VOLUME TWO
PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

CHAPTER V: THE OVERALL GOVERNMENT RESPONSE TO THE AIR INDIA BOMBING

5.0 Introduction

The Government of Canada took a defensive stance early on in relation to the Air India bombing and maintained this attitude throughout the years in its interaction with the families of the victims and in its response to public questions and external review. Rather than admitting their mistakes and taking steps to address them, government agencies blamed each other and expended their resources to unite in the defence of the Government against potential civil liability and to act in a concerted effort, first to oppose external review, and then to present a common position. Meanwhile, few meaningful changes were made to address the deficiencies apparent from the Air India narrative until the agencies were confronted with the prospect of an Inquiry, at which point they took action to demonstrate that initiatives were now being put in place to address long-standing cooperation problems.

At this Inquiry, the response of the Government followed along the lines of the past response: mistakes were not admitted, an attempt at a common front was presented, but overtones of mutual blame and criticism among the agencies nevertheless remained. Despite all this, the limited evidence heard at this Inquiry about the current level of interagency cooperation was, perhaps surprisingly, overwhelmingly positive. This evidence, along with the overall submissions presented on behalf of the Government, must be assessed in light of the history of the Government's response to the Air India terrorist attack in the past decades.

5.1 Early Government Response

Immediate Public Response

In the immediate aftermath of the bombing, the Government issued statements denying that there had been any deficiencies in the pre-bombing security in relation to Air India Flight 182 and insisting that the screening of checked luggage was entirely the responsibility of Air India, and not of the Government of Canada.

Shortly after the crash, the media were already reporting that three suspicious bags, destined for Air India Flight 182, had been left behind at Mirabel.[1] Transport Canada took a public position immediately, on the day of the bombing, which blamed Air India for allowing the plane to depart Mirabel without informing Canadian authorities about the three suspicious bags. This position was forwarded on the same day by the Department of External Affairs to Canadian authorities in India to answer "…GOI [Government of India] or Indian Press enquiries."[2]

The Transport Canada statement of June 23, 1985 also implied that it would have been Air India's responsibility to identify and report any "specific threat" to Canadian authorities, in which case "emergency procedures" would have been followed.[3] The evidence heard in this Inquiry revealed that the concept of "specific threat" was only meant to apply to a narrow set of circumstances, generally involving a call-in bomb threat, but that the Government nevertheless remained responsible for implementing adequate security measures to respond to threats which it was aware of through its intelligence collection activities.[4] In the heat of the moment, however, officials turned to the lack of a "specific threat" as an explanation and justification for any perceived laxness in security.

On June 25, 1985, the Minister of Transport, the Hon. Don Mazankowski, responded to questions in the House of Commons in relation to the Air India crash. He made repeated statements that there had been "…no indication that there was a specific threat to Flight 182," and that as a result "…the extraordinary precautionary measures were not/not in place." He also asserted that "… whenever the Air India people had requested additional security or assistance with regard to the surveillance of passengers and baggage and whenever there were any suspicions and such requests had come to us, we responded on every occasion." The issue of the three suspicious bags left behind at Mirabel was raised again, but this time the Minister decided not to discuss the incident, indicating that it was the subject of "…a very delicate and intensive investigation by the RCMP" and that it would therefore be inappropriate to comment further.[5]

Early Days of RCMP Task Force

In the early stages of the Air India investigation, the HQ RCMP Task Force had to devote time and resources to the coordination of the RCMP public response, or the response to those in office, even while attempting to set up and organize the RCMP's largest ever criminal investigation.

In the first days of the investigation, there was "mass confusion" at RCMP Headquarters. Sgt. Warren Sweeney, a member of NCIB at RCMP HQ, who was assigned to work on the Air India matter from the beginning, explained that

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1 Exhibit P-101 CAF0057, p. 43; See Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.
2 Exhibit P-101 CAE0209, pp. 1-2.
3 Exhibit P-101 CAE0209, p. 2.
4 See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.
5 Exhibit P-101 CAF0825, pp. 2-4.

the analysts and readers were entirely consumed by the requirement to make 18 copies of each piece of paper dealing with the investigation for distribution amongst RCMP senior management and line officers "…so everyone could read the same report at the same time at the general meetings held in the Commissioner's office."[6] HQ members were "…running all over the place," getting telexes, answering phone calls and responding to requests from senior management.[7] As a result, the RCMP members working at HQ had "…no time to analyze any information," and telexes to Liaison Officers and to the RCMP Divisions were "…sometimes overlooked and definitely delayed."[8]

The situation improved somewhat a few days after the bombing, when the HQ and divisional Task Forces began to be more formally organized.[9] However, during the following weeks, the RCMP had to participate in daily meetings of the Interdepartmental Task Force into Air India Flight 182 chaired by the Prime Minister's Office, along with other government agencies, including CSIS, Transport Canada and the Department of Justice.[10] The purpose of these meetings was to "…ensure that key government officials possessed up-to-date information, and to devise timely strategy concerning response to the press, assistance to victims' families, assistance to the Indians in their investigation, etc."[11] The RCMP HQ Task Force had to produce situational reports on a daily basis for the information of senior management. As a result, daily update reports were requested from each division and from Liaison Officers abroad. HQ then compiled the information received and outlined investigative leads, Liaison Officer assistance and "…general information dealing with PMO's decisions and aspects of [the] civil aviation investigation."[12] The reporting requirements were heavy for the divisional investigators involved in this large-scale investigation, and E Division, in particular, could not always keep up.[13]

One of the matters Sweeney was asked to look into immediately after the bombing was the issue of the three suspicious bags left behind at Mirabel. On June 23rd, he called Mirabel to find out why luggage was removed from the plane and to obtain details of the incident.[14] Then, on the same day, C Division reported to HQ officials with an explanation of what had occurred.[15] Further inquiries were made by HQ during the day about the use of explosives detection dogs at Mirabel airport.[16] It was learned that no dog search had been done in Toronto at Pearson International Airport, and that the special security had been at level 4.[17]

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6 Exhibit P-101 CAF0055, p. 3; Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2646-2647.
7 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2646-2647.
8 Exhibit P-101 CAF0055, pp. 3-4; Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2646.
9 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2646.
10 Exhibit P-101 CAF0055, p. 4, CAF0880, p. 1.
11 Exhibit P-101 CAF0880, p. 1.
12 Exhibit P-101 CAF0055, p. 4.
13 See Section 2.1 (Post-bombing), Centralization/Decentralization.
14 Exhibit P-101 CAF0035, pp. 5-8.
15 Exhibit P-101 CAF0057, p. 43.
16 Exhibit P-101 CAF0035, pp. 18-19.
17 Exhibit P-101 CAF0035, p. 27. A telex was apparently prepared requesting RCMP airport security to increase security following the bombing and, where explosives detection dogs were available, to use them to check all the baggage destined for Air India flights or flights connecting to India: Exhibit P-101 CAF0035, p. 30.

On June 27th, an RCMP member, Cpl. Leblond, was asked to go to Mirabel airport for the purpose of "clarifying" a newspaper article, published the previous day, which alleged that security was lax at Mirabel. He interviewed two RCMP airport policing members, one RCMP member from the local detachment and the Air Canada security officer. The individuals interviewed were aware of the article, and explained how Burns Security had set aside three bags because they were suspicious. Leblond learned that the three bags incident had been discussed during a meeting involving RCMP, Transport, Air India and Air Canada officials, held at Mirabel on June 25th, to enhance the implementation of security measures. A union representative for Air Canada was present, and Leblond noted that this was probably how a "…deformed version of the facts" was given to the press, which then used it for "propaganda." Leblond submitted a report about his investigation and concluded that no further action was necessary.[18]

Government Interaction with the Families of the Victims and Early Inquiries

On July 22, 1985, representatives of the Canadian Government met on Parliament Hill with representatives of the Canadian families who lost relatives in the Air India crash.[19] The meeting was chaired by J.A. ("Fred") Doucet, Senior Advisor to Prime Minister Brian Mulroney, and attended by four Members of Parliament. By then, some of the family members had already produced Notices of Claim against the Crown as a result of the crash, and many more Notices were received by the Government in the following weeks and months[20] (as of January 1986, approximately 155 law suits had been launched against the Government).[21] The purpose of the meeting was described by Doucet as an "…update on information." Members of various departments of the Government, including External Affairs, Transport Canada and the Department of Multiculturalism, made short presentations to the families. There were also presentations by the Canadian Aviation Safety Board and the Canadian Coast Guard. In his opening comments, Doucet stated that the purpose of the meeting was to update the families on the latest information available and stressed that the meeting was not a forum for "…presenting petitions or ascribing blame."[22]

Terry Sheehan, Director General of Consular Affairs for the Department of External Affairs, described the consular task force that was established after the crash and explained the consular services that had been arranged and made available to next of kin following the bombing. Daniel Molgat, also from Consular Affairs, explained the consular operation that had been put into place in Cork, Ireland, and the nature of assistance that had been provided to families.[23]

Paul Sheppard, Director of Civil Aviation Security, Department of Transport, described the security measures in place for civil aviation at Canadian airports and the special measures that had been announced by the Minister of Transport after the bombing. Sheppard began his remarks by stating that:

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18 Exhibit P-101 CAC0482, pp. 2-3, 7.
19 Exhibit P-101 CAF0819.
20 Exhibit P-101 CAF0785, pp. 15-19; CAF0880, p. 2.
21 Exhibit P-391, document 100 (Public Production # 3224), p. 6.
22 Exhibit P-101 CAF0819, p. 1.
23 Exhibit P-101 CAF0819, p. 1.

> We have no knowledge that even if a criminal act was involved that there was a breach of Canadian security – an explosive device, if it existed, could have been placed on the aircraft anywhere.[24]

He noted that Canada "…meets or exceeds" international civil aviation standards. He stated that Air India met Canadian standards, but that, in response to threats received by the airline about one year ago, "…stricter measures were applied to Air India flights with respect to security of baggage." He noted that "no specific threat" had been lodged against Air India Flight 182, but that there had been "strict precautions" in place due to the overall level of threats involving Air India flights. He explained that, had there been a specific threat, "…additional security measures would have been imposed on Air India by Transport Canada and the law enforcement authorities."[25] He explained the assignment of responsibilities between the Government of Canada and Air India, and discussed the additional aviation security measures that were now being taken.

The Chief of Staff for the Department of Multiculturalism described a grant that had been provided by the Federal Government to assist in providing "information assistance" to bereaved families. Toll-free information lines had been set up to cover Ontario, BC, Quebec and the Atlantic provinces, to provide information on where families could go to receive counselling on psychological, legal and financial matters. A press release announced the establishment of these services. Doucet also informed the group of the monument that was to be erected in Ireland.[26]

During the meeting, a "recurring theme" expressed by the families was the need for further assistance to bereaved families with respect to financial, psychological and other counselling. A government official provided additional information on how the Information Centres (Vancouver, Toronto, and Montreal) would function, and their roles in helping families to access all resources which could be of assistance. Several participants raised concerns about the financial plight of bereaved families, and asked whether the Canadian Government would be providing financial assistance to the families, particularly those who had lost the breadwinner. One participant asked whether the Canadian Government planned to set up a special fund for the families of the victims of Flight 182.[27] Doucet explained that there were:

> …already structures and programs in place to assist families in financial need in Canada. The Federal Government participates, through a cost sharing programme with the provinces, in a number of social programmes designed to provide financial assistance to those in need.[28]

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24 Exhibit P-101 CAF0819, p. 10.
25 Exhibit P-101 CAF0819, pp. 3, 11.
26 Exhibit P-101 CAF0819, p. 4.
27 Exhibit P-101 CAF0819, pp. 6-7.
28 Exhibit P-101 CAF0819, p. 8.

In other words, the families were directed to existing financial aid programmes – such as welfare assistance – with no special assistance offered in light of their particular plight.

In response to the families' concerns about the need for provision of information to other bereaved families not in attendance, Doucet agreed that "…every effort should be made to maintain and increase the flow of information to bereaved families," and undertook to provide a summary of proceedings, produce a checklist of steps families could take to access services offered by various level of government, and to maintain open and effective communication between the Government and the families.[29]

It appears that this promised open communication between the Government and the families was not successfully maintained. By 1987, the families were claiming that "…the only way they have of finding out anything about the tragedy is through the media."[30] In testimony before this Inquiry, current RCMP Commissioner William Elliott commented that part of the "lessons learned" from the Air India tragedy was that the RCMP "…need to do a better job" in communicating with the public and with victims' families.[31] He stated:

> I think we have a role to play with respect to providing support or access to support, and I think we need to be more forthcoming, recognizing that there may be appropriate and necessary limitations on how forthcoming we can be.[32]

He noted that there were a number of instances unrelated to Air India where the RCMP had been criticized for not being more forthcoming, and that "…not all of that criticism is unfounded."[33]

In the mid-1990s, the RCMP finally opened a dialogue with groups representing the families and held several meetings to discuss the investigation, meetings the Force found "…very useful in establishing understanding and confidence." CSIS, however, did not participate. The RCMP invited the Service to take part in this dialogue but the agency refused.[34] CSIS Director Jim Judd testified that, beginning in 2005, CSIS had been participating in meetings with the families and that he believed this was appropriate. He explained that he had tried to find out why the Service had previously had little or no contact with the families and that he still did not have a clear answer, but had heard that it was "…on the basis of legal advice or policy advice."[35] CSIS has provided this Inquiry with no further documents or information explaining what legal or policy advice could justify its refusal to meet the families.

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29 Exhibit P-101 CAF0819, p. 8.
30 Exhibit P-101 CAB0737, p. 2.
31 Testimony of William Elliott, vol. 90, December 6, 2007, p. 11841.
32 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11841-11842.
33 Testimony of William Elliott, vol. 90, December 6, 2007, p. 11842.
34 Exhibit P-101 CAA0969, p. 24.
35 Testimony of Jim Judd, vol. 90, December 6, 2007, pp. 11847-11848.

Though communication with the families was not always maintained, the Government of Canada did invest a great deal of time and resources in attempting to preserve its public image and to avoid liability in the civil suits launched by the families.

Shortly before the July 1985 meeting with the families, the Government of India had appointed Justice Kirpal to conduct a public inquiry into the crash of Air India Flight 182. Earlier in the same month, the Government of Canada had appointed Ivan Whitehall, General Counsel with the Department of Justice, to "…coordinate all litigation on behalf of the Government of Canada," in light of the Notices of Claim produced by the families. Whitehall was also instructed to seek standing on behalf of the Government of Canada at the Kirpal Inquiry.[36]

A Government memorandum to the Minister of Transport, dated August 15, 1985, warned of a possible conflict in the Government's position before the Kirpal Commission.[37] The Canadian Aviation Safety Board (CASB) was independent from the Department of Transport (DOT), and had already begun to provide assistance to the Indian officials who were investigating the wreckage of Air India Flight 182. However, the memorandum indicated that CASB now "…may perceive itself as being in a position of conflict" in terms of representation at the Kirpal Inquiry. The memorandum explained that CASB viewed its interests, described as "…aviation safety, determination of the cause of the accident" as being "…possibly at odds" with those of the Government as a whole, which were described as "…ensuring that the commission of inquiry receives in the best light evidence concerning Canada."[38]

The Minister of Transport was informed of the possible conflict, described as "purely hypothetical" for the time being, between CASB and DOT because he was responsible for both entities and could be asked to intervene if Whitehall and CASB could not reach an agreement.[39] In the event that the conflict did present itself, the memorandum indicated that CASB had no legal authority to represent Canada at the Kirpal Commission, and could not act as an independent party at an inquiry in a foreign state, unlike the situation at domestic judicial inquiries. The memorandum argued:

> It is important for Canada's international image that Canada speak with one voice, and it would seem that that voice should not be that of the CASB. The DOT, if its security measures are found blameworthy, has most to lose in such an inquiry. If Justice Kirpal determines that Canada is blameworthy by virtue of its inadequate security measures, then even in the event the courts in Canada do not subsequently find liability, the political and financial costs may be unavoidable. The DOT should therefore at the least provide the lead role in advising counsel in the conduct of the inquiry.[40]

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36 Exhibit P-101 CAF0880, p. 2.
37 Exhibit P-101 CAF0880.
38 Exhibit P-101 CAF0880, p. 2.
39 Exhibit P-101 CAF0880, pp. 3-4.
40 Exhibit P-101 CAF0880, p. 3.

The memorandum recommended that Whitehall be instructed by all departments and agencies concerned, including CASB, and that dispute resolution take place in the Prime Minister's Office or at the Cabinet level.[41]

The Government memorandum went on to express concern about the cost of representing Canada at the Inquiry, indicating that it had not yet been determined who would be responsible for the costs of DOJ counsel – the DOJ, the DOT, the PMO on behalf of the Government, or all agencies involved. In any event, the memorandum suggested that the agencies who had expressed interest in sending observers or advisers – the RCMP, CASB and the DOT – should do so at their own cost.[42]

The resources required to prepare for the Kirpal Inquiry were also a concern for the RCMP. Pursuant to international law, Canada had to provide India, the requesting state, with all information gathered about civil aviation at the Canadian airports involved.[43] As a result, in addition to conducting its purely criminal investigation, the RCMP was required to conduct an extensive investigation into civil aviation security measures applied at Vancouver, Pearson and Mirabel airports on June 22, 1985,[44] which meant also investigating some of the measures implemented by the RCMP itself.

The RCMP committed to providing the Kirpal Commission with comprehensive and detailed reports about this investigation. From an administrative perspective, this required the HQ Air India Task Force to compile and index over 5000 pages of documents, photographs and drawings and to produce a 12-volume interim report in August 1985, a two-volume supplementary report in October and a final report in November. RCMP members working in the divisional Task Forces had to conduct countless interviews with all personnel involved at the three airports, including cleaning crews, Burns Security employees, RCMP Airport Detachment members, airline employees and others who worked at the airport. The investigation was described by Sweeney as "…lengthy, detailed and at times frustrating," since the individuals to be interviewed were difficult to locate and lawyers were present at the interviews.[45] In practice, this meant that, in the weeks and months following the bombing, many of the 200 RCMP members who were assigned to the Air India investigation in its early stages[46] were, in fact, employed in the conduct of the aviation security investigation. According to Sweeney, this hampered the RCMP criminal investigation.[47]

Despite its concerns, the Government did expend the necessary resources to prepare for the Kirpal Inquiry and to send Whitehall to represent the Canadian Government's position. Before the Kirpal Commission began its hearings, Whitehall was also sent to represent Canada at the Coroner's Inquest held

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41 Exhibit P-101 CAF0880, p. 4.
42 Exhibit P-101 CAF0880, pp. 4-5.
43 Exhibit P-101 CAF0055, pp. 3-4.
44 Exhibit P-101 CAF0055, p. 3.
45 Exhibit P-101 CAF0055, pp. 4-5.
46 See Exhibit P-101 CAA0335, p. 11, CAF0438, p. 20.
47 Exhibit P-101 CAF0055, p. 4.

in Cork, Ireland, from September 17 to September 22, 1985. The purpose of the inquest, presided over by Coroner Cornelius Riordan, was to establish the identities of the victims whose bodies were recovered and to determine how, when and where their deaths occurred.[48]

At the inquest, a lawyer representing several of the victims' families attempted to show that the crash had most likely been caused by an explosion and that the airport security measures applied were insufficient.[49] According to an internal government report, this attempt was "successfully balanced" by Whitehall, who indicated that bombing was "…only one of several possibilities" and that there was no evidence as to what had taken place on the aircraft. When the Coroner "…appeared to have made up his mind" that the crash was most likely caused by a bomb and contemplated instructing the jury to recommend "…closer scrutiny of baggage at airports," Whitehall intervened on behalf of the Government of Canada to remind the Coroner that his powers were limited to assigning the cause of death of the victims, and that there were a "…number of possible causes" for the crash itself which had not been the subject of complete evidence at the inquest and would be investigated at the Kirpal Commission. Whitehall further argued that there was "…no/no evidence to indicate that security at Montreal or Toronto airports had been at fault."[50] The Coroner ultimately accepted this argument, instructing the jury that there was no conclusive evidence about the cause of the crash and that they should make no recommendations.[51] The Government provided a report to the families summarizing the proceedings at the inquest, but made no mention of this debate and of the position adopted by Canada.[52]

Before the Kirpal Commission, the Government continued to take the position that there was no conclusive evidence of a bomb or of any inadequacies in the Canadian security measures. The Government also blamed Air India for any security breaches. On October 24, 1985, a DOT lawyer swore an affidavit for the Kirpal Inquiry, which described the statutory regime in place for the regulation of civil aviation in Canada and stated that it placed "…a duty on the owner or operator of a foreign aircraft to ensure the security of its passengers and aircraft."[53]

On January 7, 1986, Whitehall met with representatives of the RCMP, DOT and CSIS to discuss "…the matter of security as it was in place on 85-06-22." Sheppard of DOT outlined the history of Air India in Canada. He explained that Air India had requested the same security measures as another airline, but noted that this other airline "…is prepared to live with the problems resulting from its stringent security measures, i.e. long lineups, passenger anger, etc.," clearly implying that Air India was not. Sheppard mentioned that "…for the sake of credibility and passenger confidence," Air India had decided to use an x-ray

48 Exhibit P-101 CAF0879, p. 1.
49 Exhibit P-101 CAE0339, pp. 2-3, CAF0878, p. 1.
50 Exhibit P-101 CAE0339, pp. 3-4.
51 Exhibit P-101 CAE0339, p. 4; Exhibit P-391, document 295 (Public Production # 3428), p. 2.
52 See Exhibit P-101 CAF0879; Exhibit P-391, document 295 (Public Production # 3428).
53 Exhibit P-101 CAF0785, p. 3.

machine to examine baggage for its flights. He then explained that beginning with the original Air India flight from Canada and continuing with subsequent flights, "…there were perceived threats to the airline" which were brought to the attention of the RCMP and Transport Canada through letters from Air India. He indicated that "…almost every flight was preceeded [*sic*] by a letter outlining a threat." Most of those present at the meeting felt that "…this was Air India's way of having increased security for their flights at no extra cost to them."[54]

The RCMP Airport Detachment members present discussed the security measures in place at Mirabel and Pearson, and mentioned that "…it is impossible to have a dog search all luggage going on board as it is too time consuming." They did state, however, that "…for best results, a combination of dog and physical search of all luggage is required," though they admitted that no physical searches of bags were done at Pearson or Mirabel on June 22, 1985.[55] As is now known, no dog searches were done either.[56]

Whitehall asked about Government powers to prevent the aircraft from departing if conditions were unsafe and was told by Bruce Stockfish of DOT that "…there must be a specific threat" to the plane for the Government to be empowered to detain an unsafe plane under the regulations. Stockfish insisted that "…there was no/no specific threat to Air India 181/182 on 85-06-22." The CSIS threat assessments immediately preceding the bombing were discussed and Whitehall inquired about who had received them. He learned that the June 18th CSIS assessment had not been transmitted to security officers at Pearson and Mirabel.[57]

During the meeting, Whitehall also learned that there was no uniform policy, either at Transport Canada or at the RCMP, for response to threats across the country, as the handling of threats was left to local authorities. Sheppard did mention, however, that CSIS threat assessments were routinely passed to the directors of security of the airlines concerned. The deficiencies in the security measures applied by Air India were then reviewed, including the documented inefficiency of the PD4 Sniffer, the "…several mechanical failures" which plagued the x-ray machine because it had to be moved constantly, and the poor pay and training of Burns Security employees. Whitehall then made inquiries about Transport Canada's supervisory role with respect to those security measures and learned that there was no systematic check of whether airlines were complying with their security plans, and that there was no monitoring of Air India's security plan. He also learned that if problems were to be found in the airline's security measures, the only remedies available were either simply to notify the airline of the deficiency in writing or to stop authorizing it to fly out of Canada altogether.[58]

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54 Exhibit P-101 CAC0517, pp. 1-2.
55 Exhibit P-101 CAC0517, pp. 2-4.
56 See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.
57 Exhibit P-101 CAC0517, pp. 3-4.
58 Exhibit P-101 CAC0517, pp. 4-5.

At the close of the meeting, Whitehall requested that investigator notes and all correspondence concerning Air India "…be frozen for future civil litigation."[59]

Also in January 1986, a CASB preliminary report suggesting that the Air India crash was caused by an explosion in the forward cargo compartment caused concern in the Government. In November 1985, the Kirpal Inquiry had concluded a first round of hearings, and the CASB had asked its staff to prepare a report on "the accident" before the beginning of the next round of hearings on January 22, 1986. At the time, the RCMP and DOT had both indicated that it was "…far too premature" to prepare this report, as there was "…no conclusive evidence" of what had happened with the flight. The RCMP had developed "… strong circumstantial evidence" of a bag getting on board through the system in Vancouver and had more details than the CASB, but was still "…not prepared to say that an explosive device entered the system this way and that it caused the disintegration of Air India 182."[60] Between November 1985 and January 1986, the RCMP participated in a number of meetings with the Department of Justice and other government agencies, where the evidence to be presented and "… the posture to be taken by Canada were laid out."[61]

On January 16, 1986, the CASB introduced its report at a meeting chaired by Doucet of the PMO. Whitehall "…felt very strongly" that he had to review the report before it went forward, and that "…the report should not go to the Kirpal Inquiry if it had any information which was not in line with other facts being brought forward through the Canadian input into the Kirpal Inquiry." Heated discussions followed, and the jurisdiction and authority of the CASB to write this report in the first place was questioned. Eventually, a decision was made at the PMO meeting that the report would not be presented to Kirpal, but that its author would testify and his evidence would constitute "…just another piece of testimony for Kirpal." The Cabinet Ministers involved supported this decision.[62]

On January 23, 1986, Sheppard prepared a confidential memorandum about the CASB report after "…knowledge of its existence surfaced at the Kirpal Inquiry." The author of the report was scheduled to testify the following week, which Sheppard noted would "…cause much publicity." Sheppard wrote that there were "…many reasons for not wishing to enter the report," including the fact that it was based on inconclusive evidence and could not be completed in time for the close of the Kirpal Inquiry. In addition, he explained that Justice Kirpal had been trying to tie the Narita incident with the crash of Air India Flight 182 for some time and had been unsuccessful. A "…potential damaging part" of the CASB report was that it would provide Justice Kirpal with "…the linkage that was not given to him by the Japanese police or the RCMP."[63] In a previous status report, the RCMP had noted that the "sensitive matter" of Japanese evidence in Canadian hands had been discussed extensively with Whitehall. It was noted that Justice Kirpal viewed the Narita explosion as relevant to his mandate and

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59 Exhibit P-101 CAC0517, p. 5.
60 Exhibit P-101 CAF0881, p. 1.
61 Exhibit P-391, document 100 (Public Production # 3224), p. 5.
62 Exhibit P-101 CAF0881, p. 1.
63 Exhibit P-101 CAF0881, pp. 1-2, 5.

would attempt to learn facts about Narita. While the RCMP could understand the rationale behind Justice Kirpal's interest, the Force decided to act "…in the best interests of our criminal investigation" and was trying, in close consultation with Government legal counsel, to "…meet the competing interests of the Kirpal Inquiry and the criminal investigation."[64]

In his memorandum, Sheppard provided an analysis of the CASB report, explaining that though "…one cannot find too many points of factual error" in it, the report was "…probably more damaging" because of the way it was written and what it did not say, leading one to conclude that there was only one possible way an explosive device could have been put on board the flight.[65]

Sheppard provided a list of the difficulties DOT had with the report, which included: the fact that it left out possibilities that a device could have been put on board in places other than Vancouver; that it went "way beyond" the CASB mandate by attempting to determine how an explosive device was put on board the plane, as opposed to whether the cause of the crash was such a device; that it did not discuss the interlining of bags in the rest of the world, which could give the impression that it was only the Canadian system that would allow this; that it dismissed without consideration expert testimony going against the idea of a bomb as the cause of the crash; that it only used "… the RCMP evidence which it finds suitable to arrive at its conclusions" – even if the RCMP had other evidence that could not be mentioned because of the investigation; that it did not "…really bring out" the fact that the noise heard from the PD4 sniffer in Toronto was not the one that would be generated by the detection of an explosive device; and that Burns Security and the DOT were condemned for having provided inadequate training, while, in fact, DOT "…only requires people to be trained at the passenger screening point," and the Burns employees screening checked luggage "…were working for Air India and were not part of the Canadian program."

One additional entry on the list was that the report implied that Air India only asked for increased security in June 1985, whereas, according to Sheppard, they had asked for additional security for "…just about all of their flights since June 1984"; and whereas the June 1985 request related mostly to the period surrounding the Gandhi visit to the US, which was concluded before June 22nd (Sheppard was not then aware of the June 1st Telex from Air India,[66] which warned that increased vigilance was necessary for the entire month, and which neither Air India nor the RCMP had transmitted to DOT).[67]

Sheppard, in his memorandum, also expressed concern about some of the conclusions of the CASB report. He noted that the report concluded that there was no evidence of a structural failure, but that CASB had found nothing

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64 Exhibit P-391, document 100 (Public Production # 3224), p. 7.
65 Exhibit P-101 CAF0881, p. 2.
66 See Section 1.2 (Pre-bombing), June 1st Telex.
67 Exhibit P-101 CAF0881, pp. 3-5.

conclusive to indicate that it was not a structural failure which caused the crash. Further, the report concluded that an unaccompanied suitcase was interlined, while the RCMP could not be "this positive" since the suitcase was never recovered.

Sheppard noted that the objective of his memorandum was not to deny that the Air India crash happened as described in the CASB report. In fact, he wrote that there was "…very strong circumstantial evidence that it was brought down in the manner described." However, the DOT and RCMP positions remained that there was "…no conclusive evidence that the aircraft was brought down by an explosion in a piece of checked luggage."[68]

The Government's stance – denying that there was proof that Air India Flight 182 was brought down by a bomb – made the families' position in the civil litigation particularly difficult, since, according to the rules of evidence, they had to prove on the balance of probabilities that the plane was brought down by a bomb, which would require complex and costly expert evidence, and which might not be possible without access to the wreckage of the plane. In his memorandum about the CASB preliminary report, Sheppard noted that as of January 1986, the RCMP had not come to the conclusion that the plane was brought down by a bomb put on board in Vancouver, and was "…still actively investigating several other alternatives."[69] Yet, the documents and testimony presented in this Inquiry show that the RCMP viewed the Air India tragedy as a bombing from the outset,[70] and quickly gathered evidence which, though it may not have been sufficient in itself to fulfill the criminal burden of proof beyond a reasonable doubt, was sufficient to confirm this theory for the RCMP and to eliminate the need to investigate other possible causes for the crash. As early as June 24, 1985, CSIS noted that, though the "definite cause" of the crash had not been determined, "…mounting evidence suggests a bomb blast aboard the plane."[71] RCMP Deputy Commissioner Henry Jensen indicated in testimony that, by July 1985, the RCMP "…certainly had very good reason to believe that a bomb originated out of British Columbia."[72]

Counsel for the Government of Canada in this Inquiry confirmed during representations on behalf of the RCMP and other government agencies that the RCMP Task Force was "…operating on the assumption that there was a bomb" from very early on, and could appreciate the significance of the connections between the Narita and Air India incidents. According to counsel, the RCMP's continued attempts to gather physical evidence were simply meant to ensure that the presence of the bomb could be proven in a criminal courtroom.[73] It was not until the 1990s that the RCMP was able to obtain evidence it considered

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68 Exhibit P-101 CAF0881, p. 5.
69 Exhibit P-101 CAF0881, p. 3.
70 See, for example, Testimony of Don McLean, vol. 21, May 1, 2007, p. 1986. Already on June 23rd, the RCMP had requested a briefing on Sikh militants in the Vancouver community.
71 Exhibit P-101 CAB0851, p. 14.
72 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5425.
73 Representations by Loretta Colton, Counsel for the Attorney General of Canada, Transcripts, vol. 21, May 1, 2007, p. 2058.

sufficient to prove that Air India Flight 182 was bombed.[74] However, S/Sgt. Bart Blachford, currently the lead Air India investigator in British Columbia, explained that the investigation was already proceeding on the assumption that there was a bomb, long before this evidence was obtained:

> Well, sir, I mean the evidence alone speaks that it was a bomb; one phone call books both tickets. I mean that is sort of our mantra. So, I mean, there is really not much – no other conclusion….[75] [Emphasis added]

Despite this general agreement amongst the RCMP members investigating Air India, the RCMP went along with the official Government position that it was not proven nor admitted that there was a bomb. The effect, if not the purpose, was to make the families' legal position much more difficult.

The Kirpal Commission completed its public hearings in February 1986. Whitehall reported that Canadian interests were "fully served," as Justice Kirpal had indicated that his report would deal solely with the cause of the crash and would not seek to allocate responsibility.[76] With this issue resolved, the Department of Justice could now focus its work on the defence of the Government in the civil litigation.

In this context, on February 7, 1986, the DOJ Civil Litigation Section instructed CSIS to retain all original tape intercept materials relating to Sikh extremism. As a result, CSIS instituted a moratorium on its routine erasure of tapes.[77] Previously, CSIS had been erasing its intercepts of Parmar's communications, whether recorded before or after the Air India bombing, to the (subsequent) great dismay of RCMP investigators.[78] Yet, as soon as civil litigation counsel got involved to request that all tapes be preserved, CSIS immediately made its contribution to the common efforts to defend the Government and ceased its erasures. While the DOJ may not have been aware of CSIS's erasure policies in July 1985, it is noteworthy that the careful steps to preserve any potential evidence which were taken in 1986 for purposes of the civil litigation were not taken immediately after the bombing for the purposes of furthering the criminal investigation, even though a DOJ counsel was involved with the RCMP Task Force and the BC Crown in the early stages of the investigation.[79] At that time, neither the RCMP nor the DOJ made a formal request to CSIS to preserve all Sikh extremism intercepts or even all intercepts of Parmar, once it was known that Parmar's communications were being intercepted.[80]

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74 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7813.
75 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7813.
76 Exhibit P-101 CAE0414, p. 1.
77 See Exhibit P-101, CAA0549, CAA0609, p. 15, CAA0913(i).
78 See Section 4.3.1 (Post-bombing), Tape Erasure.
79 See Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5662-5664; Exhibit P-101 CAD0005, p. 6.
80 See Section 4.3.1 (Post-bombing), Tape Erasure.

DOJ counsel representing the Government in the civil litigation also participated in the negotiations about the release of CSIS information for the Narita prosecution. Several high-level meetings were held in Ottawa, with representatives from the Attorney General of British Columbia (AG BC), the RCMP, CSIS, the Solicitor General and the DOJ (in its capacity as legal counsel for the agencies), to discuss the release of CSIS information and documents to Crown prosecutor James Jardine, and the use which could be made of that information in terms of disclosure to the defence or regarding introduction into evidence to rebut an eventual abuse of process motion based on CSIS's erasure of the Parmar Tapes.[81] One of the meetings took place on October 4, 1988, with civil litigation counsel also in attendance.[82] The purpose of the meeting was:

> …to establish lines of communication and positive dialogue with a view to developing strategy to lead evidence in the most favourable light in both the criminal and civil cases.[83]

The issues facing the Crown in the criminal prosecution and those facing the Government in the defense of the civil litigation were discussed. Whitehall explained that, in terms of the civil litigation, important issues would include threat assessment and whether CSIS had sufficient information in its possession, including the information gleaned from the Parmar intercepts, to justify a conclusion that it "…knew or ought to have known that there was a possibility of bombs being targeted for Air India flights or being interlined to Air India Flights." In an earlier meeting with the RCMP and the AG BC, the CSIS Director General of Counter Terrorism had stated that CSIS was "…quite concerned about references in RCMP letters that CSIS 'destroyed evidence'," since this put CSIS "…into a bad position for future civil proceedings." CSIS had requested that the RCMP "…refrain from using reference to destruction of evidence in future correspondence."[84]

In the end, however, though there could be ramifications in the civil proceedings resulting from the disclosure of CSIS materials, Whitehall received instructions indicating that the criminal prosecution was to take precedence. In fact, civil litigation counsel worked together with the Crown prosecutors to review CSIS materials and to prepare a disclosure package of relevant materials for the plaintiffs in the civil action and the defendant in the criminal case.[85]

In addition to its efforts to defend the civil litigation, the Government also attempted to limit the resources it would have to expend to assist the families of the victims. In a March 1986 memorandum, Douglas Bowie, Assistant Under Secretary of State – Multiculturalism, provided an update about Multiculturalism Canada's involvement in the Air India incident to date. That department had been called upon to assume the cost of a number of "…community-based or

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81 See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
82 Exhibit P-101 CAF0177.
83 Exhibit P-101 CAF0177, p. 5.
84 Exhibit P-101 CAF0172, pp. 7-8.
85 Exhibit P-101 CAA0708(i), CAF0177, pp. 7, 9.

community-related activities." These included: making the arrangements and paying for costs for selected members of the Indo-Canadian community to attend the information meeting on July 22, 1985; providing a $30,000 grant to a Toronto-based group called "Flight 182 Relief Program" to act as a focal point for community contact and liaison for problems related to the crash; drafting and designing an information "Guide to Services" for bereaved families; installing and operating a toll-free hotline, which remained in operation until "demand fell off"; liaising with PCO on the drafting and mailing of an information circular sent out by the Prime Minister's Office (Doucet); and assuming the cost of three community representatives to accompany the Minister of Transport to a memorial ceremony held in Cork on August 5, 1985.[86]

The unveiling of a new commemorative monument was being planned for June 23, 1986 in Cork, Ireland, and Bowie indicated that "informal approaches" had already been made to Multiculturalism Canada about the "…possibility of assisting those families who would face financial difficulties in paying their way." He explained that External Affairs was chairing an interdepartmental group to coordinate planning for the unveiling, and that the advice of this group was that it would be "…impractical and extremely costly to provide financial assistance to families. It would also be inconsistent with government action around other disasters." Bowie noted, however, that given "…our experience during the year, we anticipate that the Prime Minister's Office might once again direct us to provide some assistance."[87]

Ongoing Public Image Concerns and Interagency Debates

Government agencies continued to be concerned with preserving their public image during the years following the Air India bombing. CSIS and the RCMP often pointed the finger at one another with respect to specific incidents which occurred during the investigation, with each agency attempting to preserve its own reputation.

At times, concern with preserving public image had an impact on the conduct of the RCMP Air India investigation. In relation to the November Plot, the RCMP began to pursue interviews with Person 2's associates and possible November Plot co-conspirators only in April 1986, after the media reported in February 1986 that the RCMP had received a prior warning of the Air India bombing.[88] Reviews of the file were conducted in E Division immediately after the media reports – which referred to the November Plot information – and a determination was made that the November Plot issue should be investigated further.[89] Previously, E Division had done very little to pursue the issue, and the RCMP had practically decided, before truly investigating it, that the November Plot information was not reliable and not related to Air India. The desire to refute public allegations that the RCMP had not heeded a prior warning of the

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86 Exhibit P-391, document 311 (Public Production # 3444), pp. 1-2.
87 Exhibit P-391, document 311 (Public Production # 3444), p. 3.
88 Exhibit P-120(c), p. 5 (entry for Feb. 13-15, 1986: doc 526-3, pp. 71-73), see also p. 7 and following.
89 Exhibit P-120(c), p. 6 (entry for Feb. 17, 1986: doc 3, entry for Feb. 19, 1986: doc 526-3, pp. 76-83 and entry for Feb. 26, 1986: doc 518-3).

Air India bombing contributed to "reviving" the November Plot information investigation, with many possible connections to other Air India suspects being discovered as a result.[90] The Solicitor General would later state, in response to media questions, that the November Plot information provided by Person 2 "… did not pinpoint the exact date or flight and provided no additional leads for the investigators,"[91] even while the RCMP was following up on the leads related to Person 2's information. This follow up extended for well over a decade, with many issues still remaining unresolved.[92]

CSIS was also concerned about preserving its reputation. In July 1986, the Service learned that the RCMP, while not formally complaining to CSIS about a failure to pass relevant intelligence, had "…suffered a certain amount of innuendo to flow around" which implied a lack of cooperation by CSIS.[93] In particular, the RCMP had complained to civil litigation counsel representing the Government about an alleged failure by CSIS to extend sufficient cooperation in providing information about the Duncan Blast incident that had been observed shortly before the bombing,[94] as well as an alleged failure by CSIS to pass information about, and/or to preserve a recording of, key conversations between Parmar and his associates on or about June 21 and 22, 1985.[95]

The CSIS Director General of Counter Terrorism, James ("Jim") Warren, immediately had the CSIS files about these incidents examined and wrote a memorandum to John Sims of CSIS Legal Services two days later. The memorandum provided a detailed explanation of all of the steps taken by CSIS to share the Duncan Blast information with the RCMP, concluding that it was impossible to understand "…how the RCMP can construe anything about this incident as reflecting a lack of cooperation by CSIS." Warren then explained how information about the Parmar conversations was shared with the RCMP shortly after the bombing through the transmission of a report referring to them. He explained that the actual recordings were erased "…in accordance with the policy of the Service," but that the RCMP investigators could have indicated their opinion about their evidentiary value beforehand. He added that it was not possible at the time for CSIS to recognize that the conversations might have been referring to the planning of the Air India bombing, and again noted that it was "…difficult to conceive" how this incident could be "…in any way construed as a lack of cooperation by this Service with the police investigation." Warren asked that the facts he outlined be provided to civil litigation counsel for the Government. He noted that it was important, not only for CSIS's reputation but for "…the unified efforts of the Canadian Government to defend the Air India litigation, that the rumours in respect to these two particular incidents be put to rest once and for all."[96]

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90 See Section 2.3.1 (Post-bombing), November 1984 Plot.
91 Exhibit P-101 CAA1099, p. 2.
92 See Section 2.3.1 (Post-bombing), November 1984 Plot.
93 Exhibit P-101 CAA0466, pp. 1, 3.
94 See Section 1.4 (Pre-bombing), Duncan Blast.
95 Exhibit P-101 CAA0466, p. 1.
96 Exhibit P-101 CAA0466, pp. 1-4.

During the difficult negotiations with Crown prosecutor Jardine and the RCMP for the release of information in the Narita prosecution,[97] CSIS also expressed concern about its position in the civil litigation and, generally, adopted a defensive attitude, strenuously defending its erasure of the Parmar Tapes as justified by applicable policy. During a January 1988 meeting with representatives of CSIS, the RCMP and the AG BC, the then CSIS DG CT, R.H. Bennett, indicated that, while CSIS had erased the Parmar Tapes, the tapes contained no evidence "…of any specific crime" and no information significant to CSIS's investigation which would have justified their retention.[98]

During a subsequent meeting on October 4, 1988, with civil litigation counsel present, CSIS counsel defended the erasure of the Parmar Tapes, maintaining that there was nothing in the intercepted material which connoted "…significant subversive activity" and that erasure was therefore justified. Counsel for CSIS objected strenuously to the BC Crown analysis of the potential impact of tape erasure on the prosecution, and maintained that the official position of CSIS and its witnesses would be that erasure was justified under policy, as there was no significant material on the intercepts. This gave rise to spirited exchanges. Jardine eventually pointed out to CSIS counsel that "…a defensive hostile attitude" would be of no assistance to the Crown in the criminal prosecution, nor to the DOJ in the civil litigation, nor would it assist CSIS in the preservation of its public image when the information was revealed publicly.[99]

Two years later, in preparation for yet another interagency meeting to discuss the abuse of process motion to be presented in the Reyat case, a new CSIS DG CT, Ian MacEwan, took a similar position. MacEwan felt that the BC Crown was "…looking for a 'fall guy' in the event the Reyat prosecution ultimately fails", and that the RCMP and the BC Crown refused to understand CSIS's policies because "…there are 'none so blind as those who will not see'." MacEwan was adamant that "…CSIS did NOT make a mistake in its application of the tape retention/destruction policy in relation to the Parmar Tapes," and that admitting such a mistake would leave CSIS open "…once again, to accusations of operating without proper control and management," and that such concerns could then be cited as the main reason for the failure of the Reyat prosecution, if it failed. He felt that the CSIS position had to be "…that the Crown MUST, no matter the cost, demonstrate to the Court that the Service did nothing wrong in applying Ministerial approved policy in processing ALL of the 210 Parmar Tapes."[100]

The RCMP also defended its own position during the Jardine negotiations and conducted file research in an attempt to exonerate itself from blame for unfortunate occurrences. In particular, the RCMP developed a singular interpretation of documents in its possession to support the claim, which it then maintained for years, that the Force had made a request to CSIS to preserve all of the Parmar Tapes that were eventually erased.

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97 See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
98 Exhibit P-101 CAF0172, p. 8.
99 Exhibit P-101 CAF0177, pp. 4-5.
100 Exhibit P-101 CAD0146, p. 6 [Emphasis in original].

On October 1, 1987, Solicitor General James Kelleher wrote to RCMP Commissioner Norman Inkster requesting a report on the extent of the RCMP's cooperation with officials from the AG BC in the Narita investigation, and asking whether there were any oral or written requests to which the RCMP had not yet been able to respond in full.[101] A meeting was held on October 2, 1987, with members of the AG BC and the RCMP, where a number of unresolved issues were discussed – one of which was in regard to the "…existence of a specific request of CSIS to retain all the tapes." The response to this issue would form part of the RCMP's report to the Minister.[102] While Jardine was confident that, in July 1985, he had made his desire to obtain all CSIS information and to ensure that CSIS retained it known to RCMP officials, RCMP and CSIS searches of their respective files did not produce evidence of such a request.[103] Time was spent at E Division searching through files for a request and nothing was located.[104]

In an attempt to determine "…when, how, how often, and by whom" the RCMP requested CSIS to preserve any potential evidence it might possess, Sgt. Robert Wall contacted Inspector John Hoadley and Sgt. Robert Beitel and asked that they look at their notes on this issue. Hoadley contacted Wall on October 22nd and indicated that his notes from June 27, 1985, reflected a discussion between RCMP Supt. Lyman Henschel and CSIS BC Region Director General Randil Claxton, where Claxton had indicated that "…CSIS will secure evidentiary info." Wall then spoke to Henschel and asked him to review his notes. Henschel located two relevant entries and Wall made photocopies.[105]

The portions of Henschel's notes that had been flagged evidenced a discussion between Henschel and Claxton about the potential continuity problem that could occur if CSIS captured "crucial evidence" on its intercepts, as well as a subsequent conversation during which Claxton indicated that any incriminating evidence found on CSIS tapes would immediately be isolated and preserved for continuity purposes with advice to the RCMP.[106] These exchanges were part of a larger discussion about whether there were legal impediments in terms of the disclosure of information between the two agencies.[107]

In testimony before this Inquiry, Henschel clarified that he was not even aware that there were tapes in existence at the time he spoke to Claxton. He explained that the conversation was a theoretical discussion about the "continuity issue" and about concerns relating to CSIS's recording methods and the potential impact on future admissibility.[108]

Wall attended the October 4, 1988 meeting with Jardine and RCMP, CSIS and DOJ representatives.[109] During the meeting, he pointed to Henschel's notes as

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101 Exhibit P-101 CAA0572.
102 Exhibit P-101 CAA0578, p. 1.
103 Exhibit P-101 CAA0578, CAA0581.
104 Exhibit P-101 CAA0578.
105 Exhibit P-101 CAA0583(i), pp. 1-4.
106 Exhibit P-101 CAA0260.
107 Exhibit P-101 CAF0166; See, generally, Section 4.3.1 (Post-bombing), Tape Erasure.
108 Exhibit P-101 CAA0255; Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5525-5527.
109 Exhibit P-101 CAD0134, CAF0177.

indicating that CSIS had been asked by the RCMP to retain the Parmar Tapes.[110] RCMP HQ viewed this information as a "revelation" and wrote to E Division requesting that E Division forward supporting documentation to assist in the briefing of the D/Comm Ops and the Commissioner if necessary.[111]

CSIS HQ wrote to Claxton and discussed the allegation made by Jardine and the RCMP about the request to preserve the tapes. HQ forwarded the text of the Henschel notes by telex and requested that Claxton provide his interpretation of the conversation.[112] Claxton replied that, according to his recollection, the discussion with Henschel was about CSIS's obligation to disclose vital evidence to the RCMP should it be identified and isolated on an intercept. He indicated that his commitment to Henschel was to notify the RCMP if vital evidence was identified and to make it available as quickly as policy permitted. Claxton had no memory of a specific request to preserve any and all non-evidentiary tapes. He stated that, had he received such a request, he would have forwarded it to CSIS HQ.[113]

In fact, it would appear that the two individuals who were actually party to these conversations had essentially the same interpretation of the conversations. While they would later differ on the "evidentiary significance" of the Parmar Tapes, they were in agreement that the discussion was prospective and not meant to refer to all tapes, regardless of their content.[114] Yet, in its effort to counter CSIS's argument that the Parmar Tapes were erased in due course and in accordance with policy, because the information they contained was not significant and because there was no specific request by anyone to preserve them, the RCMP presented the Henschel notes as evidence of precisely such a request to preserve the Parmar Tapes. This position reappeared, at least implicitly, in the RCMP's submission to the Hon. Bob Rae in 2005.[115]

Before they returned to debating their conflicting positions during the Rae review, government agencies united to oppose external review of the Air India matter, and to limit the amount of information about the interagency conflicts that would be disclosed outside of Government.

5.2 Government Attempts to Avoid/Delay Reviews or Inquiries and Government Response to External Review

SIRC's Initial Interest in Air India

In April 1986, the Security Intelligence Review Committee (SIRC), which was established in 1984 to review the activities of CSIS, received its first briefing from CSIS. At that time, the Air India case and particularly the erasure of the Parmar Tapes were discussed. The Committee was immediately concerned because

110 Exhibit P-101 CAF0177, p. 8.
111 Exhibit P-101 CAA0709.
112 Exhibit P-101 CAD0134.
113 Exhibit P-101 CAD0019(i), p. 2. See also Exhibit P-101 CAD0003, pp. 8-9.
114 See Section 4.3.1 (Post-bombing), Tape Erasure.
115 Exhibit P-101 CAA0335, p. 26.

there appeared to be a disconnect between, on the one hand, the official policy and the manner in which it was understood by senior management and, on the other hand, the "blind erasure" which had occurred at the lower and middle-management levels. After the initial briefing, SIRC concluded that it would need to receive further briefings and complete information about this issue.[116]

During the following years, SIRC submitted numerous questions to CSIS about the processing and erasure of the Parmar Tapes, many of which paralleled the questions that were being asked by BC prosecutor Jardine.[117] Initially, SIRC had been trying to allow CSIS and the RCMP "…time to do their job." The Committee had received information indicating that prosecutions might be going ahead and that the authorities could be successful in bringing to justice some of those responsible for the bombings. As a result, SIRC members decided not to do anything that might slow down the criminal investigation and accordingly proceeded slowly with their enquiries.[118]

In December 1987, during an appearance before the Standing Committee on Justice, the chairman of SIRC, the Honourable Ronald ("Ron") Atkey, was besieged with questions about Air India. Atkey explained in testimony before the Inquiry that while SIRC had been patient with CSIS, by this time its patience had begun to run short. SIRC sent a letter directly to the Director of CSIS requesting answers. More questions were sent out on New Year's Eve 1987, after an initial response was received from the Director. By then, there was a sense of urgency for SIRC to receive answers. In fact, the Committee was moving toward a position where it felt that it was not receiving complete answers about tape erasure and that a more formal inquiry might be necessary. At its January 1988 meeting, the Committee essentially decided it would hold an inquiry, as the responses received from CSIS kept raising more questions. SIRC instructed its staff to draft terms of reference for an inquiry and to hire counsel.[119]

In January 1989, a draft of the terms of reference for the proposed SIRC review was provided to the CSIS Director as part of the SIRC "no surprises" policy.[120] Atkey explained in testimony that there were discussions with the Director about the proposed SIRC inquiry, and that there was generally no resistance from CSIS to SIRC's proposal. However, there was significant resistance from other parts of the Government.[121]

On January 25, 1989, Whitehall, who was still representing the Government in the civil litigation, contacted Jardine, the BC Crown prosecutor,[122] to advise that SIRC was contemplating conducting a review and holding hearings about CSIS's

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116 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 5968, 5987-5988.
117 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5988; See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
118 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5994.
119 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 5989-5996.
120 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5996; Exhibit P-101 CAF0285.
121 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5997.
122 See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

investigation into the Air India and the Narita bombings.[123] Whitehall indicated that, should such a review be conducted, Jardine (who was attempting to obtain CSIS information and to investigate the Parmar Tapes erasure)[124] would most likely be called as a witness. Whitehall requested that Jardine travel to Ottawa at his earliest convenience at the DOJ's expense to meet and discuss the matter.[125]

On January 28, 1989, Jardine attended a meeting in Ottawa with representatives of the DOJ, the RCMP and the Solicitor General. The terms of reference for the proposed SIRC review were discussed. The DOJ, the RCMP, the Solicitor General and the AG BC all expressed a concern about "…the purpose of such a review by that Committee." The timing of the proposed review was also of concern because the discovery process for the Air India civil litigation and the rendition of Reyat from England were both proceeding. One of the purposes of the Ottawa meeting was to determine the positions of the agencies involved, "… to ascertain whether or not a united front could be established, with a view to either delaying the SIRC Review, or having it set aside for the purposes of another review at a later date." At the commencement of the meeting, Whitehall discussed his concerns about a document that the DOJ had obtained unofficially which he stated indicated "…a breadth to the review far beyond that afforded the review committee by its mandate under the provisions of the *Canadian Security Intelligence Service Act*." From the questions proposed to be examined and the witnesses to be called, it appeared that the SIRC investigation would entail decisions on threat assessment, therefore "…affecting the civil case," and on the destruction of evidence, thereby having an impact on the abuse of process argument in the criminal case. The DOJ representatives present felt that SIRC was the wrong forum to investigate CSIS's actions in dealing with Air India "…or any other criminal/intelligence pass over of information."[126]

The RCMP, for its part, was concerned about the possible impact of the proposed review on the continuing investigation into Air India and on the Reyat prosecution. Jardine reported that it appeared that the RCMP Commissioner "… would attempt to circumvent the review committee in so far as he could legally do so." The Solicitor General did not want to be the one person "…to be seen as an obstacle to the review," and therefore wanted to ascertain the positions of the DOJ, the RCMP and the AG BC.[127]

In the end, the unanimous opinion expressed at the meeting was that the appropriate forum for a review of CSIS's failure to retain information in connection with Air India would be a parliamentary committee or joint Parliament and Senate committee, which could conduct a review after the Reyat prosecution. SIRC was perceived by those present at the meeting as "…a group of persons who are interested in their own personal advancement and media coverage."[128]

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123 Exhibit P-101 CAF0183, p. 1.
124 See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
125 Exhibit P-101 CAF0183, p. 1.
126 Exhibit P-101 CAF0184, pp. 1-2.
127 Exhibit P-101 CAF0184, p. 2.
128 Exhibit P-101 CAF0184, p. 2.

Jardine advised the Assistant Deputy Attorney General of BC that, after the discussions held at the meeting, he felt that the proposed SIRC review could have a negative impact on the Reyat prosecution through pre-trial publicity, by drawing potential jurors' attention to weaknesses in the investigation and by mobilizing Crown resources otherwise necessary to prepare the case. Jardine also explained that the review could have a negative impact on the Department of Justice position regarding threat assessment issues in the civil litigation, that this would also create pre-trial publicity, and that the publicity surrounding the review could hamper the ongoing RCMP investigation. Prior to attending the Ottawa meeting, Jardine had been instructed to take the position on behalf of the AG BC that, if conducted immediately, the proposed SIRC review could impact negatively on the abuse of process argument in the Reyat case, but that the AG BC would cooperate once it was appropriate for the information to be released in the public forum.[129]

In a letter to Joseph Stanford, Deputy Solicitor General, dated January 30, 1989, RCMP Commissioner Inkster updated Stanford on the progress of the Narita proceedings, and indicated that, though charges had been laid only with respect to the Narita bombing, the "active pursuit" of the Air India aspect of the investigation was continuing to receive "high priority."[130] Inkster expressed concern that SIRC's proposed review "…duplicates some critical issues" that would be determined in the criminal proceedings, and that an opinion expressed by SIRC could "…jeopardize the successful resolution of either or both the Narita or Air India investigations." Inkster suggested that such a review would also cause "significant concern" to allied agencies that had provided information to the RCMP and could lessen the RCMP's ability to "…obtain information from human sources."[131] While the SIRC review was, by definition, a private report in which no significant information that was sensitive would be revealed to the public, Inkster testified at the Inquiry hearings that in general, the RCMP was concerned about "…the net, the circle widening about who had information about what" during a time when "…these investigations were coming to some very crucial stages of development."[132] Similarly, Sgt. Terry Goral, a member of the RCMP HQ Air India Task Force from 1986 to his retirement in 2000, explained that the danger of conducting an inquiry during an ongoing investigation is that "…the more you wash this out in the public, in laundry, about the strength of your evidence and weaknesses of evidence, so that gives a heads-up to the suspects."[133]

Inkster's letter to Stanford also noted concerns in relation to the "…ongoing Air India civil litigation," since "the essence" of the SIRC investigation "…parallels a

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129 Exhibit P-101 CAF0183, pp. 1-3.

130 Exhibit P-101 CAF0439, p. 1. In fact, witnesses before the Commission characterized the Air India investigation in the late 1980s and early 1990s as tired. It was characterized by a lack of resources dedicated to the Air India investigation and the discouragement of pursuits in furtherance of this investigation. See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

131 Exhibit P-101 CAF0439, p. 2.

132 Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10346.

133 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9258.

major portion of the allegations set out in the statement of claim in the civil action." In addition to the "…burden of review" that would be occasioned by the RCMP having to prepare documentation, the SIRC review could also "…put some of the defendants in the civil action in jeopardy."[134] When asked at the Inquiry hearing about the relevance to the RCMP of the effects of an inquiry on civil litigation, Inkster testified that this letter was prepared as a result of discussions with officials from the Department of Justice, and that it was simply a matter of making sure that the RCMP "…had covered off our bases in terms of any potential harm that might come to anybody anywhere in terms of the – both of the Air India and Narita."[135]

In February 1989, the SIRC chairman was called to a meeting at the office of the Deputy Solicitor General, where he learned that the Solicitor General's department was not in favour of a SIRC inquiry at the time.[136] He was eventually shown a draft letter from the Deputy Attorney General of Canada, speaking on behalf of the Government and of the RCMP Commissioner, which essentially requested that SIRC not undertake a review of the CSIS practices and policies in the Air India matter at that time.[137] The reason invoked in the draft letter was that the review could cause an "…unwarranted interference with the administration of justice," particularly with respect to the ongoing RCMP investigation (which was said to have reached a "critical stage"), to the Reyat prosecution and to the civil proceedings arising from the loss of Air India Flight 182.[138]

Atkey explained in testimony that he also received a call from Jardine, who expressed his concerns about the possible difficulties that a SIRC review could cause for the Reyat prosecution, particularly if information about the CSIS tape erasure was made public. Jardine told Atkey that the AG BC was working with the RCMP and that they had "…everything under control here."[139] Further, a SIRC staff member had been provided with information by Whitehall about the civil litigation issues. Whitehall specifically expressed concern about the potential impact of a SIRC review on the civil case, and also noted that SIRC, as it had jurisdiction only over CSIS, would likely not get the complete picture, since other parties involved would not be inclined to cooperate or would be somewhat protective because of the civil actions and criminal investigation.[140] All this confirmed to Atkey that there were "…many parts of the system where an inquiry was not favoured at that time."[141]

Atkey indicated in his testimony that the Government's concern with the impact of a SIRC Inquiry on the civil litigation was not necessarily related to the risk that information might be used for an improper purpose, but rather to the concern that a SIRC report would not be helpful to the Government's case, not

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134 Exhibit P-101 CAF0439, p. 2.
135 Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10347.
136 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5997.
137 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5997; Exhibit P-101 CAF0306.
138 Exhibit P-101 CAF0306, pp. 1-2.
139 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5998.
140 Exhibit P-101 CAF0301.
141 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 5999-6000.

only causing embarrassment, but possibly "…cost[ing] the Government more money" if there were adverse findings respecting CSIS. He agreed that "…an implication that one can draw" from the Government's attempt to delay the SIRC review was that it was trying to "…delay the full knowledge of the facts until they solved their civil litigation" with the families of the victims.[142]

At the next meeting of SIRC, Atkey distributed a copy of the draft letter from the Deputy Attorney General and reported on the concerns that had been conveyed to him. The Committee considered the request to refrain from holding its inquiry very seriously, since it was made on behalf of the Government as a whole, and the Committee did not want to interpose itself into a process when criminal convictions could be imminent. SIRC was also concerned about its ability to conduct a proper inquiry, since its jurisdiction was limited to CSIS, and other agencies such as the RCMP and Transport Canada would be free to refuse to cooperate and could therefore put up barriers in any inquiry that SIRC would conduct. In addition, the Committee was concerned about accomplishing the task with limited resources, since the Government did not appear to be inclined to grant additional resources for the review.[143]

In the end, SIRC reluctantly agreed not to proceed with its review and notified the Deputy Attorney General of this decision.[144] It was decided that the SIRC review would be held in abeyance until such time as the Air India civil litigation, the Reyat trial and the criminal investigation would no longer be affected.[145] At the Inquiry hearings, Atkey explained that SIRC was not happy at the time to be "…put off the trail, if you will, of what had occurred," but felt that the reasons for not having the inquiry were compelling. Atkey testified that he did not know whether anything was lost because of the delay in conducting the SIRC review, but indicated that he sometimes wonders what could have been learned if the SIRC inquiry had been held earlier. He noted that the passage of time causes memories to fade, and that the longer it takes, the fewer will be the number of people with recall of the events.[146]

Renewed Calls for an Inquiry and the Air India Working Group

In the spring of 1991, calls for an inquiry or a review of the Air India matter were renewed. By early June 1991, the Reyat sentencing hearings had begun and the sixth anniversary of the bombing was approaching.[147] That month, the Solicitor General's department struck an Interdepartmental Working Group, with representatives from the RCMP and several other government departments, to discuss options to address mounting pressure for an inquiry into the bombing of Flight 182. This group was headed by Margaret Purdy of the Solicitor General's department.[148]

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142 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 6016-6017.
143 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 5998-6001.
144 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 6001.
145 Exhibit P-101 CAF0286.
146 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 6001, 6004.
147 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9189.
148 Exhibit P-101 CAA0846, p. 1.

A meeting was held on June 27, 1991, with representatives from the RCMP, PCO, CSIS, DEA and Justice, and chaired by Ian Glen, Assistant Deputy Solicitor General. The purpose of the meeting was to ensure that the ADM (Glen) would be prepared with advice in case the Minister needed a position on whether or not there should be an inquiry. The role of the Working Group, chaired by Purdy, was to coordinate and obtain opinions from various government departments and agencies about a possible inquiry into Air India.[149] The Working Group was to prepare a report by September to address options, advantages, and disadvantages in terms of inquiries. The report would be reviewed by the group that had attended the meeting. It was suggested that Sgt. Goral, because of his extensive experience at Headquarters and with the Air India file, represent the RCMP on the Working Group.[150] Goral had joined the RCMP in 1969 and had worked as a police officer in Alberta and in the Yukon, mostly in the General Investigation Sections (GIS), investigating serious crimes. In December 1986, he was posted to Ottawa and began working at the HQ Air India Task Force. He continued to work on the Air India and other Sikh extremism investigations until his retirement in 2000.[151]

At the June 27th meeting, a number of options were canvassed. The preference of the ADM and others present was that there be no inquiry, as it would "…serve no purpose" from a public policy point of view.[152] Another option was for SIRC to "…proceed on its own," which would only allow it to look at a "…portion of the big picture," a process that could result in "…more questions than answers." The option of a Royal Commission was seen as a "…long and costly" one that would allow "…venting of frustrations and could lead to a lot of work by RCMP."[153] Other options mentioned were a review by a Parliamentary committee or by a competent, respected person.

The various options for reviews or inquiries were discussed during the initial meetings of the Working Group, and the RCMP took the position that any inquiry would adversely affect ongoing RCMP investigations.[154] From the RCMP perspective, Goral explained that an inquiry would not assist in the collection of further evidence, and that the Force felt that it could have a negative impact on the various investigative initiatives being pursued, including the wreckage recovery attempts and the possibility of offering a reward. The RCMP was also concerned because Reyat had appealed his conviction. The appeal proceedings were ongoing and could lead to a new trial being ordered.[155]

However, even within the RCMP, there were some who questioned how long the Force could maintain the position that the investigation would be jeopardized by any review.[156] At the June 27th meeting, a concern was expressed that

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149 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9190.
150 Exhibit P-101 CAA0815, p. 2.
151 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9187.
152 Exhibit P-101 CAA0815, p. 1; Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9191, 9200.
153 Exhibit P-101 CAA0815, p. 1.
154 Exhibit P-101 CAA0817, p. 1; Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9190.
155 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9191-9192.
156 Exhibit P-101 CAA0825.

using the excuse of an ongoing investigation to delay an inquiry could put the institutional integrity of the RCMP and of the Commissioner in question,[157] as it was unclear what possible harm would be done to the investigation by holding an inquiry.[158]

Goral explained in his testimony that the concern was that the RCMP opposition to the holding of an inquiry could be perceived as a cover-up attempt, since it was less credible to claim that the investigation would be adversely affected by an inquiry when the facts and the problems in the investigation were already well publicized and had been covered in the Reyat trial.[159]

Nevertheless, Goral felt that, from the RCMP perspective, continuing to have the process exposed in the media, while trying to investigate, was not in the best interests of collecting admissible evidence. He indicated that those who questioned the position that a review might jeopardize the ongoing investigation might not have been fully informed of the initiatives that were being undertaken by the RCMP. He noted that "…there has always been a belief that there was a stalemate after the Reyat trial," and that the RCMP "…weren't going anywhere," but that, in his opinion, that belief was wrong since initiatives were constantly being pursued.[160] Goral did admit, however, that the basic activity of the RCMP after the Reyat trial was to conduct wreckage recovery operations and to attempt to prove that there was a bomb, and that, aside from this, there was "…very little activity" at the time.[161] Goral went on to explain that the RCMP was looking into pursuing other initiatives in the investigation after the Reyat trial and that this was only a short time after the verdict, which explained why the initiatives were not yet put in place and not discussed with the Working Group. He indicated that, overall, while it was true that there was "…not very much going on in the investigation" at that moment, many initiatives were in the planning stages and the RCMP was planning to go forward now that the Reyat trial was over.[162]

One month after the June 27th meeting, RCMP HQ wrote a briefing note[163] for the Solicitor General, using precisely the reason of the continuing investigation to argue against a SIRC review. The Solicitor General had a meeting scheduled with John Bassett, who had replaced Atkey as the SIRC chairman, and had requested an update from the RCMP about the status of the investigation, particularly about the wreckage recovery attempts, and the RCMP position about the possible SIRC review.[164] The briefing note stated the RCMP position that:

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157 Exhibit P-101 CAA0817, p. 1; Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9192; Exhibit P-101 CAA0815, p. 2.
158 Exhibit P-101 CAA0815, p. 2.
159 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9192-9193.
160 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9193, 9197.
161 See Exhibit P-101 CAB0847, p. 1; Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9193.
162 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9200-9201.
163 Exhibit P-101 CAA0826.
164 Exhibit P-101 CAA0824, CAA0825.

> Under the present circumstances the RCMP recommends against a SIRC review because the Reyat appeal has not been concluded and the results of laboratory analysis on the recovered wreckage [have] not been completed.[165]

Asked about this position at the Inquiry proceedings, Inkster testified that the RCMP would "…want anyone who was contemplating a review" to take into account the "…reality that the investigation was ongoing" and that, whether or not this could do any harm, it was necessary to "…speculate that that was a possibility."[166]

On August 1, 1991, the Working Group had a confidential meeting, where the positions of each agency about the possibility of an Air India Inquiry were discussed. The Privy Council Office (PCO) was in favour of a clear conclusion recommending that no inquiry be held, and suggested that the Government "…get its message out" by issuing a statement about what was known and done to "…put SIRC in the position of being extremely limited in the scope of its work and hindered from providing anything new." CSIS was also generally opposed to an inquiry, indicating that it could cause persons with information to withhold it and that it could "…upset the environment" and make Sikh extremism investigations more difficult. CSIS added that a SIRC review could "…stimulate overwhelming public pressure for a broader inquiry." The Service was of the view that a public statement about the case would not be advisable, since there were "…too many unanswered questions." According to CSIS, only arrests and prosecutions could satisfy those calling for an inquiry. The Service was still optimistic that answers would be found in the case, and indicated that a comprehensive briefing from the Government might convince the SIRC chair that a SIRC inquiry would serve no purpose.[167]

Transport Canada also expressed a preference for not having an inquiry, suggesting that a White Paper describing the resources expended, the training provided, the equipment upgrading done and the research underway since the bombing, would be sufficient. The department went on to state that it "…could not guarantee that the same thing that happened in 1985 could not happen today," but stated that if all the rules were followed, it could not happen again. If the fallback position of an inquiry was necessary, Transport Canada expressed a preference for a one-person commission with deadlines and "…controlled terms of reference." The Department of External Affairs (DEA) also wished to not have an inquiry, indicating that, if one were to be held, it should be with a single commissioner and a clear mandate. DEA thought that a SIRC inquiry would do more to generate controversy than to resolve questions.[168]

Surprisingly, the RCMP was reported to have offered the opinion that a SIRC review would not hurt or compromise its investigation, which was described as now being "…at a stalemate." It was even noted that an inquiry might encourage

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165 Exhibit P-101 CAA0826.
166 Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10348-10349.
167 Exhibit P-101 CAB0847, pp. 2-3.
168 Exhibit P-101 CAB0847, pp. 3-4.

someone to come forward with evidence, though it would drain investigative resources. However, the Force disagreed with the notion that the public was becoming "…increasingly impatient and sceptical." The RCMP felt that there was no strong and broad-based public desire for an inquiry, and no desire within the public service or among politicians. The Force was uncertain how the public and lobbyists would react to a Government statement about Air India, and felt that public pressure would peak each year with the anniversary of the bombing, but would not become so overwhelming that it would result in a public inquiry.[169]

The Department of Justice (DOJ) representative present at the meeting indicated that contact would be made with Jardine, and that he did not expect him to object to a SIRC review on the grounds that it could jeopardize the Reyat appeal. Similarly, the DOJ warned that, unless the RCMP had a "cogent rationale," the Deputy Minister of Justice would not use the ongoing RCMP investigation as grounds to object to a SIRC inquiry, as the privilege claim would be weakened "…unless the RCMP investigation is active and vulnerable to compromise." The DOJ noted that the three reasons cited in 1989 to discourage the SIRC review – the ongoing investigation, the Reyat prosecution and the civil litigation – were "…no longer valid." By then, the civil litigation launched by the families had been settled out-of-court by the Government. According to the DOJ, the public was missing an explanation of why charges had not been laid, which could be provided in a White Paper discussing the criminal burden of proof and the inability of the AG BC to lay charges. However, the DOJ felt that the Transport Canada perspective would be difficult to present in a White Paper since, regardless of the improvements, "…an Air India-type disaster could happen again domestically within the new rules."[170] The DOJ concluded that, in the absence of strong public demand, the White Paper option was not persuasive.[171]

After these discussions, the Working Group recommended making one more attempt to dissuade SIRC from conducting a review.[172] It was decided that Ministers should arrange a comprehensive Government briefing for the SIRC chair, which would convey the Government's view that there was "no public benefit" to be gained from a public inquiry, including a SIRC review, since the public pressure was for arrests and the criminal burden of proof had not yet been met. The briefing would indicate that both CSIS and the RCMP were "still optimistic" and working on the case; that the RCMP had discovered some wreckage items that might have evidentiary value; that CSIS had disclosed much information in the Reyat trial; that improvements had been made in RCMP/CSIS relations and in aviation security since 1985; and that counterterrorism was now being accorded a high priority. It was also noted that the status of the Reyat appeal and the "possible impact" of an inquiry should be discussed in the briefing.[173]

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169 Exhibit P-101 CAB0847, p. 2.
170 Exhibit P-101 CAB0847, p. 4 [Emphasis in original].
171 Exhibit P-101 CAB0847, p. 4.
172 Exhibit P-101 CAB0847, p. 4-5; Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9203-9204.
173 Exhibit P-101 CAB0847, pp. 4-5.

A communication strategy aimed at pre-empting any momentum for a call for a SIRC inquiry was also recommended.[174] It was decided that Ministers should "…get the Government's position in the public domain before SIRC issues its annual report," which would include a section on Air India. A Minister's response to a "blind" question in the House was the preferred option contemplated by the Working Group to ensure that the Government would "…pre-empt SIRC by getting its position out." The Solicitor General's office also considered the option of having the Minister of Justice read a prepared statement in the House prior to Question Period, noting that this would provide "…a greater impression of the Government being in control of the agenda than would a reply by a Minister to a 'blind question' in the House."[175]

On August 16th, Goral prepared a briefing note about this matter. He summarized the initial discussions about the possibility of an inquiry and the advantages and disadvantages of the various options. Goral reiterated his previous recommendation that a SIRC review was not advisable because of the Reyat appeal and the ongoing initiatives to investigate the wreckage, and noted that he had also made this recommendation during a Working Group meeting on August 1, 1991. However, Goral reported that, by then, it appeared likely that a SIRC review would nonetheless be held and that Purdy had advised that, if the review proceeded, the Solicitor General would want the RCMP to provide SIRC with a briefing on the status of the file.[176]

SIRC Review of Air India and Government Response

Despite the Working Group's careful planning, the attempt to prevent SIRC from conducting a review did not succeed. In mid-August 1991, Bassett met with Cabinet ministers and then announced that SIRC would likely conduct a review of CSIS files on the Air India bombing.[177]

On August 30, 1991, Purdy wrote a confidential memorandum to the members of the Air India Working Group. She advised that SIRC had decided at its August 22nd meeting to conduct a review of CSIS activities in relation to the Air India and Narita incidents. She reported that SIRC had already held preliminary meetings with CSIS and would be announcing its review in its Annual Report, which was expected to be released in October. Bassett planned to hold a press conference and to issue a news release after the Annual Report was tabled, as well as to make the Air India review project known to interested lobby groups. Purdy remarked that "considerable media coverage" on the issue was to be expected since the SIRC Annual Report otherwise contained little controversial material. She noted that drafts of the press lines and of a questions-and-answers package to be used by the Solicitor General would be provided to the Working Group members for comment. She added that, during their meetings with the SIRC chair, the Cabinet ministers had extended offers of "information-sharing briefings" by the

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174 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9204.
175 Exhibit P-101 CAB0847, p. 5.
176 Exhibit P-101 CAA0817, pp. 1-2.
177 Exhibit P-101 CAA0827.

other government agencies affected and that letters requesting this cooperation would soon be sent to the Minister of Justice, the Minister of Transport and the RCMP Commissioner. The Solicitor General would be setting out the "ground rules" for the briefings in a letter to Bassett. Purdy advised that the Solicitor General's department "…recognize[d] that this is a sensitive area and will work closely with you in preparing these exchanges of correspondence." The format and content of the "non-CSIS briefings" to SIRC would be discussed at the next Working Group meeting.[178]

It was later decided that the Working Group would coordinate all SIRC questions and requests for briefings and that, to the extent possible, briefings would be provided in written format.[179] The Working Group was to "…try to keep control over the message,"[180] and was to ensure that SIRC was "…kept within its mandate," and that "…SIRC access to various departments [was] controlled."[181] Goral explained in testimony that, at the RCMP, it was felt that the Working Group would be the best and the "least intrusive way" to provide information to SIRC. He explained that the Working Group would be monitoring the content of the briefings by the various agencies involved to ensure that Government "…spoke with one voice" and that the content provided by each agency was integrated. Essentially, the Working Group would ensure that all the agencies adhered to the same perspective.[182]

In a September 12, 1991 RCMP briefing note, Goral reported what he had learned about the upcoming public announcement of the SIRC review and the Solicitor General's offer of briefings by the RCMP. He indicated that the Working Group would be meeting at the end of the month to discuss the current status of the SIRC review, the press lines for the announcement of the review and the format and content of the briefings to be provided by peripheral agencies, as promised by the Ministers. A discussion paper about the Government's options after the completion of the SIRC review would also be prepared. Goral recommended that the Solicitor General be discouraged from offering any RCMP briefings to SIRC, noting that the Narita investigation closely paralleled the Air India investigation and that, since Reyat had been convicted in that case, "…a trial transcript is felt to be the best briefing material available."[183] Goral explained in testimony that participating in the SIRC review would bring no benefit to the ongoing RCMP investigation and, therefore, if the Force did not have to provide a briefing, it would be better for the investigation.[184] He noted in the September 1991 briefing note that RCMP briefings to SIRC could create an unwanted precedent, but that, if they were necessary, it would be preferable if SIRC provided a list of issues of interest and allowed the RCMP to make a decision to provide or not provide briefings on a case-by-case basis for each issue.[185]

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178 Exhibit P-101 CAA0830, pp. 1-2.
179 Exhibit P-101 CAA0846, p. 2.
180 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9205-9206.
181 Exhibit P-101 CAA0846, p. 2.
182 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9195-9196.
183 Exhibit P-101 CAA0818, p. 1.
184 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9194.
185 Exhibit P-101 CAA0818, p. 2.

In preparation for the RCMP Commissioner's attendance at a Deputy Ministers' meeting on September 13, 1991, the RCMP Criminal Intelligence Directorate (CID) prepared a "talking points" note that discussed the issue of whether RCMP cooperation should be extended to the SIRC inquiry. The document indicated that the RCMP continued to be opposed "…to any call for an external review of this matter while the investigation is in progress" and "…until all avenues have been exhausted," and expressed concern that RCMP participation in the SIRC review could be used to support arguments for an expanded SIRC jurisdiction to review some RCMP activities on a routine basis.[186]

RCMP Resistance to External Review

Opposition to external review was often a matter of principle for the RCMP. The CID "talking points" about RCMP cooperation in the SIRC review noted that a parliamentary review committee had recommended that SIRC be established as the review body not only for CSIS, but also for the conduct of the RCMP's security enforcement responsibilities. The "talking points" note explained that the Force had opposed the recommendation, indicating that the RCMP functions were already subject to ultimate oversight by the courts and other review bodies such as the RCMP Public Complaints Commission. CID was concerned that, having succeeded in gaining Government support to oppose extending SIRC jurisdiction to cover RCMP activities, the Force would now risk reopening the debate by cooperating in the Air India SIRC review. The "talking points" cautioned that the arguments against subjecting the RCMP to SIRC's control remained valid and that the type of cooperation provided by the RCMP had to be considered carefully, "…as it may well lead" to SIRC "…gaining an oversight role with respect to the RCMP."[187]

In earlier years, the RCMP had reacted strongly to any implication that more oversight was required for the Force. When SIRC mentioned in its 1985-86 Annual Report that there was "…comparatively little independent oversight of the RCMP" as compared to CSIS,[188] Commissioner Robert Simmonds responded in a letter to the Solicitor General that this was based on an "erroneous premise." He listed in detail many mechanisms for legal and extra-legal accountability that existed to control police conduct, including applications for judicial authorizations, mandamus, criminal and civil proceedings against police officers and the exclusion of evidence, internal discipline, public complaints, the media and accountability to Government through various reports and requests for directions.[189] The SIRC chair of the time, the Honourable Ronald Atkey, commented in testimony before this Inquiry:

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186 Exhibit P-101 CAA0831, p. 1.
187 Exhibit P-101 CAA0831, p. 1.
188 Exhibit P-144: *Security Intelligence Review Committee Annual Report 1985-86*, p. 7; See also Exhibit P-101 CAA0536, p. 1.
189 Exhibit P-101 CAA0474, pp. 1-4.

> Obviously, Commissioner Simmonds and his staff had spent some time on this and were in – what I could call a defensive mode at that point, in terms of resisting what might be concern – calls for some kind of review of the RCMP, an issue which has not gone away.
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> …
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> But certainly there was before Parliament at that time, legislation establishing the Public Complaints Commission and there is now, of course, before the Government of Canada the report of Part 2 of Justice O'Connor in Arar and this is being considered by a committee within the government by David Brown. So these issues are quite current.[190]

The issue indeed remains current, with both the 2006 *Arar Report*, following Justice O'Connor's policy review, and the December 2007 report of the Task Force on Governance and Cultural Change in the RCMP (the David Brown committee) having recommended improved independent oversight mechanisms for the RCMP.[191] Former RCMP Commissioner Norman Inkster shared the concerns of his predecessor, Simmonds, about the risks associated with political interference in police investigations,[192] but indicated in testimony before this Inquiry that he had "…absolutely no hesitation in underscoring the need for civilian review of law enforcement operations" in an "…after the fact way."[193] Inkster was a member of the Task Force that advocated for more oversight for the RCMP, indicating in its report:

> Police are vested with extraordinary powers. They have long been held to account for the use of their powers through the courts, internal discipline and review bodies as well as media. With evolving public expectations, growing distrust and calls for greater transparency and accountability, the Task Force believes that there is a need to strengthen the current legislative scheme for dealing with complaints against the RCMP.[194]

Current RCMP Commissioner William Elliott indicated that, while he felt that oversight by the courts – which is a constant reality for the RCMP – is not less onerous than the review mechanisms in place for CSIS, this did not mean that

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190 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5978.

191 See Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services Canada, 2006) and the Task Force on Governance and Cultural Change in the RCMP, Rebuilding the Trust (Ottawa: Public Works and Government Services Canada, 2007) [*Rebuilding the Trust*].

192 See Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9335-9336; Exhibit P-101 CAA1033, p. 8; Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10336.

193 Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10336.

194 *Rebuilding the Trust*, p. 12.

the current review and oversight for the RCMP is sufficient. He recognized that there is "…certainly room for improvement," as outlined in Justice O'Connor's recommendations with respect to independent review of the RCMP's national security activities, and that there is a "…requirement for an enhanced regime [of review], at least as it relates to the RCMP."[195] He expected to see the improvements introduced by Parliament, as did CSIS Director Jim Judd, who also favourably looked upon the possibility of having an independent body review the activities of the RCMP in the national security realm.[196]

On a more fundamental level, Elliott emphasized that, while the RCMP must remain independent from Government in terms of its operational decisions about its investigations, the Force remains a federal agency that is not independent in many important respects (such as funding and overall policies) and that the Force's insistence on independence had in some instances been exaggerated and counterproductive: "I think, I would describe the RCMP as being at times more standoffish than independent and our standoffishness has not worked to our advantage."[197]

In general, resistance to external review seems to have diminished at the RCMP. A/Comm. Mike McDonell testified that he thought the RCMP could benefit from review of its national security activities by an independent body, as he found "… reviews most instructive and constructive."[198]

In the Air India case, had stronger independent review mechanisms for the RCMP been in place, the families might have been able to obtain some of the answers they were looking for earlier. Certainly, it would have been more difficult for the Force to resist review and to present the type of defensive corporate position that at times was advanced, if it had been directly accountable to an independent body with complete powers to launch investigations, compel the production of documents and the attendance of witnesses, and make binding recommendations. Unfortunately, the Government has yet to implement the numerous recommendations for stronger independent review of RCMP activities.

RCMP Briefing to SIRC

In the end, the RCMP did provide a briefing to SIRC. Despite its strong claims to independence, the RCMP also agreed to attempt to present a position in line with the Government's efforts to minimize interagency criticisms and to let the Interdepartmental Working Group vet this briefing. The Force itself had noted in the September 1991 CID "talking points" that, despite the dangers of extending cooperation to SIRC, a failure to cooperate would lead to many questions remaining unanswered which, in turn, could trigger a Royal Commission or a

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195 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11798-11799, 11835-11836.
196 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11798-11799; Testimony of Jim Judd, vol. 90, December 6, 2007, p. 11877.
197 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11822-11823.
198 Testimony of Mike McDonell, vol. 95, December 13, 2007, p. 12666.

"…prejudiced or slanted view of the RCMP involvement in this matter." It was felt that a SIRC inquiry would allow the RCMP to maintain control over classified information and to provide *in camera* briefings, which "…may not be true" for a Royal Commission.[199] On this point, Goral agreed that, from an RCMP perspective, a Royal Commission would have been "…more intrusive into the ongoing investigation," and therefore if it had to provide a briefing about the case, it was preferable for the Force to do it through SIRC rather than through a Royal Commission.[200]

On November 20, 1991, Inkster wrote to the Deputy Solicitor General to thank him for transmitting a copy of the terms of reference for the SIRC review. Inkster indicated that he agreed that the Interdepartmental Working Group should be used to channel SIRC requests for information. He also suggested that any briefings should be provided in writing.[201] Goral confirmed in testimony that providing a written rather than a verbal briefing was the preference of the RCMP, because a verbal briefing "…can go a lot further than what you want to go" and, in the interest of the ongoing investigation, the less the Force was required to say, the better it would be.[202]

On November 29, 1991, Goral prepared a briefing note about an upcoming request which the SIRC chair would be forwarding to the RCMP Commissioner in December for a briefing on the Air India and Narita investigations. Goral noted that, at the time, the Solicitor General had not yet received responses from all agencies involved about the type of briefings which would be offered and, as a result, had not yet advised the SIRC chair. The Solicitor General's department was urgently soliciting comments and would immediately advise SIRC upon receipt.[203]

The request for a briefing came that same day in a letter to Inkster from the chair of the SIRC review, John Bassett. Bassett stated that the briefing should provide "…the Committee with an overview of the RCMP's concerns relating to the CSIS investigations and the information exchanges." SIRC wanted to learn the views of the Force concerning the CSIS/RCMP relationship prior to and after the crash, and whether the RCMP was satisfied with the information passed to the Force by CSIS or whether it perceived "…that there were gaps in that information." SIRC also wanted the RCMP's views regarding the tape destruction issue in relation to Parmar, and whether the tapes still extant were found to contain useful criminal intelligence. It also expressed interest in the possible role of the Government of India (GOI) in relation to Sikh extremism in general, and the Air India bombing in particular. It was noted that, to a large extent, the purpose of the briefing was to ensure that SIRC's research "…neither overlooks important areas of inquiry nor misinterprets the RCMP's perception and actions."[204]

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199 Exhibit P-101 CAA0831, p. 1.
200 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9199.
201 Exhibit P-101 CAA0839.
202 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9205.
203 Exhibit P-101 CAA0820, p. 1.
204 Exhibit P-101 CAA0840, pp. 1-2.

Goral was appointed to coordinate the RCMP's SIRC briefings.[205] On December 11, 1991, he wrote a memorandum to the Assistant OIC of the Security Offences Section (SOS) indicating that he had forwarded SIRC's November 29th letter to Purdy, the chair of the Working Group, and had discussed the letter with her. He recommended that the RCMP Commissioner respond to SIRC with a letter indicating that the Working Group had been set up to respond to SIRC's requests and that the SIRC letter would be forwarded there. He also recommended that the issues SIRC inquired about should be addressed in a written RCMP briefing.[206]

Goral noted that the major issue of interest for SIRC was the destruction of the Parmar Tapes by CSIS, which was "well documented" by the RCMP. For the rest, the issues could be summarized briefly by stating that "…CSIS/RCMP relations were/are good," and that CSIS had tried to cooperate within its mandate; that the RCMP was initially not satisfied with the CSIS information; that CSIS would not initially provide full access to the RCMP or authorize the use of its information in judicial proceedings, but eventually came around after a lot of negotiation; and that the "…tape destruction created suspicion."[207]

Goral noted that the issue of the tapes still in existence and the information they contained could be addressed by E Division. In response to SIRC's inquiry in this respect, he indicated that there was "…no proof GOI was involved." He added that it was important that E Division agree with the RCMP briefing to SIRC. He expected that verbal briefings would take place, even in the divisions, and noted that the RCMP was "…more likely to respond in a cohesive manner in the future" if there was agreement now on the written briefing. Finally, he wrote that if the RCMP was to give verbal briefings that were complete, E Division should be involved, "…in particular S/Sgt. Wall who has headed the investigation from the start."[208]

In a December 13, 1991 memorandum to the OIC SOS, Goral sought direction on how to respond to SIRC's request for information. He provided his own recommendations along with this request. He indicated that the RCMP should provide only a "brief comment" on each issue and stay away from opinions, allowing SIRC to form its own opinion on the facts. He also noted that, about the tape destruction issue, the RCMP "…should maintain the line as in previous briefing notes."[209]

When asked during his testimony at this Inquiry about the reference to "the line" in previous briefing notes, Goral was unable to comment specifically, as he did not know which briefing notes were being referred to, but stated that:

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205 Exhibit P-101 CAA0846, p. 4.
206 Exhibit P-101 CAA0847, p. 1.
207 Exhibit P-101 CAA0847, pp. 1-3.
208 Exhibit P-101 CAA0847, pp. 3, 5.
209 Exhibit P-101 CAA0852, p. 1.

> …it's always been our position that the tapes were important. There were summaries – there were only summaries of those tapes and we always wanted them. To be able to investigate further it certainly would have helped to see if there was further leads on those tapes. There were definitely leads on the summaries and, however, we didn't have the tapes and that's what we were faced with. We couldn't recreate them.[210]

A subsequent notation by Goral, dated December 18th, indicates that he received a response from his superiors to his memorandum. The Deputy Commissioner of Operations directed that the RCMP was "…not to criticize CSIS."[211] Speculating about the reason for this direction, Inkster commented that there were ongoing negotiations at the time between the RCMP and CSIS about obtaining information and "…no one wanted to say anything to upset that relationship." It was felt that criticizing one another "…didn't serve any organization well," and would "…just bring harm to the relationship."[212]

According to an RCMP briefing note, on December 23, 1991, Margaret Purdy and Assistant Deputy Solicitor General Wendy Pourteous met with SIRC to discuss the logistics of an RCMP briefing. SIRC was "adamant" that the RCMP provide a verbal briefing, citing offers of full cooperation from the Justice Minister, the Solicitor General and Deputy Commissioner Michael Shoemaker. The note stated that it appeared the Force would "…have to provide a verbal briefing" and a tentative date of February 12, 1992, was set. It was noted that RCMP Criminal Intelligence Directorate would meet with Purdy and Maurice Klein of SIRC on January 2, 1992 to discuss in greater depth the issues which SIRC had identified for the briefing. It was suggested that A/Comm. Mike Thivierge provide the verbal briefing as he was well versed in the issues.[213]

A January 7, 1992, letter from Purdy to the members of the Working Group provided an overview of developments in relation to the SIRC Air India Inquiry. She indicated that "ground rules" had been agreed to for the RCMP's briefing to the Committee, including that the briefing would be "general" and that the RCMP team would accept "…general questions, but may have to defer certain questions for research and written response." The SIRC officials were not to "…cross-examine RCMP officials or seek their personal opinions." The RCMP briefing would "…present the corporate RCMP position" on issues, and SIRC would channel any follow-up questions to the Working Group for written responses. It was noted that RCMP officials planned to "…rely largely on public statements by Commissioners Simmonds and Inkster and Solicitors General on such issues as tape erasure, Government of India complicity and the ongoing criminal investigation."[214] While the RCMP would agree to provide a verbal

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210 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9207.
211 Exhibit P-101 CAA0852, p. 2.
212 Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10350.
213 Exhibit P-101 CAA0821, pp. 1-2.
214 Exhibit P-101 CAA0861, pp. 1-3.

briefing, this briefing would be prepared in writing in advance,[215] and Working Group members would have the opportunity to review the prepared response prior to the briefing.[216]

In an internal RCMP document written by the Director of CID, Wayne Eaton,[217] it was noted that, while SIRC would undoubtedly ask questions during or following the presentation, it was expected that the questions would be general in nature and that, if Thivierge was not comfortable as to an "appropriate answer," he would take the question under advisement and a written response would be provided later.[218] The memorandum suggested that the briefing take the audience "… from where we were in 1985 to where we are today insofar as co-operation with CSIS is concerned." Eaton instructed that members should:

> …be positive when it is appropriate – i.e. CSIS documents disclosed at Reyat Trial etc. You should also ensure that we do not contradict ourselves. The Committee has made public statements on the degree of co-operation in the erased tapes saying basically that it did not hinder our investigation as an example.[219]

During his testimony before the Inquiry, Inkster was asked about these past statements about the tapes. He was shown a note that was passed to Atkey during the course of his testimony before a House of Commons Committee about the impact of tape erasure. The note, passed to Atkey by one of SIRC's employees, said:

> You could say, if you wish, we have been informed by the Director that no erasure of tapes has left an information gap which could hinder or has hindered the investigation. All useful information was transcribed from tapes before erasure (of those which were erased).[220]

The document then noted that "…[the] Director was assured of the above by Commissioner Inkster."[221]

In response to this document, Inkster testified that his view was that likely someone had "taken liberty" with his comments made before the Parliamentary Committee and the words he had used there. He testified that "Of course, it was an information gap because we didn't know what was on the tapes. And we

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215 Exhibit P-101 CAA0860, p. 1.
216 Exhibit P-101 CAA0861, p. 3.
217 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9212.
218 Exhibit P-101 CAA0860, pp. 1-3.
219 Exhibit P-101 CAA0860, p. 3.
220 Exhibit P-101 CAF0293.
221 Exhibit P-101 CAF0293.

had to deal with that reality, just get on with it and do what we could with what we had." Inkster said that at the Parliamentary Committee he had been asked about the impact of tape erasure on the RCMP investigation and had responded that the tape erasure "…didn't stop us from investigating."[222]

The RCMP's verbal briefing to SIRC was provided on February 11, 1992.[223] The written document that formed the basis of the briefing was drafted by the RCMP, then submitted for comments internally and finally circulated for comments and redrafting to the Working Group.[224]

A draft of the RCMP's SIRC briefing was forwarded to the Air India Working Group members on January 27, 1992. The original RCMP briefing had a full two pages about the issue of tape erasure. In the final document, the "tape erasure" issue was dealt with in two paragraphs. Information from the first draft that was omitted from the final briefing included: the RCMP's position that there had been a request to retain the tapes; a statement that pre-crash summaries indicated that conversations were guarded; and a remark that file research indicated that "…the RCMP took it for granted that CSIS intercept tapes were being retained." The draft briefing had noted that "…it can be expected" that the erasure of the tapes would be used as an abuse of process defence argument during any future criminal proceedings. It had also stated that, since complete transcripts of the "guarded conversations" were not made, they could not be "… thoroughly analyzed as to whether or not they contained further leads."[225]

The complete briefing paper that was ultimately produced was an 11-page, double-spaced document. Goral acknowledged that the document's conclusions were high-level and "…accentuate[d] the positive," perhaps at the expense of drawing attention to the negative.[226] In its Final Submissions to this Inquiry, the Attorney General of Canada took the position that "…[th]ere was undoubtedly an effort to provide the necessary information to SIRC without directly attacking other agencies", explaining that this was meant to preserve the improving relationship with CSIS.[227] When asked about the "…appropriateness of an 11-page document to deal with the most extensive investigation ever undertaken by the RCMP," Goral replied that this was "…not an appropriate way to brief as far as the so-called relationships and problems were," but that it was in the best interests of the ongoing investigation and constituted the "least intrusive" option.[228]

Goral noted that the briefing that was provided to SIRC in "no way" compared to the RCMP's significantly more extensive submission to the Honourable Bob Rae on the issue of the CSIS/RCMP relationship, a document he also assisted in drafting, and which took a somewhat more critical approach to the relationship.

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222 Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10342, 10351-10352.
223 Exhibit P-101 CAA0881.
224 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9215.
225 Exhibit P-101 CAB0861, pp. 11-12.
226 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9217.
227 Final Submissions of the Attorney General of Canada, Vol. I, para. 320.
228 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9216.

According to Goral, the reason for the difference was that, in the case of the Rae briefing, the RCMP was "…not taking direction … from anyone in government." The RCMP did not object to the directions being provided through the Working Group during the SIRC review, since it was felt that, in light of the ongoing investigation, this approach would give the RCMP a better chance of "…securing admissible evidence."[229]

Despite the well-chronicled frustrations experienced by the early E Division Task Force[230] and by BC prosecutor James Jardine,[231] in terms of their attempts to obtain and use information from CSIS, the RCMP briefing to SIRC simply stated:

> The Force has always considered our cooperation with CSIS to be good, both before and after the June 1985 Air India crash. It would be wrong, however, to conclude that difficulties in our relationship were not experienced.[232]

The briefing went on to state that, during the first days after Flight 182 crashed, "…formal and extensive liaison was established" between CSIS and the RCMP. The framework was "…quickly put in place to allow extensive information exchanges between the two agencies." It added that "…CSIS fully cooperated in producing CSIS documents which were required by the court and for disclosure to the defence." It described the level of RCMP access to CSIS materials by stating that, while CSIS was "cautious" and "…negotiations took a long time to resolve," the Force was provided "hands-on" access and was able to conduct its own analysis. The briefing also stated that "…CSIS caveats have not impeded the Force's ability to share information on the Air India criminal investigation."[233]

In terms of tape erasure, the briefing stated that CSIS provided the RCMP with summaries of the tapes that had been erased, and that access was also provided to the logs of the CSIS translators. It indicated that the RCMP "…does not know what the erased tapes contained" and that, to the RCMP's knowledge, "…complete transcripts of the conversations were not made and therefore no analysis can now be made to ascertain whether or not they contained further leads." The briefing mentioned that, in October 1985, a Punjabi-speaking RCMP member assisted CSIS in translating a backlog of approximately 50 CSIS tapes that had not been erased, and that the RCMP review of these tapes "…did not uncover significant criminal information."[234]

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229 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9216-9217, 9245-9246.
230 See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.
231 See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
232 Exhibit P-101 CAA0881, p. 3. Explaining what was meant by the statement that the "…Force has always considered our cooperation with CSIS to be good," Goral indicated that the RCMP continued to talk to CSIS and that dialogue never stopped and the two organizations "…always strived to – as much as we could – work together because it was in the best interest of the investigation": Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9221.
233 Exhibit P-101 CAA0881, pp. 11, 15, 17.
234 Exhibit P-101 CAA0881, p. 17.

The briefing also emphasized the initiatives put in place since the Air India bombing to "…further improve the exchange of information" between the agencies, including the Liaison Officers (LO) Program, the new MOU, and the "advisory letter" system.[235] About the Liaison Officers Program, the briefing stated that:

> The respective L.O.'s are presently provided with full and complete access to relevant information of the other agency. This allows a timely identification of information relevant to the responsibilities of the concerned agency.[236]

In fact, the members of both agencies who participated in the LO Program had expressed serious concerns. Ultimately, and in spite of initial doubts, management in both agencies concluded that the LO Program was successful overall in improving trust and communication, but the actual extent of the "… full and complete access" to the other agency's information was a constant subject of debate.[237]

On February 26, 1992, Purdy sent a memorandum to the Working Group summarizing the results of the RCMP's briefing to the SIRC Chair.[238] Purdy set out the "messages" that Bassett appeared to have taken away from the briefing, which were also included in a letter sent by Bassett to Inkster:

- RCMP/CSIS relations around Air India were not always smooth, largely because of the two agencies' different, and sometimes conflicting, mandates
- Both agencies worked hard at solving the problems
- Current RCMP/CSIS cooperation is "first class" (Bassett's words)
- The RCMP has no reason to believe that anything CSIS did or didn't do hampered the criminal investigation
- The RCMP will never give up on this case and has made "every effort on earth" (RCMP words) to complete a full criminal investigation.[239]

When asked about Bassett's impressions, Goral admitted that they may not have been "…entirely in alignment with the facts," at least on the issue of the tape erasure and of the RCMP's views on the effect that this incident had had on the criminal investigation.[240]

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235 Exhibit P-101 CAA0881, p. 19, 21.
236 Exhibit P-101 CAA0881, p. 19.
237 See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation and Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
238 Exhibit P-101 CAA0883.
239 Exhibit P-101 CAA0883, p. 1.
240 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9219-9220.

Purdy noted that Bassett had sent five follow-up questions in writing for the RCMP, which dealt with specific instances of CSIS/RCMP liaison and RCMP participation in the translation of CSIS tapes. SIRC also provided a question for the Solicitor General Secretariat, dealing with a 1986 instruction from the Solicitor General on the exchange of CSIS and RCMP liaison officers. Purdy ended her memo by indicating that the Interdepartmental Working Group would "… have an opportunity to vet the proposed RCMP and Secretariat responses before they go to SIRC."[241]

SIRC Report

The SIRC report was provided to the Solicitor General in November 1992, and an abridged version was released to the public in July 1993.[242]

Included in the report was a summary of the "RCMP perspective," based on the briefing provided in February 1992. The report noted that the Force's view was that cooperation with CSIS was (and is) good, and that, while the investigation "…put great strains" on both agencies, the RCMP emphasized "…the lessons learned." SIRC noted that "…at no time in the briefing was it alleged or intimated that the investigation was materially harmed by the difficulties or delays that occurred."[243] Rightly or wrongly, the RCMP's failure to criticize CSIS was taken by SIRC as an indication that any difficulties experienced did not ultimately impact on the investigation or prosecution.

The report concluded that "…apart from questions on the erasure of tapes and the use of CSIS information in court, though, we saw few examples of specific complaints and recriminations over the conduct of the case in the CSIS files we examined." SIRC found "…no evidence that the provision of CSIS information relevant to the RCMP investigation of the disaster was unreasonably denied or delayed to the Force." It also found that, while some caveats were applied by CSIS to limit the use to which the material could be put by the RCMP, "…[t]hese caveats were fully consistent with the CSIS mandate."[244]

The report noted a few examples of "good cooperation" between CSIS and the RCMP. Among these was the June 4, 1985, Duncan Blast episode where SIRC stated "…CSIS advised the RCMP of the events."[245] At this Inquiry, however, it became clear that, as also noted in the Rae report, the agencies were still providing "differing" – in fact contradictory – accounts of the level of cooperation and information exchange that took place about the Duncan Blast.[246]

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241 Exhibit P-101 CAA0883, pp. 1-3.
242 Exhibit P-101 CAA0923, p. 5.
243 Exhibit P-101 CAB0902, p. 73.
244 Exhibit P-101 CAB0902, pp. 70, 74.
245 Exhibit P-101 CAB0902, p. 44.
246 Exhibit P-35: *Lessons to be Learned: The Report of the Honourable Bob Rae, Independent Advisor to the Minister of Public Safety and Emergency Preparedness, on outstanding questions with respect to the bombing of Air India Flight 182* (Ottawa: Air India Review Secretariat, 2005), p. 8 and Section 1.4 (Pre-bombing), Duncan Blast.

With respect to the issue of tape erasure, the SIRC report stated that SIRC "…saw nothing to suggest that the RCMP asked that the tapes be retained." The SIRC report also stated that, since there was no opportunity to review the contents of the erased tapes in order to ascertain what was contained on the tapes, it had to rely on statements from the individuals who had direct contact with the erased tapes, specifically the translators/transcribers and the investigators.[247] According to SIRC:

> In their statements to the RCMP, each CSIS officer stated that there was no evidence or information of value to the Air India case lost with the erasure of the tapes. The RCMP reviewed all the logs from the transcribers and translators as well as their own translation of the 50 backlogged tapes of Parmar's conversations. The RCMP stated they did not uncover significant criminal information.[248]

The SIRC report concluded:

> It is impossible to determine independently if any evidence was lost through erasure. We consider it unlikely that any information in the erased tapes indicating plans to bomb the aircraft would have escaped the attention of the monitors, translators and investigators. The RCMP determined from the translator/transcriber logs of the erased tapes and from the 54 tapes retained and reviewed by them after the disaster, that no significant criminal information was revealed.[249]

The report found that CSIS tape-handling procedures were out-of-date and ambiguous, and that the new policies (which still specified a 10-day post-processing retention period) significantly filled in "…many of the gaps" in the old policy.[250]

Government Response to the SIRC Report

Prior to SIRC releasing its public report, all concerned government departments were provided copies and were given opportunities to provide comments to SIRC.[251]

A "communications strategy" briefing by the office of the Solicitor General, dated October 1992,[252] detailed how the Government of Canada should handle the tabling of the SIRC report. It was noted that SIRC's findings were "not sensational" and were "…largely of historical interest," and that the media had exhaustively covered the crash of Air India Flight 182.

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247 Exhibit P-101 CAB0902, pp. 53, 92.
248 Exhibit P-101 CAB0902, p. 92.
249 Exhibit P-101 CAB0902, p. 99.
250 Exhibit P-101 CAB0902, pp. 97-99.
251 Exhibit P-101 CAA0335, p. 17.
252 Exhibit P-101 CAF0440.

According to the briefing note, the SIRC study made two "…important, positive conclusions," that is, that:

- CSIS could not have predicted the Air India flight would be bombed; and
- All CSIS information was given to the RCMP.[253]

It was noted that the SIRC report "…contains enough qualifications to lead a journalist to ask (even if SIRC won't answer) whether the possible lack of CSIS/RCMP cooperation, and lack of direction, resulted in critical omissions in the criminal investigation." It was felt that "…CSIS will incur some criticism for its handling of audio intercept tapes in 1985," but it was also noted that "…SIRC may be criticized because the Committee is not overly critical of CSIS in respect of the Air India investigation."[254]

The briefing note also stated that, while there had been periodic calls from Opposition MP John Nunziata and the Air India victims' associations for a public inquiry, "…[t]o date, the Government has steadfastly resisted such an inquiry."[255]

The communications strategy briefing note referred to the arrest of Manjit Singh and the RCMP's questioning of him along with the "…controversial death of Talwinder Singh Parmar," as having "…raised hopes for a breakthrough," and that "…sooner or later, the RCMP and the Minister will have to announce that Manjit Singh provided some investigative leads that are being pursued." The briefing note went on to suggest that, if possible, this announcement should be held off until "…a Sub-Committee appearance or at least until after tabling [of the SIRC report]."[256] In reality, Manjit Singh was not an important suspect at the time. He had become a suspect in the RCMP investigation immediately after the bombing, due to his suspected connection to other criminal activity and his name, "M. Singh," which was the name listed on the ticket of the individual believed to have checked in the luggage containing the bomb. However, by the time news surfaced about Manjit Singh's arrest, he was no longer considered to be a central suspect in the plot, and the RCMP was of the view after his interview that he had no connection to the bombing.[257] In terms of Parmar's "controversial death," while the RCMP clearly had suspicions about the circumstances surrounding his demise in 1992, serious follow-up by the RCMP on this matter did not begin until many years later.[258]

The October 1992 briefing note listed a number of "Communications Objectives." Important goals were to avoid "…a prolonged discussion of

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253 Exhibit P-101 CAF0440, p. 1.
254 Exhibit P-101 CAF0440, p. 1.
255 Exhibit P-101 CAF0440, p. 1.
256 Exhibit P-101 CAF0440, p. 1.
257 See Section 2.3.3 (Post-bombing), The Purported Parmar Confession.
258 See Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

the Air India issue" and to emphasize "…the Government's determination to pursue the criminal investigation." The suggested strategy was that the Government should "…adopt a low key" approach to the tabling of the report, "…concentrating on not jeopardizing the criminal investigation."[259]

In terms of timing, it was noted that the Minister should table the report "... amid the welter of post-recess, post-referendum Government documents," and the preferred weekday for tabling would be a "Thursday afternoon, as soon as possible after Parliament resumes sitting," but that the Government "…should not attempt to bury the Annual Report, such as by releasing it on a Friday afternoon." The Solicitor General should be "…prepared to deal with the issues identified with a sound question and answer package," and "…should not seek media coverage." CSIS spokespersons could be used "to deflect" most of the questions to a "…nuts and bolts discussion (i.e., fixes to tape retention policy)," while RCMP spokespersons could deal with questions about the "criminal investigation." It was noted that the Solicitor General would have to deal with calls for a public inquiry or a Royal Commission, and the fact that there had been no arrest. Upcoming National Security Sub-Committee meetings would have Messrs. Ray Protti, Norman Inkster and (Minister) Doug Lewis as witnesses, and it was noted that there "…should be no contradictions or variations between their answers." If a more formal response was required, the Minister could take an "assertive approach," listing the "…comprehensive national security reforms taken since 1985" and deploring terrorism as a method of forcing political change.[260]

The briefing note suggested a "main message" for the Minister, as follows:

> I am pleased that an independent body, the Security Intelligence Review Committee, has laid to rest concerns about CSIS' role in respect of the Air India disaster of June 1985. I know the families of the victims want to see justice done. The RCMP will investigate the case vigorously for as long as it takes to solve this tragedy.[261]

It was also suggested that the Minister end by saying:

> I would not support any initiatives that might hinder the process of bringing to justice the persons responsible for the crime. The best hope of solving this crime is through police work.[262]

This last suggestion appears to be a pre-emptive initiative.

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259 Exhibit P-101 CAF0440, p. 2.
260 Exhibit P-101 CAF0440, pp. 2-3.
261 Exhibit P-101 CAF0440, p. 4.
262 Exhibit P-101 CAF0440, p. 4.

From the RCMP's perspective, Goral testified that the statement about SIRC having laid to rest concerns about CSIS was inaccurate because, in contrast to the "extensive materials" from CSIS, "…SIRC had such a limited input from the RCMP" which was "…basically, … an 11-page … [d]ouble spaced [briefing]."[263]

The RCMP and the SIRC Report

Internal RCMP correspondence contradicts statements made to SIRC by the RCMP and SIRC's conclusions in its report. An RCMP internal memorandum written by NCIS, likely in the fall of 1989, and received by RCMP HQ National Security Investigations Directorate (NSID) on October 30, 1989, discusses the obstacles that the RCMP investigation encountered in attempting to access CSIS information in the post-bombing period. The document states that: "Commensurate with their obvious investigational needs, RCMP investigators should have received any and all surveillance material in the raw data form of surveillance notes, tapes, verbatim transcripts, verbatim translations (if they existed) and the 'final reports' prepared." However, the "critical" telephone conversations that were intercepted by CSIS were only "…summarized in a paraphrased manner" and verbatim transcripts were not made available to RCMP reviewers.[264] The document notes that:

> During the Air India investigation CSIS was unwilling to provide to the RCMP complete verbatim transcripts of intercepted private communications or any details surrounding how, where and when their information was developed and obtained. These measures required the Force to develop information supplied by CSIS thereby restricting appropriate investigative avenues. The inability to provide complete information such as intercepted recordings to support the prosecution of criminal offences jeopardizes and hampers the court's determination of whether the accused has been precluded from full answer and defence, in which [case] a breach of the Charter may take place.[265]

The document concludes that "…the availability and disclosure of information retained by CSIS contributed significantly to impeding the RCMP's investigation of the Air India/Narita incident."[266]

Documents such as these, along with the extensive back-and-forth correspondence in relation to the RCMP's attempts to access CSIS information in the early post-bombing period and continuing through the Reyat trial, might have called into question some of the findings of the SIRC report. Perhaps, unsurprisingly, the RCMP had chosen not to share such criticisms with SIRC and then decided not to take issue with SIRC's conclusions. When the report was

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263 Testimony of Terry Goral, vol. 73, November 7, 2007, pp. 9223-9224.
264 Exhibit P-101 CAA0750, p. 1.
265 Exhibit P-101 CAA0750, p. 2.
266 Exhibit P-101 CAA0750, p. 3.

initially released and all government departments were given opportunities to comment, the RCMP "…chose not to provide any comments."[267] In later years, even after the RCMP began to see that the SIRC conclusions could be seriously problematic for its continued investigation, the Force nevertheless continued to maintain that it was important to "…not proactively criticize the review publicly."[268]

In his testimony at this Inquiry, former RCMP Commissioner Giuliano Zaccardelli explained that he viewed the RCMP's participation in the SIRC inquiry as a missed opportunity to deal with fundamental and unresolved issues of cooperation between CSIS and the RCMP.[269] By 1996, when it produced a wiretap application based largely on the CSIS logs for the Parmar Tapes, the RCMP began to make attempts to distance itself from the SIRC conclusions, a development that continued in the briefing it provided to the Honourable Bob Rae in 2005.

The SIRC Report and the Post-1995 RCMP Investigation

In late 1995, at a time when some government documents were referring to the RCMP investigation as having "reached an impasse" and were speculating that it was unlikely that the RCMP would ever solve the case,[270] Deputy Commissioner Gary Bass – who was the Officer in Charge of the BC Major Crime Section at the time – was asked by the CO for E Division to assemble a team to take a look at the investigation that had been carried out to date, and to provide advice on whether or not there was anything else that could be done in the investigation.[271] Bass and his team conducted an extensive file review and, as a result, in early 1996, began to assemble an application for an authorization to intercept private communications.

In his testimony before this Inquiry, Bass discussed the discrepancies between "…what actually happened" and "…the public record as to what happened" in Air India, which became evident to him during his review of the file.[272] He commented that, in contrast to the extensive critical correspondence generated during the years that BC Crown prosecutor James Jardine was attempting to figure out from CSIS what had happened to the Parmar Tapes and why, the SIRC report essentially said that:

> …despite the fact that there were some problems with cooperation, in a general sense, cooperation was good, and that the RCMP didn't ask that the tapes be retained, and that in any event, it was agreed, apparently, by everyone that there was nothing of any probative value on the tapes anyway. [273]

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267 Exhibit P-101 CAA0335, p. 17.
268 Exhibit P-101 CAA1007, p. 4.
269 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11086-11087.
270 Exhibit P-101 CAA0923, pp. 4-5.
271 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11177.
272 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11187-11188.
273 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11187-11188.

This was a conclusion Bass "…obviously disagreed with," and which, in his view, was not "…supported by the facts."[274]

The findings of the SIRC report became a source of serious concern for the renewed Task Force when it was decided that the RCMP would rely on the content of the CSIS Parmar intercepts in support of its application for authorization to intercept communications. Because SIRC had made findings that the wiretap material "…contained nothing of significant evidentiary value,"[275] there was a risk that the SIRC report, or other similar statements that had been made by RCMP management, could subsequently be used to cast doubt on the *bona fides* of the RCMP investigative tactics. The RCMP wiretap affidavit material would "…vary significantly from the findings of the SIRC Review,"[276] as it would present the intercepted Parmar conversations as providing grounds for a wiretap authorization under the *Criminal Code*. According to Bass, defence counsel would undoubtedly suggest to the affiant:

> …in very strong terms, that his view of events is diametrically opposed to the views of CSIS, SIRC and some members of the RCMP. The entire disclosure, CSIS/RCMP co-operation and tape erasure issues will be examined in infinite detail.[277]

Bass discussed the issues at the time with Robert Wright, Regional Crown Counsel for Vancouver, and Austin Cullen, Regional Crown Counsel, New Westminster, who were in agreement with his analysis of the situation and with his view that it would be necessary to "…describe in some detail" for the record where the 1995 Task Force differed with the SIRC report.[278]

In a February 9, 1996 memorandum, Bass addressed what he termed the "popular perception" of the issues surrounding erasure of tapes, RCMP/CSIS cooperation and the assessment of the value of the lost evidence, a perception he felt "…does not accurately reflect the facts."[279] Bass, who was not aware until shortly before his testimony at this Inquiry of the nature of the RCMP's own participation in the SIRC review, explained in testimony that this memo was an "…effort to set the foundation" for later demonstrating to a court that the RCMP did not agree with SIRC, and it was hoped that the "…grounding of the wiretap that was founded on this would … essentially be found to be solvent…."[280] He wrote in his memorandum:

> Without belabouring the issue, it is clear that this entire procedure will undergo intense scrutiny should we ever reach the prosecution stage. Many of the issues arising from this

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274 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11187-11188.
275 Exhibit P-101 CAA0934.
276 Exhibit P-101 CAA0932, p. 4
277 Exhibit P-101 CAA0934, p. 1.
278 Exhibit P-101 CAA0934, p. 1.
279 Exhibit P-101 CAA0932, p. 2.
280 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11188-11189, 11208.

> correspondence were touched upon in the 1992 SIRC report. There are several important issues which must be resolved before continued resource commitment to the investigation can be justified. To proceed without resolution would be a waste of scarce police resources and merely delay the inevitable public inquiry.[281]

He went on to summarize the "…assessment of senior RCMP management" as well as the findings of the SIRC review conducted in 1992. He noted that SIRC found that "good cooperation" existed between RCMP and CSIS in the "post disaster days" and that there was a "…good exchange of information." Though SIRC was critical of CSIS's policy respecting the handling of intercepts, it found no evidence of an RCMP request to retain the Parmar Tapes, and it also found that the RCMP had said that "…nothing of an evidentiary nature had been intercepted" and that therefore CSIS actions had "not resulted in a loss of evidence."[282] On the contrary, according to Bass:

> …numerous intercepts of high probative value between several of the co-conspirators leading up to the bombings were destroyed. If, in fact, someone in the RCMP made the statement there were no intercepts of evidentiary value, they were clearly wrong. If the RCMP did not make that statement, other concerns are raised.[283] [Emphasis in original]

In testimony, Bass pointed to the intercepts surrounding the trip to Duncan and the directions that were being given by Parmar. He stated that, assuming the existence of a conspiracy could be proven, the utterances of Parmar and Reyat "…could potentially become admissible against all the other co-conspirators." He felt that perhaps the value of these tapes was underestimated in the early days of the investigation because the conspiracy approach was not a strategy that "…a lot of people understood." Bass indicated that, for his part, he continued to view the tapes as "…valuable and of high probative value."[284]

In relation to the impact of CSIS's delay in providing information to the RCMP in 1985, Bass indicated that the RCMP put up wires on the wrong targets, and that it was not until September that a wire on the principals was obtained. He explained, in this context, that the period directly following an event like the bombing was a "…really critical time" for investigative purposes. He added that had he been aware of the information that was available through the CSIS intercepts at the time, he would have "…been moving towards a wiretap on different people," and would have immediately "…wired up all the pay telephones" that the suspects were using.[285]

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281 Exhibit P-101 CAA0932, p. 2.
282 Exhibit P-101 CAA0932, p. 3
283 Exhibit P-101 CAA0932, p. 3.
284 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11197-11198.
285 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11202, 11240.

Bass concluded that there was a "strong likelihood" that, had CSIS retained the tapes between March and August, 1985, "…a successful prosecution against at least some of the principals in both bombings could have been undertaken."[286] In his testimony before the Inquiry, he confirmed that he was still of the view that if the RCMP had had the pre-bombing tapes and they were found to contain what was recorded in the transcriber notes, there would have been "… fairly compelling evidence" to put forward to Crown counsel against Parmar, Reyat and others with respect to the bombings.[287]

In terms of the information that would have been made public through disclosure in a criminal trial, Bass's memo noted that a "…great deal of what some will classify as embarrassing correspondence" and "…thousands of pages of memos and telexes wherein our Force and CSIS argue over release of information between 1985 and 1990 will not be protected."[288] Bass wrote that "…the gross inaccuracy of the SIRC Review report" would then become "immediately evident" to anyone reading this correspondence. [289]

Subsequent RCMP Submissions about SIRC's Findings

In its briefing to the Honourable Bob Rae in 2005, the RCMP took issue directly with some of SIRC's findings. The briefing outlined areas of disagreement with the SIRC report and surmised that the mistaken impressions of SIRC may have been due to SIRC's mandate:

> These differences may stem largely from the nature of SIRC's legislative mandate, which dictates that its scope of review is limited to the actions of CSIS and not of other government agencies or departments.[290]

Though not emphasizing directly that many of SIRC's findings in relation to RCMP/CSIS cooperation were based on the RCMP's own statements, the Force recognized that its briefing to SIRC was not exhaustive:

> Prior to completing its report, therefore, SIRC only had the benefit of a very general 12-page briefing from the RCMP, without access to its extensive document holdings, nor its personnel.[291]

As we know, the decision to provide as little detail as possible to SIRC and to participate in a coordinated response which avoided interagency criticism was

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286 Exhibit P-101 CAA0932, p. 3
287 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11201.
288 Exhibit P-101 CAA0932, p. 4; See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
289 Exhibit P-101 CAA0932, p. 4.
290 Exhibit P-101 CAA0335, p. 13.
291 Exhibit P-101 CAA0335, p. 13.

deliberate. However, the RCMP was not satisfied with the consequences of this decision and decided to state its position in a different manner. In its briefing to SIRC, the RCMP had stated that: it had always considered its cooperation with CSIS to be good, though some difficulties were experienced; that a framework had been put in place soon after the bombing to allow "…extensive information exchanges"; and that CSIS had "…fully cooperated in producing CSIS documents" for disclosure and prosecution, and had provided "hands-on" access to its materials for the RCMP investigators to conduct their own analysis.[292] Yet, in its Rae briefing, the RCMP stated that SIRC's comments to the effect that other than with respect to the tape erasures, these had been a "full exchange of information":

> …minimize the concerns felt by the RCMP, as well as the importance of the Force's requirement to use CSIS information in court. Arguably, the ability to use CSIS information in furtherance of a criminal prosecution goes to the heart of the relationship between the two agencies.[293]

Although it had been advised that one of the messages the SIRC chair had taken from the RCMP briefing was that "…the RCMP has no reason to believe that anything CSIS did or didn't do hampered the criminal investigation,"[294] the RCMP also took issue with SIRC statements that the investigation was not unreasonably denied or delayed. Even though it had not made any efforts at the time to correct the chair's impressions, in its briefing to Rae, the RCMP indicated:

> It appears that SIRC failed to appreciate that, in the law enforcement milieu, access to <u>all</u> relevant information in a <u>timely</u> manner is critical to the criminal investigation and judicial process.[295] [Emphasis in original]

The RCMP briefing to Rae pointed to the example of Michael ("Mike") Roth's difficulties in accessing information regarding the intercepts[296] as contradicting SIRC's assertion that no information was unreasonably delayed.[297] It noted that:

> With an appreciation of the context, SIRC's comments that it did not see any indication that relevant information was not being shared with the RCMP could mislead some readers. On one hand, information was being exchanged, however this does not hold true for much of the information the Service

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292 See Exhibit P-101 CAA0335, pp. 3, 11, 15, 17.
293 Exhibit P-101 CAA0335, p. 25.
294 Exhibit P-101 CAA0883, p. 1.
295 Exhibit P-101 CAA0335, p. 25.
296 See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.
297 Exhibit P-101 CAA0335, p. 25.

> had from its intercepts. Moreover, meaningful access to this information was not provided to the RCMP until Aug. 22 and Sept. 10. The coded conversations were clearly relevant yet were not being handed over.[298]

The Rae briefing also correctly pointed out that the RCMP briefing document to SIRC had only stated that the surviving Parmar Tapes reviewed by Cst. Manjit ("Sandy") Sandhu were not found to contain significant criminal information,[299] and not, as SIRC concluded, that no significant criminal information was revealed in the logs from the CSIS transcribers and translators in relation to the erased tapes.[300] Though the former SIRC chair had been advised in 1987 that the position of the RCMP Commissioner was that no erasure of tapes had left an information gap which could hinder the investigation.[301] However, Goral agreed in testimony that it would take a very close reading of the language of the RCMP's written submission to SIRC to be able to understand that it was only the 54 tapes listened to by Sandhu that were found to contain nothing of importance, and not the entire collection.[302] The RCMP certainly did not state that its review of the logs for the erased tapes indicated that they might have contained significant information. Rather, it simply wrote that the logs were reviewed; that it could not be known what the tapes contained since they were erased; and that no analysis could be done to ascertain whether they contained further leads because of the lack of verbatim transcripts.[303] The Force also did not point out to SIRC, as it did in its briefing to Rae, that information about the June 1985 Parmar conversations was used in RCMP wiretap authorization applications in 1985 and that this information was described as "…relevant to the RCMP investigation."[304]

5.3 1995 Anniversary and Renewed Interest in a Public Inquiry

June 1995 marked the 10th anniversary of the Air India bombing. During the preceding months, the RCMP began attempts to pursue unresolved issues in the investigation with a renewed sense of urgency, and also began to plan its media strategy.[305]

In February 1995, members of E Division NSIS and HQ held a meeting to review the Air India investigation and to develop and follow up on unresolved initiatives. The members were considering announcing a reward for new information and releasing a video presentation, possibly on the television show "Unsolved Mysteries," in order to obtain information. HQ had already given approval in

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298 Exhibit P-101 CAA0335, p. 24.
299 Exhibit P-101 CAA0881, p. 17.
300 See Exhibit CAB0902, p. 99: "CSIS Activities in Regard to the Destruction of Air India Flight 182 on June 23, 1985: A SIRC Review"; Exhibit P-101 CAA0335, p. 26: RCMP Submission to the Honourable Bob Rae.
301 Exhibit P-101 CAF0293.
302 Testimony of Terry Goral, vol. 73, November 7, 2007, p. 9219.
303 Exhibit P-101 CAA0881, p. 17.
304 See Exhibit P-101 CAA0335, p. 25.
305 Exhibit P-101 CAF0393, p. 2.

principle for the use of a video presentation and a reward of $300,000, and it was felt that "…some action should be taken before June 22."[306] According to the minutes of the meeting, prepared by RCMP Sgt. Ken Laturnus, the following discussions were then held:

> 21. What does news release get us? Can we be criticized for not doing a news release. Video can be done to show investigation was professionally done. Police have done the best they can, we now need public assistance.[307]

After the meeting, E Division NSIS decided to address a number of outstanding initiatives as soon as possible. The Assistant Officer in Charge of NSIS transmitted a report to the Officer in Charge of the Criminal Investigations Bureau for the Division to advise of the results of the Air India file review and of the initiatives which would be pursued (all of which had been "…identified and documented previously"). He indicated that NSIS was "…attempting to resolve all the issues" before the 10th anniversary of the bombing and added that it was "…preferable to have the RCMP make a public statement beforehand, rather than reacting to media queries afterwards."[308] At the time, the Solicitor General had rejected a proposal for offering a reward of more than $300,000, the maximum signing authority of the RCMP Commissioner. RCMP senior management took the position that a "…public plea for assistance" had to be a "…last resort after all other initiatives have failed."[309] E Division NSIS agreed, but noted that, aside from three proposed initiatives involving approaches to Reyat, Surjan Singh Gill and Ms. E, the point where all initiatives had failed had been reached and a presentation to the public had to be ready before the anniversary.[310]

In June 1995, the RCMP offered a reward of one million dollars for information leading to an arrest in the Air India case. However, the RCMP Commissioner also decided at the time that if evidence was not forthcoming in a reasonable period of time, "…such as six months," resources would no longer be devoted to investigating the crash, though the file would not be closed.[311]

In October 1995, Cabinet members were asked to consider "…whether and how the Government could respond to continued demands for action on the Air India disaster." On October 11th, the Director General of the National Security Directorate of the Solicitor General's office, Paul Dubrule, prepared a draft aide-memoire to provide Ministers with possible options for dealing with continued demands for Government action. He noted that, based on the information then available to the Government, it was believed that "…the RCMP may soon announce that it has reached an impasse in its investigation of the crash of Air

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306 See Exhibit P-101 CAF0390, pp. 2, 5.
307 Exhibit P-101 CAF0390, p. 5.
308 Exhibit P-101 CAF0391, pp. 1-2.
309 Exhibit P-101 CAF0392, pp. 3-4.
310 Exhibit P-101 CAF0391, CAF0392, p. 4.
311 Exhibit P-101 CAA0923, p. 4.

India flight 182." As a result, the Government would need to consider "…which steps it will initiate for managing the issue."[312]

The draft aide-memoire provided background on the June 23, 1985 bombings and indicated that earlier that year, the RCMP "…publicly acknowledged that the crash was caused by a bomb," noting that both the "…Canadian Aviation Safety Board (CASB) (1985) and the Indian Kirpal judicial inquiry (1986) came to the same conclusion." The briefing stated that in the first few years after the disaster, "…amidst continued pressure from victims' families and from the media, the then Government did not initiate a full public inquiry" because such an inquiry could have interfered with the "…ongoing police investigation" and "…compromised a subsequent trial." In addition, as the incident was investigated by CASB, Kirpal and SIRC, it was felt "…that little more, if anything, could be learned about the bombing through a public inquiry."[313]

About the RCMP investigation, Dubrule noted that the "…overriding problem for investigators is the lack of physical evidence," which was in "sharp contrast" to the Narita bombing. It was understood that "…unless an informant comes forward with new evidence, it is unlikely that the RCMP will solve the Air India case." Several options were then set out in the aide-memoire. "Option 1" was the appointment of a commission of inquiry. It was felt that, given that more than 10 years had passed since the crash, the commission would report on the circumstances surrounding the crash and would describe the various lines of investigation. The commission's mandate would likely need to cover issues such as the nature of the security arrangements at Toronto, Montreal, and Vancouver airports at the time of the incidents, the extent to which safety and security regulations were met by federal aviation authorities and carriers, the cooperation between the various agencies in relation to airport security, the "… thoroughness of the RCMP investigation" and the pre-bombing intelligence.[314]

The main advantage of a commission of inquiry was noted to be that it would "…respond to the families' concerns and perhaps initiate a healing process." It would also give the Government the opportunity to set the record straight, and it would allow the Prime Minister to live up to the pledge he made while Leader of the Opposition. There were a number of perceived disadvantages listed as well. A full inquiry would "…likely be costly and lengthy," lasting "…three or four years given the complexity of the issues, the quantity of evidence and the involvement of numerous parties." Though the Government could establish a fixed budget and time frame, it would need to "…balance fiscal imperatives" against the need to undertake a "…credible, transparent and comprehensive inquiry into the disaster."[315]

The document went on to note that:

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312 Exhibit P-101 CAA0923, pp. 1, 5.
313 Exhibit P-101 CAA0923, p. 3.
314 Exhibit P-101 CAA0923, pp. 4-5.
315 Exhibit P-101 CAA0923, p. 6.

> Moreover, if there were new revelations about inadequate airport security that existed in 1985 they could provide evidence to re-open civil liability suits with the victims' families which were previously settled.[316]

And that:

> A full inquiry would likely be inconclusive and ineffective in uncovering any new information: it would not determine who planted the bomb. In addition, its terms of reference would, of necessity, cover areas that have already been the subject of intense scrutiny.[317]

It was also thought that a full inquiry would be disruptive to Government and "…usurp a considerable amount of Ministers' time," and that "yet another" inquiry could "…test taxpayers' tolerance" and lead to "…widespread criticism of government inquiries."[318]

"Option 2" was listed as maintaining the "status quo," meaning the Government "…would not take immediate action of any kind." As it had been the Government's position that for as long as the criminal investigation was ongoing, "…a public inquiry should be held off," it was felt that this option would not be unreasonable.[319] Under "advantages," it was noted that it might not be necessary for the Government to take further action, as it was "…unlikely that incremental pressure" would be brought to bear on the Government, given that the ten-year anniversary "…passed with limited public interest and media attention." This option was also perceived to be the least disruptive to Government and it was stated that:

> As time passes, it may become more evident to those calling for an inquiry that it will likely not uncover new information. Over time, as the victims' families are kept apprised of the progress of the criminal investigation, their commitment to an inquiry may lessen.[320]

On the downside, the "status quo" approach could appear as though the Government was stalling and indecisive, and in the absence of new evidence, would not bring "…closure to the issue."[321]

"Option 3" was a "public statement by the Solicitor General," whereby the RCMP would acknowledge publicly that it had come to an impasse in its investigation

316 Exhibit P-101 CAA0923, p. 6.
317 Exhibit P-101 CAA0923, p. 6.
318 Exhibit P-101 CAA0923, p. 6.
319 Exhibit P-101 CAA0923, p. 6.
320 Exhibit P-101 CAA0923, p. 7.
321 Exhibit P-101 CAA0923, p. 7.

and the Solicitor General would make a statement in the House of Commons providing an account of the criminal investigation and reviews to date. To be effective, it was noted that the statement would have to be "…accompanied by a sound communications strategy" that would include briefings of "…key journalists, contact with the groups representing the families, and press kits stressing the work that has been done on the investigation and the results of all inquiries."[322]

Advantages were that this approach would "…bring closure to the issue" without the necessity of a "…lengthy and costly inquiry," and would give the Government the opportunity to summarize the details of the measures that had been taken since the crash to prevent similar tragedies, and to detail the investigations that had been done to date. On the other hand, ending the investigation with no charges and no public inquiry would prompt a negative reaction "…mainly from the victims' families." As well, the Prime Minister could be accused of not keeping a promise, made while in opposition, that he would hold a public inquiry. It was noted that there was a risk this approach could "backfire," leading to increased pressure for an inquiry and prompting "…accusations of racism which could tarnish the Government."[323]

The final option, "Option 4," was for a review of the Air India matter under the chairmanship of a respected, independent person. This option would be a more "informal inquiry," allowing the Government to have the review completed expeditiously. This option would be seen as "…honouring the commitments" made by the Government while in opposition in a fiscally responsible fashion, and could bring closure to the Air India issue. As disadvantages, it was noted that the credibility of the process could be questioned since, without official status under statute, the chair would have no legal power to compel witnesses to testify or to compel the production of documents. As well, the victims' families might not be satisfied.[324]

On November 9, 1995, Dubrule forwarded the draft aide-memoire to CSIS for comment.[325] The reply provided on behalf of Jim Corcoran, Assistant Director of Requirements and Analysis, stated that CSIS's preference was "Option 2": maintaining the status quo, with Option 3, a statement by the Solicitor General, as a backup only if something needed to be said "…as a result of further public pressure." It was the Service's view that:

> …absolutely nothing will be gained by exercising Option 1 or 4. In fact, these two options may lessen the chance for the healing process to begin as it would only force the victims' families to once again relive the event.[326]

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322 Exhibit P-101 CAA0923, p. 7.
323 Exhibit P-101 CAA0923, pp. 7-8.
324 Exhibit P-101 CAA0923, p. 9.
325 Exhibit P-101 CAA0923.
326 Exhibit P-101 CAA0923, p. 1.

It was felt that the "…only one thing that will allow a full and complete healing process to occur," would be a conclusion to the investigation leading to charges being laid, or a "…full and complete explanation of who did it." CSIS commented that "…as we now know, this is unlikely to occur."[327]

At the RCMP, it was also in October or November 1995 that Bass received a call from the British Columbia Criminal Operations Officer, A/Comm. Dennis Brown, and was asked "…to take a look at the investigation that had been done to date and to give him advice as to whether or not there was anything else that could be done." This is how the extensive file review and the post-1995 renewed Air India investigation began. Bass testified that, though this was not discussed directly with Brown, the increasing calls for a public inquiry and the fact that the Government was considering its options in light of the state of the RCMP investigation were "probably the impetus" for Brown's request that the investigation be reviewed.[328]

During the review and renewed investigation process, RCMP management remained sensitive to the possibility of an eventual public inquiry. In his February 1996 memorandum, where Bass noted that proceeding without resolving the issues surrounding the SIRC report would be a waste of resources and would "…merely delay the inevitable public Inquiry," he commented:

> I am confident that the result of such an inquiry will be to direct severe criticism to the CSIS and, to a lesser extent, the RCMP in relation to the handling of this investigation. The fact that some part of the criticism will be with the benefit of hindsight, will not soften the blow to any great extent.[329]

Bass later indicated in a May 1996 memorandum to the BC Criminal Operations Officer that, while he was optimistic that sufficient evidence would be gathered to lay charges, it was difficult to predict the likelihood of a successful prosecution. He noted that in any event, the process would "…at the very least, place us in a better position should an inquiry eventually be held."[330]

5.4 The Prosecution of Malik, Bagri and Reyat

By November 1996, the renewed RCMP Task Force had not uncovered any significant new evidence. However, the RCMP had begun to have meetings with the BC Crown office, and a decision had been made to "…proceed to prosecution" and "…leave the matter to the courts and a jury," whether or not "fresh evidence" was uncovered as a result of the efforts of the renewed Air India

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327 Exhibit P-101 CAA0923, p. 1.
328 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11177, 11180.
329 Exhibit P-101 CAA0932, p. 2.
330 Exhibit P-101 CAA0952, p. 2.

Task Force.[331] A prosecution team was assembled and a review of the file for the purposes of charge approval began.[332]

Ripudaman Singh Malik and Ajaib Singh Bagri were charged on October 27, 2000 with eight counts each, including first degree murder of the Air India Flight 182 passengers and crew, first degree murder of the two Japanese baggage handlers who died in the Narita explosion, and conspiracy to commit murder. Inderjit Singh Reyat was subsequently added to a new indictment filed on June 5, 2001, which charged Malik, Bagri and Reyat jointly for all counts except the murder of the Narita baggage handlers, since Reyat had already been convicted of manslaughter for the Narita case in 1991.[333]

On February 10, 2003, Reyat pleaded guilty to the manslaughter of the Air India Flight 182 victims and the Crown withdrew the other charges against him. He was sentenced to five years in prison in addition to the 10-year sentence he had received in 1991.[334] Shortly after Reyat's plea, the Crown announced its intention to call Reyat to testify.[335] Reyat's testimony did not implicate the other accused or reveal any information helpful to the prosecution. He denied that he had knowledge of a plan to bomb Air India Flight 182, admitting only that Parmar had asked him for an explosive device to be used in India to assist Sikh people. Justice Josephson, who presided at the trial, found him to be an "… unmitigated liar under oath" and concluded he was withholding information.[336] He is currently being prosecuted for perjury, following the laying of charges at the end of his five-year sentence in 2008.

The proceedings involving Malik and Bagri lasted almost five years. The trial itself began in April 2003 in a state-of-the-art electronic courtroom specially created for the Air India case.[337] There were a total of 230 trial days. Extensive forensic evidence was heard to prove that Air India Flight 182 was bombed and that the bomb was located in the area where the bag checked in by the still unidentified "M. Singh" would have been.[338] This evidence did not however link the two accused to the bombing. The case against Malik and Bagri essentially rested on the testimony of a handful of witnesses, who mostly alleged that the accused had confessed to the crime. Three main witnesses testified against Malik. Two alleged that Malik had asked their assistance to take a suitcase to the airport, and the main witness, Ms. D, alleged that Malik had confessed his involvement to her on several occasions during the course of their relationship.[339]

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331 Exhibit P-101 CAA0958, p. 2; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7815-7816. See, generally, Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.
332 Exhibit P-101 CAA0958, p. 2.
333 *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.).
334 *R. v. Reyat*, 2003 BCSC 254.
335 *In the Matter of an Application Under s. 83.28 of the Criminal Code and Satnam Kaur Reyat*, 2003 BCSC 1152 at para. 21.
336 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1277-1284.
337 Ministry of Attorney General, Court Services Branch, *Report of the 2002/2003 Fiscal Year*, June 25, 2003, p. 7.
338 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1262-1268.
339 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1285-1313; See, generally, Section 1.5 (Post-bombing), Ms. D.

The case against Bagri was based on the evidence of two witnesses, as well as some evidence of motive on the basis of a heated speech he gave in 1984. Mr. C, who was a paid police informant, alleged that Bagri had made comments after the fact which tended to indicate he was responsible for the bombing. Ms. E, a former friend of Bagri, had told CSIS that Bagri had asked to borrow her car to take a suitcase to the airport the night before the Air India bombing, but at trial testified that she had no recall of the conversation. Some of her previous statements to CSIS were admitted in evidence.[340]

During the trial, Justice Josephson found that CSIS's erasure of the Parmar intercept tapes and its destruction of notes for interviews with Ms. E violated the accused's *Charter* rights.[341]

Malik and Bagri were both acquitted on March 16, 2005.[342] Justice Josephson found that, quite aside from the *Charter* violations, the evidence presented by the Crown fell "markedly short" of proving guilt beyond a reasonable doubt.[343] Serious credibility and reliability issues were identified with the evidence of each of the witnesses who testified against the two accused. The issues identified included the fact that many of the witnesses had only come forward many years after the crime, that they had largely provided information otherwise available in the public domain, and that they had their own reasons to wish harm to the accused.[344]

This Commission learned that there was another individual who was willing to testify in the trial and whose evidence was never brought to the Court's attention. This individual (who will be referred to in this discussion as "Mr. G") was an important figure in the Sikh extremist movement in 1985. His name appears in many of the documents provided to the Commission, and there existed independent information – known to the RCMP for years – that indicated that he might have some knowledge about the bombing. Mr. G was approached by the RCMP in 1995 and he claimed that Bagri was involved in the Air India bombing, along with other Babbar Khalsa (BK) members. He also indicated that Reyat should be questioned further about the bombing, though Parmar was the ringleader. Mr. G initially indicated that Lakhbir Singh Brar was the "…L Singh in question," apparently referring to the person in whose name reservations had been booked on Air India Flight 182 and on the connecting CP flight to Toronto. Parmar, in his purported confession (which did not become known to Canadian authorities until years later), also named Lakhbir Singh Brar as one of the Air India ticket holders.[345] Mr. G soon amended his earlier statement, indicating that he was not referring to the Air India plane that was bombed, but to a CP Air Flight to Toronto which Lakhbir Singh would have boarded under the name of L. Singh during the same period.

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340 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1324-1342; See, generally, Section 1.3 (Post-bombing), Ms. E.
341 *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864; *R. v. Malik and Bagri*, 2004 BCSC 554.
342 *R. v. Malik and Bagri*, 2005 BCSC 350.
343 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1345.
344 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1313-1323, 1330-1344. See Section 1.3 (Post-bombing), Ms. E and Section 1.5 (Post-bombing), Ms. D.
345 See Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

Initially, the E Division Air India Task Force investigators felt that Mr. G's information could be a "major breakthrough" in the investigation, given his position in the Sikh extremist movement at the time of the events. The investigators noted, however, that Mr. G's cooperation would have to be based on an understanding that he would not be charged with any offences and, in fact, they took steps to discuss possible immunity for the Air India case with the BC Crown. At the time, they felt that this should not be a problem, given the benefits of obtaining Mr. G's cooperation.

When Mr. G was further questioned by the RCMP, he stated that he had heard Parmar and Bagri bragging in the months following the Air India bombing, that the BK, unlike other extremist organizations which only had guns, had higher technology to "…further the cause" and to "kill people," and that one of them had added "…look what we have done," which Mr. G interpreted as a reference to the Air India bombing. Mr. G alleged that Bagri had bragged the most, and had claimed that the BK had the capability to "…put the government of India in place." Parmar and Bagri also discussed Reyat, remarking approvingly "…look what our Singh has done," which Mr. G interpreted as a reference to Reyat's role in the bombing.

Initially, Mr. G was adamant that he would not testify in court about his knowledge under any circumstances. However, he indicated that he might be willing to provide a written or recorded statement. The RCMP was concerned about Mr. G's credibility, given some contradictions in his statements and because of the investigators' view that, in light of facts known to them, Mr. G possessed additional information which he was withholding. The Force was also concerned about Mr. G's unwillingness to testify. In general, the investigators believed that Mr. G was "hedging his bets" and refusing to commit himself to the RCMP until it became absolutely necessary. They decided not to pursue the matter further, but to re-contact Mr. G periodically to see if his attitude and willingness to cooperate changed.

In the following months, Mr. G reiterated his willingness to provide information and to identify individuals, places and events to assist the RCMP, but still did not want to testify. E Division investigators decided that the RCMP could continue to receive information from him, since his attitude about giving evidence might change over time. They indicated clearly, though, that the Force could not seriously entertain providing any concessions to Mr. G unless he provided "… full and complete co-operation of an evidentiary nature."

In 1997, Mr. G agreed to testify. He did not ask for financial considerations in exchange for his testimony, but did enquire about protection for himself and his family and compensation for any losses he might incur as a result of his cooperation. He was told by the RCMP that he first needed to provide a statement which could be evaluated by the Crown. Mr. G complied. His statement indicated that he had heard Parmar bragging that the BK had "…the people and technology to inflict extreme damage against the Indian Government." He stated that Parmar did most of the talking, but was supported by comments

from Bagri. He added that Parmar made comments indicating that he had had a part in an explosion or had "obliterated something," which Mr. G felt was a reference to the Air India bombing. The investigators told Mr. G they would contact him again once Crown counsel had assessed the value of his evidence.

The following year, Mr. G approached the RCMP again, indicating that he was "… ready to consider any offers of financial awards and protection from the RCMP" in exchange for his cooperation, which could include testifying. The RCMP did not take him up on his offer at this time. No attempts were made to provide financial assistance or protection.

In 2000, Mr. G again told the RCMP that he was willing to testify. He was advised, however, that "…the Crown was not intending to call him as a witness." The RCMP investigators nevertheless told Mr. G that they did need his assistance in the Air India case, since they believed he had more information than he had previously disclosed. Mr. G stated that he had exhausted his memory and could provide no additional information. He was told by the RCMP that if "the circumstances" changed and he became willing to provide more evidence, the Force would be willing to relay this message to the Crown.

There were serious concerns about Mr. G's credibility and truthfulness, because he had made several conflicting statements to the RCMP over the years. There were also concerns about the value of Mr. G's potential evidence. However, as reflected in Justice Josephson's reasons, both these concerns also attached to most, if not all, of the witnesses who did testify in the Air India trial. Mr. C, in particular, had received substantial financial compensation for his testimony and his credibility was of serious concern, ultimately leading the court to reject his evidence. Given Mr. G's role in the Sikh extremism movement and the other information about him that was available to police through independent sources, it was at least plausible, and indeed perhaps likely, that he had some knowledge about the bombing. Under the circumstances, it is somewhat puzzling that his repeated offers of cooperation were simply rejected without further attempts to satisfy his concerns or demands.

In light of his repeated offers to cooperate – which may put him at risk from current supporters of religious or political extremism – the Commission has decided not to identify Mr. G by his actual name, nor to disclose any documents identifying him, in order to protect his safety. This will also avoid any possibility of jeopardizing the ongoing investigation. In coming to this decision, the Commission is heeding the explicit warning of the Attorney General of Canada through correspondence by its counsel indicating that Mr. G's safety may be jeopardized if the extent of his cooperation with the authorities were to be revealed and that the RCMP may not be able to protect him. The Commission does note, however, that, like Mr. A's information, the information Mr. G provided and the manner in which it was rejected might deserve further examination at a time when safety and/or ongoing investigation concerns will no longer be factors.

5.5 2003 Calls for an Inquiry

In 2003, while the Air India prosecution was ongoing, Bass was again called upon to address the issue of a possible public inquiry into Air India. On June 5th, he prepared a note providing advice about a briefing to be given to the Solicitor General, who had to respond to calls for a public inquiry. The Solicitor General, at the time, was "…referring back to the SIRC review" as the rationale for his position that "…an inquiry is not justified." Bass took issue with this position, noting that there were "serious problems" in terms of the accuracy of the SIRC report. He wrote that, contrary to the SIRC conclusions, there were "…incredible problems between June 23rd, 1985 and mid September [1985]" in terms of cooperation, and that the Supreme Court of BC had found that CSIS had been "unacceptably negligent," in destroying the tapes. Bass wrote that it was "…probably only a matter of time before the media finds its way" to the defence submissions on this issue and runs stories on it, adding that the foreseeable scenario would be that the Solicitor General "…would be asked to choose between the SIRC report and a court decision."[346]

Bass therefore advised that the Solicitor General should be briefed about the issues with the SIRC report, and provided with advice "…not to use it as grounds for rejecting calls for an Inquiry." Rather, Bass indicated that the Solicitor General should be advised to use "…the usual lines" regarding ongoing prosecutions, with a comment that the inquiry issue might be revisited after judicial proceedings had concluded. According to Bass, while it was important not to "proactively criticize" the SIRC review, it was "…equally important that we do not indicate acceptance of its validity."[347]

Bass also felt it important to "…work with CSIS to ensure we have accurate and consistent media lines," though he noted that coming to an agreed position about the validity of the SIRC review could be problematic. Indeed, when CSIS was made aware in 1999 of the criticisms in Bass's February 1996 memorandum, a CSIS employee reviewed the "complete file" and came to the conclusion that it was clear that "…SIRC left no stone unturned during their study," and that the RCMP "…was clearly aware of and consulted throughout the entire SIRC process," and that the cooperation and liaison extended from the "…Commissioner on down."[348] Bass disagreed, testifying that SIRC certainly did not "…make its way to the Taskforce file."[349]

5.6 The Rae Review

In April 2005, shortly after the acquittal of Malik and Bagri, the Honourable Bob Rae was appointed to provide independent advice to the Minister of Public Safety and Emergency Preparedness on whether there remained outstanding questions of public interest about the bombing of Air India Flight 182 that could still be answered.[350]

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346 Exhibit P-101 CAA1007, p. 2.
347 Exhibit P-101 CAA1007, pp. 3-4.
348 Exhibit P-101 CAA0977, p. 2.
349 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11211.
350 Exhibit P-35, p. 3.

Agencies Prepare for Rae Review

The appointment of Bob Rae to review the Air India matter marked the beginning of a flurry of activities at CSIS and the RCMP to resolve cooperation issues. Then RCMP Commissioner Zaccardelli testified that the announcement of the Rae review "…brought a focus to the relationship" between the agencies that had not been there before, and directed their attention "…to be able to demonstrate we're doing something."[351] CSIS Director Judd confirmed that "…there was a greater acuity, if you will, to the relationship with the RCMP obviously because of the public perception that, in no small part, arising out of the Air India case that there were issues that needed to be particularly addressed."[352] Zaccardelli explained that he and Judd said:

> Mr. Rae's been appointed. There could be an inquiry. We've got to be able to say we've done everything we can to deal with some of these irritants and to demonstrate positive solidarity amongst the organizations in spite of what's gone on in the past. So he [Rae] did, in effect, enable us to focus much more clearly on some of these issues.[353]

Thus, beginning in April 2005, RCMP and CSIS held a series of high-level meetings for the purpose of "…trying to get to the root" of the outstanding problems in cooperation.[354] The agencies agreed to move forward in relation to a number of initiatives, with the intent of "modernizing" the RCMP/CSIS relationship. These included: MOU revision; standardizing and centralizing secondment agreements; improvement of managerial exchanges; potential assignments of senior advisors from RCMP to CSIS and vice versa; creation of operational management teams at Divisional/Regional levels; and joint training (to include DOJ participation/orientation).[355]

On October 11, 2005, the RCMP met with and provided a briefing to Bob Rae.[356] During the briefing, Rae inquired about the RCMP/CSIS relationship and about the movement of sensitive/security information and intelligence to actionable criminal information. Importantly, Rae indicated to those in attendance that he "…does not have confidence that if this tragedy was to occur again, that the challenges that occurred between the agencies would not happen again as in the past."[357]

The following day, October 12, 2005, there was a meeting at the "highest level" between CSIS and the RCMP to discuss progress that had been made by the

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351 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11055.
352 Testimony of Jim Judd, vol. 90, December 6, 2007, p. 11854.
353 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11041-11042.
354 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11041.
355 Exhibit P-101 CAA1043(i), p. 2.
356 Exhibit P-101 CAA1110.
357 Exhibit P-101 CAA1043(i), pp. 2-3.

two agencies on the initiatives discussed during the April 2005 meeting.[358] In advance of this meeting, the RCMP prepared a package of "talking points" for Zaccardelli in relation to "RCMP/CSIS Modernization" initiatives.[359] The 24-page "talking points" document provided an overview of some of the perceived shortcomings in the RCMP/CSIS relationship, and then examined a number of "short-term improvements," including revising the MOU, creating an Executive Joint Management Team (JMT) at HQ, and putting in place joint training programs. For each item, the document highlighted "significant changes" that would have to be made, "contentious issues" and a recommendation for further action.[360]

In terms of the existing situation, the talking points document noted that there was a desire at the senior executive level in both CSIS and the RCMP to bring about meaningful improvements in the exchange of information and to modernize the relationship following 9/11. It also stated that CSIS was motivated to make "…changes of its own choosing" in advance of "…changes that may be forced upon it" as a result of the O'Connor Commission and the Rae review.[361]

From the joint executive meeting on October 12, 2005, a number of initiatives were listed for follow-up, many of which were specifically dated for completion prior to the release of the Rae report. Specifically, joint RCMP/CSIS meetings with the Minister and with Rae were targeted to take place prior to November 15, 2005 (the date mentioned by Rae for the release of his report during the October briefing with the RCMP). In addition, the agencies agreed to:

- Finalize the draft MOU;
- Finalize the language of secondment agreements (by the end of October 2005), and bring all secondment agreements in existence in line with the new language (by the end of October 2005);
- Have the RCMP A/Comm. Criminal Intelligence invited to attend future TARC meetings as an advocate of the RCMP (starting by the end October 2005);
- Have the CSIS Assistant Director of Operations (ADO) and RCMP A/Comm. Criminal Intelligence consult and convene a meeting of experts to address challenges in the movement of security intelligence to criminal information (prior to end of 2005);
- Have the CSIS ADO and RCMP A/Comm. Criminal Intelligence consult their HR groups to identify a training expert for each agency to commence the design of a joint investigative training course (by November 15, 2005); and

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358 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11041.
359 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11041, 11058; Exhibit P-101 CAA1043(i).
360 Exhibit P-101 CAA1043(i), p. 10.
361 Exhibit P-101 CAA1043(i), p. 8.

- Put in place an HQ level Joint Management Team (JMT) led by the ADO and the A/Comm. Criminal Intelligence (with its first meeting to be held by November 15, 2005 or as operationally required prior to that date).[362]

After this meeting, Zaccardelli and Judd sent a letter to Rae, updating him on progress that had been made with initiatives to improve RCMP and CSIS cooperation and listing specific measures that would be implemented.[363] However, despite the agencies' apparent enthusiasm for reform at the time, some of the projected initiatives ended up with little follow-up attention and achieving few positive results.

The CSIS Deputy Director Operations (DDO), Luc Portelance, had pointed out at the October meeting that there might be barriers that could prevent the effective legal movement of security intelligence to criminal information. He indicated that the agencies should therefore focus their actions on "…articulating the legal barriers or changes that could alleviate those challenges or set up a structure that allows this to occur." A discussion followed about the need to review the legislation in light of the present-day situation, which was "much different" from the 1985 situation. In that regard, one of the "to do" items agreed upon was that the agencies would convene a meeting of hand-picked experts, including DOJ representatives and others deemed appropriate, to come forward with an innovative set of solutions to this issue.[364] Among the initiatives discussed in the subsequent letter to Rae was a mention that the agencies would:

> …convene a meeting of experts before year's end, to address the challenges inherent in the movement of security intelligence to criminal information, and to identify any legislative changes that would support the goals of both organizations in moving ahead in that respect.[365]

During the Inquiry hearings, we learned that this proposed meeting of experts never did occur:

> **MR. FREIMAN**: …the proposed meeting of experts who were supposed to identify the problems and start working on creative solutions, in fact, never did occur?
>
> **MR. ZACCARDELLI**: I certainly was never advise[d] or – saw any documents of any work that was done up – nor was I ever consulted about my views on that. So I'm not aware of anything – that took place past the meeting with the Deputy Minister of Justice with us.

362 Exhibit P-101 CAA1043, pp. 4-5.
363 Exhibit P-101 CAA1110.
364 Exhibit P-101 CAA1043(i), pp. 3-5.
365 Exhibit P-101 CAA1110, p. 2.

> **MR. FREIMAN**: In fact, sir, other than your articulation of your own problems, and your own issues, and hearing CSIS articulate its issues and problems, are you aware of any legal analysis prepared for RCMP or for CSIS or for both of them jointly by the Department of Justice or anyone else to help to analyze this problem?
>
> **MR. ZACCARDELLI**: No, I'm not.[366]

In explaining why this commitment did not materialize, Portelance indicated that the idea in October 2005 was to undertake to find someone with enough neutrality and experience to chair a working group, but that "…events sort of passed us by," and those individuals who would have been suitable were named to positions and were no longer available. According to Portelance, the agencies then started to engage the DOJ and, more recently, did "…a lot of work ourselves with Justice to start to think about some of those issues." While the expert group was never formed as intended, in Portelance's view "…the intent of that exercise has been fulfilled through other means."[367]

The joint letter from Zaccardelli and Judd to Rae had also indicated that "…work [had] begun anew" on updating the MOU, which would "…refine the existing framework for the sharing, handling and use of information and intelligence."[368] Zaccardelli testified that the revision of the MOU – which was finally signed in 2006 – had actually started in 1998 and that it had taken eight years before a new agreement was struck. He indicated that there was "…very little done in the first seven years because there was simply no willingness to make any modifications on the part of CSIS…."[369]

Professor Wesley Wark also felt that the Rae review provided the motivation that had previously been lacking for the agencies to finally create the new MOU. He explained that there had been "…tremendous political change between 1990 and 2006 in terms of the threat environment, including 9/11, and the legal environment, particularly the *Stinchcombe* decision and the *Anti-terrorism Act*."[370] Yet, despite the changes to the threat and legal landscape, Wark testified that it was the "…concern about trying to get ahead of the findings likely to be reached by the Honourable Bob Rae in his Inquiry" that provided the impetus for a new MOU. Wark stated that, in the end, the deadlock between the two agencies in rewriting the MOU was broken by Rae's Air India review.[371]

At the October 2005 meeting, there had been considerable discussion about whether modifying the MOU was really necessary, since the "ideal situation" was viewed as achieving a change in behaviour rather than creating a legal document. However, the consensus was to "…create the document now,"

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366 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11052.
367 Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11522-11524.
368 Exhibit P-101 CAA1073(i), p. 2.
369 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11059-11060.
370 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1471-1472.
371 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1472.

but to recognize that it would be a living document, since the modernization discussions would continue in the future "…and well beyond the November 15, 2005 deadline."[372]

In the RCMP Commissioner's talking points, it was stated that the CSIS position was that the Service would not accept a requirement to inform law enforcement of criminality it uncovered because the *CSIS Act* specifies that the Service "may" (as opposed to "shall") inform law enforcement as it deems appropriate. It was recommended that the RCMP request that CSIS advise the Force of all "serious crimes" it uncovers through its investigations (i.e., all criminal offences for which the maximum sentence is five years or more).[373] About the utility of this measure in bridging the gap between the CSIS and RCMP positions, Zaccardelli commented in his testimony that it helped a little, but that "…it literally adds nothing in reality," since, in fact, many people involved in terrorist activity "… operate at a very low level of criminality."[374]

Ultimately, the MOU signed in 2006 did not incorporate even the requirement of passing information about the "serious crimes."[375] The information-sharing provision of the MOU states that:

> In accordance with the terms and conditions of this Memorandum of Understanding and pursuant to the *CSIS Act* and ministerial direction, the CSIS may, on its own initiative or upon request by the RCMP, provide information and intelligence in its possession that may assist the RCMP in fulfilling its security related responsibilities.[376]

In Zaccardelli's view, this MOU was not "…a good accommodation of the needs of both the CSIS and the RCMP, and more specifically, the needs of Canada." While it showed "…some desire to collaborate," the underlying structural and legislative problems that needed to be resolved were not dealt with.[377]

To Zaccardelli, the type of measures put in place in preparation for the Rae review could not bring about meaningful change in the relationship between the agencies:

> …in a lot of way[s] what you see now, in terms of talking about the collaboration and the protocols and so on, I don't mean to demean that because I was part of instituting that when I was the Commissioner, but it's not much more than window dressing on a very serious problem and that's what we have to change.[378]

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372 Exhibit P-101 CAA1043(i), p. 3.
373 Exhibit P-101 CAA1043(i), p. 10.
374 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11062-11063.
375 Exhibit P-101 CAA1073.
376 Exhibit P-101 CAA1073, p. 10.
377 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11060-11062.
378 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11040.

The CSIS and RCMP Rae Briefings

Both CSIS and the RCMP provided written reports to Rae.

The RCMP briefing to Rae painted a considerably less rosy picture of the challenges to RCMP/CSIS cooperation than the Force's briefing to SIRC. This time, there was no interdepartmental working group coordinating the agencies' responses, and CSIS and the RCMP in particular openly challenged and criticized each other about many aspects of the Air India investigation.

By this time, the RCMP's position was that legislative changes "must occur."[379] In its briefing, the Force discussed legal impediments to cooperation, but also directly mentioned the lack of trust between the agencies, which it described as "…rooted in problems which surfaced during the initial Air India investigation and were never resolved."[380]

The RCMP submission went on to quote an excerpt from a 1999 "RCMP program review" which described the relationship between CSIS and the RCMP as being threatened by "…unresolved, contentious issues relating primarily to the use of security intelligence information for the purpose of criminal prosecutions." The RCMP indicated that many of the same challenges and concerns that existed in 1985 still remained, and were even "…exacerbated by the evolution of the law and shifting nature of the threat environment."[381]

CSIS, on the other hand, presented a much more positive view of the current situation in its briefing to Rae. It insisted on the tremendous evolution within the Service as a result of "…twenty years of constant review activity" by SIRC, which CSIS indicated resulted in the creation of a now "…robust and complete policy regime" providing guidance to its employees.[382]

Unlike the RCMP briefing, the CSIS briefing to Rae did not mention any current problems in the CSIS/RCMP relationship, describing it as "a close one," and quoting a SIRC comment which indicated that the agencies had shown the capacity to "…assist each other effectively while working within their respective mandates." CSIS concluded its briefing by stating that "…the Service and the RCMP are working closely together on a series of strategic issues," including updating and modernizing the MOU, standardizing and centralizing secondment agreements, developing a JMT and developing joint training courses.[383] Overall, the CSIS briefing to Rae left the clear impression that any serious problems in interagency cooperation were now in the past.

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379 Exhibit P-101 CAA1043(i), p. 17.
380 Exhibit P-101 CAA0335, pp. 42-43.
381 Exhibit P-101 CAA0335, pp. 43, 45-46.
382 Exhibit P-101 CAA1086, pp. 10-11.
383 Exhibit P-101 CAA1086, pp. 11-12.

Comments about the Air India Investigation Narrative

In its comments about the Air India case, the RCMP admitted few mistakes in its own handling of the matter, but this time did not refrain from criticizing CSIS. CSIS responded directly to some of these criticisms in its own briefing to Rae, with the result that both agencies' briefings contained back-and-forth arguments and finger pointing about issues of historical fact. The RCMP not only took the opportunity to "…set the record straight" about some of the SIRC findings, but added other recriminations about the cooperation it had received from CSIS in the Air India matter. The difference in tone and approach, as compared to the RCMP briefing to SIRC, is striking.

The SIRC report had deemed that the sharing of information about the Duncan Blast[384] was an example of good cooperation.[385] In its briefing to Rae, the RCMP argued, rather, that it had not been provided with sufficient detail by CSIS to allow it to understand the significance of this incident prior to the bombing.[386] The CSIS briefing to Rae produced previously had simply stated that "…the Service alerted the RCMP to this event verbally on the same date…."[387] In an internal RCMP memo about the CSIS briefing, which recorded "…certain specifics within the [CSIS] report where we have a slight difference of opinion," it was noted that the CSIS statement that the RCMP was notified of the Duncan Blast on the same date was "misleading."[388] In its briefing to Rae, the Force explained that the Duncan Detachment member who received the information from CSIS was not provided with "…any additional details to indicate the seriousness of [the Duncan Blast] information," and that, in particular, he did not know about the "… guarded manner that Parmar spoke on the telephone intercepts."[389]

In an additional briefing, which it provided to Rae for the express purpose of responding to the RCMP submission, CSIS countered that its contemporaneous report did not support the notion that the Duncan Detachment member was provided with insufficient detail to indicate the seriousness of the information. The Service indicated that, in fact, the issue of Sikh extremism was discussed between CSIS and the RCMP in relation to the Duncan Blast and that the RCMP was aware of Parmar's involvement and understood "…Parmar's history and the threat he presented." The Service added that the RCMP participated in disruptive interviews of Parmar and others, along with the US SS on June 12, 1985, after being specifically briefed about the Duncan Blast incident, and that its significance therefore should have been clear.[390]

In its submission to Rae, the RCMP discussed SIRC's conclusion that there was no suggestion of an RCMP request to CSIS to retain the Parmar Tapes. It asserted that Claxton and Henschel had had a conversation about CSIS intercepts shortly

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384 See Section 1.4 (Pre-bombing), Duncan Blast.
385 Exhibit P-101 CAB0902, p. 44.
386 Exhibit P-101 CAA0335, pp. 18-19.
387 Exhibit P-101 CAA1086, p. 5.
388 Exhibit P-101 CAF0814.
389 Exhibit P-101 CAA0335, p. 19.
390 Exhibit P-101 CAA1088, p. 2.

after the bombing, and that Henschel's notes indicated that tape retention was, in fact, discussed. According to the RCMP, Claxton advised Henschel that evidence from the CSIS installations would be isolated and retained for continuity.[391]

CSIS addressed this issue in its initial briefing to Rae, referring to a "difference of views" with respect to whether CSIS had been requested to retain the Parmar Tapes. According to CSIS, Claxton remembered his exchange with Henschel differently, and stated that he had received no direct request from the RCMP to preserve any or all of the CSIS tapes. Claxton indicated, rather, that he had told Henschel that CSIS would isolate and retain significant information contained in its intercepts. He added that the general commitment made was that if significant information surfaced, he would notify the RCMP and consult with CSIS HQ regarding release.

Like the RCMP, CSIS admitted few mistakes in its own handling of the Air India case, noting in its briefing that, in relation to the Parmar Tapes, "…all the tapes were listened to"; they "…were determined not to contain, in the Service's view, information of evidentiary value"; and they were therefore "…duly destroyed, according to CSIS policy and the law." The Service provided an explanation for interrupting physical surveillance of Parmar immediately prior to the bombing, describing the other activities that the surveillance team had to engage in and explained that, given the threat environment at the time, counter-intelligence targets generally took precedence over counterterrorism targets. CSIS then noted that it was "…aware of the belief held among some members of the RCMP that surveillance was withdrawn from the OP [Observation Post] because the Service was holding a family picnic day in BC Region." Though it could not locate specific documentation about the reasons for vacating the OP on June 22nd, CSIS stated that the RCMP belief was mistaken, and attempted to explain how it could have arisen.[392] This prompted a rather stark response in the RCMP internal memorandum describing disagreements with the CSIS briefing:

> CSIS states they are aware of the belief among some RCMP members that surveillance was withdrawn on Parmar the day the bombs were delivered to the airport because of a CSIS family picnic. CSIS provides some examples which may have lead [sic] to this mistaken impression. The real fact for this false impression is that CSIS did not advise until years later why they did not have surveillance on that date. The RCMP was asking very early on why they had no surveillance on this date and were getting no answers. Months later the RCMP begins to get rumours that CSIS destroyed the tapes. Understandably this begins to look like a cover up and RCMP investigators are very suspicious. Had CSIS been up front in a timely manner on these issues mistaken impressions would have not occurred.[393]

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391 Exhibit P-101 CAA0335, p. 26; See also Section 4.3.1 (Post-bombing), Tape Erasure.
392 Exhibit P-101 CAA1086, pp. 4-5.
393 Exhibit P-101 CAF0814, p. 1.

In the end, the RCMP decided not to address the issue of the family picnic rumours in its briefing to Rae.

The RCMP's submission to Rae discussed the case of Ms. E, a witness at the trial of Malik and Bagri.[394] The Force stated:

> Another witness informed CSIS that Bagri asked to borrow her car to go to the airport on the night prior to the Vancouver/ Toronto flight. This information was not relayed to the RCMP in a timely manner and the rules/admissibility of evidence were again affected.[395]

In its response to the RCMP briefing, CSIS countered that the RCMP submission provided some information that was "simply incorrect" and that it failed to mention that the Force had twice interviewed Ms. E, shortly after the bombings in 1985, and that she had essentially dismissed the officers and asked not to be contacted again by the RCMP. The Service noted that the 1985 RCMP interviews had been conducted as a result of a CSIS surveillance report which had been provided to the Force. CSIS added that its investigator later interviewed Ms. E in 1987 as a result of her name appearing on a list of BK supporters, and that when she revealed her information about Bagri's request to borrow her car, the Service advised the RCMP verbally in October 1987 of what she had said, and it was the RCMP that decided not to pursue the issue, given that she would be a reluctant witness.[396] In fact, the documentary record produced in this Inquiry shows that CSIS had conducted internal research when controversy first arose between the agencies over this issue in 1990, and had been unable to locate any documents or any personnel with a memory of the events that could confirm what information was passed verbally in 1987. The Service's assertion that the information received from Ms. E was passed verbally was based solely on RCMP internal correspondence demonstrating that at least some of Ms. E's information had been revealed to the RCMP in 1987.[397]

In November 2005, Goral prepared an internal RCMP memorandum responding to CSIS's comments on the Ms. E issue. After reviewing the history of CSIS's sharing of this information, Goral concluded that CSIS's comments were partially correct:

> When examining the information provided by CSIS in 1990 it is obvious that CSIS did not [earlier] provide all the information in its proper context. The statement in our report should have read: "Not all this information was relayed to the RCMP in a timely manner."[398] [Emphasis in original]

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394 See Section 1.3 (Post-bombing), Ms. E.
395 Exhibit P-101 CAA0335, p. 29.
396 Exhibit P-101 CAA1088, pp. 3-4.
397 See Section 1.3 (Post-bombing), Ms. E.
398 Exhibit P-101 CAA1045(i), p. 3.

It is not clear whether the RCMP passed on this correction to Rae.

Inaccuracies in Briefings to Rae

Over the course of the present Inquiry, it became apparent that some of the information contained in the briefings to Rae provided by government agencies was not accurate. The inaccuracies include:

- A statement in an appendix to the RCMP submission to Rae[399] that the content of the June 1st Telex – which alerted authorities to the threat of time/delay explosives being planted in registered baggage – was passed to CSIS. In fact, the RCMP did not share the June 1st Telex with CSIS, and several witnesses from the intelligence agency testified about the impact of their lack of knowledge of this information on their analysis and assessment of the Sikh extremist threat prior to the bombing.[400]

- A statement in the RCMP submission to Rae that the security measures that were in place for Air India prior to, and on the day of, the bombing included an "…RCMP dog master checking any reported suspect luggage or baggage and searching the passenger section of the Air India aircraft before departure."[401] In fact, on June 22, 1985, there was no dogmaster available at Pearson airport and the "on call" dogmaster arrived at Mirabel airport after the departure of the flight. As a result, there was no search of the passenger section of the Air India aircraft prior to departure from either airport on the eve of the bombing.[402]

- A statement in a technical paper presented by Transport Canada as part of its briefing to Rae indicating that "…an explosive-sniffer dog was used at Mirabel International Airport for the screening of this flight [Air India 182]."[403] In fact, the Quebec Police Force (QPF) dogmaster who replaced the RCMP dogmaster at Mirabel on June 22, 1985, testified that this statement was not accurate as he was only called in to the airport after the flight had departed and therefore did not screen the flight.[404]

- A statement in the RCMP submission to Rae that the security measures for Air India were increased to level 4 between June 16, 1984 and June 22, 1985.[405] In fact, Mirabel airport was

399 Exhibit P-101 CAA0234, p. 8.
400 See Section 1.2 (Pre-bombing), June 1st Telex.
401 Exhibit P-101 CAA0335, pp. 8-9.
402 See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.
403 Exhibit P-263, p. 46; Exhibit P-101 CAF0070, p. 2.
404 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2672-2673.
405 Exhibit P-101 CAA0335, p. 8.

operating at level 4 security throughout 1985 while, up to June 1985, the Air India flight departing from Toronto Pearson airport was being provided only with level 1 security, the minimum possible RCMP level of security.[406]

- A statement in CSIS's briefing to Rae that the Service had "… informed the RCMP the day after the crash" that it had intercepted Parmar's telephone.[407] The Government has been unable to provide any documentation or testimony to support this claim, which was contradicted by numerous RCMP witnesses at the Inquiry.

- A statement, in an appendix to the RCMP submission to Rae which discussed major Sikh extremist events, that Z, one of the alleged conspirators in the November 1984 bomb plot,[408] took a polygraph test in 1988 which verified the information he had provided in his exculpatory statement and which eliminated him as a suspect in the plot.[409] In fact, the test taken by Z was inconclusive in part and was directly contradicted by the statement of another alleged co-conspirator, Person 1, who passed a polygraph test with complete, as opposed to partial, success.[410]

In addition to these demonstrably incorrect statements, there were also statements made to Rae by government agencies that could be misleading in that they presented only a partial picture of the facts. In Transport Canada's briefing to Rae, it was stated that hijackings and hostage takings in the 1960s had generated a focus on the screening of passengers and carry-on baggage and that the Air India and Narita bombings marked a shift in paradigm as Canada and the international community responded to a "…new threat (coordinated, multiple attacks, that used explosive devices in checked baggage)."[411] In fact, the threat of sabotage was already well-understood in 1985. What had not happened was any substantive change in the security focus to meet that threat.[412]

In relation to these and other mistakes that were identified over the course of the hearings of the present Inquiry, the Government was apparently unable to reach an internal consensus or "single voice" in which to respond. In the first volume of the Attorney General of Canada's Final Submissions, the inaccuracies in the RCMP briefing to Rae are discussed. The Submissions state:

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406 Exhibit P-101 CAA0169, CAF0010, p. 1. The only exceptions prior to June were for the inaugural flight on January 19, 1985 and the April 6, 1985 flight, which were provided an elevated level of protection by the RCMP: See Exhibit P-101 CAA0169.
407 Exhibit P-101 CAA1086, p. 7.
408 See Section 1.1 (Pre-bombing), November 1984 Plot; See Exhibit P-120(b).
409 Exhibit P-120(b), p. 2 (entry for doc CAA1099, p. 2).
410 See Section 2.3.1 (Post-bombing), November 1984 Plot.
411 Exhibit P-138, p. 9.
412 See Section 2.3 (Pre-bombing), Inadequate Preparation for Nature of Threat.

> The RCMP made diligent efforts to provide accurate information to SIRC as it did in its Report to Bob Rae. A few unintentional misstatements were made when relying on file material. Such inadvertent mistakes are hardly surprising given the volume of material to be sorted and analyzed. The RCMP do regret, however, any inaccuracies in the information they provided.[413]

In the second volume of the Final Submissions, the AGC refers to the "allegation" that Transport Canada and the RCMP had misinformed Rae in relation to aviation security. The tone is quite different:

> Mr. Rae's mandate was not to inquire into the facts and make findings. Rather, it was to review material relating to the tragedy … with a view to identifying outstanding questions and options for addressing them. In his own words, his report was not "a definitive account of every event related to the Air India disaster but rather an assessment of the issues that need to be examined more fully." Throughout the summer and fall of 2005, Government officials collected historical documents and provided them in a timely fashion to Mr. Rae. The information they provided to him was complete and correct based on their review of the material available to them at that time. However, the process of briefing Mr. Rae was ongoing. Mr. Rae discharged his mandate in a summary manner, releasing his final report on November 23, 2005. Any inaccuracies in information given to Mr. Rae were a result of this abbreviated process, complicated as it was by the voluminous material and its historical nature.[414] [Emphasis added]

No evidence was presented before this Inquiry suggesting that the inaccuracies and incomplete statements in briefings to Rae, significant though they may have been, were in any way intentional on the part of the government agencies. As pointed out by the AGC, there were short timelines for the Rae review, which may not have afforded the opportunity for the agencies to conduct thorough file reviews in preparation for their briefings. It deserves mention, however, that the briefings do not contain any inaccuracies or errors that were unfavourable to the positions of the agencies that authored them. It appears that somewhat greater care was exercised to avoid these types of errors than was devoted to ensuring that even facts unfavourable to an agency's position were recounted fully and accurately. It also deserves mention that many of the Rae materials were provided to this Commission of Inquiry over a year after their submission to Mr. Rae, with the same inaccuracies repeated – and with no comment or correction by the Government.

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413 Final Submissions of the Attorney General of Canada, Vol. I, para. 322.
414 Final Submissions of the Attorney General of Canada, Vol. II, paras. 264-265.

5.7 The Present Commission of Inquiry

Unlike the situation that developed during the Rae review, the Government again chose to "…speak with one voice" to this Inquiry, as it had done for the SIRC Review. One team of legal counsel appeared on behalf of the Attorney General of Canada and represented all potentially affected departments and agencies, as well as the Government itself. The Government sought to minimize interagency criticism and to present a unified position, rather than advocating for, or at least explaining, the differing positions and viewpoints of the agencies about the facts and policy issues under consideration.[415] This resulted in Final Submissions on behalf of the Attorney General of Canada which were at times self-contradictory, and which ended up advocating maintenance of the status quo. The Final Submissions defended the response of the government agencies involved in the Air India narrative as entirely adequate under the circumstances, and the protocols and practices currently in place were presented as having resolved any of the issues that might have surfaced in the past.

No Apologies

Though not blaming each other as much, or as openly, as during the Rae review, government agencies were still not disposed to admit any mistakes of their own in relation to the Air India matter. Again, the Government maintained that it had met all of its security obligations in relation to Air India prior to the bombing, and that the security measures for which its agencies were responsible were adequate.[416]

As part of its seemingly never-ending quest to demonstrate that there was no "specific threat" to Air India,[417] the Government launched an all-out attack on the testimony of James Bartleman, who stated that he saw a CSE document indicating that the June 22, 1985 Air India Flight 182 would be targeted for attack.[418] The Government submitted that Bartleman's testimony was "inaccurate" and that it was impossible that events occurred as he described.[419] Government witness after Government witness testified that they never saw a document like the one described by Bartleman, that they would have raised general alarm if they had, and that such a document could not have existed without their having seen it.[420]

In fact, the concept of "specific threat," which the Government so insistently relied on, only obscured the discussion. The term was so narrowly, yet inconsistently, defined by those who used it that every witness could claim that there was no specific threat. However, many direct threats to Air India, much

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415 See Volume One of this Report: Chapter II, The Inquiry Process.
416 See, generally, Final Submissions of the Attorney General of Canada, Vol. II.
417 See Final Submissions of the Attorney General of Canada, Vol. II, paras. 116-198 and Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.
418 See Section 1.7 (Pre-bombing), Testimony of James Bartleman.
419 Final Submissions of the Attorney General of Canada, Vol. I, paras. 184-205.
420 See Section 1.7 (Pre-bombing), Testimony of James Bartleman.

like the one referred to in the document Bartleman says he saw, were received by the Government prior to the bombing, with no general alarm having been raised and no anti-bombing security measures having been implemented.[421] By clinging to the concept of "specific threat," which was never meant to apply to circumstances such as those at issue in the current Inquiry, the Government avoided confronting the real issue of the adequacy of the security measures implemented in light of the threat information available, and simply continued to deny any mistakes or deficiencies.

In maintaining that the Government had made no errors in the security afforded to Air India on June 22, 1985, the Attorney General of Canada took the position that it was not a mistake to send the RCMP dogmaster for Pearson airport away on training without coverage of a backup dogmaster during a time when Air India was operating at the second highest possible level of security alert. The AGC Submissions pointed to the RCMP "Hand Search Team" – a team that was responsible for overseeing a process of passenger-baggage matching once the dogmaster had completed conducting a search of the luggage – and described it as sufficient backup for the dogmaster and a bomb-sniffing dog.[422] The Government attempted to portray the Hand Search Team as being actually responsible for opening and hand searching the luggage, a claim that was contradicted by the evidence heard in this Inquiry. In fact, the evidence showed that the misnamed Hand Search Team was not an adequate substitute for the dogmaster. It would also not have been effective in the case of a suicide bomber.[423]

Overall, the Government denied that it had received sufficient threat information to be able to prevent the bombing, maintaining that "…even the most astute analyst" examining the pre-bombing threat information "…would still not have had enough information to prevent the tragedy."[424] While it is a matter of speculation whether the bombing would have been prevented if the threat information had been properly identified, reported, shared and analyzed,[425] the Government goes one step further in arguing categorically that the bombing *could not* have been prevented. More importantly, this stance glosses over the reality that relevant information was not identified or shared so that no one had the opportunity to try to piece the mosaic together.[426]

The Government also did not admit any mistakes or deficiencies in the agencies' post-bombing investigation of the Air India disaster.

The Attorney General of Canada claimed that, once CSIS and the RCMP discovered that Mr. Z was speaking to both agencies, "…the response by both agencies was a careful, measured one which attempted to preserve the viability of the

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421 See Section 1.7 (Pre-bombing), Testimony of James Bartleman.
422 Final Submissions of the Attorney General of Canada, Vol. II, paras. 242, 252-254.
423 See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.
424 Final Submissions of the Attorney General of Canada, Vol. I, para. 183.
425 See Section 1.12 (Pre-bombing), A "Crescendo" of Threats and Section 3.6 (Pre-bombing), Lack of Government-Wide Coordination in Threat Assessment Process.
426 See Section 3.6 (Pre-bombing), Lack of Government-Wide Coordination in Threat Assessment Process.

source for the purposes of both."[427] In fact, CSIS witnesses testified that they were forced to terminate their association with the source, despite an initial, seemingly ideal, agreement with the RCMP to develop the information jointly, and that this was detrimental to CSIS operations.[428] The Attorney General of Canada also claimed that once the RCMP took the lead on the Mr. Z information, "…they followed up and investigated thoroughly," including with the use of polygraphs, only to find that "…the lead dissolved into another dead end."[429] In fact, the evidence heard in this Inquiry shows that the RCMP's initial follow-up investigation of this information consisted simply of comparing the appearance of the suspects identified by Mr. Z with the Jeanne ("Jeanie") Adams descriptions and composite drawing, in circumstances where Adams had provided many different descriptions, had indicated that she did not recall the suspect's face and had said that the composite drawing was wrong. The Mr. Z information was received in 1986, but it was not until 1988 that some of the suspects were actually interviewed, and not until 1997, over ten years after the information was received, that polygraph examinations were conducted.[430]

Though the destruction of the notes and recordings for the CSIS interviews with Ms. E was found by the British Columbia Supreme Court to constitute a violation of the accused's *Charter* rights, and though it was clearly contrary to CSIS's own policies at the time,[431] the Attorney General of Canada also did not admit any mistakes or deficiencies on this account.[432] The Attorney General of Canada's Final Submissions admitted that it was unclear whether CSIS investigators even knew about the Security Service note-taking policy inherited by CSIS, which was not rewritten for specific CSIS use until March 31, 1992. The fact that the policy was not being followed, however, simply led the Attorney General of Canada to conclude that it may not have been applicable. Both the Security Service policy and the subsequent rewritten CSIS policy – which provides for the preservation of notes in cases where CSIS investigators receive crucial criminal information – would have required the preservation of the notes of the interviews with Ms. E. Nevertheless, the Attorney General of Canada simply asserts that, in destroying his notes in circumstances in which he knew that he would likely end up in court in connection with Ms. E's information, the CSIS investigator "…followed established practice."[433]

The Attorney General of Canada did not even admit a mistake by CSIS in the erasure of the Parmar Tapes, which continued after the bombing and after the RCMP's interest in Parmar as an important suspect was known to CSIS. The Attorney General of Canada's Final Submissions blandly state that "CSIS followed policy as they understood it and erased the tapes." The AGC's Submissions

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427 Final Submissions of the Attorney General of Canada, Vol. I, para. 257.
428 See Section 1.4 (Post-bombing), Mr. Z.
429 Final Submissions of the Attorney General of Canada, Vol. I, para. 259.
430 See Section 2.3.2 (Post-bombing), Mr. Z.
431 See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.
432 See Final Submissions of the Attorney General of Canada, Vol. I, paras. 445, 498-503.
433 See Final Submissions of the Attorney General of Canada, Vol. I, para. 502.

continue to defend the CSIS tape retention/erasure policy, as did many present and former CSIS officials who testified in this Inquiry. The Final Submissions fall back to the familiar refrain that, though intercept product collected by CSIS in counterterrorism investigations may have relevance to a criminal prosecution, "CSIS does not collect information for criminal prosecution purposes and furthermore has never been directed to do so by a Minister or any of its varied review bodies."[434]

The AGC maintained this position about the tape erasure despite the testimony of the former CSIS DG CT Jim Warren, who stated that the Parmar Tapes were erased because of an "oversight" which resulted in no orders being given to CSIS personnel to stop applying the default erasure policy after the bombing. Warren, at least, candidly added that the erasure was done in error, and that "CSIS has acknowledged and does acknowledge the error in destroying the tapes."[435] Another retired CSIS executive, Jack Hooper, who was the Assistant Director of Operations and then the Deputy Director of Operations designate prior to his retirement in May 2007, also concurred that everyone at CSIS wished they had kept the Parmar Tapes. He added that there was merit to the suggestion that erasure should have stopped with the bombing and that the tapes should then have been retained.[436] In an interview in the documentary *Air India Flight 182* released in the spring of 2008, Hooper went further and indicated that someone should have stopped CSIS personnel from erasing the Parmar Tapes, that erasure was a mistake that should have never happened, and that CSIS had recognized that it should have never happened.

A similar acknowledgment, however, did not come from Jim Judd, the Director of CSIS during his testimony before this Inquiry, though he did note that, in light of past experience, the Service had adopted a practice of retaining counterterrorism intercepts for longer than the period provided for in the CSIS policy.[437] Similarly, no such acknowledgement of error came from former CSIS Director Reid Morden, who testified that he had seen nothing that caused him to alter his view that the tapes had been erased in accordance with policy.[438] Nor, certainly, was Hooper's view the position articulated by the Attorney General of Canada who represented Government and the agencies. Not only do the AGC's Final Submissions not admit mistakes or deficiencies in connection with the erasure, but Government counsel raised objections during questioning at the Inquiry hearings designed specifically to emphasize that, despite the BC Crown's admission of "unacceptable negligence" during the trial of Malik and Bagri, CSIS itself had never made any admissions of negligence in relation to the tape erasures.[439]

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434 Final Submissions of the Attorney General of Canada, Vol. I, para. 117.
435 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5817-5818, 5895.
436 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6273-6274.
437 Testimony of Jim Judd, vol. 90, December 6, 2007, pp. 11847, 11860, 11875.
438 Testimony of Reid Morden, vol. 88, December 4, 2007, pp. 11429-11431.
439 See Representations by Tracy McCann during Testimony of Reid Morden, vol. 88, December 4, 2007, pp. 11428-11429.

The fact is that, throughout this Inquiry, no one on behalf of the Government of Canada or its agencies ever made any apology to the families of the victims of Air India Flight 182 for any mistakes or deficiencies in the government agencies' actions in relation to the bombing, including the pre-bombing threat assessment and security measures and the post-bombing investigation. While many witnesses formulated expressions of sympathy or condolences for the families, no one apologized, either personally or on behalf of the government agency for which they worked. The AGC's Submissions, which present the unified position of the Government and its agencies, also contain no apology, nor even any admission that deficiencies existed and mistakes were made. Instead, the Submissions caution against assigning blame with the benefit of hindsight[440] and go on to provide justifications for all of the actions taken by Government authorities before and after the bombing.

Upon reviewing the three-volume Submissions, one is left with the impression that there were no deficiencies in the policies, practices and behaviour of Government or its agencies, only "challenges" to be addressed. The evidence heard in this Inquiry revealed clear deficiencies in the Government's assessment of the threat of Sikh extremism and in its security response in 1985, as well as deficiencies in the interagency cooperation throughout the post-bombing investigation of the Air India case. Whether or not they contributed to a failure to prevent the bombing or to a failure to bring those responsible to justice, it is regrettable that, even after more than 20 years have elapsed, the Government was still not willing to admit these clear deficiencies nor to apologize for them to the families.

Stonewalling

As outlined earlier in this report, the Commission experienced significant difficulties in obtaining information and documents from the Government and in making information public.[441] In particular, the Government often sought to debate the relevance of the Commission's requests and to persuade the Commission not to pursue certain information that the Government viewed as irrelevant. In some cases, the Commission uncovered highly significant new information precisely as a result of continuing to pursue requests that had been met with resistance. The "Mr. A" story, notably, was found to illustrate many of the issues at the heart of the Inquiry's mandate. Nevertheless, when information about Mr. A was initially requested, Government counsel advised in correspondence, factual content of which has been classified as "Top Secret," that this was an avenue of inquiry that led nowhere and would only result in "…a tremendous waste of time and resources at the expense of matters germane to the Terms of Reference." In the end, when the Commission persisted in its request, the Government did provide, insofar as the Commission is aware, all of the information requested.

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440 Final Submissions of the Attorney General of Canada, Vol. I, paras. 18-19.
441 See Volume One of this Report: Chapter II, The Inquiry Process.

Another incident, however, is of even greater concern. It relates to Mr. G, the individual who had provided information to the RCMP about Bagri and Parmar's alleged statements that the BK had technology to cause real damage and had "obliterated" something. Mr. G approached the RCMP in January 2007 and stated that he was willing to give evidence at "…any Inquiry or Commission." What Mr. G said, at that point, was that he had been approached in the past by police and prosecutors to give evidence at the Air India trial, that he had been reluctant to give evidence at the time, but that he now wanted to testify before this Inquiry.

In January 2007, Commission counsel had independently become interested in Mr. G. Even though Commission counsel were not aware at the time of the information Mr. G had provided in 1995 or of his most recent approach to the RCMP, there were separate reasons to believe that he might have knowledge about the bombing. Commission counsel expressed a clear interest in information about Mr. G during interviews with RCMP witnesses and soon expressed their intention to lead evidence about him in the Inquiry hearings.

Meanwhile, the RCMP Air India Task Force was advised in February 2007 that Mr. G had contacted the RCMP. The Air India investigators immediately expressed interest in obtaining his information. They were, however, concerned about Mr. G's motivation for coming forward at that time, and they noted that his information and contacts should be treated carefully. The RCMP contacted Mr. G to obtain further information and he advised that he was willing to meet with Air India investigators.

In March 2007, investigators from the Air India Task Force had a brief conversation with Mr. G. He reiterated that he wanted to give evidence at the present Inquiry. He said that he had talked to police in the past and had provided a statement. He explained that he now wanted to testify because his views on terrorism had changed and because he had concerns for the safety of his family. He indicated that his story had not changed since he had spoken to police in the past, and that he would also be willing to give evidence in a trial. He repeated, again, that he wanted to testify at the Inquiry.

Throughout this period, the RCMP did not advise the Commission that an individual with potential knowledge about the bombing wanted to testify at the Inquiry, let alone that this individual was Mr. G, about whom Commission counsel had been making enquiries. Nor did the RCMP advise the Commission subsequently. In fact, but for an accidental discovery in the course of a data search for other purposes, the Commission would most likely never have discovered that Mr. G had expressed a willingness to provide information to the Inquiry.

Though it did not advise the Commission, the RCMP decided to take steps to arrange a more comprehensive meeting with Mr. G as soon as possible. Mr G agreed and cooperated with the arrangements. Despite ongoing concerns about Mr. G's motivations and credibility, the Task Force felt that he might have information that he had not disclosed previously that could assist in the investigation.

While arrangements were being made for a meeting between the RCMP and Mr. G under the appropriate conditions, Task Force investigators had brief conversations with him in May and June 2007. He reiterated his willingness to cooperate with the RCMP, but also indicated that he was considering attempting to contact the Inquiry directly to see if he could testify anonymously. The investigators told him that they would not prevent him from making this contact, but asked that he delay it until the Force had had an opportunity to make further arrangements for a proper meeting.

Ultimately, the Force did interview Mr. G under the desired conditions in September 2007. At that time, he again talked about this Commission and questioned why the RCMP were not "…allowing him to do anything." He explained that he had been contacting an RCMP officer to request assistance in setting up a secure line for him to speak with the Commission and that the officer had not been returning his calls (the Commission saw no trace of such calls in any of the documents it reviewed). The investigators told him that "… at no time we were impeding his contact to the Commission of Inquiry," and that "…if he wanted to speak to them he could do that." They informed him, however, that the Commission counsel "…were not investigators" and that they would "…refer him to the police." During the interview, Mr. G also requested to see the statements he had previously given to the RCMP to refresh his memory, but the investigators refused. Generally, the investigators felt that, though some of the information provided by Mr. G might be correct, the discrepancies in his various statements were "glaring." The RCMP did not attempt to pursue further interviews with Mr. G after this. RCMP documents indicate that, in April 2008, a request was made for the file to be reviewed in order to ensure that the task of assessing Mr. G's offer of information was complete and could be concluded.

Despite his repeated requests, the RCMP did not come forward to advise the Commission that Mr. G wanted to testify at the Inquiry, nor did it take any steps to facilitate contact between Mr. G and the Commission. Instead, in March 2007, Government counsel acting on behalf of the RCMP advised Commission counsel that Mr. G had recently expressed a desire to cooperate and to provide information to police. Based on this version of events, the Government now sought additional redactions to existing Commission documents, in order, as it maintained, to protect this ongoing investigation. Nothing was said about the fact that Mr. G was actually willing to testify at the Inquiry and was asking to contact the Commission. A number of E Division investigators were involved in discussions with Commission counsel that were intended to explain the renewed RCMP investigative interest in Mr. G that was being used as the basis to seek additional redactions. Among the investigators providing these explanations were officers directly involved in the discussions with Mr. G about his desire to testify at the Inquiry. They were silent as to this salient fact. Whatever it may have disclosed to its own counsel, the RCMP was certainly aware of the whole story, even as Commission counsel was being told only a part.

The RCMP now acknowledges that it failed to notify the Commission of Mr. G's interest in testifying at the Inquiry, that it asked Mr. G to delay contacting the Commission, and that it sought additional redactions after Mr. G asked to speak

to the Inquiry. The RCMP indicates, however, that this was not motivated by any intention to impede the Commission's work, or to impede Mr. G's ability to contact the Commission, but only resulted from the investigators' focus on their ongoing investigation and from their concern to ensure that this new initiative was protected. Accepting those statements at face value, the fact remains, however, that even after the RCMP had completed its interview with Mr. G and had decided to stop pursuing any follow-up on this initiative in light of the discrepancies in Mr. G's statements, the Commission was still not notified that he had expressed an interest in making contact.

In the fall of 2007, the Commission came upon information suggesting that Mr. G had offered to testify at the Inquiry. In March 2008, the Government responded to a Commission letter written months earlier that had requested further information and had specifically asked whether Mr. G had expressed interest in speaking with representatives of the Inquiry. In that response, the Government finally advised the Commission that Mr. G "…was at one point prepared to speak with representatives from the Commission." Even at this point, Government counsel took the position that Mr. G remained "…a person of interest with respect to ongoing investigations which must not be jeopardized" and asked that if Commission counsel wished to contact Mr. G, arrangements be made through the Government and that the RCMP be involved. When Commission counsel responded by asking that the arrangements be made as suggested by Government, the RCMP provided a briefing to outline the sensitivity of the issue and the risk of compromising protected information in exploring this aspect. It was after this briefing, and without informing Commission counsel, that the RCMP made a decision to take no further steps to pursue Mr. G's information, instead noting that the task of assessing his most recent offer of cooperation could be considered completed after a review of the file.

The Commission subsequently secured from the RCMP the documentation upon which this description of the events and the account of Mr. G's information set out earlier in this section are based. The Commission conducted further enquiries, as it deemed feasible in the circumstances, in order to provide relevant information germane to its mandate in this Report without jeopardizing the safety of Mr. G or any ongoing investigations.

The conduct of the RCMP in its dealings with this Commission in relation to Mr. G is deeply troubling.

Ongoing Interagency Debates

Despite its attempt to speak with one voice, the Government could not eliminate the undertone of interagency criticism, particularly between CSIS and the RCMP, which has permeated their discourse since the early days of the Air India investigation. With the rare exception of a few retired employees such as, notably, former RCMP E Division member S/Sgt. Robert Solvason and, to an extent, former CSIS DG CT Jim Warren, Government witnesses did not

admit mistakes or deficiencies on the part of the agency with which they were associated. However, many were willing to point the finger at other agencies in defending their own.

RCMP witnesses blamed CSIS for not disclosing the Parmar Tapes early in the investigation,[442] while CSIS witnesses blamed the RCMP for driving potential sources away without anyone benefitting.[443] RCMP witnesses blamed CSIS for not advising the Force until 1996 that it had a large quantity of intercept tapes recording the communications of Bagri, thereby delaying the RCMP's own wiretap application at the time,[444] while CSIS witnesses felt that the RCMP, at times, needed to be "re-sensitized" to the need to protect sources, in particular after Ms. D's identity was published in a newspaper because of an RCMP oversight in sealing warrant applications.[445] The former RCMP Liaison Officer in Toronto, Ron Dicks, testified that access to CSIS materials was constrained and restricted, and that there was not a free flow of information coming from CSIS,[446] while the former CSIS Liaison Officer in BC, John Stevenson, testified about feeling run off his feet in the early years, particularly as he had to deal with "…self-professed CSIS bashers" at the RCMP, adding that the information flow in the liaison program was "…essentially a one-way street" with the RCMP not reciprocating CSIS's sharing.[447] RCMP witnesses continued to question the sufficiency and timeliness of the information provided by CSIS about the Duncan Blast,[448] while CSIS witnesses maintained that the information was passed immediately to the RCMP for investigation.[449]

With the many irreconcilable positions taken by the different agencies about the Air India narrative, the Government at times had difficulty in meeting its stated goal of speaking with one voice and in presenting a clear and coherent position before the Inquiry.[450]

The Government had difficulty harmonizing its submissions about whether or not CSIS authorized the use of its information in an RCMP application for authorization to intercept private communications (the "September 19 affidavit"), a matter that was the subject of conflicting evidence from RCMP and CSIS witnesses and documents.[451] At one point, in its Final Submissions, the AGC stated that "…[w]hether due to a miscommunication or not," RCMP officers

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442 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11201-11202, 11239-11240.
443 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9435-9436, 9447; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7400-7401, 7403-7404.
444 Exhibit P-101 CAA0969, p. 23; Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11182-11183; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7820-7822.
445 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8331-8332.
446 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7563.
447 Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7656, 7723; See also Testimony of James Warren, vol. 48, September 19, 2007, p. 5915.
448 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11243.
449 Testimony of James Warren, vol. 48, September 19, 2007, p. 5821.
450 See Volume One of this Report: Chapter II, The Inquiry Process.
451 See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

understood that they did have permission from CSIS to use the material.[452] Later in the Submissions, the AGC stated categorically that CSIS HQ had not authorized the use of its information, but added that it was possible that CSIS BC Region had indicated a willingness to obtain permission from CSIS HQ.[453] Nowhere, however, did the AGC come out and say whether the Government accepts that there was a miscommunication, or whether the understanding of either CSIS or the RCMP was wrong.

The Government also did not take any position about whether or not the RCMP asked CSIS to retain the Parmar Tapes. Though conceding that the RCMP did not make a written request for retention, the AGC did not tackle the issue of whether or not the Henschel/Claxton conversation should be viewed as a retention request, simply stating in its Submissions that Henschel and Claxton had a different understanding of the "agreement" they reached.[454]

Similarly, the Government did not propose any way of harmonizing the different views expressed by CSIS and the RCMP about cooperation in connection with the Duncan Blast, simply stating that "…[t]he RCMP provided the assistance required to CSIS"[455] without indicating whether what CSIS told the RCMP was sufficient.

While the Government sometimes had difficulty presenting a clear, "unified" position about matters subject to debate among its agencies, its decision to speak with one voice did have an impact on Government counsel's apparent willingness and ability to test statements made by Government witnesses that were critical of other government agencies. This is hardly surprising since the AGC was acting both for the agency being criticized and for the agency and individual doing the criticizing.[456] As a result, as was the case with the SIRC review, the Government decision to coordinate the response of its agencies had an impact on how fully and frankly interagency grievances were aired or explored.

Current Level of Interagency Cooperation

Despite the continuing disagreements between CSIS and the RCMP about elements of the Air India narrative, the evidence that was presented at this Inquiry by Government witnesses about the current level of cooperation between the Service and the Force painted an overwhelmingly positive picture.

RCMP Commissioner Elliott testified that "…we have a much better situation now with respect to the cooperation and flow of information between our two organizations than we had in the past," and indicated that it was unlikely that there would be situations of conflicts between agencies that could not be

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452 Final Submissions of the Attorney General of Canada, Vol. I, p. 133, Footnote 401.
453 Final Submissions of the Attorney General of Canada, Vol. I, para. 368.
454 Final Submissions of the Attorney General of Canada, Vol. I, para. 353.
455 Final Submissions of the Attorney General of Canada, Vol. I, para. 173.
456 See Volume One of this Report: Chapter II, The Inquiry Process.

resolved. He felt that, if another catastrophe of the magnitude of the Air India bombing were to occur now, the cooperation issues that arose in the past would not arise again.[457] Similarly, Deputy Commissioner Bass, the Commanding Officer for E Division (British Columbia), indicated that at present CSIS and the RCMP have "…a very close relationship" in BC.[458]

Assistant Commissioner McDonell, in charge of National Security Investigations at RCMP HQ, talked about the "open relationship" which now exists with CSIS. McDonell stated that he had no concerns about CSIS's ability to recognize information of interest to the RCMP since, in the current open relationship, CSIS now discloses all information that could possibly be relevant.[459] Asked about the need for guarantees that the current climate of openness and discussion between CSIS and the RCMP would continue, McDonell testified:

> **A/COMM. McDONELL**: I cannot see the Government of Canada standing for anything less than the current relationship we have in CSIS. I can't see the National Security Advisor, who is responsible for the overall and has a view of exactly where we're going, letting that devolve and I certainly can't accept that either the Director of CSIS or our Commissioner would let that happen. And I know myself and my counterpart will not let that happen – we've gotten to a good state and it's recognized throughout both organizations and I believe in the government that it's a good state.
>
> **MR. SHORE**: So you're optimistic. I hope we can be.
>
> **A/COMM. McDONELL**: I am.[460]

The evidence of RCMP members of the Integrated National Security Enforcement Teams (INSETs) – multi-agency investigative teams created in 2002 and focused on national security matters[461] – was to a similar effect. Members in the various divisions across the country testified that current cooperation between CSIS and the RCMP is at a "high level."[462] Insp. Ches Parsons of A Division (Ottawa) discussed the "deconfliction" process in place since 2005 at the Joint Management Team (JMT) meetings, which involves a common review of CSIS interests and RCMP investigations and a discussion of the approach to be taken in case of overlap.[463] He noted that he had not yet encountered a situation where there

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457 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11807, 11825, 11831.

458 See, generally, Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11283-11284.

459 Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12636, 12638.

460 Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12663-12664.

461 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10445. See, generally, Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.

462 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10476; Testimony of Trevor Turner, vol. 82, November 23, 2007, p. 10477.

463 Testimony of Ches Parsons, vol. 82, November 23, 2007, pp. 10457-10458; Testimony of Mike McDonnell, vol. 95, December 13, 2007, p. 12636; Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11473-11474, 11478-11481. See, generally, Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.

was a disagreement between the agencies, and added that CSIS and the RCMP had now evolved to a point where a conflict that the agencies would be unable to resolve together would not happen.[464] McDonell confirmed that, since the implementation of the JMT in 2005, he had never seen a situation where CSIS and the RCMP both had an interest in an investigation that got to the point of conflict. Like his colleagues from the INSETs, he could not imagine a situation that could not be resolved between the agencies and which would require a "tie breaker" or arbiter. He indicated that it was realistic to think that the spirit of cooperation between the agencies was now so embedded that it could not unravel.[465]

Insp. Jamie Jagoe of O Division (Ontario) and Sgt. Trevor Turner of E Division (British Columbia) testified that they believed CSIS would now "…go to all extents possible" to share intercept information with the RCMP were there a situation similar to that which had arisen in the early days of the Air India investigation.[466] Supt. James Malizia of C Division (Quebec) and Jagoe both felt that the current high level of cooperation was the result, not only of good personal relationships between the individuals in charge, but of the mechanisms, systems, processes and protocols instituted by the agencies.[467]

The views expressed by CSIS witnesses were quite similar. CSIS Director Jim Judd indicated that there had been "a lot of changes" in the CSIS/RCMP relationship over the last several years and that "…the relationship is working quite well now." Like Commissioner Elliott, he was confident that if another tragedy like Air India were to occur today, "…it would be dealt with completely differently."[468]

CSIS DDO Portelance described the current cooperation mechanisms as providing for "…a fulsome dialogue" between the agencies, and commented that those mechanisms were enshrined in increasingly rigorous ways since their initial implementation in 2005. He described CSIS's current relationship with the RCMP as "very connected," and noted that "…we know each other personally, at senior levels, working levels…." He also testified that, in light of the quality of the cooperation, he did not believe that conflicts could arise which could not be resolved directly between the agencies. Like McDonell, Portelance stated the view that, in the current system, there was no risk of CSIS not recognizing information of interest to the RCMP, since CSIS's "…default mechanism has been to disclose," such that the Service discloses its information "…quite aggressively to the RCMP." He testified to a belief that cooperation is here to stay: "I firmly believe that the current protocol, the MOU provides a framework that will outlive changes in personalities. I truly do believe that."[469]

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464 Testimony of Ches Parsons, vol. 82, November 23, 2007, pp. 10457-10458.
465 Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12637, 12639, 12656.
466 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10476; Testimony of Trevor Turner, vol. 82, November 23, 2007, p. 10477.
467 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, pp. 10479-10480; Testimony of James Malizia, vol. 82, November 23, 2007, pp. 10479-10480.
468 Testimony of Jim Judd, vol. 90, December 6, 2007, pp. 11855-11856, 11869-11870.
469 Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11474, 11476, 11484-11485, 11517, 11520.

The Directors General of three of the CSIS Regions also testified that the model now in place for "…effective and efficient exchange of information" between CSIS and the RCMP "…works extremely well." R. Andrew Ellis of the CSIS Toronto Region emphasized that "…the relationships are exceptionally sound," and noted that this was no longer only the result of good personal relations, but of a developing convention between the agencies. He stated: "I don't think, as you say, it will ever unravel."[470]

In its Final Submissions, the AGC noted that the relationship between CSIS and the RCMP "…is better than it has ever been."[471]

Nevertheless, it is worth remembering that, in preparing for the Rae review, the RCMP had expressed the view that, as of late 2005, it was "evident" from recent experience and reviews that there was a need to improve the RCMP/CSIS working relationship. As of 2005, the agencies still seemed to misunderstand each other. An RCMP note from that period observed that CSIS had little understanding of police investigations and court proceedings, and that the RCMP also lacked understanding of CSIS's operating and investigative processes.[472] A recent joint operational file review had led both agencies to conclude that many of the cooperation problems present in 1985, including misunderstanding of the other agencies' procedures and confusion about legal requirements, were still present.[473] In its October 2005 briefing to Rae, the RCMP indicated that there were ongoing problems in the relationship with CSIS, mentioning a lack of trust rooted in unresolved issues dating back to the early years of the Air India investigation.[474]

Accounts from 2005 show that, as of that date, the RCMP still felt that CSIS had not demonstrated the ability to make the determination as to what information was relevant for the RCMP, "…from Air India twenty years ago to Project [redacted] today." The RCMP maintained that when CSIS did share information, it was often too late in their investigations, "…after many opportunities for law enforcement to gather evidence have been lost," and that, in general, "…CSIS disclosures appear to be producing more problems than benefits for RCMP investigators."[475] During his testimony at this Inquiry, the CSIS DDO disagreed vigorously that such perceptions were accurate, even in 2005, indicating that CSIS in fact had been disclosing aggressively to the RCMP. Accurate or not, though, those perceptions were still present at the RCMP, as reflected in the Force's briefing to Rae, and Portelance explained that this was part of the reason the agencies decided "…to create a system whereby, there would be so much transparency, so much openness, that that kind of thinking would hopefully disappear."[476] The initiatives being referred to included proposed measures to improve cooperation such as revising the MOU, standardizing secondment agreements, developing joint training courses and creating a JMT.[477]

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470 Testimony of Andrew Ellis, vol. 82, November 23, 2007, pp. 10539, 10575-10576.
471 Final Submissions of the Attorney General of Canada, Vol. I, para. 409.
472 Exhibit P-101 CAA1043(i), pp. 8-9.
473 Exhibit P-101 CAA0335, pp. 45-46.
474 Exhibit P-101 CAA0335, pp. 42-43.
475 Exhibit P-101 CAA1043(i), pp. 8, 25, 31.
476 Testimony of Luc Portelance, vol. 88, December 4, 2007, p. 11525.
477 See Exhibit P-101 CAA1043(i), pp. 4-5, CAA1086, pp. 11-12.

When former RCMP Commissioner Giuliano Zaccardelli testified at this Inquiry, he indicated that, despite the implementation of some of the initiatives contemplated during the preparation for the Rae review, when he left the Force in late 2006, the situation had not fundamentally changed in terms of the challenges in CSIS/RCMP cooperation and the inability of the agencies to bridge the gap. He noted that not only the legislation itself, but the narrow interpretations it was given, had not enabled the agencies to carry out their mandates, and that issues surrounding the information being passed to the RCMP by CSIS were still present at the close of 2006.[478]

In Zaccardelli's view, what was required was not only a change in legislation, but also a change in policy and in the culture prevailing at the agencies. He noted that, though there had already been tremendous improvements, there was still a need for "…a fundamental cultural change of understanding each other." He indicated that "…the culture has to change where we recognize that the objective is not to protect your own organization…." He felt that the protocols for cooperation and information exchange now in place, including the exchange of senior advisors and the JMT, could not in themselves solve the underlying problem.[479] Though the protocols and mechanisms put in place before and after the Rae review could not be sufficient without a more fundamental change, Zaccardelli was of the view that, with major structural changes, the necessary cultural changes would follow:

> …when we create the proper legislative and policy changes, I believe that will drive the cultural changes because then we can all safely look and see that we're here for the interest of Canada and not worry so much about – what is the effect of me disclosing this information or what is the effect on my organization when this method of operation gets blown out of the water.
>
> We spend more time worrying about that than worrying about working together for the greater interest of Canada.[480]

In 2002, a secondment program had replaced the RCMP/CSIS Liaison Officers (LO) Program. RCMP members were to be seconded to CSIS, and CSIS members to the RCMP, but, in 2008, the secondments provided for by the program in the four regions where INSETs were established were not active. There was one RCMP member seconded to CSIS HQ and one CSIS member seconded to RCMP HQ at the management level. Unlike the LO Program, the secondment program was not aimed at transmitting information between the agencies, but at achieving greater cultural and operational understanding.[481]

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478 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11021-11023, 11044-11045.
479 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11029-11031, 11040, 11057-11058.
480 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11040.
481 See Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.

The evidence heard in this Inquiry reveals that, despite the creation of the INSETs and of the secondment program in 2002, there were still serious problems in the RCMP/CSIS relationship as of 2005, many of which were described as similar to the problems that existed in the early years of the Air India investigation. After 2005, the "deconfliction" process was established, involving the exchange of information about CSIS interests and RCMP investigations at the operational level and a review of national issues at the HQ level JMT.[482] A new MOU was signed in November 2006, formalizing some of the recently implemented procedures.[483] Nevertheless, as of late 2006, according to the then RCMP Commissioner Zaccardelli and the reports he received from RCMP members, the fundamental problems had still not been resolved.

Even in this Inquiry, the testimony of some of the high-level RCMP and CSIS officials showed that conflicting views still remain about what needs to be done. D/Comm. Bass noted that change was necessary in the counterterrorism field in order for the justice system to be able to use CSIS information as evidence, and that this change might require CSIS to handle the information it collects to an evidentiary standard.[484] CSIS DDO Portelance, on the other hand, felt that this was a "simplistic interpretation" that failed to take into account the breadth of CSIS activities unrelated to law enforcement, even in the counterterrorism area, and that also failed to take into account CSIS's role and purpose as an intelligence agency and not as "…a branch plant of law enforcement." Portelance did admit that some issues have yet to be resolved through the current cooperation mechanisms, in particular some "…residual older cases" where the agencies are still "…trying to see if we can find common ground in terms of whether or not we go with prosecution or source protection." Though he felt that the issues would eventually be resolved or, at least, that the mechanisms were in place for such a resolution, he explained that "…within the wonderful world of collegiality and the joint management forum – I can tell you that there are ongoing tensions where we are still trying to resolve some cases."[485]

No Need for Change?

Despite evidence of continuing tensions and problems, at least into 2006, the enthusiasm for the current level of cooperation between CSIS and the RCMP displayed by many of the present-day witnesses and echoed by the Attorney General of Canada in its Submissions on behalf of the Government was such that, at times, it led to suggestions that, in fact, no reform at all was required, and that all former policy challenges have been met through current cooperative practices and procedures, making change unnecessary and even undesirable.[486]

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482 Testimony of Mike McDonell, vol. 95, December 13, 2007, p. 12636; Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11473-11474, 11478-11481. See Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.

483 Exhibit P-101 CAA1073; See Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12630-12631; Testimony of Luc Portelance, vol. 88, December 4, 2007, p. 11480.

484 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11275-11276.

485 Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11492-11493, 11501-11503, 11539.

486 See Volume One of this Report: Chapter II, The Inquiry Process.

Notably, however, the Government did not land on a clear or unified position as to whether legislative changes are necessary to address any remaining challenges in interagency cooperation. Perhaps more surprisingly, it also did not present a clear or coherent position on the issue of reform to facilitate the use of security intelligence as evidence.[487]

A number of witnesses testified about the necessity of legislative intervention, but their views about the nature and extent of desirable reforms varied.

RCMP Commissioner Elliott, though he did not feel there was a need for legislation "…to ensure that a spirit of collaboration continues" between CSIS and the RCMP, did indicate that "…there may be scope for legislative changes" with respect to other issues, such as the current obstacles to turning intelligence into evidence and the impediments to the CSIS/RCMP relationship which result from the current disclosure regime.[488]

Turner of E Division INSET testified that "…legislation is the best route" for long-term cooperation, even though relations between the agencies are good at the moment.[489]

Zaccardelli was categorical that the present legal structure for RCMP and CSIS interaction is not adequate and that the *status quo* cannot be left to prevail. To him, it was clear that legislative change was necessary.[490]

Deputy Commissioner Bass was equally unequivocal:

> **MR. FREIMAN**: The final question I'd like to put to you is, assuming the best will be done about joint targeting, joint management, joint operations, better communications; with all that in your pocket and working, is the status quo sustainable or even with all of that, is it necessary to do something?
>
> **D/COMM. BASS**: Yes, it is. I mean, that's a good place to be; that's great that people are working together and we are. We have a very good relationship right now. But we don't have the foundational support that allows us to share information effectively. We need that legislative piece – to pull it all together. So I don't think it can be done without that.
>
> …
>
> **D/COMM. BASS**: Not only that – just to finish that – I think that to rely on the individual relationships that people build

487 See Volume One of this Report: Chapter II, The Inquiry Process.
488 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11804-11806, 11835.
489 Testimony of Trevor Turner, vol. 82, November 23, 2007, pp. 10479-10480.
490 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, pp. 11021, 11029, 11044-11045.

> in certain positions as a means to be effective is dangerous, in that those positions are going to continually change, and individuals will change, and degrees of cooperation will change. So there's got to be something there that helps them do that.[491]

Bass had also indicated, earlier in his testimony, while discussing the current regime of disclosure to the defence in criminal trials, that "…there have to be legislative fixes to disclosure."[492]

Former CSIS DDO designate Jack Hooper also made it clear that he felt a change in the legal regime is absolutely necessary:

> …there is an impression that has a very large constituency that CSIS and law enforcement don't get along and if they would just learn to live together and share their toys, then all of the problems would go away.
>
> And I could tell you, based on my experience that is never going to happen, because I have seen instances of outstanding cooperation between the Service and law enforcement where at the end of the day, we always confront the legal issues around transitioning intelligence into evidence.
>
> That is not a relationship issue; that is a legal issue and I think the legal architecture around the prosecution of national security offences is largely inadequate.
>
> …
>
> I think there needs to be a great deal of thought brought to bear on this issue because, at the end of the day the solution must be a legal solution, a legislative solution, not a relationship solution.[493]

Bill Turner, who acted as the CSIS Liaison Officer to the 1995 RCMP Air India Task Force, testified that, in his view, the RCMP and CSIS had done everything they could to improve the relationship between the two agencies. He stated that what was needed now was a change in legislation to solve the issues surrounding the disclosure of CSIS information in court.[494]

Current CSIS DDO Luc Portelance noted that a constant problem that remains, despite the good level of cooperation between CSIS and the RCMP, is the fact

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491 See, generally, Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11285.
492 See, generally, Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11280.
493 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6246-6248.
494 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8359-8360.

that the Service has not been provided with the assurances necessary to ensure the protection of its sources and employees. Though he denied that such concerns prevented CSIS from disclosing information to the RCMP, Portelance did note that it is difficult under the current regime to achieve both the objective of providing information to law enforcement for the purposes of having a successful prosecution, and that of protecting CSIS's sensitive assets to ensure that its operations can continue. He stated that the cases currently before the courts would be "the ultimate judge" as to whether the present system really works, but that the current disclosure regime in criminal trials puts pressures on CSIS that could probably not be sustained in the long term. He felt that legislative solutions to provide better protection for CSIS information in the criminal justice system would ultimately be necessary. He also thought that the bifurcated process under section 38 of the *Canada Evidence Act* to determine questions of national security privilege might not be the best model, as it is "… complex, complicated and probably contributes to a loss of momentum in the case."[495]

However, Portelance was categorical in stating that there is no need to modify the current CSIS discretion to disclose by making disclosure obligatory. He noted that not only does CSIS already disclose aggressively to the RCMP, but that the current cooperation protocols create a "two-way dialogue" and allow the RCMP to make demands, "…through the exposure of our cases to the RCMP and vice versa," while the legislative discretion allows CSIS to protect its investigations in cases where information does not need to be disclosed to police.[496]

Some witnesses, though fewer in number, opined that legislative change is not necessary.

CSIS Director Judd did not, generally, see a need for legislative changes. He expressed the view that the necessary legislation and policy tools are already in place to allow CSIS and the RCMP to work together, but specified that the results of several ongoing prosecutions would need to be considered to fully test the workability of the regime for determining national security privilege (section 38 of the *Canada Evidence Act*). Though Judd was not opposed to possible reforms to protect the identity of certain witnesses in the judicial process (including CSIS employees or sources) and to limit the disclosure of some information, he did not believe that any fundamental changes to the *CSIS Act*, the CSIS mandate or CSIS policies were necessary.[497]

Ellis, the Director General of the CSIS Toronto Region, also indicated that it could be "…a little premature" to look into legislative remedies at the moment, since the agencies were waiting for the results of a number of cases currently before the courts in order to be able to assess the situation.[498]

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495 Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11504-11508, 11510-11511, 11521-11522, 11526-11527, 11539-11540.

496 Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11515-11517.

497 Testimony of Jim Judd, vol. 90, December 6, 2007, pp. 11856-11857, 11861-11862, 11871-11873, 11875, 11887.

498 Testimony of Andrew Ellis, vol. 82, November 23, 2007, pp. 10575-10576.

A/Comm. McDonell of RCMP HQ was also not convinced of the need for legislation. Though he agreed that measures providing for the anonymity of some informants or sources in the trial context would be helpful, he indicated that he was "not satisfied" that there was a legislative gap which could hinder cooperation between the agencies. He also did not express concern about the regime for the protection of national security information under section 38 of the *Canada Evidence Act*, noting "…that's the system we have; that's the system that we've tailored ourselves to and we're working with." He emphasized that the cases currently before the courts would provide guidance and allow for more informed decisions about the direction to adopt for the future. McDonell also saw no need for legislative changes that would turn the current CSIS discretion to pass information into an obligation, indicating that he was "…of the opinion that 'may' is sufficient," given the breadth of the work of CSIS.[499]

It should be noted that McDonell was one of the chief proponents of the philosophy of "less is more" in terms of the information which the RCMP is to receive from CSIS.[500] He testified that, in his view, if the police can gather the information themselves on the basis of limited initial information from CSIS, then the issues of how the CSIS information will impact on the criminal process will be avoided.[501] This view is not unanimous at the RCMP. Supt. Larry Tremblay, the RCMP officer seconded to CSIS HQ, noted that, at times, the RCMP has taken the position that it is preferable to "…to have less than more information" from CSIS, but testified that "…by no means is that an ideal concept." To him, "less is more" is simply a concept that was adopted by necessity because of issues relating to disclosure and because of the need to protect CSIS's national security interests.[502]

The Final Submissions of the Attorney General of Canada are not consistent or coherent in their treatment of the issue of the desirability of change or reform of the current system as it relates to information flow between CSIS and the RCMP. In one section of its Final Submissions, the AGC suggests that legislative change is necessary. The Submissions note that "…[t]he Commission was encouraged to consider legislative solutions that would enable and protect both mandates and permit a fair trial."[503] The AGC goes on to assert that current disclosure law in criminal matters constitutes "…an obstacle for sharing security intelligence with the police,"[504] and that the *Canada Evidence Act* does not provide sufficient guarantees of protection for CSIS information.[505] In this section, the AGC concludes that "…[t]he agencies' concerted efforts to cooperate and understand one another however will not resolve the legal issues surrounding the movement

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499 Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12639-12640, 12651-12652, 12662-12663, 12665.
500 See, generally, Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.
501 Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12634-12635.
502 Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12777.
503 Final Submissions of the Attorney General of Canada, Vol. I, para. 449.
504 Final Submissions of the Attorney General of Canada, Vol. I, para. 450.
505 Final Submissions of the Attorney General of Canada, Vol. I, para. 451.

of intelligence to evidence,"[506] and that "…goodwill on the part of the RCMP and CSIS will not alter the legal difficulties that the agencies encounter in a major terrorist investigation."[507]

Nevertheless, in another section of its Submissions, the AGC argues the opposite position. After an initial statement that it would "…refrain from offering suggestions about what policy recommendations the Commission should make," the Attorney General of Canada provides comments on "intelligence to evidence" issues in order to offer the "…governmental perspective and experience."[508] That governmental perspective focuses largely on the dangers of introducing legislative changes.

In this section, the Attorney General of Canada argues against changes to section 38 of the *Canada Evidence Act*, indicating that the current law "…achieves a nuanced approach that respects the interest of the state in maintaining the secrecy of sensitive information and in protecting the rights of the accused to a fair trial."[509] The Government notes that the involvement of the Attorney General of Canada and the vesting of ultimate decision-making authority about disclosure of alleged national security information in the Attorney General of Canada, as is provided for in section 38, ensures that third party information is protected; that Canada honours its commitments to respect caveats; that national security privilege is applied consistently; and that additional materials can be disclosed as circumstances change without the need to return to court.[510] The AGC also commends the flexibility of the current procedure which allows for issues to be determined on a case-by-case basis.[511] The AGC emphasizes that experience with section 38 since the passage of the *Anti-terrorism Act* has been limited, leading to the suggestion that future cases would provide guidance "… on whether the current regime needs to be modified,"[512] and that it is "…too early to draw conclusions" concerning the use of the section 38 procedure.[513] The AGC also cautions that proposed changes to section 38 to address RCMP or CSIS information in criminal trials would have an impact on other agencies.[514]

The AGC then reviews possible changes to the section 38 procedure and argues against making any of the changes discussed. About the possibility of employing special advocates in section 38 proceedings, the AGC quotes the Government response to a similar House of Commons committee recommendation to the effect that further study is needed and that not all proceedings would necessarily engage the *Charter*.[515] Dealing with the much-criticized bifurcated process for section 38 issues, whereby the trial judge in anti-terrorism prosecutions must await the results of a separate proceeding in Federal Court that determines

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506 Final Submissions of the Attorney General of Canada, Vol. I, para. 452.
507 Final Submissions of the Attorney General of Canada, Vol. I, para. 409.
508 See, generally, Final Submissions of the Attorney General of Canada, Vol. III, paras. 3-113.
509 Final Submissions of the Attorney General of Canada, Vol. III, para. 48.
510 Final Submissions of the Attorney General of Canada, Vol. III, paras. 62-64, 98, 110-111.
511 Final Submissions of the Attorney General of Canada, Vol. III, para. 91.
512 Final Submissions of the Attorney General of Canada, Vol. III, para. 96.
513 Final Submissions of the Attorney General of Canada, Vol. III, para. 106.
514 Final Submissions of the Attorney General of Canada, Vol. III, para. 113.
515 Final Submissions of the Attorney General of Canada, Vol. III, paras. 52-53.

whether information is to be shielded from disclosure on grounds of national security, the Attorney General of Canada strongly argues that any change to allow the trial judge to resolve those issues is neither necessary nor desirable and that the bifurcated process is in fact beneficial. Among the arguments invoked against the possible change, the AGC maintains that the section 38 procedure is not directly linked to the criminal trial, that the delays currently encountered would remain, and that the Federal Court has both the expertise and the facilities to deal with the issues, whereas the Superior Courts of Justice that deal with serious criminal trials (and which the AGC insists on referring to, perhaps pejoratively, as "provincial courts") could lack experience and would risk making inconsistent rulings. The AGC adds that "…the storage, handling, transportation and viewing of sensitive information in provincial facilities could be problematic."[516]

Though the AGC does outline the challenges associated with disclosure requirements in criminal trials, its Final Submissions suggest that legislative reform may not solve the issues or eliminate the practical burdens associated with the disclosure obligation, and that, in any event, codifying disclosure law could have unintended negative consequences such as introducing uncertainty, creating an impact on the provincial administration of justice, producing financial implications and affecting the rights of self-represented accused persons.[517] Similarly, the AGC argues that common law privileges (such as the state security privilege) should not be codified and "…should be permitted to evolve on a case-by-case basis."[518]

The AGC's position on the need for legislative change (or lack thereof) not only reflects on the apparent difficulty in speaking with one voice on behalf of agencies with different goals and mandates, but also appears at odds with the position of the Government that called this Inquiry in the first place and asked it to make recommendations about the difficult policy issues listed in the Terms of Reference.[519]

Past Response versus Present Position

In the end, not only did government agencies not admit any mistakes in the past handling of the Air India case, but they were also loathe to admit or discuss any flaws in the current system that might require improvements.

The individuals who appeared before the Commission to discuss the current level of cooperation between CSIS and the RCMP, and the recent protocols and mechanisms implemented, appeared understandably and sincerely enthusiastic about the prospects for success of the processes they had contributed to and were now relying on. McDonell and Portelance both clearly are sincere in their belief that the "deconfliction" (JMT) process they created, and

516 Final Submissions of the Attorney General of Canada, Vol. III, paras. 85-99, 105.
517 Final Submissions of the Attorney General of Canada, Vol. III, paras. 34-37, 78, 80-84.
518 Final Submissions of the Attorney General of Canada, Vol. III, paras. 100, 103.
519 See Volume One of this Report: Chapter II, The Inquiry Process.

later formalized through the latest RCMP/CSIS MOU, has resolved most of the cooperation problems experienced in the past. The individuals who are tasked with implementing the new process at the INSETs and in the CSIS regions also obviously have confidence in the system in which they participate and have clearly made sincere efforts to create a cooperative climate. The optimism and dedication of the individuals involved at both agencies is commendable, and the fact that those involved believe in their endeavours has surely contributed to the improvements in the relationship that the new protocols appear to have brought about.

However, it should also be noted that the Commission was limited as to the nature and extent of the evidence it could hear about the current situation as demonstrated by current cases, given the national security implications and the Commission's commitment to ensure that the Inquiry evidence be heard in public. Under the circumstances, it was not possible for Commission counsel to test the evidence of the CSIS and RCMP members who testified about the current relationship, since no specifics could be obtained. In this context and in light of the evidence indicating that problems still remained as of the end of 2006, several years after some aspects of the current regime including the INSETs and the secondment program had been implemented, and a full year after the "deconfliction" (JMT) process began, there is not a sufficient experience basis upon which to found a conclusion that the cooperation issues observed throughout the Air India narrative are now entirely a thing of the past. It would be naïve to believe that something happened between the end of 2006 and the end of 2007 – when the testimony about the current relationship was heard in this Inquiry – which caused so dramatic a change in the status quo as to resolve entirely all of the lingering cooperation issues. The most recent protocols designed to improve cooperation were already in place by late 2005 and did not have so radical an effect as of 2006.

The general message that the witnesses involved in making the CSIS/RCMP relationship work sent was that problems in the relationship are now a thing of the past and that cooperation is now close and harmonious. If that is indeed the case, it is a welcome development. On the other hand, a review of the Air India investigation and of the response of the Government and its agencies to previous reviews, or attempted reviews, of the actual workings of the CSIS/RCMP relationship reveals numerous premature declarations that the problems in the relationship had been resolved and now lay strictly in the past: "that was then; this is now." Zaccardelli commented on this message:

> **MR. FREIMAN**: So to the extent that we now hear the proposition, "That was then, this is now; the problems were in the past. We've looked at them. Now we're on an even keel and moving well into the future," is that an accurate representation of CSIS/RCMP relationships currently?
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> **MR. ZACCARDELLI**: No.

> That's a dangerous categorization of the relationship, because – it ignores the underlying problems.
>
> …
>
> I know I've repeated myself a thousand times here, but solving the personnel problems does not solve the fundamental problem, the legislation and policy issues that have to be addressed.[520]

The prior consistent response of the Government and its agencies to external reviews must be a factor in this Commission's evaluation of the latest assurances that all cooperation problems have been resolved, and leads the Commission to view the current unified message of the government agencies in this Inquiry with a healthy dose of skepticism. Despite previous declarations that problems were all in the past, the issues continued to surface.

Rather than accede to the AGC's suggestion that the *status quo* has adequately resolved all issues and that no reforms need be contemplated, this Commission has devoted most of Volume Three of this Report to an analysis of the legal and policy issues that underlie the relationship between CSIS and the RCMP. Where appropriate, the Commission has indicated the aspects of the current situation that remain problematic or dysfunctional, and has proposed a number of concrete and pragmatic recommendations for change in the law or in the current practices and procedures.

5.8 Conclusion: Learning from Past Mistakes

Throughout the years following the bombing, a number of themes have remained constant in the Government's response to the Air India tragedy. In addition to a defensiveness and resistance to review on the part of the Government and its agencies, there have often been attempts to present a unified position, or to "speak with one voice," leading at times to a downplaying of interagency conflicts, and to attempts to convey the message that any problems, particularly with respect to CSIS/RCMP cooperation, were in the past.

The past response to the issues arising from the Air India bombing in fact suggests caution in accepting the "that was then, this is now" message that the Government so often tried to convey, and instead raises serious questions about the ability of the Government and its agencies to reflect on past mistakes and to make necessary changes.

From the outset, the Government and its agencies invested a great deal of time and many resources into justifying their actions and denying any mistakes or deficiencies. The real problems illustrated in both the pre-bombing and the

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520 Testimony of Giuliano Zaccardelli, vol. 86, November 30, 2007, p. 11089.

post-bombing periods could hardly be addressed when, as a consequence of the legalistic focus taken on defending the Government's position, they were not even being recognized, let alone admitted.

Even when agencies made attempts to reflect on the past, the defensive positions had often become so ingrained that deficiencies could not be recognized. Hence, when a member of the RCMP HQ Air India Task Force prepared a "lessons learned" document one year after the bombing, few RCMP deficiencies were discussed or identified.[521] The document contained some mention of the need to increase RCMP analytical capabilities and of the need for greater centralization in national security investigations, but continued to maintain that, prior to the bombing, the RCMP had "no indications" that Air India could be a target and "… no intelligence of a direct threat to Air India or Indian missions and officials."[522]

One year after the bombing, the wealth of pre-bombing threat information in the RCMP's possession which clearly indicated threats to both Air India and Indian officials – including the June 1st Telex about the threat of sabotage with time-delayed devices in checked luggage – had not been researched as part of the investigation, and the Force continued to believe that it had not received significant information.[523] The Force continued to blame CSIS for the lack of warning when, in fact, it was the RCMP that failed to provide CSIS with one of the most important pieces of information, namely the June 1st Telex.[524] The "lessons learned" document boldly asserted that CSIS had "…failed, for one reason or another, to supply the RCMP with the necessary intelligence" prior to the bombing.[525]

Even when the bombing should have made it clear to all that the threat was real, RCMP and Transport Canada officials continued to view the threat warnings provided to these agencies by Air India as a means to obtain additional security for free,[526] and classified the June 1st Telex as an example of such a "floater," or piece of information provided "…every time in hopes that security would be increased."[527]

The RCMP "lessons learned" document also blamed the lack of CSIS information for the fact that the RCMP did not begin to pursue targets such as Parmar and Reyat earlier in the post-bombing investigation.[528] In fact, the pre-bombing threat information – including the Duncan Blast information that had been provided by CSIS – contained numerous references to Parmar and to the level of threat he posed, as well as an indication of Reyat's connection to Parmar.

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521 Exhibit P-101 CAF0055; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2706-2707.
522 Exhibit P-101 CAF0055, pp. 3, 7-8.
523 For a discussion of the information which was in one form or another in the RCMP's possession prior to the bombing, see Section 1.2 (Pre-bombing), June 1st Telex; Section 1.12 (Pre-bombing), A "Crescendo" of Threats; and Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process. See also Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force, for a discussion of what was done with that information during the post-bombing investigation.
524 See Section 1.2 (Pre-bombing), June 1st Telex.
525 Exhibit P-101 CAF0055, p. 7.
526 Exhibit P-101 CAC0517, p. 2.
527 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2736-2737, 2745.
528 Exhibit P-101 CAF0055, p. 7.

In addition, the reports CSIS provided to the RCMP LO in the early days of the investigation provided a clear indication of CSIS's interest in Parmar and of the suspicious nature of some of his conversations prior to the bombing. It is true that issues arose with respect to the RCMP's access to intercept logs and to use of CSIS information for judicial authorizations and court proceedings, but the actual information about the targets that CSIS viewed as being of interest was available early on.[529] It was also CSIS who reminded the RCMP about the Duncan Blast incident days after the bombing, and suggested the searches of the area that eventually yielded some of the evidence that the RCMP made reference to in its subsequent wiretap authorization and search warrant applications.[530] Nevertheless, a year after the bombing, it seems that the only lesson the RCMP had learned was that CSIS was to blame for the failure to obtain necessary information to prevent the bombing and for all problems encountered in the early post-bombing investigation.

As has been observed, the Government and its agencies were often too busy defending themselves against any possible blame or potential liability to be able to perform a true self-examination and to recognize the mistakes or deficiencies that needed to be addressed. Nevertheless, when they were asked to provide answers and explanations, government agencies consistently claimed that all problems had already been addressed. In fact, it seems that changes were often made only when the agencies felt that they had no choice, and not as a result of any decision to look back on what went wrong in the past and to make improvements. Hence, in preparation for the Rae review, CSIS was willing to make some changes in the process of "modernization" of the relationship, rather than having an external body impose its own version of those changes. Many of the initiatives put in place in 2005 as part of the modernization process were meant to resolve issues that had been present for over 20 years and which were simply left unaddressed until there was a perceived risk that change would be imposed on the agencies.

This tendency to make changes, years after the necessity to do so should have become apparent, can be observed in many areas. For example, the problem of the lack of central control and coordination for national security investigations at the RCMP had been recognized in the 1986 "lessons learned" document about the Air India investigation.[531] Yet, it was only in May 2007 that the RCMP took concrete steps to establish a new governance framework which provided for central control of national security investigations – and then only largely as a result of the recommendations in the *Arar Report*.[532] In testimony before the Inquiry, RCMP Commissioner Elliott commented on the lessons learned from Air India, noting that "…the Air India experiences have contributed to the recognition that there are some special things about national security investigations that require expertise; that require coordination; that require central management…."[533] It

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529 See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.
530 See Section 1.4 (Pre-bombing), Duncan Blast.
531 Exhibit P-101 CAF0055, p. 8.
532 See Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12623-12624; Exhibit P-219; Testimony of Rick Reynolds, vol. 52, September 25, 2007, pp. 6481-6482; Final Submissions of the Attorney General of Canada, Vol. I, paras. 413-415.
533 Testimony of William Elliott, vol. 90, December 6, 2007, pp. 11830-11831.

is not clear just when that recognition came into being, but it is worth noting that the concrete steps to implement real changes to address these issues did not come until over 20 years had passed from the date of the bombing, and not before an independent Inquiry had recommended them.

Similarly, the impact of the RCMP promotion system on the ability to retain personnel in national security investigations has long been a known and problematic issue at the RCMP. It was recognized as an obstacle to retaining personnel on the Air India investigation, and the issues caused by the lack of continuity of personnel on the RCMP side were often the subject of comment by CSIS members who had to deal with the RCMP.[534] Nevertheless, in December 2007, McDonell testified that the issue continued to persist at the RCMP in terms of creating a career stream in national security investigations. At the time, he had just submitted a proposal to have Human Resources centralized in national security matters. The proposal was rejected.[535]

Nor were lessons more easily learned at CSIS. It was long known that there was often significant delay involved in obtaining authorizations to intercept private communications. The Parmar warrant had taken over six months before all the internal steps were completed and the application was sent to the Federal Court, where it was granted. This delay had caused significant frustration for the BC Region investigators, and may have resulted in the loss of important information for the investigation.[536] Former CSIS investigator Neil Eshleman testified about the CSIS procedures and their impact on the investigations:

> …the RCMP can obtain wiretap warrants very quickly; we're talking very quickly, within hours, on certain situations, and be it kidnapping or whatever. I mean, that's the circumstances I'm sort of reflecting on at the moment.
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> CSIS, on the other hand, even on a very urgent basis, there is the odd exception in the last 25 years that I've – I suppose I could – I'm somewhat aware of perhaps. But CSIS, as a matter of routine, has created a bureaucratic structure that safeguards people in the organization from risk, but it certainly doesn't enhance the operational value of the organization. And, you know, I've discussed this with others. We discussed it at the time I was involved with CSIS, and there were many occasions we just shook our heads in frustration as to why it would take so long to obtain intercept warrants, and so much was lost in those timeframes. And yet, the service couldn't come to grips with changing that application system. I don't think they've changed it much since I left, and that's a long time ago.[537]

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534 See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.
535 Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12648-12649.
536 See Section 1.3 (Pre-bombing), Parmar Warrant.
537 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9396-9397.

It was not until recently that this issue was actually addressed by CSIS. In testimony before this Inquiry in December 2007, Judd announced that the CSIS warrant process had been "…completely reengineered last year, in part, to deal with the issue of timeliness." As a result, Judd could finally say that "…we do not operate any longer in the world of four to six months warrant preparations."[538]

Similarly, one of the central issues that arose in the Air India investigation – the destruction of operational notes relating to interviews during which information relevant to the criminal investigation was obtained – was left unaddressed by CSIS for years. The policy on the preservation of officer notes continued to be inconsistently applied, and notes made during interviews with an eventual key Air India witness in the late 1990s were no more preserved than the notes and recordings made by the CSIS investigator who had interviewed another key witness in 1987.[539] The 1987 destruction led to a finding in the Mailk and Bagri trial in 2004 that the accused's *Charter* rights were violated.[540] Even before this finding, CSIS was long aware that the RCMP and the Crown had raised serious concerns about its erasure of the Parmar intercept tapes and its possible impact on the prosecution.[541] Yet, no steps were taken to ensure that operational notes that could be relevant to the Air India criminal investigation were preserved.

It was only after the Supreme Court of Canada ruled in June 2008 that the routine destruction of interview notes relating to a Security Certificate issued under the *Immigration Act* violated the *Charter* and that it was not required under the *CSIS Act*, that CSIS finally took steps to revise its policies and to ensure that operational notes would be preserved.[542]

The improvements made by the agencies in recent years, including the new protocols for greater RCMP/CSIS cooperation, are of course commendable. However, because of the time it took for the agencies to get there and, at times, the motivation behind the reforms, the changes cannot be taken for granted. Nor are they to be seen as a clear demonstration that government agencies have overcome their previous difficulty in performing a true self-examination and in modifying their practices accordingly. The history of the Government response to the issues arising from the Air India bombing – and the response to the present Inquiry – appear to suggest the contrary.

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538 Testimony of Jim Judd, vol. 90, December 6, 2007, pp. 11862-11863.
539 See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.
540 See Section 1.3 (Post-bombing), Ms. E.
541 See Section 4.3.1 (Post-bombing), Tape Erasure and Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.
542 See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.