

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

**MOTION FOR STANDING BY THE
ATTORNEY GENERAL OF CANADA**

The Attorney General of Canada hereby moves for standing to participate fully in all aspects of the Inquiry before the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (the "Commission of Inquiry"). The grounds for the application are as follows:

Summary

1. The Attorney General of Canada represents clients with interests and perspectives that are essential to the Commission of Inquiry's mandate. The Commission is charged with investigating and evaluating multiple facets of the government of Canada's activities, requiring broad access to documents in government custody, evidence from government employees and submissions from government departments.

Mandate of the Commission of Inquiry

2. The Commission of Inquiry was established by Order in Council number P.C. 2006-293 (the "OIC"), dated May 1, 2006 with a mandate to investigate and report on matters related to the investigation of the bombing of Air India Flight 182, and to investigate namely with respect to the following issues:

- (a) if there were any deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985, or in their response to that threat, whether any changes in practice or legislation are required to prevent the recurrence of similar deficiencies in the assessment of terrorist threats in the future;
- (b) if there were problems in the effective cooperation between government departments and agencies, including the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, in the investigation of the bombing of Air India Flight 182, either before or after June 23, 1985, whether any changes in practice or legislation are required to prevent the recurrence of similar problems of cooperation in the investigation of terrorism offences in the future;
- (c) the manner in which the Canadian government should address the challenge, as revealed by the investigation and prosecutions in the Air India matter, of establishing a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial;
- (d) whether Canada's existing legal framework provides adequate constraints on terrorist financing in, from or through Canada, including constraints on the use of misuse of funds from charitable organizations;
- (e) whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases;

- (f) whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required, including whether there is merit in having terrorism cases heard by a panel of three judges; and
- (g) whether further changes in practice or legislation are required to address the specific aviation security breaches associated with the Air India Flight 182 bombing, particularly those relating to the screening of passengers and their baggage.

The Involved Departments of the Government of Canada

3. Each item in the mandate of the Commission of Inquiry arches over the policy formation, governing legislation, protocols, current activities and historical record of several departments and agencies in the government of Canada, some of which are the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, Foreign Affairs Canada, Transport Canada, the Canada Revenue Agency, and the Department of Finance.¹

4. Additionally, the perspectives of the various departments, agencies and their employees will be invaluable to the work of the Commission of Inquiry since they will provide an inside-view of the investigation of the bombing of Air India Flight 182 and the government of Canada's efforts to prevent further terrorist attacks.²

¹ Affidavit of Matthew Jochen Keen Sullivan, at para. 3.

² Affidavit of Matthew Jochen Keen Sullivan, at para. 7.

5. Therefore, the government of Canada will be directly and substantially affected by the Commission of Inquiry's report.

Responsibilities of the Attorney General of Canada

6. Pursuant to the federal *Department of Justice Act*, R.S. 1985, c. J-2, the Minister of Justice, who is *ex officio* the Attorney General of Canada, is responsible for, *inter alia*:

- (a) ensuring that the administration of public affairs is in accordance with law;
- (b) the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces;
- (c) advising the heads of the departments of the government of Canada on all matters of law connected with such departments; and
- (d) the regulation and conduct of all litigation for or against the Crown or any department, in respect of any subject within the authority or jurisdiction of Canada.

Possession, Custody or Control of Relevant Documents

7. Many documents and information central to the Commission of Inquiry's mandate are within the exclusive possession, custody or control of the

government of Canada.³ Some of the documents and information raise considerations of national security, national defence, international relations, cabinet confidence, solicitor-client privilege and other forms of privilege.

8. Rule 30 of the Draft Rules of Procedure and Practice for the Air India Inquiry provides that as soon as possible after being granted standing, parties and intervenors shall provide to the Commission all documents having any bearing on the subject matter of the Inquiry.⁴

9. The Attorney General of Canada is responsible for representing the government of Canada and its several departments and agencies in matters related to the production of documents in response to the request issued by the Commission of Inquiry.⁵

10. The OIC appointing the Commission for Inquiry directs the Commissioner to take all necessary steps to prevent the disclosure of information which could be injurious to international relations, national defence or national security if it were disclosed, a process which requires the participation of the Attorney General of Canada. For example, the Attorney General is responsible for requesting that the Commission for Inquiry hear such sensitive information *in camera*, for providing the Commission for Inquiry with submissions with respect to the disclosure of this sensitive information or a summary of this information, and for providing submissions with respect to any sensitive information contained in the Commission of Inquiry's report(s) to the Governor in Council.

11. The OIC further specifies that the Commission for Inquiry will notify the Attorney General of Canada prior to the release of any such sensitive information pursuant to s. 38.01 of the *Canada Evidence Act*, R.S., 1985, c. C-5.

³ Affidavit of Matthew Jochen Keen Sullivan, at para. 11.

⁴ Affidavit of Matthew Jochen Keen Sullivan, Ex. "B".

⁵ Affidavit of Matthew Jochen Keen Sullivan, at para. 10.

12. In order to safeguard the integrity of sensitive information, the participation of the Attorney General is essential to the Commission of Inquiry's work.

Departmental Legal Advice

13. The Attorney General of Canada is also responsible for advising the heads of the several departments and agencies of the government of Canada on all matters of law connected with such departments and agencies.⁶ The Attorney General of Canada therefore acts as the Crown's legal adviser and representative with respect to the positions to be advanced before the Commission of Inquiry, and also with respect to the government's response to any report(s) submitted to the Governor in Council by the Commission of Inquiry.

Legal Representation of Crown Servants

14. Crown servants who have knowledge of facts, events, policies and procedures that may be relevant to the Commission of Inquiry may be called as witnesses to give evidence before the Inquiry. Pursuant to the *Department of Justice Act*, and in accordance with the Treasury Board's *Policy on the Indemnification of and Legal Assistance for Crown Servants*, these Crown servants may be eligible to be represented by the Attorney General of Canada.⁷

Contact Information for Counsel for the Attorney General of Canada

15. Lead counsel for the Attorney General of Canada will be Barney Brucker. Mr. Brucker can be reached at the following address:

⁶ Affidavit of Matthew Jochen Keen Sullivan, at para. 9.

⁷ Affidavit of Matthew Jochen Keen Sullivan, at para. 14 and Ex. "C".

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Conclusion

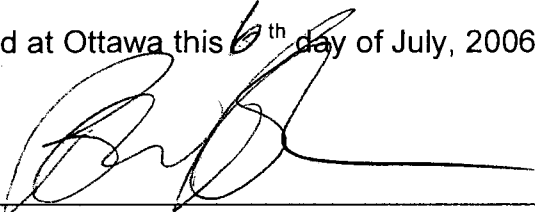
16. The Attorney General of Canada applies for standing before the Commission of Inquiry for the purposes of the inquiry on the following grounds:

- (a) the Attorney General of Canada is responsible for representing the government of Canada and its several departments and agencies in matters related to the production of documents held by Canada in response to any request for such documents issued by the Commission of Inquiry;
- (b) the Attorney General of Canada is responsible for asserting confidentiality in respect of evidence which, if disclosed publicly, would be injurious to international relations, national defence or national security;
- (c) The Attorney General of Canada acts as the Crown's legal adviser with respect to the positions to be advanced before the Commission of Inquiry, and also with respect to the government's response to any report submitted to the Governor in Council by the Commission of Inquiry; and

- (d) the Attorney General of Canada will be the legal representative of certain Crown servants who may have information relevant to the Commission of Inquiry or who may be called as witnesses.

17. Therefore, the Attorney General of Canada has a substantial and direct interest in all aspects of the Inquiry, and should be granted full standing, through counsel, to give evidence, examine or cross-examine witnesses and make submissions.

Dated at Ottawa this 6th day of July, 2006.



Counsel for the Attorney General of Canada

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

**AFFIDAVIT OF MATTHEW JOCHEN KEEN SULLIVAN
IN SUPPORT OF THE
MOTION FOR STANDING OF THE
ATTORNEY GENERAL OF CANADA**

I, **MATTHEW JOCHEN KEEN SULLIVAN**, of the City of Toronto in the Province of Ontario **MAKE OATH AND SWEAR AS FOLLOWS:**

1. I am counsel in the Regulatory Section in the federal Department of Justice in the Ontario Regional Office, Toronto. I have occupied this position since July 2003. In the course of my employment, I have been assigned as one of the counsel representing the government of Canada in the Inquiry into the Investigation of the Bombing of Air India Flight 182 (the "Commission of Inquiry").
2. I have reviewed Order in Council number P.C. 2006-293 dated May 1, 2006 which establishes the Commission of Inquiry with a mandate to investigate and report on the the investigation of the bombing of Air India Flight 182. A copy of this Order in Council is attached as Exhibit "A".
3. Each item in the mandate of the Commission of Inquiry arches over the policy formation, governing legislation, protocols, current activities and historical record of several departments and agencies in the government

of Canada, among which are the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, Foreign Affairs Canada, Transport Canada, the Canada Revenue Agency, and the Department of Finance.

4. Numerous examples of the Commission of Inquiry's mandate to examine a broad spectrum of the federal government's activities and policies are evident from the terms of reference. For instance, the terms of reference explicitly charge the Commission of Inquiry to make findings and analyze the historical and contemporary cooperation between the Royal Canadian Mounted Police and the Canadian Security Intelligence Service with respect to the investigation of terrorist offences. The terms of reference also require the Commission of Inquiry to investigate the connection between evidence and intelligence, which is at the heart of the relationship between the Royal Canadian Mounted Police and the Canadian Security Intelligence Service. The Commission of Inquiry is empowered to formulate recommendations for changes to practice or legislation to assist these and other government organizations.
5. The Order in Council also empowers the Commission of Inquiry to investigate various aspects of Canada's response to the threat of terrorism, including the problem posed by witness intimidation in terrorism investigations or prosecutions, and the possibility of having three judges preside as a panel over terrorism trials. These issues touch on active government policy and legislative planning, and on the operations of various government departments, including the Royal Canadian Mounted Police.
6. The Commission of Inquiry's mandate also involves an investigation into whether Canada's existing legal framework provides adequate constraints on terrorist financing. Such an investigation will involve an analysis of the

policies, procedures and legislation governing the Canada Revenue Agency and the Department of Finance among other departments, and may involve recommendations which could affect the way these departments carry out their duties to the Canadian public.

7. Therefore, the government of Canada will be directly and substantially affected by the Commission of Inquiry's report. As well, in my opinion, the perspectives of the various departments, agencies and their employees will be invaluable to the work of the Commission of Inquiry since it will provide an inside-view of the investigation of the bombing of Air India Flight 182 and the government of Canada's efforts to prevent further terrorist attacks.
8. The Attorney General of Canada and his counsel are charged with representing the interests of the government of Canada in an inquiry such as this Commission for Inquiry.
9. The Attorney General of Canada is responsible for advising the heads of the several departments and agencies of the Government of Canada on all matters of law connected with such departments and agencies. The Attorney General of Canada therefore acts as the Crown's legal adviser and representative with respect to the positions to be advanced before the Commission of Inquiry, and also with respect to the government's response to any report(s) submitted to the Governor in Council by the Commission of Inquiry.
10. The Attorney General of Canada is also responsible for representing the government of Canada and its several departments and agencies in matters related to the production of documents in response to the request issued by the Commission of Inquiry.

11. A great many documents central to the Commission of Inquiry's mandate are within the exclusive possession, custody or control of the government of Canada.
12. Rule 30 of the Draft Rules of Procedure and Practice for the Air India Inquiry provides that as soon as possible after being granted standing, parties and intervenors shall provide to the Commission of Inquiry all documents having any bearing on the subject matter of the Inquiry. A copy of the Draft Rules of Procedure and Practice are attached as Exhibit "B".
13. Some information and documents relating to the terms of reference in the custody of the government of Canada raise considerations of national security, national defence, international relations, cabinet confidence, solicitor-client privilege and other forms of privilege. In order to safeguard the integrity of such information, the participation of the Attorney General is essential to the Commission of Inquiry's work.
14. Finally, it is my understanding that Crown servants who have knowledge of facts, events, practices and procedures that may be relevant to the Commission of Inquiry and may be called as witnesses to give evidence before the Inquiry. In accordance with the Treasury Board's *Policy on the Indemnification of and Legal Assistance for Crown Servants*, these Crown servants may be eligible to be represented by the Attorney General of Canada. A copy of the *Policy on the Indemnification of and Legal Assistance for Crown Servants* is attached as Exhibit "C".

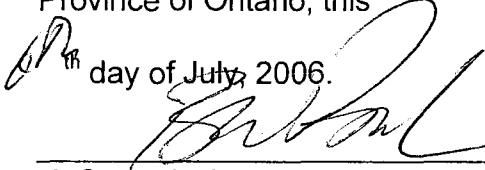
15. I make this affidavit in support of the Attorney General of Canada's application for standing as a party before the Commission of Inquiry and for no improper purpose.

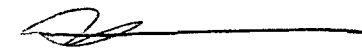
SWORN BEFORE ME at the)

City of Ottawa, in the)

Province of Ontario, this)

10th day of July, 2006.)


A Commissioner for taking Affidavits)


Matthew Jochen Keen Sullivan