

**WRITTEN REPLY BY THE AIR INDIA VICTIMS' FAMILY ASSOCIATION TO  
THE WRITTEN SUBMISSION BY THE ATTORNEY GENERAL OF CANADA  
IN RESPONSE TO AIVFA'S REQUEST FOR DIRECTION WITH RESPECT TO  
ANTICIPATED *IN CAMERA* PROCEEDINGS OF THE COMMISSION AND  
REDACTED MATERIALS**

1. Recognizing that the Air India Victims' Families Association (AIVFA) requested direction with respect to anticipated *in camera* proceedings of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (the "Commission") and redacted materials, and that the Attorney General of Canada (the "AGC") responded to this request for direction with a written submission, the following is provided to the Commission as a reply to the AGC's written submission. AIVFA maintains that their counsel be granted access to *in camera* proceedings of the Commission and unredacted copies of redacted documents of the Commission.
2. AIVFA acknowledges that the AGC conceded that it is prepared to make any request to review information *in camera* or *ex parte* in public and, when doing so, to identify generally the aspect of national security, national defence or international relations involved in the request. AIVFA maintains that their counsel be permitted to make submissions to the Commissioner with respect to the opinion of the Commissioner concerning any and all requests of the AGC for the Commission to receive information *in camera* and in the absence of any party and their counsel.
3. AIVFA and their counsel have always maintained that as per the statement in paragraph 20 of the AGC's written response, that "[t]here is no more important obligation for a government than the protection of its citizens and institutions."  
AIVFA and their counsel have always and continue to fully support the necessary

process provided for under section 38 of the *Canada Evidence Act* and anticipates its appropriate use in the proceedings of this Commission.

4. AIVFA understands the concerns of the AGC at paragraphs 8 and 28 of their written response, that “granting access increases the risk of inadvertent disclosure” and that “the secrecy of information is breached any time it is shared with those who do not have a strict ‘need to know.’” However, AIVFA co-lead counsel, Jacques Shore has possessed a top-secret level clearance since 1985 and has therein relevant legal experience in dealing with national security matters on behalf of the Security Intelligence Review Committee and as legal advisor to the Royal Canadian Mounted Police (RCMP) and the RCMP Public Complaints Commission. With respect to Norman Boxall, he possess top-secret level clearance and relevant legal experience as counsel for a party in the Arar Inquiry, which sat for months of *in camera* testimony, in addition to working with officers of the RCMP. Further, AIVFA counsel are both willing to be bound by an undertaking that any and all documents and information which are produced to them in connection with any and all *in camera* hearings of the Commission and the review of any and all unredacted materials and documents, will not be disclosed to anyone for whom they act or to anyone for whom they do not act.
5. At the end of Stage One of this Commission of Inquiry, the Honourable John C. Major, Q.C., Commissioner, stated that, “We want to ensure that when parties leave this hearing that they feel they’ve had a full opportunity to explore the cause and to be satisfied that they know what happened to the extent that that is possible.”

6. It is respectfully submitted that AIVFA will feel that they have had “a full opportunity to explore the cause and to be satisfied that they know what happened” if AIVFA counsel has access to anticipated *in camera* proceedings of the Commission and to unredacted versions of redacted materials.
7. It is further respectfully submitted that the AGC misinterpreted provision (m)(i) of the Terms of Reference. This provision provides that:

(m) The Commission, in conducting the Inquiry, to take all steps necessary to prevent disclosure of information which, if it were disclosed, could, in the opinion of the Commissioner, be injurious to international relations, national defence or national security and to conduct the proceedings in accordance with the following procedures, namely,

(i) on the request of the Attorney General of Canada, the Commissioner shall receive information *in camera* and in the absence of any party and their counsel if, in the opinion of the Commissioner, the disclosure of that information could be injurious to international relations, national defence or national security...

AIVFA respectfully submits that provision (m)(i) of the Terms of Reference must be read as a whole. The request of the AGC alone does not trigger *in camera* proceedings; the request only triggers the necessity of a determination by the Commissioner about whether the disclosure of information that could be injurious to international relations, national defence or national security necessitates *in camera* proceedings. Given that AIVFA counsel possess top-secret level clearance, relevant legal experience in dealing with national security matters, and are willing to be bound by an undertaking not to disclose any information to anyone for whom they act or to anyone for whom they do not act, disclosure of information to AIVFA counsel under the unique circumstances of this Commission for which there are no analogous

proceedings, would not be injurious to international relations, national defence or national security. To further emphasize, under the Terms of Reference an *in camera* proceeding of the Commission does not automatically exclude all parties. A party would only be excluded from an *in camera* proceeding of the Commission, if upon the request of the AGC, the Commissioner determined that disclosure of information to a specific party could be injurious to international relations, national defence or national security.

8. It is also respectfully submitted that given the understandable distrust and cynicism many AIVFA members feel towards the Government as a result of the manner in which they were allegedly treated by the Government in the aftermath of the Air India tragedy and after having fought for a public inquiry into the tragedy for 21 long years, that participation by AIVFA counsel in anticipated *in camera* proceedings and access by AIVFA counsel to unredacted materials would increase confidence and trust in the process of the Commission and ultimately prevent any further disillusionment of families of the victims of this tragedy.
9. Furthermore, it is respectfully submitted that the reason for establishing the Commission was to meet the needs of families of the victims of the Air India tragedy to create a lasting legacy to their lost loved ones through participation in a Commission of Inquiry aimed at preventing this tragedy from ever occurring again through the policy review process of Stage Two. Excluding AIVFA counsel from anticipated *in camera* proceedings of the Commission and not granting them access to unredacted versions of all redacted material when appropriate safeguards exist to

prevent the disclosure of national security confidential material is, given the unique circumstances of this particular Commission of Inquiry, not in the public interest. Clearly, no public interest would be served by excluding AIVFA counsel from participating in *in camera* hearings and in reviewing unredacted materials as their experience and background would, it is respectfully submitted, add value to addressing critical issues raised and assisting in providing perspectives towards the proper deliberation of matters under review by this Commission.

10. In the alternative, it is respectfully submitted that if AIVFA counsel is denied access to anticipated *in camera* proceedings of the Commission, that they be granted the right to view unredacted versions of all redacted material disclosed to the parties.

Such review could occur within a process and at a suitable location agreed to by the parties.

11. To summarize, AIVFA respectfully submits that on balance, and in the public interest of achieving the goals of this Commission, the AGC has not put forward sufficient reasons or arguments to exclude AIVFA counsel from anticipated *in camera* proceedings of the Commission and to exclude AIVFA counsel from having access to unredacted versions of all redacted materials recognizing that no harm, risk, or damage to Canada's national security interest is at stake with the appropriate safeguards identified in paragraph 4 above. On the contrary, AIVFA has as its main goal, its participation in this Commission of Inquiry, to advance Canada's interest in this regard and to ensure governments take the necessary steps and are vigilant in ensuring another tragedy such as the bombing of Air India Flight 182, never occurs again.

*J. M. Shore for Norm Boxall*  
 Norman Boxall

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 Jacques J.M. Shore

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