

**COMMISSION OF INQUIRY INTO THE INVESTIGATION  
OF THE BOMBING OF AIR INDIA FLIGHT 182  
The Hon. John C. Major, Q.C., Commissioner**

**Application for Standing**

**AIR INDIA VICTIMS FAMILIES ASSOCIATION (AIVFA)**

The Air India Victims Families Association (AIVFA) hereby applies for standing as a party in both “Stage 1” and “Stage 2” of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, to participate fully in the conduct of Commission proceedings relating to each of the seven issues into which an inquiry will be conducted, namely:

- (1) whether there were deficiencies in threat assessment or response, and what remedial steps, if any, are required;
- (2) whether there were problems of cooperation between government departments and agencies in the investigation, and what remedial steps if any, are required;
- (3) addressing the challenge of a reliable and workable relationship between security intelligence and evidence admissible at a criminal trial;
- (4) the adequacy of restraints on terrorist funding, including use or misuse of charitable organizations, and what remedial steps, if any, are required;
- (5) the adequacy of witness protection mechanisms in terrorism cases, and what remedial steps, if any, are required;
- (6) the adequacy of the law in addressing the unique challenges in prosecuting terrorism cases, and what remedial steps, if any, are required; and
- (7) the adequacy of aviation security, particularly those relating to passenger and baggage screening, and what remedial steps, if any, are required.

**Contact Information**

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## **Who is the Air India Victims Families Association (AIVFA)?**

1. The AIVFA is an unincorporated association currently consisting of representatives from over 60 of the approximately 80 known families of victims of the Air India Flight 182 bombing. This is a clear majority of the family members. The AIVFA cannot claim to represent all victims' families, for there are family members who have left the country, others who have chosen to attempt to leave the Air India murders behind, and a minority of individuals who maintain an interest in the relevant issues but who do not want to be a part of the AIFVA. There are doubtlessly other inactive family members who, in spite of our best efforts, the AIFVA has failed to identify. To the knowledge of its members, the AIVFA is the only association of victims' families. The AIFVA is prepared to direct its chosen counsel to represent the interests of all victims' family members, should the Honourable Commissioner so order.
  
2. To date the AIVFA has:
  - a. provided a support network for interested members of the families of Flight 182 victims;
  - b. provided liaison with the RCMP and the Attorney General of British Columbia in connection with the investigation and the failed Air India prosecution;
  - c. lobbied for fair monetary settlements for families of Flight 182 victims;
  - d. lobbied successfully on behalf of all families of Flight 182 victims for:
    - i. a day of remembrance of terrorism victims;
    - ii. the establishment of permanent memorials to the Air India victims, in select major Canadian cities; and
    - iii. the calling of a public inquiry; and
  - e. most recently, taken the initiative of identifying a potential legal team to represent the interests of victims' families.
  
3. The attempt to organize the families of victims of Air India Flight 182 began immediately after the June 23, 1985 bombing of Air India Flight 182. Dr. Bal K. Gupta, a Canadian Citizen, whose Affidavit will be filed in support of this application, made efforts to identify affected families. Tragically, Dr. Bal K. Gupta lost his wife, Ramwati Gupta, age 37 years, in the bombing. He was left to care for two sons, Susheel Gupta and Suneel Gupta. Soon after the murders, Dr. Gupta began collecting the names of families who had lost loved

ones in the terrorist attack. Names were collected from newspaper articles and word of mouth. Families were found through telephone listings. Ultimately, the name “Air India Flight 182 Victims Families Association” was registered to identify the group he had assembled, and that group ultimately merged with another informal group representing the interests of victims’ families in Ottawa, Ontario.

4. Initially, what is now the AIVFA operated as a loose organization that would organize monthly phone calls for support, organize memorial meetings, advocate for the rights of victims, and engage in lobbying and letter writing with the goal of securing justice for the victims of Flight 182 and their families. Lines of contact were opened with the RCMP in an effort to keep the families apprised of the status of the investigation, and early calls were made for a public inquiry.
5. In 1995, ten years after the Flight 182 bombing, the AIVFA became increasingly active. The precipitating factor was the RCMP announcement that the case had grown cold. This led to the AIVFA members becoming more vocal and cohesive and to more frequent and intense contact with the RCMP. The AIVFA assisted in arranging meetings between the RCMP and victims’ families in Vancouver, Edmonton, Toronto, Ottawa and Montreal.
6. In 2000 after the arrests occurred, the AIVFA kept close contact with the status of the case, through the RCMP and the Victim Services of the Attorney General of British Columbia.
7. In addition to liaison with the RCMP, the AIVFA also interceded by lobbying successfully to reopen financial settlements that had been made with some family members that were out of line with what other family members were receiving.
8. After the acquittals in the Air India trials, the AIVFA spearheaded the call for a public inquiry. More than a dozen members participated actively. An organized and active lobbying campaign began and a website was established at [www.airindiainquiry.ca](http://www.airindiainquiry.ca).
9. In the summer of 2005, after the 20<sup>th</sup> anniversary of the murder of its family members, elections were held to formalize the AIVFA by electing a Chair and four regional spokespersons, as well as chairs of three sub-committees, the Memorial Subcommittee, the Anti-Terrorism Day subcommittee, and the Inquiry Subcommittee. The Memorial Subcommittee has lobbied successfully for the establishments of permanent memorials in select, major Canadian cities; the Anti-Terrorism Day subcommittee inspired the Federal Government decision to proclaim June 23 as a day of remembrance for victims of terrorism; and we believe that it was the work of the Inquiry subcommittee and the AIVFA that led directly to the decision of the Government of Canada

to instate the Commission of Inquiry into the Investigation of the Bombing of Flight 182.

10. Most recently, the AIVFA has taken steps to organize victims' families to ensure full and effective representation at this Commission of Inquiry. To make this possible, the AIVFA, through the work of Rob Alexander, Deepak Khandelwal, Susheel Gupta and Venu Thampi, invited known family members to sign formal membership forms declaring their membership in the AIVFA and authorizing the selection of counsel. As of July 7, 2006 at 12:00, the AIVFA had received over 60 registrations from the 80 known families.
11. In order to enable the selection of expert counsel, the AIVFA approached several lawyers and law firms and invited their expression of interest in representing the AIVFA. We provided those lawyers and law firms with eleven criteria, which they were asked to address. Counsel will be selected after consultation among AIVFA members in an open and transparent process. Attached to the forthcoming Affidavit of Dr. Bal Gupta will be the copies of the membership forms, the criteria, and relevant correspondence including the announcement of our the selection by the Inquiry Subcommittee of counsel.

## **DETAILS OF SCOPE OF STANDING AND INTEREST**

12. As indicated, the AIVFA seeks full standing in relation to both "Stage 1" and "Stage 2" of the Commission proceedings with respect to each of the issues that this Honourable Commission is inquiring into. The families of victims of the terrorist bombing of Air India Flight 182 have a direct interest in each and every failure that lead to or contributed to the deaths of their loved ones. They were affected by those failings in a way that no other Canadians were. They lost parents, children, spouses and siblings in what should have been a preventable attack. Those families also have a direct and compelling interest in the failure of the prosecution and investigation to achieve justice. While investigations and prosecutions are undertaken in Canada in the name of Her Majesty the Queen and in the public interest generally, those who feel the failure of justice most acutely are victims and their families. The intense, personal interest in each of the matters raised is recognized implicitly in paragraph "f" of the "Terms of Reference" for the Commission of Inquiry:

"that the Commissioner be authorized to grant to the families of the victims of the Air India Flight 182 bombing an opportunity for appropriate participation at the Inquiry."

That interest was also expressed by the Honourable Prime Minister of Canada, Stephen Harper, when announcing the Commission of Inquiry:

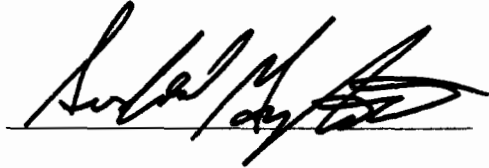
“The families of the victims continue to demand answers that only a full public inquiry can provide into the senseless slaughter of the victims of Air India Flight 182.” Office of the Prime Minister, 1 May 2006, <http://pm.gc.ca/eng/media.asp?id=1145>

13. It is respectfully submitted that without the full participation of victims’ families, there will be continuing doubt about answers provided. The AIVFA, as the only organization representing family members, therefore has a direct and substantial interest in each of the following issues:
  - (1) whether there were deficiencies in threat assessment or response, and what remedial steps, if any, are required;
  - (2) whether there were problems of cooperation between government departments and agencies in the investigation, and what remedial steps if any, are required;
  - (3) addressing the challenge of a reliable and workable relationship between security intelligence and evidence admissible at a criminal trial;
  - (4) the adequacy of restraints on terrorist funding, including use or misuse of charitable organizations, and what remedial steps, if any, are required;
  - (5) the adequacy of witness protection mechanisms in terrorism cases, and what remedial steps, if any, are required;
  - (6) the adequacy of the law in addressing the unique challenges in prosecuting terrorism cases, and what remedial steps, if any, are required;
  - (7) the adequacy of aviation security, particularly those relating to passenger and baggage screening, and what remedial steps, if any, are required.
14. The Air India Victims Families Association requests that this standing be extended, through their counsel, to both open and closed session hearings.
15. The Air India Victims Families Association understands a right of full standing to include the right to attend open sessions personally, and all sessions by their counsel, the right through their counsel to make opening statements and submissions on questions of law as appropriate, to have their counsel provide representation to the families of victims during the voluntary testimony in Stage 1, to have their counsel examine and cross-examine witnesses, to enable their counsel invite the Commission to receive and consider evidence where appropriate, and to make closing statements through their counsel, including recommendations orally and/or in writing as appropriate.

**Request**

16. For the reasons indicated, the AIVFA hereby respectfully requests full standing as described.

Signed, this 7<sup>th</sup> day of July 2006.

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "Linda M. [unclear]".

**COMMISSION OF INQUIRY INTO THE INVESTIGATION  
OF THE BOMBING OF AIR INDIA FLIGHT 182  
The Hon. John C. Major, Q.C., Commissioner**

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**AFFIDAVIT OF DR. BAL GUPTA, IN SUPPORT OF AN  
APPLICATION FOR STANDNIG AND AN APPLCIATION  
FOR FUNDING made on behalf of  
AIR INDIA VICTIMS FAMILIES ASSOCIATION (AIVFA)**

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I, Dr. Bal K. Gupta, of the City of Etobicoke in the Province of Ontario, make oath and say as follows:

1. I am a Canadian citizen, and a retired physicist and engineer. On June 23, 1985, I lost my wife, Ramwati Gupta, age 37 years, when she was murdered in the bombing of Air India Flight 182. She left surviving her, our two sons, Susheel Gupta and Suneel Gupta.
2. In the summer of 2005, after the 20<sup>th</sup> anniversary of the murder of its family members, I was formally elected to be Chair of the Air India Victims Families Association (AIVFA). The AIVFA is an unincorporated association that evolved from efforts made by me and by others over the past 21 years to organize the families of Victims of Air India Flight 182 in order to memorialize the victims, provide mutual support, and to represent the interests of those families. The AIVFA has evolved in both name and the formality of its organization, but it is the successor organization of those efforts.
3. To date the AIVFA has:
  - a. provided a support network for interested members of the families of Flight 182 victims;
  - b. provided liaison with the RCMP and the Attorney General of British Columbia in connection with the investigation and the failed Air India prosecution;
  - c. lobbied for fair monetary settlements for families of Flight 182 victims;

- d. lobbied successfully on behalf of all families of Flight 182 victims for:
- i. a day of remembrance of terrorism victims;
  - ii. the establishment of permanent memorials to the Air India victims, in select major Canadian cities; and
  - iii. the calling of a public inquiry; and
- e. most recently, taken the initiative of identifying a potential legal team to represent the interests of victims' families.
4. Until this past month, the Air India Victims Families Association did not provide for formal membership. It operated through mailing and contact lists and an internet website and depended on *ad hoc* volunteering. In an effort to prepare for the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, the AIVFA solicited formal membership subscriptions. Currently members representing over 60 of the approximately 80 families of victims of the Air India Flight 182 bombing that we have been able to identify have signed subscription forms.
5. While I therefore believe that the AIVFA has representation from more than half of the active victims' families in Canada, the AIVFA cannot claim to represent all victims' families, for there are family members who have left the country, others who have chosen to attempt to leave the Air India murders behind, and a minority of individuals who maintain an interest in the relevant issues but who do not want to be a part of the AIFVA. There are doubtlessly other inactive family members who, in spite of our best efforts, the AIFVA has failed to identify. I know of no other associations of Air India Flight 182 victims' families.
6. The AIVFA began this way. Shortly after Ramwati's death I began to contact the families of the other victims of the terrorist attack on Air India Flight 182. I collected the names of family members from newspaper clippings and media reports. I found them, where possible, with the assistance of telephone listings, and then by word of mouth. Ultimately, the name "Air India Flight 182 Victims Families Association" was registered (for example with Hepcoe Credit Union to open an account) and selected to identify the group we had assembled, and that group ultimately merged with another informal group representing the interests of victims' families in Ottawa, Ontario and surrounding area. As indicated, the group is now identified as the AIVFA.
7. Initially, we operated as an organization without formal membership requirements, other than to be a victim's family member. We would organize phone calls often on a monthly basis, and we would hold memorial meetings. We would also advocate for the rights of victims and engage in lobbying and



letter writing with the goal of securing justice for the victims of Flight 182 and their families. We worked to maintain lines of contact with the RCMP in an effort to keep the families apprised of the status of the investigation, and early calls were made for a public inquiry.

8. In 1995, ten years after the Flight 182 bombing, we in what is now the AIVFA became increasingly active. The precipitating factor was the RCMP announcement that the case had grown cold. This prompted us to become more vocal and cohesive and to seek more frequent and intense contact with the RCMP. We assisted in arranging meetings between the RCMP and victims' families in Vancouver, Edmonton, Toronto, Ottawa and Montreal.
9. In 2000 after the arrests occurred, the AIVFA kept close contact with the status of the case through the RCMP and the Victim Services of the Attorney General of British Columbia.
10. In addition to liaison with the RCMP, we also interceded by lobbying successfully to reopen financial settlements that had been made with some family members that were out of line with what other family members were receiving.
11. After the acquittals in the Air India trials, we spearheaded the call for a public inquiry. More than a dozen members participated actively. An organized and active lobbying campaign began and a website was established at [www.airindiainquiry.ca](http://www.airindiainquiry.ca).
12. As the 20<sup>th</sup> anniversary of the murder of our family members approached, we decided to formalize the AIVFA by electing a Chair and regional spokespersons, as well as members of three sub-committees, the Memorial Subcommittee, the Anti-Terrorism Day subcommittee, and the Inquiry Subcommittee. The Memorial Subcommittee lobbied successfully for the establishments of permanent memorials in select, major Canadian cities; the Anti-Terrorism Day subcommittee inspired the Government of Paul Martin to proclaim June 23, the anniversary of the Air India bombing, as a day of remembrance for victims of terrorism; and we believe the work of our the Inquiry subcommittee and of the AIVFA generally led directly to the decision of the Government of Canada to instate the Commission of Inquiry into the Investigation of the Bombing of Flight 182.
13. Most recently, we in the AIVFA decided to act decisively to organize victims' families to ensure full and effective representation at this Commission of Inquiry. To make this possible, the AIVFA, through the work of Rob Alexander, Deepak Khandelwal, Susheel Gupta and Venu Thampi, invited known family members to sign formal subscription forms declaring their membership in the AIVFA and authorizing the selection of counsel. As of

July 7, 2006 at 12:00, the AIVFA had over 60 registrations from the 80 known families. We expect membership registrations to continue to be received.

14. In order to enable the selection of expert counsel, we approached several lawyers and law firms and invited their expression of interest in representing the AIVFA. We provided those lawyers and law firms with eleven criteria, which they were asked to address. Attached hereto as Exhibit "A" to this my Affidavit is a list of the criteria that was furnished to those firms.
15. Attached hereto as Exhibit "B" to this my Affidavit is a "Message to Air India Family Members" circulated by Rob Alexander, Deepak Khandelwal and Susheel Gupta, soliciting membership and support in the selection of counsel. Attached as Exhibit "C" is the Air India Victims Families Association (AIVFA) Membership form. To be provided later will be copies of the subscription forms that were received as of noon on July 7, 2006 and any subsequent forms.

## STANDING AND INTEREST

16. We in the AIVFA understand a right of full standing to include the right to attend open sessions personally, and all sessions by our counsel, the right through our counsel to make opening statements and submissions on questions of law as appropriate, to have our counsel provide representation to the families of victims during the voluntary testimony in Stage 1, to have our counsel examine and cross-examine witnesses, to enable our counsel invite the Commission to receive and consider evidence where appropriate, and to make closing statements through our counsel, including recommendations orally and/or in writing as appropriate.
17. As the Application for Standing discloses, the AIVFA is seeking full standing of the kind described in relation to both "Stage 1" and "Stage 2" of the Commission proceedings with respect to each of the issues that this Honourable Commission is inquiring into. As families of victims of the terrorist bombing of Air India Flight 182 we have a direct interest in each and every failure that lead to or contributed to the deaths of our loved ones. We were affected by those failings in ways that no other Canadians were. We lost parents, children, spouses and siblings in what should have been a preventable attack. We therefore have a direct and compelling interest in the failure of the prosecution and investigation to achieve justice. While I understand that investigations and prosecutions are undertaken in Canada in the name of Her Majesty the Queen and in the public interest generally, it is victims and their families who most acutely feel the failure of justice. Our interest was recognized by the Honourable Prime Minister of Canada, Stephen Harper, when announcing the Commission of Inquiry when he said:

**“The families of the victims continue to demand answers that only a full public inquiry can provide into the senseless slaughter of the victims of Air India Flight 182.” Office of the Prime Minister, 1 May 2006, <http://pm.gc.ca/eng/media.asp?id=1145>**

18. I verily believe that without the full participation of victims’ families at all stage of the Commission proceedings in all of the respects described there will be continuing doubt about the answers provided and continued anguish and even acrimony. It is therefore my opinion that the AIVFA, as the only organization representing family members, has a direct and substantial interest in each of the issues to be addressed by the Commission, including:
- (1) whether there were deficiencies in threat assessment or response, and what remedial steps, if any, are required;
  - (2) whether there were problems of cooperation between government departments and agencies in the investigation, and what remedial steps if any, are required;
  - (3) addressing the challenge of a reliable and workable relationship between security intelligence and evidence admissible at a criminal trial;
  - (4) the adequacy of restraints on terrorist funding, including use or misuse of charitable organizations, and what remedial steps, if any, are required;
  - (5) the adequacy of witness protection mechanisms in terrorism cases, and what remedial steps, if any, are required;
  - (6) the adequacy of the law in addressing the unique challenges in prosecuting terrorism cases, and what remedial steps, if any, are required;
  - (7) the adequacy of aviation security, particularly those relating to passenger and baggage screening, and what remedial steps, if any, are required.
19. I also believe that in order to maintain the confidence of families in the Commission, matters should be as open and transparent as possible, and that if closed session hearings are to be conducted, counsel for the Air India Victims Families Association should be present.
20. Although I am not at liberty to speak on behalf of victims’ families not represented by the AIVFA, the AIVFA is prepared, if it pleases the Honourable Commissioner, to instruct its counsel to undertake representation on behalf of the interests of all victims’ families, and not only those who are members of the AIVFA.

## **COUNSEL AND FUNDING**

21. The AIVFA received proposals from lawyers and law firms that approached the families . After consultation among AIVFA members in an open and transparent process in which background information was posted on our

website and Inquiry Subcommittee meetings were held, the Inquiry Subcommittee has made a decision to retain one of the applicant teams. That decision was based on their dedicated expertise in the law of evidence and investigations, their general relevant experience, and the quality of their proposal which gave the selection committee confidence that this legal team would represent our interests effectively and sensitively. When required by the Commission, a copy of the "Offer of Representation to Air India Flight 182 Victim's Families Association" will be presented by the selected team.

22. I understand that these lawyers should not be considered, at this point, to be counsel of record although they have agreed to prepare and file the Application for Standing and Application for Funding on a *pro bono* basis to move the process along. Their agreement to act on our behalf is contingent on a suitably favourable response by the Commission to the Funding Request which the AIVFA is submitting along with this Application for Standing. I am advised and verily believe that neither counsel of our choice is prepared to undertake the legal work required, for the period required, at the ordinary rates provided to lawyers of their experience by the Federal Treasury Board Guidelines, as that those guidelines fall far below their ordinary rates of retainer. I am also advised and verily believe that neither counsel of our choice is prepared to undertake the work without adequate support to enable them to discharge their responsibilities effectively.
23. I also understand that there is urgency in our Application for Standing and Request for Funding. For professional reasons, our counsel of choice require a prompt response, failing which they will be unable to make the arrangements to provide the necessary representation, including one of the lawyers securing a leave of absence from the University of Ottawa. I am advised and verily believe that the University of Ottawa will look favourably on that leave request if submitted promptly. This particular lawyer has furnished us with an outside date of Wednesday July 19, 2006.
24. The funding requests that are being made in our Application for Funding are inspired by a desire to ensure that the Air India Victims Families Association secures timely and effective, expert representation on behalf of those who suffered most (including the families of Flight 182 crew members) as result of the tragic events of June 23, 1985 and their aftermath – namely the families of the victims. We are therefore requesting competitive rates and conditions of funding to ensure that effective, expert representation from the counsel of our choice.
25. We also wish to ensure that the legal team is adequately staffed to enable our counsel to be properly prepared during this, our best and final opportunity to get answers to lingering questions and to take something positive from the deep loss we have experienced by contributing to change where change is most needed.


26. We wish, as well, to ensure that there is adequate funding to enable the legal team to meet with, and communicate with victims' families across Canada so that the legal team will have the confidence of all victims. I verily believe that this will assist ultimately in the acceptance of the findings arrived at by the Commission.
27. We in the AIVFA are aware that given the volume of material that will be involved and the desirability of having counsel work in a common work area, that efficient space and facilities proximate to Victoria Hall, Bytown Pavillion, will be required and that furnishing this space will improve the security of classified information shared by the Commission with the legal team, if any.
28. We in the AIVFA are also aware that the Commissioner is to use the automated litigation support program specified by the Attorney General of Canada, and that our counsel will therefore require the hardware, software and training required to manage the data efficiently.
29. Finally, we in the AIVFA are aware that the services of a paralegal will provide necessary word processing and document management assistance to their legal team, and that failing this support, false economy will be achieved as counsel will be required to spend their time at counsel rates undertaking work that does not require their expertise.
30. The AIVFA is therefore requesting in our Application for Funding:
  - a) Funding for two senior litigators of 20+ years experience at \$400.00 per hour, without a billing cap, provided all accounts be subject to assessment in accordance with approved guidelines;
  - b) Funding for two junior lawyers to assist in interviewing witnesses, legal research, file preparation, and if necessary, hearing attendance, at \$200.00 per hour, without billing cap, provided all accounts be subject to assessment in accordance with approved guidelines;
  - c) Funding for one paralegal in the amount of \$3,000 per month, or the secondment from the Government of Canada of a paralegal, who can provide electronic document management assistance, word processing and litigation support;
  - d) Secured Office space in or proximate to the Bytown Pavillion, 111 Sussex Drive, Ottawa, Ontario (permitting access outside of normal government hours) where documents and materials can be stored and where the legal team can gather, consult and prepare;

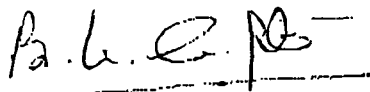
- e) Provision of photocopying and facsimile facilities and sundry office supplies;
- f) Computer hardware for each member of the legal team, containing funded access to electronic legal research and the software necessary to organize and read Commission documents and conduct word processing, as well as provision for necessary training in the document management programs; and
- g) Funding or technical assistance in establishing a password protected website to facilitate communication with families.

31. The AIVFA understands that the undertaking of a Commission of Inquiry is an expensive undertaking and that the requests for funding made are significant. We are cognizant that a criminal prosecution raises different issues but it is a relevant consideration in our minds that the legal fees expended by Canadian governments in defence of Ajaib Singh Bagri and Ripudiman Singh Malick to enable them to have their counsel of choice were reportedly 9.4 million and 6.4 million dollars respectively. The AIVFA is now asking for adequate funding for the representation of the families of Air India Flight 182 victims.

32. I make this affidavit in support of an Application for Standing and an Application for Funding made to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, and for no improper purpose.

SWORN before me at the City )  
of Toronto in the Region )  
of Ontario, this 7<sup>th</sup> day of July )  
2006 )

  
A Commissioner for Taking Oaths

  
Dr. Bal K. Gupta