

Air India Flight 182

A Canadian Tragedy

VOLUME TWO
Part 2: Post-Bombing

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VOLUME TWO PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

TABLE OF CONTENTS

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

1.0 Introduction	5
1.1 Mr. A	12
1.2 Tara Singh Hayer	29
1.3 Ms. E	85
1.4 Mr. Z	202
1.5 Ms. D	212
1.6 Atwal Warrant Source	227

CHAPTER II: RCMP POST-BOMBING

2.0 Set-up and Structure of the Federal Task Force	233
2.1 Centralization/Decentralization	254
2.2 The RCMP Investigation: Red Tape and Yellow Tape	261
2.3 The Usual Suspects versus "Alternate Theories"	279
2.3.1 November 1984 Plot	279
2.3.2 Mr. Z	290
2.3.3 The Purported Parmar Confession	297
2.3.4 The Khurana Tape	316

CHAPTER III: CSIS POST-BOMBING

3.0 The CSIS Investigation	339
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CHAPTER IV: CSIS/RCMP INFORMATION SHARING

4.0 The Evolution of the CSIS/RCMP Memoranda of Understanding	355
4.1 Information Sharing and Cooperation in the Air India Investigation	363
4.2 The Liaison Officers Program	421
4.3 The Preservation of CSIS "Evidence"	433

4.3.1	Tape Erasure	433
4.3.2	Destruction of Operational Notes	467
4.4	CSIS Information in the Courtroom	475
4.4.1	The Reyat Trial and the BC Crown Prosecutor Perspective	475
4.4.2	The Air India Trial	517
4.5	Recent Cooperation and Information-Sharing Mechanisms	522

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

5.0	Introduction	545
5.1	Early Government Response	545
5.2	Government Attempts to Avoid/Delay Reviews or Inquiries and Government Response to External Review	564
5.3	1995 Anniversary and Renewed Interest in a Public Inquiry	596
5.4	The Prosecution of Malik, Bagri and Reyat	601
5.5	2003 Calls for an Inquiry	606
5.6	The Rae Review	606
5.7	The Present Commission of Inquiry	619
5.8	Conclusion: Learning From Past Mistakes	641

VOLUME TWO

PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

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

1.0 Introduction

The RCMP: Difficulty Recruiting Sources in the Sikh Community

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

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

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

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

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

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

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

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

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

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

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

The CSIS Approach versus the RCMP Approach

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

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

⁸ Exhibit P-101 CAA0310, p. 7.

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

¹⁰ Exhibit P-101 CAA0313, pp. 2-3.

¹¹ Exhibit P-101 CAF0057, p. 38.

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

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁰ Exhibit P-101 CAF0055, p. 7.

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

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

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

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

MR. KAPOOR: Which way?

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

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

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

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

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

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

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

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

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

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

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

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

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

Air India Sources and Witnesses: The Consequences of Overlap

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.1 Mr. A

Introduction

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

Were these two “purposes” necessarily in conflict?

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

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

RCMP and CSIS Both Have an Interest in Mr. A

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

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

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

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

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

⁴ Exhibit P-291, items 1, 3, 34.

⁵ Exhibit P-291, item 1.

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

CSIS Reports on the Information it Learned from Mr. A

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

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

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

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

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

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

⁶ Exhibit P-291, item 1.

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

⁸ Exhibit P-291, item 2.

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

¹⁰ Exhibit P-291, item 3.

¹¹ Exhibit P-291, items 5, 6.

¹² Exhibit P-291, item 2.

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

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

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

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

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

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

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

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

¹⁷ Exhibit P-291, items 54, 82.

¹⁸ Exhibit P-291, items 4, 9.

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

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

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

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

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

RCMP and CSIS Argue for Control

Competition between CSIS and the RCMP

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

20 Exhibit P-291, item 9.

21 Exhibit P-291, items 14, 16, 18.

22 Exhibit P-291, items 7, 8, 11.

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

24 Exhibit P-291, item 17.

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

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

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

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

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

25 Exhibit P-291, items 19, 21.

26 Exhibit P-291, item 25.

27 Exhibit P-291, items 20, 32.

28 Exhibit P-291, items 20, 26.

29 Exhibit P-291, items 27, 29.

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

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

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

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

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

30 Exhibit P-291, items 29, 32, 40.

31 Exhibit P-291, item 37.

32 Exhibit P-291, items 35, 51.

33 Exhibit P-291, item 37.

34 Exhibit P-291, item 46.

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

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

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

CSIS to Turn Over Investigation to the RCMP

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

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

³⁵ Exhibit P-291, items 54, 56, 63.

³⁶ Exhibit P-291, item 48.

³⁷ Exhibit P-291, items 22, 54.

³⁸ Exhibit P-291, items 34, 45, 58.

³⁹ Exhibit P-291, item 49.

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

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

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

The RCMP’s Approach to Mr. A

The RCMP Operational Plan

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

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

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

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

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

44 Exhibit P-291, item 42.

45 Exhibit P-291, item 52.

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

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

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

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

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

47 Exhibit P-291, items 58, 59.

48 Exhibit P-291, items 31, 38.

49 Exhibit P-291, item 61.

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

51 Exhibit P-291, items 60, 61.

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

53 Exhibit P-291, item 63.

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

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

CSIS's Meeting with Mr. A

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

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

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

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

The RCMP's Meeting with Mr. A

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

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

⁵⁶ Exhibit P-291, item 63.

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

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

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

⁶⁰ Exhibit P-291, item 63.

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

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

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

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

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

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

62 Exhibit P-291, items 34, 49, 58.

63 Exhibit P-291, item 65.

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

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

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

67 Exhibit P-291, item 63.

68 Exhibit P-291, item 63.

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

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

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

72 Exhibit P-291, item 65.

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

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

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

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

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

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

74 Exhibit P-291, items 58, 63, 65.

75 Exhibit P-291, items 63, 65.

76 Exhibit P-291, item 63.

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

78 Exhibit P-291, item 65.

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

80 Exhibit P-291, item 66.

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

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

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

RCMP Analysts Question E Division’s Conclusions

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

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

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

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

83 Exhibit P-291, item 73.

84 Exhibit P-291, items 64, 82.

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

The Second RCMP Interview with Mr. A

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

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

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

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

The Government Debates the Issue of a Reward

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

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

85 Exhibit P-291, item 67.

86 Exhibit P-291, items 58, 68.

87 Exhibit P-291, item 68.

88 Exhibit P-291, item 68.

89 Exhibit P-291, item 68.

90 Exhibit P-291, item 69.

91 Exhibit P-291, item 69.

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

⁹⁶ Exhibit P-291, items 77, 78.

⁹⁷ Exhibit P-291, item 79.

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

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

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

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

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

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

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

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

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

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

1.2 Tara Singh Hayer

Introduction

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

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

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

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

¹⁰² Exhibit P-431, p. 1.

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

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

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

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

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

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

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

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

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

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

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

Contacts with CSIS and Initial Sharing of Information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 Exhibit P-101 CAA0418(i).

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

116 Exhibit P-101 CAA0418(i), p. 2.

117 Exhibit P-101 CAA0420(i).

118 Exhibit P-101 CAA0436(i), p. 1.

119 Exhibit P-101 CAF0444.

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

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

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

¹²⁰ Exhibit P-101 CAF0444, p. 2.

¹²¹ Exhibit P-101 CAF0444, pp. 2-3.

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

¹²³ Exhibit P-101 CAF0444, p. 3.

¹²⁴ Exhibit P-101 CAF0444, pp. 3-4.

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

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

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

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

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

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

¹²⁵ Exhibit P-101 CAF0444, pp. 4-5.

¹²⁶ Exhibit P-101 CAF0444, p. 5.

¹²⁷ Exhibit P-101 CAF0444, p. 5.

¹²⁸ Exhibit P-101 CAF0444, pp. 5-6.

¹²⁹ Exhibit P-101 CAF0444, p. 9.

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

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

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

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

130 Exhibit P-101 CAA0424(i).

131 Exhibit P-101 CAA0424(i).

132 Exhibit P-290, Admission 1, p. 1.

133 Exhibit P-290, Admission 1, p. 1.

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

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

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

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

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

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

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

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

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

¹³⁷ Exhibit P101 CAF0464, pp. 2-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sorting Out the Confusion: RCMP Takes the Lead

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

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

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

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

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

147 Exhibit P-101 CAF0445, p. 7.

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

149 Exhibit P-101 CAA0443(i), p. 1.

150 Exhibit P-101 CAA0440(i), p. 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155 Exhibit P-101 CAA0434(i), p. 2.

156 Exhibit P-101 CAA0434(i), p. 2.

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

158 Exhibit P-101 CAA0436(i), p. 2.

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

160 Exhibit P-101 CAA0436(i), p. 5.

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

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

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

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

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

161 Exhibit P-101 CAA0437(i).

162 Exhibit P-101 CAA0438.

163 Exhibit P-101 CAF0445, p. 7.

164 Exhibit P-101 CAA0440(i), p. 1.

165 Exhibit P-101 CAA0440(i), p. 2.

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

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

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

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

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

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

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

¹⁶⁷ Exhibit P-101 CAA0443(i), p. 1.

¹⁶⁸ Exhibit P-290, Admission 2.

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

¹⁷⁰ Exhibit P-101 CAF0507, pp. 2-4.

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

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

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

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

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

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

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

174 Exhibit P-290, Admission 3.

175 Exhibit P-101 CAF0751, p. 1.

176 Exhibit P-408, Admission 9.

177 Exhibit P-101 CAF0751, p. 1.

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

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

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

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

The First Plan for Travel to England with Hayer

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

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

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

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

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

182 Exhibit P-101 CAF0752, p. 6.

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

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

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

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

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

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

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

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

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

¹⁸⁴ Exhibit P-101 CAF0507, p. 6.

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹² Exhibit P-290, Admission 4.

¹⁹³ Exhibit P-290, Admission 4.

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

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

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

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

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

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

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

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

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

199 Exhibit P-290, Admission 5.

200 Exhibit P-101 CAF0732, p. 1.

201 Exhibit P-101 CAF0732, p. 2.

202 Exhibit P-290, Admission 5.

203 Exhibit P-101 CAF0732, p. 2.

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

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

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

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

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

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

205 Exhibit P-101 CAF0714, p. 2.

206 Exhibit P-101 CAF0728, pp. 1-2.

207 Exhibit P-101 CAF0728, pp. 1-2.

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

209 Exhibit P-101 CAF0728, p. 2.

210 Exhibit P-101 CAF0733, pp. 1-2.

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

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

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

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

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

211 Exhibit P-101 CAF0735, p. 1.

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

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

214 Exhibit P-101 CAF0735, p. 3.

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

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

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

218 Exhibit P-101 CAF0737.

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

220 Exhibit P-101 CAF0737, p. 1.

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

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

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

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

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

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

221 Exhibit P-101 CAF0737, p. 2.

222 Exhibit P-101 CAF0738.

223 Exhibit P-101 CAF0739.

224 Exhibit P-101 CAF0740.

225 Exhibit P-101 CAF0741, CAF0742.

226 Exhibit P-101 CAF0741, p. 2.

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

228 Exhibit P-101 CAF0727.

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

Solvason strongly disagreed with this interpretation of the events:

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

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

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

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

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

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

229 Exhibit P-408, Admission 10.

230 Exhibit P-290, Admission 7.

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

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

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

234 Exhibit P-408, Admission 11.

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

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

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

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

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

²³⁵ Exhibit P-101 CAF0755.

²³⁶ Exhibit P-101 CAF0754, pp. 3-5.

²³⁷ Exhibit P-101 CAF0746.

²³⁸ Exhibit P-101 CAF0748, pp. 1-3.

²³⁹ Exhibit P-101 CAF0748, p. 3.

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

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

CSIS Concerns Left Unaddressed

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

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

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

²⁴¹ Exhibit P-101 CAF0747.

²⁴² Exhibit P-101 CAF0733, p. 3.

²⁴³ Exhibit P-101 CAF0736.

²⁴⁴ Exhibit P-101 CAF0736, p. 3.

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

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

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

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

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

²⁴⁶ Exhibit P-101 CAA0504, p. 1.

²⁴⁷ Exhibit P-290, Admission 6.

²⁴⁸ Exhibit P-290, Admission 6.

²⁴⁹ Exhibit P-290, Admission 6.

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

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

CSIS was concerned about the RCMP plan and warned:

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

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

²⁵⁰ Exhibit P-101 CAB0680, p. 1.

²⁵¹ Exhibit P-101 CAB0680, pp. 1-2.

²⁵² Exhibit P-101 CAB0680, p. 2.

²⁵³ Exhibit P-101 CAB0680, p. 2.

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

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

The RCMP Travels to England – More CSIS Cooperation Issues

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

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

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

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

255 Exhibit P-290, Admission 7.

256 Exhibit P-101 CAF0746.

257 Exhibit P-101 CAF0748, pp. 2-3.

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

259 Exhibit P-101 CAF0747.

260 Exhibit P-101 CAF0731.

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

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

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

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

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

261 Exhibit P-101 CAF0714, p. 2.

262 Exhibit P-101 CAF0750, p. 2.

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

264 Exhibit P-290, Admission 8.

265 Exhibit P-290, Admission 8.

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

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

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

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

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

²⁶⁶ Exhibit P-290, Admission 8.

²⁶⁷ Exhibit P-101 CAF0750, p. 3.

²⁶⁸ Exhibit P-101 CAF0731, p. 1.

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

²⁷⁰ Exhibit P-101 CAB0770(i), p. 2.

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

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

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

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

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

²⁷¹ Exhibit P-101 CAB0770(i), p. 1.

²⁷² Exhibit P-101 CAB0770(i), p. 3.

²⁷³ Exhibit P-101 CAB0770(i), p. 3.

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

²⁷⁵ Exhibit P-101 CAB0770(i), p. 3.

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

Hayer Agrees to Testify

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

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

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

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

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

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

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

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

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

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

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

²⁸³ Exhibit P-101 CAF0443, p. 9.

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

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

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

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

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

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

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

286 Exhibit P-101 CAF0443, p. 5.

287 Exhibit P-431, p. 1.

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

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

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

291 Exhibit P-431, p. 2.

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

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

Protecting Hayer

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

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

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

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

²⁹² Exhibit P-431, p. 2.

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

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

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

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

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

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

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

The 1988 Attempt on Hayer's Life

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

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

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

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

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

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

301 Exhibit P-101 CAF0466.

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

303 Exhibit P-101 CAF0466.

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

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

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

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

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

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

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

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

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

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

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

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

³¹¹ Exhibit P-101 CAF0466, p. 5.

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

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

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

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

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

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

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

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

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

³¹⁷ Exhibit P-101 CAF0502, p. 1.

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

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

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

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

Continuing Threats to Hayer and the RCMP Response

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

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

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

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

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

³²² Exhibit P-101 CAF0470.

³²³ Exhibit P-101 CAF0465.

³²⁴ Exhibit P-101 CAF0467, CAF0469.

³²⁵ Exhibit P-101 CAF0471, pp. 2-3.

³²⁶ Exhibit P-101 CAF0471, p. 2.

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

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

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

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

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

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

327 Exhibit P-101 CAF0471.

328 Exhibit P-101 CAF0471, p. 7.

329 Exhibit P-101 CAF0475.

330 Exhibit P-101 CAF0474.

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

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

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

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

335 Exhibit P-101 CAF0500.

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

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

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

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

MR. FREIMAN: Intercept, I'm sorry.

INSP. CUNNINGHAM: Intercept, absolutely.³³⁸

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

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

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

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

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

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

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

³⁴⁰ Exhibit P-101 CAF0484.

³⁴¹ Exhibit P-101 CAF0481, p. 2.

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

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

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

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

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

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

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

³⁴² Exhibit P-101 CAF0482.

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

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

³⁴⁵ Exhibit P-101 CAF0483.

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

³⁴⁷ Exhibit P-101 CAF0483.

³⁴⁸ Exhibit P-101 CAF0483.

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

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

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

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

³⁴⁹ Exhibit P-101 CAF0484, p. 1.

³⁵⁰ Exhibit P-101 CAF0484, pp. 2-4.

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

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

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

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

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

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

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

On March 24, 1998, Smith responded to Hayer:

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

³⁵³ Exhibit P-101 CAF0486.

³⁵⁴ Exhibit P-101 CAF0486.

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

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

³⁵⁷ Exhibit P-101 CAF0486.

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

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

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

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

Information about a "Hit List"

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

³⁵⁸ Exhibit P-101 CAF0487.

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

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

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

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

³⁶³ Exhibit P-101 CAF0485, p. 3.

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

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

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

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

Implementation of Video Surveillance

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

364 Exhibit P-101 CAF0485, pp. 3-4.

365 Exhibit P-101 CAF0485, p. 4.

366 Exhibit P-101 CAF0485, pp. 4-5.

367 Exhibit P-101 CAF0485, p. 5.

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

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

370 Exhibit P-101 CAF0499.

371 Exhibit P-101 CAF0462.

372 Exhibit P-101 CAF0499, p. 2.

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

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

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

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

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

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

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

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

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

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

³⁷⁶ Exhibit P-101 CAF0499, p. 2.

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

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

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

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

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

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

RCMP Investigation and Response to the Hayer Murder

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

377 Exhibit CAF0491, p. 1.

378 Exhibit P-101 CAF0499, p. 2.

379 Exhibit P-101 CAF0499, p. 3.

380 Exhibit P-101 CAF0499, p. 3.

381 Exhibit P-101 CAF0498.

382 Exhibit P-101 CAF0498.

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

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

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

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

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

³⁸⁴ Exhibit P-101 CAF0493.

³⁸⁵ Exhibit P-101 CAF0494, p. 1.

³⁸⁶ Exhibit P-101 CAF0494, pp. 1-2.

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

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

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

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

³⁸⁷ Exhibit P-101 CAF0494, p. 2.

³⁸⁸ Exhibit P-101 CAF0494.

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

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

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

Video Surveillance Failure Revealed at the Inquiry

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

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

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

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

Charges against Bagri for the 1988 Attempted Murder

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

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

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

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

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

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

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

Disclosure Issue

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

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

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

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

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

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

³⁹⁸ Exhibit P-101 CAF0502, p. 2.

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

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

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

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

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

⁴⁰⁰ Exhibit P-101 CAF0502, p. 1.

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

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

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

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

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

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

Admissibility of the Hayer Attempted Murder Evidence

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

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

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

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

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

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

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

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

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

Deficiencies Revealed

CSIS/RCMP Cooperation

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

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

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

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

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

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

The RCMP Approach to Hayer and Witness Protection

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

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

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

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

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

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

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

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

Records Issues at the RCMP

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

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

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

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

Conclusion

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

1.3 Ms. E

Introduction

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

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

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

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

Ms. E

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

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

1985: Ms. E Questioned by the RCMP

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

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

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

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

414 Exhibit P-101 CAA0513, p. 1.

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

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

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

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

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

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

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

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

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

420 Exhibit P-101 CAA0387(i), p. 6.

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

422 Exhibit P-101 CAA0397(i), p. 1.

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

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

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

1986: The RCMP Fails to Follow Up

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

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

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

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

⁴²⁴ Exhibit P-101 CAA0397(i), p. 2.

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

⁴²⁶ Exhibit P-101 CAA0411.

⁴²⁷ Exhibit P-101 CAA0491.

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

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

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

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

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

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

⁴³⁰ Exhibit P-101 CAA1045(i), p. 2.

⁴³¹ Exhibit P-101 CAA0513.

⁴³² Exhibit P-101 CAA0513, pp. 1-3.

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

⁴³⁴ Exhibit P-101 CAA0513, p. 4.

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

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

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

435 Exhibit P-101 CAA0513, p. 4.

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

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

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

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

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

441 Exhibit P-101 CAF0414, p. 1.

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

443 Exhibit P-101 CAA0513, p. 4.

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

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

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

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

1987-1989: Ms. E Speaks to CSIS

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

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

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

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

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

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

451 Exhibit P-101 CAF0714, p. 2.

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

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

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

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

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

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

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

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

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

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

Laurie's First Interview with Ms. E

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

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

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

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

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

462 Exhibit P-101 CAF0415, pp. 1-3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Laurie's Second Interview with Ms. E

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

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

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

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

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

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

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

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

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

494 Exhibit P-101 CAA0562(i), p. 2.

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

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

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

Laurie's Third Interview with Ms. E

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

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

⁴⁹⁷ Exhibit P-101 CAF0418.

⁴⁹⁸ Exhibit P-101 CAF0418, p. 2.

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

⁵⁰⁰ Exhibit P-101 CAF0424, pp. 1-2

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

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

⁵⁰³ Exhibit P-101 CAF0424, p. 2.

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

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

⁵⁰⁶ Exhibit P-101 CAA0579(i).

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

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

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

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

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

Subsequent Interviews with Ms. E

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

⁵⁰⁸ Exhibit P-101 CAF0424, p. 2.

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

⁵¹⁰ Exhibit P-101 CAA0579(i), p. 2.

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

⁵¹² Exhibit P-101 CAA0579(i), p. 2.

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

⁵¹⁴ Exhibit P-101 CAA0579(i), p. 3.

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

⁵¹⁶ Exhibit P-101 CAA0579(i), p. 3.

⁵¹⁷ Exhibit P-101 CAF0424, p. 2.

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

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

MR. LAURIE: In a word, yes.

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

MR. LAURIE: Yes.

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

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

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

⁵¹⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7457; Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 35-36.

⁵¹⁹ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), p. 36.

⁵²⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7538-7539.

⁵²¹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7453-7454.

was verified by a reliable source), and his wife then had come to the business, but Ms. E always rebuffed them. Ms. E also advised that she had been visited by Bagri's wife, who complained that Ms. E was no longer associating with the family or inviting them into her home. A heated argument followed, and Ms. E told Mrs. Bagri that she "...wanted to avoid any involvement with any BK people," now that she knew enough about the BK. Laurie noted that Ms. E continued to be cooperative, but that he only maintained infrequent contact with her to see if she had contact with any of the CSIS targets.⁵²²

Laurie met with Ms. E again on January 19, 1989. The meeting took place at Ms. E's home and lasted nearly two hours.⁵²³ Laurie wanted to check on Ms. E's well-being and he also wanted some biographical information about Bagri.⁵²⁴ During the interview, they ended up discussing the issues previously covered, including Bagri's request to borrow Ms. E's car and his subsequent threat to her.⁵²⁵ This time, Ms. E did not get emotional when discussing Bagri's request – she had been confiding in Laurie for a long time and felt more secure.⁵²⁶ The meeting took the form of a "friendly chat." Laurie was then convinced that there was no additional intelligence which could be obtained from Ms. E which might have been overlooked.⁵²⁷

On April 24, 1989, Laurie met with Ms. E again at her home.⁵²⁸ His main purpose was to find out whether any of his targets had contacted her and whether the police had made contact.⁵²⁹ In both cases, there was no contact.⁵³⁰ Laurie then proceeded to ask Ms. E questions "...in order to develop a character profile of Ajaib Singh Bagri." As a result of the "...considerable new and interesting intelligence" provided by Ms. E in response,⁵³¹ Laurie was able to prepare an assessment of Bagri which described his early years in India and some of his associates.⁵³² The information provided by Ms. E was consistent with what was observed by CSIS and partly corroborated by other sources.⁵³³ After this interview, Laurie noted that his relationship with Ms. E continued to be "...very friendly, albeit professional." Ms. E had even stated that "...she now likes to meet to discuss these matters and she expects that [Laurie] will return."⁵³⁴ Laurie explained that, when he visited Ms. E, he "...was always armed with a box of sweets" and she would make tea. After a year and a half, Ms. E no longer expressed concern about his visits.⁵³⁵ In his report about this last interview, Laurie indicated that he intended to contact Ms. E again in six months, unless she had contact with

522 Exhibit P-101 CAF0406, pp. 1-2.

523 Exhibit P-101 CAF0377, p. 1.

524 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7457-7458.

525 Exhibit P-101 CAF0377, pp. 1-2.

526 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7458.

527 Exhibit P-101 CAF0377, pp. 1-2.

528 Exhibit P-101 CAF0379, p. 1.

529 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7459-7460.

530 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7459; Exhibit P-101 CAF0379, p. 1.

531 Exhibit P-101 CAF0379, p. 1.

532 Exhibit P-101 CAF0378.

533 Exhibit P-101 CAF0378, p. 3.

534 Exhibit P-101 CAF0379, p. 1.

535 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7460.

his targets before that time.⁵³⁶ By then, however, he already knew that he would not be with the CT Section six months later.⁵³⁷ During the same year, he was moved to work on counter-intelligence investigations and Ms. E's source file was closed.⁵³⁸ On February 14, 1990, Laurie left CSIS to rejoin the RCMP.⁵³⁹

Delay in Sharing Information with the RCMP

Initially, CSIS decided not to share the Ms. E information with the RCMP immediately.

During his first interview with Ms. E, it became clear to Laurie that her biggest fear was that the police might get involved. As Laurie put it, "...she did not want that at any cost."⁵⁴⁰ When she was visited by the RCMP after the bombing, she did not tell them what she told Laurie.⁵⁴¹ Laurie was not surprised:

It seems to me that when I was told that the police had been there and been dismissed – I don't remember that being shocking news because I come across that many times. There are people who say to me in plain English, oh, I had told the police I don't speak English. Oh, okay.⁵⁴²

Ms. E told Laurie that she was "rattled" by the RCMP's visits.⁵⁴³ She was convinced that cooperating with the police would put her and her children in danger and she said that she would never assist the police in any way.⁵⁴⁴ She made it clear that she did not want her information or her identity revealed to the police:

MR. LAURIE: She couldn't have made it more clear. She stressed it over and over again that she would not, for the reasons stated, ever cooperate with the police and that if the police came she would deny everything...⁵⁴⁵

Ms. E's fear of having the police involved remained constant throughout her dealings with Laurie:

MR. LAURIE: Well, she is still [during the second interview] consumed with fear about the police. For the entire time that I knew Ms. E, if I had to pick one thing about her that was constant, it was the fear of the police and the fear of her children being killed.

⁵³⁶ Exhibit P-101 CAF0379, p. 1.

⁵³⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7460.

⁵³⁸ Exhibit P-101 CAF0399, p. 3.

⁵³⁹ Exhibit P-101 CAF0399, p. 3; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7469.

⁵⁴⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7410.

⁵⁴¹ Exhibit P-101 CAA0553(i), p. 2.

⁵⁴² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7420.

⁵⁴³ Exhibit P-101 CAA0579(i), p. 1.

⁵⁴⁴ Exhibit P-101 CAA0553(i), p. 2.

⁵⁴⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7412.

MR. KAPOOR: And to be correct, it is not the police particularly but it is the fear that going to the police will reveal her such that she will be placed in jeopardy at the hands of others?

MR. LAURIE: Yes. And one time I was told that if Bagri has me killed that's one thing, but if he kills my children, it will be a bad thing. So she was really, really concerned about the children.⁵⁴⁶

...

MR. KAPOOR: And through this, again, she makes it clear the police are not – she does not want to deal with the police?

MR. LAURIE: Yes. When I discussed the police aspect, it was usually her telling me that she would commit suicide before she would assist the police – or before she went to court she would kill herself to protect her children. That is reported once or twice.⁵⁴⁷

Years later, when he drafted a statement in preparation for Bagri's trial in 1999, Laurie noted that his relationship with Ms. E was still friendly, but that "...she profoundly wishes she had never confided in me."⁵⁴⁸

On September 11, 1987, in the report he transmitted to his superiors at the BC Region and to CSIS HQ about his first interview with Ms. E, Laurie indicated that he was convinced that Ms. E's cooperation with him would cease immediately if she were contacted by police.⁵⁴⁹ Based on her "repeated comments," he felt that she would deny all knowledge and "...perhaps even her contact with CSIS."⁵⁵⁰ Laurie noted that, if Ms. E's information had to be passed to the police "...because of policy or legal requirement," "...considerable effort will be required to protect [her] identity in order to prevent the source from walking away." Since the RCMP knew of Ms. E's relationship with Bagri, Laurie felt that "...even a sanitized version" of his report would allow the RCMP to identify her. He specifically requested that CSIS HQ allow him to recontact Ms. E and obtain additional information before disclosing the information already obtained to any other agency.⁵⁵¹

Laurie explained in testimony that "...it was clear to all of us, both my supervisors and I and to the people who received [the information] in Ottawa, that this is police information and it will go to the police."⁵⁵² Laurie never had doubts on this point:

546 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7427.

547 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7440.

548 Exhibit P-101 CAF0399, p. 3.

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

550 Exhibit P-101 CAA0553(i), p. 3. In the source report he prepared about this interview with Ms. E, Laurie indicated that Ms. E "...stated emphatically that she will not co-operate with the police" and that she had refused her questions in the past: Exhibit P-101 CAF0376, p. 1.

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

552 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7416.

MR. BOXALL: Okay. But in this particular case, it was obvious to you from the first time you met her that what she was supplying was criminal information, criminal intelligence, a potential witness in a criminal case?

MR. LAURIE: Yes.

MR. BOXALL: And, in fact, the value of that was clear?

MR. LAURIE: Very clear and I said so just about every time I report it.⁵⁵³

This was difficult because the source, Ms. E, did not want to cooperate with the police. The question for Laurie then became whether he could further develop the information before it was passed on, especially given that the RCMP had already interviewed Ms. E and obtained no information. Laurie decided not to request the information in the RCMP's possession as a result of their interviews with Ms. E, since that could expose his interest and cause the RCMP to attempt contacting Ms. E again. Laurie explained that, by his comments in his report, he was asking his HQ for guidance about whether he could go see Ms. E again as he wished, or whether it would all "end now" with an immediate transfer of the information to the RCMP.⁵⁵⁴

The Dilemma: Protecting an Intelligence Source with Potentially Criminal Information

The Unit Head for the BC Region Counter Terrorism Section, John Stevenson, supported Laurie's request to be allowed to recontact Ms. E "...prior to CSIS HQ disseminating any details to the RCMP." He noted: "...we have everything to gain by a cautious empathetic approach to this source."⁵⁵⁵ At the Inquiry hearings, Stevenson explained that "...there was nothing life-threatening here." Since Laurie appeared to have established a rapport with Ms. E, he felt the best approach for CSIS was "...softly, softly, let's go back and go back and go back and get as much as we can." This was not necessarily because CSIS expected Ms. E to have intelligence about present threats to Canada's security, as opposed to information about the possible perpetrators of the Air India bombing, but simply because, since she was not willing to speak to the police, it was better for CSIS to "...see what we can get" rather than rush to pass the matter over to the RCMP, in which case "...the RCMP may not have gone anywhere." Stevenson explained that there was no "formula" to determine when a source with information about past criminal activity would be "turned over" to the RCMP. The decision would be made by CSIS HQ and would depend on all circumstances, including the benefit to CSIS's investigations of the source's information, and whether the source could be "...more easily utilized in the criminal side."⁵⁵⁶

⁵⁵³ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7531.

⁵⁵⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7416-7417, 7421.

⁵⁵⁵ Exhibit P-101 CAA0553(i), p. 3.

⁵⁵⁶ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7680-7682, 7685-7686.

The Deputy Director General Operations at the BC Region, Ken Osborne, agreed with his colleagues, indicating that "...once our information is more complete then a decision can be taken on the best method of dissemination to the RCMP"⁵⁵⁷ He asked for direction from CSIS HQ, clearly recognizing the implications of the information:

Once again we find ourselves in a position where a source who demands anonymity has provided information which has a direct bearing on a serious criminal matter.⁵⁵⁸

Laurie explained that his supervisors' attitude, upon learning about the information he received from Ms. E, was "...let's see if headquarters will give us authority to not pass it yet."⁵⁵⁹

On September 13, 1987, Michael Gareau of CSIS HQ wrote in an internal Transit Slip that he agreed that Laurie should be allowed to recontact Ms. E for more details, but that this had to be done prior to September 18th. He then provided a list of questions about the information found in the BC Region report, and suggested that Ms. E be shown photographs to identify the individuals who were to accompany Bagri to the airport.⁵⁶⁰ Surprisingly, he appeared to disagree with Laurie's comment that the information obtained was "...new and important intelligence concerning the Air India/Narita issue."⁵⁶¹ He wrote: "Para 11. information not new, but does support CSIS's premise."⁵⁶² About Osborne's comment that the decision concerning the "...best method of dissemination to the RCMP" could be made when more information was obtained,⁵⁶³ Gareau noted that the decision was not yet reached at HQ and that answers to his questions and the "source's future potential" would be taken into account. He addressed this Transit Slip only to Bill Dexter, another CSIS HQ member, and asked him to add other points requiring clarification.⁵⁶⁴

Dexter did not send a message to the BC Region until September 24, 1987. He reproduced Gareau's questions about the Ms. E information and advised the Region that the decision on dissemination had not yet been made by HQ. He also suggested a manner of compiling photo albums, similar to police photo lineups, for the purpose of having Ms. E identify the other individuals involved.⁵⁶⁵ Laurie had never prepared photo lineups since he joined CSIS and did not follow this last suggestion, since Ms. E had not indicated that she had seen the individuals who were to accompany Bagri to the airport.⁵⁶⁶

557 Exhibit P-101 CAA0553(i), p. 4.

558 Exhibit P-101 CAA0553(i), p. 4.

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

560 Exhibit P-101 CAF0346, pp. 1-2.

561 Exhibit P-101 CAA0553(i), p. 3, para. 11.

562 Exhibit P-101 CAA0346, p. 2.

563 Exhibit P-101 CAA0553(i), p. 4.

564 Exhibit P-101 CAF0346, p. 2.

565 Exhibit P-101 CAA0347, pp. 1-2.

566 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7423-7424.

Because the HQ message to the BC Region was dated September 24th, Gareau's directive that Ms. E be recontacted before September 18th could not be communicated in time to the Region. Further, Laurie conducted his second interview with Ms. E on September 24th⁵⁶⁷ before he received the HQ message, so he could not address the HQ questions during the interview. In his report about this interview, he reiterated the request that CSIS HQ advise of any questions they had, and again asked that HQ wait until his next interview with Ms. E before "...taking any action with respect to the passing of this information to police agencies."⁵⁶⁸ Laurie wanted to be allowed to speak to Ms. E again before the police found out about her information.⁵⁶⁹ He noted that Ms. E was still adamant in her reluctance to assist the police and was "...now living in fear of exposure." He reiterated his earlier views that all assistance provided by Ms. E would stop if she was approached by any police.⁵⁷⁰

The BC Region Director General, Randil Claxton, and the Chief of Counter Terrorism, Mervin Grierson, commented on the dilemma faced by CSIS as a result of the nature of the information provided by Ms. E. They wrote that her information could implicate Bagri and others in the Air India bombing, but had yet to be substantiated. They said the BC Region would try to corroborate Ms. E's information with the data in their possession. They noted that Ms. E had previously refused to cooperate with the RCMP, but now wanted to speak to Laurie.⁵⁷¹ They wrote:

Again, we are faced with the problem of a developing source in possession of information vital to a criminal investigation. The dilemma of source confidentiality continues.... It is realized that we cannot shelter this information but must strive for a working relationship, i.e., (joint operation) with the RCMP to maximize this information as this arrangement is at the best tenuous at this time.⁵⁷²

The Chief CT and the Director General also wrote that while Laurie was aware of CSIS HQ's suggested questions for Ms. E, "...you will no doubt appreciate the dilemma we face in advancing the dialogue with source without impinging on the responsibilities of law enforcement authorities."⁵⁷³ Laurie explained in testimony that the BC Region was facing a dilemma because going back to Ms. E and asking for more information about Bagri's request to borrow the car was "...very much what law enforcement should be doing, not what the Service should be doing at this stage." Since Ms. E would not speak to police, it appeared as though only CSIS could get her information.⁵⁷⁴

⁵⁶⁷ Exhibit P-101 CAA0562(i).

⁵⁶⁸ Exhibit P-101 CAA0562(i), p. 3.

⁵⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7436.

⁵⁷⁰ Exhibit P-101 CAA0562(i), pp. 2-3. See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7436.

⁵⁷¹ Exhibit P-101 CAA0562(i), p. 3.

⁵⁷² Exhibit P-101 CAA0562(i), p. 3.

⁵⁷³ Exhibit P-101 CAA0562(i), p. 3.

⁵⁷⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7437.

Grierson explained in testimony before the Inquiry that the BC Region wanted to continue developing this information on its own because "...there was no immediacy in terms of disclosing right away."⁵⁷⁵ He added:

MR. GRIERSON: So the deal is, if we pass it right away, we know what the dilemma is going to be, it's going to turn the tap off. So what we're proposing is, in consultation with Headquarters, we've got to find a way to basically see if we can maximize this without losing the benefit that's potentially there.

...

I mean, quite clearly it's very significant but it's not immediate and it's not life-threatening so we've got some time to deal with this.⁵⁷⁶

Again, BC Region requested guidance from HQ about this issue.⁵⁷⁷

After the third interview with Ms. E on October 7th, when the questions suggested by HQ were asked of Ms. E, Laurie again asked for more time before her information was passed to the RCMP:

The source is presently searching records for the date of Bagri's travel (para 4) and another meeting is assured. It is hoped that this Region may complete these inquiries prior to a decision on which, if any, information, should be passed to other agencies.⁵⁷⁸

He explained that Ms. E continued to maintain the posture that "...co-operation with the police is out of the question," but was now opening up more and more when she saw that she was not "...summarily handed over to the police" after speaking to Laurie. As Ms. E felt that "...her biggest worry is over," Laurie could approach almost any topic with her.⁵⁷⁹

Laurie did recognize, however, that Ms. E's information would eventually have to go to the police, and that she would eventually become less and less useful to CSIS as a source. He even proposed to help convince her to approach the police:

⁵⁷⁵ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9490.

⁵⁷⁶ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9490-9491.

⁵⁷⁷ Exhibit P-101 CAA0562(i), p. 3.

⁵⁷⁸ Exhibit P-101 CAA0579(i), p. 3.

⁵⁷⁹ Exhibit P-101 CAF0424, p. 1.

While I am convinced that bringing the police to see her would end all co-operation I now wonder whether I would be able to convince her, over time, to approach the police herself, offering limited (no court) co-operation. In this way, a gradual transfer could take place and police assurances of protection etc. could be laid on her. The source is now checking personal records in order to provide me with needed dates but her usefulness to us will have limits. If she ever could be brought 'on side' by the police then possibly she could be used by the police to elicit some sort of evidentiary confession from Bagri suitable for court. Naturally time hangs in the balance and we must make a decision on which way to go with this source. I have developed a relationship with her which, if developed, I feel can lead to her offering co-operation to the police. If such an effort failed, then I feel we would have lost little, and the police may still then be brought in to make their own efforts to woo her. Your views are sought.⁵⁸⁰

Laurie explained that, like other colleagues at his level in CSIS, he wanted not only to gather information but also "...to see things resolved successfully." If Ms. E was summarily passed to the RCMP, then Laurie felt that no one would be successful with her. After his third interview with Ms. E, except for the verifications she was to make about Bagri's dates of travel, Laurie felt that he had gotten all the information from her that was relevant to the CSIS mandate about the BK and his targets. There was little long-term benefit that could be gained for CSIS in continuing to develop Ms. E as a source. The benefit she could bring would be to the police.⁵⁸¹

Grierson noted that the good relations established between Ms. E and Laurie were "...a good indication that this source may be of great benefit in helping solve Air India." He added that "...the old dilemma still remains [as] to how do we introduce this source to the authorities without jeopardizing the investigation or this source's development." Grierson noted that the Region's decisions about Ms. E's future development as a source would depend on CSIS HQ's response to the Grierson/Claxton comments formulated after the second interview, asking about the passing of information to the RCMP.⁵⁸²

CSIS HQ Makes a Decision

Laurie did not receive a response from CSIS HQ about his suggestion to attempt to convince Ms. E to cooperate with police. He never received instructions to make this attempt.⁵⁸³ From the time of its September 24th message indicating that no decision had yet been made about the dissemination of Ms. E's information, CSIS

580 Exhibit P-101 CAF0424, p. 2.

581 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7445, 7449.

582 Exhibit P-101 CAF0424, pp. 2-3.

583 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7446-7447.

HQ provided no further guidance to the BC Region until October 23, 1987, when HQ finally provided a response to the Region's questions. HQ decided that Ms. E would remain under CSIS control until it was deemed necessary to turn her over to the RCMP and that, in the meantime, she would not be interviewed by the RCMP. HQ noted that, as the handler was gaining Ms. E's confidence, it was in the interest of all agencies to not alter this situation. HQ recognized that Ms. E's potential for CSIS was short-term and that, for the most part, the "...intelligence gathered to this point has concerned Air India/Narita." This type of information was said to put CSIS in the "familiar position" of having to decide when to pass the source and her information to the RCMP. It was decided that this would be done "...sooner rather than later," but that, for now, CSIS would handle the source independently.⁵⁸⁴

CSIS HQ also added:

We are of the opinion that source has provided us with historical information only and any information which is of a criminal matter can not be corroborated.⁵⁸⁵

In the same telex, HQ went on to caution Laurie against possible interference with the criminal investigation by counselling Ms. E in relation to appearing as a witness. Finally, HQ indicated that CSIS had been "...cooperating with the RCMP by providing relevant information to them."⁵⁸⁶

Laurie disagreed with HQ's assessment of Ms. E's information as "historical" and with the notion that none of the information provided could be corroborated. He viewed the HQ telex as "...an excuse to not pass it." According to Laurie, "historical information" was meant to designate information that did not need to be passed immediately.⁵⁸⁷ He explained:

MR. LAURIE: I had said in my previous messages that I believe this is information that needs to be passed. It is true that I said that, you know, I would like to corroborate or get further details and that sort of thing, but up to this point it seems to me that everyone is in agreement that this was information that needed to be passed. I mean, after the very first interview in my report, my management in British Columbia agreed with the assessment that this was material that would be passed. The dilemma was when and how and all those sorts of things, but this all of a sudden indicates that maybe that is not the case in their view.⁵⁸⁸

584 Exhibit P-101 CAF0348, pp. 1-2.

585 Exhibit P-101 CAF0348, p. 1.

586 Exhibit P-101 CAF0348, pp. 1-2.

587 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7450-7451.

588 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7451.

Overall, Laurie felt that the HQ telex was contradictory in that it seemed to indicate in one paragraph that the information was historical and did not need to be passed and, in another paragraph, that it needed to be passed sooner rather than later. As Laurie had not tasked Ms. E with taking any actions, he could easily put the matter on hold after receiving the HQ instructions.⁵⁸⁹ He explained that during this period, it was not unusual to receive contradictory and changing instructions from HQ about the Air India investigation:

MR. LAURIE: You have to remember also that during this period in October of '87, this is when we are in that period where one day we are aggressive and the next day we are not, and the next day we re doing this and the next day we are not. And, you know, we would get messages like this that seemed to be conflicting from paragraph to paragraph. And so if the solution for this particular file is to do – just put it on hold for a few days, hey, I'm happy with that. I've got lots of other things that I am doing.⁵⁹⁰

However, Laurie did need to know whether and when Ms. E's information would be passed to the RCMP and whether her identity would be revealed, as this could have a serious impact on his future meetings with Ms. E and on his ability to continue receiving information.⁵⁹¹ Having received this telex, he still did not know what was, or would be done.

On November 7, 1987, Gareau of CSIS HQ wrote an internal note asking a colleague to review the information provided by Ms. E and to send questions to BC Region, where clarification was needed. Gareau expressed particular interest in Bagri's trip to New York. He did return the Ms. E material to the Human Sources Branch, and he indicated that Ms. E did not have any future potential as a source for CSIS, but that he nevertheless wanted to make sure that BC Region obtained all the information they could about Bagri and the early 1980s.⁵⁹²

Information from A "Vancouver Source" Revealed to the RCMP

A little over a month later, on December 17th, the RCMP HQ National Security Offences Task Force (NSOTF), in charge of coordinating the Air India investigation, wrote the following to the E Division NSOTF investigating Air India in British Columbia:

Further to our request of CSIS for description of two UMs to accompany Bagri to airport on 85-06-22 provide in their HQCT/9064/438 the following response.⁵⁹³

589 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7452.

590 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7453.

591 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7453.

592 Exhibit P-101 CAF0349.

593 Exhibit P-101 CAA0610, p. 1.

Attached was a telex from Gareau to the RCMP HQ NSOTF, also dated December 17th, indicating that, in response to RCMP Insp. Terry Hart's request the same morning, CSIS's "Vancouver source" could not identify the two persons who would accompany Bagri to the airport because the source had not seen them – Bagri visited the source on his own to borrow the source's car.⁵⁹⁴

Having received a copy of this CSIS telex, the E Division Task Force replied that it had "...no record or knowledge" of an incident where Bagri attempted to borrow a vehicle to go to the airport on June 22, 1985. The Division asked HQ to elaborate.⁵⁹⁵ HQ explained that CSIS had advised the RCMP of the intelligence about Bagri's request to borrow the car of one of their sources, during a meeting with RCMP HQ members, Supt. Pat Cummins and Insp. Terry Hart. RCMP HQ indicated that no "hard copy" of the information had been provided.⁵⁹⁶ On December 17, 1987, the day when Hart made his verbal request for a description of the UMs who were to accompany Bagri to the airport, Gareau and Dexter of CSIS HQ met with Cummins and Hart and discussed recent (unrelated) information about Bagri which the RCMP was to investigate.⁵⁹⁷ Obviously, it was at that time that Hart requested information about the two UMs. It was also at that time, or sometime before then, that CSIS had provided the RCMP with some of the Ms. E information, without identifying Ms. E.⁵⁹⁸

Because no written record of this passage of information was prepared, it is difficult to know exactly what information was passed verbally by CSIS. In its 1987 message to E Division, RCMP HQ noted that it was "...not clear how many people accompanied Bagri however source cannot identify them not having seen them."⁵⁹⁹ HQ added:

There may have been a mention of luggage however source does not clearly recall.⁶⁰⁰

Finally, HQ advised that it had "no further info" other than that contained in their previous telex about the request to CSIS for the identification of the two UMs.⁶⁰¹

⁵⁹⁴ Exhibit P-101 CAA0610, p. 2, CAF0356, p. 2.

⁵⁹⁵ Exhibit P-101 CAF0350.

⁵⁹⁶ Exhibit P-101 CAA0615.

⁵⁹⁷ Exhibit P-101 CAF0420, p. 3.

⁵⁹⁸ Final Submissions of the Attorney General of Canada, Vol. 1, para. 240. The AGC states that the Ms. E information was provided verbally "...at a meeting in Ottawa on another matter in the late fall of 1987." It appears that the meeting would have occurred sometime between Laurie's early interviews with Ms. E in September and October and the December 17th request by Hart or even on the day of the request. The AGC also states that CSIS did not identify Ms. E at that time, which is consistent with the evidence where she is referred to only as "the source" in 1987. Finally, the AGC claims that CSIS advised the RCMP that she refused to meet the Force. This is unsupported by the evidence, which provides no information about whether such a statement was made or not.

⁵⁹⁹ Exhibit P-101 CAA0615.

⁶⁰⁰ Exhibit P-101 CAA0615.

⁶⁰¹ Exhibit P-101 CAA0610, CAA0615.

Subsequent CSIS Contacts with Ms. E

Laurie was not advised of the discussions held between CSIS and RCMP at the HQ level. After his October 1987 interview with Ms. E, and HQ's cryptic telex about the "historical information" and the eventual need to pass it to the RCMP, he was never informed of whether Ms. E's identity or information had been disclosed to the RCMP. He testified that he kept enquiring about whether the information was passed, but could not get an answer from CSIS HQ.⁶⁰²

At some point, – Laurie does not recall exactly when – Gareau visited the BC Region and Laurie asked him, "directly face-to-face did he pass it."⁶⁰³ Gareau said that the material had been passed. When Laurie asked "which of it" was passed, Gareau responded "all of it." At first, Laurie assumed that this meant that Ms. E's identity had been disclosed to police. He was surprised that this had been done without his knowledge and without even advising him. Later, Laurie felt confused because Ms. E did not say anything about being contacted by the RCMP and her attitude towards him did not change.⁶⁰⁴ In fact, after he interviewed her in January 1989, Laurie noted:

The source admitted that after the first time she told me what she knew, she was afraid, despite my assurances, that I would not exercise caution and that our meetings would become publicly known. She also feared the police would get involved and she would be forced to deny everything. Now, the source says that she feels more secure and she expressed gratitude [REDACTED] that her security has been safeguarded.... I still feel that the source will never co-operate with the police or give evidence in court.⁶⁰⁵

Ms. E did not say that she was contacted by the RCMP and rather indicated the opposite. During his subsequent interview with Ms. E in April 1989, Laurie ascertained that the police had not contacted her.⁶⁰⁶

After he received the HQ telex in October 1987, Laurie did not meet with Ms. E again for over a year. A decision was made at the BC Region level that it would be "prudent" for CSIS not to make contact with Ms. E for a time, "...in order that we not contaminate any investigations."⁶⁰⁷ However, Laurie was never instructed to stop all contact with Ms. E.⁶⁰⁸ He was told that he was not to use her "...

⁶⁰² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7453, 7470-7471.

⁶⁰³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7470-7471. See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7455.

⁶⁰⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7455-7457, 7470-7471.

⁶⁰⁵ Exhibit P-101 CAF0377, p. 2.

⁶⁰⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7458-7460.

⁶⁰⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7453.

⁶⁰⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7528; Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 51-52.

for criminal information or intelligence,” but that he could use her for other information, which is why he focussed more on biographical information about Bagri during subsequent interviews with her.⁶⁰⁹

When Laurie interviewed Ms. E for the fourth time, in November 1988, he found that she was cooperative because she could see that “...no one has learned of our discussions.” He reported to HQ that, even if HQ had suggested in October 1987 that he continue to gain Ms. E’s trust to obtain more information of value to CSIS and the RCMP, that she was “not pursued vigorously” because it was assessed that she “...did not have any more valuable information,” that she was “...still determined to resist co-operating with the police” and that she “...did not want to get involved with members of the BK.”⁶¹⁰

Other BC Region members, including the Assistant Chief of the CT Section, reminded HQ that Ms. E had “...supplied information which may have relevance to the RCMP Air India/Narita investigations.” They explained that, because HQ had said that the information was passed to the RCMP, because the RCMP had requested that CSIS make no inquiries that could “...contaminate their investigation,” and because Ms. E was not willing to get involved with BK members, contact with her was “...reduced to periodic telephone calls to check on source’s well being.” According to the BC Region, this was not a problem because “...pursuant to Headquarters instructions, we are not investigating Air India/Narita.” Ms. E was willing to maintain contact, but BC Region thought it was unlikely that any information of value could be learned, so they decided to see her only occasionally and to consider her in the “dormant category” as a source.⁶¹¹ Yet, two other interviews were conducted subsequently.

After the November 1988 interview, the BC Region Deputy Director General of Operations, Grierson, further explained that it was now the Region’s understanding that Ms. E’s identity had not been revealed to the RCMP, only her information. He suggested HQ might want to address the issue of passing on her identity, since her value as a source to CSIS operations was “now limited.” He added that, as requested in HQ’s October 1987 telex, Laurie had never counselled her not to cooperate with police.⁶¹²

After his January 1989 interview with Ms. E, Laurie continued to be convinced that Ms. E could not provide new information because she did not have contact with CSIS targets. He reported to HQ that his contact with Ms. E would be “... limited to those occasions when she calls me or there is a specific reason to see her.” His supervisors at BC Region all agreed.⁶¹³

Deficiencies in the 1987 Sharing of Information about Ms. E

During his time at CSIS, Laurie was never shown the CSIS/RCMP Memorandum of Understanding which governed the transfer and sharing of information

609 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7528.

610 Exhibit P-101 CAF0406, p. 2.

611 Exhibit P-101 CAF0406, pp. 2-3.

612 Exhibit P-101 CAF0406, p. 3.

613 Exhibit P-101 CAF0377, p. 2.

about the RCMP investigation of Sikh extremism dubbed “Project Colossal.”⁶¹⁴ He agreed that the information provided by Ms. E appeared to qualify as information relating to the RCMP investigation that was to be fully disclosed to the RCMP. However, this was not his decision to make, and the only way the MOU could have an impact on his work was through the directions he would receive from his supervisors.⁶¹⁵

CSIS HQ, which had the responsibility for deciding whether and how to pass on the Ms. E information, initially allowed for two more interviews of Ms. E before a decision was even made. As will be shown later, some of those interviews were likely recorded by Laurie, and the tapes and transcripts destroyed according to CSIS’s usual practice at the time, steps that at trial were found to constitute a violation of the accused’s *Charter* rights. When HQ finally made a decision, it provided no clear indication to its BC Region of what the decision was, leaving the source handler in the dark about what would happen to his source. HQ provided no instructions to stop contact with Ms. E, with the result that the Laurie interviews, and the destruction of tapes and transcripts, continued. HQ also provided no instructions about the types of records of the interviews which were to be prepared and maintained, given the criminal nature of the information.

In 1987, CSIS HQ provided only verbal information about Ms. E to the RCMP, and did not preserve any record of the nature of the information passed. No written documents were provided. The interview reports were not provided, even in edited or redacted form. No indication of the number of interviews conducted with the source or of their timing in relation to the events related by the source was provided. The source was not identified, with the result that the RCMP could not interview her itself to obtain more information while CSIS contact with the source continued.

On the other hand, the RCMP failed to follow up on what little information was provided. Having received information indicating that Bagri sought to borrow a car to go to the airport the night before the bombing, the RCMP took no further action once it was told the source could not identify the persons accompanying Bagri. When the file was reviewed many years later, it was noted that “...no documents could be found to indicate that anything was done with this information during 1988 and 1989” and there was no indication about “... why someone did not ask more questions of CSIS in 1987.”⁶¹⁶

1990: The RCMP “Discovers” the Ms. E Information

The Watt MacKay Report

In the late 1980s, the RCMP Deputy Commissioner of Operations ordered that a review of the Air India investigation be conducted to ensure that “...all

⁶¹⁴ Exhibit P-101 CAA0500; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7465.

⁶¹⁵ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7464-7466.

⁶¹⁶ Exhibit P-101 CAA1045(i), pp. 1-2.

appropriate avenues of this investigation have been explored to the extent possible.”⁶¹⁷ Insp. B.G. Watt and Insp. R.E. MacKay reviewed the files held in the Divisions and at HQ, and in 1989 they produced a report referred to as the Watt MacKay report.⁶¹⁸ A draft of the report was circulated to all the Task Forces involved in 1989, and then comments and suggested actions from the divisional analysts were added to the final version of the report. The Watt MacKay report identified issues that were viewed as still outstanding in the investigation. It was organized according to the suggested priority to be afforded each outstanding issue: first, items which required initial or follow-up investigation; second, items which “should be considered” for investigation or follow-up; third, items of “minimal investigative value”; and finally, information of interest. Under the second group – issues which “should be considered” for action – issue (w) was devoted to Ms. E.⁶¹⁹

Watt and MacKay mentioned the “...undocumented CSIS information” about Bagri visiting a Vancouver CSIS source to borrow a car on June 22, 1985, and asked how much detail was available about Bagri’s arrival, his appearance, his travel companions, his vehicle, etc. They asked whether the “material witness” aspect should be pushed with CSIS. Interestingly, they also asked whether this was the “...same incident where Bagri arrived late at night and asked to leave some suitcases for a while?” The E Division analyst commented that efforts to obtain more information about the RCMP HQ information about the request to borrow the car “...were not successful.” The analyst noted that no direct inquiry had been made of the CSIS BC Region, where the information likely originated, and that this avenue could be pursued. Finally, he noted that, according to his research, he could identify no late night visit where Bagri asked to leave suitcases. He added that the only late night visit on file involving Bagri was to his friend, Ms. E, but that there was no information indicating that he had asked to leave suitcases. The “anticipated action” included in the Watt MacKay report for this issue was to contact the CSIS BC Region and request “complete details” about the request to borrow the car.⁶²⁰

The RCMP Approaches CSIS about the Ms. E Information

Cpl. Rick Rautio and Cst. Bart Blachford were members of the E Division National Security Investigations Section (NSIS), which was then in charge of the Air India investigation, and were tasked with following up on the Watt MacKay report recommendations.⁶²¹ They prepared a list of questions for CSIS which was transmitted to CSIS BC Region on July 9, 1990, in a letter signed by Insp. Ron Dicks, Officer in Charge of E Division NSIS.⁶²² Further to issue 2(w) in the report, paragraph 6 of the letter requested “...complete details of the incident on 85

617 Exhibit P-101 CAF0343(i), p. 8.

618 Exhibit P-101 CAF0343(i); Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7566.

619 Exhibit P-101 CAF0343(i), pp. 8, 9, 35.

620 Exhibit P-101 CAF0343(i), p. 35.

621 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7735. See also Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7568.

622 Exhibit P-101 CAA0773; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7735.

JUN 22 when Ajaib Bagri approached a CSIS source in Vancouver to borrow a car.⁶²³ The CSIS BC Region forwarded the request to CSIS HQ with a note that the Region would be writing separately about paragraph 6 and requesting HQ's input about the response.⁶²⁴ Shortly afterwards, John Stevenson, the BC Region CT Unit Head, reviewed the information on file about Ms. E.⁶²⁵

On July 25th, Rautio and Blachford went to the CSIS offices and perused records about the questions asked in Dicks's letter. Records about paragraph 6 of the letter were not made available however, as BC Region "...left the dissemination of that information to HQ."⁶²⁶ In the following week, the CSIS BC Region wrote to HQ and advised that the Ms. E information relevant to paragraph 6 of the RCMP request was "...not passed to the RCMP locally," and that the decision of whether to pass it would be left to HQ. Other questions were to be answered directly by the BC Region, but the RCMP was told that paragraph 6 would be addressed by CSIS HQ. The Region reminded HQ that the investigator who used to deal with Ms. E, Laurie, was now an RCMP member.⁶²⁷

In a letter dated September 27, 1990, addressed to RCMP HQ, CSIS HQ provided answers to the RCMP questions, including paragraph 6 of the RCMP request.⁶²⁸ The letter contained a two-paragraph summary of the Ms. E information, extracted from Laurie's reports about his interviews with Ms. E. The information provided included a detailed description of Bagri's request to borrow the car, limited information about his previous association with Ms. E (simply stating he used her car regularly), and information about Bagri's visits to Ms. E after the bombing, including the threat he uttered when discussing the "secrets" they shared.⁶²⁹ Ms. E's identity was not provided, nor were any details about her interaction with CSIS, her previous interviews with the RCMP, nor any of the additional information she provided about Bagri and Parmar.

On October 9, 1990, RCMP HQ transmitted the CSIS response to E Division NSIS.⁶³⁰ On the same day, Blachford compared the information found in the 1987 RCMP HQ correspondence about this matter, which simply stated that "...there may have been a mention of luggage but the source does not clearly recall,"⁶³¹ with the two paragraphs now sent by CSIS, noting that a "lot of new details" were provided, and concluding: "...question of course is where was all this info before?"⁶³² Blachford was of the view that the information passed in 1987 was "...scant and contained very little content or context" when compared to the information now provided in response to the Watt MacKay questions.⁶³³

623 Exhibit P-101 CAA0773, p. 2. See also Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7568-7569.

624 Exhibit P-101 CAB0838, p. 3.

625 Exhibit P-101 CAF0351.

626 Exhibit P-101 CAF0432, pp. 1-2.

627 Exhibit P-101 CAF0352, pp. 1-2.

628 Exhibit P-101 CAA0777.

629 Exhibit P-101 CAA0777, pp. 4-5.

630 Exhibit P-101 CAF0353.

631 Exhibit P-101 CAA0615.

632 Exhibit P-101 CAA0781(i), p. 1; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7733-7735.

633 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7737.

Later in the day on October 9th, Dicks wrote to RCMP HQ about this matter.⁶³⁴ He attached the three pieces of correspondence between HQ and E Division from 1987, in which HQ first transmitted CSIS's response that their source could not identify the UMs who were to accompany Bagri to the airport,⁶³⁵ and indicated that there was "...no hard copy record" of the CSIS intelligence.⁶³⁶ Dicks explained that item 6 of the latest CSIS response to the Watt MacKay questions was analyzed in light of the 1987 correspondence. He commented, "...you will readily discern considerable material difference between what was reported in 1987 to what is now reported on pages 5 + 6 [item 6]." Dicks advised that he asked Cummins about his recollection. Cummins explained that, at the time, RCMP HQ had wanted to have the CSIS source identify the individuals Bagri took to the airport by viewing photographs. He said that, because the source had not seen anyone and "...in the absence of any additional information, the matter was not pursued further."⁶³⁷

Dicks pointed to the information in the latest CSIS response, which indicated that the source "...was quite afraid of Bagri and sensed his intentions" by the time Bagri made the request to borrow the car. He noted that now that such specific information was provided by CSIS, E Division would "...eventually want to vigorously investigate what CSIS source felt, were Bagri's 'INTENTIONS.'" Dicks indicated in conclusion that he did not want CSIS approached about this at that time, but requested that HQ files be researched and that Hart be canvassed for "...any light he may be able to cast on the developments as they occurred in 1987."⁶³⁸ Dicks explained in testimony that he felt that the information just received from CSIS was significant and could have a material impact on the Air India investigation, but that he wanted to understand clearly what information the RCMP already had before seeking additional information from CSIS.⁶³⁹

On the next day, October 10, 1990, RCMP HQ replied to Dicks' message.⁶⁴⁰ HQ said they concurred with E Division's interest in the CSIS information, and that a review of HQ files had revealed no additional information. HQ reported that Hart recalled receiving the information during a meeting at CSIS HQ on another subject. He indicated that "...it was the position of this HQ at the time given the fact source did not see the other two UMs that source could not identify them and given the fact source did not wish to meet with RCMP members this issue could not be further pursued." HQ then noted that both Hart and HQ Supt. Neil Pouliot were now of the view that, given the information provided by CSIS in response to the Watt MacKay questions, the issue "...deserves further examination." HQ finally noted that CSIS would not be approached for the time being, but that consideration should be given "in the near future" to making a request to CSIS for access to the source "...for a full police interview" as "...it may well be that source could provide missing link in this investigation."⁶⁴¹

634 Exhibit P-101 CAA0779.

635 Exhibit P-101 CAA0610, CAF0356, p. 2.

636 Exhibit P-101 CAA0615.

637 Exhibit P-101 CAA0779, pp. 1-3.

638 Exhibit P-101 CAA0779, p. 3.

639 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7576-7577.

640 Exhibit P-101 CAF0421.

641 Exhibit P-101 CAF0421, pp. 2-3.

Before the HQ message was sent to the Division, Dicks spoke with Pouliot and Hart of HQ.⁶⁴² As a result of those discussions, a modified version of the HQ message was sent to E Division.⁶⁴³ It contained only part of Hart's explanation about why the information was not pursued in 1987, cutting out the passage about the source's unwillingness to speak to the RCMP, and then mentioning that the issue should be further examined and that the E Division request that CSIS be approached would be adhered to "...re: access to the source for full police interview."⁶⁴⁴ E Division replied on the same day, indicating that Dicks would approach CSIS the next morning to discuss the "revelation" contained in the letter responding to the Watt MacKay questions. Dicks was to point out to CSIS the need for the RCMP to have direct contact with the source handlers and "related material" in order to have "...an absolutely clear understanding of the information as it currently exists." Dicks also intended to make it clear that he expected CSIS "...to use any persuasion possible to convince the source of the importance of speaking with the RCMP." The Division requested that HQ also raise the issue with CSIS HQ "...to co-ordinate with the E NSIS approach."⁶⁴⁵

The following morning, on October 11, 1990, Dicks and Wall of E Division met with members of the CSIS BC Region.⁶⁴⁶ At the time, the RCMP did not know the identity of the CSIS source or source handler.⁶⁴⁷ Stevenson, who was present at the meeting and prepared a note summarizing the discussions, noted that the "main thrust" of the RCMP's interest was the recent CSIS correspondence about the "...source from whom Ajaib Singh Bagri wished to borrow a car on or about the time of Air India (85/06)."⁶⁴⁸ At the Inquiry hearings, he explained that both the RCMP officers "were angry" and were accusing CSIS "...of holding back of information." According to Stevenson, the exchanges during the meeting were "...spirited and bordering on hostile."⁶⁴⁹ He said:

...by this time I'm a little rusty on that source, Ms. E, we were just talking about, because I had been off doing other things, and to be holding back information on that particular source and it's information that they felt they should have had. They were a bit – perhaps it's fairly strong, but I think there were intimations that CSIS was obstructing justice.⁶⁵⁰

In his note about the meeting, Stevenson indicated that the RCMP request on this issue had been received by the BC Region in July, but that the Region "...purposefully refrained from addressing or discussing the sensitive [redacted]

642 Exhibit P-101 CAA0782, p. 1.

643 Exhibit P-101 CAA0783; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7580-7581.

644 Exhibit P-101 CAA0783.

645 Exhibit P-101 CAA0782, pp. 1-2.

646 Exhibit P-101 CAF0404; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7584-7585.

647 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7585.

648 Exhibit P-101 CAF0404, p. 1.

649 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7688.

650 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7688.

issue but left that to our HQ colleagues to address with RCMP HQ.” He explained that the current meeting was the result of the CSIS HQ response having been received by E Division. He wrote that Dicks advised that a message had been sent to RCMP HQ about this issue and, in particular, the need to “...explore further the particular relevance of the info that the source had become ‘aware of his intentions’ i.e. Bagri’s intentions.” He noted that the RCMP asked permission to talk to the source handler, as they were interested in “...learning about what exactly the source knew and when the source knew about it.”⁶⁵¹

Stevenson also reported that the RCMP members stated that “...it would be foolish to think that [RCMP] discussion with the source automatically mean[s] that the source is going to court.” Stevenson commented, “I quite frankly don’t believe them.”⁶⁵² Dicks did not have a specific recollection of the CSIS members raising the issue of possible court proceedings, but explained that this issue became a concern in all cases where CSIS information coming from a human source was received.⁶⁵³ Stevenson explained that “...my take on it at that time was that the RCMP would eventually have that individual in court” because of her link with Bagri.⁶⁵⁴

Stevenson noted that “...reservations about this source’s willingness to meet with the RCMP were expressed by CSIS” during the meeting, and that the RCMP was told that CSIS HQ would be the route to channel RCMP correspondence in this respect.⁶⁵⁵ He explained:

What I indicated to the two gentlemen during that meeting, I remember saying to them – I’m pretty sure I remember saying to them – the source doesn’t want to meet with you. The other thing I found strange at the time and I don’t know if Murray Nicholson told me, but someone had told me they don’t realize that they have already spoken to this individual. So in other words, it has kind of come full circle.⁶⁵⁶

Dicks had no recollection of CSIS raising the fact during the meeting that their source had already been interviewed by the RCMP.⁶⁵⁷ Wall showed CSIS the 1987 telex about the source’s inability to identify the UMs accompanying Bagri, and Stevenson noted the file number for this previous reference “surfaced by Wall.” Dicks discussed the need to understand the “level of knowledge” of the source at the time of Air India. Stevenson noted that RCMP correspondence would be received by the CSIS BC Chief CT on the same day.⁶⁵⁸ Finally, Stevenson commented in his note:

651 Exhibit P-101 CAF0404, pp. 1-3.

652 Exhibit P-101 CAF0404, p. 3.

653 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7586-7587.

654 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7690.

655 Exhibit P-101 CAF0404, p. 4.

656 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7690.

657 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7588-7589.

658 Exhibit P-101 CAF0404, p. 4.

My feeling is that we are in all likelihood going to be involved in a similar situation in terms of source [redacted] & these individuals will not rest, or desist until they have interviewed the source & satisfied their curiosity as to the source's identity. As I mentioned to you, I believe they did interview this individual after Air India, however did not follow up on it. One of these days, they will surprise us & develop a source or an asset of their own.⁶⁵⁹

Stevenson explained before the Inquiry that the "similar situation" he was alluding to referred to another individual that the RCMP wished to interview despite indications that the individual was unwilling to speak to the RCMP rather than CSIS.⁶⁶⁰

After the meeting, Dicks wrote to the CSIS BC Region Chief of CT. He commented that the information recently provided in item 6 of the CSIS response to the Watt MacKay questions was "far more elaborate" than the information provided in the December 1987 CSIS message, which advised that their source could not identify the UMs who were to accompany Bagri.⁶⁶¹ He emphasized the "absolute necessity" that the RCMP ascertain the extent of the source's knowledge, "direct and indirect," "at the time and now."⁶⁶² He pointed out that "...this need, although high at all times, is particularly acute in light of the ongoing Reyat trial." Dicks requested permission to discuss the matter "at length" with the source handler and indicated that it could subsequently become necessary to discuss the matter directly with the source. If the source was unwilling, Dicks noted that "special considerations" could be arranged in advance. He reminded CSIS that it was "...obviously within the interest of CSIS and the RCMP, that CSIS should use whatever persuasion possible, to convince the source of the importance of speaking with the RCMP."⁶⁶³ Dicks explained in testimony before the Inquiry that the considerations he had in mind at the time related to witness protection. He understood that these matters would have to be organized in advance, and he was prepared to consider making the necessary arrangements.⁶⁶⁴

Dicks transmitted a copy to RCMP HQ of his letter to CSIS, advising that the Reyat trial was shut down until October 22nd and that he hoped to "...have a handle on this situation before then." He asked HQ to advise of the outcome of their discussions with CSIS HQ.⁶⁶⁵

On the following day, October 12, 1990, Blachford reviewed a package of CSIS surveillance information received in June 1990. He noted that according to this information, an UM was dropped off in Vancouver late at night on June

659 Exhibit P-101 CAF0404, p. 5; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7692.

660 Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7691-7692.

661 Exhibit P-101 CAA0786, p. 1.

662 Exhibit P-101 CAA0796, p. 1.

663 Exhibit P-101 CAA0786, pp. 1-2.

664 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7591.

665 Exhibit P-101 CAA0785.

9, 1985. A review of RCMP tip 2155 confirmed that the UM was in fact Bagri, and that he visited Ms. E on that evening. Blachford noted the link between this information and the Watt MacKay issue 2(w).⁶⁶⁶ Since the Watt MacKay report mentioned that the only late night visit by Bagri in June 1985 was to his friend Ms. E, the possible link between the CSIS source behind the information which was now being obtained from CSIS and Ms. E was finally becoming clear to the RCMP. Based on the information already in the RCMP's possession, the Task Force inferred that the CSIS source behind the information provided in response to the Watt MacKay questions was Ms. E. From his review of tip 2155, Blachford learned that there had been at least two approaches to Ms. E by the RCMP in 1985.⁶⁶⁷ He reviewed the documents detailing the 1985 interviews with Ms. E and her landlord as a result of the CSIS June 9, 1985 surveillance information.⁶⁶⁸ However, he did not remember seeing the information about Ms. E's BK application form in the file.⁶⁶⁹

On October 15, 1990, Cpl. Pete Goulet of RCMP HQ wrote to E Division in response to Dicks's October 11th message transmitting a copy of his letter to CSIS.⁶⁷⁰ He reported that, along with C/Supt Thivierge and Supt. Pouliot of HQ, he met with CSIS HQ personnel, including Dexter, about Dicks's request for access to the source handler and, eventually, to the source. The CSIS members explained that they had first learned of Bagri's request to borrow the source's car in 1987 and that, at that time, "...the details were provided to C/Supt. Cummins and Insp. Hart during a verbal conversation at CSIS HQ." They said that the source was "only under development" in 1987 and that the source handler only had a few meetings with the source before putting an end to all contact because of a transfer of the handler to another unit. The CSIS members further advised that the relationship between Bagri and the source was "...of a sexual nature" and that no meetings were held at the source's residence and no other individuals were seen by the source when Bagri asked for the car. Goulet explained that the information from CSIS's source could prove to be invaluable, especially since Bagri was "...in a bind as to how to get the luggage delivered to the airport following reconsideration by the initial mules." The CSIS members agreed, but felt that the source would be of "...little use already having refused to talk with any police officer." In any event, they agreed to have the RCMP interview the source handler, and advised that it was Laurie, now an RCMP member stationed in Richmond, BC. They asked, however, that the RCMP make no immediate direct contact with the source. They wished to seek a legal opinion prior to agreeing to the RCMP approach, but were optimistic that it would be possible and intended to recommend this course of action.⁶⁷¹

Goulet asked that E Division keep HQ advised of the results of their interview with Laurie so that HQ could be up-to-date in their future discussions with CSIS.

⁶⁶⁶ Exhibit P-101 CAA0781(i), pp. 2-3.

⁶⁶⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7738-7739, 7750.

⁶⁶⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7739-7745. See, in this section, "1985: Ms. E Questioned by the RCMP."

⁶⁶⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7747.

⁶⁷⁰ Exhibit P-101 CAA0787(i).

⁶⁷¹ Exhibit P-101 CAA0787(i), pp. 1-3.

He also noted that the Director of the RCMP National Security Investigations Directorate (NSID) at HQ was “quite pleased” with the cooperation received from CSIS in this matter and that HQ was expecting a favourable reply shortly about direct contact with the source.⁶⁷²

The following morning, Blachford began his work shift by reviewing Goulet’s telex report on the latest meeting with CSIS at the HQ level.⁶⁷³ His colleague, Rautio, spoke with Goulet to clarify some of the information contained in the HQ message.⁶⁷⁴ About the “details,” which CSIS alleged were conveyed to Cummins and Hart in 1987, Goulet explained that “...very little info was committed to paper about the info that was received.” However, Hart “...vaguely recalls that there was some mention of luggage being delivered to the airport and the vehicle being returned.” According to Goulet, this information was passed on September 17, 1987.⁶⁷⁵ Goulet also advised that his statement that Bagri was “in a bind” to get to the airport because of “...reconsideration by the initial mules”⁶⁷⁶ was simply based on his own opinion as a result of analyzing the file, and not confirmed by additional information in HQ’s possession.⁶⁷⁷

CSIS Tries to Prove that It Passed the Information in 1987

Also on the morning of October 16th, Dexter, the head of the BK Unit at CSIS HQ,⁶⁷⁸ called Stevenson at the CSIS BC Region.⁶⁷⁹ Dexter said that HQ was “...most anxious to surface documentation which indicates that info relating to source [REDACTED] (developed by Willie Laurie of Richmond Detachment) was passed to the RCMP,” in addition to “...the short paragraph which was passed at the HQ level in 1987.” Dexter added that he was told at CSIS HQ that Ms. E’s identity and her information about Bagri’s request to borrow her car had been passed to the RCMP in British Columbia in 1987. Apparently, James (“Jim”) Warren of CSIS HQ had informed RCMP Deputy Commissioner Donald Wilson of E Division, while he was visiting BC at the time. Dexter asked Stevenson to contact Laurie to find out what he could remember about the events and, in particular, the passing of information to the RCMP.⁶⁸⁰

Indeed, Laurie recalled that in October 1990, after he had rejoined the RCMP and had not heard about the Ms. E issue since, he received a phone call from Stevenson, one of his former supervisors at the CSIS BC Region.⁶⁸¹ Stevenson told him that the RCMP would be contacting him about Ms. E, that they knew about her information, and that his name had been provided to the RCMP as the handler. Laurie was told that he should cooperate with the RCMP “...in any way

672 Exhibit P-101 CAA0787(i), p. 4.

673 Exhibit P-101 CAA0781(i), p. 4.

674 Exhibit P-101 CAA0781(i), p. 4, CAA0792(i), pp. 1-2.

675 Exhibit P-101 CAA0792(i), p. 1.

676 Exhibit P-101 CAA0787(i), p. 2.

677 Exhibit P-101 CAA0781(i), p. 4, CAA0792(i), pp. 1-2.

678 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7694.

679 Exhibit P-101 CAF0355.

680 Exhibit P-101 CAF0355, pp. 1-2.

681 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7469; Exhibit P-101 CAF0355, p. 3.

that [he] could” when they contacted him. Laurie recalled that there seemed to be a sense of urgency surrounding the whole matter: “...for some reason, this information appeared to be new to [the RCMP] and they wished to develop what they could quickly.” He could not recall with certainty whether Stevenson explicitly said that the RCMP was aware of Ms. E’s identity. However, it was what he understood, given the context of the conversation and the urgency. To him, it was clear that the purpose of Stevenson’s call was to authorize him to assist the RCMP in any way, including revealing Ms. E’s identity.⁶⁸² Stevenson testified that the purpose of his call was first to find out what Laurie could recall about who might have passed the Ms. E information to the RCMP in 1987. He was also tasked to “...advise Laurie to cooperate with the RCMP;” but indicated that he did not advise Laurie that he was authorized to divulge the identity of the source.⁶⁸³ He explained:

MR. STEVENSON: I had no authority and no one that I was aware of would have had authority for Willie to tell or reveal the identity. Section 18 of the Act doesn’t allow that.

MR. FREIMAN: And just to remind us, section 18 of the Act says what?

MR. STEVENSON: That one is not allowed to divulge the identity of sources and covert employees of the Service, if my memory serves me correctly.⁶⁸⁴

Stevenson reported to his HQ that he managed to reach Laurie prior to his interview with the RCMP.⁶⁸⁵ He noted that Laurie informed him that his recollection was that Gareau had passed the information about Bagri’s request to borrow the car to the RCMP, but without revealing Ms. E’s identity.⁶⁸⁶ Stevenson noted:

Willie said that at the time he (Willie) was opposed to the passing of any information, however, Gareau was visiting the Region at the time, and indicated that he as chief would do it if he wanted to. Willie’s recollection is that Gareau said he had done it himself.⁶⁸⁷

According to Stevenson’s note, Laurie also said that he was under the impression that the information had been passed to an RCMP Inspector at the HQ level and that he did not recall Warren passing the information to Wilson.⁶⁸⁸

682 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7469, 7472.

683 Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7695-7697, 7701.

684 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7697.

685 Exhibit P-101 CAF0355, p. 3.

686 Exhibit P-101 CAF0355, p. 3.

687 Exhibit P-101 CAF0355, pp. 3-4.

688 Exhibit P-101 CAF0355, p. 4.

Stevenson discussed this with Dexter of CSIS HQ, who was apparently worried about the uncertainty surrounding the passing of the information. Stevenson noted:

Bill's [Mr. Dexter] fear is that we as a Service are going to finish up with egg on our face over this one, since we cannot surface the documentation to substantiate our claim to the RCMP that the info was passed.⁶⁸⁹

Stevenson explained in testimony that, for Dexter, "...there seemed to be something missing in this loop here as to who had passed the information." It was assumed that Ms. E's information about Bagri's request to borrow the car had been passed, but neither Dexter at HQ, nor the CSIS BC Region could surface specific documentation demonstrating this. There was a sensitivity or concern that, as a result of this lack of "...paper or verbal trail," the RCMP might be able to claim that CSIS had not been forthcoming with its information.⁶⁹⁰

Laurie Interviewed by RCMP Officers

While CSIS was busy trying to reconstruct the 1987 events, Laurie was being interviewed by Rautio and Blachford about Ms. E's information.⁶⁹¹ Laurie testified that he received a call from Rautio shortly after Stevenson's call on October 16th.⁶⁹² A meeting with the E Division NSIS members was arranged for 9:30 AM and the interview proceeded until 11:20 AM.⁶⁹³ Laurie was shown the 1990 two-paragraph CSIS response to the RCMP inquiries about the Ms. E information and he confirmed that the contents were extracted from the reports he authored about his source.⁶⁹⁴ At the time, however, Laurie did not have his reports with him. He had not requested a copy when speaking to Stevenson and no one from CSIS offered him a copy prior to his meeting with the RCMP.⁶⁹⁵ Blachford testified that the RCMP officers were already aware that Laurie did not have notes of his interviews with his source and he could not recall any discussions about attempting to gain access to the reports Laurie had prepared while at CSIS.⁶⁹⁶ Nevertheless, Laurie was questioned about the Ms. E information and confirmed that the contents of the CSIS response to the Watt MacKay questions were accurate.⁶⁹⁷ He explained that his source was "positive" that the request to borrow the car was the night before the Air India/Narita incidents,⁶⁹⁸ that his source had not seen the UMs who were to accompany Bagri to the airport and that the source had been "...quite afraid of Bagri" by the time he had made his

689 Exhibit P-101 CAF0355, p. 4.

690 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7699.

691 Exhibit P-101 CAA0781(i), p. 4.

692 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472.

693 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472; Exhibit P-101 CAA0781(i), pp. 4-7.

694 Exhibit P-101 CAA0781(i), p. 4, CAA0792(i), p. 2; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7473-7474.

695 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7474.

696 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7759-7760.

697 Exhibit P-101 CAA0781(i), p. 5; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7752.

698 Exhibit P-101 CAA0792(i), pp. 2-3.

request,⁶⁹⁹ as she knew that he was violent and he had told her "...he could have anybody killed if he wanted to." Laurie explained the comment about Ms. E "sens[ing]" Bagri's intentions as relating to a strong feeling that Bagri was "...up to no good," but indicated that the source had no information about specific actions Bagri was going to take. Laurie said that when his source refused her car, Bagri told her that only the luggage was going on the plane, implying that he would return her car. Immediately after the Air India/Narita incidents, Laurie said the source had "no doubt" that Bagri was directly involved in putting the bags on the plane.⁷⁰⁰

Laurie also provided additional information, such as the fact that his source thought that Bagri arrived in a "big blue car," which Laurie said during the interview would have been the description of the vehicle Parmar was driving at the time.⁷⁰¹ He specified that Ms. E did not let Bagri in when he requested her car, but spoke to him "...through the door with a chain across it."⁷⁰² Laurie said that Ms. E did not see who else was in the vehicle, or even how many others were in the vehicle, that dropped off Bagri, but that Bagri may have told her that "...the two guys are from Toronto." He added that Ms. E told Bagri that she needed her car for work.⁷⁰³ During his testimony at the trial of Malik and Bagri, when he finally had an opportunity to compare this information with what he had written in the reports he prepared for CSIS shortly after the interviews, Laurie admitted that Ms. E had never in fact told him that she had said to Bagri that she needed her car for work and had never in fact indicated that she saw a blue car.⁷⁰⁴

During the interview with the RCMP, Laurie told the officers how emotional Ms. E was about the whole matter and said he feared for her safety and felt that she would be suicidal if her information got out. He explained that Bagri came back twice after the June 1985 visit, once to borrow her car, and another time to tell her that they shared "a couple of secrets" or "two secrets," one being "... the knowledge that Bagri was involved with A.I./Narita" and another possibly referring to the relationship between Bagri and Ms. E. Laurie also discussed the information about Ms. E assisting Bagri in getting "normal" or western-looking clothes and in hemming a pair of pants shortly before he travelled to the United States. On his return, Bagri commented that it was a "close call." Laurie explained that he had researched the time period and that it coincided with a conspiracy to murder the Indian Prime Minister which was then focussed on an Indian minister who was in New Orleans for eye surgery. Laurie said that a number of individuals had been arrested but that "about three" had escaped.⁷⁰⁵

According to Laurie, it was clear during the meeting that the RCMP members involved already knew Ms. E's identity.⁷⁰⁶ Blachford testified that going into the

699 Exhibit P-101 CAA0777, p. 5. See also Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7474-7475.

700 Exhibit P-101 CAA0553(i), p. 2, CAA0792(i), pp. 3-5.

701 Exhibit P-101 CAA0781(i), p. 5, CAA0792(i), p. 4.

702 Exhibit P-101 CAA0781(i), p. 5.

703 Exhibit P-101 CAA0792(i), p. 4.

704 Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 47-49.

705 Exhibit P-101 CAA0781(i), pp. 5-7, CAA0792(i), pp. 4-6.

706 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472.

interview, they suspected the source was Ms. E, but this was not confirmed.⁷⁰⁷ Eventually, the RCMP officers advised Laurie that "...we were aware of the source's identity already."⁷⁰⁸ After the interview, Laurie told Stevenson that the identity of the source was known to the RCMP and "...he [Laurie] may have said" also that "...he confirmed it for them."⁷⁰⁹ During his testimony at the Inquiry hearings, Laurie was of the view that he had, in fact, confirmed Ms. E's identity for the RCMP, based on the notes of the meeting he had subsequently seen.⁷¹⁰ Blachford's notes for the interview with Laurie initially refer to Ms. E only as "the source," in a gender-neutral manner. Then, when reporting Laurie's answers about the content of the information and on several occasions thereafter, "the source" is described as a "she" or "her."⁷¹¹ However, the notes do not state that Laurie confirmed the source's identity.

At the trial of Malik and Bagri, Rautio testified that Laurie did not, in fact, confirm Ms. E's identity during the interview. Immediately after the interview with Laurie, E Division did indicate that they were ready to approach the source, but Rautio explained that they were referring to the person interviewed by the RCMP in 1985, whom they suspected was Laurie's source.⁷¹² He said that, while Laurie agreed to provide an introduction, it was always the RCMP's intention to interview the person they had interviewed in 1985 and ask her directly if she was the CSIS source.⁷¹³ Blachford also indicated, in testimony before the Inquiry, that Laurie did not reveal his source's identity during the interview.⁷¹⁴ He explained that when he and Rautio told Laurie they knew who the source was, they may have alluded to her name, but they were "...aware of the restrictions that were on Laurie" and did not ask him to confirm or deny Ms. E's identity. According to Blachford, the RCMP investigators were not to obtain the name of the source from Laurie during this first interview with him. Had they gone and interviewed Ms. E without CSIS's permission, he felt that they would not have been able to use the information learned in the interview with Laurie, but only the information already in the RCMP's possession and that, in that sense, "...it would simply be another cold approach on Ms. E," though they could have asked her if she had provided information to "any other agency."⁷¹⁵

During Laurie's interview with Rautio and Blachford, it was clear that the Ms. E information was not previously known to the RCMP members. At the beginning, Laurie said they went as far as to suggest that he had committed "some sort of offence" by not revealing his knowledge of the Ms. E information, especially now that he was an RCMP member. Laurie responded that he disagreed, but was

⁷⁰⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7750.

⁷⁰⁸ Exhibit P-101 CAA0781(i), p. 6. See also Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 49; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7755.

⁷⁰⁹ Exhibit P-101 CAF0357, p. 1.

⁷¹⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7472.

⁷¹¹ Exhibit P-101 CAA0781(i), pp. 4-6.

⁷¹² Exhibit P-244, vol. 6 (January 9, 2004 Transcript), pp. 45-46.

⁷¹³ Exhibit P-244, vol. 6 (January 9, 2004 Transcript), p. 46. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7756.

⁷¹⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7755.

⁷¹⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7755-7759.

willing to cooperate with the RCMP now. He felt the officers were not satisfied with his response and continued to be "...unhappy that the CSIS had withheld this information."⁷¹⁶ He commented:

MR. LAURIE: This concerns me because in the initial stages, the RCMP weren't focussed on Ms. E, or even the information. They were focussed on me.

MR. KAPOOR: Sorry. When you say the initial stages, you mean the initial stages of the interview?

MR. LAURIE: Of the interview.

MR. KAPOOR: They were pointing a finger at you?

MR. LAURIE: At me, for not passing it.

MR. KAPOOR: Okay. And what does the – can you help me with what the comment "dangerous world out there" has to do with you?

MR. LAURIE: There's lots of bad things that happen. You know, at this point in my service, I'm a constable again in the RCMP. I'm driving a marked police car and I'm carrying a gun all the time, and for 12 hours a day I'm going from one dangerous thing to another. There's lots of things to me that are more dangerous than this particular episode.

MR. KAPOOR: Okay.

MR. LAURIE: I think when the RCMP raise their tone to me and start intimating that I could be perhaps in trouble, I think they were really intending that comment for somebody who was junior and could have been afraid of them, but frankly, I was interested in pursuing a positive aspect of what's going on.⁷¹⁷

According to the RCMP notes, Laurie explained to the officers that he always thought the information was related to Air India/Narita and should "go to the police," while protecting the source's identity, but, at the time, this was not done because "...it would not prove the offence."⁷¹⁸ Laurie said that after further discussions in September or October 1987, it was decided that "...something to the effect of that the luggage was making the trip but the people were not"

716 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7478.

717 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7480-7481.

718 Exhibit P-101 CAA0781(i), p. 5: These are Blachford's notes about the interview with Laurie.

would be passed to the RCMP.⁷¹⁹ He advised that he had been told that the information was passed verbally by Gareau in HQ.⁷²⁰ He confirmed that Gareau had told him that "...he passed the info that only the luggage would go."⁷²¹ He added that he was told by Stevenson that it was probably Warren of CSIS who in fact passed the information.⁷²² In testimony, Laurie explained that he had always been under the impression that the Ms. E information had been passed in late 1987, because of what Gareau had told him, but that the RCMP officers interviewing him had clearly not been previously aware of the information.⁷²³ It was "very much" a "revelation" for Laurie when he found out in 1990 that the RCMP did not previously have all of his Ms. E information.⁷²⁴ Blachford testified that, when he interviewed Laurie, he understood him to say that he had personally wanted the information passed to the RCMP, but that CSIS would not agree to pass it. Laurie's statement that information was passed verbally by CSIS accorded with his review of the file, but he indicated that the nature of the information which was passed as revealed by the file was not as extensive as what Laurie thought had been passed.⁷²⁵

The RCMP officers noted that, during their interview with Laurie, he explained that he had been required to stop developing Ms. E as a source "...because she was only providing criminal info ... not intelligence" and that he had not talked to her in approximately two years.⁷²⁶ At the Inquiry hearings, Laurie specified that he was not in fact instructed to stop contacting Ms. E, but simply to stop using her "...for criminal information or intelligence," as opposed to other information which he could and did continue to elicit from her.⁷²⁷

Laurie also explained during his interview with Rautio and Blachford that Ms. E was afraid of Bagri. She was convinced he had put the bomb on the plane; she believed him to be violent; he had told her that he had had people beaten up and could have people killed; and she believed him.⁷²⁸ At the end of the interview, the RCMP officers told Laurie that E Division would "most likely" approach his source for an interview and that they might be requesting that Laurie "...be available to provide an introduction."⁷²⁹

CSIS/RCMP Debates about the Information Passed in 1987

After his interview with the RCMP, Laurie spoke to Stevenson again. He told him that he "...would not be surprised" if there was further dialogue, probably

719 Exhibit P-101 CAA0781(i), pp. 5-6.

720 Exhibit P-101 CAA0781(i), p. 6; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7475. See also Exhibit P-101 CAA0792(i), p. 6.

721 Exhibit P-101 CAA0781(i), p. 7.

722 Exhibit P-101 CAA0792(i), p. 7.

723 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7475.

724 Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 13.

725 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7754-7755.

726 Exhibit P-101 CAA0781(i), p. 6. See also Exhibit P-101 CAA0792(i), p. 7.

727 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7528; Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 51-52.

728 Exhibit P-101 CAA0781(i), p. 6; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7475.

729 Exhibit P-101 CAA0792(i), p. 8.

“negative dialogue,” between the RCMP and CSIS as a result of the information obtained by the RCMP about Ms. E. He said that the RCMP asked him a series of questions, and that he would probably have to return once his information was further analyzed by the Force.⁷³⁰ Stevenson noted:

He [Laurie] is not overly concerned about this info coming to light now and commented that it is “a dangerous world out there”. While he was circumspect in his account, I believe he was indicating that he had told the RCMP that it was his belief that the info from source [REDACTED] had been passed to the RCMP at the HQ level by Mike Gareau of CSIS.⁷³¹

Laurie explained in testimony that, given the comments made by the RCMP officers about what they perceived as CSIS’s failure to pass on the Ms. E information, he expected the RCMP would “...go back to CSIS and say ‘why didn’t you provide this information to us earlier?’” He knew, however, that the RCMP were not really going to charge him with anything, because he had received the information in the course of his functions at CSIS. While the RCMP thought there was an oversight on CSIS’s part in not disclosing the information, Laurie knew that the information had been passed.⁷³²

Stevenson told Dexter of CSIS HQ about his conversation with Laurie the following day. Dexter said that CSIS HQ had still not found documentation confirming that the RCMP was advised of the Ms. E information, but that HQ was nevertheless drafting a letter to the RCMP “...giving them the assurance that it was passed verbally to them.”⁷³³ Stevenson noted:

He is hoping that they will then let the issue die and they will get on with their investigation.⁷³⁴

In his testimony before the Inquiry, Stevenson confirmed that his understanding was that, even if CSIS HQ did not know the details and could not find confirmation that the materials had been passed in 1987, they intended “...to write a letter to say we can assure you it was passed verbally in 1987 and just hope that the matter dies.”⁷³⁵

On October 18, 1990, CSIS was still busy reviewing its files and trying to sort out the facts about the passing of the Ms. E information in 1987. The BC Region Deputy Director General of Operations wrote to Stevenson that he had reviewed the materials relating to Ms. E and indicated that, about the reference from Gareau that Warren had passed the information to the Commanding Officer of E

⁷³⁰ Exhibit P-101 CAF0357, p. 1.

⁷³¹ Exhibit P-101 CAF0357, pp. 1-2.

⁷³² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7478-7480.

⁷³³ Exhibit P-101 CAF0357, p. 2.

⁷³⁴ Exhibit P-101 CAF0357, p. 2.

⁷³⁵ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7702-7703.

Division during a trip to BC, he remained of the view that Gareau was "...mixing this one up" with a meeting Warren had had with the RCMP on another matter. He asked to be kept informed of CSIS HQ's "...efforts to satisfy the RCMP."⁷³⁶

On October 22nd, CSIS HQ transmitted to RCMP HQ an official written response to the original RCMP message sent by Dicks on October 11th, which complained about the lack of details in the 1987 information compared to the new information received, and which requested access to the source handler and the source.⁷³⁷ CSIS indicated that, having reviewed their holdings "...and corroborated our findings by questioning those persons who were involved in the investigation," they were "certain" that the information contained in the response to the Watt MacKay questions had been "...passed verbally to your Force in 1987." CSIS stated that "...all the details of Bagri's approach to the source were provided, with the name of the source being protected due to the sensitivity of the handler/source relationship and the source's insistence on anonymity."⁷³⁸ At the Inquiry hearings, Stevenson testified that, to his knowledge, CSIS never did discover from its holdings who had passed information to the RCMP verbally in 1987 and never found confirmation that information other than the "short paragraph" found in the 1987 telex to the RCMP was passed verbally.⁷³⁹

In its report to the Honourable Bob Rae in 2005, the RCMP noted that the Ms. E information "...was not relayed to the RCMP in a timely manner" by CSIS and that this affected the "rules/admissibility of evidence."⁷⁴⁰ CSIS took issue with this statement, and produced a response indicating that the RCMP statement was "simply incorrect." CSIS first noted that the RCMP had failed to mention that the Force itself had interviewed Ms. E twice shortly after the bombing in November and December 1985. Ms. E was not pleased with the RCMP visits and asked them to stop. CSIS then interviewed her in September and October 1987. She was adamant that she did not want to deal with the RCMP. CSIS maintained that it had informed the RCMP verbally in October 1987 of the information provided by Ms. E and had also responded to a related RCMP request for information in December 1987. CSIS concluded: "RCMP HQ decided not to pursue the issue, given that she would be a reluctant witness."⁷⁴¹

In response to the CSIS position, which was shared informally with the RCMP, that the Ms. E information had indeed been passed to Cummins and Hart during a meeting at CSIS HQ, the RCMP conducted file research and confirmed that this was the case. However, the RCMP analyst noted that, from the 1987 documents, it appeared that "...only 'certain' information was passed verbally." The analyst concluded that, because "...other information was not provided," the field investigators may not have appreciated the significance of the information "... which in the end pertains to perhaps the most significant witness against Bagri at trial."⁷⁴² He wrote:

736 Exhibit P-101 CAF0358.

737 Exhibit P-101 CAA0786.

738 Exhibit P-101 CAA0794(i), p. 1.

739 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7703.

740 Exhibit P-101 CAA0335, p. 29.

741 Exhibit P-101 CAA1088, pp. 3-4.

742 Exhibit P-101 CAA1045(i), p. 1.

The documentation does not give any indication why someone did not ask more questions of CSIS in 1987. Could have Cummins & Hart been of the belief that the CSIS source would not cooperate as a witness or that CSIS would never allow their source to be used in this manner? Therefore, the only way to further this evidence was through the occupants who were waiting in the vehicle while Bagri talked to the source.⁷⁴³

The 1987 documents only recorded that "...there may have been a mention of luggage however source does not clearly recall." HQ also wrote to E Division at the time that it had "no further info" about this matter.⁷⁴⁴ The RCMP analyst noted that this could have "...mised field investigators into believing this could not be pursued further."⁷⁴⁵

In fact, when Hart was asked in 1990 about his recollection of the information passed verbally by CSIS, he indicated that he "...vaguely recall[ed] that there was some mention of luggage being delivered to the airport and the vehicle being returned."⁷⁴⁶ This recollection, combined with the 1987 documents, demonstrates that CSIS did pass on verbally the essentials of the Ms. E information in 1987, including the request to borrow the car to go to the airport the night before the bombing and the comment that only the bags would be travelling. RCMP HQ did not document all of the information received verbally in its correspondence to E Division, and decided that the matter could not be pursued further because Ms. E could not identify the individuals accompanying Bagri and was not willing to speak to police.⁷⁴⁷

In 1987, the Ms. E issue was perceived as "a dead-end" by the HQ members in place at the time,⁷⁴⁸ while in 1990, the same information was now viewed as deserving "further examination"⁷⁴⁹ and needing to be "vigorously investigat[ed]".⁷⁵⁰ Dicks could not explain why more was not done by the RCMP in 1987. He acknowledged, however, that the handling of the Ms. E information in 1987 was something which would have been done "very differently" if given the opportunity to "redo this."⁷⁵¹

Blachford, currently a Staff Sergeant acting as the lead investigator in the continuing Air India police investigation, felt that the 1987 verbal passing of information should have been followed up by written correspondence from CSIS, given the significance of the information, rather than Hart having to go back to CSIS to ask about the identification of the individuals accompanying

743 Exhibit P-101 CAA1045(i), p. 2.

744 Exhibit P-101 CAA0615.

745 Exhibit P-101 CAA1045(i), p. 2.

746 Exhibit P-101 CAA0792(i), p. 1.

747 Exhibit P-101 CAF0421, pp. 2-3.

748 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7582.

749 Exhibit P-101 CAF0421, p. 3.

750 Exhibit P-101 CAA0779, p. 3.

751 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7630-7631.

Bagri.⁷⁵² Indeed, CSIS did not pass on the Ms. E information with complete details when it was received in 1987 and, even when the issue surfaced in 1990, CSIS did not provide access to the reports which were the only remaining records of the information provided by Ms. E. It is also troubling that CSIS made a decision to reassure the RCMP that complete details had been passed in 1987, when verifications in its own records and with its own present and former employees, in fact, had provided little clarity about what information and details were passed, and by whom.

The 1990 RCMP Interviews of Ms. E

While the interagency debates about the 1987 situation unfolded, the RCMP was also getting ready to conduct its own interview of Ms. E. Dicks sent a message to RCMP HQ on October 16, 1990, reporting on the interview with Laurie. He related that Laurie had explained that the CSIS response to paragraph 6 of the Watt MacKay questions contained “direct quotes” from some of the reports he had submitted when he was the handler for the source.⁷⁵³ He also reported that Laurie clarified that his source “...was positive that Bagri made the approach for the vehicle the evening before the Air India/Narita incidents.”⁷⁵⁴ As for the mention in the CSIS response that the source sensed Bagri’s intentions, Dicks reported that Laurie clarified that this related to a general strong suspicion on the part of the source that “...Bagri was up to something no-good” or wanted to use the source’s car for “...unspecified purposes which were disagreeable to the source.” Dicks added that after Air India, the source “was convinced” that Bagri was involved, and that that was the reason why Bagri threatened the source.⁷⁵⁵ Dicks concluded by stating that E Division would now “...be directly approaching the source for an interview” and asked that CSIS be directed not to approach the source before this was done.⁷⁵⁶

On October 17, 1990, RCMP HQ informed E Division that CSIS had advised that Laurie was the last person to have had contact with the source on behalf of CSIS and that CSIS had no intention of approaching the source again. HQ added that they “would be interested” in finding out Laurie’s opinion about the chances that the source would cooperate with the RCMP.⁷⁵⁷ Finally, HQ reminded E Division that “...no/no approach is to be made to the source prior to direction by this HQ following receipt of CSIS approval expected in very near future.”⁷⁵⁸

On the same day, Dicks received a call from Thivierge of RCMP HQ, who advised that CSIS had no objection to E Division approaching the source.⁷⁵⁹ CSIS eventually confirmed this in writing in a letter dated October 22nd, indicating

⁷⁵² Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7731, 7738.

⁷⁵³ Exhibit P-101 CAA0790.

⁷⁵⁴ Exhibit P-101 CAA0790 [Emphasis in original].

⁷⁵⁵ Exhibit P-101 CAA0790.

⁷⁵⁶ Exhibit P-101 CAA0790 [Emphasis in original].

⁷⁵⁷ Exhibit P-101 CAA0791.

⁷⁵⁸ Exhibit P-101 CAA0791 [Emphasis in original].

⁷⁵⁹ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7599. See also Exhibit P-244, vol. 6 (January 9, 2004 Transcript), pp. 47-48.

that its Legal Services Branch had advised that there was "...no problem in granting access to the source at this time."⁷⁶⁰ RCMP HQ transmitted the letter to E Division with a note indicating that it related to the "C/Supt. Thivierge Insp. Dicks telecom of 90-10-18[sic]" and that it would "...serve as a paper trail and confirm that [redacted] of CSIS HQ has agreed to NSIS investigators contacting their source."⁷⁶¹ According to Rautio's review of his notes during his testimony at the trial of Malik and Bagri, it would have been during telephone conversations after the authorization was received from CSIS on October 17th that Laurie finally confirmed his source's identity and took steps to arrange an introduction.⁷⁶²

After his interview with Rautio and Blachford, Laurie understood that the RCMP members would discuss the "revelation" of the Ms. E information among themselves while he was to remain available to provide further assistance. The notion of having Laurie introduce the police to Ms. E was soon adopted. Laurie was willing to assist in this manner, but warned the RCMP in no uncertain terms that obtaining Ms. E's cooperation would be very difficult. He explained that he himself had been successful probably because he was not intimidating and had met with Ms. E alone. For the RCMP, "...that was a non-starter.... They were absolutely going to do it their way. All they wanted from me was to make an introduction and stand back." Laurie understood that he was not to be an "active participant" in the eventual RCMP interview of Ms. E, even if he provided an introduction.⁷⁶³

Laurie did not get an opportunity to review his CSIS reports about Ms. E in preparation for the introduction he was about to provide for the RCMP. The RCMP did not attempt to obtain the reports from CSIS, nor did CSIS offer to provide copies.⁷⁶⁴ At the time, Laurie did not even know whether accessing his former reports "...was legal or possible."⁷⁶⁵

On October 19, 1990, three days after his interview with the RCMP, Laurie accompanied Rautio to visit Ms. E. Both men wore civilian clothes and they used an unmarked car.⁷⁶⁶ It was apparent that Ms. E knew Laurie and was comfortable in meeting with him. Laurie introduced Rautio to Ms. E and explained the difference between his role as a CSIS investigator and the role of RCMP investigators.⁷⁶⁷ He explained that he was now a member of the RCMP and that the person accompanying him was an RCMP member who was involved in the collection of evidence about Air India.⁷⁶⁸ He told Ms. E what he thought would be her worst nightmare: that even though he had assured her that her

⁷⁶⁰ Exhibit P-101 CAA0794(i), p. 2.

⁷⁶¹ Exhibit P-101 CAA0793.

⁷⁶² Exhibit P-244, vol. 6 (January 9, 2004 Transcript), pp. 47-49.

⁷⁶³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7475-7476.

⁷⁶⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7476-7477. See, generally, Exhibit P-101 CAA0781(i), for the notes of the RCMP interview which make no mention of attempting to obtain the reports.

⁷⁶⁵ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7476-7477.

⁷⁶⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7481-7482.

⁷⁶⁷ Exhibit P-244, vol. 5 (January 8, 2004 Transcript), pp. 52-53.

⁷⁶⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7473.

information would remain confidential, the situation had now changed. Her information had now gone to the RCMP because it was criminal, and the police now knew who she was and what information she had provided.⁷⁶⁹ Rautio told Ms. E about the RCMP role in investigating criminal offences, and told her that she might be required to attend court if she had valuable information or evidence.⁷⁷⁰ Ms. E was shocked and dismayed and she became fearful.⁷⁷¹ She stated that she would not go to court, that she would commit suicide and that she was afraid for her children and herself.⁷⁷² Her attitude was consistent with Laurie's warning to the RCMP that Ms. E might be suicidal if her information got out.⁷⁷³

During his first interview with Ms. E, Laurie had "assured" her, "...prior to her providing criminal information," that he would treat her information "in a confidential manner."⁷⁷⁴ Though he made "no explicit promise" to not tell the police, Laurie gave Ms. E the clear impression that he would not give her information to the police.⁷⁷⁵ It was clear to him that she chose to speak to him because she believed her identity would not be revealed.⁷⁷⁶ The RCMP also concluded later that Ms. E's motivation in providing her information to Laurie was "...the guarantee of absolute confidentiality."⁷⁷⁷ In a report about his first interview with Ms. E, Laurie had noted:

Clearly though, the source chose to release herself of this enormous burden, by telling us what she would not tell the police. If the police are provided with her identity she will cease co-operation with us and provide absolutely no assistance to the police.⁷⁷⁸

Ms. E had no confidence in the ability of the police to protect her identity or her safety:

MR. BOXALL: I don't know if you had any discussions with her in this regard, but you would know from your police experience also that police also use sources and keep them confidential and don't reveal their identity to the public?

⁷⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7483; Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 54.

⁷⁷⁰ Exhibit P-244, vol. 5 (January 8, 2004 Transcript), p. 54.

⁷⁷¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7483.

⁷⁷² Exhibit P-101 CAF0381, p. 1; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7483-7484.

⁷⁷³ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7772-7773.

⁷⁷⁴ Exhibit P-101 CAF0376, p. 1.

⁷⁷⁵ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), p. 50.

⁷⁷⁶ Exhibit P-101 CAF0376, p. 1.

⁷⁷⁷ Exhibit P-101 CAF0383, p. 3.

⁷⁷⁸ Exhibit P-101 CAF0376, p. 1.

MR. LAURIE: And her understanding of that, that it didn't meet the threshold of what her personal security goals were, she did not trust that avenue. Later, when her identity was known to the police and when I introduced her to the police, there was a discussion about source protection and witness protection program and all that and, really, she just scoffed at that. I mean – that was not compelling for her.

MR. BOXALL: But she did find it compelling that speaking to a CSIS agent – would protect her?

MR. LAURIE: Yes.⁷⁷⁹

When Ms. E first revealed her information, Laurie immediately knew that it would eventually have to be disclosed to the police, but he initially believed that her identity would be protected. However, it was always his understanding that, should CSIS decide to pass on Ms. E's identity to the RCMP, her consent would not be required.⁷⁸⁰ His CSIS BC Region superiors apparently shared that view when they realized in 1988 that the RCMP still did not know who Ms. E was and when they suggested that HQ "address this aspect."⁷⁸¹ In fact, in 1990, CSIS eventually authorized the RCMP to approach its source, after seeking legal advice. Laurie confirmed Ms. E's identity when he agreed to introduce Rautio to her (or possibly earlier, during his interview with the RCMP), as authorized by CSIS. Ms. E was not consulted before CSIS granted this authorization and before Laurie revealed her identity. From her reaction towards the RCMP, it appears that she would not, in fact, have consented.

Having interviewed Laurie, Rautio and Blachford were aware that Ms. E "...had been told that she was going to have complete confidentiality," but viewed this simply as a factor that the RCMP was "...going to have to overcome." They did not know, and apparently did not attempt to find out, whether Ms. E had given her consent prior to Laurie's "introduction" of the RCMP to her. Before the Inquiry, Blachford confirmed that, had Ms. E been a confidential informant for the RCMP, "...her identity could not [have been] revealed without her consent" as was done by CSIS in this case.⁷⁸² However, CSIS clearly did not view Ms. E as a confidential informant and did not feel bound by its own representations that her information would be treated confidentially.

After Laurie and Rautio finished explaining to Ms. E the difference between CSIS and the RCMP and telling her that she might have to testify, Rautio proceeded to ask her questions about her information.⁷⁸³ In response, she related the manner in which she met Bagri and began to associate with him while in Canada. She then recounted the incident where she hemmed pants for Bagri prior to his

⁷⁷⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7533-7534.

⁷⁸⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7417, 7457, 7462.

⁷⁸¹ Exhibit P-101 CAF0406, p. 3; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7462.

⁷⁸² Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7771-7772, 7823-7824.

⁷⁸³ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7484.

travel out of the country – at a time when Mrs. Bagri could not do it because of an accident in Ms. E's car. She then explained how she wanted to get away from Bagri after the Air India bombing, because of rumours she heard about the involvement of Parmar, Surjan Singh Gill and Bagri in the bombing, and because of Mrs. Bagri's reaction when she discussed the crash with her while she was staying at Ms. E's for a few weeks.⁷⁸⁴

Ms. E then went on to explain that, while she was still living in her rented basement suite, Bagri came to borrow her car at 10:30 or 11 PM. She did not open the door and he kept knocking. When she opened the door and asked how he got there, he said someone dropped him off. When she told him that she would not lend him her car anymore, he told her that the thing he needed to do that day was very important, that he was going to the airport with two others, but only the bags would be travelling and that if they got caught, Ms. E would not see him anymore. Ms. E believed she did not give him her car and he said he would walk to Ross Street, but she was not 100 per cent certain. Ms. E then said that the next day, she heard of the "CP Air crash" and understood what Bagri had meant "...about the bags going to the airport." She recounted her subsequent encounters with Bagri, including the following Halloween, when he visited her upon returning from India or Pakistan and left a letter which stated that Ms. E was the only one to know Bagri's secret, that she could put him "in big trouble" and that he would "...never leave it up to [her]." Ms. E finally recounted her last fight with Mrs. Bagri about the fact that she was not visiting the Bagris anymore, and shared her views that the "secret" Bagri was referring to was the mention that only the bags would be travelling. She then said that she had to go and she put an end to the interview.⁷⁸⁵

Laurie explained in testimony that while Ms. E did provide information in response to Rautio's questions, she did not speak as freely as she had in the past:

MR. LAURIE: Well, I think we needed to extract quite a bit of it. The will to cooperate was not as strong as one might guess from reading the information that came forth, but I think that the reason we got as much as we did was because of the caveat that she supplied that yeah, this is what I told him and this is what happened, but don't ever ask me to go to court with it because I won't.⁷⁸⁶

Though this was not recorded in Rautio's notes, Laurie recalled that at the end of the interview, Rautio told Ms. E that "...another investigator would soon follow up with more questions."⁷⁸⁷

⁷⁸⁴ Exhibit P-101 CAF0381, pp. 1-2.

⁷⁸⁵ Exhibit P-101 CAF0381, pp. 2-3.

⁷⁸⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7485.

⁷⁸⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7485.

The RCMP investigators had decided to have Laurie do the introduction to Ms. E because he had established a relationship with her and obtained the sensitive information on a topic which made her very emotional and possibly even suicidal.⁷⁸⁸ However, they did not involve Laurie in their second interview with Ms. E.⁷⁸⁹ In fact, the RCMP made a decision not to involve Laurie any further at all:

MR. KAPOOR: I take it you never had any follow-up conversations with her by telephone or otherwise; you wanted out of the piece.

MR. LAURIE: I didn't want out of it; they wanted me out of it.

MR. KAPOOR: They being the RCMP?

MR. LAURIE: Yes. Even though I'm back into the RCMP, because of my background I am a contaminating factor.

MR. KAPOOR: Explain that.

MR. LAURIE: I can't.

MR. KAPOOR: Or explain what you mean by contaminated factor is what I mean to say.

MR. LAURIE: If I involve myself in the file, then I may gather some information or for some reason find myself in a court case and once I'm on the stand and people can ask questions of me, then all of a sudden I have all this other information that I either have to respond to or not respond to based on secret things.

MR. KAPOOR: So by getting you involved in the piece, it also brings in all of the CSIS information which could create problems for the investigation.

MR. LAURIE: Yes, but I can't – not being a lawyer, sir, I really can't explain it any more logically than that.⁷⁹⁰

Blachford explained that they wanted to make it clear to Ms. E that "...this was no longer a CSIS operation, it was clearly RCMP only." Involving Laurie, even if he was now with the RCMP, may not have made it as clear that "...this was a police investigation" now. Blachford recognized that the RCMP could have

⁷⁸⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7763.

⁷⁸⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7485-7486.

⁷⁹⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7486-7487.

adopted a different investigative technique and had Laurie lead the interviews, especially since it was clear from the beginning that Ms. E did not want to talk to the police. However, a decision was made within E Division NSIS that the RCMP would “take that over” completely and not involve Laurie any further. The RCMP wanted to move into an “evidentiary” or “policing role, separate from CSIS” and felt that keeping Laurie involved, given that he had interviewed Ms. E a number of times for CSIS, could have been problematic in this respect.⁷⁹¹

Laurie viewed the decision to exclude him from the case in 1990 as related to problems in the CSIS/RCMP relationship at the time, especially since the RCMP ultimately asked him to get involved again years later. He explained:

MR. LAURIE: At that point, I think the relationship was not a good relationship between the agencies and although I was in the RCMP in 1990, the recency of my employment with the CSIS left me a little bit suspect.⁷⁹²

On October 22, 1990, it was Blachford who accompanied Rautio to interview Ms. E for a second time. The interview began at 2 PM and lasted almost two hours.⁷⁹³ In the summary that the officers prepared on the basis of Blachford’s notes, they noted first that the interview was “...a continuation of the interview of 90-10-19.”⁷⁹⁴ Ms. E’s demeanour was composed throughout the interview, but, as Blachford indicated, “I don’t think she was very happy that we were there right from the get-go.”⁷⁹⁵

Ms. E began by discussing how she became reacquainted with Bagri in the early 1980s after moving to Canada. She was then asked about the night when Bagri visited her and “immediately stated” that it was after the Air India crash. She explained that Bagri came to her door and when she asked how he got there, he told her that he came with someone. When asked by the officers whether this was the night before Air India, she was “...very emphatic that no it was not before Air India, it was the night before the CP Air crash or the thing that crashed in Tokyo.” Ms. E was uncertain about exactly what had happened in Tokyo, but had heard about it on the radio or from others and remembered that an unknown flight, she thought it was CP Air, was involved in a crash which resulted in “not many people” getting hurt, and which was caused by something that was on the plane.⁷⁹⁶

Ms. E then described her conversation with Bagri on that evening. After asking how he got there, she asked why he was there so late and he said he needed a car. When asked where he was going, Bagri said that he was going to the

⁷⁹¹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7763-7764.

⁷⁹² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7543.

⁷⁹³ Exhibit P-101 CAF0428, pp. 2, 5; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7770.

⁷⁹⁴ Exhibit P-101 CAF0428, p. 2.

⁷⁹⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7770.

⁷⁹⁶ Exhibit P-101 CAF0428, p. 2.

airport, that he knew she did not want him to visit or use her car, that "...our bags are going but we're not going anywhere" and that Ms. E may not see him anymore, as they "might get caught." Ms. E explained that she told Bagri he could not use her car anymore and that he got angry and left. She thought he went to the Ross Street Temple. She did not see him get dropped off and did not see anyone else, but she thought he said there were three of them going to the airport and he may also have said that Talwinder [Parmar] dropped him off, but she was not sure. She added that Laurie had told her it was probably Parmar who dropped off Bagri.⁷⁹⁷

Ms. E discussed the period which followed the Air India crash with the officers. At times, she confused the date that she had moved out of her basement suite and she provided slightly different accounts during the interview of her interactions with the Bagris after the crash.⁷⁹⁸ Ms. E initially stated that Mrs. Bagri stayed with her during the period immediately following the bombing, but not after Bagri's request to borrow the car, and that during this time, she only saw Bagri himself on a few occasions.⁷⁹⁹ She then said that the Bagris had in fact stayed with Parmar and only visited her during the day. Ms. E reiterated her information about Mrs. Bagri's comment about the Air India crash along the lines that: "...we told them not to fly Air India." She said that Mrs. Bagri had made that comment while staying in her home after the bombing and had appeared proud of the crash. After this, Ms. E maintained that she did not want "...anything to do with the Bagris" and that this was when Bagri tried to borrow her car. Ms. E stated that she did not see Bagri for "quite a while" after his request to borrow her car, but that he visited her between 7 and 8 PM on an evening around Halloween and "...gave her the letter about the secret." Asked if there could be "another secret," she stated that nothing came to mind aside from the fact that "...Bagri was going to the airport and just the luggage was going."⁸⁰⁰

Ms. E initially denied having frequent contact with Bagri after Air India and after his request to borrow the car. The RCMP officers showed her long distance tolls indicating contact between Bagri's and her residence, including after the period when she stated she stopped having contact. Ms. E said she only had infrequent contact, and explained that most of the calls were with Mrs. Bagri about financial issues, including a \$10,000 loan she had received from the Bagris and a \$10,000 lottery win which she had let the Bagris keep.⁸⁰¹

Ms. E then discussed again her conversation with Bagri when he visited her. She said that after he said he was headed to the airport, she asked him where he was going and he stated, "my bags are going, I am not." She added that Bagri had once told her that he would not tell women about the matters he discussed with Parmar and that, indeed, Bagri's wife often complained to her about the fact that Bagri was not keeping her informed of his whereabouts. Ms. E stated

797 Exhibit P-101 CAF0428, pp. 2-3.

798 Exhibit P-101 CAF0428, pp. 3-5.

799 Exhibit P-101 CAF0428, p. 3.

800 Exhibit P-101 CAF0428, pp. 3-5.

801 Exhibit P-101 CAF0428, p. 4; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7777.

that Bagri often bragged about Parmar and thought he was a God. She said that she did not hold Parmar in high regard herself, as she had been asked to provide him with merchandise free of charge, but had heard that he was "...a government man and already had lots of money."⁸⁰²

Rautio and Blachford were surprised by Ms. E's claim that Bagri had visited her after Air India and that the Narita and Air India bombings had not occurred at the same time.⁸⁰³ They asked her about her perception of the timing of the Air India crash. Ms. E said there was only one crash in June 1985 and that "...everything went into the ocean" somewhere. She volunteered that she thought Laurie had "explained everything" to her common-law husband about three years ago. She remembered that when Air India crashed, she was still living in her basement suite and was planning a party. She believed the date of the tragedy was around June 10th but when told it was June 22nd, she speculated she may have planned her party two weeks later.⁸⁰⁴ The officers told Ms. E that "...CP Air and the Air India crash were the same day," but she maintained that Bagri's request to borrow her car was after Air India.⁸⁰⁵ She recalled finding out about Air India because a relative phoned her, and she cancelled her party.⁸⁰⁶

Rautio and Blachford asked Ms. E about her 1985 interviews with the RCMP and, in particular, why she had not revealed her information about Bagri's request to borrow her car at that time. She explained that the officers who interviewed her then had not specifically asked about the incident. She added that she had been comfortable telling Laurie "...because she was promised that the information would stay confidential between the two of them."⁸⁰⁷ Blachford explained that the officers did not get around to discussing how the RCMP could meet Ms. E's concerns about maintaining confidentiality during this interview.⁸⁰⁸

At the end of the interview, Rautio and Blachford asked Ms. E directly, "point blank," whether she was having an affair with Bagri.⁸⁰⁹ She became "visibly upset" and "quite nervous" and she "denied it emphatically." The interview was then concluded at her request, but the officers explained that the issue "...may not be resolved for a long time" and that she could be approached by police again.⁸¹⁰ According to Blachford's recollection, the interview was not concluded because of the "direct challenge" the officers put to Ms. E about having had an affair with Bagri, but rather because she had to go pick up her children at school. He explained that Ms. E was asked about the alleged affair because the RCMP wanted to "...establish what her relationship was with Mr. Bagri."⁸¹¹

802 Exhibit P-101 CAF0428, pp. 4-5.

803 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7769.

804 Exhibit P-101 CAF0428, p. 3.

805 Exhibit P-101 CAF0428, p. 4; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7769-7770.

806 Exhibit P-101 CAF0428, p. 5.

807 Exhibit P-101 CAF0428, p. 5.

808 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7771.

809 Exhibit P-101 CAF0428, p. 5; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7771.

810 Exhibit P-101 CAF0428, p. 5.

811 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7770-7771.

RCMP Conclusions: Ms. E Considered Unreliable

After the second interview with Ms. E, Rautio prepared a continuation report summarizing the 1990 RCMP approach to Ms. E and the conclusions that could be drawn. He referred to the typed accounts of the two interviews and noted that Ms. E would not allow tape recording. He described Ms. E as a “talkative woman,” and concluded that her explanation about how she met Bagri and his family in BC could “...probably be taken at face value.”⁸¹² However, he then listed five different concerns which made Ms. E problematic as a potential witness.

First, Rautio discussed the fact that Ms. E was “...extremely reluctant to admit any sexual involvement with Bagri.”⁸¹³ He wrote:

It is felt by the investigators that [Ms. E] is more concerned about the issue of her affair with Bagri becoming common knowledge, than she is actually afraid of any physical threats to herself or family by Bagri.⁸¹⁴

Blachford confirmed in the Inquiry hearings that this was a factor to take into account.⁸¹⁵

Second, Rautio mentioned the threats that Ms. E had received from Bagri. Despite the opinion of the investigators that Ms. E was more concerned about saving face than about safety, Rautio did note that Ms. E had in fact said that she was afraid of Bagri because of his past comments.⁸¹⁶

Third, Rautio listed Ms. E’s unwillingness to testify. He noted that, as a result of her expressed fears about Bagri, she had said that she would not testify in court.⁸¹⁷

The fourth concern expressed by Rautio related to the inconsistencies in the information provided by Ms. E. Rautio felt that Ms. E’s account of Bagri’s request to borrow her car appeared to be “based on fact,” but that the fact that she was now separating the Air India and Narita incidents by a period of time of up to two weeks and “...denying extended contact with Bagri by phone after the Air India/Narita incidents” raised “a serious credibility problem.”⁸¹⁸ Rautio reported that he contacted Laurie and told him that Ms. E now separated the incidents.⁸¹⁹ Laurie said that this was not consistent with the information Ms. E had given him in the past, and rather indicated that she had “...recently and deliberately

812 Exhibit P-101 CAA0792(i), pp. 10-14.

813 Exhibit P-101 CAA0792(i), p. 11.

814 Exhibit P-101 CAA0792(i), p. 11.

815 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7775-7776.

816 Exhibit P-101 CAA0792(i), p. 11.

817 Exhibit P-101 CAA0792(i), p. 11. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7776.

818 Exhibit P-101 CAA0792(i), p. 13. See also Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7776-7777.

819 Exhibit P-101 CAA0792(i), p. 14.

changed her story.”⁸²⁰ In testimony, Laurie explained that the information Ms. E had provided him had been clearly ingrained in her brain and that, according to him, she was simply trying to “make herself unreliable” by confusing the timing of events when those she did not want to speak to were questioning her. To him, this showed that, as CSIS had thought from the beginning, Ms. E would not cooperate with police and in fact did not cooperate.⁸²¹ Rautio and Blachford also felt that Ms. E’s allegation that Air India and Narita were separate in time was an attempt on her part to “mitigate her evidence.”⁸²²

Rautio’s fifth and final concern related to the possible “contamination” of Ms. E’s evidence as a result of her past meetings with CSIS. Rautio indicated that Ms. E had said she had met with Laurie “on ten occasions” and noted that Ms. E had been provided with specific information, such as “...CSIS knew that Talwinder dropped Bagri off at [Ms. E’s] residence because CSIS had been following Talwinder.” Rautio noted that this could raise questions “...as to what [Ms. E] knows independently as opposed to what she has been told.”⁸²³ Blachford explained in testimony that the RCMP officers were generally concerned that Laurie had provided information to Ms. E which could affect the content of her evidence.⁸²⁴

However, Laurie denied telling Ms. E about the CSIS surveillance.⁸²⁵ The typed accounts of the Ms. E 1990 interviews, based on the investigators contemporaneous notes, do not contain a mention of Laurie having told Ms. E that CSIS was conducting surveillance on Parmar, but only that she thought he may have told her that it was “probably” Parmar who had dropped off Bagri at her residence.⁸²⁶ On the basis of a document he reviewed, Laurie believed that it was the RCMP who had informed Ms. E of the surveillance when they first visited her in 1985.⁸²⁷

In fact, the RCMP constable who had interviewed Ms. E for the first time in 1985 had noted in his report that she was “...questioned regarding the u/m dropped off by Parmar at [redacted] avenue Vancouver on 85-06-09 at approximately 23-06hrs,” and that he had also asked her about her knowledge of Parmar during the interview.⁸²⁸ In 1987, according to the report Laurie prepared immediately after his third interview with Ms. E, she told Laurie that the RCMP had implied to her, when they interviewed her in 1985, that it was Parmar who had brought Bagri to her residence.⁸²⁹ Given the manner in which the RCMP questioned Ms. E about a person who was seen arriving at her place at a specific date and time, it is clear that the RCMP revealed the fact of the surveillance during the 1985 interview.

⁸²⁰ Exhibit P-101 CAA0792(i), p. 14; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7491.

⁸²¹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7491.

⁸²² Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7779.

⁸²³ Exhibit P-101 CAA0792(i), pp. 13-14.

⁸²⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7777-7778.

⁸²⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7489.

⁸²⁶ Exhibit P-101 CAF0428, p. 3.

⁸²⁷ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7489-7490.

⁸²⁸ Exhibit P-101 CAA0387(i).

⁸²⁹ Exhibit P-101 CAA0579(i), p. 1.

If the officers did not directly reveal the fact that the person seen dropping off Bagri at the time was Parmar, questioning her about him in the same interview was probably sufficient for her to conclude that this was implied.

In any event, based on the five concerns listed by Rautio, the RCMP investigators concluded that Ms. E could not be considered a reliable witness, and that this "...conclude[d] [the Watt MacKay] issue 2W."⁸³⁰ Insp. Dicks, the NSIS Officer in Charge, accepted this analysis.⁸³¹

Rautio and Blachford further explained their view of the value of the information provided by Ms. E during a conversation with John Stevenson of CSIS a few months later, in January 1991. At the time, Stevenson was tasked with accompanying RCMP investigators who were interviewing former CSIS members in preparation for the Reyat trial. In this context, he travelled to Nelson together in one car with Rautio and Blachford.⁸³² The topic of Ms. E came up and the RCMP officers told Stevenson that they had "not been impressed" by the information she had to offer. Stevenson reported that the investigators said they felt she was "...merely feeding information back to the previous CSIS handler which the handler, Mr. Willie Laurie had confided to her during his debriefing sessions." They left Stevenson with the "...distinct impression that they felt that there was nothing to be gained by the Force from a continuing association with the source."⁸³³ Blachford, unlike Stevenson who had also drafted a memorandum about it, did not recall this conversation, but felt it was an "overly broad generalization" on the part of Stevenson to describe the RCMP reasons for not pursuing Ms. E in the way he did.⁸³⁴ Blachford maintained that the reasons for the RCMP's decision at the time were the five concerns described by Rautio in his report.⁸³⁵

On October 24th, Rautio reported to RCMP HQ about the two interviews with Ms. E. He summarized the information she provided about Bagri's request to borrow her car and noted that "...the source was emphatic that this conversation took place after the Air India crash, but before the C.P. Air incident in Japan." He advised that the source felt that a "couple of weeks" may have passed between the two events and that she "...had no explanation when advised that the two incidents occurred on the same day."⁸³⁶ Rautio commented:

It is apparent to the investigators that the source is not being completely truthful. The source explained that the lack of supplying this information to the RCMP in 1985 when interviewed twice, by simply saying that the RCMP did not specifically ask about the Bagri conversation.⁸³⁷

830 Exhibit P-101 CAA0792(i), p. 14; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7779-7780.

831 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7601-7602.

832 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7704.

833 Exhibit P-101 CAF0425, p. 1; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7705.

834 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7781-7782, 7841-7842.

835 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7842; Exhibit P-101 CAA0792(i).

836 Exhibit P-101 CAF0383, p. 2.

837 Exhibit P-101 CAF0383, p. 3.

Rautio also reported that Ms. E had provided her information to CSIS only because of the confidentiality they could offer. He concluded that "...the value of this source is questionable considering the reluctance to cooperate."⁸³⁸

This was the end of the RCMP approach to Ms. E in 1990.⁸³⁹ She was not contacted again by the RCMP until June 1991, when two E Division investigators, who did not know about the 1990 interviews and the conclusion of unreliability, approached her while working on a source development project.

In 1985, the RCMP had discounted Ms. E, though they suspected she may have been Bagri's mistress, because it was believed she did not have information of interest to its investigation. In 1990, the RCMP knew that she had provided information of interest to Laurie numerous times, but nevertheless discounted her again after two interviews, concluding that she was unreliable.

Blachford explained that, in 1990, Bagri was not the principal focus of the E Division investigation. At the time, NSIS was focused on the preparation of the trial of Inderjit Singh Reyat for manslaughter in connection with Narita.⁸⁴⁰ However, the RCMP had had information pointing to Bagri's possible involvement since the early months of the investigation, including the information received from Tara Singh Hayer in 1986, when Bagri was described as a "...prime Canadian suspect in the Air India/Narita investigation."⁸⁴¹ In 1987, Bagri was referred to in RCMP correspondence to CSIS as "...one of the principal players in the Air India/Narita investigation."⁸⁴² In 1995, after Parmar's death and when the RCMP was considering offering immunity to Reyat and Surjan Singh Gill, but without new information having been obtained since the Ms. E information came to light, Bagri was described as the "main target" of the Air India investigation.⁸⁴³

1991-1992: The RCMP "Re-Discovers" the Ms. E Information

A New Approach to Ms. E

In June 1991, Sgt. Fred Maile and Cpl. Robert Solvason of E Division NSIS made an approach to Ms. E. At the time, Maile and Solvason were assigned to the criminal extremist group within NSIS, a group which focused on non-Sikh extremism related matters. The Air India investigation fell under the responsibility of another group. Maile had transferred to NSIS on the understanding that he would be working on the Air India disaster and was frustrated that he was unable to work on the investigation. He developed a project that would enable investigators to get into the Air India investigation "...through the back door."⁸⁴⁴ Solvason assisted Maile, his immediate supervisor at the time, in this

838 Exhibit P-101 CAF0383, p. 3.

839 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7780.

840 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7780-7781.

841 Exhibit P-101 CAF0714, p. 1.

842 Exhibit P-101 CAA0591, p. 1.

843 Exhibit P-101 CAF0392, p. 4.

844 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11575-11577, 11617.

“source development project.”⁸⁴⁵ The investigators planned to do “speculative” interviews with individuals who were likely to have knowledge of the Air India disaster, in order to develop sources for the Air India investigation.⁸⁴⁶

Solvason came up with the names of about six people who could be approached. He had previous information from one of his human sources that Bagri was reputed to have “some girlfriends,” one of whom, Ms. E, lived in Vancouver.⁸⁴⁷ As it was common practice to approach persons believed to be the girlfriends of suspects,⁸⁴⁸ Maile and Solvason decided to interview Ms. E.

On June 20, 1991, Maile and Solvason went to Ms. E’s residence and introduced themselves as members of the RCMP. She told them that she had an appointment and asked that they return the next day.⁸⁴⁹ When they returned on June 21st, they told her that they were investigating the Air India disaster, that they wanted to know what she knew about it, and that they wanted to know about her association with Bagri.⁸⁵⁰ She explained that she had already spoken to CSIS and the RCMP many times. She was concerned about the “continuing interview process” and about her security.⁸⁵¹ Solvason recalled that she said something indicating that she “was tired of” speaking to CSIS and the RCMP. However, she was “quite forthcoming” and the RCMP officers felt there was a “lot of potential,” particularly since this was only the first interview they had conducted with her.⁸⁵² Solvason noted in his continuation report about the interview that Ms. E was “...forthright in her account of circumstances surrounding her association with Bagri ‘et al’, with the possible exception of some detail relating to personal or romantic matters.”⁸⁵³

Ms. E told the RCMP officers about her association with Bagri back in India and of Bagri’s visits to her in Canada. She recounted that, while visiting her in Vancouver, Bagri used her telephone and her car and mostly visited Parmar. He was also associating with Surjan Singh Gill, Daljit Singh Sandhu and Ripudaman Singh Malik, from whom he obtained 20 to 40 thousand dollars for unspecified reasons. Ms. E stated that she once overheard Bagri tell Parmar on the phone that “...Surjan Singh was not doing what they wanted him to do and to leave him out of it.” She also recounted a meeting held in her home sometime between April and June 1985 involving Parmar, Bagri, Gill, Sandhu and others, where raised voices and arguments could be heard.⁸⁵⁴

About Bagri’s request to borrow her car, Ms. E stated that, during the latter part of June 1985, Bagri visited her late at night and woke her up with his knocking.

845 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11577; Exhibit P-101 CAF0405, p. 1.

846 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11577.

847 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11578.

848 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11616.

849 Exhibit P-101 CAF0405, p. 2; Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11578.

850 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 42.

851 Exhibit P-101 CAF0405, p. 2.

852 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11580.

853 Exhibit P-101 CAF0405, p. 2.

854 Exhibit P-101 CAF0405, pp. 2-4.

She let him in and he requested her car. Asked why he was visiting so late, he stated that Parmar had dropped him off and that he was going to the airport with Parmar and two others from Toronto. Asked if he was going somewhere, he stated that "...we are not going but our bags are going." When Ms. E refused the car, Bagri stated that they might get caught and then he would not return to ask for the car. When Ms. E asked questions about what Bagri was doing, he said that she did not need to know and that she would find out if he got caught. Ms. E said she refused to lend her car and reminded Bagri that he had a family, but he responded "I know all of those things but I am going." She said that when he left, he indicated that he was going to the Ross Street Temple. Ms. E explained that the entire conversation lasted about five minutes and that she did not see any vehicles or other individuals and did not observe in which direction Bagri went. The following day, Ms. E heard of the Air India disaster.⁸⁵⁵

Ms. E also told Maile and Solvason that she had heard a speech in the Ross Street Temple during the year preceding the bombing which mentioned that two men from Toronto would be "fictitiously named Lal and [unknown]." She recounted Mrs. Bagri's comment, made while she was staying in Ms. E's home for one week after the disaster, about the fact that the victims were responsible for flying Air India despite the warnings. Ms. E explained that, subsequently, she decided to stop associating with the Bagris. She discussed Bagri's relations with his family and other members of the community and provided information about an address regularly visited by Surjan Singh Gill. Finally, she recounted Bagri's visit in October 1985, when he was upset about the alienation between them, and gave her a letter and powdered medicine from Pakistan after she stated she "... did not wish to be closely associated to him." The letter explained that Bagri did not wish their relationship to sour, and went on to remark that "...you are the only who knows one of my secrets and this could get me in lots of trouble and put my life in danger." Ms. E stated that she threw away the letter.⁸⁵⁶

Ms. E objected to the recording of the conversation by the RCMP officers. She also expressed a reluctance to testify.⁸⁵⁷ In fact, when she was told that a written statement was necessary to further the investigation and "...because she would be called as a witness," Ms. E was adamant that she would not testify and she indicated that she had been given "assurances" by Laurie that "...she would never have to testify."⁸⁵⁸ While she did not directly object to providing a written statement,⁸⁵⁹ she was fearful and she wanted to speak with her common-law husband before deciding whether to provide the statement.⁸⁶⁰ In any event, a statement could not be prepared on that day because of time constraints. Instead, Solvason recorded the "...highlights of the conversation that will be made subject of a statement for future evidentiary purposes" in his continuation report.⁸⁶¹

855 Exhibit P-101 CAF0405, pp. 4-5.

856 Exhibit P-101 CAF0405, pp. 5-6.

857 Exhibit P-101 CAF0405, p. 2.

858 *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 44-45.

859 Exhibit P-101 CAF0405, p. 2.

860 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 44.

861 Exhibit P-101 CAF0405, p. 2.

In the conclusion to his report, Solvason noted that Ms. E was "...most reluctant towards any suggestion as to eventually becoming a witness." He wrote that this was "...to be expected considering the lengthy association and debriefings with CSIS." Solvason noted minor discrepancies in Ms. E's story, which he felt were also to be expected given the time lapse and numerous repetitions of the story to CSIS.⁸⁶² He explained in testimony before the Inquiry that while Ms. E "...didn't have the times right and there was some discrepancy," he would have been suspicious if she had "...each and every detail correct," and he said that the fact that there were some minor variations was not surprising.⁸⁶³ Because he was not aware of the 1990 RCMP interviews, he did not know about the major discrepancy between the version she provided then, separating Air India and the "CP Air crash" by a period of about two weeks, and this version, where she situated Bagri's request to borrow her car the night before Air India.⁸⁶⁴

In his report, Solvason concluded that Ms. E's reluctance to testify was "...not seen as insurmountable," but that there was "...considerable distance to travel in terms of realigning [Ms. E's] commitment" and of corroborating her information. He also remarked that Ms. E's common-law partner was "...less than enthused with the constant police attention." Notwithstanding the issues, Solvason concluded that there was "...no question that [Ms. E] has direct evidence towards future criminal conspiracy proceedings against Bagri 'et al' and would form a major part of any such proceedings." He noted that "...a tactful and diplomatic approach" would be necessary to achieve those objectives, which would eventually require Ms. E to testify.⁸⁶⁵ Knowing how sensitive Ms. E was, and having experience in source development, Solvason recommended this "tactful diplomatic approach" because he knew that this would be critical to securing her cooperation.⁸⁶⁶

When he was shown the conclusion reached by Rautio after the 1990 interviews that "...at this time, ENSIS can not consider [Ms. E] as a reliable witness,"⁸⁶⁷ Solvason testified that this did not square with his evaluation of the circumstances.⁸⁶⁸ He noted:

S/SGT. SOLVASON: I think sometimes the problem – I noticed with this woman, she seemed to be quite sensitive. And – sometimes it's – if they just perceive that someone – they feel threatened somehow or they don't feel comfortable, it's possible that they may alter what they have to say, as a means of getting rid of somebody. And I don't know that that happened, but I know that that's a possibility.

862 Exhibit P-101 CAF0405, p. 6.

863 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11602.

864 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7785-7786.

865 Exhibit P-101 CAF0405, p. 6.

866 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11545, 11582-11583.

867 Exhibit P-101 CAA0792(i), p. 14.

868 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11582.

MR. FREIMAN: Does it have anything to do with your recommendation for a tactful diplomatic approach?

S/SGT. SOLVASON: I think it would be critical in her case because, from what I could see with her, she was quite sensitive.⁸⁶⁹

In his continuation report about his 1991 interview with Ms. E, Solvason listed a number of points which could be researched in order to corroborate or confirm her information. He noted that it was "...imperative to establish the credibility" of Ms. E through corroborating information and that contact with her would also continue for this purpose.⁸⁷⁰

Lack of Support for the New Approach at RCMP E Division

Before their approach to Ms. E, Maile and Solvason were not aware that she had been interviewed by Rautio and Blachford in 1990, but knew that she had provided information to Laurie which had been relayed to the RCMP.⁸⁷¹ When Ms. E repeated the information about Bagri's request to borrow her car, this time situating it clearly as occurring the night before the Air India disaster, it came as a surprise to the officers, who felt that Ms. E had provided some "startling" and "very important" information.⁸⁷²

When Maile and Solvason returned to the office and reported the results of their interview to the other NSIS members, the information was received with "...a lot of anger and hostility." The "...office was in a turmoil." Wall, who was the second-in-command at NSIS, and Rautio were upset.⁸⁷³ Instead of being eager to take advantage of Ms. E's apparent willingness to cooperate, the RCMP seemed more concerned about Maile's and Solvason's unauthorized interview with Ms. E, and about the fact that their interview was more successful than the interviews conducted by Rautio and Blachford.

Interestingly, the anger and hostility does not seem to have entirely subsided. Some of the present and former RCMP members who testified at the Inquiry still faulted Maile and Solvason for their lack of knowledge. Counsel for the AGC also seemed to be pursuing the same issue in the cross-examination of Solvason.⁸⁷⁴

Insp. Dicks, who was still the Officer in Charge (OIC) of NSIS at the time of these events, testified that he could not understand why Maile and Solvason were not

⁸⁶⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11582-11583.

⁸⁷⁰ Exhibit P-101 CAF0405, p. 7.

⁸⁷¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 39. See also Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11616-11617.

⁸⁷² Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11579; *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 42.

⁸⁷³ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11581.

⁸⁷⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11617-11620.

aware of the 1990 interviews. He stated that there was nothing in NSIS at the time which would have precluded the officers from being aware. According to him, the documents and reports about the prior interviews would have been accessible to all NSIS members through the tip system, which assigned numbers to various subjects of investigation.⁸⁷⁵ He felt that there was “an open process” at NSIS and that matters such as the Ms. E information would have been discussed openly. Dicks also testified that, as the OIC, he would have been aware of Maile and Solvason’s initiative to approach Ms. E and kept informed in this respect, formally or not.⁸⁷⁶

Blachford, on the other hand, thought that one possible explanation for the fact that Maile and Solvason were unaware of the 1990 interviews was the “...the size of the [Air India] file itself.”⁸⁷⁷ He explained:

Unfortunately, it is massive and, as I indicated, the original carding system was the old three-by-five, write the name on and then the reference files, and if it is not done in a timely and efficient fashion then stuff can get overlooked.⁸⁷⁸

In fact, Blachford himself, when he reviewed the file again in 1992, did not recall seeing the information about the interview conducted by Maile with Solvason.⁸⁷⁹ However, he felt that the fact that he had approached Ms. E with Rautio in 1990 should have been easy to discover for Maile and Solvason:

Well, I can’t answer why they didn’t know that Mr. Rautio and I had met with Ms. E previously. I mean, that was a well known fact within the task force. It is well documented and, in fact, I think if you went to the card with her name on it, all the associated files are neatly listed or listed out and it would have been a very easy check. I was there in ’91 and there is no way that I would not have relayed that information to those investigators if I had known they were going out.⁸⁸⁰

Solvason testified that he had done some “cursory checks,” which included a quick search of the RCMP files. He recalled having seen on the file the notes for the 1985 RCMP interviews, during which no information of significance had been learned, but he saw no information about the fact that she had been named in the Watt MacKay review, nor any information about the 1990 RCMP interviews. He was unable to recall exactly which searches he conducted, but

⁸⁷⁵ See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force, for a description of the tip system and its deficiencies.

⁸⁷⁶ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7615-7616, 7635, 7638-7639.

⁸⁷⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7784-7785.

⁸⁷⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7785.

⁸⁷⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7786-7787.

⁸⁸⁰ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7832.

testified that normally he would go to the index cards in the tip system and look at the relevant files, many of which were cross-referenced. He explained that the files in the tip room were “master files” and that when an officer took out a master file, a “charge card” was supposed to be left in its place. However, this did not always happen and items got misfiled, which was another possible explanation for why he did not see the information about the 1990 interviews. It was also possible that he missed something, as it was not his intention to do an “in-depth profile” because these were highly speculative interviews. When Solvason did not see any “...real activity for some time” on the file, he felt that he and Maile could proceed as they wished with the interview of Ms. E. He explained that, had he and Maile known that Rautio and Blachford had recently interviewed Ms. E, he would have spoken to them ahead of time and tried to figure out the best course of action from there.⁸⁸¹

CSIS Information about the Continuing RCMP Interviews

In July 1991, John Stevenson of CSIS recorded information he had received about Ms. E in a memorandum.⁸⁸² Stevenson had learned that “...the RCMP had not ceased their contact” with Ms. E and, in fact, were visiting her “...notwithstanding her reluctance to have anything to do with them.”⁸⁸³ His memorandum documented the fact that on June 20, 1991, Ms. E had complained about being contacted by two policemen who had arrived “...unexpectedly on the source’s doorstep and questioned her about the Air India explosion.” He noted that this visit was “...part of ongoing contact” the RCMP had maintained with Ms. E. He added that Ms. E had indicated that she did not want to have contact with the RCMP, but that they insisted on contacting her and asking her many questions.⁸⁸⁴ There was even an indication that some health problems Ms. E had been having had been “...compounded by the persistence of the RCMP” in contacting her against her wishes.⁸⁸⁵ According to Stevenson’s memorandum, Ms. E was complaining about the fact that the RCMP were still dropping by to see her and were “...not listening to her protestations that she does not want to talk to them.”⁸⁸⁶ She said that, on a recent visit, the RCMP had stayed for three hours, and that they had on occasion had discussions with her within earshot of others. She wanted “...the RCMP to stay away from her house.”⁸⁸⁷

Stevenson also noted that Ms. E had admitted that she “...does know ‘something’ about Air India explosion” but had stated that she would “...never go on to the witness stand” because she knew that “...those who committed the crime would have [her] children murdered.” She added that she believed that Reyat was in the same situation and hence would not be providing information about those who organized the bombing. Stevenson concluded that Ms. E and others around her

881 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11578, 11583, 11601, 11616-11618.

882 Exhibit P-101 CAF0384, CAF0425.

883 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7705.

884 Exhibit P-101 CAF0384, p. 2.

885 Exhibit P-101 CAF0425, p. 2.

886 Exhibit P-101 CAF0384, p. 2.

887 Exhibit P-101 CAF0425, p. 2.

appeared upset by the "...persistent contact of the RCMP as they continue with their investigation into the Air India explosion." Stevenson noted that he did not intend to report this information to the RCMP at that time, but "...merely to forward it for the file record in case any queries originate either now or at some later date."⁸⁸⁸ In fact, the information was not passed to the RCMP until over 10 years later, in November 2001.⁸⁸⁹

RCMP Follow-Up on the Ms. E Information

Dicks confirmed that, as the OIC of NSIS, he would have been informed of the information received from Ms. E in June 1991, especially since it was viewed as "direct evidence" which could be used in furtherance of conspiracy charges. This was particularly important because, at the time, there was very little evidence of direct participation by anyone.⁸⁹⁰ Yet, the RCMP did not approach Ms. E again until the spring of the following year. Solvason had no further direct involvement with Ms. E at all after his June 1991 interview.⁸⁹¹ Maile "...became involved in other matters," which resulted in some delay before he attempted another approach to Ms. E in late March 1992.⁸⁹²

In November 1991, NSIS members recognized, during a "group leader session," that there was "...insufficient evidence to support charges" in relation to Air India.⁸⁹³ However, they noted that during recent months "...new information has been received which tends to support what we have always believed about who was involved and how the bomb was delivered to the Airport," obviously referring to the Ms. E information.⁸⁹⁴ It was decided that "...directing sources as a result of currently known new information and future information," which meant instructing sources to take specific actions,⁸⁹⁵ was to be done after a "careful analysis" of the facts and circumstances. This was to be "...weighed against a desired/projected outcome" and was to be "well documented." At the time, six months after the interview by Maile and Solvason, the Ms. E information still required follow-up and "considerable development."⁸⁹⁶ In fact, Maile only became "directly involved" with the Air India investigation in December 1991.⁸⁹⁷

In December 1991, Dicks sent a report to the OIC of Federal Operations in the Division about the progress of the Air India investigation. He noted that the information received from sources "...over the past couple of months" provided cause for some "...cautious optimism, we may be able to confirm who was responsible for Air India."⁸⁹⁸ He indicated that "...charges may not be out of

888 Exhibit P-101 CAF0425, pp. 2-4.

889 Exhibit P-101 CAF0429.

890 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7606-7607.

891 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11580.

892 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 47.

893 Exhibit P-101 CAF0407, p. 1.

894 Exhibit P-101 CAF0407, p. 1; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7607-7608.

895 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7610.

896 Exhibit P-101 CAF0407, pp. 1-2.

897 Exhibit P-101 CAF0388, p. 5.

898 Exhibit P-101 CAF0409; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7608-7609.

the question,” but felt it was still too early to tell. He reported that directing of sources had not taken place yet. As there was a “...high probability the sources will be witnesses” and there would be “inherent protective liability,” a plan was to be put forward before proceeding.⁸⁹⁹ Dicks explained this related to the possible need to put protective operations into play for sources.⁹⁰⁰

In a January 1992 status report about the Air India investigation, the Ms. E information was listed as having been obtained as a result of the NSIS Source Development initiative. NSIS was planning to “...take statements from known witnesses and newly acquired witnesses.”⁹⁰¹ At the end of March 1992, a meeting was held about the creation of a re-organized team at E Division NSIS for the Air India investigation. At the time, the investigators were making a “...continuing effort to concentrate on Bagri.” Maile, who was about to retire, was instructed by Dicks to work longer shifts and to claim overtime where necessary. Maile reminded his colleagues that if “...relocation or some type of witness protection” was required, it was available and that this should be kept in mind in dealing with witnesses or suspects.⁹⁰² Dicks confirmed that witness protection was a concern that was present in the case of Ms. E.⁹⁰³

In late March 1992, Maile contacted Ms. E and her common-law husband and arranged interviews with both.⁹⁰⁴ Maile interviewed Ms. E’s common-law husband and explained to him the police interest in Ms. E.⁹⁰⁵ He said he would talk it over with Ms. E and that they would advise Maile if she would provide a statement.⁹⁰⁶

On April 6, 1992, Maile met with Ms. E at her residence. She was “quite anxious” to discuss the interview he had conducted with her common-law husband. She was mostly concerned because her husband was now suggesting that she had been having an affair with Bagri. Maile told Ms. E that he had said to her husband that she had been “seeing” Bagri in 1985-1986. Maile then spent “considerable time” discussing the need for the RCMP to obtain and present as evidence a written statement from Ms. E and the need for Ms. E to give evidence in court about the statements made by Bagri. Ms. E indicated that she felt she had cooperated enough with the authorities and that her life had been disrupted by the RCMP dealings with her. She was also concerned that members of her family in Canada or abroad would be harmed by the BK if she testified. Maile explained to her that “...no one could guarantee the safety of her family members in India due the constant random killing which appears to be [a] fact of life in that country.” However, Ms. E was “assured” that threats to her family in Canada would receive “immediate attention.”⁹⁰⁷

899 Exhibit P-101 CAF0409.

900 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7609-7610.

901 Exhibit P-101 CAF0411, pp. 2-3.

902 Exhibit P-101 CAF0385, p. 4.

903 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7621.

904 Exhibit P-101 CAF0385, p. 5.

905 Exhibit P-101 CAF0385, p. 2; Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7617-7618.

906 Exhibit P-101 CAF0385, p. 2.

907 Exhibit P-101 CAF0359, p. 1.

Maile and Ms. E then discussed "...whether she would actually give a written statement and then give evidence in court." Maile emphasized the importance of beginning with a statement "...to allow the police to conduct further investigation resulting from the statement." He then explained that before testifying, Ms. E would be "consulted" by both police and the prosecutor. Ms. E remained "somewhat reluctant," but agreed to discuss the matter some more with her common-law husband before making a decision.⁹⁰⁸ Maile was optimistic about the possibility that Ms. E would provide a written statement and agree to testify.⁹⁰⁹ He planned to contact her again the following week if he did not hear from her before.⁹¹⁰

Ms. E Provides a Written Statement

On May 11, 1992, Maile obtained a written statement from Ms. E.⁹¹¹ The statement described how Ms. E became reacquainted with Bagri in Canada in the early 1980s and began to have him and his family visit and stay with her in Vancouver, and to have Bagri use her car on weekends. It stated that the Bagris had Ms. E convinced that they were "...very religious people and that they were always helping people in India by sending money back to India." It discussed Bagri's use of Ms. E's phone, stating that he never spoke in front of her, but told her he was speaking with Parmar when she asked, and that she once heard him argue with Daljit Sandhu, but she did not know about what. It mentioned that Ms. E's family had warned her to stay away from Bagri and his group.⁹¹²

The statement went on to explain that, in June 1985, Ms. E was not getting along well with the Bagris, as she had refused to let Mrs. Bagri stay with her and had been too busy to take her shopping when asked. It stated that Bagri came to Ms. E's very late one evening, around 10 or 11 PM, and knocked on the window to her basement suite. She ignored him at first, but when he kept knocking and woke the upstairs residents, she opened her door. She asked why he was there so late and he said he needed her car. She asked how he got there and, according to the statement, he said, "Talwinder Singh dropped me off." She then asked where he was going, and he said he was going to the airport. When she refused her car, he said he was going to the airport and "...may not come back." He told her that he had people waiting for him. When Ms. E asked where he was travelling to, he told her, "...I'm not going, only the bags are going." Bagri then left and Ms. E closed the door.⁹¹³

In the statement, Ms. E indicated that she refused to give her car to Bagri that night because she "...knew something was up." She then indicated that she heard about "the CP Air crash" on her car radio the next day. She added that she found out about the Air India crash from a relative, as a distant relative of hers

908 Exhibit P-101 CAF0359, pp. 1-2.

909 Exhibit P-101 CAF0385, p. 1.

910 Exhibit P-101 CAF0359, p. 2.

911 Exhibit P-101 CAF0386.

912 Exhibit P-101 CAF0386, p. 2.

913 Exhibit P-101 CAF0386, p. 2.

was one of the victims. During the following weeks, she heard discussions at work about who was responsible for Air India, and she told Mrs. Bagri that she thought the bombing was “really bad.” Mrs. Bagri said that they kept saying in the newspapers not to fly Air India and kept warning people. At that time, the statement continues, Ms. E stayed in contact with the Bagris but began to pull away. She no longer had them over or lent them her car. Subsequently, Bagri visited her and wrote in a letter “...you know some of my secrets, you could put me in big trouble if you want to.” Ms. E was also visited by Mrs. Bagri, who asked for money. Ms. E said the Bagris owed her money for something she did for them and that they had also shared a \$10,000 lottery win. Finally, Ms. E stated that, before she moved to her basement suite, Bagri held a meeting at her home which was attended by Daljit Sandhu, Parmar, and two or three others, possibly including Surjan Gill and “...another fellow’s name was Malik, who was giving them money.”⁹¹⁴

At the Malik and Bagri trial, Ms. E testified that Maile had arrived at her house with a written statement already prepared, explaining it was prepared on the basis of information from Laurie. She claimed that Maile had forced her to sign the statement, telling her she would be jailed for perjury if she refused. She said that Maile was rude and that she had threatened suicide if forced to sign the statement.⁹¹⁵ She explained that she signed the statement “...without knowing its contents because she felt she had no choice.”⁹¹⁶ Maile denied those allegations.⁹¹⁷ Justice Josephson found that Ms. E’s allegations were “...an attempt by her to withdraw from a statement signed by her” and did not accept them, but instead believed Maile’s evidence about the circumstances surrounding the statement.⁹¹⁸

Maile testified at the trial that he took no prepared documents to the interview and wrote the statement as Ms. E related the events to him. He gave Ms. E an opportunity to review the statement and she told him that she had no difficulty reading his handwriting. She signed the statement without making corrections, and they then had a discussion outside her residence about her safety concerns. He indicated that the interview lasted approximately 40 minutes and that at the end he felt that he had a good relationship with Ms. E.⁹¹⁹

Ms. E Refuses Further Contact

On May 15, 1992, four days after obtaining the statement from Ms. E, Maile retired from the RCMP after almost 25 years of service.⁹²⁰ Blachford was assigned the task of conducting the necessary follow-up with Ms. E. He explained that the statement obtained by Maile was “good but brief” and that he was asked to attempt to flesh it out if possible. He also had to compare the statement to the other information provided by Ms. E and to clarify any discrepancies.⁹²¹

914 Exhibit P-101 CAF0386, pp. 2-3.

915 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 50; *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 23.

916 *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 23.

917 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 50.

918 *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 66-67.

919 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 49.

920 Exhibit P-101 CAF0388, p. 1.

921 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7782-7783.

On June 2, 1992, Blachford called Ms. E at her residence and asked for an hour of her time to go over the statement she had provided to Maile. Ms. E refused and said that Maile had agreed that "...no one would bother her again about this."⁹²² She was cold with Blachford and did not want to discuss the statement she had provided. She even said that the police had ruined her life by continually coming back.⁹²³ She explained that speaking about this matter upset and depressed her each time. Blachford tried to "negotiate" an hour of her time, but she was "adamant" and said she had no time. Blachford told Ms. E that one more hour of her time "...would be the end of us" because she had provided a statement as requested, and he only needed to clarify a few points and then it would be finished. Ms. E then indicated that she would have to speak to Laurie. Blachford told her that he was no longer involved and that "...the fewer people involved the sooner this would be completed." Ms. E was "unresponsive" and said she did not want to be involved anymore. Blachford told her he would call her the following week to see if she had changed her mind. She said "OK good bye" and put an end to the conversation.⁹²⁴

The following day, Blachford spoke to Maile when he phoned the office about another matter. Maile said that he did not tell Ms. E that the police would not contact her again.⁹²⁵ Indeed, in a previous meeting, he had told Ms. E that if she provided a statement, she would be "consulted" by police and prosecutors prior to testifying.⁹²⁶

On June 9, 1992, Blachford called Ms. E again. She said she did not want to discuss this anymore, was busy and had to go. Asked whether she would be available at other times, Ms. E repeated that she "...would not talk about this matter any further."⁹²⁷

Blachford initially thought that the fact that Maile had obtained a written statement was "the opening" and that Ms. E was now "...more receptive to receiving the RCMP." However, during his brief conversations with Ms. E, she made it "absolutely clear" that she was just not going to talk to him. Blachford was surprised. He felt that it would not have been opportune in this context to try to address or discuss Ms. E's concerns about security or other issues.⁹²⁸ He was also not aware at the time of the information contained in the 1991 CSIS memorandum by Stevenson, which recorded Ms. E's complaints about the RCMP approaches to her in the past, as well as some of the fears behind her reluctance to cooperate with police and to testify.⁹²⁹

In July 1992, Maile attended an "exit interview," which was an RCMP procedure allowing retired members to review their experience with the Force and to make

⁹²² Exhibit P-101 CAF0360, p. 2.

⁹²³ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7792, 7806.

⁹²⁴ Exhibit P-101 CAF0360, pp. 2-3.

⁹²⁵ Exhibit P-101 CAF0387, p. 2.

⁹²⁶ Exhibit P-101 CAF0359, p. 2; Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7790.

⁹²⁷ Exhibit P-101 CAF0361, p. 1.

⁹²⁸ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7794, 7806.

⁹²⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7795-7796, 7842; Exhibit P-101 CAF0425.

comments if they wished.⁹³⁰ During the interview, Maile described the statement he obtained from Ms. E shortly before his retirement as a “major breakthrough” in the Air India investigation.⁹³¹ He explained that when he retired, he had advised that he would be “...happy to come back to assist in interviewing some key individuals,” whose confidence he had gained after spending much time establishing a relationship with them. Maile now felt that the evidence he had obtained from Ms. E had not been used in the best manner and that the Air India investigation was not “...being given the priority it deserve[d].” He explained that, after his retirement, others were sent to interview Ms. E but made no progress, which was to be expected given the hard work he had had to do to gain her confidence. In this respect, the Staffing and Personnel Officer who conducted Maile’s interview noted that, because of the sensitivity of the Air India investigation, the involvement of a civilian could only be very limited and that “...undoubtedly all avenues are being explored by investigators in an attempt to overcome any sensitive areas that surfaced with [Maile’s] departure.” He concluded that Maile might have “misconstrued” his limited involvement as a result of his new civilian status as a lack of proper priority given to the investigation.⁹³²

The Staffing Officer further commented that it was “unfortunate” that an experienced investigator like Maile did not take another member along when he interviewed Ms. E and obtained her statement, knowing that it would be one of his last interviews before retiring and given that the interview turned out to be “very important.” He noted that, had Maile taken another member, he could have made the introductions and facilitated follow-up after his retirement.⁹³³ On this issue, Maile initially testified at the Malik/Bagri trial that he recalled being accompanied by Solvason during this interview. However, when Solvason indicated that he did not recall being present, Maile admitted that it was possible that he was alone for the interview.⁹³⁴

The OIC of NSIS, Dicks, could not recall why Maile’s offer to provide assistance after his retirement was not taken up. He indicated that it would not have been usual, but also not abnormal for this to occur. He explained however that, notwithstanding Maile’s comments, NSIS did all that needed to be done with Ms. E and that “...the process was in hand and was able to move forward” because other officers had been involved with Ms. E, including Solvason, Rautio and Blachford.⁹³⁵ Blachford did not recall Maile specifically offering his assistance when he spoke to him after trying to contact Ms. E, and he was also not told by his supervisors at NSIS that Maile had made a general offer to provide assistance. He indicated that, had he known of Maile’s offer, he would have “...taken him up on it,” if this was possible at the time, as it is today. He was uncertain whether the RCMP used retired members as police officers back in the early 1990s, but nevertheless felt that since “this was important,” the RCMP would have used Maile if he could have furthered the investigation.⁹³⁶

930 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7621-7622.

931 Exhibit P-101 CAF0388, p. 3; Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7623.

932 Exhibit P-101 CAF0388, p. 3.

933 Exhibit P-101 CAF0388, p. 3.

934 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 47.

935 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7624, 7636.

936 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7798-7800.

Dicks viewed the statement obtained by Maile from Ms. E as important, but not necessarily the “breakthrough” described by Maile, since “...for the most part what this witness could say was known or suspected.” He further explained, in the note he authored in response to Maile’s exit interview, that “...Sgt. Maile had to be pressured to get on with the job” of getting Ms. E to sign a statement. As he had established good relations with Ms. E, it was important for the RCMP to “take advantage” before Maile retired but, as his retirement approached, he spent “valuable time” attending to pre-pension administration. As a result, the statement was obtained “...in a panic environment, brought on by ex Sgt. Maile’s untimely decision to take his pension.” Dicks did, however, recognize that Maile deserved “full marks” for obtaining the statement, and that it was still “...a break to get the statement.”⁹³⁷

In the end, E Division NSIS made a decision not to carry on with Ms. E any further at the time. After his conversations with her, Blachford concluded that more contact would only alienate Ms. E further, which would not benefit the RCMP. Since the issue was very upsetting to Ms. E, and since her statement to Maile contained the basic information she had to provide about Bagri’s request to borrow her vehicle, Blachford suggested that she be interviewed only at a later date, if it became imperative, and that her reluctance be addressed at that time. He noted that this “tip” would be concluded for now.⁹³⁸

Cpl. Bob Stubbings, another NSIS member involved in the Air India investigation, agreed with Blachford’s comments. He saw three options: making further attempts to get another statement; involving Laurie in negotiations with Ms. E; or pursuing other initiatives and re-assessing the issue if or when it became “imperative” to re-interview Ms. E in the future.⁹³⁹ The options were discussed with NSIS members Blachford and Sgt. Rennie, and all concurred that no further action would be taken for the time being.⁹⁴⁰ At the Inquiry hearings, Blachford explained that the concern of the investigators at the time was to not “...totally alienate a potential witness of this magnitude” at a time when, in any event, the RCMP did not have enough evidence to go to court against Bagri and could not yet prove it was a bomb that downed Air India Flight 182.⁹⁴¹

The Ms. E issue was not raised again until 1994.

1994: Missed Opportunities – Laurie’s Promotion Board Interview

In 1994, Laurie applied for a promotion within the RCMP and was interviewed by a board who questioned him about his past experiences.⁹⁴² One of the members of the promotion board was S/Sgt. Doug Henderson, who was part of the “Air India group.”⁹⁴³ Laurie was asked about source development, and he

⁹³⁷ Exhibit P-101 CAF0388, p. 5.

⁹³⁸ Exhibit P-101 CAF0361, p. 1.

⁹³⁹ Exhibit P-101 CAF0341.

⁹⁴⁰ Exhibit P-101 CAF0341.

⁹⁴¹ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7800.

⁹⁴² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7492.

⁹⁴³ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7492; Exhibit P-101 CAF0362, p. 1.

cited his interaction with Ms. E as an example of his experience.⁹⁴⁴ At the time, RCMP members involved in the Air India investigation had also heard rumours indicating that Laurie had made comments which "...may have a bearing" on the investigation.⁹⁴⁵ Comments that "...he could have solved Air India" were being attributed to Laurie.⁹⁴⁶ Laurie testified that he would not have used these words. He explained that, in the competition process, he had been required to describe an incident and to explain what actions he had taken and what the results had been. With respect to the Ms. E information, he had to say that he did not know about the ultimate result of his effort, and that, in fact, he had not seen any, but that the information he had gathered had been important and that he would have liked to find out how it had been used. Laurie thought that the Air India investigation would have been an interesting career path for him within the RCMP.⁹⁴⁷

After Laurie's promotion interview, Henderson told Stubbings during a meeting that Laurie "...may have significant information regarding the Air India investigation" which he obtained while at CSIS. As a result, and because of the rumours about Laurie's other comments, it was decided that he should be interviewed.⁹⁴⁸

In April 1994, Laurie was interviewed by Stubbings and Cpl. Jim Cunningham. He discussed the suggestion that he had made while working at CSIS that he be seconded to the RCMP Task Force, along with his colleagues, Ray Kobzey and Neil Eshleman, because they could have made a contribution to the Air India investigation. Stubbings noted that all three former CSIS investigators were now RCMP members working in E Division. Laurie explained that he had received information from Ms. E which he considered vital to the investigation, though it may not be "...directly related to Air India." He stated that the information he received from Ms. E was included in three to six reports, and that the RCMP had not been provided copies, but probably should review them.⁹⁴⁹ Laurie explained in testimony before the Inquiry that he felt the reports, and the investigator's comments and forwarding minutes, might be of use to the RCMP, as they "...added weight to the information." He also could not precisely remember what was in the reports because he had written so many and, without reviewing them, he could not be exactly sure what information came from Ms. E and what information came from other sources.⁹⁵⁰

Laurie also told Stubbings and Cunningham about his opinion that Ms. E consciously changed her story when she was interviewed by the RCMP so that she would not be an acceptable witness. He discussed his belief that Bagri was involved in the assassination attempt of the Indian minister who was in New Orleans shortly before the bombing. The RCMP members involved, however,

⁹⁴⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7492.

⁹⁴⁵ Exhibit P-101 CAF0362, p. 1.

⁹⁴⁶ Exhibit P-101 CAF0340, p. 1.

⁹⁴⁷ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7493-7494.

⁹⁴⁸ Exhibit P-101 CAF0362, p. 1.

⁹⁴⁹ Exhibit P-101 CAF0340, p. 1.

⁹⁵⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7495.

had information which tended to discount Bagri's participation. Finally, Laurie stated that his former colleague, Eshleman, might have information about Bagri, Parmar and the movement of the bags and that he, Laurie, had received the information in a social setting and did not know whether it was reported to CSIS or to the RCMP.⁹⁵¹

After this interview with Laurie, Stubbings indicated that Ms. E's statement was reviewed and that there was "...no reason to recontact [Ms. E] at this time." He recommended that Eshleman be interviewed. E Division also contacted the CSIS BC Region and decided to write to CSIS formally to request permission to speak to their former investigators about the matter.⁹⁵²

On May 18, 1994, RCMP A/Comm. Frank Palmer, in charge of Operations for E Division, wrote to the CSIS BC Region explaining that Laurie had recently been interviewed and had referred to source reports he had prepared. The RCMP requested copies of the reports.⁹⁵³ Palmer also indicated that Laurie had said that his former colleagues, Kobzey and Eshleman, might have information vital to the Air India investigation. Palmer requested authorization to "...fully discuss with these three members information of a criminal nature obtained during their employment with the CSIS, that directly relates to [the RCMP] Air India investigation."⁹⁵⁴

CSIS provided a response on June 20, 1994. CSIS indicated that it had to interview Laurie in order to identify the documents he was referring to.⁹⁵⁵ CSIS added:

...in the unlikely event any documents containing information which has not previously been provided to you are identified, we would be happy to provide access and or disclosure pursuant to arrangements currently in place under our M.O.U.⁹⁵⁶

About the information allegedly known to Kobzey and Eshleman, CSIS suggested that the RCMP first ascertain whether they agreed that they had any such information and, if so, suggested that a similar procedure be followed, with CSIS first interviewing them to identify the information at stake.⁹⁵⁷

Access to the CSIS Report Provided for the First Time

On July 12, 1994, Laurie went to the CSIS offices and met with Stevenson. He was given an opportunity to review his reports about Ms. E for one to three hours. He was not, however, provided with copies of the reports or permitted to

951 Exhibit P-101 CAF0340, pp. 1-2.

952 Exhibit P-101 CAF0340, p. 2.

953 Exhibit P-101 CAF0363.

954 Exhibit P-101 CAF0363, p. 1.

955 Exhibit P-101 CAF0389, pp. 2-3.

956 Exhibit P-101 CAF0389, p. 2.

957 Exhibit P-101 CAF0389, p. 2.

make notes during his review.⁹⁵⁸ The following day, Laurie returned to the CSIS offices, this time accompanied by Stubbings, and again met with Stevenson.⁹⁵⁹ Laurie described his recollection of the visits at CSIS:

MR. KAPOOR: What were the circumstances or conditions placed upon you to review those notes – I mean those reports?

MR. LAURIE: I don't have a good recollection of the first day, but what I do recall is that my reports were made available to me. I sat in a room and glanced at them and I think that the statement that I needed to make was, "Yes, I believe that's all of them"; something like that.

...

MR. KAPOOR: Okay. And what was your understanding of your purpose to review them on the 12th, without the presence of the police?

MR. LAURIE: I don't really know. I think it was to – so that I could satisfy myself that, yes, these are the reports that I was thinking of. If I had any questions, I suppose I could ask them in the absence of the police. It is a little bit of an odd situation since I am the police. I think the understanding was, we were going to identify which of these – the trails were going to be available the next day when we went through it again, only with Corporal Stubbings there.⁹⁶⁰

In the statement he wrote five years later in preparation for the Malik and Bagri trial, Laurie noted that reviewing the reports "...went a long way to refreshing my memory of the many details I had reported," but that "little else" was learned "...which was considered evidentiary."⁹⁶¹

Stubbings prepared a report about his meeting with Stevenson and Laurie.⁹⁶² He noted that he was advised that Laurie had reviewed all of his reports.⁹⁶³ Laurie then read aloud for Stubbings a note prepared by CSIS which contained the information provided by Ms. E.⁹⁶⁴ Stubbings confirmed that the RCMP was in possession of the information.⁹⁶⁵ Stubbings was not permitted to see the

⁹⁵⁸ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7467-7498; Exhibit P-101 CAF0399, pp. 1, 3.

⁹⁵⁹ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁰ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7497-7498.

⁹⁶¹ Exhibit P-101 CAF0399, p. 3.

⁹⁶² Exhibit P-101 CAF0344.

⁹⁶³ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁴ Exhibit P-101 CAF0344, p. 1; See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7500.

⁹⁶⁵ Exhibit P-101 CAF0344, p. 1; See also Testimony of William Laurie, vol. 61, October 15, 2007, p. 7500.

actual reports.⁹⁶⁶ At this stage, the RCMP took the position that it was no longer interested in determining whether and when the Ms. E information was passed from CSIS to the RCMP:

Stubbings stated that he was not attempting to determine if and when the information was received from the CSIS. Rather more importantly, that the RCMP was in possession of the information regardless of whether the CSIS or the RCMP was the originator.⁹⁶⁷

CSIS offered to allow Stubbings to review the Laurie reports himself, but he noted that he "...declined based on Laurie's comments."⁹⁶⁸ Laurie explained in testimony before the Inquiry that Stubbings was satisfied that all the information that he (Laurie) had gathered from Ms. E was included in the text he read aloud, because Laurie confirmed that this was the case.⁹⁶⁹

Stubbings reported that during the meeting at CSIS, Laurie had said that there were four top secret Babbar Khalsa files that Stubbings should review, as they were interesting, though not directly related to Air India. Stubbings declined because this was not "the issue at hand" and because it could be accomplished at a later date.⁹⁷⁰ Laurie explained before the Inquiry that, in fact, he was referring to the operational reports he had prepared, based on the Ms. E information, which were on the top secret BK file. He asked Stubbings if he wanted to review those reports, as they were about the BK and the RCMP targets were associated with the BK, but Stubbings declined.⁹⁷¹

Finally, Stubbings reported that during the meeting, Laurie indicated that his former colleague Eshleman "...has information regarding Air India/Narita that was not even reported to the CSIS let alone the RCMP."⁹⁷² At the conclusion of the meeting, it was agreed that a letter from RCMP management documenting the agreements reached during the meeting would be provided.⁹⁷³

After the meetings with Laurie and Stubbings, the CSIS BC Region wrote to CSIS HQ to advise of the developments. The Region advised that, before interviewing Laurie, they made "informal inquiries" with the RCMP NSIS members and found out that their concerns related to statements made by Laurie which implied that the information he obtained from a source could help the RCMP's case. Laurie was apparently reluctant to discuss the matter further without CSIS authorization and "...an opportunity to refresh his memory by reviewing his reports." After interviewing Laurie, the BC Region concluded that he was "unaware" that the

⁹⁶⁶ Exhibit P-101 CAF0399, p. 3.

⁹⁶⁷ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁸ Exhibit P-101 CAF0344, p. 1.

⁹⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7501.

⁹⁷⁰ Exhibit P-101 CAF0344, p. 1.

⁹⁷¹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7501-7502.

⁹⁷² Exhibit P-101 CAF0344, p. 2.

⁹⁷³ Exhibit P-101 CAF0344, pp. 1-2.

RCMP had “learned the identity” of Ms. E and “...subsequently persuaded the source to disclose the same information provided to the Service.” The CSIS BC Region noted that, once Laurie reviewed his reports and the meeting with Stubbings was held, the CSIS information was compared to that known to the RCMP and was “...determined to be identical.” The RCMP was only concerned that Laurie may have known more, but that was “clearly not the case.” As a result, no further action was necessary. Stubbings “...withdrew [the RCMP’s] request for disclosure of related documents” and agreed to provide a letter confirming that the matter was resolved to the RCMP’s satisfaction.⁹⁷⁴

On July 25, 1994, the RCMP wrote to CSIS and indicated that, following the Laurie and Stubbings meetings with CSIS, Stubbings was “...satisfied that the RCMP is in possession of ALL information related to Air India/Narita provided to the CSIS by the source.” As a result, the RCMP specified it was not requesting any of the CSIS reports.⁹⁷⁵

The CSIS BC Region also had discussions with RCMP E Division member S/Sgt. Don Brost, who stated that “...the issue involving Laurie’s source information was resolved to his satisfaction.” Brost indicated that investigators still intended to speak to Eshleman about the possible unreported information and would advise CSIS of any developments. The BC Region noted that it did not anticipate taking any further action until then. On August 17, 1994, someone in the Region assembled the “...entire package dealing with the Willie Laurie issue” in a work file, noting that “...this kind of thing always seems to resurface.”⁹⁷⁶

The RCMP Interviews Laurie’s Colleagues

In its report to CSIS HQ, following Laurie’s review of his reports, the CSIS BC Region discussed Laurie’s comments about the knowledge of his former colleagues, Eshleman and Kobzey. The Region indicated that Laurie was referring to information that Eshleman would have obtained but not reported. During the meeting, the Region assured Stubbings that they were not aware of any information gathered by the two investigators about Air India/Narita that would not have been disclosed to the RCMP. Under the circumstances, CSIS did not object to the RCMP interviewing Eshleman and Kobzey, who had both rejoined the RCMP.⁹⁷⁷ The BC Region concluded its report to CSIS HQ about the whole incident as follows:

The erroneous perception that the Service failed to disclose Mr. Laurie’s information would appear to have developed as a result of a misunderstanding on Mr. Laurie’s part. It has now been resolved. The possibility that Mr. Eshleman may have failed to report vital information remains a concern. Mr. Stubbings was asked to keep us informed of any developments in this regard.⁹⁷⁸

⁹⁷⁴ Exhibit P-101 CAF0426, pp. 10-11.

⁹⁷⁵ Exhibit P-101 CAF0365, p. 2.

⁹⁷⁶ Exhibit P-101 CAF0426, pp. 4, 6.

⁹⁷⁷ Exhibit P-101 CAF0426, p. 11.

⁹⁷⁸ Exhibit P-101 CAF0426, p. 11.

Laurie testified before the Inquiry that his interlocutors, both at CSIS and the RCMP, had been “missing the point” of his comments about his co-workers. What he meant to indicate was that his colleagues had in-depth knowledge of the subject matter and knew of many details. As a result, they could bring useful insight to the areas of the investigation where the RCMP was “very short of information.” Laurie said he never meant to imply that his colleagues “secreted information away” and kept it from CSIS or the RCMP.⁹⁷⁹ He explained:

MR. KAPOOR: You weren’t suggesting, at all, that they were sitting on information and –

MR. LAURIE: No.

MR. KAPOOR: – failed to pass it up?

MR. LAURIE: No – but the problem is when you make a suggestion like, “Why don’t you talk to those fellows because they know quite bit,” somebody immediately says, “Oh well, they must be hiding stuff, you know; do they know something that hasn’t been reported?” No. Perhaps everything that they know has been reported but you can get it all out of the one mouth by talking to them.⁹⁸⁰

Stubbings contacted Eshleman on August 30, 1994, and asked him whether, while at CSIS, he obtained information about Air India that was not reported to the RCMP. When Eshleman inquired, Stubbings told him that Laurie had provided his name, but “...no specifics were discussed.” Eshleman mentioned that there was much personal conjecture from the CSIS investigators included in the “comments portion” of their reports. He was asked to “consider the situation” and call Stubbings back. He indicated that he would contact Laurie to find out what information he was referring to. A few weeks later, Eshleman advised Stubbings that he was not aware of any “significant information” he knew of that was not passed to the RCMP. He added that he had his “...own opinions on aspects of this [the Air India] disaster as has anyone who has worked this file.”

On September 12, 1990, Stubbings spoke to Kobzey. He said he did not recall any “...significant information to which he was privy that was not passed to the RCMP.” He added that he was not aware of what “action or priority” was placed on the CSIS information once received by the RCMP.⁹⁸¹

The RCMP Decides to Take No Further Action

After his conversations with Laurie’s former colleagues, Stubbings concluded that Laurie, Kobzey and Eshleman had all “...been spoke[n] to without any

⁹⁷⁹ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7506.

⁹⁸⁰ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7507.

⁹⁸¹ Exhibit P-101 CAF0345, pp. 1-2.

new information or leads surfacing” and that therefore “...no further action is required on this particular initiative.”⁹⁸² In the end, after investing time and effort to investigate Laurie’s comments to the promotion board, the RCMP never obtained, or even reviewed, copies of the actual reports containing the details of the Ms. E information gathered by CSIS, and never followed up on the suggestion to review some of the CSIS Top Secret files which may have assisted in its investigation.

Further, the RCMP had become confused about the Ms. E information in its possession, and some of the facts discussed during the 1994 meetings at CSIS were taken as “revelations” when in fact they were known all along to the Force. During his initial interview with Rautio and Blachford, Laurie had made it clear that his approach to Ms. E was done in 1987.⁹⁸³ CSIS HQ had provided similar information to RCMP HQ members in October 1990, indicating that the source had been “only under development” in 1987.⁹⁸⁴ This information had been relayed to E Division by RCMP HQ at the time.⁹⁸⁵ Yet, over the years, RCMP members apparently began to entertain the notion that CSIS had received the information from Ms. E in 1985, shortly after the bombing.

In his report about the 1994 meeting with CSIS and Laurie, Stubbings wrote:

Of particular interest it was determined that Laurie and the CSIS did not initiate their relationship with the source until September 1987, fully more than two years after the disasters. This is a major revelation and may explain some of the confusion that has arisen over this source and the information.⁹⁸⁶

After discovering this “revelation,” Stubbing contacted Rautio and Blachford and they, too, confirmed that they had been under the impression that CSIS had been talking to Ms. E in 1985.⁹⁸⁷ Blachford could not explain why both he and his colleague, Rautio, were under the impression that CSIS had received the information from Ms. E in 1985.⁹⁸⁸ Laurie attempted to explain this confusion:

MR. KAPOOR: Are you able to help us at all about how – about any discussion about that issue at the time?

MR. LAURIE: Not really. I know that when the RCMP – well, first of all, it is my understanding that the information was initially passed in December of 1987. However, later when they

982 Exhibit P-101 CAF0345, p. 1.

983 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7760; Exhibit P-101 CAA0781(i), p. 6.

984 Exhibit P-101 CAA0787(i), pp. 1-2.

985 Exhibit P-101 CAA0787(i).

986 Exhibit P-101 CAF0344, p. 1.

987 Exhibit P-101 CAF0344, p. 2.

988 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7761.

seemingly become aware of it again for the first time, they are very upset and I believe that they describe that the CSIS has been withholding this information for x number of years and that x is a number of years that goes back to 1985 and there is no reason why it should be obviously it was 1987 before the initial meeting took place.

MR. KAPOOR: And, of course, there is the reference here that this is a major revelation and may explain some of the confusion that has arisen over the source and the information. Did you get a sense when you were in that meeting with Stubbings and Stevenson, that Stubbings was surprised that it started in '87?

MR. LAURIE: No. I don't remember him – I think he might have, you know, double-checked the date, but I think he was trying to hold his cards pretty close to his chest. You have to remember that Corporal Stubbings believes that I am in on this conspiracy to withhold information somehow and that, you know, this is a ruse of some sort. I don't know. So if he was really, really surprised he didn't express it to me.⁹⁸⁹

The Ms. E issue again appears to have been put to rest by the RCMP after the 1994 meeting with CSIS and Laurie. No further attempts were made to contact Ms. E since the 1992 interviews and phone calls.

1995-1996: The Ms. E Issue “Re-Surfaces” Again

In 1995, there was a sense of urgency at the RCMP E Division NSIS, because the tenth anniversary of the bombing was approaching in June. NSIS was “...attempting to resolve all the issues before then,” since it was thought “...preferable to have the RCMP make a public statement beforehand, rather than reacting to media queries afterwards.”⁹⁹⁰

In February 1995, a lengthy meeting was held at E Division NSIS for the purpose of reviewing the Air India file and attempting to “...develop and follow-up on unresolved initiatives.” The Ms. E issue was discussed. At that time, Bagri was considered one of the main suspects.⁹⁹¹ He was described shortly after as the “main target” of the E Division investigation.⁹⁹² Early on in the meeting, the NSIS members discussed “...the connection of Bagri to a female identified as [Ms. E] with whom he was allegedly having an affair.” The Ms. E information was reviewed and it was noted that: “...it was believed that CSIS had interviewed [Ms. E] shortly after the Air India crash/Narita explosion but it was recently learned

989 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7499-7500.

990 Exhibit P-101 CAF0391, p. 2.

991 Exhibit P-101 CAF0390, p. 2.

992 Exhibit P-101 CAF0392, p. 4.

that this did not happen until 2 years afterwards.” The members then noted that Ms. E denied having a relationship with Bagri, and had been interviewed several times by different RCMP officers. They mentioned the fact that the last interview had been conducted by Maile alone, at Ms. E’s request, and that the written statement obtained then “...raised some unanswered questions.”⁹⁹³

The statement obtained by Maile was reviewed and the members specifically noted that Ms. E knew something was not right and therefore refused to lend her car to Bagri. A general discussion followed and the questions raised included whether the RCMP could put Bagri in Vancouver the day before the bombing, how Laurie had come to know of Ms. E, whether NSIS wanted to interview Bagri about his meeting with Ms. E and whether Ms. E knew more than she told police. The RCMP had information indicating that Bagri’s vehicle was found at Parmar’s residence on June 21st, and the NSIS members thought that this confirmed that he was in Vancouver on that date.⁹⁹⁴ At trial, however, this was found to be inconclusive, as CSIS surveillance had described the occupants in Bagri’s vehicle as an “...unknown East Indian male, who was not Mr. Bagri and has not been subsequently identified,” along with an unknown female and young child.⁹⁹⁵ The CSIS surveillance information had been the object of an admission of fact by the Crown and defence, and Justice Josephson found that, as a result, the Crown could not use the presence of Bagri’s vehicle in Vancouver on June 21st to show that Bagri himself was in Vancouver on that date.⁹⁹⁶ Further, because the CSIS transcriber was on leave on the weekend of the bombing, the subscriber information which would have provided information about Bagri’s location when Parmar called him on that weekend was not recorded, though CSIS intercepted the call.⁹⁹⁷

During the February 1995 RCMP meeting, Blachford, who was working in the Informatics section by then,⁹⁹⁸ was brought in to discuss the Ms. E issue since he had been involved in the matter.⁹⁹⁹ He did not bring or review his notes or other materials, but was simply asked to share his recollection.¹⁰⁰⁰ He informed the members that the information about Bagri meeting with Ms. E had initially been passed by CSIS to Cummins “at a social function” and “not through channels.”¹⁰⁰¹ At the Inquiry hearings, Blachford recalled that, in fact, the information was passed during a meeting at CSIS HQ on another matter and not during a social function.¹⁰⁰² His mistaken impression about the passing of the information is another example, along with the RCMP belief that CSIS had obtained the information from Ms. E in 1985, of how knowledge can become distorted and reported inaccurately in cases of such magnitude as Air India, with a variety of RCMP officers and CSIS agents participating separately and in a disorganized fashion.

993 Exhibit P-101 CAF0390, p. 2.

994 Exhibit P-101 CAF0390, pp. 3-4.

995 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1003.

996 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1145-1146, 1237.

997 See Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.

998 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7801.

999 Exhibit P-101 CAF0390, p. 4.

1000 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7802-7803.

1001 Exhibit P-101 CAF0390, p. 4.

1002 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7802-7803.

Blachford told his RCMP colleagues that, according to his information, Bagri had asked to borrow Ms. E's car for "something big" and had told her she "...may not see him again." He explained that Ms. E became hostile to the Bagris after the bombing. He then stated that an "...initiative on Air India brought Maile to re-interview Ms. E" and that the first interview of Ms. E "...may be on tape." Attention then turned to Laurie's alleged statements to RCMP members that "...while he was [in] CSIS, information given to RCMP would have solved Air India." The review of CSIS reports by Laurie and the subsequent meeting with Stubbings at CSIS were discussed, as well as the conclusion that Stubbings "...determined that the CSIS had no information not already in the possession of the RCMP." Blachford indicated that, according to him, "...something happened that night," which Ms. E had not revealed. The discussion then moved on to "whether or not" there was a "...CSIS cover-up and lack of cooperation from CSIS," and it was decided that any new approach to Ms. E would have to be "well thought out" and would have to involve Laurie, now a Corporal in the RCMP, along with an NSIS member.¹⁰⁰³

In the end, interviewing Ms. E was included in a list of "...suggested things to do." During the meeting, it was suggested twice that Ms. E be asked to take a polygraph. The final recommendation concluded that Ms. E should be re-interviewed after discussions were held about who would conduct the interview and about whether Laurie should be involved. Consideration was to be given to polygraphing her, and "background work" was to be done to find out more about her common-law husband.¹⁰⁰⁴ About the possibility of polygraphing Ms. E, Blachford indicated in testimony before the Inquiry that, given her state of mind and her continued reluctance, it would have been "...a little over the top" to use this approach with her.¹⁰⁰⁵ While this was considered as an avenue during the meeting, it does not appear that the RCMP, in fact, attempted to polygraph Ms. E.

The recommendations made during the February 1995 meeting were re-examined, and E Division NSIS sought the concurrence of senior management to undertake certain outstanding initiatives as soon as possible. These initiatives included an attempt "...to get a further statement" from Ms. E.¹⁰⁰⁶ When asked to provide more detail to senior management, the Acting Officer in Charge for NSIS, Brost, indicated that Ms. E had provided information about a request from Bagri to borrow her car to take bags to the airport which took place "...a night or two before the aircraft departed Vancouver." Brost added that "...it was learned in 1994" that the Ms. E information "...did not surface until 2 years after the disaster." He noted that Ms. E was "allegedly" having an affair with Bagri, "...which she denies." Finally, he explained that NSIS had approached Ms. E "...on a number of occasions," that "...she reluctantly provided a written statement on 92-05-11," and that she had refused to cooperate since and "...rebuffed further attempts to talk to her" by the RCMP. Because of Ms. E's reluctance, NSIS proposed to assess the possibility of using Laurie, hoping that their rapport would still exist and "...result in additional information."¹⁰⁰⁷

¹⁰⁰³ Exhibit P-101 CAF0390, p. 4.

¹⁰⁰⁴ Exhibit P-101 CAF0390, pp. 2-3, 5, 10.

¹⁰⁰⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7804.

¹⁰⁰⁶ Exhibit P-101 CAF0391, p. 2.

¹⁰⁰⁷ Exhibit P-101 CAF0392, p. 3.

In May 1995, E Division NSIS decided to have one of its members, Cunningham, review the Ms. E tip and determine "...what information is still required from her." Once this was done, NSIS planned to contact Laurie to request his assistance in approaching Ms. E.¹⁰⁰⁸ In August 1995, Sgt. G. Lamontagne wrote to Cunningham about the Air India initiatives, noting that further to a response received from the Crown in April and to the "...reward approval from HQ," E Division could now proceed with its interview plans. He instructed Cunningham to carry out the interview with Ms. E with the assistance of Laurie as soon as possible.¹⁰⁰⁹ However, no further approach to Ms. E was undertaken by the RCMP in 1995.

Meanwhile, at CSIS, the Ms. E file was being considered for destruction as it was no longer active. In June 1995, the file was reviewed and the Chief of Operations agreed with a recommendation that it be retained for another year. In June 1996, CSIS again decided to retain the file for one more year, noting that "...in view of what is happening with the RCMP on the 30th floor these days, we should probably hang on to this one for at least another year."¹⁰¹⁰ At the time, the RCMP had formed a new Air India Task Force and was planning to take the case to trial with the evidence already collected.¹⁰¹¹

On February 7, 1996, a member of the E Division Air India Task Force did a review of tip 2805, the Ms. E tip.¹⁰¹² The Ms. E information was summarized and issues requiring follow-up were listed. Among the questions suggested for future investigation were: "...did [Ms. E] ever openly admit to investigators that she had/was having an affair with Bagri? If so, when? When did the affair start & end?" The reviewer also suggested asking Ms. E why she did not go to the police when she heard about Air India, given her suspicions of Bagri. He also asked whether Ms. E saw other individuals with Bagri, whether she felt threatened by Bagri's mention that she knew his secret and what she thought the secret was. Another suggestion raised the possibility of interviewing Ms. E's father about what he knew about Bagri which would have motivated him to warn Ms. E to stay away from him. As Ms. E had stated to Maile that Bagri's knocking had woken up the people living upstairs, the reviewer suggested interviewing Ms. E's landlord and his family about the observations made on that night, as well as conducting neighbourhood inquiries, which had not previously been done.¹⁰¹³

On February 16, 1996, the OIC of the renewed Air India Task Force reported on the new initiatives undertaken, which included an application for authorization to intercept private communications.¹⁰¹⁴ At that time, the Task Force was planning to commence "...a concentrated series of interviews/interrogations of several key subjects," including Ms. E.¹⁰¹⁵ On February 26th, another tip review was conducted, this time of tip 2731, which was assigned to the follow-up

¹⁰⁰⁸ Exhibit P-101 CAF0393, p. 2.

¹⁰⁰⁹ Exhibit P-101 CAF0398, p. 2.

¹⁰¹⁰ Exhibit P-101 CAF0426, p. 2.

¹⁰¹¹ See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

¹⁰¹² Exhibit P-101 CAF0412.

¹⁰¹³ Exhibit P-101 CAF0412, pp. 2-3.

¹⁰¹⁴ Exhibit P-101 CAA0936(i).

¹⁰¹⁵ Exhibit P-101 CAA0936(i), p. 2.

of Watt MacKay issues, including issue 2(w) about the Ms. E information.¹⁰¹⁶ The 1987 correspondence on file, as well as the 1990 Watt MacKay follow-up documents and interviews with Ms. E were summarized. The reviewer noted that "...statements made by [Ms. E], some of which are not directly related to A.I., have been included to reflect the manner & frequency in which [Ms. E] changes her stories." A list of follow-up questions about issue 2(w), similar to those in the former review of the Ms. E tip, was included.¹⁰¹⁷ About Ms. E's failure to report her information to police, the reviewer noted:

Re: Source convinced Bagri directly involved (A.I./Narita). If [Ms. E] felt immediately that Bagri was directly involved in A.I./Narita, what reason did she give for not contacting police right after the crash? Why did she wait for C.S.I.S./R.C.M.P. to approach her, particularly when her own relatives had been killed? If fear of Bagri/personal involvement with Bagri was her excuse, how much initial pressure was put on her by investigators, in the vein of solving her relatives murder/protecting others from Bagri's violence? Has she shown any sense of guilt in previous interviews, that could be developed further with an[sic] re-interview?¹⁰¹⁸

It was not until July 1996 that the RCMP began taking steps for a new approach to Ms. E, and not until December 1996 that this approach was finally attempted.

1996-1999: New RCMP Approach to Ms. E – Preparation for Trial

On April 1, 1996, Cpl. Doug Best joined the Air India Task Force as an investigator. He was provided with a briefing on the Air India file and was asked to follow up on the Ms. E tip as part of a larger review of the Air India case. He was ultimately requested to approach Ms. E. At the time, it was obvious to the Task Force investigative team that Ms. E was one of the most important witnesses in the case against Bagri. Securing her cooperation would be key to the success of the prosecution, and it was therefore imperative that Ms. E be made to feel comfortable and safe in her cooperation with the RCMP.¹⁰¹⁹

In preparation for his approach to Ms. E, Best reviewed the information on file which documented the RCMP's interactions with her over the years. He then spoke with Laurie in July 1996 to get his advice on how best to approach Ms. E in order to receive her cooperation.¹⁰²⁰ This was the first time Laurie had been contacted by the RCMP about the Ms. E issue since his April 1994 meetings with CSIS and the RCMP.¹⁰²¹ Laurie told Best that Ms. E was unlikely to cooperate

¹⁰¹⁶ Exhibit P-101 CAF0413.

¹⁰¹⁷ Exhibit P-101 CAF0413, pp. 2-8.

¹⁰¹⁸ Exhibit P-101 CAF0413, p. 7.

¹⁰¹⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7851-7852, 7901-7902.

¹⁰²⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7852, 7855-7856.

¹⁰²¹ Exhibit P-244, vol. 2 (January 5, 2004 Transcript), pp. 50-53; Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7514-7515.

if she felt intimidated.¹⁰²² He emphasized that she should be interviewed in a non-intimidating environment, and should be interviewed one-on-one.¹⁰²³ He explained that Ms. E was afraid of police and that two or more officers would seem very “police-like.”¹⁰²⁴ While Ms. E was concerned that cooperation with police would put the safety of her children at risk, Laurie felt she would likely cooperate if she could be “...convinced protection would be provided to her and her family.” Laurie also indicated that he was prepared to assist the RCMP, including by way of an introduction or direct approach.¹⁰²⁵ At the Inquiry hearings, he commented on his impression of Best’s approach following his conversation with him:

MR. LAURIE: I think he’s after a statement more than an interview. I think he wants a piece of paper.¹⁰²⁶

The RCMP canvassed a number of options for possible approaches to Ms. E. These included contacting Ms. E’s brother to have him convince her of the need for her cooperation, making a direct approach to be facilitated by Laurie, and simply making a direct approach. Best wrote that it was his belief that the first approach, using her brother, was the best option at the time. He noted that the RCMP’s last contact with Ms. E in June 1992 “...yielded a negative response,” which was felt to have been “...based on her predisposition concerning Police vis-à-vis Personal Safety.”¹⁰²⁷ Yet, in late 1996, Best attempted a direct approach to Ms. E, without the help of her brother or Laurie.¹⁰²⁸ He dropped in on her residence unannounced and was informed by her common-law husband that she had left Vancouver and would not be back until the following week. Best advised that he would return then.¹⁰²⁹

Best again dropped by Ms. E’s residence on December 6, 1996, and this time he found her at home. He proceeded to explain to Ms. E that she would be subpoenaed as a witness based on the statement that she had given to Maile. At this point, he did not speak to Ms. E about possible protection or her concerns about her safety.¹⁰³⁰ A few days later, on December 11, 1996, Ms. E came to the RCMP Headquarters at Best’s request for an interview about her relationship with Bagri and her information in relation to Air India.¹⁰³¹

Interviews at RCMP Headquarters

The Air India Task Force attempted to control the conditions of the December 11th interview with Ms. E as much as possible. It was conducted in an interview

1022 Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7855-7856.

1023 Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7855-7856, 7883; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7515.

1024 Exhibit P-244 (Proceedings at Trial, Day 65), p. 62.

1025 Exhibit P-101 CAF0394, p. 2.

1026 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7515.

1027 Exhibit P-101 CAF0394, p. 2.

1028 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7859.

1029 Exhibit P-101 CAF0423, p. 3.

1030 Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7860-7861.

1031 Exhibit P-101 CAF0423, p. 3.

room at RCMP Headquarters with audio and video recording.¹⁰³² The interview lasted about two hours.¹⁰³³ Ms. E was asked for her permission to have the interview audio recorded and agreed, but she was not aware that she was being videotaped.¹⁰³⁴ Upon her arrival, Ms. E was taken directly to the interview room and was "...permitted to make herself comfortable."¹⁰³⁵ Ms. E was introduced to another officer, Leon Van deWalle, the sergeant in charge of the investigative team,¹⁰³⁶ who provided an overview of the investigation and explained to her the importance of witnesses.¹⁰³⁷ He told her that she was one of several witnesses who would be required to provide evidence to the court. He asked that she provide an account of the events for Best.¹⁰³⁸ Van deWalle then excused himself, and Best proceeded with the interview.¹⁰³⁹ A transcript of the interview was produced.¹⁰⁴⁰ Unfortunately, the interview did not prove to be a very useful exercise.

At the outset, Ms. E was nervous. She gave an account of the incident when Bagri came to her home late at night and asked to borrow her car, which she said she had refused. She said she had the feeling that Bagri went to the Ross Street Temple, but stated that she thought "...Willie told [her] that's where he went." She was unable to recall specifically when this incident occurred. After changing the subject for a brief time, Best again attempted to return to the specifics in the statement that Ms. E had provided to Maile. When pressed, Ms. E complained that Laurie told her that she would not have to answer these questions again. She said that because it had been so long, all she could recall of the episode was that she had refused to lend Bagri her car.¹⁰⁴¹

Ms. E brought up the issue of when the visit had occurred relative to the disaster and said she was asking herself the question of how many days apart these events were. Best attempted to "jog" her memory, and suggested that the events were "...in fact, extremely close." When Best asked whether Bagri's visit was "just before" or after the disaster, Ms. E said that it was before, and thought that it was "pretty close." At some point in the interview, she indicated that Bagri's visit was "three, four days" before the disaster.¹⁰⁴²

Best eventually had to read out the 1992 Maile statement to Ms. E, point by point, to help refresh her memory.¹⁰⁴³ As it was being read back to her, she indicated that she still could not remember the details,¹⁰⁴⁴ including the fact that Bagri had told her that Talwinder Singh Parmar had dropped him off at

1032 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7862.

1033 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7863; Exhibit P-101 CAF0395.

1034 *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 53-54.

1035 Exhibit P-101 CAF0423, p. 4.

1036 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7862.

1037 Exhibit P-101 CAF0423, p. 4.

1038 Exhibit P-101 CAF0423, p. 4; Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7863.

1039 Exhibit P-101 CAF0423, p. 4.

1040 Exhibit P-101 CAF0395.

1041 Exhibit P-101 CAF0395, pp. 3, 8, 12-16, 18-19.

1042 Exhibit P-101 CAF0395, pp. 22-23, 35, 41.

1043 Exhibit P-101 CAF0395, p. 48.

1044 Exhibit P-101 CAF0395, pp. 51, 54, 55, 57, 58, 60, 62, 65, 81.

her place – stating “I thought Willie told me that.” She also did not remember crucial facts, including whether Bagri said that “...only the bags were going” on the plane or that the crash had occurred the day after the Bagri request. Late in the interview, Ms. E said that Maile had, in fact, copied what Laurie had written down and asked her to sign it.¹⁰⁴⁵

Best pressed Ms. E to try to remember because if she did not, it left her open to “unpleasant things”:

...because what will happen if, if it's not, when you get up there, well the, the lawyer will explain. We, our Crown Counsel will explain this to you, is that you leave yourself, you leave yourself open to unpleasant things ... happen, you know, by that I mean you're questioned, you're cross questioned, ... so it's important that you're clear.¹⁰⁴⁶

In response to this scenario, Ms. E asked Best whether he thought she needed a lawyer and he provided his opinion that she did not.¹⁰⁴⁷

Ms. E told Best that she wanted to have as few meetings as possible, indicating she did not want this to be a prolonged affair. He told her that she would need to meet with the Crown and go over the incident again so that it remained “refreshed” in her memory as possible.¹⁰⁴⁸ Near the end of the interview, Ms. E became very emotional when she started talking about family and the fact that she had lost family members on the flight.¹⁰⁴⁹

Ms. E expressed concern that Bagri's family would feel she was betraying them. She told Best, “...at least they don't know who you are,” and “...in our community, they know who we are and where we live and where we go.” She also said that if they want to “...find me, they [know] where I am and they know [where] my family is.” To this, Best responded that, from the RCMP's perspective, the threat of the BK was “minimal” and that their “...day has come and their day has gone from a political perspective.”¹⁰⁵⁰ At the Inquiry hearings, he explained that occasionally at the RCMP's weekly meetings with CSIS, CSIS would provide an update about the status of the groups, including the BK, and this is likely how he came to the impression that “...maybe their infrastructure wasn't as strong as it once was.” However, while Best stated that the RCMP took Ms. E's concerns very seriously, the Force did not attempt to conduct an assessment of the possible threat to Ms. E. Best expressed the view that perhaps Ms. E was emphasizing her fear to “...make us [the RCMP] kind of go away maybe.”¹⁰⁵¹ Protective measures, which could be implemented to alleviate Ms. E's concerns for her safety, were not discussed during the December 1996 interview.

¹⁰⁴⁵ Exhibit P-101 CAF0395, pp. 57, 59-60, 81.

¹⁰⁴⁶ Exhibit P-101 CAF0395, p. 97.

¹⁰⁴⁷ Exhibit P-101 CAF0395, p. 97.

¹⁰⁴⁸ Exhibit P-101 CAF0395, p. 94.

¹⁰⁴⁹ Exhibit P-101 CAF0395, p. 103; Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7879.

¹⁰⁵⁰ Exhibit P-101 CAF0395, pp. 100-102.

¹⁰⁵¹ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7877-7878.

Best phoned Ms. E again on January 6, 1997, and after an exchange of pleasantries, she agreed to meet him on January 9th. She was informed that “our mutual friend, Willie Laurie” would also be present at the meeting.¹⁰⁵² Laurie had not heard again about the Ms. E issue since his July 1996 discussion with Best. Then, in January 1997, he was asked to assist in an RCMP interview of Ms. E.¹⁰⁵³ Best met with Laurie at his office in Richmond on January 7, 1997, and provided him with materials to “refresh his memory.”¹⁰⁵⁴ Laurie’s understanding was that he was brought in because he was a “friendly face,” as he had worked with Ms. E in the past. At the time, Laurie was not aware of any contact other RCMP officers had had with Ms. E since 1990.¹⁰⁵⁵ In fact, he was still under the impression that, since 1990, Ms. E had consistently relied on her “memory loss” to refuse to cooperate,¹⁰⁵⁶ and was obviously not aware of Ms. E’s dealings with Maile and Solvason or of the statement she had provided in 1992.

On the morning of January 9, 1997, Best phoned Laurie to confirm their meeting at 3 PM. At 2 PM, Best met with then Insp. Gary Bass and some of the other RCMP members involved in the Ms. E interview, including Sgt. Jim Hunter, at RCMP Headquarters.¹⁰⁵⁷ While Laurie participated in a briefing session immediately before the interview when he arrived at HQ, he was not involved in any broader discussions about the general strategy in approaching Ms. E which may have taken place beforehand.¹⁰⁵⁸ Laurie felt that his role was to attempt to convince Ms. E that the RCMP needed to acquire the information she had provided to him in the past in a form suitable for court, i.e. a written statement.¹⁰⁵⁹ Ms. E arrived at 3:20 PM¹⁰⁶⁰ and finally left around 9 PM that night.¹⁰⁶¹ She requested that the interview not be recorded, as it made her anxious.¹⁰⁶² The interview was live-monitored in another room¹⁰⁶³ so that officers were able to watch what was going on in the interview room.¹⁰⁶⁴

It is difficult to reconstruct what occurred during the almost six hours that Ms. E was in the RCMP interview room, as there were only three pages of handwritten notes by Best produced as a result of the interview, and the notes do not provide any manner of detailed account of what occurred.¹⁰⁶⁵

Laurie was present throughout the interview, at times in the room with Ms. E and at other times outside the room.¹⁰⁶⁶ Ms. E was pleased to see Laurie again.¹⁰⁶⁷

1052 Exhibit P-101 CAF0367, p. 2.

1053 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7515.

1054 Exhibit P-101 CAF0367, p. 3.

1055 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7515-7516.

1056 Exhibit P-101 CAF0399, p. 3.

1057 Exhibit P-101 CAF0367, p. 5.

1058 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7516; See also Exhibit P-244, vol. 2 (January 5, 2004 Transcript), p. 55.

1059 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517.

1060 Exhibit P-101 CAF0367, p. 5.

1061 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7882.

1062 Exhibit P-101 CAF0367, p. 5.

1063 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7885.

1064 Exhibit P-244 (Proceedings at Trial, Day 65), p. 56.

1065 Exhibit P-101 CAF0367, pp. 5-7.

1066 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7518.

1067 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517; Exhibit P-101 CAF0367, p. 5.

According to him, Ms. E also seemed to have a good relationship with Best. But in terms of providing a statement, "...she tried everything she could think of to not do this."¹⁰⁶⁸ Laurie described her reactions during the interview:

MR. LAURIE: I remember on an occasion or two her whispering to me, "[Willie] help me? I can't do this. I won't do this. You can't let them do this to me." And she was very fearful and you know how she had this worst nightmare for years. It was materializing in front of her and she was not happy.

MR. KAPOOR: Was she – would you describe her at times of being distraught?

MR. LAURIE: Yes, and I did so, I think.

MR. KAPOOR: And sobbing?

MR. LAURIE: Occasionally.¹⁰⁶⁹

Portions of Laurie's testimony relating to his involvement in this interview were read to Best during his evidence. Best disagreed with Laurie's description of events, and said it did not comport with how Ms. E appeared to him over the course of the interview. He admitted that at some point she did become emotional, but he explained that he "...didn't take the emotion that she was expressing quite in the context that Laurie does in here." He said that he had not seen Ms. E whispering to Laurie, though it may have happened. He also admitted that due to the fact that he was in and out of the room and was consulting with his colleagues, he was not able to monitor the interview continuously.¹⁰⁷⁰

Laurie explained that throughout the day, the people around Ms. E changed. Sometimes she was with one of the officers alone, sometimes there were two.¹⁰⁷¹ Best explained that he went back to the monitor room at some point and spoke with Hunter, a polygraphist, who was monitoring the interview with Ms. E.¹⁰⁷² Hunter realized then that, by coincidence, he actually knew Ms. E from previous associations, and it was decided to introduce him.¹⁰⁷³ He would be a "friendly face," like Laurie.¹⁰⁷⁴ The manner in which Hunter's connection to Ms. E was discovered by the Task Force was not explained to Laurie, who always believed that Hunter had been brought into the interview by design due to his past association with Ms. E.¹⁰⁷⁵

¹⁰⁶⁸ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517.

¹⁰⁶⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7517-7518.

¹⁰⁷⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7884-7886.

¹⁰⁷¹ Exhibit P-244 (Proceedings at Trial, Day 65), p. 39.

¹⁰⁷² Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7887.

¹⁰⁷³ Exhibit P-101 Exhibit P-101 CAF367, p. 6, CAF0423, p. 5.

¹⁰⁷⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7516-7517; See also Exhibit P-244, vol. 2 (January 5, 2004 Transcript), p. 57.

¹⁰⁷⁵ Exhibit P-244 (Proceedings at Trial, Day 65), p. 57; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7516.

Ms. E was surprised and pleased to see Hunter.¹⁰⁷⁶ There was an “instant rapport” between them. Best noted at the time that, after discussions with Laurie and Hunter, Ms. E eventually admitted that she could recall Bagri’s visit on the evening before the Air India crash.¹⁰⁷⁷ In his testimony before the Inquiry, Best explained that when Hunter and Ms. E sat down and proceeded with the interview, she said that she did not want to hold the investigators back any longer and that what she had told Laurie in the past was true, indicating that she in fact recalled what she had told him. Hunter then asked her to repeat that to Best and to Laurie. From Best’s perspective, she was very emotional at the time, but the emotion was that “...she was expressing that finally, finally, after all of this, there was relief again that she has finally said it.”¹⁰⁷⁸ She was then asked to provide a written statement.

While Best’s evidence was that Ms. E was not reluctant during the interview, he admitted that the effort over five hours was to try to get her amenable to giving a statement. If she had walked in and said she was prepared to provide a statement right away, such a long interview would obviously not have been necessary. According to Best, “...she had tried to distance herself from the position she had initially taken with Laurie and our objective was to get her back on track.”¹⁰⁷⁹

When asked about the length of the interview and the possible effect that might have had on Ms. E, Best stated that it:

...seems or may seem from the outside looking in, that is an inordinate amount of time. All I can say is that during that time there would have been breaks. There may have very well even been a – we may have even brought in sandwiches. I simply don’t recall.¹⁰⁸⁰

Best asserted that the interview room was “quite comfortable.” He stated that Ms. E “...was free to come and go as she pleased.”¹⁰⁸¹ Ms. E apparently had a different perception. At the Malik and Bagri trial, she testified that “...she was at the police office for hours” and that she “...believed that she would not be permitted to leave” until she signed a written statement.¹⁰⁸²

The result of the January 1997 interview was a one-page typed document, which was signed by Ms. E and witnessed by Best and Laurie.¹⁰⁸³ Ms. E later testified that she signed this statement “under great pressure.”¹⁰⁸⁴ The statement consists

¹⁰⁷⁶ Exhibit P-101 CAF0423, p. 5; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7517.

¹⁰⁷⁷ Exhibit P-101 CAF0367, pp. 6-7.

¹⁰⁷⁸ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7888-7889.

¹⁰⁷⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7910.

¹⁰⁸⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7890.

¹⁰⁸¹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7883.

¹⁰⁸² *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 26.

¹⁰⁸³ Exhibit P-101 CAF0397.

¹⁰⁸⁴ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 26.

of seven questions and answers. The first question, to which Ms. E answered in the affirmative, was "...the statement/information you provided to Willie Laurie during your numerous meetings with him over the past years are true and accurate, to the best of your knowledge." She also agreed that during her first meeting with Best she was "...very anxious and scared to reveal all [her] knowledge concerning Mr. Bagri," and confirmed that Bagri asked to borrow the car the night before the Air India crash to take some luggage to the airport.¹⁰⁸⁵ She said she did not think she had lent it to him. He might have had a key, she could not recall.¹⁰⁸⁶ She also stated that Bagri returned to her home at night and told her that she knew secrets that could put him in trouble.¹⁰⁸⁷

While Ms. E agreed in the written statement that her past statements to CSIS had been true, she did not have the opportunity to review them and, in fact, Laurie did not have his reports with him during this interview,¹⁰⁸⁸ and had not even looked over them since 1994.¹⁰⁸⁹ In fact, their content was not really discussed with Ms. E in detail because it was believed that Ms. E "knew precisely" which facts she was being asked to confirm, as she "...had gone through them so many times" with Laurie.¹⁰⁹⁰ Laurie admitted that, at the time of this 1997 interview, he could recall "the basics" of what Ms. E had told him back in 1987-1989, but that it is "...difficult to recall the details without the benefit of the reports."¹⁰⁹¹ Laurie was disappointed with the results of the interview:

MR. KAPOOR: How did you feel by the end of the interview as to how it went and where she was at and from your perspective, having managed her as your source, back in '87 all the way to this, 10 years later?

MR. LAURIE: Well, I felt a number of things, sir. I was quite disappointed that this was the result. It was an unpleasant experience and hopefully after this much time there would be a better result than the one-page statement of this calibre. Throughout the afternoon there were periods where I felt sympathy for her because she had placed her trust in me and it was misplaced. There were times when it was frustrating because we made a very good case for the need to have her cooperation. The original reason for her cooperation was the families. We needed this. And she felt that, but she needed to protect her children, and she was going to.¹⁰⁹²

1085 Exhibit P-101 CAF0397.

1086 Exhibit P-101 CAF0367, p. 7.

1087 Exhibit P-101 CAF0397.

1088 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7887.

1089 Exhibit P-244 (Proceedings at Trial, Day 67), p. 58.

1090 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7519.

1091 Exhibit P-244 (Proceedings at Trial, Day 67), p. 59.

1092 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7519-7520.

Shortly after the January 1997 interview, Ms. E went to a psychiatrist and said that she was “suffering from stress” and that “...the police were putting words in her mouth and making her sign documents, the nature of which she did not appreciate.”¹⁰⁹³

Continued Unsolicited Contacts, the “Grocery Store Operation” and the Hayer Murder

After the January 1997 interview, Best continued to contact Ms. E to “take the temperature,” to make sure she had not “gone offside,” and to give her the opportunity to address concerns she may have had.¹⁰⁹⁴ However, signs began to appear that Ms. E was once again pulling away.

On January 27, 1997, Best phoned Ms. E at her residence. She indicated that she had discussed with her husband the last meeting with the RCMP and that she was under “considerable stress.” She advised that her husband wanted to speak to Best. Ms. E’s husband initially agreed to meet Best at the RCMP Headquarters, but later phoned Best to cancel. He expressed “...concern that his wife has been under considerable stress and feels under considerable pressure to recall the events in question,” and indicated that it was their wish to “...avoid further contact with [the RCMP] until Court.” Best suggested that Ms. E and her husband take some time to “cool down” and make note of “...any concerns they may have.”¹⁰⁹⁵

Just over two weeks later, on February 14, 1997, Best showed up, unannounced, at Ms. E’s home where she was working.¹⁰⁹⁶ Ms. E was busy with an employee and took Best to the family room for a private conversation. Best indicated that, while he “could empathize” with her concern about being a witness, they “... both know that she recalls the events of the night in question.” Best indicated that he was prepared to discuss any concerns she and her husband had, but that unless he “...specifically knew what her concerns are” he was unable to address them.¹⁰⁹⁷ She suggested that Best call to arrange a time convenient for her and her husband.¹⁰⁹⁸

Best phoned and spoke with Ms. E’s husband the next month, emphasizing the importance of Ms. E being relaxed and prepared for her testimony. He asked whether he knew about the nature of the information Ms. E held. Ms. E’s husband responded that he believed he knew. Best indicated that Ms. E’s evidence was very important to the case and that her requirement as a witness “is inevitable.” He stated that he wanted to help reduce their anxiety by addressing any concerns they might have. He suggested they get together in the coming weeks.¹⁰⁹⁹

1093 *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 27.

1094 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7890.

1095 Exhibit P-101 CAF0423, p. 6.

1096 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7892.

1097 Exhibit P-101 CAF0367, p. 14.

1098 Exhibit P-101 CAF0423, p. 7.

1099 Exhibit P-101 CAF0423, pp. 7-8.

It appears that there was then no further communication until a year later, on March 2, 1998, when Best, once again, arrived at Ms. E's residence unannounced. Ms. E and her husband invited Best to have coffee with them and they informed him that after the last meeting, Ms. E had sought legal counsel. Ms. E explained that she had been advised that she did not need to speak to police and that if she "...didn't know anything that could help us, she wouldn't have to say anything in Court." She stated that "...short of arrest, she did not wish to cooperate further." Best indicated that it was "...their prerogative to seek legal counsel," but that Ms. E had given signed statements as to her knowledge of events and that her failure to respond to a subpoena would "...result in her arrest and compulsory attendance before the Court." He added that proceeding in this manner "...would not serve either of our interests."¹¹⁰⁰ Best testified that his comments about the subpoena and possible arrest were not "...said in any kind of a threatening manner," and that he was simply explaining what would happen if she did not show up.¹¹⁰¹

In response to Best's comments, Ms. E and her husband indicated that they were surprised, as they did not perceive that her evidence was important. Best assured them that it was, indeed, critical. He then suggested that Ms. E "...would be well advised to provide any additional information she may have relative to our case as failure to provide same would not serve either of our interests." He again emphasized that it was "imperative" for her to disclose all the information she might have "...vis-à-vis her association with Bagri et al."¹¹⁰² In his testimony before the Inquiry, Best said this conversation occurred in the context of "friendly" and "cordial" relations.¹¹⁰³

Despite these "amicable" relations, it appears that the RCMP's confidence in Ms. E's willingness to meet voluntarily was shaken. Two months later, in May 1998, Best used the RCMP surveillance team, "Special 'O'," to coordinate a "chance" meeting with Ms. E as she was out grocery shopping.¹¹⁰⁴ Best testified that he saw this as an opportunity to meet Ms. E away from her employees and to address any concerns that she might not have wanted to discuss in the presence of others in her home.¹¹⁰⁵

Ms. E was "surprised" to see Best at the grocery store, but her demeanour was "cordial." She confirmed that she recalled that Bagri had come to her house requesting to borrow her vehicle for the purpose of taking the baggage to the airport. She did not recall whether she had given him the car or not.¹¹⁰⁶ Best explained before the Inquiry that the discussion about Ms. E's visit with Bagri occurred "...en route from the grocery store to her vehicle," as he assisted her with her groceries.¹¹⁰⁷

1100 Exhibit P-101 CAF0423, pp. 7-8.

1101 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7894.

1102 Exhibit P-101 CAF0423, pp. 8-9.

1103 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7894.

1104 Exhibit P-101 CAF0423, p. 9.

1105 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7895.

1106 Exhibit P-101 CAF0423, p. 9.

1107 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7896.

Ms. E advised Best that she was upset that Bagri had spread rumours that he had been having an affair with her in 1984/85, and that she sometimes felt compelled to call him, but did not make the call because she feared "...he would realize she is cooperating with [the RCMP]." Best again pressed Ms. E, stating that "it is essential" that the RCMP know the "full extent" of her knowledge of Bagri's, and others', activities pertaining to the Air India bombing.¹¹⁰⁸

The next time Best dropped in on Ms. E¹¹⁰⁹ was about six months later, on November 25, 1998, one week after the shooting murder of Tara Singh Hayer.¹¹¹⁰ It was the position of the Crown at the trial of Malik and Bagri that the motive for the earlier attempted murder of Hayer in 1988 was the fact that he was capable of implicating Bagri in the Air India bombing.¹¹¹¹ After consultation with S/Sgt. John Schneider, it was decided that Best should contact Ms. E to discuss any security concerns she might have.¹¹¹²

When Best arrived at Ms. E's residence, she was working and had four employees assisting her. She advised Best that she was busy and invited him to speak with her in private. He suggested that Ms. E's husband join them, but Ms. E said that he was too busy.¹¹¹³ Best advised that the purpose of his visit was to discuss any security concerns she might have. This was the first time that the RCMP contacted Ms. E for the express and sole purpose of discussing her safety concerns. It was also the first time that specific examples of precautions that could be taken were mentioned to Ms. E.

Ms. E was aware of the Hayer murder. Best cautioned that the RCMP did not know the motive behind the shooting, but that Hayer had published many articles that were "...very controversial within the community," and such articles included speaking out against the fundamentalists and their involvement in the Air India and Narita bombings.¹¹¹⁴

Ms. E told Best that if "...anything happens to her it is the responsibility of the police because they have brought her into this situation."¹¹¹⁵ He replied that she was "...entitled to her opinion," but that it was not one he shared because "...she had become involved with these people (Bagri) on her own volition." Best stated that "as a reasonable person," he felt in his heart that she was privy to much more information than she had told the RCMP because of her "close association" with Bagri.¹¹¹⁶

Ms. E was concerned about whether Bagri knew that she was a witness; Best stated that, "to his knowledge," Bagri did not, and that the police would not have

1108 Exhibit P-101 CAF0423, p. 9.

1109 Exhibit P-101 CAF0423, p. 9.

1110 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7896.

1111 Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 50.

1112 Exhibit P-101 CAF0368, p. 2.

1113 Exhibit P-101 CAF0423, p. 9.

1114 Exhibit P-101 CAF0423, p. 9.

1115 Exhibit P-101 CAF0423, p. 10.

1116 Exhibit P-101 CAF0368, p. 5.

told him. At the time, however, there is no indication that the RCMP took steps to verify the potential that those close to Bagri were aware of Ms. E's participation – for example, because she was often approached by the RCMP in front of her employees or even in a public place like the grocery store – and what this could have meant for the threat to Ms. E.

Best "...briefly discussed security cameras, silent alarms and the witness protection program with [Ms. E]." She declined the offer and advised that "...she is not worried for herself as if people wish to kill her, they will – it's God's will." Best advised that, should she change her mind concerning security arrangements, she could call him at any time.¹¹¹⁷ She clarified that she had received no threats concerning herself or her children.¹¹¹⁸

A few weeks later, just before Christmas, Best again attended Ms. E's residence and dropped off a box of sweets.¹¹¹⁹ Ms. E advised that she was very busy and had no time to talk. Best testified that the purpose of the visit was to let her know that the RCMP was still interested in her and that they were concerned with her well-being.¹¹²⁰ Ms. E told him that she would be busy until mid-January 1999. Best said he would be back in touch with her then and, in the meantime, she could contact him anytime.¹¹²¹

Early the next year, on January 18, 1999, Best went to the residence of Ms. E and gave her a letter authored by Crown counsel. Best impressed upon Ms. E the need to meet with Crown counsel. She agreed but expressed concern that people were going to try to make her say things she did not wish to say. Best assured her that she would not be forced to say things that were not true. Three days later, Ms. E advised that she would be unable to attend the scheduled meeting. Best phoned Ms. E's residence again on January 20, 1999, and Ms. E's husband answered. He advised that Ms. E had been to see her lawyer and had been instructed to refer any calls from Crown counsel or Best to Ms. E's lawyer.¹¹²²

In September 1999, Ms. E was interviewed by Crown counsel. She indicated that she did not recall "...any discussion about luggage going to the airport" during Bagri's visit, and said that "...the police had been pressuring and bribing her, as well as forcing her to sign statements."¹¹²³

1999: Access to CSIS Materials and Laurie's Written Statement

After participating in the January 1997 interview with Ms. E, Laurie again did not hear about the issue for about two years. He was contacted by Best in January 1999 and asked to provide a statement about his involvement with Ms. E and

¹¹¹⁷ Exhibit P-101 CAF0423, p. 10.

¹¹¹⁸ Exhibit P-101 CAF0369, p. 2.

¹¹¹⁹ Exhibit P-101 CAF0369.

¹¹²⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7897-7898.

¹¹²¹ Exhibit P-101 CAF0369, p. 2.

¹¹²² Exhibit P-101 CAF0423, pp. 10-11.

¹¹²³ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 29.

the Air India investigation in preparation for the prosecution of Bagri.¹¹²⁴ He prepared the statement on January 27, 1999, and provided it to the Crown.¹¹²⁵ He was not provided with a copy of his CSIS reports in order to prepare this statement and did not try to gain access to the reports.¹¹²⁶ As a result, the statement contained several material differences with the information found in the actual reports, and some contradictions.

In his statement, Laurie wrote that he decided to recruit Ms. E as a source in order to obtain information about Bagri. He explained that she initially resisted providing “sensitive information,” as she was afraid to reveal it to “any official,” and had previously rebuffed the police by claiming that she knew nothing. However, she was comforted by the fact that Laurie did not represent the police and was not conducting a police investigation, but was only informing the Government. She was also “...haunted by the knowledge that she held valuable information,” and expressed feelings of sympathy for the families of the victims of the bombing. As a result, she confided in Laurie “...many details that [he] had sought concerning Ajaib Singh Bagri and Talwinder Singh Parmar.” According to Laurie’s statement, Ms. E made it “...abundantly clear that her recollection of events was crystal clear and etched forever in her memories.” He added that she recounted the same events with the same words on subsequent visits. He expressed the view that she then “...feigned poor memories” when contacted by the police later in order to protect herself and her family by avoiding to appear as a witness in the prosecution of Bagri.¹¹²⁷

Laurie then proceeded to set out the information obtained from Ms. E about her acquaintance with Bagri. Unlike the information found in the CSIS reports, he stated that both Bagri and Parmar visited Ms. E, used her car, used her telephone and even held meetings at Ms. E’s residence. He further stated that he deliberately chose not to press Ms. E about the closeness of her relationship with Bagri as “...she seemed reluctant to speak about it” and he did not need intelligence on that topic. About the warning from Ms. E’s family to stay away from Bagri and Parmar, he stated that Ms. E was given this warning because they were “dangerous men,” and he added that this perception was common in the Sikh community. When relating Bagri’s request to borrow Ms. E’s car, Laurie specified that it was the night before the Air India bombing, that Ms. E was awakened by Bagri and that she could see a car in her driveway, but could not identify the car or any of the passengers. Laurie added that Ms. E was pressed to find out if the car was blue and if the passengers had tall turbans, but could not answer. This information was not found in the CSIS reports. He related that Bagri had told Ms. E that Parmar had driven him there, and that when he insisted on obtaining Ms. E’s car, she told him she needed it for work the next day and he said that “...only the luggage was going on the plane and that he was not going with it.”¹¹²⁸

1124 Exhibit P-101 CAF0399, p. 4; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7520.

1125 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7520-7521; Exhibit P-101 CAF0399.

1126 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7521.

1127 Exhibit P-101 CAF0399, pp. 1-2.

1128 Exhibit P-101 CAF0399, pp. 2-3.

Laurie then explained that when Ms. E learned of the bombing the next day, she knew that Bagri and Parmar were responsible and that she confronted both men's wives about it and was told that it was the victims' own fault for flying Air India in spite of the BK warnings. The CSIS reports only recorded such a confrontation with Bagri's wife, not Parmar's. Laurie recounted Bagri's statement to Ms. E, that they shared "a couple of secrets" and her conclusion that he would kill her if she revealed their involvement with one another and his involvement in the bombing. Again, there were some differences with the information found in the CSIS reports. Laurie then went on to describe Ms. E's emotional state during their interviews and the fact that she was reluctant to meet with him and "...go over the same ground again." He specified that no other CSIS member met with Ms. E.¹¹²⁹

In his statement, Laurie related his 1990 involvement in discussions with the Air India Task Force members after he had rejoined the RCMP. Interestingly, his recollection of the interview with Ms. E, conducted by Rautio and himself, was that Ms. E was "...very shaken that the police were now making enquiries and that [Laurie] was one of them," that they "...spoke at length about Ajaib Singh Bagri and Air India," but that Ms. E "...feigned memory loss and was not helpful." Laurie then explained how he met with CSIS at the request of the RCMP Air India Task Force in 1994 and reviewed his source reports, which refreshed his memory but did not lead to the finding of new information that the RCMP considered evidentiary.¹¹³⁰

Finally, Laurie recounted his participation in the 1997 interview with Ms. E. He stated that since her discussions with him in the 1980s, she "...had relied upon her 'memory loss' to deflect efforts to secure her cooperation," and that she was again reluctant to cooperate, but ultimately admitted that she had not really lost her memory and that she remembered everything that she had told Laurie. Laurie explained that Ms. E was "most upset" about her involvement, but still relieved that her information was out. He described her as a "conscientious, ethical and honest" person. He noted that she signed a statement which "validated" the information she had provided to him while he was with CSIS.¹¹³¹

Laurie's statement raised two issues for the eventual prosecution of Bagri. On the one hand, it created inconsistencies which could weaken the Crown's case, because it was prepared from memory only, many years later. Not only did Laurie not have access to his CSIS reports, but he obviously did not consult, or was not given access to, the notes and report for the October 1990 interview; hence his erroneous recollection that Ms. E claimed memory loss during that interview. On the other hand, the statement raised the possibility that Laurie had made additional inquiries of Ms. E during the CSIS interviews, for example, questioning her about the car parked in her driveway when Bagri made his request, which Laurie recalled in 1999, but did not record in his reports at the time. Since the reports were meant to transmit the intelligence which could be obtained from Ms. E and not to record the facts that she did not know, it is possible that large

1129 Exhibit P-101 CAF0399, p. 3.

1130 Exhibit P-101 CAF0399, p. 3.

1131 Exhibit P-101 CAF0399, p. 3.

portions of the interviews remained entirely unrecorded. From an evidentiary perspective, this left Laurie's memory, which had been demonstrated to be less than perfect, as the only remaining evidence of the manner in which the interviews unfolded and of Ms. E's responses to precise questions.

Laurie testified at the Inquiry that he had a vague recollection of wanting to consult his reports to refresh his memory. He explained that he did not approach CSIS directly for this purpose:

MR. KAPOOR: Did you have any discussions directly with CSIS at all about this?

MR. LAURIE: I don't believe so. I think that they did it for me. Meeting independently, contacting CSIS and asking for anything, is a non-starter. That just doesn't happen.¹¹³²

In February 1999, the RCMP finally requested that Laurie be permitted to review the CSIS file on Ms. E in order to prepare for trial. At the time, the RCMP and the Crown viewed Ms. E as an important potential witness in the Bagri prosecution, and the Crown was considering using the information she provided to CSIS to challenge her, as she was being uncooperative and claiming not to recall details. The Crown wanted to interview Laurie, who in turn wanted to use his reports to refresh his memory. The CSIS BC Region's initial reaction to the request was to note that this was reminiscent of the earlier 1994 request to review the reports, which had been the result of concerns that not all information had been disclosed to the RCMP. In discussions with the Crown, the Region refused to allow counsel to review the reports with Laurie. CSIS then learned that the reports that were reviewed could be subject to disclosure to the defence, as they were used to refresh Laurie's memory, but the BC Region explained that this "jeopardy" existed regardless of whether the reports were reviewed again now, since they were already reviewed in 1994. The Crown counsel explained that he would require copies of the reports reviewed by Laurie to refresh his memory, and explained that information provided by CSIS in advisory letters could not replace witness notes in court. The BC Region could make "no commitment" to provide access to the reports. Crown counsel asked for an urgent response from CSIS, as the Attorney General of British Columbia had to make a decision about the charges to bring by the end of the month.¹¹³³

The CSIS BC Region wrote to CSIS HQ and suggested they allow Laurie to review only the reports he authored, under the supervision of a CSIS representative. The Region added that the reports could then be vetted and prepared in "... expurgated (i.e., headers and trailers) version for disclosure purposes," but not provided to the Crown immediately. Instead, the Region suggested that Crown counsel be asked to identify the documents he needed and to advise of when they would have to be provided.¹¹³⁴

¹¹³² Testimony of William Laurie, vol. 61, October 15, 2007, p. 7522.

¹¹³³ Exhibit P-101 CAF0400, pp. 1-2.

¹¹³⁴ Exhibit P-101 CAF0400, p. 2.

In response, CSIS HQ indicated that Laurie would be allowed to review the “source file notes” and operational reports about Ms. E to prepare for his interview with the Crown. HQ was preparing a binder with the relevant documents for Laurie, as was being done for other potential witnesses at the Air India trial. The documents were to be in “expurgated form” even for Laurie’s review, so HQ had no objection to allowing Crown counsel to review them as well. If counsel wanted to obtain a copy of the binder after reviewing the documents, HQ indicated that a written request would be necessary. CSIS HQ agreed that Laurie’s review of the expurgated materials should take place in CSIS offices, under the supervision of Bill Turner from the CSIS BC Region.¹¹³⁵ Laurie believed that the documents he reviewed were, in fact, redacted.¹¹³⁶ This would not be a problem in general, as he would be able to recall the redacted information within the text, but it could be a problem if the investigator’s comments were blacked out (as they were in the versions of the reports initially produced by the Government to this Inquiry),¹¹³⁷ as he would need to review those.¹¹³⁸

Ultimately, CSIS allowed a fairly large proportion of its information about Ms. E to be made public in the Malik and Bagri trial. Laurie testified about his contacts with Ms. E while at CSIS, and his reports were introduced into evidence, albeit in redacted form. However, policy decisions were still slowly evolving at CSIS shortly before the trial. In May 1999, CSIS expressed concern about the fact that the Senior Crown Counsel for the Air India Task Force had identified Ms. E as a former informant of CSIS, during a briefing to the Assistant Deputy Attorney General of BC in the context of a report about the charge approval process.¹¹³⁹ Concern was expressed that the briefing note, though marked “confidential”, could be subject to disclosure to defence.¹¹⁴⁰ Clearly, CSIS had not understood in 1999 that since Ms. E was to testify, her involvement with CSIS would necessarily be revealed.

In 2001, CSIS had to provide additional disclosure about Ms. E pursuant to a court order.¹¹⁴¹ At the time, CSIS had disclosed 10 reports about Ms. E, but needed to research other reports relating to her and to disclose many of the documents found in her source file. Once the reports were identified, they were vetted prior to being disclosed.¹¹⁴²

2001: CSIS Provides Additional Information About Ms. E Ten Years Later

In 1991, Stevenson had authored a CSIS memorandum which discussed the effect that persistent RCMP contact may have had on Ms. E. The information in the memorandum indicated clearly that Ms. E did not want to have contact with the RCMP and that she was complaining about the manner in which the RCMP

1135 Exhibit P-101 CAF0342, pp. 1-2.

1136 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7524.

1137 See Volume One of this Report: Chapter II, The Inquiry Process.

1138 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7524.

1139 Exhibit P-101 CAF0427.

1140 Exhibit P-101 CAF0427.

1141 Exhibit P-101 CAF0402, CAF0403.

1142 Exhibit P-101 CAF0403.

was approaching her.¹¹⁴³ The memorandum also contained information which indicated that Ms. E had admitted that she had some knowledge relevant to the Air India investigation and that she had said that she would not testify, for fear that her children would be murdered. At the time, CSIS had decided not to report any of the information in the Stevenson memorandum to the RCMP.¹¹⁴⁴

Over ten years later, in November 2001, Best was finally provided with a copy of the CSIS memorandum.¹¹⁴⁵ Bass, who had been overseeing the RCMP E Division Air India investigation since 1995, explained that this information was clearly important for the Force, as it would tend to "...corroborate the value of the source's information and does give indication of its truthfulness."¹¹⁴⁶

Bass added that it would not necessarily have changed anything if the information had been shared earlier, because the RCMP already "generally knew this."¹¹⁴⁷ However, some of the details in the Stevenson memorandum were not known to the investigators. For example, the fact that Ms. E was concerned because RCMP officers spoke to her within earshot of others, and the fact that she did not appreciate the RCMP's unannounced visits to her residence and place of business¹¹⁴⁸ were not known to the Task Force. As a result, Best continued to adopt a similar approach in his contacts with Ms. E from 1996 onward. He also admitted that he had on occasion attended Ms. E's residence and spoken to her with employees present, though he stated that "...when it came down to matters of significant issue," Ms. E always invited him to a private room.¹¹⁴⁹ However, the repeated, unexpected and public arrival of Best would have, at the very least, drawn the attention of onlookers, and may have opened up Ms. E to uncomfortable questions and speculation. In addition, there was the possibility that conversations, though held in "private," may still have been heard by others.

Had the RCMP known about Ms. E's 1991 complaints, the investigators might have been better able to appreciate the impact their approaches could have on Ms. E's well-being and to devise better strategies for approaching Ms. E. Such strategies might have helped the RCMP modify its patterns of contact which were ineffective and, moreover, detrimental to the RCMP's main purpose of securing the full and consistent cooperation of Ms. E.

2000-2004: Further RCMP Interactions with Ms. E

It does not appear that relations between Ms. E and the RCMP improved with time.

Bagri was arrested in October 2000. On October 10, 2000, the lawyer for Ms. E, Arne H. Silverman, wrote to Crown counsel indicating that he did not

¹¹⁴³ Exhibit P-101 CAF0384.

¹¹⁴⁴ Exhibit P-101 CAF0425.

¹¹⁴⁵ Exhibit P-101 CAF0429.

¹¹⁴⁶ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11269.

¹¹⁴⁷ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11269.

¹¹⁴⁸ Exhibit P-101 CAF0384, CAF0425, p. 2.

¹¹⁴⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7895.

intend to make an application based on informer privilege, as his client took the view that "...she is not an informant."¹¹⁵⁰ He asked that any further written communications for Ms. E be directed to his office.¹¹⁵¹ He also wrote that, while Ms. E had instructed him that she would attend in court pursuant to a subpoena, she would not attend any pre-trial interviews. Silverman wrote that he had conveyed to Ms. E the offer that the Crown's office made to provide her with "... whatever form of protection she might consider she is in need of," and that Ms. E instructed that "...she did not consider herself to be in need of protection of any kind."¹¹⁵²

In May 2001, Best served a subpoena on Ms. E for her to attend in court as a witness.¹¹⁵³ She was again served with a subpoena in February 2002, by Best and Cpl. Ryan.¹¹⁵⁴ On this second occasion, Ms. E told Best that she had been advised by her lawyer not to speak with him.¹¹⁵⁵

Ms. E testified at Bagri's trial in December 2003. On March 5, 2004, Best, now an inspector, visited Ms. E as a result of a recent ruling by Justice Josephson. The ruling held that certain statements she had made to Laurie would be entered into evidence. Best and Cpl. Glen Little went to Ms. E's residence and met with Ms. E as she was driving away. Best asked if she was aware of the recent ruling, and she was not. She stated that she was in a rush to get to the bank and would return to speak with the officers. They waited at her residence for about 25 minutes before Ms. E returned. Best advised that the purpose of the visit was to discuss any security concerns Ms. E had in view of the recent ruling. He advised Ms. E that she should speak to her lawyer. He also said that he was not aware of any new or "imminent threat." In response to this statement, Ms. E asked, "...you really still care about my security?" Best advised that his position and that of the RCMP had not changed – if she had security concerns or if "...we were aware of any immediate danger, we would take appropriate action."¹¹⁵⁶

The next day, Best was paged by Silverman, Ms. E's lawyer, who informed him that Ms. E was with him and was confused about the purpose of the officers' visit the day before. Silverman advised Best that Ms. E was not seeking, and would not be seeking, security assistance from the RCMP at this time, and that he would be seeking from the Court a permanent ban on the publication of her name. Best agreed that a ban sounded like a "good idea," but indicated that such a ban would not protect her from people who know her. Best agreed that the publication ban would still "...protect her from any extreme elements," assuming these "extreme elements" did not already know Ms. E's identity.¹¹⁵⁷ He stated that "...there is always a threat out there on this particular file." At the

1150 Exhibit P-101 CAF0822.

1151 Exhibit P-101 CAF0822.

1152 Exhibit P-101 CAF0822.

1153 Exhibit P-101 CAF0423, p. 11.

1154 Exhibit P-101 CAF0370, p. 2.

1155 Exhibit P-101 CAF0370, p. 2. Similarly, in October of that year, when a subpoena was served by Best on Ms. E in the presence of her lawyer, the lawyer informed Best that his client would not be answering any questions Best may have: Exhibit P-101 CAF0370, p. 4.

1156 Exhibit P-101 CAF0372, pp. 2-4.

1157 Exhibit P-101 CAF0372, pp. 5-6.

request of Ms. E's lawyer, and after consulting with his superiors, Best gave his consent to the lawyer to rely on his statement about the ever-present threat in order to support his application for a publication ban on Ms. E's name.¹¹⁵⁸

Prior to this discussion with Ms. E's lawyer, the RCMP did not offer to contact the Crown to suggest that Crown counsel apply to the court for a permanent publication ban.¹¹⁵⁹ Instead, Ms. E was left with the onus of personally applying for the ban, with both the Crown and the defence taking no position in support or in opposition to the application.¹¹⁶⁰ Justice Josephson granted the application, noting that Ms. E's "...ongoing security concerns rise beyond the merely speculative," and that the risk did not abate "...simply because she has completed her testimony, as retaliation is a strong element of the risk." He noted, however, that Ms. E's counsel had indicated that her concerns did not at that time relate to Bagri himself, who had been aware "...of her status as a Crown witness for a number of years."¹¹⁶¹

2005: The Result at Trial

After his arrest in October 2000, Bagri was refused bail and was charged, along with Malik and Reyat, of first-degree murder and conspiracy in relation to the Air India and Narita bombings.¹¹⁶² Preliminary motions were heard beginning in 2001. The actual trial began in April 2003, and lasted until December 2004.

Ms. E Loses her Memory

In December 2003, Ms. E was called to testify at the trial pursuant to the subpoena served on her in 2002. At the time, she was considered to be "...one of the Crown's primary witnesses in its case against Mr. Bagri."¹¹⁶³ Although the RCMP had discounted Ms. E as not possessing useful information in 1985, and had then concluded that she was unreliable in 1990, Bass testified that by the time the case went to court, he was satisfied, having had "...quite a bit of personal involvement with this issue," that what Ms. E could say was valid and that it was consistent with what she had been saying all along, with no major discrepancies. In part, this impression was based on dealings Bass had had with Hunter, "...another member of the RCMP who knew this individual personally, fairly well." Bass was confident in the end that Ms. E was "reluctant, but reliable." Referring back to the 1990 conclusion of unreliability, Bass explained that it is not uncommon, especially in a case such as this where there is little corroboration available, to have disagreement between officers as to a witness's credibility.¹¹⁶⁴

¹¹⁵⁸ Exhibit P-101 CAF0373, p. 3.

¹¹⁵⁹ Exhibit P-101 CAF0372, p. 5.

¹¹⁶⁰ *R. v. Malik and Bagri*, 2004 BCSC 520 at para. 2.

¹¹⁶¹ *R. v. Malik and Bagri*, 2004 BCSC 520 at para. 7.

¹¹⁶² *R. v. Malik and Bagri*, 2001 BCSC 2; *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 6.

¹¹⁶³ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 4.

¹¹⁶⁴ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11265-11266.

In court, Ms. E testified about how she came to know Bagri in India and to associate with him and his family in Canada in the early 1980s. About his request to borrow her car, she could only recall that he visited her at her residence late one evening in June 1985, and asked to borrow her car. She refused and Bagri left. In her testimony, she initially said that she thought the visit occurred “a few days” before the bombings, but then stated that she was not sure whether it was before or after the crash. She “consistently maintained” in cross-examination that she thought the authorities knew the date of Bagri’s visit “...because of CSIS surveillance.” She also agreed, again in cross-examination, that she could only recall one late-night visit by Bagri to borrow her car in June 1985, but, upon re-examination, stated that there could have been other visits in June but she did not remember them.¹¹⁶⁵

Ms. E explained in her testimony at trial that Bagri returned to visit her after the bombing, including at least once in 1985, when he brought her medicine.¹¹⁶⁶ Asked whether Bagri had “...said anything to her that she perceived to be a threat,” she stated “absolutely not.” She also indicated that she had no recollection of Bagri talking to her about secrets.¹¹⁶⁷ She explained how her relations with the Bagris deteriorated after the Air India bombing because of Mrs. Bagri’s comments. She stated that she knew that Bagri was a BK member who associated with Parmar, and that Bagri had told her that he had met Mr. C, another Crown witness at trial, in New York.¹¹⁶⁸ Finally, Ms. E indicated that she had heard “...talk in the community” after the bombing about who was responsible, which named both the Indian Government and the BK, including Parmar and Bagri specifically, as well as rumours about the possibility that Parmar and Bagri were responsible for taking the suitcases to the airport.¹¹⁶⁹

The Crown attempted to use the statements she had provided in the past to CSIS and the RCMP to refresh Ms. E’s memory, in particular about the content of her June 1985 conversation with Bagri when he asked for her car, about the timing of that request, about Bagri’s use of her telephone and about his mention of sharing secrets during a subsequent visit. However, Ms. E “...continued to profess, for the most part, a lack of recall.”¹¹⁷⁰ In fact, Justice Josephson concluded that while Ms. E initially provided a “sanitized version” of the “core story” about Bagri when questioned by the Crown, “...she quickly adopted a position of lack of memory once her prior statements were put to her.”¹¹⁷¹

The Crown brought an application to have Ms. E declared an adverse witness. This would have enabled the Crown to cross-examine Ms. E, and it was intended to support the Crown’s next application to have the content of Ms. E’s past statements admitted into evidence. A hearing was held, where Laurie and the RCMP officers who interviewed Ms. E over the years testified about their

¹¹⁶⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 5, 6, 966-968.

¹¹⁶⁶ *R. v. Malik and Bagri*, 2004 BCSC 149 at para. 6; *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 969.

¹¹⁶⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 969.

¹¹⁶⁸ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 6, 8.

¹¹⁶⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 971.

¹¹⁷⁰ *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 9-10.

¹¹⁷¹ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 73.

dealings with her. Ms. E also testified about her dealings with the authorities.¹¹⁷² Generally, she could not recall what she had told Laurie and the various RCMP officers who interviewed her, but indicated that she was telling them the truth "...as she considered it at the time."¹¹⁷³ With respect to Laurie, she confirmed that the events were fresh in her mind when she spoke to him and said that "...she always spoke the truth when speaking with Laurie, with whom she developed a friendship."¹¹⁷⁴ About the written statement provided to Maile, Ms. E indicated the content "...could have been true at the time," but said she did not presently recall whether this was the case. Ms. E maintained that she had generally been pressured by police and forced to sign written statements.¹¹⁷⁵

Justice Josephson found that Ms. E's memory loss, about the key events surrounding Bagri's visit, his subsequent threat and her beliefs about his involvement in Air India, was, in fact, feigned. He also concluded that her allegations about RCMP behaviour, at least as far as Maile was concerned, were false. However, Justice Josephson concluded that Ms. E was not an adverse witness, because her testimony was not positively harmful to the Crown's case and did not contain substantial inconsistencies with her previous statements. He added that, given the significant cooperation she had extended to police over the years, Ms. E could not be considered hostile to the prosecution or to the authorities.¹¹⁷⁶

The Crown then sought to have some of Ms. E's previous statements admitted into evidence to prove their contents.¹¹⁷⁷ Those statements included: the ones made during the first two interviews with Laurie; the ones made during the two 1990 RCMP interviews and during the 1991 interview with Maile and Solvason; the May 11, 1992 statement to Maile; and Ms. E's statement to Best during the December 1996 interview.¹¹⁷⁸ Another hearing was held. Ms. E testified again in these proceedings, as well as in the trial subsequently. Her last day of testimony was April 16, 2004.¹¹⁷⁹

Laurie testified about his interviews with Ms. E. He admitted that, during the first interview, he had at some point said that he knew of Bagri and Parmar and that they were members of the BK, but said that he otherwise "...avoided supplying the Witness with information since it would have been contrary to the intelligence gathering purpose of his visit."¹¹⁸⁰ The RCMP officers involved in the other relevant interviews also indicated they did not supply Ms. E with information or pressure her.¹¹⁸¹

1172 *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 1, 10.

1173 *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 11-21.

1174 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 24.

1175 *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 23, 26.

1176 *R. v. Malik and Bagri*, 2004 BCSC 149 at paras. 63-72.

1177 *R. v. Malik and Bagri*, 2004 BCSC 299.

1178 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 12.

1179 *R. v. Malik and Bagri*, 2004 BCSC 520 at para. 1.

1180 *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 16.

1181 *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 28-54.

Justice Josephson concluded that the circumstances surrounding Ms. E's statements to Laurie provided sufficient guarantees of reliability to make them admissible into evidence. He noted that the events described were simple, and would be remembered, and that the promise of confidentiality negated the possibility of fabrication for the purpose of harming Bagri. Justice Josephson ruled, however, that the statements provided to the RCMP could not be considered sufficiently reliable, because "...no longer could [Ms. E] speak of the incident without incurring what she believed to be significant risk to herself and her family." The December 1996 statement, essentially professing a lack of recall of the contents of the Maile statement, was adopted by Ms. E during her testimony and hence was part of the evidence.¹¹⁸² The statements made by Ms. E during her third interview with Laurie were also subsequently admitted into evidence for the same reasons as the first two interviews.¹¹⁸³

Charter Violation: CSIS Destruction of Notes, Tapes and Transcripts

In accordance with his usual practice, Laurie did not take notes while interviewing Ms. E.¹¹⁸⁴ After the first interview, he stopped to make some notes when he left Ms. E's residence because "...it was clear to me that this report would be the subject of some scrutiny and that it needed to be as accurate as I possibly could get it." He walked to his car, which was parked some distance away, and then wrote down on a piece of paper "...as precisely as possible" the issues that he wanted to include in his report. He then took that paper to his office and used it to write his report. His notes did not include quotes of Ms. E's words. They were a series of words which Laurie felt would help him recall the most important aspects of the information in preparing his report.¹¹⁸⁵ Laurie wrote a first draft of his report by hand. It was typed by someone else and then reviewed by Laurie and discussed with his supervisors, who could also add their comments.¹¹⁸⁶ The draft report was then authorized, communicated to CSIS HQ and put on file.¹¹⁸⁷

After the second interview, Laurie also wrote some notes while in his car, but they were not detailed. He did not feel a sense of urgency attached to the new information he obtained then, as compared to what he had learned during the first interview. He simply wanted to ensure that he would not forget anything before getting to his office and preparing his report.¹¹⁸⁸ Laurie wrote the report upon returning to his office immediately after the interview, but the content was then discussed with Grierson, the BC Region Chief CT, and Claxton, the Director General, and the actual report was only sent to CSIS HQ four days after the interview.¹¹⁸⁹ Laurie indicated that he probably also made notes after his third interview with Ms. E. He then wrote his report immediately or soon after his return to his office.¹¹⁹⁰

1182 *R. v. Malik and Bagri*, 2004 BCSC 299 at paras. 103-109, 110-111.

1183 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 961.

1184 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7414, 7429; See Section 1.0 (Post-bombing), Introduction.

1185 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7417-7418.

1186 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7419; Exhibit P-101 CAA0553(i), pp. 3-4.

1187 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7419.

1188 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7429-7430.

1189 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7430; Exhibit P-101 CAA0562(i).

1190 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7442.

The notes made by Laurie after the Ms. E interviews were not preserved by CSIS and were not available at trial.¹¹⁹¹

Laurie tape-recorded two of his interviews with Ms. E with a concealed recording device, but could not recall which ones.¹¹⁹² On one occasion, the device malfunctioned and nothing was recorded. On the other occasion, Laurie believes he read a transcript of the recording, but only to ensure that his report about the interview was accurate. He did not listen to the recording or read the transcript prior to writing his report and, in fact, did not find the recording particularly helpful. The interview which was successfully recorded most likely involved a discussion of Bagri's request to borrow Ms. E's car, since this was discussed in most of the interviews.¹¹⁹³

CSIS did not preserve the tape with the recording of Laurie's interview with Ms. E.¹¹⁹⁴ According to his general practice, Laurie submitted the tape for transcription without listening to it and never saw the tape again afterwards. His understanding was that such tapes were erased after they were transcribed. He was provided with the transcript, which was shredded after he reviewed it.¹¹⁹⁵

Laurie explained that he perceived his role as an intelligence officer as simply to write his report as accurately as he could. His report reflected what he had heard and what he thought his superiors at CSIS HQ needed to know.¹¹⁹⁶ He added, making a comparison with his subsequent work as a police officer after he rejoined the RCMP:

MR. LAURIE: I don't have a method of keeping and storing notebooks or tapes or any of that sort of stuff. It is something that I've got to baby-sit now and I don't have a way of doing – I don't have an exhibit locker; I don't have an exhibit log; I don't have somebody that guards the room that it is in. I don't need it and it is destroyed the same way they all are.

...

MR. LAURIE: Perhaps if I can give some context, sir.

MR. KAPOOR: Sure.

MR. LAURIE: The service is so new and we are being [given] such guidance not to do anything the way the police do it. We are no longer the police and in fact there is movement afoot to try and remove any of the people who used to be in the police as quickly as possible.

¹¹⁹¹ See, generally, *R. v. Malik and Bagri*, 2004 BCSC 554.

¹¹⁹² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7430-7431. He was also uncertain about the exact number of interviews for which he brought a tape recorder.

¹¹⁹³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7431-7432.

¹¹⁹⁴ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7431.

¹¹⁹⁵ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 7.

¹¹⁹⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7431-7432.

And given that the issue of passing material to a police agency is there but is not widely used in a format that we are familiar with, it wouldn't have been unreasonable for me to presume that at some point this information, and perhaps even the individual, is going to be passed to a police agency and they can get their own tape because they are the ones that preserve evidence and I do not.¹¹⁹⁷

Laurie also said that, had the recording been preserved, it would have opened the door to different assessments or opinions of what was actually said by Ms. E during the interview, as opposed to the situation now, where we only have his assessment as found in his report which, according to Laurie "...reflects what I heard."¹¹⁹⁸

When Laurie received the Ms. E information, the policy which was supposed to govern the preservation of notes by CSIS investigators was an RCMP Security Service policy, inherited by CSIS at its creation, which required investigators to keep a separate notebook and to retain it securely in cases where there was "reason to believe" that an investigation would "...result in court appearances being necessary."¹¹⁹⁹ However, Laurie, like many of his colleagues, was not aware of the existence of this policy.¹²⁰⁰ He was never informed about it while working at the Security Service, or during his time at CSIS, and instead followed the general practice adopted by his colleagues, which was to destroy original notes once the information gathered was included in a report.¹²⁰¹

When Ms. E first told Laurie about Bagri's request to borrow her car, it was clear to him, as it was to his supervisors at the BC Region when he reported back the information, that this information related to a criminal investigation, that it would eventually have to be passed to the police and even that Laurie might well have to testify in court about it. Yet, when Laurie discussed the information with his supervisors, no one told him to maintain notes in a separate notebook, or to maintain notes at all for that matter. Laurie was simply "...never given any guidance to do that."¹²⁰²

In 1987, the policy inherited from the Security Service only addressed handwritten notes, whether made while receiving the information or "...as soon as possible afterwards."¹²⁰³ When CSIS adopted its own policy on Operational Notes in 1992, it expressly recognized that audio or video recordings made by a CSIS employee to be used in the preparation of CSIS reports, including the temporary recording of information received while conducting interviews or debriefing human

1197 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7432-7433.

1198 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7432.

1199 Exhibit P-101 CAA0007, p. 2; See, generally, Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1200 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7466; See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1201 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7468-7469, 7536-7537.

1202 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7413, 7416, 7468-7469, 7531, 7538.

1203 Exhibit P-101 CAA0007.

sources, constituted “operational notes” subject to the retention policy.¹²⁰⁴ The tapes and transcripts of the Ms. E interviews, as well as the notes made by Laurie after the interviews, would have been covered by this policy and subject to retention because the information related to a serious crime.¹²⁰⁵ However, it appears that in 1987, the potential impact on eventual prosecutions of the destruction of recordings or notes of interviews with sources providing criminal information was not communicated to CSIS investigators:

MR. BOXALL: And earlier today you gave evidence about the destruction of your tape recording of one of the interviews and the impression I was left with was that you didn’t view the destruction of that tape as particularly significant or out of the ordinary.

MR. LAURIE: I still don’t.¹²⁰⁶

At trial, Justice Josephson concluded that the destruction by CSIS of the notes and audio recordings relating to Laurie’s interviews of Ms. E violated Bagri’s right to disclosure under the *Charter*.¹²⁰⁷ The British Columbia Attorney General (the “Crown”) had conceded that, in the *Air India* case, the RCMP “...had been granted access to all relevant information in the files of CSIS” pursuant to an access agreement which “crystallized” in early 1987 in correspondence between the Solicitor General and the CSIS Director.¹²⁰⁸ In law, this meant that CSIS would be subject to the same obligations to disclose information to the defence as the police were pursuant to the case of *R. v. Stinchcombe*. According to the applicable test, the failure to disclose the notes, tapes and transcripts in this case would violate Bagri’s rights, if their destruction was found to constitute “unacceptable negligence.” The Crown had conceded earlier in the trial that CSIS had been unacceptably negligent in erasing the Parmar intercepts, but did not make this concession for the failure to preserve the notes, tapes and transcripts of the Ms. E interviews.¹²⁰⁹

Justice Josephson found that CSIS’s behaviour did amount to unacceptable negligence. He accepted Laurie’s testimony that he “...simply followed his normal practice in relation to the gathering of source intelligence,” but found that “...CSIS appears to have failed at an institutional level to ensure that the earlier errors in the destruction of the Parmar tapes were not repeated.” He noted that a “...procedure should have been in place” at CSIS to preserve “...this clearly relevant evidence for the criminal investigation.”¹²¹⁰ As a result of this *Charter* violation, Bagri would have been entitled to a remedy, if he had not otherwise been acquitted because the evidence was found to be insufficient.

¹²⁰⁴ Exhibit P-101 CAA0889, pp. 4, 10.

¹²⁰⁵ See, generally, Section 4.3.2 (Post-bombing), *Destruction of Operational Notes*.

¹²⁰⁶ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7541.

¹²⁰⁷ *R. v. Malik and Bagri*, 2004 BCSC 554.

¹²⁰⁸ See, generally, Section 4.4.2 (Post-bombing), *The Air India Trial*.

¹²⁰⁹ *R. v. Malik and Bagri*, 2004 BCSC 554 at paras. 3-5.

¹²¹⁰ *R. v. Malik and Bagri*, 2004 BCSC 554 at paras. 7, 19, 21-22.

This could have meant that the trial judge would have been unable to take into account Ms. E's statements to Laurie, because some of the evidence about those statements had been destroyed through unacceptable negligence.

Aside from the breach of the accused's rights, the destruction of the notes, tapes and transcripts by CSIS also deprived the Court of "...the best evidence of what was actually said" by Ms. E.¹²¹¹ This is especially true if one is to accept, as stated by Laurie in testimony, that opinions could have differed about what Ms. E said, if a tape had been available. This, of course, would be an additional reason to preserve the recording in order to have access to all possible interpretations of the information, both for intelligence and for possible evidentiary purposes.

In this case, because CSIS did not take steps to preserve the notes and recordings for the Ms. E interviews, the only remaining records available at trial of the statements made by Ms. E in 1987 were Laurie's intelligence reports.¹²¹² However, questions were raised about the completeness and, at times, the accuracy of those reports – which further complicated matters.

The Ultimate Reliability of the CSIS Reports

When he prepared his reports about the Ms. E interviews, Laurie wrote the information in chronological order, as opposed to the order in which Ms. E revealed it to him.¹²¹³ He did not write down the questions or comments that he made to Ms. E during the interview.¹²¹⁴ He did not attempt to quote Ms. E or to provide a word for word account of what she told him.¹²¹⁵ Laurie organized his reports by content, as opposed to providing an account of the interviews. He explained:

MR. LAURIE: That's right. I suppose that's another difference between us and the police. I related the story – the briefing if you will, in a manner that my consumer would find it easiest to arrive at the conclusions that I did. This is what I was told, maybe not in this way, but I was told this information and now I feel this about the information. What do you think?

I think this report [the report for the 2nd interview] is the only one where I actually put a quote in and so it is clear and it was again in testimony at the trial that I wasn't attempting to make any literal translation or just to say precisely what it was that she had said to me.¹²¹⁶

1211 *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 21.

1212 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1231.

1213 Exhibit P-101 CAA0553(i), p. 1; Testimony of William Laurie, vol. 61, October 15, 2007, p. 7418.

1214 See, generally, Exhibit P-101 CAA0553(i).

1215 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7511; See, generally, Exhibit P-101 CAA0553(i).

1216 Testimony of William Laurie, vol. 61, October 15, 2007, p. 7428.

Laurie's reports contained a summary of the information Ms. E had provided and additional comments or analysis in the section entitled "investigator's comments."¹²¹⁷ The body of the reports included "all details considered intelligence."¹²¹⁸ In some cases, Laurie summarized the information in accordance with his own interpretation, for example by referring to Talwinder Singh Parmar where Ms. E had said "Bhai Sahib."¹²¹⁹ In other cases, Laurie may also have added information based on his own beliefs. In his report for his fifth interview with Ms. E, he noted that Ms. E recounted Bagri's request to borrow her car and that her "...account was exactly the same as reported previously." He then went on to state that she reported that Bagri said he needed her car "...to go to the airport with Bhai Sahib (Talwinder Singh Parmar [REDACTED]) and an u/m."¹²²⁰ This had never been mentioned in the previous interviews, and Laurie admitted in his testimony at trial that it may have been included in his report as a result of his own beliefs and theories and not of information actually provided by Ms. E.¹²²¹ He explained in testimony before the Inquiry that, if he did report information based on his own theory of the case, this was inadvertent. Generally, the text preceding the investigator's comments was "...supposed to be attributed only to the sources that are referenced."¹²²²

Because they were only meant to report the information obtained, the intelligence reports provided no indication of the manner in which the interviews with Ms. E unfolded. The order in which she provided the information, the questions she was responding to, or any information she was provided during the course of the interviews were not noted in the reports. Further, as only the "...details considered intelligence" were included, a selection could have been made among the information provided by Ms. E, and some information may not have been reported. The information she provided was at times described in general terms only, such as her account being "...the same as before," which would make it impossible to assess whether or not there were small changes or contradictions in her information from time to time, an issue that is important from an evidentiary perspective.

Justice Josephson had initially found that Laurie's reports for his first three interviews with Ms. E were admissible in evidence because the hearsay statements they recorded met "threshold reliability" criteria. However, having heard all of the evidence at trial, he found that the ultimate reliability of Ms. E's past statements could not be established.¹²²³

There were contradictions between the statements to Laurie and the evidence at trial which could not be resolved to the Court's satisfaction without a proper opportunity for the defence to cross-examine Ms. E about the facts. In her

¹²¹⁷ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7509.

¹²¹⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 999.

¹²¹⁹ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7509-7510.

¹²²⁰ Exhibit P-101 CAF0377, p. 1.

¹²²¹ Exhibit P-244, vol. 4 (January 7, 2004 Transcript), pp. 44-45.

¹²²² Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7512-7514.

¹²²³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 1236.

statements to Laurie, Ms. E had indicated that she was “certain” that Bagri’s visit had occurred the night before the Air India bombing. However, during her testimony at trial, she generally associated the timing of the visit with the CSIS surveillance. She had been questioned by the RCMP in 1985 about this surveillance, which had Parmar dropping off an unidentified male at her residence on June 9th, and she had said that the person was Bagri. Nowhere in her past statements or in her evidence at trial was there any suggestion of Ms. E having received two separate late night visits from Bagri in June 1985. In fact, from her evidence and her December 1996 statements during the interview with Best, it appeared that the arrival of Bagri at her residence at such a late time was an “unusual event,” to the point that she initially tried to ignore him when he started knocking. The Crown’s “...theory of a second late night visit in June was only revealed mid-trial,” and Ms. E simply “...allowed for the possibility” on re-examination.¹²²⁴

Justice Josephson added that the issue of the “adequacy of the record” of Ms. E’s statements to Laurie was also a valid concern, which contributed to his finding that Ms. E’s past statements could not ultimately be demonstrated to be reliable. He found that the CSIS reports, though “prepared with care,” constituted a “less than complete record” of what Ms. E had said. The reports were not complete in terms of describing Laurie’s full interaction with Ms. E, which left open the possibility that unknown context could have affected the interpretation which could be made of the meaning of what Ms. E had said. Further, questions remained about the complete accuracy of the reports, since Laurie had admitted to being uncertain about whether the mention that Parmar would be accompanying Bagri to the airport, which he attributed to Ms. E in one of his subsequent reports, in fact originated from information provided by Ms. E. Because of these issues, the weight which the reports could have at trial was diminished.¹²²⁵

The promise of confidentiality made by Laurie to Ms. E also impacted on the weight which could be given to Laurie’s reports at trial, since confidentiality could lead a person making a statement to feel that they would not have “...to account for the honesty and accuracy” of the statement. The facts that Ms. E’s statements to Laurie were not made under oath and that Ms. E had later made a false claim to having lost her memory also had an impact.¹²²⁶

Justice Josephson found that the rest of the evidence at trial neither confirmed nor refuted Ms. E’s statements to Laurie. Overall, Ms. E’s past statements were not found to be sufficiently reliable to convince the Court beyond a reasonable doubt of Bagri’s guilt and, as none of the other evidence presented was found to be credible or sufficient, Bagri was acquitted.¹²²⁷

¹²²⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1226-1229.

¹²²⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1230-1231.

¹²²⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1232, 1236.

¹²²⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1233-1235, 1244-1249.

Conclusions

In the end, after almost 20 years of interaction between Ms. E and Canadian authorities, nothing was accomplished. The combined effect of the agencies' actions and decisions was that: (a) Ms. E did not cooperate in her testimony at trial, but instead claimed memory loss, a claim which the trial judge found to be false; and (b) her information could not be used in the prosecution because the available evidence of her past statements was not sufficient. Opportunities were missed by the RCMP and CSIS at every stage of the process.

RCMP Failures to Follow Up

In 1985-1986, the RCMP had information indicating that Ms. E possibly knew more about Bagri's activities than what she was willing to tell police. The RCMP had other information which made Bagri a suspect. Yet, the Force chose not to pursue its attempt to obtain information from Ms. E. Then, after CSIS approached her in 1987 and verbally informed the RCMP about Bagri's request to borrow the car, albeit without identifying Ms. E as the source, the RCMP simply did not follow up and did not even record the full extent of the information received from CSIS.

Had the RCMP been involved as soon as possible in 1987, the officers could have sought to clarify the factual issue of the timing of Bagri's June 1985 late night visit in relation to the June 9th CSIS surveillance. This unresolved issue ultimately led the Court to consider her past statements unreliable. However, it does not appear that the RCMP, whose investigators had revealed the existence of the surveillance during the 1985 interviews, ever thought about asking Ms. E about this issue during their subsequent dealings with her. In 1990, when Ms. E's identity was finally revealed and she confirmed, at least in part, the information she had provided to CSIS about Bagri's request, the RCMP concluded after two interviews that she was not reliable, without asking about the June 9th visit. The RCMP was eager to discount Ms. E for all sorts of reasons, including the fact that Laurie may have provided information to her, the fact that the officers felt she was trying to hide her alleged affair with Bagri and the fact that she had not revealed her information to the police in 1985. Yet, the RCMP never even asked Ms. E about the one issue which was ultimately found to make her information unreliable.

The RCMP failures to follow up caused frustration for the CSIS personnel who had worked hard to develop a source and then had to terminate contact to allow the RCMP to pursue its investigation.¹²²⁸ Mervin Grierson, the CSIS BC Region Chief CT at the time of the events, commented:

MR. GRIERSON: Now, if we talk about Ms. E, I mean, there is the living example of that. It's already been said here in this

¹²²⁸ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

room that they had talked to her and never fleshed that out. We knocked on her door and she started to talk to us. And we could see some potential. That's what we would expect them to do, is nurture it, cultivate it, be reassuring, not just in a 15-minute deal, sort of say, "There's nothing here and go on to something else."¹²²⁹

CSIS "Promises" of Confidentiality

When Laurie approached Ms. E in 1987, he was successful in obtaining from her the information that the RCMP could not. Ms. E was afraid to speak to the police, but felt comfortable providing her information to CSIS. Ironically, Ms. E's anonymity may have been better protected if she had chosen to speak to the police instead. If the RCMP had assured Ms. E that her information would remain confidential the way Laurie did, she would have been considered an informant and, because of informer privilege, the authorities could not have revealed her identity without her consent, and could not have forced her to testify against her will as was done here.¹²³⁰ Hence, the RCMP would never have promised "complete anonymity" in the context of an approach to a potential witness.¹²³¹

CSIS, on the other hand, did give assurances of confidentiality. At trial, Justice Josephson found that Ms. E could not be characterized as a confidential informant, subject to informer privilege, because CSIS's "...subsequent actions in passing [Ms. E's] information and identity to the RCMP" indicated that CSIS "...never regarded or treated" Ms. E as a confidential informant, regardless of whether CSIS sources could, in law, be protected by informer privilege.¹²³² CSIS did not feel bound by Laurie's assurances to Ms. E when it authorized the RCMP to interview her in 1990, essentially revealing her identity without her consent. Ms. E provided her information to Laurie with the belief that it would remain confidential. Laurie later stated that Ms. E had "...placed her trust" in him and that "...it was misplaced."¹²³³ Because CSIS had broken its promise of anonymity to Ms. E, it was difficult for her to place her trust in Canadian authorities again when the RCMP approached her subsequently.¹²³⁴

CSIS Delay in Turning Over Sufficient Information and Interagency Conflicts

While CSIS did not feel bound by its promises of anonymity in 1990, the Service was apparently in no hurry to provide all available information to the RCMP when it first received it. The information was clearly relevant to the criminal investigation and was of little value to CSIS operations. Yet, CSIS hesitated before passing the Ms. E information at all during the initial stages in 1987.

¹²²⁹ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9514.

¹²³⁰ See, generally, *R. v. Leipert*, [1997] 1 S.C.R. 281.

¹²³¹ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7841.

¹²³² *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 18.

¹²³³ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7519-7520.

¹²³⁴ Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7901-7903.

When it did pass the information, it did so with little detail and without written records. Most importantly, CSIS chose not to inform the RCMP of Ms. E's identity in 1987.

Because of its decision to delay the passing of the full Ms. E information, in circumstances where, in the end, it did not assert a duty to protect the identity of its source, CSIS deprived the RCMP of the opportunity to attempt to obtain a statement from Ms. E – and to keep proper records – at a time when the events were more fresh in her mind. As an RCMP analyst later concluded, "...had there been a signed statement taken by the RCMP after her revelation to CSIS the evidence may have been more acceptable by the Court."¹²³⁵

CSIS also kept the RCMP in the dark for ten years about the information recorded in the Stevenson memorandum. Further, CSIS did not make its actual reports about the Ms. E information available until the late 1990s. As a result, Laurie had to answer the RCMP's questions and write his statement from memory, the RCMP officers who interviewed Ms. E did not have the benefit of knowing exactly what information she had provided in the past, and Ms. E had to confirm the accuracy of the information she provided to Laurie without having an opportunity to look at the reports.

In 1990, both CSIS and the RCMP appeared overly focused on their interagency conflicts, at a time when working together was necessary to secure Ms. E's cooperation. CSIS focused its efforts on demonstrating, at all costs, that it had passed the information in 1987, while the RCMP went about making accusations, including towards Laurie, who could have been its greatest ally in securing Ms. E's cooperation.

CSIS Failure to Keep Adequate Records

Knowing that the information related to a criminal investigation and that the RCMP was unaware of Ms. E's identity, CSIS continued to send Laurie to interview Ms. E with no instructions to take complete and contemporaneous notes or to prepare complete reports detailing his interactions with her. CSIS took no steps to prevent the destruction of the recordings of the interviews and of the limited notes Laurie did make. Regardless of the view one takes of the impact of the agreement to cooperate with the RCMP on CSIS's disclosure obligations in the Air India matter, it remains the case that CSIS did promise its cooperation. CSIS agreed to "...coordinate the preparation of evidence" for an eventual Air India prosecution, as directed by the then Solicitor General,¹²³⁶ and promised to place "...the full cooperation of the Service ... at the disposal of the RCMP" to assist in bringing those responsible for the Air India bombing before the courts.¹²³⁷ Yet, the agency continued to receive Ms. E's information without keeping proper records for two years, and then waited for an express RCMP demand a year later to reveal her identity.

¹²³⁵ Exhibit P-101 CAA1045(i), p. 3.

¹²³⁶ Exhibit P-101 CAA0533, CAD0094.

¹²³⁷ Exhibit P-101 CAD0094, p. 3.

Inadequate Access to Information

Overall, it appears that none of the Canadian officials who approached Ms. E, whether from CSIS or the RCMP, ever had a full picture of all of the information available prior to meeting with her, or when making decisions about whether to pursue her as a source of information. In 1986, the RCMP failed to access its own information about the BK application forms. In 1987, Laurie was not aware of CSIS's own interview with Ms. E's landlord. He did not have the reports for the 1985 RCMP interviews with Ms. E, and may not even have known about them. In 1991, Maile and Solvason approached Ms. E without knowing about the 1990 RCMP interviews. After 1990, for many years the RCMP entertained the mistaken notion that Ms. E had initially provided her information to Laurie in 1985. In 1997, Laurie participated in an interview with Ms. E without having been informed of the RCMP contacts with Ms. E since 1990.

Counterproductive RCMP Approach to Ms. E and Witness Protection Issues

Once it was aware of Ms. E's identity and information, the RCMP was unable to obtain a statement from her at an early stage, and, when a statement was obtained, it was not sufficiently detailed. It was suspected that Ms. E altered her story in order to get rid of police attention, a strategy which was known to be used at times by sources who felt threatened or uncomfortable.¹²³⁸ The RCMP was unable to set the stage early on to encourage Ms. E to cooperate. Instead, the manner in which the RCMP approached her had the opposite effect – alienating her further from the authorities and aggravating her anxiety. RCMP investigators did not attempt to minimize the disruptions to Ms. E's life or to address other sources of stress associated with their visits.¹²³⁹ Instead, the RCMP used a pressurized, persistent, and public approach to Ms. E.

Between 1985 and 2000, Ms. E dealt with many different officers, with large gaps in time where the RCMP showed no apparent interest in her. The person with whom she had the best rapport, Laurie, was excluded from the process as soon as possible in 1990, and was only involved again in 1997. The result was that the RCMP was unable to build any rapport or continuity with Ms. E.¹²⁴⁰

The RCMP often approached Ms. E in a confrontational manner and as an adversary. In 1990, she was regarded with suspicion and she was implicitly blamed for not having reported her information to the RCMP during the 1985 interviews. When Best attempted a new approach in 1996, he told Ms. E of the need to disclose the "full extent" of her knowledge, with the undertone that she was withholding information that she would be "well advised" to divulge. When she showed reluctance to testify, she was warned that her failure to respond to a subpoena could result in her arrest.¹²⁴¹ Throughout her dealings with the RCMP,

¹²³⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11582; Exhibit P-101 CAA0792(i), p. 14.

¹²³⁹ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7891.

¹²⁴⁰ Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7903.

¹²⁴¹ Exhibit P-101 CAF0423, pp. 8-9.

Ms. E was constantly “asked”, in a manner that sounded more like accusations than genuine questions, about her alleged affair with Bagri, even after she denied it repeatedly.¹²⁴² In 1992, the RCMP told her common-law husband that she had been “seeing” Bagri in 1985-86, a period when she was already with her common-law husband.

The RCMP constantly showed up at Ms. E’s home without making appointments, not giving her any control over when and where she would meet police. She was also disturbed by the length of the RCMP interviews. In subsequent years, she was taken to lengthy interviews – including one lasting over five hours – at RCMP HQ.¹²⁴³ She later indicated that she felt as if she could not leave until she provided the RCMP with the statements they were after.

Even after Ms. E expressed her frustration, indicating that she felt she had “... cooperated enough with the authorities and that her life has been disrupted by [their] dealings with her,”¹²⁴⁴ the RCMP charged on, apparently comforted by the notion that, since Ms. E was not “... totally detached from the targets of interest” in the investigation, they had to be persistent to ensure that she was not “an accomplice.”¹²⁴⁵

When the renewed Task Force contacted Ms. E again in 1996, Best endeavoured to have regular contact with Ms. E,¹²⁴⁶ despite the fact that she indicated that she wanted to have as few meetings as possible.¹²⁴⁷ After Best was first informed that Ms. E had retained counsel and that she did not wish to cooperate further with the RCMP,¹²⁴⁸ he continued to contact her, even following her to the grocery store.

In order to put an end to the RCMP contact, Ms. E’s then husband had to instruct Best to refer calls to Ms. E’s lawyer.¹²⁴⁹ Even after this, Best maintained that, overall, he did not take from Ms. E’s behaviour that there was “...any major reluctance to speak with [him] otherwise she would never have allowed me in her door.” Best explained that while “from the outside” it may “...give the image that there was some reluctance,” in dialogue with Ms. E, “...from the time I met her until after the trial, even in the presence of her lawyer,... – it was always in a professional manner, demeanour, and it was always very friendly.”¹²⁵⁰ Many times throughout his notes¹²⁵¹ and in his testimony, Best reiterated how “cordial” his interaction with Ms. E always was.¹²⁵²

1242 See, for example, Exhibit P-101 CAF0405, p. 2, CAF0428, p. 5.

1243 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7882.

1244 Exhibit P-101 CAF0359.

1245 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11267.

1246 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7903.

1247 Exhibit P-101 CAF0395, p. 94.

1248 Exhibit P-101 CAF0423, p. 8.

1249 Exhibit P-101 CAF0423, p. 11.

1250 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7907.

1251 See, for example, Exhibit P-101 CAF0423, pp. 7-8, where Best notes numerous times that conversations with Ms. E and with her husband ended on “cordial terms”.

1252 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7907.

Taking the fact that Ms. E allowed Best into her home and was “cordial” as tantamount to a lack of reluctance is based on questionable cultural assumptions. It may not have even occurred to her that she could deny the police entry to her residence. Overall, the RCMP apparently failed to appreciate how detrimental to their relationship with Ms. E this persistent contact was.

Ms. E consistently expressed fears for her personal safety if it ever became known that she was providing information, even threatening suicide if forced to testify, for fear that her children would be murdered. She knew the Sikh community well and thus knew about the potential risk to herself. Justice Josephson concluded that Ms. E’s actions were consistent with a belief that the “...threat was and remains real.”¹²⁵³ Yet, the RCMP did not always take Ms. E’s fears seriously.

In 1990, the RCMP concluded that Ms. E was more concerned about her alleged affair with Bagri becoming public than actually afraid for her safety. The officers decided not to discuss source witness protection.¹²⁵⁴ Blachford explained that it would have been problematic to offer protective measures to Ms. E when she was changing her story:

S/SGT. BLACHFORD: Well, certainly when I met her she certainly made some significant changes to her evidence that caused me concern. In hindsight, to go back and offer her now – offer her protection and try and get her evidence back onboard, I’m not sure if that’s –

MR. BOXALL: Right.

S/SGT. BLACHFORD: You know, there’s a fine line in there. Again, it’s case by case.¹²⁵⁵

He added that it was important to get Ms. E’s evidence before promising her the “benefit” of source witness protection measures:

MR. BOXALL: And were her fears in that regard ever addressed?

S/SGT. BLACHFORD: In terms of source witness protection, is that where you’re –

MR. BOXALL: Or – yes.

S/SGT. BLACHFORD: Not in – not in my time with her.

MR. BOXALL: Is there any reason why not?

¹²⁵³ *R. v. Malik and Bagri*, 2004 BCSC 299 at para. 102.

¹²⁵⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7771, 7836.

¹²⁵⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7837.

S/SGT. BLACHFORD: Well, one of the key factors is before you start offering a witness incentives, I think you want to get their evidence.

I think the view of the court certainly is how much are you promising a witness and that starts to weigh on their evidence and it can be viewed. Certainly, that was a huge problem on Air India, some of the witnesses that we had and the arrangements that were made.¹²⁵⁶

In subsequent years, the various RCMP officers who dealt with Ms. E seldom mentioned what the RCMP could do to protect her. She was rarely encouraged to voice her concerns. When she did, she received little response. In 1992, Maile made a general statement indicating that threats against Ms. E's family in Canada would receive the RCMP's "immediate attention," but Ms. E was also told that nothing could be done about her fears for her relatives in India, "... due to the constant random killing which appears to be [a] fact of life in that country."¹²⁵⁷

The RCMP officers were not proactive in trying to deal with possible concerns, but instead often waited for Ms. E to provide more detail or make "specific" requests. After her 1992 conversation with Maile, the first time that protective measures were specifically addressed with Ms. E was in 1998, after the murder of Tara Singh Hayer, when Best explicitly offered to provide security measures and discussed some actual options for the first time.¹²⁵⁸ Before that, Best had simply asked Ms. E to specifically identify any "concerns" that she might have.¹²⁵⁹ He explained that before he could think about the type of protection that could be afforded to Ms. E, he first needed to get a sense from her as to "...specifically what her concerns were."¹²⁶⁰

The RCMP's approach in focusing on "specifics" and in imposing an onus on Ms. E, a scared and vulnerable source, to provide details of her fears, before discussing protective options, is somewhat puzzling. The RCMP was in the best position, certainly, to engage the intelligence community to get a better understanding of the real potential threat posed to Ms. E. Yet, before preparation for the trial actually began, the RCMP took no steps to assess the risk to Ms. E.

Despite Ms. E's fears, the RCMP often approached her in a public way, which could put her at risk and increase the stress that the police visits caused her. The RCMP often visited Ms. E in her home and place of business, where employees and clients would see her being approached by the police. At times, they spoke to her within earshot of others. Further, according to Stevenson, the RCMP was actually planning to have Ms. E meet two policemen in a "coffee/doughnut shop"

1256 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7836-7837.

1257 Exhibit P-101 CAF0359.

1258 Exhibit P-101 CAF0423, p. 10.

1259 See, for example, Exhibit P-101 CAF0423, pp. 6-7.

1260 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7858.

near her residence "...on a very busy intersection," which raised "...all sorts of security concerns." Stevenson did not know whether the meeting actually took place in the end.¹²⁶¹ We do know, however, that, years later, Best approached Ms. E in public, at the grocery store, without her prior consent, and had a discussion with her about her information in the parking lot.

The RCMP's apparent lack of concern for Ms. E's real fears for her security and that of her family were not conducive to helping rebuild Ms. E's already shattered trust. Ms. E clearly considered herself to be at grave risk, but when offers of protection were finally presented to her, she ultimately maintained that she did not want protection. The RCMP then took no steps to attempt to convince her and others – like her lawyer¹²⁶² – that she was in need of protection. In fact, when Ms. E expressed anxiety about testifying and mentioned the possibility of retaining a lawyer, Best advised her that, in his opinion, this was unnecessary.¹²⁶³ Throughout the process, Ms. E also did not receive any offer of counselling to help her better deal with or express her concerns,¹²⁶⁴ nor was there any attempt to involve a female or South Asian officer.¹²⁶⁵

In the period immediately preceding Bagri's trial, the RCMP recognized the potential danger posed to Ms. E's safety and instituted patrols around her residence. When Ms. E testified, there was witness support available to her as there was to all other witnesses.¹²⁶⁶ Perhaps the RCMP would have been more successful in securing Ms. E's cooperation if she had been treated from the start with the same sensitivity and care that were extended to witnesses during and immediately before trial.

1.4 Mr. Z

Introduction

At some time between 7:30 and 8:00 AM on the morning of June 22, 1985, an East Indian man, who brought with him the "M. Singh" ticket for CP Air Flight 060 to Toronto, appeared at the CP Airlines check-in desk at Vancouver International Airport (VIA) and requested that his luggage be checked straight through to Delhi, even though his flight for the Toronto-Delhi portion of the flight was not confirmed. Ms. Jeanne ("Jeannie") Adams, the agent who was working at the CP check-in desk, told him that this was not possible. The man argued with her and Adams finally relented and marked the luggage to be interlined to Delhi. Later that morning an unidentified male, whose ticket was issued for "L. Singh," showed up at the CP Airlines check-in desk for Flight 003 from Vancouver to Tokyo. The agent checked in his baggage without issue. Neither M. Singh nor L. Singh boarded their flights.¹²⁶⁷

1261 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7706.

1262 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7908.

1263 Exhibit P-101 CAF0395, p. 97.

1264 Testimony of Douglas Best, vol. 63, October 17, 2007, p. 7910.

1265 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7827-7828.

1266 Testimony of Douglas Best, vol. 63, October 17, 2007, pp. 7891, 7915-7916.

1267 Exhibit D-1: Dossier 1, "Background and Summary of the Facts," p. 6; Exhibit P-101 CAF0160, p. 34.

In 1986, Mr. Z provided information to both CSIS and the RCMP which purported to identify the individuals responsible for checking in the luggage at Vancouver International Airport. Despite CSIS's assessment that there was a "... high probability that this information [was] accurate,"¹²⁶⁸ the RCMP ultimately concluded that the individuals identified had no connection to the bombing (see Section 2.3.2 (Post-bombing), Mr. Z). However, the manner in which this information first surfaced and was then shared within the RCMP, and between CSIS and the RCMP once again, illustrates the challenges posed when CSIS learns of important criminal intelligence through sources who may be reluctant to deal with the RCMP. Moreover, the Mr. Z incident raises the issue of how the RCMP's internal information management problems posed challenges in terms of the cooperation between CSIS and the RCMP.

June 1986: Mr. Z Provides Information to RCMP Handlers

In 1986, Cpl. Robert Solvason and Cst. Laurie MacDonell were investigators in the RCMP National Criminal Intelligence Section (NCIS) in Surrey, BC. Solvason had previously been seconded to the Air India Task Force and was released back to Surrey NCIS to work on the *Indo-Canadian Times* investigation in early 1986. The focus of the work in Surrey was on criminal acts that had taken place in the community, rather than on gaining an understanding of, or investigating, the broader national and international implications of Sikh extremism – this was the mandate of the Task Force out of E Division. The purpose of the criminal intelligence work was to gather intelligence to establish enough grounds to lay a criminal charge and to develop witnesses in aid of criminal investigations. However, Solvason had extensive experience and abilities in developing community contacts and sources, and he and MacDonell worked pro-actively to develop sources, with the result that the Surrey NCIS unit was able to develop important contacts within the Sikh community, who provided insight in terms of who the major players were.¹²⁶⁹ Some of these individuals also provided these investigators with information of central significance to the Air India Task Force's investigation. One such contact was Mr. Z, who was a member of the Sikh community.¹²⁷⁰

On June 15, 1986, during a source debriefing with his RCMP handlers, Mr. Z provided information that he had heard a rumour that two individuals associated with Ajaib Singh Bagri were involved in the Air India disaster. One of the individuals was connected to Bagri, and he and another relative could be the individuals who delivered the luggage to the airport.¹²⁷¹ In October 1986, Solvason and MacDonell met again with Mr. Z, who provided further information about the luggage scenario. He advised of information he had received from another individual about two Sikhs he identified as being responsible for bringing the Air India/Narita explosives to the airport.¹²⁷²

1268 Exhibit P-101 CAF0499, p. 1.

1269 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9609-9613, 9616-9617.

1270 Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9409.

1271 Exhibit P-101 CAF0446, p. 1.

1272 Exhibit P-290, Admission A.

October 1986: Mr. Z Provides Similar Information to CSIS

Neil Eshleman, who was a specialist in the area of source handling and had considerable experience with CT human sources, had also, independently, developed a relationship with Mr. Z,¹²⁷³ a source whom CSIS believed to be reliable.¹²⁷⁴

On October 12, 1986, Mr. Z contacted Eshleman and advised that two Sikhs had assisted Ajaib Singh Bagri and Talwinder Singh Parmar by actually checking in the luggage containing the bombs at the CP Air counter.¹²⁷⁵ According to Mr. Z, Bagri and Parmar had been waiting outside in the Vancouver International Airport parking lot at the time. Mr. Z was unable to identify the Sikhs at that time.

On October 16, 1986, Mr. Z told CSIS the identities of the two Sikhs who were responsible for checking in the luggage. One of the two individuals had a connection to Ajaib Singh Bagri.¹²⁷⁶ Mr. Z also indicated that he had not previously divulged this information to the RCMP or to CSIS. Mr. Z indicated that he had obtained his information about these events from another person, whom he did not identify to CSIS at that time. The details of the information that Mr. Z had disclosed were reported by Eshleman in internal CSIS correspondence. In his report, Eshleman reviewed information already on file about the booking of the tickets and the check-in of the suspect bags, and stated that, given these facts, "...one can understand why after 15 months, information from a source, implicating an individual named [redacted] in the Air India/Narita conspiracy would pique our interest."¹²⁷⁷

While the purported involvement of these individuals was based solely on information derived from an individual whose identity had not been revealed by Mr. Z at that time, in relation to one of the named individuals, Eshleman wrote that "...taking the allegation of his involvement into consideration along with his confirmed connection with Ajaib Bagri, and then viewing this with the knowledge that [redacted] I believe is enough to start a very thorough investigation of this individual." Through further inquiries, CSIS was able to confirm that both of the identified Sikhs "...are connected to at least Ajaib Bagri." BC Region had not yet had the opportunity to verify whether these individuals had connections to Parmar or to Reyat, the other "prime suspects."¹²⁷⁸ Eshleman speculated that it was possible that Surjan Singh Gill backed out of his assignment to take the luggage to the airport, leaving Bagri responsible for this task.¹²⁷⁹ Bagri may have therefore recruited these two individuals to assist him. Despite its obvious criminal nature and importance, Eshleman felt that it was preferable that this information not be passed to the RCMP right away and rather be forwarded in "due course," after a more complete analysis was completed.¹²⁸⁰

¹²⁷³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376, 9409.

¹²⁷⁴ Exhibit P-101 CAA0506.

¹²⁷⁵ Exhibit P-101 CAA0506.

¹²⁷⁶ Exhibit P-290, Admission B.

¹²⁷⁷ Exhibit P-101 CAA0506, p. 4.

¹²⁷⁸ Exhibit P-101 CAA0506, pp. 4-5.

¹²⁷⁹ See Section 1.2 (Post-bombing), Tara Singh Hayer.

¹²⁸⁰ Exhibit P-101 CAA0506, p. 5.

In his testimony Eshleman explained that the intention at this point was for CSIS to spend some time with the information, to analyze it and to try to corroborate it and then pass it to the RCMP. According to him, there was "...no intention of delay that would cause concern in passing information to them," but rather CSIS wanted to "...add some perspective and analysis" rather than simply passing raw data.¹²⁸¹

Mervin Grierson, Chief CT, and Ken Osborne, DDG Ops, of the CSIS BC Region, agreed with Eshleman's evaluation and proposed course of action. They felt that, once "fleshed out," this information could be of "...major significance to the Air India investigation." They echoed Eshleman's hesitancy to pass on the information right away, indicating that, since the information is "not perishable," it would be preferable for CSIS to further investigate these leads prior to any dissemination taking place. It was felt that such action would "...ensure that our avenues of investigation are not jeopardized before we have the opportunity to fully explore same."¹²⁸²

When he testified at this Inquiry, Grierson was asked what he was thinking at this time. He replied:

Well, it's the same issue that we have discussed here ... that if we disseminate this information immediately, we're going to be asked for the identity of Mr. Z. We're going to be asked for all the collateral that goes with interviewing this person and full disclosure and what we're basically saying is – there's no immediacy in terms of the threat. We should try to flesh it out and ensure that we don't lose this. Like in other words, these things are just reoccurring.

...

And if full disclosure takes place, then there's this issue about identity and sources, evidentiary and – it's just a continuum.¹²⁸³

He went on to explain that CSIS was not only trying to assist the Air India investigation, but also to fulfil its own "long-term intelligence requirements." In that vein, if CSIS could flesh out the criminal intelligence and not lose "the asset," then it could continue to fulfill both these functions, but "...as soon as we disclose it, we lose."¹²⁸⁴

On October 21, 1986, Eshleman and J. Richard ("Dick") Redfern of CSIS interviewed the person whom Mr. Z had identified as having provided the information about the two Sikhs. However, this person did not identify the two Sikhs as being involved and, in fact, would not acknowledge knowing these two individuals. This person did say that he was presently in touch with an unidentified Sikh

1281 Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9411.

1282 Exhibit P-101 CAA0506, p. 6.

1283 Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9497.

1284 Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9497-9498.

who was involved in the Air India crash and that he might be in a position to confirm this fact. However he was adamant that he would not talk to the RCMP or in any way put himself in a position where he would be compelled to appear in court.¹²⁸⁵

On October 24, 1986, CSIS received a request from Les Hammet of E Division indicating an intention on their part to conduct interviews in Kamloops with Ajaib Singh Bagri, among others. The RCMP asked if their enquiries in that town would impinge on any initiatives that were ongoing for CSIS in that area. CSIS informed the RCMP locally that it would prefer the RCMP's Kamloops interviews to be delayed, though no specific explanation was provided. The RCMP agreed to postpone its interviews.¹²⁸⁶ The next contact that the RCMP had from CSIS in relation to this issue was over three weeks later.¹²⁸⁷

On November 18th, CSIS HQ initiated a meeting with representatives from RCMP HQ and provided a briefing on the recent information developed through Mr. Z.¹²⁸⁸ The meeting took place at CSIS HQ and a number of issues related to Sikh extremism were discussed. James ("Jim") Warren, the DG CT at headquarters, opened the discussion with a number of concerns that CSIS had, including the identification of "human" sources in RCMP reports (CSIS preferred the term "sensitive" sources) and the "free lance activity" by RCMP investigators who were "...going beyond normal enquiries without consultation." The RCMP agreed that appropriate caveats and adjustments would be made by the RCMP as well as "...greater consultation between services to avoid any conflicts." Warren then stated that CSIS had received information that the two Sikhs who checked the bags at VIA had been tentatively identified. At this time, CSIS provided the names of three individuals who might be responsible. Further particulars concerning how CSIS obtained this information would be provided to the RCMP via telex.¹²⁸⁹ CSIS requested that the RCMP allow them to continue their intelligence operation. C/Supt. Norman Belanger agreed and added that there were three main objectives:

1. [redacted]
2. What can the RCMP do to shore up CSIS intelligence probe?
3. To penetrate the conspiracy these two individuals will have to be confronted some time down the road.¹²⁹⁰

While only the information about the individuals who were possibly responsible was disclosed to the RCMP at this time without identification of the source,¹²⁹¹ the RCMP concluded that the information was probably coming through Mr. Z. RCMP HQ wrote to E Division and instructed it to "...compare your notes and CSIS notes on a peripheral source [Mr. Z]."¹²⁹²

1285 Exhibit P-101 CAB0689(i), pp. 1-2.

1286 Exhibit P-101 CAB0689(i), p. 2.

1287 Exhibit P-101 CAA0512(i).

1288 Exhibit P-101 CAA0509(i).

1289 Exhibit P-101 CAF0726, pp. 1-2.

1290 Exhibit P-101 CAF0726, pp. 2-3.

1291 Exhibit P-101 CAA0509(i); Final Submissions of the Attorney General of Canada, Vol. I, para. 252.

1292 Exhibit P-101 CAA0509(i).

The following day, RCMP HQ sent a telex to the E Division National Security Offences Task Force (NSOTF), to the attention of Supt. Les Holmes, indicating that CSIS had disclosed to the RCMP the identity of the two Sikhs who had checked in the luggage and that the information was “of such importance” that a full briefing would be provided by CSIS BC region at the Top Secret level. Headquarters went on to direct E Division that it was “...necessary to allow CSIS to pursue their intelligence operation before a full criminal investigation was undertaken by E/NSOTF (E Division/National Security Offences Task Force).”¹²⁹³

The following week, on November 25, 1986, a meeting was held between the RCMP and CSIS at E Division Headquarters in Vancouver. Attendees included RCMP members A/Comm. Donald Wilson, C/Supt. Gordon Tomalty, Supt. Les Holmes and Insp. John Hoadley, and CSIS members Warren, Claxton, Grierson, Redfern and Eshleman. The purpose of the meeting was to “...relay the agreements which were made between the RCMP and CSIS at Headquarters to establish a coordinated plan for the joint investigation of the new lead.”¹²⁹⁴

According to CSIS’s account of the meeting, Warren opened up the meeting by divulging the names of the two individuals believed to be responsible for personally checking in the luggage at the CP Air counter on June 22nd. He added that the lead opens “...new avenues to the RCMP’s investigation” and that the matter must be “handled delicately.” He indicated to the RCMP that this new information was coming to CSIS from Mr. Z. Mr. Z had learned his information through another individual, who was said to be “very vulnerable,” and required “...careful handling in order to achieve the maximum product.”¹²⁹⁵

CSIS informed the RCMP that it was in the process of doing an in-depth analysis of the information in its possession which, when complete, would be shared with the RCMP, and that any pertinent information developed would also be shared with the RCMP. During the meeting, the RCMP did not indicate having prior knowledge of the two Sikhs who checked in the luggage, but did indicate a possible awareness of the location of the CSIS source and a possible knowledge of the source’s identity and the identity of the individual from whom Mr. Z obtained his information.¹²⁹⁶

With respect to the RCMP possibly knowing the identity of the CSIS contact, CSIS stated that the important issue was that the contact not be disturbed. The RCMP agreed that “...absolutely no tampering should take place due to the delicate situation,” and that if it did, the “...small trickle of information would dry up.”¹²⁹⁷ According to Eshleman, Mr. Z was in a “very vulnerable position” and both organizations appreciated that fact.¹²⁹⁸

It was agreed that CSIS would take the “lead role” in order to develop the required intelligence, since it was directly involved in handling the human contact who

1293 Exhibit P-101 CAA0509(i).

1294 Exhibit P-101 CAA0510(i).

1295 Exhibit P-101 CAA0510(i), p. 1.

1296 Exhibit P-101 CAB0689(i), p. 2.

1297 Exhibit P-101 CAA0510(i), p. 2.

1298 Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9416.

was providing new information on Air India.¹²⁹⁹ Warren also invited the RCMP to access CSIS's Ottawa data bank on the RCMP's names, incidents, or other points of interest. An internal RCMP record of this meeting states that this proposal would "...be reviewed by the Task Force."¹³⁰⁰

There was also discussion, largely between Claxton and Insp. Hoadley, of the "...question of joint liaison officers." This suggestion was felt by Hoadley to have been "somewhat precipitated" by the RCMP's informing CSIS on October 24th that they were going to "move in" on interviews in the area in which CSIS maintained an interest and that "...it is obvious that we are getting close to their source, whose identity they are protecting. This latter arrangement is still being negotiated."¹³⁰¹

There was further agreement that close coordination between the RCMP and CSIS would take place, and a proposal was made that a CSIS member who was knowledgeable about this lead would work "hand in hand" with the RCMP, and that the RCMP would prepare the "necessary ground work" to act on the CSIS information. These steps would be a "...safeguard preventing overlaps which would in turn jeopardize this new incoming information." It was even suggested by Holmes that Solvason, the RCMP handler for Mr. Z, did not have to know about this latest lead.¹³⁰² It would seem that Holmes was unaware at the time that Solvason had, in fact, developed essentially the same information from Mr. Z – the same source.

From Grierson's perspective, it was "significant" that Holmes offered to keep this information from the RCMP handler. This suggestion was a "very significant departure" from the way the RCMP normally operated. It meant that when that information went to the NCIS unit, Solvason would know the investigative lead, but not where it came from. This was important for CSIS because it would allow CSIS to "flesh" out the information.¹³⁰³

When asked about the significance of having someone like Warren attend an investigative operational meeting such as this, Grierson commented that this was not something that happened routinely, but did happen on an "irregular basis." His feeling was that having someone from HQ come out to the field allowed situations to be addressed "...from a national perspective in support of our efforts in the Air India investigation." Also, since Warren had personal familiarity with many senior managers in the RCMP, that it would be beneficial "...in terms of exploring these opportunities and ensuring that we come to some consensus to fully exploit this without getting into the usual problems." This allowed for the possibility of making policy decisions that "...may be things we wouldn't have done before."¹³⁰⁴

Coming out of this meeting, the intention was that Eshleman would continue to handle Mr. Z, and that Mr. Z's information would be available to both agencies.

¹²⁹⁹ Exhibit P-101 CAA0510(i), p. 2.

¹³⁰⁰ Exhibit P-101 CAF0447.

¹³⁰¹ Exhibit P-101 CAF0447, pp. 1-2.

¹³⁰² Exhibit P-101 CAA0510(i), p. 2.

¹³⁰³ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9501.

¹³⁰⁴ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9498-9499, 9511-9512.

However, despite what appeared to be an ideal plan – at least from CSIS’s perspective – things did not go according to that plan.

RCMP Reports Back about CSIS Information – Parallel Investigations Discovered

While management of both agencies recognized the risk that “overlaps” could pose to the “new incoming information,”¹³⁰⁵ the unfortunate reality was that this overlap had been occurring on the ground, undetected, for some time.

After learning of CSIS’s information about the two Sikhs who had checked in the luggage, Hoadley made subsequent inquiries with Task Force investigators. It was through these inquiries that he learned that the RCMP was, in fact, already aware of the two individuals in question and had been for some time – as demonstrated by a June 17, 1986, report from the Surrey detachment (likely the original source debriefing report), by an internal Task Force document from September 19, 1986, as well as by the subsequent source debriefing in early October, 1986.¹³⁰⁶

On December 2, 1986, Hoadley initiated a meeting with Claxton, during which CSIS was advised that the identities of the two Sikhs who had checked in the luggage was already known to the RCMP, that the RCMP was currently investigating this aspect and that the information was developed by Solvason in Surrey from Mr. Z. Claxton was informed that this information had already been passed to the CSIS BC Region, referring to a September 10, 1986 report by Sgt. Robert Wall that had been made available to CSIS BC Region and subsequently to CSIS HQ. However, CSIS took issue with this assertion, stating that the information contained in Wall’s report did not make CSIS aware of the “...full extent of the RCMP investigation” nor did it clarify the RCMP interest in these two individuals. CSIS DDG OPS Osborne and the A/Chief, CT wrote that the RCMP “...were conducting this aspect of their investigation parallel to ours and CSIS BC Region was not cognizant of it.”¹³⁰⁷ When asked about his view on the decision that had originally been made by RCMP Headquarters to permit CSIS to take control of this lead, Wall was unable to think of any possible rationale for that decision.¹³⁰⁸

On December 3, 1986, John Stevenson, CSIS BC Region, met with Wall and Cpl. K. Schmidt at E Division and discussed these recent developments.¹³⁰⁹ In his testimony, Wall recalled the members of CSIS showing up at his office and being “accusatory” toward Wall and the RCMP for not having earlier revealed the nature of the investigation to CSIS, particularly in light of the fact that, at the regional meeting, CSIS was told that it was going to take the lead. As far as Wall could recall, the meeting ended with the understanding that the RCMP would continue with its own investigation of this lead.¹³¹⁰

1305 Exhibit P-101 CAA0510(i), p. 2.

1306 Exhibit P-101 CAA0512(i).

1307 Exhibit P-101 CAB0689(i), p. 3.

1308 Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9722.

1309 Exhibit P-101 CAB0689(i), p. 3.

1310 Testimony of Robert Wall, vol. 77, November 16, 2007, pp. 9724-9725.

Wall explained to CSIS that he had one man investigating the issue and agreed to coordinate his unit's activities in this regard with those of CSIS. Osborne and the A/Chief, CT CSIS BC Region, did not interpret the RCMP's withholding of information as intentional and considered this to be a case where "...the left hand was not totally aware of what the right hand was doing." Claxton commented that, while he similarly did not view this confusion as a deliberate attempt to deceive CSIS, he would have expected the RCMP to "...discuss such findings and could have readily compared notes on [redacted] speculation." It was felt that this "dilemma" could have been avoided if the Task Force investigators had been involved in the November 25th meeting about this issue.¹³¹¹

It seems that the RCMP continued to experience internal difficulties in sorting out how this information came to be developed. That same day, in a "secret" December 3, 1986 "overview report" produced by RCMP HQ on "Project Colossal,"¹³¹² it was reported that "...CSIS have supplied information which may lead to the identification of two Sikhs who checked baggage containing explosives at Vancouver International Airport." The report indicates that the lead is "extremely sensitive," and thus "...no dissemination is permitted beyond addressees."¹³¹³ It appears that, despite the fact that this information was, in fact, first developed by the RCMP, this connection continued to remain unrecognized by those responsible for creating the very summaries that were meant to keep HQ and investigators in the various Task Forces aware of important developments.¹³¹⁴

CSIS Reports its Mr. Z Information to the Solicitor General

Still positive about the possibilities raised by the Mr. Z information, CSIS was eager to report on the information it had developed. On December 19, 1986, CSIS Director Ted Finn sent a letter to the Solicitor General of Canada, the Honourable James Kelleher.¹³¹⁵ Finn provided an update about the Mr. Z information, indicating that the individuals identified by Mr. Z as having checked in the luggage had been established by CSIS as having "...links to the main suspects in the Air India disaster." In CSIS's view, there was a "...high probability that this information is accurate." Finn noted that the "...RCMP was fully apprised, by the Service, of this information," first at the Headquarters level on November 18, 1986, and then at the E Division level on November 25, 1986.¹³¹⁶

1311 Exhibit P-101 CAB0689(i), pp. 3-4.

1312 The code name for RCMP investigations of Sikh extremist conspiracies including the Air India disaster investigation.

1313 Exhibit P-101 CAB0688(i), p. 4.

1314 Exhibit P-101 CAF0504, p. 2. In early 1986, as part of RCMP HQ initiatives in relation to Project Colossal, it undertook to produce an Overview Report for dissemination to the Divisions every 48 hours. Division Task Forces were required to provide updates on their investigative activities to HQ every 24 hours. It appears that RCMP NSOTF Overview Reports were routinely provided to CSIS as well as to the Divisions. See for example, Exhibit P-101 CAB0701, CAB0730(i).

1315 Exhibit P-101 CAF0449.

1316 Exhibit P-101 CAF0499, pp. 1-3.

In January 1987, CSIS conducted file research in British Columbia as part of its continuing attempt to identify the perpetrators of the alleged bombing of Air India Flight 182. At that time, it was discovered that there were calls, including in June 1985, from the home of Talwinder Singh Parmar to the home of one of the two Sikhs identified by Mr. Z as being responsible for delivering the bags. This meant that there were now links established between this individual and both Bagri and Parmar – two of the RCMP’s main suspects in the Air India investigation. CSIS’s Chief of Counter Terrorism advised the RCMP Liaison Officer, Insp. John L’Abbe, of this information on February 17, 1987, and stated that the calls from Parmar provided a reinforcing link between the organizer and the family of the men identified by the CSIS source as the delivery people.¹³¹⁷

A few weeks later, CSIS produced a comprehensive analytical report on the bombing of Air India Flight 182, which was the result of a “...thorough review of information in its possession” from CSIS sources and leads from police inquiries. The report sets out a chronology of events that led up to the bombing, and includes CSIS’s theory of the case and a list of “weakest links” in the conspiracy.¹³¹⁸ CSIS reported that, according to Mr. Z, it was probably Bagri who made the arrangements to have the bombs brought to the airport and checked in at Vancouver airport. Mr. Z indicated that Bagri enlisted the services of the two Sikhs and, in fact, Parmar and Bagri remained in the parking lot of the airport while the baggage check was conducted. The report states that “...this seems entirely plausible when weighed against supporting data which we have developed.”¹³¹⁹

CSIS Forced to Terminate Contact with Mr. Z

Mr. Z was “significant” in terms of his “long-term potential” for CSIS. He was important not only for the information he could provide in relation to Air India, but also in relation to Sikh extremism more generally. Eshleman testified however, that despite a seemingly ideal agreement that had been made between the RCMP and CSIS in late November (where it was decided that Mr. Z’s information was to be developed jointly, with CSIS taking the lead), CSIS terminated its relationship with Mr. Z shortly afterwards and turned over control of this source to the RCMP.¹³²⁰

The impact of losing a source like Mr. Z was that it prevented CSIS from “... developing people that have access to our target area in the Sikh community.” If “...we lose that person ... we lose that access.”¹³²¹ As CSIS did not have a “great number” of individuals providing valuable information to the Service, when it lost one it was “frustrating” for investigators.¹³²² For Eshleman, this was just another “...example of CSIS losing a source to another organization.” It was felt

1317 Exhibit P-290, Admission D.

1318 Exhibit P-101 CAB0717(i).

1319 Exhibit P-101 CAB0717(i), p. 14.

1320 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9391, 9416-9417.

1321 Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9502.

1322 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9416-9417.

that the "...Air India investigation took preceden[ce] over everything," including the "...bigger picture of Sikh extremism." While CSIS's views "...perhaps were listened to ... they certainly didn't prevail in the debate."¹³²³

Grierson's view was that:

Mr. Z was in a position where he had access, very good access to the community. So he represented good potential. How that would have developed had we had the opportunity to work with it remains unknown.¹³²⁴

Conclusion

The Mr. Z story is an example of the problems that can arise in national security investigations where there are deficiencies in the centralization of the investigation.¹³²⁵ Once CSIS had decided to brief RCMP HQ about the Mr. Z information it had uncovered, RCMP management, despite its best efforts to reach a mutually agreeable solution with CSIS, was ineffective, as it was unaware that the RCMP had already developed the Mr. Z information independently and was currently pursuing this lead. The failure of both agencies to keep each other informed in a timely way meant that parallel investigations were allowed to proceed for some time before they were detected. Also, woven into the fabric of the Mr. Z narrative is a thread of mistrust between the two agencies, mostly at the lower management and investigator level. CSIS hesitated in passing its information to the RCMP, having already experienced the problems that could be caused for its own investigations by sharing information with the RCMP. CSIS was very optimistic about the Mr. Z information, reporting to the Solicitor General that there was a "...high probability that this information is accurate."¹³²⁶ However, when the RCMP finally began to follow up on the Mr. Z information,¹³²⁷ it appeared to be eager to dismiss this lead, which ultimately "...dissolved into another dead end."¹³²⁸ The dissolution of yet another promising lead, and the loss of yet another valuable source, could only have served to further fuel the climate of mistrust and resentment that had been brewing between the two agencies.

1.5 Ms. D

Introduction

Ms. D was hired by Ripudaman Singh Malik as the Pre-School Supervisor of the Khalsa School in Surrey BC, in September 1992. She was a Sikh by birth, who

¹³²³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9416.

¹³²⁴ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9500-9502.

¹³²⁵ See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force.

¹³²⁶ Exhibit P-101 CAF0499, p. 1.

¹³²⁷ See Section 2.3.2 (Post-bombing), Mr. Z.

¹³²⁸ Final Submissions of the Attorney General of Canada, Vol. I, para. 259.

was married to a Hindu man and had two children.¹³²⁹ This school, although geared towards religious teachings, allowed Ms. D to enter into a "...non-Sikh employment contract," which permitted her to wear dresses and to have short hair.¹³³⁰

Ms. D became involved in the Air India investigation in 1997, speaking first to CSIS for a short period of time and then to the RCMP Air India Task Force. She was the Crown's main witness in the prosecution against Malik for the Air India and Narita bombings. Her dealings with the RCMP and CSIS illustrate once again some of the cooperation issues that arose when individuals provided information to both agencies. In this case, CSIS rapidly turned Ms. D over to the RCMP, but nevertheless failed to retain the notes made during its initial interviews with her. The manner in which the RCMP addressed Ms. D's security concerns – providing protection as needed, and then rapidly moving Ms. D into the Witness Protection Program – represents a sharp contrast to the treatment and protection of Ms. E, who had demonstrated less willingness than Ms. D to cooperate with the RCMP.

Despite the RCMP's willingness to protect Ms. D, it was discovered in this Inquiry that an error led to the release of her identity by the RCMP. This error may have been related to the involvement of multiple RCMP units with Ms. D, and it led to her entry into the Witness Protection Program much earlier than would otherwise have been necessary. This was of concern to CSIS, and it obviously had a significant impact on Ms. D's life. That impact was not necessarily fully appreciated by the RCMP.

Ms. D's Information

Ms. D testified at the trial of Malik and Bagri that while working at the Khalsa School, she became close to Malik. She worked long hours and assisted him in many matters involving not only the Pre-school but also the main Khalsa School. Eventually, she began to accompany him to numerous political events to which his wife was not invited.¹³³¹ She explained that her relationship with Malik ultimately became very close and intimate,¹³³² and that, as a result, he made a number of admissions to her.

Ms. D testified that in May 1996, Malik brought up the Air India bombing during a heated discussion about a student at the Khalsa School who had attempted suicide.¹³³³ At that time, Ms. D said that Malik first told her "...if one child dies for Sikhism, so what?" and then said "...[in] 1982, 328 people died; what did anyone

¹³²⁹ Ms. D is the pseudonym adopted by Justice Josephson for this woman who was a witness at the Air India Trial. Her identity is protected by a permanent publication ban, which is mentioned at the beginning of *R. v. Malik and Bagri*, 2005 BCSC 350.

¹³³⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 275-276.

¹³³¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 271.

¹³³² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 276, 281-282. Ms. D's description of her relationship with Malik was questioned at trial, and not entirely accepted by the trial judge. Her claim was that Malik professed his love for her in 1995, that she had similar feelings which she did not express, and that the romantic aspect of their relationship developed no further.

¹³³³ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 305-309.

do? ... People still remember Khalistan." Later in the discussion, Ms. D reported that Malik added: "...we had Air India crashed" and "...nobody, I mean nobody can do anything. It's all for Sikhism. Cudail [the student who had attempted suicide] won't get anywhere. Ministry won't listen; no one will."¹³³⁴

Ms. D also testified that in March 1997, Malik revealed intimate details of the roles that he and others had played in the Air India conspiracy, explaining that the Air India and Narita bombings were related to the pro-Khalistan movement, that each person had been assigned a task and that Malik had been generally responsible for overseeing them. According to Ms. D's testimony, Malik also indicated at that time that he had personally booked and paid for the airline tickets later used to check in the suitcases carrying the bombs on board the planes.¹³³⁵ Ms. D explained that Malik had made those admissions after she confronted him with a newspaper article (which Mrs. Reyat had translated for her from Punjabi to English) that revealed that a number of arrests were imminent in the Air India investigation, and that referred to Malik as a suspect.¹³³⁶ Ms. D added that, after the discussion, Malik told her not to repeat to anyone what she had learned, or even to acknowledge that she knew anything. She explained that Malik warned her that people would know that the information came from him, and that it would get her into a lot of trouble, adding that he could protect her if he was there, but that she should remember that he could not always protect her.¹³³⁷

Ms. D also reported that in April 1997, she overheard a conversation between Malik and Raminder Singh Bhandher ("Mindy Bhandher") in the trustee's office at the Khalsa School. The conversation related to a meeting at which Malik, Bagri, Parmar and one of their associates, Avtar Singh Narwal, had been looking at a diagram of an aircraft. Malik later admitted to Ms. D that the meeting had taken place before the Air India bombing, and that the *Anashka* (plan or drawing) they were looking at was "...about the Air India that fell." Narwal's son had come in during the meeting and had since been telling others about what he had seen. Ms. D explained that, in the conversation she overheard, Malik was asking why the boy had not been stopped from revealing this information.¹³³⁸

Finally, Ms. D testified that Malik told her about some meetings he had attended prior to the bombing, including one in Calgary, where the progress of the Air India plan was discussed, and one in Seattle, where Malik's spiritual leader blessed the Air India plot. She added that Malik admitted to having asked Mr. B, another witness at trial, to carry a suitcase for him onto an Air India plane.¹³³⁹

¹³³⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 308. This account is also detailed, in a similar fashion, in Kim Bolan, *Loss of Faith: How the Air-India Bombers Got Away With Murder* (Toronto: McClelland & Stewart Ltd., 2005), pp. 152-153 [Bolan, *Loss of Faith*].

¹³³⁵ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 285, 287, 291-292.

¹³³⁶ Ms. D testified that the "Newspaper Confession" took place on one of the following dates: March 28, 1997, March 31, 1997 or April 2, 1997.

¹³³⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 303.

¹³³⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 311.

¹³³⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 312-314.

Initial Contacts with CSIS

Ms. D testified that she initially contacted CSIS to find out about the origin of persistent rumours that she was working for CSIS and providing the Service with information about Malik.¹³⁴⁰ This followed a progressive deterioration of her relations with Malik and the Khalsa School administration.

In May 1996, Ms. D filed a complaint with the British Columbia Human Rights Commission against the Khalsa School administration because of comments made by a school trustee, Aniljit Singh Uppal, about her manner of dress, and because she was being asked to sign a Sikh employment contract. She testified at trial that Malik convinced her to withdraw her complaint on the same day that it was filed. Then, in August 1997, Ms. D's relations with Malik became strained because she had a dispute with Uppal, and because of persistent rumours that she was a CSIS informer and had been recording her conversations with Malik.¹³⁴¹

Ms. D testified that, on August 28, 1997, one of the school's officials, Balwant Bhandher, pushed her onto a chair and told her that she had to provide a written "voluntary" resignation to the school. She said that he warned her not to go to the media or to the police and that he added that Malik had the power to have the RCMP arrest her. Ms. D stated that she called Malik later that evening and asked why she was being accused of being a spy. She explained that he responded that he had been told that she had been recording their conversations, that he was afraid of her and that he did not want her at the Khalsa School, though she did not have to resign from the Pre-school. She testified that he asked her to write a letter stating that she would refrain from entering the Khalsa School, and that she provided him with such a letter in early September.¹³⁴²

Ms. D testified that, after she complied with Malik's request and resigned from the main school, he began to ask for her resignation from the Pre-school as well. She stated that the Khalsa School was attempting to cut all ties with her between August and October 1997. In September 1997, she contacted the British Columbia Human Rights Commission to request complaint forms.¹³⁴³

Ms. D testified that, in September 1997, she told a friend that she was tired of the rumours about her being a CSIS spy, and that she was willing to approach CSIS herself to ask about the rumours. Her friend, who had already spoken with CSIS, provided her with the business card of CSIS agent Nicholas Rowe. She contacted him by telephone on October 15, 1997, and they agreed to meet on October 17th at a local coffee shop.¹³⁴⁴ In internal correspondence, a CSIS representative later noted that CSIS had found out that Ms. D had had a "falling out" with Malik, and that he had tried to force her to resign her position at the Khalsa School, and that this was the reason why the Service had begun speaking with her.¹³⁴⁵

¹³⁴⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 328.

¹³⁴¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 315, 317, 323-324, 327, 432, 434.

¹³⁴² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 316-318.

¹³⁴³ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 319, 325.

¹³⁴⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 328, 379.

¹³⁴⁵ Exhibit P-101 CAF0436.

On October 17, Ms. D met with Rowe as agreed. The meeting began at the coffee shop, but moved to Rowe's vehicle once he was advised that Ms. D had been the victim of threats and intimidation. Ms. D testified that, during this meeting, she asked Rowe about the rumours that she was a CSIS spy, and he told her that he would get back to her. She had no other recollection of the meeting, except that she indicated that she also told Rowe that she did not want to meet with the RCMP, as she was afraid of them. Rowe, for his part, recalled that Ms. D talked about being afraid for her safety and about having been the victim of threats and intimidation, and also mentioned being accused of informing for the Government of BC and for CSIS. The meeting was concluded with an agreement to meet again at a secure location.¹³⁴⁶

Ms. D testified at trial that, on the same day she had her meeting with Rowe, she also met with Malik, who offered her a chance to remain employed at the Pre-school, provided she follow Sikh contract rules and donated ten per cent of her income to the school. She explained that, when she refused, Malik told her that she could either resign or be laid off, and then confronted her again with accusations that she had been recording his telephone calls. Ms. D then recounted that on the morning of October 20th, Malik phoned her to tell her that he was afraid of her, that she knew too much, and that he wanted her to resign. She said that on the same day she received two threatening telephone calls from a person with a Punjabi accent, warning her that she was being watched and that she should leave Malik alone, and that, later that evening, she was followed by a van and felt that the people inside were trying to intimidate her. She testified that when she confronted Malik about these incidents, he told her that it was too bad and that she should resign.¹³⁴⁷

Ms. D then met with Rowe again on October 21st and 24th, in a hotel, for meetings which each lasted between two and two-and-a-half hours. She had little recollection of the details of these meetings. Rowe included the information he had received from Ms. D in intelligence reports he prepared after his interviews with her, and later stated that he had received a large amount of information from Ms. D during these meetings about Malik and the organizations he was involved with. Rowe explained in testimony at trial that he prepared for his meetings with Ms. D by reviewing CSIS databases and writing questions, and that he had used the meetings to gather as much information as possible from her.¹³⁴⁸

Rowe did not tape any of his interviews with Ms. D, but he explained in his testimony at trial that he took careful notes during the meetings, writing down what Ms. D said verbatim or making efforts to summarize everything she was saying. He used his notes to prepare his intelligence reports. The reports did not attempt to capture the exact words spoken by Ms. D. The vocabulary and phraseology were primarily Rowe's, and he was at times selective in terms of

¹³⁴⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 329, 373, 380.

¹³⁴⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 320-321.

¹³⁴⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 331, 374, 381, 392, 394.

the information he included in the reports, though he did endeavour to be as accurate as possible in summarizing and reporting what Ms. D had expressed to him.¹³⁴⁹

According to Rowe's reports, Ms. D provided information during the October meetings about improprieties in Malik's management of the Khalsa School including: the levying of hidden tuition fees which constituted fraud on the Ministry of Education; the misuse of government grants; attempts to defraud the unemployment insurance program by manipulating the employment status of teachers at the school; and welfare fraud by employing Reyat's wife "under the table." Ms. D also advised that Malik engaged in financial or tax fraud through the use of the Satnam Trust, and misappropriated funds from the Khalsa School account. She stated that Malik engaged in various forms of immigration fraud by issuing fake credentials to qualify for visitors' visas to Canada, and that he employed religious instructors who were in Canada illegally. She added that Malik ran a tour company, which he used to smuggle money and valuable items into India. Finally, she advised that Malik sponsored visits by fundamentalist groups, held private meetings with members of militant groups in the school, and provided funding and support for militant or terrorist activities, although, in this last case, Ms. D stated that her knowledge was based on information which was "hearsay and circumstantial."¹³⁵⁰

After the two meetings at the hotel, Ms. D and Rowe were in contact by telephone to arrange a subsequent meeting.¹³⁵¹ Before this meeting took place, a decision was made at CSIS that Ms. D had to be introduced to the RCMP.

Introduction to the RCMP

CSIS initially contemplated using Ms. D as an ongoing source, but decided by October 29, 1997, that she had to be handed over to the RCMP. Rowe wrote in his reports that the information provided by Ms. D was "...of considerable interest to the Service's investigation of the Babbar Khalsa International," but that she was also providing intimate details about substantial frauds committed by Malik, a former target of CSIS. Rowe's reports indicated that Ms. D wanted her information about Malik's criminal activities passed on to the competent authorities, that she requested to be put in contact with these authorities and that she understood that full cooperation with the RCMP might be necessary for her to "get back" at her antagonists at the Khalsa School.¹³⁵²

In subsequent correspondence, a CSIS BC Region representative, Bill Turner, explained that the Service was in the process of recruiting Ms. D as a source when it became apparent that she had "inside knowledge" of frauds and irregularities at the Khalsa School, which involved Malik.¹³⁵³ Turner explained in testimony before the Inquiry that CSIS then concluded that Ms. D's information was of little

¹³⁴⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

¹³⁵⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 394.

¹³⁵¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 382.

¹³⁵² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 382, 396.

¹³⁵³ Exhibit P-101 CAF0436; Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8331.

value to the Service, but would be of great value to the RCMP. He explained that, within a matter of weeks, CSIS passed the information over to the RCMP and made arrangements to introduce Ms. D to the RCMP.¹³⁵⁴ He noted that the RCMP found Ms. D's information to be "of good quality."¹³⁵⁵

On October 29, 1997, Rowe contacted Cpl. Doug Best of the RCMP Air India Task Force to set up a meeting to introduce Ms. D to him. Rowe testified at trial that, on the same day, he met with Ms. D "...to discuss the issue of her transfer to the RCMP." He said that Ms. D accepted this arrangement and "...seemed to recognize that she had no choice but to continue."¹³⁵⁶

On October 30, 1997, Ms. D met with Rowe and Best at a secure location. At that time, the reasons why the RCMP would take over the case were discussed with Ms. D. Best advised her that he was with the Air India Task Force, and provided her with his business card and contact numbers at the end of the meeting. According to a report that Rowe wrote in 1999, Best advised Ms. D during the meeting that her information was needed in court, and she consented to testifying. Best also explained that, if required, the RCMP could offer Ms. D financial assistance and protection for herself and her family. Rowe noted that Ms. D "...appeared to be totally at ease with Best and her circumstances."¹³⁵⁷

In her testimony at trial, Ms. D indicated that she had repeatedly told Rowe that she did not want to meet with the RCMP, and did not trust them. She stated that she was angry to find that Best was present at the October 30th meeting, that she had not "hit it off" with Best and that she had lost any interest in talking to him when he mentioned that he was with the Air India Task Force. Justice Josephson did not believe Ms. D's claims that she did not want to meet with the RCMP, and found that she had wanted her information about Malik's criminal activities to go to the police, had consented to meeting with the RCMP and had agreed to become a witness against Malik, and perhaps even an agent for the RCMP.¹³⁵⁸

After the October 30th meeting, Ms. D called Rowe once¹³⁵⁹ and then ceased her communications with him and began to have frequent discussions with the RCMP.

Ongoing Contacts with the RCMP

On November 1, 1997, Malik called Ms. D to attempt once again to secure her resignation. He called her again later that day to inform her that she was being terminated. Ms. D then contacted Best to advise that she had received harassing phone calls from Malik. She advised Best that she had no intention of accepting

¹³⁵⁴ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8331-8332.

¹³⁵⁵ Exhibit P-101 CAF0436.

¹³⁵⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 383.

¹³⁵⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 384, 403, 406.

¹³⁵⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 332, 373, 375, 722-728.

¹³⁵⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 334, 385.

her termination and that she would present herself at work on the following Monday, November 3rd. On November 2nd, she met with Best and Insp. Gary Bass at an RCMP detachment in Surrey and provided an account of her association with Malik and of her knowledge of his fraudulent business practices.¹³⁶⁰

On November 3rd, she again met with Best and a number of other RCMP officers at a local restaurant. The officers provided her with a transmitting device to carry in her purse when she attended at the Pre-school, giving her a code word to signal them if she felt threatened. When Ms. D arrived at the school, she was immediately asked to leave by Uppal. She requested written proof that she had been fired. After Uppal and Balwant Bhandher handed her a letter to that effect, she said that they began to follow her and intimidate her. Ms. D called out the code word and a team of seven officers came to the school to escort Ms. D out. Bhandher was arrested on this occasion.¹³⁶¹

Ms. D then went to the police station and provided the first in a series of formal statements to the RCMP. After that time, she had regular contact with the RCMP. She received weekly visits from Best or S/Sgt. John Schneider of the Air India Task Force, who changed the videocassettes in the security cameras that had been installed at her house. In early November 1997, she advised the RCMP about the admission Malik had made during their discussion about the student who had attempted suicide. Though during her testimony at trial she claimed not to recall it, she also continued to provide information relevant to the Air India investigation over the following months.¹³⁶² She gave information about an individual in Toronto, in an attempt to assist the police in identifying Mr. X,¹³⁶³ and about other individuals who might agree to cooperate with the RCMP.¹³⁶⁴ She provided the RCMP with pages from the journal she kept in 1996-97 in which she had recorded her meetings and conversations with Malik about Air India, as well as conversations with others which tied Malik and Bagri to the Air India bombings.¹³⁶⁵ She claimed that she had destroyed the rest of the journal to protect herself.¹³⁶⁶

In November 1997, Ms. D received the forms she had earlier ordered from the British Columbia Human Rights Commission and filed an employment discrimination complaint against the organizations overseeing the Khalsa School, which included allegations of physical and verbal harassment. In January 1998, Ms. D also commenced a civil lawsuit for wrongful dismissal, which was ultimately settled out of court for \$12,000.¹³⁶⁷

¹³⁶⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 322, 335-336, 407, 409.

¹³⁶¹ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 335-337, 376, 410-412.

¹³⁶² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 337, 363, 377, 413.

¹³⁶³ See Section 1.5 (Pre-bombing), Mr. X.

¹³⁶⁴ All of the information given by Ms. D to the RCMP is detailed at *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 414.

¹³⁶⁵ See, generally, *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 340-348, 414.

¹³⁶⁶ See, generally, *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 340. The remaining portions of the journal, which were disclosed to the accused in the Air India Trial, were the subject of legal debate in two main rulings: *R. v. Malik, Bagri and Reyat*, 2003 BCSC 231 (Ruling re Editing of the Witness's Testimony and Statements) and *R. v. Malik and Bagri*, 2003 BCSC 1387 (Ruling on the Admissibility of the Witness's Evidence Regarding her Discussions with Mrs. Reyat).

¹³⁶⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 325-326.

On January 8, 1998, Ms. D provided a statement to the RCMP Commercial Crime Unit. She also spoke to the Ministry of Education, which was auditing the Khalsa School.¹³⁶⁸

Though she provided much information to the RCMP, beginning in November 1997, Ms. D waited until March 28, 1998 to reveal her information about the detailed confession Malik was alleged to have made in March 1997 when confronted with the newspaper article. Ms. D then met with Schneider and Best on April 2nd and April 27th to provide a formal statement.¹³⁶⁹ In late July 1998, CSIS reported that the RCMP had polygraphed Ms. D about her information and that she had "...passed with flying colours." According to this report, she was to become "...one of the main witnesses at the Air India trial."¹³⁷⁰

Reporter Kim Bolan, who was in contact with Ms. D since October 1997, believed that the explanation for Ms. D's failure to reveal Malik's detailed confession when he was confronted with the newspaper article related to Ms. D's reluctance to testify. She wrote in her book about the Air India tragedy that Ms. D "...felt thrust into the camp of the police," and had difficulty trusting the RCMP investigators. She reported that Ms. D did not want to be a witness, especially in the Air India case, as she felt "...it would be a death sentence." Bolan wrote that, in February or March 1998, Ms. D asked her to consult the *Vancouver Sun's* lawyer about whether she could be forced to be a witness. Bolan explained that she then provided information about the hearsay rule that turned out to be inaccurate and that could have led Ms. D to believe that she would not have had to testify about what Malik had told her.¹³⁷¹ It was shortly after that time that Ms. D revealed to the RCMP her information about the detailed admissions she said Malik had made when he was confronted with the newspaper article.

Ms. D continued to reveal new information to the RCMP in subsequent years. In October 2000, she provided her information about the conversation she overheard (and Malik's subsequent admissions to her) about Narwal's son, and the plans for the Air India plane which was bombed. In October 2003, she mentioned for the first time the Seattle meeting where Malik's spiritual leader was alleged to have blessed the Air India plot.¹³⁷²

Threats and Intimidation

From the beginning of her dealings with the authorities, Ms. D indicated that she had been the victim of threats and intimidation and that she feared for her safety. Early on, in November 1997, the RCMP installed a video surveillance camera at her residence.¹³⁷³ Ms. D continued to receive threats after she began speaking with the RCMP.

¹³⁶⁸ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 377, 414.

¹³⁶⁹ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 338.

¹³⁷⁰ Exhibit P-101 CAF0436.

¹³⁷¹ Bolan, *Loss of Faith*, pp. 167-168, 217-218.

¹³⁷² *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 369-371.

¹³⁷³ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 377, 380, 396, 414.

On February 14, 1998, Ms. D was warned by a relative of Balwant Bhandher to be careful because Malik, Bhandher and Uppal had met and would "...try to shut her up permanently."¹³⁷⁴ Shortly thereafter, she was approached at a Sky Train station and told by a young East Indian male that Malik would "finish" her and reporter Kim Bolan. In March 1998, eggs were thrown at her house in the middle of the night, and she received a number of unsettling phone calls.¹³⁷⁵ In June 1998, Ms. D was at the shopping centre with her child when a former acquaintance from the Khalsa School approached her and warned her that she was creating a lot of problems. The individual was aware of personal information about Ms. D's child and warned her that she and her family would be severely harmed if she did not "watch it."¹³⁷⁶

In July 1998, Bolan contacted the RCMP and advised that she had received information about a "hit list," and had been told that a person from the US would come with AK-47s to take care of the hit list. Ms. D's name was reportedly included on the list, as well as the names of Tara Singh Hayer and Bolan herself. At the time, Bolan, who had heard a gun shot on her street on July 16th, reported to the RCMP that she felt that the person from the US with the AK-47s was "...already in town to carry out the hit list contract." As a result of the hit list information, an additional video surveillance camera was installed at Ms. D's residence by the RCMP.¹³⁷⁷

The Release of Ms. D's Name

In late July 1998, shortly after the information about the "hit list" was received, a newspaper article was published in Surrey concerning allegations of fraud involving Reyat's wife and the Khalsa School. An Information to Obtain a search warrant had been sworn in connection with the case by someone from the Ministry of Social Services. The Information identified Ms. D and another individual as two persons from the Khalsa School who had provided information to RCMP investigators. A reporter had obtained a copy of the document from the Court and, as a result, the published story identified Ms. D.¹³⁷⁸

The RCMP attempted to find out how Ms. D's name ended up being released in this manner. The Force contacted the appropriate members to verify whether the RCMP warrants were sealed, and whether someone from the Ministry could have provided a copy of the warrants to the reporter.¹³⁷⁹ Bill Turner of CSIS found out what had happened and reported it in an electronic message dated July 31, 1998. He explained that the Information to Obtain prepared by the RCMP Commercial Crime Section was based largely on Ms. D's information and that of the other individual. When the Information was filed in Court and the search warrant obtained, "...someone forgot to ask that the Information be sealed, and it was not, and therefore available to the public." This is how reporters were able

¹³⁷⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 352.

¹³⁷⁵ Exhibit P-101 CAF0485, pp. 1, 3.

¹³⁷⁶ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 352.

¹³⁷⁷ Exhibit P-101 CAF0485, pp. 3, 5.

¹³⁷⁸ Exhibit P-101 CAF0485, p. 6.

¹³⁷⁹ Exhibit P-101 CAF0485, p. 6.

to obtain a copy of the document identifying Ms. D. As of July 31st, Turner noted that "...some of this information has already been published and the rest of it is in the public domain."¹³⁸⁰

On the day that the news article identifying her was published, Ms. D was contacted by the RCMP and was read parts of the article. The RCMP suggested that she and her family move to a different location "for a while" at RCMP expense in order to allow the Force to "...assess the threat situation." She replied that she felt "secure enough" at home and did not want to move out at that time. The police provided additional patrols for the residences of Ms. D. and the other individual named in the news story. The following day, Ms. D advised that no problems had been encountered since the previous day, and that she still felt that moving away was not necessary.¹³⁸¹

In the next days, the investigative team consulted with the RCMP Witness Source Relocation Unit. It was determined that "...it could be necessary to move [Ms. D's] family in the next few days." The RCMP again suggested a temporary move to Ms. D for security purposes, but she was "...still reluctant to do so." The RCMP resolved to "...discuss the option with her and her family members." In the meantime, arrangements were made by the RCMP to do protective surveillance of Ms. D's residence during the evening hours. The Commercial Crime Section of the RCMP was also advised of the news article and the resulting potential danger to its witnesses in the fraud case.¹³⁸²

Four days after the news article disclosing Ms. D's name was published, the RCMP continued to provide protection for Ms. D and to attempt to convince her to move into temporary accommodations for "...safety, evaluation and assessment purposes." It was resolved that "...once she agrees to do this," appropriate members would be notified, and that, in the meantime, a threat assessment and "personal history forms" would be completed.¹³⁸³

Ms. D ultimately "agreed" to a temporary move, as suggested by the RCMP. On July 31, 1998, Turner reported that the RCMP, having "...quickly realized that their source was now in danger" as a result of the publication of her identity, had taken her and her family into "protective custody." They were "...being hidden outside of the Vancouver area," and CSIS was asked to be on alert for any threats against Ms. D. At the time, CSIS did not know how long the RCMP was planning to keep Ms. D hidden.¹³⁸⁴ By the time she testified at the Air India trial in 2003, she had still not returned to her home. She had entered the Witness Protection Program and had been moved to "...a number of temporary homes" since the summer of 1998. She testified that she had assumed that her fifth move would be permanent, but that she had then run into someone from her past and, as a result, "...had to be moved yet again."¹³⁸⁵

1380 Exhibit P-101 CAF0436.

1381 Exhibit P-101 CAF0485, p. 6.

1382 Exhibit P-101 CAF0485, pp. 6-7.

1383 Exhibit P-101 CAF0485, p. 7.

1384 Exhibit P-101 CAF0436.

1385 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 352-353.

According to Bolan's book, while entry into the Witness Protection Program was offered to Ms. D's whole family, her husband and her eldest child, who was beginning university, refused to enter. Therefore, only Ms. D's youngest son accompanied her when she was relocated.¹³⁸⁶ Ms. D was divorced by the time she testified at trial. In her testimony, she became emotional in describing how "...being in the Witness Protection Program had cost her her job, family and contact with friends." She also testified that she continued to have constant concerns about her safety and security.¹³⁸⁷ During the trial, Justice Josephson had to intervene on a number of occasions to enforce the publication ban on Ms. D's identity.¹³⁸⁸

The Impact on the RCMP/CSIS Relationship

CSIS was concerned about the RCMP's failure to seal its Information to Obtain and to protect Ms. D's identity. In his July 31, 1998 electronic message entitled "an interesting story," Turner noted that, following this error, the RCMP had advised CSIS "...that they will be much more diligent in handling CSIS sources or intelligence" in the future.¹³⁸⁹ In testimony before the Inquiry, Turner explained that it was sometimes necessary "...to re-sensitise the RCMP to this issue of the need to protect sources."¹³⁹⁰

The Impact on Ms. D and on the RCMP's Ability to Recruit Sources and Witnesses

At the Inquiry hearings, RCMP Deputy Commissioner Gary Bass, who headed the renewed Air India Task Force constituted in 1995, testified that Ms. D agreed early on to become a witness when she provided her information to the RCMP. Once the RCMP "...decided we would use her as a witness," the officers involved knew that they were "...going to end up in witness protection with this individual." However, Bass explained that this would not necessarily have been discussed with Ms. D "at that stage."¹³⁹¹ Indeed, from Ms. D's reaction to the initial RCMP suggestions that she move away, after her identity was published, it appears that this possibility had not been previously discussed.

During his testimony, Bass was uncertain whether the failure to obtain a sealing order on the Commercial Crime warrant had resulted in Ms. D needing to go into witness protection "...a good deal earlier." He recalled obtaining information about the "hit list," though he could not recall the exact dates, and felt that this probably had "...much more bearing on this witness going into witness protection" than the issue of the unsealed warrant.¹³⁹² However, the

¹³⁸⁶ Bolan, *Loss of Faith*, p. 177.

¹³⁸⁷ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 273, 353.

¹³⁸⁸ *R. v. Malik and Bagri*, ruling on February 28, 2003 (unreported); ruling on November 4, 2003 (unreported); ruling on November 6, 2003 (unreported); rulings on November 5 and 10, 2003 (unreported); ruling on November 12, 2003 (unreported).

¹³⁸⁹ Exhibit P-101 CAF0436.

¹³⁹⁰ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8331-8332.

¹³⁹¹ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11270-11271.

¹³⁹² Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11270-11271.

contemporaneous documents produced before the Inquiry show that the issue of the alleged “hit list” was already being addressed through other means, with no suggestion of moving Ms. D and her family, before Ms. D’s identity was released. In fact, another intended Air India witness, Tara Singh Hayer, was also listed as a target on the alleged “hit list” and no suggestion was made to relocate him. Rather, video surveillance was implemented at his residence, as was the case for Ms. D.¹³⁹³ Indeed, the RCMP later indicated that the “...continuous ‘rumours’ regarding the existence of a so-called ‘hit list’” had never been confirmed, despite extensive efforts to do so.¹³⁹⁴

In Ms. D’s case, it was only when her identity was published because of the unsealed warrant, and when her cooperation with the authorities was thus revealed, that the RCMP began its attempts to relocate her temporarily.¹³⁹⁵ After persisting for several days, the Force finally convinced Ms. D to move, and this temporary relocation, in fact, marked her entry into the Witness Protection Program. This was in July 1998. Malik was only arrested and charged in October 2000. Before that time, while Ms. D did receive threats as a result of her differences with Malik about the Khalsa School, there is no reason to believe that she would have needed to be moved into witness protection until her eventual appearance as a witness in the case was disclosed, something that would only have taken place after the start of the proceedings. Because the fact that she was providing information to the RCMP was revealed publicly when the Commercial Crime Information to Obtain was filed, Ms. D had to enter into the Witness Protection Program over two years earlier than would have otherwise been necessary.

Ms. D testified at trial about the disastrous impact that her participation in the Witness Protection Program had had on her life. Bolan also reported that Ms. D told her that her “...whole life is ruined”; she had lost the opportunity to watch her eldest son grow into a young man and her youngest son had lost the opportunity to be with his brother and father. Bolan wrote that Ms. D added that she would never recommend to anyone, who had not yet made that decision and still had their family, to cooperate with the authorities and risk being relocated like she was.¹³⁹⁶ Given the difficulties she endured, Ms. D would surely have felt that entering the Witness Protection Program two years in advance of the proceedings was “...a good deal earlier” than necessary, and had deprived her of the chance of perhaps living a relatively normal life during this period.

The Destruction of CSIS Notes

Justice Josephson noted in his reasons for judgment that Rowe’s handwritten notes from his meetings with Ms. D, with the exception of the very last meeting the day before she was introduced to the RCMP, were “...destroyed as a matter

¹³⁹³ Exhibit P-101 CAF0485, pp. 3-5.

¹³⁹⁴ Exhibit P-101 CAF0494, p. 2.

¹³⁹⁵ Exhibit P-101 CAF0485, pp. 6-7.

¹³⁹⁶ Bolan, *Loss of Faith*, p. 365.

of policy.”¹³⁹⁷ At the time, the CSIS policy in force required the preservation of operational notes where the information they contained could be crucial to the investigation of unlawful acts of a “serious nature” (defined as criminal acts posing a threat to life or property and constituting indictable or possibly indictable offences), and where CSIS employees could require their notes to refresh their memories prior to recounting the facts.¹³⁹⁸

Rowe immediately recognized that Ms. D was providing information of a criminal nature about substantial frauds committed by Malik, and noted this in his reports. CSIS quickly decided that Ms. D’s information would be of great interest to the RCMP. The frauds alleged could certainly qualify as “serious” unlawful acts under the policy. Yet, no steps were taken by the Service to preserve the notes, and Rowe stressed in testimony that he had not prepared his reports with the expectation that they would be used in court.¹³⁹⁹

When Ms. D was introduced to the RCMP, it was the Air India Task Force that CSIS contacted. Though she had not yet provided information directly about the bombing, the Service was apparently aware that she might possess or obtain such information, and that she might play a role in the RCMP Air India investigation and in an eventual prosecution. The failure to retain the notes, which arguably was contrary to CSIS’s own policy in any event, is even more surprising under those circumstances. While it was not ultimately of any consequence to the prosecution, this failure did nevertheless deprive the RCMP and the Court of detailed information about Ms. D’s prior statements.¹⁴⁰⁰

The Result at Trial

In the end, Justice Josephson did not believe Ms. D’s testimony, and found that he could not rely on any of her evidence that incriminated Malik. He noted many unexplained contradictions in her evidence and past statements, as well as conflicts with other evidence. He also found that the information that Ms. D attributed to Malik, including erroneous details, could have been found in publicly available materials which Ms. D had access to, raising the inference that she had “...crafted a false confession from those publications.” Further, he concluded that Ms. D was motivated by animus and ill will towards Malik when she approached the authorities to provide information and agreed to testify, rejecting her claims of strong ongoing emotional ties with Malik as unsupported by the evidence.¹⁴⁰¹

Other Crown witnesses against Malik were also found to lack credibility, and Malik was ultimately acquitted of all charges relating to the Air India and Narita bombings.¹⁴⁰²

1397 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

1398 See Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1399 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

1400 For a discussion of this issue, see Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

1401 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 417-418, 455, 521, 703, 706, 710-715, 722, 725, 727-728, 736, 740, 744-752, 774-777, 1320.

1402 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 1313-1323.

Conclusion

Regardless of one's views as to the credibility of Ms. D's evidence or of the evidence presented against Malik generally, the history of Ms. D's dealings with CSIS and the RCMP, during a period when she was viewed as a potentially important witness in the Air India case, remains instructive about the ongoing challenges in interagency cooperation and the need for concrete improvements in the measures used to protect witnesses and to encourage them to cooperate in terrorism cases.

The transfer of Ms. D from CSIS to the RCMP occurred rapidly, with no apparent conflict or problems. When compared with other situations, such as the cases of Ms. E or Tara Singh Hayer, it can be seen that the agencies did improve their ability to cooperate in cases where sources provide information of a criminal nature to CSIS first. However, despite this early recognition by the Service, the notes for the meetings with Ms. D were still not preserved.

In contrast with the attitude that was adopted towards Ms. E, who was openly reluctant to cooperate, the RCMP was sensitive to Ms. D's security concerns and offered her protection early on. Financial assistance was mentioned during the very first meeting with the RCMP, before Ms. D provided any information about Air India, whereas, in the case of Ms. E, investigators were reluctant to offer any assistance, including protection, before finding out exactly what information Ms. E could provide. Video surveillance cameras were installed at Ms. D's residence within weeks after she began speaking with the RCMP, while Ms. E's concerns were left unaddressed for years.¹⁴⁰³

In the end, however, the manner in which the RCMP failed to protect Ms. D's identity was a cause of concern for CSIS, and her story provides little encouragement for potential witnesses or sources to cooperate with police in the future. The failure to ask for a Sealing Order for the Information to Obtain was obviously a mistake. Human error can never be entirely prevented and is bound to occur on occasion in any context. However, in this case, the RCMP's failure to assign Ms D's case to a single unit with full knowledge of the situation may have contributed to creating an environment in which all the necessary safeguards were not in place to prevent such an error from occurring. As was the case with Tara Singh Hayer,¹⁴⁰⁴ the RCMP's dealings with Ms. D were not all carried out by units that had an understanding of the Sikh extremism context. The Commercial Crime Section handling the Khalsa School investigation was apparently aware that Ms. D was a witness in the Air India case as well as in the Khalsa School fraud case.¹⁴⁰⁵ However, the Section may not have been as well informed about Sikh extremism or about the seriousness of the threat faced by Ms. D. Had the Air India Task Force been involved in all aspects of the case against Malik, it is likely that the officers filing the Information to Obtain would have been more acutely concerned about protecting Ms. D's identity and would therefore have exercised more care to ensure that this was achieved.

¹⁴⁰³ See Section 1.3 (Post-bombing), Ms. E.

¹⁴⁰⁴ See Section 1.2 (Post-bombing), Tara Singh Hayer.

¹⁴⁰⁵ Exhibit P-101 CAF0485, p. 6.

1.6 Atwal Warrant Source

Introduction

On May 25, 1986, Malkiat Singh Sidhu, an Indian Minister for the Punjab state government, was assaulted while he was driving to Tahsis, BC, to visit relatives after attending a wedding in Canada. A vehicle cut off Sidhu's car and four assailants broke the windows and shot Sidhu repeatedly. He survived the attack. The four occupants of the vehicle were caught, charged and convicted of attempted murder and were sentenced to 20 years imprisonment.¹⁴⁰⁶

Before the trial of the four assailants, an additional charge, that of conspiracy to murder Sidhu, was brought against them. Five other individuals, including Harjit Singh Atwal, were also charged with the conspiracy. Those charges were based in large part on a CSIS intercept of Atwal's communications, which recorded conversations pointing clearly to a plan to assault Sidhu. Atwal applied for access to the affidavit in support of the CSIS warrant. The Federal Court of Appeal ordered that access be granted with the names of CSIS agents and informants deleted. The affidavit behind the CSIS warrant was ultimately withdrawn when it was discovered that it contained information from a source who was found to be unreliable. As a result, the proceedings for conspiracy against Atwal and his eight co-accused had to be stayed.¹⁴⁰⁷

The "Atwal affair" led to the resignation of the first Director of CSIS, Ted Finn, on September 11, 1987, when the inaccuracies and irregularities in the warrant application were discovered.¹⁴⁰⁸ There were even calls for the resignation of then Solicitor General James Kelleher, since, as the Minister responsible, CSIS was generally acting under his direction.¹⁴⁰⁹ In the end, only Finn resigned and Kelleher ordered several internal investigations of the matter.

In this Inquiry, it was learned that the discredited source whose information was included in the Atwal warrant application – Source P – had in fact been discounted by the RCMP before he started to speak to CSIS. Further, the RCMP had warned CSIS that the individual was not reliable.

The RCMP Discounts Source P

In 1985, Cpl. Robert Solvason, an RCMP member since 1969, worked in the Surrey Detachment National Crime Intelligence Section (NCIS). Solvason had "...considerable experience and expertise in the development and handling of

¹⁴⁰⁶ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 47.

¹⁴⁰⁷ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," pp. 47-48.

¹⁴⁰⁸ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 48.

¹⁴⁰⁹ Canadian Press, "PM defends Kelleher over CSIS incident" *The Globe and Mail* (September 17, 1987), p. A4. See also Don McGillivray, "Spy chief's resignation begs a question" *The Ottawa Citizen* (September 18, 1987), p. A8 and Marjorie Nichols, "When politicians go awry subversives can play" *The Ottawa Citizen* (September 18, 1987), p. A2.

sources." A short time before the Air India bombing, he became involved in an investigation "...concerning an individual who had associations with various Sikh personalities, and was bringing forward some allegations that these Sikh personalities were desirous of learning various criminal techniques." At the time of the bombing, Solvason was asked to join the Air Disaster Task Force, but could not do so immediately because he had to complete this investigation.¹⁴¹⁰

Solvason explained that the individual he was dealing with (referred to as "Source P" for the purposes of this report) made some "...rather startling allegations," and that Surrey NCIS undertook various plans to confirm or refute those allegations. After some time, Solvason was able to come to the conclusion that Source P's allegations were "completely unfounded" and that his background was probably invented. Solvason also concluded that Source P was "opportunistic" and "treacherous," and that, to the extent he did have contact with the "Sikh personalities" he was proposing to provide information about, "...he seemed to be controlling it."¹⁴¹¹

Source P Speaks to CSIS

When Solvason was unwilling to grant Source P's request to be taught various "criminal techniques" or "ways of detecting investigative techniques," Source P indicated that he would approach CSIS. Solvason told him that he was free to do as he wanted. Shortly thereafter, Solvason was contacted by CSIS about Source P and his information. He received a surprising visit at the Surrey Detachment from the CSIS BC Region Director General, Randil Claxton, and the Deputy Director, Ken Osborne, who told him that they had been "ordered" by their Director to speak with Source P. Solvason told them that Source P "...wasn't reliable at all." He said that Source P was "treacherous," and he advised the CSIS officials that "...if I were you, I wouldn't talk to him at all."¹⁴¹²

In spite of Solvason's warnings, Source P ultimately "...went to CSIS and they spoke to him for a period of time." Solvason and other RCMP members were then involved in meetings with Claxton and Osborne about the nature of Source P's allegations and background.¹⁴¹³

In early July 1985, CSIS and the RCMP had discussions about Source P, who was at the time speaking with both agencies. The RCMP agreed to "...suspend certain avenues of their investigation" while CSIS was talking to Source P.¹⁴¹⁴ At the time, the RCMP was considering making a court application for authorization to intercept private communications based on information provided by Source P.¹⁴¹⁵ However, the Force was concerned that, because CSIS was still dealing with Source P, he could later "...contend that he was acting under CSIS direction."¹⁴¹⁶

¹⁴¹⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11544-11546.

¹⁴¹¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11547.

¹⁴¹² Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11546-11548.

¹⁴¹³ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11547-11548.

¹⁴¹⁴ Exhibit P-430, p. 1.

¹⁴¹⁵ Exhibit P-430, p. 1.

¹⁴¹⁶ Exhibit P-430, p. 1.

This could then open up the possibility down the road that disclosure of CSIS materials could be requested by the defence and that a prosecution could be jeopardized if such disclosure was refused or if the materials were not available.

The RCMP also expressed concern during the discussions with CSIS about presenting an application "...primarily based on the information of Source P, a source whom the RCMP and CSIS did not trust."¹⁴¹⁷ CSIS informed the Force that it would be applying for its own authorization shortly. The RCMP, because of its concerns, decided not to pursue an application, and advised CSIS accordingly. The RCMP agreed to "...await word from CSIS" about the Service's position with Source P, and CSIS advised that it was "...on the verge of severing connection with Source P."¹⁴¹⁸

Solvason subsequently learned that CSIS eventually came to the same conclusion he did about Source P's reliability and "terminated him" as a source.¹⁴¹⁹ Indeed, in a CSIS report dated June 26, 1985, Source P was referred to as "...a source 'of doubtful reliability,'" and on July 8, 1985, he was terminated by CSIS as unreliable.¹⁴²⁰

The Atwal Warrant

Solvason testified that, after his dealings with Source P and CSIS in this matter, he learned that some of the information provided by Source P to CSIS was used in an application for authorization to intercept private communications "...relative to the Malkiat Singh Sidhu conspiracy." Ultimately, Solvason understood that the affidavit in support of the authorization was found to be unreliable and had to be withdrawn, causing the prosecution to collapse. Solvason felt that this "... must have been a mistake of some sort."¹⁴²¹

Information provided by Source P was indeed included in a CSIS application for authorization to intercept the communications of Harjit Singh Atwal which was presented on July 15, 1985.¹⁴²² Source P was referred to in the warrant application as a "CSIS confidential informant." No mention was made in the application of the issues surrounding Source P's reliability or of the fact that he was terminated by CSIS for unreliability. The Atwal warrant application also contained some inaccuracies and unsupported information unrelated to Source P. These combined errors led to the withdrawal of the Atwal warrant application.¹⁴²³

After these events, an internal CSIS investigation was conducted. It was concluded that there was nothing to suggest that the inaccuracies in the application, including with respect to Source P, resulted from deliberate acts or omissions

1417 Exhibit P-430, p. 1.

1418 Exhibit P-430, p. 1.

1419 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11547-11548.

1420 Exhibit P-430, p. 2.

1421 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11548.

1422 Exhibit P-430, p. 2; Exhibit P-101 CAF823.

1423 Exhibit P-430, p. 2.

by CSIS employees. Rather, they were found to have resulted from errors and a lack of verifications at the BC Region and at HQ. The CSIS employees involved explained that the errors made resulted in large part from the "...pressures associated with the immediate aftermath of the Air India tragedy" when CSIS was understaffed and overworked, both at HQ and at the BC Region.¹⁴²⁴

It appears that many of those who reviewed and approved the Atwal warrant application materials at the BC Region, and then at HQ, did not question the veracity of the data originating from Source P or the assessment of his reliability. All were working long hours and many were away or otherwise occupied with duties relating to the immediate aftermath of the bombing. Following the disaster, much "...pressure to produce was coming from the higher levels" at CSIS. This, coupled with the lack of resources, resulted in "...a harried and sometimes chaotic work environment, improvisation, a departure from basic and accepted work procedure, and ultimately, error." The Director General for the CSIS Toronto Region, who conducted an internal review of the matter, concluded that the work environment at CSIS at the time could even be described as one "inviting error." However, in spite of the pressure to "...produce relative to Air India and Narita," it was found that the individuals involved did not attempt to "manipulate data" or turn a blind eye to what was known, for example about Source P's reliability, in order to improve the chances of obtaining the warrant.¹⁴²⁵

In the aftermath of the Air India and Narita bombings, CSIS BC Region employees had been "...urged by Headquarters to send in Warrant submissions on individuals suspected of involvement in these terrorist acts." BC Region personnel conducted "...rather rushed research" in an effort to comply, while still trying to produce accurate submissions. The mention in the June 26th CSIS report that Source P was of "doubtful reliability" apparently "...slipped through the cracks" in the preparation of the warrant application materials, even if some of the individuals involved at the BC Region, including the Director General, Claxton, who was "...intimately involved with the [Source P] operation," knew that there were "some concerns" over Source P.¹⁴²⁶

BC Region employees felt that any errors made would be caught by CSIS HQ analysts, who had access to all of the materials. However, HQ personnel were equally overworked and understaffed. Some of the normal procedures were "short circuited" by HQ Sikh Desk analysts who reviewed warrant application materials because of the "...urgency connected with the Air India/Narita investigations" and the "...rush to complete and forward Affidavits." At HQ, as in the BC Region, "...pressure to produce intelligence was great ... [u]rgency was attached to all aspects of the Air India/Narita investigations" and, as a result, there was little time for "...planning, reflection or the usual close attention to detail."¹⁴²⁷ In the end, the errors in the BC Region warrant application materials, including the failure to raise the reliability issues surrounding Source P, were not corrected at the HQ level, and the affidavit ultimately had to be withdrawn.

1424 Exhibit P-430, p. 2.

1425 Exhibit P-101 CAF823, pp. 3, 5, 9.

1426 Exhibit P-101 CAF823, pp. 10, 13-14.

1427 Exhibit P-101 CAF823, pp. 14-17.

Conclusion

In the end, CSIS came to the same conclusion as the RCMP about the reliability of Source P. Unfortunately, because of a series of errors associated with the workload in the aftermath of the Air India bombing, these conclusions were not properly reflected in the Atwal warrant application, and this ultimately caused the Sidhu conspiracy case to collapse.

At times during the Air India investigation, the RCMP displayed exaggerated skepticism towards potential sources or witnesses and, as a result, was not always able to secure their cooperation or to investigate their information.¹⁴²⁸ However, the Source P episode shows that, in some cases, the RCMP's caution and skepticism could protect the Force from trouble down the road and preserve the state's ability to prosecute. Had CSIS heeded Solvason's early warning that Source P was "treacherous" and completely unreliable, the Service may not have included his information in the reports which were used to prepare the Atwal warrant materials, or may have been more cautious about the information included and may have come to its own conclusions about Source P's reliability earlier.

As an intelligence agency, CSIS is not expected to be predominantly concerned with preserving the ability to prosecute in the future in the same manner as the RCMP. However, in this case, CSIS knew that the RCMP had made a decision not to use Source P's information in support of intercept applications, given that neither agency trusted him. Under those circumstances, it is unfortunate that CSIS nevertheless went ahead and used Source P's information in its own application, ultimately contributing to the collapse of an important Sikh extremism conspiracy prosecution.

¹⁴²⁸ See, for example, Section 1.1 (Post-bombing), Mr. A; Section 1.2 (Post-bombing), Tara Singh Hayer; Section 1.3 (Post-bombing), Ms. E; and Section 1.4 (Post-bombing), Mr. Z.

VOLUME TWO

PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

CHAPTER II: RCMP POST-BOMBING

2.0 Set-up and Structure of the Federal Task Force

According to the Attorney General of Canada, the Air India and Narita bombing investigations still have been "...by far, the most extensive investigations ever undertaken by the RCMP."¹ The RCMP faced numerous challenges and had to make many difficult decisions about its approach to the investigation. At times it was ill-prepared for the organizational and technical demands required for the investigation.

Early Response and Formation of the Air India Task Force

On June 23, 1985, A/Comm Donald Wilson, the OIC, Operations Branch of E Division, received a call from the HQ Duty Officer in Ottawa, who informed him of the Air India and Narita explosions that had occurred that morning. Wilson immediately contacted Richmond Detachment, which had jurisdiction for the Vancouver International Airport,² and directed that officers be sent to the airport to begin "...piecing together events." It is clear that politically motivated sabotage was suspected from the very beginning. At 9:30 AM, Insp. Lloyd Hickman of P Directorate, VIP Branch, contacted Wilson and requested that E Division VIP Security check with the Indian Consul General and at the Consulate to determine if any "...unusual parcels, cars, etc." were in the vicinity.³

Early the next morning, Wilson was advised that the RCMP Commissioner had directed that an investigator be dispatched from Vancouver to Tokyo at the earliest opportunity to liaise with Japanese police, and he was informed that an investigator from "the East" was being dispatched to Ireland to perform a similar function with respect to Air India Flight 182.⁴ In the following hours, Wilson had a number of contacts with the OIC, Richmond Detachment, primarily to ensure that he had all the necessary resources available to him. A request for additional investigators for the Richmond Detachment investigation was made to the OIC, Contract Policing, and a request was made to Supt. Lyman Henschel, the OIC, Support Services in E Division, to make available a member from the National Criminal Intelligence Section (NCIS) to ensure effective liaison and that nothing

¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 277.

² Exhibit P-101 CAF0438, p. 22; Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5544-5545.

³ Exhibit P-101 CAA0241, p. 1.

⁴ Exhibit P-101 CAA0241, p. 2.

was “overlooked.” The member assigned was Sgt. Wayne Douglas, who, prior to the bombing, had been in charge of the Terrorist/Extremist NCIS unit at E Division.⁵ Contact was made with Randil Claxton of CSIS to ensure liaison with the Richmond Detachment.⁶

Task Force to Be Led by the Federal Side of the RCMP

On June 25, 1985, RCMP Headquarters in Ottawa directed that the investigation would be designated a “CSIS Act Investigation” and would be taken over from the Richmond Detachment by a Task Force that would be formed and which would eventually work out of E Division Headquarters.⁷ Part IV of the *CSIS Act, the Security Offences Act*, gave the RCMP primary responsibility for performing peace officer duties in connection with criminal offences arising “...out of conduct constituting a threat to the security of Canada” or targeting “internationally protected person[s].”⁸ The decision to set up the investigation as a “CSIS Act investigation” meant that the federal side of the RCMP would take over local jurisdiction from the Richmond BC contract policing unit.

The RCMP provides community policing services by contract in all provinces and territories of Canada, except Ontario and Quebec. These contracts make the RCMP the “regular police” in these jurisdictions: the provinces and municipalities that are responsible for providing local law enforcement services hire the RCMP to perform these duties. Contract police services are organized into 10 divisions, and divisions are further divided into sub-divisions or districts, which comprise groups of detachments. Each detachment operates independently, with its own dedicated resources, and is responsible for law enforcement and the prevention of crime within its defined jurisdiction. To support detachments, there are specialized units and operational support groups at division headquarters, as well as at the sub-division and detachment level. Division commanding officers are accountable to the RCMP Commissioner.⁹

In addition to its contract policing side, the RCMP is also responsible for providing designated federal services everywhere in Canada. The federal side of the Force is structurally separate from the contract policing side, with its own chain of command, reporting through Federal Operations. In addition to offences relating to national security, the federal side of the RCMP is also responsible for programs such as Customs and Excise, Immigration and Passport, Drugs and Organized Crime, Criminal Intelligence and International Policing.

Since the Air India investigation was constituted as a federal Task Force, personnel that would work on it would be drawn from the federal side of the RCMP and would report through Federal Operations. There were three units or task forces

⁵ See Section 1.1 (Pre-bombing), November 1984 Plot.

⁶ Exhibit P-101 CAA0241, p. 3; Testimony of Lyman Henschel, vol. 46, September 17, 2007, p. 5557.

⁷ Exhibit P-101 CAF0166, p. 1.

⁸ *Canadian Security Intelligence Service Act*, S.C. 1984, c. 21, ss. 57, 61.

⁹ Online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/ccaps-spcca/contract-eng.htm>> (accessed November 3, 2009).

set up, under the administration of their respective divisional National Criminal Intelligence Sections (NCIS): Montreal, Vancouver, and Toronto (and later Alberta).

The RCMP quickly put in place a group at Headquarters to coordinate the investigation.¹⁰ The HQ Coordination Center initially had one Officer in Charge (OIC) and two readers, responsible for reviewing all incoming information. An information coordinator was soon brought in to produce daily situation reports. A search then began for two analysts to be assigned to the Task Force, but they were not found until two weeks after the bombing and began work on July 4, 1985. The Coordination Center staff therefore comprised five members in total, with one OIC. A “runner” was later recruited to handle telexes and to compile RCMP reports to the Kirpal Commission of Inquiry,¹¹ which had been instituted by the Indian government to explore the cause of the downing of Air India Flight 182.

The E Division Air Disaster Task Force

On June 26, 1985, a Task Force was created in E Division under the direction of Assistant Commissioner Wilson,¹² and as of June 27th, the E Division Air Disaster Task Force was in place and operational.¹³ It was directed by the OIC, Federal Operations, Chief Supt. Gordon Tomalty, and managed by Inspector John Hoadley.¹⁴ Sgt. Robert Wall, who had been working at the Vancouver Integrated Intelligence Unit (VIU) prior to the bombing, was assigned to the investigation on June 25th, and was told that his team would form the core of a federal Task Force in relation to the two incidents.¹⁵ The investigative team consisted of 17 investigators from RCMP federal units and two coordinators who were Non-Commissioned Officers, assisted by CSIS liaison Jim Francis, RCMP NCIS NSE Unit member Michael (“Mike”) Roth, as well as representatives from the VIU.¹⁶ Supt. Les Holmes¹⁷ joined the E Division Task Force as the OIC in late July,¹⁸ after which Wall became the second-in-command.

The E Division Air Disaster Task Force, which was housed at E Division Headquarters, experienced some “growing pains” as it took time to find space to set up the unit, though, within about six weeks of the bombing, the unit was a “workable environment.” By the latter part of August, the Task Force had about 105 personnel working on the Air India/Narita investigation. While, in the early weeks, the Task Force was still gearing up and acquiring resources, this did not

10 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9365.

11 Exhibit P-101 CAF0055, p. 6.

12 Exhibit P-101 CAA0242, p. 1.

13 Exhibit P-101 CAA0267, p. 1.

14 Exhibit P-101 CAA0242, p. 1, CAA0267, p. 1.

15 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9658-9659.

16 Exhibit P-101 CAA0242, p. 1.

17 Hoadley and Holmes reported up through the Federal Operations side in Vancouver to the Federal Operations Officer, then to the Commanding Officer of E Division and ultimately to Headquarters in Ottawa.

18 Exhibit P-101 CAF0503, p. 8. Holmes remained as the OIC until the fall of 1987.

prevent the investigation from getting underway. Wall testified at the Inquiry that "...those in the trenches with us rose to the occasion and made the best of a bad situation." Members of the Task Force regularly worked "extremely lengthy" hours for the first two to two and a half months of the investigation.¹⁹ In fact, by July 25, 1985, an E Division update to HQ reported that "...issues of overtime, leave, health and welfare of our personnel must be addressed immediately," and measures were suggested to alleviate some of the pressures on the investigators.²⁰ The work was "grinding hard work" that left an "un-erasable" mark on the investigators, who were extremely dedicated and worked hard to solve the case under less than ideal conditions.²¹

The individuals on the Task Force were "...basically starting from nothing" in terms of their expertise in the area of Sikh extremism.²² Though E Division housed the NCIS Terrorist/Extremist unit, which had as its mandate the development of intelligence about criminal threats to national security, the reality was that in the pre-bombing period this unit had developed only very limited knowledge about the major Sikh extremist players in Canada and had no meaningful access to sources in the community.²³ Only one or two Punjabi-speaking officers were on the Air India file, and there was a lack of understanding of Sikh culture.²⁴ These factors would pose challenges to investigators when they attempted to gather intelligence from within the Sikh community.

As a result, the Task Force relied heavily on CSIS for its knowledge and insight about Sikh culture and about the important figures in the Sikh extremist community.²⁵ On August 29, 1985, the E Division Task Force received a briefing from Ray Kobzey of CSIS BC Region, about the phenomenon of Sikh extremism and about the Babbar Khalsa.²⁶ Cst. Axel Hovbrender, a VPD member of VIIU who had been gathering intelligence about Sikh extremism during the years preceding the bombing, also provided briefings to the RCMP.²⁷ Hovbrender testified that due to the lack of background knowledge at the Task Force, it took a long time for the RCMP Air India investigation to get started in BC. He commented:

I think that I was feeling frustrated that it was taking a long time to get the investigation going. I sort of likened it to a battleship; it takes a while for the battleship to get going, but once it goes it's pretty impressive. It took ... about two or three weeks for them to do the things that I thought

¹⁹ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9660, 9661, 9713-9714.

²⁰ Exhibit P-101 CAA0282, p. 2.

²¹ Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5567-5568; Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9713-9714.

²² Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11587.

²³ See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

²⁴ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10314. See also Chapter I (Post-bombing), Human Sources: Approach to Sources and Witness Protection.

²⁵ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9661-9662.

²⁶ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9662; Exhibit P-101 CAA0313, pp. 2-3.

²⁷ Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3914-3915.

should have been done in the first week, and that was to interview some of those individuals who, as most of us knew or who were in the intelligence field, believed responsible for – that act, that tragic act. So, in the initial phases, I was feeling frustrated in relation to the lack of ... any sort of movement and any sort of enforcement activity against those individuals.²⁸

The Task Force faced challenges in terms of its preparedness to undertake certain investigative initiatives in the Sikh community. For example, on July 21, 1985, E Division wrote to Headquarters that a "...contingency plan is required to respond to any potential arrests of suspect(s) in the investigation" and that included in this plan should be the "...realization that we may be lacking in suitable expertise in the interview/interrogation of suspect(s) and the potential to have available security cleared and experienced investigator/translators."²⁹ More than two years later, in October 1987, HQ suggested in a status report that one of the initiatives that should be undertaken was a review of investigation files in C, E and O Divisions, with emphasis on "...material accumulated in 1985/86 when investigators lacked knowledge of Sikh extremism generally and Canadian Sikh extremists in particular."³⁰

Access to Information about Sikh Extremism

Failure to Use Past Threat Information

While members of the E Division Air Disaster Task Force might not have had significant knowledge or expertise with respect to the Sikh extremist community in Canada, within its own files the RCMP had a wealth of pre-bombing information that it had received about threats to Indian interests in Canada, including Air India.³¹ This information had been passed by CSIS, DEA, and by sections of the RCMP itself to the RCMP Protective Policing Directorate to help officials provide sensitive protection to Indian personnel and missions in Canada.

This material contained references to specific Sikh extremist individuals and groups who demonstrated a potential for violence and who were believed to have had the intent to carry out attacks against Indian interests in Canada. Parmar, Bagri, Surjan Singh Gill and the Babbar Khalsa were specifically mentioned.³² Other information focused on ISYF members such as Manmohan Singh and Pushpinder Singh, who were involved in the Khurana meeting.³³

²⁸ Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3915.

²⁹ Exhibit P-101 CAA0282, p. 2.

³⁰ Exhibit P-101 CAA0582, p. 12.

³¹ See, for example, discussion of pre-bombing threat information in Section 1.12 (Pre-bombing), A "Crescendo" of Threats. Threats to Air India included the June 1st Telex: See Section 1.2 (Pre-bombing), June 1st Telex.

³² For example, see Exhibit P-101 CAA0097, CAA0110, pp. 2-3, CAB0024, CAB0085, CAB0851, pp. 5-6, CAC0235, pp. 3-4, CAC0312, p. 3.

³³ Exhibit P-101 CAC0293, CAC0487, p. 5.

All of the threat information received by the RCMP P Directorate and NCIB was filed in central records at Headquarters. Through the Soundex system, it was possible to locate all mentions of a specific individual (regardless of the spelling of the name) in the documents. The central records could also be searched by subject areas, such as Sikh extremism, threats to the Government of India, or threats to Air India.³⁴ The entire holdings of Airport Policing, VIP Security and NCIB relating to Sikh extremism were therefore easily accessible for members of the HQ and E Division Air India Task Forces.³⁵

However, this pre-bombing threat information does not ever appear to have been used by the RCMP to orient or provide leads for the Air India investigation. Not one of the RCMP officers involved in the investigation who gave evidence at the hearings was involved in reviewing this information or was aware of such a review, and no documentary record has been found indicating that such a review was performed at any time. Sgt. Warren Sweeney, one of the small number of members of the HQ Task Force, specifically recalled that he was never asked to collect the pre-bombing RCMP holdings about Parmar or Reyat.³⁶ Wall, who was the second-in-command and who remained on the E Division investigation for nine years,³⁷ had no recollection of there ever having been an effort at the divisional level to obtain access to P Directorate files in the post-bombing period, either at the Headquarters or at the divisional level.³⁸

The pre-bombing information might have been invaluable in helping to orient the RCMP investigation in the early days, when they were experiencing difficulties in accessing CSIS information.³⁹ The information would have alerted the Task Force to the fact that, in the month prior to the bombing, Air India was warned of the threat of time/delay devices being placed in registered luggage – a lead that, from the record before the Commission, was never investigated for its possible connection to the time/delay device that ultimately brought down Air India Flight 182.⁴⁰ This information could also have led the RCMP to understand that Parmar was considered to be the “...most radical and potentially dangerous Sikh in the country,” and that Bagri was a close consort of Parmar who could easily be manipulated into committing a terrorist act and who was allegedly involved in a plan to hijack an Air India plane in October 1984.⁴¹

This information was already in the RCMP’s possession and was easily accessible. In some cases, it had even been transmitted in the pre-bombing

³⁴ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2653; Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2692.

³⁵ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2655; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2692-2693; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5451. Some restrictions applied where classified CSIS information was involved or where documents were flagged for the exclusive use of a Branch or Directorate, such as P Directorate, but the existence of relevant documents would be revealed following a central records search, and access could then be obtained from the sub-registry for CSIS information or from the Branch or Directorate involved: Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2653-2655.

³⁶ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2655.

³⁷ Final Submissions of the Attorney General of Canada, Vol. I, para. 290.

³⁸ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9672.

³⁹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁴⁰ Exhibit P-101 CAA0185. See also Section 1.2 (Pre-bombing), June 1st Telex.

⁴¹ Exhibit P-101 CAA0110, p. 3.

period to E Division NCIS,⁴² whose members Roth and Douglas were involved with the E Division Task Force, for the very purpose of assisting the divisional NCIS investigators to detect "...potential criminal acts, and if it does happen, to know who to look for."⁴³ Information passed to NCIS in the pre-bombing period included information about Parmar's group working on a secret project,⁴⁴ and about the BK being associated with a Sikh who advocated boycotting Air India.⁴⁵ NCIS members had, in fact, interviewed Parmar and Surjan Singh Gill shortly before the bombing, as part of a disruptive interview program conducted in conjunction with American authorities, in preparation for Indian Prime Minister Rajiv Gandhi's visit to the US.⁴⁶ The purpose of the interviews was "...to dissuade Parmar, Gill and their associates from any action against Gandhi who appeared to be their target at the time."⁴⁷ E Division NCIS members working in the VIU had also received information, in the course of their discussions with the VPD members of VIU, that could have assisted the RCMP in orienting the investigation and identifying the main players in the Sikh extremist movement and the Babbar Khalsa. An example was that VPD members of VIU had learned in October 1984 that Surjan Singh Gill and Ripudaman Singh Malik were close associates of Parmar and that Malik was financially supporting Parmar, and had discussed this information with NCIS members.⁴⁸

Under the circumstances, it is surprising that, to this day, the RCMP continues to complain that the initial focus of its investigation was on the wrong targets because the lack of CSIS information prevented it from discovering the more promising suspects. In a 1996 memorandum, Assistant Commissioner Gary Bass stated that "...lack of disclosure by CSIS in the early days, allowed the RCMP to seek a wiretap authorization on the wrong targets."⁴⁹ In confirming this position in testimony, Bass testified:

I would think that had the Task Force, on the day of the bombing or the day after the bombing – had access to all of the intercepted material on Parmar, he probably would have ... been one of the targets in the first authorization; I can't imagine that he wouldn't be – and as well as, probably some of the others there.

I don't know this for sure but looking at what's in that material today or in this case in 1995 and '96 ... if I had been in the Task Force in '85 and had that information on the day after the bombing, I would have been moving towards a wiretap on different people.⁵⁰

42 Exhibit P-101 CAA0160, CAC0290, p. 2.

43 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2703-2704.

44 Exhibit P-101 CAC0290.

45 Exhibit P-101 CAA0160.

46 Exhibit P-101 CAA0871, p. 1, CAA0876, CAA1099, p. 2.

47 Exhibit P-101 CAA0876, p. 1.

48 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3886.

49 Exhibit P-101 CAA0932, p. 3.

50 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11201-11202.

While it is true that, without access to the contents of the CSIS Parmar intercepts, the RCMP might not have been able to demonstrate sufficient grounds to obtain a *Criminal Code* wiretap authorization on Parmar in the early days, the Force certainly had enough information in its own past holdings, and through its access to CSIS intelligence reports, to have been aware of individuals such as Parmar and Reyat as important potential suspects, especially since the RCMP was requested by CSIS to conduct searches of the Duncan Blast site shortly after the bombing.⁵¹ Yet, it was not until mid-August 1985 that a formal decision was made to re-orient the investigation with a more central focus on “Talwinder Singh Parmar et al,” about whom the RCMP had “...definite evidence of criminal activity.”⁵² At that time, a decision was also made to remove the earlier focus on Lakhbir Singh Brar, a leader of the ISYF who was present at the Khurana meeting. This appeared to stem from a belief that the persons responsible could not be associated with both the Babbar Khalsa, which was Parmar’s group, and the ISYF.⁵³ This assumption may have been questionable, but, had the RCMP searched its own files, it would have had sufficient information to enable it to focus on Parmar as well as on Lakhbir Singh Brar from the outset of the investigation.

Lack of Integration of Local Forces

The VPD was another source of information about Sikh extremism and the important players in the movement. While the RCMP initially took steps to draw on VPD information and expertise, the Task Force’s failure to better integrate the VPD into its investigation meant that the Task Force did not fully benefit from this resource.

Early in the investigation, the RCMP seconded two VPD investigators to the Task Force. About two or three weeks after the bombing, Cst. Axel Hovbrender became involved with the Task Force as an investigator. He also continued to provide contextual information about the intelligence gathered by VIU prior to the bombing, but his main role was that of investigator.⁵⁴ Cst. Don McLean, a member of the VPD Indo-Canadian Liaison Team (ICLT), had established contacts in the Vancouver community and had had access to information from many sources prior to the bombing.⁵⁵ He began with the Task Force soon after the bombing and remained for two to three months.⁵⁶

On June 23, 1985, the RCMP requested that McLean come to the Richmond Detachment, which was in charge of the Air India investigation in the immediate aftermath of the tragedy, to provide information about Sikh militants in the community.⁵⁷ He provided several verbal briefings to the RCMP about the

⁵¹ See Section 1.4 (Pre-bombing), Duncan Blast. There is also evidence that there was, in fact, significant sharing of information by CSIS with the RCMP about CSIS’s investigation and its targets of interest: See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁵² Exhibit P-101 CAA0303. See Section 2.3.4 (Post-bombing), The Khurana Tape.

⁵³ See Section 2.3.4 (Post-bombing), The Khurana Tape.

⁵⁴ Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3915.

⁵⁵ See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

⁵⁶ Testimony of Don McLean, vol. 21, May 1, 2007, p. 2032.

⁵⁷ Testimony of Don McLean, vol. 21, May 1, 2007, p. 1986.

Vancouver Indo-Canadian community and about the identity of the Sikh extremists who were the most likely to have been involved in the Air India bombing. He identified these generally as the ISYF leaders, as well as Parmar, Bagri and the BK members. In particular, McLean advised the RCMP about Bagri's relations with Parmar and the intelligence that Bagri could be easily manipulated into committing a terrorist act.⁵⁸ He also briefed them about the information he had received indicating that, approximately two weeks before, ISYF leader Pushpinder Singh had commented that something would happen in two weeks – in response to a question about the lack of attempts on Indian diplomats (the Khurana information).⁵⁹ On June 28, 1985, McLean verbally advised the RCMP Air India Task Force of information (learned on June 27th) that the Toronto Sikh Temple was warning Sikhs not to fly Air India, and his report was copied to CISBC (Air India Task Force) and RCMP Sgt. Wayne Douglas. The report specifically indicates that the Malton Sikh Temple was "...associated to [Talwinder] Parmar group."⁶⁰ Eventually, the RCMP Task Force also took copies of all of the VPD reports from the ICLT and VIIU.⁶¹ An analytical document which compiled the available intelligence, prepared by a Coordinated Law Enforcement Unit (CLEU) analyst, in cooperation with VPD members of the ICLT and the VIIU in early 1985, was also provided to the RCMP Task Force.⁶²

During the initial stages of the investigation, McLean was actively involved with the RCMP Task Force. He reviewed incoming intelligence on a daily basis and assisted the Task Force in assessing the information and identifying the individuals involved. The RCMP also requested his assistance in using his sources to obtain information. However, McLean testified that he was never involved in a joint investigation with any of the RCMP members investigating Air India, but was simply carrying out RCMP instructions.⁶³ When an early post-bombing RCMP telex mentioned McLean as a contact person with respect to the NCIS probe into local factions of the BK and the ISYF,⁶⁴ this did not mean that McLean participated directly in the probe as an equal partner. He explained that his role was limited mostly to assisting Douglas of E Division NCIS in identifying the individuals involved. Beginning approximately one month after the bombing, the RCMP asked for McLean's assistance less and less in terms of obtaining information from his sources. In his words, he became a "token muni" at the RCMP Task Force, used only to give an impression that the RCMP was integrating municipal forces and using them to assist in the investigation.⁶⁵

Meanwhile, the RCMP was pursuing its own investigation, in its own direction. McLean assumed, though he was apparently not informed directly, that the

⁵⁸ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4143-4144, 4157-4158.

⁵⁹ Testimony of Don McLean, vol. 35, May 29, 2007, p. 4143. See, generally, Exhibit P-101 CAA0249, CAC0487.

⁶⁰ Exhibit P-404, p. 3.

⁶¹ Testimony of Don McLean, vol. 21, May 1, 2007, p. 2037; Testimony of Don McLean, vol. 35, May 29, 2007, p. 4159.

⁶² Testimony of Axel Hovbrenner, vol. 33, May 24, 2007, pp. 3915-3916. See Exhibit P-391, document 124 (Public Production # 3254).

⁶³ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4144-4145, 4162, 4173.

⁶⁴ See Exhibit P-101 CAA0249, p. 2. See also Section 1.6 (Pre-bombing), Khurana Information.

⁶⁵ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4145-4146, 4162.

RCMP had developed its own intelligence sources and no longer needed his information. As a result, he simply resumed his former functions for the ICLT and continued to work with the community.⁶⁶ Wall testified that he recalled being informed by Hoadley that investigators had to be federal police officers in order to receive certain kinds of information, and that municipal police officers could not be fully integrated for this reason.⁶⁷

McLean had access to resources and contacts in the community that the RCMP did not have, and he hoped that these resources would be accessed and used by the RCMP in its investigation. He was surprised and disappointed when the RCMP did not utilize his services to the extent that it could have. McLean indicated that, even after his formal involvement with the RCMP Task Force ended, he would have provided the RCMP with information he received from his sources if it was relevant to the Task Force, and also admitted that he did not receive any information that could actually have been used to directly identify the persons responsible for the Air India bombing.⁶⁸ Nonetheless, his ability to assist the Task Force was limited because of his lack of access to information about the status of the ongoing investigation and about the information being acquired by the RCMP. Without this knowledge, it would have been much more difficult for McLean to assess any information he was receiving in terms of whether it could be relevant to the RCMP investigation.

CSIS, by contrast, allowed McLean to take a more active role in providing assistance with its investigation, beginning immediately after the bombing. He was granted the appropriate security clearance to access the “very top levels” of CSIS in Vancouver, and was privy to incoming intercepts and intercept logs or summaries to see whether he could provide additional information. He was tasked by CSIS to provide background information about the community and the ICLT’s work in the community, and to assist in identifying individuals who came to CSIS’s attention as a result of physical or technical surveillance. McLean continued to work with CSIS throughout the year following the bombing.⁶⁹

Problems with the Federal Task Force Structure

Difficulties in Staffing the Federal Task Force

S/Sgt. Robert Solvason, who was seconded to the Task Force from Surrey NCIS in September 1985 and continued to work on the Air India investigation for the next 10 years, explained in his testimony that it was difficult to recruit individuals with good operational skills and experience in major crimes investigations on the federal side.⁷⁰ Most officers acquired this type of experience by working in the contract policing units, which dealt with major criminal investigations on a daily basis. Officers in the contract General Investigation Sections (GIS)

⁶⁶ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4162-4163.

⁶⁷ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9714-9715.

⁶⁸ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4163-4164, 4172.

⁶⁹ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4146, 4160, 4165, 4172.

⁷⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11549-11550.

were involved in many cases as "...first responders to major crimes," including homicides. They were "...right up to date on the latest techniques" and were "... usually hand-picked to get there." These investigators had the opportunity to learn how to handle and develop sources and how to use their information to "...further our evidentiary needs for the serious crimes aspect."⁷¹

It was difficult to recruit experienced homicide investigators for the Task Force because the investigation fell under the jurisdiction of the RCMP's federal policing operations, and because municipal contract units were "very protective" of their homicide investigators at that time.⁷² As a result, there were not many members of the original Air Disaster Task Force with experience in major crimes investigations,⁷³ and there were very few, if any, homicide investigators. Solvason explained that even his own experience in major crimes investigations, which included working on the Kamloops GIS unit, was "quite dated."⁷⁴

Wall testified that drawing from the federal sections allowed the Task Force to draw "...a great talent pool from varying backgrounds."⁷⁵ Solvason recognized that there were in fact officers from the federal drug squad and Commercial Crime who had skill sets of benefit to the Task Force. But, in his view, it was a question of trying to bring together the "proper mix" of skills. Because of the difficulty in attracting homicide and major crimes investigators, this "proper mix" was more difficult to obtain.

This situation also created difficulty at the management level. When Hoadley was ordered by the Commanding Officer of E Division to set up a Task Force, he immediately began looking for what he called a "good staff sergeant," meaning someone who had a good knowledge of operational techniques and good managerial assets. Again, it was difficult to get this type of individual on the federal side as officers with good operational skills were more often found in the contract policing units.⁷⁶

Problems with the Federal Task Force Model

The Air Disaster Task Force was not created as a permanent section. It brought in individuals who were seconded from many other federal duties. It provided no established structure or career paths and offered limited opportunities for promotion. Wall stated that, at the time, he did not think a Task Force situation "...lends itself to necessarily a good work environment long-term inasmuch as careers are limited, opportunities are limited and it's by and large a very thankless job." His view at the time was that it would have been better to have created a permanent section of investigators rather than a Task Force model where people were brought in from elsewhere.⁷⁷

71 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11545, 11550.

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

73 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9658-9659.

74 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11550.

75 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9661-9662.

76 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11549-11550.

77 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9709; Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9732.

The structure of the Task Force posed challenges for the continuity of the investigation. The RCMP promotion system requires officers to compete for positions. An officer who becomes eligible for a promotion may compete for positions that become available at the officer's eligible rank. The fact that the Task Force was not a permanent section meant that investigators were often promoted out of the Task Force, taking with them the knowledge that they had accumulated while serving on the Task Force.

Beginning in 1986, John Stevenson of CSIS acted as a Liaison Officer and, in that capacity, provided documents on a daily basis to three different RCMP investigative units in E Division, including the unit investigating Air India. He observed that there were "...a fair number of people turning over on the RCMP Task Force," but not on the other units.⁷⁸ Bill Turner, who was at CSIS HQ in 1985 and joined the Sikh Desk in 1986, commented on his view of the negative effect that a high turnover had on the expertise of the investigators:

MR. GOVER: And when we think about other issues like institutional culture that could impact on how cases are investigated, do you think that the RCMP had a turnover rate or a culture of promotion that worked against creating a constant membership in the taskforce?

MR. TURNER: Oh, I think so. There was a turnover rate. They did have some core investigators. But again, I don't know how many people they had come and go for periods of six months to a year, two years, but there was a regular rotation around a core.

MR. GOVER: And that worked against accumulating that critical mass of investigative expertise. Is that fair?

MR. TURNER: Well, yeah, if you look in the – not just the security intelligence area, but you have to look within that and you have to look at the Sikh extremists milieu, which is quite different than looking in the Al Qaeda or something else.

MR. GOVER: And —

MR. TURNER: So it's not just national security background you need; you also need background in the Sikh area.⁷⁹

One of the deficiencies noted by Bass when he began his review of the investigation into the Air India bombing in 1995 was that "...there was not a lot of continuity at the very senior management levels of the organization."⁸⁰ Since the file was "so big" it was:

⁷⁸ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7653-7654, 7658.

⁷⁹ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8304-8305.

⁸⁰ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11288.

...very difficult to get people up to speed when they come into it, especially if they're not involved right in the investigation; they're kind of at the management level where I was. So new people coming in would get parts of the information ... they certainly wouldn't have a good strong understanding of the case which I'm sure you can appreciate from work here.... A "lesson learned" is that there has to be a way "to ensure senior level continuity."⁸¹

High turnover, combined with the lack of a good information management system, made it difficult to retain knowledge on the Task Force.⁸² Once Bass took charge of the file in 1995, he carried it all the way to the trial and, according to S/Sgt. Bart Blachford, Bass "...carried that with him until today in fact."⁸³

Blachford stated that, with large criminal investigations, the problem of officers getting promoted in the RCMP and being moved far away, is still a challenge today.⁸⁴ To better maintain continuity of the investigation, when the Task Force was re-invigorated in 1995, a system known as "over-ranking" was implemented.⁸⁵ This system allowed investigators to stay in place, even if ordinary promotional considerations might have warranted their being transferred to some other duty. The Task Force had the ability to ask that a member receive a promotion to the next rank, but not change position or locations. Insp. Jim Cunningham testified that this was "...somewhat of a quick fix." It was not a perfect solution, since the Task Force could give a promotion, but might not always provide the investigator with the challenges to "...develop him for the next level."⁸⁶ Further, while "over-ranking" allows managers to "...put in a business case," stating why a particular member should be able to keep their promotion and stay on file, these decisions are still made "...on a case-by-case basis."⁸⁷

Lack of Training

The Air India investigation was specifically designated a "CSIS Act Investigation" because the crime was seen as arising out of "...conduct constituting a threat to the security of Canada." Yet, most investigators received no training on terrorism/extremism investigations.

There was little attempt, within the structure of the Task Force, to educate members or to provide them with specific skills training in the areas of extremism or terrorism. RCMP members of the Air India investigation were "...not required to have specific training prior [to] or during their involvement in

⁸¹ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11288-11289.

⁸² Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9460-9461.

⁸³ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7818-7819.

⁸⁴ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7834.

⁸⁵ Final Submissions of the Attorney General of Canada, Vol. I, para. 290.

⁸⁶ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11336-11337.

⁸⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7834.

the investigation.”⁸⁸ In response to a request by Commission counsel, the RCMP identified three courses it offered which were relevant to “...specific training on Sikh extremism or religious or politically motivated terrorism.” These included:

- **Cross-cultural Education** – a course which provided “broad training” on cultural awareness. From 1978 to 1994, 10 of the “core Air India investigators”⁸⁹ completed this course. The RCMP, in its submissions, indicated that there was “a core of 92 investigators,” which was maintained throughout the course of the investigation;⁹⁰
- **Investigational Techniques – Criminal Extremism/Terrorism** – a course which commenced in 1988. Twenty-one of the “core Air India investigators” from 1988 to 1996 completed this course;
- **Cross-cultural Education – The Sikhs** – a course which commenced in 1992. From 1992 to 1995, three of the core Air India investigators completed this course.⁹¹

The lack of available courses in criminal extremism/terrorism investigative techniques for the first three years of the investigation may help explain some of the difficulties that members of the Task Force seemed to encounter in their approach to sources in the Sikh community.⁹² The RCMP members involved in the Air India investigation also did not always understand the need for centralization in national security investigations, nor appreciate the value of intelligence and the relevance of the larger Sikh extremism context.

RCMP HQ Task Force member Sweeney would later reflect on the early months of the Air India investigation, noting that the RCMP needed to increase its “...intelligence gathering and analytical capabilities” with respect to terrorism if it was to adequately assist in the investigation of future terrorist acts.⁹³

File Management – Coordination, Centralization, and Organization

The quantity of information and intelligence that was collected by the RCMP created a large investigation – of a scale never experienced by the RCMP, before or since – spanning three continents and six countries.⁹⁴ Given the scale and complexity of the investigation, an obvious challenge that faced the RCMP was the management of information.

⁸⁸ Exhibit P-101 CAF0438, p. 23.

⁸⁹ Exhibit P-101 CAF0438, p. 23.

⁹⁰ Exhibit P-101 CAF0438, p. 22. There is a question as to whether this number of 92 was, in fact, maintained throughout. See Section 2.2 (Post-bombing), *The RCMP Investigation: Red Tape and Yellow Tape*.

⁹¹ Exhibit P-101 CAF0438, pp. 22-23.

⁹² See Chapter I (Post-bombing), *Human Sources: Approach to Sources and Witness Protection*.

⁹³ Exhibit P-101 CAF0055, p. 7.

⁹⁴ Final Submissions of the Attorney General of Canada, Vol. I, para. 277.

Organizing the File

Before the Air India investigation, the RCMP did not have policies or procedures for the use of information management systems in major investigations. As a result, the different Task Force units across the country implemented different applications. This resulted in confusion and delay in setting up an information system for the Air India investigation.⁹⁵ A manual TIPS system was initiated in Vancouver, and the Task Force members converted the existing Richmond file information into a TIPS record system.⁹⁶ Toronto utilized a totally different automated system, whereas Ottawa and Montreal maintained sequential paper files.

The TIPS system, which is a manual card system, is named for the concept of “tips” – or leads in a criminal case. This system was used by the Michigan State Police at the time, and imported into British Columbia. Every piece of information and every investigative lead that came in was made the subject of a “tip” or a file – and was given its own folder and number.⁹⁷ When a “tip” came in, investigators were assigned to investigate or follow up the specific piece of information or area.⁹⁸ All initiatives with respect to that particular undertaking were housed in that TIP folder. TIPS were opened under the name of the person or organization related to the information received.⁹⁹ Administrative personnel in the office would read any incoming information and “card” the names mentioned into a card index system. Other identifiers – for example, dates of birth, fingerprint section numbers – were added to the cards as well.¹⁰⁰ An officer who was trying to find all references to a particular individual within the file for the investigation would go to the card index and look for that name. The card would then refer to the TIP files in which that name appeared. If the name was referenced in a number of different TIP files, the card would contain the cross-references to the other tips. Some TIP files would end up consisting of three to four pages, while others could number in the thousands of pages.¹⁰¹

After individual Task Forces had already implemented their own document management systems, a Headquarters directive came out requiring that a TIPS/PIRS system was to be used.¹⁰² The PIRS system, which was the Police Information Retrieval System, was a national automated “alpha reference,” or indexing system, that provided file references but not the actual material in the file.¹⁰³

The Headquarters directive was received with reluctance and resulted in a “major overhaul” of the established day-to-day operations that each Task Force

⁹⁵ Exhibit P-101 CAF0056, p. 3.

⁹⁶ Exhibit P-101 CAA0267, p. 1.

⁹⁷ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9662-9663.

⁹⁸ Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2750.

⁹⁹ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11322-11323.

¹⁰⁰ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9662-9663.

¹⁰¹ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11321-11323.

¹⁰² Exhibit P-101 CAF0056, p. 4.

¹⁰³ Final Submissions of the Attorney General of Canada, Vol. I, para. 294.

had put in place. This resulted in a backlog. Members were unfamiliar with the systems, and their implementation created a significant workload – hence, the reluctance. Personnel needed to be well-informed, and the system required “full managerial support” to establish its credibility. Due to deficiencies in this respect, TIPS/PIRS became a secondary application at some units, and was not “...utilized to its fullest.”¹⁰⁴

The TIPS/PIRS system was ultimately implemented in all four investigation units, and while it was described as a “...very useful tool,” its use by the “...Vancouver Task Force was not uniformly positive.” Personnel in the E Division Task Force had in place the manual TIPS system, and had no experience with PIRS. They felt that they could not utilize a tool that required, on their part, training and the conversion of data, while coping with the pressures and demands of the investigation itself. TIPS/PIRS training was provided to all units, with the exception of Vancouver. Hardware was also a challenge for the E Division Task Force in the early days of the investigation. While Headquarters had two analysts, each with a computer terminal, there were six analysts in Vancouver who were provided with only one terminal to share.¹⁰⁵

The manual TIPS system remained in use as the main system at E Division,¹⁰⁶ and Solvason testified that, as late as 1991, the “...filing system of that time” was still the manual system of index cards and physical files.¹⁰⁷ Until the entire E Division file was digitized into a Supertext document management system in the mid-1990s, the Task Force relied on the card index system as the main means to locate information within the files (with more limited reliance on PIRS).¹⁰⁸

While the RCMP Security Service (and then CSIS) had used the NSR system, a searchable and centralized computer database since 1981, the RCMP did not implement an equivalent system for the centralized sharing of narrative information. CSIS personnel entered their intelligence reports and threat assessment information into a central database that was searchable by other regions and by Headquarters.¹⁰⁹ The RCMP units, by contrast, distributed summaries of their initiatives by way of “ciphered telex,” a top secret level telex-sharing system.¹¹⁰ The investigative units did not provide detailed information or distribute the actual reports about their initiatives,¹¹¹ with the result that analysts at Headquarters did not have ready access to data, and had to specifically request material from the divisions in order to obtain detailed information.¹¹² Some time in 1986, a national searchable narrative database, Divisional Investigative Database 22 (DIB 22), began implementation.¹¹³ This database, however, has

¹⁰⁴ Exhibit P-101 CAF0056, pp. 4-6.

¹⁰⁵ Exhibit P-101 CAF0056, pp. 7, 10.

¹⁰⁶ Exhibit P-101 CAF0056, p. 7.

¹⁰⁷ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11601.

¹⁰⁸ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11329-11330.

¹⁰⁹ Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3734, 3738.

¹¹⁰ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9663.

¹¹¹ See Section 2.1 (Post-bombing), Centralization/Decentralization.

¹¹² Exhibit P-101 CAA0055, p. 6. For a more detailed discussion of this topic see Section 2.1 (Post-bombing), Centralization/Decentralization.

¹¹³ Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9663.

been described as a “meat and potatoes” database, which focused only on what was viewed as the most important material. Not everything which existed in hard copy was put into electronic format, with the result that not all continuation reports were retyped and entered into the system.

Though the investigational Task Forces all ultimately used TIP systems, each set their systems up in their own way. Headquarters did not use the TIP system at all, and maintained a sequential file instead. As there was no standardization, the same information would be filed under different numbers in different locations.¹¹⁴ This created extra work for investigators who needed to compare information they had on file in order to ensure that their files were complete.

Moreover, there was different information on the files at the different Task Force locations and at Headquarters in Ottawa. In fact, the lack of an effective centralized filing system meant that a Task Force investigator looking for the RCMP system-wide holdings on the national investigation would have had to look at the BC master file, at the Ottawa file, at the Toronto and Montreal and perhaps even Hamilton files. The officer would also have needed to look in electronic files as well, since it was not possible to know whether a document would be in one or more or all of the systems.¹¹⁵ The existence of multiple filing systems with different material made finding information on any particular subject an onerous task, and posed the risk that information would be missed. In 1990, in preparation for the abuse of process motion in the Reyat trial, E Division cautioned Headquarters that the materials E Division had collected on the “... subject of requests for access to CSIS materials by the Force” were incomplete, and that additional documentation “...no doubt exists at both this HQ’s level and HQ’s Ottawa.”¹¹⁶

The fact that there was information stored in files at multiple locations was recognized when the Air India Task Force was reinvigorated in 1995. The Task Force requested that the Toronto and Montreal files be shipped to Vancouver, and these files were digitized and uploaded, along with the E Division files, to “Supertext,” a new searchable electronic document management system. This allowed for easier searching of the database and tracking of documents. Yet, as late as 2007, in preparing information for a briefing to Commission counsel on the issue of Mr. A, Sgt. Terry Goral still had to search through a number of different HQ and BC files, because all of the information had not been compiled into one system.¹¹⁷

Difficulties in Locating Information on File

Investigators also, at times, experienced difficulties in locating information that was on file. Solvason testified, in relation to the manual system in use in 1991, that the rule was that when taking out a “...master file, you’re supposed to put a charge card there; [but] didn’t always happen” and sometimes things were

¹¹⁴ Testimony of Jim Cunningham, vol. 87, December 3, 2007, p. 11327.

¹¹⁵ Testimony of Jim Cunningham, vol. 87, December 3, 2007, p. 11328.

¹¹⁶ Exhibit P-101 CAF0232. See also CAF0259.

¹¹⁷ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11329-11330.

misfiled.¹¹⁸ Hence, when a tip review in relation to the November 1984 bomb plot was conducted by an RCMP analyst in February 1986, it was noted that the report about the information obtained by the RCMP from Person 1 in 1985 was not on file.¹¹⁹ Similarly, there was a report which indicated that, on June 22, 1985, the video camera at the Vancouver International Airport, which should have faced the lost and found area, was found facing the floor. The camera holder was loose and needed to be tightened. Investigators, following up for the Watt Mackay review on whether there were other cameras in operation and whether any of the tapes had been examined, noted that the analysts "...are aware that there was a file on this issue but were unable to locate it for the purposes of discussing this review."¹²⁰

The RCMP also experienced difficulty in locating information that had been provided to the Task Force by CSIS. For example, CSIS provided the RCMP with two reels of tape that were said to record Parmar making the statement: "If someone implicates me or gets me arrested for planting the bomb, that person would have to be an insider. How any other person can do it – who doesn't know anything." However, a review of RCMP information on file, conducted in 1988-89, revealed that there was "...no information to indicate that the tapes were transcribed or what action resulted," and "...efforts to surface the tape were unsuccessful."¹²¹

The sheer bulk of information also made it difficult for the RCMP to locate and correct errors on file. For example, the Watt Mackay review, completed in 1989-90, noted that "...CSIS surveillance mixed up Surjan Singh Gill with his brother Gurdam Singh Gill on 85-06-24 (around Vancouver and out to VIA)," and that, when the photographs of the subject CSIS covered at VIA were compared with photographs of Surjan Singh Gill, "...it does appear that the subject was not Surjan Gill."¹²² However, the Air India "inclusive timeline" (a chronology prepared by the RCMP, which summarized events in relation to Air India, dated September 1999) replicated this error, repeatedly referring to CSIS PSU observations of "Surjan Singh Gill" around Vancouver and at Vancouver airport.¹²³

At times the RCMP had to re-request material from CSIS that it was unable to locate in its own files.¹²⁴ For example, as a result of the Watt Mackay review, RCMP E Division requested six particular CSIS documents to assist them in the Air India investigation. One of these documents was an important analytical document

¹¹⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11618.

¹¹⁹ Exhibit P-120(c), p. 6 (entry for Feb. 26, 1986: doc 518-3).

¹²⁰ Exhibit P-101 CAF0343(i), p. 45.

¹²¹ Exhibit P-101 CAF0343(i), p. 34.

¹²² Exhibit P-101 CAF0343(i), pp. 57-58.

¹²³ See Exhibit P-101 CAF0519, pp. 3-4. In response to this contradiction, while Insp. Cunningham agreed that both documents could not be correct, he replied that one would also need to look at yet another document, the "relevant timeline," as "...there is the possibility that those particular notations in relation to Surjan Gill and the surveillance being conducted, may have been removed" in that document:

Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11332-11333.

¹²⁴ Exhibit P-101 CAF0056, p. 24.

– referred to as “the Dexter analysis” – which CSIS had already provided to the RCMP a number of years prior, but which the RCMP was no longer able to locate on file.¹²⁵

Bill Turner of CSIS testified in relation to the RCMP’s requests for documents in the context of the Malik and Bagri trial:

MR. GOVER: And had any of the information provided to the RCMP been lost by them?

MR. TURNER: I think there were occasions that we knew that we had given them information and we said we’d given that to you already and the response was “Well we’re not sure where it is. Can you provide it again?”

Certainly, that was the case with some disclosure letters and we provided, I think, about 3,000 disclosure letters to them.¹²⁶

Similarly, Mervin Grierson noted that he represented CSIS in the Narita trial in Vancouver:

...and knew every piece of paper that went into the disclosure package for that trial in 1988. And years later – that was all declassified. The RCMP got the same material as the Defence got; they got five boxes of documents. We would be having discussions and they’d say, “Well, we don’t know about that. You didn’t provide that to us.” And I’d say, “Well, it’s in the public domain. It was released five years ago.” “Well, we can’t find it. It’s not on our Air India file. So, again, without being uncharitable to those members, they didn’t have that continuity of knowledge, and their method of retrieving that was more labour-intensive than ours were.¹²⁷

The inability of the RCMP to locate information on file appears to have caused some tension between the two agencies. As explained by Grierson, there were times when CSIS knew that it had shared certain information with the RCMP because it had a “tracking mechanism,” but the RCMP “... would create a big stink,” accusing CSIS of never having provided the information. CSIS would go through its files and find that the RCMP had indeed been provided the information by CSIS years ago.¹²⁸

¹²⁵ Exhibit P-291, item 80. The Unit Head for the BC Region Counter Terrorism Section, John Stevenson, testified that he was once asked to provide another copy of CSIS materials he had previously given because the RCMP somehow misfiled or misplaced it within E Division and could not find it: Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7676-7677.

¹²⁶ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8313.

¹²⁷ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9460-9461.

¹²⁸ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9460-9461.

On the other hand, Blachford testified that, despite the limitations of a manual system, he did not experience difficulty in retrieving the information he required:

MR. BOXALL: Were there problems then – given the size of the file and the technology existing at that time – with the RCMP’s management of a file this size and the number of documents and tips and so on?

S/SGT. BLACHFORD: Well, it was a struggle. I mean it was a manual maintenance, file maintenance system, cards, but I think it was done fairly well.... I was able to access these tips in my review and find them before we went out and did follow-up. I ... my job as part of the Watt McKay Review was to go back and research the file and I was able to find material that I needed and ... it seemed to be logically accessible.

MR. BOXALL: So your evidence was there wasn’t any problem with persons being able to access the information —

S/SGT. BLACHFORD: I certainly didn’t have trouble finding the material on the file. It may have taken a little longer than I like because of the volume that you had to go through but....¹²⁹

Retention of Information

In spite of the fact that the Air India investigation continuously remained open, the RCMP did not preserve all relevant materials over the years. The RCMP destroyed a number of important files, documents, and audio recordings. In 1999, when the RCMP began once again to follow up on the November 1984 bomb plot,¹³⁰ retired Sgt. Wayne Douglas was contacted regarding his knowledge of the incident and, specifically, about his knowledge of certain "...reports, notes or tapes" that he may have received from the VPD. Douglas advised that his "...notebooks may have been shredded" when he turned them in to the Task Force on his retirement. The destruction of his notebooks posed a challenge for the RCMP’s ability to reconstruct the interactions between the VPD and Douglas, the main investigator on the November 1984 Plot issue, and meant that the RCMP was forced to rely on Douglas’s recollection of events, 15 years after the fact.¹³¹

Similarly, in relation to the individuals identified by Mr. Z as being responsible, or associated with those responsible, for checking in the luggage with the bombs,

¹²⁹ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7830-7831.

¹³⁰ See Section 1.1 (Pre-bombing), November 1984 Plot.

¹³¹ Exhibit P-101 CAF0521, pp. 7-8.

the tapes of interviews with these individuals were "...destroyed for unknown reasons during the investigation and there were no copies made and none were transcribed."¹³²

Ongoing File Reviews

One of the ways the RCMP attempted to address the challenges of managing the quantity of information on file was through ongoing file reviews. The Task Force undertook massive file reviews every few years, with the first file review beginning six months after the bombing.¹³³ These reviews required a large mobilization of resources each time, but never seemed to lead to any innovations or changes in the filing system itself. From the outset, the E Division Task Force did not organize its material by issues, themes or incidents, and there was no running thematic summary of the file created as the investigation went along.¹³⁴ Despite the difficulties encountered on successive file reviews, this never changed, and the errors continued to accumulate in the files over the years. When Gary Bass began the process of reviewing the files when the Task Force was reinvigorated in 1995, there was still no executive summary or report on the status of the investigation to use as a starting point. Bass, in his February 9, 1996 memorandum, wrote:

...the file volume and complexity of the investigation has meant that few people ever acquired a grasp of the big picture, in terms of evidence over the years. We have noted that as the details of certain events have been told and retold over the years, they have become increasingly less accurate.¹³⁵

When the Crown, as part of the prosecutorial decision on whether to proceed to trial, was called on to determine whether there was a substantial probability of conviction, it had to go through the entire holdings in the possession of the RCMP. It took the Crown approximately four years to review all of the information on the file, and it was during this review process that the Crown for the first time reorganized the information thematically.¹³⁶

Conclusion

The Air India Task Force was created to solve the greatest crime in Canadian history, but faced numerous challenges in this endeavour. While some of these challenges were inherent to the investigation itself, a number of difficulties arose as a direct result of structural decisions made in relation to the Task Force.

¹³² Agreed statement read into testimony by agreement with the Attorney General of Canada during Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9729.

¹³³ Late 1985 HQ analysts review E Division files; 1985-1988 Project Dojail (review in connection with the civil litigation); Exhibit P-101 CAF0391: 1988-1989 File review by Watt McKay; review for SIRC; Exhibit P-101 CAF0411, p. 1: 1992 "complete examination of entire Air India investigation" by E Division NSIS Investigators; Exhibit P-101 CAF0391: February 1995; 1995-1996 File review under Gary Bass.

¹³⁴ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11324, 11326.

¹³⁵ Exhibit P-101 CAA0932, p. 5.

¹³⁶ Testimony of Jim Cunningham, vol. 87, December 3, 2007, pp. 11323-11324.

The Task Force belonged to the federal side of RCMP operations, which, unfortunately, had few officers trained in major crime investigations and virtually none acquainted with the issues of Sikh extremism or with the ability to speak Punjabi. Municipal police forces could have provided much useful information to the Task Force, but were badly under-utilized. As well, because the Task Force was temporary, investigators were promoted out of the unit and the resulting high turnover could only have eroded the collective mastery of the file.

The investigation was slow to get up-and-running and, in the early days, was dependent on CSIS for investigative leads and targets. This fact is particularly unfortunate, as the RCMP had a great deal of information about pre-bombing threats and key figures in the Sikh extremist movement, but never used it to orient the investigation set up after the bombing. As well, information generated by the Task Forces themselves was not organized in a well-thought-out manner. Files in different locations used different filing systems and were never organized according to issue, theme, or incident. There were important instances where files that held important content were lost or destroyed.

These problems needed to be identified early on – and should have been, in the course of the many file reviews that were conducted. Either they were not identified, or the will to effect change was not there.

2.1 Centralization/Decentralization

The Need for Centralization in Security Offences Investigations

A key challenge faced by the RCMP in conducting the Air India investigation resulted from the overall organization of the Force's operations. In 1985, RCMP operations were decentralized. RCMP Headquarters was "...fundamentally an administrative" office and was "...not deeply involved in field investigations."¹³⁷ Divisions were used to being "autonomous,"¹³⁸ conducting investigations without input or oversight by Headquarters.

Prior to the Air India bombing, the RCMP had recognized that there were circumstances in which this model of decentralized control would need to be modified. It was noted in the draft RCMP Guidelines respecting National Security Enforcement that security offences investigations required a "...high level of central control and coordination."¹³⁹ Centralized *control* in national security investigations makes sense for a number of reasons. Investigations relating to national security issues involve highly sensitive information: the investigative decisions that are made could impact on national and international interests. A central body is necessary to analyze all relevant information – which may be coming in from multiple jurisdictions – in order to ensure that the information is shared with the proper units. A central unit also has the broadest perspective,

137 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9365.

138 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9671.

139 Exhibit P-101 CAA0039(i), pp. 9-10 [Emphasis added].

and is thus in the best position to make accountable decisions of overall benefit to the investigation. If investigative decisions are left solely to regional management, the broader national and international perspective will be lost.

Limited Control by RCMP Headquarters

The draft National Security Enforcement guidelines, while establishing an obligation to supply HQ with reports on security offences investigations,¹⁴⁰ did not confer any actual power or impose any obligation on HQ to control or impact investigations. Reports were to be sufficiently detailed to "...allow Headquarters to respond to enquiries by Government," and detailed operational plans had to be submitted only where significant resource commitments or intrusive measures were involved.¹⁴¹ Thus the nature of the actual control to be exercised by HQ in Ottawa in the case of national security offences investigations remained modest, resulting in the view that it was control in name only.

The RCMP's discomfort with any significant operational centralization, at both the HQ and divisional level, came to characterize an unhealthy and ineffective relationship between Ottawa and the divisions throughout the Air India investigation.

At HQ, an Air India Task Force Coordination Centre was set up to coordinate the divisional Task Forces in Montreal, Vancouver, Toronto and later Alberta. According to Robert Simmonds, who was Commissioner at the time, the purpose of the Headquarters Task Force was "...to do nothing more than to look at all of the information that was being generated" by the investigative groups in the divisions, as well as through foreign liaison in Japan and Ireland.¹⁴² The Headquarters Task Force was not to manage, supervise or review the investigative activities of the divisions.¹⁴³ The idea was that those investigating in Vancouver might not know everything happening in the Toronto investigation, so central coordination via the HQ Task Force would provide a "...reasonable assurance that nothing would be overlooked or missed."¹⁴⁴

In the first months of the investigation, HQ management representatives met at the Prime Minister's Office (PMO) on a daily basis. The first endeavour of the Headquarters Task Force was to produce daily situational reports for senior management to outline investigative matters and "...general information dealing with PMO's decisions" and "...aspects of [the] civil aviation investigation."¹⁴⁵ The reports summarized the initiatives that were underway in each unit's respective areas, and were sent out to all of the divisional Task Forces as well, so that everyone in the network would have all the information available at the same time.¹⁴⁶

140 Exhibit P-101 CAA0039(i), p. 15. See also pp. 20-21, providing for reporting requirements about the offence itself and related criminal intelligence.

141 Exhibit P-101 CAA0039(i), pp. 16-17, 20.

142 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9366.

143 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2647-2648.

144 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9366.

145 Exhibit P-101 CAA0248, CAF0055, p. 4.

146 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9667-9668.

On July 25, 1985, HQ wrote to the division Task Forces, stating that questions could arise from "...the PMO, DEA, MOT and the CASB."¹⁴⁷ The memo indicated that, in order to enable the Commissioner and the author to respond in an "informative manner," HQ "...must always be aware of the details of your respective investigations."¹⁴⁸ The reporting requirements placed on the divisions proved to be "labour intensive." The divisions were required to report all ongoing initiatives to HQ Ottawa through a Top Secret cleared telex system,¹⁴⁹ and in the first few months did so by daily updates. The divisions would also copy all of the other divisional Task Force units when sending out their daily updates so that "...all the task forces within this network would have all the information available of the investigation at the same time."¹⁵⁰

Divisional Autonomy in the Investigation

The E Division Task Force generally operated autonomously, taking operational decisions and undertaking investigative steps without having to seek approval from Ottawa.¹⁵¹ Important operational initiatives, such as assembling applications to intercept communications) or engaging in source development, could be launched without seeking approval from Ottawa.¹⁵² Bill Turner, who was at CSIS HQ in 1985, and who joined the Sikh Desk in 1986, described the contrast between CSIS's highly centralized structure and the RCMP's structure with respect to the Air India investigation:

Well, the RCMP is quite different. They're very decentralized. I mean the CO in 'E' Division has a lot more authority on running the investigation out in 'E' Division. They do talk, obviously, to their headquarters counterpart but 'E' Division is semi-autonomous.¹⁵³

S/Sgt. Robert Wall testified that, while there was some resistance to a model of Headquarters control, it was made clear early on that this was the way the operation would be run, and that, in a paramilitary organization, "...you do as you're told by your superiors."¹⁵⁴ However, the reality was that HQ personnel were not actually E Division personnel's "superiors." The HQ Task Force was set up in such a way that divisional investigators did not have any formal reporting requirements that obliged them to respond to questions or operational suggestions from HQ. In terms of the official line of command, Sgt. Warren

147 Canadian Aviation Safety Board.

148 Exhibit P-101 CAA0288, p. 1.

149 The "Cipher System."

150 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9667-9668.

151 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9667. There were certain initiatives for which approval of Ottawa was required – for example, any operational plans requiring foreign travel or investigations requiring Ottawa's assistance to coordinate through diplomatic channels: Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9668.

152 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9668-9669.

153 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8275.

154 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9671.

Sweeney testified that E Division did not report to him. The only ways that he could have required the division to provide answers to HQ questions would have been either to have Chief Superintendent Norman Belanger, who was put in charge of the HQ Air India Task Force, sign the request, or to place his request through the supervisor of divisional investigators within the division.¹⁵⁵

The Impact of Decentralization on HQ Control and Effectiveness

The RCMP's philosophy of decentralization, and the structure that embodied it, affected the ability of HQ to act as a coordinating body. Divisions only informed HQ of what they thought HQ should know. The HQ situation reports were neither detailed nor complete because the divisional reports upon which they were based were lacking in detail, and the divisional responses to HQ requests, and information sharing with HQ, were "inadequate." The result was that HQ "...analysts were not working with all the pieces of the jug [sic] saw puzzle,"¹⁵⁶ making it impossible for HQ to provide any true in-depth coordination or direction. It became "very frustrating" for analysts to receive correspondence stating that "...12 perimeter interviews were conducted to date", with no indication of "...what most of those interviewed had to say,"¹⁵⁷ or to be given a report that a review of CSIS material from the Parmar intercept "...revealed nothing of significance other than intelligence regarding contacts he has made," with no information as to the identity or nature of those contacts.¹⁵⁸

The result was that Headquarters did not have a sufficient understanding of what was occurring on the ground, or even a basic understanding of the focus of E Division initiatives. For example, on July 22, 1985, RCMP HQ NCIB sent a telex to E Division with numerous questions about the state of the investigation at the E Division Task Force. At the end of the list of questions, HQ asked: "What is E Division Task Force's main investigational concentration at this point? What is their future operational plan?" and concluded by noting that "...more details required in daily reports," and that copies needed to be provided "...of statements, interview reports, intercept reports, surveillance reports, etc."¹⁵⁹ In the face of such basic information deficits, it would clearly have been impossible for HQ to assume any meaningful centralized direction or coordination of the investigation.¹⁶⁰

HQ also experienced difficulties in obtaining responses to its requests of the divisions. It took months before E Division finally responded to HQ's requests for information about the November Plot in the months following the bombing.¹⁶¹ When asked to comment about the non-responsive attitude of E Division with respect to the November Plot matter, Sweeney explained that by the time most

¹⁵⁵ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2627.

¹⁵⁶ Exhibit P-101 CAF0055, p. 6.

¹⁵⁷ Exhibit P-101 CAF0055, p. 6.

¹⁵⁸ Exhibit P-101 CAA0292(i), p. 3.

¹⁵⁹ Exhibit P-101 CAA0286.

¹⁶⁰ Exhibit P-101 CAF0055, p. 8.

¹⁶¹ See Section 2.3.1 (Post-bombing), November 1984 Plot and Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

requests were sent in September 1985, the Air India Task Force was operational, and E Division was constantly receiving requests for updates and information. He believed there was a feeling in E Division that HQ should simply let the on-the-ground investigators do their job, and that they would notify the appropriate recipients once they received the information.¹⁶²

Sweeney identified the lack of true central control as a problem in a 1986 report examining the role of the Coordination Center in the Air India investigation.¹⁶³ In his recommendations he stated that:

Policy should be drafted whereby Part IV.I (now Part VI) offences and major international investigations such as Air India, are controlled and directed from HQ's. All the major decisions affecting Canada under Part IV.I have to be made in Ottawa in consultation with other government departments. As such, HQ's requires that all information gathered be forwarded, analyzed, assessed and disseminated from one central area. (This is the way CSIS operates.)¹⁶⁴

In June 1986, HQ attempted to readjust its relationship with the divisions. By that time, in addition to the Air India bombing, a number of Sikh extremist incidents had occurred, including: the attempted bombing of the *Indo-Canadian Times* office in Surrey; the attempted murder of Indian Cabinet Minister Malkiad Singh Sidhu; the arrest of Parmar in Hamilton in connection with a plot to blow up the Indian Parliament and to kidnap children of Indian MPs;¹⁶⁵ and the plot to blow up another Air India plane, discovered in Montreal in April/May 1986.¹⁶⁶ At this point, HQ began to see the need for a more direct and active role on its part and for control over the multiple Sikh extremism-related investigations, which by this time had been given the collective title, "Project Colossal."

HQ sent a telex to the divisions stating that the "...events of the last few days" have necessitated an "urgent review" of the RCMP response to the most "... serious and wide-ranging criminal extremist activity ever encountered in this country."¹⁶⁷ The telex asked for the cooperation of the divisions stating that:

It is abundantly clear that the magnitude of the task at hand goes far beyond the bounds of Divisional autonomy.... Individual actions and initiatives cannot be addressed in a narrow, regional context. For these reasons, there will be occasions when it is reasonable and necessary for HQ to direct field operations.¹⁶⁸

¹⁶² Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2627.

¹⁶³ Exhibit P-101 CAF0055, p. 2; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2706-2707.

¹⁶⁴ Exhibit P-101 CAF0055, p. 8.

¹⁶⁵ Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 47.

¹⁶⁶ Exhibit P-101 CAF0504, p. 1.

¹⁶⁷ Exhibit P-101 CAF0504, p. 1.

¹⁶⁸ Exhibit P-101 CAF0504, p. 1.

According to the telex, the role of HQ would be to coordinate, monitor and assess all ongoing Sikh extremist criminal investigations and, as necessary, to direct specific investigative operations.

Though it appears that Headquarters' view of the level of control that it should exercise over the investigation was beginning to change, no structural or cultural changes occurred to allow for this level of control to be implemented.¹⁶⁹ Even when analysts from HQ sent what would appear to have been instructions to the divisions, these were often taken as "suggestions," and were met with indifference. Thus, on February 6, 1987, Cpl. Doug Wheler, an analyst at HQ, sent the E Division Task Force a number of questions, some of which related to Pushpinder Singh's purported statements made two weeks before the bombing that "something would happen" in two weeks.¹⁷⁰ Wheler wrote that there should be a "...complete re-examination of Khurana situation on 85 June 12," including a determination of whether Khurana was "still adamant" that the conversation took place. He also wrote that VPD members involved in this incident should be re-interviewed "...to determine if anything was missed."¹⁷¹

Wheler's report was forwarded to the E Division Task Force on February 9, 1987.¹⁷² The E Division response, dated February 18th, was devoted mostly to correcting what clearly were perceived as misunderstandings of the existing information by HQ,¹⁷³ and to advancing the justification for the Division's view that the Khurana scenario had already been sufficiently investigated. It is apparent that there was no "complete re-examination" of the Khurana situation at that time, nor does it appear that the VPD members who had been listed as having been involved in the scenario were contacted for purposes of any serious follow-up.¹⁷⁴

The failure of the divisions to report all relevant information to HQ, and the perception that reporting obligations were onerous and at times unnecessary, continued well into the investigation. In July 1988, E Division had been dealing directly with Crown Counsel James Jardine and with CSIS BC Region in connection with the Reyat trial. A memo by the Non-Commissioned Officer in Charge of Operations of the E Division investigation noted:

With respect to HQ's Ottawa they have not been supplied with any of the previous correspondence on this subject from this division. HQ's NSOTF have been dealing direct with CSIS HQ's and [therefore suggest] we may wish to re-consider sending copies to them. If we are to send them we will have to put together all previous correspondence for them.¹⁷⁵

¹⁶⁹ In fact, it was not until after Justice O'Connor made his recommendations in connection with the Arar Commission of Inquiry that the RCMP began to take steps to implement a model of central control for national security investigations.

¹⁷⁰ See Section 1.6 (Pre-bombing), Khurana Information and Section 2.3.4 (Post-bombing), The Khurana Tape.

¹⁷¹ Exhibit P-391, document 429 (Public Production # 3811), pp. 9-10.

¹⁷² Exhibit P-391, document 429 (Public Production # 3811), p. 1.

¹⁷³ Exhibit P-101 CAA0528.

¹⁷⁴ See Section 2.3.4 (Post-bombing), The Khurana Tape.

¹⁷⁵ Exhibit P-101 CAF0223.

The ineffectiveness of the RCMP's Ottawa bureaucracy in coordinating and organizing the investigation is well illustrated in a number of the source episodes. When members of RCMP HQ received oral information from CSIS about a CSIS source who had been asked by Bagri to borrow her car on the night before the bombing, the information was not committed to paper (with the result that it is now impossible to know exactly what information was, in fact, passed at the time) and was not properly reported to the divisions. It also appears that HQ decided that, as the CSIS source was not able to identify other individuals who accompanied Bagri to the airport, it was not worth pursuing the matter any further. It was not until years later that the significance of the information that had been provided to RCMP HQ would be recognized, when E Division pursued the matter directly with CSIS after the Watt Mackay review.¹⁷⁶

In the case of Mr. Z, since HQ was not informed of the fact that E Division had already developed and was pursuing his information, it was unable to keep CSIS properly informed of the RCMP's own initiatives. Once it was discovered that CSIS and the RCMP were, in fact, pursuing parallel investigations, confusion and ill will between the agencies ensued.¹⁷⁷ In the case of Tara Singh Hayer, RCMP HQ took an aggressive stance with CSIS, threatening to go after the identity of CSIS's community contact when CSIS passed along information from the individual about Bagri's purported confession of his involvement in the bombing. In fact, unbeknownst to HQ, the RCMP already had access to this CSIS contact (Tara Singh Hayer) and had developed this same information sometime earlier.¹⁷⁸ In both cases, the lack of information at HQ prevented it from effectively communicating with CSIS in order to identify and correct any potentially problematic overlap with CSIS's operations, and this in turn led to further friction with CSIS.

At the same time, even if a decision had been made to provide formal authority to HQ to direct the investigation, it does not appear that HQ would have been equipped for the task. Solvason testified that suggestions for actions from Ottawa were not generally received with great enthusiasm at the E Division Task Force. He stated that "...you had to do it, but it wasn't really received with any great deal of – it wasn't welcome." This was, in part, due to the fact that the input of HQ was not seen as making any particularly useful contribution. According to Solvason, RCMP HQ input was sometimes dismissed because directions in some cases came "...from civilians or people that did not necessarily have hands-on experience and certainly were a large distance away."¹⁷⁹ He went on to explain that:

In a normal homicide investigation, people with highly-skilled and unique abilities come together as a small team and they're very much adaptive to circumstances as they flow and they make decisions sometimes instantly as the investigation progresses.

¹⁷⁶ See Section 1.3 (Post-bombing), Ms. E.

¹⁷⁷ See Section 1.4 (Post-bombing), Mr. Z.

¹⁷⁸ See Section 1.2 (Post-bombing), Tara Singh Hayer.

¹⁷⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11574.

So, to have somebody from thousands of miles away make those decisions was different.

In his view, while there was a need to "...coordinate things from a national perspective" because of the multiple Task Forces across Canada, "...sometimes that went a little further in terms of 'do this, do that' and when somebody is directing your resources there instead of here, it makes it difficult sometimes."¹⁸⁰

To make things worse, HQ was not provided with sufficient resources to enable it to manage and analyze all the information being produced in the multiple Task Force units. A group of five Coordination Center members could only have provided the most general supervision and oversight for an investigation of this magnitude.

Conclusion

Factors related to culture, resources, structure and staffing all combined to defeat any true centralized coordination and control of the RCMP investigation, at least up to the reinvigoration of the investigation in 1995. The effect of this lack of centralization was that HQ did not have the information it would have needed in order to effectively coordinate the Air India investigation. Furthermore, even in circumstances where HQ wanted to provide investigative input, it had no structural authority over the divisions, and its "directions" were often disregarded or treated as mere suggestions.

2.2 The RCMP Investigation: Red Tape and Yellow Tape

Introduction

On May 10, 1991, Inderjit Singh Reyat was convicted of two counts of manslaughter and four explosives charges relating to the Narita bombing. He was sentenced to ten years imprisonment. Reyat was arrested in England on February 5, 1988, and he fought the extradition until he was returned to Canada on December 13, 1989. RCMP E Division members received high praise by counsel in the UK for their efforts in what was described as a "logistical nightmare."¹⁸¹ James Jardine, who had worked with members of E Division for six years in connection with the Reyat trial, had similar praise for the investigators who worked tirelessly in the preparation of this case.¹⁸²

There is no question that the conviction of Reyat in relation to his role in the Narita bombing was a significant success for the RCMP. While the efforts of the RCMP in relation to the Narita investigation are well documented, it is considerably more difficult to reconstruct the RCMP's progress in relation to the investigation of the bombing of Air India Flight 182 during the period of the late

¹⁸⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11588.

¹⁸¹ Exhibit P-101 CAF0176.

¹⁸² Testimony of James Jardine, vol. 47, September 18, 2007, p. 5782.

1980s and early 1990s. The question that naturally arises is – what was the RCMP doing in relation to the Air India investigation during this period?

The RCMP, like any government agency, has finite resources that it must strategically allocate to best meet its institutional objectives. Not surprisingly, to a great extent, the RCMP measures its success in terms of convictions. In its difficult task of budgeting efficiently for various initiatives, it will naturally consider the likelihood of successfully resolving an investigation as a factor in its decision-making. At the same time, resourcing itself can impact on the likelihood of success for an investigation. No investigation, no matter how potentially “open and shut” the case may be, will be solved if there are no officers available to collect the evidence. The manner in which resources are allocated is by its very nature a statement about priorities, which in turn trickles down to the ranks as a form of message about how the Force expects investigative energy to be expended. A close examination of the history of the Air India investigation provides a lesson in the interconnectedness of investigative priorities, financial and human resources, creativity, and, ultimately, investigative progress or the lack thereof.

Forensics made it more likely to resolve the Narita case, at least in part. The RCMP focussed its resources and energy on obtaining at least one conviction, albeit for lesser charges, targeting an accused who was not believed to have been a mastermind of the conspiracy. Meanwhile, the difficulties associated with resolving the Air India case led the RCMP to devote fewer, rather than more, resources to this important investigation. From the outset, both the Narita and the Air India bombings were approached as traditional homicide investigations – attempting to link forensic evidence from the scene of the crime and eyewitness evidence to the suspects. The problem was that the Air India Flight 182 crime scene, which was thousands of metres below the Irish Sea, was vastly more problematic than that of the Narita bombing.

For years, the position of the RCMP was that until sufficient evidence had been collected from the crime scene, the Air India investigation had gone as far as it could go. The result was that, for a time, there were not many investigative initiatives ongoing at E Division in connection with Air India, other than attempts to retrieve exhibits from the Irish Sea and to obtain forensic reports.¹⁸³ Rather than looking for alternative approaches to the investigation or reorienting it in the only way that made sense under the circumstances – as an intelligence-led investigation – the RCMP let the investigation fall into stagnation for years. The undersea dives were expensive operations. Meanwhile, resources for other investigative initiatives were not made readily available to E Division investigators, who were, in fact, actively discouraged from pursuing Air India initiatives at all. Over time, morale became a very serious issue in the E Division unit. Many investigators at the Task Force did their best to pursue the Air India investigation, despite a difficult work environment. Some even tried to focus efforts on developing an approach based on the potential for a conspiracy

¹⁸³ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9642-9643, 9646-9647.

charge and on pursuing potential sources. However, the negative climate that developed at the Task Force inevitably had an impact on the investigators, and thus on the investigation.¹⁸⁴

The Air India investigation was finally overhauled in 1995, as calls for a public inquiry grew louder in the lead-up to the ten-year anniversary of the bombing. What could have been done earlier was undertaken only then, ten years after the bombing. The investigation was injected with significant new resources and a dedicated task force was again created, which allowed investigators to focus their energy entirely on this investigation. The investigation was reoriented towards a conspiracy approach. At this point, the investigation went forward with a wiretap application on the basis of information that had been available to the RCMP for years. When the case ultimately went to trial, it was almost entirely on the basis of source information, in many cases developed by CSIS or other agencies first, and in some cases known to the RCMP for years (for example, Ms. E).¹⁸⁵

The Progress of the Investigation: 1987-1995

Structural Changes and Resources

In the early years of the Air India investigation, there was tremendous drive to solve the crime at all levels of the RCMP. Retired Staff Sgt. Robert Solvason testified that everyone was doing "...whatever they could" and that the Air India investigation was the "...number one priority in the Force." This meant that there was a push at HQ and at the divisions to ensure that sufficient resources were made available to meet investigative needs and to see that the investigation was being well managed and well run.¹⁸⁶ A dedicated Task Force was formed in E Division, and investigators on the Air India file were able to focus their efforts exclusively on this investigation.

Beginning in the late 1980s, a number of structural changes occurred that affected the continuity of, and priority afforded to, the Air India investigation. As early as 1986, investigative resources became increasingly devoted to the Narita investigation and prosecution, to the exclusion of the Air India explosion, and by September 1986, efforts at E Division were mainly focused on the Narita incident.¹⁸⁷ An internal RCMP report about the status of the investigation dated September 10, 1986, states that the "thrust" of the investigation was on the forensic findings arising out of materials uncovered at Narita and that:

While ever cognizant of the loss of Air India's Flight 182, to date nothing in terms of physical evidence has been established on which efforts parallel to those ongoing in the Narita case might be based.¹⁸⁸

¹⁸⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11565-11566, 11604.

¹⁸⁵ See Section 1.3 (Post-bombing), Ms. E.

¹⁸⁶ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11551-11552.

¹⁸⁷ Exhibit P-101 CAA0494, p. 2.

¹⁸⁸ Exhibit P-101 CAA0494(i), p. 2.

Over time there was a “slow degeneration” of the Air India investigation, which began receiving lower and lower priority.¹⁸⁹

By 1987, many of the key figures in the management of the Air India investigation were no longer on the Task Force. Supt. Les Holmes, who had been the OIC of the E Division Task Force, had been transferred, and Inspector John Hoadley, who had managed the E Division investigation, had retired. Similarly, at RCMP HQ in Ottawa, C/Supt. Norman Belanger, who was the head of the Coordination Centre and then of Special Projects Branch, which had been set up to manage the Air India investigation at HQ, had left his position as well.¹⁹⁰ In addition, while dedicated task force units were set up to focus on the Air India investigation immediately after the bombing, over the years the Air India investigation was transferred to the National Security Offences Task Force (NSOTF), then to the National Security Offences Section (NSOS), and, by 1989, to the National Security Investigations Section (NSIS). With those changes, the Air India investigation was no longer conducted by a dedicated unit, but became one among a number of other matters handled by the new units.¹⁹¹

Staff Sergeant Bart Blachford, who was involved with the Air India investigation throughout most of the 1990s and subsequent years and is now the lead investigator in the continuing RCMP investigation, explained that during the early 1990s, although “...people always wanted to move that file forward,” members of NSIS were also responsible for other files and were “...continually dealing with other Sikh matters” as they arose. He noted that, in the context of “limited manpower,” the focus of E Division was on completing the Reyat trial.¹⁹² By 1989 there was a “tremendous” reduction in resources dedicated to Air India at E Division,¹⁹³ and Sgt. Laurie MacDonell, who joined NSIS at E Division Headquarters in 1990, testified that, in the early 1990s, he never “...felt a push or drive” coming from Headquarters to prioritize the Air India investigation. It was one of a number of priorities at the time and was “...in a bit of a lull at that point.”¹⁹⁴

In late 1989, there was a formal attempt to shut down the Air India investigation at E Division. Solvason recalled being called to attend a team leaders’ meeting at E Division, along with Insp. Ron Dicks and Sgt. Robert Wall. They were advised that the Air India investigation was being concluded and that the team would focus solely on the Narita investigation. An announcement was made that C/Supt. Frank Palmer, OIC Federal Operations E Division, would be releasing members who had been seconded to the unit. The secondments were terminated and officers were sent back to their home units. However, a day or two later, a message arrived from Ottawa reversing that decision and “...ordering those people back.” They had only been gone about three days.¹⁹⁵

189 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11551-11552, 11596; See Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9647.

190 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11565-11566.

191 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7832-7833.

192 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7811-7812.

193 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9707-9708.

194 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9642-9643, 9646-9647.

195 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11573-11574.

Though Ottawa intervened to prevent the investigation from being shut down, it does not appear that it provided instructions or resources to E Division to re-prioritize the investigation.

After the attempt to shut down the investigation, there was yet another reorganization at E Division and the Air India investigation was assigned to a single person, who was responsible for coordinating various recovery attempts of the wreckage of Flight 182 and file administration.¹⁹⁶

Though the RCMP provided a written response to questions from Commission counsel indicating that there was a “core group” of 92 investigators dedicated entirely to the Air India investigation throughout the course of this investigation,¹⁹⁷ this number does not seem to be supported by the evidence and most likely includes investigators engaged in the preparation for the Narita trial and the Reyat prosecution, which was the main focus of the E Division NSIS unit throughout most of this period.

Discouragement of Intelligence-Led Initiatives and the “Yellow-Tape” Approach

In spite of the limited resources allocated to the investigation, some of the E Division investigators “...wanted to be more active and try other things.”¹⁹⁸ In Solvason’s view, for instance, the chances of successfully making a forensic case out of the investigation were very remote and it seemed to be more “...realistic to pursue other initiatives towards a conspiracy because in fact, that’s what we believed it was.”¹⁹⁹

Indeed, from the outset of the Air India and Narita investigations, the RCMP’s view was that there had been one conspiracy planned to execute two concurrent acts of terrorism against the Indian government²⁰⁰ (“one phone call books both tickets”²⁰¹), in which the key conspirators were Parmar, Bagri, Gill, and Johal – with Inderjit Singh Reyat being used in the conspiracy for his bomb-making expertise and access to materials. A conspiracy, in non-technical terms, is an agreement among individuals to break the law at some time in the future, and in some cases, with at least one overt act to further that agreement.

Solvason and other investigators attempted to engage in intelligence-oriented endeavours, such as source development and strategic prosecutions. However, E Division management seemed unable to appreciate the value of these pursuits and actively discouraged these initiatives.²⁰²

196 There were three teams – only one of which dealt with Sikh extremist issues, including the Air India disaster: See Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11575-11576. At the time, there were approximately 25 NSIS members, including the OIC: See Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7808.

197 Exhibit P-101 CAF0438, pp. 20, 22.

198 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11601; See also Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9655-9656.

199 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11566, 11601.

200 Exhibit P-101 CAF0055, p. 2.

201 Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7813.

202 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11566.

In Solvason's view, one of the keys to advancing the RCMP's evidentiary position with respect to the Air India conspiracy would be to develop sources who had knowledge of the involvement of the main conspirators. It was believed that many members of the Sikh community had knowledge bearing on the Air India case, but that they were fearful of the extremist elements in the community and were of the view that, "...the police don't do anything and can't do anything." Therefore, one strategy Solvason developed was the pursuit of prosecutions against Sikh extremists to raise the "stature" of the police. In his view, fighting terrorism is a "...political war as well," and part of the battle is to create an impression about "...who has power, who can do things, who doesn't." Solvason felt that the successful prosecution of prominent extremists, who were engaging in criminal activity in the Sikh community, would help the RCMP get access to better sources in the Sikh community, and this could, in turn, be of use to the Air India investigation.²⁰³ However, these initiatives were not well supported by E Division management.

At one point, Solvason noticed a report from the RCMP's Kamloops Detachment about Bagri's involvement in an altercation. There was some suggestion that Bagri had been involved in an assault on another Sikh, and that this individual had lost a gold necklace worth about \$1,000. There were indications that Bagri may have stolen the necklace. The matter had been looked at in a cursory manner by the municipal police force and had been concluded. Solvason had the idea of taking a team up to Kamloops to reinvestigate that issue. In his view, if successful, the initiative would improve morale, lower Bagri's stature in the community, and make it more difficult for him to travel internationally if he were to have a criminal conviction.²⁰⁴

The plan called for taking two members to Kamloops to conduct interviews and another member to do source debriefings, with Solvason going up to coordinate the initiative. However after "...a lot of correspondence back and forth," Solvason was eventually told to go to Kamloops and take only one other person with him, and that Solvason was to "do everything." Despite this staffing situation, Solvason was able to put together a case that ended in a conviction. In Solvason's view, this conviction did "...have a positive effect for us that we were able to do something even though it was a relatively minor offence. And of course, it diminished Bagri's stature because now he was a convicted thief."²⁰⁵

In another case, Solvason gathered evidence and built a case against an individual named Harjinderpal Singh Nagra for conspiracy to bring a known Sikh extremist into the country under a false identity.²⁰⁶ He considered the Nagra case to be "...very much a test case" to see if investigators could obtain the cooperation of mostly Sikh witnesses, something the Force had not done up to that point. Given his view that the Air India case should be reoriented towards a conspiracy investigation, Solvason believed that the Nagra case would also be useful to see if the Force could be successful in a conspiracy prosecution. Solvason was, in

²⁰³ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11568, 11572.

²⁰⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11571.

²⁰⁵ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11571-11572.

²⁰⁶ Exhibit P-101 CAF0752, pp. 5-6.

fact, successful in recruiting witnesses from the Sikh community. In the end, the prosecution went forward and was successful at trial. The success of the case "... elevated [the RCMP's] stature in the community and made an impact upon Tara Singh Hayer." Solvason felt that the success of the Nagra case was instrumental in eventually convincing Hayer to be a witness on the Air India disaster.²⁰⁷

It is notable, however, that the Nagra case was successful in spite of the lack of support for this initiative by the management of the E Division unit. Solvason testified that his requests to use resources in the Nagra case were often questioned and denied. During the investigation, Solvason submitted an operational plan to go to the Philippines, where important elements of the alleged conspiracy had taken place. The plan involved taking a Crown lawyer to the Philippines to take section 30, Canada Evidence Act affidavits, and to assist in some investigative and diplomatic work, because Canada had no formal agreements with the Philippines government and that country has a different system of law. There was also a requirement for clerical assistance, since Solvason's team was not computer-trained and would have been required to take affidavits. In total, his operational plan called for bringing two investigators, a Crown counsel and some support staff to the Philippines. After submitting the operational plan, Solvason was told to go by himself. Solvason's experience in Manila took a toll on his health. When he came back he became dizzy and kept falling down. He saw a doctor who put him off work for some time for exhaustion, and later, in 1991, he was diagnosed with post-traumatic stress disorder.²⁰⁸

After the success of the Nagra case at first instance, the matter was appealed to the BC Court of Appeal and subsequently to the Supreme Court of Canada, where the conviction was overturned on the basis of an error in the charge to the jury. A retrial was ordered but did not take place. Solvason testified that "... resources were not made available to me to do that file." Solvason explained that it was a "...very awkward situation", and he "...couldn't see going through that again" because "...if you didn't have the support, it just was impossible, and I told the Crown that."²⁰⁹

Solvason was not the only investigator frustrated by the lack of support for, and the active discouragement of, initiatives related to the Air India investigation in this period. Sergeant Frederick Maile was transferred into NSIS and took charge of the unit where Solvason had been working, focusing mainly on the investigation of white supremacists and potential eco-terrorists [environmentalists]. This was during the time that the Air India investigation had been assigned to a single person. Maile "...wasn't particularly pleased" because he felt that he had accepted the transfer with the understanding that he would be working on the Air India bombing. But, according to Solvason, "...such was not the case."²¹⁰

Eventually, Maile developed a project that he believed would allow him to investigate the Air India bombing through the "back door." He initiated a "source

207 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11569-11571.

208 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11569, 11603.

209 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11570.

210 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11576-11577.

development project," ostensibly to focus on increasing sources of information for the Force. This project would involve "speculative" interviews with people who were likely to have knowledge of the Air India disaster. The hope was that if investigators approached the "right people", that it would be possible to develop sources able to assist with the Air India investigation.²¹¹ It was through this "source development initiative" that investigators Maile and Solvason decided to interview Ms. E, who proved willing to discuss the details of Bagri's visit to her the night before the bombing.²¹² Ms. E ultimately provided a written statement to Maile in which she stated that she recalled Ajaib Singh Bagri visiting her on the night before the Air India bombing and asking to borrow her car to deliver luggage to the airport. Though Solvason and Maile considered Ms. E's information to be of major importance, when they returned to the office and reported the results of their interview to the other NSIS members, the revelation was received with "...a lot of anger and hostility."²¹³ Despite the fact that the investigators had managed to get Ms. E to cooperate, which she was not willing to do in her 1990 interview with Cpl. Rick Rautio and Cst. Blachford, the NSIS members were angry that Maile and Solvason had pursued this investigation without authorization.

Aside from source development initiatives, Solvason also wanted to pursue other Sikh extremist cases that had potential connections to the Air India case. It was Solvason's view that "...all of those matters" are "...interrelated in some way" and "...they're the same people who are doing it or for the same reasons." On that basis, he believed "...those [investigations] should be focused in a central place and worked on together because one thing may quite often lead you into another."²¹⁴

One such potential case was the investigation of the 1988 attempted murder of Tara Singh Hayer, who had been shot by Harkirat Singh Bagga.²¹⁵ Despite Solvason's suggestions, and in spite of the numerous connections between this plot and Ajaib Singh Bagri that were known at the time,²¹⁶ E Division management was unwilling to take on this investigation. Harkirat Singh Bagga was charged and convicted as a result of the work of the Surrey Major Crime Unit, but in Solvason's view many possible connections remained unexplored. He felt that there had been others behind Bagga who were connected to the major figures in the Sikh extremist movement. Solvason testified that, though resources were being expended on Narita as a "priority" initiative, the unit "...did have some resources" that could have been devoted to the Hayer assassination attempt.²¹⁷

It appears that after the RCMP Air India Task Force was reconstituted in 1995, it finally took on the investigation of the 1988 shooting, which it came to believe

²¹¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11577.

²¹² See Section 1.3 (Post-bombing), Ms. E.

²¹³ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11581.

²¹⁴ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11597.

²¹⁵ See Section 1.2 (Post-bombing), Tara Singh Hayer.

²¹⁶ See Section 1.2 (Post-bombing), Tara Singh Hayer.

²¹⁷ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11596-11597, 11609-11610.

was possibly connected to the Air India case. In 1997, Blachford was involved in putting together the RCMP report to Crown counsel for the prosecution of Bagri for his involvement in the shooting. He requested that Hayer provide articles he had written about Bagri, Parmar and the Babbar Khalsa (BK) between September 1987 and August 1988 in order to "...establish a motive for why Bagri would have conspired with Harkirat Bagga to murder Tara Singh Hayer." In one of the articles, dated August 19, 1988, Hayer had made reference to "...an alleged confession by Bagri in 1985 regarding his involvement in the Air India incident."²¹⁸ This article was finally translated late during the Air India trial. It raised the possibility that Bagri sought to eliminate Hayer because he was capable of implicating him in the Air India bombing and had been publicly identifying him as one of the perpetrators. Had this incident been properly followed up on in 1988, this important connection might have been made earlier.²¹⁹

While so many of the intelligence-led initiatives proposed by the investigators were being discouraged, during this period when there was so little other activity on the Air India investigation, NSIS management was focused on attempting to obtain forensic evidence. With few resources made available for other endeavours, the Force was mostly just waiting, apparently believing that the Air India investigation was effectively at an impasse until forensic evidence became available. As explained by MacDonell, this was a time when:

We were at stages where we were waiting for information from the Service to be provided, evidence to be gathered from the sea bed and technical information to come. In addition to that, there were not a whole lot of resources on the unit to deal with a full-fledged task force. Like, you know, it takes a considerable amount of people to do that, and during that period of time resources were limited.²²⁰

The lack of a crime scene and the attempt to develop one has often been cited as the main reason why so little was going on in the Air India investigation in the late 1980s and early 1990s.²²¹ During this time period, the RCMP focused its efforts on "enormously expensive" wreckage recovery operations in relation to Air India Flight 182.²²² There were two major dive operations – in 1989²²³ and in 1991²²⁴ – for which the RCMP sent missions to Ireland to attempt to gather "conclusive evidence" of a bomb from the Air India debris at the bottom of the Irish Sea.²²⁵

218 *HMTQ v. Malik, Bagri and Reyat*, 2002 BCSC 823 at para. 6.

219 See Section 1.2 (Post-bombing), Tara Singh Hayer.

220 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9646.

221 See, for example, Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9707; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5472-5473; Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11287-11288.

222 Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10376-10378.

223 Exhibit P-101 CAA1109, p. 1. This was the first dive since the 1985 recovery and very little wreckage was recovered due to poor weather.

224 Exhibit P-101 CAA1109, p. 2.

225 Exhibit P-101 CAA0335, p. 30.

This focus on forensics may have been attributable in part to an opinion received by the early Task Force that it should focus on the substantive counts (i.e., possible accusations of murder, use of explosives, or similar charges). To prove the substantive charges, it was necessary to prove that Air India Flight 182 was brought down by a bomb. In addition, forensic evidence was assumed to be necessary, even in a case of conspiracy.²²⁶ Blachford agreed that, even before the expert reports and studies had been completed, there was a “general impression” that Air India was brought down by a bomb. However, the RCMP was “...still trying to look for that Holy Grail of forensic evidence and that was never to be found.”²²⁷

The best results that could be obtained remained limited, even if the “holy grail” was found, as was demonstrated by the Narita prosecution. Under the circumstances, the exclusive focus on forensics (the so-called “yellow tape” approach) was surprising.

The Force knew by 1988, when Reyat was charged,²²⁸ that it was unlikely that anyone else would be brought into the Narita prosecution. The Force was able to link parts of the debris found at Narita to items Reyat had purchased in the lead-up to the bombing – including a Sanyo stereo tuner that was believed to have housed the bomb. The people who were considered to be the true “brains” behind the planning and execution of the bombing were not charged, as there was insufficient evidence to tie them to the crime scene. Even the link to Reyat that was made in the Narita case required means other than forensic. Reyat was ultimately convicted for manslaughter only.

Given the results obtained in Narita, with a crime scene vastly less problematic than that of the Air India explosion, it was likely that any forensic evidence ultimately obtained in relation to the Air India Flight 182 crime scene would, at best, provide a link to Reyat only. Even with such a conclusive connection, but without other evidence, the best result realistically to be hoped for after a successful recovery effort would be the conviction of Reyat for manslaughter in connection with Air India as well as Narita. In order to get to “the brains” of the operation, more would have been needed.

While the RCMP’s wreckage recovery efforts are laudable, and ultimately contributed to proving that Air India 182 had been downed by a bomb loaded aboard a plane in Vancouver,²²⁹ it is unfortunate that, for a long period of time, the resources invested in these efforts, and the perceived technological

²²⁶ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11184-11185, 11287, 11310-11313.

²²⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7813. According to Blachford it was “late in 1990” that the RCMP was able to “...successfully conclude that, in fact, it was a bomb that brought down Air India.” John Garstang, Air Crash Investigator, developed a technical process to prove that Air India was bombed and concluded that Flight 182 had been bombed, but at the time had not issued a written report. By February 1995, the RCMP had two experts who would state that Air India Flight 182 went down as a result of a bomb, but still had no hard forensic evidence to support this conclusion:

Exhibit P-101 CAF0390, p. 8.

²²⁸ Exhibit P-101 CAA1109, p. 1.

²²⁹ *R. v. Malik and Bagri*, 2005 BCSC 350.

impossibility of gathering further forensic evidence, seemed to stand in the way of pursuing other initiatives or made the pursuits of such initiatives seem less urgent. In any criminal investigation, putting off source or witness development initiatives and failing to pursue other initiatives poses problems. As explained by MacDonell:

Any investigation that is long term, when we're talking years, not only do police investigators come and go, and when they leave they take knowledge; new investigators have to be trained, but on the other side, you have witnesses. Their memories, other evidence that may exist, as time goes on, there is the risk of losing a good portion of that.²³⁰

Red Tape and Defensiveness

Though the Air India E Division investigation in the late 1980s and early 1990s was stagnating, suggestions for initiatives to further the Air India conspiracy investigation were not "...received very well." When they were not actively being discouraged, suggestions might be put forth and investigators "...never heard anything about them." What made the situation more discouraging was that there were investigators who were "...just sit[ting] around" with time available that could have been devoted to the Air India investigation, if not for management's active discouragement of these initiatives. According to Solvason, "...we did have resources available and there were people there that could have done it." Management was focused on "administrative things" and there was a "fixation" on details, such as proper titles and signatures.²³¹ A defensive attitude often prevailed at E Division and, in some cases, steps were even taken to cover up complaints.

The difficulty in accepting suggestions about how to improve the investigation was in some cases apparent in the way that the RCMP Task Force responded to internal file reviews. For example, in 1988/1989, Inspectors B.G. Watt and R.E. MacKay reviewed the files held in the divisions and at HQ, and in 1989 they produced a report that bears their names.²³² Insp. Ron Dicks, who was the Officer in Charge (OIC) of E Division NSIS from 1989 to 1993, explained that the purpose of the review was to go over the available material again, to ensure that "...if something had slipped through the cracks, it would get recognized", or that matters requiring additional follow-up would be identified. He added that such reviews were common.²³³

Overall, Watt and MacKay concluded that the Air India investigation, which was "...the largest case to date in the RCMP's history," was conducted "...in a

²³⁰ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9646.

²³¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11573, 11586, 11595-11596, 11621.

²³² See Exhibit P-101 CAF0343(i) and Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7566. Dicks felt that the two Inspectors were "quite qualified" to conduct the review: See Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7645.

²³³ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7644-7645.

very thorough and professional manner.” They stated that they uncovered few outstanding issues during their review.²³⁴ Nevertheless, their 80-page report contained “...a lengthy list of recommendations that they felt should be followed up on the investigation.”²³⁵ While Solvason testified that the suggestions of the Watt and MacKay review were useful in helping to point out “...things that we could do better” or “...things we may have missed,” this was not the universal feeling. In some cases, suggestions by the reviewers were interpreted as “...a criticism that [had] to be countered.”²³⁶

The circumstances surrounding Maile’s retirement are also telling in terms of the climate at E Division in this period. Upon his retirement, Maile requested an “exit interview” with a member of the Staffing and Personnel unit at E Division HQ. He met with the officer on July 10, 1992, and outlined a number of areas of concern. Dicks explained that the exit interview was “...part of the RCMP process of reviewing with people who are leaving the Force, their experience and any comments they wish to make.”²³⁷ Maile explained during his interview that, in addressing the situation at NSIS in his exit interview, he was fulfilling a promise made to a number of other members of the Section who had felt very dissatisfied and frustrated with the way things were being handled and who wanted to have the situation documented.²³⁸

Maile indicated that his retirement at that time was due to a work situation that had become “intolerable.” He said that he had initially planned on serving at least two more years, but felt he was not being allowed to do his job and was frustrated. He felt that retirement was the “only solution.” Maile explained that he had initially accepted the transfer to NSIS, as he was eager to get involved in the Air India file, and was told that his position would be of an “investigative nature.” Within a short time after his arrival, however, he became “...completely disillusioned with the manner in which a number of situations were being handled.” He felt that his “...dignity had been taken away” and that he was not “...allowed to conduct investigations or to supervise.” Maile had also raised his concerns with a member of the Staffing and Personnel branch in the past.²³⁹ According to Solvason, Maile was “...very distressed, as were other members.” Maile told him that he retired because “...he just couldn’t take it anymore.”²⁴⁰

In the exit interview, Maile indicated concern about the “...direction the Air India investigation had taken” following what Maile described as a “major breakthrough,” only days before his retirement, when he had obtained a written

²³⁴ Exhibit P-101 CAF0343(i), p. 8.

²³⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7735. See Exhibit P-101 CAF0343(i). Two E Division members, Cpl. Rick Rautio and Cst. Bart Blachford, began this follow-up in July 1990. Over a year later, in November 1991, it was reported that the follow-up was “practically completed”: Exhibit P-101 CAF0407, p. 1. See Exhibit P-101 CAA0773, for the initial letter to CSIS as a result of the Watt MacKay report.

²³⁶ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11575.

²³⁷ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7621-7622.

²³⁸ Exhibit P-101 CAF0388, p. 3.

²³⁹ Exhibit P-101 CAF0388, pp. 1-2.

²⁴⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11584.

statement from Ms. E.²⁴¹ He expressed the view, at the time of his exit interview, that the Air India investigation was not currently receiving the "...priority it deserves."

The Staffing and Personnel officer responded to Maile's position, indicating that "...undoubtedly all avenues are being explored by investigators in an attempt to overcome any sensitive areas that surfaced with his departure", which "... unfortunately, may have been misconstrued by Maile as an indication the investigation was not being given the priority it deserved." The staffing officer then criticized Maile for not having taken another member along with him when he conducted his interview of Ms. E, as it would have provided an opportunity to make an appropriate introduction to other members of the Force. The officer went on to speculate that, with Maile's "...acknowledged weakness in administration, combined with the computer environment, it is possible this created problems for Maile[sic] when he encountered the high degree of accountability required on some very sensitive investigations," and that these factors may have led to some of the conflicts with NSIS management.²⁴²

Dicks then provided a written response to the report on Maile's exit interview. After dealing with and largely dismissing Maile's complaints about his personal treatment by management, Dicks addressed Maile's comments about the Air India investigation. Dicks stated that he was unaware that Maile had previously raised any concerns. He felt that Maile's comments were "...a little self-serving," inasmuch as Maile had been directly involved with the investigation since December 1991 and, as such, "...was part of the Planning process" and never raised concerns about the direction of the investigation at the time.²⁴³

Dicks explained in testimony that he did not have the sense that NSIS members were concerned that the Air India investigation was not following the proper direction. He did not receive complaints from the members about the overall direction of the investigation, though some members at times could have questioned decisions to pursue or not pursue specific initiatives. According to him, everyone was frustrated by the lack of evidence, but all had opportunities to make their suggestions about the steps to be taken, and these were incorporated in the operational plans.²⁴⁴ According to Dicks, plans to acquire evidence had always been approved by all involved, including the "numerous senior people" under whose scrutiny the investigation fell at the divisional and HQ levels.²⁴⁵

Dicks also went on to deny that Maile's obtaining a statement from Ms. E was a breakthrough, since what this witness could say was "...known or suspected." Rather, he felt that the statement was taken in a "panic environment", due to Maile's "...untimely decision to take his pension."²⁴⁶

241 Exhibit P-101 CAF0388, p. 3.

242 Exhibit P-101 CAF0388, p. 3.

243 Exhibit P-101 CAF0388, p. 5.

244 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7625-7626.

245 Exhibit P-101 CAF0388, p. 5.

246 Exhibit P-101 CAF0388, p. 5.

The response to Maile's exit interview was one of defensiveness. Maile's concerns about the investigation were dismissed and characterized as "self-serving." One wonders how Maile's engaging in a voluntary exit interview after he had already taken retirement and earned his pension could be self-serving, and what possible benefit Maile is alleged to have been seeking by his comments.

Though the behaviour of management at E Division became "stifling," and the work environment was later described as "poisoned,"²⁴⁷ it was clearly not easy for officers to take steps to address these issues, as illustrated by the Maile exit interview and the response to it. Solvason explained that the culture of the RCMP was not one that welcomed these types of suggestions:

S/SGT. SOLVASON: ...the RCMP is not particularly fond of people who complain about their superiors ... you try to resolve them in an informal way ... if you have a conflict with a superior and if you can't, then I suppose you'll have to take other measures or you'll have to go to his superior ... it can have a lot of personal consequences for yourself, if you do that, in some cases.

MR. SHORE: Potentially a risk in terms of advancement.

S/SGT. SOLVASON: Oh, absolutely. You know ... that would be a last resort, those sort of things, you're always trying to make things ... work.²⁴⁸

Solvason was medically discharged from the RCMP as a result of his experience on the Task Force and ultimately received an apology for harassment that he suffered over the course of the investigation.²⁴⁹ The fact that this poor climate at E Division was allowed to continue as long as it did testifies to the lack of oversight and to the relatively low priority the Air India operation had within the Force throughout this time period.

What Should Have Been Done: The 1995 Renewed Task Force

In late 1991 or early 1992, there was a brief attempt to refocus the activities at E Division on the Air India investigation. Additional members at E Division NSIS were assigned to conduct a "...complete examination of [the] entire Air India investigation," and all were "...encouraged to provide a positive – enthusiastic approach to all tasks."²⁵⁰ However, in spite of this enthusiasm, it appears that this climate of prioritization of the Air India investigation was short-lived and the Air India bombing became, once again, just one of a number of tasks the unit was responsible for.²⁵¹

²⁴⁷ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11573, 11595-11596.

²⁴⁸ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11595.

²⁴⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11604.

²⁵⁰ Exhibit P-101 CAF0411, p. 1.

²⁵¹ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9647-9649.

As the ten-year anniversary of the bombing approached, there were increasing calls for an inquiry.²⁵² E Division NSIS took the position that, in preparation for the anniversary, it was "...preferable to have the RCMP make a public statement beforehand, rather than reacting to media queries afterwards."²⁵³ When RCMP senior management decided that a "...public plea for assistance" had to be a "...last resort after all other initiatives have failed," E Division NSIS noted that, aside from three proposed initiatives involving approaches to Reyat, Surjan Singh Gill and Ms. E,²⁵⁴ the point where all initiatives had failed had, in fact, been reached.²⁵⁵ In May 1995, the RCMP announced a one million dollar reward for information leading to the conviction of the perpetrators.²⁵⁶

A draft aide-memoire on Air India produced by the Solicitor General's office in October 1995, noted that, after the June 1995 RCMP "million dollar reward" offer for information leading to an arrest, the RCMP Commissioner had indicated that "...if new evidence is not forthcoming within a reasonable period of time, such as six months, resources will no longer be devoted to investigating the crash," though the file would stay open.²⁵⁷ It was also reported that, based on current information at the time, the "...RCMP may soon announce that it has reached an impasse" in the investigation of Air India.²⁵⁸

In late 1995, when Gary Bass was the Officer in Charge of the provincial Major Crime Section in British Columbia, he was asked by Assistant Commissioner Dennis Brown, the Criminal Operations officer for the province (E Division), to assemble a team to take a look at the investigation that had been done to date and to give advice as to whether or not there was anything else that could be done in the investigation. Bass commented that the increasing number of calls for an inquiry was the likely impetus for Brown's request.²⁵⁹

Bass initially assigned a team of about six officers from the Major Crime section, all of whom had extensive experience in major criminal investigations, to the renewed Task Force. From late November 1995 to February 1996, Bass reviewed materials on file to see whether there was sufficient information to support a wiretap application. His team also conducted a thorough file review of the investigation. Bass concluded at the end of his review that a wiretap application could be successful, but that an account of the history of CSIS's wiretap on Parmar from 1985 would be a critical part of the new wiretap affidavit.²⁶⁰

252 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11180.

253 Exhibit P-101 CAF0391, p. 2.

254 See Section 1.3 (Post-bombing), Ms. E.

255 Exhibit P-101 CAF0391, CAF0392, p. 4.

256 Exhibit P-101 CAA0335, p. 29.

257 Exhibit P-101 CAA0923, p. 4.

258 Exhibit P-101 CAA0923, p. 5; See Chapter V (Post-bombing), The Overall Government Response to the Air India Bombing.

259 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11177, 11180.

260 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11177-11178.

On February 16, 1996, Supt. Rick MacPhee, the OIC of the Air India Task Force at that time, wrote a memorandum providing an overview of the status of the Task Force's investigative initiatives at that time. In relation to the wiretap affidavit, he noted that:

This issue of perception and the fact that the "evidence" we are now using for the affidavit (with no new evidence gleaned in the past ten years) has always been there, will certainly be controversial and a major embarrassment to both agencies and the Government of Canada, but especially to the RCMP who have primary investigative responsibility.²⁶¹ [Emphasis in original]

Because most of the information used had been available all along, the Task Force could be open to criticism for not proceeding with the investigation until 10 years after the fact.²⁶²

In correspondence with CSIS on February 20, 1996, MacPhee noted that "to date" the announcement of the million dollar reward and release of two composite drawings had resulted in "100 tips," which were being followed up on, but that "...nothing new or of significance has developed."²⁶³ Shortly after February 1996, MacPhee retired and Bass took over his role of oversight of the investigation.²⁶⁴

With his involvement came a change in the approach to the investigation and a "renewed vigour." A Task Force was again created and the members were to work on Air India only, with no interruptions. Blachford, the current lead Air India investigator, confirmed that it was "most definitely" helpful to have a dedicated task force or unit for large investigations like Air India in order to maintain continuity and corporate knowledge. He agreed that there was more progress after 1995 as a result of the dedicated unit.²⁶⁵

From the Bass review, the team felt that the most "appropriate approach" to the new investigation was a "...conspiracy investigation and a conspiracy prosecution," and that the conspiracy investigation would start from when CSIS began their intercepts in March 1985. Bass explained that the review of the pre-bombing intercepts seemed to present a "fairly clear picture" of a conspiracy.²⁶⁶ He added that a conspiracy approach also offered "...a very valuable investigative and prosecution tool" in terms of the "co-conspirators' exception" to the hearsay

²⁶¹ Exhibit P-101 CAA0936(i), p. 2.

²⁶² Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11213. Blachford agreed that this was a concern, adding "...but at my level probably not as much as theirs, but we are always subject to criticism": Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7814.

²⁶³ Exhibit P-101 CAA0939, p. 1.

²⁶⁴ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11178.

²⁶⁵ Testimony of Bart Blachford, vol. 63, October 17, 2007, p. 7812, 7833.

²⁶⁶ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11183-11184.

rule. What this essentially means is that statements made by a person engaged in an unlawful conspiracy can be used as admissions against all those engaged in the conspiracy if made while the conspiracy was ongoing.²⁶⁷

Investigators felt that a conspiracy might be proven on the basis of the pre-bombing intercepts and surveillance information. If it could be proven that Flight 182 had been bombed, the incident could be linked to Reyat, who had already been proven to be the bomb maker in Narita. On this basis, in 1995, investigators were considering offering immunity to Reyat and Surjan Singh Gill.²⁶⁸

Bass and his team developed an operational plan to take the Air India conspiracy case forward. In his testimony, Bass explained that his operational plan had a number of steps. The first was to put in place a wiretap authorization on a number of targets. The next was to begin an interview program to try to locate new witnesses. A further step was an undercover operation planned to go along with the investigation, and a final element was an increased focus on trying to prove that Flight 182 was brought down by a bomb.²⁶⁹ Bass noted that "...adequate resourcing is **paramount** to the success of the ongoing investigation, file review and these new initiatives."²⁷⁰ In that vein, he noted that the Task Force currently had 15 full-time employees on a "secondment basis," and that to run the necessary initiatives would require 10 to 12 additional full-time employees.²⁷¹ By May 1996, there were 25 full-time employees at the E Division investigation – some working on the file review and others pursuing fresh initiatives.²⁷²

By November 1996, a decision was taken that the Force was going to "proceed to prosecution" whether or not there was "fresh evidence," and to "...leave the matter to the courts and a jury."²⁷³ Bass noted that he was "...sure there will be much criticism over certain aspects of the RCMP investigation in the early years."²⁷⁴

The Task Force was aware of the abuse of process argument that the defence was developing regarding the erasure of the CSIS Parmar tapes, and the RCMP began to get "...a pretty good idea" that it would probably be successful. There came a point, after 2000, when the Crown suggested, and Bass agreed, that they would not attempt to enter CSIS intercept evidence because it was unlikely that

²⁶⁷ See for example, the discussion in *R. v. Mapara*, 2005 SCC 23, [2005] 1 S.C.R. 358 at para. 8. Following the Supreme Court of Canada decision in *R. v. Carter*, [1982] 1 S.C.R. 938, co-conspirators' statements can be used against the accused if 1) the judge is satisfied beyond a reasonable doubt that a conspiracy existed and 2) if independent evidence, directly admissible against the accused, establishes on a balance of probabilities, which is a much lower standard, that the accused was a member of the conspiracy.

²⁶⁸ Exhibit P-101 CAF0392, p. 4.

²⁶⁹ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11181.

²⁷⁰ Exhibit P-101 CAA0936(i), p. 3 [Emphasis in original].

²⁷¹ Exhibit P-101 CAA0936(i), p. 3.

²⁷² Exhibit P-101 CAA0952, p. 1.

²⁷³ Exhibit P-101 CAA0958, p. 2; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7815-7816.

²⁷⁴ Exhibit P-101 CAA0958, p. 2.

they would succeed. Thereafter, the matter was to go forward on the strength of the new interview program or on the strength of old “sources” (or potential witnesses like Ms. E) becoming new witnesses.²⁷⁵

Too Broad a Mandate?

The RCMP is our national police force. If its mandate were limited to enforcing federal laws in a country as vast and diverse as Canada, it would be ambitious, but its mandate is much wider than that; it also acts as the police force of three territories and every province other than Quebec and Ontario. This much larger mandate arose as the effects of the economic depression of the 1930s made it difficult or impossible for many of the provinces to allocate sufficient resources to sustain their own police forces. Alberta, for example, which had its own police force previously, decided to accept the contract policing offer made by the Federal Government when diminishing provincial resources made the change an economic necessity.

The RCMP’s contract policing duties have continued to this day. The agreements with the Federal Government have been regularly renewed, generally for periods of twenty years; with the current contracts due to expire in 2012. In 2006-2007, in addition to its responsibilities as the national police force, the RCMP delivered policing services to eight provinces, three territories, 200 municipalities, and many Aboriginal communities.

The evidence heard and research conducted by this Commission lead to the conclusion that perhaps Canadians have come to expect too much of the RCMP. With such a large array of responsibilities, senior officers can be appointed only if they have at least some knowledge of each of the police force’s many functions. This creates the danger that junior officers, as they progress through the ranks, need to gain experience in too many diverse areas to become truly expert in any particular one of them.

This Commission learned that transfers to and from the Air India desk of the RCMP were frequent. This movement incurred considerable time educating newcomers, and reduced the RCMP’s overall effectiveness in investigating the tragedy. This was almost inevitable because it is difficult to imagine how the RCMP could ensure that its officers had both the varied positions required to provide attractive careers, and the considerable focussed experience and study required to become expert in National Security, or any other complex and pressing federal matter.

This Commission believes that, after nearly eighty years of contract policing arrangements, it would be appropriate for the Government to give serious consideration to the advantages and disadvantages of the present policing structure in Canada. It might well be an opportune moment to put the emphasis on a national police force that is more focussed on federal matters and less occupied with provincial policing.

²⁷⁵ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11215, 11249.

Conclusion

In its submissions to the Honourable Bob Rae, the RCMP, in reviewing the level of resources afforded to the Air India investigation over the years, stated:

Although, at first blush, it may appear that few resources were dedicated to the investigation, the reality was that prior to the announcement of the reward there were fewer leads to investigate. As a result of the reward, this all changed, and resourcing to the Air India Task Force was increased due to the volume of tips received.²⁷⁶

In fact, what the evidence shows is that resources for the Air India investigation were increased as a result of a concerted decision to reinvigorate the investigation – placing experienced members on the investigation, creating a dedicated task force, proceeding with a wiretap affidavit based exclusively on information that had been on file all along, and initiating new investigative strategies as a result of a reorientation of the investigation.

The information and suggestions for a reorientation of the approach to the investigation were all pre-existing. What changed in 1995, in the face of the ten-year anniversary, and calls for a public inquiry, was the political will to take the case forward.

2.3 The Usual Suspects versus “Alternate Theories”

2.3.1 November 1984 Plot

Introduction

Prior to the Air India bombing, the RCMP E Division learned from two sources of the existence of a plot to bomb an unspecified Air India plane in November 1984. The first source, Person 1, had reported the information to the RCMP in September 1984, while providing other information to police about local Sikh extremist activity. The second source, Person 2, provided the information first to the Vancouver Police Department (VPD), and then to the RCMP and to CSIS during an interview, while being held in custody on an unrelated charge.²⁷⁷

In the pre-bombing period, investigators were skeptical about the motivations of Person 1 and Person 2, leading them to doubt that there was an actual bomb plot at all. As a result, investigators were reluctant to follow up on the information. After the bombing, despite the striking similarities between the pre-bombing reports about the November 1984 Plot and the plot that was actually carried out on June 23, 1985, the skepticism about the November Plot

²⁷⁶ Exhibit P-101 CAA0335, p. 30.

²⁷⁷ See Section 1.1 (Pre-bombing), November 1984 Plot.

lingered. In this post-bombing period, the skepticism was twofold: investigators doubted that the November 1984 Plot was real and they also doubted that the plot could have any connection to the June 23rd bombing. Investigators felt that the existence of any connection between the two plots was incompatible with their main theory of the Air India case, which was that at the root of the June 23rd bombings were Canadian members of the Babbar Khalsa, namely Parmar and his associates. It took many months before resources were invested in following this lead, and even then, the investigation into the potential November 1984 Plot connection proceeded in fits and starts for decades, leaving many questions about its significance still unanswered.

Post-Bombing: Possible Connection to the November 1984 Plot Discounted

On June 23, 1985, when Sgt. Warren Sweeney of HQ NCIB learned of the Air India tragedy, he thought about the November Plot information and immediately asked that the E Division NCIS investigator in charge, Sgt. Wayne Douglas, be contacted to find out if Person 2 had any information about the bombing.²⁷⁸ That morning, Cpl. Mike Curry from Headquarters in Ottawa phoned Douglas and requested that he speak to Person 2 about the crash.²⁷⁹

That same day, Douglas met with Person 2 who, on the advice of his lawyer, refused to speak with police unless they were willing to deal with his charge. Person 2's lawyer later phoned Douglas and stated that "...Person 2 didn't know anything about the Air India crash."²⁸⁰ Despite the fact that Douglas had not actually spoken with Person 2 about the bombing, he contacted NCIB later that same day to advise that "...Person 2 knew nothing."²⁸¹ Sweeney testified that he was aware at the time about Person 2 not "...knowing anything and wanting to deal." When asked during his testimony about the significance of this interview, Sweeney simply said "...he was trying to bargain,"²⁸² a view that, at the time, appears to have put an end to the matter for quite some time.

Like Sweeney, Supt. Lyman Henschel, who was the OIC Support Services in E Division, was also concerned that the November 1984 Plot information might have had some bearing on the bombing of Air India Flight 182. Henschel, who noted that the November Plot investigation had begun with the VPD, spoke to Douglas and asked him to ensure that the Task Force received all relevant information about the November Plot. Douglas told Henschel that he had already done so and that he had also been back in touch with Person 2.²⁸³

²⁷⁸ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2615; Exhibit P-120(c), pp. 3-4 (entry for June 23, 1985: doc 526-3, p. 13).

²⁷⁹ Exhibit P-120(c), p. 4 (entry for June 23, 1985: doc 526-3, p. 13).

²⁸⁰ Exhibit P-120(c), p. 4 (entry for June 1985: doc 526-3, p. 59).

²⁸¹ Exhibit P-120(c), p. 4 (entry for June 1985: doc 526-3, p. 59).

²⁸² Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2615-2616.

²⁸³ Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5553-5555. However, if all steps had been taken to ensure that E Division had all relevant information, investigators almost certainly would have located the transcript of Person 2's interview with the VPD in which Person 2 revealed that the November Plot possibly involved the bombing of two planes, information that Douglas was unaware of to the date of his testimony: See Section 1.1 (Pre-bombing), November 1984 Plot.

On July 1, 1985, Henschel spoke with Douglas and Insp. John Hoadley about this matter. They indicated that they were:

...satisfied that the information provided by [Person 2] has no connection with Air India and CP Air disasters. All leads have been followed up on [redacted] info and have proven negative.²⁸⁴

E Division discounted any possible connection between the November Plot and the bombing early on, and then, perhaps not unexpectedly, failed to follow up on the lead.

On July 10, 1985, Detective Dave Randhawa from the VPD forwarded an occurrence report to E Division detailing information that he had learned during an interview that morning with Person 2.²⁸⁵ The report indicated that Person 2 had named "Z" as responsible for having brought the bombing plot to Canada from India, and that another person, "W," was also likely connected to the plot.²⁸⁶ Though E Division noted that the "...information contained in the report is similar to that reported by Person 1 in November 1984,"²⁸⁷ it does not appear that E Division took further steps to investigate this information in light of this potential corroboration.

Meanwhile, HQ sent repeated, and often unanswered, correspondence to E Division, asking Douglas's group to update HQ on the November Plot information.²⁸⁸ For example, prior to the bombing, in November 1984, Douglas and David Ayre of CSIS had met with Person 2, along with Person 2's lawyer, while Person 2 was in custody. Person 2 had indicated that the East Indian males who were involved in the plot resided in x town, y province.²⁸⁹ A check of Person 2's associates identified three individuals with y province phone numbers. Douglas wrote to HQ stating that information about these subscribers would be obtained and forwarded upon receipt. However, despite numerous requests for this information,²⁹⁰ it was not forthcoming, and HQ eventually had to approach CSIS directly for this information.²⁹¹

However, at the same time that HQ was requesting updates on the November Plot information, throughout the late summer and the fall of 1985, it maintained

²⁸⁴ Exhibit P-101 CAF0166, pp. 10-11.

²⁸⁵ Exhibit P-120(c), p. 4 (entry for July 10, 1985: doc 493-3).

²⁸⁶ Though, throughout, Person 1 and Person 2 had clarified that "...the main motive of the planned bombing and hijack was to let the Indian government know Sikhs meant business": Exhibit P-120(c), p. 4 (entry for July 10, 1985: doc 493-3); Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2759. See also Exhibit P-120(c), p. 1 (entry for Oct. 1984: doc 231-3, pp. 2-4), where it was indicated that the "...purpose of the bombing was to discredit the Indian Government," and p. 6 (entry for February 19, 1986: doc 526-3, pp. 76-83), mentioning that "...radical Sikhs demanded revenge and wanted to retaliate – plan to bomb Air India plane was formulated...."

²⁸⁷ Exhibit P-120(c), p. 4 (entry for July 12, 1985: doc 494-3).

²⁸⁸ See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

²⁸⁹ Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3 (254-3), p. 40).

²⁹⁰ Exhibit P-120(c), p. 4 (entries for Sept. 9, Sept. 13, Sept. 24 and Oct. 2, 1985: doc 526-3, pp. 46-49).

²⁹¹ Exhibit P-120(c), p. 5 (entry for Dec. 6, 1985: doc 526-3, p. 56).

the view that there was no connection between the two plots, and that the June 23, 1985 bombings had been an act of the BK alone. Sweeney testified that, at the time, Person 2 was viewed only as a person of interest, and it was believed that his information had nothing to do with the Air India bombing. Requests for updates were made simply to "...tie up loose ends," because the RCMP was "onto Parmar" and efforts were concentrated on him. Follow-up was therefore simply to "...confirm that he was involved."²⁹²

On November 22, 1985, E Division reported to HQ that a shopkeeper in Duncan had been "...approached approximately a year prior looking for 2 stereo tuners able to fit into suitcases, explaining they were for [redacted] in India."²⁹³ Because of the time frame, the HQ Task Force, at the request of the analyst who was interested in the November Plot information,²⁹⁴ noted a possible connection between the new tuner information and Person 2, and asked once again for a response to its previous requests for updates.²⁹⁵ In spite of the obvious significance of this information, given that the two June 23rd bombings were believed to have been executed through the use of bombs hidden in stereo tuners, HQ did nothing else to press the matter. According to Sweeney, the reason for pointing out to the Division the possible link between the tuner information and Person 2 was to confirm whether the individuals who had approached the shopkeeper were "...Reyat, Parmar or was it these other individuals?"²⁹⁶

Even after CSIS supplied the requested names and phone numbers of Person 2's associates to Sweeney in early December 1985, and it was learned that one associate was affiliated with the BK and a second person was possibly affiliated with another suspected Sikh extremist,²⁹⁷ Sweeney still did not believe that there could be some connection between Person 2 and Sikh extremists.²⁹⁸

It was not until January 1986 that long distance tolls for Persons 1 and 2 were finally obtained by E Division.²⁹⁹ At that time it was discovered that the November Plot sources and/or possible co-conspirators might have had a connection to Reyat³⁰⁰ and, in particular, that calls had been made from Person 1's residence to Reyat on the day after Person 2 had been arrested in October 1984.³⁰¹ Sweeney indicated that, had he been aware of this information in the fall of 1985, he probably would have viewed the individual, who was ultimately discovered to have made the calls to Reyat, as worth pursuing.³⁰²

²⁹² Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2617-2618.

²⁹³ Exhibit P-120(c), p. 4 (entry for Nov. 22, 1985: doc 526-3, pp. 52-54).

²⁹⁴ Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2620-2621.

²⁹⁵ Exhibit P-120(c), pp. 4-5 (entry for Nov. 25, 1985: doc 526-3, p. 55).

²⁹⁶ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2620.

²⁹⁷ Exhibit P-120(c), p. 5 (entry for Dec. 6, 1985: doc 526-3, p. 56).

²⁹⁸ See Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2622; Exhibit P-120(c), p. 5 (entry for Dec. 6, 1985: doc 526-3, p. 56).

²⁹⁹ Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).

³⁰⁰ Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23); Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2633.

³⁰¹ Exhibit P-120(c), p. 7 (entry for April 6, 1986: doc 523-3).

³⁰² Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2633. For the earlier comment about tying up loose ends, see pp. 2617-2618.

The RCMP remained highly skeptical of the motivations of Person 1 and Person 2. In the case of Person 2, his information was approached early on with suspicion because he wanted to bargain away his unrelated charges in exchange for information he said he had in relation to the November Plot. After the bombing, in February 1986, it was learned that Person 2 was again attempting to bargain away his charges in exchange for giving information to the police. Person 2 stated that he believed that East Indians were responsible for the bombing of Air India Flight 182, but that he had no knowledge of whom. Douglas wrote that, in his opinion, if Person 2 did in fact have any information regarding the bombing of Flight 182, he "...would want charges stayed – something [Person 2] did not suggest to the writer."³⁰³ Douglas maintained the opinion that "...the reliability of both subjects [was] questionable for specified reasons."³⁰⁴ This time, it seems that Person 2's value was discounted precisely because he did not ask to bargain.

In the case of Person 1, when Douglas finally met with Person 1 after the bombing, he reported that "...Person 1 could offer up no further information, and advised that no names were ever mentioned." There is no indication that Person 1 was asked about whether he knew Person 2's identified associates, or that he was asked to provide descriptions of the other individuals who had participated in the meetings. Douglas then went on to note that "Information re: Person 1 financial status being gathered and will be forwarded."³⁰⁵

Sweeney explained that the RCMP was interested in Person 1's financial status because it wanted to verify "...whether he was maybe stringing us along to get money," since "...he was a source of the RCMP and, as such, the more information he gave, the more money he would get."³⁰⁶ Given that the RCMP already had other indicators pointing to the likely veracity of the plot, including the fact that the information came from two independent sources, this investigative focus on Person 1's finances may have diverted resources away from more pressing endeavours, including actually following up on the substance of the information.

File Reviews and Follow-Up Investigation

Between February 13 and 15, 1986, reports were published in the *Toronto Star* and the *Ottawa Citizen* indicating that, prior to the Air India disaster, the RCMP in Vancouver had been warned of the threat of a bomb being placed on an Air India plane. The VPD confirmed that they had received information relating to a threat to Air India several months before the crash and had passed the information to the RCMP at that time. The RCMP did not comment.³⁰⁷

³⁰³ Exhibit P-120(c), p. 6 (entry for Feb. 18, 1986: doc 526-3, pp. 74-75).

³⁰⁴ Exhibit P-120(c), p. 6 (entry for Feb. 19, 1986: doc 526-3, pp. 76-83).

³⁰⁵ Exhibit P-120(c), p. 5 (entry for Dec. 17, 1985: doc 29, doc 526-3, pp. 63-65).

³⁰⁶ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2626.

³⁰⁷ Exhibit P-120(c), p. 5 (entry for Feb. 13-15, 1986: doc 526-3, pp. 71-73).

Shortly after, E Division, which had so far shown very little interest in the November Plot information, began to conduct numerous and extensive file reviews on the matter. HQ also conducted an in-depth review. Follow-up investigative steps were then taken, with some of the potential November Plot conspirators being interviewed for the first time in mid-1986 and 1987.

On February 17, 1986, Sgt. Robert Beitel of the E Division Task Force requested a thorough tip review of the November Plot information.³⁰⁸ Cpl. Donald de Bruijn, an analyst at E Division, reported on his findings in a February 26, 1986 continuation report. He noted that Person 2 had been interviewed on a number of occasions by CSIS, RCMP and VPD and that, at the time, "...investigators did not believe Person 2's alleged involvement in the plot," and that there was "...suspicion and reluctance to act on this information," but that the matter should now be looked at again for a number of reasons. Included in the reasons were the facts that, after the November meeting with Person 2, his lawyer indicated to Douglas that Person 2 "...knows a lot more than is willing to discuss," and that Person 2 associated with a man from x town who had been linked by telephone with a suspected Sikh extremist.³⁰⁹

Cpl. Doug Wheler, of NCIB HQ, analyzed the information regarding the November 1984 conspiracy. In April 1986, he produced a detailed analysis of the file, and his conclusion was that it was "extremely unlikely" that both Person 1 and Person 2 had fabricated the November Plot information. He recommended that all information regarding the possible bombing should be obtained by Douglas of VIU and Ayre of CSIS, and suggested that Person 1 and Person 2 should then be questioned to identify the unknown Sikhs.³¹⁰ During the Inquiry hearings, Sweeney agreed that, at the very least, having two persons providing the same information would "...certainly cause [the RCMP] to investigate further."³¹¹

After the file reviews, local investigative initiatives began to be undertaken. On March 5, 1986, E Division reported to HQ that, though investigators believed Person 2 had concocted the story of the possible bombing in order to obtain release from custody,³¹² Person 1 and Person 2 would be re-interviewed, and attempts would be made to obtain consent for polygraphs.³¹³ In relation to the plan to re-interview Person 1, it was noted that one of the objectives should be to establish the remarks that he made in September 1984 in relation to an unknown man in x town and to another unknown man in Duncan who, it was said, "...can manufacture 'nitro' for blowing up an AI flight...."³¹⁴

E Division investigators met with Person 1 again in March, and de Bruijn met again with Person 1 in early April. Person 1 stated that he had never met Parmar or Reyat, and agreed to submit to a polygraph examination on his information in relation to the November Plot.³¹⁵

308 Exhibit P-120(c), p. 6 (entry for Feb. 17, 1986: doc 3).

309 Exhibit P-120(c), p. 6 (entry for Feb. 26, 1986: doc 518-3).

310 Exhibit P-120(c), p. 8 (entry for April 15, 1986: doc 526-3, pp. 1-22).

311 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2632.

312 Exhibit P-120(c), p. 6 (entry for March 5, 1986: doc 526-3, p. 86).

313 Exhibit P-120(c), p. 6 (entry for March 9, 1986: doc 520-3).

314 Exhibit P-120(c), p. 6 (entry for March 10, 1986: doc 521-3).

315 Exhibit P-120(c), p. 7 (entry for April 1986: doc 17).

In his polygraph examination, he was asked a number of questions, including whether he had been involved in any discussions regarding the bombing of the Air India flight, if he had been offered money, and who was present at the meetings.³¹⁶ He passed the test on his information, and subsequently, in a photo lineup,³¹⁷ identified Z, the individual who had been named by Person 2 in his July 1985 interview with Randhawa of the VPD.³¹⁸ In an earlier interview, Person 1 had suggested that Z could have been involved. Donald de Bruijn stated that it "...appears that information provided by Person 1 and Person 2 has been substantiated." Donald de Bruijn speculated that Person 2 and Z were recruited in 1984 by unknown militant Sikhs within the Khalistan movement to carry out these bombings. After Person 2's arrest, the conspirators may have found an alternate supplier and participants to complete the bomb plot.³¹⁹

The day after the polygraph exoneration, de Bruijn met again with Person 1 to ask him further questions that had not been covered in the test. In particular, de Bruijn showed Person 1 copies of long distance toll records of calls made from his residence, and asked Person 1 about the two calls that had been made from his home to Inderjit Singh Reyat in October 1984. Person 1 said that he did not know anyone in Duncan and that the calls to Reyat could have been made by W or by the associate who had both stayed with Person 1 after Person 2's arrest. Person 1 reported that in October 1984, W and the associate intended to travel to Vancouver Island to visit someone.³²⁰

Conspirator "W"

At this point, the RCMP began to look into W and to explore the possibility of an x town connection to the main suspects in the Air India Flight 182 bombing.

In follow-up research, it was discovered that Parmar had visited x town a number of times since April 1983.³²¹ Person 2 also confirmed that W had had contact with Gill, Parmar and Reyat.³²² Further information about connections between possible conspirators was received in early April 1986 from x town NCIS. This information indicated that W, believed to be associated with the International Sikh Youth Federation (ISYF), had been in contact with Person 1 in September, October and November 1984.³²³ Members of the ISYF were involved in the meeting two weeks prior to the bombing, during which the statement by an alleged Sikh extremist that "something would be done" in two weeks was reported to have been made.³²⁴ Lakhbir Singh Brar, a member of the ISYF who had also attended the meeting, was later identified as having played a major role in the bombing in the purported Parmar confession.³²⁵

316 Testimony of Person 1, vol. 20, April 30, 2007, p. 1954. Sweeney testified that, if Person 1 had taken and passed the polygraph earlier, it would probably have elevated the Person 2 issue to something more than tying up loose ends: Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2634.

317 Exhibit P-120(c), p. 7 (entry for April 1986: doc 17).

318 Exhibit P-120(c), p. 7 (entry for March 1986: doc 16).

319 Exhibit P-120(c), p. 7 (entry for April 1986: doc 17).

320 Exhibit P-120(c), p. 8 (entry for April 25, 1986: doc 2).

321 Exhibit P-120(c), p. 9 (entry for June 4, 1986: doc 530-3).

322 Exhibit P-120(c), p. 9 (entry for May 26, 1986: doc 529-3).

323 Exhibit P-120(c), p. 8 (entry for May 1986: doc 23).

324 See Section 1.6 (Pre-bombing), Khurana Information.

325 See Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

Donald de Bruijn met with W. W stated that, some time ago, he, Parmar, Gill and an unnamed Sikh from x town were planning on “doing something” in India. W said that he was “totally committed” to the Khalistan cause and would do anything within his power to avenge the deaths of his relatives in the Punjab.³²⁶

In fact, that same year, the RCMP learned that W had independently provided information to another police force that two individuals had approached Person 2, along with two unknown white males, and had offered Person 2 a sum of money to put a bomb on an Air India plane.³²⁷

Conspirator “Z”

In the spring of 1986, the RCMP also began to pursue information about Z and focused on finding information linking Z and Parmar.³²⁸

In April 1986, de Bruijn visited x town NCIS and obtained phone records for Z. It was learned that Z had departed for India in June 1985, and that there were indications that he would not return to Canada.³²⁹ Donald de Bruijn met with x town local police, who were familiar with the VPD investigation of Z and Person 2, and who had conducted inquiries on behalf of the VPD. These inquiries were unable to link Z with any militant Sikh organization. However, in May 1986, the RCMP concluded that it was “imperative” that Z be interviewed.³³⁰

In 1987, Z was arrested in x town and was awaiting charges. Z offered to provide information in relation to Air India in exchange for the current potential charges against him being dropped.³³¹ Z’s demands also included a promise of confidentiality and an agreement that he would not have to testify in court about his information.³³²

The x town Attorney General’s Department was prepared to negotiate Z’s prison sentence, if his information was useful and pertinent to the Task Force’s investigation, and to have the extent of Z’s cooperation reflected in the prosecutor’s remarks on sentencing. Investigators noted that Z was displaying “...all the classic telltale signs of nervousness,” and that this was “most evident” when he was confronted with “...information pertaining to the 1984 conspiracies.” It was noted that the 15-month investigation of Z and his unknown associates had reached a “pivotal point,” and that the “conspirator” was on the “...verge of revealing involvement in these conspiracies.”³³³

³²⁶ Exhibit P-120(c), pp. 7-8 (entry for April 10, 1986: doc 525-3).

³²⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7822-7823. This would appear to be a third independent source corroborating the existence of the November 1984 Plot.

³²⁸ Exhibit P-120(c), p. 9 (entry for May 26, 1986: doc 529-3).

³²⁹ Exhibit P-120(c), pp. 7-8 (entry for April 10, 1986: doc 525-3).

³³⁰ Exhibit P-120(c), p. 9 (entry for May 26, 1986: doc 529-3).

³³¹ Exhibit P-120(b), p. 1 (entry for Sept. 21, 1987).

³³² Exhibit P-120(b), p. 1 (entry for June 5, 1987: Wall Notes).

³³³ Exhibit P-120(b), p. 1 (entry for June 10, 1987).

During the September 1987 negotiations with Z and his lawyer, nothing specific was revealed. Z indicated that he had knowledge of a discussion regarding weapons and explosives from a meeting in 1984, but said he had no direct knowledge of the 1985 disaster. Z agreed to give his information under polygraph.³³⁴ It appears that, ultimately, a deal was not reached, and that Z's trial went ahead and he was convicted.

In March 1988, Z again offered to provide information in exchange for a reduction in his sentence, in addition to secrecy and protection of his family. A deal was reached and Z's sentence was reduced in exchange for providing information.³³⁵ The next month, Z provided his information under polygraph. He provided an exculpatory statement, telling police that he knew Person 1 and Person 2 and that, at the time, Person 2 had been upset about the 1984 storming of the Golden Temple. In anger, Person 2 proclaimed that he would procure weapons for the Sikh cause and contemplated bombing an Air India plane. However, Z stated that he did not take Person 2 seriously.³³⁶ According to the RCMP's briefing to the Honourable Bob Rae, Z's polygraph test "verified his information."³³⁷

However, a notation about Z's polygraph results was located by this Commission in Robert Wall's notes:

Z – Polygraph – Boyarski concluded. Inconclusive on portion. Everyone telling the truth including Person 1. However, different stories. Polygraph is a big question mark.

When asked about this notation, Wall explained that the results from Z's polygraph test were "inconclusive," and that in his view "...there's a margin for error with polygraphs, and I think that's well known. They're not the end-all, it's merely an investigative tool."³³⁸

Nevertheless, despite the known limitations associated with polygraphs, the inconclusiveness of Z's test, and the fact that Z's version of events was incompatible with that provided by Person 1 (who had passed his polygraph test), as well as with that provided by Person 2, the RCMP "eliminated" Z "...as a suspect in the AI investigation" on the basis of his polygraph test.³³⁹

Subsequent File Reviews and Follow-Up

Investigators continued to investigate or review portions of the November Plot every few years. In 1990, new information about Person 2 surfaced and the

³³⁴ Exhibit P-120(b), p. 1 (entry for Sept. 21, 1987).

³³⁵ Exhibit P-120(b), p. 1 (entry for March 15, 1988: Wall Notes).

³³⁶ Exhibit P-120(b), p. 2 (entry for doc CAA1099, p. 2).

³³⁷ Exhibit P-120(b), p. 2 (entry for doc CAA1099, p. 2).

³³⁸ Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9734.

³³⁹ Exhibit P-120(b), p. 1 (entry for June 1991).

RCMP undertook to investigate.³⁴⁰ A continuation report by Cpl. Rick Rautio in May 1990 concluded that the significance of the new information was that it "... corroborates the discussion of a bombing plot in 1984, but also indicates that the plot of 1984 differed from the plot to bomb Air India in June 1985."³⁴¹

In June 1991, Cpl. R.A. Boyarski reported that he would review the file on the November 1984 Bomb Plot and provide a report on his findings to Wall.³⁴²

In a 1992 briefing to the SIRC review panel, the RCMP referenced the November Plot information stating that:

During 1984, the RCMP received information to the effect that a bomb was to be placed on an Air India flight in Montreal. This information was not connected to the June 1985 disasters and our investigation failed to substantiate an actual plot.³⁴³

Notwithstanding this conclusion, investigators once again began to research the November Plot in March 1997. RCMP members travelled to x town to meet with Person 1. Person 1 indicated that he thought the calls to Reyat that were made from his home had been made by W. Person 1 had reported this fact when he was questioned about the phone charges in 1986. According to Person 1, W had told him that a "...guy on the island wanted to do some experiments" which W had also referred to as a "test explosion."³⁴⁴

In May 1997, Cst. Ray Watson did yet another file review on the November Plot. He wrote that:

There is no doubt that in the mid 80's Person 1 could have been very useful in the intelligence field dealing with the east Indians however [redacted] at this time has no useful intelligence, therefore tip to be concluded at this time.³⁴⁵

Another two years later, however, in February 1999, Cpl. Robert Ginn was tasked to contact Person 1. By this point, the November Plot was being investigated as an "alternate theory,"³⁴⁶ while the file was being reviewed by the Crown who was to make a decision on whether to approve charges. Throughout the period of February to November 1999, there was extensive contact between Ginn and Person 1. Ginn attempted to set up a meeting with Person 1 to discuss his information about the November Plot. It was through these investigations

³⁴⁰ Exhibit P-120(c), p. 10 (entry for May, 1990: doc 11).

³⁴¹ Exhibit P-120(c), p. 10 (entry for May, 1990: doc 12).

³⁴² Exhibit P-120(c), p. 10 (entry for June 1991: doc 13).

³⁴³ Exhibit P-101 CAA0881, p. 7.

³⁴⁴ Exhibit P-120(c), p. 10 (entry for March 1997: doc 10).

³⁴⁵ Exhibit P-120(c), p. 10 (entry for May 2, 1997: doc 31).

³⁴⁶ Exhibit P-120(c), p. 11 (entry for Nov. 24, 1999: doc RCMP.SUPERTEXT.0002).

that the RCMP recognized that there were important connections between conspirators involved in the November Plot and those involved in the June 23, 1985 bombings.

Ginn informed Person 1 that "...one of the problems with [his] information" was that the RCMP "...have a theory and we have suspects and we do not have any direct links between Person 1's information and the current suspects." Ginn was of the view that W did, in fact, meet Reyat in the fall of 1984, and that this was corroborated by Person 1 in terms of the long distance phone charges from Person's 1 home while W was staying with Person 1 in the fall of 1984 and by the information about W knowing someone in Duncan who could make nitro.³⁴⁷

Ginn concluded that:

Although Person 1 cannot provide information which directly links our suspects to the plan of making and placing bombs on Air India and that Reyat was experimenting with dynamite before the disaster happened, [redacted] certainly is connected with [redacted] individuals who are very likely to have been involved with one or more of our suspects in the early planning stages of placing bombs on Air India planes. These individuals are Person 2 and W. The connections that Person 1 can supply information about are Person 2 [to] Talwinder Parmar and W [to] Inderjit Reyat.³⁴⁸

Ginn wrote that another approach to Z should be considered, since the last interview with him was in 1988. Ginn went on to write that:

...if Person 1 was being truthful about Z being at all 3-4 meetings with Person 2 and Z actually carried the briefcase full of money to the second meeting and departed with it, then Z certainly was not totally forthcoming during his 1988 interview. From discussing Person 1's initial information provided to at least Brian Sommerville, way back in 1984 before Person 2's arrest, it would appear that Person 1, would not be fabricating any of this information and in fact later passed a polygraph on the truthfulness of this information.³⁴⁹

It was further reported that if "...we wish to find additional evidence on our current conspiracy that efforts should be made to secure further information from Z, W and Person 2."³⁵⁰

It is not clear what, if anything, occurred on this file after Ginn produced this report.

³⁴⁷ Exhibit P-120(c), p. 10 (entry for Feb. 12, 1999: doc RCMP.SUPERTEXT.0001).

³⁴⁸ Exhibit P-120(c), p. 10 (entry for Feb. 12, 1999: doc RCMP.SUPERTEXT.0001).

³⁴⁹ Exhibit P-120(c), pp. 10-11 (entry for Feb. 12, 1999: doc RCMP.SUPERTEXT.0001).

³⁵⁰ Exhibit P-120(c), p. 11 (entry for Feb. 12, 1999: doc RCMP.SUPERTEXT.0001).

Conclusion

According to the submissions of the Attorney General of Canada:

...this matter was extensively investigated pre-bombing. However, the RCMP also followed up on this matter post-bombing to ensure that this plot had no connection with the events of June 23, 1985.³⁵¹

Early on, prior to the initiation of any follow-up investigation, the RCMP had already concluded that the November Plot had no connection to the bombing. It was not until media reports began surfacing about the November Plot that a follow-up began in earnest.

Leads in relation to this plot were at times discounted prematurely, with the result that issues had to be continually revisited at a later date. It appears that – as was the case in relation to the purported Parmar confession and the Khurana tapes – since the individuals believed to be involved in the November Plot were not the RCMP's main suspects, the November Plot was viewed as "alternate" to the main theory of the case. By clinging to a narrow and exclusive theory of the case, the RCMP missed early opportunities to conduct thorough follow-up investigative initiatives – while the memories of potential witnesses were fresh and there was a greater likelihood of useful evidence being found intact.

2.3.2 Mr. Z

Introduction

In 1986, Mr. Z provided, to both CSIS and the RCMP, information that he had learned from another individual about the identity of the two Sikhs who may have been responsible for checking in the luggage that contained the bombs at Vancouver International Airport.³⁵² CSIS was ultimately forced to terminate its relationship with Mr. Z, and the investigation of this lead was to be followed up solely by the RCMP. Despite CSIS's assessment that there was a "... high probability that this information [was] accurate,"³⁵³ the RCMP ultimately concluded that the individuals identified had no connection to the bombing.³⁵⁴

RCMP Follows Up on the Mr. Z Information

The first follow-up investigative action the RCMP took in relation to this tip was in early 1987.³⁵⁵

Cpl. Les Hammett and Sgt. Robert Wall, the NCO I/C of E Division NSOTF, wrote a report detailing their follow-up on the Mr. Z information. Investigators made

³⁵¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 246.

³⁵² See Section 1.4 (Post-bombing), Mr. Z.

³⁵³ Exhibit P-101 CAF0499, p. 1.

³⁵⁴ Testimony of Robert Wall, vol. 77, November 16, 2007, pp. 9744-9745.

³⁵⁵ Exhibit P-101 CAF0450, p. 1.

inquiries in relation to the individuals named by Mr. Z as having checked in the suspect luggage on June 22, 1985, or associated with them. Suspects were observed and compared to the composite drawing done by the RCMP on the basis of information about “M. Singh” provided by Jeanne (“Jeannie”) Adams, the CP check-in agent.³⁵⁶

The composite drawing was produced on the basis of the description provided by Adams in an interview with the RCMP on June 24, 1985.³⁵⁷ During this interview she told police that the suspect was an East Indian male, 35 to 45 years of age, about 5’7” to 5’9”, with wavy black hair covering the ears, a western-style hair cut, dark brown eyes, and no beard. According to Adams, he had an East Indian accent, but it was not so pronounced that she could not understand his English. The suspect was also neatly dressed in western clothes – possibly a suit.³⁵⁸

When re-interviewed on July 19, 1985, Adams was shown the composite that had been done and she felt it was wrong. She indicated that “M. Singh” had a “...softer looking face, eyes lowered and a rounder cuter face.”³⁵⁹ She clarified that “M. Singh” had an “average build” and believed that he had been wearing a “...conservative westernized suit” and “possibly” a tie.³⁶⁰ Adams described him as having “...softly waved hair slightly over [his] ears.” She also put him at a slightly taller, 5’8” to 5’10” and at 150 pounds. She told investigators that he was “...kind of sparkly eyed” as well.³⁶¹ On July 24, 1985, RCMP HQ sent an update to O and C Divisions based on information reported by the E Division Task Force. C/Supt. Norman Belanger instructed the regions that the composites that had been completed, including the one based on Adams’s description, were to be used as “...an investigative aid only,” and that “...[d]istribution of the composite at this stage to the Sikh community ... would be premature.”³⁶²

Adams was subsequently interviewed twice under hypnosis, as it was hoped that she could provide further details about the description of “M. Singh.”³⁶³ Indeed, the description that had been provided thus far would not have provided investigators with much to go on in the way of distinguishing features of “M. Singh”. Results of an initial attempt at hypnosis were unsatisfactory and a further attempt was made on August 6, 1985.³⁶⁴ The description provided by Adams at this time put “M. Singh” at a shorter 5’5”-5’6”, and at the lower end of the age range she had initially provided – i.e. 35 years old.³⁶⁵

Adams participated in three photographic lineups – the first on June 25, 1985, the second in 1987 and the third in 1988. In the course of those lineups, she

³⁵⁶ Exhibit P-101 CAF0450, p. 4.

³⁵⁷ Exhibit P-456, p. 2.

³⁵⁸ Exhibit P-101 CAF0667; Exhibit P-456, p. 1.

³⁵⁹ Exhibit P-456, p. 1.

³⁶⁰ Exhibit P-101 CAF0667.

³⁶¹ Exhibit P-456, p. 3.

³⁶² Exhibit P-391, document 86 (Public Production # 3206), p. 7.

³⁶³ Exhibit P-101 CAA0290(i), p. 7; Exhibit P-456, p. 2.

³⁶⁴ Exhibit P-101 CAB0460.

³⁶⁵ Exhibit P-456, p. 2.

identified various individuals as “similar” or “very similar,” but did not definitively identify anyone as the man she had dealt with at the baggage counter, “M. Singh”. On the form she completed during the first photographic lineup, she indicated that: “This is not a definite identification as I cannot remember the passenger’s face – as much as the incident, which I remember more clearly.”³⁶⁶

Despite the fact that the flight manifest for CP003 Vancouver to Narita showed that “L. Singh” had checked in through Adams, when she was interviewed Adams was unable to recall “L. Singh” checking in through her.³⁶⁷ Unfortunately, there is no known description of “L. Singh”.

Mr. Z always indicated that two Sikhs had been tasked with checking in the luggage, and always indicated that the two individuals had come from two different families – which will be referred to here as Family 1 and Family 2. However, he named different individuals from these two families at different times.³⁶⁸ He had identified two individuals, who were members of Family 1, as the first individual responsible for checking in the luggage (and who for the purpose of this account will be referred to as the purported L. Singh “A” and L. Singh “B”). He also named three persons, who were all members of Family 2 and had a connection to Ajaib Singh Bagri, as the second individual responsible for checking in the luggage (who for present purposes will be referred to as the “purported M. Singh”). These three individuals will be referred to here as M. Singh “A”, M. Singh “B”, and M. Singh “C”. For clarity, it should be noted that Mr. Z did not specify which of the individuals he named was the purported “L” or “M” Singh. They are being designated as such for the purposes of convenient reference in this narrative.³⁶⁹

In relation to M. Singh “A”, it was concluded by investigators Wall and Hammett that, “[i]t’s possible this person could have been in Vancouver the next morning, but there is nothing to indicate his whereabouts. He doesn’t look like our suspect composites.”³⁷⁰

In relation to M. Singh “B”, this individual’s photograph was obtained and compared to the composite drawings done by Adams. There was no match to the photos.³⁷¹

To verify or reject the identity of the purported L. Singh “A”, a plan was formulated to observe this individual “at close range” and then to compare the physical observations of this person with the descriptions that had been provided by Adams. It was felt that “...if this information was accurate,” then it would “set the tone” for further investigation of Mr. Z’s information.³⁷² Cpl. Donald de Bruijn was able to observe this individual, now over a year and a half post-bombing, and found that in relation to Adams composite:

³⁶⁶ Exhibit P-456, p. 2 [Emphasis in original].

³⁶⁷ Exhibit P-101 CAF0667, p. 4.

³⁶⁸ Exhibit P-454, p. 1.

³⁶⁹ See Exhibit P-454.

³⁷⁰ Exhibit P-101 CAF0450, pp. 2-3; Exhibit P-455.

³⁷¹ Exhibit P-101 CAF0450, p. 4; Exhibit P-455.

³⁷² Exhibit P-101 CAF0450, p. 4; Exhibit P-455.

...he was similar in height and build, East Indian complexion, round face. However he was different by his hair, it was combed straight back, not wavy and not parted on the left side. He did not fit the composite done by the witness.³⁷³

At the end of the RCMP report, the officers noted that research in the debriefing reports indicated that "...all of this information, ours and CSIS [*sic*], seems to centre around [Mr. Z]," and that there had not been a "hard link" but rather only "...speculation on somebody's part." In the investigators' opinion, for "...Mr. Warren (James Warren, OIC of Counter Terrorism) [to] come out and say that they have identified the two Sikhs" is "...not to say the least premature." They added that it seemed "...somewhere along the lines their information has been taken out of context."³⁷⁴

The report concludes that there would be "...no further investigation on this tip unless we receive substantive information from CSIS or our own sources."³⁷⁵ Given that CSIS had been ordered to stop its investigation of this lead, it would seem unlikely that the RCMP would be receiving further information from CSIS about this situation. It must be noted that, as the RCMP only had a composite drawing and identification information about one of the two individuals believed to have checked in the bags, the elimination of potential suspects on the basis of information about the identification of "M. Singh" only would seem to have been a questionable practice.

On March 18, 1987, RCMP Headquarters sent a letter to CSIS asking for confirmation that there was no longer a bar to conducting "...overt enquiries and interviews in the [redacted] area" in furtherance of the Mr. Z information. RCMP HQ indicated that it would be advising E Division to proceed with its efforts to develop this aspect of the investigation.³⁷⁶ This consent was confirmed by CSIS on March 26, 1987.³⁷⁷

On June 12, 1987, Wall's notes contain an entry stating:

There is a lengthy review of the scenarios. Both have potential for disaster due in part to inaction by senior management, i.e. Acting Ops Officer.³⁷⁸

When asked about this entry, Wall indicated that it related to his attempts to have an operational plan approved in relation to the Mr. Z situation. His unit had submitted the plan, which "...didn't appear to be going up the chain rapidly enough to suit [him]."³⁷⁹

³⁷³ Exhibit P-101 CAF0450, pp. 4-5; Exhibit P-455.

³⁷⁴ Exhibit P-101 CAF0450, p. 5; Exhibit P-455.

³⁷⁵ Exhibit P-101 CAF0450, p. 5; Exhibit P-455.

³⁷⁶ Exhibit P-101 CAA0538.

³⁷⁷ Exhibit P-101 CAB0720.

³⁷⁸ Exhibit P-101 CAF0508; Exhibit P-455.

³⁷⁹ Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9730.

1988: RCMP Conducts Photo Lineup and Interviews Suspects

On February 5, 1988, Adams was contacted at Vancouver International Airport and viewed a photo lineup in relation to the Mr. Z investigation. She was unable to indicate anyone as a positive match to the suspect at the airport. She did, however, point out several photos as “look-alikes” – all those she pointed out had the round face and either wavy or curly hair. One of the photos she did select was the purported L. Singh “A”. However, it was noted that “...no preference was given to him over the others selected.”³⁸⁰

In early February 1988, Cst. McRae and Cpl. R.A. Boyarski conducted interviews with regard to the Mr. Z issue in conjunction with the arrest of Inderjit Singh Reyat. Those interviewed were the purported M. Singhs “A”, “B”, and “C”, and the purported L. Singh “A”. There was no mention of the RCMP interviewing L. Singh “B” at this time, and efforts by the RCMP to locate information on file about any such interview turned up negative.³⁸¹

The officers concluded that the purported M. Singhs “A” and “C” did not fit the descriptions for the possible suspect nor did they speak fluent enough English. Both denied any involvement in the occurrence. M. Singh “B” was very cooperative and denied any involvement. He advised that he would take a polygraph and would submit to a lineup if necessary. As the interview continued, he became more uneasy when the officers put to him that he had been involved in the plot. However, the officers concluded that his reaction was not that of someone trying to hide something, but rather that he seemed angered by the officers’ statement.³⁸²

L. Singh “A” denied any involvement.³⁸³ While this individual admitted to having associations with Bagri and had a good command of English, his description “... was not totally consistent” with the description provided by Adams. According to RCMP records, “...the investigation was unable to eliminate this individual or confirm him as a suspect for having checked in the suspect bag.”³⁸⁴ Nevertheless, the officers concluded that there was nothing further to do with respect to the investigation of this individual at that time.³⁸⁵

Investigators concluded that, at this point in time, there was nothing to indicate that any further investigation was necessary. The results of source information, photo lineups, factual information, and interviews conducted were all “negative.”³⁸⁶

380 Exhibit P-454.

381 Exhibit P-454.

382 Exhibit P-454.

383 Exhibit P-454.

384 Agreed statement read into testimony by agreement with the Attorney General of Canada during Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9729.

385 Exhibit P-454.

386 Exhibit P-454.

Officers sent a telex to Ottawa HQ indicating that discussions would be held about the future direction of the file, and that it was likely that they would be "...concluding this scenario."³⁸⁷

The RCMP taped the interview of L. Singh "A", along with the interviews of the three purported "M. Singh" suspects. However, the "...tapes were destroyed for unknown reasons during the investigation. There were no copies of the tapes made and none were transcribed."³⁸⁸ The RCMP second-in-charge of the investigation, Wall, had no recall of this incident.³⁸⁹

1997: RCMP Interviews Suspects

It does not appear that there was any further RCMP discussion of this matter until early in 1995, when members of the E Division National Security Investigations Section (ENSIS) met for the purpose of conducting a review of the Air India file and generating new leads. In the course of that discussion, the topic of the various individuals who had been identified by Mr. Z as the two Sikhs who had checked in the luggage arose. It was suggested that the individuals be re-interviewed and polygraphed if this had not already been done.

The next action by the RCMP on this file was two years later, in 1997 – over ten years after this information first surfaced.

In January of 1997, Cpl. Bart Blachford and S/Sgt. John Schneider went to the residence of M. Singh "A" and "B". M. Singh "A" appeared to be "...very nervous at the start when it was explained we were there regarding the Air India investigation." Apparently, he "...started breathing very deeply" and this continued until M. Singh "B" joined in. M. Singh "A" denied staying with Ajaib Singh Bagri in Kamloops,³⁹⁰ and denied the allegation that he may have checked in the suspect bags at Vancouver airport or that he had ever been asked to do this. Both M. Singh "A" and "B" admitted having a connection to Bagri.³⁹¹ When investigators suggested to them that perhaps the person who had checked in the bag was "duped" and was "unaware of the contents," both still maintained their lack of involvement.³⁹²

While M. Singh "A" agreed to take a polygraph test, M. Singh "B" refused, saying that "...whoever made those allegations should take the test first." Attempts to persuade him failed.³⁹³

On March 12, 1997, Blachford went to the residence of M. Singh "A" and brought him to the Surrey detachment to conduct the test.³⁹⁴ He was found to be

387 Exhibit P-454.

388 Agreed statement read into testimony by agreement with the Attorney General of Canada during Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9729.

389 Testimony of Robert Wall, vol. 77, November 16, 2007, p. 9729.

390 Exhibit P-101 CAF0451; Exhibit P-455.

391 Exhibit P-290, Admission F; Exhibit P-455.

392 Exhibit P-101 CAF0451; Exhibit P-455.

393 Exhibit P-101 CAF0451; Exhibit P-290, Admission F; Exhibit P-455.

394 Exhibit P-101 CAF0453; Exhibit P-455.

telling the truth when he denied aiding the BK by delivering the luggage to the Vancouver Airport or checking in the luggage.³⁹⁵ It was concluded that this should "...resolve our concern" that he was involved with the movement of the luggage on June 22, 1985. That M. Singh "A" was not involved is "...supported by [redacted] where he was documented as having worked the 21st of June completing the shift at 2400hrs. [Redacted] maintains that [redacted] then he would not be able to leave on the bus ... [and] be in Vancouver in time to check the luggage and this was borne out by the polygraph." No further action regarding this individual was deemed to be required at the time.³⁹⁶

During this period, Schneider also went to the residence of the purported L. Singh "A". In an interview on February 17, 1997, Schneider found him "...very relaxed and cooperative" and he stated that he never saw much of Bagri once Bagri became militant and a member of the Babbar Khalsa. He said that he was not associated with any Sikh religious group and was not a devout religious believer. He denied transporting any luggage or bags for Bagri or his associates to the Vancouver airport and said he was never asked to check in any bags for Parmar or their associates. He did not know Bagri's associates such as Parmar, Gill or Johal. He stated that in 1985 he had "...fairly short hair, combed back, no mustache or beard and never wore a turban." It does not appear that Schneider requested to see a photo of the purported L. Singh "A" from that period. Schneider concluded that he did not "...resemble the composite from Jeanie [sic] Adams." The purported L. Singh "A" told Schneider that he had never been asked in the past about the luggage carrying the bombs and said that he did not know why anyone would suspect him. This was not accurate, as investigators McRae and Boyarski had interviewed L. Singh "A" in 1988. It is unclear whether Schneider was aware of this inconsistency, as he concluded that the purported L. Singh "A" appeared to be truthful, and that he did not feel it was necessary to consider a polygraph examination of this individual. The tip on this individual was "concluded."³⁹⁷

M. Singh "C" was polygraphed during this period and was found to have been truthful about his lack of involvement.³⁹⁸

In a March 14, 2002 memorandum from Blachford to Cpl. Baltej Singh Dhillon, on the subject of "Alternate Theories," it was noted that M. Singh "A" and "C" passed polygraph tests and that the purported L. Singh "A" had been cleared after an interview.³⁹⁹ There was no conclusion in relation to M. Singh "B", the individual who had refused to submit to a polygraph test.

Wall was asked about the follow-up conducted by the RCMP in relation to the Mr. Z information. He testified that the follow-up investigation, including

³⁹⁵ Exhibit P-101 CAF0453, CAF0454, CAF0456; Exhibit P-455.

³⁹⁶ Exhibit P-101 CAF0453; Exhibit P-455.

³⁹⁷ Exhibit P-101 CAF0452, pp. 1-2; Exhibit P-455.

³⁹⁸ Exhibit P-101 CAF0457; Exhibit P-455.

³⁹⁹ Exhibit P-101 CAF0457; Exhibit P-455.

interviews and polygraphs of suspects and associates, led the RCMP to the ultimate conclusion that the individuals implicated had no involvement in the bombing of Air India Flight 182.⁴⁰⁰

Conclusion

The RCMP, once it began to make inquiries in relation to the Mr. Z information, following soon after CSIS's positive reporting on the Mr. Z information to the Solicitor General, appeared eager to dismiss the lead on the basis of questionable identification comparisons to the composite by Jeanne Adams, and then decided it would make no further inquiries until CSIS provided more solid evidence of the connection.

The Attorney General of Canada submitted that:

When the RCMP took the lead on the Mr. Z information, they followed up and investigated thoroughly, on occasion with the assistance of CSIS, including the use of polygraphs. The police were unable to verify the information provided by Mr. Z, and the lead dissolved into another dead end.⁴⁰¹

However, the documents used by the AGC to support the assertion that the RCMP followed up "thoroughly" relate to the "observations" of certain suspects that were made by the RCMP in 1987 and the polygraphs and interviews that were conducted in 1997 – over ten years after the Mr. Z information first surfaced. Also not referenced in their submissions is the information that indicated that the interview of one suspect in 1988 was neither able to exclude nor confirm this individual's involvement.

While the RCMP relegated the Mr. Z information to another "alternate theory,"⁴⁰² the manner in which the RCMP followed up on this information raises questions about whether this lead was really a "dead end," as reported.

To this day, the individuals who were responsible for checking in the luggage carrying the bombs have never been identified.

2.3.3 The Purported Parmar Confession

Introduction

In September 2007, representatives of the Punjabi Human Rights Organization (PHRO) testified at the Commission hearings about their belief that in 1992, Talwinder Singh Parmar was captured, tortured and killed by the Indian police,

⁴⁰⁰ Testimony of Robert Wall, vol. 77, November 16, 2007, pp. 9744-9745.

⁴⁰¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 259.

⁴⁰² Exhibit P-101 CAF0457; Exhibit P-436.

and that prior to his death he provided a “confession” regarding his role in the Air India bombing. This section will explore how the Inquiry came to obtain this information, what the information was, how the RCMP came into possession of the information and what was ultimately done with it.

The mandate of this Commission includes the question of how institutions in Canada can better utilize intelligence as evidence in court. Apart from its inherent historical interest in terms of the Air India narrative, the “Parmar confession” illustrates the challenges that arise from intelligence originating in foreign jurisdictions, and, in particular, from foreign jurisdictions which may follow rules and procedures which differ vastly from ours, or whose values are significantly different from our own.⁴⁰³

Parmar’s Death – The Official Version

In May 1991, Indian Prime Minister Rajiv Gandhi was assassinated. Soon after, the Government of India set up an inquiry, known as the Jain Commission, to look into the conspiracy that led to the assassination of Gandhi. The Jain Commission produced a massive report in April 1993. One small part of the report⁴⁰⁴ focuses on the alleged police encounter in which Parmar was killed, which took place on October 15, 1992, at the village of Kang Araian, in the Jalandhar District of the Punjab state in India. The official version of how Parmar died is contained in this report. The volume includes sworn statements by eyewitnesses and the police involved, as well as a copy of the post-mortem report.⁴⁰⁵

According to the report, on October 10, 1992, Shri S.K. Sharma, the Senior Superintendent of Police (SSP) in Jalandhar was informed by a reliable source that “...suspected terrorists armed with lethal weapons”⁴⁰⁶ were in the Phillaur sub-division of Jalandhar district. On October 14th, the source further informed the police that the leader of the gang was Talwinder Singh Parmar, “...a hard core Sikh terrorist who had been evading arrest since 1982.”⁴⁰⁷ The gang also included two Muslims and three other terrorists who were all travelling in two Suzuki Maruti cars.⁴⁰⁸ The police made plans for a night patrol in order to catch the group:

On going through the old police records it was established that Talwinder Singh Parmar had been a front ranking leader of Sikh terrorist movement right from its inception. He had been involved in large number of cases of terrorist violence

⁴⁰³ Comment by Commission Lead Counsel regarding the Attorney General of Canada’s Final Submissions on Phase One, Transcript, vol. 51, September 24, 2007, p. 6279.

⁴⁰⁴ Entitled “Report of the Enquiry on the police encounter at Village Kang Araian, P.S. Phillaur, District Jalandhar on October 15, 1992 conducted by Shri V.K. Jain, Special Secretary, Government of India, Ministry of Home Affairs, New Delhi.”

⁴⁰⁵ Exhibit P-101 CAF0326, pp. 2-3.

⁴⁰⁶ Exhibit P-101 CAF0326, p. 4.

⁴⁰⁷ Exhibit P-101 CAF0325, p. 45.

⁴⁰⁸ Exhibit P-101 CAF0326, p. 4.

in India and abroad which included hijacking, murder, shoot-outs, gun-running etc. He was also a prime suspect in Kanishka aircrash of June 23, 1985.... Keeping in view the background and desperate character of Parmar and his gang, SSP Jalandhar made elaborate operational plan to apprehend the gang.⁴⁰⁹

On the morning of October 15, 1992, at 5:30 AM, two Maruti cars were observed approaching a bridge near the village of Kang Araian. The police, who were there waiting, signalled for the two cars to stop. The cars "...screached to a halt" and the occupants rushed out "...indiscriminately firing towards the police post with automatic weapons."⁴¹⁰ The police returned fire. Two of the terrorists were killed immediately. One terrorist armed with an AK-47 took cover nearby and continued firing on the police. One group of police provided cover fire so that SSP Jalandhar could approach the terrorist. At this point the terrorist threw two hand grenades at the police, but the police took cover and suffered no injuries. Then SSP Jalandhar killed the terrorist:

SSP Jalandhar climbed up on the roof and from there fired at the extremist instantaneously killing him on the spot. This extremist was subsequently identified as Talwinder Singh Parmar.⁴¹¹

Close by, another group of three terrorists began firing on the police.⁴¹² That encounter resulted in the death of the final three terrorists. After the gunfight the police recovered the bodies of the six terrorists, guns and ammunition, documents, vehicles and currency.⁴¹³

The facts determined by the report (and indeed the entire police encounter) were brought into question by the information provided to this Inquiry by the PHRO.

The Punjabi Human Rights Organization

The Punjabi Human Rights Organization (PHRO) is an organization that investigates human rights violations in the state of Punjab in India.⁴¹⁴ Two members of the PHRO approached the Commission with information regarding the death of Parmar.

In the early 1990s, their lead investigator, Sarabjit Singh, heard about an alternate version of how Parmar died. He was approached by two reporters from the *Indian Express*, an Indian newspaper, who wanted his help in investigating the

409 Exhibit P-101 CAF0325, p. 46.

410 Exhibit P-101 CAF0325, p. 47.

411 Exhibit P-101 CAF0325, p. 51.

412 Exhibit P-101 CAF0325, p. 51.

413 Exhibit P-101 CAF0326, pp. 6-8.

414 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6281.

death of Parmar. Singh investigated the story, but the *Indian Express* chose not to print it.⁴¹⁵ Singh did not pursue the matter further. However, in 2005, news of the acquittal of Ripudaman Singh Malik and Bagri reached India. At the time, Singh was travelling in a car and the news of the acquittals came on the radio. The person Singh was travelling with revealed that he knew all about the case.

The story Singh was told was that Parmar was captured by the police and held in custody for a number of days prior to being killed in a staged shootout. The story was similar to what he had heard in the 1990s when he had first tried to investigate the death of Parmar.

His interest rekindled, Singh set out once more to uncover what he could about Parmar's death, as part of a PHRO-sanctioned investigation. He tracked down persons alleged to have knowledge of the incident and interviewed them. Based on interviews of persons allegedly with Parmar in his final days, he determined that Parmar had been interrogated by the police prior to his death and that between four and twelve persons had been present during that interrogation.⁴¹⁶

In the process of interviewing and investigating the story, Singh came into possession of a number of documents, including an alleged transcript of the interrogations. Singh also heard recordings of some of the events which led to Parmar's capture.⁴¹⁷

The Capture of Parmar

Singh uncovered a great deal of information relating to the story of Parmar's capture. The story begins with the arrest of two men in the Punjab. One of the men had a 50 rupee bill that had been torn in two. The two men were interrogated and, eventually, one of them revealed that they had been expecting to pick up a number of arms and weapons and that the delivery person was to identify himself by presenting the other half of the torn rupee note. However, by the time that this information was revealed, the scheduled meeting time had passed. Further questioning revealed the name of a contact whose alias was "Tank." Tank was then apprehended and, under questioning, disclosed that he was in contact with Talwinder Singh Parmar.⁴¹⁸

Tank stated that he contacted Parmar through another person known as "Major." Tank knew the phone number for Major, so the police had Tank call Major to set up a trap to lure Parmar from Pakistan to the Punjab.⁴¹⁹ In addition, the police taped the phone calls between Tank and Major, and the PHRO had the benefit of listening to tapes of those conversations, which corroborated much of the capture story.

415 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6287.

416 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, pp. 6287-6289.

417 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, pp. 6289-6290.

418 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6291.

419 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6292.

It was understood that Parmar was going to make his way to the Punjab. Parmar first made his way to Jammu, a northern state in India. Coincidentally, when he arrived in the capital of Jammu, a bomb blast occurred. As a response to the blast, the Jammu police rounded up individuals roaming the streets at night and, without knowing his identity, captured Parmar.⁴²⁰

Parmar contacted Major to let him know that he had been apprehended. He told Major that the Jammu police believed he was a person called “Professor Sahib.” Major contacted Tank and told him of Parmar’s capture. This information was obtained by the Punjab police through their intercept of phone conversations between Tank and Major.⁴²¹

The Punjabi police then contacted the Jammu police, but did not tell them the true identity of Parmar. Instead, they said his name was “Saroop Singh” and that he was a police informant. As a result, the Jammu police handed him over into the custody of the Punjabi police without ever knowing who it was they had really captured.⁴²²

Once Parmar was in the hands of the Punjabi police, he was brought back to their police station and interrogated. They extracted biographical information from Parmar as well as information about his activities, including some information about the Air India bombing. The information was handwritten in the Punjabi language.⁴²³ The PHRO obtained a copy of the document and provided the Inquiry with a translation, which they called “The Life Story of Talwinder Singh Parmar (Translated by R.S. Bains).”⁴²⁴

The document purports to tell the story of who Parmar was, and certain crimes he was allegedly involved in, as well as those who assisted him in his endeavours. He discusses the Air India bombing and does not deny his involvement with it. However, the main focus of the document was not the bombing itself but, rather, crimes committed in India.⁴²⁵

Highlights of “The Life Story of Talwinder Singh Parmar”

The key document provided to the Inquiry by the PHRO is a translation of the handwritten documents the PHRO obtained.⁴²⁶ The document, entitled “The Life Story of Talwinder Singh Pamar,”⁴²⁷ begins by providing biographical information about Parmar, including his birthdate, the names of his immediate family and a short biography about Parmar’s youth. The document then details how Parmar became influenced by Sikh preachers and was baptized as a Sikh. The document

420 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6292.

421 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, pp. 6293-6294.

422 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6294.

423 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6294.

424 See Exhibit P-216.

425 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6297.

426 Exhibit P-216.

427 The title was not on the original document but was given to the document by the PHRO. See Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6296.

also states that Parmar met Sant Jarnail Singh Bhindranwale in the late 1970s.⁴²⁸ The document details Parmar's rise to the leadership of the BK and his various trips back and forth between India and Canada.

A short two-page section of the document concentrates on the Air India bombing. This section is bolded in the document, an emphasis the PHRO added.⁴²⁹ The information implicates Lakhbir Singh Brar, head of the International Sikh Youth Federation, as the mastermind behind the bombings:

Around May 1985, one activist of ISYF came to me and disclosed his name as Lakhbir Singh and told me that he had come from Winnipeg, and he asked some help from me, for doing some intense activities. I told him the way of conducting a [*sic*] explosion/bomb blast with dynamite.⁴³⁰

The document also names Lakhbir Singh Brar as Mr. X who attended the Duncan Blast:

Around 4 days later since I don't remember the date, the same Lakhbir Sinh [*sic*] Winnipeg [*sic*] and one Youngman [*sic*] Inderjit Singh Ryat [*sic*] came to me. I was ready and the same three went in the car to the forest. There a blast was done with the help of small piece of dynamite after connecting it to the battery through wire from afar, which exploded with powerful blast.... The fact is that at that time itself they had in mind a plan to explode an aircraft with such explosion. They disclosed this plan to me while talking on return journey.... They on the same day took dynamite sticks from me and went away.⁴³¹

It also names Lal Singh (also known as Manjit Singh)⁴³² as the person who purchased the tickets:

No doubt thereafter Lakhbir Singh, Inderjit Singh and one of their associates Manjit Sinjh prepared a plan to blast two air craft flights.... Lakhbir Singh booked the tickets from Vancouver to Tokyo through local flight [and] then from Tokyo to Bangkok and Manjit Singh booked the tickets from Vancouver to Toronto and again from Toronto to New Delhi through Air India.⁴³³

428 Exhibit P-216, pp. 2-3.

429 Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6296.

430 Exhibit P-216, pp. 6-7.

431 Exhibit P-216, p. 7.

432 Exhibit P-101 CAF0334, p. 2.

433 Exhibit P-216, p. 7.

Throughout the document, Inderjit Singh Reyat's well-known role is maintained:

And Inderjit wanted for this purpose ... transistor fitted with battery which, at the appointed time, automatically connects with the battery and the battery by creating sparks then shall explode dynamite.... They made such arrangements that Inderjit fitted dynamite bomb along with batteries in the transistor and then fitted them in the bags filled with luggage.⁴³⁴

In the thirteen-page document, only two pages are dedicated to the Air India bombing. The rest focuses on Parmar's terrorist activities in India.

Efforts to Bring the Purported Confession to the Attention of the Canadian Authorities

At the completion of their investigation, the PHRO attempted to contact Canadian authorities in an effort to advise them of the information they had uncovered. They believed that the information consisted of a confession by Parmar and the revelation of the identity of Mr. X which could further assist Canadian authorities in their ongoing investigation.⁴³⁵

The PHRO first tried to contact the RCMP directly in December 2005. However, the RCMP did not respond. Then, in January 2006, the PHRO contacted Gurjinderjit Singh Sahota, an Indian resident living in Canada, who had been a lawyer in Amritsar and so was known to the PHRO. The PHRO asked Sahota to contact the RCMP on its behalf. Sahota emailed Dan Bond of the RCMP. Bond did reply to Sahota, but the impression the PHRO got was that the RCMP was not really interested in obtaining the information.⁴³⁶

On August 18, 2006, Sahota contacted the Attorney General of British Columbia. On September 1, 2006, Geoffrey Gaul, Director of Legal Services, referred the PHRO to the Air India Inquiry, and in particular, Mark Freiman, lead Commission Counsel.⁴³⁷

In June 2007, with the PHRO scheduled to testify, the RCMP finally appeared interested in the PHRO information and a meeting was scheduled. Prior to that meeting the RCMP had no knowledge of what the PHRO had to offer.

The PHRO representatives did not testify in June 2007, in part for reasons that cannot be discussed in this Report. Following intensive discussions and negotiations, the PHRO representatives returned to Canada in September.

⁴³⁴ Exhibit P-216, p. 7.

⁴³⁵ Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6299.

⁴³⁶ Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, pp. 6298-6299, 6303, 6305-6307.

⁴³⁷ Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6307.

It was only in September of 2007, just prior to their testimony, that PHRO representatives, at the urging of this Commission, once more attempted to meet with the RCMP. This time the meeting was successful and a great deal of information was passed. In fact, the PHRO gave the RCMP all of the information they had collected. Rajvinder (Singh) Bains (also known as R.S. Bains) felt that the RCMP was pleased with the information provided by the PHRO.⁴³⁸

The fact that it took the efforts of a Commission of Inquiry to transmit the information to the RCMP is troubling. As Jacques Shore, counsel for the families, stated:

[A]ttempts were made to bring it to the attention of the authorities back in 2005 and some of that ... may have assisted in the investigation a lot earlier than having to wait for a Commission of Inquiry to provide the setting in which this information ultimately finds its way in the hands of the RCMP, that's where my concern is.⁴³⁹

However, according to Insp. Lorne Schwartz, the information provided by the PHRO did not contain any new details, though, at the outset, the RCMP did not know the details of what the PHRO had to offer and whether or not it could have led to new revelations for the case.⁴⁴⁰

The PHRO was correct to believe that these matters should be aired at the Inquiry. The circumstances that prevented the PHRO from testifying as originally scheduled in June 2007 cannot be discussed with any specificity. It is sufficient to note that no blame can be attached to the PHRO representatives for their initial reluctance. The ensuing negotiations through the Attorney General of Canada, and others with various interested parties, led to evidentiary compromises that allowed the essence of the testimony to be heard. It is unfortunate that so much effort was required to allow this to happen.

The RCMP's Knowledge of the Parmar Information

The RCMP First Learns of the Purported Parmar Confession

In May of 1997, the RCMP received information about a purported Parmar confession from a number of sources,⁴⁴¹ and was advised that the purported confession disclosed the identity of Mr. X, the third person who was present with Parmar and Reyat at the test blast site in Duncan.⁴⁴²

⁴³⁸ Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6309.

⁴³⁹ See Statement of Jacques Shore during Testimony of Rajvinder (Singh) Bains and Sarabjit Singh, vol. 51, September 24, 2007, p. 6313.

⁴⁴⁰ Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6371.

⁴⁴¹ Exhibit P-101 CAF0334, p. 1: This document was prepared to summarize the steps that were taken by the RCMP once they received this information in May of 1997; Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6318.

⁴⁴² Exhibit P-101 CAF0334, p. 1.

Phone calls by the RCMP to India confirmed that the individuals from whom this information came believed they knew the identity of Mr. X, the names of the people who checked in the baggage in Vancouver, as well as the identity of the person who interlined the bags to Toronto. The RCMP was told that it could obtain much more information if it met the individuals in person, but that the meeting should not take place in India as it would draw attention to the individuals and possibly put them at risk.⁴⁴³

Insp. Lorne Schwartz was on the Air India Task Force when this information was received, and had had some role in the RCMP's follow-up investigation in relation to the purported Parmar confession. Prior to his testimony before the Commission, he also had the opportunity to review the RCMP records in relation to the follow-up of this issue by the Task Force.⁴⁴⁴

According to Schwartz, it took several months for the RCMP to obtain the information, due to complications with diplomatic protocol and due to concern for the safety of sources.⁴⁴⁵ Throughout June and into August 1997, the RCMP had contact with the individuals, attempting to set up a meeting – possibly in a third country.⁴⁴⁶

In September 1997, a letter was received from the individuals indicating that they would not travel to a third country, as per the RCMP's suggestion, and preferred that the RCMP travel to India at that point. The letter also advised that Mr. X was Lakhbir Singh Brar, a member of the ISYF; that he had also booked one of the Air India tickets under the name of "L. Singh"; and that Manjit Singh had purchased the other. The RCMP called India and confirmed that the individuals believed Brar to be Mr. X, as well as their belief that he was from Winnipeg. On November 7, 1997, documents were received from India which had been sent through the RCMP Liaison Officer in New Delhi by diplomatic bag. The documents provided further information about the facts contained in the alleged Parmar confession.⁴⁴⁷

Then, in 1999, one of the individuals met with the RCMP and indicated that Parmar had apparently admitted his involvement in the bombing of Air India, among other terrorist plots. At two further meetings in 1999, this individual also advised that three people took the luggage containing the bombs to the airport, obtained boarding passes, but did not get on the plane. Additional information was provided which indicated that Manjit Singh and Lal Singh were in fact the same person, and that Parmar had indicated that the Narita bomb had exploded prematurely.⁴⁴⁸

Whether or not the information in the confession is accurate, the information itself, how it came to be obtained by the RCMP and what the RCMP did with

443 Exhibit P-101 CAF0334, p. 1.

444 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6317.

445 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6320-6321.

446 Exhibit P-101 CAF0334, pp. 1-2.

447 Exhibit P-101 CAF0334, p. 2.

448 Exhibit P-101 CAF0334, p. 2.

the information, all raise questions. As well, the details of the RCMP's follow-up investigation illustrate difficulties and complexities inherent in investigations that take the RCMP away from the ground rules and assumptions of the Canadian domestic context.

The RCMP Follow-Up on Information

Schwartz explained the process used to follow up on new information. An investigator furnishes the new information to the file coordinator who, together with the lead investigators, compares it to information already on file and identifies the need, if any, for follow-up. Any one lead is not necessarily dealt with by the same investigator, but rather follow-up initiatives are farmed out as required. Schwartz explained that, while investigators would be interested in following up on new information received, the investigation was already 12 years old by that time, and there were "volumes of information," some of which "...was confirmed and would later be entered as evidence ... to compare this new information with, for its validation."⁴⁴⁹

According to Schwartz, at the time the RCMP received this information, it already knew the points of contact for the booking and the purchasing of the tickets for the flights, and had descriptions on file of the individuals who had picked up the tickets and, to a degree, of those who had delivered the luggage to the airport. There was also a physical description of Mr. X and an understanding of the roles carried out by Mr. X, Parmar and Reyat. Some of the information in the alleged Parmar confession "...on its face appeared to be problematic" to the RCMP, as it "...didn't really match with evidence that [the RCMP] knew to be factual." For example, the information in the purported Parmar confession was that both Lakhbir Singh Brar and Lal Singh had a role in booking the tickets. This information did not accord with the information the RCMP had gathered from witnesses involved in those transactions – that the same individual was responsible for the booking of both tickets. It was felt that while the information "...was of interest" and "...worthy of following up," these factors "...tended to minimize the importance of it to a degree."⁴⁵⁰ The RCMP was also aware of the possibility that this purported confession might have resulted from physical or mental torture.⁴⁵¹

The information related to the Parmar confession raised obvious questions about the alleged involvement of two named individuals, Lal (Manjit) Singh and Lakhbir Singh Brar. According to the RCMP, in terms of its follow-up of this information, it conducted overseas interviews of Lal Singh and Lakhbir Singh Brar, interviewed various people "...in Canada and elsewhere" about these individuals, and reviewed police files for additional information.⁴⁵²

449 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6325, 6330.

450 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6341, 6346, 6368-6369.

451 Exhibit P-101 CAF0334, p. 3.

452 Exhibit P-101 CAF0334, p. 3.

The RCMP Follow-Up on Allegations in Relation to Lakhbir Singh Brar

During the course of the RCMP Air India investigation, and up until 2001, Brar was never interviewed as a potential witness or as a suspect regarding the Air India and Narita bombings,⁴⁵³ despite the fact that he was reported to have been present at the June 12, 1985, Khurana meeting, where Pushpinder Singh was alleged to have vowed that something big would happen in two weeks,⁴⁵⁴ and although he had frequently been in the company of the Babbar Khalsa and Akhand Kirtani Jatha (AKJ) suspects, and had been present at various meetings and Sikh temple fundraisers with suspects in the bombings prior to and after the offences. He was also reported to have been a terrorist.⁴⁵⁵ In June 1985, the RCMP began conducting extensive surveillance of Brar, and this continued for several weeks before the RCMP discontinued all coverage.⁴⁵⁶ After expending considerable time and resources "...following Lakhbir Singh [Brar] across the country,"⁴⁵⁷ the RCMP noted that Brar's activities "...had not indicated a touch of criminality"⁴⁵⁸ and no further action was taken. Brar left Canada in 1991 and moved to Lahore, Pakistan, while his family remained in Canada. He remained the leader of the ISYF.⁴⁵⁹

The allegation that Lakhbir Singh Brar, a member of the ISYF, was Mr. X did not accord with the RCMP's primary theory – that the bombing was an act of the Babbar Khalsa alone.⁴⁶⁰ The RCMP also believed that they had "pertinent information" about Brar for the period of time around the bombing that substantially did not match with the Parmar confession. In addition, the RCMP also had knowledge of Lakhbir Singh Brar's travels and information that he had not spent extensive time in Winnipeg, though he may have been there at different times.⁴⁶¹

Significant emphasis was placed on the fact that, according to Schwartz, the known physical descriptions of Lakhbir Singh Brar did not match with those on file for Mr. X. The RCMP believed that Brar would have been too old at the time of the incident to fit the known descriptions of Mr. X. CSIS surveillance had described Mr. X as being in his late teens, whereas Brar, according to the information in the file, was thought to have been 33 years old at the time of the blast. The information on which the RCMP based its understanding of the age of Brar, who was not born in Canada, was from CSIS intelligence reports, though Schwartz was "...not privy exactly to what documentation would have been used." The RCMP's understanding of the appearance of Mr. X was based on reports by a number of CSIS surveillance officers involved in surveillance on the day of the Duncan Blast.⁴⁶² However, there were no photos taken of Mr. X.⁴⁶³

453 Exhibit P-101 CAF0332, p. 1.

454 Exhibit P-101 CAC0487, p. 5; See Section 1.6 (Pre-bombing), Khurana Information.

455 Exhibit P-101 CAC0487, p. 5.

456 This coverage is discussed in more detail in Section 2.3.4 (Post-bombing), The Khurana Tape.

457 Exhibit P-101 CAA0303.

458 Exhibit P-101 CAA0303.

459 Exhibit P-101 CAF0332.

460 See, for example, Exhibit P-101 CAA0582, pp. 2-3, CAA0601, p. 1.

461 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6341, 6347-6348.

462 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6331-6332, 6341, 6346-6349.

463 See Section 1.4 (Pre-bombing), Duncan Blast and Section 1.5 (Pre-bombing), Mr. X.

Moreover, through a search of information available to the Inquiry, the 1952 date of birth for Brar was called into question. An Interpol report from India's Central Bureau of Investigation (CBI) states Brar's date of birth to be 1960, a date much more in line with the description of Mr. X.⁴⁶⁴ The RCMP had not previously been aware of this conflicting information.⁴⁶⁵

Schwartz stated that the RCMP also relied on its 2001 interview of Brar to confirm his age,⁴⁶⁶ though, based on the record of the information gleaned from this interview of Brar, it does not appear that he was asked about his date of birth.⁴⁶⁷ It seems that the RCMP relied on Brar's appearance to conclude that he looked to have been born in the early 1950s. However, Schwartz did concede that, as police officers, he and the rest of the Air India Task Force would have been aware of the frailties of eyewitness identification, including the difficulty of gauging a person's age as well as the difficulty with cross-race identifications.⁴⁶⁸

In 1998 the RCMP conducted approximately 12 interviews in Winnipeg, during which they attempted to determine whether Lakhbir Singh Brar had in fact spent time in, or originated from, Winnipeg. However these interviews were not conducted as a result of the confession and the RCMP likely already had plans to conduct these interviews in furtherance of other aspects of the Air India investigation there when the confession surfaced.⁴⁶⁹

After learning of the information about the purported Parmar confession in 1997, attempts were made to locate Brar in Pakistan, but it was not until he surfaced in Pakistan as a Canadian immigration applicant in 2000 that he was located by the RCMP. At this time, his wife, who had remained in Canada and possessed a Canadian passport, sponsored him for Canadian immigration.⁴⁷⁰

Lakhbir Singh Brar was eventually interviewed in 2001. According to Schwartz, by 2001 the RCMP was "quite heavy" into the disclosure phase of Air India and the investigation was "curtailing," though aspects of the investigation considered to be of "considerable importance" would be looked at for "continuance." Information about the purported confession was being discussed with Crown counsel, to be eventually disclosed to defence counsel, along with material in relation to other "alternate" theories. According to Schwartz, "...for most intents and purposes," Brar was "...well on his way to elimination before these interviews took place" and, while the fact that he had been named in the purported Parmar confession was "...a portion of the reason for conducting the interview," there were "...numerous reasons to interview" Brar prior to, and unrelated to, this confession.⁴⁷¹

464 Exhibit P-217.

465 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6336.

466 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6350.

467 Exhibit P-101 CAF0333.

468 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6349, 6350-6352.

469 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6330-6331.

470 Exhibit P-101 CAF0332, p. 2.

471 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6359-6360, 6363.

A prosecutor was not consulted for advice, prior to the interview of Lakhbir Singh Brar, about the best approach to maximize any potential evidence that could come from the interview. Brar was not cautioned prior to his interview.⁴⁷² CSIS had advised the RCMP that Brar's English was "basic," and that he could understand more than he could speak. The RCMP, however, did not use a Punjabi-speaking officer to conduct the interview and the interview was conducted in Punjabi through the use of an interpreter. The interview of Brar started out being recorded and, at a certain point, Brar refused to have the recording continue.⁴⁷³

During the interview, Brar was asked about the bombing. He provided some information about others who might have been involved, but denied his own involvement. He specifically stated that he had no knowledge of who Mr. X was. He also denied being present at the Khurana meeting in mid-June 1985,⁴⁷⁴ which was contrary to information the RCMP had in relation to this meeting.⁴⁷⁵

The RCMP appears to have placed considerable reliance on the fact that, during Brar's interview, he denied any involvement in the Air India bombing.⁴⁷⁶ By the second day of the interview, it appears that the main objective of the RCMP was to obtain investigative leads that Lakhbir Singh Brar might provide, rather than to pursue information that might implicate him in the Air India bombing. As Schwartz admitted, the interview team did conclude that Lakhbir Singh Brar was likely lying at times during his interview, but it seems they felt satisfied enough with the information that he had provided in relation to his own involvement to move on to other areas in which he might provide useful information.⁴⁷⁷

The interview was to be translated and transcribed and reviewed to assess the potential of developing Brar as a witness. Investigators commented that "... Brar may recall more details if he is interviewed again by a Punjabi speaking member."⁴⁷⁸ It is not clear that this was ever done.

The RCMP Follow-Up on Allegations in Relation to Lal (Manjit) Singh

Lal Singh first came to the attention of the RCMP when, immediately following the tragedy of Air India Flight 182, an article was published in the Toronto *Globe and Mail* reporting that FBI fugitives, Lal and Amand Singh, were the "L. Singh" and "A. Singh" in whose names the tickets for the Air India flights had been issued.⁴⁷⁹

472 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6342, 6356.

473 Exhibit P-101 CAF0333, p. 3.

474 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6337.

475 See, for example, Exhibit P-101 CAC0487, p. 5; Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6337.

476 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6336; See also Exhibit P-101 CAF0333, for the interview continuation report.

477 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6340, 6359-6360.

478 Exhibit P-101 CAF0333, p. 5.

479 Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6380.

The RCMP conducted three interviews with Lal Singh in India. The first two interviews, in 1992 and in 1997, were conducted prior to the receipt of information about the purported Parmar confession.

An examination of the entire history of the RCMP's investigation of Lal Singh is instructive in terms of the difficulties Canadian authorities face in conducting sensitive investigations in foreign countries. It is also important in terms of understanding the RCMP's approach to the follow-up of the purported Parmar confession, as the earlier interviews of Lal Singh shaped the approach and evaluation of the final interview of Lal Singh that was conducted in 2000, after receipt of the Parmar information.

The 1992 Interview of Lal Singh

Lal Singh had evaded RCMP questioning for seven years and was a person of interest. Then, in 1992, word was received from India that Lal Singh had been arrested and detained in India,⁴⁸⁰ and, soon after, media reports began to surface that Lal Singh had been questioned by Indian police and had "admitted complicity" in the June 1985 bombing.⁴⁸¹ Suspicions were that he had checked in the luggage carrying the bombs.⁴⁸² The RCMP Liaison Officer in New Delhi attempted to confirm the information in the media articles and was apparently told "the exact opposite" by his contacts in India.⁴⁸³ However, no attempts were made to contact the journalist, Mr. Salim Jiwa, to try to find out further information to help corroborate the information in the media articles or to find further sources of information that could be of use to the investigation.⁴⁸⁴

Upon receipt of the Lal Singh information, steps were taken by the RCMP to arrange an interview of Lal Singh. Along with an interview of Lal Singh, officers planned to conduct a physical lineup in India to attempt to identify Lal Singh as the individual who had checked in the luggage. Jeanne ("Jeannie") Adams, the ticket agent at the Vancouver Airport on the morning of the check-in of the luggage, would participate by viewing the physical lineup. There was no mutual legal assistance treaty with India until 1995.⁴⁸⁵

To complicate matters, there had been reports, both in the media and from the RCMP Liaison Officer, that Lal Singh had tried to swallow a cyanide capsule when he was arrested, and had bitten off his tongue during police interrogations.⁴⁸⁶ The media articles also suggested that there may have been "...tactics used in interrogations" of Lal Singh that would not meet the standards of the Canadian courts. For example, Lal Singh's confession was reported to have been the result

480 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6380-6381.

481 Exhibit P-101 CAF0317.

482 Exhibit P-101 CAF0318.

483 Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6383; Exhibit P-101 CAF0321.

484 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6428-6429.

485 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6385, 6392, 6451.

486 Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6386; Exhibit P-101 CAF0318.

of "...virtually non-stop questioning over six days." In light of these concerns, the RCMP discussed the media reports with its counsel and sought advice about its planned interview.⁴⁸⁷

In August 1992, Jim Cunningham, an investigator on the RCMP E Division Sikh Desk, flew to India, along with his colleagues Bob Stubbings and Ron Dicks, and met with Indian police. At the time, Cunningham was not aware of any policies about how to handle a situation such as this, in which there was suspicion that someone might have been mistreated in custody.⁴⁸⁸ Upon arrival in Delhi, the officers were informed that due to security concerns, it would be necessary for them to travel to Bombay to conduct the interview. Upon arrival in Bombay, the officers were provided with heavy police security protection. When the RCMP officers questioned Indian authorities about the allegations of mistreatment, they were told that "...with the exception of a lengthy period without sleep," Lal Singh had been well taken care of and well treated.⁴⁸⁹ The Indian authorities claimed that after Lal Singh attempted to bite off his tongue, a portion of his tongue had to be cut away to prevent the spread of infection. They also indicated that Lal Singh had tried to swallow his tongue and had "...attempted suicide by hitting his head against a wall."⁴⁹⁰ Cunningham was skeptical about the truth of this story, although he had nothing to show that this was untrue. In any event, this situation raised questions about Lal Singh's frame of mind going into the RCMP's interrogations.⁴⁹¹

The conditions under which the interview took place were "less than ideal." Officers were told that, in conducting the interview of Lal Singh, they would only be allowed to discuss his activities in Canada. As for regulating who would be present during the interview, as this was a prisoner of foreign law enforcement, the RCMP was not able to fully control who would be present or how the interview would be conducted. In the same interview room as the two RCMP officers and Lal Singh were two officers from the Indian Central Bureau of Investigation, the officer who had effected the arrest of Lal Singh, and an armed police officer. The room was cramped and humid, and was not soundproofed. There was significant noise from the outside that could be heard in the interview room. As the officers "...didn't know if it would be practical" and understood that "...there may, in fact, be problems in admissibility of any statement at any rate," they did not tape-record the interview or even request permission to do so. As a result, there was no tape recording.⁴⁹²

In spite of the difficult conditions and the concerns that Lal Singh was not in a position to speak freely, prior to the commencement of the interview the officers informed him of his *Charter* rights and provided the secondary police warning or caution.⁴⁹³

487 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6385, 6388-6389.

488 Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6389.

489 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6392, 6395, 6400.

490 Exhibit P-101 CAF0319, p. 5.

491 Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6398.

492 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6398-6400, 6402, 6406, 6449-6450.

493 Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6419.

Over the course of the interview, Lal Singh told officers about statements that he had heard Ajaib Singh Bagri make about boycotting Air India. He was also familiar with Bagri's speech at Madison Square Gardens where Bagri had asserted that 50,000 Hindus would be killed. The interview went on over three days and the officers spent approximately twelve and a half hours with him. They covered issues such as his alleged involvement in the Air India bombings as well as other leads that he could provide about the investigation. On the last day, the lineup with Jeannie Adams took place. The Indian police found people off the street to participate, along with other police officers who matched Lal Singh's appearance. There was no two-way glass through which Adams could view the lineup. She came into the room and was able to view the lineup face-on. She was unable to identify anyone from the lineup.⁴⁹⁴

Throughout, Lal Singh remained "...steadfast that he was not involved in the Air India bombing" and stated that he would "...welcome the opportunity to return to Canada to prove his innocence." He also indicated that he would "...sign the extradition papers." Lal Singh felt that he was no longer trusted by his former associates, having been in police custody for so long, and that, if he was released, he would be killed.⁴⁹⁵

At the end of the interview, the officers did not feel that they had any more evidence with which to prosecute Lal Singh than when they went in. From Cunningham's perspective, Lal Singh "...had nothing to lose by admitting to it if he had been involved in Air India." Cunningham was of the view that Lal Singh had not played a part in the disaster.⁴⁹⁶

The 1997 Interview of Lal Singh

Again in June of 1997, a group of investigators and prosecutors travelled to India to find out whether Lal Singh had information that could assist the investigation. He was not approached as a suspect, and this was indicated to him a number of times in the course of the interview.⁴⁹⁷ There was "...not a strong thought" of him being a suspect because the investigators "...already had the benefit of a prior interview and investigative techniques done in regards to Lal Singh back in 1992," and there was "...no information to substantiate that he was tied in any way to the conspiracy."⁴⁹⁸

Again, the circumstances of the interview were not ideal. The RCMP provided a list of proposed interview questions to Indian authorities, at their request, three days in advance of its interview with him. The interview was held in the presence of a member of the Indian police. The interview proceeded in English and was not formally recorded.⁴⁹⁹

⁴⁹⁴ Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6405-6406, 6415, 6418-6419.

⁴⁹⁵ Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6414.

⁴⁹⁶ Testimony of Jim Cunningham, vol. 52, September 25, 2007, p. 6422.

⁴⁹⁷ Exhibit P-101 CAF0329, pp. 1, 3.

⁴⁹⁸ Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6333-6334.

⁴⁹⁹ Exhibit P-101 CAF0329.

The interview took place over two days. On the first day, Lal Singh was questioned for about one and a half hours about his knowledge of various suspects, about his knowledge of statements that various individuals might have made about Air India and about explosives. On the second day, he was questioned for about 45 minutes, again to see if he could recall any more details pertinent to the case and to determine whether he had given any further consideration to testifying. Lal Singh was not pressed on details about his whereabouts on the night of the bombing, or asked for details in relation to the theory that he might have been involved in checking in the luggage.⁵⁰⁰

Lal Singh was not willing to provide a tape-recorded statement and was not interested in being a witness in Canada in this case. He cited the safety of his family in the Punjab as a primary reason for this position. On the basis of this interview, according to the internal RCMP report, the file was concluded.⁵⁰¹

The 2000 Interview of Lal Singh

S/Sgt. John Schneider, Cpl. Lorne Schwartz, and Cst. Baltej Dhillon arrived in New Delhi in February 2000 to pursue yet another interview with Lal Singh, who was still in custody in relation to terrorist offences in India. This time, however, the officers were in receipt of information about the purported Parmar confession. It was thought that, as it was three years since the last interview, perhaps his custody and family situation could be changing, and if he was near a point of getting out of jail, he might be willing to share information which he had chosen not to share earlier. Again, investigators felt that there was “no strong indication” that he was involved in any way as a suspect.⁵⁰²

The interview was conducted by officers Schneider and Schwartz. This time Lal Singh was asked particularly about his whereabouts at the time of the Air India crash. He stated that he had been working on a farm in Abbotsford at the time of the crash. He denied that either he or Dalbir (aka Amand) Singh had taken the bombs to the airport check-in. He admitted that he had been involved with extremist groups in Pakistan and that he had met Parmar a few times while in Pakistan as well. He again discussed his recall of Ajaib Singh Bagri’s speech at Madison Square Gardens, and recalled meeting Bagri in Pakistan – when Bagri would talk about doing “something big”, referring to India. He said that Bagri never mentioned Air India.⁵⁰³

The report by Schwartz concludes that “Lal comes across quite sincere. He likely does possess knowledge concerning Air India from his time in Pakistan, but is not going to divulge same. He was not interested in providing a statement, saying that media publicity could make matters hard if it ever came out.”⁵⁰⁴

500 Exhibit P-101 CAF0329.

501 Exhibit P-101 CAF0329, p. 5.

502 Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6335.

503 Exhibit P-101 CAF0331, pp. 1-3.

504 Exhibit P-101 CAF0331, p. 4.

The Question of Torture

Overhanging this entire episode, and the information and allegations coming to the RCMP in connection with the Parmar confession, was the difficult issue of torture. This matter was made even more difficult for investigators because, in the period 1992 to 2001, the RCMP did not have policies in place with respect to how they should follow up on information that could be the product of torture.⁵⁰⁵

The RCMP's involvement and approach to the follow-up interviews, in particular in relation to Lal Singh, raise questions about the RCMP's sensitivity to issues of torture. Such issues are bound to confront police again and again in modern terrorism investigations, which will often lead investigators into jurisdictions where the observance of human rights is less robust than in our own. Through their actions, well-meaning investigators may, by virtue of their lack of training or sensitivity, unwittingly further human rights violations of those detained abroad. At the same time, a lack of sensitivity to human rights issues may also prevent investigators from utilizing the tools needed to best ensure any information that is gathered in foreign jurisdictions will meet Canadian standards for admissibility.

The problematic issue of cooperation with countries with poor human rights records surfaced numerous times in the Air India Investigation. One important episode was that of the alleged shooting death of Canadian citizen Balbir Singh Kaloe. In July 1986, an article appeared in the *Ottawa Citizen* with information that Balbir Singh Kaloe had been shot by officials of the Indian government in India following the passing of information to the Government of India by either the RCMP or CSIS.⁵⁰⁶ Balbir Singh Kaloe and his brother, Tejinder Pal Singh Kaloe, were both members of the Babbar Khalsa.⁵⁰⁷ In internal CSIS correspondence, James ("Jim") Warren, Director General, Counter Terrorism, reported that his understanding was that information about Balbir Singh Kaloe and his brother had been passed to Indian police by RCMP C/Supt. Norman Belanger during his June visit to New Delhi.⁵⁰⁸ Tejinder Pal Singh Kaloe had been charged in Canada in relation to a terrorist plot, and the RCMP investigation revealed that these individuals, along with others, were planning to execute criminal acts in India.⁵⁰⁹

On August 12, 1986, CSIS was advised about some of the details surrounding the demise of Balbir Singh Kaloe. Information was provided that he had been arrested by the Indian police and then tortured while in custody. He was apparently killed in a fake encounter with the police.⁵¹⁰ The perception in the

⁵⁰⁵ Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6364.

⁵⁰⁶ Exhibit P-101 CAA0462(i).

⁵⁰⁷ Exhibit P-101 CAF0336, p. 1.

⁵⁰⁸ Exhibit P-101 CAA0462(i).

⁵⁰⁹ Exhibit P-101 CAF0336, p. 1.

⁵¹⁰ Exhibit P-101 CAF0337, p. 2.

Sikh community that the death of Balbir Singh Kaloe at the hands of Indian authorities was a result of information supplied to India by Canadian authorities had a significant impact on the Sikh community and their trust of Canadian authorities.⁵¹¹

The fact that certain countries have poor human rights records does not mean that the RCMP should never interact with these countries. In its attempt to verify compromised information independently, the RCMP will sometimes require direct access to the source of information to conduct its own investigation. A sensible approach to the engagement of foreign authorities and individuals detained abroad must, at a minimum, consider the human rights record of the police in that jurisdiction, the value of the information that the source could provide, the risk of further compromise or abuse to the individual as a result of RCMP questioning and any measures that could be put in place to avoid this risk. Further, where the foreign agency has no independent interest in obtaining information from the individual, it would stand to reason that the risk of abuse to the individual as a result of RCMP questioning is lessened.⁵¹²

Conclusion

The RCMP came upon the information related to the Parmar confession very late in the day.⁵¹³ Parmar died seven years after the Air India bombing, at a time when memories would have already faded. It was another five years before the RCMP obtained information about the confession and another two years before the RCMP interviewed Lakhbir Singh Brar. At this point, any viable leads arising from this information would likely have already been tenuous. The follow-up of the Parmar information posed many challenges for the RCMP, many of which were beyond its own control. The RCMP's classification of the Parmar information as "alternate" to the main theory, and initial and quick discounting of the information – in the case of Lakhbir Singh Brar, seemingly mostly on the basis of shaky identification information – appears to have impacted on the vigour with which this lead was pursued.

However the alleged Parmar confession may, in the final analysis, be more instructive in terms of spotlighting the vexing investigative problems it illustrates, rather than in terms of any substantive light it sheds with respect to the perpetrators of the Air India bombing. There were clearly many challenges innate to the Air India investigation, quite apart from any problems of communication or cooperation with CSIS. Terrorism investigations, like the Air India investigation, will often lead investigators into situations in which they are required to interact with foreign police forces with questionable human rights records or to attempt to gather evidence or assess credibility in sub-optimal circumstances. There is a balance that must be achieved by investigators who find themselves in possession of information that may have come from torture.

⁵¹¹ Exhibit P-101 CAF0338, p. 3; Testimony of Manjit Singh Sahota, vol. 52, September 25, 2007, pp. 6517-6519.

⁵¹² For discussion of these issues see, generally, Testimony of Rick Reynolds, vol. 52, September 25, 2007.

⁵¹³ CSIS was never in possession of the Parmar confession but knew that some police encounters occurring in India at the time of Parmar's death were in fact staged.

On the one hand is the need to vigorously pursue each important criminal lead and to minimize the risk to the Canadian public; on the other is the need to ensure that the RCMP does not condone or aggravate human rights violations. This is by no means an easy problem. The formulation of policies, protocols and other investigative tools in this regard is best left to those with intimate operational understanding of policing and human rights issues. It should be pointed out, however, that it was not until May 15, 2007, as part of an effort towards centralization and in response to the recommendations of Justice O'Connor in the Arar Commission of Inquiry,⁵¹⁴ that the RCMP developed a Force-wide Policy on National Security Investigations, dealing in part with the sharing of information with countries with "...questionable human rights records,"⁵¹⁵ with important supporting protocols apparently still in the process of "being developed."⁵¹⁶ This state of affairs raises questions about the RCMP's preparedness to deal with these issues in a sound, balanced and sensitive manner.

2.3.4 The Khurana Tape

Introduction

Approximately two weeks before the Air India bombing, on June 12, 1985, a meeting involving Sikh extremists was held at the residence of Sarbjit Khurana and was recorded by the Vancouver Police Department (VPD).⁵¹⁷ Pushpinder Singh, one of the leaders of the Sikh extremist organization the International Sikh Youth Federation (ISYF), was present at the meeting. Immediately after the meeting, Khurana reported that he witnessed the following exchange during the meeting:

Manmohan Singh pressured Pushpinder Singh at the meeting by pointing an accusing finger at him and telling him —

"No counsels have been killed, no Ambassadors have been killed!! What are you doing? Nothing!!"

Pushpinder Singh replied back —

"You will see! Something will be done in two weeks!"⁵¹⁸

This information was available to the RCMP as of June 13, 1985, but the Force only started investigating it after the bombing, when the possible connection between the "wait two weeks" comment and the bombing became clear, given the time frame.⁵¹⁹ Once the RCMP began investigating, the VPD member who

⁵¹⁴ Testimony of Rick Reynolds, vol. 52, September 25, 2007, pp. 6481-6482.

⁵¹⁵ See Exhibit P-101 CAF0335, pp. 17-18.

⁵¹⁶ Testimony of Lorne Schwartz, vol. 51, September 24, 2007, p. 6365.

⁵¹⁷ See Section 1.6 (Pre-bombing), Khurana Information.

⁵¹⁸ Exhibit P-101 CAC0487, p. 4.

⁵¹⁹ See Section 1.6 (Pre-bombing), Khurana Information.

had originally received the Khurana information was not kept informed about, or involved in, the investigation. The RCMP focused on obtaining a translation of the tape recording of the meeting to corroborate Khurana's information. In the initial stages, the RCMP also investigated some of the players present at the Khurana meeting, but the Air India investigation was soon "re-oriented" away from the Sikh extremist organization involved in the meeting. The Khurana information was then no longer part of the main focus of the RCMP's efforts. In the end, the RCMP claimed that, after extensive investigation, no link between the Khurana information and the Air India bombing had ever been substantiated.

The RCMP Takes Over the Investigation

Shortly after the Air India bombing, on June 25, 1985, the RCMP Richmond Detachment (initially in charge of the Air India investigation in BC) reported the Khurana information to RCMP HQ in a telex, and indicated that local factions of the ISYF and the Babbar Khalsa (BK) were being investigated by E Division NCIS. The Khurana information was described as "...intelligence provided by NCEU/NCIS/VIIU," indicating the ISYF to be responsible for the bombing.⁵²⁰ The ISYF historically was a violent organization that had been proscribed in India because of its bombing assassinations of Sikhs and Hindus.⁵²¹ It was one of the three organizations (along with the Dashmesh Regiment and the Kashmir Liberation Front) that had claimed responsibility for the attack on Air India Flight 182.⁵²²

The RCMP telex reporting the Khurana information stated that Cst. Don McLean of the VPD had learned about the "wait two weeks" comment on June 12th from a taped conversation, during which ISYF member Manmohan Singh said "...you have not killed an ambassador or counsel yet" and Pushpinder Singh responded "...you will see in two weeks we'll show the community." The contact persons listed for the NCIS probe into the ISYF and the BK were RCMP Sgt. Wayne Douglas and VPD Cst. McLean.⁵²³

However, McLean testified that he was not involved in a joint investigation of the Khurana information with the RCMP members investigating Air India.⁵²⁴ In fact, he was never informed about any follow-up investigation conducted by the RCMP before or after the bombing, and he remained unaware to the date of his testimony whether anyone was ever tasked to follow up on the Khurana information.⁵²⁵

McLean had in-depth knowledge of the Sikh extremist leaders in the Lower Mainland and had access to many sources in the community.⁵²⁶ He was the

⁵²⁰ Exhibit P-101 CAA0249, p. 2.

⁵²¹ Exhibit P-101 CAB0851, p. 14. The Sikh Student Federation (SSF) is the same organization as the ISYF. See also Exhibit P-101 CAB0360, p. 5.

⁵²² Exhibit P-101 CAB0851, p. 14, CAC0492, CAF0057, p. 35.

⁵²³ Exhibit P-101 CAA0249, p. 2.

⁵²⁴ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4145-4146.

⁵²⁵ Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2027-2028.

⁵²⁶ See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

person Khurana went to when the meeting with the ISYF was first proposed, and he made the arrangements to have the meeting recorded. He had developed a relationship with Khurana as a source, and he received Khurana's information about the "wait two weeks" comment immediately after the meeting. He had even begun his own follow-up investigation prior to the bombing, albeit without the RCMP's assistance or involvement.⁵²⁷ McLean could have contributed significantly to the investigation and could have been an important resource for the RCMP. Yet, the RCMP chose not to involve him in its post-bombing investigation of the Khurana information, requesting his assistance only to help its members in identifying individuals in photographs.⁵²⁸

After the bombing, McLean received information indicating that one of the individuals believed to have participated in the Khurana meeting, Jaspal Singh Atwal, was bragging that he had known before the crash that Air India was about to be blown up. This information was passed on to the RCMP by the VPD.⁵²⁹ It is not known what follow-up investigation, if any, was conducted by the RCMP in this respect.

Translating the Khurana Tape

During the Khurana meeting, a Punjabi-speaking VPD member, Cst. Jas Ram, was listening and translating as the conversations were being recorded. He indicated that he had not heard the "wait two weeks" comment reported by Khurana.⁵³⁰ McLean and his other VPD colleagues from the Vancouver Integrated Intelligence Unit (VIU) still had no doubt about the veracity of Khurana's information and were prepared to rely on his word, since he had always proved to be a credible and reliable source in the past.⁵³¹ For the RCMP, the exact translation of the Khurana tape became an important focus in the early months of the investigation.

Shortly after the bombing, CSIS's assistance was sought to translate and transcribe the VPD tape which contained the recording of the Khurana meeting.⁵³² A Punjabi-speaking RCMP member at E Division, Cst. Manjit ("Sandy") Sandhu, was also asked to review the tape and to provide his interpretation.⁵³³ In the days immediately following the bombing, the E Division Air Disaster Task Force reported to HQ that Sandhu had translated the conversation on the tape as follows:

[redacted] it may take two weeks, a few months, or a few weeks and then we will do something (undecipherable) [redacted].⁵³⁴

⁵²⁷ See Section 1.6 (Pre-bombing), Khurana Information.

⁵²⁸ Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4129, 4144-4146.

⁵²⁹ Exhibit P-101 CAA1108, pp. 1-2.

⁵³⁰ See Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2024, 2035; Exhibit P-391, document 208 (Public Production # 3341), p. 6.

⁵³¹ See Section 1.6 (Pre-bombing), Khurana Information.

⁵³² Exhibit P-101 CAF0166, p. 1, CAF0208, p. 2. See also Exhibit P-101 CAA0295, p. 6.

⁵³³ Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2647.

⁵³⁴ Exhibit P-101 CAA0267, p. 2.

In a different version of the translation, dated June 27, 1985 and described as Cst. Sandhu's interpretation of a conversation between Sukhdev ("Sukhi") Sandhu (SS) and Pushpinder Singh (P), the conversation was reported as follows:

- S.S. Government of India is very powerful and they are trying to infiltrate us.
- P. They are infiltrating us we are infiltrating them.
- S.S. They don't have all the people of that level that can't be sold and we also have people who would be ready to sell themselves, understand. So this is their policy to cause problem and division among Sikhs so they won't get ahead.
- P. To achieve this we will not take more than couple weeks, three months is little longer. Think it will take us a few weeks before we achieve this. Once we achieve this I am still thinking we can do better on this level than that. Once we do this our next step is to get rid of ... (undecipherable) railway. And I mean we will destroy those plants.⁵³⁵

On July 22, 1985, RCMP HQ noted in a telex to the E Division Task Force that no response had been received to its previous request for a translated transcript of the Khurana tape.⁵³⁶ On July 25th, the Task Force learned that the CSIS translation had not been completed.⁵³⁷

On August 28, 1985, Cst. Sandhu wrote to the HQ Task Force about the Khurana meeting transcript in response to an HQ telex dated August 6th. He indicated that he had contacted the transcriber (presumably from CSIS), and had learned that she had attempted to identify the Unidentified Males (U/Ms) who participated in the meeting by number, but in the end could not because there were too many persons present. She advised that approximately 15 to 20 individuals were in attendance. The transcriber reported that most of the conversations during the meeting were attempts to convince Khurana to drop assault charges he had filed against ISYF members. She informed Cst. Sandhu that the only conversation "of any value" occurred between Pushpinder Singh and Sukhi Sandhu, immediately after Khurana had said that he wanted "...to know how many groups are there, how many leaders are there." At that time, Pushpinder Singh provided an answer which related to bringing various Sikh groups on the North American continent under one group. Sukhi Sandhu added: "...they are not the people that, who are most ready to sell themselves. There are people among us who are ready to sell themselves."⁵³⁸

⁵³⁵ Exhibit P-391, document 202 (Public Production # 3335), p. 2.

⁵³⁶ Exhibit P-101 CAA0286, p. 2.

⁵³⁷ Exhibit P-101 CAA0295, p. 6.

⁵³⁸ Exhibit P-101 CAC0501, p. 2.

Cst. Sandhu advised HQ that the E Division Task Force had contacted Khurana “again” to find out who was present when he asked the question which began the conversation. Khurana stated that the persons present were his wife and children, Manmohan Singh and his wife, Sukhi Sandhu and Pushpinder Singh. Cst. Sandhu indicated that, having listened to the tape himself, he was of the view that the goal Pushpinder Singh was discussing was to bring Sikh groups together under one group.⁵³⁹ Though this did not confirm Khurana’s information about the “wait two weeks” comment, it did confirm some of the other information he had provided immediately after the meeting, when he had stated that Pushpinder Singh had said that he was using Parmar to bring all Sikhs in the Lower Mainland together.⁵⁴⁰

In a transcript of the Khurana tape prepared at an unknown date, this conversation about bringing Sikh groups together was also reported, with a specific mention that this involved “...mainly this Talwinder Singh from Babbar Khalsa,” as well as other leaders from the Akhand Kirtani Jatha, the ISYF and other organizations.⁵⁴¹ This transcript also mentioned Parmar’s recent presence in Toronto, and agreement to participate in the “common platform” which they were trying to create:

Talwinder Singh has been convinced; discussion about in Toronto there being two organizations working together, in there Talwinder Singh came and addressed the religious gathering and said, we are one and we are working on [t]his together, so this is a very good step on one level.⁵⁴²

This transcript did not identify any of the individuals who spoke in the meeting (referring to them as U/M or U/F), except Khurana, and often simply reported the topic of the conversation in a general manner, without setting out the words spoken by each individual.⁵⁴³ The transcript mentioned that a portion of the tape was blank.⁵⁴⁴ Among the conversations which were reported, the following was of interest:

U/M says we can do a big job with the support of all you big guys, another U/M says we should start with small jobs, and God willing we can do something big later on; we have been doing a big job all along, but there was a set back.⁵⁴⁵

There was also a conversation about the Punjab situation where an U/M said that “...instructions were given not to do anything, but just to accumulate your

⁵³⁹ Exhibit P-101 CAC0501, p. 2.

⁵⁴⁰ Exhibit P-101 CAC0487, p. 4.

⁵⁴¹ Exhibit P-391, document 200 (Public Production # 3333), p. 13.

⁵⁴² Exhibit P-391, document 200 (Public Production # 3333), p. 13.

⁵⁴³ Exhibit P-391, document 200 (Public Production # 3333). “U/F” means “unidentified female.”

⁵⁴⁴ Exhibit P-391, document 200 (Public Production # 3333), p. 13.

⁵⁴⁵ Exhibit P-391, document 200 (Public Production # 3333), p. 3.

sources, and wait for instructions,” and an U/M discussed the capability for chemical warfare and said “...we can do anything, and everything, but there are specific instructions for us, after that the thing is to kill the ambassadors.” This was followed by an explanation of “...clear cut instructions on an international level,” which would have been given in a lecture by Jasvir Singh, that no person or no embassies be harmed. However, it was added that “...if in any way there is [sic] men ready to sacrifice themselves [sic], we can....” A conversation about complaints over the delay in taking action since the storming of the Golden Temple was also described. Finally, when Khurana began to complain about not being informed of the plans of the various groups, he was told that this was “for security reasons” and the following comments were made: “...another U/M says, you would be surprised, there are so many people who are close; U/M says, I am so close, even I don’t know 90% of it, and the 10% I know, I think I know too much.”⁵⁴⁶

The conversation about infiltrating the Government of India, which was reported in the second version of the June 1985 Sandhu translation, was also reported in the undated transcript in a modified and much abridged form, without the mention of the plans to get rid of railways or destroy plants.⁵⁴⁷

In his August 1985 update to HQ, Cst. Sandhu made no mention of his earlier interpretation of the Khurana tape which included a comment about waiting weeks or months, but appeared to accept the statement of the CSIS transcriber that the only conversation of interest was about the goal of bringing Sikhs together.

In a 1996 affidavit in support of an authorization to intercept private communications, the RCMP indicated that Cst. Sandhu had reviewed the tape for the Khurana meeting and had been unable to discern the conversation reported by Khurana about doing something in two weeks. The RCMP noted that “...this portion was not clearly recorded,” and again made no mention of the initial Sandhu interpretation in June 1985 which indicated that a comment was heard about waiting weeks or months to “do something.”⁵⁴⁸

Years later, in a chronology prepared in support of its briefing to the Hon. Bob Rae, the RCMP simply stated that the “wait two weeks” comment reported by Khurana was not recorded on the VPD intercept of the meeting.⁵⁴⁹ Given the early Sandhu translation and the discrepancies in the various translations, this seems like an overstatement. However, even if it were the case that the comment reported by Khurana could not be heard on the tape, this fact cannot be taken as an indication that the comment was not made during the meeting.

The overall quality of the tape was described by McLean as average. He explained that, depending on their location in the room, some participants could be heard better than others.⁵⁵⁰ Ram, who was interpreting the meeting

⁵⁴⁶ Exhibit P-391, document 200 (Public Production # 3333), pp. 7-8, 11-12.

⁵⁴⁷ Exhibit P-391, document 200 (Public Production # 3333), p. 14.

⁵⁴⁸ Exhibit P-101 CAD0180a, p. 2.

⁵⁴⁹ Exhibit P-101 CAA1099, p. 3.

⁵⁵⁰ Testimony of Don McLean, vol. 21, May 1, 2007, p. 2008.

as it was taking place, said that he did not hear anything unusual, but that he was having trouble understanding everything that was being said because of the slang and the speed of the conversation.⁵⁵¹ Portions of the tape were unintelligible and, significantly, the initial conversations in the meeting were not recorded because the VPD members were not aware that the meeting had actually started.⁵⁵² The numerous participants present during the meeting were often speaking at the same time and, as a result, could not be heard clearly.⁵⁵³ For these reasons, it is entirely possible that the “wait two weeks” comment was made during the meeting but was simply not recorded or could not be heard clearly on the recording. In fact, the RCMP recently obtained another translation of the Khurana tape and the transcript prepared contains numerous mentions that the recording “goes on and off” and that the conversations cannot be heard clearly.⁵⁵⁴ The 2008 transcript contains none of the references to the conversations of interest which were found in previous transcripts. It ends with a note that the conversation was still in progress when the end of the tape was reached.⁵⁵⁵

Khurana was a reliable source and he was adamant that the conversation occurred as he stated.⁵⁵⁶ He reported this information immediately after the meeting, before he could know that the Air India bombing would occur within the time frame mentioned. While corroborating Khurana’s information by means of the recording could have been helpful to police, the absence of a decipherable recording would certainly not have been cause to refrain from investigating the information Khurana reported. Indeed, while the RCMP was waiting for the translation of the tape to be completed by CSIS during the early weeks of the Air India investigation, the Force did investigate some of the participants in the Khurana meeting.

Early Surveillance and Investigation

In the days immediately following the bombing, three of the five targets that CSIS had under surveillance, in conjunction with the RCMP Air Disaster Task Force (CSIS and the RCMP coordinated some of their surveillance activities during the Air India investigation), were participants in the Khurana meeting: Manmohan Singh, Sukhi Sandhu and Harjit Singh Atwal.⁵⁵⁷ This coverage continued through to the end of June, with CSIS conducting surveillance on Manmohan Singh’s business as well.⁵⁵⁸ However, the CSIS surveillance team watching Sukhi

551 Exhibit P-391, document 429 (Public Production # 3811), p. 7; Exhibit P-391, document 208 (Public Production # 3341), p. 6.

552 Exhibit P-101 CAD0180a, pp. 1-2; Exhibit P-391, document 208 (Public Production # 3341), p. 6.

553 Testimony of Axel Hovbrenner, vol. 33, May 24, 2007, pp. 3910, 3921.

554 Exhibit P-101 CAF0884.

555 Exhibit P-101 CAF0884, p. 172.

556 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2014. Khurana also subsequently recounted the same information in a police statement provided to an RCMP officer in connection with the Air India investigation: See Exhibit P-101 CAD0180a.

557 Exhibit P-101 CAA0242, p. 2, CAC0487, p. 5.

558 Exhibit P-101 CAA0261, p. 3.

Sandhu had to back off when he complained to the RCMP about being under surveillance.⁵⁵⁹ During the following month, CSIS surveillance of Manmohan Singh and Harjit Atwal continued.⁵⁶⁰

In late June 1985, the RCMP began extensive coverage of Lakhbir Singh, which was to continue for the following weeks.⁵⁶¹ Lakhbir Singh, also known as Lakhbir Singh Brar, was a leader of the ISYF who had many contacts and was well respected in the Sikh community.⁵⁶² He was present at the Khurana meeting. At the time, like Pushpinder Singh, he had recently arrived from India and was described by McLean as a terrorist.⁵⁶³ According to McLean's information, both Pushpinder Singh and Lakhbir Singh had entered Canada illegally after the assassination of Indian Prime Minister Gandhi in the fall of 1984.⁵⁶⁴ Years later, Lakhbir Singh Brar was identified in the purported Parmar confession as having been the unidentified person present during the Duncan Blast (Mr. X) and as having been the one conspiring with Reyat to plan the Air India and Narita bombings.⁵⁶⁵ Both before and after the bombing, Lakhbir Singh was frequently seen in the company of the Babbar Khalsa suspects and was present at various meetings and Sikh temple fundraisers with Air India suspects.⁵⁶⁶

As of July 1, 1985, the RCMP had identified Pushpinder Singh and had him under surveillance.⁵⁶⁷

The RCMP HQ Coordination Center for the Air India investigation also showed interest in the Khurana information during the early weeks of the investigation. In a July 22, 1985 request to the E Division Task Force for an immediate update, HQ asked to be informed about how many of those attending the Khurana meeting were under surveillance or investigation. HQ wanted to know what was learned by the divisional Task Force about the movements and contacts of those who attended the meeting, and also asked whether the suspected illegals who were present (Lakhbir Singh and Pushpinder Singh) had been the subject of RCMP actions, such as surveillance, source cultivation or investigation.⁵⁶⁸

However, the intensive interest in the Khurana information was short-lived. Soon after the HQ request, the information began to be viewed as a red herring, diverting the Force's attention away from more promising suspects.

559 Exhibit P-101 CAB0371, p. 2.

560 Exhibit P-101 CAA0295, p. 5.

561 Exhibit P-101 CAA0303, CAB0360, p. 5, CAB0371, p. 2.

562 See Section 2.3.3 (Post-bombing), The Purported Parmar Confession; Exhibit P-101 CAA0303, CAA0307, p. 8.

563 Exhibit P-101 CAC0487, p. 5.

564 Exhibit P-101 CAB0306, pp. 1-2.

565 See Section 2.3.3 (Post-bombing), The Purported Parmar Confession; Section 1.4 (Pre-bombing), Duncan Blast; and Section 1.5 (Pre-bombing), Mr. X.

566 Exhibit P-101 CAF0332, p. 1.

567 Exhibit P-101 CAA0269(i), p. 7.

568 Exhibit P-101 CAA0286, p. 1; Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2649-2650.

Re-Orientation of the RCMP Investigation

On August 12, 1985, a member of the HQ Task Force wrote a memorandum to the Officer in Charge, C/Supt. Norman Belanger, indicating that the RCMP Air India investigation was “getting off track.” The memorandum explained that the Force had “...expended numerous resources following Lakhbir Singh around the country,” and had observed him visiting various locations to mobilize Sikh communities against the Longowal Accord, a peace agreement recently signed by the leader of the moderate Sikh party, Akali Dal, and the Indian Prime Minister.⁵⁶⁹ The memorandum noted:

Lakhbir’s activities have not indicated a touch of criminality but are of great interest to CSIS because of his association with the International Sikh Youth Federation (I.S.Y.F.).⁵⁷⁰

The memorandum went on to state that, in contrast to the Lakhbir Singh situation, the RCMP had “definite evidence” of criminal activity by Talwinder Singh Parmar and his associates. Criminality was said to be apparent simply by examining Parmar’s contacts. The Duncan Blast and Parmar’s association with Reyat were mentioned, and it was concluded that Parmar’s activities and those of his associates demanded closer scrutiny from the RCMP.⁵⁷¹

On the same day, Belanger had a telephone conversation with the Officer in Charge of the E Division Task Force, Supt. Les Holmes. In accordance with the HQ memorandum, the divisional investigators were re-assessing their investigation. The E Division Task Force was conducting an intensive investigation of Reyat and resolved to focus on the luggage, the tuners and the “major individuals” as its priorities.⁵⁷²

From then on, the RCMP Air India investigation focused mostly on Parmar and his associates, all members of the Babbar Khalsa (BK).⁵⁷³ Charges were brought against Parmar and Reyat in connection with the Duncan Blast in November 1985 (only to be dropped the following spring in Parmar’s case),⁵⁷⁴ and manslaughter charges were eventually brought against Reyat for the Narita bombing in the late 1980s, with Reyat being convicted in 1991.⁵⁷⁵ Meanwhile, Lakhbir Singh Brar, who had been the object of so much RCMP attention in the early weeks of the investigation, was never interviewed as a potential witness or suspect in the Air India investigation until 2001, as part of the follow-up investigation of the purported Parmar confession.⁵⁷⁶

⁵⁶⁹ Exhibit P-101 CAA0303.

⁵⁷⁰ Exhibit P-101 CAA0303.

⁵⁷¹ Exhibit P-101 CAA0303.

⁵⁷² Exhibit P-101 CAA0304, p. 1.

⁵⁷³ See generally the narratives within Section 2.3 (Post-bombing), The Usual Suspects versus “Alternate Theories”.

⁵⁷⁴ See Section 1.4 (Pre-bombing), Duncan Blast.

⁵⁷⁵ See *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.).

⁵⁷⁶ Exhibit P-101 CAF0332, p. 1; See, generally, Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

Pushpinder Singh, for his part, was only interviewed once during the early stages of the investigation. This interview was part of a series of “perimeter interviews” conducted by the RCMP.⁵⁷⁷ In October 1985, VPD Cst. Axel Hovbrender, who was working with the RCMP Task Force at the time, and who had extensive knowledge of Sikh extremist organizations in Vancouver through his work at the VIU,⁵⁷⁸ interviewed Pushpinder Singh along with another Constable. Pushpinder told the officers that he was involved in the ISYF, which he described as a charitable organization, and in lobbying governments to support the Sikh cause and the eventual state of Khalistan. He stated that Sikhs would not blow up an Air India plane but would only “...damage the Indian government on Indian soil.” He added that his brother worked at the Indian nuclear plant and that, as a result, if Sikhs wanted to take some action, they had “...more than ample opportunity to do it on Indian soil.” He said they could also, if necessary, disrupt the Indian government by “...placing or corrupting a few people in key places within the bureaucracy.” At the time Pushpinder Singh was not asked about statements he had made at the Khurana meeting, most likely because it was not yet known that Khurana had allowed the meeting to be recorded by police. Asked about newspaper reports that Sikhs from Toronto had attended combat training, Pushpinder Singh dismissed the story as “vicious propaganda,” denied that any such training had taken place and said that the Sikhs were attending a wedding ceremony.⁵⁷⁹

After the perimeter interview, Hovbrender noted that his general impression about Pushpinder Singh was that he was “...very charismatic, articulate and dangerous.” The investigator added that Pushpinder Singh had expressed contradictory views on violence, at times claiming to be non-violent and only lobbying, and at other times appearing to support and glorify violence. Hovbrender believed that Pushpinder Singh had been “...trained in police interrogation techniques” and had attempted to use such techniques during the interview. He concluded his interview report by stating that he felt that Pushpinder Singh was “...a significant danger in the ISYF and may in the near future go to the forefront of that organization.”⁵⁸⁰ Nevertheless, no further follow-up to determine Pushpinder Singh’s possible involvement in the Air India bombing was done by the RCMP for over a year.

Beginning in August 1985, it appears that the RCMP’s primary theory of the case – that the Air India bombing was an act of the Babbar Khalsa alone⁵⁸¹ – began to crystallize. From then on, information implicating other groups – like the Khurana information – became part of the “alternate theories” which were not pursued as intensively.⁵⁸² As submitted by the Attorney General of Canada:

⁵⁷⁷ Exhibit P-101 CAF0883, p. 2.

⁵⁷⁸ See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

⁵⁷⁹ Exhibit P-101 CAF0883, pp. 3-5.

⁵⁸⁰ Exhibit P-101 CAF0883, pp. 5-6.

⁵⁸¹ See, generally, Exhibit P-101 CAA0582, pp. 2-3, CAA0601, p. 1.

⁵⁸² See also Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

It was learned that Pushpinder Singh was a member of the ISYF and not the BK (Parmar's group). Parmar and the BK became the focus of the investigation at a comparatively early stage.⁵⁸³

This focus was unfortunate as far as the Khurana information was concerned, precisely because the information itself revealed important connections between the BK and the ISYF. Pushpinder Singh was reported to have praised Parmar during the Khurana meeting and to have said that he had met with him in Toronto the previous week. CSIS surveillance confirmed that Parmar and ISYF types from BC, possibly including Pushpinder Singh, were in Toronto at the time.⁵⁸⁴ Further, Khurana had reported that Pushpinder Singh claimed that he was using Parmar to bring all Sikhs in the Lower Mainland together, and this was confirmed in many of the various translations and interpretations of the Khurana tape.

There was also other information pointing to possible links between the BK and the ISYF, as well as to links between specific Air India suspects and the ISYF. In June 1985, the VIU had received information from CSIS about an alleged meeting at Surjan Singh Gill's residence on June 3rd, which involved both BK and ISYF representatives.⁵⁸⁵ On June 10th, the RCMP had received information about Reyat's involvement with a new temple whose leader advocated cutting off travel with Air India. At the time, it was also learned that some of the associates of the new temple leader were believed to be ISYF members.⁵⁸⁶ The RCMP was also aware that Bagri, one of only three individuals who were ever prosecuted in connection with Air India, had travelled to Toronto with Lakhbir Singh in August 1985.⁵⁸⁷

In 1986, the RCMP conducted two investigations into terrorist plots involving the Babbar Khalsa. The Project Scope investigation related to a plot by Montreal BK members to blow up an Air India plane flying out of New York, and the Project Outcrop investigation related to a plot hatched in Hamilton by Parmar and other BK members to blow up Parliament buildings in India and to kidnap the children of Indian MPs.⁵⁸⁸ During the Outcrop investigation, the RCMP obtained information which indicated that Parmar had requested assistance from an ISYF member, asking that he provide "...ten men ready to die" and a sum of money.⁵⁸⁹ In June 1986, RCMP HQ was seriously concerned about the plots, and sent a message to all divisions setting out measures which had to be implemented in response.⁵⁹⁰ HQ stated:

583 Final Submissions of the Attorney General of Canada, Vol. I, para. 177.

584 See Section 1.6 (Pre-bombing), Khurana Information.

585 Exhibit P-101 CAA0196, p. 2.

586 Exhibit P-101 CAA0276, p. 2.

587 Exhibit P-101 CAA0307, p. 8.

588 See generally Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," pp. 45-46; Exhibit P-101 CAF0504.

589 Exhibit P-391, document 429 (Public Production # 3811), p. 8.

590 Exhibit P-101 CAF0504.

Until recently it would have been an overstatement to claim that there was a serious extremist presence in Canada. Emphatically this is no longer true. There are growing indications that the Babbar Khalsa and the International Sikh Youth Federation are to some extent consolidating their efforts within Canada in their increasingly – violent fight for an independent Khalistan.⁵⁹¹

In fact, indications that the BK and the ISYF were consolidating their efforts had existed since before the bombing of Air India Flight 182. Yet, the investigation of the possible BK/ISYF connections did not form a central part of the RCMP Air India investigation, and the ISYF suspects received limited attention after the investigation was re-oriented in August 1985.

Subsequent Investigation

Although the ISYF players involved in the Khurana meeting were no longer important targets for the RCMP Task Force, and the Khurana information was no longer a primary focus of the investigation, an HQ analyst, Cpl. Doug Wheler, nevertheless showed interest in the matter in 1987. He prepared a report raising questions about several aspects of the investigation. In the report, he recounted the Khurana information and noted that, if it was factual, it was significant because it clearly indicated that Pushpinder Singh had definite knowledge that something serious was going to happen within two weeks, "...exactly on schedule for Air India crash/Narita bombing." Wheler noted that "...the problem that exists with this intelligence is that the above-mentioned portions of the conversation were not recorded, as the tape ran out one hour to 45 minutes prior to this portion of the conversation taking place" (this was the recollection of some of the VPD members involved, but not of others). However, he also indicated that the source, Khurana, was adamant that the conversation took place.⁵⁹²

Wheler noted that the Khurana information might not be completely in line with the RCMP's main theory of the case, but he did not feel that it should be discounted for that reason:

I realize we have two different groups operating here, ie: ISYF and Babbar Khalsa, however the possibility exists that both these groups have combined their efforts to bring about certain effects which would benefit their cause.⁵⁹³

Wheler noted that such cooperation between the BK and the ISYF had been suspected in the Outcrop investigation and could have existed in the Air India conspiracy. He added that the conversations at the Khurana meeting indicated

⁵⁹¹ Exhibit P-101 CAF0504, p. 1.

⁵⁹² Exhibit P-391, document 429 (Public Production # 3811), pp. 6-7.

⁵⁹³ Exhibit P-391, document 429 (Public Production # 3811), p. 7.

that Pushpinder Singh had strong ties to Parmar, "...even if [Pushpinder] is ISYF and Parmar is B.K."⁵⁹⁴ As a result, Wheler concluded his report by suggesting that the Khurana situation be completely re-examined. He suggested a number of investigative initiatives, including: meeting with Khurana to find out if he was still adamant about the conversation he had heard and to ask him more questions about Pushpinder Singh's other comments; interviewing the VPD members involved in the investigation; and re-examining any notes made by the VPD member who was monitoring the meeting⁵⁹⁵ (in fact, the RCMP learned in 1996 when the live-monitor was contacted that it was his first day on the job and that he did not make notes but simply listened as the meeting was taking place).⁵⁹⁶

Wheler's report was forwarded to the E Division Task Force on February 9, 1987, for its information and consideration.⁵⁹⁷ On February 18, 1987, E Division wrote to the HQ Task Force in response to the questions raised in the Wheler report. About the Khurana information, the Division focused on the recording and reported that Cst. Sandhu had reviewed the original tape and that he was unable to detect any conversation where Manmohan Singh would have said that "...no consuls have been killed, no ambassadors have been killed, what are you doing, nothing?" and Pushpinder Singh would have replied "...you will see, something will be done in two weeks." The Division advised that the tape had been recorded on both sides and that Cst. Sandhu had heard the end of the conversation and the participants going home. The only time when there was a break in the tape was when it was changed over to the other side. Again, mysteriously, no mention was made of the first translation by Cst. Sandhu which referred to a conversation about waiting weeks or months to do something. The only information which was added was that "...Cst. Sandhu was in contact with Cst. Don McLean and found McLean unable to back up the claim that [redacted]." The Division concluded its message by saying that the information it provided "...should answer all your questions,"⁵⁹⁸ and apparently conducted no further follow-up on the Khurana information in response to Wheler's questions and recommendations. The Division also did not discuss the possibility of cooperation between the BK and ISYF.

In March 1987, shortly after the Division provided this response, the RCMP learned that Pushpinder Singh had been arrested in India. At this time, the RCMP decided not to attempt an interview with Pushpinder Singh because, on the one hand, it would reveal the Canadian police interest which could be relayed to other extremists and, on the other hand, it was believed that Pushpinder Singh was attempting to put himself in a bargaining position, "...the cost of which is not known." The Force was aware that Pushpinder Singh had admitted having met Parmar in 1985, though it was not known whether this was before or after the bombing. Pushpinder Singh also possessed some general knowledge

594 Exhibit P-101 CAF0885, p. 3.

595 Exhibit P-391, document 429 (Public Production # 3811), pp. 8-10.

596 Exhibit P-391, document 208 (Public Production # 3341), p. 6.

597 Exhibit P-391, document 429 (Public Production # 3811), p. 1.

598 Exhibit P-101 CAA0528, pp. 2-3.

about the BK, though he claimed that he did not get involved in any of the BK's problems. He had recounted that Parmar had had a falling out with Surjan Singh Gill because he had spoken to Gill's wife about something personal and had upset her and that, after that, Bagri had replaced Gill as Parmar's confidant. At the time, however, attempts to conduct an RCMP interview were deemed premature by the Force.

On May 20, 1987, Wheler wrote another memorandum, pursuant to his February analysis and the response received from E Division. He indicated that "...efforts should still be made" to establish whether Pushpinder Singh had knowledge of, or was involved in, the Air India bombing. He provided additional reasons for not abandoning the investigation of Pushpinder Singh's possible involvement, reproduced some of his earlier analysis and responded to some of the points raised by the Division in response to his February suggestions. In particular, Wheler noted that, though Cst. Sandhu did not hear the conversation on the tape and did hear participants in the meeting going home, this probably related to the majority leaving and the fact that some could have stayed behind, given that there were 15 to 20 persons originally present. He added that the "wait two weeks" comment was reported to have been made during a conversation involving a small group only, and reiterated his belief that the conversation occurred over an hour after the recording stopped, noting that some of the VPD members involved had indicated in May 1986 that the tape stopped before the conversations of interest. Wheler again concluded with a number of recommendations, including the suggestion that Pushpinder Singh, who was still in custody in India, be interviewed by RCMP Air India investigators once "outstanding questions" were clarified. Wheler also recommended once more that the Khurana situation be re-examined and that the questions outlined in his previous analysis about this issue be answered. In particular, he suggested the possible use of a polygraph test as an avenue the Division could take to "...clarify this situation."⁵⁹⁹

On June 24, 1987, the E Division Task Force provided HQ with a report which contained detailed comments on the points raised in Wheler's message. The report noted that the facts and hypotheses relied on by Wheler were not confirmed by "substantive data." About the Khurana meeting, the Division noted that the conversation was reported by the VPD's human source (Khurana) before the tape was translated, and that subsequent follow-up by VPD Cst. Hovbrender had revealed that the "...source was 'obviously excited and nervous because of the nature of the meeting' and may have misinterpreted parts of the conversation." E Division admitted that VPD Cst. Ram, who was monitoring the Khurana meeting, had indicated that he had had difficulty in distinguishing and interpreting the conversations when the "...full contingent of ISYF members were present and talking at the Khurana residence (some 17 individuals plus Khurana)," but felt that, had the conversation described by Khurana taken place, Ram would have been able to hear and interpret it since the number of participants was "significantly reduced" at that time.⁶⁰⁰ It seems that the E

⁵⁹⁹ Exhibit P-101 CAF0885, pp. 1, 4-5, 7.

⁶⁰⁰ Exhibit P-101 CAF0886, pp. 3-4 [Emphasis in original].

Division Air India Task Force doubted that the conversation reported by Khurana even took place, though Khurana had reported this information immediately after the meeting, before the Air India bombing.

Sgt. Robert Wall, in charge of the E Division Task Force, indicated in the memorandum forwarding the divisional report which was responding to Wheler's analysis, that he felt "...compelled to further comment," in light of the "...amount of time consumed by our analysts in their review of this material and the results thereof." He explained that the E Division analysis led to the conclusion that much of what was suggested in the Wheler report could not be supported "...by facts known or available to us." He requested that if the HQ Task Force was in possession of "...additional factual material," that this material be forwarded to the Division.⁶⁰¹ Wall concluded:

Given "E" Division's current undertakings and resources available to us, we must of necessity prioritize our workload. Having so stated, reports of this nature will not be subject of lengthy examination by us in the foreseeable future. Mutual cooperation in the pursuit of our common goal is invited.⁶⁰²

It should be noted that by mid-1987, the "slow degeneration" of the E Division Air India investigation had already begun. Wall's comments about prioritizing the workload should be understood in the context of the time. When they were written, the Division's priorities focused increasingly on forensics, wreckage recovery, and on the Reyat prosecution in connection with the Narita bombing, as opposed to solving the bombing of Air India Flight 182.⁶⁰³

Despite its demonstrated annoyance at being forced to look into the issue by RCMP HQ, the E Division Task Force nevertheless appeared to agree with the suggestion that Pushpinder Singh be questioned about his knowledge of the Air India bombing. In an additional response to Wheler's report, which was forwarded to HQ on June 25, 1987, the Division pointed out that the questions should be posed to Pushpinder Singh "...in general or broad terms i.e. what do you know about the Air India/Narita incidents etc.," because since there was "...no concrete information" to illustrate his role, if any, alluding to specifics would leave the door open for Pushpinder "...to manipulate the interrogator(s)," who would then "...have no recourse for verifying any of his admissions or denials."⁶⁰⁴

On June 29, 1987, Cpl. Greg Bell of the HQ Task Force wrote a memorandum to his OIC about the possibility of conducting an interview with Pushpinder Singh. He indicated that, when the RCMP had learned about Pushpinder's arrest in March, HQ had forwarded the information to the divisions, along with Wheler's analysis of his possible role in the Air India/Narita investigation, hoping that the

⁶⁰¹ Exhibit P-101 CAF0886, p. 1.

⁶⁰² Exhibit P-101 CAF0886, p. 1.

⁶⁰³ See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

⁶⁰⁴ Exhibit P-101 CAF0887.

divisions would raise issues where further clarification or details were required. Bell noted that the divisions had outlined different areas where additional information from Pushpinder Singh was needed, but had generally seemed "... particularly unresponsive and slow in providing in-depth thought regarding a second crack at Pushpinder." Now that the responses had been received, Bell saw a dilemma in deciding who would interview Pushpinder Singh on the RCMP's behalf. He set out various options, including to "...do nothing to pursue this avenue of investigation," and noted that all options except the last had advantages and disadvantages. He suggested that a decision be made as to whether the RCMP LO could conduct the interview, and that the divisions be notified of this decision and asked to provide more information.⁶⁰⁵

The OIC of the HQ Task Force responded that he had requested an update some time ago in anticipation of sending someone to India to interview Pushpinder Singh. He suggested that one RCMP investigator and the LO attempt to conduct an interview, but felt that conditions would have to improve before someone would be sent to India. The OIC noted that the last thing he wanted was to send a member "...all the way to India on speculation" and then to find out that nothing Pushpinder Singh said – assuming he said anything – was available as evidence.⁶⁰⁶ In a subsequent note, the OIC also indicated that he shared Bell's concerns about the length of time necessary to obtain responses from the divisions. He noted that, having read the report submitted by E Division in June, he doubted that Division would even submit questions it would want posed to Pushpinder Singh. The OIC added that it appeared that the people at HQ were "...the only ones interested in Pushpinder" and that this was because HQ supported Wheler's hypothesis about his involvement in the bombing. The OIC asked that a message be sent to the divisions to request responses about the proposed interview by mid-August, and that the divisions be told that "...if we hold off any longer we run the risk of losing the interview opportunity," since Indian authorities could probably not hold Pushpinder Singh forever.⁶⁰⁷

In November 1987, Wheler wrote another memorandum about Pushpinder Singh. He noted that his previous reports were aimed at showing that Pushpinder "...could have knowledge of, or was actually involved in, the Air India/Narita investigation and that he should be interviewed by the RCMP." He reviewed some of the responses provided by the divisions, including the O Division response concurring that questions were raised and that Pushpinder should be interviewed "...by experienced, knowledgeable Air India/Narita investigators." About the rather less enthusiastic E Division response indicating that there was not enough information to support Wheler's theory or to warrant an investigation about Pushpinder's potential involvement, Wheler noted that, though nothing could be confirmed, enough questions and theories existed which pointed strongly to Pushpinder's involvement to make the matter worthy of further investigation. He wrote that, obviously, if no effort was made to investigate, then "...we can be assured that we will never uncover any factual/

⁶⁰⁵ Exhibit P-101 CAF0888, pp. 1-3.

⁶⁰⁶ Exhibit P-101 CAF0888, pp. 3-4.

⁶⁰⁷ Exhibit P-101 CAF0889.

substantive information to either prove/disprove this theory." He provided a summary of some of the points he had raised in his earlier reports, and concluded that Pushpinder Singh should be considered "...as a prime suspect in the Air India/Narita bombings," and that "...every effort should be made to have this individual interviewed by the RCMP." He added that enquiries still needed to be made by the Division, noting in particular that the Khurana issue was "...still not satisfactorily concluded" and that Khurana needed to be asked for additional information and possibly given a polygraph test.⁶⁰⁸

Finally, in January 1988, an RCMP team travelled to India to interview a number of individuals incarcerated there. The OIC of the HQ Task Force, Supt. Pat Cummins, attended, accompanied by one E Division investigator and two O Division investigators. The E Division member, Cpl. Solvason, noted that E Division interest rested primarily on Pushpinder Singh, who was suspected of possible complicity in the Air India bombing. When the interview was attempted, Pushpinder Singh was told that the RCMP was interested in his knowledge of and/or responsibility for the Air India bombing. He presented "...an apprehensive and very defensive attitude." According to the RCMP investigator, he was "...very evasive and non-committal" and he denied certain points that were known to the RCMP to be true. Pushpinder Singh stated that he was not in a position to inform on his friends in Canada, and generally denied any involvement or responsibility in the Air India bombing, indicating that he was willing to take a polygraph on this issue. He was also adamant that he had no contact with Reyat and was not present for any test explosion in Duncan.

Solvason noted that as the interview progressed, it became clear that Pushpinder was "...attempting to entertain himself with the presence of the Canadian officials in an effort to have conversation designed to enlighten himself on the Canadian situation and the circumstances of his friends and associates in Canada." According to the investigator, Pushpinder prided himself "...on being able to outsmart persons and gain intelligence from his interviewers." After an O Division investigator took over the interview, the officers concluded that Pushpinder was simply attempting to obtain information without providing any. Solvason noted that Pushpinder had "certainly lied" during the interview, as well as refusing to answer questions and providing extremely general answers. He concluded that Pushpinder was untruthful and "...far from candid" and that it was clear that further discussions were "...not likely to be fruitful." The investigators put an end to the interview by telling Pushpinder that they would not continue speaking to him unless he was prepared to be more candid and truthful. Pushpinder simply reiterated his denials of responsibility. Interestingly, Solvason reported that Pushpinder Singh "...appeared to be extremely upset at the possibility of his voice being recorded."

On January 5, 1988, Cummins, who was still in India, wrote a telex indicating that nothing further could be gained from Pushpinder Singh and that "...any further action will come from Canada." Later in the month, HQ followed up

⁶⁰⁸ Exhibit P-101 CAF0890, pp. 1, 9, 11-12.

on Pushpinder Singh's offer to take a polygraph test about his involvement in Air India. The RCMP LO in Delhi, however, was not enthusiastic. He wrote on January 20th that Indian authorities likely did not have the proper equipment, which meant that conducting the examination would require specific logistical requirements from Canada. He indicated that he would only be prepared to entertain the suggestion "...with the input of E Div investigators," as it was his view "...that Pushpinder would in all likelihood pass/pass this examination."⁶⁰⁹

In its Final Submissions, the Attorney General of Canada indicated that, in spite of the RCMP focus on Parmar and the BK, "...the RCMP also continued to investigate those present at the meeting and conducted interviews with many people on this point over the years."⁶¹⁰ In fact, after the January 1988 attempt to interview Pushpinder Singh – which had received limited support from the E Division Task Force in any event – the documents produced in this Inquiry show that very little follow-up took place for the next seven years.

Wheler continued to push for the issue to be investigated, and E Division continued to resist. In August 1988, Wheler wrote yet another memorandum suggesting that "...enquiries be made in order to prove/disprove the theories of [Pushpinder Singh]'s possible involvement in Air India/Narita." He asked that E Division be requested to conduct a series of additional enquiries, including some about the Khurana meeting. He noted that many of these suggestions had been made previously, but that there had been "...no indication that they were acted upon or pursued."⁶¹¹ HQ forwarded Wheler's memorandum to the Division and an E Division analyst, Cpl. Ed Drozda, prepared a report in response. Drozda researched the Division files and concluded that Wheler's suggestions had either already been addressed or that further follow-up was not warranted in light of existing information. He felt that only two out of Wheler's ten suggestions needed to be pursued.⁶¹² Further action relating specifically to the Khurana information was not included on the list.

Wall also wrote another memorandum complaining about Wheler's questions, this time to the Division's OIC of Federal Operations. Wall indicated that his Section intended to proceed as suggested in Drozda's report, "...given we have appropriately in our view, responded to all other issues raised by Sgt. Wheler." He wrote that he again felt compelled to make observations about Wheler's most recent memorandum and "...previous like submissions." He noted that comparing Drozda's report with Wheler's "scenario" led him to conclude that Wheler was "...not fully informed of all the details of a rather complex investigation being conducted by this Division" and that, as a consequence of Wheler's "...scenarios which are too numerous to list, an unnecessary work load is placed on our already limited resources."⁶¹³ Wall added:

609 Exhibit P-101 CAF0895.

610 Final Submissions of the Attorney General of Canada, Vol. I, para. 177.

611 Exhibit P-101 CAF0891, pp. 1, 7, 9.

612 Exhibit P-101 CAF0892, pp. 1, 3, 5.

613 Exhibit P-101 CAF0893.

For the record we are not reluctant to undertake any viable endeavour which might bring this investigation to a successful conclusion, however, we do take issue with direction from Sgt. Wheler on how to accomplish this task i.e. "questioning should be done in a manner which would indicate that surveillance followed Parmar" etc. etc.⁶¹⁴

Wall concluded his memorandum by noting that he was "appalled" that Wheler's report had been distributed by HQ to three other divisions of the Force and to CSIS, "an outside agency."⁶¹⁵

The OIC Federal Operations for E Division also wrote to HQ about the matter, attaching Wall's memorandum and indicating that he largely agreed with Wall's concerns. He stated that, while he did not like to "point fingers," he was "...cognizant that the approach taken by [Wheler] on this occasion creates an unnecessary and unreasonable workload on my N.S.O.S. personnel."⁶¹⁶ He added that, since every investigative step taken or rejected at the divisional level was not the subject of a written report to HQ, it was "inconceivable" to him that any HQ member "...could, with the file material available to him, presume to be in a position to provide reasonable investigative oversight on the most intricate of details."⁶¹⁷ He wrote:

While I applaud the apparent motivation of the author of the critique, I find the result to be labour intensive, unproductive and not in good taste. In my view, such probing questions can only be of assistance and not detrimental if the questioner is on site (here) acting with the support of this office and cognizant of all relevant facts.⁶¹⁸

Like Wall, he expressed concern that the HQ correspondence was distributed outside the Force before it was received by the Division. He concluded that the Division welcomed "...constructive suggestions and criticisms," but expected such queries "...to be considerate of existing effective investigative competence and control mechanisms at this point and mindful of information already in H.Q. N.S.O.T.F. possession." He asked that in the future "...the effect of posing questions of the quantity and quality of those alluded to above, be given due consideration" by HQ.⁶¹⁹

This response from the Division apparently put an end to Wheler's attempts to advance the Pushpinder Singh investigation, at least insofar as can be determined

614 Exhibit P-101 CAF0893.

615 Exhibit P-101 CAF0893.

616 Exhibit P-101 CAF0894, p. 1. N.S.O.S. was the National Security Offences Section, at the time, in charge of the Air India investigation in E Division.

617 Exhibit P-101 CAF0894, p. 1 [Emphasis in original].

618 Exhibit P-101 CAF0894, p. 2 [Emphasis in original].

619 Exhibit P-101 CAF0894, p. 2.

from the documentary record made available to this Commission. During the following years, it appears that the only concrete step taken in pursuit of this avenue of investigation was to obtain a formal statement from Khurana on July 30, 1990.⁶²⁰ Khurana was asked about what he had heard in the meeting, and indicated that they were talking about politics in India when Manmohan Singh asked Pushpinder Singh “What are you guys doing – nothing?” and Pushpinder responded “Just wait two weeks and then you will see something happen.” Khurana indicated that he believed that Pushpinder Singh was talking about what he and “...the groups in India” were doing.

It was not until 1995, when the file was reviewed in preparation for the 10-year anniversary of the bombing and a revived Task Force was eventually constituted,⁶²¹ that further investigation of Pushpinder Singh’s possible role took place. An RCMP member who conducted a review of the Pushpinder Singh file in early 1995 noted that “...there still appears to be a lot of controversy as to what Pushpinder Singh did or did not say at Khurana’s house” and that “... further work should be done to try and verify just what statements did occur at the Khurana residence.”⁶²²

Later in 1995, requests were made by E Division for the RCMP LO in Delhi to approach Pushpinder Singh again. The E Division Task Force noted at the time that Pushpinder Singh had been described “...as being one of the most important Sikh terrorists in the world.” In fact, immediately prior to his arrival in Canada in 1985, CSIS information had suggested that someone important would be coming from India and that this visit had “something to do” with Parmar, who would eventually become the main suspect in the Air India investigation. Solvason of the E Division Task Force felt that Pushpinder was a major player in 1985, but a lesser player in the actual Air India bombing. Though he was not viewed as one of the main conspirators, Solvason believed that Pushpinder would “...have definite knowledge/evidence to contribute” and could be a “... very important Crown witness” in any conspiracy prosecution.

Ultimately, Solvason interviewed Pushpinder Singh again during a trip to India, this time with Cpl. Jim Cunningham. Pushpinder was reluctant to speak to the investigators. He adamantly refused to have the conversation recorded and attempted to leave when the officers tried to record it. He indicated that he had no contact with Reyat or Parmar prior to the bombing, that he had no prior knowledge of the bombing and that he did not participate in the planning or commission of the crime, nor did he hear conversations about it ahead of time, “...e.g., Denied any of the statements attributed to him on the Khurana tapes.” Pushpinder Singh indicated that he was not willing to testify about any matters of which he might have knowledge. Overall, the investigators noted that Pushpinder was very vague in his statements and was believed to be “less than forthright,” and that interviewing him was of little value since he was unwilling

620 See Exhibit P-101 CAD0180a.

621 See Chapter V (Post-bombing), The Overall Government Response to the Air India Bombing.

622 Exhibit P-101 CAF0882.

to testify.⁶²³ They also felt that attempting to obtain a statement from him would be of little use since the statement "...would be totally exculpatory." For the time being, they noted that no further action was being taken.

Generally, the RCMP members involved in the investigation felt that Pushpinder Singh had more information than he admitted, but that, under the circumstances, the Force had "...nothing really to hang over him in an attempt to illicit [*sic*] his cooperation." Should the Force gather significant new information on their main suspects at the time (Bagri and his associates), it was noted that another interview, this time with the use of a polygraph, could be considered.⁶²⁴ However, the project was not carried out at the time. E Division investigators cautioned that Pushpinder Singh might attempt "to manipulate things," and that he was clearly not forthcoming about information known to the RCMP, such as the statements he had made during the Khurana meeting.

In March 1996, Cpl. Bart Blachford of the Air India Task Force contacted many of the VPD members involved with the Khurana meeting and made various inquiries, mostly about their recollection of the recording and about locating the relevant VPD file. Blachford also requested yet another translation of the Khurana tape, asking an RCMP member to review it and to compare it with a pre-existing transcript and to look specifically for the conversation which Khurana had reported.⁶²⁵ The Khurana information was then included in a 1996 affidavit in support of an authorization to intercept private communications. The affidavit recounted the manner in which the recording of the meeting was made, Khurana's statement about the conversation he had heard and the unsuccessful efforts to identify the conversation on the recording.⁶²⁶ The affidavit did not seek to link this information with the intended targets of the intercept or to use it to support the application.⁶²⁷ It appears that the information was included only for the purpose of making full disclosure.

In testimony before the Inquiry, Insp. Lorne Schwartz, who was an investigator with the renewed Air India Task Force in the late 1990s, discussed the investigation of Lakhbir Singh Brar which followed the receipt of information about the purported Parmar confession in 1997. Schwartz stated that he believed that, even before 1997, there had been "...lots of investigation done in relation to Mr. Brar to the ISYF, to any potential involvement that they may have had or contributed to the Air India conspiracy and bombing." He did not, however, provide details of the investigative steps that had been taken. Schwartz was also under the impression that there had been a lengthy investigation by the RCMP to identify those who were present at the Khurana meeting, but again could provide no details and was not aware whether Lakhbir Singh was "...purported to have been there or not."⁶²⁸

⁶²³ Exhibit P-101 CAF0883, p. 1.

⁶²⁴ Exhibit P-101 CAF0883, p. 1.

⁶²⁵ Exhibit P-391, document 208 (Public Production # 3341), p. 4.

⁶²⁶ Exhibit P-101 CAD0180a.

⁶²⁷ See, generally, Exhibit P-101 CAD0180.

⁶²⁸ Testimony of Lorne Schwartz, vol. 51, September 24, 2007, pp. 6345-6346, 6359.

In June 1997, Schwartz and Cpl. Doug Best had interviewed Pushpinder Singh to ask about the Khurana information. Pushpinder Singh explained that he had been taken to Khurana's residence by Lakhbir Singh Brar, and that one of the reasons he was invited was because Khurana had two daughters and Pushpinder Singh was an eligible bachelor at the time. Pushpinder recalled that Manmohan Singh was present at the meeting. He acknowledged that he might have made a comment during the meeting about waiting two weeks to see something happen, but was adamant that he was not referring to Air India. He explained that he would have been referring to the state of affairs in India and the Punjab and that, as this was an emotional time, he might have simply made the comment in an incensed state of emotion. The investigators noted that the description of the meeting provided by Pushpinder Singh was consistent with the description Manmohan Singh had previously provided to the RCMP.⁶²⁹

During a subsequent interview with the RCMP, Pushpinder Singh indicated that he may have met Reyat at a gurdwara in Duncan at some point. He reiterated that the ISYF was not involved in the Air India bombing. He also continued to deny having had any prior knowledge of the conspiracy.

In 2005, the RCMP advised the Hon. Bob Rae that, despite having extensively investigated the Khurana information, the Force had not been able to corroborate the "wait two weeks" statement made by Pushpinder Singh, or his association with Parmar or other Air India bombing associates.⁶³⁰ In 2008, the Attorney General of Canada, acting on behalf of the RCMP (as well as all other government agencies involved), advised in its Final Submissions to the Inquiry that the Khurana information had been "...thoroughly investigated over the years" and that no connection to the Air India bombing "...has in any way been substantiated."⁶³¹

Conclusion

The Khurana information, signalling as it did that the leader of an important Sikh extremist organization had indicated two weeks before the bombing that something would be done in two weeks, was clearly a matter that had to be investigated once the bombing occurred, as was recognized by all of the actors involved at the time. The information was especially significant in light of the possible connections between the organization it implicated – the ISYF – and the main Air India suspects – Parmar and the BK, including Reyat and Bagri. Yet, the follow-up investigation conducted by the RCMP was plagued by an exaggerated focus on the recording of the meeting (despite the availability of a reliable source who had reported the information before the bombing); by a lack of meaningful cooperation with the police force that had originally obtained the information; by an early re-orientation away from the ISYF members present at the meeting; and by a strong resistance at E Division to HQ suggestions that the matter be pursued further.

⁶²⁹ Exhibit P-391, document 209 (Public Production # 3342), p. 3.

⁶³⁰ Exhibit P-101 CAA1099, p. 3.

⁶³¹ Final Submissions of the Attorney General of Canada, Vol. I, para. 177.

The failure to pursue interviews with Lakhbir Singh Brar as a witness or suspect in the Air India investigation until 2001, and the fact that this was only done in response to the purported Parmar confession information, provides an indication of the comparatively low priority which was accorded to the follow-up investigation of the Khurana information after the focus of the investigation was re-assessed in August 1985. Information that did not directly implicate the known BK member suspects was viewed as "alternate" to the main theory of the case. This may have impacted the vigour with which the Khurana information was pursued, in the same manner as it may have impacted the follow-up investigation of the purported Parmar confession.

VOLUME TWO

PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

CHAPTER III: CSIS POST-BOMBING

3.0 The CSIS Investigation

Introduction

Following the bombing of Air India Flight 182, CSIS launched a full-scale intelligence investigation. While the stated priority was an investigation into Sikh extremism with the aim of preventing the next “Air India,” the investigation could not avoid overlapping with the RCMP’s criminal investigation of the bombing. CSIS at times took an over-expansive view of its mandate, which actually led it to investigate the Air India bombing – ostensibly, as part of its intelligence probe and, in some cases, to pursue clearly criminal leads as part of this work.

Because of CSIS’s approach to information sharing and because of its methods for gathering and preserving information¹ – which often impaired the admissibility of the information in court proceedings – CSIS’s heavy involvement in the Air India investigation resulted in the loss of potential evidence for the criminal investigation. The CSIS methods, in particular, the destruction of the Parmar intercepts, as well as of the notes and recordings of interviews with an individual who became an important witness, gave rise to findings in the Malik and Bagri trial that the *Charter* rights of the accused had been violated.² In the end, these findings did not have an effect on the outcome of the prosecution, because the accused were acquitted for other reasons.³ The main prosecution witnesses were not found sufficiently credible to convince the trial judge of the accused’s guilt beyond a reasonable doubt.

The CSIS Air India Task Force

In the months following the bombing, a CSIS Air India Task Force was formed. CSIS increased its resources devoted to the investigation of Sikh extremism and began to investigate many issues closely connected to the bombing.

CSIS investigator Ray Kobzey returned from his leave on the evening of June 22, 1985. He woke up the next morning unaware of the bombing and placed a call

¹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation and Section 4.3 (Post-bombing), The Preservation of CSIS “Evidence.”

² See Section 4.4.2 (Post-bombing), The Air India Trial.

³ The main prosecution witnesses were not found sufficiently credible to convince the trial judge of the accused’s guilt beyond a reasonable doubt.

to his partner, David Ayre, to find out what had happened while he was away. Ayre's wife answered the phone and advised Kobzey that Ayre was in the office, which was unusual for a Sunday. Ayre's wife asked Kobzey if he had heard the news:

I said, "Heard what?" and she said, "The plane, it went down."
I said, "What plane?" and she said, "Air India," and my reply to that was, "That [expletive] Parmar, he did it, they did it"; and that was my gut instinct....⁴

Kobzey hurried into CSIS which was already in a "...state of intense operational activity." He was immediately assigned to conduct interviews and to brief the other investigators, who had been reassigned from other units. CSIS launched into a full-blown operational response to the bombing.⁵

CSIS HQ Post-Bombing Organization

At CSIS HQ, Chris Scowen was the de facto Deputy Director General CT, a position that was formalized in August 1985. Scowen immediately became the operational head of the CSIS investigation at HQ.⁶ Mel Deschenes, the DG CT, "...did not have direct involvement with the investigational or analytical activities," nor did he have "...any direct dealings with the Region on the Parmar investigation." His responsibilities were limited to oversight and "adherence to policy" with respect to the Air India and Parmar investigation.⁷ Glen Gartshore, head of the HQ Sikh Desk, was also involved in the early part of the investigation. He testified that the Desk tasked the regions, particularly BC and Toronto, to provide investigative leads that could then be given to the RCMP.⁸ In the aftermath of the bombing, Gartshore travelled to India on July 11th returning July 22nd, following which he commenced three weeks of annual leave. Shortly thereafter, on September 3, 1985, he was transferred to the Middle East Section.⁹

In the days and weeks following the bombing, there were frequent meetings at a very senior level within the Government of Canada. CSIS prepared a brief on Sikh extremism for Prime Minister Brian Mulroney on June 28th.¹⁰ Scowen became the point person for information flowing in from the regions concerning the investigations as well as for cooperation between CSIS and the RCMP. Scowen would brief Archie Barr, Deputy Director of Operations at CSIS HQ, daily at 8:30 AM regarding developments in the CSIS investigation. This allowed Barr to be up-to-date with the latest developments when he attended the daily 9 AM meetings at the Privy Council Office convened by J.A. ("Fred") Doucet, the Prime Minister's Chief of Staff.¹¹

⁴ Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3812.

⁵ Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3812-3813.

⁶ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6118.

⁷ Exhibit P-101 CAD0157, p. 4.

⁸ Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3547.

⁹ Exhibit P-101 CAD0144, p. 2.

¹⁰ Exhibit P-101 CAB0373.

¹¹ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6130-6131, 6133-6135.

BC Region Post-Bombing Organization and Task Force

At the regional level, Randy Claxton, the BC Region DG, immediately realigned the CT section, with the Sikh interest area becoming a separate operational unit demanding high priority.¹² Claxton ordered the creation of a CSIS Task Force and placed Bob Smith in charge. Smith was responsible for coordinating and directing the activities of the Task Force and for reviewing, evaluating and disseminating intelligence at the regional level. Smith was to keep Ken Osborne, the regional Deputy Director General of Operations, fully informed, and Osborne in turn would brief Claxton.¹³ Jim Francis, who had been Kobzey's and Ayre's unit head in CT, was transferred and assigned on June 25th as the CSIS liaison member interfacing with the RCMP.¹⁴

The CSIS Task Force was composed of an "expanded investigational team,"¹⁵ consisting of 13 local investigators, including BC Region CT Chief and Task Force head Smith, investigators Kobzey, Ayre and Neil Eshleman, and Francis, the CSIS liaison officer to the RCMP Task Force.¹⁶ The CSIS Task Force worked out of the Operations Centre and a direct line to the RCMP was set up.¹⁷ In addition to Parmar, five additional CSIS targets were quickly established, including Hardial Singh Johal and Surjan Singh Gill, though, notably, Malik and Bagri were absent from this initial list.

Kobzey and Ayre were a vital resource for the Task Force as "...they had most of the knowledge between them and what was on file."¹⁸ Responsibilities were parceled out according to skills – community interviewing, source development, and liaison with the RCMP and other departments.¹⁹

Task Force Interview Program

The CSIS Task Force was ordered to "...undertake a comprehensive interview program of the East Indian communities throughout BC."²⁰ Ayre was the coordinator and resource person for the community interview program.²¹ The investigators were tasked with getting out into the Sikh community to capitalize on the widespread shock and grief in order to get people to talk to them. Smith described CSIS's use of the bombings as "a door opener," with investigators projecting the image that they were investigating the bombings. While CSIS hoped to gain new sources concerning the Sikh extremist community, Smith later said that "...the interviews didn't produce anything." In almost all cases, copies of the intelligence reports produced from interviews were provided to the CSIS Liaison Officer for transmission to the RCMP.²²

12 Exhibit P-101 CAD0136, p. 3.

13 Exhibit P-101 CAD0139, p. 4.

14 Exhibit P-101 CAD0136, p. 3.

15 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

16 Exhibit P-101 CAA0253, p. 2.

17 Exhibit P-101 CAD0127, p. 18.

18 Exhibit P-101 CAD0130, pp. 4-5.

19 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

20 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

21 Exhibit P-101 CAD0138, p. 3.

22 Exhibit P-101 CAD0130, pp. 4-6.

Task Force Warrant Writing and Research

Osborne quickly received approval for the formation of a warrant application and file review team within the Task Force consisting of five people including Kobzey and John Stevenson.²³ This team completed six affidavits for intercept warrants by July and more throughout the summer. Stevenson testified that selection of targets was based on Kobzey's knowledge of and expertise in Sikh extremism. Kobzey chose targets based on his belief about who would produce the most intelligence and who would be connected to what was going on in the Sikh extremism milieu. To this end, Stevenson wrote three affidavits, including one with respect to Ajaib Singh Bagri and one with respect to Surjan Singh Gill.²⁴ Kobzey was also instrumental in the creation and supervision of a research unit "...undertaking projects directly relating to the Narita and Air India incidents." Because of his involvement in the warrant writing process and with the research unit, Kobzey terminated his direct participation in the active investigation a few days after the bombing.²⁵

In July 1985, when the first post-bombing intercepts were implemented, investigators who had previously been doing community interviews were instructed to review the intercept product and prepare reports. Copies of those reports were, in most cases, sent to the RCMP, but in an edited form.²⁶

The new warrant applications and intercepts were in addition to the technical intercept already in place against Parmar. CSIS immediately considered Parmar to be a key suspect in the bombing.²⁷ Jack Hooper testified that, soon after the bombing, CSIS investigators from BC Region "...had a very good sense that Air India and Narita were the product of a conspiracy by a number of people" and that they were fairly confident they knew the identities of the conspirators.²⁸

The Parmar Intercept

CSIS continued its technical intercept of Parmar after the bombing. A large portion of the pre-bombing intercepts had yet to be listened to. Kobzey did not listen to the tapes, though he did review some of the notes of the transcribers prior to being transferred to warrant writing and research duties with the CSIS Task Force. Ayre was the investigator responsible for "...supervision of the intelligence product" following the bombing. Other CSIS investigators would also review material and transcribers' logs in order to assist in the "...conduct of the planning of our interview program and later on in any research that was necessary to obtain additional warrants."²⁹

²³ Exhibit P-101 CAB0495, p. 4; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7651.

²⁴ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7651-7652.

²⁵ Exhibit P-101 CAD0140, p. 6.

²⁶ Exhibit P-101 CAD0130, pp. 4-5; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

²⁷ Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3812; Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6210.

²⁸ Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6209.

²⁹ Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3839-3842.

HQ had no involvement in reviewing tapes. That was a local responsibility. CSIS HQ never accessed raw product, such as the tapes, transcriber logs and translator notes, and only reviewed intelligence officers' reports written on the basis of intercepts.³⁰

Toronto Region Investigation

The Toronto Region had an ongoing Sikh extremism investigation at the time of the bombing. Although the focus of the Air India investigation was in Vancouver, some of the regional differences in approach are worth noting.

The RCMP, the Metropolitan Toronto Police and Peel Regional Police (who are the police of jurisdiction for the Toronto International Airport) created a 20-person joint forces unit named "Organza."³¹ CSIS Toronto Region met daily with Organza, communicating results to CSIS HQ through a daily situation report.³² CSIS Toronto stated that the purpose of its involvement with Organza was "...to avoid critical overlap of investigations which has been demonstrated during recent similar joint investigations."³³ BC Region did not attempt a similar integration.

CSIS Post-Bombing Resources

Immediately after the Air India and Narita bombings, extra resources were devoted to the Sikh Desk at HQ. The analytical positions were increased, though new analysts required training, and the reorganization itself consumed considerable resources. Authorization was given to enhance technical resources at the regional and field level. Along with the daily briefings provided to Barr, special daily Task Force reporting was established. Joint meetings were held, involving Russell Upton, Barr, Deschenes, Scowen and the section head of the Sikh Desk. These special briefings were held to review daily situation reports submitted by the field units and allowed HQ and the senior management the ability to direct the course of the CSIS investigation effectively. Even with the added resources and attention, CSIS's greatest problem continued to be "...a lack of trustworthy and reliable human sources," who would have been able to elaborate upon or to corroborate questionable conversations from intercepts.³⁴

The Post-Task Force Period

A few months after its creation, on October 28, 1985, the CSIS Air India Task Force was closed down and its members transferred back to their previous units to continue their CSIS investigation.³⁵ This signalled a shift in CSIS, away from its original, perhaps misguided, attempt to assist the RCMP more directly in the criminal investigation.

³⁰ Exhibit P-101 CAD0153, p. 4.

³¹ Exhibit P-101 CAB0349, p. 1.

³² Exhibit P-101 CAA0264.

³³ Exhibit P-101 CAB0349.

³⁴ Exhibit P-101 CAD0154, pp. 9-10.

³⁵ Exhibit P-101 CAA0379(i).

A number of key changes marked the development of CSIS during this period. In March 1986, James (“Jim”) Warren replaced Deschenes as the DG CT at HQ.³⁶ Warren immediately set upon the task of conducting an internal investigation into the erasure of the Parmar tapes. This was done both for CSIS HQ itself, to understand whether the tapes had been erased as part of a cover-up, as well as to respond to the questions being put to CSIS by the RCMP on behalf of James Jardine. The issue of CSIS tape erasure would eventually play a central role in the CSIS-RCMP relationship with regard to Air India, and is dealt with in a separate section.³⁷

The CSIS investigation was also profoundly affected by a separate incident, in which Sikh extremists shot Indian diplomat Malkiat Singh Sidhu on Vancouver Island on May 25, 1986. CSIS’s failure to prevent this terrorist act deeply affected the Service and had a fundamental impact on its self-confidence as well as the confidence of Government in it.³⁸ CSIS BC Region had had an intercept that warned of the coming attack on Sidhu, but had allowed a time lag over a weekend in its translation/transcription. In addition, the investigators involved had deemed the information “...not sufficiently important to be reported.” These errors were blamed in part on the lack of clear policies.³⁹

Changes to the CSIS Sikh Extremism Investigations

After the bombing, Sikh extremism remained the number one priority at CSIS for quite some time. In 1986, CSIS began making some changes to the CSIS HQ Sikh Desk, creating three desks under the umbrella of the Sikh Desk, each devoted to investigating one of: the Babbar Khalsa, the ISYF and the World Sikh Organization. Initially the BK desk and the ISYF desk each had five or six CSIS intelligence officers assigned to them, whereas the WSO desk had only four. Within two years, CSIS determined that the WSO “...simply weren’t a threat,” and those intelligence officers were reassigned and the WSO desk discontinued.⁴⁰ In 1990, Bill Turner was promoted to head of the Sikh Desk and amalgamated the BK and ISYF desks back into a single Sikh extremism desk.

In the regions, Montreal, Toronto and Vancouver each had dedicated desks investigating Sikh extremism during the post-bombing era. Only the desk in Vancouver mirrored the HQ desk, with a split between the BK unit and the ISYF unit, while the others had a single Sikh extremism desk that handled all of the investigations. Other regions also pursued Sikh extremism investigations, to a lesser extent.⁴¹

³⁶ Testimony of James Warren, vol. 48, September 19, 2007, p. 5816.

³⁷ The issue of the Parmar tape erasure is covered in depth in Section 4.3.1 (Post-bombing), Tape Erasure. The lengthy debates between Jardine and Warren are covered in Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

³⁸ See Section 1.6 (Post-bombing), Atwal Warrant Source.

³⁹ Exhibit P-101 CAB0902, p. 95.

⁴⁰ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8272, 8286.

⁴¹ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8273.

In 1986, the Vancouver desk had four investigators and a supervisor for the BK unit and a similar arrangement for the ISYF unit. The BK unit's number one target was Talwinder Singh Parmar, and not far behind in importance was Ajaib Singh Bagri.⁴² CSIS investigator William Dean ("Willie") Laurie worked at the BK desk between 1986 and 1989. During that time his targets included Parmar, Bagri, and Malik. Malik's name was found on a list of individuals who had donated money to the BK, but who were not necessarily members of the organization. Based on the intelligence in its possession, CSIS concluded that Malik was a BK member and the BC Region obtained operational priority to target him, even if others on the list of donors to the BK were not considered members and not targeted in the same manner.⁴³

In other parts of the country, Toronto had eight investigators working on Sikh extremism and Montreal had four or five. In comparison, Edmonton, Calgary and Winnipeg each had one or two investigators dealing with Sikh extremism.⁴⁴

Starting in 1986, CSIS expanded its investigation to include other groups, such as the Khalistani Commando Force, the Khalistani Liberation Force, the Khalistan National Army and the Dusth Sodh Commando Force. At varying times one or another of these groups may have taken priority but, throughout, Talwinder Singh Parmar always remained a high priority target.⁴⁵

Intercepts

Warrant affidavits continued to be written by the CSIS HQ desk, based on information and intelligence developed from the regions. Resource constraints continued to be a concern but, despite this, CSIS continued to obtain warrants on key targets such as Parmar on an individual basis, due to the possibility of criminal proceedings.⁴⁶

Resource considerations did, however, affect the warrant process on some occasions. Arrests by the RCMP could affect CSIS decisions on warrant coverage. In 1986, Parmar's son, Jaswinder Singh Parmar, was arrested in connection with the Hamilton plot. While he was in police custody, the CSIS warrant expired. CSIS did not renew its warrant because he was not considered to be a threat while in pre-trial custody and CSIS could therefore not justify their warrant. Once he was released, however, CSIS was able to get an intercept up on him within a day or two.⁴⁷

While police custody may have altered the availability of a CSIS warrant for a target, leaving the country did not. In 1988, Parmar left Canada. However,

42 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7397, 7529.

43 Exhibit P-244, vol. 3 (January 6, 2004 Transcript, Day 66), pp. 5-6.

44 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8273-8274.

45 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8287.

46 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8277-8278, 8286-8289.

47 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8285-8286.

he was still the leader of the BK, and was in regular communication with BK members in Canada, and was therefore "...still a factor" according to Turner. In that case, CSIS did not diminish the resources directed against Parmar.⁴⁸

A further change that took place was in the location of the translators and their contact with the various desks. In 1985, the translators constituted their own separate unit. Ten years later, in 1995-1996, the translators were moved into the Desk Units with which they were working. Turner testified that this change was "absolutely" beneficial, since working alongside the investigators enhanced the ease of communication.⁴⁹ One may conclude that the arrangements for the previous decade were suboptimal.

Continuing Difficulties in Defining CSIS's Role in Investigating the Air India Bombing

From the day of the Air India bombing, there have been persistent claims that CSIS was trying to "solve" the case, in spite of its new mandate and at the expense of cooperation with the RCMP. Robert ("Bob") Burgoyne specifically testified that at an HQ daily briefing, Archie Barr said: "We're going to solve Air India." Though Burgoyne qualified this by adding that it was in the context of the recognition of CSIS's greater knowledge base and of the fact that it would allow CSIS to assist the police in their investigation, the implication remains.⁵⁰ Many feel CSIS's goal was to legitimize the new organization that had failed to prevent a bombing by solving the case itself.

Lending credence to this belief is the testimony of former VPD Detective Don McLean, who worked on the Indo-Canadian Liaison Team as a constable in 1985, and who was asked for assistance by both CSIS and the RCMP in the immediate post-bombing period. In his view, CSIS was attempting to solve the crime and trying to identify the parties involved in the bombing. Though he indicated that CSIS was investigating terrorism across Canada for national intelligence purposes, McLean felt that such activities were akin to a criminal investigation to the extent that they were trying to solve the crime.⁵¹

Turner stated that, in the summer of 1985, the roles and responsibilities of both CSIS and the RCMP were not yet established. As a result, in his view, there were CSIS members who were "...asking questions quite improperly about Air India," a criminal investigation outside of the CSIS mandate.⁵² This sort of questioning may have contributed to the impression that CSIS was trying to solve the case. Turner testified that there was a perception among members of CSIS that if Kobzey, Ayre, Eshleman and Laurie had been allowed to step outside their roles as intelligence officers and to move into the criminal sphere, they would have been able to solve the case. In particular, it was felt that they would have been able to identify the four or five conspirators, including Mr. X and the persons

48 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8288-8289.

49 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8291-8292.

50 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3486-3487.

51 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4160-4161.

52 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8292.

responsible for purchasing the plane tickets and checking in the bags, whose identities were unknown during the first two to three weeks. Turner stated that there was not a rivalry as to who could solve the case first, but that some CSIS operatives did hope to get the identities of those involved and pass them to the RCMP.⁵³

Hooper testified that the concern for CSIS was to continue to examine Sikh extremism in order to identify other individuals and other plots that posed threats to the security of Canada.⁵⁴ He stated, though, that CSIS did have "...a head start over the RCMP" in terms of their understanding and knowledge of the Sikh extremism movement and its key players. He explained that CSIS felt it was in a "...position to assist the RCMP in arriving at some appreciation for what might have happened in Air India and Narita."⁵⁵

Similarly, Stevenson testified that CSIS was not necessarily looking into the bombing itself but was trying to look into individuals "...who may have been associated with it" and who were involved in "...matters of Sikh extremism."⁵⁶ It is significant that documentation from the Task Force states that the object of the CSIS Task Force was to "...develop intelligence on local Sikh activity, gather information on the bombing incidents and develop human sources for future needs."⁵⁷ Certainly from the perspective of the authors of the memorandum, which included Bob Smith, Chief of the CSIS Task Force, and Ken Osborne, the DDG Operations, CSIS was indeed gathering information on the bombing incidents themselves.⁵⁸

Osborne later stated that the CSIS community interview program was undertaken because it was felt that there was "...information out in the community about the incident itself and about future threats." Smith, for his part, stated that the aim of the interview program was to produce sources, not evidence or even information in relation to Air India – an orientation that would clearly impact on the criminal investigation. Smith did add that investigators were repeatedly reminded that they were not investigating a crime, but instead were to advance CSIS's ability to investigate the Sikh extremism.⁵⁹

Overall, it was difficult to separate the investigation of Sikh extremism from the bombing of Air India. CSIS did have a continuing responsibility to gather intelligence, and it was felt that information relating to Air India was helpful in gathering intelligence on what could happen next.⁶⁰

To add to the confusion, CSIS HQ seemed to have a different view than that of BC Region as to what they should be investigating. In August, Scowen wrote to the RCMP expressing his view of what CSIS was investigating:

53 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8294-8296.

54 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6210.

55 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6210-6211.

56 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7652.

57 Exhibit P-101 CAA0253, p. 2.

58 Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7651-7653.

59 Exhibit P-101 CAD0130, p. 5.

60 Exhibit P-101 CAD0130, p. 5.

The CSIS interview program goes to great lengths to avoid interfering with individuals who may have “evidence” to impart, i.e. those who could be classified as suspects. CSIS has concentrated on the periphery of the East Indian community and has reported to the task force on each of the 65 plus interviews conducted.⁶¹

Coming from the man who was directing the investigation from HQ, this statement is notable. The definition of the “periphery” implicit in this message appears to refer to individuals who are not suspected of involvement in the bombings. Obviously, such individuals could nevertheless possess evidence central to the criminal investigation. If the only criterion used by CSIS to ensure that its operations remained “on the periphery” was whether the Service was interviewing actual known suspects, the potential for overlap with the RCMP investigation would clearly be high.

In addition, while it was true that CSIS had passed intelligence reports based on community interviews to the RCMP, it was not accurate to state that CSIS had restricted itself to “the periphery,” even if one were to accept the generous definition of the term put forward by HQ. There was no attempt to interview Parmar but, within days of the bombing, CSIS had interviewed or attempted to interview Surjan Singh Gill and Ajaib Singh Bagri, two persons who were viewed as potential conspirators in the Air India bombing early on and for whom CSIS was also writing intercept warrant applications.⁶²

Eshleman not only admitted that some contacts made in the days following the bombing were likely inappropriate, in that they involved individuals who were or would soon become key Air India suspects, but added that, even aside from those early contacts, the CSIS effort was not, in fact, “on the periphery”. Eshleman understood that limiting CSIS’s activities to “non-suspects” was not the equivalent of focusing “on the periphery”:

...the BK which was responsible for this incident had a number of people that we would be interested in dealing with. They were perhaps close associates of Mr. Parmar, Mr. Bagri. And I don’t think we were hesitant to interview those people who may offer close information, or if they were perhaps relatively close associates. Certainly, they weren’t on the periphery of it.⁶³

The confusion and the difficulties in defining CSIS’s role in connection with the bombing continued well after the summer of 1985. Laurie explained that the purpose of his work in the BK unit between 1986 and 1989 was to gather security intelligence information about the BK, but also, if possible, to obtain information about the bombing of Air India Flight 182 as well, to ensure that if any other similar acts were planned, CSIS would be able to gather enough information

61 Exhibit P-101 CAA0299(i), p. 2.

62 Exhibit P-101 CAA0261, p. 4; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7651.

63 Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9393-9394.

to prevent them. Laurie testified that his overall workload during this time was very heavy. Part of the reason for the intensity and pace of the work was that there was an imperative, at least at some points, to get information to help solve the crime.⁶⁴

According to Laurie, the instructions CSIS provided to its investigators about their role in relation to the criminal investigation into the Air India bombing were inconsistent and changed frequently:

...sometimes it would be an instruction to be aggressive and do what you can, and then the next day it would be quite the opposite and it would be no, we're contaminating an investigation, so do not do that today. We are getting clarification and we will have to see until tomorrow. And over a period of months, the message was very unclear.⁶⁵

Laurie explained that these instructions reflected directions his supervisors in the BC Region were receiving from Ottawa HQ. The changes in position affected his work and that of his superiors in BC. They had objectives to accomplish and this was "...practically impossible when someone tells you to stop." He explained that the BC Region investigators did follow each conflicting directive as it was issued, in spite of the frustration that this caused.⁶⁶

In January 1987, the Minister directed that CSIS cooperate with the RCMP "...to coordinate the preparation of evidence which would be used for court purposes" (the Kelleher Directive),⁶⁷ and the CSIS Director indicated that he had directed that "...the full cooperation of the Service be placed at the disposal of the RCMP in this regard." The Director also promised to provide a chronology of relevant events.⁶⁸ The Kelleher Directive and the subsequent transmission of this chronology to the RCMP would symbolically mark the end of an era in the CSIS investigation of the Air India bombing.

One month later Barr wrote a crucial memo to all regions in CSIS signifying this shift at CSIS. This memo reinforced the CSIS mandate and appears intended to signal CSIS's exit from its previous equivocal role in the Air India investigation:

Due to some excellent investigation and analysis by the Service, important leads have recently been developed relating to the Air India crash flight 182. These leads have been passed to the RCMP and to our Minister. Additionally, the Service is attempting to develop a chronological timetable of the events and the actions of certain key suspects based

⁶⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7395, 7406-7407.

⁶⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7398.

⁶⁶ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7398-7399, 7528-7529.

⁶⁷ Exhibit P-101 CAD0095, pp. 1-2; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁶⁸ Exhibit P-101 CAD0094, p. 2.

upon the disclosures of Service [redacted] and a detailed and thorough analysis of information within our data base. This will be completed and in the hands of the RCMP by early March at which point, it is fully expected that the conduct of the investigation will move into the hands of the RCMP.... [Emphasis added]

I don't need to remind you that the events that unfolded over the Irish Sea and at Narita Airport in Japan on 1985 06 23, reflect one of the most callous and heinous crimes in the history of Canada. There can be no higher priority for the law enforcement authorities of this country and, incidently [*sic*], for this Service, than bringing the persons who perpetrated these crimes, before the courts. While information developed by the Service has been of critical importance in helping the RCMP understand how the crime was committed and in identifying suspects, we have not uncovered evidence sufficient to support convictions. Indeed, it is not the role of the Service to do so. This is clearly the responsibility of the RCMP. The Service can, however, continue to be of assistance to the RCMP by providing information that may shed new light on this crime and by providing a comprehensive data base against which to test information developed by the police. The Minister has directed that the Service and the RCMP cooperate very closely in this regard and I would ask every member of the Service to be guided accordingly in assuring that the full cooperation of the Service is at the disposal of the RCMP in what both we and the RCMP share as the only satisfactory outcome of this matter; the conviction of those responsible.⁶⁹

Though there would be more developments in the Air India case as a result of CSIS activity, most notably CSIS source development work with Ms. E and Ms. D, the bulk of its work in relation to the bombing had by this point been concluded. CSIS moved on to focusing on what Sikh extremists might be up to in the future, and its more overt investigation of the Air India bombing was, for the most part, at an end.

Yet, the confusion in the instructions received continued after this period. When Ms. E provided information clearly relevant to the bombing in September 1987, there was hesitation at CSIS about whether the information needed to be passed on to the RCMP right away or whether CSIS could continue to develop it on its own for a time.⁷⁰

The confusion was still apparent in January 1988 when the RCMP requested CSIS assistance before arresting Reyat.⁷¹ The CSIS BC Region sent a message to CSIS

⁶⁹ Exhibit P-101 CAB0711, pp. 1-2.

⁷⁰ See Section 1.3 (Post-bombing), Ms. E.

⁷¹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

HQ and to all CSIS regions and districts to inquire about past instructions it had received from HQ indicating that "...CSIS participation in the investigation of Air India is restricted to providing investigative leads to the RCMP should they be developed during the course of other [CSIS] investigation" and stating that, "...in essence, CSIS is no longer involved in the Air India investigation, but rather back to our mandated role of investigating Sikh terrorist activities." The Region was concerned because, with Reyat's arrest, information about the Air India bombing might be obtained and, depending on how aggressively the Region pursued its investigations, it might well be obtained by CSIS and not by the RCMP.⁷² Despite HQ's attempts to define and redefine CSIS's role in connection with Air India, the Region was left with little practical guidance on how to conduct its operations when it was confronted with the overlap between its investigations and the RCMP criminal investigation. The Region also requested clarification about the steps to take in cases where it had provided investigative leads that were not exhaustively followed up by the RCMP.⁷³

Laurie, who authored this message, explained that what really brought about the request from BC Region was the confusion created in the field by the lack of consistent tasking from CSIS HQ:

If one of the tasks of your inquiry is to measure whether or not there is consistent tasking of us, or whether or not we in the field became confused about whether they wanted us to do something or did not, then this inquiry from the field to Headquarters which is forwarded with my supervisor could be evidence that it was inconsistent because it looks like the Chief of Counter Terrorism also put a forwarding minute on that and it – we've been told "yes" and then we've been told "no" and we've been told "yes" and we've been told "no". Now we have an opportunity, because it appears that the police are going to be doing some arrests and for those of you who don't know it, the police are going to be doing arrests then a lot of the people we're watching are going to have an impact; they're – they're going to respond in some way; they're going to be talking to their friends and it's a time where the CSIS need to be busy. So this is an inquiry of our Headquarters saying, "Are we a 'yes' or are we a 'no' today? Like tell us, are we assisting these people with an investigation or do you want us to sit? You tell us."⁷⁴ [Emphasis added]

The Chief of the Counter Terrorism Section of the Region commented that the BC Region request for clarification was based on earlier discussions with the

⁷² Exhibit P-101 CAA0627(i), p. 4.

⁷³ Exhibit P-101 CAA0627(i), p. 5; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁷⁴ Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7526-7527.

Region CT Unit Head and the HQ DG CT.⁷⁵ Generally, the Region felt that it was in a difficult position, because it had refrained from pursuing certain avenues of investigation because of instructions to stay away from the criminal investigation and to avoid contaminating it.⁷⁶

The only response provided by CSIS HQ to Laurie's message that could be identified in the documents provided to the Commission, was a memo sent to all regions and districts, simply stating that the contents of the BC Region message were "...not/not to be discussed with anyone outside the Service under any circumstance."⁷⁷ An exception was made for the RCMP but, CSIS HQ specified, "...ONLY/ONLY if the RCMP raises the matter first."⁷⁸

Conclusion

CSIS felt well-positioned to solve the Air India bombing crime, as its agents had the skill and experience in national security investigations, as well as knowledge about the key suspects, all of which the RCMP lacked. In effect, CSIS had a head start on the RCMP, but did not have the mandate to pursue a criminal investigation. CSIS immediately knew the key suspects, and some felt that if they had had the mandate, they could have identified the remaining suspects. At least some members of CSIS believed that what they should have been investigating, from an intelligence point of view, was the bombings and not just Sikh extremism. They hoped to either find the "smoking gun," or to uncover investigative leads that would allow the RCMP to close the case.

The parallel CSIS Air India Task Force was short-lived and terminated in October 1985. It is clear that, even after the Task Force was shut down and CSIS officially redirected its efforts to preventing future acts, some CSIS individuals were still trying to solve the Air India case. The directives issued by HQ were conflicting and inadequate, and did not clarify the role which CSIS investigators were expected to play in relation to the criminal investigation into the bombing.

While it is clear that CSIS personnel were at least at times attempting to investigate the Air India bombing, it appears that, ironically, they did so by using a full range of investigative means, but without regard to issues of evidence collection. In fact, CSIS employees, both at the field and managerial levels, seemed obsessed with ensuring that they did not retain evidence of any kind.⁷⁹ This meant that the difficulties in defining CSIS's role in relation to the criminal investigation, which continued throughout the post-bombing period, would by definition have an impact on the criminal investigation and on the eventual prosecutions. Whenever CSIS got involved in collecting information relevant

⁷⁵ Exhibit P-101 CAA0627(i), p. 6.

⁷⁶ Exhibit P-101 CAA0627(i), p. 6. See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁷⁷ Exhibit P-101 CAA0628, p. 1. The redacted portions of this document contain identifying information (such as file numbers) only and no substantive response to the BC Region enquiries.

⁷⁸ Exhibit P-101 CAA0628, p. 2.

⁷⁹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

to solving the crime, difficulties would inevitably arise because of its inability or unwillingness to collect, record and retain the information in a manner that would not jeopardize its admissibility in court.

Though it may not have found the “smoking gun,” CSIS did indeed uncover information that was eventually used at both the Reyat trial and, later, the Malik and Bagri trial. But as Volume Three of this Report makes clear, the use of intelligence in a criminal trial is a process fraught with difficulty. Indeed, the process was long and difficult in the Air India case, and the need to use CSIS information led to intensive negotiations and raised difficult legal issues.⁸⁰ The combined effect of the CSIS investigators’ desire to solve the case, the lack of clear instructions from CSIS HQ, and the refusal by CSIS to apply any police-like methods to its work, had a negative impact on the RCMP effort, particularly when information uncovered by CSIS was either destroyed or not fully shared with the RCMP in a timely fashion.

⁸⁰ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation and Section 4.4 (Post-bombing), CSIS Information in the Courtroom.

VOLUME TWO

PART 2: POST-BOMBING INVESTIGATION AND RESPONSE

CHAPTER IV: CSIS/RCMP INFORMATION SHARING

4.0 The Evolution of the CSIS/RCMP Memoranda of Understanding

The Memoranda of Understanding (MOUs), signed between the RCMP and CSIS, are the central instruments used to define the nature of CSIS/RCMP cooperation, especially in relation to the issue of information sharing. The aim of an MOU is to provide additional clarity in defining the distinct mandates of the two organizations, as well as to offer general guidance as to ways in which the organizations need to, and should, share information.¹

Professor Wesley Wark testified that, historically, RCMP/CSIS MOUs were agreements made solely between these two agencies. There was "...nothing built into them particularly that would provide for ministerial direction," nor was there any other support to make that agreement work,² aside from a limited conflict resolution role, which the agencies left to the Solicitor General in the first MOU.³ Wark stated that the early MOUs reflected the reality that, generally, the intricacies of CSIS/RCMP cooperation were left to CSIS and the RCMP to work out on their own.⁴

The 1984 Memorandum of Understanding

On July 17, 1984, the RCMP and CSIS entered into their first MOU, consisting of 17 separate agreements.⁵ The 1984 MOU was in place at the time of the Air India bombing. The most important agreement, at least in relation to the Air India investigation, was the one entitled "Transfer and Sharing of Information."⁶ This MOU provided that, "...pursuant to section 12 of the *CSIS Act*," CSIS "shall provide" assessments or information to the RCMP respecting a number of RCMP responsibilities, including the investigation of security offences and various protective duties, as they became available or when they were specifically requested.⁷ Section 12 of the *CSIS Act*⁸ is the general provision empowering CSIS to collect and report to the Government of Canada information about threats to the security of Canada.

¹ Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1465.

² Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1466.

³ Exhibit P-101 CAA0076, p. 4.

⁴ Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1466.

⁵ Exhibit P-101 CAA0062.

⁶ Exhibit P-105, Tab 2; Exhibit P-101 CAA0076; Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1650.

⁷ Exhibit P-101 CAA0076, p. 2.

⁸ *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23.

The MOU further provided that, pursuant to section 19(2) of the *CSIS Act*, CSIS “shall provide” information to the RCMP respecting the “...investigation and enforcement of alleged security offences or the apprehension thereof,” as well as with respect to certain indictable offences where the RCMP was the police of jurisdiction.⁹ Section 19(2) is the provision specifying circumstances under which CSIS is permitted to disclose the information it collects, including disclosure as necessary for the performance of CSIS’s duties and functions, and specifically including disclosure to peace officers of information relevant to the investigation or prosecution of “...an alleged contravention to any law of Canada.”¹⁰

There were debates between the agencies about the interpretation of the MOU, and particularly the extent of the obligations that it imposed on CSIS.¹¹ Section 19(2) of the *CSIS Act* provides that “...the Service *may* disclose information” in the enumerated circumstances, leaving a legislated discretion as to whether information would in fact be disclosed [Emphasis added]. In contrast, the MOU used the word “shall” when describing the information that CSIS was to provide to the RCMP.¹² The RCMP interpreted the MOU as making CSIS disclosure mandatory. According to then RCMP Deputy Commissioner of Operations, Henry Jensen, who was involved in the discussions with CSIS leading up to the MOU, the MOU imposed an obligation on CSIS to provide information to the RCMP about security offences. Essentially, he viewed the MOU as converting the discretion to share, conferred on CSIS by section 19 of the *CSIS Act*, into a positive obligation that made sharing mandatory and regulated the manner in which CSIS could exercise its discretion under the law.¹³ Jensen explained that this was done pursuant to a Cabinet directive passed on through the Solicitor General to the group who developed the MOU.¹⁴ CSIS disagreed and interpreted section 19 as permitting CSIS to disclose, but leaving the final discretion in the hands of the CSIS Director.

Other contentious issues related to the nature of the materials that CSIS had agreed to provide under the MOU and the timing of disclosure. Jensen stated that the obligations imposed on CSIS to provide information through the MOU applied to both raw materials and analysis.¹⁵ CSIS, however, would often take the position that access to raw materials would not be provided, and that only the resulting information obtained had to be disclosed.¹⁶ Jensen also believed that the MOU imposed an obligation on CSIS to provide information as soon as it was available, in “real time”, when it was “live” and “fresh.”¹⁷ He stated that this was meant to overcome the delay that could arise if CSIS waited until the information was fully assessed and analyzed before passing it on, as this delay

⁹ Exhibit P-101 CAA0076, pp. 2-3.

¹⁰ *Canadian Security Intelligence Service Act*, S.C. 1984, c. 21, s. 19 (R.S.C. 1985, c. C-23, s. 12).

¹¹ See Section 3.5.1 (Pre-bombing), CSIS/RCMP Relations and Information-Sharing Policies.

¹² Exhibit P-101 CAA0076.

¹³ Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1651, 1654-1656, 1676-1677.

¹⁴ Exhibit P-101 CAA0059; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5365-5366.

¹⁵ Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1651-1652, 1654.

¹⁶ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

¹⁷ Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1651, 1664.

would have been unacceptable to law enforcement.¹⁸ Again, however, CSIS did not appear to share Jensen's view, and it generally waited until the information had been assessed in order to make a decision about whether or not it should be passed to the RCMP.¹⁹

The MOU also made RCMP sharing with CSIS mandatory for information relevant to CSIS's role, in particular information "...relevant to activities that may be suspected of constituting threats to the security of Canada."²⁰ Though there would be complaints by CSIS about the RCMP's failure to share some of its information,²¹ there were no debates about the interpretation of the MOU itself in this respect.

The MOU provided that neither agency would have an "unrestricted right of access" to the operational records of the other, and that the agency receiving information could not "...initiate action based on the information" without the consent of the agency that provided it. One exception to this rule was joint RCMP/CSIS operations, about which the 1984 MOU stipulated that, except for source protection and third-party rule information, all operational information acquired through the joint operation would be shared freely.²² This resulted in CSIS taking a strong initial position against any joint operations with the RCMP for fear of exposing its employees, methods and sources in a court procedure.²³ This position made the 1984 MOU section on unrestricted sharing of information in a joint operation context irrelevant in practice.

Finally, under the 1984 MOU, the Solicitor General was to be the final arbiter in case of disputes between the agencies.²⁴ The MOU provided that disagreements respecting the sharing or use of information that could not be resolved between the CSIS Director and the RCMP Commissioner were to be referred to the Solicitor General for resolution.²⁵

The 1984 MOU was meant to be the source of the cooperative principles upon which further established procedures would be based. These procedures were to be agreed upon by both CSIS and the RCMP.²⁶ As of August 1986, however, it was unclear what procedures had in fact been established to implement the MOU.²⁷ In fact, in preparatory notes written in August 1986 for the Deputy Solicitor General in advance of a meeting with RCMP Commissioner Simmonds and CSIS Director Finn, key issues relating to the transfer of information between CSIS and the RCMP were noted, including: "Is there a need for procedures to facilitate timely CSIS disengagement from investigation and the transfer of information to

¹⁸ Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5373.

¹⁹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

²⁰ Exhibit P-101 CAA0076, p. 3; Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1666.

²¹ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

²² Exhibit P-101 CAA0076, p. 4.

²³ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

²⁴ Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1659.

²⁵ Exhibit P-101 CAA0076, p. 4.

²⁶ Exhibit P-101 CAF0045, p. 3.

²⁷ See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

the RCMP to foreclose or limit the use of s. 36(1) and (2) of the *Canada Evidence Act*?²⁸ Wark testified that the Minister of the day, Solicitor General Robert Kaplan, correctly predicted that the MOU itself would be insufficient, and used the associated ministerial directive to underpin the agreement.²⁹

Despite the agreement and the directive, however, the inability to find a solution to limit CSIS's potential exposure in court, while still sharing sufficient information with police, continued to plague the Service, and no doubt affected its willingness to share information with the RCMP.

According to Wark, the MOU provided "doctrinal guidance" based on the findings and recommendations of the McDonald Commission, the legislative parameters of the *CSIS Act*, and "...essentially the political will of the day." Though he stated that there were no clear weaknesses and that there was nothing in the agreement that struck him as inherently deficient, Wark concluded that the 1984 MOU created a system that was "...overly rigid, that made sense in theory, but wasn't going to make sense at the end of the day."³⁰ Indeed, Jensen testified that, according to the RCMP, the MOU did not function "...the way it was intended," especially with respect to the timely sharing of information.³¹

The problem, according to Wark, was that the MOU reflected an understandable desire "...to rigidly separate the mandates of the RCMP and the Canadian Security Intelligence Service," based on the belief that intelligence and police work could easily be distinguished from one another. The MOU lacked sensitivity to the fact that the RCMP might need intelligence in order to properly fulfill its duties, or that CSIS might require a "...significant understanding of law enforcement" to communicate and share usefully with the RCMP.³²

The 1986 Memorandum of Understanding

In November 1986, CSIS and the RCMP signed an all-encompassing MOU covering 14 areas.³³ This MOU replaced the 17 MOU agreements signed in 1984.³⁴ Difficulties soon arose in implementing two areas of the new MOU: access by CSIS to the CPIC database,³⁵ and the transfer and sharing of information. Those areas were targeted for renegotiation.³⁶ In the meantime, CSIS and the RCMP relied on another MOU, one that had been specifically developed for "Project Colossal," for the principles to guide the transfer and sharing of information in relation to the Air India investigation.

²⁸ Exhibit P-101 CAF0045, p. 4.

²⁹ Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1468.

³⁰ Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1469-1470.

³¹ Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5373.

³² Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1469-1470.

³³ Exhibit P-101 CAA0688.

³⁴ Exhibit P-101 CAA0520, p. 1.

³⁵ For a review of the debates surrounding access to CPIC, see Section 3.5.1 (Pre-bombing), CSIS/RCMP Relations and Information-Sharing Policies.

³⁶ Exhibit P-101 CAA0580.

The “Project Colossal” Memorandum of Understanding

In October 1986, CSIS and the RCMP signed a modified MOU on the transfer and sharing of information.³⁷ The MOU only applied to certain RCMP investigations, collectively named “Project Colossal,” which related to the criminal investigation of Sikh terrorism in Canada, including the Air India/Narita investigation.³⁸

The agreement contained conditions, the first of which provided that the RCMP would provide to the Minister progress reports on the Task Force investigations. CSIS was to advise the Minister “on issues that arise” only on an “as required” basis, with a requirement to consult with the RCMP first if the issue also was of concern to the RCMP.³⁹

The MOU stated that, when targets were shared, the RCMP would attempt to obtain its own wiretap authorizations under the *Criminal Code* in order to protect CSIS sources and methodology and to minimize the risk of CSIS involvement in a court process. If, however, the RCMP required CSIS information for judicial purposes, the RCMP was required to consult with CSIS in advance. If the consultation resulted in an impasse “...the issue will be raised with the Director/Commissioner for resolution.”⁴⁰

To avoid duplication, consultation was required on the deployment of physical surveillance units. When CSIS was required to assist the RCMP, its units were to be deployed against “...targets least likely to require court appearances.” Similarly, avoidance of duplication was to be practiced when tasking foreign liaison officers. CSIS analysts were also to have a continuous presence in the RCMP Task Force.⁴¹ There was no reciprocal arrangement for an RCMP analyst to be placed anywhere within CSIS.

Most importantly, on the topic of sharing of information, the agencies agreed in this MOU that “[...]all information that impacts on, or relates to, the RCMP investigation of Project Colossal shall be fully disclosed to the Force by CSIS.” [Emphasis added] The agreement required the RCMP to reciprocate “in a like manner” for information relating to the CSIS mandate. Information so shared would not be further disseminated or reclassified without the consent of the agency providing the information. Consultation between the RCMP and CSIS was required in advance of any involvement by the RCMP of a third party (i.e. another agency, whether Canadian or foreign) in its National Security Offences Task Force.⁴²

The MOU specifically imposed an obligation on the RCMP Commissioner and the CSIS Director to “...establish procedures to implement these principles.” It also provided for the arrangement to be reviewed at the end of one year.⁴³

³⁷ Exhibit P-101 CAA0500.

³⁸ Exhibit P-101 CAA0457. See also Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation, under the heading “Project Colossal.”

³⁹ Exhibit P-101 CAA0500, p. 1.

⁴⁰ Exhibit P-101 CAA0500, p. 2.

⁴¹ Exhibit P-101 CAA0500, pp. 2-3.

⁴² Exhibit P-101 CAA0500, pp. 2-3.

⁴³ Exhibit P-101 CAA0500, p. 4.

When CSIS Director Finn signed the Project Colossal MOU, he noted that the process of creating project-specific MOUs "...may not be the most expeditious and practical approach" to enable the transfer and sharing of information. He felt that the existing Transfer and Sharing of Information MOU covered everything that was included in the new Project Colossal MOU and that, in the future, a preferable approach would be to provide for the possibility of annexing to existing MOUs particular provisions for "...joint CSIS/RCMP operations such as 'Project Colossal'".⁴⁴ The Solicitor General agreed in early 1987 that this was a preferable approach.⁴⁵

Liaison Officer Exchange Agreement

In addition to the Project Colossal MOU, RCMP and CSIS entered into an agreement relating to the exchange of liaison officers which was signed on December 10, 1986.⁴⁶ The liaison officer agreement was eventually replaced by clauses 25 and following of the 1989 MOU.⁴⁷

The 1989 Memorandum of Understanding

In April 1988, a notice of intention was forwarded to the Solicitor General by the RCMP Commissioner and the CSIS Director that an all-encompassing MOU would be ready for the Solicitor General's review and signature by June 1988.⁴⁸ Proposed changes submitted by the RCMP just prior to the June deadline resulted in renewed negotiations that delayed the MOU.⁴⁹ As a result, the MOU was not signed until August 22, 1989.⁵⁰

The 1989 MOU superceded the 1986 MOU.⁵¹ It consolidated the previous MOU and expanded on it in three key areas: exchange of information; provisions of assistance and operational support; and principles underlying cooperation. On November 1, 1989, amendments were made "...to remove sensitive operational information" from the ambit of the agreement, at CSIS's request, and to correct a reference made to the RCMP regulations in an introductory clause. The MOU was slightly revised in April 1990 to permit its public release to the House of Commons Special Committee on the Revision of the *CSIS Act* and the *Security Offences Act*.⁵² It then remained in place until 2006.⁵³

Wark testified that the 1989 MOU was not designed to make truly radical changes to the landscape of CSIS/RCMP relations. Instead it was meant to strengthen the mechanisms for cooperation, such as through the Liaison Officers Program.

44 Exhibit P-101 CAA0502, p. 2.

45 Exhibit P-101 CAC0044.

46 Exhibit P-101 CAA0968. See, generally, Section 4.2 (Post-bombing), The Liaison Officers Program.

47 Exhibit P-101 CAA0968, p. 2.

48 Exhibit P-101 CAA0688.

49 Exhibit P-101 CAA0688, CAA0714.

50 Exhibit P-101 CAA0968, p. 2.

51 Exhibit P-101 CAA0580.

52 Exhibit P-101 CAA0968, pp. 2-3.

53 Exhibit P-101 CAA0580.

However, in terms of understanding the relationship between CSIS and the RCMP, the MOU did not represent a significant difference from the earlier MOUs, but rather, a “fine-tuning.”⁵⁴

Ongoing Debates

Almost as soon as the 1989 MOU was signed, the RCMP and CSIS began debating what it meant. In particular, the nature and extent of CSIS’s obligations to disclose information to the RCMP remained a contentious issue. Notably, this time, the MOU did not use the word “shall” in its information-exchange provisions, using instead the phrase “agrees to,” which signified more flexibility for each agency to make information-sharing decisions.⁵⁵

A particular debate arose over the interpretation of Article 7 of the 1989 MOU, which provided for the possible use of CSIS intelligence as evidence in a criminal prosecution. The RCMP felt that information in the hands of CSIS constituted essential evidence in an attempted murder case, and heated discussions between the agencies about the use of the CSIS information followed. A letter dated April 30 1990, from Ian MacEwan, the CSIS DG CT to C/Supt. Pat Cummins, who was in charge of national security investigations at RCMP HQ, highlights the tensions between the two agencies on the use of intelligence as evidence:

Your interpretation of article 7 of the CSIS/RCMP MOU suggests that the use of Service intelligence as evidence is the norm. Contrary to your inclination, I am of the view that your interpretation does not take into account the discretionary powers awarded to the Service by section 19(2)(a) of the *CSIS Act*. Your reference to the Deputy Solicitor General’s briefing before the 5 Year Review Committee fails to point out that he called for “potential” use of Service information and not a right to access it.⁵⁶

In reply, Cummins stated, “For the record, I have never suggested nor ever advanced the interpretation of article 7 of the MOU in the manner you suggest.” Although Cummins denied that he felt that the use of CSIS intelligence as evidence was the “norm,” he noted that, despite CSIS’s particular mandate and the fact that it is not “...in the business of collecting evidence,” the fact is “...CSIS sometimes does end up with evidence.” The matter was referred to the Senior Liaison Committee for resolution.⁵⁷

Nearly a decade later, no new changes had been made to the 1990 MOU, and the conflicts encountered by the agencies in the sharing of information continued.

54 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1471-1472.

55 See Exhibit P-101 CAA0758, pp. 8-9.

56 Exhibit P-101 CAA0765, p. 1.

57 Exhibit P-101 CAA0771, p. 1. The Liaison Committee was established in 1986 to resolve issues arising in the counterterrorism liaison arrangements between CSIS and the RCMP. See, generally, Section 4.2 (Post-bombing), The Liaison Officers Program.

In 1999, the National Security Offences Review report was released by the RCMP. This internal examination of the RCMP Security Offences Program was conducted in consultation with CSIS. One of the key issues reviewed was the cooperation with CSIS and, in particular, the MOU. The report noted that problems in the use of security intelligence information threatened to undermine the RCMP/CSIS relationship.⁵⁸

Senior management of the RCMP attempted to stimulate greater partnership opportunities by creating a separate National Security Investigation Section (NSIS) and a centralized Criminal Intelligence Directorate (CID), but aspects of this attempt actually increased discord between the two agencies. The case law decision of *Regina vs. Stinchcombe* further restricts both agencies' ability to properly share in an open and public environment.⁵⁹

The report went on to state that both agencies could make better use of the mechanisms for conflict resolution in the MOU and that problems could have been avoided or greatly reduced through the "...appropriate application of the processes outlined in the MOU." In particular, the review found "little evidence" that section 29(c) of the MOU, which authorized the HQ liaison officer from each agency to address problems with the RCMP Deputy Commissioner or the CSIS Deputy Director, had ever been used. Section 30 provided for the resolution of conflicts at the Senior Liaison Committee. However, despite the use of that committee to successfully resolve problems in the past, the Senior Liaison Committee was disbanded in 1993 "...in favour of an informal consultation process." In addition, although section 30(e) of the MOU required the Senior Liaison Committee to file an annual report to the Commissioner of the RCMP and the Director of CSIS, this requirement had not been followed since 1991.⁶⁰

The report reviewed the concerns regarding the MOU documented in several memos written by RCMP divisions between 1990 and 1999. According to the review, the memos "...considered the MOU one-sided in favour of CSIS" and recommended four amendments to address the needs of the RCMP, including: the ability to form a joint management team in investigations where the interests of both agencies coincide; mechanisms to designate a lead agency in certain investigations of common interest; problem-solving mechanisms to resolve any issues that arise; and an "MOU escape clause" allowing either agency to refuse to work within the MOU in a particular case. The review noted however that "...all four of these proposed amendments have existed within the present MOU since its revision in 1990." The report stated that few members of either the RCMP or CSIS were aware of the MOU provisions and that, as a result, the MOU's problem-solving and operational guidelines had "...never been fully used, with

⁵⁸ Exhibit P-101 CAA0970, pp. 2, 22.

⁵⁹ Exhibit P-101 CAA0970, p. 7.

⁶⁰ Exhibit P-101 CAA0970, pp. 7, 25.

the exception of the Senior Liaison Committee meetings held prior to 1993.” The report concluded, therefore, that only minor changes were required to make the MOU contemporary.⁶¹ Nevertheless, it would be years before any changes at all were made.⁶²

4.1 Information Sharing and Cooperation in the Air India Investigation

Introduction

In 1984, when CSIS was created, the emphasis was on maintaining a separation between CSIS’s security intelligence function and the RCMP’s criminal investigation function. While this separation made sense in relation to the RCMP Security Service’s historical focus on Cold War counter-intelligence issues, it was less relevant in dealing with counterterrorism investigations.

Information sharing between CSIS and the RCMP became an issue early in the Air India investigation, as each agency struggled to develop an understanding of the role and obligations of the other agency and of its own responsibilities. The tangled policy thicket that emerged at CSIS, starting right after the Air India bombing, was the result of CSIS’s struggles to differentiate its civilian intelligence mandate from how things were done in the old RCMP Security Service. Prior to the creation of CSIS, if there were unresolved issues in relation to what information could be transferred from the intelligence side of the RCMP to the police side of the RCMP, the problem would be solved by the RCMP Commissioner. Had the bombing occurred prior to the separation of the agencies, the Commissioner would have “...cut down on the bureaucracy,” made the decision and – in the words of CSIS DDG CT Chris Scowen – “...that would be that.” CSIS felt that, by enacting the *CSIS Act*, Parliament had signalled that that was not to be the system for the future. The transition to CSIS created many issues, as the Service’s policy perspective was continually evolving. CSIS and the RCMP were often at odds over what to provide to whom, and on what basis. Regrettably, this struggle occurred at a crucial time for the Air India investigation.⁶³

As CSIS continued to pursue its intelligence investigation into the ongoing activities of Sikh extremists after the Air India bombing, the RCMP pressed on with its law enforcement investigation to uncover the perpetrators of the Air India and Narita bombings. Due to the inevitable overlap of the agencies’ investigations, a two-way exchange of information was critical. Coordination was crucial to avoid conflicts in investigational strategies and to ensure that the investigations did not overlap in a way that could lead to unnecessary exposure of CSIS information in court proceedings or that could derail the RCMP’s case on account of CSIS information that could not be disclosed.

61 Exhibit P-101 CAA0970, pp. 7, 25.

62 See Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.

63 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6137-6139.

CSIS often obtained information of interest to the RCMP's criminal investigation.⁶⁴ Yet, in an apparent attempt to civilianize, CSIS initially took overly restrictive positions about the access it would grant to some of its materials and the use that could be made of what the RCMP was allowed to see. The RCMP, for its part, felt entitled to use any information that could further its investigation and was not always sensitive to CSIS's legitimate concern about protecting its operations by avoiding public disclosure of information about its sources, methods and personnel. Tensions between the agencies escalated due to conflicts in information sharing and source sharing, particularly human sources. This had a negative impact on the investigations of both agencies. In some cases, this was an inevitable consequence of the difficulties associated with the use of intelligence in criminal prosecutions. In many other cases, however, the tensions that the agencies allowed to grow created situations that could unnecessarily compromise both their investigations.

Early Days of the Investigation

At the time of the bombing, CSIS had already collected a mass of information about the Sikh extremist movement in Canada, as well as about several potential conspirators such as Parmar, Bagri and Gill. Meanwhile, the RCMP had little in terms of its own independent information on Sikh extremists with which to launch its investigation into this terrorist act of mass murder.

CSIS investigator Neil Eshleman testified that "...CSIS had an advantage over ... another organization such as the RCMP who were starting from scratch."⁶⁵ Recognizing, at least to some extent, the limits of its own knowledge base, the RCMP E Division received briefings about the major players in the Sikh extremism movement from members of the dedicated community policing unit of the Vancouver Police Department.⁶⁶

According to Eshleman, there was a "...close, informal, constant ongoing discussion" between the CSIS Task Force and the RCMP in BC in the days following the bombing. CSIS was supplying information to individuals within the RCMP "... even before ... the RCMP created their own task force to investigate Air India."⁶⁷

Sgt. Robert Wall joined the Air India Task Force in Vancouver on June 25, 1985, as the NCO in charge of operations for the Task Force, a position that made him second-in-command. He testified that, initially, few members the Task Force had any familiarity with Sikh extremism. For that reason, particularly during the early days of the investigation, the Task Force relied heavily on CSIS information for background and details concerning Sikh extremism.⁶⁸

After the bombing, the need for increased liaison was recognized by both the RCMP and CSIS. *Ad hoc* liaison arrangements were implemented, but these often

⁶⁴ See Section 3.0 (Post-bombing), The CSIS Investigation.

⁶⁵ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

⁶⁶ Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1986, 2037; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4143-4144, 4157-4159.

⁶⁷ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9376-9377.

⁶⁸ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9657-9658, 9661-9662.

resulted in inconsistent information-sharing practices. On June 27, 1985, LOs from the RCMP and CSIS were assigned to facilitate the exchange of information between CSIS BC Region and the newly formed RCMP E Division Task Force.⁶⁹ This arrangement was intended to ensure a timely two-way flow of information passed through the LOs who were both supposed to be fully informed about what was going back and forth.⁷⁰

Supt. Lyman Henschel of the E Division Federal Operations Branch testified at the hearings that his understanding was that the Air India liaison program was intended to allow the RCMP Task Force investigators to take an active role in reviewing CSIS information with the full knowledge of the intricacies of the investigation. He felt it was understood that the RCMP investigators were best qualified to determine the ultimate relevancy to the criminal investigation of the often subtle and obscure information CSIS would be gathering.⁷¹ This understanding differed from that of CSIS personnel, who did not provide the RCMP full access to CSIS information, but rather insisted on the Service being the one to select what it determined was "...all information ... that had any even remote connection to the [AITF] investigation to be passed to the RCMP."⁷²

The intended role of the CSIS LO, a position filled by Jim Francis, was to gain familiarity with both the avenues of investigation being pursued by the RCMP Task Force and the mass of information being uncovered by CSIS, in order to be equipped to make an intelligent first judgment of the relevance of CSIS information to the RCMP investigation into the Air India and Narita bombings.⁷³ Francis would deliver relevant CSIS materials to the RCMP LO, Sgt. Michael ("Mike") Roth, on a daily basis. Francis would highlight any information of possible interest to the RCMP and leave the reports with Roth for review.⁷⁴

Roth was responsible for identifying specific information of interest to the RCMP Task Force in the information passed by Francis, after which he was to request CSIS authorization for formal disclosure to the RCMP of this select information. CSIS HQ would consider Roth's requests, in consultation with CSIS legal counsel. The RCMP LO was intended to be the conduit for all CSIS requests for RCMP information.

Immediately after the bombing, CSIS began to pass its Situational Reports (sitreps) regarding relevant Sikh extremist investigations to the RCMP Task Force, a practice that continued from June 26 to November 4, 1985.⁷⁵ The sitreps were the daily intelligence reports submitted by the BC Region to CSIS HQ, as well as some reports from other CSIS regions "...on an irregular basis."⁷⁶ The sitreps essentially contained daily summaries of the regional investigations. They were

⁶⁹ Exhibit P-101 CAA0802, p. 1, CAF0193.

⁷⁰ Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5607-5608.

⁷¹ Testimony of Lyman Henschel, vol. 46, September 17, 2007, p. 5538.

⁷² Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6135. AITF is the abbreviation for the Air India Task Force.

⁷³ Testimony of Lyman Henschel, vol. 46, September 17, 2007, p. 5532.

⁷⁴ Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5609-5610.

⁷⁵ Exhibit P-101 CAA0379(i), CAA0802, p. 1, CAB0447(i).

⁷⁶ Exhibit P-101 CAA0379(i).

prepared on the basis of the CSIS investigators' review of intercept products, as well as on the basis of the reports produced following community interviews. The investigators extracted the information they felt to be relevant from the original records of intercepts, surveillance reports, or interview notes and provided their analysis and comments. The context in which the information was obtained was not always described exhaustively and the source of the information was not always identified.

Francis brought the sitreps to Roth each day. Roth would informally brief the rest of the AITF on the pertinent details of the sitreps at daily meetings. The reports would then be processed through the Task Force's readers or analysts section. If there was something of interest, the RCMP would generate a "tip"⁷⁷ in its filing system for further investigation. Both Roth and the RCMP records analysis section kept copies of the sitreps.⁷⁸

CSIS also provided copies of its surveillance reports to the RCMP Task Force.⁷⁹ Surveillance targets were shared and coordinated daily between CSIS and the RCMP in BC and "...all information produced by either organization" as a result of the physical surveillance was shared.⁸⁰

In the days immediately following the bombing, CSIS re-examined its own surveillance information about the Duncan Blast incident on June 4th, when CSIS followed Parmar, Reyat and an associate and heard a loud noise in the woods. After the bombing, CSIS began to understand that the sound heard by its surveillants might have been an explosion – and not a gunshot, as was initially mistakenly believed. This led to speculation that Parmar, Reyat, and their associate might in fact have been conducting tests in advance of the bombing. CSIS "reminded" the RCMP of the Duncan Blast information it had provided prior to the bombing, and suggested that the RCMP visit the Duncan Blast site with one of the CSIS surveillants. The RCMP Explosives Detection Unit (EDU) conducted searches on June 28th, July 2nd and July 4th and uncovered some items that tended to indicate that a blasting cap had been handled at the location. Though the evidentiary value of the items would prove limited in the end, the RCMP searches did serve to orient the investigation towards Reyat early on.⁸¹

In mid-July 1985, RCMP O Division requested a briefing from CSIS on the organizational structure of the BK and the ISYF "...concentrating on the Sikh members of these organizations who may be described as being the most dedicated extremists."⁸² In response, Toronto Region personnel briefed an RCMP O Division analyst on July 17, 1985. In British Columbia, on the other

77 According to the filing system used by the RCMP, the "tip system," every investigative lead was made the subject of a "tip" or file with its own folder or number. The documentation respecting all initiatives related to the investigation of that particular lead would then be housed in that tip folder: See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force.

78 Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5608-5611.

79 Exhibit P-101 CAA0379(i), pp. 1-5.

80 Exhibit P-101 CAA0299(i).

81 See Section 1.4 (Pre-bombing), Duncan Blast.

82 Exhibit P-101 CAB0440.

hand, it was only on August 29th that a similar briefing was requested and that Ray Kobzey consequently briefed the RCMP on Sikh extremism.⁸³ The length of time it took for the RCMP to take the obvious step of requesting a briefing from an agency with more knowledge of the landscape and of the issues might have been the result of the rapid deterioration of the CSIS/RCMP relationship, particularly in BC, during the period following the bombing. It is clear that by the end of the summer of 1985, relations had soured significantly.

Emerging Issues in BC

Wall testified that he had, early in the investigation, formed the opinion that CSIS had been intercepting Parmar's communications since before the bombing. This was an inference drawn from the fact that CSIS had been conducting physical surveillance on Parmar during this period.⁸⁴ Similarly, the Crown prosecutor assigned to assist the Task Force, James Jardine, testified that he had concluded that "...if there were watchers there would be wires," and that he had mentioned this possibility to the Task Force members as early as July 1st.⁸⁵

In a briefing written for the Honourable Bob Rae during his review of the Air India investigation, CSIS took the position that it had been very prompt in informing the RCMP about its intercept activities concerning Parmar:

The Service informed the RCMP the day after the crash that we had intercepted Parmar's telephone and later provided information relating to some of those interceptions in support of the RCMP obtaining [*Criminal Code of Canada*] warrants.⁸⁶

Deputy Commissioner Gary Bass, who took over the Air India investigation in 1995, testified that he saw nothing in his review of the investigation to indicate that CSIS had notified the RCMP of its telephone intercepts of Parmar the day after the crash.⁸⁷ The Commission also saw no evidence of any notification to the RCMP about the CSIS Parmar intercept on the day after the bombing.

What can be ascertained from the evidence is that the RCMP was aware that CSIS was intercepting the communications of Parmar early in July 1985. The RCMP had obtained a CSIS situation report, dated June 27, 1985,⁸⁸ which referred to a number of intercepted conversations between Parmar and Surjan Singh Gill, Parmar and Hardial Singh Johal, and Parmar and his brother.⁸⁹ The report did not directly mention the existence of an electronic intercept of Parmar's communications. It simply referred to the information as having originated

⁸³ Exhibit P-101 CAA0313, p. 2, CAD0115, p. 8.

⁸⁴ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9673-9674.

⁸⁵ See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

⁸⁶ Exhibit P-101 CAA1086, p. 7.

⁸⁷ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11225.

⁸⁸ Exhibit P-101 CAB0360.

⁸⁹ Exhibit P-101 CAB0360, pp. 6-7.

from “a reliable source.”⁹⁰ However, the report described Parmar’s telephone conversations in detail, including verbatim quotes of the language used. It would have left little doubt in the mind of an experienced RCMP investigator that the information must have originated from an intercept. Indeed, Cpl. Robert Solvason, who would join the Task Force in September,⁹¹ immediately noted that the information in the CSIS situation reports appeared to have come from technical intercepts, even though the source was not identified.⁹²

It is unknown exactly when the RCMP received the June 27th sitrep document.⁹³ According to a subsequent report, Roth began his review of the CSIS situation reports on July 5, 1985.⁹⁴ He testified that, to the best of his recollection, he received the situation reports in volumes, which were provided in chronological order, beginning with the reports for June 26th, 27th, and 28th.⁹⁵ That would make July 5th the earliest date that the RCMP could have seen the June 27th sitrep. From that date onward, though it may not have been officially confirmed by CSIS, the RCMP Task Force would certainly have had reason to believe, with a high degree of certitude, that CSIS had in fact been intercepting Parmar’s communications during the pre-bombing and immediate post-bombing period. Wall’s notes contain a reference to a July 12th meeting between the RCMP and CSIS where Francis directly mentioned the Parmar intercept.⁹⁶ On July 21, 1985, the Task Force explicitly reported that it was aware that CSIS was intercepting communications of at least one target, and that several other intercepts would be put in place.⁹⁷

On July 11, 1985, Roth asked the CSIS BC Region what intercept warrants they had in effect. He renewed that request on July 23rd and asked for information about the intercepts. He was told that the request would be addressed by CSIS HQ.⁹⁸ Roth testified that he was never given a direct answer about what warrants CSIS had in place. However, he indicated that he became convinced on July 24th that CSIS had an intercept on Parmar, after Insp. John Hoadley, one of the officers in charge of managing the RCMP Task Force, informed him that arrangements had been made for him to go to CSIS to read the transcriber notes from their intercepts.⁹⁹

In late July 1985, the RCMP E Division Task Force advised its HQ that “Liaison with CSIS continues and we are assured that we will be apprised of any information they surface having a bearing on this investigation.”¹⁰⁰ Chris Scowen, who became the Deputy Director of Counter Terrorism at CSIS shortly after the bombing,

⁹⁰ Exhibit P-101 CAB0360, p. 6.

⁹¹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11549.

⁹² Exhibit P-101 CAA0797(i), p. 1; Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11552-11553.

⁹³ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11231.

⁹⁴ Exhibit P-101 CAA0379(i), p. 9.

⁹⁵ Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5608-5609.

⁹⁶ Exhibit P-101 CAA0379(i), p. 9.

⁹⁷ Exhibit P-101 CAA0282(i), p. 1; Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11230-11231.

⁹⁸ Exhibit P-101 CAA0802.

⁹⁹ Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5619-5620; Exhibit P-101 CAA0802, p. 2.

¹⁰⁰ Exhibit P-101 CAA0294, p. 1.

maintained in his testimony that Roth's access to CSIS information provided "...a very clear statement of the level of cooperation that the Service provided the RCMP very early in their investigation." He stated that CSIS supplied the RCMP with "...many dozen surveillance reports," pages of observation post reports, and "...ten volumes of daily Situation Reports." He noted that the number of investigative leads passed was enormous. According to him, the RCMP Air India Task Force was getting "...virtually everything we knew." He stated that "...it was a litany of activity and cooperation."¹⁰¹

Roth did not share Scowen's views on the matter, mostly because of his experience in connection with the access, or lack thereof, he was given, as RCMP LO, to the product of the Parmar intercepts. The process of obtaining access to the CSIS materials proved to be a lengthy one, requiring repeated discussions between the agencies, as well as ongoing policy debates at CSIS HQ concerning the terms and the extent of that access. The end result was often a "revolving door" of access that was marked by intermittent access punctuated by long periods without it. Scowen explained that, for CSIS, the intermittent access was all based on the evolving policy about access to sensitive material and on CSIS's paramount concern for protecting the identities of sources and targets. He stressed that when access to the intercept product was denied, the denial did not extend to intelligence reports.¹⁰² Nevertheless, the process strained the early relationship between the Service and the RCMP significantly.

After Roth started inquiring about CSIS intercepts, the E Division Task Force transmitted a request to CSIS BC Region Director General Randil Claxton in late July for direct access to CSIS intercept product. When Claxton transmitted the request to CSIS HQ, HQ initially granted the request.¹⁰³ On July 25, 1985, Roth signed a declaration that indoctrinated him into CSIS so that he could receive CSIS information. Following this step, he was given access to the Parmar intercept "product," meaning the CSIS transcriber and translator notes and logs that had been prepared on the basis of the recorded conversations. There was no discussion at this point about direct access to the recordings themselves.

Roth subsequently prepared a document chronicling the shifting conditions for his access to the intercept product.¹⁰⁴ His July 25th entry reads "started debriefing notes," which meant he had started looking through the Parmar intercept product on that day. He went to CSIS to review the material on two other occasions in July. On August 6th, however, his note states: "Informed by CSIS that I no longer had access to their material and to obtain data from Bob Smith."¹⁰⁵ Roth immediately went to try to speak to Claxton about the change of access, but he was unable to meet with him until the next day, August 7th. Claxton informed Roth that, from then on, he would only receive situation reports, some of which would be based on the Parmar intercepts. Claxton further informed

¹⁰¹ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6146, 6148.

¹⁰² Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6148, 6152.

¹⁰³ Exhibit P-101 CAA0726, p. 4.

¹⁰⁴ Exhibit P-101 CAA0379(i).

¹⁰⁵ Exhibit P-101 CAA0379(i), p. 6; Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5621.

Roth that if CSIS determined that there was urgency to the information, Roth would be informed right away so that he could determine the evidentiary value of the information.¹⁰⁶

In his testimony before the Inquiry, Roth explained that there was a difference in being granted access to the transcribers' notes and simply seeing the intelligence reports derived from them. The reports were only a summary of the information in the original notes and were "...cleansed for protection of material."¹⁰⁷

Roth testified that he was never personally informed as to why his access was refused.¹⁰⁸ Scowen testified that he believed that BC Region had given Roth full access to the intercept product, but that when either BC Region senior management or CSIS HQ became aware of the extent of the access, it was deemed improper and further access was denied.¹⁰⁹

On September 3, 1985, Solvason joined the Task Force.¹¹⁰ Solvason began to review the information that the Task Force had collected, including the CSIS situation reports provided to the RCMP Liaison Officer, and he soon pointed out that access to more CSIS information and materials would be necessary to go forward with the investigation.¹¹¹

Hoadley solicited the help of C/Supt. Norman Belanger, the OIC of the RCMP HQ Task Force, to negotiate new terms for access to the Parmar intercept logs with CSIS.¹¹² Hoadley advised Solvason on September 6th that CSIS had authorized the release, and that Solvason would likely be designated as a person to liaise with CSIS as a result. On September 9, 1985, Roth was once again given access to the intercept product. On September 10th, Solvason was sent to CSIS along with Roth. He signed an "official secrets form" and began to review the Parmar intercept logs with Roth.¹¹³ After that date, the two officers went to CSIS to review the material almost every day until they were again denied access to the logs on September 18th.¹¹⁴

The RCMP would later take the position that "meaningful access" to the Parmar intercept notes was obtained only on September 10th.¹¹⁵ An RCMP report prepared in early September indicated that the Task Force believed that CSIS had been monitoring Parmar since March 1985, but that "...thus far, no substantive information acquired from the surveillance activities has been passed on to the E Division Task Force by CSIS Pacific Region," with the exception of the CSIS surveillance report on the Duncan Blast.¹¹⁶

¹⁰⁶ Exhibit P-101 CAA0802, p. 3.

¹⁰⁷ Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5622.

¹⁰⁸ Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5612-5613.

¹⁰⁹ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6146.

¹¹⁰ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11549.

¹¹¹ Exhibit P-101 CAA0797(i), p. 1; Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11552-11553.

¹¹² Exhibit P-101 CAB0551.

¹¹³ Exhibit P-101 CAA0797(i), p. 2.

¹¹⁴ Exhibit P-101 CAA0802, p. 4.

¹¹⁵ Exhibit P-101 CAA0335, pp. 22-23.

¹¹⁶ Exhibit P-101 CAA0313, p. 5.

Roth testified that the delay in obtaining access to the Parmar intercept logs impeded the progress and speed of the investigation.¹¹⁷ The nature of the access provided was also not always considered satisfactory for the RCMP. Both Roth and Solvason signed official secrets forms that indoctrinated them into CSIS prior to receiving access to the Parmar logs. In effect, they signed agreements providing that they would not disclose what they learned without CSIS authorization.¹¹⁸ Roth could not recall ever having been briefed on what he could do with the CSIS information and testified that no one advised him about restrictions on his ability to pass information to the RCMP.¹¹⁹ Solvason, on the other hand, documented that on September 10, 1985, Joe Wickie of CSIS advised him that he and Roth were not allowed to make copies of the Parmar intercept logs but could write notes, provided they were written "...in such a way as to disguise or shield source of information."¹²⁰ As a result, Solvason reported that all information recorded was referenced as originating from an anonymous source, code E2255.¹²¹

To speed up the process, however, Roth and Solvason read significant verbatim portions of the translator's notes into a tape recorder, and these recordings were later transcribed and typed into reports for use by the RCMP.¹²² Roth testified that when he read information from the Parmar logs into the tape recorder, he read in verbatim extracts, including dates and names.¹²³ The end result was that the RCMP reports often ended up being identical to the original CSIS logs to which the RCMP was denied copies.¹²⁴ Under the circumstances, it would have saved time to have allowed the RCMP to simply make copies rather than verbally recording the material, transcribing it and then writing up a report. It is unknown whether CSIS knew Roth and Solvason were making verbatim recordings of what they read.

HQ-Level Debates between CSIS and the RCMP

While the tensions were rising in British Columbia, relations between the agencies were also difficult in Ottawa.

In late July 1985, a dispute erupted between Archie Barr, the CSIS Deputy Director of Requirements (DDR), and C/Supt. Belanger. While the two agencies were still sharing communications facilities at RCMP HQ, a message sent to CSIS HQ, which dealt with information that still remains classified, was inadvertently picked up by the RCMP. Belanger, making certain incorrect assumptions, wrote to Barr suggesting that CSIS was involved in something that was properly within

117 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5623.

118 Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11554.

119 Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5633-5634.

120 Exhibit P-101 CAA0335, pp. 22-23, CAA0797(i) p. 2.

121 Exhibit P-101 CAA0797(i), p. 4; Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11554.

122 Exhibit P-101 CAA0797(i), pp. 2-3, CAA0802, p. 4.

123 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5625.

124 Exhibit P-101 CAA0802; Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5624. For an example of identical RCMP and CSIS notes, see Exhibit P-101 CAD0013, pp. 42-43 (original CSIS notes) and Exhibit P-101 CAA0322 (RCMP transcription).

the RCMP's mandate.¹²⁵ Scowen testified that the memo sent by Belanger "... was setting the tone for a relationship that Mr. Barr considered was getting off track."¹²⁶ Barr used strong language in his response, accusing the RCMP of improperly accessing classified CSIS documents,¹²⁷ and stating that Belanger seemed unaware of CSIS's role. He also dealt with the pressing issue of information sharing between the RCMP and CSIS in relation to Air India:

We are very conscious of the fact that while carrying out this mandate we may generate information or intelligence which may be of interest to police forces, or may relate to a specific criminal offence. The Act provides authority for us to pass such information to the police of jurisdiction. With specific reference to the recent incidents involving Air India and Canadian Pacific Airlines, our policy has been in keeping with the spirit and intent of the *CSIS Act*. We have offered full cooperation to the RCMP and have kept the Force apprised of relevant information which we have collected.... the nature and tone of your message does little to encourage a continued spirit of cooperation.¹²⁸ [Emphasis in original]

Scowen explained that Barr's reaction was the result of what CSIS viewed as the incessant and voracious demand for information and intelligence from the RCMP and from Government in the immediate aftermath of the bombing, and the exceptional pressures faced at the time by both CSIS and the RCMP.¹²⁹ The exchange illustrates the fears and the animosity that sometimes existed between the management of the two agencies. Along with other incidents, it paints a picture of mistrust between the two agencies and a struggle to define mandates and their limits.

Another debate occurred on July 28, 1985, when then RCMP Deputy Commissioner of Operations, Henry Jensen, and James ("Jim") Warren, then CSIS DG Foreign Liaison, returning on the same flight from London, stopped for a beer on arrival in Montreal. In a memo written afterwards, Warren stated that Jensen pointed out that CSIS was "...unnecessarily intruding into a police investigation."¹³⁰ In testimony, Jensen said that there were serious problems with cooperation, but denied thinking that CSIS was attempting to do police work.¹³¹ He explained that the problems brought to his attention were with regard to the RCMP Task Force access to necessary CSIS information and intelligence.

Warren's memo said that Jensen predicted that the RCMP would soon develop a completely parallel investigative capacity – which Jensen denied in testimony,

125 Exhibit P-101 CAA0287.

126 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6133-6135.

127 Exhibit P-101 CAA0289, p. 1.

128 Exhibit P-101 CAA0289, pp. 1-2.

129 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6133-6135.

130 Exhibit P-101 CAA0293.

131 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5426.

saying that what he actually said was that the RCMP would have to develop its "...intelligence capacity to deal with crime."¹³² Regardless of what Jensen said precisely to Warren, CSIS believed that the RCMP was trying to circumvent and undermine the new agency, while the RCMP believed that CSIS was withholding information, sentiments that could only damage the relationship between the two organizations.

CSIS Information Used in Judicial Proceedings: The September 19th Affidavit and Subsequent Tensions

In the months following the bombing, CSIS information was used in RCMP affidavits in support of warrant applications. This use raised the possibility that these warrants would be challenged in court at a later date,¹³³ and it caused significant tensions between the agencies.

On August 22, 1985, the RCMP had presented an affidavit in support of an application for judicial authorization to intercept the communications of Inderjit Singh Reyat and Lal Singh.¹³⁴ At that time, the Task Force did not believe that there was enough information available for the RCMP to obtain a judicial authorization to intercept Parmar's communications.¹³⁵ The August affidavit was based mostly on RCMP information, but did make reference to some CSIS information, including the Duncan Blast surveillance, identifying one of the CSIS physical surveillance unit (PSU) members, Larry Lowe, by name.¹³⁶ The affidavit made no reference to the CSIS Parmar intercept.

When Solvason joined the Task Force in early September, he was put to work analyzing the information that the Task Force already possessed to determine whether another intercept authorization could be obtained, as he had expertise in wiretaps.¹³⁷ Solvason explained in his testimony before the Inquiry that at this point in the investigation, it was important to obtain judicial authorizations to intercept the communications of various suspects, especially given the limited knowledge of the Task Force. Solvason examined the information gathered, and he concluded that the Task Force should seek a new authorization to intercept communications with respect to an expanded set of targets. He also understood immediately that there was no question that "...if there was going to be any application, we would have to get authority to use the CSIS information for that because that was by far the majority of what meaningful information we had."¹³⁸

Solvason advised his immediate supervisor, Sgt. Wayne Douglas, that a "...considerable amount of information and cooperation would have to be

132 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5426-5427.

133 Exhibit P-101 CAA0480, p. 1.

134 Exhibit P-101 CAA0310.

135 Exhibit P-101 CAA0282(i), p. 5.

136 Exhibit P-101 CAA0310, p. 5.

137 Exhibit P-101 CAA0797(i), p. 1.

138 Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11551-11553.

forthcoming from CSIS” if the RCMP were to make any attempt at a wiretap application.¹³⁹ He also advised Hoadley and Wall that in order for the RCMP to obtain an authorization to intercept private communications, CSIS information would be necessary and “...authority for use of same in our application” would have to be obtained. In his notes, Solvason wrote that he was advised by Hoadley on September 6th that “...authority had been granted for release of CSIS information,” and that Solvason would likely be designated as a person to liaise with CSIS as a result.¹⁴⁰ It is unclear whether this referred to the use of CSIS information in the RCMP intercept application or whether it simply referred to the fact that access to the Parmar intercept logs would resume.

During the next days, Solvason began to work on drafting an affidavit in support of an application for authorization to intercept private communications under Part IV.I (now Part VI) of the *Criminal Code of Canada*, using some of the information that he and Roth had gleaned from the CSIS intercept logs.¹⁴¹ Cst. Howard D. Walden, another member of the Task Force, swore the affidavit on September 19, 1985. Reyat and Lal Singh were again listed as targets, but this time the list also included Talwinder Singh Parmar, Surjan Singh Gill, Hardial Singh Johal, Gurchuran Singh Reyat, and Amarjit Pawa. Additionally, since Parmar and Reyat were evidently alert to the risk of discussing sensitive matters over the telephone and preferred to speak face to face, the application sought authorization to enter their residences in order to install and operate listening devices to allow for interception of their conversations within the home.¹⁴²

The September 19th affidavit made extensive use of CSIS information. Like the August 22nd application, the document identified covert CSIS personnel, such as Larry Lowe, by name. It also listed details that the RCMP obtained from CSIS intercept logs. The affidavit revealed that CSIS was conducting an investigation into Parmar’s activities, as well as those of Johal, Gill, and Reyat, and that CSIS had been intercepting Parmar’s communications since March 1985, information that had been provided to Solvason by Joe Wickie of CSIS. The affidavit discussed the purpose of the CSIS investigation, referring to information provided by Claxton, the CSIS BC Region Director General, to RCMP Supt. Les Holmes, which indicated that CSIS was not pursuing an investigation of either the bombing of Air India Flight 182 or the bombing at Narita airport, but was focused on matters of national security and on information relevant to the protection of Indian Prime Minister Rajiv Gandhi and other internationally protected persons.¹⁴³

The September 19th affidavit included a substantial amount of information obtained from the CSIS intercept logs, summarizing over 20 different conversations. For example, the affidavit referred to an April 8, 1985, conversation between Parmar and an individual named Jung Singh, in which the RCMP stated

¹³⁹ Testimony of Robert Solvason, vol. 89, December 5, 2007, p. 11553.

¹⁴⁰ Exhibit P-101 CAA0797(i), pp. 1-2; Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11553-11555.

¹⁴¹ Exhibit P-101 CAA0797(i); Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11554-11555.

¹⁴² Exhibit P-101 CAA0324(i), pp. 23-26.

¹⁴³ Exhibit P-101 CAA0324(i), pp. 5, 11-12, 22.

that the two discussed the possibility of assassinating Indian Prime Minister Rajiv Gandhi. Details of the other CSIS intercepts relied upon also included a telephone conversation on June 22, 1985, in which Parmar asked Johal, "Did he mail those letters?" to which Johal replied, "Yes, he did."¹⁴⁴

The affidavit provided details about the number of Parmar intercept tapes believed to be in CSIS's possession, noting that CSIS had "...only translated a portion of those private communications." The affidavit stated that Solvason had advised that the Parmar intercept materials "...have been released subject to the condition that they are provided for intelligence purposes only and for the purposes of an application to obtain an authorization [to intercept private communications], and are not to be used as evidence at a trial." The affidavit also set out a request by Solvason to CSIS to obtain all material acquired by CSIS during this investigation and stated that CSIS's response to Solvason was that the RCMP Task Force had "...received all relevant material" with the exception of the material pertaining to the interception of Parmar's communications.¹⁴⁵

The application also made reference to the access the RCMP had received to the CSIS materials. The frustration of the Task Force members was apparent on the face of the affidavit. For example, the application stated that the initial request for the CSIS materials (obviously a reference to the Parmar intercept logs) had been made in July 1985, but that Solvason had only been cleared to receive the materials on September 10th. The affidavit also stated that CSIS "...refuses, on policy grounds, to release copies of the taped private communications" and has reserved to itself "...the decision of what is relevant and what will be released to the Air India Task Force investigation." In another paragraph, the affidavit added that Claxton had informed Holmes, the RCMP Task Force OIC, that CSIS would not disclose the names or telephone numbers of any individuals it had under surveillance for national security reasons, but would provide all relevant material to the Task Force.¹⁴⁶

At the Inquiry hearings, Crown counsel Jardine, who presented the affidavit to obtain the wiretap authorization to the Justice of the Peace, testified that, from a legal standpoint, it was necessary to set out the sources of the information in detail in the September 19th affidavit so that the judicial officer reviewing the application could come to his own conclusions about the evidence. He explained that the law required the Crown to make "...full, fair, and frank disclosure before the judicial officer at the time of the application for and granting of an authorization." This was important not only to ensure that the authorization was obtained, but also to ensure that it was sustainable "...from a constitutional scrutiny perspective," so that the evidence collected pursuant to the authorization could be used.¹⁴⁷

According to Jardine, in order to ensure that full disclosure was made and that the grounds for the application were sufficiently established, it was necessary

¹⁴⁴ Exhibit P-101 CAA0324(i), pp. 13-17.

¹⁴⁵ Exhibit P-101 CAA0324(i), pp. 12-13.

¹⁴⁶ Exhibit P-101 CAA0324(i), pp. 12, 22.

¹⁴⁷ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5667-5668, 5676-5677.

to set out exactly what information the RCMP investigators had been provided with, how it was provided, in what context and what amount of detail was available in the materials. Jardine explained that the September 19th affidavit, as drafted, contained the degree of information that he considered necessary and appropriate to support the application. Nevertheless, he continued to be concerned about "...whether the judicial officer would grant the authorization on that kind of information," and he would have preferred to have been given access to the intercept tapes themselves or to complete transcripts.¹⁴⁸ His initial position had been that he was not prepared to proceed with the application because of the CSIS involvement,¹⁴⁹ but he testified that after lengthy discussions with the RCMP officers involved, he was persuaded and became satisfied that there were reasonable grounds disclosed within the affidavit.¹⁵⁰

CSIS reacted badly to the use of its information in the September 19th affidavit. When Roth was denied access to the Parmar intercept logs on September 18th,¹⁵¹ he testified that although no one from CSIS had ever explained precisely why the conditions of access had changed, he understood that this decision was likely made as a result of the RCMP use of CSIS information in the September 19th affidavit.¹⁵² In its response to the RCMP submission to the Honourable Bob Rae, CSIS stated bluntly that Roth's access to CSIS intercepts was discontinued "...because the RCMP had used CSIS information in a Part IV.I (now Part VI) application, contrary to the Service's caveats, and without permission."¹⁵³

At a meeting between the CSIS Director General for Communications Intelligence and Warrants, Jacques Jodoin, and Belanger, held on September 26, 1985, Jodoin indicated that "...previous intelligence should not have been used to secure [a] Part IV.I (now Part VI) warrant."¹⁵⁴ New and stricter conditions that CSIS would now impose in order to grant the RCMP access to its information were discussed during this meeting.¹⁵⁵

There is disagreement between the RCMP and CSIS as to whether the use of CSIS information in the September 19th affidavit was in fact authorized by CSIS. The September 19th affidavit itself stated that CSIS had authorized the RCMP to use its information for purposes of an application to obtain an authorization to intercept private communications. This information was said to have been provided by Solvason to the member who swore the affidavit.¹⁵⁶ In testimony before the Inquiry, Solvason indicated that it was not his responsibility to secure CSIS's consent prior to use of the information in an RCMP affidavit.¹⁵⁷ Wall made

¹⁴⁸ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5672, 5676-5677, 5799.

¹⁴⁹ Exhibit P-101 CAA0797(i), p. 2.

¹⁵⁰ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5676-5677.

¹⁵¹ Exhibit P-101 CAA0802, p. 4.

¹⁵² Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5630-5631.

¹⁵³ Exhibit P-101 CAA1088, p. 3. This was in response to the RCMP complaints about the denial of access to the Parmar intercepts materials at various times in August and September 1985. See also Exhibit P-101 CAA0335, p. 22.

¹⁵⁴ Exhibit P-101 CAA0327, p. 2.

¹⁵⁵ Exhibit P-101 CAA0327.

¹⁵⁶ Exhibit P-101 CAA0324(i), pp. 12-13.

¹⁵⁷ Testimony of Robert Solvason, vol. 89, December 5, 2007, pp. 11555-11556.

a note on September 16th in his notebook indicating that he had been informed by Wickie of CSIS that the information in the Parmar intercept logs could be used by the RCMP for intelligence purposes and for purposes of a wiretap application, and that Holmes had been advised accordingly.¹⁵⁸

On the other hand, CSIS has steadfastly insisted that it had not granted any such approval.¹⁵⁹ In a 1987 letter to Solicitor General James Kelleher, CSIS Director Reid Morden wrote "...we can locate no record of having been told in advance" that a CSIS surveillance report on Parmar would be used in the September 19th affidavit.¹⁶⁰

When Belanger had negotiated access to the Parmar intercept product with CSIS HQ in early September, he had specifically indicated that the review of the CSIS materials by the RCMP, if authorized, would "...not be utilized to glean information of an evidentiary nature." CSIS HQ had agreed to grant access, but had advised the CSIS BC Region that certain conditions would have to be respected, including that "Material must not be used as evidence for court purposes."¹⁶¹

During a meeting between the RCMP and CSIS on September 18th, the RCMP had advised CSIS that Crown prosecutor Jardine insisted that he would require access to CSIS intercept materials "...in order to properly prepare applications for wiretap warrants against Parmar et al.," and that he would require "...the freedom to use [the CSIS materials] as necessary for evidentiary purposes." Yet the Commanding Officer of the RCMP E Division, Deputy Commissioner Tom Venner, was reported to have stated that he did not agree with Jardine's position, and that the RCMP Task Force was satisfied to receive CSIS intercept materials for investigative leads purposes only. Venner was said to have added that he foresaw further procedural difficulties down the road because of the "...pressures being generated by Crown Counsel Jardine" and that he might attempt to have the case transferred to a federal prosecutor.¹⁶²

The confusion created by the agencies' differing perspectives on whether the use of CSIS information in the September 19th affidavit was authorized is such that even the official position taken by the Attorney General of Canada on the matter has been inconsistent. In its Final Submissions to this Inquiry, the Attorney General of Canada states that, even though it had been suggested that the RCMP improperly used CSIS information in support of the September 19th affidavit, it remained that "...[w]hether due to a miscommunication or not, officers understood that they had permission from Joe Wickie to use the CSIS material in the Affidavit."¹⁶³ Conversely, in another part of the same volume of the Final Submissions, the Attorney General of Canada maintains that the RCMP use of CSIS information was clearly not authorized:

¹⁵⁸ Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9674-9675.

¹⁵⁹ Exhibit P-101 CAA1088, p. 3.

¹⁶⁰ Exhibit P-101 CAA0609, p. 17.

¹⁶¹ Exhibit P-101 CAB0551, p. 1.

¹⁶² Exhibit P-101 CAB0553, p. 2.

¹⁶³ Final Submissions of the Attorney General of Canada, Vol. I, p. 133, Footnote 401.

CSIS HQ had not authorized the use of its information in this manner, and on September 25, 1985 made it clear to RCMP HQ that this should not happen again. It is possible that BC Region had indicated a willingness to obtain permission from HQ on behalf of the RCMP to use CSIS information; Bob Wall testified that he believed Joe Wickie of CSIS BC Region had actually given permission.¹⁶⁴

Regardless of which agency was correct about the actual granting of authorization, or whether all parties, including the various levels within each organization, misunderstood the situation, it is clear that the incident contributed to increasing tensions between the agencies. From this point forward the RCMP had to adjust to new restrictions on the use of CSIS's information as it conducted its investigation. The RCMP E Division Task Force investigators had already experienced significant frustrations as a result of the back-and-forth on access to the Parmar logs and of what they felt was unsatisfactory access to CSIS information, even before the September 19th affidavit. In fact, the day before that affidavit was sworn, Wall had raised the possibility of executing a search warrant against CSIS during a meeting with Crown Counsel Jardine.¹⁶⁵

After the September 19th affidavit and the suspension of access to the Parmar intercepts materials, negotiations for access to the logs recommenced between CSIS and the RCMP.¹⁶⁶

On September 27, 1985, RCMP HQ advised the E Division Task Force of the new conditions tabled by CSIS in order for access to its information to be granted to the RCMP.¹⁶⁷ Among the restrictions imposed by CSIS was the condition that "CSIS information is not to be used for judicial purposes such as Part IV.I (now Part VI) authorizations, search warrants, court briefs, etc."¹⁶⁸ CSIS also denied the RCMP access to transcripts or tapes of intercepts, and stated it would only provide information assessed by CSIS as relevant in "...summary form under third-party rule."¹⁶⁹ The Third Party Rule generally requires that information obtained from one agency not be further disseminated or disclosed without the consent of the original agency.¹⁷⁰ Finally, CSIS demanded that its information not be blended with any RCMP data of a criminal nature that would likely be used as evidence, as this would risk disclosure of the CSIS information in judicial proceedings. Scowen testified that he felt these conditions were appropriate "at the time."¹⁷¹ The conditions outlined were clearly more restrictive than the access that the RCMP had enjoyed previously, at least in terms of access to intercept logs.

Discontent was also growing at CSIS for other reasons. In October 1985, lower-level management personnel at CSIS HQ were complaining about the lack of

164 Final Submissions of the Attorney General of Canada, Vol. I, para. 368.

165 Testimony of Robert Wall, vol. 76, November 15, 2007, pp. 9675-9676.

166 Exhibit P-101 CAA0802.

167 Exhibit P-101 CAA0331.

168 Exhibit P-101 CAA0331, p. 1.

169 Exhibit P-101 CAA1089(i), p. 2.

170 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1656-1657.

171 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6144.

any benefit to CSIS from the HQ-level liaison arrangements made in connection with the Air India file. One CSIS personnel official wrote that the assignment of a CSIS LO at the RCMP HQ Task Force had become a "...one-way street giving the RCMP advantage and no return for our effort." He noted that, though liaison itself should continue, the practice of "...having one of our personnel tied up on a daily basis at the 'beck and call' of the RCMP" should stop. He indicated that, when CSIS HQ had suggested to RCMP HQ that it was "...the RCMP's turn" to send someone down to CSIS "for a change," the RCMP had "...scoffed at this suggestion."¹⁷² He also felt that, more generally, the RCMP was taking advantage of CSIS's indecision and unwillingness to take a stand in policy matters as to CSIS's primary role in national security investigations to "...increase its presence in our historical territory," and was using the liaison arrangements to "...expand their wings." He was particularly critical of the CSIS regions, as he felt that, in a spirit of cooperation, they were allowing the RCMP essentially to run their operations.¹⁷³ The writer closed the note by stating:

Maybe some members of CSIS still think they're working for the RCMP. Myself – I say we are an independent org. & should act that way.¹⁷⁴ [Emphasis in original]

Russell Upton, the Chief of the Section responsible for the Sikh Desk at CSIS HQ, agreed and echoed the criticism that the regions were setting up their own independent liaison arrangements, with the result being "...confusion, complications and more alarming, loss of control over CSIS's intelligence."¹⁷⁵ Upton also felt that CSIS was not gaining a great deal from the present HQ liaison arrangement. He indicated that if the RCMP HQ section in charge of the Air India investigation felt a Liaison Officer was needed to facilitate regular RCMP access to CSIS information, then the RCMP, rather than CSIS, should provide all liaison representatives.¹⁷⁶

It would not be until October 11, 1985, that the RCMP would again be granted access to CSIS intercept materials.¹⁷⁷ At that time, the Service granted access to the Parmar intercept notes, as well as intercept notes on other Sikh extremist targets.¹⁷⁸ CSIS's position was that its material was to be used as investigational leads only, and not for judicial purposes. Access to transcripts and tapes would occur only at the discretion of the CSIS regional directors general in consideration of specific RCMP investigative needs.¹⁷⁹

Solvason continued to be tasked as a liaison to CSIS along with Roth and to attend CSIS offices to review what material was made available. On November 18th, Solvason was instructed to "...compile and co-ordinate" CSIS information

¹⁷² Exhibit P-101 CAA0338, p. 1.

¹⁷³ Exhibit P-101 CAA0338, pp. 2-5.

¹⁷⁴ Exhibit P-101 CAA0338, p. 5.

¹⁷⁵ Exhibit P-101 CAA0341.

¹⁷⁶ Exhibit P-101 CAA0341.

¹⁷⁷ Exhibit P-101 CAA0802, p. 4.

¹⁷⁸ Exhibit P-101 CAA0379(i), CAA0802.

¹⁷⁹ Exhibit P-101 CAA0346.

for use in an evidence package.¹⁸⁰ On November 27th, CSIS denied access to physical surveillance reports on Surjan Singh Gill, while continuing to allow access to Parmar physical surveillance reports.¹⁸¹ According to Solvason's notes, Wickie explained that the RCMP access was being reviewed by CSIS because the RCMP was looking for "evidence," while CSIS believed that the RCMP access was supposed to be for "intelligence purposes" only.¹⁸² CSIS reversed its decision two days later, allowing the RCMP access to reports on Gill.¹⁸³

Meanwhile, the RCMP had to conform to strict conditions when it again wanted to use CSIS information in support of a warrant application, this time to conduct a search of the suspects' residences. In early November 1985, the RCMP executed search warrants on the residences of Parmar and Reyat, as well as Hardial Singh Johal, Surjan Singh Gill, and Amarjit Singh Pawa.¹⁸⁴ Both Parmar and Reyat were arrested.¹⁸⁵ In crafting the affidavit in support of the application for this search warrant, the RCMP sought CSIS's authorization to make use of its intercept materials.¹⁸⁶ Authorization was granted on November 4, 1985,¹⁸⁷ but the affidavit in support of the application sworn by Cpl. Glen Rockwell on November 4th had to be drafted in collaboration with CSIS, and certain conditions had to be observed. These conditions would later be viewed by Crown counsel as having the potential to put the prosecution in jeopardy.¹⁸⁸

The November affidavit again described the Duncan Blast observed by the CSIS PSU and referred to Parmar's communications. However, the affidavit was written in a way to hide the fact that CSIS was the source of information. Instead of naming CSIS, the affidavit indicated that the affiant was "...informed by a source of known reliability, whose identity for security reasons I do not wish to reveal at this time...."¹⁸⁹

In spite of the new conditions that were observed in the November search warrant application, when the RCMP Task Force sought later in the same month to renew its September wiretap authorizations against Parmar et al., it prepared an affidavit that reproduced much of the content of the September 19th affidavit. The affidavit once again made reference to CSIS as the source of a considerable amount of information, and again referred to covert CSIS operatives such as Lowe by name.¹⁹⁰ The affidavit disclosed information about the fact that CSIS had been conducting an investigation into Parmar's activities and intercepting

180 Exhibit P-101 CAA0797(i), p. 3.

181 Exhibit P-101 CAA0802, p. 5.

182 Exhibit P-101 CAA0797(i), p. 3.

183 Exhibit P-101 CAA0802, p. 5.

184 Exhibit P-201.

185 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5683.

186 Exhibit P-101 CAA0354, p. 1, CAA0365.

187 Exhibit P-101 CAA0367.

188 See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

189 Exhibit P-201, pp. 5-6, 8.

190 Exhibit P-203, p. 10. This document was used in a motion brought during the trial of Malik and Bagri and portions of this document, referring to CSIS members by name and other private information, had been manually redacted at that time.

his communications since March 27, 1985,¹⁹¹ and it summarized dozens of CSIS intercepts concerning the named targets. Obviously, having used CSIS information in the September 19th affidavit, the RCMP could not include less information in the application for renewal of the same authorization. However, there is no record of a specific warning to CSIS that its information would again be used or of a request for its use in this context.

The intermittent and delayed access provided by CSIS to the Parmar intercepts, the use of information that CSIS clearly viewed as unauthorized, and the new and changing restrictions on the access to CSIS materials and on the use that could be made of them fuelled significant interagency conflicts and mistrust. By November 1985, tensions had risen significantly. An incident documented by Roth illustrates the level of distrust and animosity that appeared to prevail in BC.¹⁹² Just after charges were laid against Reyat and Parmar in relation to the Duncan Blast,¹⁹³ Francis asked Roth for photographs of Parmar, Reyat and the supporters who had attended the court, for use in updating CSIS files. CSIS also requested access to an RCMP report relating the court proceedings.¹⁹⁴ Roth was informed by a member of the Task Force that Wall had instructed that nothing was to be given to CSIS.

When Roth approached Wall about the issue, Wall walked away from Roth and refused to talk to him. As a result, Roth approached Sgt. Bob Beitel, who was in charge of administrative matters at the Task Force, to obtain the material CSIS had requested. Roth explained the reason he wanted the photographs and stated that the information would "...further [CSIS's] files and update their photos and biographical data on whatever we were able to obtain." Beitel indicated that he would identify the photos first and process them, and then make them available to Roth in a couple of days. However, he wanted a letter from CSIS requesting the information, indicating that he would forward it once he received the request. When Roth asked for copies of RCMP interviews of Reyat and Parmar to pass on to CSIS, Beitel responded "no way," adding that "...we did all the work and they get the benefit."¹⁹⁵

Roth felt that, as the RCMP Liaison Officer, he had been properly contacted by the CSIS Liaison Officer with the request, and that insisting on a written request defeated the purpose of having a Liaison Officer whose job it was to transmit requests in the first place. He noted, however, that this was "a stressful time" and a "...very high pressure environment."¹⁹⁶ Indeed, it is hard to imagine that an investigation into a crime as horrendous as the Air India bombing would not result in stressful times. However, it is precisely because the pressure was so acute and the stakes so high that clear and precise policies for information sharing and cooperation between CSIS and the RCMP would have been required.

¹⁹¹ Exhibit P-203, p. 18.

¹⁹² Exhibit P-101 CAF0207.

¹⁹³ See Section 1.4 (Pre-bombing), Duncan Blast.

¹⁹⁴ Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5635.

¹⁹⁵ Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5637.

¹⁹⁶ Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5638, 5650-5651.

Instead, the lack of clear policies allowed serious tensions and conflicts to fester, and controversy about the incidents that occurred in the months immediately after the bombing continued to rage for years between the agencies.¹⁹⁷

Debate over Access to CSIS Toronto Information

The growing differences between the agencies' perspectives are well illustrated by a protracted debate, which began in December 1985, about the level of access to CSIS information to be granted to the RCMP.

The RCMP E Division Task Force asked the RCMP O Division Task Force in Toronto to inquire about accessing CSIS Toronto files to review "...any surveillance and intercepts relating to our main players."¹⁹⁸ The O Division Task Force reported in January 1986 that their projected meeting with CSIS Toronto to discuss this request was cancelled by CSIS because of instructions from CSIS HQ that any review should take place in Ottawa rather than at the Toronto Region.¹⁹⁹ On instructions from RCMP HQ, the O Division Task Force resubmitted in writing a request for information about Parmar, Reyat and Bagri. In response, in February 1986, CSIS Toronto Region provided limited materials, consisting of a booklet of 150 pages of handwritten surveillance notes with no covering reports and no photographs. The Region advised that no relevant intercepts were available. In March 1986, O Division formulated another written request, this time for access to all CSIS Toronto files on a list of 18 individuals and businesses that were believed to have connections with Parmar. This request was forwarded to CSIS HQ by the Toronto Region.²⁰⁰

During a subsequent meeting between Inkster and Barr in early May 1986, Inkster mentioned that the RCMP had encountered a delay of 45 days without obtaining a response to this latest request from RCMP BC investigators to be given access to CSIS Toronto files. He asked Barr "...whether this was some indication of the service CSIS was prepared to offer them?"²⁰¹ Following further discussions at the HQ level, with Scowen indicating that he was "somewhat disturbed" by the long list of individuals covered by the RCMP request, the RCMP narrowed its request to Parmar and ten other individuals.²⁰²

On May 26, 1986, CSIS HQ provided a response indicating that the Service agreed in principle to provide the requested access.²⁰³ However, CSIS asked the RCMP to refine its request further in accordance with the protocol already in place for the RCMP access to CSIS files in the BC Region:

197 See, for example, Exhibit P-101 CAA0609, p. 17, CAD0881.

198 Exhibit P-101 CAA0395.

199 Exhibit P-101 CAA0403.

200 Exhibit P-101 CAA0439.

201 Exhibit P-101 CAB0226.

202 Exhibit P-101 CAA0443.

203 Exhibit P-101 CAA0447.

[I]t is requested that prior to access, the specific nature of your requirements be made known. To ask for “All Surveillance [sic] reports,” “All technical intercepts” ... and “All information” ... as your letter to us states, is not sufficiently specific for us to render assistance.²⁰⁴

Two months passed before the RCMP reformulated its request. In correspondence dated July 25, 1986, the RCMP asked that its investigators “...be granted access to all technical and physical surveillance reports in the possession of the Toronto Region which contain information on Parmar’s activities, contacts, travels, associations since 1984.”²⁰⁵ This level of particularity was not satisfactory to CSIS. Scowen testified that CSIS would not “...countenance fishing trips through our database in search of information that they thought would be of interest in their investigation.”²⁰⁶ CSIS HQ advised the RCMP in August that the CSIS Toronto Region had been asked to review its holdings to identify relevant material in response to the RCMP request.²⁰⁷ When this decision was relayed to the E Division Task Force, it wrote to RCMP HQ to complain about the delay in obtaining access to the information and insisted on having its own investigators conduct the review. The Task Force insisted that “...the importance of having our investigators do a hands-on review of the CSIS info to solicit the relevant points cannot be over emphasized” and maintained that the identification of specific information relevant to the investigation would only be possible “... upon gaining access (if ever) to Toronto CSIS info.”²⁰⁸

After further discussion between the agencies,²⁰⁹ CSIS finally agreed to grant the RCMP investigators access to the Toronto materials, specifying that the information would be provided for “investigational leads only” and that any use of the information for court purposes would have to be approved by CSIS.²¹⁰ In the end, after nine months of negotiations to access the materials, the RCMP did not identify “anything of importance” from its review of the CSIS Toronto files.²¹¹

Project Colossal

In 1986, Project Colossal became the code name adopted by the RCMP for its investigations of Sikh extremism, including the Air India and Narita bombings, the Montreal Plot investigation (code name Project Scope), the Hamilton Plot investigation (code name Project Outcrop) and the Sidhu shooting conspiracy investigation.²¹²

²⁰⁴ Exhibit P-101 CAA0447.

²⁰⁵ Exhibit P-101 CAA0470.

²⁰⁶ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6162-6163.

²⁰⁷ Exhibit P-101 CAA0472.

²⁰⁸ Exhibit P-101 CAA0477.

²⁰⁹ Exhibit P-101 CAA0478.

²¹⁰ Exhibit P-101 CAA0489. See also Exhibit P-101 CAA0494.

²¹¹ Exhibit P-101 CAA0494, p. 16.

²¹² Exhibit P-101 CAA0457; Exhibit P-102: Dossier 2, “Terrorism, Intelligence and Law Enforcement – Canada’s Response to Sikh Terrorism,” pp. 45-48.

The Hamilton and Montreal investigations were largely developed by the RCMP alone. However, some of the RCMP's actions during these investigations, in particular what CSIS perceived as the Force's attempts to open channels of liaison with foreign security and intelligence services, caused concern to CSIS. The Service felt that it could not discourage direct contact between the RCMP and foreign police forces, but that, in cases where security services operated within those police forces, this led "...to confusion as to who in Canada is in fact responsible for the collection of intelligence respecting terrorism." CSIS sent out a memo to its Security Liaison Officers (SLOs) abroad to debunk a rumour that the RCMP had "...full, unfettered access to CSIS data banks." CSIS wanted to ensure that its allies knew that the information they passed to the Service would not end up being made public in criminal proceedings without their knowledge or permission, and was concerned that the RCMP may have misinformed allies about this matter.²¹³

On June 2, 1986, CSIS wrote to the RCMP to set out conditions for the passage of information from CSIS to the RCMP in relation to Project Colossal. The new procedures allowed the RCMP to view some CSIS "intercept transcripts" (the notes or logs prepared by CSIS translators and transcribers) with CSIS HQ approval. The possibility that some CSIS information could be used to support applications for judicial authorizations was left open, but the proposed text of such applications had to receive approval from CSIS HQ as well.²¹⁴

On June 23, 1986, the CSIS conditions were replaced by guidelines, agreed upon by CSIS and the RCMP, for information sharing relating to Project Colossal.²¹⁵ The agreement included provisions to protect CSIS sources and methodologies as well as third-party information.²¹⁶ The guidelines stipulated:

- When advice would be given to the Minister and by which organization;
- That the RCMP would attempt to obtain its own warrants to reduce the possibility of CSIS involvement in court proceedings;
- That the RCMP would consult with CSIS prior to using CSIS information for judicial purposes, with impasses being resolved at the Commissioner/Director level;
- That consultation was to be undertaken to avoid duplication of surveillance;
- That CSIS would disclose all information that impacts on or relates to Project Colossal, with the RCMP to reciprocate;
- That Foreign Liaison tasking would be coordinated to avoid duplication;
- That CSIS would assign dedicated CSIS analysts to RCMP Task Forces;

²¹³ Exhibit P-101 CAA0456, pp. 1-2.

²¹⁴ Exhibit P-101 CAA0449.

²¹⁵ Exhibit P-101 CAA0455.

²¹⁶ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6171.

- That all information shared would not be further disseminated; and
- That consultation would precede any third-party involvement.

These arrangements were circulated at CSIS on June 27th. The Ministerial Directive received by CSIS on May 29, 1986 was also circulated for CSIS employees to review. This directive stated that CSIS was "...to cooperate with and make available to the RCMP all information that relates to Project Colossal."²¹⁷ Retired CSIS Deputy Director of Operations (DDO) Jack Hooper testified that the grouping of Sikh extremism investigations under one project and the negotiation of specific information-sharing agreements was aimed at facilitating cooperation between the RCMP and CSIS on the broad issue of Sikh extremism.²¹⁸ A project-specific MOU on the transfer and sharing of information for Project Colossal was signed and circulated in October 1986.²¹⁹

The Kelleher Directive, The Barr Memo and The CSIS Theory of the Case

On January 28, 1987, the Minister issued what has become known as the "Kelleher Directive" about the Air India/Narita investigation. In a letter addressed to CSIS Director Finn, the Minister discussed three major concerns. First, he ordered the development of a "...fully coordinated Ministry approach to the handling of media and other public inquiries" in advance of any arrests in the case. Second, he stated that it was "...essential that both CSIS and the RCMP commence action now to coordinate the preparation of evidence which would be used for court purposes," again in the expectation of a criminal trial. Third, he asked to be updated on certain source development issues.²²⁰

This Directive signalled a departure from the early days of CSIS in dealing with disclosure of CSIS information that might have evidentiary value.²²¹ In his reply, Finn stated that CSIS "...fully appreciates the vital importance of bringing those responsible for the crash of Air India before the courts." He noted that he had "...directed that the full cooperation of the Service be placed at the disposal of the RCMP in this regard and that all information that may possibly be relevant is made available to the RCMP to assist in its investigation," and he stated that CSIS would "...develop a chronological timetable of the events the Service believe[d] led up to the commission of the crime."²²²

In a memorandum that Barr authored shortly afterwards, he clarified that CSIS was not responsible for investigating the bombing, and that the investigation would now "...move into the hands of the RCMP." He stated that, in their treatment of the information uncovered by CSIS, the RCMP had agreed that "...everything possible will be done to prevent damage to CSIS sources and operational

²¹⁷ Exhibit P-101 CAA0457, p. 3.

²¹⁸ Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6218.

²¹⁹ Exhibit P-101 CAA0500. See Section 4.0 (Post-bombing), *The Evolution of the CSIS/RCMP Memoranda of Understanding*.

²²⁰ Exhibit P-101 CAD0095, pp. 1-2.

²²¹ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9479.

²²² Exhibit P-101 CAD0094. See also Section 3.0 (Post-bombing), *The CSIS Investigation*.

methods and that the Service will be kept fully informed of the progress of the criminal investigation.” CSIS personnel were directed to “...continue to be of assistance to the RCMP by providing a comprehensive database against which to test information developed by the police,” and to be guided in offering this cooperation by the common goal of convicting those responsible for the crimes.²²³

Within two months of the Kelleher Directive, CSIS had submitted its comprehensive analysis of the intelligence it had collected on the bombing to the Minister and the RCMP. The document included a chronology of events, a summary of new source information, supplementary information, and a link analysis chart. The conclusion set out the CSIS perspective that “...the concept of blowing up a civilian airliner originated in the minds of a small group of men,” and that the main protagonist was Parmar. The CSIS analysis also listed persons it felt were the “weakest links” in the conspiracy who could potentially be pressured to provide further information. This list included Surjan Singh Gill and Hardial Singh Johal.²²⁴

Though the degree of direct CSIS involvement in pursuing avenues of investigation related or directly impacting on the criminal investigation changed somewhat after this period,²²⁵ the information sharing and cooperation problems continued.

Norman Inkster (who was a Deputy Commissioner in March 1987 before being promoted to Commissioner in September 1987) was asked about the level of cooperation the Force received from CSIS in the period from April 1987 onwards. He stated that “...it was certainly a relationship that had its difficulties,” but he did not think that it would be fair to characterize it as one involving “...people simply being difficult and not wanting to cooperate.” He thought, however, that attempts to obtain documents and information from CSIS in a timely way continued to be a difficult process, partly because of the constraints created by the *CSIS Act* itself and partly because of cautious legal opinions CSIS had obtained regarding the sharing of information. According to Inkster, CSIS “...felt obliged to move very, very cautiously,” which caused frustration to investigators who wanted to be “...able to move on it expeditiously.”²²⁶ There was always a review process involved, during which CSIS would assess the purpose for which the information was needed and the manner in which it could be used. It was, from Inkster’s perspective, never a case of asking for the information and “... simply getting it. There was always a delay of various lengths.”²²⁷

The Reyat Arrest

Even after CSIS had made a decision to follow the ministerial direction and specifically instructed its investigators to stay out of the Air India investigation,

²²³ Exhibit P-101 CAB0717.

²²⁴ Exhibit P-101 CAB0717, pp. 15, 18.

²²⁵ See Section 3.0 (Post-bombing), The CSIS Investigation.

²²⁶ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10317.

²²⁷ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10317-10318.

separating the roles of the agencies did not always prove as easy in practice. It was particularly difficult when CSIS was faced with situations where it perceived that it had better chances of obtaining information from certain individuals than the RCMP had, or when RCMP actions in the criminal investigations risked generating relevant information which would end up in CSIS's hands.

In January 1988, the RCMP was planning to arrest and extradite Reyat back to Canada. CSIS BC Region was advised of the RCMP plans for conducting interviews once the arrest became known, and was asked to avoid contacts with those targets, as such contact "...may jeopardize our criminal investigation." The RCMP also requested that CSIS provide any information in its possession about the targets and advise the RCMP of the interviews it intended to conduct in connection with the arrest, as well as the targets on whom CSIS would be conducting physical surveillance. In reaction, the CSIS BC Region wrote to CSIS HQ, copying all CSIS regions and districts, explaining that the Region remained "... cognizant that the investigations into the Air India/Narita disasters are criminal matters and they are the responsibility of the Royal Canadian Mounted Police (RCMP)," but that the arrest would have an impact on the CSIS investigations, as it was felt that the entire Sikh community would be affected by the arrests. BC Region intended to monitor sources for feedback "...which may prove useful to the RCMP" and to comply with the RCMP requests.²²⁸

While the Region felt that its intended investigations fell within the guidelines requiring that CSIS participation in the investigation of Air India be restricted to providing investigative leads, it was concerned and asked for guidance from CSIS HQ because, with Reyat's arrest, information about Air India might be obtained. The Region stated it was "...intensely aware of the enormous importance of this criminal case" and that it hoped its actions would contribute "...toward a successful end to the criminal case."²²⁹

Parmar's Death

Though CSIS had effectively ended its investigation of the Air India bombing, Parmar remained a target of the Service's Sikh extremism investigations. In 1988, however, Parmar left Canada.

On July 15, 1988, a briefing note was written to the Director of CSIS, Reid Morden, asking whether CSIS should notify Indian authorities that, as of July 15th, CSIS was able to place Parmar in Pakistan.²³⁰ CSIS believed that Parmar was attempting to return to India, possibly to commit further acts of terrorism. The conclusion of the briefing note was that it was recommended that "...because of Parmar's stature as a dangerous Sikh terrorist, CSIS notify the GOI [Government of India]."²³¹ The decision was referred to the Director level due to the fact that CSIS was concerned that, once alerted, Indian authorities might kill Parmar, a

²²⁸ Exhibit P-101 CAA0627(i), pp. 1-4.

²²⁹ Exhibit P-101 CAA0627(i), pp. 4-5.

²³⁰ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8337.

²³¹ Exhibit P-101 CAB0780.

Canadian citizen. The Director made the decision to notify the Government of India. On October 13, 1992, another briefing note was sent to the Director. This note updated the Director on the search for Parmar. The next day Parmar was reportedly killed following a gun battle with Indian authorities.²³²

Bill Turner, who became the head of the Sikh Desk at CSIS HQ in 1990, testified that he did not accept the “official story,” that Parmar had been killed in a shootout with Indian authorities. Turner stated that they had sources in the community and within the BK, and that there were indications that Parmar had been captured first. Turner also saw photos of his body and stated, “...there [were] clear indications that he had been tortured prior to being killed.”²³³

Turner was not surprised that the Government of Canada had not been informed of Parmar’s capture. There had been a prior case where a Canadian citizen had been captured, held in custody and tortured. When Canada was informed, External Affairs Minister Joe Clark travelled to India to make representations on behalf of the imprisoned Canadian citizen. The capture and torture of Canadian citizens became “...a bit of a sticky issue” between the Government of Canada and the Government of India. In order to avoid further tension, Turner believed it was simpler for the Government of India to do what it was going to do along these lines without informing the Canadian government. Turner said this included the case of Parmar.²³⁴

The death of Parmar, the prime suspect in the Air India/Narita bombings, obviously had an impact on the Air India investigation. There has been no evidence to suggest that CSIS was aware of Parmar’s capture prior to his death. Nevertheless, CSIS had occasionally informed the Government of India of Parmar’s suspected whereabouts with the full knowledge that such information could lead to his death. Conversely, there was no evidence before the Inquiry that CSIS informed the RCMP of either its knowledge of Parmar’s whereabouts or its concerns about the actions the Government of India might take on the basis of CSIS information, including that Parmar might be caught and killed rather than being repatriated to Canada to face charges in the Air India bombing. Finally, there was no evidence presented that the Director informed the Minister of the CSIS decision to inform the Government of India, regardless of the possible consequences for Parmar.

CSIS stated in 1987 that there was “...no higher priority for ... this Service, than bringing the persons who perpetrated these crimes, before the courts.”²³⁵ In subsequent years, no charges were laid and Parmar slipped out of the country. When faced with information that suggested Parmar was planning to return to India, CSIS needed to balance the threat posed to innocent people abroad from possible terrorist acts by Parmar, against the possible capture and death of a Canadian citizen and a prime suspect in the bombing.

²³² See Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

²³³ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8339.

²³⁴ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8337-8340.

²³⁵ Exhibit P-101 CAB0717(i).

It is not known how the ultimate decision to inform the Government of India about Parmar's whereabouts was taken. It is not known whether the Director consulted with the Minister. It is not known whether CSIS's action had any impact on Parmar's capture and death, though the evidence seems to suggest otherwise.²³⁶ But in this age of globalization, including the globalization of terror, a similar situation may arise again. The question of how the Government of Canada and its agencies should react to such a situation is a difficult one, with no easy answers. It does seem, however, that the decision cannot be that of CSIS or of any other single agency alone.

The Disclosure and Advisory Letters Process

A new process for disclosing material to the RCMP was developed in the 1990s. During this period, relations between the agencies continued to be difficult. Ron Dicks, the former RCMP LO in Toronto,²³⁷ became the Officer in Charge of the E Division National Security Investigations Section (NSIS) responsible for the Air India investigation. He testified that, in his interactions with CSIS in his new position, he felt that the flow of information between the agencies continued to be restricted.²³⁸ He described the relationship that NSIS had with CSIS as a very bureaucratic one, characterized by great formality, and far from fluid.²³⁹

According to the new process for exchanging information devised in the 1990s, CSIS would provide "disclosure" and "advisory" letters to the RCMP. When CSIS gathered information, the intelligence would be written up in an investigator's report. A copy of this report was to be given to the RCMP, usually through the RCMP LO, and was called a "drop copy." If the RCMP was interested in some, or all, of the information, it would request it through the LO. CSIS would then provide the information in the form of a "disclosure letter."

Disclosure letters were typically provided at the regional level. Their purpose was to let the RCMP know that "something is afoot."²⁴⁰ They contained a refined version of the drop copy report with some analysis. Over the course of the Air India investigation, Turner estimated that CSIS sent 3,000 disclosure letters to the RCMP.²⁴¹

Disclosure letters were not meant to be used in court or in support of judicial authorizations. If the information was required by the RCMP for use in court or for an affidavit, the RCMP had to request its use. In response, CSIS prepared an "advisory letter," drafted by HQ, which would provide "...the information to the extent possible that the RCMP were seeking," available for use in court. Advisory letters were "far more polished" and included a CSIS assessment with additional caveats added.²⁴² The aim of the advisory letters was to be more probative

²³⁶ See Section 2.3.3 (Post-bombing), The Purported Parmar Confession.

²³⁷ See Section 4.2 (Post-bombing), The Liaison Officers Program.

²³⁸ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7565.

²³⁹ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7565.

²⁴⁰ Testimony of Ches Parsons, vol. 82, November 23, 2007, pp. 10480-10481.

²⁴¹ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8313.

²⁴² Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6230, 6232.

in nature and of more utility to the police.²⁴³ However, the disclosure letters typically contained a much broader amount of information than the advisory letters.

The RCMP complained that at each level of disclosure, from disclosure letter to advisory letter, the information provided was narrowed and sanitized. Sgt. Laurie MacDonell, who joined E Division NSIS in 1990, testified that the information contained in CSIS advisory letters was generally "...nowhere near the standards that a criminal court would expect." He explained that as a result, it was "...frustrating to obtain information from the Service." MacDonell recalled that, in some instances, CSIS would provide advisory letters in which even the limited information provided would change from version to version. According to him, the release of vague, and at times inconsistent, information was "...not consistent with evidence or full disclosure; it became a little bit confusing."²⁴⁴

Indeed, although the agencies could devise protocols between themselves for sharing information, it would ultimately be for the court to decide whether additional information was required if an attempt was made to use the sanitized information in court or in support of a judicial authorization. Pursuant to the habitual rules of evidence, a letter containing a summary of information available from original sources could probably not have been admitted in evidence in a trial without presenting underlying testimony and original materials. As for judicial authorizations, it would always be open to the defence to challenge the lack of detail and to request more information to evaluate the sufficiency of the grounds for the searches or wiretaps.

From his perspective as an investigator, MacDonell emphasized that the RCMP needed "raw data" and the "exact source" of information and that, in order to satisfy disclosure requirements, police officers needed access to the source of the information, and not "a crafted letter."²⁴⁵

There were also significant delays in the process. In one particular case, MacDonell had to wait a considerable amount of time while attempting to get direct evidence to support criminal charges on a homicide. The issue had to go to the "highest levels" of CSIS and the RCMP, with RCMP management fully supporting MacDonell's request. Nevertheless, it took well over a year for the issue to get resolved.²⁴⁶ MacDonell indicated that the delays encountered in obtaining information from CSIS hindered the police investigations.²⁴⁷

Despite the legal and practical difficulties in the disclosure and advisory letters system for passing CSIS information to the RCMP in potential criminal cases, this system continued to be used as of the close of the hearings of the Commission.²⁴⁸

²⁴³ Testimony of Ches Parsons, vol. 82, November 23, 2007, p. 10481.

²⁴⁴ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9649.

²⁴⁵ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9649-9650.

²⁴⁶ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9648-9650.

²⁴⁷ Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9648-9650.

²⁴⁸ See Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12766-12768.

Post-1995 CSIS/RCMP Relationship

Turner testified that 1995 was a key date in the CSIS/RCMP relationship. Prior to that date, he described the relationship as “difficult.”²⁴⁹ The 1992 SIRC report had noted personality problems, but had concluded, based in part on a less-than-complete briefing from the RCMP,²⁵⁰ that “...there was no indication that these problems had any long-term effect on the overall conduct of the investigations.”²⁵¹ According to Turner, mainly as a result of a “change of personalities,” relationships between the two organizations improved after 1995.²⁵² At that time, Insp. Gary Bass (now Deputy Commissioner) was asked to review the Air India investigation and to provide advice about any additional steps that could be taken.²⁵³ A renewed Task Force was assembled to first conduct the review, and then to pursue the new investigative initiatives identified.²⁵⁴

Turner stated that the relationship, post-1995, was “...excellent, a sentiment echoed by SIRC in 1998.” Turner became the CSIS Liaison Officer to the 1995 RCMP Air India Task Force, and he testified that, as the CSIS representative, he was treated as a full partner.²⁵⁵ This era saw greater cooperation between CSIS, the RCMP and, notably, the Crown. The use of CSIS intelligence in court proceedings continued to be the primary liaison issue, one that occupied the majority of Turner’s efforts, and, though some aspects could never be fully resolved, the situation was much improved when compared to the earlier Reyat trial.²⁵⁶

However, some of the problems experienced throughout the earlier years of the investigation continued. The back-and-forth arguments about the scope of RCMP requests for information in light of the risk of exposure for CSIS, as well as the complex logistics associated with the review done by the Service prior to determining the information to be provided, were still present in the late 1990s.²⁵⁷

On February 9, 1996, Bass wrote a memorandum to the OIC of the Air India Task Force at E Division headquarters which provided an overview of the challenges faced in preparing an application to intercept the communications of the principals in the investigation, as well as in proceeding with charges. Making reference to the abuse of process concerns expressed by Jardine during the Narita prosecution, Bass noted that there would be “...intense criticism of CSIS” during the process of getting the CSIS wiretap evidence into court at trial, and that “...we can only hope that other relevant information has not been withheld.”²⁵⁸ He concluded that if such a discovery occurred, the prosecution would collapse.

249 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8271.

250 See Chapter V (Post-bombing), The Overall Government Response to the Air India Bombing.

251 Exhibit P-101 CAB0902, p. 74.

252 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8340-8341. See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

253 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11177.

254 See Section 2.2 (Post-bombing), The RCMP Investigation: Red Tape and Yellow Tape.

255 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8270, 8310.

256 See Section 4.4.2 (Post-bombing), The Air India Trial.

257 See, for example, Exhibit P-101 CAA0966, pp. 24-25.

258 Exhibit P-101 CAA0932, p. 2.

In his testimony, Bass took care to emphasize that this was not a criticism of CSIS:

They're operating in a different environment than we are. We were still growing through disclosure. We could see through our experience in the courts and criminal cases how these things were likely to go. And as it turns out, I think we predicted it fairly accurately. But CSIS didn't have that experience in the courts. And I fully expected and accepted that we didn't know everything at that stage about what they knew about Air India. I mean, that's the nature of the business. And so I'm not saying that as a criticism. But what I was pointing out is that it's something that we need to be aware of, that as this thing progresses, you know, hopefully, there won't be any instance happen that would look like nondisclosure.²⁵⁹

When CSIS learned in 1999 about the Bass February 1996 memorandum, a file review was conducted. CSIS noted that the Bass memorandum was written "in a vacuum" and "without balanced views," and believed that Bass relied mostly on "...tribal knowledge from those involved in the Reyat prosecution," and was influenced by those who had deeply negative attitudes towards CSIS. CSIS concluded that if Bass could apply "...the wisdom of 20/20 hindsight," he would "...most likely regret everything he wrote in 1996."²⁶⁰ In his testimony before this Inquiry, Bass recognized that some CSIS members were of great help in resolving many large disclosure issues in the post-1996 investigation and in moving the case forward. He stated, however, that this did not change the opinions he expressed in 1996 and that therefore he did not regret what he had written.²⁶¹

In February 1996, the RCMP had completed the preparation of a first draft affidavit in support of its wiretap application.²⁶² The affidavit made extensive reference to CSIS information, in particular from the Parmar intercept logs. The Task Force informed CSIS of the targets for the intended wiretap and soon afterward, CSIS informed the RCMP for the first time that it possessed over 200,000 tapes containing the intercepted communications of Parmar, Bagri, and Malik, among others, recorded between 1985 and 1996.²⁶³ The RCMP investigators had to review 60,000 pages of intercept logs regarding these recordings to determine whether the tapes contained information that would be useful to the case, a task that had to be completed before the Force could satisfy the requirements of the *Criminal Code* for the wiretap application.²⁶⁴

In the end, the RCMP concluded that the new materials did not contain any substantive evidence that would exonerate the suspects.²⁶⁵ However, the

²⁵⁹ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11192.

²⁶⁰ Exhibit P-101 CAA0977, p. 1.

²⁶¹ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11207-11211.

²⁶² Exhibit P-101 CAA0936(i), p. 1.

²⁶³ Exhibit P-101 CAA0952, p. 1, CAD0180, p. 6.

²⁶⁴ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11182.

²⁶⁵ Exhibit P-101 CAD0180, pp. 6-7.

unexpected discovery of their existence and the associated need to conduct a review took “considerable time” and delayed the RCMP’s plans for the new wiretap application.²⁶⁶ This naturally caused frustrations for the Task Force investigators. S/Sgt. Bart Blachford, who was a member of the Task Force at the time and is now the lead Air India investigator in E Division, testified that the RCMP had “no idea” of the existence of the CSIS tapes prior to its own approach to CSIS to advise of its intended targets for the new wiretap. He indicated that the CSIS disclosure effectively “shut down” the RCMP’s wiretap application process for months while the material was reviewed, and that the Force simply “...couldn’t move forward” until this was done.²⁶⁷

Clearly, the post-1995 improvements in the CSIS/RCMP relationship did not resolve all the issues. Indeed, Merv Grierson, former Director General of the CSIS BC Region, testified that until his retirement in 1997, disclosure of CSIS information continued to be a major problem.²⁶⁸

Nevertheless, the relations between the agencies did change in the post-1995 era, with fewer back-and-forth and legalistic debates being observed in this period. Having gone through the experience of the Reyat trial, where, after much delay and resistance, CSIS finally agreed to provide some materials for the prosecution,²⁶⁹ CSIS advised that its approach would be different this time. At a February 1996 meeting between Supt. Rick MacPhee and S/Sgt. Doug Henderson of the RCMP and Grierson, it was made clear that CSIS was ready to assist with the investigation and to provide evidence for use in court. Grierson indicated to the officers that, within the bounds of its guidelines and security concerns, “...CSIS would provide whatever evidence they can with respect to the seriousness of the Air India disaster, and that their position on this has modified over the years.”²⁷⁰ Grierson acknowledged the access and disclosure issues prior to the Reyat trial, but emphasized that these were successfully worked out in the end and resulted in a conviction. The RCMP officers in turn assured Grierson that they would go through the normal disclosure and advisory letters process for any CSIS information that had not previously been disclosed in the Reyat trial or otherwise become part of the public domain.

In September 1996, the authorization to intercept communications sought by the RCMP was finally granted,²⁷¹ but the wiretaps put into place did not yield any useful information that could be entered as evidence.²⁷² In November 1996, Bass sent a memorandum to Grierson to update him regarding the investigation.²⁷³ He acknowledged that CSIS and the RCMP enjoyed a close working relationship at the time and that CSIS’s cooperation had been very helpful to the investigation. However, he noted that there were outstanding issues with respect to the CSIS intercept tapes – which the RCMP intended at that time to make use of as evidence

²⁶⁶ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11183.

²⁶⁷ Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7820-7822.

²⁶⁸ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9475-9476.

²⁶⁹ See Section 4.4.1 (Post-bombing), *The Reyat Trial and the BC Crown Prosecutor Perspective*.

²⁷⁰ Exhibit P-101 CAA0942.

²⁷¹ Exhibit P-101 CAA1127. The application itself can be found at Exhibit P-101 CAD0180.

²⁷² Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11214-11215.

²⁷³ Exhibit P-101 CAA0958.

– such as continuity and the erasure of many of the tapes. Bass testified that the RCMP still believed that the CSIS intercept materials were the best evidence available at the time, though the prosecution team would subsequently decide not to attempt to enter the material in evidence.²⁷⁴ In the memorandum, Bass expressed the concern that if defence challenges to the admissibility of the CSIS intercept information were successful and the prosecution collapsed as a result, the failure could be attributed to the erasure of the tapes.²⁷⁵

The Recurring Challenges of Information Sharing

CSIS always had concerns about the RCMP's ability to protect CSIS information, regardless of the state of the relationship with the RCMP and of the various agreements reached. Warren testified that, in providing access to its information, CSIS was concerned about losing control of its intelligence. Warren was also concerned about potential loss of protection for CSIS information in the courtroom.²⁷⁶ He testified that the "bottom line" of the cooperation issue was:

How does one maintain control? How does one ensure that ... responsible control over the disclosure of information relating to Canadians is being maintained by the Service if one invites other organizations into one's midst....²⁷⁷

CSIS was always concerned about the ultimate use of its information. If it was eventually introduced in court, this would obviously mean making some information public about CSIS operations and possibly exposing some of its personnel. This, for the most part, is what drove the CSIS resistance to answering certain types of requests and to sharing certain types of information. Turner explained in testimony that the RCMP advised CSIS early on that there would be difficulties in protecting the CSIS information that was passed to the Force from disclosure in a criminal prosecution. In response, CSIS did its own "vetting" at every stage of information sharing, in an attempt to protect the information.²⁷⁸ Concerned about the extent of its exposure, CSIS sought to restrict the amount of material provided to the RCMP.

CSIS's concern for protecting its information from public disclosure was based on a very real – and legitimate – fear of the consequences that could result from exposure. Jack Hooper explained in testimony that if CSIS sources, methodology or translators were exposed, CSIS would have to start again "...from ground zero" in an attempt to "...reconstitute an inventory of assets." He stated that when a human source became exposed, "...it chills an entire community." He added that once methodologies are exposed, "...you are in real trouble." As an

²⁷⁴ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11221-11222. See Section 4.4.2 (Post-bombing), The Air India Trial.

²⁷⁵ Exhibit P-101 CAA0958, p. 2.

²⁷⁶ Testimony of James Warren, vol. 48, September 19, 2007, pp. 5909-5910.

²⁷⁷ Testimony of James Warren, vol. 48, September 19, 2007, p. 5910.

²⁷⁸ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8298-8299.

example, he explained that, not long ago, “very important targets” believed that cellular phone communications could not be intercepted. However, once that ability was publicly disclosed, targets became guarded in their communications and CSIS was required to spend a great deal of time and money to develop new methods for the interception of communications.²⁷⁹

CSIS was determined to keep secret the details of how technical intercepts were put together, placed, and installed, as well as their capacity and their characteristics. Scowen testified that CSIS needed to protect its methodology in order to do its job effectively, since all fields, not just CT, employed the same methodologies. He stated that “...methodology is a crucial part in the tool bag of any intelligence service and all of us protect it to a maximum degree.”²⁸⁰

Another important concern for CSIS was the protection of its translators and, to a lesser extent, its transcribers. This was of particular concern because finding translators who could be security cleared was also an ongoing problem for CSIS. The Director General for Communications Intelligence and Warrants, Jacques Jodoin, wrote in a 1986 document that “...cleared and proven translators are a scarce commodity, especially in the people recruited from the visible minority groups.”²⁸¹ Translators were “...an exceptionally important resource” for CSIS, and often came from, and lived in, the community where the language needs arose. It was generally imperative for translators to keep their involvement with CSIS a secret from their community. Compromising the identity of a translator could lead to that person being ostracized in the community, and could possibly place the person at risk of physical harm. If CSIS was unable to protect translators, it would experience difficulty in recruiting more translators, and its ability to monitor threats to the security of Canada would thereby be compromised.²⁸²

Despite CSIS's desire not to have its information, methods or sources exposed in a court case, that possibility was at least likely, and perhaps inevitable, in the Air India case. Even where the RCMP felt that it might be able to collect the necessary evidence on its own on the basis of the leads provided by CSIS, the need to use CSIS information in support of the RCMP's warrant applications could also lead to the exposure of CSIS information to public disclosure in judicial proceedings. By gathering its own information, the RCMP avoided the risk of exposing sensitive information regarding CSIS operations, and also improved the chances of successful prosecution by ensuring that the evidence was collected and preserved in accordance with the legal standards. Ironically, however, where the RCMP needed CSIS information in order to gather its own information, CSIS would not be protected. Hence, even when its information was provided to the RCMP as investigative leads only, CSIS risked exposing confidential matters because the information would ultimately be exposed if it turned out to be the only source available, or if it was needed to obtain RCMP warrants.

279 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6272-6273.

280 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6189-6190.

281 Exhibit P-101 CAF0279, p. 2.

282 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6155-6157.

Norman Inkster acknowledged that the friction between the RCMP and CSIS concerning access to information was very much a product of the "... fundamental differences between the RCMP and CSIS."²⁸³ Each organization had its own mandate and priorities, and was subject to different legal thresholds and constraints regarding the collection and disclosure of information. CSIS itself was frequently bound by caveats imposed by foreign agencies as well as the desire and obligation to protect its sources and personnel, while the interest of the RCMP was on placing as much evidence as possible before a court should an investigation lead to an arrest and charges. These differences were not necessarily irreconcilable, but understandably led to mutual frustration.

In practice, CSIS's fear of exposure led to numerous debates at all stages of the information-sharing process. Not only was CSIS reluctant to grant the RCMP authorization to use its information in judicial proceedings, but CSIS attempted to restrict the extent of the RCMP's access to its materials to ensure that this possibility never materialized. This led to debates about the nature of the RCMP's requests for information, about CSIS's ability to identify independently the criminal relevancy of its information, and, importantly, about the type of materials to which CSIS would grant access. There was a particular difficulty in providing the RCMP with "raw" or original materials, as opposed to summaries of information.

The RCMP, for its part, often failed to distinguish between CSIS's reluctance to have its information exposed in court or to provide raw materials, and a reluctance to share information. As a result, the RCMP made blanket accusations of a lack of sharing, when, in fact, it was being provided with countless investigative leads but simply could not use the information for prosecution purposes.

The increasing tensions between the agencies were also fuelled by CSIS complaints about the RCMP's own lack of willingness to share its information and by particular issues associated with human sources, as well as by structural issues relating to the level of centralization within each agency and the internal responsibility for decisions about the sharing of information.

The Range of CSIS Information Shared: Who Decides?

Specific Requests versus "Fishing Trips"

From the early days of the Air India investigation onwards, CSIS and the RCMP often appeared to be talking at cross-purposes when discussing the access to CSIS information that would be provided to the RCMP. The agencies were continually at odds about the fundamental issue of how much material should be provided to the RCMP, and about who should decide what was relevant to the RCMP investigation. In addressing these issues, CSIS often took initial positions that were very restrictive in terms of sharing, only to acquiesce later and provide at least part of the access or information initially requested.

²⁸³ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10326-10327.

CSIS's general position was that it would advise the RCMP of any information that was obtained that had a bearing on the investigation.²⁸⁴ When it requested information from CSIS, the RCMP traditionally asked for "...everything CSIS had," apparently assuming that it would then be able to make its own selection of relevant materials. At CSIS, this was viewed as the RCMP's opening "stance," despite the fact that there would inevitably be conditions on any information passed. CSIS replied with the standard response that the RCMP would be supplied with "...all information we had that had any even remote connection to their investigation" – an answer that never satisfied the RCMP, since the selection of relevant material would be done by CSIS. Scowen testified that CSIS was constantly telling the RCMP that their requests had to be more specific, and that it was "...a response that they understood."²⁸⁵

The RCMP felt entitled to receive access to all CSIS information that could be of assistance, whereas CSIS felt that it had a responsibility to protect information for long-term intelligence and to provide only "investigative leads" to the RCMP, rather than broad access to its holdings. According to Grierson, when CSIS explained its perspective to the RCMP, "...that wasn't accepted." Grierson testified that the RCMP's perception was "...that our job was to dump – all our stuff to them, give them everything, including sources, identities, whatever it was, and because they had to mount a criminal investigation."²⁸⁶

Inkster explained that, from the RCMP's perspective, the difficulty was that the RCMP was interested only in information pertaining to the Air India crash, and he felt that this should have provided a sufficient basis for CSIS to retrieve and review material in line with its requests. He added that it was "disconcerting" when CSIS was looking for more specificity – "...you couldn't be more specific if you didn't know what they had; and that was the challenge."²⁸⁷ According to Inkster, CSIS's position "...compounded the difficulties that the police had in terms of investigating this and in as speedy a fashion as possible."²⁸⁸

The problem with requiring the RCMP to be more specific was that it did not necessarily know what it needed to ask for. CSIS required the RCMP to have a notion of what it was looking for before making the request, but it would be difficult for the Force to know what to look for without knowing what information CSIS had. Hence, the Force made broad requests, and this was viewed by CSIS as an indication that the RCMP was on a "fishing trip" for missed leads.²⁸⁹

According to CSIS, there was a logistical problem with blanket requests from the RCMP. Because of the size of its informational holdings, it would be very difficult without a specific request to bring up the actual information being searched

²⁸⁴ Exhibit P-101 CAA0294, p. 1.

²⁸⁵ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6135, 6162-6163.

²⁸⁶ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9459-9460.

²⁸⁷ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10321. An example of the RCMP being required to provide precise, narrow requests can be found at Exhibit P-101 CAD0182.

²⁸⁸ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10321.

²⁸⁹ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6164.

for. Further, CSIS was concerned that to allow the RCMP access to its extensive database would have an impact on other areas which were of no proper interest to the RCMP and that were outside the scope of the RCMP/CSIS relationship.

The RCMP, for its part, felt that CSIS could not be relied on for the purpose of “pre-screening” its information to decide what would be of relevance or interest to the RCMP. Inkster testified that having CSIS make the assessment as to what was relevant for the RCMP “...added an area of doubt and concern” that was “a serious one.” He explained that it would be the police who would have to continue the criminal investigation and ultimately to appear before court and give evidence or to swear affidavits for search warrants and wiretap authorizations. With these responsibilities, Inkster felt that the officers needed to be in a position to determine, on the basis of their professional training and experience, whether there was information that was relevant and important to the issues that needed to be resolved.²⁹⁰

It would seem natural to assume that the criminal investigators would be in the best position to determine what was relevant to their investigation. For CSIS, however, providing the open access requested by the RCMP was inconceivable. It would have meant that the Force would have known more than “...most intelligence officers in the BC Region.”²⁹¹ The need-to-know principle, as applied at CSIS, meant that individuals were provided access to classified or designated material only to the extent necessary to properly carry out their current duties or responsibilities. Stevenson explained that colleagues working side by side would not necessarily know what the other was working on. Even CSIS agents would have to justify their own legitimate need to know before being given access to restricted information in their own department.²⁹² CSIS felt justified in applying this need-to-know principle to information passed to the RCMP. The result was that CSIS, rather than the RCMP Task Force, made the decisions on what the RCMP needed to know.

Lack of Trust

There was also significant mistrust between the agencies that impacted on the access debates. As Warren explained:

I guess one of the other problems – and I think it’s just endemic with the nature of the job – it’s sometimes really as much a function of the personalities involved as it is any structure you want to put in place. If there’s a trust built up between individuals, then information tends to flow a lot quicker than if there is an aura of suspicion that surrounds the relationship.²⁹³

²⁹⁰ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10322.

²⁹¹ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7726.

²⁹² Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7726.

²⁹³ Testimony of James Warren, vol. 48, September 19, 2007, p. 5908.

The RCMP's distrust of CSIS's abilities or good faith led the Force to fail to appreciate the value of some of the CSIS information that was being provided to it, while continuing to suspect that CSIS was withholding other information. CSIS investigator Neil Eshleman explained that in the course of their duties and in order to be informed about community issues and better able to make contacts in the community, CSIS investigators made a significant effort to educate themselves on Operation Bluestar and its consequences, on the views of the community towards the Government of India and on Sikh extremism in general. In Eshleman's experience, the RCMP had little appreciation for the value of this type of information. When he tried to explain to them the nuances of community attitudes about the Sikh separatist movement, Sikh extremism and the bombing, he felt it was "...not appreciated to the degree that [he] thought it would be helpful to them." Instead, the RCMP was focused on the "...immediate criminal investigation" and was not interested in the background or "...the larger picture of understanding the extremism that was in the community."²⁹⁴

Eshleman was under the impression that CSIS was passing "...just about everything we had developed" to the RCMP. He felt that this may have contributed to information overload, given that the RCMP was starting at "square one."²⁹⁵

Eshleman indicated that there appeared to be a belief within the Force that CSIS was actively withholding important factual information. He felt that this allegation was incorrect. From CSIS's perspective, the RCMP seemed continually dissatisfied with the information it received, yet appeared to make little use of the community and background information which CSIS investigators felt was important.²⁹⁶

The lack of appreciation at the RCMP for the knowledge and expertise developed at CSIS is well illustrated by the treatment received by three of the BC Region's main Sikh extremism investigators – Ray Kobzey, William Dean ("Willie") Laurie and Neil Eshleman – when they returned to the RCMP. After six years with CSIS, Eshleman returned to the RCMP. He testified that he was not necessarily welcomed back to the Force with open arms.²⁹⁷

This experience was common to all the key CSIS investigators who went back to the RCMP. None of Kobzey, Eshleman or Laurie was assigned to the RCMP Air India Task Force. The RCMP did not see fit to utilize their skills or expertise in the Sikh extremism area. Even when the RCMP received the Ms. E information and was advised that Laurie had been the source handler at CSIS and had developed a good rapport with her, the Force decided not to utilize Laurie's services to continue relations with Ms. E on behalf of the RCMP. Instead, the RCMP treated Laurie with suspicion, making implicit accusations that he had withheld information or that the information he related about what Ms. E had told him was inaccurate.²⁹⁸ In many respects, the RCMP missed the opportunity to capitalize on the extensive experience of the CSIS investigators.²⁹⁹

²⁹⁴ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9383-9384.

²⁹⁵ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9384.

²⁹⁶ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9382-9385.

²⁹⁷ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9452.

²⁹⁸ See Section 1.3 (Post-bombing), Ms. E.

²⁹⁹ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8345.

There was, reciprocally, at CSIS, a lack of confidence in the RCMP's abilities. There was a perception that the RCMP was generally unable to capitalize on the CSIS information it had already been given, because of an apparent lack of "... continuity of knowledge, and their method of retrieving that was more labour-intensive than ours."³⁰⁰ From CSIS's perspective, extensive turnover in the RCMP investigation only added to the problem by limiting institutional memory.³⁰¹

CSIS investigators felt that the RCMP was not appropriately following up on or investigating some of the leads and information provided by CSIS. There was frustration for the CSIS investigators at having to restrict some of their activities for fear of being accused of contaminating the RCMP investigation, while at the same time they did not see the RCMP pursuing avenues CSIS believed to be worthwhile as vigorously as the CSIS investigators would have or could have. In the message it sent to CSIS HQ and to all CSIS regions and districts, requesting clarification about the best way to proceed when the RCMP requested assistance in connection with the Reyat's arrest, the CSIS BC Region specifically addressed the issue of past cases where it had provided investigative leads which the Region felt "...were not given exhaustive follow-up" by the RCMP. BC Region asked HQ whether, in such cases, it had to continue to stay out of the Air India investigation, or whether it could do its own follow-up where "avenues of investigation" still remained after information was passed to the RCMP. The Chief of the Counter Terrorism Section of the Region explained that on the basis of the RCMP E Division response to some leads provided by CSIS, "...the perception was that these were not exhausted."³⁰² CSIS HQ provided no further guidance to assist the Region with this matter.³⁰³

Further, CSIS did not trust that the RCMP would refrain from using its information in judicial processes without authorization, especially after the September 19th affidavit experience. CSIS was also concerned about the RCMP's handling of sensitive material. Some of the information passed to the RCMP was occasionally lost, misplaced or forgotten.³⁰⁴ This resulted in the need to request missing information from CSIS, even when the information had already been requested and provided in the past.³⁰⁵ Not only could this cause confusion and delays, but it would obviously do nothing to reassure CSIS that its information was being treated with care.

Security of Information and Risk of Exposure

Another cause of concern for CSIS was the manner in which the RCMP protected the confidentiality of CSIS information internally. Stevenson testified that the need-to-know principle was not relied upon to the same extent in the RCMP as it was at CSIS. Whatever deficiencies the rigid application of the need-to-know principle might create for an effective investigation in terms of the sharing of

³⁰⁰ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9461.

³⁰¹ See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force.

³⁰² Exhibit P-101 CAA0627(i), pp. 5- 6.

³⁰³ Exhibit P-101 CAA0628; See Section 3.0 (Post-bombing), The CSIS Investigation.

³⁰⁴ See, for example, Exhibit P-101 CAA0969, p. 24.

³⁰⁵ See Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force.

relevant information, it was nevertheless viewed as very effective in terms of the security of that information. CSIS expected the RCMP to understand its need-to-know orientation and to act in a similar manner. However, Stevenson found the situation in RCMP operations to be in stark contrast with the CSIS approach. On a “daily basis” he found files and information “...left lying on desks.” Though this was in a restricted area, cleaners, often of a similar background to individuals the RCMP was investigating, “...were wandering around freely within the working bullpen of the RCMP.” Similarly, at the RCMP, Stevenson could “...quite easily figure out who the translator or translators were.” He felt this pointed to a security risk for those translators. In sum, he stated, “I didn’t think it was good security.”³⁰⁶

CSIS also repeatedly expressed fear that the RCMP would come to know the identities of CSIS sources and targets through the “mosaic effect,” that is “...the possibility that an analyst adding to [CSIS] information their own information would be able, over a period of time, to identify sources.”³⁰⁷ Scowen on the other hand, testified that the threat posed by the mosaic effect “...wasn’t an overriding concern, but it was a consequence of our cooperation.”³⁰⁸ It was enough of an issue, however, to be the subject of a high-level memo to the DDR in 1986, in which it was identified as a concern that was not capable of being addressed by an MOU on the transfer and sharing of information.³⁰⁹

Information Sharing Issue Left Unaddressed

Overall, the RCMP and CSIS seemed to lack the ability to communicate their needs to each other. The basic assumptions made by each agency about the fundamental issue of who should decide what information was relevant were clearly at odds with each other, but the issue was apparently never addressed directly. No resolution was found for the impasse – at least through the Reyat trial and, arguably, even after that. Miscommunications persisted and the relationship between the two organizations continued to falter. Valuable time was wasted while the agencies repeated the same debates over and over again but never addressed the underlying issues. Both agencies failed to recognize the problem for what it was and to take steps to correct it.

Raw Material versus Information and Leads

While the RCMP Task Force obtained free-flowing access to the relevant CSIS sitreps during the early days of the investigation, requests for raw data, such as underlying surveillance reports, interview notes, or intercept logs were generally met with resistance.

As a matter of policy, CSIS only shared intelligence reports dealing with its intercepts and never the intercepts themselves. What the RCMP got was a document outlining information derived from CSIS wiretaps that CSIS believed

³⁰⁶ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7674-7675.

³⁰⁷ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6165.

³⁰⁸ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6166-6167.

³⁰⁹ Exhibit P-101 CAA0415.

would be of assistance to the RCMP. The intercept tapes or the notes prepared by the CSIS transcribers and translators who listened to the tapes were not made available.³¹⁰

On an “exceptional basis,” CSIS would allow the RCMP to use its own resources to translate tapes. This expedient was employed when RCMP Cst. Manjit (“Sandy”) Sandhu was indoctrinated into CSIS to help review the Parmar Tapes in the fall of 1985.³¹¹ The result was to reduce CSIS exposure, by removing the need for a CSIS translator to appear in court, avoiding the issue of naming the translator in public. However, this solution was only adopted by CSIS when its resources did not allow for the timely translation of the Parmar Tapes and did not appear, at the time, to be intended as a long-term policy solution geared towards avoiding exposure of the translators and transcribers.

CSIS’s view of its information-sharing obligations to law enforcement was based on its model of providing investigative leads with possible added CSIS assessment to “...facilitate the RCMP’s job.”³¹² In his testimony, Hooper explained that CSIS’s practice, which was generally not to provide “transcripts” (intercept notes), notes or other “raw material” to the RCMP, was based on CSIS’s interpretation of what he characterized as the proscriptive nature of section 19 of the *CSIS Act*. Section 19 forbids the dissemination of CSIS information obtained during the course of its duties and functions, but then sets out four exceptions, including disclosure to a law enforcement body. Hooper noted that the exceptions were to be triggered at the discretion of the CSIS Director, and thus, in his view, it was the Director alone who was to decide whether to release certain classes of information to the RCMP.

In considering the possibility of routinely passing information to the RCMP and providing full access to raw materials, a possibility Hooper described as doing a “data dump” on the RCMP, CSIS had to consider whether it was failing to meet the expectations of Parliament by stripping the Director of the discretionary power accorded by the statute.³¹³ According to Hooper, it was on this basis that CSIS felt that the “...wholesale release of all forms of information to the RCMP would not be in keeping with the law,”³¹⁴ and consequently tried to draw a line based on a distinction between original records (“raw materials”) and intelligence reports.

As a matter of statutory interpretation, and also as a matter of logic, this argument is difficult to defend. A blanket prohibition on disclosing raw intercept materials is hardly necessary as a means to preserve the Director’s discretion. Indeed the initial decision to grant access to the Parmar intercept logs is clearly an example of exercising the discretion granted by section 19. Distinguishing between raw materials and summaries is equally unrelated to ostensible privacy concerns, since it is the content of the disclosure, not its form, that might damage privacy rights.

³¹⁰ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6142.

³¹¹ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6191; See Section 4.3.1 (Post-bombing), Tape Erasure.

³¹² Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6221.

³¹³ Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6220-6221.

³¹⁴ Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6221.

In the end, it appears that CSIS's attempt to control the form in which information was made available to the RCMP was in fact intended to prevent the possibility of future use and disclosure of the information in court. Grierson stated that when leads were provided by CSIS, the RCMP would ask for evidence such as "...notes, tapes of interviews, verbatim, all of the things that they do, in an evidentiary collection model." Grierson testified that, in his view, the Act prohibited CSIS from keeping such material, because Parliament had opted for a civilian service. This is another way of stating that, as a civilian agency, "CSIS does not collect evidence." The result was that the RCMP kept revisiting the issue of CSIS disclosure and persistently complained that CSIS was not giving over everything it had.³¹⁵

Inkster explained that access to original documents or "raw data" – as opposed to summaries of information from CSIS – is important in the policing context because only RCMP officers have a full understanding of all relevant documents and information in relation to the investigation and thus it would be "impossible" for "...a CSIS individual to conclude the relative merits and value of that information" without that background.³¹⁶ Roth testified that the raw intercept notes provided much more information than the sitrep summaries which were cleansed to protect CSIS's interests.³¹⁷ According to Inkster, direct access to raw materials was necessary since the RCMP investigators on the file were in the best position to understand the subtleties of information and to make connections and understand the significance of information relating to the case.³¹⁸ In other words, aside from issues surrounding the possible use of CSIS materials as evidence, the RCMP felt that CSIS was unjustifiably denying access to important information by refusing to provide raw materials. From the RCMP point of view, this was another instance of CSIS unilaterally deciding what information was relevant to the criminal investigation.

An RCMP memorandum, likely written in the fall of 1989, makes clear the RCMP's view of the effect of CSIS policies on the RCMP investigation of the bombing. The document states that "...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."³¹⁹ However, the conversations that were intercepted by CSIS were only "...summarized in a paraphrased manner" and verbatim transcripts were not made available to RCMP reviewers.³²⁰ 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

³¹⁵ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9459-9460.

³¹⁶ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10322-10323.

³¹⁷ Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5622.

³¹⁸ Testimony of Norman Inkster, vol. 81, November 22, 2007, p. 10324.

³¹⁹ Exhibit P-101 CAA0750, p. 1 [Emphasis added].

³²⁰ Exhibit P-101 CAA0750, p. 1.

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.³²¹

The delay, uncertainty and limited access provided by CSIS to certain materials, as a result of its legalistic and narrow approach and of its inability to devise policies based on common sense in the early stages of the post-bombing period, were perceived as hindering the RCMP investigation. About the changing access to the Parmar intercept logs, Hooper testified that "...in many respects we were trying to be quite reasonable actually."³²² The overall impression for the RCMP, however, was not one of reasonableness, especially in the context of such an immense tragedy. Instead, it appeared that CSIS was acting erratically, without well thought-out policy guidelines, as it kept changing the rules.

The Use of CSIS Information

In its briefing to the Honourable Bob Rae, CSIS pointed to the vast quantity of information it had made available to the RCMP Task Force early on, but noted that frustrations emerged because of the limits which the Service felt had to be placed on the use that could be made of its information:

Because of its mandate and the requirement to protect the methodologies, targets and sources, and because it does not collect evidence, the Service necessarily placed a caveat on the use to which this information could be put. It is clear that this prompted considerable frustration on the part of the RCMP. The Service understands the frustration that this caused within the RCMP, and how their perception would have coloured any cooperation that did take place.³²³

Certainly, the inability to use CSIS information as evidence or in support of warrant applications by the police – whether because the CSIS raw materials were not provided because they had not been preserved or because CSIS refused to grant authorization – was the cause of significant frustrations for the RCMP investigators in the early days of the Air India investigation and was the most important factor contributing to the escalation of the tensions between the agencies.

Many criticisms have been levelled against CSIS's approach to sharing information with the RCMP. Given the debates about the need for more specific RCMP requests and the refusal to provide raw materials, in many cases these criticisms were not entirely unwarranted. However, the recriminations were taken a step further, with many at the RCMP eventually coming to believe that

321 Exhibit P-101 CAA0750, p. 2.

322 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6224.

323 Exhibit P-101 CAA1086, p. 7.

the disputes over access to CSIS information, and the delays in obtaining the information, prevented the RCMP from identifying those responsible for the Air India bombing early on and caused the investigators to focus on the wrong suspects. Early on in his review of the Air India file, Bass concluded that, if CSIS had cooperated more fully with the RCMP at the beginning of the investigation, "...the case would have been solved at that time."³²⁴ Bass believed that because of the time it took for CSIS to inform the RCMP about the existence of the communications intercepts, and because of the subsequent erasure of the tapes, the RCMP began its investigation in June 1985 focusing on the wrong targets. In a 2003 briefing note to the RCMP Commissioner, Bass noted that:

As a result of the Force not being aware of the contents of the intercepted material on Parmar until September [1985], the crucial linkages between Parmar and the key [co-conspirators] went unknown to the Force. In August, the Task Force swore a Part IV.I (now Part VI) affidavit on persons not connected with the offences.³²⁵

In its submission to the Honourable Bob Rae, the RCMP indicated that it was only when it received access to the Parmar intercept notes in September 1985, two and one-half months into the investigation, and was then able to analyze some of the coded conversations in the intercept notes, that its perspective on the investigation shifted "...to consider Parmar more of a primary suspect rather than as peripheral to Reyat."³²⁶

In fact, however, the RCMP was aware of Parmar as a prime CSIS target early in July 1985. At the time, all of the CSIS surveillance and intelligence reports were turned over promptly in British Columbia. Those reports contained all of the information that CSIS itself considered relevant to its analysis, and set out CSIS's theories of the case. In particular, the June 27th CSIS sitrep, which would have been available to the Task Force in early July,³²⁷ contained references to some of the Parmar conversations which were later identified by the RCMP as providing serious indications of Parmar's involvement.³²⁸ CSIS also advised the RCMP, as soon as it became aware through its own analysis in August 1985, that coded language was used in some of Parmar's conversations.³²⁹

The real debate was not about the RCMP being kept in the dark about the CSIS information pointing to the identity of the prime suspects. The root of the problem was the RCMP's continuing focus on access to the underlying, or "raw," materials, and the desired ability to use those materials in support of its own warrant applications, and CSIS's resistance to provide this access and authorization. On the one hand, it appears that CSIS believed that simply informing the RCMP of

³²⁴ Exhibit P-101 CAA0932, p. 5.

³²⁵ Exhibit P-101 CAA1007, p. 3.

³²⁶ Exhibit P-101 CAA0335, pp. 22-26.

³²⁷ Exhibit P-101 CAA0379(i), p. 9.

³²⁸ Exhibit P-101 CAB0360, pp. 6-7.

³²⁹ Exhibit P-101 CAA0308, CAA0309(i).

what it learned would be sufficient to enable the Force to go off and do its own separate investigation, when in fact, at the very least, the RCMP would have had to include detailed information about what CSIS knew and how it knew it in any application it would have made for the warrants and authorizations needed to conduct its investigation. On the other hand, the RCMP confused CSIS's reluctance to grant access to raw materials and to authorize their use in judicial proceedings with a lack of access to the actual information, even while the information was, for the most part, available from the beginning.

The reason for the Task Force's frustration was that it believed it could not proceed with a wiretap application against its most important suspects without the detailed "raw" information contained within the CSIS translators' notes and intercept logs. Bass explained that the failure to obtain RCMP wiretaps against Parmar much sooner than was ultimately done was a lost opportunity. He believed that the immediate post-bombing period was critical to the investigation in terms of intercepting communications.³³⁰ He testified that if he had been involved in the investigation in 1985 and had been aware of the information obtained via the CSIS pre-bombing intercepts, he would have concentrated more directly on the principals suspected in the conspiracy and would have sought authorizations to intercept communications at the pay telephones within proximity to their places of residence.

The RCMP expected CSIS to be able to provide information that could be used as evidence. Bass believed that had the CSIS Parmar intercept tapes not been erased, a successful prosecution could have been brought against at least some of the principals in the bombing of Air India Flight 182, using the CSIS tapes as evidence.³³¹ Wall indicated that the sense of frustration amongst the members of the Task Force was caused by the fact that "...we weren't getting what we thought we should in terms of hard evidence or original evidence."³³²

In August 1985, the RCMP did reorient its investigation to focus more on Parmar.³³³ This was done on the basis of an analysis at RCMP HQ of the information already in the RCMP's possession, along with the information that was being acquired about Reyat's suspicious purchases. This decision could have been made earlier by the RCMP. The summaries provided by CSIS in its sitreps were sufficient to lead to the conclusion that Parmar and his close associates should be prime suspects. The need for raw data about the CSIS intercepts and the delay in accessing it cannot fairly be said to have "caused" the RCMP to focus on the wrong targets, though it is possible that it may have prevented the Force from being able to support a wiretap application earlier. Even on this last point, Bass could not state with certainty that the other information available to the RCMP would have been insufficient to obtain an authorization to intercept the communications of Parmar and his associates earlier, although he thought it was likely the case.³³⁴

330 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11239-11241.

331 Exhibit P-101 CAA0932, p. 3.

332 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9674.

333 Exhibit P-101 CAA0303; See Section 2.3.4 (Post-bombing), The Khurana Tape.

334 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11241. See, generally, Section 2.0 (Post-bombing), Set-up and Structure of the Federal Task Force.

The real issue which divided CSIS and the RCMP from the early days of the Air India investigation was about the use of CSIS information for court purposes. CSIS was concerned not to be seen to be collecting evidence, while the RCMP, as a police entity, felt it had a need for evidence, not intelligence.

When it provided information to the RCMP, CSIS generally specified that it was provided as “investigative leads” and attached caveats restricting the use that could be made of the information without CSIS’s prior consent.³³⁵ The 1984 information-sharing MOU also provided that “...the receiving agency shall not initiate action based on the information provided without the concurrence of the providing agency.”³³⁶ All information released to the RCMP would be accompanied with the caveat that it could not be disseminated further without CSIS authorization.

In his testimony, Warren noted that CSIS places caveats on almost all information it passes.³³⁷ The caveat is a boilerplate warning, intended to conceal the identity of the source of the information and to protect sensitive information from further dissemination. Stevenson testified that “...any intelligence service worth its salt will put caveats on its information,” particularly information passed to the police, in order to have “...care and control” of the information and to know where it has gone and how it is being used.³³⁸

Bass testified that he understood why CSIS felt from its perspective that it was important to place caveats on the use of its information, but he did not agree that the caveats were always “necessary.”³³⁹

Deputy Commissioner Henry Jensen wrote to the Assistant Deputy Solicitor General about the issue on July 14, 1988.³⁴⁰ He noted that CSIS information was heavily caveated, and that this was problematic because it precluded the use of CSIS information in subsequent criminal investigations and prosecutions. Jensen was concerned that while CSIS had committed to passing information on criminal conspiracies as early as possible, this passage would in practice generally only occur after the conspiracy was formulated. At that late stage, Jensen felt that the conspirators would already have become more cautious, resulting in a “catch-22” situation where the RCMP needed to rely on CSIS information to support its investigation. Jensen noted CSIS’s fears of exposure of its sensitive information in court, as well as the potential perception that cooperation between CSIS and the RCMP would indicate that CSIS was performing a quasi-police function. While Jensen recognized these fears, he emphasized the seriousness of the conspiracy offences. Jensen noted that the Solicitor General’s office had previously recognized the need to develop specific policy guidelines governing the RCMP use of CSIS information, but that no such guidelines had been formulated. Jensen pressed the Ministry to address these issues.³⁴¹

³³⁵ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6163; Exhibit P-101 CAA0447.

³³⁶ Exhibit P-101 CAA0076, p. 4.

³³⁷ Testimony of James Warren, vol. 48, September 19, 2007, p. 5846.

³³⁸ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7657.

³³⁹ Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11225.

³⁴⁰ Exhibit P-101 CAC0061.

³⁴¹ Exhibit P-101 CAC0061, pp. 1-3.

In the absence of concrete policy guidelines from Government, CSIS made its own decisions about whether to authorize the use of its information, based on its own concerns and on its own assumptions about the criminal process. In 1986, CSIS stated in an internal memorandum:

In the event that intelligence provided is requested for use as evidence or court purposes, then CSIS HQ must be consulted prior to any authorization being granted.... HQ will request a legal opinion and a management judgment will be based on that opinion. While we accept the importance of the judicial system in fighting terrorism, it is not our intention to hand over carte blanche all intelligence required for court by the RCMP.³⁴²

In testimony before the Inquiry, Scowen commented that the overriding consideration in deciding whether to authorize the use of CSIS information in court was the preservation of CSIS capabilities in the long-term.³⁴³

As illustrated by the September 19th affidavit episode, the CSIS concern was not only about the attempt to use its information as evidence in a court of law. Using the information in support of intercept or search warrant applications presented by the RCMP could also expose the information to ultimate public disclosure. This possibility was tied to the change in criminal procedure that took place in the mid-1980s whereby the “sealed packets” containing affidavits in support of wiretap authorizations were now routinely “opened” and examined in court.³⁴⁴ In a 1987 memo, Barr noted that recent court cases had made it a virtual certainty that CSIS information used in *Criminal Code* wiretap affidavits and warrant applications would be disclosed to the defence. As such, the decision to provide CSIS information for any use in the criminal process was a “...very serious one indeed and must be weighed in the light of the competing public interests of successful prosecution and the need to protect the national security of Canada.”³⁴⁵

For the RCMP, CSIS restrictions on the use of its information were viewed as creating a dilemma and as complicating its legal position:

The RCMP viewpoint on using CSIS information in judicial affidavits was that if the information was provided for investigative leads only, the RCMP was then seized with knowledge of criminal activity yet was unable to use the information to fulfil its mandate under the *Security Offences Act* when attempting to further the investigation.³⁴⁶

³⁴² Exhibit P-101 CAB0666, p. 3.

³⁴³ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6180-6181.

³⁴⁴ Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6227.

³⁴⁵ Exhibit P-101 CAF0272, p. 3.

³⁴⁶ Exhibit P-101 CAA0881, p. 13.

As explained by Inkster, "...when someone gives you the information and yet tells you how you can or cannot use it, you're sometimes better off not to have it."³⁴⁷

On this issue, James Jardine testified that it was necessary, in order to fulfill the police and Crown's legal obligations, to include information in the September 19th affidavit about the nature of the CSIS materials, the difficulties encountered by the RCMP in accessing them, and the type of access finally provided.³⁴⁸ About the November search warrant application, which did not reveal the fact that CSIS was a source of the information in an attempt to accommodate CSIS concerns, Jardine testified that he was not consulted before this approach was adopted, and that he felt it made the warrant vulnerable to constitutional attack.³⁴⁹ This was particularly significant in the Reyat trial, because the Crown's case rested in large part on the forensic analysis of some of the items seized at Reyat's residence pursuant to the search warrant. If the warrant was found to be invalid, defence counsel could seek the exclusion of these items from the evidence as a remedy.³⁵⁰

CSIS ultimately authorized the use of much of its information and materials in the Reyat trial in the early 1990s and then in the recent prosecution of Malik and Bagri.³⁵¹ Issues arose as to the admissibility of some of the material, and constitutional challenges were mounted because of CSIS's failure to preserve original records,³⁵² but CSIS nonetheless did authorize the use of its information in court. It would appear, however, that this authorization was largely driven by the view that Air India was a "special case."

Grierson stated that the Air India investigation was an exception and that the public interest dictated that CSIS needed to do everything it could to assist.³⁵³ Scowen also indicated that special exceptions were made from a policy standpoint in the Air India case due to the overwhelming magnitude of the bombings. According to Scowen, Barr made it very clear that if CSIS were to come across the "smoking gun" or uncover investigative leads that would allow the RCMP to close the Air India case, "...all bets are off." The information would be passed directly, regardless of whether it exposed a source, and the consequences would be dealt with later.³⁵⁴

Given the constant tensions and debates over every request for CSIS information, one wonders how the RCMP's initial approaches to CSIS for access to raw

³⁴⁷ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10325-10326.

³⁴⁸ See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

³⁴⁹ See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

³⁵⁰ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5721-5722; Exhibit P-101 CAA0575(i), p. 6; See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective. Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5721-5722; Exhibit P-101 CAA0575(i), p. 6.

³⁵¹ See Section 4.4 (Post-bombing), CSIS Information in the Courtroom.

³⁵² See Section 4.3 (Post-bombing), The Preservation of CSIS "Evidence" and Section 4.4 (Post-bombing), CSIS Information in the Courtroom.

³⁵³ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9459-9460.

³⁵⁴ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6145, 6160-6162.

material or for the use of CSIS information in judicial proceedings would have been received if CSIS had not considered the Air India case to be exceptional. Most importantly, even where, after much discussion and many difficulties, the disclosure of an important amount of CSIS information was obtained, as was the case in the preparation for the Reyat trial,³⁵⁵ such robust disclosure was not necessarily a precedent-setting move by CSIS. Grierson testified that the CSIS position in the Reyat case was due to the significance of the Air India bombing, and that in future cases CSIS's willingness to disclose sensitive information would depend on the nature of the crime. He stated, "...in terms of the magnitude of that issue, and the public interest, we did a lot of things that we wouldn't have normally done in the due course of intelligence exchanges in order to support that prosecution, and it was successful."³⁵⁶

In June 1987, Barr noted that "...in counterterrorism, the distinction between intelligence and evidence collection will never be absolute and crystal clear."³⁵⁷ Yet, CSIS's difficulty to come to terms with situations where it did end up in possession of evidence continued. It continued to refuse to use police-like methods for gathering and storing information. It maintained an acutely cautious approach to authorizing the use of any of its information in judicial proceedings. Even the successes eventually achieved in the Air India case cannot be taken as a sign that the problem is resolved.

Human Sources

The issue of protection of human sources was always a central concern for CSIS in its decisions about information sharing and cooperation with the RCMP. According to CSIS, human sources are the "most important resource" for any intelligence service. The protection of these resources is seen as "absolutely paramount" for CSIS, since the ability to protect sources has a direct impact on its ability to keep and recruit other human sources. When recruiting human sources, CSIS would guarantee anonymity "...to the best of their ability" and would "...go to great lengths to ensure that that is the case throughout their relationship with us."³⁵⁸

Concerns about the RCMP's ability to protect the anonymity of CSIS sources extended throughout the Air India investigation. In a memo dated November 13, 1986, Warren wrote to all CSIS regions that, due to events demonstrating "... the apparent inability of the RCMP to restrict dissemination of CSIS information relating to human sources," Barr had imposed a temporary moratorium on the sharing of information with the RCMP where that information could lead to human source identification.³⁵⁹ The memo noted that the issue would be discussed at an upcoming CSIS/RCMP Liaison Committee meeting, where a resolution to the problem would be sought. Whatever the incident that had

³⁵⁵ See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

³⁵⁶ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9481.

³⁵⁷ Exhibit P-101 CAF0272, p. 3.

³⁵⁸ Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6154-6155. This promise was not always fulfilled: See Section 1.3 (Post-bombing), Ms. E.

³⁵⁹ Exhibit P-101 CA0682(i), p. 1.

precipitated this particular crisis, CSIS's concern for the protection of its sources continued to influence the nature and the extent of the information it was willing to share with the RCMP. CSIS's belief that its paramount concern for the protection of human sources was not shared by the RCMP, or at least not to the same extent,³⁶⁰ caused additional tensions between the agencies.

Over the years, CSIS did develop a number of sources who became relevant to the Air India investigation.³⁶¹ CSIS agents seemed to have a better sense of the Sikh community and were often able to make better community contacts than the RCMP.³⁶² Eshleman testified that CSIS had a "...good success rate in utilizing casual sources," who provided CSIS with good intelligence and a useful understanding of the various organizations they were targeting.³⁶³

As CSIS developed sources, the RCMP responded by demanding access to those sources, often demonstrating a sense of entitlement in pursuing a purported right to "take over" CSIS sources or contacts where it was felt the individuals provided or could provide information relevant to the Air India investigation.³⁶⁴ Grierson testified that, despite the fact that the RCMP's own policy was not to identify sources, whenever CSIS shared information with them the "first question" they would ask pertained to the identity of the source. Grierson viewed such behaviour as unprofessional. He stated that in a number of cases "...it was almost unbelievable that they would have – take the aggressive nature that they did in terms of demanding it."³⁶⁵ In a memo discussing Ms. E, Stevenson described the RCMP attitude in these matters as follows: "...these individuals will not rest, or desist until they have interviewed the source or satisfied their curiosity as to the source's identity."³⁶⁶

The transfer to the RCMP of information from CSIS sources, and, in some cases, of the sources themselves, led to serious morale problems for CSIS investigators, in particular among the source handlers.

Grierson testified that the BC Sikh unit had five or six very dedicated investigators who had a "...wealth of knowledge" about the Sikh extremism milieu. He stated that "...one after another" they would put their efforts into developing a source, only to lose that source to the RCMP. Grierson stated that this was very discouraging for the investigators and left them asking "...why do we even bother doing this anymore?" It became an immense challenge to try to keep the investigators motivated.³⁶⁷

Morale issues and lack of motivation may have contributed to the loss by the CSIS BC Region of three of its most knowledgeable Sikh extremism investigators. Ray Kobzey, Willie Laurie and Neil Eshleman all returned to work for the RCMP in

³⁶⁰ See Section 1.5 (Post-bombing), Ms. D and Section 1.2 (Post-bombing), Tara Singh Hayer.

³⁶¹ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8326-8327.

³⁶² See Section 1.0 (Post-bombing), Introduction.

³⁶³ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9402-9403.

³⁶⁴ See, generally, Chapter I (Post-bombing), Human Sources: Approach to Sources and Witness Protection.

³⁶⁵ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9485-9486.

³⁶⁶ Exhibit P-101 CAF0404, p. 5.

³⁶⁷ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9508-9509.

the late 1980s. Eshleman testified that he returned for a number of reasons, "... some personal, some operational." He testified that there was often a "...lack of recognition" at CSIS from senior people for the work done in the field. He stated that a number of the people who testified at the Inquiry "...put their heart and soul" into the Air India investigation, but that their efforts were not appreciated by CSIS.³⁶⁸ No doubt, being forced to give up sources an investigator had spent long hours cultivating, only to see the RCMP scare the source away or reject their information,³⁶⁹ would be perceived as a sign that the investigator's work was not being appreciated by senior management. It appears that investigators felt they were at risk of being personally blamed, and not backed up by their organization, whenever the RCMP accused CSIS of interfering with the criminal investigation.³⁷⁰

The general sentiment among CSIS investigators appeared to be one of outrage that the RCMP would demand and often obtain access to their sources. They distrusted the RCMP's professionalism in handling its relations with sources, and even questioned its basic competence and ability to recruit sources. In one note written in connection with the Ms. E issue, Stevenson wrote: "...one of these days they will surprise us and develop a source or an asset of their own."³⁷¹

The dissatisfaction among CSIS investigators with the results when the RCMP took over the CSIS sources also naturally made them more reluctant to share information that might enable the RCMP to identify those sources and ask for direct access to them. When the Ms. E information was first received by CSIS, despite its clear relevance to the criminal investigation, the CSIS investigator and his supervisors all concluded that it was better to allow CSIS to continue to develop the information, since the source would most likely provide nothing to the RCMP.³⁷²

Information Sharing by the RCMP

The difficulties in sharing did not operate in only one direction. The RCMP also was often hesitant to share its information with CSIS. Throughout the post-bombing period, many at CSIS felt that the RCMP, while aggressively demanding access to CSIS information, was reluctant to share its own information. CSIS complaints about information sharing being a "one-way street" from CSIS to the RCMP, both generally and in the context of the LO program,³⁷³ were recurrent.

What can be observed, interestingly, is that the RCMP often adopted practices that were very similar to the CSIS practices which it so consistently complained about. Like CSIS, the RCMP was vetting its information prior to sharing, was providing partial documents in order to tailor its responses to the requests, and was adding caveats to the information it provided.

³⁶⁸ Testimony of Neil Eshleman, vol. 75, November 14, 2007, p. 9450.

³⁶⁹ See Chapter I (Post-bombing), Human Sources: Approach to Sources and Witness Protection.

³⁷⁰ Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9498-9499.

³⁷¹ Exhibit P-101 CAF0404, p. 5; Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7692.

³⁷² See Section 1.3 (Post-bombing), Ms. E.

³⁷³ See Section 4.2 (Post-bombing), The Liaison Officers Program.

Though RCMP sharing with CSIS was made mandatory under the 1984 information-sharing MOU,³⁷⁴ the RCMP decided that its files would have to be reviewed prior to providing access to CSIS and that, even after such a review, only the portion of the file specific to the particular CSIS inquiry could be shown to CSIS. Decisions about whether access would be provided to CSIS to materials of mutual interest and if so, to what extent, were described by the RCMP Director of Criminal Investigations as "...subjective decisions that the RCMP member will have to make based on all the circumstances." It was concluded that in some cases it would be impossible to provide the information requested or that the information would have to be transferred to a separate document in order to be sufficiently isolated.³⁷⁵ RCMP members responding to CSIS requests for RCMP HQ files vetted the materials and provided or shared only "releasable information."³⁷⁶

Part of the Project Colossal agreement was that RCMP information related to CSIS's mandate would be shared with CSIS. Scowen testified, however, that the volume of information CSIS supplied to the RCMP always greatly outweighed what the RCMP provided to CSIS.³⁷⁷ While this may have resulted simply from the fact that CSIS gathered more information than the RCMP, the Service saw indications, in some instances, that there was also a failure on the part of the RCMP to share the information that it did gather.³⁷⁸ At the same time, some members of the E Division RCMP Task Force got caught up in an attitude of suspicion and competition, and were reluctant to share the product of their work for fear that it would provide CSIS with a "free benefit," while they believed CSIS continued to hold out on providing its own information.

CSIS took issue with "...the RCMP's restrictive use of caveats on the grounds of conducting a criminal investigation," arguing that this was "...hindering the CSIS from fulfilling its responsibilities." In particular, CSIS was concerned about an RCMP practice of putting caveats restricting the use of its information relevant to Air India until the investigation was completed. While CSIS understood that an RCMP caveat could be necessary in some circumstances, for example to avoid jeopardizing the execution of a search warrant, the Service noted that the RCMP "...should not use the caveats frivolously to obtain a competitive advantage."³⁷⁹

The Centralization of Information Sharing

Decisions about information sharing between CSIS and the RCMP were often made at the HQ level in both organizations. While this was more conducive to creating and applying consistent policies, this structure contributed to creating tensions within and between the agencies. In CSIS's case, it often operated as an additional pressure militating against sharing with the police.

³⁷⁴ Exhibit P-101 CAA0076, p. 3; Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1666.

³⁷⁵ Exhibit P-101 CAC0018, p. 2.

³⁷⁶ Exhibit P-101 CAC0026(i).

³⁷⁷ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6175.

³⁷⁸ See, for example, Exhibit P-101 CAB0590, pp. 4-9, 11-14.

³⁷⁹ Exhibit P-101 CAA0743(i), p. 6.

CSIS policy generally required that if there was a possibility that information to be shared would lead to, or become relevant to, a criminal investigation, the exchange of information had to be pre-cleared with CSIS HQ, which was where the decisions about information sharing with the RCMP were made. Where authorization was sought by the RCMP to use CSIS information in the judicial process, CSIS HQ also insisted on being advised and on making the decision, in light of the risk that its information would be disclosed to the defence.³⁸⁰

In practice, this centralized decision-making structure resulted in a delay in the exchange of information while the CSIS regions sought authorization from HQ and waited for a response. This left the RCMP with the impression that CSIS was not providing information fast enough.³⁸¹

During a 1987 meeting about the LO program,³⁸² the CSIS BC Region cited ongoing problems associated with passing perishable or life-threatening information to the RCMP, noting that often this information surfaced late in the day, or on weekends, when CSIS HQ offices in Ottawa were closed. The CSIS policy at the time provided that the regions had the autonomous authority to pass such information directly to the RCMP, provided HQ was immediately advised of the information that had been passed.³⁸³ In practice, when the regions exercised this autonomy in cases involving time-sensitive information or “immediate threats,” internal tensions arose.

During the attempted murder trial of the Sidhu shooters, the CSIS BC Region came into possession of information about an upcoming meeting of Sikh extremists and obtained technical coverage. During the meeting a statement was made with reference to “...a judge, a courtroom and the difficulty of killing people who are afforded some form of security.”³⁸⁴ The Region believed the information constituted a threat to a judge while sitting in court, possibly the judge involved in the Sidhu trial.³⁸⁵

Not wishing to make the same mistake that had resulted in the shooting of Sidhu – when information warning of the attack was obtained by CSIS and was not provided to the RCMP³⁸⁶ – BC Region made the decision to pass the information to the RCMP immediately, without first seeking guidance from HQ. The Region provided extensive access to raw materials. Corporal Don Brost of the RCMP was allowed to review the pertinent verbatim material written by the translators, raw materials usually restricted to CSIS. Brost did not disagree with the CSIS BC Region assessment that a threat to a judge was involved.³⁸⁷

380 Exhibit P-101 CAF0272, p. 3.

381 Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9465-9467.

382 See Section 4.2 (Post-bombing), The Liaison Officers Program.

383 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6151-6152, 6154; Exhibit P-101 CAF0272, pp. 2-3, CAF0275, p. 1.

384 Exhibit P-101 CAB0724(i), p. 2.

385 Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9467-9469.

386 See Section 3.0 (Post-bombing), The CSIS Investigation.

387 Exhibit P-101 CAB0724(i), p. 2.

BC Region reported the incident to CSIS HQ and was criticized for its actions. The information was assessed at HQ and the Region was advised that it should not have disclosed the information because "...quite clearly they weren't really talking about killing a judge." Grierson, then the Deputy Director CT in the BC Region, testified that the Region could not risk making a mistake. The Region made the decision based on the possible risk and what they perceived to be the immediacy of the threat. Grierson testified that, faced with a similar situation in the future, the Region would have made the same decision and would have incurred the criticism from HQ. This position caused friction because the Region was "...questioning the authority and the wisdom and the analytical ability of our counterparts in Headquarters vis-à-vis our analysis."³⁸⁸

In 1988, BC Region was again criticized by HQ for passing an investigative lead to the RCMP without first clearing it with HQ. At the time, the Region intercepted a discussion between Parmar and some of his followers. While discussing a Sikh in the Punjab, who was caught due to a betrayal by other Sikhs, Parmar stated:

If someone implicates me or gets me arrested for planting the bomb, that person would have been an insider. How any other person can do it who doesn't know anything?³⁸⁹

Grierson testified that, considering who was in the room when Parmar said those words, the Region thought the statement was "fairly significant." BC Region passed the information immediately. HQ was critical of the decision to pass the information, as HQ felt that there was no "...immediacy of the threat." Instead, HQ felt the decision could have waited for HQ to weigh in on the matter. Grierson stated that the Region only cared that the statement represented a "significant" investigative lead for the RCMP and hence made the decision to pass it.³⁹⁰

Though Grierson testified that he would make the same decisions again, despite having incurred criticism, it must be recognized that the possibility of incurring criticism from HQ if information was shared without authorization could only operate as an incentive not to share at the regional level. With the passage of time, a more relaxed policy was adopted by CSIS HQ that allowed the regions more autonomy and simply urged them to use common sense in deciding what information could be passed.³⁹¹

On the RCMP side, centralizing information sharing was problematic for different reasons. Because of the RCMP's decentralized structure, the HQ members often lacked the knowledge necessary to identify information of interest, to explain the needs of the RCMP divisions, or to know when to push for more access to certain information or sources.³⁹² This also made it difficult for the Force to

³⁸⁸ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9454-9455, 9467-9469.

³⁸⁹ Exhibit P-101 CAA0630, p. 2.

³⁹⁰ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9470-9472, 9515-9516.

³⁹¹ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9467-9469.

³⁹² See Section 2.1 (Post-bombing), Centralization/Decentralization and Section 1.3 (Post-bombing), Ms. E.

provide CSIS with the information it needed. The CSIS Liaison Officer at RCMP HQ received little information because very little was available at HQ.³⁹³ Often CSIS, with its centralized structure, would know about developments at one of the RCMP divisions before RCMP HQ found out about it. Warren testified that he understood that the RCMP had a real logistics problem moving intelligence around because of its decentralized structure. He did not attribute the perceived lack of sharing at HQ to any bad will on the part of the RCMP.³⁹⁴

The Overly Legalistic Approach to Information Sharing

CSIS legal services played a key role in determining the appropriate level of access to be granted to the RCMP. Turner testified that all access and disclosure decisions were made in consultation with the legal branch. In the early years after the creation of CSIS, the Service relied heavily on its legal counsel to interpret the effect of the *CSIS Act* on its operations. In the early stages after the bombing, all information-sharing decisions were made in consultation with the CSIS legal branch. CSIS was concerned about second-guessing the Federal Court, which had been assigned a new oversight role over CSIS information and warrants. It felt unsure of how the Court would react to the sharing of CSIS information in light of the new civilian mandate.³⁹⁵ In 1987, Barr noted that the decision to authorize the RCMP to use CSIS information in support of judicial applications for warrants or wiretaps had to be made in consultation with CSIS legal counsel, the Solicitor General and in some cases, the Department of Justice, considering the “virtual certainty” that it would lead to the disclosure of CSIS information to the defence.³⁹⁶

This focus on legal aspects, while arguably necessary at times, often led to unnecessary debates and delays. The lawyers who were consulted about information-sharing decisions would naturally exercise as much caution as possible to protect CSIS interests and did not always have a full understanding of the requirements of the criminal process.³⁹⁷ The ultimate decisions on information sharing had to be made on the basis of broad public interest considerations and had to take practical factors into account. They could not be based solely on legalistic arguments. The over-reliance on legal advice tended to narrow the scope of information shared by CSIS.

Leaving information-sharing decisions to CSIS HQ could also result in an overly legalistic focus. When Parmar’s statement about the fact that only an insider could implicate him or get him arrested was intercepted by the CSIS BC Region, HQ was stuck in a debate as to whether the statement was inculpatory or exculpatory and as to its ultimate interpretation if revealed in a court of law. CSIS did have reason to be concerned about the potential exposure, if its information was used in court. It is understandable that it might, for that purpose, attempt to assess the risk that the information would indeed be so used if passed. It does, however, appear well beyond its role, expertise or qualifications to attempt to determine

³⁹³ See Section 4.2 (Post-bombing), The Liaison Officers Program.

³⁹⁴ Testimony of James Warren, vol. 48, September 19, 2007, pp. 5907, 5915.

³⁹⁵ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8297-8298.

³⁹⁶ Exhibit P-101 CAF0272, p. 3.

³⁹⁷ See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

the substantive interpretation that a court might make of the information and whether the information would assist in prosecuting a certain individual or not. In this case, the Region took a more appropriate approach, one that was more pragmatic as would be expected from those working closer to the ground and having more operational interactions with the RCMP. Grierson testified that the Region saw the information as "...a significant potential investigative lead for the RCMP," while HQ "...chose to look at it from a legalistic" approach. He argued that the "bigger question" was the significance of the information and that the legal ramifications could be determined later, and hence his decision to pass the information directly to the RCMP.³⁹⁸

Overlap and the Lack of Coordination

While CSIS was concerned about the RCMP's use of its information and wished to see the RCMP develop its own information, at times there were also concerns about potential overlap in the information-gathering activities of both agencies. Grierson testified that the RCMP did not entirely appreciate CSIS's role as intelligence collector, but often took the position that, in order to assess and interpret investigative leads, it needed to collect its own intelligence. This could make CSIS's work in the community more difficult in instances when the RCMP conducted its own community interviews and community members became confused about the role of each agency and about the risk of being required to testify in court.³⁹⁹

The overlap created by the necessity for the RCMP to conduct its own enquiries separately – whether resulting from the RCMP's inability to use CSIS's information or from the Force's mistrust in CSIS's ability to gather information or in its willingness to share it – was also viewed as inefficient. Grierson testified that it was counterproductive, because two federal departments were "...working in the community with a tremendous amount of overlap." He stated that the overlap went beyond the interviews and stretched into all of the professional resources used by both CSIS and the RCMP to collect information. There was overlap on community interviews, targets and surveillance – all of which made each agency's tasks more difficult.⁴⁰⁰

The overlap problem also went further for CSIS. Because of the risk of contaminating the RCMP investigation and, at least after the Kelleher Directive, the explicit requirement not to get involved in or to interfere with the criminal investigation, CSIS had to refrain from "...actively or aggressively" pursuing certain of its interests in the BK players suspected of being involved in the bombing. In the summer of 1987, the CSIS DG CT advised the RCMP E Division Commanding Officer that if the RCMP investigations were completed, CSIS would begin to pursue its interests aggressively. BC Region was left in a difficult position: if it got "...actively involved in 'pro active' investigations surrounding the RCMP's operations," it risked interfering with the criminal investigation or

³⁹⁸ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9470-9472, 9515-9516.

³⁹⁹ See Section 1.0 (Post-bombing), Introduction.

⁴⁰⁰ Testimony of Mervin Grierson, vol. 75, November 14, 2007, p. 9459.

getting "...dragged into a criminal prosecution." However, given the breadth of the RCMP list of targets, that did not leave CSIS "much room to [manoeuvre]."⁴⁰¹

The Possibility of Joint Operations

One possibility – to avoid some of the negative consequences of overlap and to achieve better coordination that would have allowed both agencies to work more efficiently – might have been the conduct of joint operations.

CSIS investigator Laurie testified that the possibility of having himself and his colleagues Kobzey and Eshleman seconded to a unit where they could work with the police was discussed within the Region. It was thought that this could help to make "some strides" towards solving the Air India case, given the knowledge that the CSIS investigators had acquired and their familiarity with the community. It seemed as though CSIS had information and expertise that the police did not have, and vice versa.⁴⁰² BC Region hoped that CSIS HQ could grant authority to disclose source information without jeopardizing source identity and that if they did not have to deal directly with police, CSIS sources such as Ms. E could be convinced to participate in operations to obtain incriminating statements from the suspects.⁴⁰³

In the end, however, the secondments did not occur and no true joint operation took place in the Air India case, although physical surveillance was at times coordinated.

The 1984 information-sharing MOU contemplated the possibility of joint RCMP/CSIS operations, and specifically provided for a broader sharing of information in this context.⁴⁰⁴ CSIS, however, generally believed that involvement in a joint operation with a police force would run the risk of exposing its assets.⁴⁰⁵ Grierson stated that, in the early years of CSIS, suggesting a joint operation was "...like horrors of horrors for operational people." He explained that police forces are able to combine for "true joint operation[s]" that involve a "...structured, formalized agreement" and full sharing, including full sharing of sources. However, when CSIS considered the possibility of such joint operations or task forces, it was felt that this type of operation would be unacceptable. If all sources and information were shared, it was thought that CSIS assets and long-term collection goals would be compromised by making CSIS operations known publicly and thereby limiting its ability to continue its covert activities and to recruit more sources. Grierson explained that even the limited coordination for physical surveillance exposed CSIS to court proceedings: "...when we did that, we knew there was an associated risk to that because those surveillances could uncover something that would take them into court and in fact, that did happen."⁴⁰⁶

401 Exhibit P-101 CAA0627(i), p. 6.

402 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7433-7434.

403 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7434-7435. See Section 1.3 (Post-bombing), Ms. E.

404 Exhibit P-101 CAA0076, p. 4. See also Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1656-1659.

405 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9335.

406 Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9476-9477, 9491-9492.

Over the years, CSIS modified its initial stance of opposing any joint operation with the RCMP. Jim Warren, when he became Deputy Director of Operations, was more open to the possibility of joint operations and rejected the sentiment that a joint operation would cause "...the sky to fall in." Rather, he felt that the risks associated with involvement in a joint operation could be dealt with "...down the road."⁴⁰⁷ While joint operations would clearly entail risks of exposure for CSIS, Warren's position shows that the Service's initial categorical rejection was at least as much the product of CSIS's preconceptions as of the real added risks which could result from such operations.

Despite later changes in CSIS, and its purported newfound willingness to involve itself in joint operations, the flexibility required to deal with the Air India investigation was not present in the immediate aftermath of the bombing, when it was most needed, and the consequences of CSIS's stubborn, legalistic adherence to its interpretation of the Act and of its attempts to minimize all risks reverberated throughout the rest of the investigation.

Conclusion

While some people at CSIS were attempting to solve the Air India case more or less directly,⁴⁰⁸ others felt it was their responsibility to support the RCMP investigation, a task which they completed with varying degrees of success. The evidence shows that, even within CSIS, there were differing views as to the appropriate level of support to offer the RCMP. Some felt the pressure of the McDonald Commission and advocated an austerely legalistic view of what could and could not be shared, to the point that the discussion and debate slowed down the transfer of information to the RCMP and created tension between CSIS HQ and the regions. Others felt that Air India was a case where exceptions to the rules could be made in the public interest, a sentiment that became more prevalent in later years.

Throughout, one significant failure was CSIS's blanket refusal to make any attempt to collect its information in a manner that would improve the prospect for its admissibility in court if necessary.⁴⁰⁹ Ultimately, in its determination to avoid becoming a "cheap cop shop," CSIS lost sight of its legitimate role in support of the RCMP investigation. While it insisted that the collection of national security intelligence was a clear part of its mandated powers, it failed to recognize that the RCMP would then need to rely on CSIS for such intelligence in national security investigations.

Another failure was CSIS's inability to share its information effectively with the RCMP. This was often exacerbated by the RCMP's own actions, which often showed a lack of understanding for the role of CSIS and a lack of respect for CSIS's most important concerns. At times, the manner in which the RCMP pursued (or failed to pursue) the leads provided by CSIS, and the manner in

⁴⁰⁷ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9491-9492.

⁴⁰⁸ See Section 3.0 (Post-bombing), The CSIS Investigation.

⁴⁰⁹ See Section 4.3 (Post-bombing), The Preservation of CSIS "Evidence."

which it interacted (or failed to interact) with CSIS sources, caused the CSIS investigators to propose making their own attempts to pursue criminal leads and to attempt to avoid turning sources over when they felt better positioned to obtain information of benefit to both agencies.

This is not to say that every RCMP complaint about CSIS information sharing was well-founded. In particular, it is not clear that the RCMP was in fact held back from pursuing Parmar, and other principal suspects, early in the investigation because of information-sharing failures by CSIS. For all of the difficulties experienced by the RCMP in obtaining access to the Parmar intercept materials in order to include them in an affidavit for purposes of obtaining a wiretap, it cannot be said that the RCMP was misled as to who the key suspects would be.

The security of CSIS human sources, translators and methods was, and is, of great importance. The Air India investigation, however, raised the question of the limits of the protection CSIS could legitimately invoke in the face of the imperative of prosecuting those involved in the murder of 331 persons. Because of the numerous problems in the CSIS/RCMP relationship, and because of the overly rigid and legalistic approach often adopted by CSIS, information-sharing disputes often prevented this balancing act from being properly carried out. Information was refused or delayed because CSIS did not – and in some cases legitimately could not – trust that it would not be used without authorization. Information sharing was also affected by the fear not only of losing sources to the RCMP, but also of the manner in which the RCMP would handle those sources and follow up on CSIS information. A legalistic distinction between “raw material” and information was sometimes invoked to refuse access to certain types of materials. In the back-and-forth debates about the breadth of RCMP requests, some questions were obviously never answered because they had not been asked in a sufficiently specific manner. All of this occurred quite aside from the rational and objective examination that should have been conducted by the agencies about the value of the information to the investigation and/or the importance of the prosecution in light of the extent of the potential damage to CSIS operations.

Each agency had a tendency to exaggerate the public interest that corresponded to its particular interests in any given situation. Hence, the RCMP generally claimed that every piece of information was essential to the investigation/prosecution, while CSIS often took the initial position that disclosing the requested information was too dangerous to its operations, without any real analysis having yet been conducted on either side. Not surprisingly, the agencies came to have little respect for each other’s broad claims and assertions, creating a context where they could hardly have the type of dialogue that would have been necessary to balance fairly the interests involved. To this day, the sharing and use of CSIS information in the criminal process remains a complex problem.⁴¹⁰

⁴¹⁰ See discussion and recommendations in Volume Three of this Report: The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions.

4.2 The Liaison Officers Program

Introduction

The RCMP Commissioner and the CSIS Director discussed the possibility of a permanent and more formalized Liaison Officers (LO) Program, shortly after the creation of the new agency. Based on the experience of the Air India, Narita and Turkish embassy investigations, in July 1985, Commissioner Robert Simmonds and Director Ted Finn jointly recognized the need for "...good and strong liaison" between the organizations. They discussed proposals to exchange personnel on a permanent basis in the main regions and divisions, as well as to exchange liaison officers between the CSIS HQ CT Unit and RCMP HQ.⁴¹¹

Initial Discussions and CSIS Opposition

By July 1985, Finn was of the view that both agencies could benefit from the exchange of liaison officers at HQ in the counterterrorism area.⁴¹² However, Finn's enthusiasm for an LO Program was not shared by all senior CSIS executives and the creation of a formal program was put on hold.

On April 17, 1986, the CSIS DDO Ray Lees and CSIS DG CT James ("Jim") Warren met to discuss the wisdom of an exchange of liaison officers between RCMP and CSIS in the area of counterterrorism. Warren concluded that "...no useful purpose would be served" in implementing an LO Program. He felt that there were already two excellent daily liaison channels, one involving RCMP NCIB (including the HQ Coordination Centre for the Air India investigation) and CSIS HQ CT, and the other, RCMP P Directorate and the CSIS Threat Assessment Unit. Warren noted that problems in cooperation between the agencies were, more often than not, based on personality differences and deep-rooted competition over turf, issues that would not be helped through an exchange of liaison officers.⁴¹³

In his testimony before the Inquiry, Warren added that he was concerned that an LO Program would result in CSIS losing control of its intelligence, specifically through erosion of the CSIS Director's discretion to pass information to the RCMP that had been granted by section 19 of the *CSIS Act*.⁴¹⁴

Simmonds, for his part, felt that difficulties in cooperation were based on flaws in policy that failed to allow CSIS intelligence to be available to the courts as evidence, rather than on personality problems. In his opinion, it was never a problem of personalities or people. He reported that he had a good relationship with Finn.⁴¹⁵ However, Simmonds's viewpoint was necessarily that of a high-level official not personally exposed to any of the daily frustrations experienced by members working at the local level.

⁴¹¹ Exhibit P-101 CAD0035, p. 4.

⁴¹² Exhibit P-101 CAD0035, p. 4.

⁴¹³ Exhibit P-101 CAA0432.

⁴¹⁴ Testimony of James Warren, vol. 48, September 19, 2007, p. 5909.

⁴¹⁵ Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9360-9361.

Chris Scowen testified at the Inquiry that one of the reasons that the LO Program was not embraced early on by CSIS was opposition to the idea (espoused by CSIS BC Region) that CSIS should embark on an LO Program simply to prove to the RCMP that CSIS was not withholding relevant information from the RCMP. The feeling at HQ was that this was not a sufficient rationale, as CSIS was already acting in good faith with the RCMP. CSIS felt that it was acting professionally with the RCMP and should not have to prove its good faith by participating in an LO Program.⁴¹⁶

In June 1986, Finn suggested that the possible exchange of liaison officers be postponed in order to allow the deputies of both agencies to discuss it at a later date.⁴¹⁷ However, on August 6, 1986, Simmonds reiterated to the Solicitor General, James Kelleher, the ongoing RCMP recommendation for the formal exchange of LOs.⁴¹⁸ Simmonds held the firm view that the best, and most effective, way to enhance the agencies' complementary roles in counterterrorism investigations would be through the exchange of liaison officers. He felt the exchange should occur at a "reasonably senior level" and on a permanent basis. Simmonds felt that the underlying principle behind the program would be open and free access to all information held by each agency in areas of common interest.⁴¹⁹ He had been advised that the liaison arrangement with the RCMP's National Security Offences Task Force investigating Air India was working well and he felt this provided evidence that the liaison concept could work elsewhere. Simmonds considered such an exchange "vital and necessary" to ensure that the RCMP and CSIS could "...capitalize on the strengths each can bring."⁴²⁰

The Solicitor General Directs the Implementation of the LO Program

On August 14, 1986, Kelleher wrote to Finn and Simmonds to propose initiatives intended to improve cooperation between the two agencies in the counterterrorism area. A main feature of these initiatives was the implementation of a formal LO Program, with LOs given full access to the other agency's files in the counterterrorism area:

[L]iaison officers with specific mandates in the counterterrorism area, will be exchanged in key operational offices across Canada and in the Headquarters of your two organizations. This arrangement will be for an initial period of one year and will be evaluated at the end of that period. Throughout the one year period liaison officers will have full access to information, discussions and briefings in the counterterrorism area to the same extent as officers of equivalent rank in the host organizations are accorded.⁴²¹
[Emphasis added]

416 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6197.

417 Exhibit P-101 CAC0029, p. 2.

418 Exhibit P-101 CAA0474, p. 11.

419 Exhibit P-101 CAC0030, p. 4.

420 Exhibit P-101 CAA0474, p. 11.

421 Exhibit P-101 CAA0484.

Kelleher also called for the creation of a Standing Liaison Committee, made up of HQ liaison officers and such other senior officers as considered appropriate by the CSIS Director and RCMP Commissioner, to review ongoing CT investigations of common interest, to review and eliminate any irritants in the CT liaison arrangements and to superintend the evaluation of the liaison exchange experience. Finally, Kelleher recommended the creation of a committee to review and update the existing ministerial directions and MOUs related to liaison and information sharing.⁴²²

Kelleher called for the implementation of these initiatives as soon as possible. In fact, he requested a progress report regarding the exchange of LOs, the establishment of the Standing Liaison Committee, and the review of existing policies by September 15, 1986. A major impetus expressed by Kelleher for these initiatives was their potential to alleviate public concerns about the CSIS/RCMP relationship, as well as the concerns expressed by SIRC in its second annual report.⁴²³

Early Doubts and Criticisms

When Ronald (“Ron”) Atkey, the Chairman of SIRC at the time, learned of Kelleher’s call to implement a CSIS/RCMP LO Program, he wrote on his copy of the letter:

Until someone defines the difference between security intelligence and criminal intelligence in this area of common concern; especially what the role of liaison officers is about, all this will represent is a papering over of the cracks.⁴²⁴

At the Inquiry hearings, Atkey testified that, in spite of his concerns about the logistics of the program, he felt the Kelleher measures were good ideas overall. He testified that they were not unanimously approved by RCMP and CSIS officials, but nevertheless may have been in the public interest and certainly were well-received by SIRC.

The LO Program met with opposition almost as soon as the Solicitor General directed its implementation. On September 5, 1986, Archie Barr, Deputy Director of National Requirements, registered his objections against the LO Program. Barr felt that the program was bad policy, both for CSIS and more importantly for the Solicitor General. Barr felt that the rationales behind the LO Program were based on unwarranted allegations against CSIS, and that the LO Program would fuse the two agencies together against the intention of Parliament.⁴²⁵

Barr noted that, on the surface, the program “...seems to paper over the cracks”⁴²⁶ in CSIS’s dealings with the RCMP, language coincidentally similar to that used

⁴²² Exhibit P-101 CAA0484.

⁴²³ Exhibit P-101 CAA0484.

⁴²⁴ Exhibit P-101 CAA0484. See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

⁴²⁵ Exhibit P-101 CAA0492.

⁴²⁶ Exhibit P-101 CAA0492.

by Atkey in his personal notes at the time.⁴²⁷ Barr felt that the initiative would give Kelleher something to say in the House about directions he had given to improve that relationship, but felt that the LO Program was ultimately a short-term public relations solution that ignored the real problems.⁴²⁸ In his testimony before the Inquiry, Warren explained that there was a concern at CSIS that the RCMP was advocating for authorization to recreate a security service within the Force and that the type of “data transfer” that would be done under the LO Program would represent one more step towards achieving this aim.⁴²⁹

At a minimum, Barr asked that the Terms of Reference for any liaison agreement be made much tighter and more clearly defined than the Kelleher’s directive for “...full access to information, discussions and briefings.” He recommended that Kelleher be made aware that the directive to grant the RCMP “full access” to CSIS information would conflict with previous ministerial directives providing that neither agency was to have “...an unrestricted right of access to the operational records of the other agency.” Barr also noted that the media and CSIS’s intelligence partners would be highly critical if they learned that the police had complete access to CSIS intelligence.⁴³⁰

According to Scowen, the implementation of the LO Program put an end to the evolving policy dynamics at CSIS that had resulted in RCMP officers experiencing continually changing access to CSIS material.⁴³¹ However, while it apparently allowed CSIS to adopt more consistent positions, the program did not put an end to the difficulties associated with the sharing and use of CSIS information, nor to the tensions in the RCMP/CSIS relationship – far from it.

Terms of Reference for the Liaison Officers Exchange Program

Negotiations about the specific implementation of the LO Program took place between the agencies in the fall of 1986,⁴³² and Terms of Reference (TOR) for the RCMP/CSIS Liaison Officers Exchange Program were signed in December 1986.⁴³³ The TOR provided means to limit information sharing between the agencies in order to accommodate CSIS’s concerns. For instance, Warren had insisted that the identity of sources had to remain off limits to the RCMP LO, despite Kelleher’s direction for “full access.”⁴³⁴ In contrast, Deputy Commissioner Inkster initially persisted in asserting that the RCMP LO should be present at all CSIS operational meetings, including at discussions regarding CSIS sources.⁴³⁵ Eventually, however, faced with strong CSIS opposition, Inkster agreed that the LO would not be included in such meetings.⁴³⁶

427 Exhibit P-101 CAA0484.

428 Exhibit P-101 CAA0492.

429 Testimony of James Warren, vol. 48, September 19, 2007, p. 5912.

430 Exhibit P-101 CAA0492, pp. 3-4.

431 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6192.

432 Exhibit P-101 CAA504.

433 Exhibit P-101 CAA0511, p. 1.

434 Testimony of James Warren, vol. 48, September 19, 2007, p. 5914.

435 Exhibit P-101 CAA0504.

436 Testimony of James Warren, vol. 48, September 19, 2007, p. 5914.

Under the TOR, CSIS was required to consult the RCMP LO where it perceived that a crime falling under RCMP jurisdiction was being planned or had taken place. In turn, the RCMP was required to consult the CSIS LO when it uncovered information of interest to CSIS activities in the CT area. Each agency was directed, with some exceptions, to grant the respective LO access, upon request, to all information relevant to “identified” investigations and interests. The TOR provided that the respective LOs had to be invited to attend CT internal operational meetings held by the host agency.⁴³⁷

While the disclosure of information to the LO was said to constitute sharing with the LO’s agency, the TOR specifically provided that, before the LO could actually give the information to his agency, approval from the host agency was necessary.⁴³⁸ When such approval was sought by the LO, the source agency could apply caveats and the receiving agency was required to treat the material in accordance with the need-to-know principle. The receiving agency was prohibited from disseminating or using the information received without again requesting the approval of the source agency.⁴³⁹ Key to responding to some of CSIS’s concerns was a provision that called for full protection to be afforded to RCMP and CSIS sources, methods of operation and targets, meaning that this information would not be routinely shared.⁴⁴⁰

The TOR also explicitly specified that “all possible steps” were to be taken to avoid the need to expose CSIS information or witnesses in court.⁴⁴¹

Implementation of the Liaison Officers Program

The exchange of LOs was to commence on November 1, 1986 for a one-year period, after which the program would be evaluated.⁴⁴² The LO Program was duly implemented at HQ offices, and duplicated in each of the major regions, namely BC, Toronto, Quebec and Ottawa.⁴⁴³ Those who first filled the LO positions found that the program was difficult to implement and that relations between the agencies continued to be problematic.

RCMP Liaison Officer Experience

S/Sgt. Ron Dicks was the first RCMP LO at the RCMP O Division in Toronto.⁴⁴⁴ He had an office at CSIS in Toronto⁴⁴⁵ and reported directly to the Officer in Charge of the RCMP O Division Intelligence Branch.⁴⁴⁶

437 Exhibit P-101 CAA0511, pp. 1-2.

438 Exhibit P-101 CAA0511, p. 2.

439 Exhibit P-101 CAA0511, p. 2. Conflicts about this last issue were to be referred to the Standing Liaison Committee and ultimately to the Director of CSIS and the Commissioner of the RCMP.

440 Exhibit P-101 CAA0511, p. 3.

441 Exhibit P-101 CAA0511, p. 3.

442 Exhibit P-101 CAA0511, p. 3.

443 Testimony of James Warren, vol. 48, September 19, 2007, p. 5915.

444 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7549-7550; Exhibit P-101 CAC0052, p. 1.

445 Exhibit P-101 CAC0052, p. 1; Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7563.

446 Exhibit P-101 CAC0052, p. 1.

CSIS had decided to accept requests for information only from the RCMP LO, so RCMP detachments were instructed to channel their requests for CSIS files through the LO.⁴⁴⁷ While the main focus of the program was on CT investigations, the RCMP LO, at least in Toronto, could request access to CSIS material relevant to other RCMP criminal investigations.⁴⁴⁸

In Toronto, CSIS decided not to maintain a “permanent on-site presence” at RCMP offices. CSIS requests for RCMP information were to be channeled through the CSIS LO, who would in turn make his requests from Dicks.⁴⁴⁹

Dicks testified at the Inquiry about his experience as the LO in Toronto. It was his understanding that the LO Program was meant to remedy a problem in communication between CSIS and the RCMP. Dicks felt that the program was a useful “initial effort” to try to improve communication, but that the CSIS/RCMP relationship was evolving. Overall, he felt that his access to CSIS material as RCMP LO was “constrained and restricted.” He testified that there was not a free flow of information coming from CSIS.

The process of information exchange was almost exclusively triggered by Dicks’s requests. He never had free access to CSIS records nor to entire investigational files to peruse at his leisure. Instead, he was able to review only the material brought to his attention by CSIS following his general requests, and his requests had to be tied to a particular RCMP investigation in O Division. Dicks was never involved in any CSIS operational meetings, in spite of the Terms of Reference for the LO Program. He could not recall any circumstance where CSIS came to him to request his expertise regarding whether the criminal threshold for passing information over to the RCMP had been reached. In general, Dicks described the RCMP/CSIS relations at the time as “difficult”, “not fluid” and, on occasion, “strained.”⁴⁵⁰

In terms of the practical application of the LO Program, Dicks explained that he was kept informed of the ongoing RCMP investigations in the Division in order to know what to focus on. For him to review CSIS material, there had to be some criminality involved. Dicks had to identify in advance for CSIS the documents or information he was looking for before receiving any materials. He would then review what was brought to his attention and identify pieces of information to be excised from the CSIS documents and provided to the RCMP. The “need-to-know” principle required that Dicks refrain from disclosing information, even within the RCMP, outside of those members involved with the particular investigation for which the CSIS information had been exchanged.⁴⁵¹

Dicks explained that the caveats that were commonly imposed on the flow of information from CSIS to the RCMP generally put the RCMP in a position where the only possible purpose for the Force in reviewing the information was “...

⁴⁴⁷ Exhibit P-101 CAC0052, pp. 1-2.

⁴⁴⁸ Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7551.

⁴⁴⁹ Exhibit P-101 CAC0052, p. 2.

⁴⁵⁰ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7553-7554, 7563-7564, 7628, 7637-7638.

⁴⁵¹ Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7552, 7555-7556, 7562-7563.

to see if the RCMP could develop other investigative leads.⁴⁵² For example, in April 1987, Dicks presented a written request to CSIS for the release to the RCMP of surveillance information about Ripudaman Singh Malik during a visit to Toronto.⁴⁵³ CSIS provided a copy of their surveillance report to Dicks with the following caveat:

It is requested that no investigative action be taken by the RCMP 'O' Div, based on the information contained in this surveillance report without prior consultation with Toronto Region. The reason being we have an ongoing interest in Malik's activities in Canada as we do not wish to see your ongoing investigation conflict with our investigation.⁴⁵⁴

According to Dicks, the restrictive nature of the caveats could often prevent the RCMP from using the CSIS information – even as investigative leads – without going back to CSIS for approval. Dicks commented "...we never had a liberty to simply use the information as we pleased in other judicial processes or to be overt in our investigative approach to people."⁴⁵⁵

Dicks explained that the process in place provided for him as LO to have discussions with his CSIS counterparts to ensure that investigations did not conflict and to obtain authorization for the RCMP to use CSIS information in more overt investigative initiatives. He commented, however, that it was a difficult process in that "...discussions would have to go back and forth," there were additional "time lags" and "...many more persons would get involved in the discussion at various levels of the management of the two organizations."⁴⁵⁶

The process in place for Dicks to review CSIS materials and to request the release of information to the RCMP also required protracted discussions and created delay. For example, Dicks was provided with a second CSIS surveillance report on Malik at the end of April 1987. According to the usual procedure, he was expected to select extracts of interest to the RCMP and to request their production. However, Dicks concluded that because Malik was "...suspected of conspiracy in most if not all BK Terrorist Canadian activities," and because his activities were "...a constant concern to the RCMP," no portion of the CSIS report could be disregarded.⁴⁵⁷ He explained in testimony that, in light of the conspiracy investigation, he believed it was important that the RCMP receive the whole report and "...not just snippets of information."⁴⁵⁸ CSIS agreed to provide the entire report after retyping it to remove the identification numbers of its surveillance employees, but this did not occur until late September, five months after Dicks's request.⁴⁵⁹

452 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7559, 7565-7566.

453 Exhibit P-101 CAF0416, pp. 1-2.

454 Exhibit P-101 CAF0416, p. 2.

455 Testimony of Ron Dicks, vol. 62, October 16, 2007, pp. 7559, 7565-7566.

456 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7560.

457 Exhibit P-101 CAF0417, p. 2.

458 Testimony of Ron Dicks, vol. 62, October 16, 2007, p. 7562.

459 Exhibit P-101 CAF0417, p. 2, CAF0419.

CSIS Liaison Officer Experience

The first CSIS LO in BC Region, John Stevenson, also testified that his experience was difficult. Stevenson had undertaken informal liaison duties in June 1986. Stevenson was tasked with liaising directly with a spokesman representing each of the three RCMP investigative units looking after the major Sikh extremism investigations, including the Air India investigation. Stevenson continued in a liaison role upon the implementation of the formal LO Program called for by Kelleher.⁴⁶⁰

Stevenson testified that he was responsible for transporting the daily investigative reports from CSIS up to the RCMP units. The RCMP LO would read this information and could request disclosure to the RCMP of any of that material.⁴⁶¹

Stevenson testified about the problems he encountered early on in his liaison duties, remarking that, in general, he felt run off his feet. He explained that many RCMP officers regarded him with suspicion. There were constant assertions on the part of the RCMP that CSIS was withholding information. Stevenson indicated that he was constantly being told, "This isn't good enough, you must have more than this." He even heard that the RCMP was so convinced that CSIS was withholding information that it had considered obtaining a search warrant for CSIS premises. The RCMP members also complained about CSIS caveats, indicating that they rendered the information that was passed to them essentially useless. Stevenson was of the view that part of his job was to explain to the RCMP members, who seemed to expect that CSIS would be handing over everything, that, in accordance with the liaison agreement, only select relevant information would be passed, and only as investigative leads.⁴⁶²

Stevenson noted that there were "331 very tragic reasons" why CSIS and the RCMP had to make the LO Program work, and he felt CSIS did its best to make the program work, bringing a tremendous number of investigative leads to the RCMP. Though he was of the view that the LO Program "...for the most part" did "...work overall quite well," Stevenson testified that friction nevertheless remained, which he attributed mainly to certain personalities within the RCMP who would never be satisfied. He explained that certain personalities on the RCMP side were not that well disposed towards CSIS, and seemed to have trouble grasping what the mandate of the intelligence service was all about.⁴⁶³ He stated:

Certain personalities in the RCMP were self-professed CSIS bashers. That is how they described themselves. We dealt with them. I was ignored by them but I dealt with them because CSIS was determined to make it work.⁴⁶⁴

⁴⁶⁰ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7655.

⁴⁶¹ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7655.

⁴⁶² Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7657, 7673.

⁴⁶³ Testimony of John Stevenson, vol. 62, October 16, 2007, pp. 7658-7659.

⁴⁶⁴ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7723.

Stevenson also had his own complaints about the RCMP information-sharing practices. He felt that information sharing was "...essentially a one-way street," and he recalled giving the RCMP subtle reminders to look for information germane to CSIS investigations.⁴⁶⁵ Warren received the BC Region complaints about the lack of RCMP information, and he went out to the Region to tell them "...that they had to be a little bit more aggressive in going over and looking at the RCMP stuff." The CSIS Liaison Officer at RCMP HQ also received little information, since most of the RCMP information was available in the divisions only and not at HQ.⁴⁶⁶

Attempts to Clarify the Terms of the LO Program

The problems encountered in the implementation of the LO Program were brought to the attention of CSIS management early on. At a February 5, 1987 meeting, Barr noted the RCMP complaints about lack of access, and called on all CSIS regions to ensure adequate access was being provided to RCMP LOs:

RCMP raised the issue of access by the RCMP LO to operational information held by CSIS. It appears this access has been severely limited, likely resulting from too strict an interpretation of advice from CSIS legal counsel. While it was agreed that the RCMP cannot be given full and unfettered access to CSIS databanks, it was agreed that when a matter is raised that might have relevance to the responsibilities of the RCMP under Part IV of the *CSIS Act*, the RCMP LO is to be given all related info, short of identifying sources.⁴⁶⁷

On June 17, 1987, Barr issued another memorandum to dispel continuing confusion that existed in the regions, and, to some extent, at HQ, about the CSIS/RCMP LO Program. He noted that the LO Program was in place to assist the Service in deciding specifically what parts of its information could be relevant to the mandate of the RCMP and thus ought to be reported to the Force. He explained that the transfer of CSIS information to the RCMP could be triggered in two ways. First, the RCMP could make a request for information. Second, and far more commonly, CSIS itself could decide its information was possibly relevant to an RCMP investigation. The information being passed to the RCMP LO at this stage could include technical intercepts and human source information. In both cases, the information would be shown to the RCMP LO, whose role would be to assist CSIS in determining what parts of the information could be relevant to an RCMP investigation and should be released to RCMP investigators as investigative leads.⁴⁶⁸

Barr went on to explain that once the RCMP LO had identified the relevant information requested for release, the request was to be submitted to the

⁴⁶⁵ Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7656.

⁴⁶⁶ Testimony of James Warren, vol. 48, September 19, 2007, p. 5915.

⁴⁶⁷ Exhibit P-101 CAF0270.

⁴⁶⁸ Exhibit P-101 CAF0272, pp. 2, 5.

appropriate CSIS HQ Desk. The CSIS HQ Desk was to consult with Human Sources and/or Legal Services. The release of sensitive information that might put in jeopardy a human or technical source could be restricted based on consultations with the DDR, Director and/or Solicitor General. CSIS HQ was to release the information to the RCMP HQ and the requesting RCMP LO with the "...clearly understood caveat that it is for the purpose of investigative leads only." Technically, it was only at this point that the RCMP LO would be able to discuss the information with other members of the RCMP.⁴⁶⁹

Barr addressed situations in which the RCMP might want to use CSIS information in the criminal process, emphasizing the importance of having HQ make the decision on whether to authorize this or not, in light of the risk that the CSIS information could be disclosed to the defence.⁴⁷⁰ Barr also noted that after the commission of a specific criminal act, interviews and investigations into the act should be conducted by the RCMP. In such cases, CSIS was to be kept updated on the investigation through the LO, rather than by conducting its own direct investigation.

In addition to providing needed clarification for CSIS Regions, Barr's memo noted that it had become clear that CSIS was not taking full advantage of the LO Program and had not received adequate access to police information.⁴⁷¹

One-Year Review of the LO Program

The Terms of Reference for the LO Program called for a review within one year after its implementation. Both the RCMP and CSIS held consultations in relevant regions and divisions across the country in preparation for the one-year review. On the morning of August 27, 1987, RCMP E Division and CSIS BC Region held internal meetings to discuss the LO Program in BC. A joint RCMP/CSIS meeting was held in the afternoon of the same day.

The internal RCMP E Division meeting was documented in a memorandum by the RCMP HQ LO, J.J. Paul Ouellet, who visited the Division in connection with the LO Program review. The general consensus was that cooperation and liaison between the agencies was very good, but there was a growing awareness that CSIS was bound by stringent guidelines. While informal disclosure was almost immediate, the formal disclosure process through CSIS HQ was very time-consuming. Continuing personality clashes were also noted.⁴⁷²

The internal CSIS BC Region meeting, which included Jim Warren from CSIS HQ, was recorded in a memorandum by John Stevenson.⁴⁷³ CSIS HQ requirements for specificity in RCMP requests, as well as the delays caused by the need for HQ approval before passing information to the RCMP, were discussed. Warren agreed that the Region did not have to require as much specificity, but simply

⁴⁶⁹ Exhibit P-101 CAF0272, p. 2.

⁴⁷⁰ Exhibit P-101 CAF0272, p. 3.

⁴⁷¹ Exhibit P-101 CAF0272, pp. 3-4.

⁴⁷² Exhibit P-101 CAC0057, pp. 1-3.

⁴⁷³ Exhibit P-101 CAF0275.

had to be satisfied that RCMP requests were connected to the performance of police duties. Concerning the delays, it was agreed that the Region could make its own decisions in certain emergency situations and, in other cases, could pass information to the RCMP when an HQ response was not received after a certain period. In terms of CSIS access to RCMP information, Warren asked the Regional LOs to adopt a “tougher” stance in demanding intelligence files on targets of common interest. He also requested that any reluctance by the RCMP to share information be immediately relayed to CSIS HQ.⁴⁷⁴

At the joint RCMP/CSIS meeting, the agencies conveyed the concerns raised at their internal meetings. The meeting concluded favourably, with both agencies confident that the LO Program should continue. CSIS’s fear that its information, once passed to the RCMP, would be exposed in court proceedings, remained unresolved and was noted as a restraint with which both agencies would have to continue to work.⁴⁷⁵

A senior-level CSIS/RCMP HQ meeting was held on September 23, 1987 in Ottawa to evaluate the LO Program, to discuss means of improving liaison, and to ensure that each organization’s mandate and responsibilities were understood. The agencies agreed to allow access as broadly as possible and to use a “... more common-sense approach” to the sharing of information. CSIS agreed to provide information of a criminal nature at the earliest possible juncture. In cases of joint interest, the agencies agreed to have operational discussions at the working level or to exchange complete case-related information at a senior level. Importantly, they recognized the continuing problem of the use of CSIS information in court proceedings. Ultimately, the agencies agreed that the LO Program was beneficial and should be continued.⁴⁷⁶

On April 20, 1988, CSIS Director Reid Morden and RCMP Commissioner Norman Inkster wrote to Solicitor General Kelleher to report on the implementation of the initiatives he had directed in August 1986. They reported that the measures were very successful, and specifically that the LO Program helped to facilitate trust between the organizations.⁴⁷⁷

Conclusion

Some of the witnesses who testified at the Inquiry also made positive comments about the program. Warren concluded that the program had worked by easing, somewhat, the tensions between the two organizations. He stated that the program ultimately did help, despite his initial strong opposition.⁴⁷⁸ Simmonds testified that the early liaison arrangements and the LO Program led to better discussions at HQ and in the divisions, and was useful because it solved many of the cooperation problems.⁴⁷⁹

474 Exhibit P-101 CAF0275, pp. 1-2.

475 Exhibit P-101 CAC0057, pp. 4-7.

476 Exhibit P-101 CAF0277, pp. 2-4.

477 Exhibit P-101 CAA0641, pp. 1-2.

478 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5915, 5921.

479 Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9344-9345.

However, the evidence also shows that CSIS often appeared to view the LO Program as an unnecessary and cumbersome process, set up in response to concerns on the part of the RCMP and of the public about a perceived resistance to information sharing by CSIS. CSIS officials concluded that the program was a success, but this assessment was largely due to the fact that it alleviated the police and public perceptions about CSIS's lack of sharing. When asked during his testimony about his overall conclusions about the LO Program, Warren stated that, as the program unfolded and the two organizations got more used to working with one another, it started doing what the Minister had hoped it would do, which was to reassure the public that CSIS and the RCMP were working together.⁴⁸⁰ Scowen stated that the benefit of the LO Program was that it curtailed the criticism that CSIS received about withholding information from the RCMP.⁴⁸¹

The full potential of the LO Program was limited by a number of recurring problems, including structural issues surrounding the centralization of information sharing and issues relating to personality conflicts.⁴⁸²

Overall, even when individuals were cooperating and the LO Program was being used as intended, the program still failed to address the main hurdle in RCMP/CSIS cooperation, the use of CSIS intelligence in court proceedings. The program did little to change CSIS's information-sharing practices, as the Service maintained the discretion to decide what information would be shared with the RCMP and continued to limit the use of the information passed, to protect its sources, its methodology and third-party information.

Initially, the RCMP appeared to view the LO Program as an opportunity to access the counterterrorism intelligence it felt it required to carry out its policing operations.⁴⁸³ Through the years, the RCMP attempted to use the LO Program to gain unfettered access to CSIS's intelligence information, but these attempts were continuously rebuffed by CSIS's insistence on protecting its categories of sensitive information and limiting the use of its information.

In the end, perhaps because the agencies themselves were unable to resolve the disclosure issues to their satisfaction, the Liaison Officers Program was quietly discontinued in 2002 and replaced with a secondment program that abandoned the historical focus on improving specific information-sharing practices in favour of an arrangement set up to facilitate an understanding of each other's mandate for the agencies.⁴⁸⁴

⁴⁸⁰ Testimony of James Warren, vol. 48, September 19, 2007, pp. 5921-5922.

⁴⁸¹ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6182.

⁴⁸² Testimony of James Warren, vol. 48, September 19, 2007, pp. 5921-5922.

⁴⁸³ Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9345.

⁴⁸⁴ See Section 4.5 (Post-bombing), Recent Cooperation and Information-Sharing Mechanisms.

4.3 The Preservation of CSIS “Evidence”

4.3.1 Tape Erasure

Introduction

On December 14, 1987, the Canadian public learned from a CBC interview of then CSIS Director, Reid Morden, that CSIS had destroyed intercept tapes on the prime Air India suspect, Talwinder Singh Parmar. Those tapes were recorded between March 27 and July 1, 1985, which spans, roughly, the period from two months prior to the terrorist attack on Air India Flight 182 to one week after the attack.⁴⁸⁵ About three-quarters of “the Parmar Tapes” recorded during that period were destroyed, with only about 25 per cent retained and made available for review to the RCMP and BC Crown counsel. The news prompted shock across the nation.

Questions and allegations began to surface immediately about possible reasons for the destruction of the Parmar Tapes. Did CSIS erase the tapes to destroy information indicating that it had advance knowledge of the bombing? Did the erasures destroy critical information that could have led to the successful prosecution of the Air India conspirators? Or, as CSIS has long claimed, were the erasures done in accordance with established tape retention policy after Service personnel had diligently ensured that no incriminating information had been recorded?

Despite investigations by CSIS, the RCMP and SIRC,⁴⁸⁶ the controversy arising from the erasure of the Parmar Tapes continued unabated.

The Commission undertook a comprehensive review of the erasures of the Parmar Tapes, focusing on not only on what happened and why, but also on the effect that the erasures had on the investigation and eventual prosecution.

There are certain facts about the erasure of the Parmar Tapes that are beyond controversy:

- a. CSIS applied to wiretap Parmar’s phone. Archie Barr testified under oath before the Federal Court that Parmar posed a threat to national security.⁴⁸⁷ Barr described Parmar as a terrorist who is “...expected to incite and plan acts of violence including terrorism”⁴⁸⁸ against Indian interests and Hindus. He also told the Federal Court that wiretapping his phone was important and necessary because all other investigative means had failed or were likely to fail;
- b. The warrant to intercept Parmar’s telecommunications was issued, and the interceptions began, on March 25, 1985;

⁴⁸⁵ Exhibit P-198.

⁴⁸⁶ These investigations include Security Intelligence Review Committee, “CSIS Activities in Regards to the Destruction of Air India Flight 182 on June 23, 1985: A SIRC Review,” November 16, 1992: Exhibit P-101 CAB0902.

⁴⁸⁷ Exhibit P-101 CAA0333: Affidavit in support of the application for the warrant.

⁴⁸⁸ Exhibit P-101 CAA0333, p. 6.

- c. In total, approximately 210 tapes were recorded between March 27 to July 1, 1985;
- d. Approximately 156 of these tapes were erased;
- e. 54 were retained and made available for review to the RCMP and Crown counsel for use during the investigation of the terrorist attack on Flight 182.

While it seems inconceivable that CSIS would destroy any of the Parmar Tapes, the systematic destruction of the Parmar Tapes after the terrorist attack on Flight 182 is particularly disturbing.

The RCMP, despite learning about the existence of the Parmar Tapes after the terrorist attack on Flight 182, knowing the importance of Parmar, and knowing – at least a few members of the Air India Task Force knew – of the existence of CSIS’s erasure policy, failed to take any concrete steps to request the preservation of the original intercepts. No one from the RCMP bothered to write a letter demanding that the tapes be preserved. It appears that the RCMP just assumed that the Service was retaining the intercepts.

CSIS continued to record Parmar’s communications and to erase the tapes until February 1986, when the Department of Justice lawyer who defended the Government in the civil litigation launched by the families asked that the tapes be retained. It was only then that the erasure stopped.⁴⁸⁹

How did this state of affairs come to be? Why did CSIS behave with “unacceptable negligence,” as found by Justice Ian Josephson?⁴⁹⁰ How could our national police force fail to gain access to all of the Parmar Tapes or, at the very least, to write a letter to prevent CSIS from destroying them?

James Jardine was the BC Crown counsel who prosecuted Reyat for the Narita bombing. He began requesting information from CSIS in connection with that case in the spring of 1986.⁴⁹¹ The first time he received clear confirmation of the destruction of the Parmar Tapes was in December 1987, while watching Morden admit their destruction to the CBC.⁴⁹² Jardine summed up his feelings at that moment in an internal note which read:

“Inconceivable, incomprehensible, indefensible, incompetence.”⁴⁹³

The Key Questions

The controversy surrounding the destruction of the Parmar Tapes essentially involves the following key questions:

⁴⁸⁹ Exhibit P-101 CAA0549, CAA0609, p. 15, CAA0913(i).

⁴⁹⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864.

⁴⁹¹ See Section 4.4.1 (Post-bombing), *The Reyat Trial and the BC Crown Prosecutor Perspective*.

⁴⁹² Testimony of James Jardine, vol. 47, September 18, 2007, p. 5702; Exhibit P-198: CBC videotape dated December 14, 1987.

⁴⁹³ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5703.

- Should the Parmar Tapes have been retained based on CSIS policy?
- Should the Parmar Tapes have been retained for use as evidence in the RCMP investigation?
- Was any information of significance lost due to the erasure of the Parmar Tapes?
- What effect did the destruction of the Parmar Tapes have on the criminal prosecutions?

To answer these questions it is important first to understand what in fact happened.

What Happened?

Tape Processing Standard Operating Procedures

In 1985, CSIS lacked clear, accessible policies for the physical handling, monitoring and processing of intercept tapes.⁴⁹⁴ As a consequence, each region developed its own system.⁴⁹⁵ In BC Region, the Communications Intelligence and Warrants (CI&W) Unit was responsible for the technical processing of tapes, and had established a standard procedure.

Communications Intercept Operators (CIOs) were responsible for ensuring that the tapes were running and recording correctly. CIOs would watch and replace tapes as needed. Each tape was marked with the line number and the date, as it was removed. At 11:00 PM each day, a new tape was placed on each line to record the overnight activity. The tapes were then stored in a separate room where the transcribers could retrieve and listen to them.⁴⁹⁶

Each morning, the transcribers would collect the tapes recorded the previous day. Each transcriber was responsible for making a log of each reel, showing the time of each call, the identity of the caller and a transcription of the English portion of the tape. The reel and log would then be passed to a translator, who would translate those portions that were in a foreign language. The translator would then return the translation and logs to the transcriber, who would put the relevant information into a report for submission to the investigator.⁴⁹⁷ The transcribers would return the tapes when they were finished. After a short holding period, the tapes would then be erased by the CIO on duty.⁴⁹⁸

Throughout this process, the transcriber was to meet with the investigator to discuss the investigation and to obtain updates in order to better understand the orientation of the investigation. It was thought that, as time went on, the

⁴⁹⁴ Exhibit P-101 CAB0902, p. 79.

⁴⁹⁵ Exhibit P-101 CAB0902, p. 70. It was believed that a BC Region Head was responsible for administering the local tape retention and erasure program: Exhibit P-101 CAB0902, Annex F, p. 11.

⁴⁹⁶ Exhibit P-101 CAD0003, p. 3, CAD0096, p. 4.

⁴⁹⁷ Exhibit P-101 CAD0096, p. 4.

⁴⁹⁸ Exhibit P-101 CAD0003, p. 3, CAD0096, p. 4.

transcribers and translators would gain familiarity with the target, including the target's use of coded language and secretive approaches,⁴⁹⁹ as well as with the subject matter of the investigation, and that this would lead to higher-quality reporting.

In 1985 CSIS employed analog recording techniques.⁵⁰⁰ Warranted interceptions of private communications were recorded on large analog tapes. Unlike modern digital recording methods, the use of analog equipment created significant storage issues, which constituted a practical reason for the erasure and reuse of tapes. Intercepted conversations could not be reduced to a digital computer file, meaning that the entire reel of analog tape would have to be indexed and stored. Access to the content of these reels was by manual means alone, and there were no automated or digitized search capabilities.

Actual Processing of the Parmar Intercepts

CSIS BC Region had been unable to hire a security-cleared Punjabi translator to coincide with the authorization to intercept communications which commenced March 25, 1985.⁵⁰¹ Thus, the standard tape processing procedures could not be followed and interim procedures were developed.

Throughout the pre- and post-bombing period, the English communications on the Parmar intercept were processed by a single transcriber in BC Region, Betty Doak. Doak transcribed the English portion of the tapes on a daily basis, with the exception of weekend material which was processed two to four days later.⁵⁰²

Meanwhile, the Punjabi communications recorded on the Parmar intercept during the pre-bombing period were processed by three different Punjabi translators. The translation of individual tapes was often delayed, sometimes for several months from the date of the interception.

The initial Parmar Tapes were sent to CSIS HQ in Ottawa for translation. CSIS HQ had a large pool of translators, and thus Ottawa Region often received tapes from the other regions. This arrangement was less than ideal, as the BC Region investigators were unable to brief the translators properly and keep them updated on the progress of the investigation. The tapes were processed and returned to the BC Region investigators in batches, inevitably resulting in investigators reviewing material weeks after it was recorded. This made it impossible to conduct the security investigation with real time knowledge of Parmar's activities.

499 Testimony of James Warren, vol. 48, September 19, 2007, p. 5857.

500 Analog recording stores audio signals by physically storing a wave – for example by grooves on a record or changing magnetic field strength on magnetic tape. Digital recording, by contrast, stores audio in the form of discrete numbers.

501 See Section 3.2 (Pre-bombing), *The CSIS Investigations into Sikh Extremism*, for more detail about the search for a Punjabi translator.

502 Exhibit P-101 CAB0613, p. 3, CAD0003, p. 3.

BC Region sent a total of 82 tapes to Ottawa for translation during the pre-bombing period.⁵⁰³ The first 14 tapes were sent to Ottawa on April 4th and transcriptions were sent back to Vancouver on May 8th. The next 15 tapes were sent on April 11th, with transcriptions returned to Vancouver on May 29th. Subsequent shipments were sent, but Ottawa translators were able to process only three more tapes.⁵⁰⁴

Eventually, a translator was hired in Vancouver, who immediately commenced work on June 8, 1985.⁵⁰⁵

By the time of the terrorist attack, 82 of the approximately 191 tapes recorded between March 27th and June 23rd had been transcribed and translated: 32 by the Ottawa translator (covering March 27th to April 9th) and 50 by the BC Region translator (covering June 8th to June 21st). All processed tapes were erased except for four tapes, recorded from May 6th to 7th, which had been set aside for voice print purposes.⁵⁰⁶ Tapes recorded after the bombing were processed as soon as possible after interception.⁵⁰⁷

Processing the Backlog of Parmar Intercepts

On July 5, 1985, Ottawa returned 50 unprocessed tapes (covering April 9th to April 25th) to add to the backlog of pre-bombing tapes already in existence at BC Region. In the meantime, CSIS had obtained warrants to intercept the communications of several other Sikh extremist targets, which meant that the Punjabi translators were fully occupied processing current intercepts.⁵⁰⁸ By September 1985, a full two months after the attack, a backlog of 80 to 85 pre-bombing tapes (covering April 9th to May 7th) remained.⁵⁰⁹

The backlogged tapes were finally processed in late September, and into October, 1985.⁵¹⁰ BC Region translators processed 33 of the backlogged tapes covering the time period between April 26 and May 7, 1985. The 50 tapes returned by Ottawa Region were processed by Cst. Manjit (“Sandy”) Sandhu of the RCMP Vancouver Task Force, who was indoctrinated⁵¹¹ into CSIS for the task.⁵¹² The RCMP and CSIS agreed that Sandhu would transcribe the 50 tapes, identifying

⁵⁰³ The tapes were sent in a number of shipments. 14 tapes covering March 27th to April 2nd were sent on April 4th, 15 tapes covering April 3rd to 7th were sent on April 11th, 15 tapes covering April 8th to 13th were sent on April 18th and 12 tapes covering April 14th to 18th were sent on April 19th. Additional tapes (likely 16) from April 19th to 22nd were sent on April 25th and 10 tapes covering April 23rd to 25th were sent on April 26th. See Exhibit P-101 CAA0625, p. 1, CAB0613, p. 3, CAD0003, p. 11.

⁵⁰⁴ Exhibit P-101 CAA0625, pp. 2-3, CAD0003, p. 6. Ottawa translators were able to work on the Parmar intercepts intermittently. During this period, they processed Parmar tapes only on April 19th, 30th, May 6th, 24th, and July 3rd.

⁵⁰⁵ Exhibit P-101 CAB0613, p. 3.

⁵⁰⁶ Exhibit P-101 CAA0625, pp. 2-3.

⁵⁰⁷ Exhibit P-101 CAB0902, p. 84.

⁵⁰⁸ Exhibit P-101 CAB0613, p. 3.

⁵⁰⁹ Exhibit P-101 CAB0613.

⁵¹⁰ Exhibit P-101 CAA0609.

⁵¹¹ Meaning that he swore an oath of secrecy and acknowledged that he could face penalties should he divulge the information improperly.

⁵¹² Exhibit P-101 CAB0613, p. 3.

portions of interest to the RCMP, and that CSIS would then summarize and package the product for RCMP use. Sandhu was also given access to the CSIS logs for the Parmar intercepts for the period May 5th to September 19th to identify anything of interest to the RCMP.⁵¹³ Sandhu completed his review of the tapes on October 7th, and reported that he did not uncover any significant criminal information.⁵¹⁴ Other RCMP investigators had been provided some access to the logs for the pre-bombing tapes in September 1985 and had identified information they found to be of interest. This information was included in an RCMP application for authorization to intercept the communications of Parmar and his associates, presented on September 19, 1985.⁵¹⁵ CSIS retained the 50 intercept tapes reviewed by Sandhu with the intention that CSIS personnel would review them at a later date to assess their intelligence (as opposed to criminal evidence) value.⁵¹⁶ By the fall of 1985, the backlog of Parmar Tapes was finally processed.⁵¹⁷

The 33 backlogged tapes processed by the BC Region translator were erased by early November, except for the four tapes retained for voice-identification purposes.⁵¹⁸ By early November 1985, CSIS had erased all Parmar Tapes recorded between March 27 and July 1, 1985, as well as most of the tapes recorded after July 1st, except for the 50 tapes reviewed by Sandhu and the four tapes retained for voice-identification analysis.⁵¹⁹

Should the Tapes Have Been Retained Based on CSIS Policy?

CSIS Policies on Tape Retention

The relevant policies and instructions relating to the handling and processing of electronic intercepts evolved over time. In 1985, the newly-formed Service had not developed a uniform, written policy governing the handling and processing of electronic intercepts. James (“Jim”) Warren testified at the Inquiry that, at the time, CSIS was less than a year old and was operating under policies inherited from the RCMP Security Service (SS). There was little time to think through the inherited policies comprehensively to determine their continued suitability in light of the new mandate.⁵²⁰ Indeed, one would have thought that this exercise would have been undertaken in the year prior to the creation of CSIS, as part of the preparation for the launch of the new agency. CSIS, by not having considered the suitability of various RCMP SS policies, was faced with four relevant policies and instructions governing retention of intercepted communications, which were inconsistent with one another and served to confuse rather than to provide clarity. The four seminal documents were:⁵²¹

513 Exhibit P-101 CAA0329.

514 Exhibit P-101 CAA0578, CAB0902, p. 99.

515 See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

516 Exhibit P-101 CAB0613, pp. 2-3.

517 Exhibit P-101 CAA0609.

518 Tapes were retained for voice identification purposes in the event that an intelligence monitor needed to listen to a voice whose identity had already been confirmed to compare it with an unknown voice.

519 Exhibit P-101 CAB0902, p. 85.

520 Testimony of James Warren, vol. 48, September 19, 2007, p. 5875.

521 Exhibit P-101 CAD0184.

- A Ministerial Directive issued on July 14, 1980;
- The Technical Aids Policy and Procedures (TAPP) Manual – an operational manual inherited from the former RCMP Security Service, issued in 1981;
- An internal memorandum by Archie Barr, then Director of Security Policy Development in the Security Intelligence Transition (SIT) Group, issued on April 5, 1984;
- An internal memorandum issued by Jacques Jodoin, then Director General, Communications Intelligence and Warrants (CI&W), on February 18, 1985.

Ministerial Directive: July 14, 1980

The Ministerial Directive set out guiding principles governing tape retention.⁵²² The Minister had reviewed a draft version of the TAPP Manual⁵²³ sent by RCMP Commissioner Robert Simmonds, and set out the following objectives:

- “Innocent” third-party and any other “non-target” intercepts inadvertently picked up, would be destroyed except in relation to the preservation of Master Evidentiary tapes, in accordance with the protection of individual rights.⁵²⁴
- The maximum time for tape retention would be one month.

TAPP Manual: 1981

The TAPP Manual incorporated the objectives of the Ministerial Directive and set out a comprehensive policy governing the handling and processing of electronic intercepts for the RCMP Security Service. Chapters 16 and 21 of the TAPP Manual outlined the policy specifically dealing with the erasure and retention of tapes.

Chapter 16 outlined the procedures for processing and reporting intelligence information derived from intercept operations.⁵²⁵ Three categories of information for which tapes should be immediately erased were defined: privileged communications (solicitor-client), communications of confidence and third-party information. Methods of reporting (e.g., in summary or verbatim form) for time-sensitive and non-time-sensitive information were canvassed and coordination between the intelligence monitors (transcribers and translators) and investigators was encouraged. The need for future evolution of these policies

⁵²² Exhibit P-101 CAA0010.

⁵²³ Exhibit P-101 CAA0009.

⁵²⁴ Master Evidentiary tapes were intercepts in investigations deemed likely to result in prosecution with communications intercept information likely to form a vital part of the case. Exhibit P-101 CAA0008: Chapter 10 of the TAPP Manual outlined the procedure for the processing and retention of these tapes designed to ensure their conformity with the rules of evidence.

⁵²⁵ Exhibit P-101 CAA0013.

was recognized and there was an expectation that the operational branches would continually provide updated lists of requirements and guidelines.

Chapter 21 governed the retention of intercept tapes.⁵²⁶ The importance of retaining tapes for a reasonable period of time after processing was emphasized, as this would permit investigators to access the original communication if necessary. The policy was to retain relevant tapes for a minimum of 10 days after they had been listened to, and preferably after the submission of the transcriber's and/or translator's report to the investigator. The maximum retention period was set at one month, in accordance with the 1980 Ministerial Directive.

There were three exceptions to the retention policy:

- the immediate erasure of non-relevant and confidential communications as defined in Chapter 16;
- the retention to an evidentiary standard of Master Evidentiary tapes; and
- indefinite retention of "communications that significantly incriminate a target subject in subversive activity."

The TAPP Manual was a Top Secret document distributed on a need-to-know basis.⁵²⁷ Whether because it was felt that they had no "need to know" or because reading the TAPP manual was simply not a part of formal training procedures, analysts and investigators who dealt with the actual content of the intercepts were not generally provided direct access to the Manual. Often, senior personnel within the CI&W Unit⁵²⁸ had access to the TAPP Manual and were responsible for passing on information about relevant portions to other Service employees.⁵²⁹ Personnel at HQ had not generally reviewed the TAPP Manual.⁵³⁰ The intelligence

⁵²⁶ Exhibit P-101 CAA0014.

⁵²⁷ Exhibit P-101 CAA0614, p. 1: The introduction to the TAPP Manual states that "The sensitivity of the information contained in the TAPP Manual dictates that it be classified as TOP SECRET.... Access to the TAPP Manual is governed by the "need to know" principle as explained in the Operational Manual.... This principle must be practiced at all times in the area of communications intercept operations. Persons involved in such operations must ensure that this principle is being following at all times."

⁵²⁸ See Exhibit P-101 CAD0162: The CI&W Unit was responsible for the processing of communications intelligence and its transmission of that information to operational units. The CI&W unit included the monitors, transcribers and translators, along with the management staff.

⁵²⁹ See Testimony of Jacques Jodoin, vol. 49, September 20, 2007, p. 6036: Jodoin had a copy of the TAPP Manual in his office; Exhibit P-101 CAD0163: Richard Wallin, Vancouver Chief, CI&W had read the TAPP Manual and had it explained to him by his predecessor; he believed that his subordinates within CI&W would have read the TAPP Manual and trainers would have passed on the relevant procedures to other personnel; Exhibit P-101 CAD0152, p. 5: Eugene John Pokoj, second in charge to Jim Laking, Deputy Chief, Communications Intelligence Production in Ottawa, had gone through the TAPP Manual and his staff passed on relevant portions to other employees. The CIP Division had a copy of the TAPP Manual.

⁵³⁰ At HQ, see Exhibit P-101 CAD0154, p. 6: Russell Upton, Chief of the Western Europe and Pacific Rim desk at CSIS HQ, had never read the TAPP Manual at that time but was aware of the need to set aside raw material if there was information that could be used by a police force; Exhibit P-101 CAD0157, p. 5: Mel Deschenes, Director General, Counter Terrorism at HQ, was familiar with the policy in general terms but felt that HQ personnel would not need to know the specifics as they were not handling the tapes. In the BC Region, see Exhibit P-101 CAD0115, CAD0138: Neither of the two Sikh extremism investigators in the BC Region read the TAPP Manual.

monitors and the people who transcribed the Parmar intercepts never personally reviewed the TAPP Manual and only knew about the policy through word of mouth.⁵³¹

Barr Memorandum: April 5, 1984

During the transition from the RCMP Security Service to CSIS, the Security Intelligence Transition (SIT) Group recognized the need to modify the TAPP Manual to meet the civilian mandate of the new security service. Archie Barr, then Director of Security Policy Development, issued a memorandum intended to reflect CSIS's new identity as a civilian, rather than police, agency.⁵³² It stated:

As the *CSIS Act* contains no requirement for collection by the Service of information for evidentiary purposes, no such capacity will be provided for within CSIS facilities.

Soon after the creation of CSIS, Minister Robert Kaplan issued a Directive (the Kaplan Directive) that stated "...since information provided by a CSIS investigation is unlikely to be usable in law enforcement work, the RCMP would be required to investigate and collect the evidence required."⁵³³ Employees of the new civilian intelligence service were reminded that they were no longer police officers. As of July 16, 1984, CSIS did not collect evidence, but only intelligence.⁵³⁴ Accordingly, CSIS ceased handling recordings of intercepts to an evidentiary standard.⁵³⁵

The Barr memorandum radically altered the Service's tape retention policy by ending the practice of retaining Master Evidentiary tapes to assist in court prosecutions. The memorandum reversed the policy set out in the 1980 Ministerial Directive and made a clear statement that the role of the new Service was to collect intelligence, not evidence.⁵³⁶ The Barr memorandum became the accepted operating standard despite the fact that he did not have the authority to reverse the 1980 Ministerial direction.⁵³⁷

Jodoin Memorandum: February 18, 1985

After CSIS was created, Jacques Jodoin, the DG CI&W at CSIS HQ (the unit responsible for the processing of communications intelligence and the transmission of that information to operational units), recognized the need to adjust the warrant policy to reflect the new Federal Court warrant process. On February 18, 1985, he issued a memorandum to all regions intended to

⁵³¹ See Exhibit P-101 CAD0148, CAD0151, CAD0166, CAD0167: The Vancouver intelligence monitors and transcribers never read the TAPP Manual but knew about the policy through word of mouth.

⁵³² Exhibit P-101 CAA0636, p. 2.

⁵³³ Exhibit P-101 CAA0081, p. 12.

⁵³⁴ Testimony of James Warren, vol. 48, September 19, 2007, p. 5829.

⁵³⁵ Exhibit P-101 CAA0453.

⁵³⁶ This policy included Chapter 10 (Evidentiary Recordings) and paragraph 3 of Chapter 21 (Tape Retention) of the TAPP Manual.

⁵³⁷ Exhibit P-101 CAF0260.

ensure that details of significant information were available for inclusion in CSIS's warrant renewal applications for consideration by the Federal Court.⁵³⁸ The memorandum called for the retention of tapes containing information that "...significantly incriminated a target subject in subversive activity or was contentious in nature or open to interpretation." The tapes were to be retained for one year or up to the renewal date of the warrant, whichever came first.

The memorandum requested that the regions inform all employees involved in investigations and in the processing of communications intelligence of this requirement. However, the regional offices did not interpret Jodoin's memorandum as a policy directive, but rather as a suggested approach. In fact, as of 1988 no region had adopted the procedures set out by Jodoin.⁵³⁹

Applying the Policies to the Parmar Tapes

The four different policies under which CSIS personnel who processed the Parmar Tapes were notionally operating were ambiguous, outdated and in conflict with one another. However, as a minimum common standard, tapes were to be retained for at least 10 days and a maximum of 30 days after having been listened to, and preferably until after submission of a report to the investigator (as specified in the TAPP Manual and the 1980 Ministerial Directive). The criteria for further retention were vague and unclear. Two separate notions can be extracted from the policies reviewed:

- Indefinite retention of communications that "...significantly incriminate a target subject in subversive activity" (TAPP Manual); and
- Retention for one year or up to the renewal date of the warrant (whichever came first) of communications that "...significantly incriminate a target subject in subversive activity or are contentious in nature or open to interpretation" (Jodoin Memorandum).

CSIS employees had inconsistent interpretations of CSIS policies on retention of intercepts.⁵⁴⁰ They held differing views about the criteria for retention, the identity of the individuals responsible for making the determination about retention and the availability of CSIS information for evidentiary purposes.⁵⁴¹ This resulted in general uncertainty as to what information to retain, with everyone appearing to rely on others to make that decision. The consequence was that there was virtually no consideration given to the importance of retaining the Parmar Tapes to assist the police in their investigation of the terrorist attack on Flight 182.

What Is "Significant Subversive Activity"?

At the time of the Air India bombing, the emphasis was on erasing tapes to respect privacy and to protect innocent parties and privileged communications.

⁵³⁸ Exhibit P-101 CAA0125.

⁵³⁹ Exhibit P-101 CAD0037.

⁵⁴⁰ Exhibit P-101 CAB0902, Annex F.

⁵⁴¹ Exhibit P-101 CAB0902, Annex F, pp. 173-174, 182-183. See also Exhibit P-101 CAB0902, p. 79.

This is best understood in light of the McDonald Commission's severe criticism of the RCMP Security Service for retaining too many files with questionable or no security intelligence value. Solicitor General Kaplan was concerned that the RCMP Security Service files be retained in accordance with a clear policy based on security need and under properly constituted authority.⁵⁴²

Despite that sentiment, no such clear policy existed in 1985. While the TAPP Manual required retention of communications which "...significantly incriminate a target subject in subversive activity," there was no guidance given on how to apply that criterion.

The term "significant subversive activity" in the TAPP Manual was developed in the early 1980s, when the RCMP Security Service was focused on counter-intelligence and counter-subversion targets. It was of marginal utility when the CSIS focus turned to counterterrorism targets. Warren noted that in the old RCMP Security Service days, "subversive activity" would have referred to membership "in the Communist Party." He noted that in the CSIS days, the term was understood to include a broader range of activities, but admitted that, for people on the ground, the criterion was "very imprecise," which was one of the faults of the policy that existed at the time.⁵⁴³

As revealed in interviews conducted in 1990 in preparation of the Reyat trial, CSIS personnel had varying understandings of the meaning of the term "significant subversive activity." Some understood it to mean "...trying to overthrow the government by violent means,"⁵⁴⁴ while others included terrorism-related activities within the definition.⁵⁴⁵ Still others admitted to having a vague understanding of the term, offering general definitions such as "...any activity that is subversive to Canada,"⁵⁴⁶ and "...something that has a derogatory impact on an individual's freedoms and rights."⁵⁴⁷ Most expressed the view that the term would be satisfied only by clear, blatant information relating to an act of political violence or a serious criminal act.⁵⁴⁸

The confusion over the meaning of the term can be illustrated by the controversy over the "Jung Singh" intercept. The following conversation was recorded on April 8, 1985 and reported to both CSIS HQ and BC Region on May 31, 1985:

⁵⁴² Exhibit P-101 CAA0011.

⁵⁴³ Testimony of James Warren, vol. 48, September 19, 2007, p. 5938.

⁵⁴⁴ Exhibit P-101 CAD0148, p. 5: Doak, Transcriber, BC Region.

⁵⁴⁵ Exhibit P-101 CAA0453, p. 2: Jodoin, Director General, CI&W, CSIS HQ.

⁵⁴⁶ Exhibit P-101 CAD0155, p. 5: Ottawa translator, CSIS HQ.

⁵⁴⁷ Exhibit P-101 CAD0154, p. 6: Upton, Chief, Western Europe and Pacific Rim Unit, CSIS HQ.

⁵⁴⁸ Randy Claxton defined the term as "...any information that would offer an investigative lead to the Air India/Narita incidents" (See Exhibit P-101 CAD0156, p. 5) and "...any indication that a violent unlawful act would be about to be committed or entertained" (See Exhibit P-101 CAD0127, p. 12); Bob Smith felt it would have to be a "...blatant confession that the individual ... has committed or is about to commit a serious act" (See Exhibit P-101 CAD0130, p. 8); Ken Osborne defined the term as activity on which a serious prosecution could be based (See Exhibit P-101 CAD0191, p. 3); Ray Kobzey looked for material that would blatantly suggest that "...someone was about to commit a significant act ... an act of political violence" (See Exhibit P-101 CAD0115, p. 13).

J. SINGH: I have heard that that woman's (Indira Gandhi) son is coming on the 6th of June. I am presenting all my ... on the 9th of April, now if you can do something....

PARMAR: Keep quiet. Everything will be taken care of.

J. SINGH: Well, he is arriving, and how do I contact you ... and ... somehow or other you have to ...

PARMAR: I said I understand, now shut up, I shall get everything done.

J. SINGH: I am willing to serve in any way.

PARMAR: Don't require this kind of service, but things will somehow work out.

J. SINGH: Something should be done.... I beg you from all my family he should not be allowed to go back ... those in India, we can hope that they will do something.

PARMAR: No, they cannot do anything.

...

J. SINGH: I beg you send somebody or something, there are three us here, one of us can have the killer number (a number to kill).

PARMAR: Do you have a passport? Can you move around easily?

J. SINGH: Yes sir, there is no problem, I can come and go freely.

PARMAR: Good then, maybe you'll be able to do something.

J. SINGH: Give me this chance to serve, if you can do this, because I don't think I can have any success in India. The ... I had thought about has already been taken by God (referring to Indira Gandhi's death) ... this is the only thing you are lacking.

PARMAR: O.K.; O.K., don't worry, everything will be alright. Find out about his complete plan.

J. SINGH: But you tell me, who and when and where I have to meet somebody for instructions ...

PARMAR: I said keep quiet, if somebody wants to meet you, they will find you.

J. SINGH: I am very happy to have talked to you.⁵⁴⁹

The translator felt this was significant, as it was a threat to Gandhi during his planned visit to Germany in early June 1985. The translator prepared a verbatim transcript and passed it on to the investigators for consideration and further distribution.⁵⁵⁰ Both CSIS HQ and BC Region were notified. Neither ordered retention of the tape.

CSIS claimed that, while the communication was seen as being of significant intelligence value, it was not regarded as "...significantly incriminating a target subject in subversive activity."⁵⁵¹ Bob Smith, Chief of CT at BC Region, stated that it was believed that the caller was "not all there," that Parmar did not pay any attention to it, and that therefore it was not a *bona fide* call.⁵⁵² In any case, CSIS argued that its intelligence requirements were met with the summary reporting of the Jung Singh/Parmar conversation and the retention of the verbatim transcripts.⁵⁵³

Meanwhile, the RCMP Air India Task Force investigators and some CSIS personnel felt that the Jung Singh intercept was obviously "significant subversive activity."⁵⁵⁴ Dave Ayre, one of CSIS BC Region's two main Sikh extremism investigators, noted that he was not even aware of the Jung Singh comments at the time.⁵⁵⁵ Warren, in his testimony at the Inquiry, stated that the conversation was something he probably "would have kept."⁵⁵⁶ If the Jung Singh conversation was not considered to be significantly subversive, it is difficult to imagine what sort of information would qualify as such.

Since CSIS personnel had no uniform understanding of what constituted "significant subversive activity," it is not possible to rely confidently upon CSIS assurances that its personnel were capable of properly identifying critical information and able to ensure that such information was not lost through the erasure of the Parmar Tapes. In fact, not only was there no clear understanding of the policy, but personnel like Ayre, with the most knowledge of the file, and who may have been best able to identify information of interest, were not even always aware of the contents of the intercepts.

⁵⁴⁹ Exhibit P-101 CAD0013, pp. 42-43.

⁵⁵⁰ Exhibit P-101 CAD0117, p. 5, CAD0155, p. 7.

⁵⁵¹ Exhibit P-101 CAD0003, p. 13, CAD0117, p. 5.

⁵⁵² Exhibit P-101 CAD0003, p. 13.

⁵⁵³ Exhibit P-101 CAD0117, p. 5, CAD0124, p. 6.

⁵⁵⁴ Exhibit P-101 CAD0003, p. 13.

⁵⁵⁵ Exhibit P-101 CAD0183, p. 16.

⁵⁵⁶ Testimony of James Warren, vol. 48, September 19, 2007, p. 5938; Exhibit P-101 CAD0003, p. 13.

Who Was Responsible for Requesting Retention?

The TAPP Manual did not identify which official or officials had the power to order the indefinite retention of "...communications that significantly incriminate a target subject in subversive activity."⁵⁵⁷

Warren outlined the responsibility to request retention within CSIS in a November 30, 1987 letter to the RCMP:

The determination of "information to significantly incriminate a target in subversive activity" ... is the responsibility of the investigator(s) assigned to the case, the analyst at HQ in Ottawa and the supervisors in the chain of command. The investigator coordinates all information about a target including that from interviews, electronic intercepts and physical surveillance, and submits the intelligence report to HQ. There, it is read and put into a broader national context. If any one piece of information is thought to be particularly significant within the context of the mandated responsibilities of this Service, or alternatively, if a piece of information is felt to require clarification, the investigator, the analyst or the supervisor may request a verbatim transcript and/or that the tape or, at least, the relevant portion of it, be kept beyond the maximum 30 day period.⁵⁵⁸

R.H. Bennett, DG CT at CSIS HQ in 1988, admitted that BC Region investigators were in the best position to make the determination to retain, bearing in mind that they had access to the raw product and, in most cases, direct access to the translator.⁵⁵⁹ At the time of the terrorist attack on Flight 182, BC Region DG Randy Claxton stated that he was satisfied that all investigators were cognizant of the need to identify significantly incriminating subversive activity, together with the requirement to preserve the tapes and to immediately notify their respective supervisors.⁵⁶⁰

Despite Warren's November 30, 1987 letter to the RCMP, neither investigators Ayre nor Ray Kobzey were familiar with the tape retention policy.⁵⁶¹ Both were BC Region investigators on the Sikh extremism file.⁵⁶² Neither had ever read the TAPP Manual. They described it as a "need to know" policy and, as investigators, they were of the view that HQ did not feel that investigators had a "need to

557 Exhibit P-101 CAA0009, p. 5.

558 Exhibit P-101 CAA0595(i), pp. 3-4.

559 Exhibit P-101 CAD0124, p. 3.

560 Exhibit P-101 CAD0139, p. 4.

561 In 1985, Kobzey was not familiar with the term "significant subversive activity." In fact, he did not become familiar with this phrase until March 1988: See Exhibit P-101 CAD0002, p. 12.

562 Exhibit P-101 CAD0112.

know” the policy.⁵⁶³ Ayre and Kobzey thought that decisions about the retention of tapes were not their responsibility, but rather that of the technical support section. In fact, most surprisingly, Ayre believed that the Parmar Tapes were being retained.⁵⁶⁴

This confusion about roles is a direct result of the need-to-know compartmentalization employed by CSIS. Investigators responsible for retention were not fully cognizant of the tape retention policy. Meanwhile the technical personnel with access to the TAPP policy were not aware of the investigative details of the case.

Ayre and Kobzey understood that they were responsible for moving significant information up the chain of command. In deciding what was significant, the investigators had to rely on the transcribers and translators to identify information relating to “significant subversive activity.” CSIS translators were generally civilians hired out of the community with no background in policing or intelligence matters. Despite this, Ayre relied heavily on the translator’s innate knowledge to identify information on “significantly subversive activity.” So complete was his reliance on the translator and transcriber – who had no police or intelligence background and little familiarity with Parmar – that Ayre never read all of their notes, but rather relied on them to apprise him of conversations containing evasive or peculiar language.⁵⁶⁵

Ayre and Kobzey were responsible for reporting any such information to Jim Francis, the Desk Supervisor. From there it would go to the Chief, Bob Smith, who was aware of all investigative activities in BC and signed all outgoing final reports,⁵⁶⁶ and from him to the Deputy Director General Operations, Ken Osborne, who coordinated and directed the activities of the investigators, read incoming and outgoing reports, and ensured appropriate dissemination of intelligence at the regional level. The CI&W Section, headed by Joe Wickie, would be brought in, and a decision would be made about what to do with the information, whether tapes would be retained, and to whom the information would be reported. An investigator’s recommendation to retain would not be final,⁵⁶⁷ but would require the approval of BC Region investigative and technical supervisors, as well as Claxton, the Director General of the BC Region. Claxton stated that even he did not have the authority to order the retention of tapes and that he would have had to obtain the authority from the CSIS HQ policy centre.⁵⁶⁸ However CSIS HQ was never called upon to consider such an order, as BC Region never sought retention.

A similar reporting structure existed at HQ, with incoming and outgoing reports on the Parmar Tapes channelled through Glen Gartshore, the Supervisor of the

⁵⁶³ Exhibit P-101 CAD0115, pp. 4, 12-13, CAD0183, p. 12.

⁵⁶⁴ Exhibit P-101 CAD0138, p. 5.

⁵⁶⁵ Exhibit P-199, p. 69; Exhibit P-101 CAD0138, p. 4.

⁵⁶⁶ Exhibit P-101 CAD0002, p. 12.

⁵⁶⁷ Exhibit P-101 CAD0115, pp. 2, 12-13.

⁵⁶⁸ Exhibit P-101 CAD0002, p. 12.

Sikh Desk. Gartshore brought all intelligence that he felt was significant to the attention of the Unit Chief (Russell Upton before the bombing and Chris Scowen after the bombing) who reported directly to Mel Deschenes, the Director General, CT. None of these personnel had direct access to the TAPP Manual, but all were aware of a general duty to bring “significant” information to the attention of their supervisors.⁵⁶⁹

In theory, the final decision to retain intercept tapes appears to have been a joint responsibility between Deschenes and Jodoin, the CI&W DG, with approval from the CSIS Director.⁵⁷⁰

At the Inquiry, Warren offered his perspective on why no one had asked for retention of the Parmar intercept tapes.

Why it happened, I don't know, but it was [an] oversight. Nobody gave the order and things just kept rolling on as if nothing had happened and the people who were at very junior levels were actually in this process of destroying the tapes. In the absence of any instructions from up above, [they] kept doing what they had always been doing.⁵⁷¹

It is true, in theory, that anyone in the chain of command at BC Region and CSIS HQ could have requested retention. It is equally true is that no one individual was assigned that responsibility. The reality is the decision could not have been made by a single individual, but rather it would have required approval by both investigative and technical personnel in BC Region and at CSIS HQ. Ultimately, if somebody had sought the retention of the Parmar intercepts, they would have had to engage an approval process involving the BC investigators right up to the CSIS Director, a cumbersome process that few, if any, CSIS personnel appear even to have been aware of.

The Jodoin Memorandum: “Contentious in Nature or Open to Interpretation”

The Jodoin memorandum purported to expand the class of communications to be retained to include those “contentious in nature or open to interpretation.” To be sure, Jodoin stated that the purpose of his directive was to maintain the intercepts to assist in wiretap renewals by advising the Federal Court about what information had been obtained to justify the renewal. Nevertheless, Jodoin understood that intercepts rarely reveal the “smoking gun” conversation that ties a conspiracy together. The process of understanding intercepted conversations is incremental and requires an integrated assessment of the content with other known investigative facts.⁵⁷² In light of the translators’ lack of familiarity with

⁵⁶⁹ Exhibit P-101 CAD0120, p. 5.

⁵⁷⁰ Exhibit P-101 CAD0003, p. 9.

⁵⁷¹ Testimony of James Warren, vol. 48, September 19, 2007, p. 5818.

⁵⁷² Testimony of Jamie Jagoe, vol. 82, November 23, 2007, pp. 10478-10479.

Parmar and with Parmar's use of veiled language and guarded conversations, the adoption of Jodoin's directive would have been especially useful to them in the interpretation of Parmar's communications.

The expanded criteria for retention recommended by Jodoin were never employed by any CSIS region. Even though a verbatim report was made and used on subsequent warrant renewals, BC Region did not retain the tape of the intercepted Jung Singh conversation, in direct contradiction of the Jodoin memorandum.⁵⁷³

Jodoin testified at the Inquiry that, as DG CI&W, he had authority to issue guidelines but not to rewrite policy—a role reserved for the CSIS Director. However, Jodoin issued the memorandum with the intention that all regions would follow his instructions. Jodoin did not realize that no region had followed his instructions and felt that, although the regional DGs had autonomy in directing their region, it was wrong of them not to notify him of their disagreement with his recommendations.⁵⁷⁴

It is not clear why Jodoin's memorandum was generally ignored. According to SIRC, the wording of the Jodoin memorandum and the explicit request that the instructions be forwarded to all responsible personnel contradict the notion that it was only meant as a "suggestion." Had the suggestion been heeded, it might have resulted in the retention of some Parmar Tapes.⁵⁷⁵

CSIS Failures

Any assessment of whether CSIS ought to have retained the Parmar Tapes has to take into account two important considerations. On the one hand, CSIS had intelligence that Parmar was a dangerous terrorist. The Service described him in as someone who is "...expected to incite and plan acts of violence including terrorism" against Indian interests and Hindus.⁵⁷⁶ On the other hand, there is the reality that CSIS was a new agency, intent on making a break with its previous Security Service orientation.

Prior to the bombing of Flight 182, the failure to have maintained the tapes might be understandable (except in cases which present clear "significantly subversive activity," like the Jung Singh intercept, which should have been preserved under CSIS's own policies), particularly in the wake of the McDonald Commission's recommendations about the privacy abuses perpetrated by the RCMP Security Service. Wishing to respond to those concerns, CSIS rightly sought to chart a path distinct from law enforcement. This entailed a greater respect for the privacy of their targets than that employed by the RCMP Security Service.

⁵⁷³ Exhibit P-101 CAA1032.

⁵⁷⁴ Testimony of Jacques Jodoin, vol. 49, September 20, 2007, pp. 6034, 6051.

⁵⁷⁵ Exhibit P-101 CAB0902, pp. 72-73.

⁵⁷⁶ Exhibit P-101 CAA0333, para. 3(g): Affidavit of Archie Barr filed in support of the application to obtain a warrant to intercept Parmar's communications.

While the Jodoin memo sets out an approach which is more in tune with our present-day understanding of the utility of intelligence information, it would be inappropriate to suggest that the Service had failed in the pre-bombing era. It is the Commission's view that that conclusion would unduly favour hindsight.

Hindsight, however, is not the sole reason for believing that the tapes obtained following the bombing of Flight 182 should have been retained. Once the bombing had occurred, there was no excuse for the continued systematic destruction of the tape recordings. That the terrorist act was rooted in the Sikh extremist movement was immediately suspected by the Service, and as the leader of the most dangerous group in Canada,⁵⁷⁷ Parmar was immediately suspected.⁵⁷⁸ The fears of terrorist violence outlined in the Barr affidavit in support of the warrant to intercept Parmar's conversations literally came to pass. The failure to put a stop to the destruction of the tapes represented a failure on the part of the Service to perform its function in the public interest. It was a triumph of blind adherence to a practice that could not then and cannot now be justified.

CSIS adopted a policy that its information would not be available as evidence out of an interest in protecting privacy, as well as from a desire to distinguish itself from the former Security Service. Warren, in his testimony at the Inquiry, stated that the pendulum had swung too far at the time of the creation of CSIS, and perhaps CSIS was being overly sensitive to the issue of being more attentive to the privacy rights of Canadians.⁵⁷⁹ In an overzealous effort to ensure that the new agency followed the recommendations of the McDonald Commission, it failed to consider the shift in paradigm from counter-intelligence to counterterrorism, or to recognize the critical role that CSIS intelligence would play in the investigation and prosecution of the Air India and Narita terrorist attacks.

In the aftermath of the terrorist attack on Flight 182, CSIS should have preserved all the tapes in its possession. This applies not only to the backlogged tapes from the pre-bombing period, but also to the tapes of the conversations CSIS continued to intercept after the bombing, and which it continued to translate, summarize and erase until February 1986.

Should the Tapes Have Been Retained as Evidence?

While it is clear from the foregoing that CSIS did not consider that it had a mandate to collect and preserve information as evidence for subsequent use by law enforcement, it was certainly the mandate of the RCMP to collect evidence for use in a criminal prosecution. The focus therefore now shifts to what the RCMP did to preserve the Parmar Tapes for their criminal investigation of the terrorist attack on Flight 182.

⁵⁷⁷ Exhibit P-101 CAB0144.

⁵⁷⁸ Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3812.

⁵⁷⁹ Testimony of James Warren, vol. 48, September 19, 2007, pp. 5814, 5941.

CSIS justified its lack of retention for criminal purposes on the basis that the responsibility to request retention for evidentiary purposes lay with the RCMP. Warren noted that the BC Region practice in the immediate aftermath of the bombings was to provide copies of final intercept reports to the RCMP members involved in the Air India Task Force. He emphasized that the RCMP should have been aware of the existence of the Parmar intercept, and thus the onus was on the RCMP to indicate its opinion on the evidentiary value of any intercept.⁵⁸⁰ CSIS found absolutely nothing in its files to suggest that a request for retention had ever been made or that anybody had even considered saving all the Parmar Tapes.⁵⁸¹

In October 1987, the RCMP learned that CSIS was claiming that it had not received a request to preserve potential evidence. The RCMP E Division Task Force performed a cursory search of its own files and failed to identify any written correspondence recording such a request.⁵⁸² Given the importance of this fact in the face of a potential abuse of process motion in the planned prosecution of Reyat for the Narita bombing, the RCMP undertook efforts to verify whether and when it had made a request for retention to CSIS.

Sgt. Robert Wall contacted members who had liaised with CSIS after the bombing to enquire about their recollection of "...when, how often and by whom we requested of CSIS that they preserve any potential evidence they might possess."⁵⁸³ In the months following the bombing, CSIS and the RCMP had met regularly to negotiate access for the RCMP to CSIS information. The RCMP claimed that it made various representations to CSIS expressing its interest in the preservation of CSIS information of evidentiary value.

Henschel-Claxton: Days after the Bombing

Supt. Lyman Henschel was the OIC of Support Services with the RCMP E Division in 1985. He was responsible for the RCMP units in charge of physical surveillance, communications intercepts and the gathering of criminal intelligence in the Division. In the aftermath of the Air India bombing, Henschel took on the responsibility of coordinating intelligence in support of the Air India Task Force investigation. On June 26, 1985, Henschel was contacted by Chief Superintendent Gordon Tomalty, the OIC of RCMP Federal Operations in the Division, who inquired whether there was a problem of disclosure of information from CSIS to the RCMP. Henschel recalled that the issue was raised as one that should be clarified at an early date in the investigation, without anticipation of difficulty.⁵⁸⁴ Henschel contacted Claxton and made the following notes of the meeting:

580 Exhibit P-101 CAA0466.

581 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5819-5820.

582 Exhibit P-101 CAA0585, CAA0606, p. 3.

583 Exhibit P-101 CAA0583(i).

584 Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5518-5520, 5523.

Discussed disclosure problem with Randy Claxton – disclosure to Force no problem as per Sec. 19(2)(a) *CSIS Act* – CSIS to RCMP. Problem of vital evidence being secured on a CSIS intercept discussed. Agreed that where there is indication of likelihood the intercept may yield evidence we will proceed with separate Part IV.I (now Part VI) authorization. CSIS may have continuity problem – as only one tape produced. In event of capture of crucial evidence, best effort would be made to introduce notwithstanding continuity problem.⁵⁸⁵

Claxton endeavoured to obtain CSIS HQ's official position on the procedure that was to be employed if the Service were to obtain "crucial evidence."⁵⁸⁶ Henschel, at the time of his meeting with Claxton, was not aware that CSIS had been intercepting Parmar's conversations or those of any other targets relevant to the terrorist attack on Flight 182. He thought that the situation discussed was intended to apply in the future, to ensure that arrangements were in place to facilitate CSIS's sharing of information of evidentiary value with the Air India Task Force.⁵⁸⁷ Henschel informed the Task Force members and the RCMP Liaison Officers of this tentative arrangement.⁵⁸⁸

The following day, Claxton contacted Henschel with CSIS HQ's official position, recorded in Henschel's notes as follows:

Any incriminating evidence off CSIS installation will immediately be isolated and retained for continuity with advice to ourselves. Told him where criminal activity appears likely we will parallel with separate Part IV.I C.C. (now Part VI) authorization. He asked that we touch base with his office ... before this is done as they have one or two very sensitive installations which they would want to consider very carefully. If they are asked to tender evidence Randy will seek ministerial approval.⁵⁸⁹

On June 27, 1985, Henschel advised Inspector John Hoadley, who was in charge of managing the E Division Air India investigation, of this CSIS position.⁵⁹⁰

Several years later, on November 18, 1987, Hoadley reviewed his notes of his conversation with Henschel. Hoadley recalled that they had discussed the need to preserve all wiretap information that came into CSIS's possession, and that Henschel had subsequently called Claxton to secure his concurrence.⁵⁹¹

585 Exhibit P-101 CAF0166, pp. 2-3.

586 Exhibit P-101 CAF0166, p. 3.

587 Testimony of Lyman Henschel, vol. 46, September 17, 2007, p. 5525.

588 Exhibit P-101 CAF0166, p. 3.

589 Exhibit P-101 CAA0260.

590 Exhibit P-101 CAA0260.

591 Exhibit P-101 CAA0592.

Henschel, in his testimony at the Inquiry, disagreed with Hoadley's recollection. Henschel testified that there was no request to retain non-evidentiary material, as he was not aware that any relevant tapes were in existence.⁵⁹²

On November 4, 1988, in response to a request from CSIS HQ for an explanation of Henschel's notes about the conversations, Claxton set out in a telex his own recollection of his conversations with Henschel. Claxton wrote that he agreed to preserve any incriminating evidence, to isolate the vital information, to advise the RCMP Division immediately and to refer the matter to CSIS HQ for direction.⁵⁹³ His position was that what would be retained pursuant to this agreement, if a need ever arose, were particular pieces of information only, not the entirety of the CSIS holdings.⁵⁹⁴ He stated that there were no specific requests to retain any/all non-evidentiary wiretap material from any RCMP officer.⁵⁹⁵ Certainly, Claxton was of the view that unless there was value to a piece of information, it would not be retained. According to him, it was clear that his agreement with Henschel was not meant to result in the retention of the Parmar Tapes.

Henschel's recollection was that Claxton committed to retain possession of and to isolate any relevant material. In his opinion, any intercept activity on a prime suspect in the bombing should probably have been considered "relevant" and resulted in a decision to retain all tapes and related material on that person.⁵⁹⁶ Therefore, while he agreed with Claxton that the agreement was not meant to provide specifically for the retention of the Parmar Tapes, he felt that the Parmar intercepts were in fact "vital evidence," and that CSIS should have recognized them as such and retained them pursuant to the general agreement with Claxton.

The Commission's review of the Henschel-Claxton exchange revealed that the language used was ambiguous and open to interpretation. Henschel noted that the agencies were operating on trust at the time and they did not go into details about specific warrants.⁵⁹⁷ He felt confident that CSIS would interpret his request properly and retain relevant intercepts, which he felt should have included all of the Parmar Tapes. However, it appears that CSIS did not have a similar understanding. The arrangement on this important matter should have been clearly understood and committed to writing to achieve clarity and to avoid disagreements.

The Jardine Request to Retain Information

James Jardine testified that he asked the RCMP to request retention of all relevant CSIS material, including intercepts, during the week of July 1, 1985. Jardine was involved in a number of briefings that week, which included discussion of

⁵⁹² Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5537, 5549.

⁵⁹³ Exhibit P-101 CAD0002, p. 4.

⁵⁹⁴ Exhibit P-101 CAD0003, p. 9.

⁵⁹⁵ Exhibit P-101 CAD0019(i).

⁵⁹⁶ Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5539, 5561.

⁵⁹⁷ Testimony of Lyman Henschel, vol. 46, September 17, 2007, pp. 5563-5564.

whether the Crown would have access to CSIS information. Jardine asked that all evidence or information or tapes or surveillance be retained for use in the prosecution, if possible.⁵⁹⁸

Jardine referred to his notes in his evidence and stated that he met with Hoadley and other members of the Task Force on July 1, 1985. Jardine said that, at that time, he asked for any information CSIS may have obtained relevant to the case.⁵⁹⁹ Jardine had just finished prosecuting the “Squamish Five” case, in which he had experienced the reluctance of the Security Service to make its information available for use as evidence. As a result, he told the RCMP Task Force to make sure to obtain all relevant information from CSIS.⁶⁰⁰ By then, the Task Force knew that CSIS had been conducting physical surveillance on Parmar – as a result of the Duncan Blast information.⁶⁰¹ Jardine recalled that CSIS would neither confirm nor deny that it was intercepting Parmar’s conversations, but Jardine suspected that it was.⁶⁰² Jardine was confident, and the Commission accepts, that in July 1985 he made his desires to have all CSIS information clearly known to the officers in charge of the RCMP Task Force, though neither agency had any such recollection.⁶⁰³

Negotiations over Access to the Parmar Tapes

Following the destruction of Air India Flight 182 in June 1985, and throughout the summer and fall, CSIS continued to erase the Parmar Tapes. CSIS personnel indicated that they assumed that the RCMP knew of the Service’s tape retention policy, as it was developed during the time of the RCMP Security Service.⁶⁰⁴ Indeed, early drafts of the TAPP Manual had been sent to the Solicitor General in 1980 and had been signed by RCMP Commissioner Simmonds.⁶⁰⁵ In addition, some of the RCMP Air India Task Force members were former RCMP Security Service officers, including Hoadley and the RCMP Liaison Officer, Sgt. Michael (“Mike”) Roth. As such, it was thought that they would have knowledge of the TAPP Manual.

Though the TAPP Manual was a Top Secret document, not widely circulated within the Service, and not known to some of CSIS’s own Sikh extremism investigators (e.g., Ayre, who thought that the Parmar Tapes were preserved), Roth testified that he did have an understanding of the RCMP Security Service’s tape erasure policy from his days with the RCMP Security Service. He recalled that tapes would be maintained for 30 days and then recycled. When serious information came up, requiring action by the RCMP or local police, Roth’s understanding was that the tape would be marked and a “slave tape” made.⁶⁰⁶

⁵⁹⁸ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5663.

⁵⁹⁹ Exhibit P-101 CAA0578.

⁶⁰⁰ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5662-5663.

⁶⁰¹ See Section 1.4 (Pre-bombing), Duncan Blast.

⁶⁰² Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁶⁰³ Exhibit P-101 CAA0578; Testimony of James Jardine, vol. 47, September 18, 2007, p. 5663.

⁶⁰⁴ See Exhibit P-101 CAD0002, CAD0003, p. 9.

⁶⁰⁵ See Exhibit P-101 CAA0009.

⁶⁰⁶ Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5633. According to Roth, a slave tape, or copy, was made off the “master slave” and kept for use by the RCMP.

RCMP Task Force members were aware of the existence of the CSIS Parmar intercept early in July 1985, and by July 12th at the latest. During the first weeks after the bombings, CSIS provided the Task Force with summaries of pre-bombing intercepted conversations pertaining to Parmar. This material included information contained in a June 27th CSIS report, sent to the RCMP in early July 1985, which reported coded conversations about “delivering papers,” “that work,” and “mailing letters,” recorded on June 21 and June 22, 1985, during two separate calls between Parmar and his brother, Kulwarn Singh, and Hardial Singh Johal, respectively.⁶⁰⁷ It was quickly clear to the RCMP that the CSIS reports about such conversations were based on intercepts.⁶⁰⁸

Wall’s notes contain a reference to a meeting between the RCMP and CSIS on July 12, 1985, at which Francis mentions the Parmar intercept.⁶⁰⁹ He did not, however, ask for specific retention of the Parmar Tapes at that time.

On July 25, 1985, Roth was given access to some of the Parmar intercept logs. He stated that the first time he knew that CSIS had an intercept on one of the RCMP targets was the previous day, when Hoadley instructed him to go to CSIS to review the logs.⁶¹⁰ Roth did not submit a request for specific retention of the Parmar Tapes.

RCMP Gains Access to Parmar Tapes

Over the fall of 1985, the RCMP gained increased access to the Parmar intercept logs, and RCMP personnel were eventually made aware of the fact that the Parmar Tapes were being erased. On September 6, 1985, C/Supt. Norman Belanger, the OIC in charge of the Air India investigation at RCMP HQ, requested that members of the E Division Task Force be given access to CSIS intercept logs on major Sikh targets for investigative leads and intelligence. Barr approved the request on the basis that the RCMP officers would be indoctrinated into CSIS, the material would be viewed on CSIS premises and it would not be used as evidence in court.⁶¹¹ During the following days, Roth and his colleague Cpl. Robert Solvason reviewed the Parmar intercept logs and took extensive notes.⁶¹² Though the information uncovered was considered to be of interest to the RCMP investigation, and was eventually used in an affidavit in support of an RCMP authorization to intercept private communication, access to the Parmar Tapes themselves was not discussed with CSIS at the time and the officers did not request that the tapes be retained.

In early October, after Constable Sandhu had completed his review of the 50 backlogged Parmar Tapes, he requested access to the tapes recorded in June. Betty Doak, the CSIS transcriber, informed him that a CSIS translator had already

⁶⁰⁷ Exhibit P-101 CAB0360.

⁶⁰⁸ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁶⁰⁹ Exhibit P-101 CAA0379(i), p. 9.

⁶¹⁰ Exhibit P-101 CAA0802, p. 6.

⁶¹¹ Exhibit P-101 CAB0551.

⁶¹² See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

processed these tapes. Even so, Sandhu pressed his request – to which Doak replied that she thought the tapes had been erased. A few days later, Sandhu returned to CSIS and requested access to the Parmar Tapes. He was told by John Stevenson that the tapes were unavailable.⁶¹³

One month later, awareness of the Parmar Tape erasures appears to have reached the highest levels of the RCMP. On November 13, 1985, Mel Deschenes, CSIS DG CT, sent a telex to CSIS BC Region,⁶¹⁴ following a request from RCMP Assistant Commissioner Norman Inkster, asking whether tapes pertaining to all Sikh targets were still available since the Air India explosion, or had been erased after processing. CSIS HQ requested that if some tapes had been erased, BC Region should specify which tapes were still available. BC Region replied to CSIS HQ that only tapes recorded from November 4th onward, along with the tapes translated by Sandhu and four tapes retained for voice-print analysis, remained.⁶¹⁵ All other tapes had been erased, in accordance with the usual 10-day retention period set out in CSIS policy. BC Region offered to hold the remaining and future Parmar Tapes for a further period of up to 30 days or until advised not to retain.⁶¹⁶

Inkster testified that there were “...frequent requests, perhaps oral in large measure to retain the tapes,” and that this was a “preoccupation of Chief Superintendent Belanger.” Inkster indicated that, when he learned from Belanger that CSIS was still erasing the Parmar Tapes, he called CSIS Director Ted Finn to say, “Ted, if that is occurring it has to stop.” Inkster was not able to recall the date of his discussion with Finn on this matter, but he stated that he became Deputy Commissioner of Criminal Operations in August of 1985 and that the conversation occurred very early in his new mandate.⁶¹⁷ No written record of this exchange appears to have been made, nor was this request distributed to the CSIS personnel handling the Parmar Tapes.

Even after these direct exchanges, CSIS could locate no record of the RCMP having asked CSIS to retain intercept material from November 4th forward.⁶¹⁸ CSIS continued to erase the Parmar Tapes until the Department of Justice ordered a stop to erasures on February 6, 1986 only in order to defend the Government against the civil damages claim filed by the victims’ families.⁶¹⁹ Beginning in late September 1985, the RCMP had its own intercept of Parmar’s communications and could conduct its investigation without the CSIS tapes. For the period preceding this, however, the CSIS tapes that were now erased had been the only original records of Parmar’s conversations in the months preceding and following the bombing.

⁶¹³ Exhibit P-101 CAA0583(i).

⁶¹⁴ Exhibit P-101 CAA0374.

⁶¹⁵ Exhibit P-101 CAA0376.

⁶¹⁶ Exhibit P-101 CAA0376.

⁶¹⁷ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10338-10340.

⁶¹⁸ Exhibit P-101 CAA0609, pp. 14-15.

⁶¹⁹ See Exhibit P-101 CAA0549, CAA0609, p. 15, CAA0913(i).

On September 18, 1985, RCMP Deputy Commissioner Tom Venner requested a meeting with CSIS BC Region to convey Jim Jardine's insistence that he be given access to the Parmar intercept information, as well as the freedom to use it as evidence in an eventual prosecution and in support of RCMP judicial applications for search warrants and authorizations to intercept communications. Jardine feared that, unless he could access and cite the intercept material, any RCMP warrant affidavit would be challenged and the resulting case could be imperilled. Jardine was under the impression that an agreement already existed between CSIS and the BC Provincial Government to ensure that CSIS would release this information for evidentiary purposes. Venner, on the other hand, stated that he did not accept Jardine's concern that CSIS intercept material would be required as evidence and affirmed that the RCMP Task Force was satisfied to receive CSIS technical information for "investigative lead" purposes only. Venner even suggested that it might be necessary to transfer the prosecution away from Jardine to avoid further difficulties on this issue.⁶²⁰

At the meeting on September 18, 1985, Claxton addressed the existence of "...an underlying suspicion in some RCMP quarters that CSIS was withholding relevant information." Assistant Commissioner Donald Wilson reassured Claxton that no mistrust existed between the agencies, and that these suspicions would be due to "...intense pressures being placed on Task Force investigators by Headquarters, Crown Counsel, etc. for results."⁶²¹ In the spirit of cooperation, CSIS BC Region recommended that the RCMP Task Force be given full access to intercept material on other Sikh extremist targets.⁶²²

On September 19th, the RCMP made use of CSIS information in an application for authorization to intercept the communications of Parmar and his associates. CSIS HQ denied that this use was authorized. As a consequence, CSIS took this opportunity to restrict access to further intercept material.⁶²³

While some RCMP members agreed with CSIS that its information should be used only for investigative leads, others, like Belanger, clearly felt that the information, including the original intercept tapes, should be available for prosecutorial purposes.

Throughout this period, while the RCMP continued to negotiate access to the Parmar transcripts, there was no written request or demand of CSIS to retain the actual tapes.

RCMP Failures

After the terrorist attack, members of both the RCMP and CSIS appreciated the need for cooperation. RCMP and CSIS members communicated frequently and

⁶²⁰ Exhibit P-101 CAB0553, p. 2.

⁶²¹ Exhibit P-101 CAB0553, p. 3.

⁶²² Exhibit P-101 CAB0553.

⁶²³ Exhibit P-101 CAA0327, CAB0554; See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

agreed to general information-sharing arrangements.⁶²⁴ However, no specific details were discussed. The agencies were apparently confident that they would do everything in their power to assist in each other's investigation.

This confidence failed to take into account the differing understanding of their mandates by the two agencies. There was a surprising lack of clarity to the arrangements and to the understanding of the arrangements by senior personnel, given the importance of the investigation. At times it appeared as if each were relying upon unspoken and incorrect assumptions about the other agency's understanding.

While CSIS continued to insist that its information was not to be used as evidence and to refuse access to its raw materials to the RCMP,⁶²⁵ the RCMP position was captured by Chief Superintendent Frank Palmer, OIC Federal Operations, who wrote to Commissioner Simmonds in October 1987:

It's possible we, involved as we are in evidence preservation in our day to day activities, assumed the same of C.S.I.S. & thus never specifically requested they not destroy any tapes. Certainly it would be our expectation that such destruction of tapes if it was being done, would have ceased after the events of 22/23 June 85.⁶²⁶

In other words, the RCMP expected that CSIS would voluntarily decide to retain the Parmar Tapes. Nevertheless, when the RCMP became aware of the existence of the tapes, it ought to have made a clear request for retention.

Was any Significant Information Lost?

CSIS has consistently claimed that no incriminating evidence was lost due to the erasure of the Parmar Tapes.⁶²⁷ CSIS noted that Parmar was very surveillance conscious, often making calls from phone booths or driving several hours for a meeting rather than talking on his home phone. Significantly, even after the bombing, Parmar continued to plot attacks, and neither CSIS nor the RCMP obtained information of real probative value from their intercepts.⁶²⁸ CSIS also points to the fact that Sandhu found no incriminating evidence in his review of the 50 backlogged Parmar Tapes.

However, from the perspective of Assistant Commissioner Gary Bass, the information that had been retained from the pre-bombing tapes presented a clear picture of a conspiracy between Parmar and his associates. He felt

⁶²⁴ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁶²⁵ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁶²⁶ Exhibit P-101 CAD0102, p. 4.

⁶²⁷ See Exhibit P-101 CAD0115, p. 13, CAD0138, pp. 4-5. The lead Sikh extremism investigators in the BC Region, Ray Kobzey and David Ayre, have both stated that there was nothing in the material that would have triggered a request for tape retention. Exhibit P-101 CAD0136, p. 4: Similar claims have been made by Jim Francis, Unit Head, Counter Terrorism Section.

⁶²⁸ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8308.

that, had the tapes not been erased, they would have been used as evidence in the trial. The Crown ultimately decided not to attempt to rely on the logs due to the likelihood that the prosecution would not withstand the inevitable abuse of process motion by the defence. Bass also stated that, if he had had the information in CSIS's intercepts, he would have put up intercepts on payphones immediately after the bombing. He felt that the delay in acquiring the CSIS information meant that valuable information that would have been communicated after the bombing was lost.⁶²⁹

Over the years, concerns have been raised about whether CSIS properly processed all the Parmar intercepts and whether, despite the Service's claims, information of significance was in fact lost. Were all the intercepts listened to? Were the translators and transcribers properly briefed to detect "significantly subversive activity"? Was CSIS aware of the need to be mindful of the use of coded language by Parmar and his associates? In short, was CSIS in a position where it could reasonably conclude that nothing of value had been intercepted?

Were all the Tapes Listened to?

The 1992 SIRC Report attempted to address this issue and concluded that, due to incomplete processing records, it was impossible to determine whether all the Parmar Tapes were reviewed prior to erasure.⁶³⁰ Ronald ("Ron") Atkey, Chairman of SIRC from 1984 to 1989, testified that, to this day, it is his belief that some tapes were erased without being listened to.⁶³¹ When Jardine was asked whether he was able to conclude, on the basis of the information he had obtained from CSIS over the years, that all the Parmar Tapes had been listened to prior to being erased, he answered: "I don't know."⁶³²

By contrast, Warren testified that BC Region had assured him that every tape had been listened to.⁶³³ It is impossible to confirm BC Region's assertion, given the confusion over the erasure policy and the fact that CSIS failed to keep accurate records of the processing of the Parmar Tapes. Indeed, in his correspondence with the RCMP on the topic, Warren was, on several occasions, obliged to retract previous statements about the intercepts and their erasure, including the number of tapes that had been recorded.⁶³⁴ In short, a reliable and proper accounting does not exist, including a complete log of the dates of erasure.⁶³⁵

It is plausible that tapes may have been erased prior to processing due to the fact that some CSIS personnel held the view that tapes were to be erased 10 days after interception, not 10 days after transcription. This is a rather surprising view, given that Chapter 21 of the TAPP Manual stressed the importance of intercepted

629 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11184, 11240, 11249.

630 Exhibit P-101 CAB0902, p. 78: 1992 SIRC Report.

631 Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5988.

632 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5763.

633 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5826, 5858.

634 See Exhibit P-101 CAA0581, CAA0595(i). See, generally, Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

635 Exhibit P-101 CAD0159, p. 3.

communications to the investigators.⁶³⁶ For this reason the Manual called for retention for a reasonable time after processing. The Manual provided:

...that tapes be held at least ten working days after having been listened to and preferably for ten working days after submission of the C-237 (the transcriber's and/or translator's report on the intercept's contents).

However, in a July 14, 1986 memo, Warren wrote that CSIS policy was to erase "...10 days following the intercept."⁶³⁷ This interpretation raises the alarming possibility that tapes would be erased before they would be transcribed and translated.⁶³⁸

In 1989, CSIS undertook a review of the processing of the Parmar intercept tapes. The document describing the review outlines estimated dates of recording, translation, transcription and erasure, as well as the personnel involved and other relevant notes. The May 1, 1985 record notes that a reel appears to have been erased without being processed. The record also shows discrepancies between the number of tapes processed for certain days, as noted by the transcriber on the one hand and the translators on the other.⁶³⁹

In 1991, the RCMP interviewed several CSIS employees involved in the processing of the Parmar Tapes. The RCMP concluded that CSIS personnel interviewed did not have a clear and consistent understanding of the tape erasure policy. The CIOs, who were responsible for erasing tapes, stated that the actual process they followed was to erase the tapes 10 days after the recording date.⁶⁴⁰ Claxton admitted that erasure of tapes 10 days after recording could have occurred in BC Region, despite the fact that it was contrary to policy.⁶⁴¹

The number of actual tapes processed has been reported differently at different times. In an October 19, 1987 letter, CSIS claimed that, during the period between March 27 and July 1, 1985, there were 169 tapes processed with respect to the Parmar intercept.⁶⁴² On November 30, 1987, Warren corrected that estimate, reporting that CSIS had collected 210 tapes, rather than 169.⁶⁴³

CSIS made subsequent attempts to clarify the total number of Parmar Tapes processed. In a 1991 review, CSIS estimated that 203 to 207 tapes were processed.⁶⁴⁴ In 1998, CSIS again attempted to account for the number of processed tapes, concluding that the number was 207.⁶⁴⁵

⁶³⁶ Exhibit P-101 CAA0014.

⁶³⁷ Exhibit P-101 CAA0466, p. 3.

⁶³⁸ Testimony of James Warren, vol. 48, September 19, 2007, p. 5826.

⁶³⁹ Exhibit P-101 CAD0159, pp. 9, 15, 19, 24, 34.

⁶⁴⁰ Exhibit P-101 CAF0250, p. 2.

⁶⁴¹ Exhibit P-199, p. 10.

⁶⁴² Exhibit P-101 CAA0581.

⁶⁴³ Exhibit P-101 CAA0595.

⁶⁴⁴ Exhibit P-101 CAD0159.

⁶⁴⁵ Exhibit P-101 CAD0184.

CSIS explained that the lack of precision was due to discrepancies between the number of reels in the translator and transcriber logs. CSIS alleged that these discrepancies were related to tapes not passed to the translator because they contained no Punjabi content.⁶⁴⁶ However, there is no record to substantiate this theory, and no mention in the transcriber notes of any tapes not being passed on to the translators.

In light of this confusion and the lack of reliable records or record keeping, the Commission cannot rely on CSIS's claim that all tapes were listened to prior to erasure. The available evidence appears to point to a different conclusion. Moreover, it is astonishing that something as simple as a proper accounting of the processing of intercept tapes was not undertaken and is therefore not available.

Lack of Appropriate Briefings for the Transcriber and Translators

The role of transcribers and translators was critical in determining if Parmar was engaged in "significant subversive activity." Ayre, the lead investigator in charge of reviewing the Parmar intercept reports, admitted that he relied heavily on the translators' innate knowledge and experiences to capture the nuances of Parmar's communications.⁶⁴⁷ However, it is clear that the Punjabi translators working on the Parmar Tapes were ill-equipped to provide meaningful intelligence information in the period preceding the bombings.

Transcribers and translators were generally civilians with no police or intelligence background, and no specific training in national security matters.⁶⁴⁸

CSIS has admitted that, in the case of the Parmar warrant, any briefing provided prior to the bombings would have been "necessarily skimpy," as little was known about Parmar at the time, due to the newness of the intercept itself.⁶⁴⁹ Doak, who could not understand Punjabi, was the lead transcriber. To prepare herself, she read the Parmar warrant and affidavit to become familiar with the target.⁶⁵⁰ The Ottawa translator, although familiar with some Sikh extremist targets, did not recall being provided any specific briefing or instructions with respect to the Parmar investigation. She was never provided with, nor did she read, any material regarding the investigation prior to undertaking the translation. She never interacted with the transcriber or with the investigators in the BC Region.⁶⁵¹ The Vancouver translator was given a briefing by Ayre, including an overview of the Sikh extremism investigation in Canada, and was provided with detailed instructions on what to look for. However, as work began on the Parmar intercepts on June 8, 1985, there was little time to gain familiarity with the nuances of his communications.⁶⁵²

⁶⁴⁶ Exhibit P-101 CAD0159, pp. 9, 15, 19, 34.

⁶⁴⁷ Exhibit P-101 CAD0138, p. 2; Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3842-3843.

⁶⁴⁸ Exhibit P-199, p. 69.

⁶⁴⁹ Exhibit P-101 CAA0597, p. 3.

⁶⁵⁰ Exhibit P-101 CAD0184, p. 17.

⁶⁵¹ Exhibit P-101 CAA0595(i), CAD0003, p. 11, CAD0184, pp. 18-19.

⁶⁵² Exhibit P-101 CAA0595(i).

The transcribers and translators were asked to log only calls of value to the investigators, looking for calls indicating all types of planning, meetings and travel involving Parmar and his associates – Gill, Bagri and Malik. They were also instructed to log any conversations indicating criminal activity, such as plans to kill or beat people, explosions, bombings or destruction of property.⁶⁵³ Any information identified by the transcriber or translators as relevant was generally summarized. Occasionally, significant communications were recorded verbatim.⁶⁵⁴

The lack of coordination between the Ottawa-based translator and BC investigators likely resulted in translators failing to appreciate what was significant in any particular case.

A further complicating factor was the suspicion that the translators might have been sympathetic to the Khalistani movement and might have allowed this bias to affect their translations. At one point Warren was reported to have made comments to the effect that he did not trust the translators 100 per cent because of this suspicion.⁶⁵⁵ Claxton was aware of this possibility, but felt that he had no reason not to trust them.⁶⁵⁶ Jodoin was not familiar with any questions about the loyalty of the translators and stated that he had no reason to doubt their loyalty and integrity.⁶⁵⁷

With minimal experience in national security matters and little knowledge about Parmar in particular, the transcribers and translators could not effectively undertake the critical responsibility of identifying information of significance. The practice of reporting in summary form meant that relevant details that might have been missed by the transcriber or translators would not be caught by the investigators, who had the most knowledge to form an understanding of the actual words spoken.

Coded Language

Initially nothing was known about the use of coded language by Parmar. As CSIS began to build a picture of Parmar, however, it became clear that he was “phone conscious” and, from time to time, resorted to coded language to disguise his true meaning.⁶⁵⁸

On June 19, 1985, shortly before and immediately after the call to book the Air India tickets, the intercept recorded conversations between Hardial Singh Johal and Parmar.⁶⁵⁹ In the first conversation, Parmar asked Johal whether he “wrote the story.” Johal replied that he had not and Parmar suggested that he write it. In the second conversation, which occurred minutes after the Air India tickets

⁶⁵³ Exhibit P-101 CAD0016, p. 2, CAD0184, p. 17.

⁶⁵⁴ Exhibit P-101 CAD0184, pp. 17-18.

⁶⁵⁵ Exhibit P-101 CAF0815, p. 85.

⁶⁵⁶ Exhibit P-199, p. 86.

⁶⁵⁷ Testimony of Jacques Jodoin, vol. 49, September 20, 2007, p. 6072.

⁶⁵⁸ Exhibit P-101 CAA0308, CAA0309, CAA0595(i).

⁶⁵⁹ Exhibit P-201, paras. 48-50. See also Exhibit P-203, paras. 59(e), 59(f); Exhibit P-101 CAD0180, paras. 269, 276.

were booked, with Johal's former phone number left as contact information, Johal (who was also seen at the airport on the day the suitcases were checked in) told Parmar that he "wrote the story" and suggested that Parmar "come over and see it." Shortly afterwards, Parmar was observed by CSIS leaving his home and driving in the general direction of Johal's house. A short time later, another call was made to CP Air to make changes to the reservations.⁶⁶⁰ The RCMP, in an Information to Obtain in 1985 and in a 1996 Affidavit, indicated that, on the basis of these intercepted conversations, they believed that the reservations for the Air India tickets were made by Hardial Singh Johal and that Johal then informed Parmar of what he had done.⁶⁶¹

On June 20, 1985, an unidentified man went to CP Air to pick up the tickets. The following day, Parmar telephoned Surjan Singh Gill and asked whether he had delivered "those papers." Gill confirmed that he had, and Parmar instructed him to deliver "the clothes" to the same place.⁶⁶² The RCMP subsequently concluded that the "papers" referred to the tickets and the "clothes" to the suitcases to be checked in on the flights. A few days before the tickets were picked up and paid for in cash, Parmar asked Surjan Singh Gill to convert a cheque into cash in the form of one hundred dollar bills.⁶⁶³ On June 22, 1985, shortly after the bags were checked in at the airport, Parmar asked Johal if he had "mailed the letters" and the two men agreed to meet in person to discuss the mailing of the "letters." Earlier that same day, Parmar's brother Kulwarn called Parmar and asked "... whether that work has been done yet." Parmar replied "not yet."⁶⁶⁴ In addition, conversations intercepted on June 6, 1985, respecting airline ticket reservations for a person visiting from Toronto, were believed by the RCMP to be relevant to the identification of Mr. X, the person who accompanied Parmar and Reyat during the June 4th Duncan test blast.⁶⁶⁵

CSIS and the RCMP officially became aware of Parmar's use of coded language on August 22, 1985, when Charlie Coghlin at CSIS HQ wrote to Belanger at RCMP E Division indicating that the Narita suspects were using coded language.⁶⁶⁶

With the tapes erased, only the translators' and transcriber's original notes were available to check for the use of coded language. This is another reason why the retention of the original tapes would have been useful, as investigators could have reassessed their contents for the use of codes.⁶⁶⁷ A review of the original intercept tapes would likely have yielded a better understanding of how Parmar employed coded language.

To this day, CSIS continues to claim that, while it is true that Parmar used coded language, there remains no reason to suspect that the erased tapes contained

⁶⁶⁰ Exhibit P-101 CAD0180, paras. 278-279.

⁶⁶¹ Exhibit P-201, para. 51; Exhibit P-101 CAD0180, para. 284.

⁶⁶² Exhibit P-101 CAD0180, para. 301. This conversation is also mentioned in the September 19, 1985 Affidavit: Exhibit P-101 CAA0324(i), para. 50(s).

⁶⁶³ Exhibit P-101 CAD0180, paras. 228, 301.

⁶⁶⁴ Exhibit P-101 CAA0324(i), paras. 50(t), 50(u), CAD0180, paras. 307, 318.

⁶⁶⁵ Exhibit P-101 CAD0180, paras. 196, 199-200.

⁶⁶⁶ Exhibit P-101 CAA0308, CAA0309.

⁶⁶⁷ Exhibit P-101 CAA0595(i).

information about the planning of the Narita/Air India terrorist attacks.⁶⁶⁸ The fact that CSIS maintains this position is surprising, as there is a complete absence of adequate evidence on the point. In this respect, the most that can be said is that it is not known, and likely never will be known, whether the intercepts captured the planning of the terrorist attacks.

It is impossible to determine what information was lost due to the Parmar Tape erasures or its potential importance to the investigation and prosecution of the Air India and Narita bombings. It is clear that CSIS did not take the necessary steps to properly educate and train the translators and transcribers for this investigation, and this leaves the quality of CSIS's analysis of the intercepts in a state of uncertainty. We cannot conclude that CSIS preformed its functions in this respect in a competent manner.

Effect on the Prosecution

Jardine considered the information erased by CSIS to be critical to the prosecution of the Air India and Narita matters. It was his view that, through the destruction of the Parmar Tapes, the court lost a major piece of evidence that would have been essential to the unfolding of the narrative at any subsequent trial.⁶⁶⁹

In a letter to Warren, dated November 3, 1987, Jardine expressed his opinion that CSIS intelligence could be admissible as evidence:

One need only use the words “information” that they were involved in a subversive activity, or “intelligence” that they were involved in subversive activity or “evidence” that they are involved in subversive activity to realize that we are talking about degrees of relevance and evidence of potential admissibility in a court room in order to make the determination. The words are almost interchangeable.⁶⁷⁰

Jardine felt that, after the bombings, the test for retention should have been the possible legal use of the tapes in a prosecution rather than the normal CSIS test of “significantly incriminating.” Throughout the protracted negotiations with CSIS in preparation for the Reyat prosecution, Jardine emphasized the need to make disclosure to the defence of the relevant information, and the impact of the tape erasure on the prosecution's ability to fulfill its obligations in this respect.⁶⁷¹ If CSIS would not admit that a mistake was made in erasing the tapes, Jardine hoped that the Court would find that CSIS was in error in not retaining the tapes rather than concluding the alternative – that CSIS wilfully destroyed evidence – a finding that had the potential to stay the prosecution as an abuse of process.⁶⁷²

⁶⁶⁸ Exhibit P-101 CAD0117, p. 2.

⁶⁶⁹ Exhibit P-101 CAF0168, p. 6.

⁶⁷⁰ Exhibit P-101 CAD0106, p. 6.

⁶⁷¹ See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective.

⁶⁷² Exhibit P-101 CAD0121, p. 3.

At the Reyat trial, the Crown made no attempt to introduce any evidence obtained in the form of the summaries that CSIS had provided regarding the content of the erased Parmar intercept tapes. The defence, however, did launch an abuse of process motion based on the erased tapes, which the Crown successfully resisted. In his March 1991 decision on the matter, Justice Paris stated: “As to the erasure of the tapes, it is clear that that occurred strictly as a result of the then-existing administrative routine. There was obviously no question of improper motive in that regard.” He also noted that it was unlikely, on the basis of the evidence before him, “...because of the way Parmar was acting,” that there was “anything of significance” on the tapes which could have assisted the defence.⁶⁷³

In the Malik and Bagri trial, the Crown decided that the CSIS intercept logs could not be used as evidence, and did not attempt to introduce them to support the prosecution.⁶⁷⁴ The Crown also considered whether the remaining CSIS intercept tapes could be used as evidence, and decided that they could not because the CSIS warrant regime was not consistent with Part IV.1 (now Part VI) of the *Criminal Code*. This was a conclusion based on a CSIS research paper but never tested in court,⁶⁷⁵ and one that is arguably incorrect, as discussed in Volume Three of this Report.

The defence brought a motion claiming that the destruction of the Parmar Tapes violated the accused’s rights under section 7 of the *Charter* because the erasure deprived the accused of essential evidence compromising the right to a fair trial. The Court agreed with the defence submission, as conceded by the Crown, that the erasures amounted to “unacceptable negligence.”⁶⁷⁶ The trial judge was not called on to craft a remedy for this *Charter* breach, as both accused were acquitted on the merits.

Certainly, the destruction of the tapes had a negative impact on the Malik and Bagri trial, as the Service was found to have violated the accused’s right to a fair trial. Viewed in that light, the destruction of the tapes was a most serious error.

Another consequence of the destruction of the tapes was that the Crown was deprived of information that it could have attempted to use to prosecute the crime. What may not have appeared to be significant in July of 1985 may very well have been significant in the hands of a skilled prosecutor. Again, the destruction of the tapes minimized any possible advantage for the prosecution.

Conclusion

The Parmar Tapes were erased by CSIS personnel operating during the infancy of CSIS, a period characterized by a lack of clear policies and direction. Warren testified that there was little time to sit back and comprehensively think through

⁶⁷³ Exhibit P-101 CAA0808, pp. 2, 6-7.

⁶⁷⁴ Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11214-11215.

⁶⁷⁵ Exhibit P-101 CAA1086, p. 8.

⁶⁷⁶ Exhibit P-101 CAA0335, p. 18. See Section 4.4.2 (Post-bombing), The Air India Trial.

the appropriateness of the policies inherited from the RCMP Security Service. CSIS personnel handling the Parmar intercepts seemed to have been operating in “default mode.”⁶⁷⁷ Thus the Parmar Tapes were routinely erased without considering whether that was a sound practice in light of terrorist attacks on Air India Flight 182 and at Narita.

Both the RCMP and the BC Crown appear to have recognized the importance of the Parmar intercept material to the eventual prosecution of the bombings: as an important possible source for inculpatory and/or exculpatory information. At the core of this conclusion is the belief that, intrinsically, all that Parmar may have said is relevant and important, given the central role he played in the Sikh terrorist movement. Yet there was no written request to preserve this information. It is surprising that the RCMP did not demand that CSIS retain intercepts on all Sikh extremists in the immediate aftermath of the terrorist attacks or, at a minimum, as soon as the RCMP knew of the Parmar Tapes. It is also unfortunate that the Department of Justice only ordered the retention of the intercepts in preparation for the civil litigation months after the bombing, though one of its prosecutors was involved in assisting the RCMP Task Force early on in the criminal investigation.⁶⁷⁸

By contrast, CSIS has continued to justify the erasure of the Parmar intercepts on the basis that it was simply following policy. In 1988, R.H. Bennett, Director General, Counter Terrorism at CSIS at the time, described the situation this way:

The requirements of the *CSIS Act* and CSIS's tape erasure policy were not necessarily fully compatible with the requirements of a police agency to build a criminal case. However this reflects a deliberate choice by Parliament to separate these two functions.⁶⁷⁹

Bennett noted that, although with hindsight one might conclude that the system is not perfect, it will not change these events as they happened. He wrote: “Hindsight will also not alter the professional analysis and determination required by the ministerial policy.”⁶⁸⁰

In effect, CSIS was defending its erasure of the Parmar Tapes as conforming to policy, regardless of whether the policy was appropriate to the circumstances.

Over the years and continuing into testimony at this Inquiry, while various CSIS personnel have expressed regret that the Parmar Tapes were erased, the Government would not acknowledge that this was an error, since it was done pursuant to a valid policy.⁶⁸¹

⁶⁷⁷ Testimony of James Warren, vol. 48, September 19, 2007, pp. 5817, 5875.

⁶⁷⁸ See Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5662-5664; Exhibit P-101 CAD0005, p. 6.

⁶⁷⁹ Exhibit P-101 CAD0124, p. 7..

⁶⁸⁰ Exhibit P-101 CAD0124, p. 7.

⁶⁸¹ See, for example, Final Submissions of the Attorney General of Canada, Vol. I, para. 353.

At the Inquiry hearings, for the first time, a former CSIS employee admitted the erasure was an error. Warren candidly testified that:

[The tape erasure was] not done in an attempt to obstruct justice or maliciously or an attempt to deprive the defence of a defence. It was done in error.⁶⁸² [Emphasis added]

The Commission found no evidence that CSIS erased the tapes for ulterior motives. CSIS simply failed to appreciate its potential role in assisting in the prosecution of terrorism offences. There was also no apparent understanding that preserving the Parmar Tapes could have been an element of an ongoing intelligence operation, given the threat to national security that Parmar posed.

The failure to have properly educated and trained transcribers and translators made it impossible to ‘mine’ the intercepted communications for valuable intelligence. The failure to retain the tapes in the aftermath of the terrorist attacks is inexcusable, and represents a key failure of the intelligence agency, regardless of the presumed value of those intercepts. To appreciate the staggering incompetence displayed in handling the Parmar Tapes, one need only recall that, in securing the warrant to intercept Parmar’s conversations, CSIS told the Federal Court that Parmar was a terrorist who would likely commit overt acts of terrorism. The affidavit was accurate in its prediction, yet once the terrorists exploded the bombs at Narita and on Air India Flight 182, CSIS, for some reason, failed to change its habitual operational methods and continued erasing tapes as if nothing had happened. The Commission is satisfied that there is no convincing explanation, let alone acceptable excuse, for CSIS to continue to erase the Parmar Tapes in the aftermath of the bombings

4.3.2 Destruction of Operational Notes

Introduction

During the Air India investigation, CSIS at times received information that might have been relevant to an eventual prosecution, or that could have significantly assisted the RCMP’s criminal investigation. In those cases, CSIS would provide to the RCMP access to CSIS official records, generally intelligence reports held on NSR.⁶⁸³ However, the RCMP often insisted on accessing the “raw materials,”⁶⁸⁴ or the original notes and reports prepared when the information was received, as they felt that these contained the most complete and accurate record. Such notes were often not provided to the RCMP, at least not immediately, or in some cases, not at all. During the early years of the Air India investigation, the official

⁶⁸² Testimony of James Warren, vol. 48, September 19, 2007, p. 5895.

⁶⁸³ Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6146.

⁶⁸⁴ Testimony of Norman Inkster, vol. 81, November 22, 2007, pp. 10322-10325. See also Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1651-1652; Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9338-9339. See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

policy in force at CSIS recommended that contemporaneous notes be taken, and it provided for the preservation of notes in cases which might result in court appearances by CSIS personnel. However, in practice, CSIS employees often did not make contemporaneous notes and, when they did, those notes were destroyed after reports were prepared.

Where original notes or reports were not provided to the RCMP, or no longer existed, problems could arise because the information received by the RCMP did not always contain all the details. In fact, the information could easily be inaccurate in those cases where the original notes or reports were incorrectly reproduced.⁶⁸⁵ Where CSIS investigators or surveillance personnel were the only ones who might be able to provide evidence about important facts, they could be required to testify. In such cases, their testimony would be less accurate and less credible, as they did not have access to memory-refreshing contemporaneous notes. In the case of the Ms. E information, which the Crown sought to introduce in the Air India trial through the CSIS reports and the testimony of the CSIS investigator involved, the unavailability of contemporaneous notes recording CSIS's interactions with Ms. E weakened the weight that the trial judge was able to place on the CSIS reports as evidence of Ms. E's out-of-court statements.⁶⁸⁶ The destruction of notes also gives rise to disclosure issues in criminal prosecutions. An instance of that occurred in the Air India trial when the trial judge found that Bagri's *Charter* rights had been violated because of the destruction of the notes and recordings of CSIS interviews with Ms. E.⁶⁸⁷

Initial CSIS Note-Taking Policy

When the decision was made by the Government to create CSIS, it acted quickly. The *CSIS Act* was passed and put into force almost immediately. There was no time to devise an adequate set of operational policies for the new agency. As a result, it was decided that the Security Service policies that governed day-to-day operations would be transferred to CSIS, and revised as necessary over time.⁶⁸⁸

The Security Service policy entitled "Investigator's Notebook and Notetaking" provided that where there was "reason to believe" that an investigation would "...result in court appearances being necessary," investigators were to keep a separate notebook and securely retain it.⁶⁸⁹ The policy also stated that it was "sound practice" to keep notes in all cases, even if most of the Security Service investigations would not result in legal proceedings.⁶⁹⁰ This policy was not reassessed or strictly followed by CSIS. In September 1987, the CSIS Policy Task Force reviewed the policy and concluded that it was "...in the RCMP format" and would need to be rewritten "to CSIS standards," with possible additions or

⁶⁸⁵ See, for example, Section 1.4 (Pre-bombing), Duncan Blast and the discussion about the phone number dialed by Parmar.

⁶⁸⁶ See Section 1.3 (Post-bombing), Ms. E.

⁶⁸⁷ See Section 1.3 (Post-bombing), Ms. E.

⁶⁸⁸ Exhibit P-101 CAA0812. See Section 3.3.1 (Pre-bombing), The Infancy of CSIS.

⁶⁸⁹ Exhibit P-101 CAA0007, p. 2.

⁶⁹⁰ Exhibit P-101 CAA0007, p. 4.

deletions.⁶⁹¹ It was not until 1992 that CSIS finally replaced the Security Service policy with its own policy on Operational Notes.⁶⁹²

Note-Taking Practices

Despite the written policy in place, a completely different practice was used at the Security Service and then at the newly-created CSIS. In most cases, notes were not taken contemporaneously, but were written shortly after interviews or meetings.⁶⁹³ Surveillance personnel only began to take notes, albeit in an unstructured way, after the 1983 incident known as the “Squamish Five” case.⁶⁹⁴ Further, at least in the case of notes made after interviews or meetings, the general practice adopted by the intelligence officers was to shred the notes after they had written and submitted their intelligence reports.⁶⁹⁵

Deputy Commissioner Henry Jensen testified that it was his impression that, prior to the creation of CSIS, RCMP Security Service members had been following the regular police protocols in terms of note-taking when faced with “...material that had criminal evidentiary value”⁶⁹⁶ in order to be able to legitimately refresh their memories if called to testify.⁶⁹⁷ He thought that the Security Service members kept two notebooks, in accordance with the policy.⁶⁹⁸ However, as former RCMP Commissioner Robert Simmonds explained in his evidence, the Security Service operated, in many respects, separately from the rest of the RCMP. It was no longer embedded in the regular command structure of the Force and “...really all the Commissioner knew was what this new Director General would choose to tell him.”⁶⁹⁹ While it is natural that Jensen would assume that Security Service members followed the policies found in their operations manual,⁷⁰⁰ he would not necessarily have had access to information about the actual practices that had developed within the Service in the years preceding the creation of CSIS.

In reality, employees of the Service were not made aware of the existence of the “Investigator’s Notebook and Notetaking” policy, before or after the creation of CSIS. CSIS BC Region investigator William Dean (“Willie”) Laurie explained that, not only was he never informed about the policy, but that he had “...never known a member of the Security Service or the CSIS that either was aware of this or practiced this.”⁷⁰¹ On the contrary, CSIS employees viewed the practice of shredding the notes as the “policy.”⁷⁰²

691 Exhibit P-101 CAA0007, p. 1.

692 Exhibit P-101 CAA1057, p. 2.

693 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3735.

694 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2158.

695 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3738. See also, Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7431-7432.

696 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5355.

697 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1637.

698 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1637-1638; Exhibit P-111 or P-101 CAA0007.

699 Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9317-9318.

700 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1640-1641.

701 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7468-7469.

702 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3738.

When Laurie interviewed Ms. E in 1987 and received information about a request by Bagri to borrow her car to take luggage to the airport the night before the Air India bombing, he was never instructed to preserve the notes he had made immediately after the interviews. He did not preserve them, even though it was clear to him that the information received related to a criminal investigation and that he would most likely be called to testify about it.⁷⁰³ Laurie's supervisors at the BC Region were also aware of the possible implications of the Ms. E information, yet took no steps to have the materials preserved,⁷⁰⁴ apparently also unaware of the official Security Service policy that was supposed to be applied in such a situation.

Laurie explained that it would have appeared contrary to the general philosophy prevailing at CSIS to follow a new procedure or policy requiring the preservation of notes in a manner similar to police procedures:

The Security Service, and later the CSIS, did not commonly work in areas where criminal cases arose and they behaved differently. Now after CSIS was created – it was created because there was – and I'm paraphrasing but there was a need to do things differently from the police, and that was something that was constantly brought up. We are not them. We don't have peace officer status. We don't do things that the police do. We don't have to do some of the things that they have to do and we can do things that they can't do.

So the notion – in retrospect that we have to adhere to this policy that the police had for keeping notes is pretty far removed, especially considering the amount of work that was being done and ... the atmosphere at the time.⁷⁰⁵ [Emphasis added]

The inconsistency between the note-taking practices of CSIS employees and the official policy was not addressed by CSIS until 1990, when the office of the Deputy Director of Operations (DDO) noted that it was "not clear" to all CSIS employees "...whether operational notes, personal notes" and other documents constituted official CSIS records, and that "...some employees are therefore uncertain as to the procedures regarding the maintenance and destruction of such records."⁷⁰⁶ The DDO requested that interim guidelines be drafted pending the adoption of a new policy on operational notes.⁷⁰⁷ The DDO believed that guidelines were necessary because of what he described as the "existing void", and he instructed that a draft be prepared after consultation with CSIS personnel to establish current practices and possible legal issues.⁷⁰⁸

⁷⁰³ See Section 1.3 (Post-bombing), Ms. E.

⁷⁰⁴ See Section 1.3 (Post-bombing), Ms. E.

⁷⁰⁵ Testimony of William Laurie, vol. 61, October 15, 2007, p. 7537.

⁷⁰⁶ Exhibit P-101 CAA0801, p. 1.

⁷⁰⁷ Exhibit P-101 CAA0801, p. 1.

⁷⁰⁸ Exhibit P-101 CAA0801, pp. 5-6.

Evolution of Note-Taking Policies and Practices

In November 1990, draft interim guidelines were transmitted to the DGs and the CSIS regions, along with a message indicating that the “Investigator’s Notebook and Notetaking” policy inherited from the Security Service was now obsolete and that existing copies needed to be destroyed.⁷⁰⁹ The interim guidelines were to replace that policy, and they were specifically meant to apply to CSIS investigators as well as to other employees.⁷¹⁰

The draft guidelines provided that “...CSIS is not an evidentiary collecting agency.”⁷¹¹ As a result, the employees were not required to keep notes that “withstand evidentiary rules,” and operational notes were to be destroyed after reports were written. An exception was provided for cases in which, “...in exceptional circumstances, some of the information collected may be required for evidentiary purposes and when such information has not already been included in a report.”⁷¹² Where a CSIS regional DG was of the view that notes had to be retained in this context, the DG was to direct that only those notes relevant to the “specific incident” be retained and that the notes be kept in the operational file and classified according to government policy.⁷¹³

The draft interim guidelines were based on instructions from the DDO, who had suggested that notes did not need to be kept and “should/could” be destroyed once reports were prepared.⁷¹⁴ However, as was the case under the previous Security Service policy, the DDO had specified:

When an investigation has been identified as one leading to possible prosecution, PSU/investigators should be required to maintain a separate notebook.⁷¹⁵

The draft guidelines that were actually prepared took a more restrictive view of the nature of the material that had to be retained than did the instructions from the DDO. Notes containing information otherwise included in reports did not have to be retained under any circumstances. Even when the information was not included in a report, only the notes containing the information that could be required for evidentiary purposes had to be retained, as opposed to the retention of a separate notebook for entire investigations that could lead to possible prosecution, as had been suggested by the DDO.

The policy on operational notes adopted by CSIS in 1992, which was in force, in a slightly modified form, as of the completion of the Inquiry hearings, again

⁷⁰⁹ Exhibit P-101 CAA0801, p. 1.

⁷¹⁰ Exhibit P-101 CAA0801, p. 1.

⁷¹¹ Exhibit P-101 CAA0801, p. 2.

⁷¹² Exhibit P-101 CAA0801, p. 2 [Emphasis added].

⁷¹³ Exhibit P-101 CAA0801, p. 2.

⁷¹⁴ Exhibit P-101 CAA0801, p. 5.

⁷¹⁵ Exhibit P-101 CAA0801, p. 5.

changed the criteria for the retention of notes.⁷¹⁶ The notes now had to be destroyed, except where the information they contained “may be crucial” to the investigation of unlawful acts of a “serious nature” (defined as criminal acts posing a threat to life or property and constituting indictable or possibly indictable offences⁷¹⁷), and where CSIS employees “may require” to refer to the notes to refresh their memories prior to recounting the facts.⁷¹⁸ The policy stated that CSIS “...does not normally collect evidence for criminal investigations,” but recognized that information relating to unlawful activity of a “serious nature” could be obtained by CSIS employees and, in “exceptional circumstances” where the “...police of jurisdiction is unable to obtain their own independent evidence,” the CSIS information could be “...crucial to the successful prosecution of a serious criminal case,” and employees could be required to provide evidence about such matters, supported by their notes.⁷¹⁹

Where CSIS employees uncovered information “...of possible evidentiary value,” they were to advise their supervisor.⁷²⁰ The ultimate decision about whether police would be advised and whether notes would be retained was left to the regional Director General.⁷²¹ Where a decision was made to retain notes, they were to be placed in a sealed envelope on file, and efforts were to be made, in cooperation with the police or Crown, to protect non-related information found in the notes.⁷²²

The new policy provided that, in order to prepare “accurate and complete reports” about the information CSIS investigators were expected to gather, it might be necessary to “...temporarily record information as it is received,” including while conducting interviews or debriefing human sources.⁷²³ The policy expressly recognized that audio or video recordings made by a CSIS employee for the purpose of being used in the preparation of CSIS reports constituted “operational notes” subject to the retention policy.⁷²⁴ Notably, had the policy been in force – and applied – when Laurie interviewed Ms. E, the tapes and transcripts of those interviews would have been required to be retained.⁷²⁵

In June 2008, the Supreme Court of Canada ruled that the CSIS policy on operational notes was contrary to the *CSIS Act* as well as to the “...case law on the disclosure and retention of evidence.”⁷²⁶ The Court found that CSIS has a duty to retain operational notes and to disclose them (subject to national security confidentiality claims), even in cases not involving information relevant to the

⁷¹⁶ See Exhibit P-101 CAA0889 for the 1992 policy. It was slightly modified in 1994 (see Exhibit P-101 CAA0917), in 2002 (see Exhibit P-101 CAA0994) and in 2006, when the current version was produced (see Exhibit P-101 CAA1061), but the substance remained unchanged. See, generally, chart of Operational Notes policy evolution: Exhibit P-101 CAA1057, p. 2.

⁷¹⁷ Exhibit P-101 CAA0889, p. 14.

⁷¹⁸ Exhibit P-101 CAA0889, p. 12.

⁷¹⁹ Exhibit P-101 CAA0889, pp. 8, 14.

⁷²⁰ Exhibit P-101 CAA0889, p. 14.

⁷²¹ Exhibit P-101 CAA0889, p. 14.

⁷²² Exhibit P-101 CAA0889, pp. 14, 16.

⁷²³ Exhibit P-101 CAA0889, p. 10.

⁷²⁴ Exhibit P-101 CAA0889, p. 4.

⁷²⁵ See Section 1.3 (Post-bombing), Ms. E.

⁷²⁶ *Charakaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 64.

investigation of criminal offences. LeBel and Fish JJ. noted that section 12 of the *CSIS Act* does not require CSIS to destroy the information it collects in order to ensure that it is retained only "...to the extent that it is strictly necessary."⁷²⁷ The Court ruled that the section requires that CSIS collect information to the extent strictly necessary and then analyze and retain it. As a result, the Court found that CSIS officers have a legal duty to retain their operational notes when conducting investigations that are targeted at a particular individual or group.⁷²⁸ The Supreme Court of Canada noted that this duty would have a practical benefit in proceedings involving CSIS information since the original notes – being a "... better source of information, and of evidence" than CSIS summaries or reports – would allow officials to verify the summaries, and would allow CSIS witnesses to refresh their memories should they have to testify.⁷²⁹

The case that was heard by the Supreme Court of Canada related to security certificate proceedings that were not criminal in nature. In such cases, the CSIS policy in place did not provide for retention of notes under any circumstances. In contrast, a large portion of the information that CSIS passed on to the RCMP in relation to the Air India investigation would have qualified for retention under the Service's various policies, other than in the period between 1990 and 1992, under the interim guidelines, as this information related to the investigation and prosecution of a "serious" criminal offence. The issue of the destruction of materials, raised in court with regard to the Ms. E notes, resulted from the fact that existing policies were not applied within the Service.

However, even in cases involving criminal information, the fact that all the CSIS policies always provided for the destruction of notes as a default position is in itself problematic. Even if the post-1992 policy had been applied, it would still have been possible for original records relevant to the Air India investigation and to an eventual prosecution to have been destroyed, if the information had not been viewed as "crucial" to the investigation or to a successful prosecution, or if its importance to a criminal matter were only to have come to light subsequently, after the default routine erasure of the notes had already taken place.

When CSIS agent Nicholas Rowe met with Ms. D in 1997 over a period of two weeks, before CSIS "...determined that she should be handed over to the RCMP," he prepared detailed notes during the meetings, including verbatim quotes and summaries. These notes were not preserved by CSIS.⁷³⁰ In the Air India trial, Ms. D was one of the main witnesses in the case against Ripudaman Singh Malik.⁷³¹ Yet, as Justice Josephson indicated, the notes for her meetings with CSIS were "...destroyed as a matter of policy" after the CSIS reports were prepared.⁷³² Whether this was because in 1997 CSIS employees continued to not follow or be aware of the note retention policy, or whether it was because it was not realized

⁷²⁷ *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at paras. 36-38.

⁷²⁸ *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 43.

⁷²⁹ *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 39.

⁷³⁰ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 378-386.

⁷³¹ See Section 1.5 (Post-bombing), Ms. D.

⁷³² *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 386.

in time that Ms. D's information could be crucial to the investigation of "serious" unlawful activity (although she had been quickly handed over to the Air India Task Force⁷³³), it appears that CSIS's own written policy on operational notes was not sufficient to prevent the ongoing destruction of the materials.

Rowe was called to testify in the Air India trial and he did not have notes to refresh his memory of events which had occurred over a period of two weeks, more than five years earlier. He could only rely on his intelligence reports, which were admittedly not prepared for use in court and not exhaustive.⁷³⁴ Malik did not follow Bagri's example and argue that the destruction of the notes violated his *Charter* rights. However, based on the reasons provided by Justice Josephson when he allowed Bagri's application,⁷³⁵ there is little doubt that an application similar to Bagri's could have led to a similar judgment that Malik's rights were violated, posing an additional challenge for the prosecution.

Conclusion

CSIS had a policy in place that could have prevented the destruction of original notes containing information relevant to the Air India investigation and eventual prosecution. This policy, while it had been inherited from the RCMP Security Service and (in the haste to create the new agency) may not have been adapted to its needs in all respects, was consistent with the policy that CSIS itself would ultimately adopt eight years later. The policy provided that notes had to be preserved in cases that might result in prosecutions where CSIS evidence would be necessary.

Because of a failure to enforce policy dating back to the Security Service days, CSIS was unable to apply its own policy – or even to inform its own employees of its existence. It took six years for CSIS to revise its inherited policy and to address the issue, ultimately devising a policy consistent with the old policy that the Service had failed to follow. When Laurie interviewed Ms. E between 1987 and 1989, had an updated and well-distributed policy been available within CSIS, it could have made a difference in the Air India case.

This failure on the part of the intelligence agency to follow its own policies is reminiscent of some aspects of the infamous tape erasure incident, where some of the Parmar intercept tapes might have been retained had the applicable policy actually been applied.⁷³⁶ By 1987, the RCMP and the BC Crown prosecutor were already signalling in clear terms to CSIS that the tape erasure was a problem, and were asking pointed questions about applicable policies.⁷³⁷ It is unfortunate that CSIS did not take this opportunity to ensure that its other policies, which could have an impact on the criminal investigation, were updated and applied. It is even more unfortunate that, even after these policies were revised, sufficient steps were still not taken to enforce them, with the result that, in 1997, CSIS was

⁷³³ *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 383.

⁷³⁴ *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 386, 390, 397.

⁷³⁵ *R. v. Malik and Bagri*, 2004 BCSC 554. See generally, Section 1.3 (Post-bombing), Ms. E.

⁷³⁶ See Section 4.3.1 (Post-bombing), Tape Erasure.

⁷³⁷ See Section 4.3.1 (Post-bombing), Tape Erasure and Section 4.4 (Post-bombing), CSIS Information in the Courtroom.

still destroying its notes for interviews with an individual whose importance to the Air India criminal investigation was quickly understood and who eventually became one of the main witnesses in the Crown's case against Malik in the Air India case.

The Supreme Court of Canada has recently recognized that, particularly in relation to the investigation of terrorism, CSIS activities often converge with those of the RCMP, and the division of work between the agencies is not always clear.⁷³⁸ As a result, the Court noted:

In this light, we would qualify the finding of the Federal Court that CSIS cannot be subject to the same duties as a police force on the basis that their roles in respect of public safety are, in theory, diametrically opposed. The reality is different and some qualification is necessary.⁷³⁹

Indeed, throughout the Air India investigation, many individuals who were to become RCMP sources or witnesses spoke with CSIS, often before speaking to police.⁷⁴⁰ The evidence at the Inquiry demonstrated that CSIS destroyed all notes and recordings for interviews with Ms. E, Ms. D and Mr. A. Given the generalized practice of destruction adopted at CSIS, it is fair to assume that CSIS also destroyed any notes or recordings for interviews with Tara Singh Hayer and Mr. Z. All of these individuals eventually spoke with the RCMP, but the RCMP had no access to accurate and complete records of their interactions with CSIS. They all provided information relevant to the Air India investigation and were all potential witnesses in an eventual prosecution.

Under the circumstances, it was a serious deficiency for CSIS to continue to destroy its notes and recordings, either ignoring its own policies or not taking care to ensure that its policies would not hinder criminal investigations and prosecutions for terrorism offences. The Supreme Court of Canada has now made clear that CSIS has a duty to retain notes and recordings prepared in investigations targeted at specific individuals or groups, and that CSIS's belief that destroying such materials was necessary under the *CSIS Act* was simply inaccurate. CSIS must now enact and enforce the appropriate policies in order to prevent a recurrence of what happened in the Air India investigation. Volume Three of this Report addresses the nature of the policies that are needed.

4.4 CSIS Information in the Courtroom

4.4.1 The Reyat Trial and the BC Crown Prosecutor Perspective

Introduction

James Jardine (now His Honour Judge James Jardine of the Provincial Court of British Columbia) became Crown counsel at the Ministry of the Attorney

⁷³⁸ *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 26.

⁷³⁹ *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38 at para. 28.

⁷⁴⁰ See Chapter I (Post-bombing), Human Sources: Approach to Sources and Witness Protection.

General for British Columbia (AG BC) in 1974. Between July 1, 1985 and October 1, 1991, he was involved in the Air India investigation and the Narita investigation and prosecution.⁷⁴¹ He assisted the RCMP Air Disaster Task Force in seeking authorizations for wiretaps and in obtaining search warrants in the early days after the bombing, and he was involved in the prosecution of Parmar and Reyat in connection with the Duncan Blast charges and, subsequently, in the prosecution of Reyat in connection with the Narita bombing.

During the years he worked on the Air India case, Jardine often had to work with CSIS information and provide advice to the RCMP about the materials that had to be obtained from the intelligence agency. In preparation for the Narita prosecution, he transmitted numerous requests to the RCMP for access to CSIS information and for explanations about CSIS policies and procedures. He eventually attended high-level meetings involving representatives of CSIS, the RCMP, the Department of Justice (DOJ) and the Solicitor General, in order to resolve differences of opinion about the level of access to CSIS information that was necessary for the Crown and the extent of disclosure of such information that had to be made to the defence. In his testimony, Jardine summarized these interactions with CSIS succinctly:

MR. FREIMAN: Mr. Jardine, you ... dealt throughout this period of time with the Canadian Security Intelligence Service, CSIS. Would you describe your relationship with CSIS as open and cooperative?

MR. JARDINE: No.

MR. FREIMAN: And would you describe their attitude towards you as being forthright?

MR. JARDINE: No.⁷⁴²

Initial Stages of the Investigation

Jardine was advised early on by the members of the RCMP Air Disaster Task Force in British Columbia that CSIS might have information relevant to the investigation.⁷⁴³ According to his notes, on July 1, 1985 he met with Insp. John Hoadley and others from the Task Force and specifically requested that the RCMP obtain any information that CSIS had.⁷⁴⁴ He explained in testimony that, given that CSIS had been conducting surveillance on Parmar and, as a result, had observed the Duncan Blast, he advised the Task Force that there might be CSIS intercepts in existence, pointing out that "...if there are watchers there will likely be wire." He testified that he asked accordingly that any evidence or information, including intercept tapes, be retained for use in an eventual prosecution.⁷⁴⁵

⁷⁴¹ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5657-5658.

⁷⁴² Testimony of James Jardine, vol. 47, September 18, 2007, p. 5657.

⁷⁴³ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5662-5663.

⁷⁴⁴ Exhibit P-101 CAA0578, p. 2.

⁷⁴⁵ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5653; See Section 4.3.1(Post-bombing), Tape Erasure.

From the very beginning of the investigation, Jardine felt that accessing CSIS materials was crucial. During a September 1985 meeting with CSIS, the RCMP conveyed Jardine's position as follows:

[Crown Counsel Jim Jardine] is fearful that unless he has access to and can evaluate all relevant information in possession of Crown Agencies (ie: CSIS), he runs the eventual risk of having any warrant he might obtain being challenged and possibly invalidated on grounds of inadequate disclosure – with the Crown's case thereby being imperilled.⁷⁴⁶

Jardine was under the impression that an agreement was in place between CSIS and the BC Government for CSIS to release information for evidentiary purposes in a case like Air India. During their meeting, CSIS and the RCMP both said that they were not aware of such an agreement. The CSIS BC Region sought direction from CSIS HQ about Jardine's "...access to and use of CSIS evidence for evidentiary purposes."⁷⁴⁷ CSIS HQ responded that CSIS legal representatives would discuss the issue of full disclosure with Jardine.⁷⁴⁸

At that time, Jardine was assisting the RCMP Task Force in preparing an application to intercept private communications which he then presented to a judicial officer.⁷⁴⁹ He was told by the investigators that they had not been given access to the CSIS materials, in particular to intercept tapes or transcripts.⁷⁵⁰ In the end, the CSIS information that could finally be accessed was set out in the affidavit in support of the authorization (the "September 19th affidavit"). The affidavit summarized 21 of Parmar's conversations during the months of May and June 1985 which were believed to constitute grounds for suspecting the involvement of Parmar, Reyat, Surjan Singh Gill, Amarjit Pawa and Hardial Singh Johal, the intended targets of the RCMP intercept, in the Air India and Narita bombings. It also mentioned a number of the targets of the CSIS investigation and specifically discussed the processing of the Parmar intercept, detailing the requests for access made by the RCMP, the status of the CSIS translation efforts and the nature of the materials provided to the RCMP in the end.⁷⁵¹

Jardine testified that he had been making "...repeated requests for access to the Canadian Security Intelligence Service information" since July 1985. He commented that, as of the end of November 1985, no progress had been made in terms of accessing the materials, except for the information made available to the Task Force about the Parmar intercepts which was used in the September 19th affidavit, information that was third or fourth-hand hearsay, as it was based on RCMP notes made while reviewing CSIS intercept logs summarizing the gist of intercepted conversations.⁷⁵²

⁷⁴⁶ Exhibit P-101 CAB0553, p. 2; Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5677-5678.

⁷⁴⁷ Exhibit P-101 CAB0553, pp. 2-3.

⁷⁴⁸ Exhibit P-101 CAB0554.

⁷⁴⁹ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5667-5677; See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁷⁵⁰ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5675.

⁷⁵¹ Exhibit P-101 CAA0324(i); See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁷⁵² Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5687-5688; Exhibit P-101 CAA0324(i).

In early November 1985, the RCMP executed search warrants on the residences of Parmar and Reyat and arrested both suspects.⁷⁵³ In order to accommodate CSIS concerns, prior to submitting the Information to Obtain sworn in support of the application for the search warrants, RCMP HQ had communicated with E Division suggesting the language to be used to avoid revealing CSIS involvement.⁷⁵⁴ As a result, unlike the September 19th affidavit, the Information to Obtain did not name CSIS as a source of information and did not reveal the nature of the materials the RCMP had access to in connection with the Parmar intercepts.⁷⁵⁵ Instead, when referring to CSIS information about the Duncan Blast and about Parmar's conversations, it identified the source of the information as "...a source of known reliability, whose identity for security reasons I do not wish to reveal at this time."⁷⁵⁶

The AG BC had not been consulted about the wording of the Information to Obtain,⁷⁵⁷ and Jardine was not even aware of the RCMP decision to arrest Reyat and Parmar and search their homes. In reviewing the materials in the possession of the RCMP after the searches, he agreed with his colleagues at the AG BC's office that there was not a body of evidence capable of supporting a charge of conspiracy against Parmar and Reyat in the Air India or Narita bombing cases, a charge that some RCMP officers wanted the Crown to approve.⁷⁵⁸ As a result, Reyat and Parmar were at that time only charged in connection with the Duncan Blast.⁷⁵⁹ Jardine explained that the AG BC had to be careful in approving discrete charges to ensure that no double jeopardy issues would later preclude the Crown from prosecuting Reyat and Parmar in connection with the actual Air India bombing if sufficient evidence was eventually obtained.⁷⁶⁰

Duncan Blast Prosecution

Though he was not involved in the November 1985 RCMP decision to arrest Parmar and Reyat, Jardine soon became responsible for the Duncan Blast prosecution.⁷⁶¹ To prepare for that case, the RCMP requested authorization to disclose CSIS information to Jardine.⁷⁶² CSIS's initial response was that information that the Service had already authorized for use in judicial proceedings (for the purposes of search warrant applications or wiretap authorizations), including the surveillance reports for the Duncan Blast, could be disclosed to Jardine, but that any requests for additional information would be considered by CSIS HQ on a case-by-case basis.⁷⁶³ Jardine explained that this type of disclosure was clearly insufficient for the purposes of the prosecution, as he needed access to CSIS

753 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5683.

754 Exhibit P-101 CAA0836, p. 23.

755 Exhibit P-201, paras. 46, 48-49, 53.

756 Exhibit P-201, paras. 23, 46, 48, 53; Exhibit P-101 CAA0575(i), p. 6; See, generally, Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India investigation.

757 Exhibit P-101 CAA0836, p. 22.

758 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5683, 5685, 5689.

759 See Section 1.4 (Pre-bombing), Duncan Blast.

760 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5689.

761 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5686.

762 Exhibit P-101 CAA0384, CAA0385.

763 Exhibit P-101 CAA0388, CAA0393, CAB0575.

personnel who could appear as witnesses, and not just access to CSIS reports.⁷⁶⁴ Jardine advised the RCMP that the testimony of members of the CSIS surveillance team would be necessary in the Duncan Blast case.⁷⁶⁵ He was already aware that there might be controversy about this because of his previous experience with the “Squamish Five” case. In that case, which took place in 1983 prior to the creation of CSIS, an issue had arisen when the prosecution requested the attendance of a Security Service surveillance team.⁷⁶⁶

In December 1985, the RCMP requested access to the members of the Duncan Blast surveillance team for interviews to determine which of the CSIS surveillants would be required to testify.⁷⁶⁷ CSIS authorized the interviews, but specified that the issue of the potential testimony of its personnel had yet to be addressed.⁷⁶⁸ Jardine commented in his testimony at this Inquiry that the interviews were a first step, but would not be sufficient for court purposes.⁷⁶⁹

In late February and early March 1986, members of the RCMP Task Force met with representatives of the CSIS BC Region and wrote to CSIS to request authorization for some members of the surveillance team to testify.⁷⁷⁰ Discussions were then held about CSIS’s concern that its methodology, training, policy and practices be protected when the surveillants testified. Jardine’s view was that he would object to questions only where they were not relevant to the proceedings. A meeting was scheduled with Department of Justice counsel representing CSIS to discuss the Service’s concerns.⁷⁷¹

Jardine explained that, at this time, it was still uncertain whether the CSIS witnesses would be permitted to testify, and under what conditions. There were issues about whether they could be identified publicly, whether some form of in camera hearing would be sought or whether screens would be used to hide their appearance.⁷⁷² It was also anticipated that objections to the disclosure of information relating to CSIS’s investigative techniques would be made by counsel for the Attorney General of Canada on behalf of the agency.⁷⁷³ In the end, agreement was reached with CSIS about which witnesses would be allowed to testify and what they would be allowed to say.⁷⁷⁴ But the case did not proceed, as Reyat pleaded guilty to two of the four counts and the Crown called no evidence against Parmar.⁷⁷⁵

⁷⁶⁴ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5692.

⁷⁶⁵ Exhibit P-101 CAF0187; Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5689-5690.

⁷⁶⁶ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5690.

⁷⁶⁷ Exhibit P-101 CAA0391.

⁷⁶⁸ Exhibit P-101 CAA0392.

⁷⁶⁹ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5693.

⁷⁷⁰ Exhibit P-101 CAA0417, CAF0213.

⁷⁷¹ Exhibit P-101 CAF0213; Testimony of James Jardine, vol. 47, September 18, 2007, p. 5698.

⁷⁷² Testimony of James Jardine, vol. 47, September 18, 2007, p. 5699; See also Exhibit P-101 CAA0425(i), CAF0215.

⁷⁷³ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5698; See also Exhibit P-101 CAA0425(i), CAB0669(i), CAF0215.

⁷⁷⁴ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5700.

⁷⁷⁵ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5686; Exhibit P-101 CAA0421, CAA0422, CAF0168, p. 7; See, generally, Section 1.4 (Pre-bombing), Duncan Blast.

Preparation for the Narita Prosecution

Jardine's Questions about the Parmar Tapes

In March 1986, before the Duncan Blast case was resolved, Jardine wrote to the RCMP Task Force about his view that the weaknesses in the evidence against Parmar in the Duncan Blast case might be cured by "...ascertaining with certainty all of the evidence currently in the hands of the Canadian Security Intelligence Service, which has not been disclosed to the Royal Canadian Mounted Police or to me as Crown Counsel during the course of this investigation from June 22, and 23, 1985 onward." Jardine felt that the evidence about the Parmar conversations intercepted by CSIS would assist in the Duncan Blast prosecution and, most importantly, could disclose the intentions and knowledge of those associated with Parmar around the time of the Air India and Narita bombings.⁷⁷⁶

Given the destruction of the Parmar Tapes,⁷⁷⁷ Jardine had serious doubts about whether this evidence could be admissible, but he nevertheless attempted to find out more about the tapes in order to provide a more informed opinion.⁷⁷⁸ In addition to pointing out that neither he nor the RCMP had received written confirmation from CSIS that the Parmar Tapes had indeed been erased, Jardine asked five questions about the CSIS intercepts that would become the object of protracted discussions for the following months and years:

- (i) By what methodology were the private communications intercepted?
- (ii) How were the private communications transcribed?
- (iii) What was the exact methodology used to translate the private communications?
- (iv) In what way were notations made of the translations, and how much of the translation was verbatim and how much a summary or précis of the conversation?
- (v) What were the dates of interception, of transcription, of translation, and destruction of the evidence?⁷⁷⁹

Jardine testified at the Inquiry that he did not receive a response to his questions in time to make a more informed decision about the strength of the evidence against Parmar in the Duncan Blast case. Nevertheless, he explained that obtaining an answer was still important after the Duncan Blast prosecution ended because the investigation of the Air India and Narita bombings was continuing.⁷⁸⁰

⁷⁷⁶ Exhibit P-101 CAF0168, pp. 4-5.

⁷⁷⁷ See Section 4.3.1 (Post-bombing), Tape Erasure.

⁷⁷⁸ Exhibit P-101 CAF0168, pp. 5-6.

⁷⁷⁹ Exhibit P-101 CAF0168, p. 6.

⁷⁸⁰ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5707-5708.

In the spring of 1986, Jardine was assigned on a full-time basis as standing counsel to the RCMP Air Disaster Task Force. At that time, a decision was made by Canadian authorities to engage in diplomatic discussions with Japan to obtain the release of the physical evidence found at the scene of the Narita bombing so that prosecution could be pursued in Canada.⁷⁸¹ In addition to providing advice to the RCMP investigators as required, Jardine began to examine the file to determine what charges could be brought in connection with the Narita bombing, now that it was known that physical evidence would likely be obtained. He subsequently determined that Reyat could be charged with manslaughter, and an indictment was signed in 1988.

In the context of his review of the Narita evidence, Jardine felt that it was important to obtain a response to his questions about the Parmar Tapes because, whether the conversations would have served to prove the intent of Parmar and Reyat or to exonerate them, "...their existence would have enabled the investigators and the prosecutors to assess the evidence in light of all of the other evidence acquired in the investigation."⁷⁸²

Jardine explained in testimony before the Inquiry that, throughout the preparation of the Narita bombing case, "...there was a sense of frustration both in the investigators and in the prosecution side of the house" as they were getting information from CSIS "...in dribs and drabs, piecemeal" and they wanted to advance the investigation. He added that CSIS continued to provide information "...in bits and pieces" between 1986 and 1991, with new information being received by the Crown even as the trial was taking place.⁷⁸³

The then Deputy Director of the CSIS Counter Terrorism Branch, James ("Jim") Warren, who was involved in attempting to formulate responses to Jardine's requests, testified that dealings with Jardine in relation to the Air India investigation quickly became the "number one priority" at CSIS when Jardine began sending questions in 1986. This remained the case as Warren, who had joined the RCMP Security Service in 1960, rose through the ranks of CSIS to become in 1987 the Assistant Director of Requirements, overseeing the day-to-day operations of the Service, and then, in 1990, the Deputy Director of Operations, with overall responsibility for CSIS operations and policy.⁷⁸⁴

Over this period, Warren was extensively involved with the conundrum of CSIS evidence in the courtroom. He testified that the McDonald Commission recommendations, spurred by "...when a little barn got burned," influenced his approach to CSIS operations. He remained constantly aware that a balance had to be found between the need to further the Service's investigations and the need to protect the rights and freedoms of Canadians.⁷⁸⁵ Warren testified about where he felt this balance lay in the case of the Air India investigation:

781 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5686.

782 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5709.

783 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5695, 5742, 5805.

784 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5812, 5815.

785 Testimony of James Warren, vol. 48, September 19, 2007, p. 5814.

I think we had come to realize from day one that at the end of the day when push came to shove, we would have to lay out – whatever it took to achieve a successful prosecution.

What we were trying to do in – perhaps our own fumbling way, was to find some way of protecting the covert assets that we had so that we could continue to go on and do our job after this prosecution was over.⁷⁸⁶

Jardine's March 1986 questions about the Parmar Tapes were transmitted to CSIS on May 6, 1986.⁷⁸⁷ Supt. Les Holmes, the Officer in Charge of the E Division Task Force, provided explanations to CSIS when he passed on the request, stating that Jardine wished to obtain the information even though he was aware that the tapes probably had little evidentiary value, in order to "...be in the position to state for the record that he had evaluated the Parmar intercepts and duly considered their worth when making his decision as to whether or not to proceed with prosecution" in his evaluation of the overall case against Reyat.⁷⁸⁸ Warren testified that, on the basis of this explanation, it appeared at the time that there was agreement between the RCMP and CSIS that CSIS intelligence would have little, if any, evidentiary value. Warren admitted that he was unsure to what extent Jardine shared this consensus, but felt that "...everyone [was] onside and recogniz[ing] what [was] happening."⁷⁸⁹

In response to Jardine's five questions, the CSIS BC Region did provide some information to CSIS HQ.⁷⁹⁰ However, the Region's responses were not transmitted to the RCMP or to Jardine.⁷⁹¹ On May 16, 1986, the Officer in Charge of the Air India investigation at RCMP HQ, C/Supt. Norman Belanger, met with Chris Scowen of CSIS HQ and discussed Jardine's questions. Scowen stated that he did not understand the purpose of the request, and Belanger agreed that it might seem obscure to someone not familiar with the issues. He provided Scowen with some background information and advised the E Division Task Force to put the enquiry on hold at the BC Region level.⁷⁹² On May 22, 1986, CSIS made a note in its file that Belanger had indicated that Jardine's request for information about the intercepts could be "put on hold" until further notice.⁷⁹³

On July 29, 1986, the RCMP E Division Task Force wrote to RCMP HQ, indicating that no response had been received to the Jardine questions and requesting that HQ undertake to obtain a response from CSIS HQ. On August 6, 1986, RCMP HQ transmitted to the E Division Task Force a draft letter for CSIS, which requested a response to the Jardine questions and attached a list of conversations from the CSIS intercepts that the RCMP considered relevant. HQ asked the Division to

786 Testimony of James Warren, vol. 48, September 19, 2007, p. 5838.

787 Exhibit P-101 CAD0070.

788 Exhibit P-101 CAB0613, p. 2.

789 Testimony of James Warren, vol. 48, September 19, 2007, p. 5959.

790 Exhibit P-101 CAB0613, pp. 3-4.

791 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5710-5711.

792 Exhibit P-101 CAF0188, pp. 2-3.

793 Exhibit P-101 CAA0559, p. 1, CAF0188, p. 3, CAF0278, p. 1.

provide comments about the draft and to add relevant conversations to the list.⁷⁹⁴ However, the issue was apparently not pursued with CSIS during the following months, though numerous discussions took place about access to CSIS materials and the use of CSIS intercepts in other Sikh extremism prosecutions.⁷⁹⁵

In September 1986, the RCMP requested intercept tapes from CSIS in connection with the prosecution of Parmar and others for the Hamilton Plot.⁷⁹⁶ CSIS replied that no tapes were available, and that the only way to obtain the evidence would have been to have CSIS translators testify, which CSIS was not prepared to allow.⁷⁹⁷

Apparently, no discussions about Jardine's request took place between the agencies during the following year. Then, on September 16, 1987, shortly after the Director of CSIS resigned when the Atwal prosecution collapsed because of inaccurate information in a CSIS warrant application,⁷⁹⁸ RCMP HQ wrote to E Division to advise that the Solicitor General had requested a full briefing on the information provided by CSIS in relation to the Air India investigation. HQ asked a number of questions, including whether the Division could identify information received from CSIS "...which could hinder any future prosecution."⁷⁹⁹ In response, E Division explained the use that was made of CSIS information in its investigation, and noted that no written confirmation had yet been received from CSIS about the erasure of the Parmar Tapes, but went on to note that Jardine was of the view that, if evidence had been destroyed in this manner, there was a real possibility that the accused in an eventual prosecution would present abuse of process arguments. The Division reminded HQ of its July 1986 request to obtain answers to Jardine's questions about the CSIS intercepts, noting that no response had been received as the request had been "blended" with requests from other Divisions for CSIS material in connection with other Sikh extremism investigations.⁸⁰⁰

On September 21, 1987, RCMP HQ wrote to CSIS HQ, indicating that no response had been received by the Force to the May 6, 1986 correspondence listing Jardine's questions about the Parmar intercepts.⁸⁰¹ In a letter written by Warren on September 24th, CSIS responded that the Service had been told by Belanger to wait until further notice before providing answers and had never received any additional request. The letter went on to note that the issues raised by Jardine's questions had already been discussed at length with the RCMP in the context of other Sikh extremism prosecutions where the Crown sought to use CSIS intercepts (including the Atwal and the Hamilton Plot cases). Warren

794 Exhibit P-101 CAA0471, pp. 1-3.

795 Exhibit P-101 CAF0188, pp. 3-5.

796 See, generally, Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism," p. 46.

797 Exhibit P-101 CAA0496, CAF0188, pp. 6-7, CAF0261.

798 See Section 1.6 (Post-bombing), Atwal Warrant Source.

799 Exhibit P-101 CAF0262.

800 Exhibit P-101 CAA0554, pp. 1-3.

801 Exhibit P-101 CAA0558.

stated that the Service did not understand which conversations were at issue, especially since it was of the view that the Parmar intercepts were unlikely to have any relevance, since only Reyat, not Parmar, was under prosecution.⁸⁰² At the Inquiry hearings, Warren noted that he could not recall what led him to this "...very curious paragraph,"⁸⁰³ as he was aware that Parmar and Reyat were often intercepted in conversation. In the September 1987 letter, Warren indicated that the Service was aware that some information from the Parmar intercepts had been used in the application for the November 1985 search warrant for Reyat's residence, but that he failed to understand how the defence could have found out that this information came from CSIS, since that fact was not stated in the application, and there was, according to him, only a limited risk that the law would allow access to this information.⁸⁰⁴

From a file review of the CSIS/RCMP correspondence and meetings between May 1986 and September 1987, the RCMP C Directorate concluded that the Force had not failed to pursue its request for responses to Jardine's questions after it was put on hold following the CSIS conversation with Belanger. On the contrary, numerous discussions about access to CSIS intercepts and transcripts were held in the context of the Sidhu shooting (Atwal) and the Hamilton Plot prosecutions, and it was clear to the RCMP that CSIS was refusing to provide information of the nature requested by Jardine. C Directorate further noted that one of the problems in obtaining a response from CSIS was the Service's apparent perception that the Parmar Tapes and information about them could not be relevant.⁸⁰⁵

Warren, in his testimony, confirmed this perception. He testified that he felt that the evidentiary value of the Parmar Tapes was always suspect, and that preservation would have been useful only for their potential intelligence value in the future.⁸⁰⁶ Warren noted that CSIS early on was concerned about the issue of disclosure. Upon receipt of Jardine's initial May 1986 request, CSIS legal counsel had warned that disclosing CSIS information to the police – if the information was ultimately considered admissible in court – could lead to the exposure in open court proceedings of CSIS personnel who had handled the information.⁸⁰⁷ CSIS understood that this sensitive information would go over to the defence, a result that Warren called "...handing the keys to the church ... to the devil." Warren testified that, throughout this period, CSIS was trying to find some way to avoid or limit this exposure, but ultimately that it cooperated with the RCMP in light of its understanding that a successful prosecution of those responsible for the Air India tragedy was in the interests of the greater public good.⁸⁰⁸

Warren explained that he ordered a review of the CSIS files in order to provide answers to Jardine's questions. Following this review, Warren concluded that,

⁸⁰² Exhibit P-101 CAA0559, pp. 1-2.

⁸⁰³ Testimony of James Warren, vol. 48, September 19, 2007, p. 5842.

⁸⁰⁴ Exhibit P-101 CAA0559, p. 2.

⁸⁰⁵ Exhibit P-101 CAF0188, pp. 8-10.

⁸⁰⁶ Testimony of James Warren, vol. 48, September 19, 2007, p. 5817.

⁸⁰⁷ Exhibit P-101 CAF0278, p. 1.

⁸⁰⁸ Testimony of James Warren, vol. 48, September 19, 2007, p. 5839.

despite Jardine's allegations that he had asked for retention of the Parmar Tapes, no such requests were received by CSIS from the RCMP or Jardine. Warren also found that there had been no deliberate destruction of the Parmar Tapes and that there was nothing nefarious in the decision to erase the tapes. Rather he concluded that the tapes were simply destroyed by people following CSIS policy in default mode.⁸⁰⁹

Following further discussions between CSIS and the RCMP, CSIS HQ provided a first response to Jardine's March 1986 questions on September 28, 1987.⁸¹⁰ The letter provided information about CSIS's methodology for recording, transcribing, translating and erasing the Parmar Tapes, as well as some information about the general time frame in which this took place. However, with respect to the questions about the exact number of verbatim transcriptions and the dates of interception, transcription, translation and destruction, CSIS advised that it would not be able to provide a response until it obtained a more accurate description of the tapes at issue, which CSIS described as the "...interceptions the Crown intends to rely upon."⁸¹¹ Warren testified that the methodology outlined in the letter described the general CSIS policy on tape processing rather than the actual process that CSIS followed in relation to the Parmar Tapes.⁸¹² Indeed, the letter omitted details about the deficiencies in the processing of the Parmar Tapes, including the absence of the transcriber during the key period immediately preceding the bombings.

Jardine recalled receiving the response and trying to ascertain whether the information it contained provided a foundation for the defence to mount an abuse of process argument. He explained in testimony that some issues remained unclear: for example, the dates when the backlog of tapes from April 9 to July 7, 1985 was translated, and when the tapes were destroyed. In particular, there was a suggestion in the CSIS reply that this may have happened in the fall of 1985, which, to Jardine, raised questions as to why the tapes would have been erased, given the timing of the explosions.⁸¹³

On September 29, 1987, the day after the CSIS response was received, Jardine met with members of the RCMP Task Force to discuss it. It was quickly concluded that the CSIS reply contained "...little in the way of specifics from which an informed evaluation might be drawn re possible probative merit." In order to avoid any misunderstandings on CSIS's part about Jardine's request for access to its materials, Jardine drafted a letter to the RCMP, which was passed to CSIS on the same day. The letter noted that CSIS did not appear to appreciate the "...directness and specificity" of the AG BC concerns. Jardine asked to receive raw materials about all CSIS surveillance and intercepts, indicating that the Crown could not specifically point to a particular tape or conversation as being relevant without knowing details of the surveillance and intercepts, and that CSIS itself, not being aware of the details of the Narita investigation, could not possibly determine the relevance of the material. The CSIS raw materials, Jardine

809 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5816-5820.

810 Exhibit P-101 CAA0563.

811 Exhibit P-101 CAA0553, pp. 3-4.

812 Testimony of James Warren, vol. 48, September 19, 2007, p. 5845.

813 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5716-5717.

noted, would be used by the AG BC to determine the relevance of the CSIS intelligence as evidence. Jardine stated pointedly that the Attorney General of BC had requested to be fully briefed by October 2nd in order to decide whether to contact the Solicitor General of Canada directly to obtain “the evidence.”⁸¹⁴

In that same letter, Jardine went on to state that, with respect to “...the issue of destruction of evidence,” it was clear that the Crown could face an abuse of process attack and therefore needed to know which tapes had been destroyed, when, why, under whose direction and pursuant to which policy, as well as which tapes still existed. Finally, Jardine noted that the Deputy Attorney General of BC had received assurances from the Deputy Solicitor General of Canada that CSIS “...would provide absolute cooperation and full exchange of documents and information in this case.”⁸¹⁵

After transmitting Jardine’s letter to CSIS, the RCMP E Division wrote to RCMP HQ:

It is clear that Jardine and senior staff of A.G.’s office including the Attorney General himself are distraught at apparent inability or unwillingness of CSIS HQ to respond to the specific questions raised by him through us, approximately 1 and ½ years ago.⁸¹⁶

Jardine explained in testimony that the matter was becoming urgent, as Canada was having discussions with Japanese authorities to release some of the physical evidence, and charge approval decisions could not be made by the AG BC without knowing whether there would be access to the CSIS evidence.⁸¹⁷

On October 1, 1987, the Honourable James Kelleher, the Solicitor General of Canada, wrote to RCMP Commissioner Norman Inkster to advise that he had been made aware of Jardine’s letter about obtaining the CSIS materials. The Solicitor General explained that he anticipated being contacted by the Attorney General of British Columbia and that he had requested a full report from the Director of CSIS. He also requested a report from the RCMP about its cooperation with the AG BC and whether there were any requests from the AG BC to which the RCMP was not able to respond fully.⁸¹⁸

The October 1987 Meetings

Meetings were held in Ottawa to attempt to resolve the issues.⁸¹⁹

On October 2, 1987, almost 18 months after the initial request by Jardine, a first meeting took place between representatives of the RCMP, CSIS and the

814 Exhibit P-101 CAF0169, pp. 1-3.

815 Exhibit P-101 CAF0169, p. 3.

816 Exhibit P-101 CAA0567(i).

817 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5719-5720.

818 Exhibit P-101 CAA0572.

819 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5717; See also Exhibit P-101 CAA0567(i).

Solicitor General. The RCMP advised of the nature of Jardine's request, and other participants expressed concern about its scope and the potential for conflict with the *CSIS Act*. The RCMP indicated that Jardine was prepared to add parameters to his requests. The Solicitor General's "bottom line" was that there would continue to be full cooperation within the legal framework. This would require that both the RCMP and CSIS be satisfied that the material was transferred in a manner that addressed all concerns, both safety-related and operational.⁸²⁰

A second meeting was held on the same day, this time with Jardine present.⁸²¹ The representative from the Solicitor General's office, Ian Glen, began by reaffirming a commitment "...to do anything possible" to ensure a successful prosecution.⁸²² Jardine explained that he was aware of CSIS's concerns because of his previous experience with the "Squamish Five" case and his discussions with the prosecutor in charge of the Sidhu shooting case. He "...went on to ensure all in attendance that it was not his nor his Minister's intention to destroy CSIS or unduly hamper its operational abilities."⁸²³ Jardine explained in testimony before the Inquiry that concerns had been raised about the AG BC's motivations for "pushing so hard" for the CSIS information, and that he wanted to reassure CSIS. He also wanted to make it clear that the AG BC was only trying to make an informed decision, and that it would treat the CSIS information in keeping with its sensitivity and would not disclose information that CSIS did not want disclosed.⁸²⁴

Warren explained in his testimony that he never concluded that Jardine was trying to "...destroy the Service." He did find that Jardine was making his life difficult from time to time, but he understood that he was simply "doing his job."⁸²⁵ Warren described CSIS's relationship with Jardine. He admitted the meetings with Jardine were not easy, as Jardine was a tough negotiator with whom Warren had differences. Warren understood their different roles: Jardine's job was to prosecute and Warren's job was to help Jardine understand that the Service had the responsibility to continue its own intelligence investigation after the prosecution.

At the meeting, Jardine explained two reasons why obtaining answers to his requests for information was important.⁸²⁶ The first reason related to the fact that CSIS information had been used in the application for the search warrant that authorized the search of Reyat's home in November 1985. As some of the items seized during the search would be entered into evidence during an eventual prosecution, the Crown wished to avoid a challenge to the warrant in order to ensure that the evidence was admitted. This was particularly problematic because the Information to Obtain, while it referred to CSIS information, did not identify CSIS as the source. This fact could leave the warrant open to an attack

820 Exhibit P-101 CAA0575(i), p. 1.

821 Exhibit P-101 CAA0575(i), p. 2.

822 Exhibit P-101 CAA0574(i), p. 5, CAA0575(i), p. 5.

823 Exhibit P-101 CAA0575(i), p. 5.

824 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5720-5721.

825 Testimony of James Warren, vol. 48, September 19, 2007, p. 5848.

826 Exhibit P-101 CAA0575(i), pp. 5-7.

by the defence based on an argument that full disclosure was not made to the judicial officer who issued it.⁸²⁷ At the Inquiry, Jardine explained that this was a matter of some urgency because counsel for Reyat and Parmar, David Gibbons, was already seeking the release of some of the items seized pursuant to the search warrants and, for this purpose, had petitioned the courts for access to the materials supporting the warrant application.⁸²⁸

The November Information to Obtain contained information about the Parmar conversations intercepted by CSIS, but was silent on a number of matters. It did not reveal the nature of the CSIS materials reviewed by the RCMP nor the fact that no verbatim transcripts of the tapes existed. It did not disclose that the RCMP investigators had not been permitted to take copies of the CSIS logs containing the notes made about the tapes.⁸²⁹ Many of these facts had been revealed in the September 19th affidavit in support of the RCMP's application for authorization to intercept private communications.⁸³⁰ That affidavit was about to be unsealed, and this would have allowed Gibbons to see the difference in the extent of the disclosure made in support of each application and perhaps thereby attack the validity of the search warrant.⁸³¹ The fact that the CSIS tapes had been erased was not mentioned in the Information to Obtain, but might now be raised by the defence to challenge the grounds for the search, as the application relied in part on the destroyed materials.

In a presentation he gave at a seminar in 1991, Jardine, who was at that time a private member of the bar and no longer Crown counsel,⁸³² discussed his concerns about the possible weaknesses of the search warrant.⁸³³ He explained that "...the full, fair, and frank disclosure expected of the Crown in the application for and obtaining of search documents had been frustrated" by the concern for security that was reflected in the RCMP HQ correspondence providing instructions about the language to be used in the Information to Obtain. Jardine was of the view that the manner in which the CSIS information was described did not provide sufficient disclosure to the justice issuing the warrant because it did not provide a "...full description of the nature of the communications referred to." He felt that the warrant could nevertheless remain valid as it related to Reyat, since the rest of the information included in the application provided sufficient grounds for a search. However, according to Jardine, the warrant could not have been upheld as it related to the search of Parmar's home.⁸³⁴ Had items of interest been found and Parmar been charged, the warrant would have been susceptible to attack and any evidence gathered as a result may have been excluded. Even as it related to Reyat, there was a risk that the correspondence from RCMP HQ

827 Exhibit P-101 CAA0574(i), p. 3, CAA0575(i), p. 6.

828 See Exhibit P-101 CAA0417, pp. 2-3; Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5721-5722.

829 Exhibit P-201, paras. 46, 48-49, 53.

830 See Exhibit P-101 CAA0324(i); Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

831 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5721-5722.

832 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5769-5770, 5804-5805.

833 Exhibit P-101 CAA0836, pp. 21-37.

834 Exhibit P-101 CAA0836, p. 22.

dictating the language to be used could be viewed as "...a considered attempt to keep the true nature of the information from the judicial officer," hence opening the warrant to attack on the ground that there was an intentional attempt to mislead.⁸³⁵

The second reason raised by Jardine at the October 2, 1987 meeting for why the AG BC needed the CSIS information related to the disclosure that had to be made to the defence in advance of the eventual trial and to possible abuse of process arguments that could be raised.⁸³⁶ Jardine explained that defence counsel would learn through disclosure that the CSIS intercepts had been erased and would argue that they might have proved the innocence of his client. In this context, it was "paramount" to show that the tapes were disposed of in the normal course of events, pursuant to the policies in place, and that, therefore, no deliberate breach of the accused's right to full answer and defence had been committed.⁸³⁷

Having explained his need for the information, Jardine then agreed in discussions with CSIS to delineate his requests and restrict them in time.⁸³⁸ The surveillance and intercept information requested in the end was confined to material related to Parmar, Reyat and a short list of their associates. Information about the Parmar Tapes was requested only for the period from March 27, 1985 to July 1, 1985.⁸³⁹ It was also understood that any other information held by CSIS that the Service believed might be relevant to the Air India/Narita investigation would be provided.⁸⁴⁰ It was agreed that this would be accomplished by providing the information to the RCMP E Division investigators, who would take appropriate steps to "...protect the various interests."⁸⁴¹ The material was to be fully identified before October 19, 1987. Glen indicated that the Solicitor General was concerned about the use that could be made of this information, and it was accordingly agreed that further discussions could be held about that issue once the material was identified and obtained.⁸⁴²

Overall, Jardine explained in testimony that he left this meeting with a sense of relief, as he had understood from Glen that there would be full cooperation. He advised his Attorney General accordingly. He testified, however, that these hopes did not materialize.⁸⁴³

On October 19, 1987, CSIS provided materials to the RCMP about Parmar, Reyat and their associates as agreed during the October 2nd meeting. CSIS specified in the cover letter that, in line with what the Service had understood was agreed to during the October 2nd meeting, the information was provided as investigative

835 Exhibit P-101 CAA0836, p. 23. This argument was made by Reyat during the Air India trial in 2002, but Justice Josephson rejected it: See Section 4.4.2 (Post-bombing), The Air India Trial.

836 Exhibit P-101 CAA0574(i), p. 3, CAA0575(i), p. 6.

837 Exhibit P-101 CAA0575(i), pp. 6-7.

838 Exhibit P-101 CAA0574(i), pp. 1-2, CAA0575(i), pp. 7-8.

839 Exhibit P-101 CAA0575(i), pp. 7-9.

840 Exhibit P-101 CAA0577, p. 2.

841 Exhibit P-101 CAA0575(i), p. 8.

842 Exhibit P-101 CAA0574(i), pp. 5-6, CAA0575(i), p. 8.

843 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5723.

leads only, and that any use Jardine wished to make of the materials for judicial authorizations or as evidence would have to receive prior approval from CSIS. CSIS also provided information in response to some of Jardine's questions about the destruction of intercept tapes, outlining that since the Service was "...not mandated to collect evidence nor are its members peace officers," the intercepts were destroyed according to the policy which was, and continued to be, applied at CSIS. Information was provided about the number of tapes recorded and destroyed, and about the retention period provided for in the policy, but CSIS stated that it could not, "...at this late date," determine exactly when any specific tape was erased.⁸⁴⁴ CSIS provided information about the process for translating and transcribing the tapes,⁸⁴⁵ but denied having received a request to retain the tapes in July 1985.⁸⁴⁶ It did provide intercept logs containing the notes made by the transcribers and translators who listened to the Parmar Tapes.

On October 27, 1987, Jardine wrote to the RCMP with his comments on the recently received CSIS materials. He outlined many of the issues about the Parmar Tapes that, in his view, still remained outstanding, in particular: the manner in which they were translated, the manner in which decisions were made to destroy them, and the timing of their destruction. He noted that some of the questions set out in his March 1986 letter were still not answered. He also pointed out that pages were missing from the translation notes and translators' notebooks, and that "...in some instances the sanitization has destroyed the context of conversations." He requested that CSIS provide the full text of the conversations and suggested that, if the issue could not be resolved, another meeting with Glen might be necessary. Jardine asked when specific conversations of interest were translated, when the tapes were erased and when the determination was made that they contained no significant information to incriminate a target in subversive activity (the threshold which, according to the policy applied by CSIS at the time, would have required that the tapes be retained).⁸⁴⁷ Jardine noted that, while CSIS was an intelligence-oriented agency, "...the facts indicated they had evidence from which the intentions of Parmar, Reyat and others could be inferred." He explained that it was likely that an abuse of process argument would be raised, and that in this context, issues of competence, negligence or bad faith would have to be investigated. For this reason, full particulars would be needed for each tape, particularly since some of the tapes that had been destroyed recorded conversations which were used in RCMP applications for search warrants and intercepts, indicating that they contained evidence which could have been led in Reyat's case.⁸⁴⁸

The RCMP met with Jardine on October 28th to discuss the CSIS materials and the outstanding issues. C/Supt. Frank Palmer, the Officer in Charge of Federal Operations in E Division, felt that the information provided by CSIS had failed to comply with the RCMP request and was "most unsatisfactory."⁸⁴⁹

⁸⁴⁴ Exhibit P-101 CAA0581, p. 2.

⁸⁴⁵ Exhibit P-101 CAA0581, pp. 3-5.

⁸⁴⁶ See Section 4.3.1 (Post-bombing), Tape Erasure.

⁸⁴⁷ Exhibit P-101 CAF0170, pp. 1-4; See Section 4.3.1 (Post-bombing), Tape Erasure.

⁸⁴⁸ Exhibit P-101 CAF0170, pp. 4-6.

⁸⁴⁹ Exhibit P-101 CAA0584, p. 1.

Continuing Discussions Regarding Jardine's Requests

On November 3, 1987, C/Supt. Palmer wrote to CSIS to express his concerns and to pass on Jardine's October 27th enquiries.⁸⁵⁰

On November 30, 1987, CSIS responded with a letter providing additional details about the Parmar Tapes. Warren, who authored the letter, provided information about the total number of tapes recorded and destroyed, correcting an earlier estimate sent in the October 19th letter. Where possible, he included information about the dates of translation and transcription, as well as about the processing of the backlog of 80 to 85 tapes, which were only reviewed in the fall of 1985. He reiterated that CSIS was unable to provide information about the dates of erasure by interviewing its personnel or consulting its records, other than to state that the tapes were kept between 10 and 30 days, according to policy. Warren noted that erasing the tapes was important in view of the *CSIS Act* which only empowered the Service to collect information "...to the extent strictly necessary." He provided explanations about the briefings and instructions received by the translators, and about the determination of whether conversations contained information to significantly incriminate a target in subversive activity, which he stated was made by the investigators, the HQ analysts and their supervisors. The letter also provided specific details about the Parmar intercepts, including the fact that the transcriber was on leave during the week of the bombings, and admitted that there were areas where CSIS could not answer "with precision," including every date of erasure, translation or transcription and the total number of backlogged tapes.⁸⁵¹

Warren denied that pages were left out of the transcribers' and translators' notes, except for two pages overlooked in photocopying, or that the materials were sanitized, indicating that the notes provided contained the conversations exactly as set down by the translators and transcribers at the time. He reiterated CSIS's intention to cooperate fully with the AG BC and assured that there was nothing that CSIS was "...deliberately withholding or failing to disclose that we know or even suspect may be relevant to this case." Warren then added that there was not only one, but two public interests at stake in this case: the administration of justice and the protection of national security. Raising the stakes somewhat, he pointed out that courts had shown a willingness in the past to curtail the extent of disclosure necessary in order to protect national security secrets, and that he was counting on the RCMP's cooperation and assistance in balancing the conflicting interests.⁸⁵²

The CSIS response was transmitted to Jardine,⁸⁵³ who then wrote to the RCMP on December 11, 1987 with more questions for CSIS. Jardine indicated that he had analyzed the CSIS information and that some of the questions posed in his October 1987 correspondence still remained unanswered.⁸⁵⁴ He noted

850 Exhibit P-101 CAA0589(i).

851 Exhibit P-101 CAA0595(i), pp. 1-4.

852 Exhibit P-101 CAA0595(i), pp. 5-6.

853 Exhibit P-101 CAA0602.

854 Exhibit P-101 CAF0189.

that it was necessary, in light of the potential abuse of process argument, to find out who had made the determination that there was no "...information to significantly incriminate a target in subversive activity" on the Parmar Tapes, and to know when that determination was made, adding that the person responsible would have to be interviewed and would have to testify.⁸⁵⁵ In light of the concerns raised by Warren about national security secrets, Jardine also asked that CSIS be approached to find out its position with respect to any objections to disclosure of information under the *Canada Evidence Act*, as the issue needed to be addressed before charges were laid against Reyat in order for the AG BC to properly assess the proposed prosecution.⁸⁵⁶

At the Inquiry, Jardine explained that the November 30th CSIS letter was perplexing to him in many respects. First, the information earlier provided about the total number of tapes collected by CSIS was corrected and a different number was now provided. Second, the Service still could not provide exact information about the dates of erasure of the tapes, but did confirm that there was a backlog of tapes which had been erased in the fall of 1985. Jardine explained that, at that stage, the prosecution team needed to obtain information about the dates of erasure in order to respond to the anticipated abuse of process argument, and needed to understand why there was a backlog and why the tapes were erased in the fall after Parmar and Reyat were already targeted in the Air India investigation. The prosecutors felt that if the erasure had been done before the end of July 1985, it would most likely have been done pursuant to policy and not because CSIS failed to identify significant subversive activity. However, after that time, when a clear connection between Parmar and Reyat was beginning to emerge, the prosecution's case that the erasure was not an abuse of process would be more difficult to make.⁸⁵⁷

Warren commented on Jardine's two concerns at the Inquiry.⁸⁵⁸ He testified that he was "very chagrined" about BC Region's error in the initial estimate of the total number of tapes collected. He anticipated that Jardine, who had already expressed suspicions that CSIS was not being totally forthcoming, would interpret this necessary correction as reinforcement of these suspicions. Warren admitted that due to a lack of records, there could never be complete certainty about the number of tapes collected nor their processing. However, he justified the lack of records on the basis that once an intercept was processed, CSIS assumed that the intelligence information had been extracted and that there was no further use for the raw intercept tape.

Jardine commented further on the CSIS letter, testifying that it provided information about the Parmar Tapes that was "...in effect, third party,"⁸⁵⁹ meaning that it contained a clause stipulating that the information could not be further disclosed or used as evidence without CSIS's consent.⁸⁶⁰ To Jardine, this signaled

855 Exhibit P-101 CAF0189.

856 Exhibit P-101 CAF0189.

857 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5725-5727.

858 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5854-5855, 5859-5861.

859 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5728.

860 See Exhibit P-101 CAA0595(i), p. 6.

an assertion that CSIS viewed the national security interest as outweighing the needs of the prosecution, and that he was not going to be able to use the information in the prosecution.⁸⁶¹

On December 15, 1987, Roger McMeans, who was assisting Jardine with the preparation for the Reyat prosecution, wrote a memorandum explaining why the Crown needed access to information about the CSIS tapes and why it needed to be able to disclose the information to the defence and to use it in Court. He noted that, because the Parmar Tapes were erased, both evidence that could have assisted in the prosecution of Reyat and evidence that could have assisted the defence might have been lost. The only remaining trace of the conversations was in the translator and transcriber notes, which McMeans described as “sketchy” and, most importantly, as specifically not covering innocuous conversations consistent with the innocence or non-involvement of Parmar or others, since it was not the purpose of the CSIS operations to gather this type of intelligence. As a result, the destruction of the tapes opened the door to an abuse of process argument by the defence or to a motion for a stay of proceedings on the basis that the unavailability of the evidence breached the rules of fundamental justice. From a review of the applicable law, McMeans concluded that, in order to respond to such arguments, the Crown would have to show that the tape erasure was done innocently, with no ulterior purpose to deprive the accused of the right to full answer and defence and with no intention to “...bury evidence of a badly conducted investigation.” This required knowledge of who ordered destruction (or failed to order retention), when and why.⁸⁶²

Further, since the issue of the impact of erasure had to be determined by the Court and not by the Crown, this meant that the Crown would have to disclose to the defence the facts known to it about the CSIS erasure. If CSIS were to prevent this disclosure, the prosecution could not go ahead with the Crown having knowledge of a possible defence and withholding it, since this would breach the prosecutors’ ethical obligations and duty to act fairly. If CSIS allowed disclosure to the defence, but then invoked the *Canada Evidence Act* to object to the presentation of evidence on the issue, this could also lead to a stay of proceedings. It was therefore necessary for the Crown to obtain complete information about the CSIS tape erasure and to know what information the Crown would be allowed to disclose to the defence and to use in Court. McMeans noted that, should CSIS refuse to allow the information to be disclosed to the defence, the AG BC’s intentions at the time were nevertheless to proceed with the laying of the charges, and then to bring a motion “...to cause CSIS to disclose this information.”⁸⁶³

In testimony before the Inquiry, Jardine explained that the question of whether the destruction of the tapes was done inadvertently and in good faith remained central to the prosecutors’ understanding “...of whether it was proper for us

⁸⁶¹ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5728.

⁸⁶² Exhibit P-101 CAF0171, pp. 1-7, 10.

⁸⁶³ Exhibit P-101 CAF0171, pp. 8-10.

to proceed with a criminal prosecution against Mr. Reyat.” He added that the questions that were being asked by the AG BC were aimed at understanding whether the prosecution could comply with its duties and responsibilities to provide disclosure to the defence.⁸⁶⁴

The Officer in Charge (OIC) of Special Projects at RCMP HQ relayed Jardine’s concerns about the responses received from CSIS to the RCMP Deputy Commissioner of Operations, in preparation for a meeting between the RCMP Commissioner and the CSIS Director on December 18, 1987, suggesting that the issues could be addressed by the RCMP Commissioner. He explained that one of the issues that would soon arise out of Jardine’s efforts would be the need to find out who had made the decision that there was no information to significantly incriminate a target on the Parmar Tapes, and when that decision was made. Most importantly, the possibility of CSIS making an objection to the disclosure of its information, as hinted at in Warren’s latest correspondence, was of concern. In this respect, the OIC noted that “...Jardine cannot in good conscience proceed with a direct indictment if he knows this is what CSIS may well do which in effect would conceivably scuttle the prosecution.”⁸⁶⁵ In testimony, Jardine explained that he needed to advise his Attorney General about the possibility of preferring a direct indictment (thereby taking the case directly to trial in the Superior Court without a preliminary inquiry), and that the Attorney General “...wanted to know whether or not he was going to be on solid ground if he was going to sign an indictment.” Jardine explained that, at the time, the Japanese had indicated that they were willing to release the Narita evidence and that, as a result, the AG BC’s office anticipated that they would be able to proceed with charges against Reyat if they received an assurance from CSIS that the full cooperation that had been promised by Glen at the October 1987 meeting would be forthcoming.⁸⁶⁶

On December 18, 1987, C/Supt. Frank Palmer wrote to Warren at CSIS HQ to seek further clarifications on behalf of Jardine. He first asked exactly who had made the determination that there was no information that would significantly incriminate a target in subversive activity on the Parmar Tapes, and when, noting that this person would have to be interviewed in order to determine his or her potential testimony. About the issue of possible objections by CSIS to disclosure of its information under the *Canada Evidence Act*, which had been specifically raised in CSIS’s most recent letter, Palmer explained that, though Jardine and the RCMP would request permission prior to using CSIS information, Jardine needed to know whether he could proceed on the assumption that the information disclosed to him could be used as evidence and, if not, what specific information would be protected by CSIS. As Jardine was to seek approval to proceed with a criminal charge, he needed to know whether he would be able to use the CSIS information in his possession, since the whole exercise might prove to be futile if it turned out that he could not use the information. Palmer therefore requested that the questions posed “...be answered forthrightly and conclusively” by CSIS.⁸⁶⁷

⁸⁶⁴ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5731.

⁸⁶⁵ Exhibit P-101 CAA0606, pp. 1-2.

⁸⁶⁶ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5731-5734.

⁸⁶⁷ Exhibit P-101 CAA0612(i), pp. 2-4.

R.H. Bennett, who had recently taken over as DG CT, since Warren had assumed the role of Assistant Deputy Director, Operations, provided a response on behalf of CSIS on December 24, 1987. He explained that CSIS would continue to cooperate, but that the Service simply could not give Jardine “carte blanche” to use all CSIS information as evidence. He stated that CSIS retained the right to object to disclosure and would seek ministerial guidance as soon as Jardine had identified the specific information he wanted to use as evidence. Bennett also indicated that CSIS was prepared to identify the person who had made the determination that there was no significant information to incriminate a target in subversive activity on the Parmar Tapes, and had requested the advice of its BC Region for this purpose.⁸⁶⁸

Warren testified that, at that time, CSIS knew that the needs of the prosecution were paramount to CSIS’s own interests, and thus, it would not have objected to disclosure of its information under the *Canada Evidence Act* to frustrate the Crown.⁸⁶⁹ However, CSIS did want to preserve the option of using the *Canada Evidence Act* protection to prevent a “fishing expedition” by the defence. For example, if the Crown agreed to allow CSIS personnel to testify behind a screen but the defence objected, Warren noted that CSIS might have considered the use of *Canada Evidence Act* protection to thwart the defence objection only. The official positions taken by CSIS in the early stages of the discussions, including in Warren’s own November 30, 1987 letter, which raised a “distinct possibility” of CSIS making an objection to disclosure,⁸⁷⁰ did not clarify the limited scope of the objections that CSIS in fact intended to make.

After reviewing the December 24, 1987 CSIS response, Jardine advised the RCMP that he could not pinpoint the pieces of information required for court, as it would be for the defence to decide “...what issues it wishes to make of the destroyed evidence.” Further, some CSIS methodology would necessarily have to be revealed in order to make a “good faith” argument. At the time, Jardine had received instructions from his Assistant Deputy Minister to present a motion to the Court for full disclosure of the CSIS information if it was not forthcoming voluntarily.⁸⁷¹ Discussions were held between CSIS and the RCMP to arrange a meeting between Jardine, the senior RCMP officers involved and the CSIS HQ executives in charge.⁸⁷² The Solicitor General’s office was favorable to such a meeting and there was a possibility that it would send a representative.⁸⁷³

The Assistant Deputy Solicitor General, Ian Glen, met with CSIS on December 31, 1987, to discuss the Service’s concerns about Jardine’s requests. Glen assured CSIS that the Minister would not “...take an all or nothing stance on the issue of disclosure of CSIS information” and that he was quite sensitive to concerns for the safety and security of individuals and their families. Glen had discussions

⁸⁶⁸ Exhibit P-101 CAA0618, pp. 1-2.

⁸⁶⁹ Testimony of James Warren, vol. 48, September 19, 2007, p. 5872.

⁸⁷⁰ Exhibit P-101 CAA0606, p. 2.

⁸⁷¹ Exhibit P-101 CAF0190, pp. 1-2.

⁸⁷² Exhibit P-101 CAA0617, CAA0622.

⁸⁷³ Exhibit P-101 CAA0617.

with Jardine and indicated that some information would not be available for trial. Glen felt that a motion from the AG BC for disclosure of the CSIS information could be avoided as a result of the planned meeting between CSIS, Jardine and the RCMP. He urged all parties to meet in order to see how CSIS could satisfy the prosecution's needs without providing a "blank cheque" to use all of its information.⁸⁷⁴

The January 1988 Meeting

On January 4, 1988, a meeting was held in Vancouver between Jardine and his colleague McMeans, on behalf of the AG BC; Bennett and Joe Wickie, on behalf of CSIS; Palmer, Insp. Terry Hart, Sgt. Robert Wall and Cst. O'Connor, on behalf of the RCMP; and Harry Wruck and Dan Murphy, Department of Justice (DOJ) counsel for CSIS.⁸⁷⁵

Jardine indicated that he was "...not prepared to state categorically that he has now received all 'relevant' materials from CSIS," given the discrepancies in some of the materials reviewed.⁸⁷⁶ At the Inquiry, Jardine explained that, not only were there discrepancies in the material provided, but that he had only received a summary instead of statements from the persons involved, and hence could not acknowledge that he had received everything.⁸⁷⁷ As a result, Jardine stated at the meeting that if the defence claimed that CSIS had further information which was not being made available, he would not be able to deny it. Bennett asked if the RCMP felt that CSIS was holding back material. Wall indicated that, since he did not know what CSIS had available, he would not say the RCMP had received everything. This prompted Bennett to ask what CSIS could do to assure the RCMP that the Service had provided everything, and to ask whether there were specific files the Force wanted to see. The RCMP did not request to review specific files for the time being.⁸⁷⁸

Bennett reiterated the CSIS position that the Service could not grant "carte blanche" access to its materials, and requested copies of all documents passed to the RCMP on Air India in the past. Jardine explained that it was not possible to predict exactly what materials the defence would/could ask for, but that he anticipated that the areas pursued would relate to: the gap in physical surveillance on Parmar at the time of the bombing; the intercepted conversation about Reyat's bow and arrows; CSIS's knowledge of code words in the intercepted conversation; and, most importantly, the erasure of the Parmar Tapes. He added that, at trial, the Crown would be seen to represent both CSIS and the RCMP, and would have to answer the defence attack that CSIS was selective in the material it kept, or that it intentionally destroyed evidence relevant to the defence. Bennett and Jardine discussed the issue of tape erasure and Jardine stressed that, as it was already in the public domain, it could not be avoided and had to be dealt with up front.⁸⁷⁹

874 Exhibit P-101 CAF0009, pp. 1-3.

875 Exhibit P-101 CAF0172.

876 Exhibit P-101 CAF0172, p. 2.

877 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5735-5736.

878 Exhibit P-101 CAF0172, pp. 4, 8.

879 Exhibit P-101 CAF0172, pp. 1-3.

Bennett stated categorically that CSIS would simply not allow disclosure of certain facts, including the names of the translators and documents identifying human sources or cooperating community members. Jardine explained that the Crown would not present the intercept notes or logs in evidence, but might want to call the translators to testify in response to an abuse of process motion, as they were the only ones who could explain their notes about the tapes. Bennett reiterated that CSIS would not identify translators, but would make supervisors available.⁸⁸⁰ At the Inquiry hearings, Warren testified that Bennett's strong position was a "bluff," and that it did not reflect the policy of the Service at the time. Warren reiterated that, as per Archie Barr's direction in the spring of 1987, CSIS was committed to cooperating to ensure a successful prosecution and certainly would not have taken a national security certificate against the Crown.⁸⁸¹

At the January 4, 1988 meeting, Jardine explained that the destruction of the tapes that took place after the crash, at a time when CSIS was fully aware of the RCMP investigation, would be analyzed differently from the erasures done prior to the bombing. Bennett indicated that CSIS had not been officially requested by the RCMP to retain the tapes and had never been provided with materials that convinced the Service that there was significant information on the tapes, and that the lack of such information was the reason they were destroyed in accordance with CSIS policy.⁸⁸² Bennett expressed concern about the language used by Jardine and the RCMP to describe the erasure of the Parmar Tapes:

Bennett states that his people are quite concerned about RCMP references in letters that CSIS "destroyed evidence." CSIS feel this is not accurate and puts them into a bad position for future civil proceedings. He requests that we [the RCMP] refrain from using reference to destruction of evidence in future correspondence.⁸⁸³

Bennett indicated that, while the Service did erase tapes, they did not contain evidence of a specific crime and CSIS considered they were not significant to its inquiries. Jardine disagreed. He felt that evidence was in fact erased by CSIS, either intentionally or not, as the tapes of conversations with Reyat and others around the time of the bombing would be relevant as evidence of association. Jardine added that "...we will never know if 'evidence' was destroyed," but that he felt that it was. CSIS counsel requested to be present when the RCMP interviewed CSIS employees involved in decisions about the Parmar Tapes.⁸⁸⁴

At the conclusion of the January 4th meeting, Jardine requested a letter from CSIS as soon as possible advising of exactly what material would be exempt

⁸⁸⁰ Exhibit P-101 CAF0172, pp. 4-5.

⁸⁸¹ Testimony of James Warren, vol. 48, September 19, 2007, p. 5880.

⁸⁸² Exhibit P-101 CAF0172, pp. 5-6.

⁸⁸³ Exhibit P-101 CAF0172, p. 8.

⁸⁸⁴ Exhibit P-101 CAF0172, pp. 7-8.

from disclosure.⁸⁸⁵ Overall, Jardine explained in testimony that his recollection of this meeting was that it was simply one where he had to explain again the type of argument the defence was anticipated to make at trial. At the end of the discussions on that day, Jardine testified that there was still no “meeting of minds” or agreement between CSIS and the police and prosecution about the next steps.⁸⁸⁶

The CSIS Policy Review

While the discussions about disclosure of CSIS information in the Reyat prosecution continued, there was a growing recognition within the Service that efforts needed to be made to avoid the “intelligence into evidence” conundrum that had arisen in the Air India case.⁸⁸⁷ CSIS was interested in looking for ways to help the police, while providing the fullest protections possible to CSIS information. On January 9, 1988, Warren sent a letter internally within CSIS stating that the CSIS Director, after consultation with the Deputy Solicitor General, had called for a policy review with respect to the handling of electronic intercepts. Warren emphasized that the review did not signify a fundamental change in CSIS’s tape retention policy, but rather that it was intended to come to grips with the reality that the Service, from time to time, would be seized with information of potential probative value in a criminal investigation.⁸⁸⁸

Warren testified that the review allowed the Service to consider how it might have handled things differently, and what could be done to mitigate the damage that inevitably occurs when CSIS intelligence is required as evidence in an open court. Effectively, CSIS was looking for a way to “flip a switch” for information relating to criminal matters, to enter into an information-retention mode that complied with rules governing continuity of evidence, while minimizing the number of CSIS employees who could be potentially identified publicly.⁸⁸⁹

Receipt of CSIS Materials and Ongoing Debates

On January 28, 1988, the AG BC signed an indictment charging Reyat with two counts of manslaughter and six counts of acquisition, possession and use of explosive substances in connection with the Narita bombing.⁸⁹⁰ Shortly afterward, the indictment was filed in Court. The RCMP travelled to England, where Reyat had been living, to interview him, following his arrest by British authorities at Canada’s request. Proceedings then began for Reyat’s rendition to Canada to stand trial for the Narita bombing.⁸⁹¹

On March 29, 1988, CSIS provided the RCMP with a package of its materials identifying the portions for which there would be disclosure objections by CSIS and setting out the reasons for those objections. Another copy was provided

885 Exhibit P-101 CAF0172, p. 9.

886 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5737-5739.

887 Testimony of James Warren, vol. 48, September 19, 2007, p. 5874.

888 Exhibit P-101 CAF0264.

889 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5874-5875.

890 Exhibit P-101 CAF0218, p. 1; *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.).

891 Exhibit P-101 CAF0218, p. 1; See also Testimony of James Jardine, vol. 47, September 18, 2007, p. 5743.

with the passages blacked out for use in court or for disclosure to the defence. Further, CSIS asked to be advised if any of the material it planned to refuse to disclose was seen as vital to a successful prosecution or essential for disclosure purposes, as CSIS would be willing to reconsider its objections on a case-by-case basis in such an event. About the erasure of the Parmar Tapes, CSIS noted that the names of three members involved in the handling of the intercepts had already been provided, and that the RCMP could also interview Wickie of the BC Region to find out about CSIS operations and policies on the destruction and retention of intercepts.⁸⁹²

On April 25, 1988, Jardine drafted a memorandum outlining his impressions after reviewing the CSIS materials. He reviewed many of the intercepted conversations that tended to show Parmar's involvement in a conspiracy, and pointed out the numerous conversations with Reyat that were recorded in the notes, particularly around the time of the Duncan Blast. Jardine expressed concern about the fact that there was no exact translation of the initial material, the consequence being that a proper analysis of the information was not possible at the time that the determination of whether the intercepts contained information about significant subversive activity was made. Most importantly, he was concerned that many of the conversations were actually erased in September 1985, after the bombing and after it was known that Reyat had purchased a tuner that could tie him to the Narita crime scene. Since the intercepts appeared to contain material that went beyond simply raising suspicion about Parmar's involvement in a conspiracy, Jardine felt that the defence would ask when the tapes were destroyed, at whose direction and "...how can the Crown argue good faith destruction when all of this information was available to review by the Canadian Security Intelligence Service by the second week of September 1985?" According to Jardine, the defence would also argue that any investigator, in the interest of accurate information and given the totality of the information available, would have wanted to know the exact words spoken in the conversations recorded.⁸⁹³

Shortly after, McMeans wrote a supplementary memorandum containing further observations about the problems raised by the CSIS materials. He noted that, given that the defence would most likely raise the point that the destruction of the CSIS tapes prevented the accused from making full answer and defence, evidence would have to be heard about CSIS procedures, and CSIS witnesses would have to testify. Once it heard this evidence, the Court would have to "...ascribe a reason for the destruction of this evidence which will range from incompetence and negligence to possibly a finding of a cover-up attempted by CSIS."⁸⁹⁴ McMeans then went on to examine the information that was available to CSIS in order to anticipate the possible conclusions the Court could draw about the tape erasure. He noted that CSIS was already aware of significant information prior to the bombing, and that, after the bombing, the Service learned of important facts that should have alerted it to the possible need to retain at least some of the Parmar intercepts:

892 Exhibit P-101 CAA0637, pp. 1, 3.

893 Exhibit P-101 CAF0173, pp. 1-9.

894 Exhibit P-101 CAF0174, pp. 1-2, 7.

By August 22, 1985 CSIS should know that Parmar, a militant terrorist leader of the B.K., who is expected to conduct a terrorist act against an Indian interest, is acting on a highly secret project. He is scheming and apparently conspiring, taking great pains to ensure his conversations with other radical Sikhs cannot be intercepted. He attends Duncan June 4 to view a test explosion conducted by another radical Sikh, Reyat. Reyat has sought dynamite and fuses to help his countrymen. On June 22, Air India and Narita explosions occur. Very quickly these are attributed to Sikh extremists because of the L. Singh and M. Singh tickets. Fragments of a Sanyo Tuner and can of liquid fire are found at the Narita explosion site. Reyat purchased the same model of tuner the day after the test explosion. The company Reyat works for distributes liquid fire. 'E' Division identified Reyat and Johal [whose suspicious conversations with Parmar in the days preceding the bombing had been intercepted] as suspects.⁸⁹⁵

McMeans concluded that it was therefore possible that the Court would rule that CSIS should have retained its intercepts after the bombing, and was absolutely required by legislation and common sense to retain them after August 22nd (the date on which CSIS was advised of all of the information gathered by the RCMP that pointed to Parmar's and Reyat's involvement in the bombing), which made the issue of the exact date when tapes were translated and erased particularly relevant. Since CSIS refused to make its translators available as witnesses, McMeans wondered how these facts could be proven, and concluded that it would assist the prosecution if CSIS could provide "...some answers relating to the dates the tapes were ordered not to be retained."⁸⁹⁶

Jardine explained in testimony that, at this stage of the proceedings, in the spring of 1988, there was still information which he anticipated would be required for trial, and that had not been provided by CSIS.⁸⁹⁷

On May 3, 1988, Jardine wrote to the RCMP to request that the Force again approach CSIS to obtain answers to the outstanding questions. In particular, Jardine asked who in the chain of command at CSIS determined that there was no "...information to significantly incriminate a target in subversive activity" on the Parmar Tapes and therefore failed to retain the tapes; who had authority to make that determination; and when the determination was made. Jardine noted that the questions had already been asked in a December 1987 letter, and that the AG BC's intention was not "...to embarrass or to conduct a witch hunt," but rather that the issue of CSIS's "good faith" required answers. He indicated that the two investigators CSIS had made available for RCMP interviews had not been the persons who had made the determination and were not even

⁸⁹⁵ Exhibit P-101 CAF0174, p. 7.

⁸⁹⁶ Exhibit P-101 CAF0174, pp. 8-9.

⁸⁹⁷ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5741-5742, 5746-5747.

aware of the term "...significant subversive activity." He added that Wickie, the BC Region DDG of Services, who supervised the individual in charge of technical operations relating to intercept warrants and to the processing of the tapes, had told the RCMP investigators that the tapes were erased pursuant to policy; that five persons were involved in the determination; and that he would have to "...deal with Ottawa" before revealing their identities. As a result, Jardine requested that CSIS be asked to determine who was involved and to provide statements from these individuals.⁸⁹⁸

On May 4, 1988, during a meeting between CSIS and RCMP HQ representatives, CSIS members voiced the concern that some of the material provided to the RCMP for possible evidence or disclosure in the pending Reyat trial "...had no relevance to the prosecution and should not be disclosed."⁸⁹⁹

On May 16, 1988, Palmer transmitted Jardine's May 3rd letter to the CSIS BC Region, emphasizing that answers to Jardine's questions were necessary because the issue would most likely be raised at trial and the prosecution needed to know the answers in advance and be able to produce witnesses to explain the facts.⁹⁰⁰

On June 9, 1988, the BC Region transmitted an interim response from CSIS HQ, which identified some of the CSIS members involved in the decisions surrounding the Parmar Tapes,⁹⁰¹ and, on June 15, 1988, an official letter from CSIS HQ was provided. The letter reported the results of interviews conducted by CSIS HQ personnel with three CSIS BC Region members, Jim Francis, Bob Smith and Ken Osborne, who were part of the chain of command of individuals who would have been in a position to order the retention of some or all of the Parmar Tapes. An explanation was added specifying that tape retention was "...not a common practice within the Service" and that the opinion of senior managers would therefore have been sought if this step had been considered for the Parmar Tapes. The letter also specified that, while CSIS HQ would have had the authority to request the retention of some of the tapes, in this case it did not do so, and the BC Region "...was in the best position to make that determination bearing in mind they had access to the raw product and the translators for clarification."⁹⁰² Finally, in answer to Jardine's question about the time when the determination to erase the Parmar Tapes was made, CSIS HQ explained that the process of erasure was automatic and ongoing, with the determination also being an "...ongoing daily process" as information was brought to the attention of the members involved.⁹⁰³

On June 14, 1988, having received the interim response from CSIS, Jardine again wrote to the RCMP, indicating that the "...CSIS reply does not answer the questions."⁹⁰⁴ Jardine noted:

⁸⁹⁸ Exhibit P-101 CAA0643, pp. 1-3.

⁸⁹⁹ Exhibit P-101 CAA0645.

⁹⁰⁰ Exhibit P-101 CAA0646.

⁹⁰¹ Exhibit P-101 CAA0649.

⁹⁰² Exhibit P-101 CAA0654, p. 3.

⁹⁰³ Exhibit P-101 CAA0643, p. 4.

⁹⁰⁴ Exhibit P-101 CAF0175.

The general references to policy do not indicate whether J. S. Francis, R. W. Smith or K.G. Osborne determined there was no significant subversive activity. Francis points to Smith, Smith says he was not aware of anything significant, Osborne says nothing was brought to his attention by Smith, which would warrant retention. Who is going to testify about this?⁹⁰⁵

Jardine appeared exasperated by the difficulty in obtaining clear answers from CSIS. He indicated: "...if no one can answer then please tell us no one can answer." He noted that the person who would testify on behalf of CSIS would have to be prepared to say when the material was destroyed and who made that determination. He proposed a different formulation of his questions to see if answers could be obtained, drawing attention to: the issue of who was coordinating and analyzing the Sikh information; whether the material was ever "...analyzed by that person with the total picture (translations) known"; and whether a complete analysis was done by the Sikh Desk after the Air India bombing, since tapes were still in existence as a result of the backlog. Jardine explained that an early response was required, since the extradition hearing for Reyat was to commence in July 1988, and the defence might raise the tape erasure issue there. Jardine requested that CSIS be asked "...again whether they can answer the questions posed" and, if not, who the witness would be to testify on behalf of CSIS that the questions could not be answered.⁹⁰⁶ The RCMP transmitted Jardine's letter to CSIS on June 20, 1988.⁹⁰⁷

Meanwhile, CSIS HQ personnel met with CSIS legal counsel Harry Wruck on June 14, 1988. Wruck stated that, in his opinion, Jardine's hope was that CSIS would admit that it was an error not to retain the Parmar Tapes which were still in existence after the bombing. Wruck explained that, if CSIS did not admit a mistake, Jardine hoped that the Court would find that one was made, since the alternative, in Jardine's view, was that "...the Court will find that CSIS willfully destroyed evidence that would clear the defendant through an abuse of process."⁹⁰⁸

On June 22, 1988, Bennett wrote to Wruck in response to several questions that had been raised about the Parmar Tapes in early May 1988. Bennett's responses set out familiar CSIS themes, focusing on the differences between CSIS's mandate as an intelligence agency and the way that law enforcement agencies worked. In response to why CSIS had not seen fit to retain information and tapes falling within its own mandate of political threats, Bennett wrote that, for CSIS's purposes, retention requirements are met by retaining translators' notes, verbatim transcripts and/or final reports compiled from the transcripts.⁹⁰⁹ Bennett pointed out that the conditions under which CSIS was operating

905 Exhibit P-101 CAF0175, p. 1.

906 Exhibit P-101 CAF0175, pp. 1-2.

907 Exhibit P-101 CAA0656(i).

908 Exhibit P-101 CAD0121, p. 1.

909 Exhibit P-101 CAD0124, p. 4.

immediately after the Air India and Narita bombings had to be borne in mind. He noted that Parliament, following the recommendations of the McDonald Commission, had decided to separate security intelligence work from criminal investigations. CSIS information was to be used as intelligence only. He specifically cited the SIT Group instruction issued by Archie Barr in April 1984 that called for the removal of all facilities on CSIS premises for the collection of information for evidentiary purposes as proof of CSIS's "intelligence only" mandate. Notably, the authority of Barr's memorandum was later challenged by the Solicitor General's office, which raised doubts that a decision of the SIT Group could be used to modify a Ministerial direction.⁹¹⁰ While this challenge called into question the basis upon which CSIS justified the Parmar Tape erasures, it does not appear that Jardine was notified.

On June 23, 1988, Bennett provided answers to Jardine's latest questions.⁹¹¹ He described the functions of those responsible for coordinating and analyzing the Sikh information, and discussed the nature of the ongoing analysis performed from the intelligence reports.⁹¹² He specified that the post-bombing analysis was done on an ongoing basis, and that tapes were not retained for the purpose of performing a complete analysis, as it was thought that this could be done on the basis of the reports. Bennett also reiterated that CSIS could not determine the date of the erasure of the individual Parmar Tapes.⁹¹³

Nevertheless, on June 28, 1988, a chart was transmitted to the RCMP containing a list of approximate dates of erasure based on the dates when the tapes were translated and on the policy of retention for 10 to 30 days.⁹¹⁴ A contemporaneous briefing note to Bennett provides some insight into CSIS thinking at the time. It states that, having granted the RCMP Task Force access to the CSIS personnel who had been involved in the review of the Parmar Tapes at the time of the bombings,⁹¹⁵ CSIS felt that it had "...successfully laid the TAPP policy issue to rest." Despite this, CSIS expected that Jardine would continue to be unsatisfied with the decision to erase the tapes "...as a result of his hindsight review of the intercept logs and reports."⁹¹⁶

The briefing note did raise a new concern about CSIS's justification for the Parmar Tape erasures. CSIS found a memorandum dated February 18, 1985 from Jacques Jodoin, Director General, Intelligence Communications and Warrants, at the time, which called for retention of tapes when a verbatim was prepared.⁹¹⁷ This instruction was problematic, as the RCMP Task Force members and Jardine had been asserting in their interviews with CSIS personnel that the tapes of certain conversations that had been reported verbatim by CSIS should

910 Exhibit P-101 CAF0260.

911 Exhibit P-101 CAF0221.

912 Exhibit P-101 CAF0221. See also Exhibit P-101 CAD0126.

913 Exhibit P-101 CAF0221, pp. 3-4.

914 Exhibit P-101 CAA0658.

915 The investigators, David Ayre and Ray Kobzey, and management, J.S. Francis, R.W. Smith and K.G. Osborne.

916 Exhibit P-101 CAA1032, p. 1. The acronym TAPP stands for Technical Aids Policies and Procedures.

917 See Section 4.3.1 (Post-bombing), Tape Erasure.

have been retained. The CSIS BC Region personnel interviewed had disagreed that the conversations met the threshold of "...significant subversive activity," and therefore denied that retention would have been justified. However, the briefing document noted that this position was in direct contradiction with Jodoin's memorandum.⁹¹⁸

The October 1988 Meeting

On September 7, 1988, Jardine wrote to the RCMP to advise that a decision had been rendered in London providing for Reyat's rendition to Canada to stand trial in the Narita matter. He noted, however, that "...on the CSIS issues, it would appear we have made little or no progress." He therefore requested that a meeting be arranged in Ottawa with the appropriate persons to decide on the next steps, since he felt that the evidence available so far was not credible and would not be found credible by the Court.⁹¹⁹ Jardine noted:

We are concerned about the possible impact on our case and our position should be predetermined to control the potential damage and minimize its impact on the trial and in the public forum.⁹²⁰

The RCMP made arrangements in preparation for the meeting, which was to bring to the table representatives of CSIS, the AG BC, the RCMP and the DOJ.⁹²¹ RCMP Deputy Commissioner Henry Jensen initially expressed an interest in being present and requested that senior personnel from CSIS also attend, as in his view, "...the lesser levels are the problem so there is no point in trying to work it out there."⁹²² In the end, Jensen could not attend,⁹²³ but the meeting proceeded as planned on October 4, 1988, with six CSIS representatives, three RCMP representatives and seven DOJ lawyers, including CSIS counsel and counsel representing the Government in the civil lawsuit launched by the families of the Air India victims.⁹²⁴ Jardine provided an update on the status of the case and explained the purpose of the meeting. He indicated that, though the cooperation that had followed the October 1987 meeting had allowed him to receive a great deal of information from CSIS, the current situation was one of a lack of communication. He indicated that further dialogue was necessary to preclude "...the continued lack of understanding exhibited by the responses" received from CSIS to recent questions transmitted via the RCMP.⁹²⁵

Several issues were discussed and some were resolved, or at least appeared to be. Reyat was expected to be returned to Canada in March 1989, if his appeal on the rendition was not successful. The AG BC had to prepare a package for

⁹¹⁸ Exhibit P-101 CAA1032, pp. 1-2.

⁹¹⁹ Exhibit P-101 CAF0176, p. 1.

⁹²⁰ Exhibit P-101 CAF0176, p. 2.

⁹²¹ Exhibit P-101 CAA0671, CAA0673.

⁹²² Exhibit P-101 CAA0673, p. 2.

⁹²³ Exhibit P-101 CAA0676.

⁹²⁴ Exhibit P-101 CAA0707(i), p. 2.

⁹²⁵ Exhibit P-101 CAF0177, pp. 1-2.

disclosure to the defence upon Reyat's return, and Jardine explained the AG BC's policy to disclose "...all relevant material which the accused may use as relevant to a defence or which the accused may use as relevant to the investigation of the investigation." In Reyat's case, the disclosure package would include CSIS information. It was agreed at the meeting that the AG BC would meet with the DOJ counsel in the civil litigation and with CSIS officials to review all of the CSIS materials and prepare a disclosure package that would be provided both to the plaintiffs in the civil litigation and to Reyat in the criminal prosecution.⁹²⁶

On the merits of the tape erasure issue, spirited exchanges took place, with CSIS counsel objecting strenuously to the analysis in the memoranda prepared by Jardine and McMeans and maintaining that there was nothing in the intercepted material that connoted "...significant subversive activity." CSIS counsel advised that this would be CSIS's official position and the position taken by CSIS witnesses. The positions of the parties in the civil litigation and the Narita prosecution were discussed, and Jardine pointed out to CSIS counsel that "...a defensive hostile attitude" would be of no assistance to the Crown in the criminal prosecution, to the DOJ in the civil litigation, or to CSIS in the preservation of its public image when the information was revealed publicly.⁹²⁷ Jardine emphasized the object of the meeting:

The point of the October 4, 1988, 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.⁹²⁸

Jardine explained the attacks that the defence was anticipated to make in the Reyat prosecution, noting that, because the erasure of the Parmar Tapes was disclosed on public television in December 1987, when CSIS Director Reid Morden admitted it had taken place, the defence would most likely raise the failure to retain evidence. This would require the Crown to present evidence about the reasons for failing to retain the tapes and the good faith of CSIS throughout the erasure process. This, in turn, would require an examination of the information which was in CSIS's possession at the time.⁹²⁹

In the end, it was decided that CSIS's position on whether the translators would testify would have to be the subject of further discussions, as CSIS would take no firm position until the defence position was ascertained. In the meantime, other avenues to avoid the necessity of their testimony would be explored. Explanations were to be provided by CSIS about whether BC Region Director General Randy Claxton had received a request to preserve the Parmar Tapes during a conversation with RCMP Supt. Lyman Henschel shortly after the bombing, as well as about Mel Deschenes's early return from Los Angeles

⁹²⁶ Exhibit P-101 CAF0177, pp. 3, 9.

⁹²⁷ Exhibit P-101 CAF0177, pp. 4-5, 8.

⁹²⁸ Exhibit P-101 CAF0177, p. 5.

⁹²⁹ Exhibit P-101 CAF0177, pp. 6-7.

immediately before the bombing.⁹³⁰ Finally, at least six CSIS witnesses would have to testify about the timing and reasons for the erasure of the tapes, but further discussions were to be held once the witnesses were identified.⁹³¹

Overall, Jardine felt at the time that the meeting was successful in that "...the logjam had been broken and much progress had been made." According to him, it was clear from the previous correspondence that the respective positions of the various agencies involved had not been understood in the past.⁹³²

Immediately after the meeting, Jardine reviewed over 200 pages of CSIS material with DOJ counsel and a CSIS representative. Agreements were reached about some pages, paragraphs and information which would be removed or blacked out in the package that would be provided to the defence.⁹³³ On October 6, 1988, CSIS advised that it would agree to allow the dates of reports to be disclosed, but requested that the page numbering be removed from the package disclosed to the defence, as it would allow Reyat's counsel to see that pages had been removed and would make it more likely that he would request access to this material.⁹³⁴ In the end, it was agreed that page numbers had to remain because of concerns related to civil disclosure issues.⁹³⁵ CSIS noted that, like Jardine, the Service felt that the October 4th meeting was "...successful in clearing up certain misunderstandings between the RCMP, CSIS and the B.C. Crown Attorney."⁹³⁶

However, though an initial disclosure package was prepared in the fall of 1988 and the winter of 1989,⁹³⁷ Jardine still did not obtain the complete information he was looking for from CSIS until 1991.⁹³⁸ Additional information and documents continued to be requested and provided. CSIS advised in late October 1988 that there were errors in its earlier chart of approximate erasure dates for the Parmar Tapes and corrected some of the information.⁹³⁹ In November 1988, Jardine had to clarify the type of statements he needed from CSIS witnesses, explaining that, to date, the correspondence provided by CSIS had "...generated a corporate response rather than the individual witness statements the prosecution sought." Jardine asked for individual statements about the witnesses' personal knowledge and recollection.⁹⁴⁰ In March 1989, Jardine wrote to the RCMP to request that CSIS be reminded about its undertaking to provide these statements, as he had learned from DOJ counsel that statements were taken from the employees involved in December 1988.⁹⁴¹ In testimony, Jardine explained that he did not receive the witness statements he needed for another two years.⁹⁴²

930 Exhibit P-101 CAF0177, p. 10; See also Section 4.3.1 (Post-bombing), Tape Erasure and Section 1.8 (Pre-bombing), Rogue Agents (Deschenes).

931 Exhibit P-101 CAF0177, p. 10.

932 Exhibit P-101 CAF0177, p. 10.

933 Exhibit P-101 CAA0708(i).

934 Exhibit P-101 CAA0708(i), p. 2.

935 Exhibit P-101 CAA0710, p. 1.

936 Exhibit P-101 CAA0708(i), p. 2.

937 See Exhibit P-101 CAA0710, CAF0179, CAF0181, CAF0224, CAF0225, CAF0226, about the discussions which took place during this process.

938 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5754-5755.

939 Exhibit P-101 CAA0713.

940 Exhibit P-101 CAF0182, p. 1.

941 Exhibit P-101 CAA0732.

942 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5756.

In 1989, Jack Hooper was transferred from CSIS HQ to the BC Region in order to actively oversee the CSIS disclosure that was to be made in connection with the Reyat trial. The process at the time involved a "...comprehensive review of all BC Region's holdings in respect of Reyat and associates." BC Region was the principal repository for the information involved in the trial and so the majority of the work was to be done there. Hooper had a number of dedicated full-time personnel reviewing file holdings and identifying material for disclosure to the RCMP. During that process they would also flag sensitive material. The teams would also inform CSIS HQ of the disclosure, which enabled HQ to conduct damage assessments for the sensitive information released in support of the Reyat trial.⁹⁴³

A disclosure package was provided to the defence on December 20, 1989.⁹⁴⁴ In August 1990, Reyat's counsel requested disclosure of the edited portions of the CSIS materials, as well as of the transcripts and tapes of "...all intercepted communications referred to in CSIS materials."⁹⁴⁵ Jardine responded that, as he did not have access to the edited portions of the CSIS materials, he could not provide them to defence counsel. As for the request for transcripts, he advised that the notes or "gist translation" were already provided in the disclosure package and that, to his knowledge, there existed no transcripts of the Parmar/Reyat communications intercepted by CSIS. Finally, in response to the request for tapes, Jardine noted that he had learned, as a result of media disclosures in 1987 which were subsequently confirmed by letter, that the tapes had been erased.⁹⁴⁶

The Reyat Trial

Inderjit Singh Reyat's trial began in September 1990 and the Crown presented its evidence until the end of the year.⁹⁴⁷ While the trial was proceeding, the defence continued to make disclosure requests about the CSIS information. An RCMP member who provided information to Jardine in September to assist in responding to those requests noted that CSIS had not authorized the release of the 54 Parmar Tapes remaining in existence as part of the disclosure package, and that the tapes could not be disclosed beyond the RCMP and the AG BC without CSIS's consent.⁹⁴⁸ Disclosure of those tapes was ordered by Justice Raymond Paris, who was presiding over the trial, following a disclosure motion by the defence.⁹⁴⁹

In October 1990, Jardine was advised that the defence would be bringing an abuse of process motion at the close of the Crown's case. He advised the RCMP that the process would most likely "...not cast CSIS in a favourable light" and would "...reflect a certain level of incompetency." Jardine also advised that evidence would have to be presented about the RCMP's efforts to secure evidence

⁹⁴³ Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6219-6220.

⁹⁴⁴ Exhibit P-101 CAF0255, p. 2.

⁹⁴⁵ Exhibit P-101 CAA0774.

⁹⁴⁶ Exhibit P-101 CAA0775, p. 1.

⁹⁴⁷ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5756.

⁹⁴⁸ Exhibit P-101 CAF0227, p. 3.

⁹⁴⁹ Exhibit P-101 CAF0255, pp. 6-7.

about the Parmar Tapes over the years, and that once this area was opened, he expected it would "...eventually lead to the political arena as to who knew what, when and what they did about it."⁹⁵⁰ Jardine suggested a high-level meeting with CSIS and RCMP representatives in order to keep all involved informed of the Crown's planned strategy in the response to the abuse of process motion.⁹⁵¹ He indicated that a representative from the Solicitor General's office should attend, as a policy decision maker from that office would most likely have to testify in the proceedings about CSIS's tape destruction policy.⁹⁵² However, the Ministry wanted to avoid the appearance of such a witness.⁹⁵³

Meanwhile, the RCMP continued to seek additional information and documents from CSIS to enable Jardine to prepare for the response to the abuse of process motion. On November 21, 1988, the RCMP wrote to CSIS to request witness statements from six of the BC Region CSIS employees involved in the processing of the Parmar Tapes. The RCMP also inquired about identifying a senior CSIS official who could testify about how the tape retention/destruction policy was formalized as a CSIS policy.⁹⁵⁴

Tensions were rising as the interagency meeting, scheduled for November 24, 1990, approached. On November 16th, Ian MacEwan, who had replaced Bennett as DG CT, prepared a memorandum outlining the history of the CSIS tape erasure policy and of its application to the Parmar Tapes. He then reviewed the explanations provided by CSIS and the statements of the CSIS employees involved, indicating that the Service made numerous attempts to provide explanations and clarifications, but that confusion remained.⁹⁵⁵ MacEwan commented:

In spite of the Service's best efforts, I doubt that the Crown, and possibly the RCMP to this day "accept" the reasons for, and the application of the Service's tape retention/destruction policy. I think that this lack of acceptance has nothing to do with shortcomings in their comprehension abilities, nor in the clarity of the explanation that has been delivered. Rather, I am of the opinion that there are 'none so blind as those who will not see'.

I think it apparent that the BC Crown Attorney's office is looking for a 'fall guy' in the event the Reyat prosecution ultimately fails. This belief is reinforced in Attachments O and P, where the suggestion is made that the tapes were destroyed as a result of a CSIS 'mistake.'⁹⁵⁶ [Emphasis added]

950 Exhibit P-101 CAF0259, p. 1.

951 Exhibit P-101 CAF0186, CAF0233, CAF0234.

952 Exhibit P-101 CAF0186, p. 1.

953 Exhibit P-101 CAD0146, p. 7.

954 Exhibit P-101 CAA0720(i), pp. 1-2.

955 Exhibit P-101 CAD0146, p. 5.

956 Exhibit P-101 CAD0146, pp. 5-6.

MacEwan then went on to state that “CSIS did NOT make a mistake,” but only followed established policy. He indicated that admitting a mistake would have left the Service open, “...once again, to accusations of operating without proper control and management” which would then be cited as the reason for the failure of the Reyat prosecution. As a result, MacEwan suggested that CSIS take the position at the upcoming meeting that the Crown “...MUST, no matter the cost, demonstrate to the Court that the Service did nothing wrong.”⁹⁵⁷

At the Inquiry, Warren testified that he did not agree with MacEwan’s position and felt that, to some extent, MacEwan’s suggestions were inappropriate.⁹⁵⁸

The RCMP, in a briefing note dated November 21, 1990, noted that there would be obvious difficulties with the CSIS evidence indicating that the Parmar Tapes were erased pursuant to policy because they contained no indication of significant subversive activity, especially since some of the intercept information provided to the RCMP, that had been used in support of applications to intercept private communications, indicated that Parmar and others were involved in activity suspected to be related to the Narita explosion. The Force noted that Jardine would attempt to cast the RCMP’s effort to obtain information and evidence in a positive light in response to the abuse of process argument, but that there was “...definite potential for CSIS to endure a negative image.”⁹⁵⁹

Jardine, in a legal memorandum dated November 21st analyzing the anticipated Crown response to the abuse of process argument, noted:

The facts are not clear. The administrative system in the Canadian Security Intelligence Service does not allow the Service to ascertain exactly when the tapes were erased, nor does it allow them to ascertain who determined there was no significant subversive activity.⁹⁶⁰

Jardine hoped to be able to show that the destruction of the Parmar Tapes had been inadvertent and not done for an ulterior purpose. At the time, he still did not know whether CSIS would object to the disclosure of its policies and procedures in Court – an objection he felt would be detrimental to the Crown’s case – and he still required answers to a number of questions about the witnesses who would testify on behalf of CSIS.⁹⁶¹ In an agenda he prepared for the November 24th meeting, Jardine noted that the position of the Crown in response to the abuse of process argument would have to be that administrative policy, translation delay and the administrative system, structure and procedures at CSIS “...precluded discovery of overt criminal activity or significant subversive activity” until after the Parmar Tapes were erased.⁹⁶²

⁹⁵⁷ Exhibit P-101 CAD0146, p. 6 [Emphasis in original].

⁹⁵⁸ Testimony of James Warren, vol. 48, September 19, 2007, p. 5901.

⁹⁵⁹ Exhibit P-101 CAA0798(i), pp. 1-2.

⁹⁶⁰ Exhibit P-101 CAF0240, p. 2.

⁹⁶¹ Exhibit P-101 CAF0240, pp. 21-23.

⁹⁶² Exhibit P-101 CAA0800, p. 2.

The meeting took place as planned on November 24, 1990. As a result of the discussions held, CSIS provided a list of personnel involved in the processing of the Parmar Tapes and allowed RCMP investigators to conduct interviews.⁹⁶³ The CSIS representatives who attended the meeting made it clear to Jardine, as had been outlined in MacEwan's memorandum, that the Service would take the position that no mistake had been made in erasing the Parmar Tapes. Jardine testified at the Inquiry that at that time, he had updated materials based on charts prepared by CSIS which indicated dates of erasure in July 1985 for many of the conversations considered potentially important in Reyat's case. The prosecution team had decided that it would argue that, given the facts known in July 1985, there was nothing that would justify retention of the intercept "... for the purposes of Inderjit Singh Reyat (note Parmar is different)."⁹⁶⁴

Jardine explained that Reyat's position was different from Parmar's, since there was much inculpatory evidence against Reyat, including forensic evidence gathered in Narita, and Reyat had made a confession about his involvement in testing explosive devices for Parmar. Under the circumstances, the Crown could argue that any conversations on the tapes would have incriminated and not exonerated Reyat, such that there was no factual foundation for the defence's abuse of process allegation. As there was no real evidence against Parmar, the impact of the tape erasure in case he was eventually charged might well be different, especially since he was the actual target of the CSIS intercept. However, as far as the Reyat prosecution was concerned, Jardine was ultimately convinced that the defence attack "...should not impact" the prosecution. In any event, the Crown's argument would be that the erasure was done innocently in July 1985.⁹⁶⁵

In December 1990 and January 1991, the RCMP interviewed many of the CSIS employees involved in the processing and erasure of the Parmar Tapes and prepared witness statements in anticipation of the abuse of process motion.⁹⁶⁶ In January 1991, the Reyat trial was adjourned until February 18, 1991, at which time the defence was expected to present its abuse of process motion. On January 22, 1991, CSIS wrote to the RCMP to express concern about the materials to be disclosed to the defence in this context. The Service requested that no CSIS witness statements or "will says" be disclosed to the defence until they were reviewed by CSIS HQ, and asked to receive a copy of the intended disclosure package.⁹⁶⁷ On January 24, 1991, the RCMP responded, explaining that the December 1990 and January 1991 statements had not yet been provided to Jardine. The Force indicated that the defence had not yet filed its motion, and that disclosure would not be made until the content of the motion was known.⁹⁶⁸

⁹⁶³ Exhibit P-101 CAF0250.

⁹⁶⁴ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5758-5759, 5761-5762.

⁹⁶⁵ Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5759-5760.

⁹⁶⁶ Exhibit P-101 CAF0242, p. 1.

⁹⁶⁷ Exhibit P-101 CAF0263.

⁹⁶⁸ Exhibit P-101 CAF0242, p. 1.

On February 5, 1991, counsel for Reyat transmitted a Notice of Motion for a judicial stay of proceedings to Jardine.⁹⁶⁹ On February 8, 1991, the RCMP wrote to CSIS to advise that, now that the motion had been filed, the Crown would be disclosing to the defence a booklet of 10 witness statements that had been provided to Jardine in 1989 for disclosure purposes. As for the most recent RCMP interviews of CSIS personnel, the investigators were still completing their interviews and would be turning over all of the notes and statements to Jardine shortly. The RCMP promised to advise CSIS if Jardine felt that these materials had to be disclosed to the defence.⁹⁷⁰ The 1989 booklet of witness statements was disclosed to the defence on February 12, 1991.⁹⁷¹

On February 14, 1991, the RCMP wrote to CSIS again, attaching 18 witness statements obtained between December 1990 and February 1991 by its investigators. The Force advised CSIS that the statements were being provided to Jardine, and asked the Service to advise of any information contained in them which CSIS would object to being disclosed to the defence "...should that become a requirement."⁹⁷² Following conversations with Jardine, the RCMP learned that he intended to disclose the additional materials to the defence on the following day, and advised CSIS verbally when the package was delivered.⁹⁷³ In the cover letter accompanying the copies of the statements sent to Jardine, the RCMP noted that the latest interviews had revealed that the document provided by CSIS with approximate erasure dates might be incorrect, since the CSIS monitors had indicated that, rather than waiting 10 days after the tapes had been processed, they generally erased them 10 days after the recording date.⁹⁷⁴

Having received the information contained in the latest witness statements, and all the other information he obtained from CSIS, Jardine was asked at the Inquiry whether he was able to conclude on that basis that all the Parmar Tapes had been listened to prior to being erased. His answer was: "I don't know." Jardine explained that until the very end of the proceedings, there was always information outstanding that he thought CSIS could provide and did not provide.⁹⁷⁵ He testified:

MR. JARDINE: Sir, that continued right to the close of the Crown's case. We still did not know exactly what evidence would be tendered from the Canadian Security Intelligence Service until the evidence was tendered at trial.⁹⁷⁶

On February 15, 1991, CSIS advised the RCMP that it had no objection to the disclosure of the most recent CSIS witness statements to Reyat's counsel.⁹⁷⁷ The

969 Exhibit P-101 CAF0244.

970 Exhibit P-101 CAF0246, pp. 1-2.

971 Exhibit P-101 CAF0255, p. 8.

972 Exhibit P-101 CAF0249.

973 Exhibit P-101 CAF0248, p. 1.

974 Exhibit P-101 CAF0250, p. 2.

975 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5742, 5763.

976 Testimony of James Jardine, vol. 47, September 18, 2007, p. 5742.

977 Exhibit P-101 CAF0251.

18 statements were disclosed to the defence on the same day.⁹⁷⁸ The Crown made a decision not to call any of the CSIS witnesses, but to let the defence call the witnesses and to cross-examine them.⁹⁷⁹ The defence conducted its own interviews with some of the CSIS witnesses and advised Jardine that the attack would be based on the allegation that the tapes were erased in bad faith by CSIS and that they might have contained evidence that might have assisted the defence.⁹⁸⁰ On February 26th, the Court ordered CSIS to disclose the Parmar warrant to defence counsel, who then learned for the first time that the Parmar intercept continued until 1990, whereas the material previously disclosed only extended to July 1985.⁹⁸¹

On March 5, 1991, after only a few of the CSIS witnesses had testified, counsel for Reyat read into the record a 30-paragraph document containing the admissions of facts on which he would rely for his abuse of process motion. He then indicated that he would not be presenting other evidence.⁹⁸² As the Crown did not present evidence,⁹⁸³ most of the CSIS witnesses who had provided statements did not testify.⁹⁸⁴ The admissions of fact recounted the extent of the disclosure received by the defence throughout the proceedings, documented the disclosure requests and the responses received and insisted on the fact that counsel had only learned recently about the ongoing interception of Parmar's communications by CSIS during the last six years.⁹⁸⁵

Ultimately, Justice Paris accepted the Crown's arguments and dismissed the defence motion for a stay of proceedings.⁹⁸⁶ He stated:

As to the erasure of the tapes, it is clear that that occurred strictly as a result of the then-existing administrative routine. There was obviously no question of improper motive in that regard.⁹⁸⁷

On May 11, 1991, Justice Paris found Inderjit Singh Reyat guilty of manslaughter for his role in assembling the bomb which exploded in Narita.⁹⁸⁸

Conclusion

In the end, the Reyat prosecution was successful. After much correspondence, many requests leading to unresponsive answers, followed by further requests,

⁹⁷⁸ Exhibit P-101 CAF0251, CAF0252.

⁹⁷⁹ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5757; Exhibit P-101 CAF0248, p. 1.

⁹⁸⁰ Exhibit P-101 CAF0253.

⁹⁸¹ Exhibit P-101 CAF0255.

⁹⁸² Exhibit P-101 CAF0255, p. 1.

⁹⁸³ Exhibit P-101 CAF0255, p. 1.

⁹⁸⁴ See Exhibit P-101 CAF0255, p. 12, CAF0256.

⁹⁸⁵ Exhibit P-101 CAF0255.

⁹⁸⁶ Exhibit P-101 CAA0808; See also Testimony of James Jardine, vol. 47, September 18, 2007, p. 5760.

⁹⁸⁷ Exhibit P-101 CAA0808, p. 2.

⁹⁸⁸ *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.).

heated discussions and high-level meetings, CSIS ended up providing most of the information sought by Jardine. In fact, CSIS would later point out that none of the “doom and gloom” predictions made by the BC Crown came to pass and that Reyat’s conviction was a sign of success in the RCMP/CSIS relationship. Grierson testified that CSIS declassified material and provided the defence with “...five boxes of highly sensitive reports.” He indicated that when the problem of full disclosure came to a head, “...CSIS disclosed information to the provincial Crown, and indirectly to the RCMP, of issues that originally we wanted to protect.”⁹⁸⁹ This was largely driven by the particular circumstances of the Air India case, which was viewed as a “special case” by CSIS.⁹⁹⁰ However, despite the exceptional circumstances of the case, it took years of efforts and debates to achieve the “success.”

When asked about comments he made that the CSIS cooperation and disclosure in the Reyat case was unprecedented, Jardine stated:

MR. JARDINE: Mr. Brucker, timing is everything. The unprecedented disclosure took place in 1991, sir.

MR. BRUCKER: All right.

MR. JARDINE: It did not take place in 1985.⁹⁹¹

Delay in obtaining necessary information, whether for the purpose of introducing it into evidence as part of the Crown’s case or for the purpose of making full disclosure to the defence pursuant to constitutional obligations, can have an impact on the prosecution. As Jardine explained, “...time doesn’t usually help prosecutors,” because “...it doesn’t help the witnesses.” The less fresh the events are in the witnesses’ minds, the more difficult the prosecution will be.⁹⁹² Obtaining information in a timely manner is important for the prosecution, and it also prevents the possibility of defence attacks on the grounds of untimely disclosure.

The difficulties experienced by Jardine in obtaining disclosure of CSIS information illustrate the difficulties that can be encountered in converting intelligence into evidence. Some of those difficulties are inherent in the nature of the functions of intelligence agencies, others are not. In this case, CSIS’s initial reluctance to disclose materials and to provide information and complete explanations was not on the whole a necessary consequence of the nature of the Service’s work.

The fact that by 1991, CSIS ended up providing most of the information that had been requested since 1986 shows that the material was in fact capable of being provided without jeopardizing national security. The reasons why it took so long

⁹⁸⁹ Testimony of Mervin Grierson, vol. 75, November 14, 2007, pp. 9480-9481.

⁹⁹⁰ See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

⁹⁹¹ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5805.

⁹⁹² Testimony of James Jardine, vol. 47, September 18, 2007, p. 5768.

and required such extraordinary efforts are to be found, in part, in what appears to be a “turf war.” Misunderstandings and a lack of communication were often observed – for example, when CSIS and the RCMP argued about whether the initial 1986 request had, by agreement, been put on hold for a year and a half. Also, because of the lack of a uniform understanding of the tape erasure policy at CSIS and because of the inconsistency in its application, CSIS had difficulty providing explanations about its own practices and needed to conduct an internal investigation in order to understand how the events leading up to the erasure of the Parmar Tapes had unfolded.⁹⁹³ More fundamentally, CSIS’s understanding of its mandate and of the requirements of criminal prosecutions, coupled with an attitude of defensiveness in the face of criticism directed at the tape erasure episode, contributed to the delay and the difficulty. CSIS’s tendency to provide narrow answers, and to advance broad National Security Confidentiality (NSC) claims initially, was also evident throughout its dealings with Jardine and contributed to the dysfunction.

Warren admitted in his testimony that relations with the BC Crown could have been improved had CSIS had clearer policies to deal with the handling of intelligence relevant to criminal matters, and better training of the operational personnel on the policies that did exist.⁹⁹⁴ He felt that CSIS personnel at the time lacked rigour in the examination of intelligence, and that this led to the inconsistent responses to Jardine’s requests. Warren stated that more face-to-face discussions might have eased the process and reduced the amount of time it took to come to an agreement. However, he did note one remaining and pervasive issue, “...how one squares the circle between evidence and intelligence.” Warren felt that this was an intractable sort of problem that would continue to arise.

CSIS appeared to perceive its role and mandate as one that prevented it from providing information for use in a criminal prosecution; this was a view to which CSIS adhered rigidly in the early years. Jardine challenged this view. He noted that “...there is little value in gathering intelligence for intelligence purposes.”⁹⁹⁵ Since the purpose of CSIS information is to inform government so that action can be taken,⁹⁹⁶ Jardine felt that in the case of criminal offences related to the security of the country, it was not contrary to CSIS’s mandate to pass on its information to police in a form that would be useable for purposes of prosecution:

The preservation and security of the “evidence” for potential court purposes must also be considered. Does this change the “mandate” of the Service? I submit it does not. The very offences outlined in the legislation are of such a serious nature they demonstrate the requirement for such an approach. The fact the legislation provides the Service may call in the RCMP

⁹⁹³ See Section 4.3.1 (Post-bombing), Tape Erasure.

⁹⁹⁴ Testimony of James Warren, vol. 48, September 19, 2007, p. 5903.

⁹⁹⁵ Exhibit P-101 CAA0836, p. 38.

⁹⁹⁶ Exhibit P-101 CAA0836, p. 38.

for the purpose of investigative assistance does not diminish the need that the Service pass the information in a useable form to the “police” investigative arm. If this was not the intent at the time the civilian intelligence service was created now is the time to change the perspective of those who have the power to enable such policy changes.⁹⁹⁷ [Emphasis in original]

For Jardine, the most important issue in the discussions relating to the availability of CSIS information for the Reyat prosecution was that “...there was no understanding at the beginning and there was little understanding at the end” by CSIS of the requirements of the prosecution or of the legal and ethical obligations of the Crown prosecutor.⁹⁹⁸ CSIS often challenged the Crown’s assessment of the relevance of its information for the prosecution, and initially failed to understand that the information might be required for disclosure purposes, even if the Crown did not intend to tender it as evidence.

In the initial stages, CSIS appeared reluctant to provide information, unless it was convinced of the necessity of the information for the criminal process. Without sufficient information about the legal issues involved, CSIS had difficulty making the determination of what might be necessary, and constantly requested specifics about the prosecution’s intentions. As Jardine later put it in his 1991 presentation:

It is my view that CSIS should consider the development of the Service to include the capacity to pass information, intelligence and evidence to the appropriate police agency in a form which will allow the police agency to use the information in evidence gathering for prosecution. To do that the Service must come to grips with the thorny issues created by the disclosure requirements for full answer and defence in criminal prosecutions.⁹⁹⁹ [Emphasis added]

Jardine testified that, throughout the course of his efforts to obtain information from CSIS, the agency did not generally volunteer any information, and only responded to precise questions. The Honourable Ronald (“Ron”) Atkey, the former chair of the Security Intelligence Review Committee (SIRC) which had the mandate to report about CSIS’s activities, also noticed this same tendency, indicating that “...CSIS were very good at responding to your questions but only to your questions.”¹⁰⁰⁰ Jardine understood some of the CSIS concerns behind this attitude, but felt that the prosecution’s need for information became more urgent as time passed:

⁹⁹⁷ Exhibit P-101 CAA0836, p. 38.

⁹⁹⁸ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5772.

⁹⁹⁹ Exhibit P-101 CAA0836, p. 38.

¹⁰⁰⁰ Testimony of Ronald Atkey, vol. 49, September 20, 2007, p. 5969.

MR. FREIMAN: Was it your experience throughout your dealings with CSIS that questions were answered in a full, broad way or that they were answered only to the extent of the precise question and the precise words?

MR. JARDINE: I believe that the persons trying to answer the questions that were brought to my attention during the course of all of this period of time were providing information pursuant to their policy and pursuant to their interpretation of their Act and that the concerns that they had with respect to the privacy interests of the targets, at least in their minds, precluded them from being open. So it was not open to them, at least in my understanding, to be voluntarily forthcoming. So I understood that reticence and from whence it came and I was sensitive to that – at least I tried to be sensitive to that – during the course of 1986-1987 and certainly during 1988. It became more urgent as we got to the abuse of process argument in 1990 and 1991.¹⁰⁰¹

The initial objections to disclosure and the NSC privilege claims were often very broad, but these positions were regularly revised during the negotiations. In the end, most of the requested information was released with few NSC claims, making it clear that the initial positions adopted by the Service were not necessarily based on an accurate evaluation of any harm to national security that might have resulted from disclosure. At the very least, the CSIS perception and attitude in this respect evolved, albeit slowly. In some respects, this Commission has had a similar experience in dealing with the Attorney General of Canada's NSC claims on behalf of all government agencies involved.¹⁰⁰² Apparently, it remains difficult for CSIS and other government agencies to make information public, even when on closer examination, no risk to national security is found to exist that might justify withholding the information. The reflex of making broad NSC claims as an opening position seems slow to subside, even after the lessons that should have been learned from the Reyat and the Malik/Bagri prosecutions.

The fact that the information being sought by Jardine dealt with tape erasure, an issue that had attracted significant public criticism and carried with it the potential for civil liability for CSIS, did not do anything to simplify matters. The Service was naturally protective of its own policy choices and practices, and this prompted it initially to provide "corporate position" explanations in response to Jardine's inquiries rather than the detailed facts he needed for court preparation purposes – facts that were eventually provided. Though the Government did make a policy choice to prioritize the Reyat prosecution over its own litigation interests, in some instances, the Service was openly concerned about the impact of its discussions with the AG BC and the RCMP on its position in the civil litigation, notably in its request that no reference be made to the "destruction of evidence" in the correspondence.

¹⁰⁰¹ Testimony of James Jardine, vol. 47, September 18, 2007, p. 5713.

¹⁰⁰² See Volume One of this Report: Chapter II, The Inquiry Process.

Jardine undoubtedly faced what he perceived to be serious challenges in the Reyat prosecution as a result of the CSIS tape erasure. Regardless of one's view on the legal significance of the tape erasure issue, it is difficult to understand how it could have taken years for CSIS simply to provide the information and documents that still existed, and to account for and explain its own procedures. This delay and reluctance created unnecessary difficulty and led to a significant expenditure of resources in the preparation for the Reyat prosecution. It also provided a foretaste of the tape erasure issues that would bedevil the Bagri/Malik prosecution.

4.4.2 The Air India Trial

Soon after the RCMP Air India Task Force was renewed, in late 1995, a decision was made to "...proceed to prosecution" and "...leave the matter to the courts and a jury," whether or not "fresh evidence" was uncovered.¹⁰⁰³ By November 1996, the RCMP had begun to have meetings with the BC Crown office. A prosecution team was assembled and a review of the file began for purposes of charge approval.¹⁰⁰⁴

Ripudaman Singh Malik and Ajaib Singh Bagri were charged in connection with the Air India and Narita bombings on October 27, 2000 and Inderjit Singh Reyat was subsequently added as a defendant in June 2001. The proceedings lasted almost five years in total. Reyat pleaded guilty to the manslaughter of the Air India Flight 182 victims in 2003, and Malik and Bagri were both acquitted in 2005.¹⁰⁰⁵ CSIS information was introduced in evidence during the trial and present and former CSIS investigators were called as witnesses.

Cooperation with CSIS in Trial Preparation

Extensive cooperation with CSIS was necessary in preparation for the trial. It was clear early on that CSIS information would be required in the process, and that much more information would need to be disclosed than even Jim Jardine had envisioned during the Reyat trial in the Narita case, due to the changes in the law following the landmark Supreme Court of Canada decision concerning disclosure in *R. v. Stinchcombe*.¹⁰⁰⁶ According to Deputy Commissioner Gary Bass, who was in charge of the renewed RCMP Task Force, the extensive disclosure obligations meant that a large amount of embarrassing information would be disclosed, including "...thousands of pages of memos and telexes wherein our Force and CSIS argue over the release of information between 1985 and 1990."¹⁰⁰⁷

Bill Turner was a member of the CSIS BC Region who had extensive experience in the Sikh extremism investigation as a result of his previous positions as head of the Sikh desk in both the BC Region and at HQ. In 1997, he became the CSIS

¹⁰⁰³ Exhibit P-101 CAA0958, p. 2; Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7815-7816.

¹⁰⁰⁴ See Chapter V (Post-bombing), The Overall Government Response to the Air India Bombing.

¹⁰⁰⁵ *R. v. Malik and Bagri*, 2005 BCSC 350.

¹⁰⁰⁶ [1991] 3 S.C.R. 326.

¹⁰⁰⁷ Exhibit P-101 CAA0932, p. 4.

representative at the Air India Task Force and began to work with the RCMP and Crown counsel in advance of the trial. He became a "...fully integrated member of the Task Force."¹⁰⁰⁸

On January 20, 1997, there was a significant meeting of the Crown, the RCMP and CSIS. Turner was in attendance. The meeting focused on a review of the case as it was understood at that point. The view was expressed that there was a very strong case against a few individuals, including Ajaib Singh Bagri, Inderjit Singh Reyat, Hardial Singh Johal, Ripudaman Singh Malik, Surjan Singh Gill and the deceased Parmar.¹⁰⁰⁹ There was also discussion of potential use of CSIS information at trial. Other matters were discussed, including the need for a "...good clean source who is willing to turn witness," critical gaps in the surveillance of Parmar, the validity of the Parmar Warrants, and destruction/erasure of the Parmar intercept tapes,¹⁰¹⁰ as well as the difficulty in obtaining statements from CSIS employees whose work was covert. This meeting appears to have marked a turning point. Turner stated that, from then on, every issue was discussed jointly amongst CSIS, the RCMP and the Crown. According to Turner, this marked an evolution in the CSIS/RCMP relationship. It also marked a change in the relationship between CSIS and the Crown. Unlike the situation which had prevailed when Jardine was preparing for the Reyat trial, when communications were always channelled via the RCMP, there was now frequent direct contact between CSIS and Crown counsel. By 1999, Turner had moved into the Crown's office for the duration of the trial to be of greater assistance.¹⁰¹¹

Defence Undertaking

A key mechanism employed in the Air India trial to facilitate the disclosure of sensitive information was a defence undertaking. This mechanism allowed the disclosure of CSIS material on the basis that defence counsel undertook not to share that information with their clients.¹⁰¹² This unusual arrangement was the result of an attempt to resolve all disclosure issues prior to the start of the trial in order to complete the trial with as little delay as possible and without the interruption that would have resulted from CSIS resorting to objections to disclosure under the *Canada Evidence Act* which would have had to have been resolved in the Federal Court.¹⁰¹³

Turner explained how the decision to adopt the undertaking approach was made.¹⁰¹⁴ He indicated that the defence announced early on that one of the alternate theories they planned to present on behalf of the accused was that it was the Government of India who was responsible for the bombing. In a February 1996 memorandum that was disclosed to the defence, Bass noted that

¹⁰⁰⁸ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8269, 8271.

¹⁰⁰⁹ Exhibit P-101 CAB0913, p. 4.

¹⁰¹⁰ Exhibit P-101 CAB0913, p. 5.

¹⁰¹¹ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8270-8271, 8315-8317.

¹⁰¹² Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8323.

¹⁰¹³ For more on the use of the undertaking see Volume Three of this Report: The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions.

¹⁰¹⁴ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8323.

“...some serious concerns regarding possible Indian Government involvement” remained, that this possibility had not been investigated in depth by either CSIS or the RCMP, and that this could open the door for the defence to explore the knowledge of the Canadian agencies about this matter.¹⁰¹⁵ When the defence asked for disclosure of all information related to “...certain Government of India individuals prior to the bombing,” CSIS took the position that providing the material would endanger national security. Since neither side would budge, Turner explained that there was a risk that the proceedings would be stayed due to non-disclosure “...of what they said was clearly relevant material.”¹⁰¹⁶

Instead of litigating the stay of proceedings issue, all parties agreed to a process that allowed defence counsel to view the material, with the vetting or redactions lifted in order that they could satisfy themselves that the information was not relevant and not needed as part of the defence at trial. The disclosure was made on the condition that counsel would not reveal what they saw to anyone, including their own clients. The accused persons agreed to this condition.

As a result of the undertaking, though there was other litigation relating to CSIS information and methods, there was no litigation during the Air India trial relating to objections to disclosure under the *Canada Evidence Act* and no need to interrupt the trial to take such issues to the Federal Court. Turner testified that this was a “band-aid” fix, and that it worked due to “...very capable, competent defense counsel who went along with it.” He cautioned that he was quite sure that this arrangement would not work in every instance.¹⁰¹⁷

Indivisibility of the Crown and the Kelleher Directive

At various times during the trial, Bagri argued that his *Charter* rights had been violated as a result of a failure by CSIS to preserve and disclose certain materials.¹⁰¹⁸ Based on *Stinchcombe*,¹⁰¹⁹ the general rule is that, in any criminal case, the defence is entitled to disclosure of any relevant materials in the possession of the Crown or the police. The Crown is therefore obliged to disclose anything that it has, or that the police have, that is not clearly irrelevant. Where materials have been destroyed, a legal test has been devised to determine when their unavailability constitutes a violation of disclosure obligations.¹⁰²⁰ The nature of the disclosure obligations, and of the legal test to be applied in case of destruction, can vary significantly if the material is in the possession of a third party rather than the Crown and the police.¹⁰²¹ In the Air India trial, this raised the issue of whether CSIS was to be considered an “indivisible” part of the Crown for purposes of disclosure obligations, or whether it was, for these purposes, simply a third party.

¹⁰¹⁵ Exhibit P-101 CAA0932, p. 4.

¹⁰¹⁶ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8323-8324.

¹⁰¹⁷ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8324.

¹⁰¹⁸ See *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 and *R. v. Malik and Bagri*, 2004 BCSC 554.

¹⁰¹⁹ [1991] 3 S.C.R. 326.

¹⁰²⁰ *R. v. La*, [1997] 2 S.C.R. 680.

¹⁰²¹ *R. v. O'Connor*, [1995] 4 S.C.R. 411.

Initially, the Crown took the position that CSIS was to be viewed as a separate entity, but ultimately conceded that it was subject to the full *Stinchcombe* disclosure obligations in the circumstances of the case because of an “access agreement” between CSIS and the RCMP.¹⁰²²

In 1987, the Solicitor General, James Kelleher, issued what has become known as “the Kelleher Directive,” which ordered the full cooperation of CSIS with the RCMP in the “preparation of evidence” for an eventual prosecution in the Air India case.¹⁰²³ CSIS Director Ted Finn’s response stated:

I have directed that the full cooperation of the Service be placed at the disposal of the RCMP in this regard and that all information, that may possibly be relevant, is made available to the RCMP to assist in its investigation.¹⁰²⁴

Following the Crown’s concession, despite the fact that the Crown later attempted to change its position, Justice Josephson ruled that the exchange of correspondence between CSIS and the Solicitor General crystallized an agreement between the agencies which gave the RCMP “...unfettered access to all relevant information in the files of CSIS.”¹⁰²⁵

Having found that the Crown was indivisible for the purposes of the Air India case, Justice Josephson ruled that the destruction of CSIS materials would be judged by the standards applicable to the destruction of materials in the possession of the police. He also added in passing that “...all remaining information in the possession of CSIS is subject to disclosure by the Crown in accordance with the standards set out in *R. v. Stinchcombe*...”¹⁰²⁶ This meant that, even if it had been collected for a different purpose, everything in the possession of CSIS that was related to the Air India bombing was part of the Crown’s material for the purposes of the trial and needed to be disclosed to the defence.¹⁰²⁷

Turner testified that the implications of the decision on indivisibility were “devastating” for CSIS and resulted in a massive undertaking. CSIS “...had to start from square one now” to try to document what had and had not been disclosed over the past 17 years. In order to accomplish this, CSIS suspended its training class and put together a team of 25 to 30 people working full-time on the disclosure package. Turner stated that it was a “...far from perfect process,” due to the fact that new recruits with no intelligence experience were making the determination about what documents would be passed. It was a process that Turner admitted led to mistakes in the vetting of information for National Security Confidentiality concerns.¹⁰²⁸

¹⁰²² *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 at para. 10.

¹⁰²³ See Exhibit P-101 CAD0095 and Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

¹⁰²⁴ Exhibit P-101 CAD0094, p. 3.

¹⁰²⁵ See *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 at para. 10 and *R. v. Malik and Bagri*, 2004 BCSC 554 at paras. 4, 16-17.

¹⁰²⁶ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864 at para. 14.

¹⁰²⁷ Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8321.

¹⁰²⁸ Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8321-8322.

Parmar Tapes Revisited

The issue of the erasure of the Parmar Tapes was revisited during the Air India trial. The Crown decided that the intercept tapes that remained in existence, as well as the intercept logs for the tapes that were erased, could not be used as evidence and therefore did not attempt to introduce them to support the prosecution.¹⁰²⁹ Meanwhile, the defence brought a motion arguing that the destruction of the Parmar Tapes violated Bagri's Section 7 *Charter* right to disclosure. In contrast to Justice Paris's finding in the Reyat trial, Justice Josephson ruled, following a concession by the Crown, that the erasures amounted to "unacceptable negligence."¹⁰³⁰ However, no *Charter* remedy was awarded since both accused were acquitted of all charges.¹⁰³¹

Destruction of Operational Notes

During the trial, Bagri also brought a motion arguing that the destruction by CSIS of the notes and recordings for interviews with Crown witness Ms. E violated his *Charter* rights.¹⁰³² Absent any concessions from the Crown this time, Justice Josephson ruled that CSIS's behaviour did amount to unacceptable negligence. He accepted the evidence showing that the CSIS investigator involved, William Dean ("Willie") Laurie, was simply following his normal practice, but found that "CSIS appears to have failed at an institutional level to ensure that the earlier errors in the destruction of the Parmar tapes were not repeated."¹⁰³³ He noted that a "...procedure should have been in place" at CSIS to preserve "...this clearly relevant evidence for the criminal investigation."¹⁰³⁴

Challenge to the November 1985 Search Warrant

As had been the case in the earlier Narita trial, the evidence against Reyat in the Air India trial rested in large part on the items seized at his residence in November 1985, pursuant to the warrant then obtained by the RCMP. The application presented to obtain this warrant made reference to CSIS information, including the Duncan Blast surveillance and information from the Parmar intercept logs. In order to accommodate CSIS concerns, and at CSIS's request, the application did not name CSIS as a source of information and did not reveal the nature of the materials to which the RCMP had access.¹⁰³⁵ Instead, the Information to Obtain sworn in support of the warrant application referred to the source of the CSIS information as "...a source of known reliability, whose identity for security reasons I do not wish to reveal at this time."¹⁰³⁶

¹⁰²⁹ Exhibit P-101 CAA1086, p. 8; Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11214-11215.

¹⁰³⁰ *R. v. Malik, Bagri and Reyat*, 2002 BCSC 864.

¹⁰³¹ For detailed examination of this issue, 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, as well as Volume Three of this Report: The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions.

¹⁰³² See Section 1.3 (Post-bombing), Ms. E.

¹⁰³³ *R. v. Malik and Bagri*, 2004 BCSC 554 at paras. 19, 22.

¹⁰³⁴ *R. v. Malik and Bagri*, 2004 BCSC 554 at para. 21. See, generally, Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

¹⁰³⁵ Exhibit P-201, paras. 46, 48-49, 53; Exhibit P-101 CAA0836, p. 23.

¹⁰³⁶ Exhibit P-201, paras. 23, 46, 48, 53; Exhibit P-101 CAA0575(i), p. 6. See Section 4.4.1 (Post-bombing), The Reyat Trial and the BC Crown Prosecutor Perspective and Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

Before he pleaded guilty to reduced charges in February 2003, Reyat challenged the validity of the RCMP search warrant. In his December 2002 ruling on this motion, Justice Josephson found that the officer who swore the Information to Obtain did not deliberately mislead the Justice of the Peace who issued the warrant by concealing the identity of the source of the CSIS information. He concluded that the Information clearly indicated that the source was concealed for security reasons, allowing the issuing judge to inquire further if necessary, and that it distinguished the concealed source from other sources of information, such as human sources and RCMP wiretaps. Justice Josephson added that, if he was wrong on this point, he still would find that the use of this “deliberate deception” by the RCMP did not invalidate the warrant, since it was a condition imposed by CSIS in order to allow the Force to use its information. He noted that the RCMP was “...at the mercy of CSIS” and had little choice but to accept the condition. Justice Josephson indicated that he could not assess the reasonableness of CSIS’s insistence on concealing its involvement. He did add that, as the Information was sworn during the early years of CSIS’s existence, and since the Air India case was unique, the issue was both “unprecedented” and “unlikely to re-occur.”¹⁰³⁷

Though the November search warrant was held to be invalid for unrelated technical reasons, Justice Josephson held that the evidence found at Reyat’s house was admissible under the *Charter*.¹⁰³⁸

Conclusion

The Air India trial preparation marked a new era of greater cooperation between CSIS and the RCMP, though all issues were far from resolved.¹⁰³⁹ Most importantly, the cooperation between CSIS and the Crown improved significantly. Despite this cooperation, however, the use of CSIS information in the courtroom remained problematic. Numerous legal challenges resulted from CSIS’s involvement, many of which could not be successfully defended. It is only due to exceptional circumstances that a defence undertaking could be entered into and that this *ad hoc* solution could prevent the disclosure issues from disrupting the trial even further by requiring Federal Court litigation. Volume Three of this Report, *The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions*, discusses the underlying difficulties in using CSIS information in criminal prosecutions and proposes policy solutions for achieving longer-term resolution of some of the issues encountered in the Air India trial.

4.5 Recent Cooperation and Information-Sharing Mechanisms

The mechanisms recently devised for the exchange of certain types of information differ in some respects from the manner in which such information was shared in the past.

¹⁰³⁷ See *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at paras. 69-71.

¹⁰³⁸ See *R. v. Malik, Bagri and Reyat*, 2002 BCSC 1731 at paras. 81-96.

¹⁰³⁹ See Section 4.1 (Post-bombing), *Information Sharing and Cooperation in the Air India Investigation*.

CSIS appears to be showing a greater willingness to discuss some of its operations with the RCMP, whether or not information relevant to a criminal investigation has been uncovered. Meanwhile, the RCMP has apparently adopted the motto of “less is more” rather than attempting to obtain and use as much CSIS information as possible. Fearing unwanted evidentiary issues if it were to rely on CSIS information, the RCMP tries to make as little use as possible of such material. Once alerted to the existence of possibly relevant information uncovered or likely to be uncovered by CSIS, the RCMP will attempt to conduct its own investigation separately, relying as little as possible on the CSIS information.

The aim of the “less is more” approach is for both agencies to avoid having to deal with the implications of having to introduce CSIS information into evidence or of having to disclose it to the defence in a trial. The Commission has serious doubts about the effectiveness and utility of such a strategy.¹⁰⁴⁰

National Priorities

The national priorities for counterterrorism, counter-proliferation and counter-intelligence are set on a yearly basis by the Privy Council Office, with input from CSIS as well as from other departments such as Foreign Affairs and the RCMP. Priorities are first identified by the Government. CSIS, as well as other involved organizations, then advises the Government on the status of those threats and on other threats that it considers should be priorities. The Privy Council submits the priorities to Cabinet, to be reviewed by the Cabinet Committee which is chaired by the Prime Minister. When approved, the national priorities are then transferred back to CSIS through the Minister of Public Safety as direction from the Government. CSIS then sets its internal priorities at HQ based on that direction.¹⁰⁴¹

These national priorities are general in nature and assist in the allocation of resources. These may or may not be directly related to what the RCMP is investigating. Assistant Commissioner Mike McDonell, in charge of National Security Investigations at the RCMP, testified that, in a reversal of how the priorities used to be set, in recent years the RCMP has been taking its strategic priorities from CSIS.¹⁰⁴² Within these priorities, at the level of the investigation of specific groups and organizations, the RCMP becomes much more involved.¹⁰⁴³

New Structures

Integrated National Security Enforcement Teams

The Integrated National Security Enforcement Teams (INSETs) are RCMP units located in major centres throughout the country and charged with preventing

¹⁰⁴⁰ See Volume Three of this Report: The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions.

¹⁰⁴¹ Testimony of Luc Portelance, vol. 88, December 4, 2007, p. 11470.

¹⁰⁴² Testimony of Mike McDonell, vol. 95, December 13, 2007, p. 12628.

¹⁰⁴³ Testimony of Luc Portelance, vol. 88, December 4, 2007, p. 11472.

and disrupting national security offences in Canada.¹⁰⁴⁴ The INSETs were formally launched on April 1, 2002.¹⁰⁴⁵

The INSETs are made up of members seconded from different agencies, including federal partners such as the Canada Border Services Agency (CBSA) and CSIS, and provincial and municipal police services, such as Peel Regional Police Force, Toronto Police Services and the Vancouver Police Department. Lawyers from the Department of Justice as well as from the Provincial Attorney General's office are also involved in the INSETs.¹⁰⁴⁶

The INSETs remain RCMP units. They are subject to the RCMP chain of command for national security investigations, operate within the structure of the RCMP and are managed by RCMP officers. The members from other agencies who join an INSET are seconded to the Force.

The majority of the RCMP national security investigations are conducted out of INSETs in the major city regions of Vancouver, Toronto, Ottawa and Montreal. In other jurisdictions, National Security Criminal Investigations Section (NSCIS) units exist, but these units are not integrated with members of other agencies.¹⁰⁴⁷

Integrated Threat Assessment Centre

The Integrated Threat Assessment Centre (ITAC) was founded following the release of the National Security Policy by the Government in 2004. A Memorandum of Understanding signed between the National Security Advisor and CSIS sets out the ITAC operating structure and the agencies it can deal with. ITAC gains its authority from the *CSIS Act*.¹⁰⁴⁸

The role of the Integrated Threat Assessment Centre (ITAC) is to centralize security intelligence in the counterterrorism domain for the purposes of helping to "... prevent and reduce the effects of terrorist incidents on Canada and its people, both at home and abroad."¹⁰⁴⁹ ITAC is housed at CSIS, and incorporates members from participating departments including CSIS, CSE, CBSA, Foreign Affairs, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Transport Canada, Public Safety Canada, PCO and the RCMP. ITAC may also include members with "specialized knowledge" from other federal government departments as needed.¹⁰⁵⁰

1044 Online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/secur/insets-eisn-eng.htm>> (accessed February 11, 2009); Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10445.

1045 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10505.

1046 Online: Royal Canadian Mounted Police <<http://www.rcmp-grc.gc.ca/secur/insets-eisn-eng.htm>> (accessed February 11, 2009); Testimony of Jamie Jagoe, vol. 82, November 23, 2007, pp. 10445-10446.

1047 Testimony of Mike McDonnell, vol. 95, December 13, 2007, pp. 12622-12623.

1048 Testimony of Daniel Giasson, vol. 89, December 5, 2007, pp. 11751-11752.

1049 Online: Integrated Threat Assessment Centre <<http://www.itac-ciem.gc.ca/bt/rl-eng.asp>> (accessed February 11, 2009).

1050 Online: Integrated Threat Assessment Centre <<http://www.itac-ciem.gc.ca/bt/rl-eng.asp>> (accessed February 11, 2009); Testimony of Daniel Giasson, vol. 89, December 5, 2007, pp. 11752-11753.

ITAC's mandate is to "...produce comprehensive and authoritative threat assessments on terrorism mainly in Canada, and make those analyses and those assessments available to a wide range of leadership in the Government of Canada," as well as to international partners and first responders across Canada.¹⁰⁵¹ ITAC assessments are also important for the development of threat assessments for Canadian missions, interests, and persons abroad.

ITAC does not collect intelligence, but rather analyzes it. To that end, members of ITAC review databases and finished threat assessment products from partner agencies. ITAC applies its own analysis and produces its own threat assessment products for release to relevant government departments.¹⁰⁵²

ITAC today produces threat assessments relevant to the RCMP Protective Services unit in charge of the safety of diplomatic missions and VIP persons in Canada. This is a change from the time of the Air India bombing when these threat assessments were produced by the CSIS Threat Assessment Unit with the aid of the relevant desk at CSIS HQ.¹⁰⁵³ CSIS still maintains a threat assessment function, however its threat assessments are considered to be more long term, with ITAC producing the more immediate TAs.¹⁰⁵⁴

CSIS Intelligence Assessment Branch

The CSIS Intelligence Assessment Branch (IAB) conducts intelligence assessments regarding threats to Canada, such as terrorism. The IAB sees these intelligence assessments as distinct from threat assessments, emphasizing that the intelligence assessments are focused on "the bigger picture" of how threats are progressing or changing.¹⁰⁵⁵ It is a strategic view, and the IAB distributes its assessments on a need-to-know basis. On request, however, the IAB conducts threat and risk assessments pertaining to the entire range of threats to a particular government department, in conjunction with other agencies such as the RCMP and the CSE.¹⁰⁵⁶ ITAC and the IAB are housed in the same facilities and work closely together.

RCMP Role in Threat Assessments

National Security Threat Assessment Section

The RCMP National Security Threat Assessment Section (NSTAS), which is housed within the National Security Criminal Operations Support Branch, monitors events and prepares threat assessments pertaining to criminal threats that may impact Canada or Canadian interests abroad.¹⁰⁵⁷ The role of the Section is primarily to support protective operations, though on occasion

1051 Testimony of Daniel Giasson, vol. 89, December 5, 2007, p. 11750.

1052 Testimony of Daniel Giasson, vol. 89, December 5, 2007, p. 11758.

1053 Testimony of Kim Taylor, vol. 89, December 5, 2007, p. 11764.

1054 Testimony of Daniel Giasson, vol. 89, December 5, 2007, p. 11774.

1055 Testimony of Louise Doyon, vol. 96, February 14, 2008, pp. 12844-12855.

1056 Testimony of Louise Doyon, vol. 96, February 14, 2008, p. 12846.

1057 Exhibit P-101 CAA0335, p. 47.

it will provide assistance to national security investigations.¹⁰⁵⁸ The Section is roughly equivalent to the P Directorate unit at Headquarters in 1985, which was a non-operational unit that serviced the needs of its on-the-ground protective operations across Canada. The primary clients of NSTAS are the RCMP Protective Services and Major Events Branch, the Prime Minister's Protection Detail Branch, the International Operations Branch, and the Canadian Air Carrier Protective Program (CACPP).¹⁰⁵⁹ The assessments produced by the RCMP unit are described as being "tactical" in nature, meaning that they are oriented towards assessing specific intelligence regarding one event, person, or set of circumstances.¹⁰⁶⁰

At the outset of the threat assessment process, the NSTAS opens an occurrence file and tasks the divisional INSETs, or the NSCIS in jurisdictions where there is no INSET, with providing information in support of the threat assessment. The INSETs have their own dedicated threat assessment resources to accomplish these tasks for the NSTAS.¹⁰⁶¹ The NSTAS also contacts CSIS, and will approach other agencies such as DFAIT and Transport Canada, and request that they provide any relevant information they may possess.¹⁰⁶² The goal is to make use of an "all source" approach – that is, to look to all possible sources of information when assessing a threat.

The limited evidence before the Inquiry showed that the RCMP still faces some ongoing challenges in its Threat Assessment (TA) mandate, some reminiscent of the issues observed during the period preceding the Air India bombing.

The focus of the NSTAS TA process has been described as centered on bringing matters of potential criminality to the protective unit's attention.¹⁰⁶³ This orientation is reminiscent of the unsuccessful RCMP attempts at distinguishing "criminal intelligence" from "security intelligence" in the pre-bombing period, and is difficult to understand. The protective mandate of the RCMP requires that protectees be kept safe from harm – whether or not the harm arises from criminality. According to Supt. Reg Trudel, the OIC of National Security Criminal Operations Support Branch and head of the NSTAS, a NSTAS threat assessment, despite its criminal focus, may "on occasion" mention a large gathering or protest which could eventually have an impact on the safety and security of a protectee.¹⁰⁶⁴ Indeed, sensitive protective operations may require that measures be put in place in response to a potential threat, even if the threat falls far short of the threshold that might be required to launch a criminal investigation. Especially given the placement of NSTAS within the national security structure, it is unclear whether the focus on "criminality" affects the utility of RCMP threat assessments for protective operations.

1058 Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12801.

1059 Exhibit P-101 CAF0717, p. 7.

1060 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12836-12837.

1061 Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12820.

1062 See Exhibit P-101 CAF0717, p. 8, for a chart describing the threat assessment process.

1063 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12826-12827.

1064 Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12807.

Despite its stated focus on criminal aspects, the NSTAS is not viewed as a resource by the criminal operations side of the RCMP. When an INSET begins to look at a particular national security problem, it does not generally consult NSTAS to help assist it in understanding any particular phenomenon. In fact, national security operational units generally resort to the NSTAS in the course of an investigation only if a target in the investigation is also a protectee. In such a case, NSTAS will prepare a TA on that person and then provide it to the protective units to allow them to respond appropriately.¹⁰⁶⁵

NSTAS does not perform any ongoing analysis or monitoring of national security threats, and acts proactively only to the extent that a domestic or international incident may cause concern due to the potential impact on the protection of a protectee or embassy.¹⁰⁶⁶

Risk Assessment

The NSTAS members testified that they do not conduct risk assessments, but rather attempt to produce “criminal threat assessments.” The threat assessments generated specifically include the caveat that they are not intended to direct protective security operations or measures,¹⁰⁶⁷ making it clear that the operational side of RCMP protective policing is free to provide the level of protection it judges most appropriate, regardless of the threat level assigned in the assessment.¹⁰⁶⁸ NSTAS does no analysis of the vulnerability of the target or of the impact that a threat may have should it come to fruition.¹⁰⁶⁹

The current definitions of threat levels used by NSTAS contain terms that are subjective and incapable of definition – reminiscent of the use of the undefined and subjective term “specific threat” during the pre-bombing period. The highest level of threat is the “imminent threat,” which is defined as a threat in the “immediate future.” However, as explained by Trudel, to qualify under this description, a threat would generally be received “...sometime during the event or close to the event.... It’s again very subjective.”¹⁰⁷⁰ “Imminent” also requires that there be a “specific target.” Again, the level of particularity does not seem reducible to a definition. Of note is the fact that the June 1st Telex¹⁰⁷¹ would not have qualified as “specific,” and thus would not have been considered as an “imminent” threat under the definitions currently in use, as corroborated by the testimony of NSTAS members before the Commission.

In 1985, P Directorate did not incorporate risk analysis into its operations, and threat levels ended up taking on operational significance that was never intended. One would hope that if the June 1st Telex was received today in a context similar to that of 1985, it would receive a highly robust on-the-ground response, whether or not it met the definition of an “imminent threat,” given

¹⁰⁶⁵ Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12807-12808.

¹⁰⁶⁶ Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12807-12808.

¹⁰⁶⁷ Exhibit P-101 CAF0717, p. 13.

¹⁰⁶⁸ Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12832.

¹⁰⁶⁹ Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12814.

¹⁰⁷⁰ Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12817.

¹⁰⁷¹ See Section 1.2 (Pre-bombing), June 1st Telex.

the magnitude of the possible consequences. As NSTAS does not conduct a risk analysis that includes an assessment of vulnerabilities and a calibration of the protective resources in light of the potential harm, it must be assumed – and hoped – that this analysis occurs somewhere within protective operations.

Distribution of Threat Assessments and Sharing of Information

Unnecessary compartmentalization of threat information in the pre-bombing period limited the ability of participants at all levels of the RCMP's threat-response system to identify and report potentially relevant information. Some of these issues continue today. As a general rule, the NSTAS TAs are sent only to the requesting unit. The threat assessments are usually classified at the Secret level, but they may be classified as Top Secret if relying on sensitive foreign intelligence. The "need-to-know" principle is "...applied at all times" when distributing threat information. This applies even within the RCMP, as caveats restrict a TA's dissemination outside the section or unit to which it was provided without the consent of the originator.¹⁰⁷²

On a case-by-case basis, the NSTAS assesses whether the threat assessment should be shared with another unit or agency.¹⁰⁷³ NSTAS members explained in testimony that, as the information contained in the threat assessments is often sensitive and heavily caveated, it is necessary for them to approach the originating agencies for all information provided in order to obtain clearance to disseminate the assessments further.¹⁰⁷⁴ This can be a time-consuming exercise, though Trudel was confident that the process could be conducted very quickly if there was an urgent need.

Before the Air India bombing, the limited distribution of RCMP threat assessments deprived RCMP units and other agencies of information which could have assisted them in recognizing activities on the ground that were relevant to threat assessment. This limited distribution appears to continue today.

It is in the sole purview of the NSTAS to assess who may benefit from a threat assessment and to take steps proactively to distribute it. Given that the section does not generally perform any type of ongoing threat monitoring function and has limited access to, and understanding of, investigations outside, and perhaps even within, the national security context, its ability to make this determination may be limited. The only information automatically shared between HQ and the divisions is that which is uploaded to the Secure Police Reporting Operating System (SPROS), which is a computer system that allows updates to shared national security investigation files in real time.¹⁰⁷⁵ From a threat assessment perspective, the information in this Top Secret national security database arguably constitutes only one small part of the potentially relevant information.¹⁰⁷⁶

¹⁰⁷² Exhibit P-101 CAF0717, p. 13.

¹⁰⁷³ Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12809.

¹⁰⁷⁴ Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12831.

¹⁰⁷⁵ Testimony of Trevor Turner, vol. 82, November 23, 2007, pp. 10450-10451.

¹⁰⁷⁶ Testimony of Dan Mayer, vol. 96, February 14, 2008, p. 12830.

The NSTAS TAs are entered onto SPROS, but this database is not generally accessible to units outside of the national security investigative sphere.¹⁰⁷⁷ This means that the RCMP members in charge of implementing the protective measures necessary to meet a given threat do not have SPROS access, since it is limited to national security investigations.¹⁰⁷⁸

Members of local police forces have testified about the importance of their front-line officers being sensitive to the signs of potential threats.¹⁰⁷⁹ It is the INSETs that are generally left to provide the information that may foster that awareness.¹⁰⁸⁰ The INSETs are also relied on to provide training and other information necessary to non-INSET RCMP units and detachments to assist them in providing information to support threat assessments, with the expectation "...that if there is something that surfaces of national security interest, then it would be passed on to the INSET...."¹⁰⁸¹ There is no formal national structure for this relationship; each divisional INSET or NSCIS has its own method of working with, and educating, local forces in order to obtain relevant security information.

Given that NSTAS is entirely dependent on the INSETs and NSCIS to liaise with other divisional RCMP units and local forces, the quality of the relevant information gathered by these units will depend on how well they understand and are able to explain the scope of relevant information to these other units and agencies.

The NSTAS threat assessments are retained pursuant to guidelines.¹⁰⁸² In general, they are kept on file for 24 to 48 months after the conclusion of an event, after which they are purged.¹⁰⁸³ It is unclear to what extent the purging of past threat information could affect the ability of the NSTAS to properly situate and assess any new threat.

Overlapping Functions

As was the case in the pre-bombing period, there appears to be significant potential for overlap in the work of the players in the threat assessment field in the current regime.¹⁰⁸⁴

ITAC's role is to centralize security intelligence in the counterterrorism domain.¹⁰⁸⁵ Trudel distinguished the RCMP's product from the type of assessment that

1077 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12818-12819.

1078 Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12831.

1079 See for example Testimony of the Provincial and Municipal Police Forces Panel, vol. 83, November 26, 2007, pp. 10579-10652.

1080 Testimony of Dan Mayer, vol. 96, February 14, 2008, pp. 12822-12823.

1081 Testimony of Dan Mayer, vol. 96, February 14, 2008, pp. 12824-12825.

1082 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12818-12819.

1083 Testimony of Dan Mayer, vol. 96, February 14, 2008, p. 12829.

1084 See Section 3.4 (Pre-bombing), *Deficiencies in RCMP Threat Assessment Structure and Process*. As demonstrated in the pre-bombing period, overlap not only wastes resources but it can also create confusion and the risk that existing gaps may remain unaddressed.

1085 Online: Integrated Threat Assessment Centre <<http://www.itac-ciem.gc.ca/bt/rl-eng.asp>> (accessed February 11, 2009).

would be done by ITAC, stating that the RCMP product is primarily tactical, more focused on protective operations, and is distributed to protective personnel (rather than being geared towards the whole of government).¹⁰⁸⁶ However, members of ITAC create both “tactical” and “strategic” threat assessments. ITAC’s tactical threat assessments were described as being designed to provide “... forewarning of an incident or a threat to an event,” or in advance of a state visit. Moreover, ITAC members indicated that ITAC does “a lot” of threat assessment work directly in support of the RCMP’s protective operations.¹⁰⁸⁷

When ITAC is tasked directly by NSTAS in support of its threat assessments,¹⁰⁸⁸ the seconded RCMP member will consult RCMP databases, including SPROS, in support of ITAC’s assessment. It is therefore unclear what additional value the NSTAS itself adds to the process – other than perhaps adding its own assessment of the threat level to the information provided.

The potential overlap with ITAC’s products does not end with the “tactical” type of assessment. The RCMP also creates its own more “strategic” product – the “threat scan” – which is done in advance of a threat assessment. A threat scan is produced 28 days before an event and is a “...high-level scan of the environment to see if there’s any threats existing.” It is done using open-source material and basic database searches as well.¹⁰⁸⁹ This type of product would seem to duplicate precisely what ITAC produces.

Members of the NSTAS agreed in their testimony that there was “slight overlap” between the assessments produced by the agencies,¹⁰⁹⁰ but stated that the RCMP was in “constant” coordination with ITAC and CSIS during the production of a given threat assessment in order to minimize duplication and conflict.

Potential for overlap also exists between ITAC and the IAB. When asked to distinguish between the roles of ITAC and the IAB, Louise Doyon, the Director General of the IAB, testified that the difference was primarily one of expertise and breadth.¹⁰⁹¹ In contrast to the ITAC analysts, who are secondees, the IAB analysts are CSIS personnel with graduate degrees in relevant areas, who produce broader assessments with a longer-term view. The distinction appears to be one of degree rather than kind, however, since ITAC members also emphasized the strategic nature of its threat assessments and the fact that ITAC draws on a wide range of intelligence sources, including CSIS databases¹⁰⁹² and, through its RCMP members, SPROS.

The members of the ITAC Panel testified, however, that they believed the IAB was focused on threat and risk assessments beyond simply terrorism, and that

1086 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12812-12813.

1087 Testimony of Kim Taylor, vol. 89, December 5, 2007, pp. 11763-11765.

1088 Testimony of Kim Taylor, vol. 89, December 5, 2007, p. 11780.

1089 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12812-12813.

1090 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12813-12814.

1091 Testimony of Louise Doyon, vol. 96, February 14, 2008, p. 12850.

1092 Testimony of Daniel Giasson, vol. 89, December 5, 2007, p. 11755.

their strategic assessments were even longer-term than those of ITAC. The CSIS assessments were also provided in the context of advising government, whereas ITAC did not see itself as specifically providing advice but rather factual assessments of the threat. The features identified by ITAC as distinguishing its mandate from that of the IAB only serve to reinforce the similarities between the role of ITAC and the RCMP NSTAS. Ultimately, it was admitted that there is potential for overlap and duplication between ITAC and the IAB. ITAC members testified that communication between the agencies is intended to minimize this phenomenon.¹⁰⁹³

What is clear from all of this is that while the agencies often distinguish their mandates from one another using the terms “tactical” and “strategic,” these are not sufficiently precise markers to delineate their respective responsibilities, given the ambiguity in the meaning of the terms.

Protection of Critical Infrastructure

In 1985, the threat-response system was set up to fight hijacking, and had not yet been adjusted to detect and prevent the phenomenon that was known would increasingly pose the greater danger to civil aviation: sabotage. Today, the vulnerability of critical infrastructure (such as the electrical grid, nuclear power plants, telecommunications networks, the financial system, and municipal water systems) to sabotage, terrorist attacks, or “cyber attacks” is well understood, and has been identified as a priority in Canada’s National Security Policy.¹⁰⁹⁴ Professor Martin Rudner referred to this critical infrastructure as “...the things upon which we live or we die.”¹⁰⁹⁵ Rudner’s opinion was that Canada’s critical infrastructure was highly vulnerable, and that protective efforts were moving much too slowly.¹⁰⁹⁶

Most critical infrastructure is owned by the private sector or by different levels of government, and much of it is connected to international networks. Such infrastructure systems are generally large and decentralized, and are therefore difficult to protect. As a result, critical infrastructure components pose tempting targets for terrorist attacks.

Canada’s threat assessment capacity with regard to critical infrastructure is not necessarily ready to meet these daunting challenges. The RCMP Critical Infrastructure Criminal Intelligence group is a relatively new group; its focus is currently limited to rail and urban transit, and, even then, only in the form of pilot projects being rolled out in “...certain cities of our country.” ITAC, meanwhile, is under-resourced for the task at hand. While the intention of the RCMP Critical Infrastructure Criminal Intelligence group is to work with public and private partners across Canada to exchange information about threats, there will be

1093 Testimony of Daniel Giasson, vol. 89, December 5, 2007, p. 11776.

1094 Exhibit P-101 CAF0539, pp. 18, 35-36.

1095 Testimony of Martin Rudner, vol. 92, December 10, 2007, p. 12278.

1096 Testimony of Martin Rudner, vol. 92, December 10, 2007, p. 12278.

a need for MOUs and a secure information-sharing structure before this can be implemented.¹⁰⁹⁷ Security clearance issues pose obstacles in working with parties outside of the RCMP, particularly in the private sector, although the RCMP has worked to provide security clearances to a number of officials within these companies to permit the exchange of information where appropriate.¹⁰⁹⁸ The fact that as of the date of the panel's testimony, the RCMP had yet to roll out its pilot project or to execute MOUs in this area,¹⁰⁹⁹ raises questions about the preparedness of the RCMP, and therefore of Canada, to deal with the current threat to critical infrastructure.

MOU Negotiations and the 2006 RCMP/CSIS MOU

Following the 1999 RCMP National Security Offences Review report, which noted that many of the problems between CSIS and the RCMP resulted from the fact that the MOU provisions were not widely known and were not being applied, the agencies embarked on negotiations to modify the MOU.¹¹⁰⁰ Issues relating to the disclosure of CSIS information in judicial proceedings and the objections that could be made, in particular, were discussed.¹¹⁰¹ Despite the earlier belief that only minor amendments to the 1989 MOU would be necessary to make it current, the review of the MOU soon encountered problems. In one CSIS memo, written in late September 1999, the Head of CT Litigation discussed the issue of the "...general misunderstanding of how, or even if, intelligence can be used by the RCMP." CSIS felt that the RCMP was misinterpreting the *Stinchcombe* decision rendered by the Supreme Court of Canada, which first imposed the obligation upon the Crown and police to disclose materials to the defence. CSIS believed that this misinterpretation could have an impact on the negotiations between the agencies for new MOU provisions. The CT Litigation Head concluded that, given the current state of legal matters related to disclosure, "...extreme care and attention" needed to be paid to the redrafting of the RCMP/CSIS MOU, and that "...it should probably not be attempted without extensive legal counseling."¹¹⁰²

Negotiations about control of CSIS information once disclosed to the RCMP¹¹⁰³ seemed to have been resolved by late November 2000, when a draft of the new RCMP/CSIS MOU was produced.¹¹⁰⁴ For unknown reasons, the draft was not approved. After a pause of two more years, the revision of the MOU process began again in 2002. At that time the RCMP reviewed the 2000 proposal and noted the areas in which the proposal was outdated. A new 2002 draft was tabled, but again the negotiations were not successful and the 1989 MOU remained in effect.¹¹⁰⁵

1097 Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12815.

1098 Testimony of Reg Trudel, vol. 96, February 14, 2008, p. 12827.

1099 Testimony of Reg Trudel, vol. 96, February 14, 2008, pp. 12827-12829.

1100 See Section 4.0 (Post-bombing), *The Evolution of the CSIS/RCMP Memoranda of Understanding*.

1101 Exhibit P-101 CAF0281.

1102 Exhibit P-101 CAA0973, pp. 2-3.

1103 Exhibit P-101 CAF0313, p. 2.

1104 Exhibit P-101 CAA0982.

1105 Exhibit P-101 CAA0985, pp. 1, 3-9.

After the Honourable Bob Rae was asked to conduct a review of the Air India file to determine whether a public inquiry was merited, RCMP Commissioner Giuliano Zaccardelli and CSIS Director Jim Judd began a “modernization” process to address ongoing issues in the RCMP/CSIS relationship.¹¹⁰⁶ At a meeting on October 17, 2005, senior members of both organizations met to discuss a number of issues, including the MOU. The members agreed that the 1989 MOU was out of date and inaccurate. Discussion ensued as to whether a new MOU was necessary, “...as really the ideal situation is about changing behaviour versus the creation of a legal document,” but consensus was reached to proceed with a new MOU anyway.¹¹⁰⁷ Later, Zaccardelli and Judd wrote to Rae to inform him that work on a renewed MOU had begun, with the objective of creating a document that would “...refine the existing framework for sharing, handling and use of information and intelligence, and for the provision of operational support between the two agencies.”¹¹⁰⁸

On July 2, 2006, Judd wrote to the Minister of Public Safety, the Honourable Stockwell Day, asking for approval of the new MOU. According to Judd, the MOU “...reflects the reinvigorated structures and mechanisms established by CSIS and the RCMP for the purpose of cooperation and consultation between the two organizations,” though it was noted that the principles guiding cooperation between CSIS and the RCMP remained unchanged.¹¹⁰⁹ The new MOU was signed on September 12, 2006.¹¹¹⁰

The 2006 MOU contained some provisions about information sharing that were similar in substance to the ones found in the previous MOU. Again, the word “shall,” which some thought would impose a positive obligation on CSIS to share information with the RCMP (even though the *CSIS Act* gave CSIS discretion in the matter), was not used.¹¹¹¹ Instead, the new MOU expressly recognized the CSIS discretion.¹¹¹²

The new MOU specifically provided that CSIS would advise the RCMP in cases where it became aware “...that its investigative activities may adversely affect an RCMP investigation.” A high-level committee in charge of managing such conflicts and resolving operational issues was established. The provisions governing the Liaison Officers Program that were found in the previous MOU were replaced with provisions dealing with secondment programs.¹¹¹³

According to Professor Wesley Wark, the result of the negotiations between the agencies (the 2006 MOU) was a “...fairly radical departure, in terms of how they expressed the nature of the CSIS/RCMP relationship.” Notably, the comments on the distinctiveness of the mandates of CSIS and the RCMP, and “...the old

1106 See Chapter V (Post-bombing), The Overall Government Response to the Air India Bombing.

1107 Exhibit P-101 CAA1043(i), p. 3.

1108 Exhibit P-101 CAA1110, p. 2.

1109 Exhibit P-101 CAA0152, p. 1.

1110 Exhibit P-101 CAA1073.

1111 Section 4.0 (Post-bombing), The Evolution of the CSIS/RCMP Memoranda of Understanding.

1112 Exhibit P-101 CAA1073, pp. 10-11.

1113 Exhibit P-101 CAA1073, pp. 7-9, 11, 14.

language that described how they would cooperate as distinctive and separate agencies," were eliminated. These were replaced with "...a new concept of partnership ... meant to reflect the thrust of the 2004 National Security Policy document" which called for an integrated national security effort.¹¹¹⁴

Wark felt that the change reflected "...more than a semantic shift" from institutional distinctiveness towards partnership, backed by "...some fairly significant departures, in terms of how that partnership should be brought into being" – the most important being the need for CSIS and the RCMP to develop an "...entirely new way of operating together," via the introduction of joint management committees. These committees would be comprised of senior members of both organizations, who would, in theory, work together and foster the cultural shift deemed necessary for proper cooperation.¹¹¹⁵

Additionally, a new officer exchange program, involving the secondment of officers, had been created to replace the earlier Liaison Officers Program. Wark noted that the importance of the secondment program was that greater knowledge of the other organization was to be gained through the exchange of senior operational officers, as opposed to employees simply being charged with ensuring the passage of intelligence.¹¹¹⁶

The 2006 MOU expressly recognized the implications of the *Stinchcombe* decision and the concerns regarding the disclosure of CSIS information to the defence in the event of a criminal prosecution, by adding a provision specifically stating that the agencies recognized that information provided by CSIS to the RCMP "...may be deemed for purposes of the prosecution process to be in the control and possession of the RCMP and the Crown and thereby subject to the laws of disclosure...." The specific procedure set out to address such circumstances was reliance on the ability to claim national security privilege under the *Canada Evidence Act* to protect information.¹¹¹⁷ Wark explained that the MOU attempted to create a cultural mechanism for dealing with disclosure, whereby the RCMP and CSIS would "...understand disclosure matters using a similar language and a similar set of concerns."¹¹¹⁸

Wark concluded that the 2006 MOU reflected the new thinking that partnership, integration and a closer relationship between CSIS and the RCMP were required. One example of such partnership was the introduction of joint training programs. According to Wark, the MOU also called for an abandonment of the "initial worries" and "...concern with distinctiveness of mandates" of the RCMP and CSIS which, even in 1984, were backward-looking. Replacing those concerns were new concerns about effectiveness of mandates and about "...translating cooperation into effectiveness."¹¹¹⁹

1114 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1472-1473.

1115 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1474.

1116 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1474-1475.

1117 Exhibit P-101 CAA1073, p. 13.

1118 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1476.

1119 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1477.

In offering his analysis of the new MOU, Wark cautioned that the problem with the new MOU was that, as a fundamental departure from the previous MOUs, "...we're going to have to watch very closely how it is translated from words on a page and doctrine into practice."¹¹²⁰ The evidence heard in this Inquiry has shown that the new cooperation mechanisms appear to have brought some improvements in the relationship, but have not been adequate to resolve the fundamental issues faced by the agencies in terrorism investigations.¹¹²¹ Neither a reliance on section 38 of the *Canada Evidence Act* nor an RCMP policy of "less is more" have been able to accomplish what James ("Jim") Warren described as "squaring the circle" in converting intelligence into evidence.¹¹²²

Current Information-Sharing Mechanisms

Target "Deconfliction"

The term "deconfliction" refers to the mechanism by which CSIS and the RCMP exchange information about their respective operations (or targets) in order to avoid conflicts in the event that both agencies are investigating the same target. The process of deconfliction of targets is accomplished by the use of a matrix at the regional level, whereby the RCMP and CSIS reveal their CT targets to one another. This procedure began in late 2005 in an effort to identify CSIS investigations that had reached a criminal threshold. During the deconfliction process, the RCMP and CSIS reveal their targets to each other and then enter into more specific discussions regarding those targets who appear on both lists in order to avoid conflict. Superintendent Jamie Jagoe of O Division INSET testified that these formal deconfliction meetings occur on an ongoing basis, approximately every two months. At these meetings case inventories are compared and all CT investigations are outlined with a short background for both agencies. Any unresolved conflicts are referred to HQ, where a Joint Management Team will solve any issues that may remain.¹¹²³

Jagoe explained that the deconfliction process does not preclude parallel investigations of similar targets, nor does it attempt to descend to a level of detail that would involve each organization in fine-tuning its investigation to avoid any overlap. Instead the aim is simply to avoid "...tripping over each other." The deconfliction process does not prevent either CSIS or the RCMP from conducting investigations within its mandate. Neither CSIS nor the RCMP attempts to direct the activities of the other organization.¹¹²⁴ While targets are discussed at the deconfliction meetings, the identity of sources is not divulged, nor is information that could identify a confidential human source.¹¹²⁵

1120 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1502.

1121 See Chapter V (Post-bombing), The Overall Government Response to the Air India Bombing.

1122 Testimony of James Warren, vol. 48, September 19, 2007, p. 5903. See, generally, Volume Three of this Report: The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions.

1123 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10459.

1124 Testimony of Jamie Jagoe, vol. 82, November 23, 2007, pp. 10459-10460.

1125 Testimony of Ches Parsons, vol. 82, November 23, 2007, p. 10461.

Luc Portelance, DDO of CSIS at the time of the Inquiry, explained that CSIS made the decision to approve CT investigations only after they have been discussed with the RCMP to determine whether or not there is an opportunity to pursue a criminal investigation rather than a national security investigation. To that end, CSIS discusses its intended investigations in terms of the activities the target is involved in and the threats involved. These discussions are held at the regional level, and are meant to determine whether the activities of the intended CSIS target meet the threshold for criminal investigation. If the activities do not meet the threshold, then CSIS pursues its investigation.¹¹²⁶

The Joint Management Team

Senior members of CSIS and the RCMP also meet at the HQ level on a regular basis through the Joint Management Team (JMT), a structural arrangement created by Luc Portelance and A/Comm. Mike McDonell that was also launched in late 2005. The JMT does not manage individual cases, but instead is aimed at "...joint management of the relationship" between CSIS and the RCMP. The goal of the JMT is to outline and share all CT investigations the organizations are conducting in order that each may know in general what the other is doing. The JMT also serves as an opportunity to discuss whether or not investigations are progressing and to re-evaluate them in that light. The JMT meetings do not occur as often as the regional deconfliction meetings, but are held periodically to review what is occurring across the country.¹¹²⁷ McDonell testified that the JMT, for the most part, looks at "...commonalities amongst the files that may serve as impediments or impairments to investigations." He added that the deconfliction at the regional level is more robust and that the JMT serves to make the transfer of information work more effectively.¹¹²⁸

According to Portelance, the launch of the JMT and of the regional deconfliction process has been "...a significant departure" from the past. Previously, CSIS would disclose information to the RCMP when it believed a criminal threshold had been reached. While this sort of exchange still occurs, the deconfliction and JMT meetings deal with all the CSIS counterterrorism investigations and thus involve the Force in the discussion of whether a specific investigation meets the criminal threshold.¹¹²⁹

CSIS Decisions to Share Information

The information collected by CSIS "...is collected to be shared," and for the purpose of advising the Government of Canada. Often, it will be relevant to other government agencies that are not involved in law enforcement. In order to carry out its role of advising the Government, it is to the advantage of CSIS to know its clients, to have an understanding of their mandates and what they require and to exchange information on that basis.¹¹³⁰

¹¹²⁶ Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11472, 11474-11475.

¹¹²⁷ Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11478, 11481.

¹¹²⁸ Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12629-12631.

¹¹²⁹ Testimony of Luc Portelance, vol. 88, December 4, 2007, pp. 11479, 11482, 11486.

¹¹³⁰ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12780.

The decision about whether to share information, and with which department, is made exclusively by CSIS. It is based on CSIS's analysis of who is best equipped to deal with the information.¹¹³¹ In cases where the information may be of interest to law enforcement, a special decision-making process has been devised at CSIS to determine the nature and the extent of the information that will be shared in each case.

CSIS generally launches an investigation when there is suspicion of a threat to the security of Canada. Supt. Larry Tremblay, the RCMP manager currently seconded to CSIS, explained that CSIS investigations often span a lengthy period of time and are aimed at assessing the intent, the ability and the means for a given group or individual to actualize the threat. Tremblay testified that suspicion of a threat is a broader concept than suspicion of criminal activity, which is the threshold used to launch a police investigation.¹¹³² However, as discussed in Volume Three of this Report, in the age of the *Anti-terrorism Act*, the overlap between CSIS counterterrorism investigations and instances where police investigations could be conducted is not as limited as Tremblay perceived it to be.

At CSIS, the decision about when information is to be passed to the police is triggered at the point when there is activity in support of a threat, such as when a group or individual starts to physically acquire the ability to act on the threat. There is no attempt by CSIS at this stage to identify the exact elements of an offence, to specify the *Criminal Code* offence implicated, or to address the admissibility of the information in court. Instead, when the activity of an individual or group indicates that "...there is something going on" that is serious in relation to a threat to the security of Canada, or that is criminal in nature, then that activity triggers the decision-making process about whether the information will be passed on to law enforcement.¹¹³³

In order to determine whether to advise the police or another government institution, CSIS employs a 13-step vetting process, used by Tremblay while he was working in the CSIS Litigation Unit. The 13 factors are intended to help assess the various types of jeopardy that could result from sharing CSIS information. Of concern are decisions to share information that would jeopardize ongoing investigations, methodology, third-party information, human sources, and CSIS employees. The public interest is a main consideration, as well as the risk for CSIS if disclosure is made, and, conversely, if disclosure is not made.

The decision to share information varies in accordance with the seriousness of the threat or crime. Information indicating a threat to life will be treated differently from information implicating credit card theft. In cases where the offence implicated is not seen as serious by CSIS, such as a facilitation offence, disclosure to the police may not always be forthcoming. For such offences, disclosure will be considered on a case-by-case basis, with more consideration given to the jeopardy to CSIS should the information be shared.¹¹³⁴

1131 Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12780.

1132 Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12769-12770.

1133 Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12769-12770, 12779.

1134 Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12772, 12779.

One of the factors considered to decide whether information will be passed is the likelihood of CSIS being able to protect the information through an application under section 38 of the *Canada Evidence Act*. This analysis is done in consultation with the CSIS legal team and the Litigation Unit.¹¹³⁵ Once the information has been fully vetted and approved for initial passing to law enforcement, CSIS will place a caveat on the information, retaining the ability to apply for protection from disclosure under section 38.

CSIS always caveats the information passed to try to retain some control should circumstances change when the matter goes to court, and should CSIS conclude that it needs to protect its assets. CSIS will continue to reassess its position prior to its information being made public through a judicial proceeding, even though the information has already been shared outside of CSIS.¹¹³⁶

According to Tremblay, whether the discussion in relation to the transfer of information is internal at CSIS or takes place after sharing with the RCMP, the *Stinchcombe* decision and its effect on disclosure at trial "...is at the forefront of every discussion."¹¹³⁷

The Service is well aware of the obligation under *Stinchcombe* and well aware of what could be the outcome, what are the outcomes when disclosure requirement kicks in, and it does factor on what information is or can be shared, understanding that that information, one day, depending on the nature of the threat, could be made public.¹¹³⁸

At CSIS, the decision on whether to share information with a law enforcement or other agency is viewed as an operational one. Operational managers are expected to identify information that could be of interest to law enforcement. The information is then sent to the Litigation Unit and Legal Department for an assessment of the jeopardy to a CSIS interest should the information be shared. Where the release of an "advisory letter" authorizing the use of CSIS information in court is contemplated, the Litigation Unit and Legal Department prepare a recommendation on the basis of their assessment of jeopardy, and the final decision to authorize release rests with the executive at CSIS. Where it is contemplated to pass information to law enforcement without authorization to use it in court, the assessment of jeopardy prepared by the legal departments is provided to the operational units, who then have authority to make the ultimate decision about sharing the information.¹¹³⁹

¹¹³⁵ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12774.

¹¹³⁶ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12773.

¹¹³⁷ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12776.

¹¹³⁸ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12777.

¹¹³⁹ Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12764-12765, 12768-12769.

Secondment Program

In 2002, the secondment program replaced the RCMP/CSIS LO program. The goal of the secondment program is to facilitate an enhanced understanding in CSIS and the RCMP of each other's "...mandate, responsibilities and methodologies" and to allow each agency to benefit from the skill and expertise of the other agency's members.¹¹⁴⁰ The secondments are instituted on both a permanent and an ad hoc basis.

Professor Wark saw the creation of the secondment program as an example of the "...cultural shifts in attitude" that have taken place since 1985. Previously, the liaison officers acted as channels for the passage of information. The seconded members fulfill an entirely different purpose; they immerse themselves in the institution and help foster knowledge of the partner institution at a senior level so that the agencies have a way to "...personally exchange concerns on a daily and ongoing basis about the development of operations and the nature of threats."¹¹⁴¹

The secondment agreement stipulates that RCMP officers are to be seconded to each of the four CSIS regional offices and to Headquarters. These officers do not report back to the RCMP. Similarly, CSIS agents are to be seconded to each of the INSETs. Again, these agents do not report back to CSIS.¹¹⁴² As of February 2008, none of these secondments were active, which leads the Commission to question their value.

In addition, a similar management secondment program currently involves the secondment of a CSIS manager to RCMP HQ to be in charge of the RCMP Threat Assessment Section and of an RCMP inspector to a management level position within CSIS HQ.¹¹⁴³ These secondments have been active for several years, and the current individuals involved from CSIS and the RCMP testified before the Inquiry about their experience.

RCMP Manager Secondment to CSIS

Supt. Larry Tremblay, who was seconded to CSIS as part of the management secondment program, discussed the program in his evidence at the Inquiry. Jack Hooper, who served in the position of Deputy Director of Operations at CSIS from 2005 until his retirement in 2007, stated in his testimony that Tremblay is a "...highly talented RCMP inspector who is managing our highest priority CT target program and he is doing an amazing job of that."¹¹⁴⁴

¹¹⁴⁰ Exhibit P-101 CAA1073, p. 14, CAA1081.

¹¹⁴¹ Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1474-1475.

¹¹⁴² Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Policy Review: The RCMP and National Security – A Background Paper to the Commission's Consultation Paper* (Ottawa: Public Works and Government Services Canada, 2004), p. 67 [*Policy Review: The RCMP and National Security*].

¹¹⁴³ *Policy Review: The RCMP and National Security*, p. 67.

¹¹⁴⁴ Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6253.

Tremblay is an RCMP officer experienced in drug investigations and major organized crime investigations.¹¹⁴⁵ In late November 2004, Deputy Commissioner Garry Loepky and Assistant Commissioner John Neily asked Tremblay to take the management secondment position at CSIS, based on his background and experience.

Tremblay was assigned a position within operational support at CSIS. His initial position was at the CSIS Counter-Proliferation (CP) branch at the level of Chief. At the time, the CP branch housed the Threat Assessment Unit, the Immigration Assessment Unit and the Litigation Unit. In May 2006, CSIS underwent a restructuring, at which time the International Terrorism (IT) branch was formed. Tremblay was moved to the IT branch for a two-year secondment as a fully operational manager responsible for part of the national program.¹¹⁴⁶

During the first part of his secondment with the CP branch and the IT branch, Tremblay was involved in the determination of what information, if any, ought to be passed to the RCMP. The duties of the Litigation Unit, which reported to Tremblay, included providing the assessment of the jeopardy for CSIS in sharing information. The Litigation Unit also had a role in the management of disclosure and advisory letters, the formal documents that provide the RCMP with CSIS information.¹¹⁴⁷

In 2006, Tremblay moved to an operational position. It became his responsibility to make the ultimate decision as to whether information that CSIS believed could be of interest to law enforcement would in fact be shared.

Tremblay testified with regard to his experience with CSIS's current ability to identify criminal information. About his work at CSIS, Tremblay stated that the "...scope of what I look at presently is far wider from an intelligence perspective than what I would look at from a criminal perspective."¹¹⁴⁸ He explained that, in his experience, when CSIS uncovers information that could be of interest to law enforcement, because it indicates that something serious is happening or that targets are acquiring the ability to act on a threat, the information is passed to the RCMP at such an early stage that there have been occasions where the information disclosed by CSIS did not yet meet the threshold that would allow the police to commence their own investigation. Tremblay testified, however, that the vetting process which he developed during his secondment at the Litigation Unit, operates to reduce the amount of information shared,¹¹⁴⁹ because the evaluation of the possible jeopardy to CSIS will at times lead to decisions not to share information of potential interest.

Tremblay gave his personal opinion that if there was a mechanism in place whereby the CSIS information could be introduced but the sensitive information – essentially CSIS methods, human sources and third-party information – could

1145 Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12764.

1146 Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12764-12765.

1147 Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12764-12766, 12768.

1148 Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12769.

1149 Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12769, 12771-12773, 12779.

be held back, then the problems with the use of CSIS information in the judicial process would be alleviated. He did not view the current legal protection provided under the *Canada Evidence Act* as sufficient. Tremblay noted that a mechanism that ensured that the sensitive information would not have to be disclosed would increase the likelihood of CSIS sharing its information with law enforcement, particularly with regard to offences perceived as less serious, such as terrorist financing and facilitation.¹¹⁵⁰ The current system militates against CSIS sharing information about such offences where there is potential for jeopardy to CSIS assets and investigations.

Tremblay offered his opinion about the RCMP's sensitivity towards CSIS's concerns for the protection of its assets that highlights some of the difficulties faced by CSIS and the RCMP in relation to sharing information. Tremblay stated that as an RCMP officer with a law enforcement perspective, he would always want more information. As a police officer, he is tasked with continuously trying to obtain the best possible evidence in court. In his words, "I still have [yet] to meet a Crown that tells me to stop my investigation; they have enough to go to trial."¹¹⁵¹ From a law enforcement perspective then, the task is to obtain as much relevant information as possible. Tremblay contrasted this outlook with the CSIS perspective that he gained through the secondment program, which is that the ideal amount of information to share with law enforcement is the minimum amount required to allow the police to proceed with their investigation without jeopardizing Service interests. These two viewpoints are inherently in conflict.

CSIS Manager Secondment to RCMP

The Inquiry also heard testimony from the CSIS management secondee to the RCMP, Neil Passmore. As of April 2007, Passmore was seconded to the position of Acting OIC of the National Security Threat Assessment Section. As with the RCMP secondee, his role was not to act as a liaison for the passage of information.¹¹⁵² Rather, he was expected to use his years of experience at CSIS to benefit the RCMP Threat Assessment Section.

In that position, Passmore applied his experience at CSIS to the management of the Threat Assessment Section and the improvement of its threat assessment product. He implemented enhanced quality control measures. His goal was to make it easier to produce an assessment product through the development of templates with standardized wording. He also implemented a timeline procedure that allows the tracking by date in the threat assessments of specific tasking and of the corresponding response.¹¹⁵³

Passmore liaised with ITAC in order to provide his colleagues at the RCMP with an improved understanding of the mandate and role of ITAC. Part of his role was to harmonize the information produced by the RCMP Threat Assessment Section and that produced by the multi-agency ITAC. His work involves ensuring

¹¹⁵⁰ Testimony of Larry Tremblay, vol. 96, February 14, 2008, pp. 12782-12784, 12788.

¹¹⁵¹ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12776.

¹¹⁵² Testimony of Neil Passmore, vol. 96, February 14, 2008, pp. 12799-12800, 12833.

¹¹⁵³ Testimony of Neil Passmore, vol. 96, February 14, 2008, pp. 12833-12834.

that both agencies are reaching the same conclusions, as well as avoiding the historic problem of duplication of threat assessment products. Passmore's section is provided with the ITAC schedule of assessments and, in response, tasks ITAC with the information needs of the RCMP.¹¹⁵⁴

Improving Relationships versus Sharing Information

Representatives of both CSIS and the RCMP have indicated that the secondments contribute to strengthening CSIS/RCMP relations.¹¹⁵⁵

Jack Hooper testified that the management secondment program had been "...a tremendously successful experiment." He credited the senior executive group within CSIS and their RCMP counterparts with the creation of the program as a replacement for the LO Program. Hooper stated that, as a result of the management secondment program, CSIS benefited from two "...very talented RCMP officers who both came in at the inspector level and who we put into management positions within CSIS."¹¹⁵⁶

Hooper believed that the need for the secondment program arose because there were fewer and fewer ex-RCMP members populating CSIS ranks and that therefore the Service was losing its understanding of the RCMP and how it worked. The goal was that, following the secondment, RCMP officers would go back to the RCMP with a very extensive understanding of CSIS's mandate and how it operates. With regard to the management and working-level secondment programs, Hooper stated that the benefit derived from the secondment program "...far outweighs those benefits that accrued [from] the old liaison officer program."¹¹⁵⁷

The RCMP, for its part, felt that the secondment program would help address a deficiency in the Force's understanding of the Service's "...standard operating procedures and investigative processes."¹¹⁵⁸

The secondment program is vastly different from the LO Program that preceded it. While secondment may enhance each institution's understanding of the other, it is not an information-sharing mechanism and, as such, it cannot replace the LO Program that was focused on transferring information. The personnel exchanges are intended to foster cooperation and understanding on a personal level. While these are worthwhile goals, they do nothing – as Tremblay admitted – to resolve the problem encountered when CSIS decides not to share information in order to protect its own interests, thereby causing the RCMP to lose relevant information.¹¹⁵⁹

1154 Testimony of Neil Passmore, vol. 96, February 14, 2008, pp. 12834-12835.

1155 Exhibit P-101 CAA1035; Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6253.

1156 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6252-6253.

1157 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6253.

1158 Exhibit P-101 CAA1043(i), p. 9.

1159 Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12776.

Regardless of whether the secondment program is an effective replacement for the LO Program, the program does have merit in fostering greater understanding that can assist in effecting cultural changes that will improve cooperation. However, Tremblay has yet to return to the RCMP to share his new insights with his law enforcement colleagues, and concerns have been raised about the level of enhanced understanding that is achieved through the secondment of CSIS managers to the RCMP under the current circumstances.

CSIS managers seconded to the RCMP are assigned civilian roles only, with no peace officer status. In 2005, CSIS raised concerns about the "...inconsistent use by the RCMP of CSIS managers," and questioned the value for the Service of seconding its managers to the RCMP under those circumstances.¹¹⁶⁰ Indeed, being seconded to the management of a threat assessment unit at the RCMP does not provide CSIS managers with many opportunities to observe the day-to-day issues that arise when the RCMP needs to rely on CSIS information in the context of criminal investigations. While Passmore attempted to use his experience at CSIS to benefit the RCMP, and did devise some improved procedures for threat assessments, he was not able to gain the level of understanding of the current information-sharing problems that Tremblay acquired through his secondment experience as an operational manager at CSIS.

Relying on just one management secondment each to foster cooperation and understanding throughout two large organizations is problematic. The secondment program could have had further impact through implementation of the agreed upon secondments at the working level. For unknown reasons, as of the end of the Commission's hearings, those secondment arrangements had not been put in place.

Less Is More

The concept of "less is more" is increasingly used by both CSIS and the RCMP in decisions about information sharing and about cooperation mechanisms. Tremblay explained in testimony that "...law enforcement took the position that, at times, it's preferable for their prosecution to have less than more information."¹¹⁶¹ Mike McDonell testified that he was a "firm believer" in the philosophy of "less is more."¹¹⁶² In practice, the concept means that both CSIS and the RCMP aim at the minimal amount of CSIS disclosure to the RCMP that is necessary for the RCMP to proceed with its own investigation.¹¹⁶³ McDonell explained his belief that, if the police can gather 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 can be avoided.¹¹⁶⁴ The "less is more" approach is used in an attempt to protect as much CSIS information as possible from potential disclosure, while also protecting the prosecution from potential collapse should the presence of sensitive CSIS information in the RCMP's possession make full disclosure to the defence impossible.¹¹⁶⁵

¹¹⁶⁰ Exhibit P-101 CAA1043(i), p. 12, CAA1081, p. 3.

¹¹⁶¹ Testimony of Larry Tremblay, vol. 96, February 14, 2008, p. 12777.

¹¹⁶² Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12634-12635.

¹¹⁶³ Testimony of Jamie Jagoe, vol. 82, November 23, 2007, pp. 10467-10468.

¹¹⁶⁴ Testimony of Mike McDonell, vol. 95, December 13, 2007, pp. 12634-12635.

¹¹⁶⁵ Testimony of Jamie Jagoe, vol. 82, November 23, 2007, p. 10467.

The prevalence of the “less is more” philosophy in shaping the recent cooperation mechanisms is obvious. The RCMP no longer seeks full access to CSIS information for its LO to review and to select all relevant materials. Instead, the secondment program is aimed at fostering better understanding, while ensuring that seconded members cannot bring information back to the host agency. While deconfliction discussions can serve incidentally as the basis for identifying a need to share information about a specific matter, they are mostly aimed at ensuring that investigations do not overlap and that the RCMP can gather for itself the information and evidence it deems necessary. The insistence on advising the RCMP early on of the existence of a CSIS investigation serves to ensure that the Force can proceed on its own and advise CSIS of the potential conflict.

In fact, there are serious questions surrounding the necessity and the effectiveness of “less is more” as a strategy for allowing CSIS to share some information with the RCMP while avoiding legal issues surrounding disclosure to the defence. It is also clear that the “less” that CSIS and the RCMP contemplate that CSIS will pass to the RCMP, diminishes to “nothing” when CSIS decides that the potential criminal offence involved is not serious enough to outweigh the perceived jeopardy to CSIS operations that might result from disclosure.¹¹⁶⁶

Conclusion

The events of 9/11 led to a renewed interest in issues of national security. Both CSIS and the RCMP again looked to improve their relationship. In 2005, partly in anticipation of the Rae review, renewed effort by the agencies produced new changes aimed at overcoming the difficulties that still remained in the cooperation between CSIS and the RCMP.¹¹⁶⁷ The current situation remains challenging, especially in terms of the effective transfer and sharing of information and of the use of CSIS information in support of criminal prosecutions. Volume Three of this Report addresses some of the legal and procedural recommendations that aim to solve the problems that remain.

¹¹⁶⁶ For an in-depth discussion of these issues and of the manner in which they can be addressed, see Volume Three of this Report: *The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions*.

¹¹⁶⁷ See Chapter V (Post-bombing), *The Overall Government Response to the Air India Bombing*.

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

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

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 months²⁰ (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:

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

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.

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

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 stages⁴⁶ 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

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 preceded [*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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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 note¹⁶³ 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:

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

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

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

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

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:

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.

...

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

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

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

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:

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

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

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.

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 Force²³⁰ 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

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

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

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.

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

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.

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

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

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

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

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

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 all relevant information in a timely 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 intercepts²⁹⁶ 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

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

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 Laternus, 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

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:

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

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

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

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.

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

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

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

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,"

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

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.

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 Blast³⁸⁴ 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

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

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]

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 Rae³⁹⁹ 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:

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.

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

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

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

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

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 hindsight⁴⁴⁰ 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.

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

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

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 McDonnell, in charge of National Security Investigations at RCMP HQ, talked about the "open relationship" which now exists with CSIS. McDonnell 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, McDonnell 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 matters⁴⁶¹ – 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

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 McDonnell, vol. 95, December 13, 2007, pp. 12636, 12638.

⁴⁶⁰ Testimony of Mike McDonnell, 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 McDonnell 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 McDonnell, 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

⁴⁶⁴ Testimony of Ches Parsons, vol. 82, November 23, 2007, pp. 10457-10458.

⁴⁶⁵ Testimony of Mike McDonnell, 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

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

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

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

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

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. McDonnell 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. McDonnell 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 McDonnell 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

499 Testimony of Mike McDonnell, 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 McDonnell, 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

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. McDonnell 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?

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

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.

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

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 McDonnell, 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.

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

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.

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.

