

**BEFORE THE COMMISSION OF INQUIRY
INTO THE INVESTIGATION OF THE BOMBING OF AIR INDIA FLIGHT 182**

**APPLICATION
by the World Sikh Organization of Canada to call Zuhair Kashmeri as
a witness**

PART I - OVERVIEW

1. The World Sikh Organization of Canada (“WSO”) is applying to call Zuhair Kashmeri (“Kashmeri”) as a witness at the Commission of Inquiry into the investigation of the Bombing of Air India Flight 182 (“Inquiry”).
2. Kashmeri is an award winning author and journalist, who has investigated fully the Air India bombing. Further, he has written extensively about the effects the Air India tragedy has had on the Sikh community. He is an ideal witness who will offer a well-researched, outside, expert analysis on the RCMP and CSIS’s handling of the Air India investigation.

PART II - FACTS

3. Kashmeri is an award winning author and journalist. Kashmeri was a reporter for the Globe and Mail for over a decade.

4. Kashmeri is the co-author of the book *Soft Target – India’s Intelligence Service and Its Role in the Air India Disaster*. Brian McAndrew (“McAndrew”) is this book’s other credited author.
5. The purpose of their book is to make people aware of the grave injustice suffered by Sikh-Canadians.

Ref.: Zuhair Kashmeri and Brian McAndrew, *Soft Target – India’s Intelligence Service and its Role in the Air India Disaster*, 2nd ed. James Lorimer & Company Ltd., Toronto, 2005, at Preface p. xxiv.

6. In their last chapter, Kashmeri and McAndrew reference an opinion poll conducted in Montreal in 1988 regarding the reputation of Sikhs. The results of this poll are as follows:

Thirty per cent of the Montrealers polled said they perceived a prejudice against Sikhs...Eighty-five per cent said that they knew nothing or little about the Sikhs, and only 18 per cent actually knew Sikhs. Although Sikhs are the most industrious of people in their native India, only 19 per cent of those surveyed said that they believed Sikhs were hard-working members of the community. Just more than 60 per cent considered Sikhs untrustworthy.

A significant number had strong, unprompted reactions when asked the question, “What comes to mind when you hear the word Sikhs?” Forty- three percent used terms such as the following: revolt, conflict, riots in India, troublemakers, bringing trouble here, bombings, terrorism, violence, fanatics, extremists, fighters, warriors, hostile, don’t like them, bad impression, shot Ghandi, fighting with Hindus. Only 14 per cent saw the Sikhs as a group suffering oppression and seeking independence in their own country.

Ref.: Zuhair Kashmeri and Brian McAndrew, *Soft Target – India’s Intelligence Service and its Role in the Air India Disaster*, 2nd ed. James Lorimer & Company Ltd., Toronto, 2005 at p. 149-150.

7. Kashmeri's and McAndrew's book offers a detailed accounting of the investigations and criminal proceedings that took place after the June 23, 1985 twin bombings.
8. Kashmeri and McAndrew also discuss leads that were not pursued by the RCMP and CSIS, and expose India's intelligence service's secret operations in Canada.
9. Kashmeri and McAndrew analyze how without a public inquiry, justice would not ensue due to a flawed and manipulated investigation conducted by the Indian Government and its intelligence agency. In their foreword, Kashmeri and McAndrew explain the following:

We believe a public inquiry is needed to put every fact and theory under the microscope, including the theory held by some uncanny hands of Indian Intelligence agents who had become close to some of the suspects who likely influenced what happened on June 23, 1985.

Ref.: Zuhair Kashmeri and Brian McAndrew, *Soft Target – India's Intelligence Service and its Role in the Air India Disaster*, 2nd ed. James Lorimer & Company Ltd., Toronto, 2005 at Foreword p. v..

PART III – ISSUES

10. Should the Commission allow Kashmeri to testify on record at the Inquiry?

PART IV – LAW AND ARGUMENT

The Commission should allow Kashmeri to testify at the Inquiry

11. Rule C8 of the *Rules of Procedure and Practice* states that the Commissioner is committed to a process of public hearings to the greatest extent possible. As such, and pursuant to Rules C6, D14, D16 and H26 of the *Rules of Procedure and Practice*, the Commissioner may exercise his discretion to:

- a) determine if there are special conditions under which a person may participate and those parts of the Inquiry in which a person granted standing may participate;
- b) determine on what terms, and in which parts of the Inquiry a party or intervenor may participate, and the nature and extent of such participation; and
- c) receive any evidence or information which he considers to be helpful in fulfilling his mandate regardless of whether such evidence or information would be admissible in court.

Ref.: Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Rules of Procedure and Practice*, 2006, online: <<http://www.majorcomm.ca/en/rulesofprocedureandpractice/>>.

12. Rule 49 prescribes the following:

When Commission Counsel indicate that they have called the witnesses whom they intend to call in relation to a particular issue, a party may then apply to the Commissioner for leave to call a witness whom the party believes has the evidence relevant to that issue. If the Commissioner is satisfied that the evidence of the witness is needed, Commission Counsel shall call the witness, subject to Rule 47.

Ref.: Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Rules of Procedure and Practice*, 2006, online: <<http://www.majorcomm.ca/en/rulesofprocedureandpractice/>>.

13. On September 21, 2007, Mr. Jack Hooper, Manager of the Emergency Preparedness Program at CSIS, provided testimony at the Inquiry. His

testimony addressed the investigation of the RCMP and CSIS and the possible involvement of the Indian Government in the Air India bombing. The following is an excerpt from his examination-in-chief:

MR. GOVER: And it appears that the service did analyze that possibility. Is that fair?

MR. HOOPER: Yes.

MR. GOVER: And, first of all, did you ever put any stock in the theory that in some way the Government of India was responsible for the bombing of Air India Flight 182?

MR. HOOPER: I personally did not. Nor did that theory enjoy a wide constituency of support within the Canadian Security Intelligence Service. And I think it's important to know that we looked at that possibility largely as a function of analytical rigour and due diligence. I think there were certain indicators out there that spoke to that possibility however remote, and we had an obligation to examine that possibility and assess its viability. And that's what we did.

MR. GOVER: And what was the result of applying that analytical rigour?

MR. HOOPER: I may be not understand the meaning of your question, but I -- at the end of the day, the report remained a record of the Canadian Security Intelligence Service, but I mean it wasn't pursued from an investigative standpoint.

Ref.: Testimony by Jack Hooper,
September 21, 2007, page 6257.

14. Thus, Commission Counsel have already questioned a witness, Mr. Hooper, regarding the possible involvement of the Government of India in the Air India tragedy. Mr. Hooper's testimony regarding the issue was rather superficial. Yet it is clear that Commission counsel do not intend to call any further witnesses on this issue.

15. Commission Counsel did not question Mr. Hooper with regard to the details of the investigation into the involvement of the Indian Government, nor did Mr. Hooper voluntarily offer any details relating to this issue. The result is that the Government of India's involvement was not adequately canvassed at the Inquiry, and Mr. Hooper's assertion that the theory was not adequately tested through proper and effective cross-examination.

16. In this regard, Kashmeri's participation as a witness is important. Kashmeri's book, referred to above, appears to directly contradict the testimony offered by Hooper, that CSIS did adequately investigate the possible involvement of the Government of India, in the Air India bombing. Kashmeri independently investigated the Air India tragedy. His testimony will provide detailed insight into whether the RCMP and CSIS properly and adequately addressed the involvement of Government of India with respect to the Air India tragedy.

17. There is further evidence to suggest that the role of the Government of India in the bombing of Air India Flight 182, needs to be fully explored. On September 24, 2007, Lorne Schwartz, of the RCMP, gave evidence about the information obtained from Mr. Lakhbir Singh Brar, during the course of several interviews conducted by the RCMP. At Exhibit P101, Tab 9, page 3/5, Mr. Brar is purported to have said, "It would be impossible to have the bomb-laden luggage cleared through check-in and security in the normal fashion, without the Government of India involvement".

The Effects the Air India tragedy has on the Sikh community

18. The Sikh community has a direct and substantial interest in the subject matter of the Inquiry, as the Inquiry deals with issues related to the alleged threat of “Sikh” terrorism. Further, many of the victims of the tragedy were of the Sikh faith.

Ref.: Application for Standing submitted
by WSO of Canada, 6 July 2006.

19. There has been disturbing evidence tendered at this Inquiry regarding the activities of Indian government operatives on Canadian soil, specifically for the purposes of negatively impacting the reputation of the Sikh community.
20. In his testimony on May 29, 2007, Don McLean, a member of the Vancouver Police Department, speaks about his concerns regarding the involvement of the Indian government and its agents in Canada. At pages 4137-4138 of the Transcripts of Evidence for May 29, 2007, Mr. McLean notes his concern that the Indian Consul General, Mr. Sharma was inflaming the Sikh community by making references to Sikhs as “semi literate farm workers”. In addition, he states that Indian secret service agents (RAW) were active in the Canadian Sikh community. They made payments of \$10,000 to Indian newspapers published in Canada, in order to influence their editorial content. Mr. McLean stated that he noticed the shift in newspaper coverage following these “payments” by the Indian agents.
21. Yet, this issue was never adequately pursued by the Commission.

22. In *Soft Target*, Kashmeri refers to a book called, “Open Secrets – India’s Intelligence Unveiled”, by Maloy Krishna Dhar, (© 2005, Manas Publications, New Delhi) former Joint Director of the Intelligence Bureau of India. Mr. Dhar writes an entire chapter on the activities of Indian intelligence agents in Canada in the 1980’s and 1990’s. At page 293, Mr. Dhar speaks about his mission while posted in Canada:

- *Penetration of a few selected gurudwaras.
- *Cultivation of a few identified targets amongst the most vocal section of the Sikh community.
- *Penetration of the Punjabi print and electronic media and control of the print and electronic media operated by the non-Sikh segments of the people of Asiatic and Indian origin
- *Creation of a few clandestine human assets in the ‘lumpen’ segment of the Sikh workforce in Canada, who were more drawn to the separatist leaders and hate-preaching priests.
- *To reach out to the Indian community with saturated supplies of audio and videotapes on current affairs in India and specially filmed tapes on the atrocities committed by the Bhindranwale goons.
- *To convert the ‘*India News*’ to a quality publication with the help of a newly acquired fast printing/copying machine.
- *To meet the Canadian Foreign Office mandarins and the RCMP point men at regular intervals to brief them about developments back in India and to share whatever ‘open’ information the Indian Mission could cull out from the community through ‘open’ means. [see for example, *Exhibit CAB 0185 which contains a memo from Mr. Dhar to the RCMP regarding the threat to Indian interests by “Sikh militants” in Canada*]
- *To target the mainstream Canadian print and electronic media and to sell the Indian side of the story.
- *To maintain ironclad cover and not to betray my involvement in intelligence generation.
- *To befriend key diplomats in Bangladesh and Sri Lanka Missions with view to reaching some targeted members of the Pakistan Mission.
- *To generate few ‘friends’ amongst the Canadian Members of Parliament

23. As further evidence of the activities of the Government of India operatives in Canada, Kashmeri authored a series of articles that appeared in the *Globe and Mail* in November 1985. The 3 part series focused on Indian spying in Canada.

24. It is respectfully submitted that the reputation of the Sikh community, whether by accident or design, has clearly suffered as a result of the Air India tragedy. Insofar as this damage to the Sikh community's reputation occurred as a result of the Air India tragedy, and the aftermath, an exploration or consideration of the factors that have been involved in damaging this reputation needs to occur. Mr. Kashmeri can provide evidence in this regard, based on his broad research and investigation into this very issue. As noted at page xxi of his book, "After the bombing...In one stroke, the Sikh separatist movement was dead. The United Nations had dropped the issue, the Sikh lobby was not welcome among political circles in Ottawa, and only hard-core right-wingers such as Jessie Helms raised the Sikh issue in the U.S. Senate. Across the Atlantic, European governments, including the U.K., looked warily upon the Sikhs. Globally, the Sikh community had moved to the number-one spot on the terrorism chart."
25. The question of whether there were deliberate attempts by the Indian government to negatively affect the reputation of the Sikh community, and whether these attempts had any impact on the investigation, laying of charges, or ability to garner convictions for the Air India bombing, has not been adequately explored.
26. By granting the WSO its request to have Kashmeri called as a witness, this Commission would be afforded the opportunity to hear critical evidence relating to the involvement and activities of the Government of India in Canada. This

evidence would assist in answering the question of what impact, if any, these activities of the Indian government may have had on the Air India investigation.

27. It is respectfully submitted that Kashmeri's evidence is required in order to ensure that this Commission is afforded with the most accurate and complete evidence upon which to base any conclusions.

PART V – CONCLUSION

28. Kashmeri is a respected author whose knowledge on the Air India bombings, and the experiences of the Sikh community both pre and post Air India, is well-documented. As such, Kashmeri will be able to testify on the cooperation (or lack of) between the RCMP and CSIS, any possible involvement by the Government of India in the Air India tragedy, the GOI's clandestine operations in Canada, and the negative effects the Air India tragedy has had on the Sikh community. This evidence goes directly to key aspects of all of the Terms of Reference, particularly those contained at (i), since the very heart of the question of whether Canadian officials correctly assessed the threat of "Sikh Terrorism", requires an examination of whether this threat was greater than or lesser than what was perceived by Canadian government officials. To this end, the artificial heightening of this threat by Government of India officials, is very relevant.

PART VI – ORDERS SOUGHT

29. The following Order is sought:

- a) An Order that Commission Counsel be compelled to call Zuhair Kashmeri to testify on record at the Air India Inquiry; or
- b) An Order allowing the Applicant to call Zuhair Kashmeri to testify on record at the Air India Inquiry; or
- c) Such further and other relief as this Honourable Commissioner may permit.

All of which is respectfully submitted.

Dated at Ottawa 12th day of October, 2007

PALBINDER K. SHERGILL

SHERGILL & COMPANY
Suite 211-9547 152nd Street
Surrey, B.C. V3R 5Y5
Tel: (604) 588 -7337
Fax: (604) 588 -7338
Palbinder K. Shergill

PRADEEP CHAND

LANG MICHENER LLP
300-50 O'Connor Street
Ottawa, Ontario K1P 6L2
Tel: (613) 232-7171
Fax: (613) 231-3191
Pradeep Chand

Counsel for the Applicant, World Sikh Organization of Canada

TO: **COMMISSION OF INQUIRY INTO THE INVESTIGATION INTO THE
INVESTIGATION OF AIR INDIA FLIGHT 182**

The Honourable Mr. Justice John C. Major, Q.C., Commissioner
Victoria Hall
Bytown Pavilion
111 Sussex Drive
Ottawa, Ontario K1N 1J1
CANADA