸⁰⁷ Blachford explained that the officers did not get around to discussing how the RCMP could meet Ms. E's concerns about maintaining confidentiality during this interview.⁸⁰⁸

At the end of the interview, Rautio and Blachford asked Ms. E directly, "point blank," whether she was having an affair with Bagri.⁸⁰⁹ She became "visibly upset" and "quite nervous" and she "denied it emphatically." The interview was then concluded at her request, but the officers explained that the issue "...may not be resolved for a long time" and that she could be approached by police again.⁸¹⁰ According to Blachford's recollection, the interview was not concluded because of the "direct challenge" the officers put to Ms. E about having had an affair with Bagri, but rather because she had to go pick up her children at school. He explained that Ms. E was asked about the alleged affair because the RCMP wanted to "...establish what her relationship was with Mr. Bagri."⁸¹¹

802 Exhibit P-101 CAF0428, pp. 4-5.

803 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7769.

804 Exhibit P-101 CAF0428, p. 3.

805 Exhibit P-101 CAF0428, p. 4; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7769-7770.

806 Exhibit P-101 CAF0428, p. 5.

807 Exhibit P-101 CAF0428, p. 5.

808 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7771.

809 Exhibit P-101 CAF0428, p. 5; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7771.

810 Exhibit P-101 CAF0428, p. 5.

811 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7770-7771.

RCMP Conclusions: Ms. E Considered Unreliable

After the second interview with Ms. E, Rautio prepared a continuation report summarizing the 1990 RCMP approach to Ms. E and the conclusions that could be drawn. He referred to the typed accounts of the two interviews and noted that Ms. E would not allow tape recording. He described Ms. E as a “talkative woman,” and concluded that her explanation about how she met Bagri and his family in BC could “...probably be taken at face value.”⁸¹² However, he then listed five different concerns which made Ms. E problematic as a potential witness.

First, Rautio discussed the fact that Ms. E was “...extremely reluctant to admit any sexual involvement with Bagri.”⁸¹³ He wrote:

It is felt by the investigators that [Ms. E] is more concerned about the issue of her affair with Bagri becoming common knowledge, than she is actually afraid of any physical threats to herself or family by Bagri.⁸¹⁴

Blachford confirmed in the Inquiry hearings that this was a factor to take into account.⁸¹⁵

Second, Rautio mentioned the threats that Ms. E had received from Bagri. Despite the opinion of the investigators that Ms. E was more concerned about saving face than about safety, Rautio did note that Ms. E had in fact said that she was afraid of Bagri because of his past comments.⁸¹⁶

Third, Rautio listed Ms. E’s unwillingness to testify. He noted that, as a result of her expressed fears about Bagri, she had said that she would not testify in court.⁸¹⁷

The fourth concern expressed by Rautio related to the inconsistencies in the information provided by Ms. E. Rautio felt that Ms. E’s account of Bagri’s request to borrow her car appeared to be “based on fact,” but that the fact that she was now separating the Air India and Narita incidents by a period of time of up to two weeks and “...denying extended contact with Bagri by phone after the Air India/Narita incidents” raised “a serious credibility problem.”⁸¹⁸ Rautio reported that he contacted Laurie and told him that Ms. E now separated the incidents.⁸¹⁹ Laurie said that this was not consistent with the information Ms. E had given him in the past, and rather indicated that she had “...recently and deliberately

812 Exhibit P-101 CAA0792(i), pp. 10-14.

813 Exhibit P-101 CAA0792(i), p. 11.

814 Exhibit P-101 CAA0792(i), p. 11.

815 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7775-7776.

816 Exhibit P-101 CAA0792(i), p. 11.

817 Exhibit P-101 CAA0792(i), p. 11. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7776.

818 Exhibit P-101 CAA0792(i), p. 13. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7776-7777.

819 Exhibit P-101 CAA0792(i), p. 14.

changed her story.”⁸²⁰ In testimony, Laurie explained that the information Ms. E had provided him had been clearly ingrained in her brain and that, according to him, she was simply trying to “make herself unreliable” by confusing the timing of events when those she did not want to speak to were questioning her. To him, this showed that, as CSIS had thought from the beginning, Ms. E would not cooperate with police and in fact did not cooperate.⁸²¹ Rautio and Blachford also felt that Ms. E’s allegation that Air India and Narita were separate in time was an attempt on her part to “mitigate her evidence.”⁸²²

Rautio’s fifth and final concern related to the possible “contamination” of Ms. E’s evidence as a result of her past meetings with CSIS. Rautio indicated that Ms. E had said she had met with Laurie “on ten occasions” and noted that Ms. E had been provided with specific information, such as “...CSIS knew that Talwinder dropped Bagri off at [Ms. E’s] residence because CSIS had been following Talwinder.” Rautio noted that this could raise questions “...as to what [Ms. E] knows independently as opposed to what she has been told.”⁸²³ Blachford explained in testimony that the RCMP officers were generally concerned that Laurie had provided information to Ms. E which could affect the content of her evidence.⁸²⁴

However, Laurie denied telling Ms. E about the CSIS surveillance.⁸²⁵ The typed accounts of the Ms. E 1990 interviews, based on the investigators contemporaneous notes, do not contain a mention of Laurie having told Ms. E that CSIS was conducting surveillance on Parmar, but only that she thought he may have told her that it was “probably” Parmar who had dropped off Bagri at her residence.⁸²⁶ On the basis of a document he reviewed, Laurie believed that it was the RCMP who had informed Ms. E of the surveillance when they first visited her in 1985.⁸²⁷

In fact, the RCMP constable who had interviewed Ms. E for the first time in 1985 had noted in his report that she was “...questioned regarding the u/m dropped off by Parmar at [redacted] avenue Vancouver on 85-06-09 at approximately 23-06hrs,” and that he had also asked her about her knowledge of Parmar during the interview.⁸²⁸ In 1987, according to the report Laurie prepared immediately after his third interview with Ms. E, she told Laurie that the RCMP had implied to her, when they interviewed her in 1985, that it was Parmar who had brought Bagri to her residence.⁸²⁹ Given the manner in which the RCMP questioned Ms. E about a person who was seen arriving at her place at a specific date and time, it is clear that the RCMP revealed the fact of the surveillance during the 1985 interview.

⁸²⁰ Exhibit P-101 CAA0792(i), p. 14; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7491.

⁸²¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7491.

⁸²² Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7779.

⁸²³ Exhibit P-101 CAA0792(i), pp. 13-14.

⁸²⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7777-7778.

⁸²⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7489.

⁸²⁶ Exhibit P-101 CAF0428, p. 3.

⁸²⁷ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7489-7490.

⁸²⁸ Exhibit P-101 CAA0387(i).

⁸²⁹ Exhibit P-101 CAA0579(i), p. 1.

If the officers did not directly reveal the fact that the person seen dropping off Bagri at the time was Parmar, questioning her about him in the same interview was probably sufficient for her to conclude that this was implied.

In any event, based on the five concerns listed by Rautio, the RCMP investigators concluded that Ms. E could not be considered a reliable witness, and that this "...conclude[d] [the Watt MacKay] issue 2W."⁸³⁰ Insp. Dicks, the NSIS Officer in Charge, accepted this analysis.⁸³¹

Rautio and Blachford further explained their view of the value of the information provided by Ms. E during a conversation with John Stevenson of CSIS a few months later, in January 1991. At the time, Stevenson was tasked with accompanying RCMP investigators who were interviewing former CSIS members in preparation for the Reyat trial. In this context, he travelled to Nelson together in one car with Rautio and Blachford.⁸³² The topic of Ms. E came up and the RCMP officers told Stevenson that they had "not been impressed" by the information she had to offer. Stevenson reported that the investigators said they felt she was "...merely feeding information back to the previous CSIS handler which the handler, Mr. Willie Laurie had confided to her during his debriefing sessions." They left Stevenson with the "...distinct impression that they felt that there was nothing to be gained by the Force from a continuing association with the source."⁸³³ Blachford, unlike Stevenson who had also drafted a memorandum about it, did not recall this conversation, but felt it was an "overly broad generalization" on the part of Stevenson to describe the RCMP reasons for not pursuing Ms. E in the way he did.⁸³⁴ Blachford maintained that the reasons for the RCMP's decision at the time were the five concerns described by Rautio in his report.⁸³⁵

On October 24th, Rautio reported to RCMP HQ about the two interviews with Ms. E. He summarized the information she provided about Bagri's request to borrow her car and noted that "...the source was emphatic that this conversation took place after the Air India crash, but before the C.P. Air incident in Japan." He advised that the source felt that a "couple of weeks" may have passed between the two events and that she "...had no explanation when advised that the two incidents occurred on the same day."⁸³⁶ Rautio commented:

It is apparent to the investigators that the source is not being completely truthful. The source explained that the lack of supplying this information to the RCMP in 1985 when interviewed twice, by simply saying that the RCMP did not specifically ask about the Bagri conversation.⁸³⁷

⁸³⁰ Exhibit P-101 CAA0792(i), p. 14; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7779-7780.

⁸³¹ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7601-7602.

⁸³² Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7704.

⁸³³ Exhibit P-101 CAF0425, p. 1; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7705.

⁸³⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7781-7782, 7841-7842.

⁸³⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7842; Exhibit P-101 CAA0792(i).

⁸³⁶ Exhibit P-101 CAF0383, p. 2.

⁸³⁷ Exhibit P-101 CAF0383, p. 3.

Rautio also reported that Ms. E had provided her information to CSIS only because of the confidentiality they could offer. He concluded that "...the value of this source is questionable considering the reluctance to cooperate."⁸³⁸

This was the end of the RCMP approach to Ms. E in 1990.⁸³⁹ She was not contacted again by the RCMP until June 1991, when two E Division investigators, who did not know about the 1990 interviews and the conclusion of unreliability, approached her while working on a source development project.

In 1985, the RCMP had discounted Ms. E, though they suspected she may have been Bagri's mistress, because it was believed she did not have information of interest to its investigation. In 1990, the RCMP knew that she had provided information of interest to Laurie numerous times, but nevertheless discounted her again after two interviews, concluding that she was unreliable.

Blachford explained that, in 1990, Bagri was not the principal focus of the E Division investigation. At the time, NSIS was focused on the preparation of the trial of Inderjit Singh Reyat for manslaughter in connection with Narita.⁸⁴⁰ However, the RCMP had had information pointing to Bagri's possible involvement since the early months of the investigation, including the information received from Tara Singh Hayer in 1986, when Bagri was described as a "...prime Canadian suspect in the Air India/Narita investigation."⁸⁴¹ In 1987, Bagri was referred to in RCMP correspondence to CSIS as "...one of the principal players in the Air India/Narita investigation."⁸⁴² In 1995, after Parmar's death and when the RCMP was considering offering immunity to Reyat and Surjan Singh Gill, but without new information having been obtained since the Ms. E information came to light, Bagri was described as the "main target" of the Air India investigation.⁸⁴³

1991-1992: The RCMP "Re-Discovers" the Ms. E Information

A New Approach to Ms. E

In June 1991, Sgt. Fred Maile and Cpl. Robert Solvason of E Division NSIS made an approach to Ms. E. At the time, Maile and Solvason were assigned to the criminal extremist group within NSIS, a group which focused on non-Sikh extremism related matters. The Air India investigation fell under the responsibility of another group. Maile had transferred to NSIS on the understanding that he would be working on the Air India disaster and was frustrated that he was unable to work on the investigation. He developed a project that would enable investigators to get into the Air India investigation "...through the back door."⁸⁴⁴ Solvason assisted Maile, his immediate supervisor at the time, in this

⁸³⁸ Exhibit P-101 CAF0383, p. 3.

⁸³⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7780.

⁸⁴⁰ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7780-7781.

⁸⁴¹ Exhibit P-101 CAF0714, p. 1.

⁸⁴² Exhibit P-101 CAA0591, p. 1.

⁸⁴³ Exhibit P-101 CAF0392, p. 4.

⁸⁴⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11575-11577, 11617.

“source development project.”⁸⁴⁵ The investigators planned to do “speculative” interviews with individuals who were likely to have knowledge of the Air India disaster, in order to develop sources for the Air India investigation.⁸⁴⁶

Solvason came up with the names of about six people who could be approached. He had previous information from one of his human sources that Bagri was reputed to have “some girlfriends,” one of whom, Ms. E, lived in Vancouver.⁸⁴⁷ As it was common practice to approach persons believed to be the girlfriends of suspects,⁸⁴⁸ Maile and Solvason decided to interview Ms. E.

On June 20, 1991, Maile and Solvason went to Ms. E’s residence and introduced themselves as members of the RCMP. She told them that she had an appointment and asked that they return the next day.⁸⁴⁹ When they returned on June 21st, they told her that they were investigating the Air India disaster, that they wanted to know what she knew about it, and that they wanted to know about her association with Bagri.⁸⁵⁰ She explained that she had already spoken to CSIS and the RCMP many times. She was concerned about the “continuing interview process” and about her security.⁸⁵¹ Solvason recalled that she said something indicating that she “was tired of” speaking to CSIS and the RCMP. However, she was “quite forthcoming” and the RCMP officers felt there was a “lot of potential,” particularly since this was only the first interview they had conducted with her.⁸⁵² Solvason noted in his continuation report about the interview that Ms. E was “...forthright in her account of circumstances surrounding her association with Bagri ‘et al’, with the possible exception of some detail relating to personal or romantic matters.”⁸⁵³

Ms. E told the RCMP officers about her association with Bagri back in India and of Bagri’s visits to her in Canada. She recounted that, while visiting her in Vancouver, Bagri used her telephone and her car and mostly visited Parmar. He was also associating with Surjan Singh Gill, Daljit Singh Sandhu and Ripudaman Singh Malik, from whom he obtained 20 to 40 thousand dollars for unspecified reasons. Ms. E stated that she once overheard Bagri tell Parmar on the phone that “...Surjan Singh was not doing what they wanted him to do and to leave him out of it.” She also recounted a meeting held in her home sometime between April and June 1985 involving Parmar, Bagri, Gill, Sandhu and others, where raised voices and arguments could be heard.⁸⁵⁴

About Bagri’s request to borrow her car, Ms. E stated that, during the latter part of June 1985, Bagri visited her late at night and woke her up with his knocking.

845 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11577; Exhibit P-101 CAF0405, p. 1.

846 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11577.

847 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11578.

848 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11616.

849 Exhibit P-101 CAF0405, p. 2; Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11578.

850 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 42.

851 Exhibit P-101 CAF0405, p. 2.

852 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11580.

853 Exhibit P-101 CAF0405, p. 2.

854 Exhibit P-101 CAF0405, pp. 2-4.

She let him in and he requested her car. Asked why he was visiting so late, he stated that Parmar had dropped him off and that he was going to the airport with Parmar and two others from Toronto. Asked if he was going somewhere, he stated that "...we are not going but our bags are going." When Ms. E refused the car, Bagri stated that they might get caught and then he would not return to ask for the car. When Ms. E asked questions about what Bagri was doing, he said that she did not need to know and that she would find out if he got caught. Ms. E said she refused to lend her car and reminded Bagri that he had a family, but he responded "I know all of those things but I am going." She said that when he left, he indicated that he was going to the Ross Street Temple. Ms. E explained that the entire conversation lasted about five minutes and that she did not see any vehicles or other individuals and did not observe in which direction Bagri went. The following day, Ms. E heard of the Air India disaster.⁸⁵⁵

Ms. E also told Maile and Solvason that she had heard a speech in the Ross Street Temple during the year preceding the bombing which mentioned that two men from Toronto would be "fictitiously named Lal and [unknown]." She recounted Mrs. Bagri's comment, made while she was staying in Ms. E's home for one week after the disaster, about the fact that the victims were responsible for flying Air India despite the warnings. Ms. E explained that, subsequently, she decided to stop associating with the Bagris. She discussed Bagri's relations with his family and other members of the community and provided information about an address regularly visited by Surjan Singh Gill. Finally, she recounted Bagri's visit in October 1985, when he was upset about the alienation between them, and gave her a letter and powdered medicine from Pakistan after she stated she "... did not wish to be closely associated to him." The letter explained that Bagri did not wish their relationship to sour, and went on to remark that "...you are the only who knows one of my secrets and this could get me in lots of trouble and put my life in danger." Ms. E stated that she threw away the letter.⁸⁵⁶

Ms. E objected to the recording of the conversation by the RCMP officers. She also expressed a reluctance to testify.⁸⁵⁷ In fact, when she was told that a written statement was necessary to further the investigation and "...because she would be called as a witness," Ms. E was adamant that she would not testify and she indicated that she had been given "assurances" by Laurie that "...she would never have to testify."⁸⁵⁸ While she did not directly object to providing a written statement,⁸⁵⁹ she was fearful and she wanted to speak with her common-law husband before deciding whether to provide the statement.⁸⁶⁰ In any event, a statement could not be prepared on that day because of time constraints. Instead, Solvason recorded the "...highlights of the conversation that will be made subject of a statement for future evidentiary purposes" in his continuation report.⁸⁶¹

855 Exhibit P-101 CAF0405, pp. 4-5.

856 Exhibit P-101 CAF0405, pp. 5-6.

857 Exhibit P-101 CAF0405, p. 2.

858 *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 44-45.

859 Exhibit P-101 CAF0405, p. 2.

860 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 44.

861 Exhibit P-101 CAF0405, p. 2.

In the conclusion to his report, Solvason noted that Ms. E was "...most reluctant towards any suggestion as to eventually becoming a witness." He wrote that this was "...to be expected considering the lengthy association and debriefings with CSIS." Solvason noted minor discrepancies in Ms. E's story, which he felt were also to be expected given the time lapse and numerous repetitions of the story to CSIS.⁸⁶² He explained in testimony before the Inquiry that while Ms. E "...didn't have the times right and there was some discrepancy," he would have been suspicious if she had "...each and every detail correct," and he said that the fact that there were some minor variations was not surprising.⁸⁶³ Because he was not aware of the 1990 RCMP interviews, he did not know about the major discrepancy between the version she provided then, separating Air India and the "CP Air crash" by a period of about two weeks, and this version, where she situated Bagri's request to borrow her car the night before Air India.⁸⁶⁴

In his report, Solvason concluded that Ms. E's reluctance to testify was "...not seen as insurmountable," but that there was "...considerable distance to travel in terms of realigning [Ms. E's] commitment" and of corroborating her information. He also remarked that Ms. E's common-law partner was "...less than enthused with the constant police attention." Notwithstanding the issues, Solvason concluded that there was "...no question that [Ms. E] has direct evidence towards future criminal conspiracy proceedings against Bagri 'et al' and would form a major part of any such proceedings." He noted that "...a tactful and diplomatic approach" would be necessary to achieve those objectives, which would eventually require Ms. E to testify.⁸⁶⁵ Knowing how sensitive Ms. E was, and having experience in source development, Solvason recommended this "tactful diplomatic approach" because he knew that this would be critical to securing her cooperation.⁸⁶⁶

When he was shown the conclusion reached by Rautio after the 1990 interviews that "...at this time, ENSIS can not consider [Ms. E] as a reliable witness,"⁸⁶⁷ Solvason testified that this did not square with his evaluation of the circumstances.⁸⁶⁸ He noted:

S/SGT. SOLVASON: I think sometimes the problem – I noticed with this woman, she seemed to be quite sensitive. And – sometimes it's – if they just perceive that someone – they feel threatened somehow or they don't feel comfortable, it's possible that they may alter what they have to say, as a means of getting rid of somebody. And I don't know that that happened, but I know that that's a possibility.

⁸⁶² Exhibit P-101 CAF0405, p. 6.

⁸⁶³ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11602.

⁸⁶⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7785-7786.

⁸⁶⁵ Exhibit P-101 CAF0405, p. 6.

⁸⁶⁶ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11545, 11582-11583.

⁸⁶⁷ Exhibit P-101 CAA0792(i), p. 14.

⁸⁶⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11582.

MR. FREIMAN: Does it have anything to do with your recommendation for a tactful diplomatic approach?

S/SGT. SOLVASON: I think it would be critical in her case because, from what I could see with her, she was quite sensitive.⁸⁶⁹

In his continuation report about his 1991 interview with Ms. E, Solvason listed a number of points which could be researched in order to corroborate or confirm her information. He noted that it was "...imperative to establish the credibility" of Ms. E through corroborating information and that contact with her would also continue for this purpose.⁸⁷⁰

Lack of Support for the New Approach at RCMP E Division

Before their approach to Ms. E, Maile and Solvason were not aware that she had been interviewed by Rautio and Blachford in 1990, but knew that she had provided information to Laurie which had been relayed to the RCMP.⁸⁷¹ When Ms. E repeated the information about Bagri's request to borrow her car, this time situating it clearly as occurring the night before the Air India disaster, it came as a surprise to the officers, who felt that Ms. E had provided some "startling" and "very important" information.⁸⁷²

When Maile and Solvason returned to the office and reported the results of their interview to the other NSIS members, the information was received with "...a lot of anger and hostility." The "...office was in a turmoil." Wall, who was the second-in-command at NSIS, and Rautio were upset.⁸⁷³ Instead of being eager to take advantage of Ms. E's apparent willingness to cooperate, the RCMP seemed more concerned about Maile's and Solvason's unauthorized interview with Ms. E, and about the fact that their interview was more successful than the interviews conducted by Rautio and Blachford.

Interestingly, the anger and hostility does not seem to have entirely subsided. Some of the present and former RCMP members who testified at the Inquiry still faulted Maile and Solvason for their lack of knowledge. Counsel for the AGC also seemed to be pursuing the same issue in the cross-examination of Solvason.⁸⁷⁴

Insp. Dicks, who was still the Officer in Charge (OIC) of NSIS at the time of these events, testified that he could not understand why Maile and Solvason were not

⁸⁶⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11582-11583.

⁸⁷⁰ Exhibit P-101 CAF0405, p. 7.

⁸⁷¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 39. See also Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11616-11617.

⁸⁷² Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11579; *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 42.

⁸⁷³ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11581.

⁸⁷⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11617-11620.

aware of the 1990 interviews. He stated that there was nothing in NSIS at the time which would have precluded the officers from being aware. According to him, the documents and reports about the prior interviews would have been accessible to all NSIS members through the tip system, which assigned numbers to various subjects of investigation.⁸⁷⁵ He felt that there was “an open process” at NSIS and that matters such as the Ms. E information would have been discussed openly. Dicks also testified that, as the OIC, he would have been aware of Maile and Solvason’s initiative to approach Ms. E and kept informed in this respect, formally or not.⁸⁷⁶

Blachford, on the other hand, thought that one possible explanation for the fact that Maile and Solvason were unaware of the 1990 interviews was the “...the size of the [Air India] file itself.”⁸⁷⁷ He explained:

Unfortunately, it is massive and, as I indicated, the original carding system was the old three-by-five, write the name on and then the reference files, and if it is not done in a timely and efficient fashion then stuff can get overlooked.⁸⁷⁸

In fact, Blachford himself, when he reviewed the file again in 1992, did not recall seeing the information about the interview conducted by Maile with Solvason.⁸⁷⁹ However, he felt that the fact that he had approached Ms. E with Rautio in 1990 should have been easy to discover for Maile and Solvason:

Well, I can’t answer why they didn’t know that Mr. Rautio and I had met with Ms. E previously. I mean, that was a well known fact within the task force. It is well documented and, in fact, I think if you went to the card with her name on it, all the associated files are neatly listed or listed out and it would have been a very easy check. I was there in ’91 and there is no way that I would not have relayed that information to those investigators if I had known they were going out.⁸⁸⁰

Solvason testified that he had done some “cursory checks,” which included a quick search of the RCMP files. He recalled having seen on the file the notes for the 1985 RCMP interviews, during which no information of significance had been learned, but he saw no information about the fact that she had been named in the Watt MacKay review, nor any information about the 1990 RCMP interviews. He was unable to recall exactly which searches he conducted, but

⁸⁷⁵ See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force, for a description of the tip system and its deficiencies.

⁸⁷⁶ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7615-7616, 7635, 7638-7639.

⁸⁷⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7784-7785.

⁸⁷⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7785.

⁸⁷⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7786-7787.

⁸⁸⁰ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7832.

testified that normally he would go to the index cards in the tip system and look at the relevant files, many of which were cross-referenced. He explained that the files in the tip room were “master files” and that when an officer took out a master file, a “charge card” was supposed to be left in its place. However, this did not always happen and items got misfiled, which was another possible explanation for why he did not see the information about the 1990 interviews. It was also possible that he missed something, as it was not his intention to do an “in-depth profile” because these were highly speculative interviews. When Solvason did not see any “...real activity for some time” on the file, he felt that he and Maile could proceed as they wished with the interview of Ms. E. He explained that, had he and Maile known that Rautio and Blachford had recently interviewed Ms. E, he would have spoken to them ahead of time and tried to figure out the best course of action from there.⁸⁸¹

CSIS Information about the Continuing RCMP Interviews

In July 1991, John Stevenson of CSIS recorded information he had received about Ms. E in a memorandum.⁸⁸² Stevenson had learned that “...the RCMP had not ceased their contact” with Ms. E and, in fact, were visiting her “...notwithstanding her reluctance to have anything to do with them.”⁸⁸³ His memorandum documented the fact that on June 20, 1991, Ms. E had complained about being contacted by two policemen who had arrived “...unexpectedly on the source’s doorstep and questioned her about the Air India explosion.” He noted that this visit was “...part of ongoing contact” the RCMP had maintained with Ms. E. He added that Ms. E had indicated that she did not want to have contact with the RCMP, but that they insisted on contacting her and asking her many questions.⁸⁸⁴ There was even an indication that some health problems Ms. E had been having had been “...compounded by the persistence of the RCMP” in contacting her against her wishes.⁸⁸⁵ According to Stevenson’s memorandum, Ms. E was complaining about the fact that the RCMP were still dropping by to see her and were “...not listening to her protestations that she does not want to talk to them.”⁸⁸⁶ She said that, on a recent visit, the RCMP had stayed for three hours, and that they had on occasion had discussions with her within earshot of others. She wanted “...the RCMP to stay away from her house.”⁸⁸⁷

Stevenson also noted that Ms. E had admitted that she “...does know ‘something’ about Air India explosion” but had stated that she would “...never go on to the witness stand” because she knew that “...those who committed the crime would have [her] children murdered.” She added that she believed that Reyat was in the same situation and hence would not be providing information about those who organized the bombing. Stevenson concluded that Ms. E and others around her

881 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11578, 11583, 11601, 11616-11618.

882 Exhibit P-101 CAF0384, CAF0425.

883 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7705.

884 Exhibit P-101 CAF0384, p. 2.

885 Exhibit P-101 CAF0425, p. 2.

886 Exhibit P-101 CAF0384, p. 2.

887 Exhibit P-101 CAF0425, p. 2.

appeared upset by the "...persistent contact of the RCMP as they continue with their investigation into the Air India explosion." Stevenson noted that he did not intend to report this information to the RCMP at that time, but "...merely to forward it for the file record in case any queries originate either now or at some later date."⁸⁸⁸ In fact, the information was not passed to the RCMP until over 10 years later, in November 2001.⁸⁸⁹

RCMP Follow-Up on the Ms. E Information

Dicks confirmed that, as the OIC of NSIS, he would have been informed of the information received from Ms. E in June 1991, especially since it was viewed as "direct evidence" which could be used in furtherance of conspiracy charges. This was particularly important because, at the time, there was very little evidence of direct participation by anyone.⁸⁹⁰ Yet, the RCMP did not approach Ms. E again until the spring of the following year. Solvason had no further direct involvement with Ms. E at all after his June 1991 interview.⁸⁹¹ Maile "...became involved in other matters," which resulted in some delay before he attempted another approach to Ms. E in late March 1992.⁸⁹²

In November 1991, NSIS members recognized, during a "group leader session," that there was "...insufficient evidence to support charges" in relation to Air India.⁸⁹³ However, they noted that during recent months "...new information has been received which tends to support what we have always believed about who was involved and how the bomb was delivered to the Airport," obviously referring to the Ms. E information.⁸⁹⁴ It was decided that "...directing sources as a result of currently known new information and future information," which meant instructing sources to take specific actions,⁸⁹⁵ was to be done after a "careful analysis" of the facts and circumstances. This was to be "...weighed against a desired/projected outcome" and was to be "well documented." At the time, six months after the interview by Maile and Solvason, the Ms. E information still required follow-up and "considerable development."⁸⁹⁶ In fact, Maile only became "directly involved" with the Air India investigation in December 1991.⁸⁹⁷

In December 1991, Dicks sent a report to the OIC of Federal Operations in the Division about the progress of the Air India investigation. He noted that the information received from sources "...over the past couple of months" provided cause for some "...cautious optimism, we may be able to confirm who was responsible for Air India."⁸⁹⁸ He indicated that "...charges may not be out of

888 Exhibit P-101 CAF0425, pp. 2-4.

889 Exhibit P-101 CAF0429.

890 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7606-7607.

891 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11580.

892 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 47.

893 Exhibit P-101 CAF0407, p. 1.

894 Exhibit P-101 CAF0407, p. 1; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7607-7608.

895 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7610.

896 Exhibit P-101 CAF0407, pp. 1-2.

897 Exhibit P-101 CAF0388, p. 5.

898 Exhibit P-101 CAF0409; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7608-7609.

the question,” but felt it was still too early to tell. He reported that directing of sources had not taken place yet. As there was a “...high probability the sources will be witnesses” and there would be “inherent protective liability,” a plan was to be put forward before proceeding.⁸⁹⁹ Dicks explained this related to the possible need to put protective operations into play for sources.⁹⁰⁰

In a January 1992 status report about the Air India investigation, the Ms. E information was listed as having been obtained as a result of the NSIS Source Development initiative. NSIS was planning to “...take statements from known witnesses and newly acquired witnesses.”⁹⁰¹ At the end of March 1992, a meeting was held about the creation of a re-organized team at E Division NSIS for the Air India investigation. At the time, the investigators were making a “...continuing effort to concentrate on Bagri.” Maile, who was about to retire, was instructed by Dicks to work longer shifts and to claim overtime where necessary. Maile reminded his colleagues that if “...relocation or some type of witness protection” was required, it was available and that this should be kept in mind in dealing with witnesses or suspects.⁹⁰² Dicks confirmed that witness protection was a concern that was present in the case of Ms. E.⁹⁰³

In late March 1992, Maile contacted Ms. E and her common-law husband and arranged interviews with both.⁹⁰⁴ Maile interviewed Ms. E’s common-law husband and explained to him the police interest in Ms. E.⁹⁰⁵ He said he would talk it over with Ms. E and that they would advise Maile if she would provide a statement.⁹⁰⁶

On April 6, 1992, Maile met with Ms. E at her residence. She was “quite anxious” to discuss the interview he had conducted with her common-law husband. She was mostly concerned because her husband was now suggesting that she had been having an affair with Bagri. Maile told Ms. E that he had said to her husband that she had been “seeing” Bagri in 1985-1986. Maile then spent “considerable time” discussing the need for the RCMP to obtain and present as evidence a written statement from Ms. E and the need for Ms. E to give evidence in court about the statements made by Bagri. Ms. E indicated that she felt she had cooperated enough with the authorities and that her life had been disrupted by the RCMP dealings with her. She was also concerned that members of her family in Canada or abroad would be harmed by the BK if she testified. Maile explained to her that “...no one could guarantee the safety of her family members in India due the constant random killing which appears to be [a] fact of life in that country.” However, Ms. E was “assured” that threats to her family in Canada would receive “immediate attention.”⁹⁰⁷

899 Exhibit P-101 CAF0409.

900 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7609-7610.

901 Exhibit P-101 CAF0411, pp. 2-3.

902 Exhibit P-101 CAF0385, p. 4.

903 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7621.

904 Exhibit P-101 CAF0385, p. 5.

905 Exhibit P-101 CAF0385, p. 2; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7617-7618.

906 Exhibit P-101 CAF0385, p. 2.

907 Exhibit P-101 CAF0359, p. 1.

Maile and Ms. E then discussed "...whether she would actually give a written statement and then give evidence in court." Maile emphasized the importance of beginning with a statement "...to allow the police to conduct further investigation resulting from the statement." He then explained that before testifying, Ms. E would be "consulted" by both police and the prosecutor. Ms. E remained "somewhat reluctant," but agreed to discuss the matter some more with her common-law husband before making a decision.⁹⁰⁸ Maile was optimistic about the possibility that Ms. E would provide a written statement and agree to testify.⁹⁰⁹ He planned to contact her again the following week if he did not hear from her before.⁹¹⁰

Ms. E Provides a Written Statement

On May 11, 1992, Maile obtained a written statement from Ms. E.⁹¹¹ The statement described how Ms. E became reacquainted with Bagri in Canada in the early 1980s and began to have him and his family visit and stay with her in Vancouver, and to have Bagri use her car on weekends. It stated that the Bagris had Ms. E convinced that they were "...very religious people and that they were always helping people in India by sending money back to India." It discussed Bagri's use of Ms. E's phone, stating that he never spoke in front of her, but told her he was speaking with Parmar when she asked, and that she once heard him argue with Daljit Sandhu, but she did not know about what. It mentioned that Ms. E's family had warned her to stay away from Bagri and his group.⁹¹²

The statement went on to explain that, in June 1985, Ms. E was not getting along well with the Bagris, as she had refused to let Mrs. Bagri stay with her and had been too busy to take her shopping when asked. It stated that Bagri came to Ms. E's very late one evening, around 10 or 11 PM, and knocked on the window to her basement suite. She ignored him at first, but when he kept knocking and woke the upstairs residents, she opened her door. She asked why he was there so late and he said he needed her car. She asked how he got there and, according to the statement, he said, "Talwinder Singh dropped me off." She then asked where he was going, and he said he was going to the airport. When she refused her car, he said he was going to the airport and "...may not come back." He told her that he had people waiting for him. When Ms. E asked where he was travelling to, he told her, "...I'm not going, only the bags are going." Bagri then left and Ms. E closed the door.⁹¹³

In the statement, Ms. E indicated that she refused to give her car to Bagri that night because she "...knew something was up." She then indicated that she heard about "the CP Air crash" on her car radio the next day. She added that she found out about the Air India crash from a relative, as a distant relative of hers

⁹⁰⁸ Exhibit P-101 CAF0359, pp. 1-2.

⁹⁰⁹ Exhibit P-101 CAF0385, p. 1.

⁹¹⁰ Exhibit P-101 CAF0359, p. 2.

⁹¹¹ Exhibit P-101 CAF0386.

⁹¹² Exhibit P-101 CAF0386, p. 2.

⁹¹³ Exhibit P-101 CAF0386, p. 2.

was one of the victims. During the following weeks, she heard discussions at work about who was responsible for Air India, and she told Mrs. Bagri that she thought the bombing was “really bad.” Mrs. Bagri said that they kept saying in the newspapers not to fly Air India and kept warning people. At that time, the statement continues, Ms. E stayed in contact with the Bagris but began to pull away. She no longer had them over or lent them her car. Subsequently, Bagri visited her and wrote in a letter “...you know some of my secrets, you could put me in big trouble if you want to.” Ms. E was also visited by Mrs. Bagri, who asked for money. Ms. E said the Bagris owed her money for something she did for them and that they had also shared a \$10,000 lottery win. Finally, Ms. E stated that, before she moved to her basement suite, Bagri held a meeting at her home which was attended by Daljit Sandhu, Parmar, and two or three others, possibly including Surjan Gill and “...another fellow’s name was Malik, who was giving them money.”⁹¹⁴

At the Malik and Bagri trial, Ms. E testified that Maile had arrived at her house with a written statement already prepared, explaining it was prepared on the basis of information from Laurie. She claimed that Maile had forced her to sign the statement, telling her she would be jailed for perjury if she refused. She said that Maile was rude and that she had threatened suicide if forced to sign the statement.⁹¹⁵ She explained that she signed the statement “...without knowing its contents because she felt she had no choice.”⁹¹⁶ Maile denied those allegations.⁹¹⁷ Justice Josephson found that Ms. E’s allegations were “...an attempt by her to withdraw from a statement signed by her” and did not accept them, but instead believed Maile’s evidence about the circumstances surrounding the statement.⁹¹⁸

Maile testified at the trial that he took no prepared documents to the interview and wrote the statement as Ms. E related the events to him. He gave Ms. E an opportunity to review the statement and she told him that she had no difficulty reading his handwriting. She signed the statement without making corrections, and they then had a discussion outside her residence about her safety concerns. He indicated that the interview lasted approximately 40 minutes and that at the end he felt that he had a good relationship with Ms. E.⁹¹⁹

Ms. E Refuses Further Contact

On May 15, 1992, four days after obtaining the statement from Ms. E, Maile retired from the RCMP after almost 25 years of service.⁹²⁰ Blachford was assigned the task of conducting the necessary follow-up with Ms. E. He explained that the statement obtained by Maile was “good but brief” and that he was asked to attempt to flesh it out if possible. He also had to compare the statement to the other information provided by Ms. E and to clarify any discrepancies.⁹²¹

914 Exhibit P-101 CAF0386, pp. 2-3.

915 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 50; *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 23.

916 *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 23.

917 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 50.

918 *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 66-67.

919 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 49.

920 Exhibit P-101 CAF0388, p. 1.

921 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7782-7783.

On June 2, 1992, Blachford called Ms. E at her residence and asked for an hour of her time to go over the statement she had provided to Maile. Ms. E refused and said that Maile had agreed that "...no one would bother her again about this."⁹²² She was cold with Blachford and did not want to discuss the statement she had provided. She even said that the police had ruined her life by continually coming back.⁹²³ She explained that speaking about this matter upset and depressed her each time. Blachford tried to "negotiate" an hour of her time, but she was "adamant" and said she had no time. Blachford told Ms. E that one more hour of her time "...would be the end of us" because she had provided a statement as requested, and he only needed to clarify a few points and then it would be finished. Ms. E then indicated that she would have to speak to Laurie. Blachford told her that he was no longer involved and that "...the fewer people involved the sooner this would be completed." Ms. E was "unresponsive" and said she did not want to be involved anymore. Blachford told her he would call her the following week to see if she had changed her mind. She said "OK good bye" and put an end to the conversation.⁹²⁴

The following day, Blachford spoke to Maile when he phoned the office about another matter. Maile said that he did not tell Ms. E that the police would not contact her again.⁹²⁵ Indeed, in a previous meeting, he had told Ms. E that if she provided a statement, she would be "consulted" by police and prosecutors prior to testifying.⁹²⁶

On June 9, 1992, Blachford called Ms. E again. She said she did not want to discuss this anymore, was busy and had to go. Asked whether she would be available at other times, Ms. E repeated that she "...would not talk about this matter any further."⁹²⁷

Blachford initially thought that the fact that Maile had obtained a written statement was "the opening" and that Ms. E was now "...more receptive to receiving the RCMP." However, during his brief conversations with Ms. E, she made it "absolutely clear" that she was just not going to talk to him. Blachford was surprised. He felt that it would not have been opportune in this context to try to address or discuss Ms. E's concerns about security or other issues.⁹²⁸ He was also not aware at the time of the information contained in the 1991 CSIS memorandum by Stevenson, which recorded Ms. E's complaints about the RCMP approaches to her in the past, as well as some of the fears behind her reluctance to cooperate with police and to testify.⁹²⁹

In July 1992, Maile attended an "exit interview," which was an RCMP procedure allowing retired members to review their experience with the Force and to make

⁹²² Exhibit P-101 CAF0360, p. 2.

⁹²³ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7792, 7806.

⁹²⁴ Exhibit P-101 CAF0360, pp. 2-3.

⁹²⁵ Exhibit P-101 CAF0387, p. 2.

⁹²⁶ Exhibit P-101 CAF0359, p. 2; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7790.

⁹²⁷ Exhibit P-101 CAF0361, p. 1.

⁹²⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7794, 7806.

⁹²⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7795-7796, 7842; Exhibit P-101 CAF0425.

comments if they wished.⁹³⁰ During the interview, Maile described the statement he obtained from Ms. E shortly before his retirement as a “major breakthrough” in the Air India investigation.⁹³¹ He explained that when he retired, he had advised that he would be “...happy to come back to assist in interviewing some key individuals,” whose confidence he had gained after spending much time establishing a relationship with them. Maile now felt that the evidence he had obtained from Ms. E had not been used in the best manner and that the Air India investigation was not “...being given the priority it deserve[d].” He explained that, after his retirement, others were sent to interview Ms. E but made no progress, which was to be expected given the hard work he had had to do to gain her confidence. In this respect, the Staffing and Personnel Officer who conducted Maile’s interview noted that, because of the sensitivity of the Air India investigation, the involvement of a civilian could only be very limited and that “...undoubtedly all avenues are being explored by investigators in an attempt to overcome any sensitive areas that surfaced with [Maile’s] departure.” He concluded that Maile might have “misconstrued” his limited involvement as a result of his new civilian status as a lack of proper priority given to the investigation.⁹³²

The Staffing Officer further commented that it was “unfortunate” that an experienced investigator like Maile did not take another member along when he interviewed Ms. E and obtained her statement, knowing that it would be one of his last interviews before retiring and given that the interview turned out to be “very important.” He noted that, had Maile taken another member, he could have made the introductions and facilitated follow-up after his retirement.⁹³³ On this issue, Maile initially testified at the Malik/Bagri trial that he recalled being accompanied by Solvason during this interview. However, when Solvason indicated that he did not recall being present, Maile admitted that it was possible that he was alone for the interview.⁹³⁴

The OIC of NSIS, Dicks, could not recall why Maile’s offer to provide assistance after his retirement was not taken up. He indicated that it would not have been usual, but also not abnormal for this to occur. He explained however that, notwithstanding Maile’s comments, NSIS did all that needed to be done with Ms. E and that “...the process was in hand and was able to move forward” because other officers had been involved with Ms. E, including Solvason, Rautio and Blachford.⁹³⁵ Blachford did not recall Maile specifically offering his assistance when he spoke to him after trying to contact Ms. E, and he was also not told by his supervisors at NSIS that Maile had made a general offer to provide assistance. He indicated that, had he known of Maile’s offer, he would have “...taken him up on it,” if this was possible at the time, as it is today. He was uncertain whether the RCMP used retired members as police officers back in the early 1990s, but nevertheless felt that since “this was important,” the RCMP would have used Maile if he could have furthered the investigation.⁹³⁶

930 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7621-7622.

931 Exhibit P-101 CAF0388, p. 3; Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7623.

932 Exhibit P-101 CAF0388, p. 3.

933 Exhibit P-101 CAF0388, p. 3.

934 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 47.

935 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7624, 7636.

936 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7798-7800.

Dicks viewed the statement obtained by Maile from Ms. E as important, but not necessarily the “breakthrough” described by Maile, since “...for the most part what this witness could say was known or suspected.” He further explained, in the note he authored in response to Maile’s exit interview, that “...Sgt. Maile had to be pressured to get on with the job” of getting Ms. E to sign a statement. As he had established good relations with Ms. E, it was important for the RCMP to “take advantage” before Maile retired but, as his retirement approached, he spent “valuable time” attending to pre-pension administration. As a result, the statement was obtained “...in a panic environment, brought on by ex Sgt. Maile’s untimely decision to take his pension.” Dicks did, however, recognize that Maile deserved “full marks” for obtaining the statement, and that it was still “...a break to get the statement.”⁹³⁷

In the end, E Division NSIS made a decision not to carry on with Ms. E any further at the time. After his conversations with her, Blachford concluded that more contact would only alienate Ms. E further, which would not benefit the RCMP. Since the issue was very upsetting to Ms. E, and since her statement to Maile contained the basic information she had to provide about Bagri’s request to borrow her vehicle, Blachford suggested that she be interviewed only at a later date, if it became imperative, and that her reluctance be addressed at that time. He noted that this “tip” would be concluded for now.⁹³⁸

Cpl. Bob Stubbings, another NSIS member involved in the Air India investigation, agreed with Blachford’s comments. He saw three options: making further attempts to get another statement; involving Laurie in negotiations with Ms. E; or pursuing other initiatives and re-assessing the issue if or when it became “imperative” to re-interview Ms. E in the future.⁹³⁹ The options were discussed with NSIS members Blachford and Sgt. Rennie, and all concurred that no further action would be taken for the time being.⁹⁴⁰ At the Inquiry hearings, Blachford explained that the concern of the investigators at the time was to not “...totally alienate a potential witness of this magnitude” at a time when, in any event, the RCMP did not have enough evidence to go to court against Bagri and could not yet prove it was a bomb that downed Air India Flight 182.⁹⁴¹

The Ms. E issue was not raised again until 1994.

1994: Missed Opportunities – Laurie’s Promotion Board Interview

In 1994, Laurie applied for a promotion within the RCMP and was interviewed by a board who questioned him about his past experiences.⁹⁴² One of the members of the promotion board was S/Sgt. Doug Henderson, who was part of the “Air India group.”⁹⁴³ Laurie was asked about source development, and he

937 Exhibit P-101 CAF0388, p. 5.

938 Exhibit P-101 CAF0361, p. 1.

939 Exhibit P-101 CAF0341.

940 Exhibit P-101 CAF0341.

941 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7800.

942 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7492.

943 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7492; Exhibit P-101 CAF0362, p. 1.

cited his interaction with Ms. E as an example of his experience.⁹⁴⁴ At the time, RCMP members involved in the Air India investigation had also heard rumours indicating that Laurie had made comments which "...may have a bearing" on the investigation.⁹⁴⁵ Comments that "...he could have solved Air India" were being attributed to Laurie.⁹⁴⁶ Laurie testified that he would not have used these words. He explained that, in the competition process, he had been required to describe an incident and to explain what actions he had taken and what the results had been. With respect to the Ms. E information, he had to say that he did not know about the ultimate result of his effort, and that, in fact, he had not seen any, but that the information he had gathered had been important and that he would have liked to find out how it had been used. Laurie thought that the Air India investigation would have been an interesting career path for him within the RCMP.⁹⁴⁷

After Laurie's promotion interview, Henderson told Stubbings during a meeting that Laurie "...may have significant information regarding the Air India investigation" which he obtained while at CSIS. As a result, and because of the rumours about Laurie's other comments, it was decided that he should be interviewed.⁹⁴⁸

In April 1994, Laurie was interviewed by Stubbings and Cpl. Jim Cunningham. He discussed the suggestion that he had made while working at CSIS that he be seconded to the RCMP Task Force, along with his colleagues, Ray Kobzey and Neil Eshleman, because they could have made a contribution to the Air India investigation. Stubbings noted that all three former CSIS investigators were now RCMP members working in E Division. Laurie explained that he had received information from Ms. E which he considered vital to the investigation, though it may not be "...directly related to Air India." He stated that the information he received from Ms. E was included in three to six reports, and that the RCMP had not been provided copies, but probably should review them.⁹⁴⁹ Laurie explained in testimony before the Inquiry that he felt the reports, and the investigator's comments and forwarding minutes, might be of use to the RCMP, as they "... added weight to the information." He also could not precisely remember what was in the reports because he had written so many and, without reviewing them, he could not be exactly sure what information came from Ms. E and what information came from other sources.⁹⁵⁰

Laurie also told Stubbings and Cunningham about his opinion that Ms. E consciously changed her story when she was interviewed by the RCMP so that she would not be an acceptable witness. He discussed his belief that Bagri was involved in the assassination attempt of the Indian minister who was in New Orleans shortly before the bombing. The RCMP members involved, however,

⁹⁴⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7492.

⁹⁴⁵ Exhibit P-101 CAF0362, p. 1.

⁹⁴⁶ Exhibit P-101 CAF0340, p. 1.

⁹⁴⁷ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7493-7494.

⁹⁴⁸ Exhibit P-101 CAF0362, p. 1.

⁹⁴⁹ Exhibit P-101 CAF0340, p. 1.

⁹⁵⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7495.

had information which tended to discount Bagri's participation. Finally, Laurie stated that his former colleague, Eshleman, might have information about Bagri, Parmar and the movement of the bags and that he, Laurie, had received the information in a social setting and did not know whether it was reported to CSIS or to the RCMP.⁹⁵¹

After this interview with Laurie, Stubbings indicated that Ms. E's statement was reviewed and that there was "...no reason to recontact [Ms. E] at this time." He recommended that Eshleman be interviewed. E Division also contacted the CSIS BC Region and decided to write to CSIS formally to request permission to speak to their former investigators about the matter.⁹⁵²

On May 18, 1994, RCMP A/Comm. Frank Palmer, in charge of Operations for E Division, wrote to the CSIS BC Region explaining that Laurie had recently been interviewed and had referred to source reports he had prepared. The RCMP requested copies of the reports.⁹⁵³ Palmer also indicated that Laurie had said that his former colleagues, Kobzey and Eshleman, might have information vital to the Air India investigation. Palmer requested authorization to "...fully discuss with these three members information of a criminal nature obtained during their employment with the CSIS, that directly relates to [the RCMP] Air India investigation."⁹⁵⁴

CSIS provided a response on June 20, 1994. CSIS indicated that it had to interview Laurie in order to identify the documents he was referring to.⁹⁵⁵ CSIS added:

...in the unlikely event any documents containing information which has not previously been provided to you are identified, we would be happy to provide access and or disclosure pursuant to arrangements currently in place under our M.O.U.⁹⁵⁶

About the information allegedly known to Kobzey and Eshleman, CSIS suggested that the RCMP first ascertain whether they agreed that they had any such information and, if so, suggested that a similar procedure be followed, with CSIS first interviewing them to identify the information at stake.⁹⁵⁷

Access to the CSIS Report Provided for the First Time

On July 12, 1994, Laurie went to the CSIS offices and met with Stevenson. He was given an opportunity to review his reports about Ms. E for one to three hours. He was not, however, provided with copies of the reports or permitted to

951 Exhibit P-101 CAF0340, pp. 1-2.

952 Exhibit P-101 CAF0340, p. 2.

953 Exhibit P-101 CAF0363.

954 Exhibit P-101 CAF0363, p. 1.

955 Exhibit P-101 CAF0389, pp. 2-3.

956 Exhibit P-101 CAF0389, p. 2.

957 Exhibit P-101 CAF0389, p. 2.

make notes during his review.⁹⁵⁸ The following day, Laurie returned to the CSIS offices, this time accompanied by Stubbings, and again met with Stevenson.⁹⁵⁹ Laurie described his recollection of the visits at CSIS:

MR. KAPOOR: What were the circumstances or conditions placed upon you to review those notes – I mean those reports?

MR. LAURIE: I don't have a good recollection of the first day, but what I do recall is that my reports were made available to me. I sat in a room and glanced at them and I think that the statement that I needed to make was, "Yes, I believe that's all of them"; something like that.

...

MR. KAPOOR: Okay. And what was your understanding of your purpose to review them on the 12th, without the presence of the police?

MR. LAURIE: I don't really know. I think it was to – so that I could satisfy myself that, yes, these are the reports that I was thinking of. If I had any questions, I suppose I could ask them in the absence of the police. It is a little bit of an odd situation since I am the police. I think the understanding was, we were going to identify which of these – the trails were going to be available the next day when we went through it again, only with Corporal Stubbings there.⁹⁶⁰

In the statement he wrote five years later in preparation for the Malik and Bagri trial, Laurie noted that reviewing the reports "...went a long way to refreshing my memory of the many details I had reported," but that "little else" was learned "...which was considered evidentiary."⁹⁶¹

Stubbings prepared a report about his meeting with Stevenson and Laurie.⁹⁶² He noted that he was advised that Laurie had reviewed all of his reports.⁹⁶³ Laurie then read aloud for Stubbings a note prepared by CSIS which contained the information provided by Ms. E.⁹⁶⁴ Stubbings confirmed that the RCMP was in possession of the information.⁹⁶⁵ Stubbings was not permitted to see the

⁹⁵⁸ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7467-7498; Exhibit P-101 CAF0399, pp. 1, 3.

⁹⁵⁹ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7497-7498.

⁹⁶¹ Exhibit P-101 CAF0399, p. 3.

⁹⁶² Exhibit P-101 CAF0344.

⁹⁶³ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁴ Exhibit P-101 CAF0344, p. 1; See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7500.

⁹⁶⁵ Exhibit P-101 CAF0344, p. 1; See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7500.

actual reports.⁹⁶⁶ At this stage, the RCMP took the position that it was no longer interested in determining whether and when the Ms. E information was passed from CSIS to the RCMP:

Stubbings stated that he was not attempting to determine if and when the information was received from the CSIS. Rather more importantly, that the RCMP was in possession of the information regardless of whether the CSIS or the RCMP was the originator.⁹⁶⁷

CSIS offered to allow Stubbings to review the Laurie reports himself, but he noted that he "...declined based on Laurie's comments."⁹⁶⁸ Laurie explained in testimony before the Inquiry that Stubbings was satisfied that all the information that he (Laurie) had gathered from Ms. E was included in the text he read aloud, because Laurie confirmed that this was the case.⁹⁶⁹

Stubbings reported that during the meeting at CSIS, Laurie had said that there were four top secret Babbar Khalsa files that Stubbings should review, as they were interesting, though not directly related to Air India. Stubbings declined because this was not "the issue at hand" and because it could be accomplished at a later date.⁹⁷⁰ Laurie explained before the Inquiry that, in fact, he was referring to the operational reports he had prepared, based on the Ms. E information, which were on the top secret BK file. He asked Stubbings if he wanted to review those reports, as they were about the BK and the RCMP targets were associated with the BK, but Stubbings declined.⁹⁷¹

Finally, Stubbings reported that during the meeting, Laurie indicated that his former colleague Eshleman "...has information regarding Air India/Narita that was not even reported to the CSIS let alone the RCMP."⁹⁷² At the conclusion of the meeting, it was agreed that a letter from RCMP management documenting the agreements reached during the meeting would be provided.⁹⁷³

After the meetings with Laurie and Stubbings, the CSIS BC Region wrote to CSIS HQ to advise of the developments. The Region advised that, before interviewing Laurie, they made "informal inquiries" with the RCMP NSIS members and found out that their concerns related to statements made by Laurie which implied that the information he obtained from a source could help the RCMP's case. Laurie was apparently reluctant to discuss the matter further without CSIS authorization and "...an opportunity to refresh his memory by reviewing his reports." After interviewing Laurie, the BC Region concluded that he was "unaware" that the

⁹⁶⁶ Exhibit P-101 CAF0399, p. 3.

⁹⁶⁷ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁸ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7501.

⁹⁷⁰ Exhibit P-101 CAF0344, p. 1.

⁹⁷¹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7501-7502.

⁹⁷² Exhibit P-101 CAF0344, p. 2.

⁹⁷³ Exhibit P-101 CAF0344, pp. 1-2.

RCMP had “learned the identity” of Ms. E and “...subsequently persuaded the source to disclose the same information provided to the Service.” The CSIS BC Region noted that, once Laurie reviewed his reports and the meeting with Stubbings was held, the CSIS information was compared to that known to the RCMP and was “...determined to be identical.” The RCMP was only concerned that Laurie may have known more, but that was “clearly not the case.” As a result, no further action was necessary. Stubbings “...withdrew [the RCMP’s] request for disclosure of related documents” and agreed to provide a letter confirming that the matter was resolved to the RCMP’s satisfaction.⁹⁷⁴

On July 25, 1994, the RCMP wrote to CSIS and indicated that, following the Laurie and Stubbings meetings with CSIS, Stubbings was “...satisfied that the RCMP is in possession of ALL information related to Air India/Narita provided to the CSIS by the source.” As a result, the RCMP specified it was not requesting any of the CSIS reports.⁹⁷⁵

The CSIS BC Region also had discussions with RCMP E Division member S/Sgt. Don Brost, who stated that “...the issue involving Laurie’s source information was resolved to his satisfaction.” Brost indicated that investigators still intended to speak to Eshleman about the possible unreported information and would advise CSIS of any developments. The BC Region noted that it did not anticipate taking any further action until then. On August 17, 1994, someone in the Region assembled the “...entire package dealing with the Willie Laurie issue” in a work file, noting that “...this kind of thing always seems to resurface.”⁹⁷⁶

The RCMP Interviews Laurie’s Colleagues

In its report to CSIS HQ, following Laurie’s review of his reports, the CSIS BC Region discussed Laurie’s comments about the knowledge of his former colleagues, Eshleman and Kobzey. The Region indicated that Laurie was referring to information that Eshleman would have obtained but not reported. During the meeting, the Region assured Stubbings that they were not aware of any information gathered by the two investigators about Air India/Narita that would not have been disclosed to the RCMP. Under the circumstances, CSIS did not object to the RCMP interviewing Eshleman and Kobzey, who had both rejoined the RCMP.⁹⁷⁷ The BC Region concluded its report to CSIS HQ about the whole incident as follows:

The erroneous perception that the Service failed to disclose Mr. Laurie’s information would appear to have developed as a result of a misunderstanding on Mr. Laurie’s part. It has now been resolved. The possibility that Mr. Eshleman may have failed to report vital information remains a concern. Mr. Stubbings was asked to keep us informed of any developments in this regard.⁹⁷⁸

⁹⁷⁴ Exhibit P-101 CAF0426, pp. 10-11.

⁹⁷⁵ Exhibit P-101 CAF0365, p. 2.

⁹⁷⁶ Exhibit P-101 CAF0426, pp. 4, 6.

⁹⁷⁷ Exhibit P-101 CAF0426, p. 11.

⁹⁷⁸ Exhibit P-101 CAF0426, p. 11.

Laurie testified before the Inquiry that his interlocutors, both at CSIS and the RCMP, had been “missing the point” of his comments about his co-workers. What he meant to indicate was that his colleagues had in-depth knowledge of the subject matter and knew of many details. As a result, they could bring useful insight to the areas of the investigation where the RCMP was “very short of information.” Laurie said he never meant to imply that his colleagues “secreted information away” and kept it from CSIS or the RCMP.⁹⁷⁹ He explained:

MR. KAPOOR: You weren’t suggesting, at all, that they were sitting on information and –

MR. LAURIE: No.

MR. KAPOOR: – failed to pass it up?

MR. LAURIE: No – but the problem is when you make a suggestion like, “Why don’t you talk to those fellows because they know quite bit,” somebody immediately says, “Oh well, they must be hiding stuff, you know; do they know something that hasn’t been reported?” No. Perhaps everything that they know has been reported but you can get it all out of the one mouth by talking to them.⁹⁸⁰

Stubbings contacted Eshleman on August 30, 1994, and asked him whether, while at CSIS, he obtained information about Air India that was not reported to the RCMP. When Eshleman inquired, Stubbings told him that Laurie had provided his name, but “...no specifics were discussed.” Eshleman mentioned that there was much personal conjecture from the CSIS investigators included in the “comments portion” of their reports. He was asked to “consider the situation” and call Stubbings back. He indicated that he would contact Laurie to find out what information he was referring to. A few weeks later, Eshleman advised Stubbings that he was not aware of any “significant information” he knew of that was not passed to the RCMP. He added that he had his “...own opinions on aspects of this [the Air India] disaster as has anyone who has worked this file.”

On September 12, 1990, Stubbings spoke to Kobzey. He said he did not recall any “...significant information to which he was privy that was not passed to the RCMP.” He added that he was not aware of what “action or priority” was placed on the CSIS information once received by the RCMP.⁹⁸¹

The RCMP Decides to Take No Further Action

After his conversations with Laurie’s former colleagues, Stubbings concluded that Laurie, Kobzey and Eshleman had all “...been spoke[n] to without any

⁹⁷⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7506.

⁹⁸⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7507.

⁹⁸¹ Exhibit P-101 CAF0345, pp. 1-2.

new information or leads surfacing” and that therefore “...no further action is required on this particular initiative.”⁹⁸² In the end, after investing time and effort to investigate Laurie’s comments to the promotion board, the RCMP never obtained, or even reviewed, copies of the actual reports containing the details of the Ms. E information gathered by CSIS, and never followed up on the suggestion to review some of the CSIS Top Secret files which may have assisted in its investigation.

Further, the RCMP had become confused about the Ms. E information in its possession, and some of the facts discussed during the 1994 meetings at CSIS were taken as “revelations” when in fact they were known all along to the Force. During his initial interview with Rautio and Blachford, Laurie had made it clear that his approach to Ms. E was done in 1987.⁹⁸³ CSIS HQ had provided similar information to RCMP HQ members in October 1990, indicating that the source had been “only under development” in 1987.⁹⁸⁴ This information had been relayed to E Division by RCMP HQ at the time.⁹⁸⁵ Yet, over the years, RCMP members apparently began to entertain the notion that CSIS had received the information from Ms. E in 1985, shortly after the bombing.

In his report about the 1994 meeting with CSIS and Laurie, Stubbings wrote:

Of particular interest it was determined that Laurie and the CSIS did not initiate their relationship with the source until September 1987, fully more than two years after the disasters. This is a major revelation and may explain some of the confusion that has arisen over this source and the information.⁹⁸⁶

After discovering this “revelation,” Stubbing contacted Rautio and Blachford and they, too, confirmed that they had been under the impression that CSIS had been talking to Ms. E in 1985.⁹⁸⁷ Blachford could not explain why both he and his colleague, Rautio, were under the impression that CSIS had received the information from Ms. E in 1985.⁹⁸⁸ Laurie attempted to explain this confusion:

MR. KAPOOR: Are you able to help us at all about how – about any discussion about that issue at the time?

MR. LAURIE: Not really. I know that when the RCMP – well, first of all, it is my understanding that the information was initially passed in December of 1987. However, later when they

⁹⁸² Exhibit P-101 CAF0345, p. 1.

⁹⁸³ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7760; Exhibit P-101 CAA0781(i), p. 6.

⁹⁸⁴ Exhibit P-101 CAA0787(i), pp. 1-2.

⁹⁸⁵ Exhibit P-101 CAA0787(i).

⁹⁸⁶ Exhibit P-101 CAF0344, p. 1.

⁹⁸⁷ Exhibit P-101 CAF0344, p. 2.

⁹⁸⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7761.

seemingly become aware of it again for the first time, they are very upset and I believe that they describe that the CSIS has been withholding this information for x number of years and that x is a number of years that goes back to 1985 and there is no reason why it should because obviously it was 1987 before the initial meeting took place.

MR. KAPOOR: And, of course, there is the reference here that this is a major revelation and may explain some of the confusion that has arisen over the source and the information. Did you get a sense when you were in that meeting with Stubbings and Stevenson, that Stubbings was surprised that it started in '87?

MR. LAURIE: No. I don't remember him – I think he might have, you know, double-checked the date, but I think he was trying to hold his cards pretty close to his chest. You have to remember that Corporal Stubbings believes that I am in on this conspiracy to withhold information somehow and that, you know, this is a ruse of some sort. I don't know. So if he was really, really surprised he didn't express it to me.⁹⁸⁹

The Ms. E issue again appears to have been put to rest by the RCMP after the 1994 meeting with CSIS and Laurie. No further attempts were made to contact Ms. E since the 1992 interviews and phone calls.

1995-1996: The Ms. E Issue "Re-Surfaces" Again

In 1995, there was a sense of urgency at the RCMP E Division NSIS, because the tenth anniversary of the bombing was approaching in June. NSIS was "...attempting to resolve all the issues before then," since it was thought "...preferable to have the RCMP make a public statement beforehand, rather than reacting to media queries afterwards."⁹⁹⁰

In February 1995, a lengthy meeting was held at E Division NSIS for the purpose of reviewing the Air India file and attempting to "...develop and follow-up on unresolved initiatives." The Ms. E issue was discussed. At that time, Bagri was considered one of the main suspects.⁹⁹¹ He was described shortly after as the "main target" of the E Division investigation.⁹⁹² Early on in the meeting, the NSIS members discussed "...the connection of Bagri to a female identified as [Ms. E] with whom he was allegedly having an affair." The Ms. E information was reviewed and it was noted that: "...it was believed that CSIS had interviewed [Ms. E] shortly after the Air India crash/Narita explosion but it was recently learned

⁹⁸⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7499-7500.

⁹⁹⁰ Exhibit P-101 CAF0391, p. 2.

⁹⁹¹ Exhibit P-101 CAF0390, p. 2.

⁹⁹² Exhibit P-101 CAF0392, p. 4.

that this did not happen until 2 years afterwards.” The members then noted that Ms. E denied having a relationship with Bagri, and had been interviewed several times by different RCMP officers. They mentioned the fact that the last interview had been conducted by Maile alone, at Ms. E’s request, and that the written statement obtained then “...raised some unanswered questions.”⁹⁹³

The statement obtained by Maile was reviewed and the members specifically noted that Ms. E knew something was not right and therefore refused to lend her car to Bagri. A general discussion followed and the questions raised included whether the RCMP could put Bagri in Vancouver the day before the bombing, how Laurie had come to know of Ms. E, whether NSIS wanted to interview Bagri about his meeting with Ms. E and whether Ms. E knew more than she told police. The RCMP had information indicating that Bagri’s vehicle was found at Parmar’s residence on June 21st, and the NSIS members thought that this confirmed that he was in Vancouver on that date.⁹⁹⁴ At trial, however, this was found to be inconclusive, as CSIS surveillance had described the occupants in Bagri’s vehicle as an “...unknown East Indian male, who was not Mr. Bagri and has not been subsequently identified,” along with an unknown female and young child.⁹⁹⁵ The CSIS surveillance information had been the object of an admission of fact by the Crown and defence, and Justice Josephson found that, as a result, the Crown could not use the presence of Bagri’s vehicle in Vancouver on June 21st to show that Bagri himself was in Vancouver on that date.⁹⁹⁶ Further, because the CSIS transcriber was on leave on the weekend of the bombing, the subscriber information which would have provided information about Bagri’s location when Parmar called him on that weekend was not recorded, though CSIS intercepted the call.⁹⁹⁷

During the February 1995 RCMP meeting, Blachford, who was working in the Informatics section by then,⁹⁹⁸ was brought in to discuss the Ms. E issue since he had been involved in the matter.⁹⁹⁹ He did not bring or review his notes or other materials, but was simply asked to share his recollection.¹⁰⁰⁰ He informed the members that the information about Bagri meeting with Ms. E had initially been passed by CSIS to Cummins “at a social function” and “not through channels.”¹⁰⁰¹ At the Inquiry hearings, Blachford recalled that, in fact, the information was passed during a meeting at CSIS HQ on another matter and not during a social function.¹⁰⁰² His mistaken impression about the passing of the information is another example, along with the RCMP belief that CSIS had obtained the information from Ms. E in 1985, of how knowledge can become distorted and reported inaccurately in cases of such magnitude as Air India, with a variety of RCMP officers and CSIS agents participating separately and in a disorganized fashion.

993 Exhibit P-101 CAF0390, p. 2.

994 Exhibit P-101 CAF0390, pp. 3-4.

995 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1003.

996 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1145-1146, 1237.

997 See Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.

998 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7801.

999 Exhibit P-101 CAF0390, p. 4.

1000 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7802-7803.

1001 Exhibit P-101 CAF0390, p. 4.

1002 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7802-7803.

Blachford told his RCMP colleagues that, according to his information, Bagri had asked to borrow Ms. E's car for "something big" and had told her she "...may not see him again." He explained that Ms. E became hostile to the Bagris after the bombing. He then stated that an "...initiative on Air India brought Maile to re-interview Ms. E" and that the first interview of Ms. E "...may be on tape." Attention then turned to Laurie's alleged statements to RCMP members that "...while he was [in] CSIS, information given to RCMP would have solved Air India." The review of CSIS reports by Laurie and the subsequent meeting with Stubbings at CSIS were discussed, as well as the conclusion that Stubbings "...determined that the CSIS had no information not already in the possession of the RCMP." Blachford indicated that, according to him, "...something happened that night," which Ms. E had not revealed. The discussion then moved on to "whether or not" there was a "...CSIS cover-up and lack of cooperation from CSIS," and it was decided that any new approach to Ms. E would have to be "well thought out" and would have to involve Laurie, now a Corporal in the RCMP, along with an NSIS member.¹⁰⁰³

In the end, interviewing Ms. E was included in a list of "...suggested things to do." During the meeting, it was suggested twice that Ms. E be asked to take a polygraph. The final recommendation concluded that Ms. E should be re-interviewed after discussions were held about who would conduct the interview and about whether Laurie should be involved. Consideration was to be given to polygraphing her, and "background work" was to be done to find out more about her common-law husband.¹⁰⁰⁴ About the possibility of polygraphing Ms. E, Blachford indicated in testimony before the Inquiry that, given her state of mind and her continued reluctance, it would have been "...a little over the top" to use this approach with her.¹⁰⁰⁵ While this was considered as an avenue during the meeting, it does not appear that the RCMP, in fact, attempted to polygraph Ms. E.

The recommendations made during the February 1995 meeting were re-examined, and E Division NSIS sought the concurrence of senior management to undertake certain outstanding initiatives as soon as possible. These initiatives included an attempt "...to get a further statement" from Ms. E.¹⁰⁰⁶ When asked to provide more detail to senior management, the Acting Officer in Charge for NSIS, Brost, indicated that Ms. E had provided information about a request from Bagri to borrow her car to take bags to the airport which took place "...a night or two before the aircraft departed Vancouver." Brost added that "...it was learned in 1994" that the Ms. E information "...did not surface until 2 years after the disaster." He noted that Ms. E was "allegedly" having an affair with Bagri, "...which she denies." Finally, he explained that NSIS had approached Ms. E "...on a number of occasions," that "...she reluctantly provided a written statement on 92-05-11," and that she had refused to cooperate since and "...rebuffed further attempts to talk to her" by the RCMP. Because of Ms. E's reluctance, NSIS proposed to assess the possibility of using Laurie, hoping that their rapport would still exist and "...result in additional information."¹⁰⁰⁷

¹⁰⁰³ Exhibit P-101 CAF0390, p. 4.

¹⁰⁰⁴ Exhibit P-101 CAF0390, pp. 2-3, 5, 10.

¹⁰⁰⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7804.

¹⁰⁰⁶ Exhibit P-101 CAF0391, p. 2.

¹⁰⁰⁷ Exhibit P-101 CAF0392, p. 3.

In May 1995, E Division NSIS decided to have one of its members, Cunningham, review the Ms. E tip and determine "... what information is still required from her." Once this was done, NSIS planned to contact Laurie to request his assistance in approaching Ms. E.¹⁰⁰⁸ In August 1995, Sgt. G. Lamontagne wrote to Cunningham about the Air India initiatives, noting that further to a response received from the Crown in April and to the "...reward approval from HQ," E Division could now proceed with its interview plans. He instructed Cunningham to carry out the interview with Ms. E with the assistance of Laurie as soon as possible.¹⁰⁰⁹ However, no further approach to Ms. E was undertaken by the RCMP in 1995.

Meanwhile, at CSIS, the Ms. E file was being considered for destruction as it was no longer active. In June 1995, the file was reviewed and the Chief of Operations agreed with a recommendation that it be retained for another year. In June 1996, CSIS again decided to retain the file for one more year, noting that "... in view of what is happening with the RCMP on the 30th floor these days, we should probably hang on to this one for at least another year."¹⁰¹⁰ At the time, the RCMP had formed a new Air India Task Force and was planning to take the case to trial with the evidence already collected.¹⁰¹¹

On February 7, 1996, a member of the E Division Air India Task Force did a review of tip 2805, the Ms. E tip.¹⁰¹² The Ms. E information was summarized and issues requiring follow-up were listed. Among the questions suggested for future investigation were: "...did [Ms. E] ever openly admit to investigators that she had/was having an affair with Bagri? If so, when? When did the affair start & end?" The reviewer also suggested asking Ms. E why she did not go to the police when she heard about Air India, given her suspicions of Bagri. He also asked whether Ms. E saw other individuals with Bagri, whether she felt threatened by Bagri's mention that she knew his secret and what she thought the secret was. Another suggestion raised the possibility of interviewing Ms. E's father about what he knew about Bagri which would have motivated him to warn Ms. E to stay away from him. As Ms. E had stated to Maile that Bagri's knocking had woken up the people living upstairs, the reviewer suggested interviewing Ms. E's landlord and his family about the observations made on that night, as well as conducting neighbourhood inquiries, which had not previously been done.¹⁰¹³

On February 16, 1996, the OIC of the renewed Air India Task Force reported on the new initiatives undertaken, which included an application for authorization to intercept private communications.¹⁰¹⁴ At that time, the Task Force was planning to commence "...a concentrated series of interviews/interrogations of several key subjects," including Ms. E.¹⁰¹⁵ On February 26th, another tip review was conducted, this time of tip 2731, which was assigned to the follow-up

¹⁰⁰⁸ Exhibit P-101 CAF0393, p. 2.

¹⁰⁰⁹ Exhibit P-101 CAF0398, p. 2.

¹⁰¹⁰ Exhibit P-101 CAF0426, p. 2.

¹⁰¹¹ See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

¹⁰¹² Exhibit P-101 CAF0412.

¹⁰¹³ Exhibit P-101 CAF0412, pp. 2-3.

¹⁰¹⁴ Exhibit P-101 CAA0936(i).

¹⁰¹⁵ Exhibit P-101 CAA0936(i), p. 2.

of Watt MacKay issues, including issue 2(w) about the Ms. E information.¹⁰¹⁶ The 1987 correspondence on file, as well as the 1990 Watt MacKay follow-up documents and interviews with Ms. E were summarized. The reviewer noted that "...statements made by [Ms. E], some of which are not directly related to A.I., have been included to reflect the manner & frequency in which [Ms. E] changes her stories." A list of follow-up questions about issue 2(w), similar to those in the former review of the Ms. E tip, was included.¹⁰¹⁷ About Ms. E's failure to report her information to police, the reviewer noted:

Re: Source convinced Bagri directly involved (A.I./Narita). If [Ms. E] felt immediately that Bagri was directly involved in A.I./Narita, what reason did she give for not contacting police right after the crash? Why did she wait for C.S.I.S./R.C.M.P. to approach her, particularly when her own relatives had been killed? If fear of Bagri/personal involvement with Bagri was her excuse, how much initial pressure was put on her by investigators, in the vein of solving her relatives murder/protecting others from Bagri's violence? Has she shown any sense of guilt in previous interviews, that could be developed further with an[sic] re-interview?¹⁰¹⁸

It was not until July 1996 that the RCMP began taking steps for a new approach to Ms. E, and not until December 1996 that this approach was finally attempted.

1996-1999: New RCMP Approach to Ms. E – Preparation for Trial

On April 1, 1996, Cpl. Doug Best joined the Air India Task Force as an investigator. He was provided with a briefing on the Air India file and was asked to follow up on the Ms. E tip as part of a larger review of the Air India case. He was ultimately requested to approach Ms. E. At the time, it was obvious to the Task Force investigative team that Ms. E was one of the most important witnesses in the case against Bagri. Securing her cooperation would be key to the success of the prosecution, and it was therefore imperative that Ms. E be made to feel comfortable and safe in her cooperation with the RCMP.¹⁰¹⁹

In preparation for his approach to Ms. E, Best reviewed the information on file which documented the RCMP's interactions with her over the years. He then spoke with Laurie in July 1996 to get his advice on how best to approach Ms. E in order to receive her cooperation.¹⁰²⁰ This was the first time Laurie had been contacted by the RCMP about the Ms. E issue since his April 1994 meetings with CSIS and the RCMP.¹⁰²¹ Laurie told Best that Ms. E was unlikely to cooperate

¹⁰¹⁶ Exhibit P-101 CAF0413.

¹⁰¹⁷ Exhibit P-101 CAF0413, pp. 2-8.

¹⁰¹⁸ Exhibit P-101 CAF0413, p. 7.

¹⁰¹⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7851-7852, 7901-7902.

¹⁰²⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7852, 7855-7856.

¹⁰²¹ Exhibit P-244, vol. 2 (January 5, 2004 Transcript), pp. 50-53; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7514-7515.

if she felt intimidated.¹⁰²² He emphasized that she should be interviewed in a non-intimidating environment, and should be interviewed one-on-one.¹⁰²³ He explained that Ms. E was afraid of police and that two or more officers would seem very “police-like.”¹⁰²⁴ While Ms. E was concerned that cooperation with police would put the safety of her children at risk, Laurie felt she would likely cooperate if she could be “...convinced protection would be provided to her and her family.” Laurie also indicated that he was prepared to assist the RCMP, including by way of an introduction or direct approach.¹⁰²⁵ At the Inquiry hearings, he commented on his impression of Best’s approach following his conversation with him:

MR. LAURIE: I think he’s after a statement more than an interview. I think he wants a piece of paper.¹⁰²⁶

The RCMP canvassed a number of options for possible approaches to Ms. E. These included contacting Ms. E’s brother to have him convince her of the need for her cooperation, making a direct approach to be facilitated by Laurie, and simply making a direct approach. Best wrote that it was his belief that the first approach, using her brother, was the best option at the time. He noted that the RCMP’s last contact with Ms. E in June 1992 “...yielded a negative response,” which was felt to have been “...based on her predisposition concerning Police vis-à-vis Personal Safety.”¹⁰²⁷ Yet, in late 1996, Best attempted a direct approach to Ms. E, without the help of her brother or Laurie.¹⁰²⁸ He dropped in on her residence unannounced and was informed by her common-law husband that she had left Vancouver and would not be back until the following week. Best advised that he would return then.¹⁰²⁹

Best again dropped by Ms. E’s residence on December 6, 1996, and this time he found her at home. He proceeded to explain to Ms. E that she would be subpoenaed as a witness based on the statement that she had given to Maile. At this point, he did not speak to Ms. E about possible protection or her concerns about her safety.¹⁰³⁰ A few days later, on December 11, 1996, Ms. E came to the RCMP Headquarters at Best’s request for an interview about her relationship with Bagri and her information in relation to Air India.¹⁰³¹

Interviews at RCMP Headquarters

The Air India Task Force attempted to control the conditions of the December 11th interview with Ms. E as much as possible. It was conducted in an interview

¹⁰²² Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7855-7856.

¹⁰²³ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7855-7856, 7883; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7515.

¹⁰²⁴ Exhibit P-244 (Proceedings at Trial, Day 65), p. 62.

¹⁰²⁵ Exhibit P-101 CAF0394, p. 2.

¹⁰²⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7515.

¹⁰²⁷ Exhibit P-101 CAF0394, p. 2.

¹⁰²⁸ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7859.

¹⁰²⁹ Exhibit P-101 CAF0423, p. 3.

¹⁰³⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7860-7861.

¹⁰³¹ Exhibit P-101 CAF0423, p. 3.

room at RCMP Headquarters with audio and video recording.¹⁰³² The interview lasted about two hours.¹⁰³³ Ms. E was asked for her permission to have the interview audio recorded and agreed, but she was not aware that she was being videotaped.¹⁰³⁴ Upon her arrival, Ms. E was taken directly to the interview room and was "...permitted to make herself comfortable."¹⁰³⁵ Ms. E was introduced to another officer, Leon Van deWalle, the sergeant in charge of the investigative team,¹⁰³⁶ who provided an overview of the investigation and explained to her the importance of witnesses.¹⁰³⁷ He told her that she was one of several witnesses who would be required to provide evidence to the court. He asked that she provide an account of the events for Best.¹⁰³⁸ Van deWalle then excused himself, and Best proceeded with the interview.¹⁰³⁹ A transcript of the interview was produced.¹⁰⁴⁰ Unfortunately, the interview did not prove to be a very useful exercise.

At the outset, Ms. E was nervous. She gave an account of the incident when Bagri came to her home late at night and asked to borrow her car, which she said she had refused. She said she had the feeling that Bagri went to the Ross Street Temple, but stated that she thought "...Willie told [her] that's where he went." She was unable to recall specifically when this incident occurred. After changing the subject for a brief time, Best again attempted to return to the specifics in the statement that Ms. E had provided to Maile. When pressed, Ms. E complained that Laurie told her that she would not have to answer these questions again. She said that because it had been so long, all she could recall of the episode was that she had refused to lend Bagri her car.¹⁰⁴¹

Ms. E brought up the issue of when the visit had occurred relative to the disaster and said she was asking herself the question of how many days apart these events were. Best attempted to "jog" her memory, and suggested that the events were "...in fact, extremely close." When Best asked whether Bagri's visit was "just before" or after the disaster, Ms. E said that it was before, and thought that it was "pretty close." At some point in the interview, she indicated that Bagri's visit was "three, four days" before the disaster.¹⁰⁴²

Best eventually had to read out the 1992 Maile statement to Ms. E, point by point, to help refresh her memory.¹⁰⁴³ As it was being read back to her, she indicated that she still could not remember the details,¹⁰⁴⁴ including the fact that Bagri had told her that Talwinder Singh Parmar had dropped him off at

1032 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7862.

1033 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7863; Exhibit P-101 CAF0395.

1034 *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 53-54.

1035 Exhibit P-101 CAF0423, p. 4.

1036 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7862.

1037 Exhibit P-101 CAF0423, p. 4.

1038 Exhibit P-101 CAF0423, p. 4; Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7863.

1039 Exhibit P-101 CAF0423, p. 4.

1040 Exhibit P-101 CAF0395.

1041 Exhibit P-101 CAF0395, pp. 3, 8, 12-16, 18-19.

1042 Exhibit P-101 CAF0395, pp. 22-23, 35, 41.

1043 Exhibit P-101 CAF0395, p. 48.

1044 Exhibit P-101 CAF0395, pp. 51, 54, 55, 57, 58, 60, 62, 65, 81.

her place – stating “I thought Willie told me that.” She also did not remember crucial facts, including whether Bagri said that “...only the bags were going” on the plane or that the crash had occurred the day after the Bagri request. Late in the interview, Ms. E said that Maile had, in fact, copied what Laurie had written down and asked her to sign it.¹⁰⁴⁵

Best pressed Ms. E to try to remember because if she did not, it left her open to “unpleasant things”:

...because what will happen if, if it's not, when you get up there, well the, the lawyer will explain. We, our Crown Counsel will explain this to you, is that you leave yourself, you leave yourself open to unpleasant things ... happen, you know, by that I mean you're questioned, you're cross questioned, ... so it's important that you're clear.¹⁰⁴⁶

In response to this scenario, Ms. E asked Best whether he thought she needed a lawyer and he provided his opinion that she did not.¹⁰⁴⁷

Ms. E told Best that she wanted to have as few meetings as possible, indicating she did not want this to be a prolonged affair. He told her that she would need to meet with the Crown and go over the incident again so that it remained as “refreshed” in her memory as possible.¹⁰⁴⁸ Near the end of the interview, Ms. E became very emotional when she started talking about family and the fact that she had lost family members on the flight.¹⁰⁴⁹

Ms. E expressed concern that Bagri's family would feel she was betraying them. She told Best, “...at least they don't know who you are,” and “...in our community, they know who we are and where we live and where we go.” She also said that if they want to “...find me, they [know] where I am and they know [where] my family is.” To this, Best responded that, from the RCMP's perspective, the threat of the BK was “minimal” and that their “...day has come and their day has gone from a political perspective.”¹⁰⁵⁰ At the Inquiry hearings, he explained that occasionally at the RCMP's weekly meetings with CSIS, CSIS would provide an update about the status of the groups, including the BK, and this is likely how he came to the impression that “...maybe their infrastructure wasn't as strong as it once was.” However, while Best stated that the RCMP took Ms. E's concerns very seriously, the Force did not attempt to conduct an assessment of the possible threat to Ms. E. Best expressed the view that perhaps Ms. E was emphasizing her fear to “...make us [the RCMP] kind of go away maybe.”¹⁰⁵¹ Protective measures, which could be implemented to alleviate Ms. E's concerns for her safety, were not discussed during the December 1996 interview.

¹⁰⁴⁵ Exhibit P-101 CAF0395, pp. 57, 59-60, 81.

¹⁰⁴⁶ Exhibit P-101 CAF0395, p. 97.

¹⁰⁴⁷ Exhibit P-101 CAF0395, p. 97.

¹⁰⁴⁸ Exhibit P-101 CAF0395, p. 94.

¹⁰⁴⁹ Exhibit P-101 CAF0395, p. 103; Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7879.

¹⁰⁵⁰ Exhibit P-101 CAF0395, pp. 100-102.

¹⁰⁵¹ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7877-7878.

Best phoned Ms. E again on January 6, 1997, and after an exchange of pleasantries, she agreed to meet him on January 9th. She was informed that “our mutual friend, Willie Laurie” would also be present at the meeting.¹⁰⁵² Laurie had not heard again about the Ms. E issue since his July 1996 discussion with Best. Then, in January 1997, he was asked to assist in an RCMP interview of Ms. E.¹⁰⁵³ Best met with Laurie at his office in Richmond on January 7, 1997, and provided him with materials to “refresh his memory.”¹⁰⁵⁴ Laurie’s understanding was that he was brought in because he was a “friendly face,” as he had worked with Ms. E in the past. At the time, Laurie was not aware of any contact other RCMP officers had had with Ms. E since 1990.¹⁰⁵⁵ In fact, he was still under the impression that, since 1990, Ms. E had consistently relied on her “memory loss” to refuse to cooperate,¹⁰⁵⁶ and was obviously not aware of Ms. E’s dealings with Maile and Solvason or of the statement she had provided in 1992.

On the morning of January 9, 1997, Best phoned Laurie to confirm their meeting at 3 PM. At 2 PM, Best met with then Insp. Gary Bass and some of the other RCMP members involved in the Ms. E interview, including Sgt. Jim Hunter, at RCMP Headquarters.¹⁰⁵⁷ While Laurie participated in a briefing session immediately before the interview when he arrived at HQ, he was not involved in any broader discussions about the general strategy in approaching Ms. E which may have taken place beforehand.¹⁰⁵⁸ Laurie felt that his role was to attempt to convince Ms. E that the RCMP needed to acquire the information she had provided to him in the past in a form suitable for court, i.e. a written statement.¹⁰⁵⁹ Ms. E arrived at 3:20 PM¹⁰⁶⁰ and finally left around 9 PM that night.¹⁰⁶¹ She requested that the interview not be recorded, as it made her anxious.¹⁰⁶² The interview was live-monitored in another room¹⁰⁶³ so that officers were able to watch what was going on in the interview room.¹⁰⁶⁴

It is difficult to reconstruct what occurred during the almost six hours that Ms. E was in the RCMP interview room, as there were only three pages of handwritten notes by Best produced as a result of the interview, and the notes do not provide any manner of detailed account of what occurred.¹⁰⁶⁵

Laurie was present throughout the interview, at times in the room with Ms. E and at other times outside the room.¹⁰⁶⁶ Ms. E was pleased to see Laurie again.¹⁰⁶⁷

1052 Exhibit P-101 CAF0367, p. 2.

1053 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7515.

1054 Exhibit P-101 CAF0367, p. 3.

1055 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7515-7516.

1056 Exhibit P-101 CAF0399, p. 3.

1057 Exhibit P-101 CAF0367, p. 5.

1058 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7516; See also Exhibit P-244, vol. 2 (January 5, 2004 Transcript), p. 55.

1059 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517.

1060 Exhibit P-101 CAF0367, p. 5.

1061 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7882.

1062 Exhibit P-101 CAF0367, p. 5.

1063 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7885.

1064 Exhibit P-244 (Proceedings at Trial, Day 65), p. 56.

1065 Exhibit P-101 CAF0367, pp. 5-7.

1066 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7518.

1067 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517; Exhibit P-101 CAF0367, p. 5.

According to him, Ms. E also seemed to have a good relationship with Best. But in terms of providing a statement, "...she tried everything she could think of to not do this."¹⁰⁶⁸ Laurie described her reactions during the interview:

MR. LAURIE: I remember on an occasion or two her whispering to me, "[Willie] help me? I can't do this. I won't do this. You can't let them do this to me." And she was very fearful and you know how she had this worst nightmare for years. It was materializing in front of her and she was not happy.

MR. KAPOOR: Was she – would you describe her at times of being distraught?

MR. LAURIE: Yes, and I did so, I think.

MR. KAPOOR: And sobbing?

MR. LAURIE: Occasionally.¹⁰⁶⁹

Portions of Laurie's testimony relating to his involvement in this interview were read to Best during his evidence. Best disagreed with Laurie's description of events, and said it did not comport with how Ms. E appeared to him over the course of the interview. He admitted that at some point she did become emotional, but he explained that he "...didn't take the emotion that she was expressing quite in the context that Laurie does in here." He said that he had not seen Ms. E whispering to Laurie, though it may have happened. He also admitted that due to the fact that he was in and out of the room and was consulting with his colleagues, he was not able to monitor the interview continuously.¹⁰⁷⁰

Laurie explained that throughout the day, the people around Ms. E changed. Sometimes she was with one of the officers alone, sometimes there were two.¹⁰⁷¹ Best explained that he went back to the monitor room at some point and spoke with Hunter, a polygraphist, who was monitoring the interview with Ms. E.¹⁰⁷² Hunter realized then that, by coincidence, he actually knew Ms. E from previous associations, and it was decided to introduce him.¹⁰⁷³ He would be a "friendly face," like Laurie.¹⁰⁷⁴ The manner in which Hunter's connection to Ms. E was discovered by the Task Force was not explained to Laurie, who always believed that Hunter had been brought into the interview by design due to his past association with Ms. E.¹⁰⁷⁵

¹⁰⁶⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517.

¹⁰⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7517-7518.

¹⁰⁷⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7884-7886.

¹⁰⁷¹ Exhibit P-244 (Proceedings at Trial, Day 65), p. 39.

¹⁰⁷² Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7887.

¹⁰⁷³ Exhibit P-101 Exhibit P-101 CAF367, p. 6, CAF0423, p. 5.

¹⁰⁷⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7516-7517; See also Exhibit P-244, vol. 2 (January 5, 2004 Transcript), p. 57.

¹⁰⁷⁵ Exhibit P-244 (Proceedings at Trial, Day 65), p. 57; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7516.

Ms. E was surprised and pleased to see Hunter.¹⁰⁷⁶ There was an “instant rapport” between them. Best noted at the time that, after discussions with Laurie and Hunter, Ms. E eventually admitted that she could recall Bagri’s visit on the evening before the Air India crash.¹⁰⁷⁷ In his testimony before the Inquiry, Best explained that when Hunter and Ms. E sat down and proceeded with the interview, she said that she did not want to hold the investigators back any longer and that what she had told Laurie in the past was true, indicating that she in fact recalled what she had told him. Hunter then asked her to repeat that to Best and to Laurie. From Best’s perspective, she was very emotional at the time, but the emotion was that “...she was expressing that finally, finally, after all of this, there was relief again that she has finally said it.”¹⁰⁷⁸ She was then asked to provide a written statement.

While Best’s evidence was that Ms. E was not reluctant during the interview, he admitted that the effort over five hours was to try to get her amenable to giving a statement. If she had walked in and said she was prepared to provide a statement right away, such a long interview would obviously not have been necessary. According to Best, “...she had tried to distance herself from the position she had initially taken with Laurie and our objective was to get her back on track.”¹⁰⁷⁹

When asked about the length of the interview and the possible effect that might have had on Ms. E, Best stated that it:

...seems or may seem from the outside looking in, that is an inordinate amount of time. All I can say is that during that time there would have been breaks. There may have very well even been a – we may have even brought in sandwiches. I simply don’t recall.¹⁰⁸⁰

Best asserted that the interview room was “quite comfortable.” He stated that Ms. E “...was free to come and go as she pleased.”¹⁰⁸¹ Ms. E apparently had a different perception. At the Malik and Bagri trial, she testified that “...she was at the police office for hours” and that she “...believed that she would not be permitted to leave” until she signed a written statement.¹⁰⁸²

The result of the January 1997 interview was a one-page typed document, which was signed by Ms. E and witnessed by Best and Laurie.¹⁰⁸³ Ms. E later testified that she signed this statement “under great pressure.”¹⁰⁸⁴ The statement consists

¹⁰⁷⁶ Exhibit P-101 CAF0423, p. 5; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517.

¹⁰⁷⁷ Exhibit P-101 CAF0367, pp. 6-7.

¹⁰⁷⁸ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7888-7889.

¹⁰⁷⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7910.

¹⁰⁸⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7890.

¹⁰⁸¹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7883.

¹⁰⁸² *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 26.

¹⁰⁸³ Exhibit P-101 CAF0397.

¹⁰⁸⁴ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 26.

of seven questions and answers. The first question, to which Ms. E answered in the affirmative, was "...the statement/information you provided to Willie Laurie during your numerous meetings with him over the past years are true and accurate, to the best of your knowledge." She also agreed that during her first meeting with Best she was "...very anxious and scared to reveal all [her] knowledge concerning Mr. Bagri," and confirmed that Bagri asked to borrow the car the night before the Air India crash to take some luggage to the airport.¹⁰⁸⁵ She said she did not think she had lent it to him. He might have had a key, she could not recall.¹⁰⁸⁶ She also stated that Bagri returned to her home at night and told her that she knew secrets that could put him in trouble.¹⁰⁸⁷

While Ms. E agreed in the written statement that her past statements to CSIS had been true, she did not have the opportunity to review them and, in fact, Laurie did not have his reports with him during this interview,¹⁰⁸⁸ and had not even looked over them since 1994.¹⁰⁸⁹ In fact, their content was not really discussed with Ms. E in detail because it was believed that Ms. E "knew precisely" which facts she was being asked to confirm, as she "...had gone through them so many times" with Laurie.¹⁰⁹⁰ Laurie admitted that, at the time of this 1997 interview, he could recall "the basics" of what Ms. E had told him back in 1987-1989, but that it is "...difficult to recall the details without the benefit of the reports."¹⁰⁹¹ Laurie was disappointed with the results of the interview:

MR. KAPOOR: How did you feel by the end of the interview as to how it went and where she was at and from your perspective, having managed her as your source, back in '87 all the way to this, 10 years later?

MR. LAURIE: Well, I felt a number of things, sir. I was quite disappointed that this was the result. It was an unpleasant experience and hopefully after this much time there would be a better result than the one-page statement of this calibre. Throughout the afternoon there were periods where I felt sympathy for her because she had placed her trust in me and it was misplaced. There were times when it was frustrating because we made a very good case for the need to have her cooperation. The original reason for her cooperation was the families. We needed this. And she felt that, but she needed to protect her children, and she was going to.¹⁰⁹²

1085 Exhibit P-101 CAF0397.

1086 Exhibit P-101 CAF0367, p. 7.

1087 Exhibit P-101 CAF0397.

1088 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7887.

1089 Exhibit P-244 (Proceedings at Trial, Day 67), p. 58.

1090 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7519.

1091 Exhibit P-244 (Proceedings at Trial, Day 67), p. 59.

1092 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7519-7520.

Shortly after the January 1997 interview, Ms. E went to a psychiatrist and said that she was “suffering from stress” and that “...the police were putting words in her mouth and making her sign documents, the nature of which she did not appreciate.”¹⁰⁹³

Continued Unsolicited Contacts, the “Grocery Store Operation” and the Hayer Murder

After the January 1997 interview, Best continued to contact Ms. E to “take the temperature,” to make sure she had not “gone offside,” and to give her the opportunity to address concerns she may have had.¹⁰⁹⁴ However, signs began to appear that Ms. E was once again pulling away.

On January 27, 1997, Best phoned Ms. E at her residence. She indicated that she had discussed with her husband the last meeting with the RCMP and that she was under “considerable stress.” She advised that her husband wanted to speak to Best. Ms. E’s husband initially agreed to meet Best at the RCMP Headquarters, but later phoned Best to cancel. He expressed “...concern that his wife has been under considerable stress and feels under considerable pressure to recall the events in question,” and indicated that it was their wish to “...avoid further contact with [the RCMP] until Court.” Best suggested that Ms. E and her husband take some time to “cool down” and make note of “...any concerns they may have.”¹⁰⁹⁵

Just over two weeks later, on February 14, 1997, Best showed up, unannounced, at Ms. E’s home where she was working.¹⁰⁹⁶ Ms. E was busy with an employee and took Best to the family room for a private conversation. Best indicated that, while he “could empathize” with her concern about being a witness, they “... both know that she recalls the events of the night in question.” Best indicated that he was prepared to discuss any concerns she and her husband had, but that unless he “...specifically knew what her concerns are” he was unable to address them.¹⁰⁹⁷ She suggested that Best call to arrange a time convenient for her and her husband.¹⁰⁹⁸

Best phoned and spoke with Ms. E’s husband the next month, emphasizing the importance of Ms. E being relaxed and prepared for her testimony. He asked whether he knew about the nature of the information Ms. E held. Ms. E’s husband responded that he believed he knew. Best indicated that Ms. E’s evidence was very important to the case and that her requirement as a witness “is inevitable.” He stated that he wanted to help reduce their anxiety by addressing any concerns they might have. He suggested they get together in the coming weeks.¹⁰⁹⁹

¹⁰⁹³ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 27.

¹⁰⁹⁴ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7890.

¹⁰⁹⁵ Exhibit P-101 CAF0423, p. 6.

¹⁰⁹⁶ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7892.

¹⁰⁹⁷ Exhibit P-101 CAF0367, p. 14.

¹⁰⁹⁸ Exhibit P-101 CAF0423, p. 7.

¹⁰⁹⁹ Exhibit P-101 CAF0423, pp. 7-8.

It appears that there was then no further communication until a year later, on March 2, 1998, when Best, once again, arrived at Ms. E's residence unannounced. Ms. E and her husband invited Best to have coffee with them and they informed him that after the last meeting, Ms. E had sought legal counsel. Ms. E explained that she had been advised that she did not need to speak to police and that if she "...didn't know anything that could help us, she wouldn't have to say anything in Court." She stated that "...short of arrest, she did not wish to cooperate further." Best indicated that it was "...their prerogative to seek legal counsel," but that Ms. E had given signed statements as to her knowledge of events and that her failure to respond to a subpoena would "...result in her arrest and compulsory attendance before the Court." He added that proceeding in this manner "...would not serve either of our interests."¹¹⁰⁰ Best testified that his comments about the subpoena and possible arrest were not "...said in any kind of a threatening manner," and that he was simply explaining what would happen if she did not show up.¹¹⁰¹

In response to Best's comments, Ms. E and her husband indicated that they were surprised, as they did not perceive that her evidence was important. Best assured them that it was, indeed, critical. He then suggested that Ms. E "...would be well advised to provide any additional information she may have relative to our case as failure to provide same would not serve either of our interests." He again emphasized that it was "imperative" for her to disclose all the information she might have "...vis-à-vis her association with Bagri et al."¹¹⁰² In his testimony before the Inquiry, Best said this conversation occurred in the context of "friendly" and "cordial" relations.¹¹⁰³

Despite these "amicable" relations, it appears that the RCMP's confidence in Ms. E's willingness to meet voluntarily was shaken. Two months later, in May 1998, Best used the RCMP surveillance team, "Special 'O,'" to coordinate a "chance" meeting with Ms. E as she was out grocery shopping.¹¹⁰⁴ Best testified that he saw this as an opportunity to meet Ms. E away from her employees and to address any concerns that she might not have wanted to discuss in the presence of others in her home.¹¹⁰⁵

Ms. E was "surprised" to see Best at the grocery store, but her demeanour was "cordial." She confirmed that she recalled that Bagri had come to her house requesting to borrow her vehicle for the purpose of taking the baggage to the airport. She did not recall whether she had given him the car or not.¹¹⁰⁶ Best explained before the Inquiry that the discussion about Ms. E's visit with Bagri occurred "...en route from the grocery store to her vehicle," as he assisted her with her groceries.¹¹⁰⁷

1100 Exhibit P-101 CAF0423, pp. 7-8.

1101 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7894.

1102 Exhibit P-101 CAF0423, pp. 8-9.

1103 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7894.

1104 Exhibit P-101 CAF0423, p. 9.

1105 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7895.

1106 Exhibit P-101 CAF0423, p. 9.

1107 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7896.

Ms. E advised Best that she was upset that Bagri had spread rumours that he had been having an affair with her in 1984/85, and that she sometimes felt compelled to call him, but did not make the call because she feared "...he would realize she is cooperating with [the RCMP]." Best again pressed Ms. E, stating that "it is essential" that the RCMP know the "full extent" of her knowledge of Bagri's, and others', activities pertaining to the Air India bombing.¹¹⁰⁸

The next time Best dropped in on Ms. E¹¹⁰⁹ was about six months later, on November 25, 1998, one week after the shooting murder of Tara Singh Hayer.¹¹¹⁰ It was the position of the Crown at the trial of Malik and Bagri that the motive for the earlier attempted murder of Hayer in 1988 was the fact that he was capable of implicating Bagri in the Air India bombing.¹¹¹¹ After consultation with S/Sgt. John Schneider, it was decided that Best should contact Ms. E to discuss any security concerns she might have.¹¹¹²

When Best arrived at Ms. E's residence, she was working and had four employees assisting her. She advised Best that she was busy and invited him to speak with her in private. He suggested that Ms. E's husband join them, but Ms. E said that he was too busy.¹¹¹³ Best advised that the purpose of his visit was to discuss any security concerns she might have. This was the first time that the RCMP contacted Ms. E for the express and sole purpose of discussing her safety concerns. It was also the first time that specific examples of precautions that could be taken were mentioned to Ms. E.

Ms. E was aware of the Hayer murder. Best cautioned that the RCMP did not know the motive behind the shooting, but that Hayer had published many articles that were "...very controversial within the community," and such articles included speaking out against the fundamentalists and their involvement in the Air India and Narita bombings.¹¹¹⁴

Ms. E told Best that if "...anything happens to her it is the responsibility of the police because they have brought her into this situation."¹¹¹⁵ He replied that she was "...entitled to her opinion," but that it was not one he shared because "...she had become involved with these people (Bagri) on her own volition." Best stated that "as a reasonable person," he felt in his heart that she was privy to much more information than she had told the RCMP because of her "close association" with Bagri.¹¹¹⁶

Ms. E was concerned about whether Bagri knew that she was a witness; Best stated that, "to his knowledge," Bagri did not, and that the police would not have

1108 Exhibit P-101 CAF0423, p. 9.

1109 Exhibit P-101 CAF0423, p. 9.

1110 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7896.

1111 Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 50.

1112 Exhibit P-101 CAF0368, p. 2.

1113 Exhibit P-101 CAF0423, p. 9.

1114 Exhibit P-101 CAF0423, p. 9.

1115 Exhibit P-101 CAF0423, p. 10.

1116 Exhibit P-101 CAF0368, p. 5.

told him. At the time, however, there is no indication that the RCMP took steps to verify the potential that those close to Bagri were aware of Ms. E's participation – for example, because she was often approached by the RCMP in front of her employees or even in a public place like the grocery store – and what this could have meant for the threat to Ms. E.

Best "...briefly discussed security cameras, silent alarms and the witness protection program with [Ms. E]." She declined the offer and advised that "...she is not worried for herself as if people wish to kill her, they will – it's God's will." Best advised that, should she change her mind concerning security arrangements, she could call him at any time.¹¹¹⁷ She clarified that she had received no threats concerning herself or her children.¹¹¹⁸

A few weeks later, just before Christmas, Best again attended Ms. E's residence and dropped off a box of sweets.¹¹¹⁹ Ms. E advised that she was very busy and had no time to talk. Best testified that the purpose of the visit was to let her know that the RCMP was still interested in her and that they were concerned with her well-being.¹¹²⁰ Ms. E told him that she would be busy until mid-January 1999. Best said he would be back in touch with her then and, in the meantime, she could contact him anytime.¹¹²¹

Early the next year, on January 18, 1999, Best went to the residence of Ms. E and gave her a letter authored by Crown counsel. Best impressed upon Ms. E the need to meet with Crown counsel. She agreed but expressed concern that people were going to try to make her say things she did not wish to say. Best assured her that she would not be forced to say things that were not true. Three days later, Ms. E advised that she would be unable to attend the scheduled meeting. Best phoned Ms. E's residence again on January 20, 1999, and Ms. E's husband answered. He advised that Ms. E had been to see her lawyer and had been instructed to refer any calls from Crown counsel or Best to Ms. E's lawyer.¹¹²²

In September 1999, Ms. E was interviewed by Crown counsel. She indicated that she did not recall "...any discussion about luggage going to the airport" during Bagri's visit, and said that "...the police had been pressuring and bribing her, as well as forcing her to sign statements."¹¹²³

1999: Access to CSIS Materials and Laurie's Written Statement

After participating in the January 1997 interview with Ms. E, Laurie again did not hear about the issue for about two years. He was contacted by Best in January 1999 and asked to provide a statement about his involvement with Ms. E and

¹¹¹⁷ Exhibit P-101 CAF0423, p. 10.

¹¹¹⁸ Exhibit P-101 CAF0369, p. 2.

¹¹¹⁹ Exhibit P-101 CAF0369.

¹¹²⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7897-7898.

¹¹²¹ Exhibit P-101 CAF0369, p. 2.

¹¹²² Exhibit P-101 CAF0423, pp. 10-11.

¹¹²³ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 29.

the Air India investigation in preparation for the prosecution of Bagri.¹¹²⁴ He prepared the statement on January 27, 1999, and provided it to the Crown.¹¹²⁵ He was not provided with a copy of his CSIS reports in order to prepare this statement and did not try to gain access to the reports.¹¹²⁶ As a result, the statement contained several material differences with the information found in the actual reports, and some contradictions.

In his statement, Laurie wrote that he decided to recruit Ms. E as a source in order to obtain information about Bagri. He explained that she initially resisted providing “sensitive information,” as she was afraid to reveal it to “any official,” and had previously rebuffed the police by claiming that she knew nothing. However, she was comforted by the fact that Laurie did not represent the police and was not conducting a police investigation, but was only informing the Government. She was also “...haunted by the knowledge that she held valuable information,” and expressed feelings of sympathy for the families of the victims of the bombing. As a result, she confided in Laurie “...many details that [he] had sought concerning Ajaib Singh Bagri and Talwinder Singh Parmar.” According to Laurie’s statement, Ms. E made it “...abundantly clear that her recollection of events was crystal clear and etched forever in her memories.” He added that she recounted the same events with the same words on subsequent visits. He expressed the view that she then “...feigned poor memories” when contacted by the police later in order to protect herself and her family by avoiding to appear as a witness in the prosecution of Bagri.¹¹²⁷

Laurie then proceeded to set out the information obtained from Ms. E about her acquaintance with Bagri. Unlike the information found in the CSIS reports, he stated that both Bagri and Parmar visited Ms. E, used her car, used her telephone and even held meetings at Ms. E’s residence. He further stated that he deliberately chose not to press Ms. E about the closeness of her relationship with Bagri as “...she seemed reluctant to speak about it” and he did not need intelligence on that topic. About the warning from Ms. E’s family to stay away from Bagri and Parmar, he stated that Ms. E was given this warning because they were “dangerous men,” and he added that this perception was common in the Sikh community. When relating Bagri’s request to borrow Ms. E’s car, Laurie specified that it was the night before the Air India bombing, that Ms. E was awakened by Bagri and that she could see a car in her driveway, but could not identify the car or any of the passengers. Laurie added that Ms. E was pressed to find out if the car was blue and if the passengers had tall turbans, but could not answer. This information was not found in the CSIS reports. He related that Bagri had told Ms. E that Parmar had driven him there, and that when he insisted on obtaining Ms. E’s car, she told him she needed it for work the next day and he said that “...only the luggage was going on the plane and that he was not going with it.”¹¹²⁸

1124 Exhibit P-101 CAF0399, p. 4; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7520.

1125 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7520-7521; Exhibit P-101 CAF0399.

1126 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7521.

1127 Exhibit P-101 CAF0399, pp. 1-2.

1128 Exhibit P-101 CAF0399, pp. 2-3.

Laurie then explained that when Ms. E learned of the bombing the next day, she knew that Bagri and Parmar were responsible and that she confronted both men's wives about it and was told that it was the victims' own fault for flying Air India in spite of the BK warnings. The CSIS reports only recorded such a confrontation with Bagri's wife, not Parmar's. Laurie recounted Bagri's statement to Ms. E, that they shared "a couple of secrets" and her conclusion that he would kill her if she revealed their involvement with one another and his involvement in the bombing. Again, there were some differences with the information found in the CSIS reports. Laurie then went on to describe Ms. E's emotional state during their interviews and the fact that she was reluctant to meet with him and "...go over the same ground again." He specified that no other CSIS member met with Ms. E.¹¹²⁹

In his statement, Laurie related his 1990 involvement in discussions with the Air India Task Force members after he had rejoined the RCMP. Interestingly, his recollection of the interview with Ms. E, conducted by Rautio and himself, was that Ms. E was "...very shaken that the police were now making enquiries and that [Laurie] was one of them," that they "...spoke at length about Ajaib Singh Bagri and Air India," but that Ms. E "...feigned memory loss and was not helpful." Laurie then explained how he met with CSIS at the request of the RCMP Air India Task Force in 1994 and reviewed his source reports, which refreshed his memory but did not lead to the finding of new information that the RCMP considered evidentiary.¹¹³⁰

Finally, Laurie recounted his participation in the 1997 interview with Ms. E. He stated that since her discussions with him in the 1980s, she "...had relied upon her 'memory loss' to deflect efforts to secure her cooperation," and that she was again reluctant to cooperate, but ultimately admitted that she had not really lost her memory and that she remembered everything that she had told Laurie. Laurie explained that Ms. E was "most upset" about her involvement, but still relieved that her information was out. He described her as a "conscientious, ethical and honest" person. He noted that she signed a statement which "validated" the information she had provided to him while he was with CSIS.¹¹³¹

Laurie's statement raised two issues for the eventual prosecution of Bagri. On the one hand, it created inconsistencies which could weaken the Crown's case, because it was prepared from memory only, many years later. Not only did Laurie not have access to his CSIS reports, but he obviously did not consult, or was not given access to, the notes and report for the October 1990 interview; hence his erroneous recollection that Ms. E claimed memory loss during that interview. On the other hand, the statement raised the possibility that Laurie had made additional inquiries of Ms. E during the CSIS interviews, for example, questioning her about the car parked in her driveway when Bagri made his request, which Laurie recalled in 1999, but did not record in his reports at the time. Since the reports were meant to transmit the intelligence which could be obtained from Ms. E and not to record the facts that she did not know, it is possible that large

¹¹²⁹ Exhibit P-101 CAF0399, p. 3.

¹¹³⁰ Exhibit P-101 CAF0399, p. 3.

¹¹³¹ Exhibit P-101 CAF0399, p. 3.

portions of the interviews remained entirely unrecorded. From an evidentiary perspective, this left Laurie's memory, which had been demonstrated to be less than perfect, as the only remaining evidence of the manner in which the interviews unfolded and of Ms. E's responses to precise questions.

Laurie testified at the Inquiry that he had a vague recollection of wanting to consult his reports to refresh his memory. He explained that he did not approach CSIS directly for this purpose:

MR. KAPOOR: Did you have any discussions directly with CSIS at all about this?

MR. LAURIE: I don't believe so. I think that they did it for me. Meeting independently, contacting CSIS and asking for anything, is a non-starter. That just doesn't happen.¹¹³²

In February 1999, the RCMP finally requested that Laurie be permitted to review the CSIS file on Ms. E in order to prepare for trial. At the time, the RCMP and the Crown viewed Ms. E as an important potential witness in the Bagri prosecution, and the Crown was considering using the information she provided to CSIS to challenge her, as she was being uncooperative and claiming not to recall details. The Crown wanted to interview Laurie, who in turn wanted to use his reports to refresh his memory. The CSIS BC Region's initial reaction to the request was to note that this was reminiscent of the earlier 1994 request to review the reports, which had been the result of concerns that not all information had been disclosed to the RCMP. In discussions with the Crown, the Region refused to allow counsel to review the reports with Laurie. CSIS then learned that the reports that were reviewed could be subject to disclosure to the defence, as they were used to refresh Laurie's memory, but the BC Region explained that this "jeopardy" existed regardless of whether the reports were reviewed again now, since they were already reviewed in 1994. The Crown counsel explained that he would require copies of the reports reviewed by Laurie to refresh his memory, and explained that information provided by CSIS in advisory letters could not replace witness notes in court. The BC Region could make "no commitment" to provide access to the reports. Crown counsel asked for an urgent response from CSIS, as the Attorney General of British Columbia had to make a decision about the charges to bring by the end of the month.¹¹³³

The CSIS BC Region wrote to CSIS HQ and suggested they allow Laurie to review only the reports he authored, under the supervision of a CSIS representative. The Region added that the reports could then be vetted and prepared in "... expurgated (i.e., headers and trailers) version for disclosure purposes," but not provided to the Crown immediately. Instead, the Region suggested that Crown counsel be asked to identify the documents he needed and to advise of when they would have to be provided.¹¹³⁴

¹¹³² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7522.

¹¹³³ Exhibit P-101 CAF0400, pp. 1-2.

¹¹³⁴ Exhibit P-101 CAF0400, p. 2.

In response, CSIS HQ indicated that Laurie would be allowed to review the “source file notes” and operational reports about Ms. E to prepare for his interview with the Crown. HQ was preparing a binder with the relevant documents for Laurie, as was being done for other potential witnesses at the Air India trial. The documents were to be in “expurgated form” even for Laurie’s review, so HQ had no objection to allowing Crown counsel to review them as well. If counsel wanted to obtain a copy of the binder after reviewing the documents, HQ indicated that a written request would be necessary. CSIS HQ agreed that Laurie’s review of the expurgated materials should take place in CSIS offices, under the supervision of Bill Turner from the CSIS BC Region.¹¹³⁵ Laurie believed that the documents he reviewed were, in fact, redacted.¹¹³⁶ This would not be a problem in general, as he would be able to recall the redacted information within the text, but it could be a problem if the investigator’s comments were blacked out (as they were in the versions of the reports initially produced by the Government to this Inquiry),¹¹³⁷ as he would need to review those.¹¹³⁸

Ultimately, CSIS allowed a fairly large proportion of its information about Ms. E to be made public in the Malik and Bagri trial. Laurie testified about his contacts with Ms. E while at CSIS, and his reports were introduced into evidence, albeit in redacted form. However, policy decisions were still slowly evolving at CSIS shortly before the trial. In May 1999, CSIS expressed concern about the fact that the Senior Crown Counsel for the Air India Task Force had identified Ms. E as a former informant of CSIS, during a briefing to the Assistant Deputy Attorney General of BC in the context of a report about the charge approval process.¹¹³⁹ Concern was expressed that the briefing note, though marked “confidential”, could be subject to disclosure to defence.¹¹⁴⁰ Clearly, CSIS had not understood in 1999 that since Ms. E was to testify, her involvement with CSIS would necessarily be revealed.

In 2001, CSIS had to provide additional disclosure about Ms. E pursuant to a court order.¹¹⁴¹ At the time, CSIS had disclosed 10 reports about Ms. E, but needed to research other reports relating to her and to disclose many of the documents found in her source file. Once the reports were identified, they were vetted prior to being disclosed.¹¹⁴²

2001: CSIS Provides Additional Information About Ms. E Ten Years Later

In 1991, Stevenson had authored a CSIS memorandum which discussed the effect that persistent RCMP contact may have had on Ms. E. The information in the memorandum indicated clearly that Ms. E did not want to have contact with the RCMP and that she was complaining about the manner in which the RCMP

¹¹³⁵ Exhibit P-101 CAF0342, pp. 1-2.

¹¹³⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7524.

¹¹³⁷ See Volume One of this Report: Chapter II, The Inquiry Process.

¹¹³⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7524.

¹¹³⁹ Exhibit P-101 CAF0427.

¹¹⁴⁰ Exhibit P-101 CAF0427.

¹¹⁴¹ Exhibit P-101 CAF0402, CAF0403.

¹¹⁴² Exhibit P-101 CAF0403.

was approaching her.¹¹⁴³ The memorandum also contained information which indicated that Ms. E had admitted that she had some knowledge relevant to the Air India investigation and that she had said that she would not testify, for fear that her children would be murdered. At the time, CSIS had decided not to report any of the information in the Stevenson memorandum to the RCMP.¹¹⁴⁴

Over ten years later, in November 2001, Best was finally provided with a copy of the CSIS memorandum.¹¹⁴⁵ Bass, who had been overseeing the RCMP E Division Air India investigation since 1995, explained that this information was clearly important for the Force, as it would tend to "...corroborate the value of the source's information and does give indication of its truthfulness."¹¹⁴⁶

Bass added that it would not necessarily have changed anything if the information had been shared earlier, because the RCMP already "generally knew this."¹¹⁴⁷ However, some of the details in the Stevenson memorandum were not known to the investigators. For example, the fact that Ms. E was concerned because RCMP officers spoke to her within earshot of others, and the fact that she did not appreciate the RCMP's unannounced visits to her residence and place of business¹¹⁴⁸ were not known to the Task Force. As a result, Best continued to adopt a similar approach in his contacts with Ms. E from 1996 onward. He also admitted that he had on occasion attended Ms. E's residence and spoken to her with employees present, though he stated that "...when it came down to matters of significant issue," Ms. E always invited him to a private room.¹¹⁴⁹ However, the repeated, unexpected and public arrival of Best would have, at the very least, drawn the attention of onlookers, and may have opened up Ms. E to uncomfortable questions and speculation. In addition, there was the possibility that conversations, though held in "private," may still have been heard by others.

Had the RCMP known about Ms. E's 1991 complaints, the investigators might have been better able to appreciate the impact their approaches could have on Ms. E's well-being and to devise better strategies for approaching Ms. E. Such strategies might have helped the RCMP modify its patterns of contact which were ineffective and, moreover, detrimental to the RCMP's main purpose of securing the full and consistent cooperation of Ms. E.

2000-2004: Further RCMP Interactions with Ms. E

It does not appear that relations between Ms. E and the RCMP improved with time.

Bagri was arrested in October 2000. On October 10, 2000, the lawyer for Ms. E, Arne H. Silverman, wrote to Crown counsel indicating that he did not

¹¹⁴³ Exhibit P-101 CAF0384.

¹¹⁴⁴ Exhibit P-101 CAF0425.

¹¹⁴⁵ Exhibit P-101 CAF0429.

¹¹⁴⁶ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11269.

¹¹⁴⁷ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11269.

¹¹⁴⁸ Exhibit P-101 CAF0384, CAF0425, p. 2.

¹¹⁴⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7895.

intend to make an application based on informer privilege, as his client took the view that "...she is not an informant."¹¹⁵⁰ He asked that any further written communications for Ms. E be directed to his office.¹¹⁵¹ He also wrote that, while Ms. E had instructed him that she would attend in court pursuant to a subpoena, she would not attend any pre-trial interviews. Silverman wrote that he had conveyed to Ms. E the offer that the Crown's office made to provide her with "... whatever form of protection she might consider she is in need of," and that Ms. E instructed that "...she did not consider herself to be in need of protection of any kind."¹¹⁵²

In May 2001, Best served a subpoena on Ms. E for her to attend in court as a witness.¹¹⁵³ She was again served with a subpoena in February 2002, by Best and Cpl. Ryan.¹¹⁵⁴ On this second occasion, Ms. E told Best that she had been advised by her lawyer not to speak with him.¹¹⁵⁵

Ms. E testified at Bagri's trial in December 2003. On March 5, 2004, Best, now an inspector, visited Ms. E as a result of a recent ruling by Justice Josephson. The ruling held that certain statements she had made to Laurie would be entered into evidence. Best and Cpl. Glen Little went to Ms. E's residence and met with Ms. E as she was driving away. Best asked if she was aware of the recent ruling, and she was not. She stated that she was in a rush to get to the bank and would return to speak with the officers. They waited at her residence for about 25 minutes before Ms. E returned. Best advised that the purpose of the visit was to discuss any security concerns Ms. E had in view of the recent ruling. He advised Ms. E that she should speak to her lawyer. He also said that he was not aware of any new or "imminent threat." In response to this statement, Ms. E asked, "...you really still care about my security?" Best advised that his position and that of the RCMP had not changed – if she had security concerns or if "...we were aware of any immediate danger, we would take appropriate action."¹¹⁵⁶

The next day, Best was paged by Silverman, Ms. E's lawyer, who informed him that Ms. E was with him and was confused about the purpose of the officers' visit the day before. Silverman advised Best that Ms. E was not seeking, and would not be seeking, security assistance from the RCMP at this time, and that he would be seeking from the Court a permanent ban on the publication of her name. Best agreed that a ban sounded like a "good idea," but indicated that such a ban would not protect her from people who know her. Best agreed that the publication ban would still "...protect her from any extreme elements," assuming these "extreme elements" did not already know Ms. E's identity.¹¹⁵⁷ He stated that "...there is always a threat out there on this particular file." At the

1150 Exhibit P-101 CAF0822.

1151 Exhibit P-101 CAF0822.

1152 Exhibit P-101 CAF0822.

1153 Exhibit P-101 CAF0423, p. 11.

1154 Exhibit P-101 CAF0370, p. 2.

1155 Exhibit P-101 CAF0370, p. 2. Similarly, in October of that year, when a subpoena was served by Best on Ms. E in the presence of her lawyer, the lawyer informed Best that his client would not be answering any questions Best may have: Exhibit P-101 CAF0370, p. 4.

1156 Exhibit P-101 CAF0372, pp. 2-4.

1157 Exhibit P-101 CAF0372, pp. 5-6.

request of Ms. E's lawyer, and after consulting with his superiors, Best gave his consent to the lawyer to rely on his statement about the ever-present threat in order to support his application for a publication ban on Ms. E's name.¹¹⁵⁸

Prior to this discussion with Ms. E's lawyer, the RCMP did not offer to contact the Crown to suggest that Crown counsel apply to the court for a permanent publication ban.¹¹⁵⁹ Instead, Ms. E was left with the onus of personally applying for the ban, with both the Crown and the defence taking no position in support or in opposition to the application.¹¹⁶⁰ Justice Josephson granted the application, noting that Ms. E's "...ongoing security concerns rise beyond the merely speculative," and that the risk did not abate "...simply because she has completed her testimony, as retaliation is a strong element of the risk." He noted, however, that Ms. E's counsel had indicated that her concerns did not at that time relate to Bagri himself, who had been aware "...of her status as a Crown witness for a number of years."¹¹⁶¹

2005: The Result at Trial

After his arrest in October 2000, Bagri was refused bail and was charged, along with Malik and Reyat, of first-degree murder and conspiracy in relation to the Air India and Narita bombings.¹¹⁶² Preliminary motions were heard beginning in 2001. The actual trial began in April 2003, and lasted until December 2004.

Ms. E Loses her Memory

In December 2003, Ms. E was called to testify at the trial pursuant to the subpoena served on her in 2002. At the time, she was considered to be "...one of the Crown's primary witnesses in its case against Mr. Bagri."¹¹⁶³ Although the RCMP had discounted Ms. E as not possessing useful information in 1985, and had then concluded that she was unreliable in 1990, Bass testified that by the time the case went to court, he was satisfied, having had "...quite a bit of personal involvement with this issue," that what Ms. E could say was valid and that it was consistent with what she had been saying all along, with no major discrepancies. In part, this impression was based on dealings Bass had had with Hunter, "...another member of the RCMP who knew this individual personally, fairly well." Bass was confident in the end that Ms. E was "reluctant, but reliable." Referring back to the 1990 conclusion of unreliability, Bass explained that it is not uncommon, especially in a case such as this where there is little corroboration available, to have disagreement between officers as to a witness's credibility.¹¹⁶⁴

¹¹⁵⁸ Exhibit P-101 CAF0373, p. 3.

¹¹⁵⁹ Exhibit P-101 CAF0372, p. 5.

¹¹⁶⁰ *R. v. Malik and Bagri*, 2004 BCSC 520 at para. 2.

¹¹⁶¹ *R. v. Malik and Bagri*, 2004 BCSC 520 at para. 7.

¹¹⁶² *R. v. Malik and Bagri*, 2001 BCSC 2; *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 6.

¹¹⁶³ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 4.

¹¹⁶⁴ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11265-11266.

In court, Ms. E testified about how she came to know Bagri in India and to associate with him and his family in Canada in the early 1980s. About his request to borrow her car, she could only recall that he visited her at her residence late one evening in June 1985, and asked to borrow her car. She refused and Bagri left. In her testimony, she initially said that she thought the visit occurred “a few days” before the bombings, but then stated that she was not sure whether it was before or after the crash. She “consistently maintained” in cross-examination that she thought the authorities knew the date of Bagri’s visit “...because of CSIS surveillance.” She also agreed, again in cross-examination, that she could only recall one late-night visit by Bagri to borrow her car in June 1985, but, upon re-examination, stated that there could have been other visits in June but she did not remember them.¹¹⁶⁵

Ms. E explained in her testimony at trial that Bagri returned to visit her after the bombing, including at least once in 1985, when he brought her medicine.¹¹⁶⁶ Asked whether Bagri had “...said anything to her that she perceived to be a threat,” she stated “absolutely not.” She also indicated that she had no recollection of Bagri talking to her about secrets.¹¹⁶⁷ She explained how her relations with the Bagris deteriorated after the Air India bombing because of Mrs. Bagri’s comments. She stated that she knew that Bagri was a BK member who associated with Parmar, and that Bagri had told her that he had met Mr. C, another Crown witness at trial, in New York.¹¹⁶⁸ Finally, Ms. E indicated that she had heard “...talk in the community” after the bombing about who was responsible, which named both the Indian Government and the BK, including Parmar and Bagri specifically, as well as rumours about the possibility that Parmar and Bagri were responsible for taking the suitcases to the airport.¹¹⁶⁹

The Crown attempted to use the statements she had provided in the past to CSIS and the RCMP to refresh Ms. E’s memory, in particular about the content of her June 1985 conversation with Bagri when he asked for her car, about the timing of that request, about Bagri’s use of her telephone and about his mention of sharing secrets during a subsequent visit. However, Ms. E “...continued to profess, for the most part, a lack of recall.”¹¹⁷⁰ In fact, Justice Josephson concluded that while Ms. E initially provided a “sanitized version” of the “core story” about Bagri when questioned by the Crown, “...she quickly adopted a position of lack of memory once her prior statements were put to her.”¹¹⁷¹

The Crown brought an application to have Ms. E declared an adverse witness. This would have enabled the Crown to cross-examine Ms. E, and it was intended to support the Crown’s next application to have the content of Ms. E’s past statements admitted into evidence. A hearing was held, where Laurie and the RCMP officers who interviewed Ms. E over the years testified about their

¹¹⁶⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 5, 6, 966-968.

¹¹⁶⁶ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 6; *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 969.

¹¹⁶⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 969.

¹¹⁶⁸ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 6, 8.

¹¹⁶⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 971.

¹¹⁷⁰ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 9-10.

¹¹⁷¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 73.

dealings with her. Ms. E also testified about her dealings with the authorities.¹¹⁷² Generally, she could not recall what she had told Laurie and the various RCMP officers who interviewed her, but indicated that she was telling them the truth "...as she considered it at the time."¹¹⁷³ With respect to Laurie, she confirmed that the events were fresh in her mind when she spoke to him and said that "...she always spoke the truth when speaking with Laurie, with whom she developed a friendship."¹¹⁷⁴ About the written statement provided to Maile, Ms. E indicated the content "...could have been true at the time," but said she did not presently recall whether this was the case. Ms. E maintained that she had generally been pressured by police and forced to sign written statements.¹¹⁷⁵

Justice Josephson found that Ms. E's memory loss, about the key events surrounding Bagri's visit, his subsequent threat and her beliefs about his involvement in Air India, was, in fact, feigned. He also concluded that her allegations about RCMP behaviour, at least as far as Maile was concerned, were false. However, Justice Josephson concluded that Ms. E was not an adverse witness, because her testimony was not positively harmful to the Crown's case and did not contain substantial inconsistencies with her previous statements. He added that, given the significant cooperation she had extended to police over the years, Ms. E could not be considered hostile to the prosecution or to the authorities.¹¹⁷⁶

The Crown then sought to have some of Ms. E's previous statements admitted into evidence to prove their contents.¹¹⁷⁷ Those statements included: the ones made during the first two interviews with Laurie; the ones made during the two 1990 RCMP interviews and during the 1991 interview with Maile and Solvason; the May 11, 1992 statement to Maile; and Ms. E's statement to Best during the December 1996 interview.¹¹⁷⁸ Another hearing was held. Ms. E testified again in these proceedings, as well as in the trial subsequently. Her last day of testimony was April 16, 2004.¹¹⁷⁹

Laurie testified about his interviews with Ms. E. He admitted that, during the first interview, he had at some point said that he knew of Bagri and Parmar and that they were members of the BK, but said that he otherwise "...avoided supplying the Witness with information since it would have been contrary to the intelligence gathering purpose of his visit."¹¹⁸⁰ The RCMP officers involved in the other relevant interviews also indicated they did not supply Ms. E with information or pressure her.¹¹⁸¹

¹¹⁷² *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 1, 10.

¹¹⁷³ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 11-21.

¹¹⁷⁴ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 24.

¹¹⁷⁵ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 23, 26.

¹¹⁷⁶ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 63-72.

¹¹⁷⁷ *R. v. Malik and Bagri*, 2004 BCSC 299.

¹¹⁷⁸ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 12.

¹¹⁷⁹ *R. v. Malik and Bagri*, 2004 BCSC 520 at para. 1.

¹¹⁸⁰ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 16.

¹¹⁸¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 28-54.

Justice Josephson concluded that the circumstances surrounding Ms. E's statements to Laurie provided sufficient guarantees of reliability to make them admissible into evidence. He noted that the events described were simple, and would be remembered, and that the promise of confidentiality negated the possibility of fabrication for the purpose of harming Bagri. Justice Josephson ruled, however, that the statements provided to the RCMP could not be considered sufficiently reliable, because "...no longer could [Ms. E] speak of the incident without incurring what she believed to be significant risk to herself and her family." The December 1996 statement, essentially professing a lack of recall of the contents of the Maile statement, was adopted by Ms. E during her testimony and hence was part of the evidence.¹¹⁸² The statements made by Ms. E during her third interview with Laurie were also subsequently admitted into evidence for the same reasons as the first two interviews.¹¹⁸³

Charter Violation: CSIS Destruction of Notes, Tapes and Transcripts

In accordance with his usual practice, Laurie did not take notes while interviewing Ms. E.¹¹⁸⁴ After the first interview, he stopped to make some notes when he left Ms. E's residence because "...it was clear to me that this report would be the subject of some scrutiny and that it needed to be as accurate as I possibly could get it." He walked to his car, which was parked some distance away, and then wrote down on a piece of paper "...as precisely as possible" the issues that he wanted to include in his report. He then took that paper to his office and used it to write his report. His notes did not include quotes of Ms. E's words. They were a series of words which Laurie felt would help him recall the most important aspects of the information in preparing his report.¹¹⁸⁵ Laurie wrote a first draft of his report by hand. It was typed by someone else and then reviewed by Laurie and discussed with his supervisors, who could also add their comments.¹¹⁸⁶ The draft report was then authorized, communicated to CSIS HQ and put on file.¹¹⁸⁷

After the second interview, Laurie also wrote some notes while in his car, but they were not detailed. He did not feel a sense of urgency attached to the new information he obtained then, as compared to what he had learned during the first interview. He simply wanted to ensure that he would not forget anything before getting to his office and preparing his report.¹¹⁸⁸ Laurie wrote the report upon returning to his office immediately after the interview, but the content was then discussed with Grierson, the BC Region Chief CT, and Claxton, the Director General, and the actual report was only sent to CSIS HQ four days after the interview.¹¹⁸⁹ Laurie indicated that he probably also made notes after his third interview with Ms. E. He then wrote his report immediately or soon after his return to his office.¹¹⁹⁰

¹¹⁸² *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 103-109, 110-111.

¹¹⁸³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 961.

¹¹⁸⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7414, 7429; See Section 1.0 (Post-bombing), Introduction.

¹¹⁸⁵ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7417-7418.

¹¹⁸⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7419; Exhibit P-101 CAA0553(i), pp. 3-4.

¹¹⁸⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7419.

¹¹⁸⁸ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7429-7430.

¹¹⁸⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7430; Exhibit P-101 CAA0562(i).

¹¹⁹⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7442.

The notes made by Laurie after the Ms. E interviews were not preserved by CSIS and were not available at trial.¹¹⁹¹

Laurie tape-recorded two of his interviews with Ms. E with a concealed recording device, but could not recall which ones.¹¹⁹² On one occasion, the device malfunctioned and nothing was recorded. On the other occasion, Laurie believes he read a transcript of the recording, but only to ensure that his report about the interview was accurate. He did not listen to the recording or read the transcript prior to writing his report and, in fact, did not find the recording particularly helpful. The interview which was successfully recorded most likely involved a discussion of Bagri's request to borrow Ms. E's car, since this was discussed in most of the interviews.¹¹⁹³

CSIS did not preserve the tape with the recording of Laurie's interview with Ms. E.¹¹⁹⁴ According to his general practice, Laurie submitted the tape for transcription without listening to it and never saw the tape again afterwards. His understanding was that such tapes were erased after they were transcribed. He was provided with the transcript, which was shredded after he reviewed it.¹¹⁹⁵

Laurie explained that he perceived his role as an intelligence officer as simply to write his report as accurately as he could. His report reflected what he had heard and what he thought his superiors at CSIS HQ needed to know.¹¹⁹⁶ He added, making a comparison with his subsequent work as a police officer after he rejoined the RCMP:

MR. LAURIE: I don't have a method of keeping and storing notebooks or tapes or any of that sort of stuff. It is something that I've got to baby-sit now and I don't have a way of doing – I don't have an exhibit locker; I don't have an exhibit log; I don't have somebody that guards the room that it is in. I don't need it and it is destroyed the same way they all are.

...

MR. LAURIE: Perhaps if I can give some context, sir.

MR. KAPOOR: Sure.

MR. LAURIE: The service is so new and we are being [given] such guidance not to do anything the way the police do it. We are no longer the police and in fact there is movement afoot to try and remove any of the people who used to be in the police as quickly as possible.

¹¹⁹¹ See, generally, *R. v. Malik and Bagri*, 2004 BCSC 554.

¹¹⁹² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7430-7431. He was also uncertain about the exact number of interviews for which he brought a tape recorder.

¹¹⁹³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7431-7432.

¹¹⁹⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7431.

¹¹⁹⁵ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

¹¹⁹⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7431-7432.

And given that the issue of passing material to a police agency is there but is not widely used in a format that we are familiar with, it wouldn't have been unreasonable for me to presume that at some point this information, and perhaps even the individual, is going to be passed to a police agency and they can get their own tape because they are the ones that preserve evidence and I do not.¹¹⁹⁷

Laurie also said that, had the recording been preserved, it would have opened the door to different assessments or opinions of what was actually said by Ms. E during the interview, as opposed to the situation now, where we only have his assessment as found in his report which, according to Laurie "...reflects what I heard."¹¹⁹⁸

When Laurie received the Ms. E information, the policy which was supposed to govern the preservation of notes by CSIS investigators was an RCMP Security Service policy, inherited by CSIS at its creation, which required investigators to keep a separate notebook and to retain it securely in cases where there was "reason to believe" that an investigation would "...result in court appearances being necessary."¹¹⁹⁹ However, Laurie, like many of his colleagues, was not aware of the existence of this policy.¹²⁰⁰ He was never informed about it while working at the Security Service, or during his time at CSIS, and instead followed the general practice adopted by his colleagues, which was to destroy original notes once the information gathered was included in a report.¹²⁰¹

When Ms. E first told Laurie about Bagri's request to borrow her car, it was clear to him, as it was to his supervisors at the BC Region when he reported back the information, that this information related to a criminal investigation, that it would eventually have to be passed to the police and even that Laurie might well have to testify in court about it. Yet, when Laurie discussed the information with his supervisors, no one told him to maintain notes in a separate notebook, or to maintain notes at all for that matter. Laurie was simply "...never given any guidance to do that."¹²⁰²

In 1987, the policy inherited from the Security Service only addressed handwritten notes, whether made while receiving the information or "...as soon as possible afterwards."¹²⁰³ When CSIS adopted its own policy on Operational Notes in 1992, it expressly recognized that audio or video recordings made by a CSIS employee to be used in the preparation of CSIS reports, including the temporary recording of information received while conducting interviews or debriefing human

1197 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7432-7433.

1198 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7432.

1199 Exhibit P-101 CAA0007, p. 2; See, generally, Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1200 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7466; See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1201 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7468-7469, 7536-7537.

1202 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7413, 7416, 7468-7469, 7531, 7538.

1203 Exhibit P-101 CAA0007.

sources, constituted “operational notes” subject to the retention policy.¹²⁰⁴ The tapes and transcripts of the Ms. E interviews, as well as the notes made by Laurie after the interviews, would have been covered by this policy and subject to retention because the information related to a serious crime.¹²⁰⁵ However, it appears that in 1987, the potential impact on eventual prosecutions of the destruction of recordings or notes of interviews with sources providing criminal information was not communicated to CSIS investigators:

MR. BOXALL: And earlier today you gave evidence about the destruction of your tape recording of one of the interviews and the impression I was left with was that you didn’t view the destruction of that tape as particularly significant or out of the ordinary.

MR. LAURIE: I still don’t.¹²⁰⁶

At trial, Justice Josephson concluded that the destruction by CSIS of the notes and audio recordings relating to Laurie’s interviews of Ms. E violated Bagri’s right to disclosure under the *Charter*.¹²⁰⁷ The British Columbia Attorney General (the “Crown”) had conceded that, in the Air India case, the RCMP “...had been granted access to all relevant information in the files of CSIS” pursuant to an access agreement which “crystallized” in early 1987 in correspondence between the Solicitor General and the CSIS Director.¹²⁰⁸ In law, this meant that CSIS would be subject to the same obligations to disclose information to the defence as the police were pursuant to the case of *R. v. Stinchcombe*. According to the applicable test, the failure to disclose the notes, tapes and transcripts in this case would violate Bagri’s rights, if their destruction was found to constitute “unacceptable negligence.” The Crown had conceded earlier in the trial that CSIS had been unacceptably negligent in erasing the Parmar intercepts, but did not make this concession for the failure to preserve the notes, tapes and transcripts of the Ms. E interviews.¹²⁰⁹

Justice Josephson found that CSIS’s behaviour did amount to unacceptable negligence. He accepted Laurie’s testimony that he “...simply followed his normal practice in relation to the gathering of source intelligence,” but found that “...CSIS appears to have failed at an institutional level to ensure that the earlier errors in the destruction of the Parmar tapes were not repeated.” He noted that a “...procedure should have been in place” at CSIS to preserve “... this clearly relevant evidence for the criminal investigation.”¹²¹⁰ As a result of this *Charter* violation, Bagri would have been entitled to a remedy, if he had not otherwise been acquitted because the evidence was found to be insufficient.

1204 Exhibit P-101 CAA0889, pp. 4, 10.

1205 See, generally, Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1206 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7541.

1207 *R. v. Malik and Bagri*, 2004 BCSC 554.

1208 See, generally, Section 4.4.2 (Post-bombing), The Air India Trial.

1209 *R. v. Malik and Bagri*, 2004 BCSC 554 at paras. 3-5.

1210 *R. v. Malik and Bagri*, 2004 BCSC 554 at paras. 7, 19, 21-22.

This could have meant that the trial judge would have been unable to take into account Ms. E's statements to Laurie, because some of the evidence about those statements had been destroyed through unacceptable negligence.

Aside from the breach of the accused's rights, the destruction of the notes, tapes and transcripts by CSIS also deprived the Court of "...the best evidence of what was actually said" by Ms. E.¹²¹¹ This is especially true if one is to accept, as stated by Laurie in testimony, that opinions could have differed about what Ms. E said, if a tape had been available. This, of course, would be an additional reason to preserve the recording in order to have access to all possible interpretations of the information, both for intelligence and for possible evidentiary purposes.

In this case, because CSIS did not take steps to preserve the notes and recordings for the Ms. E interviews, the only remaining records available at trial of the statements made by Ms. E in 1987 were Laurie's intelligence reports.¹²¹² However, questions were raised about the completeness and, at times, the accuracy of those reports – which further complicated matters.

The Ultimate Reliability of the CSIS Reports

When he prepared his reports about the Ms. E interviews, Laurie wrote the information in chronological order, as opposed to the order in which Ms. E revealed it to him.¹²¹³ He did not write down the questions or comments that he made to Ms. E during the interview.¹²¹⁴ He did not attempt to quote Ms. E or to provide a word for word account of what she told him.¹²¹⁵ Laurie organized his reports by content, as opposed to providing an account of the interviews. He explained:

MR. LAURIE: That's right. I suppose that's another difference between us and the police. I related the story – the briefing if you will, in a manner that my consumer would find it easiest to arrive at the conclusions that I did. This is what I was told, maybe not in this way, but I was told this information and now I feel this about the information. What do you think?

I think this report [the report for the 2nd interview] is the only one where I actually put a quote in and so it is clear and it was again in testimony at the trial that I wasn't attempting to make any literal translation or just to say precisely what it was that she had said to me.¹²¹⁶

¹²¹¹ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 21.

¹²¹² *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1231.

¹²¹³ Exhibit P-101 CAA0553(i), p. 1; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7418.

¹²¹⁴ See, generally, Exhibit P-101 CAA0553(i).

¹²¹⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7511; See, generally, Exhibit P-101 CAA0553(i).

¹²¹⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7428.

Laurie's reports contained a summary of the information Ms. E had provided and additional comments or analysis in the section entitled "investigator's comments."¹²¹⁷ The body of the reports included "all details considered intelligence."¹²¹⁸ In some cases, Laurie summarized the information in accordance with his own interpretation, for example by referring to Talwinder Singh Parmar where Ms. E had said "Bhai Sahib."¹²¹⁹ In other cases, Laurie may also have added information based on his own beliefs. In his report for his fifth interview with Ms. E, he noted that Ms. E recounted Bagri's request to borrow her car and that her "...account was exactly the same as reported previously." He then went on to state that she reported that Bagri said he needed her car "...to go to the airport with Bhai Sahib (Talwinder Singh Parmar [REDACTED]) and an u/m."¹²²⁰ This had never been mentioned in the previous interviews, and Laurie admitted in his testimony at trial that it may have been included in his report as a result of his own beliefs and theories and not of information actually provided by Ms. E.¹²²¹ He explained in testimony before the Inquiry that, if he did report information based on his own theory of the case, this was inadvertent. Generally, the text preceding the investigator's comments was "...supposed to be attributed only to the sources that are referenced."¹²²²

Because they were only meant to report the information obtained, the intelligence reports provided no indication of the manner in which the interviews with Ms. E unfolded. The order in which she provided the information, the questions she was responding to, or any information she was provided during the course of the interviews were not noted in the reports. Further, as only the "...details considered intelligence" were included, a selection could have been made among the information provided by Ms. E, and some information may not have been reported. The information she provided was at times described in general terms only, such as her account being "...the same as before," which would make it impossible to assess whether or not there were small changes or contradictions in her information from time to time, an issue that is important from an evidentiary perspective.

Justice Josephson had initially found that Laurie's reports for his first three interviews with Ms. E were admissible in evidence because the hearsay statements they recorded met "threshold reliability" criteria. However, having heard all of the evidence at trial, he found that the ultimate reliability of Ms. E's past statements could not be established.¹²²³

There were contradictions between the statements to Laurie and the evidence at trial which could not be resolved to the Court's satisfaction without a proper opportunity for the defence to cross-examine Ms. E about the facts. In her

¹²¹⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7509.

¹²¹⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 999.

¹²¹⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7509-7510.

¹²²⁰ Exhibit P-101 CAF0377, p. 1.

¹²²¹ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 44-45.

¹²²² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7512-7514.

¹²²³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1236.

statements to Laurie, Ms. E had indicated that she was “certain” that Bagri’s visit had occurred the night before the Air India bombing. However, during her testimony at trial, she generally associated the timing of the visit with the CSIS surveillance. She had been questioned by the RCMP in 1985 about this surveillance, which had Parmar dropping off an unidentified male at her residence on June 9th, and she had said that the person was Bagri. Nowhere in her past statements or in her evidence at trial was there any suggestion of Ms. E having received two separate late night visits from Bagri in June 1985. In fact, from her evidence and her December 1996 statements during the interview with Best, it appeared that the arrival of Bagri at her residence at such a late time was an “unusual event,” to the point that she initially tried to ignore him when he started knocking. The Crown’s “...theory of a second late night visit in June was only revealed mid-trial,” and Ms. E simply “...allowed for the possibility” on re-examination.¹²²⁴

Justice Josephson added that the issue of the “adequacy of the record” of Ms. E’s statements to Laurie was also a valid concern, which contributed to his finding that Ms. E’s past statements could not ultimately be demonstrated to be reliable. He found that the CSIS reports, though “prepared with care,” constituted a “less than complete record” of what Ms. E had said. The reports were not complete in terms of describing Laurie’s full interaction with Ms. E, which left open the possibility that unknown context could have affected the interpretation which could be made of the meaning of what Ms. E had said. Further, questions remained about the complete accuracy of the reports, since Laurie had admitted to being uncertain about whether the mention that Parmar would be accompanying Bagri to the airport, which he attributed to Ms. E in one of his subsequent reports, in fact originated from information provided by Ms. E. Because of these issues, the weight which the reports could have at trial was diminished.¹²²⁵

The promise of confidentiality made by Laurie to Ms. E also impacted on the weight which could be given to Laurie’s reports at trial, since confidentiality could lead a person making a statement to feel that they would not have “...to account for the honesty and accuracy” of the statement. The facts that Ms. E’s statements to Laurie were not made under oath and that Ms. E had later made a false claim to having lost her memory also had an impact.¹²²⁶

Justice Josephson found that the rest of the evidence at trial neither confirmed nor refuted Ms. E’s statements to Laurie. Overall, Ms. E’s past statements were not found to be sufficiently reliable to convince the Court beyond a reasonable doubt of Bagri’s guilt and, as none of the other evidence presented was found to be credible or sufficient, Bagri was acquitted.¹²²⁷

¹²²⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1226-1229.

¹²²⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1230-1231.

¹²²⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1232, 1236.

¹²²⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1233-1235, 1244-1249.

Conclusions

In the end, after almost 20 years of interaction between Ms. E and Canadian authorities, nothing was accomplished. The combined effect of the agencies' actions and decisions was that: (a) Ms. E did not cooperate in her testimony at trial, but instead claimed memory loss, a claim which the trial judge found to be false; and (b) her information could not be used in the prosecution because the available evidence of her past statements was not sufficient. Opportunities were missed by the RCMP and CSIS at every stage of the process.

RCMP Failures to Follow Up

In 1985-1986, the RCMP had information indicating that Ms. E possibly knew more about Bagri's activities than what she was willing to tell police. The RCMP had other information which made Bagri a suspect. Yet, the Force chose not to pursue its attempt to obtain information from Ms. E. Then, after CSIS approached her in 1987 and verbally informed the RCMP about Bagri's request to borrow the car, albeit without identifying Ms. E as the source, the RCMP simply did not follow up and did not even record the full extent of the information received from CSIS.

Had the RCMP been involved as soon as possible in 1987, the officers could have sought to clarify the factual issue of the timing of Bagri's June 1985 late night visit in relation to the June 9th CSIS surveillance. This unresolved issue ultimately led the Court to consider her past statements unreliable. However, it does not appear that the RCMP, whose investigators had revealed the existence of the surveillance during the 1985 interviews, ever thought about asking Ms. E about this issue during their subsequent dealings with her. In 1990, when Ms. E's identity was finally revealed and she confirmed, at least in part, the information she had provided to CSIS about Bagri's request, the RCMP concluded after two interviews that she was not reliable, without asking about the June 9th visit. The RCMP was eager to discount Ms. E for all sorts of reasons, including the fact that Laurie may have provided information to her, the fact that the officers felt she was trying to hide her alleged affair with Bagri and the fact that she had not revealed her information to the police in 1985. Yet, the RCMP never even asked Ms. E about the one issue which was ultimately found to make her information unreliable.

The RCMP failures to follow up caused frustration for the CSIS personnel who had worked hard to develop a source and then had to terminate contact to allow the RCMP to pursue its investigation.¹²²⁸ Mervin Grierson, the CSIS BC Region Chief CT at the time of the events, commented:

MR. GRIERSON: Now, if we talk about Ms. E, I mean, there is the living example of that. It's already been said here in this

¹²²⁸ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

room that they had talked to her and never fleshed that out. We knocked on her door and she started to talk to us. And we could see some potential. That's what we would expect them to do, is nurture it, cultivate it, be reassuring, not just in a 15-minute deal, sort of say, "There's nothing here and go on to something else."¹²²⁹

CSIS "Promises" of Confidentiality

When Laurie approached Ms. E in 1987, he was successful in obtaining from her the information that the RCMP could not. Ms. E was afraid to speak to the police, but felt comfortable providing her information to CSIS. Ironically, Ms. E's anonymity may have been better protected if she had chosen to speak to the police instead. If the RCMP had assured Ms. E that her information would remain confidential the way Laurie did, she would have been considered an informant and, because of informer privilege, the authorities could not have revealed her identity without her consent, and could not have forced her to testify against her will as was done here.¹²³⁰ Hence, the RCMP would never have promised "complete anonymity" in the context of an approach to a potential witness.¹²³¹

CSIS, on the other hand, did give assurances of confidentiality. At trial, Justice Josephson found that Ms. E could not be characterized as a confidential informant, subject to informer privilege, because CSIS's "...subsequent actions in passing [Ms. E's] information and identity to the RCMP" indicated that CSIS "...never regarded or treated" Ms. E as a confidential informant, regardless of whether CSIS sources could, in law, be protected by informer privilege.¹²³² CSIS did not feel bound by Laurie's assurances to Ms. E when it authorized the RCMP to interview her in 1990, essentially revealing her identity without her consent. Ms. E provided her information to Laurie with the belief that it would remain confidential. Laurie later stated that Ms. E had "...placed her trust" in him and that "...it was misplaced."¹²³³ Because CSIS had broken its promise of anonymity to Ms. E, it was difficult for her to place her trust in Canadian authorities again when the RCMP approached her subsequently.¹²³⁴

CSIS Delay in Turning Over Sufficient Information and Interagency Conflicts

While CSIS did not feel bound by its promises of anonymity in 1990, the Service was apparently in no hurry to provide all available information to the RCMP when it first received it. The information was clearly relevant to the criminal investigation and was of little value to CSIS operations. Yet, CSIS hesitated before passing the Ms. E information at all during the initial stages in 1987.

¹²²⁹ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9514.

¹²³⁰ See, generally, *R. v. Leipert*, [1997] 1 S.C.R. 281.

¹²³¹ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7841.

¹²³² *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 18.

¹²³³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7519-7520.

¹²³⁴ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7901-7903.

When it did pass the information, it did so with little detail and without written records. Most importantly, CSIS chose not to inform the RCMP of Ms. E's identity in 1987.

Because of its decision to delay the passing of the full Ms. E information, in circumstances where, in the end, it did not assert a duty to protect the identity of its source, CSIS deprived the RCMP of the opportunity to attempt to obtain a statement from Ms. E – and to keep proper records – at a time when the events were more fresh in her mind. As an RCMP analyst later concluded, "...had there been a signed statement taken by the RCMP after her revelation to CSIS the evidence may have been more acceptable by the Court."¹²³⁵

CSIS also kept the RCMP in the dark for ten years about the information recorded in the Stevenson memorandum. Further, CSIS did not make its actual reports about the Ms. E information available until the late 1990s. As a result, Laurie had to answer the RCMP's questions and write his statement from memory, the RCMP officers who interviewed Ms. E did not have the benefit of knowing exactly what information she had provided in the past, and Ms. E had to confirm the accuracy of the information she provided to Laurie without having an opportunity to look at the reports.

In 1990, both CSIS and the RCMP appeared overly focused on their interagency conflicts, at a time when working together was necessary to secure Ms. E's cooperation. CSIS focused its efforts on demonstrating, at all costs, that it had passed the information in 1987, while the RCMP went about making accusations, including towards Laurie, who could have been its greatest ally in securing Ms. E's cooperation.

CSIS Failure to Keep Adequate Records

Knowing that the information related to a criminal investigation and that the RCMP was unaware of Ms. E's identity, CSIS continued to send Laurie to interview Ms. E with no instructions to take complete and contemporaneous notes or to prepare complete reports detailing his interactions with her. CSIS took no steps to prevent the destruction of the recordings of the interviews and of the limited notes Laurie did make. Regardless of the view one takes of the impact of the agreement to cooperate with the RCMP on CSIS's disclosure obligations in the Air India matter, it remains the case that CSIS did promise its cooperation. CSIS agreed to "...coordinate the preparation of evidence" for an eventual Air India prosecution, as directed by the then Solicitor General,¹²³⁶ and promised to place "...the full cooperation of the Service ... at the disposal of the RCMP" to assist in bringing those responsible for the Air India bombing before the courts.¹²³⁷ Yet, the agency continued to receive Ms. E's information without keeping proper records for two years, and then waited for an express RCMP demand a year later to reveal her identity.

¹²³⁵ Exhibit P-101 CAA1045(i), p. 3.

¹²³⁶ Exhibit P-101 CAA0533, CAD0094.

¹²³⁷ Exhibit P-101 CAD0094, p. 3.

Inadequate Access to Information

Overall, it appears that none of the Canadian officials who approached Ms. E, whether from CSIS or the RCMP, ever had a full picture of all of the information available prior to meeting with her, or when making decisions about whether to pursue her as a source of information. In 1986, the RCMP failed to access its own information about the BK application forms. In 1987, Laurie was not aware of CSIS's own interview with Ms. E's landlord. He did not have the reports for the 1985 RCMP interviews with Ms. E, and may not even have known about them. In 1991, Maile and Solvason approached Ms. E without knowing about the 1990 RCMP interviews. After 1990, for many years the RCMP entertained the mistaken notion that Ms. E had initially provided her information to Laurie in 1985. In 1997, Laurie participated in an interview with Ms. E without having been informed of the RCMP contacts with Ms. E since 1990.

Counterproductive RCMP Approach to Ms. E and Witness Protection Issues

Once it was aware of Ms. E's identity and information, the RCMP was unable to obtain a statement from her at an early stage, and, when a statement was obtained, it was not sufficiently detailed. It was suspected that Ms. E altered her story in order to get rid of police attention, a strategy which was known to be used at times by sources who felt threatened or uncomfortable.¹²³⁸ The RCMP was unable to set the stage early on to encourage Ms. E to cooperate. Instead, the manner in which the RCMP approached her had the opposite effect – alienating her further from the authorities and aggravating her anxiety. RCMP investigators did not attempt to minimize the disruptions to Ms. E's life or to address other sources of stress associated with their visits.¹²³⁹ Instead, the RCMP used a pressurized, persistent, and public approach to Ms. E.

Between 1985 and 2000, Ms. E dealt with many different officers, with large gaps in time where the RCMP showed no apparent interest in her. The person with whom she had the best rapport, Laurie, was excluded from the process as soon as possible in 1990, and was only involved again in 1997. The result was that the RCMP was unable to build any rapport or continuity with Ms. E.¹²⁴⁰

The RCMP often approached Ms. E in a confrontational manner and as an adversary. In 1990, she was regarded with suspicion and she was implicitly blamed for not having reported her information to the RCMP during the 1985 interviews. When Best attempted a new approach in 1996, he told Ms. E of the need to disclose the "full extent" of her knowledge, with the undertone that she was withholding information that she would be "well advised" to divulge. When she showed reluctance to testify, she was warned that her failure to respond to a subpoena could result in her arrest.¹²⁴¹ Throughout her dealings with the RCMP,

¹²³⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11582; Exhibit P-101 CAA0792(i), p. 14.

¹²³⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7891.

¹²⁴⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7903.

¹²⁴¹ Exhibit P-101 CAF0423, pp. 8-9.

Ms. E was constantly “asked”, in a manner that sounded more like accusations than genuine questions, about her alleged affair with Bagri, even after she denied it repeatedly.¹²⁴² In 1992, the RCMP told her common-law husband that she had been “seeing” Bagri in 1985-86, a period when she was already with her common-law husband.

The RCMP constantly showed up at Ms. E’s home without making appointments, not giving her any control over when and where she would meet police. She was also disturbed by the length of the RCMP interviews. In subsequent years, she was taken to lengthy interviews – including one lasting over five hours – at RCMP HQ.¹²⁴³ She later indicated that she felt as if she could not leave until she provided the RCMP with the statements they were after.

Even after Ms. E expressed her frustration, indicating that she felt she had “... cooperated enough with the authorities and that her life has been disrupted by [their] dealings with her,”¹²⁴⁴ the RCMP charged on, apparently comforted by the notion that, since Ms. E was not “... totally detached from the targets of interest” in the investigation, they had to be persistent to ensure that she was not “an accomplice.”¹²⁴⁵

When the renewed Task Force contacted Ms. E again in 1996, Best endeavoured to have regular contact with Ms. E,¹²⁴⁶ despite the fact that she indicated that she wanted to have as few meetings as possible.¹²⁴⁷ After Best was first informed that Ms. E had retained counsel and that she did not wish to cooperate further with the RCMP,¹²⁴⁸ he continued to contact her, even following her to the grocery store.

In order to put an end to the RCMP contact, Ms. E’s then husband had to instruct Best to refer calls to Ms. E’s lawyer.¹²⁴⁹ Even after this, Best maintained that, overall, he did not take from Ms. E’s behaviour that there was “...any major reluctance to speak with [him] otherwise she would never have allowed me in her door.” Best explained that while “from the outside” it may “...give the image that there was some reluctance,” in dialogue with Ms. E, “...from the time I met her until after the trial, even in the presence of her lawyer,... – it was always in a professional manner, demeanour, and it was always very friendly.”¹²⁵⁰ Many times throughout his notes¹²⁵¹ and in his testimony, Best reiterated how “cordial” his interaction with Ms. E always was.¹²⁵²

1242 See, for example, Exhibit P-101 CAF0405, p. 2, CAF0428, p. 5.

1243 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7882.

1244 Exhibit P-101 CAF0359.

1245 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11267.

1246 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7903.

1247 Exhibit P-101 CAF0395, p. 94.

1248 Exhibit P-101 CAF0423, p. 8.

1249 Exhibit P-101 CAF0423, p. 11.

1250 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7907.

1251 See, for example, Exhibit P-101 CAF0423, pp. 7-8, where Best notes numerous times that conversations with Ms. E and with her husband ended on “cordial terms”.

1252 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7907.

Taking the fact that Ms. E allowed Best into her home and was “cordial” as tantamount to a lack of reluctance is based on questionable cultural assumptions. It may not have even occurred to her that she could deny the police entry to her residence. Overall, the RCMP apparently failed to appreciate how detrimental to their relationship with Ms. E this persistent contact was.

Ms. E consistently expressed fears for her personal safety if it ever became known that she was providing information, even threatening suicide if forced to testify, for fear that her children would be murdered. She knew the Sikh community well and thus knew about the potential risk to herself. Justice Josephson concluded that Ms. E’s actions were consistent with a belief that the “...threat was and remains real.”¹²⁵³ Yet, the RCMP did not always take Ms. E’s fears seriously.

In 1990, the RCMP concluded that Ms. E was more concerned about her alleged affair with Bagri becoming public than actually afraid for her safety. The officers decided not to discuss source witness protection.¹²⁵⁴ Blachford explained that it would have been problematic to offer protective measures to Ms. E when she was changing her story:

S/SGT. BLACHFORD: Well, certainly when I met her she certainly made some significant changes to her evidence that caused me concern. In hindsight, to go back and offer her now – offer her protection and try and get her evidence back onboard, I’m not sure if that’s –

MR. BOXALL: Right.

S/SGT. BLACHFORD: You know, there’s a fine line in there. Again, it’s case by case.¹²⁵⁵

He added that it was important to get Ms. E’s evidence before promising her the “benefit” of source witness protection measures:

MR. BOXALL: And were her fears in that regard ever addressed?

S/SGT. BLACHFORD: In terms of source witness protection, is that where you’re –

MR. BOXALL: Or – yes.

S/SGT. BLACHFORD: Not in – not in my time with her.

MR. BOXALL: Is there any reason why not?

¹²⁵³ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 102.

¹²⁵⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7771, 7836.

¹²⁵⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7837.

S/SGT. BLACHFORD: Well, one of the key factors is before you start offering a witness incentives, I think you want to get their evidence.

I think the view of the court certainly is how much are you promising a witness and that starts to weigh on their evidence and it can be viewed. Certainly, that was a huge problem on Air India, some of the witnesses that we had and the arrangements that were made.¹²⁵⁶

In subsequent years, the various RCMP officers who dealt with Ms. E seldom mentioned what the RCMP could do to protect her. She was rarely encouraged to voice her concerns. When she did, she received little response. In 1992, Maile made a general statement indicating that threats against Ms. E's family in Canada would receive the RCMP's "immediate attention," but Ms. E was also told that nothing could be done about her fears for her relatives in India, "... due to the constant random killing which appears to be [a] fact of life in that country."¹²⁵⁷

The RCMP officers were not proactive in trying to deal with possible concerns, but instead often waited for Ms. E to provide more detail or make "specific" requests. After her 1992 conversation with Maile, the first time that protective measures were specifically addressed with Ms. E was in 1998, after the murder of Tara Singh Hayer, when Best explicitly offered to provide security measures and discussed some actual options for the first time.¹²⁵⁸ Before that, Best had simply asked Ms. E to specifically identify any "concerns" that she might have.¹²⁵⁹ He explained that before he could think about the type of protection that could be afforded to Ms. E, he first needed to get a sense from her as to "...specifically what her concerns were."¹²⁶⁰

The RCMP's approach in focusing on "specifics" and in imposing an onus on Ms. E, a scared and vulnerable source, to provide details of her fears, before discussing protective options, is somewhat puzzling. The RCMP was in the best position, certainly, to engage the intelligence community to get a better understanding of the real potential threat posed to Ms. E. Yet, before preparation for the trial actually began, the RCMP took no steps to assess the risk to Ms. E.

Despite Ms. E's fears, the RCMP often approached her in a public way, which could put her at risk and increase the stress that the police visits caused her. The RCMP often visited Ms. E in her home and place of business, where employees and clients would see her being approached by the police. At times, they spoke to her within earshot of others. Further, according to Stevenson, the RCMP was actually planning to have Ms. E meet two policemen in a "coffee/doughnut shop"

¹²⁵⁶ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7836-7837.

¹²⁵⁷ Exhibit P-101 CAF0359.

¹²⁵⁸ Exhibit P-101 CAF0423, p. 10.

¹²⁵⁹ See, for example, Exhibit P-101 CAF0423, pp. 6-7.

¹²⁶⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7858.

near her residence "...on a very busy intersection," which raised "...all sorts of security concerns." Stevenson did not know whether the meeting actually took place in the end.¹²⁶¹ We do know, however, that, years later, Best approached Ms. E in public, at the grocery store, without her prior consent, and had a discussion with her about her information in the parking lot.

The RCMP's apparent lack of concern for Ms. E's real fears for her security and that of her family were not conducive to helping rebuild Ms. E's already shattered trust. Ms. E clearly considered herself to be at grave risk, but when offers of protection were finally presented to her, she ultimately maintained that she did not want protection. The RCMP then took no steps to attempt to convince her and others – like her lawyer¹²⁶² – that she was in need of protection. In fact, when Ms. E expressed anxiety about testifying and mentioned the possibility of retaining a lawyer, Best advised her that, in his opinion, this was unnecessary.¹²⁶³ Throughout the process, Ms. E also did not receive any offer of counselling to help her better deal with or express her concerns,¹²⁶⁴ nor was there any attempt to involve a female or South Asian officer.¹²⁶⁵

In the period immediately preceding Bagri's trial, the RCMP recognized the potential danger posed to Ms. E's safety and instituted patrols around her residence. When Ms. E testified, there was witness support available to her as there was to all other witnesses.¹²⁶⁶ Perhaps the RCMP would have been more successful in securing Ms. E's cooperation if she had been treated from the start with the same sensitivity and care that were extended to witnesses during and immediately before trial.

1.4 Mr. Z

Introduction

At some time between 7:30 and 8:00 AM on the morning of June 22, 1985, an East Indian man, who brought with him the "M. Singh" ticket for CP Air Flight 060 to Toronto, appeared at the CP Airlines check-in desk at Vancouver International Airport (VIA) and requested that his luggage be checked straight through to Delhi, even though his flight for the Toronto-Delhi portion of the flight was not confirmed. Ms. Jeanne ("Jeannie") Adams, the agent who was working at the CP check-in desk, told him that this was not possible. The man argued with her and Adams finally relented and marked the luggage to be interlined to Delhi. Later that morning an unidentified male, whose ticket was issued for "L. Singh," showed up at the CP Airlines check-in desk for Flight 003 from Vancouver to Tokyo. The agent checked in his baggage without issue. Neither M. Singh nor L. Singh boarded their flights.¹²⁶⁷

¹²⁶¹ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7706.

¹²⁶² Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7908.

¹²⁶³ Exhibit P-101 CAF0395, p. 97.

¹²⁶⁴ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7910.

¹²⁶⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7827-7828.

¹²⁶⁶ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7891, 7915-7916.

¹²⁶⁷ Exhibit D-1: Dossier 1, "Background and Summary of the Facts," p. 6; Exhibit P-101 CAF0160, p. 34.

In 1986, Mr. Z provided information to both CSIS and the RCMP which purported to identify the individuals responsible for checking in the luggage at Vancouver International Airport. Despite CSIS's assessment that there was a "... high probability that this information [was] accurate,"¹²⁶⁸ the RCMP ultimately concluded that the individuals identified had no connection to the bombing (see Section 2.3.2 (Post-bombing), Mr. Z). However, the manner in which this information first surfaced and was then shared within the RCMP, and between CSIS and the RCMP once again, illustrates the challenges posed when CSIS learns of important criminal intelligence through sources who may be reluctant to deal with the RCMP. Moreover, the Mr. Z incident raises the issue of how the RCMP's internal information management problems posed challenges in terms of the cooperation between CSIS and the RCMP.

June 1986: Mr. Z Provides Information to RCMP Handlers

In 1986, Cpl. Robert Solvason and Cst. Laurie MacDonell were investigators in the RCMP National Criminal Intelligence Section (NCIS) in Surrey, BC. Solvason had previously been seconded to the Air India Task Force and was released back to Surrey NCIS to work on the *Indo-Canadian Times* investigation in early 1986. The focus of the work in Surrey was on criminal acts that had taken place in the community, rather than on gaining an understanding of, or investigating, the broader national and international implications of Sikh extremism – this was the mandate of the Task Force out of E Division. The purpose of the criminal intelligence work was to gather intelligence to establish enough grounds to lay a criminal charge and to develop witnesses in aid of criminal investigations. However, Solvason had extensive experience and abilities in developing community contacts and sources, and he and MacDonell worked pro-actively to develop sources, with the result that the Surrey NCIS unit was able to develop important contacts within the Sikh community, who provided insight in terms of who the major players were.¹²⁶⁹ Some of these individuals also provided these investigators with information of central significance to the Air India Task Force's investigation. One such contact was Mr. Z, who was a member of the Sikh community.¹²⁷⁰

On June 15, 1986, during a source debriefing with his RCMP handlers, Mr. Z provided information that he had heard a rumour that two individuals associated with Ajaib Singh Bagri were involved in the Air India disaster. One of the individuals was connected to Bagri, and he and another relative could be the individuals who delivered the luggage to the airport.¹²⁷¹ In October 1986, Solvason and MacDonell met again with Mr. Z, who provided further information about the luggage scenario. He advised of information he had received from another individual about two Sikhs he identified as being responsible for bringing the Air India/Narita explosives to the airport.¹²⁷²

¹²⁶⁸ Exhibit P-101 CAF0499, p. 1.

¹²⁶⁹ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9609-9613, 9616-9617.

¹²⁷⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9409.

¹²⁷¹ Exhibit P-101 CAF0446, p. 1.

¹²⁷² Exhibit P-290, Admission A.

October 1986: Mr. Z Provides Similar Information to CSIS

Neil Eshleman, who was a specialist in the area of source handling and had considerable experience with CT human sources, had also, independently, developed a relationship with Mr. Z,¹²⁷³ a source whom CSIS believed to be reliable.¹²⁷⁴

On October 12, 1986, Mr. Z contacted Eshleman and advised that two Sikhs had assisted Ajaib Singh Bagri and Talwinder Singh Parmar by actually checking in the luggage containing the bombs at the CP Air counter.¹²⁷⁵ According to Mr. Z, Bagri and Parmar had been waiting outside in the Vancouver International Airport parking lot at the time. Mr. Z was unable to identify the Sikhs at that time.

On October 16, 1986, Mr. Z told CSIS the identities of the two Sikhs who were responsible for checking in the luggage. One of the two individuals had a connection to Ajaib Singh Bagri.¹²⁷⁶ Mr. Z also indicated that he had not previously divulged this information to the RCMP or to CSIS. Mr. Z indicated that he had obtained his information about these events from another person, whom he did not identify to CSIS at that time. The details of the information that Mr. Z had disclosed were reported by Eshleman in internal CSIS correspondence. In his report, Eshleman reviewed information already on file about the booking of the tickets and the check-in of the suspect bags, and stated that, given these facts, "...one can understand why after 15 months, information from a source, implicating an individual named [redacted] in the Air India/Narita conspiracy would pique our interest."¹²⁷⁷

While the purported involvement of these individuals was based solely on information derived from an individual whose identity had not been revealed by Mr. Z at that time, in relation to one of the named individuals, Eshleman wrote that "...taking the allegation of his involvement into consideration along with his confirmed connection with Ajaib Bagri, and then viewing this with the knowledge that [redacted] I believe is enough to start a very thorough investigation of this individual." Through further inquiries, CSIS was able to confirm that both of the identified Sikhs "...are connected to at least Ajaib Bagri." BC Region had not yet had the opportunity to verify whether these individuals had connections to Parmar or to Reyat, the other "prime suspects."¹²⁷⁸ Eshleman speculated that it was possible that Surjan Singh Gill backed out of his assignment to take the luggage to the airport, leaving Bagri responsible for this task.¹²⁷⁹ Bagri may have therefore recruited these two individuals to assist him. Despite its obvious criminal nature and importance, Eshleman felt that it was preferable that this information not be passed to the RCMP right away and rather be forwarded in "due course," after a more complete analysis was completed.¹²⁸⁰

¹²⁷³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376, 9409.

¹²⁷⁴ Exhibit P-101 CAA0506.

¹²⁷⁵ Exhibit P-101 CAA0506.

¹²⁷⁶ Exhibit P-290, Admission B.

¹²⁷⁷ Exhibit P-101 CAA0506, p. 4.

¹²⁷⁸ Exhibit P-101 CAA0506, pp. 4-5.

¹²⁷⁹ See Section 1.2 (Post-bombing), Tara Singh Hayer.

¹²⁸⁰ Exhibit P-101 CAA0506, p. 5.

In his testimony Eshleman explained that the intention at this point was for CSIS to spend some time with the information, to analyze it and to try to corroborate it and then pass it to the RCMP. According to him, there was "...no intention of delay that would cause concern in passing information to them," but rather CSIS wanted to "...add some perspective and analysis" rather than simply passing raw data.¹²⁸¹

Mervin Grierson, Chief CT, and Ken Osborne, DDG Ops, of the CSIS BC Region, agreed with Eshleman's evaluation and proposed course of action. They felt that, once "fleshed out," this information could be of "...major significance to the Air India investigation." They echoed Eshleman's hesitancy to pass on the information right away, indicating that, since the information is "not perishable," it would be preferable for CSIS to further investigate these leads prior to any dissemination taking place. It was felt that such action would "...ensure that our avenues of investigation are not jeopardized before we have the opportunity to fully explore same."¹²⁸²

When he testified at this Inquiry, Grierson was asked what he was thinking at this time. He replied:

Well, it's the same issue that we have discussed here ... that if we disseminate this information immediately, we're going to be asked for the identity of Mr. Z. We're going to be asked for all the collateral that goes with interviewing this person and full disclosure and what we're basically saying is – there's no immediacy in terms of the threat. We should try to flesh it out and ensure that we don't lose this. Like in other words, these things are just reoccurring.

...

And if full disclosure takes place, then there's this issue about identity and sources, evidentiary and – it's just a continuum.¹²⁸³

He went on to explain that CSIS was not only trying to assist the Air India investigation, but also to fulfil its own "long-term intelligence requirements." In that vein, if CSIS could flesh out the criminal intelligence and not lose "the asset," then it could continue to fulfill both these functions, but "...as soon as we disclose it, we lose."¹²⁸⁴

On October 21, 1986, Eshleman and J. Richard ("Dick") Redfern of CSIS interviewed the person whom Mr. Z had identified as having provided the information about the two Sikhs. However, this person did not identify the two Sikhs as being involved and, in fact, would not acknowledge knowing these two individuals. This person did say that he was presently in touch with an unidentified Sikh

1281 Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9411.

1282 Exhibit P-101 CAA0506, p. 6.

1283 Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9497.

1284 Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9497-9498.

who was involved in the Air India crash and that he might be in a position to confirm this fact. However he was adamant that he would not talk to the RCMP or in any way put himself in a position where he would be compelled to appear in court.¹²⁸⁵

On October 24, 1986, CSIS received a request from Les Hammet of E Division indicating an intention on their part to conduct interviews in Kamloops with Ajaib Singh Bagri, among others. The RCMP asked if their enquiries in that town would impinge on any initiatives that were ongoing for CSIS in that area. CSIS informed the RCMP locally that it would prefer the RCMP's Kamloops interviews to be delayed, though no specific explanation was provided. The RCMP agreed to postpone its interviews.¹²⁸⁶ The next contact that the RCMP had from CSIS in relation to this issue was over three weeks later.¹²⁸⁷

On November 18th, CSIS HQ initiated a meeting with representatives from RCMP HQ and provided a briefing on the recent information developed through Mr. Z.¹²⁸⁸ The meeting took place at CSIS HQ and a number of issues related to Sikh extremism were discussed. James ("Jim") Warren, the DG CT at headquarters, opened the discussion with a number of concerns that CSIS had, including the identification of "human" sources in RCMP reports (CSIS preferred the term "sensitive" sources) and the "free lance activity" by RCMP investigators who were "...going beyond normal enquiries without consultation." The RCMP agreed that appropriate caveats and adjustments would be made by the RCMP as well as "...greater consultation between services to avoid any conflicts." Warren then stated that CSIS had received information that the two Sikhs who checked the bags at VIA had been tentatively identified. At this time, CSIS provided the names of three individuals who might be responsible. Further particulars concerning how CSIS obtained this information would be provided to the RCMP via telex.¹²⁸⁹ CSIS requested that the RCMP allow them to continue their intelligence operation. C/Supt. Norman Belanger agreed and added that there were three main objectives:

1. [redacted]
2. What can the RCMP do to shore up CSIS intelligence probe?
3. To penetrate the conspiracy these two individuals will have to be confronted some time down the road.¹²⁹⁰

While only the information about the individuals who were possibly responsible was disclosed to the RCMP at this time without identification of the source,¹²⁹¹ the RCMP concluded that the information was probably coming through Mr. Z. RCMP HQ wrote to E Division and instructed it to "...compare your notes and CSIS notes on a peripheral source [Mr. Z]."¹²⁹²

1285 Exhibit P-101 CAB0689(i), pp. 1-2.

1286 Exhibit P-101 CAB0689(i), p. 2.

1287 Exhibit P-101 CAA0512(i).

1288 Exhibit P-101 CAA0509(i).

1289 Exhibit P-101 CAF0726, pp. 1-2.

1290 Exhibit P-101 CAF0726, pp. 2-3.

1291 Exhibit P-101 CAA0509(i); Final Submissions of the Attorney General of Canada, Vol. I, para. 252.

1292 Exhibit P-101 CAA0509(i).

The following day, RCMP HQ sent a telex to the E Division National Security Offences Task Force (NSOTF), to the attention of Supt. Les Holmes, indicating that CSIS had disclosed to the RCMP the identity of the two Sikhs who had checked in the luggage and that the information was “of such importance” that a full briefing would be provided by CSIS BC region at the Top Secret level. Headquarters went on to direct E Division that it was “...necessary to allow CSIS to pursue their intelligence operation before a full criminal investigation was undertaken by E/NSOTF (E Division/National Security Offences Task Force).”¹²⁹³

The following week, on November 25, 1986, a meeting was held between the RCMP and CSIS at E Division Headquarters in Vancouver. Attendees included RCMP members A/Comm. Donald Wilson, C/Supt. Gordon Tomalty, Supt. Les Holmes and Insp. John Hoadley, and CSIS members Warren, Claxton, Grierson, Redfern and Eshleman. The purpose of the meeting was to “...relay the agreements which were made between the RCMP and CSIS at Headquarters to establish a coordinated plan for the joint investigation of the new lead.”¹²⁹⁴

According to CSIS’s account of the meeting, Warren opened up the meeting by divulging the names of the two individuals believed to be responsible for personally checking in the luggage at the CP Air counter on June 22nd. He added that the lead opens “...new avenues to the RCMP’s investigation” and that the matter must be “handled delicately.” He indicated to the RCMP that this new information was coming to CSIS from Mr. Z. Mr. Z had learned his information through another individual, who was said to be “very vulnerable,” and required “...careful handling in order to achieve the maximum product.”¹²⁹⁵

CSIS informed the RCMP that it was in the process of doing an in-depth analysis of the information in its possession which, when complete, would be shared with the RCMP, and that any pertinent information developed would also be shared with the RCMP. During the meeting, the RCMP did not indicate having prior knowledge of the two Sikhs who checked in the luggage, but did indicate a possible awareness of the location of the CSIS source and a possible knowledge of the source’s identity and the identity of the individual from whom Mr. Z obtained his information.¹²⁹⁶

With respect to the RCMP possibly knowing the identity of the CSIS contact, CSIS stated that the important issue was that the contact not be disturbed. The RCMP agreed that “...absolutely no tampering should take place due to the delicate situation,” and that if it did, the “...small trickle of information would dry up.”¹²⁹⁷ According to Eshleman, Mr. Z was in a “very vulnerable position” and both organizations appreciated that fact.¹²⁹⁸

It was agreed that CSIS would take the “lead role” in order to develop the required intelligence, since it was directly involved in handling the human contact who

¹²⁹³ Exhibit P-101 CAA0509(i).

¹²⁹⁴ Exhibit P-101 CAA0510(i).

¹²⁹⁵ Exhibit P-101 CAA0510(i), p. 1.

¹²⁹⁶ Exhibit P-101 CAB0689(i), p. 2.

¹²⁹⁷ Exhibit P-101 CAA0510(i), p. 2.

¹²⁹⁸ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9416.

was providing new information on Air India.¹²⁹⁹ Warren also invited the RCMP to access CSIS's Ottawa data bank on the RCMP's names, incidents, or other points of interest. An internal RCMP record of this meeting states that this proposal would "...be reviewed by the Task Force."¹³⁰⁰

There was also discussion, largely between Claxton and Insp. Hoadley, of the "...question of joint liaison officers." This suggestion was felt by Hoadley to have been "somewhat precipitated" by the RCMP's informing CSIS on October 24th that they were going to "move in" on interviews in the area in which CSIS maintained an interest and that "...it is obvious that we are getting close to their source, whose identity they are protecting. This latter arrangement is still being negotiated."¹³⁰¹

There was further agreement that close coordination between the RCMP and CSIS would take place, and a proposal was made that a CSIS member who was knowledgeable about this lead would work "hand in hand" with the RCMP, and that the RCMP would prepare the "necessary ground work" to act on the CSIS information. These steps would be a "...safeguard preventing overlaps which would in turn jeopardize this new incoming information." It was even suggested by Holmes that Solvason, the RCMP handler for Mr. Z, did not have to know about this latest lead.¹³⁰² It would seem that Holmes was unaware at the time that Solvason had, in fact, developed essentially the same information from Mr. Z – the same source.

From Grierson's perspective, it was "significant" that Holmes offered to keep this information from the RCMP handler. This suggestion was a "very significant departure" from the way the RCMP normally operated. It meant that when that information went to the NCIS unit, Solvason would know the investigative lead, but not where it came from. This was important for CSIS because it would allow CSIS to "flesh" out the information.¹³⁰³

When asked about the significance of having someone like Warren attend an investigative operational meeting such as this, Grierson commented that this was not something that happened routinely, but did happen on an "irregular basis." His feeling was that having someone from HQ come out to the field allowed situations to be addressed "...from a national perspective in support of our efforts in the Air India investigation." Also, since Warren had personal familiarity with many senior managers in the RCMP, that it would be beneficial "...in terms of exploring these opportunities and ensuring that we come to some consensus to fully exploit this without getting into the usual problems." This allowed for the possibility of making policy decisions that "...may be things we wouldn't have done before."¹³⁰⁴

Coming out of this meeting, the intention was that Eshleman would continue to handle Mr. Z, and that Mr. Z's information would be available to both agencies.

1299 Exhibit P-101 CAA0510(i), p. 2.

1300 Exhibit P-101 CAF0447.

1301 Exhibit P-101 CAF0447, pp. 1-2.

1302 Exhibit P-101 CAA0510(i), p. 2.

1303 Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9501.

1304 Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9498-9499, 9511-9512.

However, despite what appeared to be an ideal plan – at least from CSIS’s perspective – things did not go according to that plan.

RCMP Reports Back about CSIS Information – Parallel Investigations Discovered

While management of both agencies recognized the risk that “overlaps” could pose to the “new incoming information,”¹³⁰⁵ the unfortunate reality was that this overlap had been occurring on the ground, undetected, for some time.

After learning of CSIS’s information about the two Sikhs who had checked in the luggage, Hoadley made subsequent inquiries with Task Force investigators. It was through these inquiries that he learned that the RCMP was, in fact, already aware of the two individuals in question and had been for some time – as demonstrated by a June 17, 1986, report from the Surrey detachment (likely the original source debriefing report), by an internal Task Force document from September 19, 1986, as well as by the subsequent source debriefing in early October, 1986.¹³⁰⁶

On December 2, 1986, Hoadley initiated a meeting with Claxton, during which CSIS was advised that the identities of the two Sikhs who had checked in the luggage was already known to the RCMP, that the RCMP was currently investigating this aspect and that the information was developed by Solvason in Surrey from Mr. Z. Claxton was informed that this information had already been passed to the CSIS BC Region, referring to a September 10, 1986 report by Sgt. Robert Wall that had been made available to CSIS BC Region and subsequently to CSIS HQ. However, CSIS took issue with this assertion, stating that the information contained in Wall’s report did not make CSIS aware of the “...full extent of the RCMP investigation” nor did it clarify the RCMP interest in these two individuals. CSIS DDG OPS Osborne and the A/Chief, CT wrote that the RCMP “...were conducting this aspect of their investigation parallel to ours and CSIS BC Region was not cognizant of it.”¹³⁰⁷ When asked about his view on the decision that had originally been made by RCMP Headquarters to permit CSIS to take control of this lead, Wall was unable to think of any possible rationale for that decision.¹³⁰⁸

On December 3, 1986, John Stevenson, CSIS BC Region, met with Wall and Cpl. K. Schmidt at E Division and discussed these recent developments.¹³⁰⁹ In his testimony, Wall recalled the members of CSIS showing up at his office and being “accusatory” toward Wall and the RCMP for not having earlier revealed the nature of the investigation to CSIS, particularly in light of the fact that, at the regional meeting, CSIS was told that it was going to take the lead. As far as Wall could recall, the meeting ended with the understanding that the RCMP would continue with its own investigation of this lead.¹³¹⁰

¹³⁰⁵ Exhibit P-101 CAA0510(i), p. 2.

¹³⁰⁶ Exhibit P-101 CAA0512(i).

¹³⁰⁷ Exhibit P-101 CAB0689(i), p. 3.

¹³⁰⁸ Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9722.

¹³⁰⁹ Exhibit P-101 CAB0689(i), p. 3.

¹³¹⁰ Testimony of Robert Wall, vol. 77, November 16, 2007, pp. 9724-9725.

Wall explained to CSIS that he had one man investigating the issue and agreed to coordinate his unit's activities in this regard with those of CSIS. Osborne and the A/Chief, CT CSIS BC Region, did not interpret the RCMP's withholding of information as intentional and considered this to be a case where "...the left hand was not totally aware of what the right hand was doing." Claxton commented that, while he similarly did not view this confusion as a deliberate attempt to deceive CSIS, he would have expected the RCMP to "...discuss such findings and could have readily compared notes on [redacted] speculation." It was felt that this "dilemma" could have been avoided if the Task Force investigators had been involved in the November 25th meeting about this issue.¹³¹¹

It seems that the RCMP continued to experience internal difficulties in sorting out how this information came to be developed. That same day, in a "secret" December 3, 1986 "overview report" produced by RCMP HQ on "Project Colossal,"¹³¹² it was reported that "...CSIS have supplied information which may lead to the identification of two Sikhs who checked baggage containing explosives at Vancouver International Airport." The report indicates that the lead is "extremely sensitive," and thus "...no dissemination is permitted beyond addressees."¹³¹³ It appears that, despite the fact that this information was, in fact, first developed by the RCMP, this connection continued to remain unrecognized by those responsible for creating the very summaries that were meant to keep HQ and investigators in the various Task Forces aware of important developments.¹³¹⁴

CSIS Reports its Mr. Z Information to the Solicitor General

Still positive about the possibilities raised by the Mr. Z information, CSIS was eager to report on the information it had developed. On December 19, 1986, CSIS Director Ted Finn sent a letter to the Solicitor General of Canada, the Honourable James Kelleher.¹³¹⁵ Finn provided an update about the Mr. Z information, indicating that the individuals identified by Mr. Z as having checked in the luggage had been established by CSIS as having "...links to the main suspects in the Air India disaster." In CSIS's view, there was a "...high probability that this information is accurate." Finn noted that the "...RCMP was fully apprised, by the Service, of this information," first at the Headquarters level on November 18, 1986, and then at the E Division level on November 25, 1986.¹³¹⁶

¹³¹¹ Exhibit P-101 CAB0689(i), pp. 3-4.

¹³¹² The code name for RCMP investigations of Sikh extremist conspiracies including the Air India disaster investigation.

¹³¹³ Exhibit P-101 CAB0688(i), p. 4.

¹³¹⁴ Exhibit P-101 CAF0504, p. 2. In early 1986, as part of RCMP HQ initiatives in relation to Project Colossal, it undertook to produce an Overview Report for dissemination to the Divisions every 48 hours. Division Task Forces were required to provide updates on their investigative activities to HQ every 24 hours. It appears that RCMP NSOTF Overview Reports were routinely provided to CSIS as well as to the Divisions. See for example, Exhibit P-101 CAB0701, CAB0730(i).

¹³¹⁵ Exhibit P-101 CAF0449.

¹³¹⁶ Exhibit P-101 CAF0499, pp. 1-3.

In January 1987, CSIS conducted file research in British Columbia as part of its continuing attempt to identify the perpetrators of the alleged bombing of Air India Flight 182. At that time, it was discovered that there were calls, including in June 1985, from the home of Talwinder Singh Parmar to the home of one of the two Sikhs identified by Mr. Z as being responsible for delivering the bags. This meant that there were now links established between this individual and both Bagri and Parmar – two of the RCMP’s main suspects in the Air India investigation. CSIS’s Chief of Counter Terrorism advised the RCMP Liaison Officer, Insp. John L’Abbe, of this information on February 17, 1987, and stated that the calls from Parmar provided a reinforcing link between the organizer and the family of the men identified by the CSIS source as the delivery people.¹³¹⁷

A few weeks later, CSIS produced a comprehensive analytical report on the bombing of Air India Flight 182, which was the result of a “...thorough review of information in its possession” from CSIS sources and leads from police inquiries. The report sets out a chronology of events that led up to the bombing, and includes CSIS’s theory of the case and a list of “weakest links” in the conspiracy.¹³¹⁸ CSIS reported that, according to Mr. Z, it was probably Bagri who made the arrangements to have the bombs brought to the airport and checked in at Vancouver airport. Mr. Z indicated that Bagri enlisted the services of the two Sikhs and, in fact, Parmar and Bagri remained in the parking lot of the airport while the baggage check was conducted. The report states that “...this seems entirely plausible when weighed against supporting data which we have developed.”¹³¹⁹

CSIS Forced to Terminate Contact with Mr. Z

Mr. Z was “significant” in terms of his “long-term potential” for CSIS. He was important not only for the information he could provide in relation to Air India, but also in relation to Sikh extremism more generally. Eshleman testified however, that despite a seemingly ideal agreement that had been made between the RCMP and CSIS in late November (where it was decided that Mr. Z’s information was to be developed jointly, with CSIS taking the lead), CSIS terminated its relationship with Mr. Z shortly afterwards and turned over control of this source to the RCMP.¹³²⁰

The impact of losing a source like Mr. Z was that it prevented CSIS from “... developing people that have access to our target area in the Sikh community.” If “...we lose that person ... we lose that access.”¹³²¹ As CSIS did not have a “great number” of individuals providing valuable information to the Service, when it lost one it was “frustrating” for investigators.¹³²² For Eshleman, this was just another “...example of CSIS losing a source to another organization.” It was felt

¹³¹⁷ Exhibit P-290, Admission D.

¹³¹⁸ Exhibit P-101 CAB0717(i).

¹³¹⁹ Exhibit P-101 CAB0717(i), p. 14.

¹³²⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9391, 9416-9417.

¹³²¹ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9502.

¹³²² Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9416-9417.

that the "...Air India investigation took preceden[ce] over everything," including the "...bigger picture of Sikh extremism." While CSIS's views "...perhaps were listened to ... they certainly didn't prevail in the debate."¹³²³

Grierson's view was that:

Mr. Z was in a position where he had access, very good access to the community. So he represented good potential. How that would have developed had we had the opportunity to work with it remains unknown.¹³²⁴

Conclusion

The Mr. Z story is an example of the problems that can arise in national security investigations where there are deficiencies in the centralization of the investigation.¹³²⁵ Once CSIS had decided to brief RCMP HQ about the Mr. Z information it had uncovered, RCMP management, despite its best efforts to reach a mutually agreeable solution with CSIS, was ineffective, as it was unaware that the RCMP had already developed the Mr. Z information independently and was currently pursuing this lead. The failure of both agencies to keep each other informed in a timely way meant that parallel investigations were allowed to proceed for some time before they were detected. Also, woven into the fabric of the Mr. Z narrative is a thread of mistrust between the two agencies, mostly at the lower management and investigator level. CSIS hesitated in passing its information to the RCMP, having already experienced the problems that could be caused for its own investigations by sharing information with the RCMP. CSIS was very optimistic about the Mr. Z information, reporting to the Solicitor General that there was a "...high probability that this information is accurate."¹³²⁶ However, when the RCMP finally began to follow up on the Mr. Z information,¹³²⁷ it appeared to be eager to dismiss this lead, which ultimately "...dissolved into another dead end."¹³²⁸ The dissolution of yet another promising lead, and the loss of yet another valuable source, could only have served to further fuel the climate of mistrust and resentment that had been brewing between the two agencies.

1.5 Ms. D

Introduction

Ms. D was hired by Ripudaman Singh Malik as the Pre-School Supervisor of the Khalsa School in Surrey BC, in September 1992. She was a Sikh by birth, who

¹³²³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9416.

¹³²⁴ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9500-9502.

¹³²⁵ See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force.

¹³²⁶ Exhibit P-101 CAF0499, p. 1.

¹³²⁷ See Section 2.3.2 (Post-bombing), Mr. Z.

¹³²⁸ Final Submissions of the Attorney General of Canada, Vol. I, para. 259.

was married to a Hindu man and had two children.¹³²⁹ This school, although geared towards religious teachings, allowed Ms. D to enter into a "...non-Sikh employment contract," which permitted her to wear dresses and to have short hair.¹³³⁰

Ms. D became involved in the Air India investigation in 1997, speaking first to CSIS for a short period of time and then to the RCMP Air India Task Force. She was the Crown's main witness in the prosecution against Malik for the Air India and Narita bombings. Her dealings with the RCMP and CSIS illustrate once again some of the cooperation issues that arose when individuals provided information to both agencies. In this case, CSIS rapidly turned Ms. D over to the RCMP, but nevertheless failed to retain the notes made during its initial interviews with her. The manner in which the RCMP addressed Ms. D's security concerns – providing protection as needed, and then rapidly moving Ms. D into the Witness Protection Program – represents a sharp contrast to the treatment and protection of Ms. E, who had demonstrated less willingness than Ms. D to cooperate with the RCMP.

Despite the RCMP's willingness to protect Ms. D, it was discovered in this Inquiry that an error led to the release of her identity by the RCMP. This error may have been related to the involvement of multiple RCMP units with Ms. D, and it led to her entry into the Witness Protection Program much earlier than would otherwise have been necessary. This was of concern to CSIS, and it obviously had a significant impact on Ms. D's life. That impact was not necessarily fully appreciated by the RCMP.

Ms. D's Information

Ms. D testified at the trial of Malik and Bagri that while working at the Khalsa School, she became close to Malik. She worked long hours and assisted him in many matters involving not only the Pre-school but also the main Khalsa School. Eventually, she began to accompany him to numerous political events to which his wife was not invited.¹³³¹ She explained that her relationship with Malik ultimately became very close and intimate,¹³³² and that, as a result, he made a number of admissions to her.

Ms. D testified that in May 1996, Malik brought up the Air India bombing during a heated discussion about a student at the Khalsa School who had attempted suicide.¹³³³ At that time, Ms. D said that Malik first told her "...if one child dies for Sikhism, so what?" and then said "...[in] 1982, 328 people died; what did anyone

¹³²⁹ Ms. D is the pseudonym adopted by Justice Josephson for this woman who was a witness at the Air India Trial. Her identity is protected by a permanent publication ban, which is mentioned at the beginning of *R. v. Malik and Bagri*, 2005 BCSC 350.

¹³³⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 275-276.

¹³³¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 271.

¹³³² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 276, 281-282. Ms. D's description of her relationship with Malik was questioned at trial, and not entirely accepted by the trial judge. Her claim was that Malik professed his love for her in 1995, that she had similar feelings which she did not express, and that the romantic aspect of their relationship developed no further.

¹³³³ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 305-309.

do? ... People still remember Khalistan." Later in the discussion, Ms. D reported that Malik added: "...we had Air India crashed" and "...nobody, I mean nobody can do anything. It's all for Sikhism. Cudail [the student who had attempted suicide] won't get anywhere. Ministry won't listen; no one will."¹³³⁴

Ms. D also testified that in March 1997, Malik revealed intimate details of the roles that he and others had played in the Air India conspiracy, explaining that the Air India and Narita bombings were related to the pro-Khalistan movement, that each person had been assigned a task and that Malik had been generally responsible for overseeing them. According to Ms. D's testimony, Malik also indicated at that time that he had personally booked and paid for the airline tickets later used to check in the suitcases carrying the bombs on board the planes.¹³³⁵ Ms. D explained that Malik had made those admissions after she confronted him with a newspaper article (which Mrs. Reyat had translated for her from Punjabi to English) that revealed that a number of arrests were imminent in the Air India investigation, and that referred to Malik as a suspect.¹³³⁶ Ms. D added that, after the discussion, Malik told her not to repeat to anyone what she had learned, or even to acknowledge that she knew anything. She explained that Malik warned her that people would know that the information came from him, and that it would get her into a lot of trouble, adding that he could protect her if he was there, but that she should remember that he could not always protect her.¹³³⁷

Ms. D also reported that in April 1997, she overheard a conversation between Malik and Raminder Singh Bhandher ("Mindy Bhandher") in the trustee's office at the Khalsa School. The conversation related to a meeting at which Malik, Bagri, Parmar and one of their associates, Avtar Singh Narwal, had been looking at a diagram of an aircraft. Malik later admitted to Ms. D that the meeting had taken place before the Air India bombing, and that the *Anashka* (plan or drawing) they were looking at was "...about the Air India that fell." Narwal's son had come in during the meeting and had since been telling others about what he had seen. Ms. D explained that, in the conversation she overheard, Malik was asking why the boy had not been stopped from revealing this information.¹³³⁸

Finally, Ms. D testified that Malik told her about some meetings he had attended prior to the bombing, including one in Calgary, where the progress of the Air India plan was discussed, and one in Seattle, where Malik's spiritual leader blessed the Air India plot. She added that Malik admitted to having asked Mr. B, another witness at trial, to carry a suitcase for him onto an Air India plane.¹³³⁹

¹³³⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 308. This account is also detailed, in a similar fashion, in Kim Bolan, *Loss of Faith: How the Air-India Bombers Got Away With Murder* (Toronto: McClelland & Stewart Ltd., 2005), pp. 152-153 [Bolan, *Loss of Faith*].

¹³³⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 285, 287, 291-292.

¹³³⁶ Ms. D testified that the "Newspaper Confession" took place on one of the following dates: March 28, 1997, March 31, 1997 or April 2, 1997.

¹³³⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 303.

¹³³⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 311.

¹³³⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 312-314.

Initial Contacts with CSIS

Ms. D testified that she initially contacted CSIS to find out about the origin of persistent rumours that she was working for CSIS and providing the Service with information about Malik.¹³⁴⁰ This followed a progressive deterioration of her relations with Malik and the Khalsa School administration.

In May 1996, Ms. D filed a complaint with the British Columbia Human Rights Commission against the Khalsa School administration because of comments made by a school trustee, Aniljit Singh Uppal, about her manner of dress, and because she was being asked to sign a Sikh employment contract. She testified at trial that Malik convinced her to withdraw her complaint on the same day that it was filed. Then, in August 1997, Ms. D's relations with Malik became strained because she had a dispute with Uppal, and because of persistent rumours that she was a CSIS informer and had been recording her conversations with Malik.¹³⁴¹

Ms. D testified that, on August 28, 1997, one of the school's officials, Balwant Bhandher, pushed her onto a chair and told her that she had to provide a written "voluntary" resignation to the school. She said that he warned her not to go to the media or to the police and that he added that Malik had the power to have the RCMP arrest her. Ms. D stated that she called Malik later that evening and asked why she was being accused of being a spy. She explained that he responded that he had been told that she had been recording their conversations, that he was afraid of her and that he did not want her at the Khalsa School, though she did not have to resign from the Pre-school. She testified that he asked her to write a letter stating that she would refrain from entering the Khalsa School, and that she provided him with such a letter in early September.¹³⁴²

Ms. D testified that, after she complied with Malik's request and resigned from the main school, he began to ask for her resignation from the Pre-school as well. She stated that the Khalsa School was attempting to cut all ties with her between August and October 1997. In September 1997, she contacted the British Columbia Human Rights Commission to request complaint forms.¹³⁴³

Ms. D testified that, in September 1997, she told a friend that she was tired of the rumours about her being a CSIS spy, and that she was willing to approach CSIS herself to ask about the rumours. Her friend, who had already spoken with CSIS, provided her with the business card of CSIS agent Nicholas Rowe. She contacted him by telephone on October 15, 1997, and they agreed to meet on October 17th at a local coffee shop.¹³⁴⁴ In internal correspondence, a CSIS representative later noted that CSIS had found out that Ms. D had had a "falling out" with Malik, and that he had tried to force her to resign her position at the Khalsa School, and that this was the reason why the Service had begun speaking with her.¹³⁴⁵

¹³⁴⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 328.

¹³⁴¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 315, 317, 323-324, 327, 432, 434.

¹³⁴² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 316-318.

¹³⁴³ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 319, 325.

¹³⁴⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 328, 379.

¹³⁴⁵ Exhibit P-101 CAF0436.

On October 17, Ms. D met with Rowe as agreed. The meeting began at the coffee shop, but moved to Rowe's vehicle once he was advised that Ms. D had been the victim of threats and intimidation. Ms. D testified that, during this meeting, she asked Rowe about the rumours that she was a CSIS spy, and he told her that he would get back to her. She had no other recollection of the meeting, except that she indicated that she also told Rowe that she did not want to meet with the RCMP, as she was afraid of them. Rowe, for his part, recalled that Ms. D talked about being afraid for her safety and about having been the victim of threats and intimidation, and also mentioned being accused of informing for the Government of BC and for CSIS. The meeting was concluded with an agreement to meet again at a secure location.¹³⁴⁶

Ms. D testified at trial that, on the same day she had her meeting with Rowe, she also met with Malik, who offered her a chance to remain employed at the Pre-school, provided she follow Sikh contract rules and donated ten per cent of her income to the school. She explained that, when she refused, Malik told her that she could either resign or be laid off, and then confronted her again with accusations that she had been recording his telephone calls. Ms. D then recounted that on the morning of October 20th, Malik phoned her to tell her that he was afraid of her, that she knew too much, and that he wanted her to resign. She said that on the same day she received two threatening telephone calls from a person with a Punjabi accent, warning her that she was being watched and that she should leave Malik alone, and that, later that evening, she was followed by a van and felt that the people inside were trying to intimidate her. She testified that when she confronted Malik about these incidents, he told her that it was too bad and that she should resign.¹³⁴⁷

Ms. D then met with Rowe again on October 21st and 24th, in a hotel, for meetings which each lasted between two and two-and-a-half hours. She had little recollection of the details of these meetings. Rowe included the information he had received from Ms. D in intelligence reports he prepared after his interviews with her, and later stated that he had received a large amount of information from Ms. D during these meetings about Malik and the organizations he was involved with. Rowe explained in testimony at trial that he prepared for his meetings with Ms. D by reviewing CSIS databases and writing questions, and that he had used the meetings to gather as much information as possible from her.¹³⁴⁸

Rowe did not tape any of his interviews with Ms. D, but he explained in his testimony at trial that he took careful notes during the meetings, writing down what Ms. D said verbatim or making efforts to summarize everything she was saying. He used his notes to prepare his intelligence reports. The reports did not attempt to capture the exact words spoken by Ms. D. The vocabulary and phraseology were primarily Rowe's, and he was at times selective in terms of

¹³⁴⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 329, 373, 380.

¹³⁴⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 320-321.

¹³⁴⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 331, 374, 381, 392, 394.

the information he included in the reports, though he did endeavour to be as accurate as possible in summarizing and reporting what Ms. D had expressed to him.¹³⁴⁹

According to Rowe's reports, Ms. D provided information during the October meetings about improprieties in Malik's management of the Khalsa School including: the levying of hidden tuition fees which constituted fraud on the Ministry of Education; the misuse of government grants; attempts to defraud the unemployment insurance program by manipulating the employment status of teachers at the school; and welfare fraud by employing Reyat's wife "under the table." Ms. D also advised that Malik engaged in financial or tax fraud through the use of the Satnam Trust, and misappropriated funds from the Khalsa School account. She stated that Malik engaged in various forms of immigration fraud by issuing fake credentials to qualify for visitors' visas to Canada, and that he employed religious instructors who were in Canada illegally. She added that Malik ran a tour company, which he used to smuggle money and valuable items into India. Finally, she advised that Malik sponsored visits by fundamentalist groups, held private meetings with members of militant groups in the school, and provided funding and support for militant or terrorist activities, although, in this last case, Ms. D stated that her knowledge was based on information which was "hearsay and circumstantial."¹³⁵⁰

After the two meetings at the hotel, Ms. D and Rowe were in contact by telephone to arrange a subsequent meeting.¹³⁵¹ Before this meeting took place, a decision was made at CSIS that Ms. D had to be introduced to the RCMP.

Introduction to the RCMP

CSIS initially contemplated using Ms. D as an ongoing source, but decided by October 29, 1997, that she had to be handed over to the RCMP. Rowe wrote in his reports that the information provided by Ms. D was "...of considerable interest to the Service's investigation of the Babbar Khalsa International," but that she was also providing intimate details about substantial frauds committed by Malik, a former target of CSIS. Rowe's reports indicated that Ms. D wanted her information about Malik's criminal activities passed on to the competent authorities, that she requested to be put in contact with these authorities and that she understood that full cooperation with the RCMP might be necessary for her to "get back" at her antagonists at the Khalsa School.¹³⁵²

In subsequent correspondence, a CSIS BC Region representative, Bill Turner, explained that the Service was in the process of recruiting Ms. D as a source when it became apparent that she had "inside knowledge" of frauds and irregularities at the Khalsa School, which involved Malik.¹³⁵³ Turner explained in testimony before the Inquiry that CSIS then concluded that Ms. D's information was of little

¹³⁴⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

¹³⁵⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 394.

¹³⁵¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 382.

¹³⁵² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 382, 396.

¹³⁵³ Exhibit P-101 CAF0436; Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8331.

value to the Service, but would be of great value to the RCMP. He explained that, within a matter of weeks, CSIS passed the information over to the RCMP and made arrangements to introduce Ms. D to the RCMP.¹³⁵⁴ He noted that the RCMP found Ms. D's information to be "of good quality."¹³⁵⁵

On October 29, 1997, Rowe contacted Cpl. Doug Best of the RCMP Air India Task Force to set up a meeting to introduce Ms. D to him. Rowe testified at trial that, on the same day, he met with Ms. D "...to discuss the issue of her transfer to the RCMP." He said that Ms. D accepted this arrangement and "...seemed to recognize that she had no choice but to continue."¹³⁵⁶

On October 30, 1997, Ms. D met with Rowe and Best at a secure location. At that time, the reasons why the RCMP would take over the case were discussed with Ms. D. Best advised her that he was with the Air India Task Force, and provided her with his business card and contact numbers at the end of the meeting. According to a report that Rowe wrote in 1999, Best advised Ms. D during the meeting that her information was needed in court, and she consented to testifying. Best also explained that, if required, the RCMP could offer Ms. D financial assistance and protection for herself and her family. Rowe noted that Ms. D "...appeared to be totally at ease with Best and her circumstances."¹³⁵⁷

In her testimony at trial, Ms. D indicated that she had repeatedly told Rowe that she did not want to meet with the RCMP, and did not trust them. She stated that she was angry to find that Best was present at the October 30th meeting, that she had not "hit it off" with Best and that she had lost any interest in talking to him when he mentioned that he was with the Air India Task Force. Justice Josephson did not believe Ms. D's claims that she did not want to meet with the RCMP, and found that she had wanted her information about Malik's criminal activities to go to the police, had consented to meeting with the RCMP and had agreed to become a witness against Malik, and perhaps even an agent for the RCMP.¹³⁵⁸

After the October 30th meeting, Ms. D called Rowe once¹³⁵⁹ and then ceased her communications with him and began to have frequent discussions with the RCMP.

Ongoing Contacts with the RCMP

On November 1, 1997, Malik called Ms. D to attempt once again to secure her resignation. He called her again later that day to inform her that she was being terminated. Ms. D then contacted Best to advise that she had received harassing phone calls from Malik. She advised Best that she had no intention of accepting

¹³⁵⁴ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8331-8332.

¹³⁵⁵ Exhibit P-101 CAF0436.

¹³⁵⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 383.

¹³⁵⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 384, 403, 406.

¹³⁵⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 332, 373, 375, 722-728.

¹³⁵⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 334, 385.

her termination and that she would present herself at work on the following Monday, November 3rd. On November 2nd, she met with Best and Insp. Gary Bass at an RCMP detachment in Surrey and provided an account of her association with Malik and of her knowledge of his fraudulent business practices.¹³⁶⁰

On November 3rd, she again met with Best and a number of other RCMP officers at a local restaurant. The officers provided her with a transmitting device to carry in her purse when she attended at the Pre-school, giving her a code word to signal them if she felt threatened. When Ms. D arrived at the school, she was immediately asked to leave by Uppal. She requested written proof that she had been fired. After Uppal and Balwant Bhandher handed her a letter to that effect, she said that they began to follow her and intimidate her. Ms. D called out the code word and a team of seven officers came to the school to escort Ms. D out. Bhandher was arrested on this occasion.¹³⁶¹

Ms. D then went to the police station and provided the first in a series of formal statements to the RCMP. After that time, she had regular contact with the RCMP. She received weekly visits from Best or S/Sgt. John Schneider of the Air India Task Force, who changed the videocassettes in the security cameras that had been installed at her house. In early November 1997, she advised the RCMP about the admission Malik had made during their discussion about the student who had attempted suicide. Though during her testimony at trial she claimed not to recall it, she also continued to provide information relevant to the Air India investigation over the following months.¹³⁶² She gave information about an individual in Toronto, in an attempt to assist the police in identifying Mr. X,¹³⁶³ and about other individuals who might agree to cooperate with the RCMP.¹³⁶⁴ She provided the RCMP with pages from the journal she kept in 1996-97 in which she had recorded her meetings and conversations with Malik about Air India, as well as conversations with others which tied Malik and Bagri to the Air India bombings.¹³⁶⁵ She claimed that she had destroyed the rest of the journal to protect herself.¹³⁶⁶

In November 1997, Ms. D received the forms she had earlier ordered from the British Columbia Human Rights Commission and filed an employment discrimination complaint against the organizations overseeing the Khalsa School, which included allegations of physical and verbal harassment. In January 1998, Ms. D also commenced a civil lawsuit for wrongful dismissal, which was ultimately settled out of court for \$12,000.¹³⁶⁷

¹³⁶⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 322, 335-336, 407, 409.

¹³⁶¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 335-337, 376, 410-412.

¹³⁶² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 337, 363, 377, 413.

¹³⁶³ See Section 1.5 (Pre-bombing), Mr. X.

¹³⁶⁴ All of the information given by Ms. D to the RCMP is detailed at *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 414.

¹³⁶⁵ See, generally, *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 340-348, 414.

¹³⁶⁶ See, generally, *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 340. The remaining portions of the journal, which were disclosed to the accused in the Air India Trial, were the subject of legal debate in two main rulings: *R. v. Malik, Bagri and Reyat*, 2003 BCSC 231 (Ruling re Editing of the Witness's Testimony and Statements) and *R. v. Malik and Bagri*, 2003 BCSC 1387 (Ruling on the Admissibility of the Witness's Evidence Regarding her Discussions with Mrs. Reyat).

¹³⁶⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 325-326.

On January 8, 1998, Ms. D provided a statement to the RCMP Commercial Crime Unit. She also spoke to the Ministry of Education, which was auditing the Khalsa School.¹³⁶⁸

Though she provided much information to the RCMP, beginning in November 1997, Ms. D waited until March 28, 1998 to reveal her information about the detailed confession Malik was alleged to have made in March 1997 when confronted with the newspaper article. Ms. D then met with Schneider and Best on April 2nd and April 27th to provide a formal statement.¹³⁶⁹ In late July 1998, CSIS reported that the RCMP had polygraphed Ms. D about her information and that she had "...passed with flying colours." According to this report, she was to become "...one of the main witnesses at the Air India trial."¹³⁷⁰

Reporter Kim Bolan, who was in contact with Ms. D since October 1997, believed that the explanation for Ms. D's failure to reveal Malik's detailed confession when he was confronted with the newspaper article related to Ms. D's reluctance to testify. She wrote in her book about the Air India tragedy that Ms. D "...felt thrust into the camp of the police," and had difficulty trusting the RCMP investigators. She reported that Ms. D did not want to be a witness, especially in the Air India case, as she felt "...it would be a death sentence." Bolan wrote that, in February or March 1998, Ms. D asked her to consult the *Vancouver Sun's* lawyer about whether she could be forced to be a witness. Bolan explained that she then provided information about the hearsay rule that turned out to be inaccurate and that could have led Ms. D to believe that she would not have had to testify about what Malik had told her.¹³⁷¹ It was shortly after that time that Ms. D revealed to the RCMP her information about the detailed admissions she said Malik had made when he was confronted with the newspaper article.

Ms. D continued to reveal new information to the RCMP in subsequent years. In October 2000, she provided her information about the conversation she overheard (and Malik's subsequent admissions to her) about Narwal's son, and the plans for the Air India plane which was bombed. In October 2003, she mentioned for the first time the Seattle meeting where Malik's spiritual leader was alleged to have blessed the Air India plot.¹³⁷²

Threats and Intimidation

From the beginning of her dealings with the authorities, Ms. D indicated that she had been the victim of threats and intimidation and that she feared for her safety. Early on, in November 1997, the RCMP installed a video surveillance camera at her residence.¹³⁷³ Ms. D continued to receive threats after she began speaking with the RCMP.

¹³⁶⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 377, 414.

¹³⁶⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 338.

¹³⁷⁰ Exhibit P-101 CAF0436.

¹³⁷¹ Bolan, *Loss of Faith*, pp. 167-168, 217-218.

¹³⁷² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 369-371.

¹³⁷³ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 377, 380, 396, 414.

On February 14, 1998, Ms. D was warned by a relative of Balwant Bhandher to be careful because Malik, Bhandher and Uppal had met and would "...try to shut her up permanently."¹³⁷⁴ Shortly thereafter, she was approached at a Sky Train station and told by a young East Indian male that Malik would "finish" her and reporter Kim Bolan. In March 1998, eggs were thrown at her house in the middle of the night, and she received a number of unsettling phone calls.¹³⁷⁵ In June 1998, Ms. D was at the shopping centre with her child when a former acquaintance from the Khalsa School approached her and warned her that she was creating a lot of problems. The individual was aware of personal information about Ms. D's child and warned her that she and her family would be severely harmed if she did not "watch it."¹³⁷⁶

In July 1998, Bolan contacted the RCMP and advised that she had received information about a "hit list," and had been told that a person from the US would come with AK-47s to take care of the hit list. Ms. D's name was reportedly included on the list, as well as the names of Tara Singh Hayer and Bolan herself. At the time, Bolan, who had heard a gun shot on her street on July 16th, reported to the RCMP that she felt that the person from the US with the AK-47s was "...already in town to carry out the hit list contract." As a result of the hit list information, an additional video surveillance camera was installed at Ms. D's residence by the RCMP.¹³⁷⁷

The Release of Ms. D's Name

In late July 1998, shortly after the information about the "hit list" was received, a newspaper article was published in Surrey concerning allegations of fraud involving Reyat's wife and the Khalsa School. An Information to Obtain a search warrant had been sworn in connection with the case by someone from the Ministry of Social Services. The Information identified Ms. D and another individual as two persons from the Khalsa School who had provided information to RCMP investigators. A reporter had obtained a copy of the document from the Court and, as a result, the published story identified Ms. D.¹³⁷⁸

The RCMP attempted to find out how Ms. D's name ended up being released in this manner. The Force contacted the appropriate members to verify whether the RCMP warrants were sealed, and whether someone from the Ministry could have provided a copy of the warrants to the reporter.¹³⁷⁹ Bill Turner of CSIS found out what had happened and reported it in an electronic message dated July 31, 1998. He explained that the Information to Obtain prepared by the RCMP Commercial Crime Section was based largely on Ms. D's information and that of the other individual. When the Information was filed in Court and the search warrant obtained, "...someone forgot to ask that the Information be sealed, and it was not, and therefore available to the public." This is how reporters were able

¹³⁷⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 352.

¹³⁷⁵ Exhibit P-101 CAF0485, pp. 1, 3.

¹³⁷⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 352.

¹³⁷⁷ Exhibit P-101 CAF0485, pp. 3, 5.

¹³⁷⁸ Exhibit P-101 CAF0485, p. 6.

¹³⁷⁹ Exhibit P-101 CAF0485, p. 6.

to obtain a copy of the document identifying Ms. D. As of July 31st, Turner noted that "...some of this information has already been published and the rest of it is in the public domain."¹³⁸⁰

On the day that the news article identifying her was published, Ms. D was contacted by the RCMP and was read parts of the article. The RCMP suggested that she and her family move to a different location "for a while" at RCMP expense in order to allow the Force to "...assess the threat situation." She replied that she felt "secure enough" at home and did not want to move out at that time. The police provided additional patrols for the residences of Ms. D. and the other individual named in the news story. The following day, Ms. D advised that no problems had been encountered since the previous day, and that she still felt that moving away was not necessary.¹³⁸¹

In the next days, the investigative team consulted with the RCMP Witness Source Relocation Unit. It was determined that "...it could be necessary to move [Ms. D's] family in the next few days." The RCMP again suggested a temporary move to Ms. D for security purposes, but she was "...still reluctant to do so." The RCMP resolved to "...discuss the option with her and her family members." In the meantime, arrangements were made by the RCMP to do protective surveillance of Ms. D's residence during the evening hours. The Commercial Crime Section of the RCMP was also advised of the news article and the resulting potential danger to its witnesses in the fraud case.¹³⁸²

Four days after the news article disclosing Ms. D's name was published, the RCMP continued to provide protection for Ms. D and to attempt to convince her to move into temporary accommodations for "...safety, evaluation and assessment purposes." It was resolved that "...once she agrees to do this," appropriate members would be notified, and that, in the meantime, a threat assessment and "personal history forms" would be completed.¹³⁸³

Ms. D ultimately "agreed" to a temporary move, as suggested by the RCMP. On July 31, 1998, Turner reported that the RCMP, having "...quickly realized that their source was now in danger" as a result of the publication of her identity, had taken her and her family into "protective custody." They were "...being hidden outside of the Vancouver area," and CSIS was asked to be on alert for any threats against Ms. D. At the time, CSIS did not know how long the RCMP was planning to keep Ms. D hidden.¹³⁸⁴ By the time she testified at the Air India trial in 2003, she had still not returned to her home. She had entered the Witness Protection Program and had been moved to "...a number of temporary homes" since the summer of 1998. She testified that she had assumed that her fifth move would be permanent, but that she had then run into someone from her past and, as a result, "...had to be moved yet again."¹³⁸⁵

¹³⁸⁰ Exhibit P-101 CAF0436.

¹³⁸¹ Exhibit P-101 CAF0485, p. 6.

¹³⁸² Exhibit P-101 CAF0485, pp. 6-7.

¹³⁸³ Exhibit P-101 CAF0485, p. 7.

¹³⁸⁴ Exhibit P-101 CAF0436.

¹³⁸⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 352-353.

According to Bolan's book, while entry into the Witness Protection Program was offered to Ms. D's whole family, her husband and her eldest child, who was beginning university, refused to enter. Therefore, only Ms. D's youngest son accompanied her when she was relocated.¹³⁸⁶ Ms. D was divorced by the time she testified at trial. In her testimony, she became emotional in describing how "...being in the Witness Protection Program had cost her her job, family and contact with friends." She also testified that she continued to have constant concerns about her safety and security.¹³⁸⁷ During the trial, Justice Josephson had to intervene on a number of occasions to enforce the publication ban on Ms. D's identity.¹³⁸⁸

The Impact on the RCMP/CSIS Relationship

CSIS was concerned about the RCMP's failure to seal its Information to Obtain and to protect Ms. D's identity. In his July 31, 1998 electronic message entitled "an interesting story," Turner noted that, following this error, the RCMP had advised CSIS "...that they will be much more diligent in handling CSIS sources or intelligence" in the future.¹³⁸⁹ In testimony before the Inquiry, Turner explained that it was sometimes necessary "...to re-sensitise the RCMP to this issue of the need to protect sources."¹³⁹⁰

The Impact on Ms. D and on the RCMP's Ability to Recruit Sources and Witnesses

At the Inquiry hearings, RCMP Deputy Commissioner Gary Bass, who headed the renewed Air India Task Force constituted in 1995, testified that Ms. D agreed early on to become a witness when she provided her information to the RCMP. Once the RCMP "...decided we would use her as a witness," the officers involved knew that they were "...going to end up in witness protection with this individual." However, Bass explained that this would not necessarily have been discussed with Ms. D "at that stage."¹³⁹¹ Indeed, from Ms. D's reaction to the initial RCMP suggestions that she move away, after her identity was published, it appears that this possibility had not been previously discussed.

During his testimony, Bass was uncertain whether the failure to obtain a sealing order on the Commercial Crime warrant had resulted in Ms. D needing to go into witness protection "...a good deal earlier." He recalled obtaining information about the "hit list," though he could not recall the exact dates, and felt that this probably had "...much more bearing on this witness going into witness protection" than the issue of the unsealed warrant.¹³⁹² However, the

¹³⁸⁶ Bolan, *Loss of Faith*, p. 177.

¹³⁸⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 273, 353.

¹³⁸⁸ *R. v. Malik and Bagri*, ruling on February 28, 2003 (unreported); ruling on November 4, 2003 (unreported); ruling on November 6, 2003 (unreported); rulings on November 5 and 10, 2003 (unreported); ruling on November 12, 2003 (unreported).

¹³⁸⁹ Exhibit P-101 CAF0436.

¹³⁹⁰ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8331-8332.

¹³⁹¹ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11270-11271.

¹³⁹² Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11270-11271.

contemporaneous documents produced before the Inquiry show that the issue of the alleged “hit list” was already being addressed through other means, with no suggestion of moving Ms. D and her family, before Ms. D’s identity was released. In fact, another intended Air India witness, Tara Singh Hayer, was also listed as a target on the alleged “hit list” and no suggestion was made to relocate him. Rather, video surveillance was implemented at his residence, as was the case for Ms. D.¹³⁹³ Indeed, the RCMP later indicated that the “...continuous ‘rumours’ regarding the existence of a so-called ‘hit list’” had never been confirmed, despite extensive efforts to do so.¹³⁹⁴

In Ms. D’s case, it was only when her identity was published because of the unsealed warrant, and when her cooperation with the authorities was thus revealed, that the RCMP began its attempts to relocate her temporarily.¹³⁹⁵ After persisting for several days, the Force finally convinced Ms. D to move, and this temporary relocation, in fact, marked her entry into the Witness Protection Program. This was in July 1998. Malik was only arrested and charged in October 2000. Before that time, while Ms. D did receive threats as a result of her differences with Malik about the Khalsa School, there is no reason to believe that she would have needed to be moved into witness protection until her eventual appearance as a witness in the case was disclosed, something that would only have taken place after the start of the proceedings. Because the fact that she was providing information to the RCMP was revealed publicly when the Commercial Crime Information to Obtain was filed, Ms. D had to enter into the Witness Protection Program over two years earlier than would have otherwise been necessary.

Ms. D testified at trial about the disastrous impact that her participation in the Witness Protection Program had had on her life. Bolan also reported that Ms. D told her that her “...whole life is ruined”; she had lost the opportunity to watch her eldest son grow into a young man and her youngest son had lost the opportunity to be with his brother and father. Bolan wrote that Ms. D added that she would never recommend to anyone, who had not yet made that decision and still had their family, to cooperate with the authorities and risk being relocated like she was.¹³⁹⁶ Given the difficulties she endured, Ms. D would surely have felt that entering the Witness Protection Program two years in advance of the proceedings was “...a good deal earlier” than necessary, and had deprived her of the chance of perhaps living a relatively normal life during this period.

The Destruction of CSIS Notes

Justice Josephson noted in his reasons for judgment that Rowe’s handwritten notes from his meetings with Ms. D, with the exception of the very last meeting the day before she was introduced to the RCMP, were “...destroyed as a matter

¹³⁹³ Exhibit P-101 CAF0485, pp. 3-5.

¹³⁹⁴ Exhibit P-101 CAF0494, p. 2.

¹³⁹⁵ Exhibit P-101 CAF0485, pp. 6-7.

¹³⁹⁶ Bolan, *Loss of Faith*, p. 365.

of policy.”¹³⁹⁷ At the time, the CSIS policy in force required the preservation of operational notes where the information they contained could be crucial to the investigation of unlawful acts of a “serious nature” (defined as criminal acts posing a threat to life or property and constituting indictable or possibly indictable offences), and where CSIS employees could require their notes to refresh their memories prior to recounting the facts.¹³⁹⁸

Rowe immediately recognized that Ms. D was providing information of a criminal nature about substantial frauds committed by Malik, and noted this in his reports. CSIS quickly decided that Ms. D’s information would be of great interest to the RCMP. The frauds alleged could certainly qualify as “serious” unlawful acts under the policy. Yet, no steps were taken by the Service to preserve the notes, and Rowe stressed in testimony that he had not prepared his reports with the expectation that they would be used in court.¹³⁹⁹

When Ms. D was introduced to the RCMP, it was the Air India Task Force that CSIS contacted. Though she had not yet provided information directly about the bombing, the Service was apparently aware that she might possess or obtain such information, and that she might play a role in the RCMP Air India investigation and in an eventual prosecution. The failure to retain the notes, which arguably was contrary to CSIS’s own policy in any event, is even more surprising under those circumstances. While it was not ultimately of any consequence to the prosecution, this failure did nevertheless deprive the RCMP and the Court of detailed information about Ms. D’s prior statements.¹⁴⁰⁰

The Result at Trial

In the end, Justice Josephson did not believe Ms. D’s testimony, and found that he could not rely on any of her evidence that incriminated Malik. He noted many unexplained contradictions in her evidence and past statements, as well as conflicts with other evidence. He also found that the information that Ms. D attributed to Malik, including erroneous details, could have been found in publicly available materials which Ms. D had access to, raising the inference that she had “...crafted a false confession from those publications.” Further, he concluded that Ms. D was motivated by animus and ill will towards Malik when she approached the authorities to provide information and agreed to testify, rejecting her claims of strong ongoing emotional ties with Malik as unsupported by the evidence.¹⁴⁰¹

Other Crown witnesses against Malik were also found to lack credibility, and Malik was ultimately acquitted of all charges relating to the Air India and Narita bombings.¹⁴⁰²

¹³⁹⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

¹³⁹⁸ See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

¹³⁹⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

¹⁴⁰⁰ For a discussion of this issue, see Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

¹⁴⁰¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 417-418, 455, 521, 703, 706, 710-715, 722, 725, 727-728, 736, 740, 744-752, 774-777, 1320.

¹⁴⁰² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1313-1323.

Conclusion

Regardless of one's views as to the credibility of Ms. D's evidence or of the evidence presented against Malik generally, the history of Ms. D's dealings with CSIS and the RCMP, during a period when she was viewed as a potentially important witness in the Air India case, remains instructive about the ongoing challenges in interagency cooperation and the need for concrete improvements in the measures used to protect witnesses and to encourage them to cooperate in terrorism cases.

The transfer of Ms. D from CSIS to the RCMP occurred rapidly, with no apparent conflict or problems. When compared with other situations, such as the cases of Ms. E or Tara Singh Hayer, it can be seen that the agencies did improve their ability to cooperate in cases where sources provide information of a criminal nature to CSIS first. However, despite this early recognition by the Service, the notes for the meetings with Ms. D were still not preserved.

In contrast with the attitude that was adopted towards Ms. E, who was openly reluctant to cooperate, the RCMP was sensitive to Ms. D's security concerns and offered her protection early on. Financial assistance was mentioned during the very first meeting with the RCMP, before Ms. D provided any information about Air India, whereas, in the case of Ms. E, investigators were reluctant to offer any assistance, including protection, before finding out exactly what information Ms. E could provide. Video surveillance cameras were installed at Ms. D's residence within weeks after she began speaking with the RCMP, while Ms. E's concerns were left unaddressed for years.¹⁴⁰³

In the end, however, the manner in which the RCMP failed to protect Ms. D's identity was a cause of concern for CSIS, and her story provides little encouragement for potential witnesses or sources to cooperate with police in the future. The failure to ask for a Sealing Order for the Information to Obtain was obviously a mistake. Human error can never be entirely prevented and is bound to occur on occasion in any context. However, in this case, the RCMP's failure to assign Ms D's case to a single unit with full knowledge of the situation may have contributed to creating an environment in which all the necessary safeguards were not in place to prevent such an error from occurring. As was the case with Tara Singh Hayer,¹⁴⁰⁴ the RCMP's dealings with Ms. D were not all carried out by units that had an understanding of the Sikh extremism context. The Commercial Crime Section handling the Khalsa School investigation was apparently aware that Ms. D was a witness in the Air India case as well as in the Khalsa School fraud case.¹⁴⁰⁵ However, the Section may not have been as well informed about Sikh extremism or about the seriousness of the threat faced by Ms. D. Had the Air India Task Force been involved in all aspects of the case against Malik, it is likely that the officers filing the Information to Obtain would have been more acutely concerned about protecting Ms. D's identity and would therefore have exercised more care to ensure that this was achieved.

¹⁴⁰³ See Section 1.3 (Post-bombing), Ms. E.

¹⁴⁰⁴ See Section 1.2 (Post-bombing), Tara Singh Hayer.

¹⁴⁰⁵ Exhibit P-101 CAF0485, p. 6.

1.6 Atwal Warrant Source

Introduction

On May 25, 1986, Malkiat Singh Sidhu, an Indian Minister for the Punjab state government, was assaulted while he was driving to Tahsis, BC, to visit relatives after attending a wedding in Canada. A vehicle cut off Sidhu's car and four assailants broke the windows and shot Sidhu repeatedly. He survived the attack. The four occupants of the vehicle were caught, charged and convicted of attempted murder and were sentenced to 20 years imprisonment.¹⁴⁰⁶

Before the trial of the four assailants, an additional charge, that of conspiracy to murder Sidhu, was brought against them. Five other individuals, including Harjit Singh Atwal, were also charged with the conspiracy. Those charges were based in large part on a CSIS intercept of Atwal's communications, which recorded conversations pointing clearly to a plan to assault Sidhu. Atwal applied for access to the affidavit in support of the CSIS warrant. The Federal Court of Appeal ordered that access be granted with the names of CSIS agents and informants deleted. The affidavit behind the CSIS warrant was ultimately withdrawn when it was discovered that it contained information from a source who was found to be unreliable. As a result, the proceedings for conspiracy against Atwal and his eight co-accused had to be stayed.¹⁴⁰⁷

The "Atwal affair" led to the resignation of the first Director of CSIS, Ted Finn, on September 11, 1987, when the inaccuracies and irregularities in the warrant application were discovered.¹⁴⁰⁸ There were even calls for the resignation of then Solicitor General James Kelleher, since, as the Minister responsible, CSIS was generally acting under his direction.¹⁴⁰⁹ In the end, only Finn resigned and Kelleher ordered several internal investigations of the matter.

In this Inquiry, it was learned that the discredited source whose information was included in the Atwal warrant application – Source P – had in fact been discounted by the RCMP before he started to speak to CSIS. Further, the RCMP had warned CSIS that the individual was not reliable.

The RCMP Discounts Source P

In 1985, Cpl. Robert Solvason, an RCMP member since 1969, worked in the Surrey Detachment National Crime Intelligence Section (NCIS). Solvason had "...considerable experience and expertise in the development and handling of

¹⁴⁰⁶ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 47.

¹⁴⁰⁷ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," pp. 47-48.

¹⁴⁰⁸ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 48.

¹⁴⁰⁹ Canadian Press, "PM defends Kelleher over CSIS incident" *The Globe and Mail* (September 17, 1987), p. A4. See also Don McGillivray, "Spy chief's resignation begs a question" *The Ottawa Citizen* (September 18, 1987), p. A8 and Marjorie Nichols, "When politicians go awry subversives can play" *The Ottawa Citizen* (September 18, 1987), p. A2.

sources." A short time before the Air India bombing, he became involved in an investigation "...concerning an individual who had associations with various Sikh personalities, and was bringing forward some allegations that these Sikh personalities were desirous of learning various criminal techniques." At the time of the bombing, Solvason was asked to join the Air Disaster Task Force, but could not do so immediately because he had to complete this investigation.¹⁴¹⁰

Solvason explained that the individual he was dealing with (referred to as "Source P" for the purposes of this report) made some "...rather startling allegations," and that Surrey NCIS undertook various plans to confirm or refute those allegations. After some time, Solvason was able to come to the conclusion that Source P's allegations were "completely unfounded" and that his background was probably invented. Solvason also concluded that Source P was "opportunistic" and "treacherous," and that, to the extent he did have contact with the "Sikh personalities" he was proposing to provide information about, "...he seemed to be controlling it."¹⁴¹¹

Source P Speaks to CSIS

When Solvason was unwilling to grant Source P's request to be taught various "criminal techniques" or "ways of detecting investigative techniques," Source P indicated that he would approach CSIS. Solvason told him that he was free to do as he wanted. Shortly thereafter, Solvason was contacted by CSIS about Source P and his information. He received a surprising visit at the Surrey Detachment from the CSIS BC Region Director General, Randil Claxton, and the Deputy Director, Ken Osborne, who told him that they had been "ordered" by their Director to speak with Source P. Solvason told them that Source P "...wasn't reliable at all." He said that Source P was "treacherous," and he advised the CSIS officials that "...if I were you, I wouldn't talk to him at all."¹⁴¹²

In spite of Solvason's warnings, Source P ultimately "...went to CSIS and they spoke to him for a period of time." Solvason and other RCMP members were then involved in meetings with Claxton and Osborne about the nature of Source P's allegations and background.¹⁴¹³

In early July 1985, CSIS and the RCMP had discussions about Source P, who was at the time speaking with both agencies. The RCMP agreed to "...suspend certain avenues of their investigation" while CSIS was talking to Source P.¹⁴¹⁴ At the time, the RCMP was considering making a court application for authorization to intercept private communications based on information provided by Source P.¹⁴¹⁵ However, the Force was concerned that, because CSIS was still dealing with Source P, he could later "...contend that he was acting under CSIS direction."¹⁴¹⁶

¹⁴¹⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11544-11546.

¹⁴¹¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11547.

¹⁴¹² Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11546-11548.

¹⁴¹³ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11547-11548.

¹⁴¹⁴ Exhibit P-430, p. 1.

¹⁴¹⁵ Exhibit P-430, p. 1.

¹⁴¹⁶ Exhibit P-430, p. 1.

This could then open up the possibility down the road that disclosure of CSIS materials could be requested by the defence and that a prosecution could be jeopardized if such disclosure was refused or if the materials were not available.

The RCMP also expressed concern during the discussions with CSIS about presenting an application "...primarily based on the information of Source P, a source whom the RCMP and CSIS did not trust."¹⁴¹⁷ CSIS informed the Force that it would be applying for its own authorization shortly. The RCMP, because of its concerns, decided not to pursue an application, and advised CSIS accordingly. The RCMP agreed to "...await word from CSIS" about the Service's position with Source P, and CSIS advised that it was "...on the verge of severing connection with Source P."¹⁴¹⁸

Solvason subsequently learned that CSIS eventually came to the same conclusion he did about Source P's reliability and "terminated him" as a source.¹⁴¹⁹ Indeed, in a CSIS report dated June 26, 1985, Source P was referred to as "...a source 'of doubtful reliability,'" and on July 8, 1985, he was terminated by CSIS as unreliable.¹⁴²⁰

The Atwal Warrant

Solvason testified that, after his dealings with Source P and CSIS in this matter, he learned that some of the information provided by Source P to CSIS was used in an application for authorization to intercept private communications "...relative to the Malkiat Singh Sidhu conspiracy." Ultimately, Solvason understood that the affidavit in support of the authorization was found to be unreliable and had to be withdrawn, causing the prosecution to collapse. Solvason felt that this "... must have been a mistake of some sort."¹⁴²¹

Information provided by Source P was indeed included in a CSIS application for authorization to intercept the communications of Harjit Singh Atwal which was presented on July 15, 1985.¹⁴²² Source P was referred to in the warrant application as a "CSIS confidential informant." No mention was made in the application of the issues surrounding Source P's reliability or of the fact that he was terminated by CSIS for unreliability. The Atwal warrant application also contained some inaccuracies and unsupported information unrelated to Source P. These combined errors led to the withdrawal of the Atwal warrant application.¹⁴²³

After these events, an internal CSIS investigation was conducted. It was concluded that there was nothing to suggest that the inaccuracies in the application, including with respect to Source P, resulted from deliberate acts or omissions

¹⁴¹⁷ Exhibit P-430, p. 1.

¹⁴¹⁸ Exhibit P-430, p. 1.

¹⁴¹⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11547-11548.

¹⁴²⁰ Exhibit P-430, p. 2.

¹⁴²¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11548.

¹⁴²² Exhibit P-430, p. 2; Exhibit P-101 CAF823.

¹⁴²³ Exhibit P-430, p. 2.

by CSIS employees. Rather, they were found to have resulted from errors and a lack of verifications at the BC Region and at HQ. The CSIS employees involved explained that the errors made resulted in large part from the "...pressures associated with the immediate aftermath of the Air India tragedy" when CSIS was understaffed and overworked, both at HQ and at the BC Region.¹⁴²⁴

It appears that many of those who reviewed and approved the Atwal warrant application materials at the BC Region, and then at HQ, did not question the veracity of the data originating from Source P or the assessment of his reliability. All were working long hours and many were away or otherwise occupied with duties relating to the immediate aftermath of the bombing. Following the disaster, much "...pressure to produce was coming from the higher levels" at CSIS. This, coupled with the lack of resources, resulted in "...a harried and sometimes chaotic work environment, improvisation, a departure from basic and accepted work procedure, and ultimately, error." The Director General for the CSIS Toronto Region, who conducted an internal review of the matter, concluded that the work environment at CSIS at the time could even be described as one "inviting error." However, in spite of the pressure to "...produce relative to Air India and Narita," it was found that the individuals involved did not attempt to "manipulate data" or turn a blind eye to what was known, for example about Source P's reliability, in order to improve the chances of obtaining the warrant.¹⁴²⁵

In the aftermath of the Air India and Narita bombings, CSIS BC Region employees had been "...urged by Headquarters to send in Warrant submissions on individuals suspected of involvement in these terrorist acts." BC Region personnel conducted "...rather rushed research" in an effort to comply, while still trying to produce accurate submissions. The mention in the June 26th CSIS report that Source P was of "doubtful reliability" apparently "...slipped through the cracks" in the preparation of the warrant application materials, even if some of the individuals involved at the BC Region, including the Director General, Claxton, who was "...intimately involved with the [Source P] operation," knew that there were "some concerns" over Source P.¹⁴²⁶

BC Region employees felt that any errors made would be caught by CSIS HQ analysts, who had access to all of the materials. However, HQ personnel were equally overworked and understaffed. Some of the normal procedures were "short circuited" by HQ Sikh Desk analysts who reviewed warrant application materials because of the "...urgency connected with the Air India/Narita investigations" and the "...rush to complete and forward Affidavits." At HQ, as in the BC Region, "...pressure to produce intelligence was great ... [u]rgency was attached to all aspects of the Air India/Narita investigations" and, as a result, there was little time for "...planning, reflection or the usual close attention to detail."¹⁴²⁷ In the end, the errors in the BC Region warrant application materials, including the failure to raise the reliability issues surrounding Source P, were not corrected at the HQ level, and the affidavit ultimately had to be withdrawn.

¹⁴²⁴ Exhibit P-430, p. 2.

¹⁴²⁵ Exhibit P-101 CAF823, pp. 3, 5, 9.

¹⁴²⁶ Exhibit P-101 CAF823, pp. 10, 13-14.

¹⁴²⁷ Exhibit P-101 CAF823, pp. 14-17.

Conclusion

In the end, CSIS came to the same conclusion as the RCMP about the reliability of Source P. Unfortunately, because of a series of errors associated with the workload in the aftermath of the Air India bombing, these conclusions were not properly reflected in the Atwal warrant application, and this ultimately caused the Sidhu conspiracy case to collapse.

At times during the Air India investigation, the RCMP displayed exaggerated skepticism towards potential sources or witnesses and, as a result, was not always able to secure their cooperation or to investigate their information.¹⁴²⁸ However, the Source P episode shows that, in some cases, the RCMP's caution and skepticism could protect the Force from trouble down the road and preserve the state's ability to prosecute. Had CSIS heeded Solvason's early warning that Source P was "treacherous" and completely unreliable, the Service may not have included his information in the reports which were used to prepare the Atwal warrant materials, or may have been more cautious about the information included and may have come to its own conclusions about Source P's reliability earlier.

As an intelligence agency, CSIS is not expected to be predominantly concerned with preserving the ability to prosecute in the future in the same manner as the RCMP. However, in this case, CSIS knew that the RCMP had made a decision not to use Source P's information in support of intercept applications, given that neither agency trusted him. Under those circumstances, it is unfortunate that CSIS nevertheless went ahead and used Source P's information in its own application, ultimately contributing to the collapse of an important Sikh extremism conspiracy prosecution.

¹⁴²⁸ See, for example, Section 1.1 (Post-bombing), Mr. A; Section 1.2 (Post-bombing), Tara Singh Hayer; Section 1.3 (Post-bombing), Ms. E; and Section 1.4 (Post-bombing), Mr. Z.

