

VOLUME TWO

PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

CHAPTER III: CSIS POST-BOMBING

3.0 The CSIS Investigation

Introduction

Following the bombing of Air India Flight 182, CSIS launched a full-scale intelligence investigation. While the stated priority was an investigation into Sikh extremism with the aim of preventing the next “Air India,” the investigation could not avoid overlapping with the RCMP’s criminal investigation of the bombing. CSIS at times took an over-expansive view of its mandate, which actually led it to investigate the Air India bombing – ostensibly, as part of its intelligence probe and, in some cases, to pursue clearly criminal leads as part of this work.

Because of CSIS’s approach to information sharing and because of its methods for gathering and preserving information¹ – which often impaired the admissibility of the information in court proceedings – CSIS’s heavy involvement in the Air India investigation resulted in the loss of potential evidence for the criminal investigation. The CSIS methods, in particular, the destruction of the Parmar intercepts, as well as of the notes and recordings of interviews with an individual who became an important witness, gave rise to findings in the Malik and Bagri trial that the *Charter* rights of the accused had been violated.² In the end, these findings did not have an effect on the outcome of the prosecution, because the accused were acquitted for other reasons.³ The main prosecution witnesses were not found sufficiently credible to convince the trial judge of the accused’s guilt beyond a reasonable doubt.

The CSIS Air India Task Force

In the months following the bombing, a CSIS Air India Task Force was formed. CSIS increased its resources devoted to the investigation of Sikh extremism and began to investigate many issues closely connected to the bombing.

CSIS investigator Ray Kobzey returned from his leave on the evening of June 22, 1985. He woke up the next morning unaware of the bombing and placed a call

¹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation and Section 4.3 (Post-bombing), The Preservation of CSIS “Evidence.”

² See Section 4.4.2 (Post-bombing), The Air India Trial.

³ The main prosecution witnesses were not found sufficiently credible to convince the trial judge of the accused’s guilt beyond a reasonable doubt.

to his partner, David Ayre, to find out what had happened while he was away. Ayre's wife answered the phone and advised Kobzey that Ayre was in the office, which was unusual for a Sunday. Ayre's wife asked Kobzey if he had heard the news:

I said, "Heard what?" and she said, "The plane, it went down."
I said, "What plane?" and she said, "Air India," and my reply to that was, "That [expletive] Parmar, he did it, they did it"; and that was my gut instinct....⁴

Kobzey hurried into CSIS which was already in a "...state of intense operational activity." He was immediately assigned to conduct interviews and to brief the other investigators, who had been reassigned from other units. CSIS launched into a full-blown operational response to the bombing.⁵

CSIS HQ Post-Bombing Organization

At CSIS HQ, Chris Scowen was the de facto Deputy Director General CT, a position that was formalized in August 1985. Scowen immediately became the operational head of the CSIS investigation at HQ.⁶ Mel Deschenes, the DG CT, "...did not have direct involvement with the investigational or analytical activities," nor did he have "...any direct dealings with the Region on the Parmar investigation." His responsibilities were limited to oversight and "adherence to policy" with respect to the Air India and Parmar investigation.⁷ Glen Gartshore, head of the HQ Sikh Desk, was also involved in the early part of the investigation. He testified that the Desk tasked the regions, particularly BC and Toronto, to provide investigative leads that could then be given to the RCMP.⁸ In the aftermath of the bombing, Gartshore travelled to India on July 11th returning July 22nd, following which he commenced three weeks of annual leave. Shortly thereafter, on September 3, 1985, he was transferred to the Middle East Section.⁹

In the days and weeks following the bombing, there were frequent meetings at a very senior level within the Government of Canada. CSIS prepared a brief on Sikh extremism for Prime Minister Brian Mulroney on June 28th.¹⁰ Scowen became the point person for information flowing in from the regions concerning the investigations as well as for cooperation between CSIS and the RCMP. Scowen would brief Archie Barr, Deputy Director of Operations at CSIS HQ, daily at 8:30 AM regarding developments in the CSIS investigation. This allowed Barr to be up-to-date with the latest developments when he attended the daily 9 AM meetings at the Privy Council Office convened by J.A. ("Fred") Doucet, the Prime Minister's Chief of Staff.¹¹

⁴ Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3812.

⁵ Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3812-3813.

⁶ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6118.

⁷ Exhibit P-101 CAD0157, p. 4.

⁸ Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3547.

⁹ Exhibit P-101 CAD0144, p. 2.

¹⁰ Exhibit P-101 CAB0373.

¹¹ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6130-6131, 6133-6135.

BC Region Post-Bombing Organization and Task Force

At the regional level, Randy Claxton, the BC Region DG, immediately realigned the CT section, with the Sikh interest area becoming a separate operational unit demanding high priority.¹² Claxton ordered the creation of a CSIS Task Force and placed Bob Smith in charge. Smith was responsible for coordinating and directing the activities of the Task Force and for reviewing, evaluating and disseminating intelligence at the regional level. Smith was to keep Ken Osborne, the regional Deputy Director General of Operations, fully informed, and Osborne in turn would brief Claxton.¹³ Jim Francis, who had been Kobzey's and Ayre's unit head in CT, was transferred and assigned on June 25th as the CSIS liaison member interfacing with the RCMP.¹⁴

The CSIS Task Force was composed of an "expanded investigational team,"¹⁵ consisting of 13 local investigators, including BC Region CT Chief and Task Force head Smith, investigators Kobzey, Ayre and Neil Eshleman, and Francis, the CSIS liaison officer to the RCMP Task Force.¹⁶ The CSIS Task Force worked out of the Operations Centre and a direct line to the RCMP was set up.¹⁷ In addition to Parmar, five additional CSIS targets were quickly established, including Hardial Singh Johal and Surjan Singh Gill, though, notably, Malik and Bagri were absent from this initial list.

Kobzey and Ayre were a vital resource for the Task Force as "...they had most of the knowledge between them and what was on file."¹⁸ Responsibilities were parceled out according to skills – community interviewing, source development, and liaison with the RCMP and other departments.¹⁹

Task Force Interview Program

The CSIS Task Force was ordered to "...undertake a comprehensive interview program of the East Indian communities throughout BC."²⁰ Ayre was the coordinator and resource person for the community interview program.²¹ The investigators were tasked with getting out into the Sikh community to capitalize on the widespread shock and grief in order to get people to talk to them. Smith described CSIS's use of the bombings as "a door opener," with investigators projecting the image that they were investigating the bombings. While CSIS hoped to gain new sources concerning the Sikh extremist community, Smith later said that "...the interviews didn't produce anything." In almost all cases, copies of the intelligence reports produced from interviews were provided to the CSIS Liaison Officer for transmission to the RCMP.²²

¹² Exhibit P-101 CAD0136, p. 3.

¹³ Exhibit P-101 CAD0139, p. 4.

¹⁴ Exhibit P-101 CAD0136, p. 3.

¹⁵ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

¹⁶ Exhibit P-101 CAA0253, p. 2.

¹⁷ Exhibit P-101 CAD0127, p. 18.

¹⁸ Exhibit P-101 CAD0130, pp. 4-5.

¹⁹ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

²⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

²¹ Exhibit P-101 CAD0138, p. 3.

²² Exhibit P-101 CAD0130, pp. 4-6.

Task Force Warrant Writing and Research

Osborne quickly received approval for the formation of a warrant application and file review team within the Task Force consisting of five people including Kobzey and John Stevenson.²³ This team completed six affidavits for intercept warrants by July and more throughout the summer. Stevenson testified that selection of targets was based on Kobzey's knowledge of and expertise in Sikh extremism. Kobzey chose targets based on his belief about who would produce the most intelligence and who would be connected to what was going on in the Sikh extremism milieu. To this end, Stevenson wrote three affidavits, including one with respect to Ajaib Singh Bagri and one with respect to Surjan Singh Gill.²⁴ Kobzey was also instrumental in the creation and supervision of a research unit "...undertaking projects directly relating to the Narita and Air India incidents." Because of his involvement in the warrant writing process and with the research unit, Kobzey terminated his direct participation in the active investigation a few days after the bombing.²⁵

In July 1985, when the first post-bombing intercepts were implemented, investigators who had previously been doing community interviews were instructed to review the intercept product and prepare reports. Copies of those reports were, in most cases, sent to the RCMP, but in an edited form.²⁶

The new warrant applications and intercepts were in addition to the technical intercept already in place against Parmar. CSIS immediately considered Parmar to be a key suspect in the bombing.²⁷ Jack Hooper testified that, soon after the bombing, CSIS investigators from BC Region "...had a very good sense that Air India and Narita were the product of a conspiracy by a number of people" and that they were fairly confident they knew the identities of the conspirators.²⁸

The Parmar Intercept

CSIS continued its technical intercept of Parmar after the bombing. A large portion of the pre-bombing intercepts had yet to be listened to. Kobzey did not listen to the tapes, though he did review some of the notes of the transcribers prior to being transferred to warrant writing and research duties with the CSIS Task Force. Ayre was the investigator responsible for "...supervision of the intelligence product" following the bombing. Other CSIS investigators would also review material and transcribers' logs in order to assist in the "...conduct of the planning of our interview program and later on in any research that was necessary to obtain additional warrants."²⁹

²³ Exhibit P-101 CAB0495, p. 4; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7651.

²⁴ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7651-7652.

²⁵ Exhibit P-101 CAD0140, p. 6.

²⁶ Exhibit P-101 CAD0130, pp. 4-5; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

²⁷ Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3812; Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6210.

²⁸ Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6209.

²⁹ Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3839-3842.

HQ had no involvement in reviewing tapes. That was a local responsibility. CSIS HQ never accessed raw product, such as the tapes, transcriber logs and translator notes, and only reviewed intelligence officers' reports written on the basis of intercepts.³⁰

Toronto Region Investigation

The Toronto Region had an ongoing Sikh extremism investigation at the time of the bombing. Although the focus of the Air India investigation was in Vancouver, some of the regional differences in approach are worth noting.

The RCMP, the Metropolitan Toronto Police and Peel Regional Police (who are the police of jurisdiction for the Toronto International Airport) created a 20-person joint forces unit named "Organza."³¹ CSIS Toronto Region met daily with Organza, communicating results to CSIS HQ through a daily situation report.³² CSIS Toronto stated that the purpose of its involvement with Organza was "...to avoid critical overlap of investigations which has been demonstrated during recent similar joint investigations."³³ BC Region did not attempt a similar integration.

CSIS Post-Bombing Resources

Immediately after the Air India and Narita bombings, extra resources were devoted to the Sikh Desk at HQ. The analytical positions were increased, though new analysts required training, and the reorganization itself consumed considerable resources. Authorization was given to enhance technical resources at the regional and field level. Along with the daily briefings provided to Barr, special daily Task Force reporting was established. Joint meetings were held, involving Russell Upton, Barr, Deschenes, Scowen and the section head of the Sikh Desk. These special briefings were held to review daily situation reports submitted by the field units and allowed HQ and the senior management the ability to direct the course of the CSIS investigation effectively. Even with the added resources and attention, CSIS's greatest problem continued to be "...a lack of trustworthy and reliable human sources," who would have been able to elaborate upon or to corroborate questionable conversations from intercepts.³⁴

The Post-Task Force Period

A few months after its creation, on October 28, 1985, the CSIS Air India Task Force was closed down and its members transferred back to their previous units to continue their CSIS investigation.³⁵ This signalled a shift in CSIS, away from its original, perhaps misguided, attempt to assist the RCMP more directly in the criminal investigation.

³⁰ Exhibit P-101 CAD0153, p. 4.

³¹ Exhibit P-101 CAB0349, p. 1.

³² Exhibit P-101 CAA0264.

³³ Exhibit P-101 CAB0349.

³⁴ Exhibit P-101 CAD0154, pp. 9-10.

³⁵ Exhibit P-101 CAA0379(i).

A number of key changes marked the development of CSIS during this period. In March 1986, James (“Jim”) Warren replaced Deschenes as the DG CT at HQ.³⁶ Warren immediately set upon the task of conducting an internal investigation into the erasure of the Parmar tapes. This was done both for CSIS HQ itself, to understand whether the tapes had been erased as part of a cover-up, as well as to respond to the questions being put to CSIS by the RCMP on behalf of James Jardine. The issue of CSIS tape erasure would eventually play a central role in the CSIS-RCMP relationship with regard to Air India, and is dealt with in a separate section.³⁷

The CSIS investigation was also profoundly affected by a separate incident, in which Sikh extremists shot Indian diplomat Malkiat Singh Sidhu on Vancouver Island on May 25, 1986. CSIS’s failure to prevent this terrorist act deeply affected the Service and had a fundamental impact on its self-confidence as well as the confidence of Government in it.³⁸ CSIS BC Region had had an intercept that warned of the coming attack on Sidhu, but had allowed a time lag over a weekend in its translation/transcription. In addition, the investigators involved had deemed the information “...not sufficiently important to be reported.” These errors were blamed in part on the lack of clear policies.³⁹

Changes to the CSIS Sikh Extremism Investigations

After the bombing, Sikh extremism remained the number one priority at CSIS for quite some time. In 1986, CSIS began making some changes to the CSIS HQ Sikh Desk, creating three desks under the umbrella of the Sikh Desk, each devoted to investigating one of: the Babbar Khalsa, the ISYF and the World Sikh Organization. Initially the BK desk and the ISYF desk each had five or six CSIS intelligence officers assigned to them, whereas the WSO desk had only four. Within two years, CSIS determined that the WSO “...simply weren’t a threat,” and those intelligence officers were reassigned and the WSO desk discontinued.⁴⁰ In 1990, Bill Turner was promoted to head of the Sikh Desk and amalgamated the BK and ISYF desks back into a single Sikh extremism desk.

In the regions, Montreal, Toronto and Vancouver each had dedicated desks investigating Sikh extremism during the post-bombing era. Only the desk in Vancouver mirrored the HQ desk, with a split between the BK unit and the ISYF unit, while the others had a single Sikh extremism desk that handled all of the investigations. Other regions also pursued Sikh extremism investigations, to a lesser extent.⁴¹

³⁶ Testimony of James Warren, vol. 48, September 19, 2007, p. 5816.

³⁷ The issue of the Parmar tape erasure is covered in depth in Section 4.3.1 (Post-bombing), Tape Erasure. The lengthy debates between Jardine and Warren are covered in Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

³⁸ See Section 1.6 (Post-bombing), Atwal Warrant Source.

³⁹ Exhibit P-101 CAB0902, p. 95.

⁴⁰ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8272, 8286.

⁴¹ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8273.

In 1986, the Vancouver desk had four investigators and a supervisor for the BK unit and a similar arrangement for the ISYF unit. The BK unit's number one target was Talwinder Singh Parmar, and not far behind in importance was Ajaib Singh Bagri.⁴² CSIS investigator William Dean ("Willie") Laurie worked at the BK desk between 1986 and 1989. During that time his targets included Parmar, Bagri, and Malik. Malik's name was found on a list of individuals who had donated money to the BK, but who were not necessarily members of the organization. Based on the intelligence in its possession, CSIS concluded that Malik was a BK member and the BC Region obtained operational priority to target him, even if others on the list of donors to the BK were not considered members and not targeted in the same manner.⁴³

In other parts of the country, Toronto had eight investigators working on Sikh extremism and Montreal had four or five. In comparison, Edmonton, Calgary and Winnipeg each had one or two investigators dealing with Sikh extremism.⁴⁴

Starting in 1986, CSIS expanded its investigation to include other groups, such as the Khalistani Commando Force, the Khalistani Liberation Force, the Khalistan National Army and the Dusth Sodh Commando Force. At varying times one or another of these groups may have taken priority but, throughout, Talwinder Singh Parmar always remained a high priority target.⁴⁵

Intercepts

Warrant affidavits continued to be written by the CSIS HQ desk, based on information and intelligence developed from the regions. Resource constraints continued to be a concern but, despite this, CSIS continued to obtain warrants on key targets such as Parmar on an individual basis, due to the possibility of criminal proceedings.⁴⁶

Resource considerations did, however, affect the warrant process on some occasions. Arrests by the RCMP could affect CSIS decisions on warrant coverage. In 1986, Parmar's son, Jaswinder Singh Parmar, was arrested in connection with the Hamilton plot. While he was in police custody, the CSIS warrant expired. CSIS did not renew its warrant because he was not considered to be a threat while in pre-trial custody and CSIS could therefore not justify their warrant. Once he was released, however, CSIS was able to get an intercept up on him within a day or two.⁴⁷

While police custody may have altered the availability of a CSIS warrant for a target, leaving the country did not. In 1988, Parmar left Canada. However,

⁴² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7397, 7529.

⁴³ Exhibit P-244, vol. 3 (January 6, 2004 Transcript, Day 66), pp. 5-6.

⁴⁴ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8273-8274.

⁴⁵ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8287.

⁴⁶ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8277-8278, 8286-8289.

⁴⁷ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8285-8286.

he was still the leader of the BK, and was in regular communication with BK members in Canada, and was therefore "...still a factor" according to Turner. In that case, CSIS did not diminish the resources directed against Parmar.⁴⁸

A further change that took place was in the location of the translators and their contact with the various desks. In 1985, the translators constituted their own separate unit. Ten years later, in 1995-1996, the translators were moved into the Desk Units with which they were working. Turner testified that this change was "absolutely" beneficial, since working alongside the investigators enhanced the ease of communication.⁴⁹ One may conclude that the arrangements for the previous decade were suboptimal.

Continuing Difficulties in Defining CSIS's Role in Investigating the Air India Bombing

From the day of the Air India bombing, there have been persistent claims that CSIS was trying to "solve" the case, in spite of its new mandate and at the expense of cooperation with the RCMP. Robert ("Bob") Burgoyne specifically testified that at an HQ daily briefing, Archie Barr said: "We're going to solve Air India." Though Burgoyne qualified this by adding that it was in the context of the recognition of CSIS's greater knowledge base and of the fact that it would allow CSIS to assist the police in their investigation, the implication remains.⁵⁰ Many feel CSIS's goal was to legitimize the new organization that had failed to prevent a bombing by solving the case itself.

Lending credence to this belief is the testimony of former VPD Detective Don McLean, who worked on the Indo-Canadian Liaison Team as a constable in 1985, and who was asked for assistance by both CSIS and the RCMP in the immediate post-bombing period. In his view, CSIS was attempting to solve the crime and trying to identify the parties involved in the bombing. Though he indicated that CSIS was investigating terrorism across Canada for national intelligence purposes, McLean felt that such activities were akin to a criminal investigation to the extent that they were trying to solve the crime.⁵¹

Turner stated that, in the summer of 1985, the roles and responsibilities of both CSIS and the RCMP were not yet established. As a result, in his view, there were CSIS members who were "...asking questions quite improperly about Air India," a criminal investigation outside of the CSIS mandate.⁵² This sort of questioning may have contributed to the impression that CSIS was trying to solve the case. Turner testified that there was a perception among members of CSIS that if Kobzey, Ayre, Eshleman and Laurie had been allowed to step outside their roles as intelligence officers and to move into the criminal sphere, they would have been able to solve the case. In particular, it was felt that they would have been able to identify the four or five conspirators, including Mr. X and the persons

⁴⁸ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8288-8289.

⁴⁹ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8291-8292.

⁵⁰ Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3486-3487.

⁵¹ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4160-4161.

⁵² Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8292.

responsible for purchasing the plane tickets and checking in the bags, whose identities were unknown during the first two to three weeks. Turner stated that there was not a rivalry as to who could solve the case first, but that some CSIS operatives did hope to get the identities of those involved and pass them to the RCMP.⁵³

Hooper testified that the concern for CSIS was to continue to examine Sikh extremism in order to identify other individuals and other plots that posed threats to the security of Canada.⁵⁴ He stated, though, that CSIS did have "...a head start over the RCMP" in terms of their understanding and knowledge of the Sikh extremism movement and its key players. He explained that CSIS felt it was in a "...position to assist the RCMP in arriving at some appreciation for what might have happened in Air India and Narita."⁵⁵

Similarly, Stevenson testified that CSIS was not necessarily looking into the bombing itself but was trying to look into individuals "...who may have been associated with it" and who were involved in "...matters of Sikh extremism."⁵⁶ It is significant that documentation from the Task Force states that the object of the CSIS Task Force was to "...develop intelligence on local Sikh activity, gather information on the bombing incidents and develop human sources for future needs."⁵⁷ Certainly from the perspective of the authors of the memorandum, which included Bob Smith, Chief of the CSIS Task Force, and Ken Osborne, the DDG Operations, CSIS was indeed gathering information on the bombing incidents themselves.⁵⁸

Osborne later stated that the CSIS community interview program was undertaken because it was felt that there was "...information out in the community about the incident itself and about future threats." Smith, for his part, stated that the aim of the interview program was to produce sources, not evidence or even information in relation to Air India – an orientation that would clearly impact on the criminal investigation. Smith did add that investigators were repeatedly reminded that they were not investigating a crime, but instead were to advance CSIS's ability to investigate the Sikh extremism.⁵⁹

Overall, it was difficult to separate the investigation of Sikh extremism from the bombing of Air India. CSIS did have a continuing responsibility to gather intelligence, and it was felt that information relating to Air India was helpful in gathering intelligence on what could happen next.⁶⁰

To add to the confusion, CSIS HQ seemed to have a different view than that of BC Region as to what they should be investigating. In August, Scowen wrote to the RCMP expressing his view of what CSIS was investigating:

53 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8294-8296.

54 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6210.

55 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6210-6211.

56 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7652.

57 Exhibit P-101 CAA0253, p. 2.

58 Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7651-7653.

59 Exhibit P-101 CAD0130, p. 5.

60 Exhibit P-101 CAD0130, p. 5.

The CSIS interview program goes to great lengths to avoid interfering with individuals who may have “evidence” to impart, i.e. those who could be classified as suspects. CSIS has concentrated on the periphery of the East Indian community and has reported to the task force on each of the 65 plus interviews conducted.⁶¹

Coming from the man who was directing the investigation from HQ, this statement is notable. The definition of the “periphery” implicit in this message appears to refer to individuals who are not suspected of involvement in the bombings. Obviously, such individuals could nevertheless possess evidence central to the criminal investigation. If the only criterion used by CSIS to ensure that its operations remained “on the periphery” was whether the Service was interviewing actual known suspects, the potential for overlap with the RCMP investigation would clearly be high.

In addition, while it was true that CSIS had passed intelligence reports based on community interviews to the RCMP, it was not accurate to state that CSIS had restricted itself to “the periphery,” even if one were to accept the generous definition of the term put forward by HQ. There was no attempt to interview Parmar but, within days of the bombing, CSIS had interviewed or attempted to interview Surjan Singh Gill and Ajaib Singh Bagri, two persons who were viewed as potential conspirators in the Air India bombing early on and for whom CSIS was also writing intercept warrant applications.⁶²

Eshleman not only admitted that some contacts made in the days following the bombing were likely inappropriate, in that they involved individuals who were or would soon become key Air India suspects, but added that, even aside from those early contacts, the CSIS effort was not, in fact, “on the periphery”. Eshleman understood that limiting CSIS’s activities to “non-suspects” was not the equivalent of focusing “on the periphery”:

...the BK which was responsible for this incident had a number of people that we would be interested in dealing with. They were perhaps close associates of Mr. Parmar, Mr. Bagri. And I don’t think we were hesitant to interview those people who may offer close information, or if they were perhaps relatively close associates. Certainly, they weren’t on the periphery of it.⁶³

The confusion and the difficulties in defining CSIS’s role in connection with the bombing continued well after the summer of 1985. Laurie explained that the purpose of his work in the BK unit between 1986 and 1989 was to gather security intelligence information about the BK, but also, if possible, to obtain information about the bombing of Air India Flight 182 as well, to ensure that if any other similar acts were planned, CSIS would be able to gather enough information

⁶¹ Exhibit P-101 CAA0299(i), p. 2.

⁶² Exhibit P-101 CAA0261, p. 4; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7651.

⁶³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9393-9394.

to prevent them. Laurie testified that his overall workload during this time was very heavy. Part of the reason for the intensity and pace of the work was that there was an imperative, at least at some points, to get information to help solve the crime.⁶⁴

According to Laurie, the instructions CSIS provided to its investigators about their role in relation to the criminal investigation into the Air India bombing were inconsistent and changed frequently:

...sometimes it would be an instruction to be aggressive and do what you can, and then the next day it would be quite the opposite and it would be no, we're contaminating an investigation, so do not do that today. We are getting clarification and we will have to see until tomorrow. And over a period of months, the message was very unclear.⁶⁵

Laurie explained that these instructions reflected directions his supervisors in the BC Region were receiving from Ottawa HQ. The changes in position affected his work and that of his superiors in BC. They had objectives to accomplish and this was "...practically impossible when someone tells you to stop." He explained that the BC Region investigators did follow each conflicting directive as it was issued, in spite of the frustration that this caused.⁶⁶

In January 1987, the Minister directed that CSIS cooperate with the RCMP "...to coordinate the preparation of evidence which would be used for court purposes" (the Kelleher Directive),⁶⁷ and the CSIS Director indicated that he had directed that "...the full cooperation of the Service be placed at the disposal of the RCMP in this regard." The Director also promised to provide a chronology of relevant events.⁶⁸ The Kelleher Directive and the subsequent transmission of this chronology to the RCMP would symbolically mark the end of an era in the CSIS investigation of the Air India bombing.

One month later Barr wrote a crucial memo to all regions in CSIS signifying this shift at CSIS. This memo reinforced the CSIS mandate and appears intended to signal CSIS's exit from its previous equivocal role in the Air India investigation:

Due to some excellent investigation and analysis by the Service, important leads have recently been developed relating to the Air India crash flight 182. These leads have been passed to the RCMP and to our Minister. Additionally, the Service is attempting to develop a chronological timetable of the events and the actions of certain key suspects based

⁶⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7395, 7406-7407.

⁶⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7398.

⁶⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7398-7399, 7528-7529.

⁶⁷ Exhibit P-101 CAD0095, pp. 1-2; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁶⁸ Exhibit P-101 CAD0094, p. 2.

upon the disclosures of Service [redacted] and a detailed and thorough analysis of information within our data base. This will be completed and in the hands of the RCMP by early March at which point, it is fully expected that the conduct of the investigation will move into the hands of the RCMP.... [Emphasis added]

I don't need to remind you that the events that unfolded over the Irish Sea and at Narita Airport in Japan on 1985 06 23, reflect one of the most callous and heinous crimes in the history of Canada. There can be no higher priority for the law enforcement authorities of this country and, incidently [*sic*], for this Service, than bringing the persons who perpetrated these crimes, before the courts. While information developed by the Service has been of critical importance in helping the RCMP understand how the crime was committed and in identifying suspects, we have not uncovered evidence sufficient to support convictions. Indeed, it is not the role of the Service to do so. This is clearly the responsibility of the RCMP. The Service can, however, continue to be of assistance to the RCMP by providing information that may shed new light on this crime and by providing a comprehensive data base against which to test information developed by the police. The Minister has directed that the Service and the RCMP cooperate very closely in this regard and I would ask every member of the Service to be guided accordingly in assuring that the full cooperation of the Service is at the disposal of the RCMP in what both we and the RCMP share as the only satisfactory outcome of this matter; the conviction of those responsible.⁶⁹

Though there would be more developments in the Air India case as a result of CSIS activity, most notably CSIS source development work with Ms. E and Ms. D, the bulk of its work in relation to the bombing had by this point been concluded. CSIS moved on to focusing on what Sikh extremists might be up to in the future, and its more overt investigation of the Air India bombing was, for the most part, at an end.

Yet, the confusion in the instructions received continued after this period. When Ms. E provided information clearly relevant to the bombing in September 1987, there was hesitation at CSIS about whether the information needed to be passed on to the RCMP right away or whether CSIS could continue to develop it on its own for a time.⁷⁰

The confusion was still apparent in January 1988 when the RCMP requested CSIS assistance before arresting Reyat.⁷¹ The CSIS BC Region sent a message to CSIS

⁶⁹ Exhibit P-101 CAB0711, pp. 1-2.

⁷⁰ See Section 1.3 (Post-bombing), Ms. E.

⁷¹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

HQ and to all CSIS regions and districts to inquire about past instructions it had received from HQ indicating that "...CSIS participation in the investigation of Air India is restricted to providing investigative leads to the RCMP should they be developed during the course of other [CSIS] investigation" and stating that, "...in essence, CSIS is no longer involved in the Air India investigation, but rather back to our mandated role of investigating Sikh terrorist activities." The Region was concerned because, with Reyat's arrest, information about the Air India bombing might be obtained and, depending on how aggressively the Region pursued its investigations, it might well be obtained by CSIS and not by the RCMP.⁷² Despite HQ's attempts to define and redefine CSIS's role in connection with Air India, the Region was left with little practical guidance on how to conduct its operations when it was confronted with the overlap between its investigations and the RCMP criminal investigation. The Region also requested clarification about the steps to take in cases where it had provided investigative leads that were not exhaustively followed up by the RCMP.⁷³

Laurie, who authored this message, explained that what really brought about the request from BC Region was the confusion created in the field by the lack of consistent tasking from CSIS HQ:

If one of the tasks of your inquiry is to measure whether or not there is consistent tasking of us, or whether or not we in the field became confused about whether they wanted us to do something or did not, then this inquiry from the field to Headquarters which is forwarded with my supervisor could be evidence that it was inconsistent because it looks like the Chief of Counter Terrorism also put a forwarding minute on that and it – we've been told "yes" and then we've been told "no" and we've been told "yes" and we've been told "no". Now we have an opportunity, because it appears that the police are going to be doing some arrests and for those of you who don't know it, the police are going to be doing arrests then a lot of the people we're watching are going to have an impact; they're – they're going to respond in some way; they're going to be talking to their friends and it's a time where the CSIS need to be busy. So this is an inquiry of our Headquarters saying, "Are we a 'yes' or are we a 'no' today? Like tell us, are we assisting these people with an investigation or do you want us to sit? You tell us."⁷⁴ [Emphasis added]

The Chief of the Counter Terrorism Section of the Region commented that the BC Region request for clarification was based on earlier discussions with the

⁷² Exhibit P-101 CAA0627(i), p. 4.

⁷³ Exhibit P-101 CAA0627(i), p. 5; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁷⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7526-7527.

Region CT Unit Head and the HQ DG CT.⁷⁵ Generally, the Region felt that it was in a difficult position, because it had refrained from pursuing certain avenues of investigation because of instructions to stay away from the criminal investigation and to avoid contaminating it.⁷⁶

The only response provided by CSIS HQ to Laurie's message that could be identified in the documents provided to the Commission, was a memo sent to all regions and districts, simply stating that the contents of the BC Region message were "...not/not to be discussed with anyone outside the Service under any circumstance."⁷⁷ An exception was made for the RCMP but, CSIS HQ specified, "...ONLY/ONLY if the RCMP raises the matter first."⁷⁸

Conclusion

CSIS felt well-positioned to solve the Air India bombing crime, as its agents had the skill and experience in national security investigations, as well as knowledge about the key suspects, all of which the RCMP lacked. In effect, CSIS had a head start on the RCMP, but did not have the mandate to pursue a criminal investigation. CSIS immediately knew the key suspects, and some felt that if they had had the mandate, they could have identified the remaining suspects. At least some members of CSIS believed that what they should have been investigating, from an intelligence point of view, was the bombings and not just Sikh extremism. They hoped to either find the "smoking gun," or to uncover investigative leads that would allow the RCMP to close the case.

The parallel CSIS Air India Task Force was short-lived and terminated in October 1985. It is clear that, even after the Task Force was shut down and CSIS officially redirected its efforts to preventing future acts, some CSIS individuals were still trying to solve the Air India case. The directives issued by HQ were conflicting and inadequate, and did not clarify the role which CSIS investigators were expected to play in relation to the criminal investigation into the bombing.

While it is clear that CSIS personnel were at least at times attempting to investigate the Air India bombing, it appears that, ironically, they did so by using a full range of investigative means, but without regard to issues of evidence collection. In fact, CSIS employees, both at the field and managerial levels, seemed obsessed with ensuring that they did not retain evidence of any kind.⁷⁹ This meant that the difficulties in defining CSIS's role in relation to the criminal investigation, which continued throughout the post-bombing period, would by definition have an impact on the criminal investigation and on the eventual prosecutions. Whenever CSIS got involved in collecting information relevant

⁷⁵ Exhibit P-101 CAA0627(i), p. 6.

⁷⁶ Exhibit P-101 CAA0627(i), p. 6. See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁷⁷ Exhibit P-101 CAA0628, p. 1. The redacted portions of this document contain identifying information (such as file numbers) only and no substantive response to the BC Region enquiries.

⁷⁸ Exhibit P-101 CAA0628, p. 2.

⁷⁹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

to solving the crime, difficulties would inevitably arise because of its inability or unwillingness to collect, record and retain the information in a manner that would not jeopardize its admissibility in court.

Though it may not have found the “smoking gun,” CSIS did indeed uncover information that was eventually used at both the Reyat trial and, later, the Malik and Bagri trial. But as Volume Three of this Report makes clear, the use of intelligence in a criminal trial is a process fraught with difficulty. Indeed, the process was long and difficult in the Air India case, and the need to use CSIS information led to intensive negotiations and raised difficult legal issues.⁸⁰ The combined effect of the CSIS investigators’ desire to solve the case, the lack of clear instructions from CSIS HQ, and the refusal by CSIS to apply any police-like methods to its work, had a negative impact on the RCMP effort, particularly when information uncovered by CSIS was either destroyed or not fully shared with the RCMP in a timely fashion.

⁸⁰ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation and Section 4.4 (Post-bombing), CSIS Information in the Courtroom.

