

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

**MOTION RECORD
OF THE PROPOSED INTERVENOR
CANADIAN JEWISH CONGRESS**

Motion for leave to be granted Standing as an Intervenor, by the Commissioner,
Pursuant to Rules D 11, 12 and 13 of the Commission's *Rules of Procedure and Practice*

July 7, 2006

CANADIAN JEWISH CONGRESS
4600 Bathurst Street
Toronto, Ontario
M2R 3V2

Steven H. Shulman
Tel: (416) 635-2883 ext. 219
Fax: (416) 635-1408
E-mail: sshulman@on.cjc.ca

National General Counsel
Canadian Jewish Congress

1

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

**NOTICE OF MOTION OF THE PROPOSED INTERVENOR,
CANADIAN JEWISH CONGRESS**

**Motion for leave to be granted Standing as an Intervenor, by the Commissioner,
Pursuant to Rules D 11, 12 and 13 of the *Commission's Rules of Procedure and Practice***

Take notice that a motion will be made to the Commission at the Pavilion, Victoria Hall, 111 Sussex Drive, Ottawa, Ontario on July 18, 2006 at 9:30 a.m. or so soon thereafter as counsel can be heard on behalf of the proposed intervenor, Canadian Jewish Congress ("Congress").

THIS MOTION IS FOR an order of the Commission:

- (a) Granting standing to Congress as an intervenor before the Commission;
- (b) Such further and other participation in the Commission, and relief, as counsel may request and this honourable Commission may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Rules D 11, 12, and 13 of the Commission's *Rules of Procedure and Practice*.
- (b) Congress represents clearly ascertainable interests and perspectives essential to the Commission's mandate.
- (c) Congress is directly and substantially affected in relation to a number of areas and issues addressed by the Commission's terms of reference and Congress has a clearly ascertainable interest or perspective which would enhance the work of the Commission.
- (d) Congress, because of its expertise and historical experience, is able to present factual and expert evidence with respect to issues before the Commission because:
 - (i) Congress has been actively involved for several decades in addressing issues associated with terrorism, as both a representative of a targeted community and an advocate for effective counter-terrorism measures for Canada;
 - (ii) Congress is the representative organizational voice of the Jewish community of Canada, on issues pertinent to the quality of Jewish and Canadian life, including special concern over community security and national anti-terrorism measures; and
 - (iii) Congress has considerable experience in issues relating to inter-group relations and the impact of foreign conflicts on multicultural harmony in Canada.

- (e) The matters to be investigated by this Commission raise important matters of public interest. As this inquiry will not focus on dissecting the past and will establish parameters for the future – “to help shape the system that contains sufficient safeguards to prevent tragedies from occurring” it is essential that Congress, representing a targeted community under threat which has established excellent relationships with security services engaged in anti-terrorism efforts since the Air India tragedy in 1985, provide details of its experience in the interim period, to inform the Commission in arriving at its recommendations.
- (f) Congress represents a constituency that relies on effective recommendations arising from the Commission to ensure sufficient safeguards are in place to prevent similar tragedies from occurring in the future. In particular, Congress, by virtue of its leadership on anti-terrorism efforts since 1985, is in the position to provide evidence on systemic changes to prevent terror attacks against Canadians.
- (g) Identifiable groups such as the Canadian Jewish community rely upon the effective coordination and enforcement of anti-terror legislation for both their psychological and physical protection as well as for the symbolic message of acceptance and inclusion that such enforcement sends to the wider Canadian community.
- (h) Founded in 1919, Congress is a non-profit human rights organization, the purpose of which is to promote and protect the human rights, freedoms, and dignity of both the Canadian Jewish community which it represents, and of all Canadians.
- (i) Congress is recognized as a representative of the Jewish Community on matters of public policy. It has national and regional officers from across Canada.
- (j) Congress and the Jewish community which it represents, have a particular and pressing interest in ensuring the Commission provides guidance on systemic changes to prevent terror attacks against Canadians.
- (k) Internationally, Jewish communities have been targeted for terrorist violence as a result of overseas struggles, in a similar fashion to the targeting of Canadians on Air India Flight 182 due to overseas strife. Congress is concerned about the domestic importation of foreign disputes that could translate to acts of terrorism against Canadians.

Congress will make a useful and different contribution to the resolution of the issues to be considered by the Commission.

- (l) Congress has great empathy for the victims of Air India Flight 182 and can provide a unique perspective as a representative of a similarly targeted group, largely arising from foreign conflict.
- (m) Congress has established excellent relationships with national, provincial, and local security and police services and is able to provide a perspective as to how such services relate to ethnocultural and religious communities facing potential terrorist threats, since 1985, particularly coordination amongst such services.
- (n) The Jewish community which Congress represents has been at the vanguard of religious and ethnocultural communities consistently supportive of government anti-terrorism legislation and other initiatives, while at the same time being sensitive to the necessary balancing with human

rights and civil liberties required, as well concern as to how communities can be tarred with negative labels in terrorism investigations.

- (o) Congress has addressed the issue of intimidation and coercion of ethnocultural communities in Canada, for the purpose of terrorist activity.
- (p) Congress has made useful interventions in a large number of court cases and human rights issues affecting minority groups.
- (q) Congress has been engaged in wide ranging advocacy on anti-terrorism matters, particularly over the course of the past two decades. Such participation has included legislative briefs, appearances before parliamentary committees, meetings and correspondence with successive Prime Ministers and responsible Cabinet Ministers, and publication of position papers.
- (r) Such further and other grounds as counsel may advise and this honourable Commission may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE IS PRESENTED:

- (a) The affidavit of Manuel Prutschi, affirmed July 7, 2006, and documentary exhibits thereto; and
- (b) Such further and other material as Congress may advise and this Honourable Commission may permit.

DATED at Toronto, Ontario this 7th day of July, 2006.

CANADIAN JEWISH CONGRESS
 4600 Bathurst Street
 Toronto, Ontario
 M2R 3V2
 Steven H. Shulman
 Tel: (416) 635-2883 ext. 219
 Fax: (416) 635-1408
 E-mail: sshulman@on.cjc.ca
 National General Counsel
 Canadian Jewish Congress

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

222 Queen Street
 Ottawa, Ontario
 K1P 5V9
 Tel: (613) 992-1834
 Fax: (613) 995-3506

Mrs. Sheila-Marie Cook
 Executive Director and Commission Secretary

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

**CANADIAN JEWISH CONGRESS
(Proposed Intervenor)**

Applicant

**AFFIDAVIT OF MANUEL PRUTSCHI
(Affirmed July 7, 2006)**

I, **MANUEL PRUTSCHI**, of the City of Vaughan in the Regional Municipality of York, Province of Ontario, **SOLEMNLY AFFIRM AND SAY:**

1. I am the National Executive Vice-President of Canadian Jewish Congress (“Congress”). In my senior policy and advocacy position as National Executive Vice-President, coupled with almost two decades of employment with Congress in senior policy and advocacy positions, I have personal knowledge of Congress’ anti-terrorism dossier, and of the matters to which I depose herein.

I. BACKGROUND

A. Nature of Motion

2. This affidavit is made in support of a motion by Congress for standing as an intervenor before the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. (the “Commission”).

B. Description of Congress

3. Canadian Jewish Congress is a non-profit, human rights organization concerned with the rights and freedoms of the Canadian Jewish community and all Canadians, and in particular, the rights of ethnic, religious and other minority groups in Canadian society. Congress was founded in Montreal in 1919. As detailed below, Congress has been particularly active on advocating measures to prevent acts of terror from reaching Canadian shores.

4. Congress is committed to preserving and strengthening the quality of Jewish life at home and abroad. It combats antisemitism and racism, promotes human rights and positive inter-group relations and addresses a broad range of public policy, humanitarian and social justice issues. It strives for a multicultural society based on mutual understanding, civil discourse, the Charter of Rights and Freedoms, the responsibilities of citizenship and Jewish and Canadian shared values.

5. Congress, as part of its mandate, exercises a security responsibility on behalf of the Jewish community. The Jewish community has assessed that protective measures must be taken against extremists, whether they be motivated by radicalism engendered by foreign conflicts, religious fanaticism, Nazism/white supremacy, or any other sources. Congress, in fulfilling this obligation:

- i. gathers and analyzes publicly available intelligence;
- ii. interacts with international counterparts; and
- iii. maintains an ongoing liaison with the security services and police forces of governments at the national, provincial and municipal levels as well as security professionals.

6. Congress has national and regional officers representing Jewish communities from across Canada. As such, Congress is uniquely situated to represent the concerns of Jews and Jewish groups in the country, as a targeted group, on the issues being addressed by the Commission. Numerous judicial and quasi-judicial bodies have expressly acknowledged the status of Congress as the voice of the Canadian Jewish community on matters that concern it.

7. In this regard, in *R. v Lelas*, the Ontario Court of Appeal noted that “[t]he Canadian Jewish Congress represents the Jewish community in Canada.” A copy of the portion of the decision containing these comments is attached and marked as Exhibit “A”. In a similar vein, during Congress’ participation in the Commission of Inquiry on War Criminals, Justice Jules Deschênes, the Chair of that Commission, observed that CJC has long been recognized as the institutional representative and defender of the rights and interests of Canada’s Jewish community.

[The Canadian Jewish Congress] has been described without contestation as an umbrella organization representing Jews in Canada. It has been known over the years as the spokesman and defender of the interests of the Jewish people in this country for scores of years. In view of the obvious interests of that particular group of Canadian citizens, it is the opinion of this Commission that the Canadian Jewish Congress deserves and should be granted the standing it has applied for (Transcript, Vol II, April 24, 1985)

A copy of relevant portion of the transcript of Mr. Justice Deschênes' comments is attached and marked as Exhibit "B".

II. MOTION TO INTERVENE

Congress now seeks to be granted intervenor status by the Commission.

A. Congress has a particular and pressing interest in this Commission

8. Congress has a particular interest in the work of the Commission because of the Jewish community's longstanding concerns about combating international and domestic terrorism and issues pertaining to both Canadian and Jewish communal security in the face of these real threats.

9. Canadian Jews are members of society twice targeted - first as members of the broad Canadian family and second as belonging to an ethno-religious community that is uniquely profiled as a potential target for terrorist violence, largely arising out of foreign disputes.

10. Given the precarious position of Canada's Jewish community in relation to potential terror attacks, our Canadian Jewish community has also developed heightened sensitivity toward other minority communities victimized by terrorism. We have always regarded the bombing of Air India Flight 182 as a **Canadian** terrorist attack: "Our 9/11 before there was a 9/11", as expressed by Congress president, Professor Ed Morgan, before the Senate committee reviewing the *Anti-terrorism Act* last year. As such, Congress has always had, and continues to have great empathy for the victims of Air India Flight 182.

11. Over the years, Congress has garnered extensive experience in anti-terrorism matters and has worked cooperatively with CSIS, the RCMP and provincial and local police departments on issues of community security.

12. Congress also has many years of experience in dealing with inter-group relations and the impact of foreign conflicts on domestic harmony and civil discourse.

(a) Congress has extensive experience in making submissions on issues relating to anti-terrorism and security.

13. Congress' wide-ranging advocacy on terrorism-related matters, especially active over the past two decades, has taken many forms including: legislative briefs, appearances before Parliamentary committees, meetings and correspondence with successive Prime Ministers and relevant Cabinet ministers, and publication of position papers.

14. An illustrative sampling of submissions and appearances includes:

- i. Brief on Bill C-9, an Act to establish the Canadian Security Intelligence Service (1984);
- ii. Presentation to the Senate Special Committee on Terrorism and the Public Safety (1987);
- iii. Brief on the Five-Year Review of CSIS and the Security Offences Act (1989);
- iv. Perspectives on the Review of the Mandate of CSIS (1992);
- v. Aide Mémoire to the Special Joint Committee Reviewing Canada's Foreign Policy (1994);
- vi. Brief to the Immigration Legislation Review Advisory Group (1997);
- vii. Brief to the House of Commons Standing Committee on Citizenship and Immigration on Bill C-11, an Act respecting immigration to Canada (2001);
- viii. Position paper on Canada and International Terrorism (2001);
- ix. Brief to the House of Commons Standing Committee on Justice and Human Rights on Bill C-36, the Anti-terrorism Act (2001) (testified before Committee);
- x. Briefs to the Department of Foreign Affairs and International Trade NGO consultations in preparation for the annual session of the UN Commission on Human Rights (2000-2004) (appeared before DFAIT panels);
- xi. Brief to the Department of Foreign Affairs and International Trade's "Dialogue on Foreign Policy" (2003);
- xii. Invited participant at policy consultation sponsored by the Deputy Prime Minister on the formulation of a "National Security Policy" (2004);
- xiii. Invited participant at Department of Justice-sponsored consultation on the Anti-terrorism Act (2004); and

xiv. Briefs to the House of Commons and Senate of Canada Committees reviewing the Anti-terrorism Act (2005) (testified before both Committees).

15. In the past two decades, Congress has met and corresponded with successive Prime Ministers, Solicitors General, Ministers of Justice, Ministers of Citizenship and Immigration and Ministers of Public Safety on issues pertaining to:

- i. The key elements of Canada's anti-terrorism regime;
- ii. Inclusion of groups on Canada's list of banned terrorist entities;
- iii. Inadmissibility criteria (commission of terrorist acts) for immigrants and refugees;
- iv. Jewish communal security matters and concerns of at-risk minority communities;
- v. Roles and mandates for CSIS and SIRC; and
- vi. Cutting off terrorist fundraising in Canada.

16. In addition, Congress has published numerous op-ed pieces on terrorism related issues, and has been widely quoted on the topic in Canadian newspapers.

(b) Congress has extensive experience in promoting inter-group harmony and social cohesion.

17. Over many years, Congress has been in the forefront of promoting the multicultural fact of Canada, and working closely with other ethnocultural and faith groups to advance inter-group relations and minority community rights. Congress played a vital role in the establishment of Canada's anti-hate laws and other statutory and regulatory instruments to combat antisemitism and all forms of racism while promoting equality of opportunity and equal protection under the law. CJC has been particularly active in the post-*Charter* era working with governments at all levels, other ethnic communities, the courts and human rights NGOs to advance an anti-racism, pro-equality minority rights agenda.

18. Recognizing the threat to social cohesion posed by tensions from foreign conflicts being imported into Canada, CJC partnered with Heritage Canada to sponsor three conferences across the country (Ottawa, Vancouver, and Halifax) to explore "The Promotion of Civil Discourse in an Atmosphere of International Instability" (2004-2005). The sessions brought together a diverse blend of panellists and participants representing ethnic and faith communities, aboriginal peoples, government, academia, media, women's groups, organized labour and relevant human rights and anti-racism NGOs.

(c) Congress has extensive experience as an intervening party.

19. Congress' expertise in the above-mentioned areas has led to the granting of intervenor status before a broad range of courts, commissions of inquiry, and administrative tribunals/regulatory bodies, including:

- i. Courts (Supreme Court of Canada, Federal Court of Appeal, various provincial appeal courts);
- ii. Royal Commissions/Commissions of Inquiry (Deschênes Commission of Inquiry on War Criminals; Commission of Inquiry into the Deployment of Canadian Forces to Somalia); and
- iii. Tribunals/Regulatory Bodies (CRTC, Canadian Human Rights Commission, provincial human rights tribunals).

B. Congress will assist the work of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 and will make useful and different submissions

20. Congress intends to make submissions that are different from and/or supplementary to those that will be made by other parties, relying upon Congress' unique experience and perspective in this regard, both as the representative of the Canadian Jewish community and as an organization which has been at the forefront of addressing terrorism-related issues in this country.

21. Consistent with the Honourable Commissioner's opening statement, Congress intends to "provide recommendations to public policy and procedural questions that can continue to repair the system that allowed such horrific acts to take place."

22. In particular, Congress is in a position to share its expertise on issues of concern to the Commission, as reflected in the Commission's Terms of Reference and the Honourable Commissioner's opening statement. Congress has derived this expertise from the "real life" experience of working directly with Canada's police and security agencies, as well as political leaders, administrative officials, other ethnocultural communities, and international authorities on the issue of terrorism over the course of decades. Subject to the discretion of this Honourable Commission, Congress is in a position to share its expertise and provide information that will help to define issues, assess progress which has been made since 1985, and assist in formulating possible recommendations moving forward, in a way that will help to advance the Commission's proceedings in an efficient and beneficial manner.

(a) Terms of Reference - b(i)

23. Congress will be able to assist the Commission in its understanding of how ethno-religious communities, particularly the Jewish community, have worked with security and police agencies, and other government officials, in assessing terrorist threats to Canada both externally and domestically, especially with reference to Canadian minority groups as targets and victims of terrorism. In this respect, Congress has called for the provision to intelligence, security and police services' personnel of specific education and training to assist them in enforcing Canada's anti-terrorist régime with sensitivity to cultural differences.

24. In this regard, Congress has been in the forefront of championing integration by minority groups, as distinct from assimilation, and ensuring concordance of particular ethnocultural values to Charter values. Congress has significant experience, on the security/terrorism front, working with government agencies to ensure that those values are respected while, at the same time, urging enhancement of any tools that will assist in the assessment of terrorist threats including those aimed at Canadian communities based on foreign conflicts.

(b) Terms of Reference - b(ii)

25. Representing a Canadian community which is a potential terrorist target, Congress has established an excellent relationship with intelligence, security and police services across Canada. As such, Congress is in a position to facilitate the Commission's understanding of issues relating to front line anti-terrorism responders, including their cooperation with targeted communities from the unique perspective of a particular religio-ethnic community (Canadian Jewish). In addition, Congress is in the unique position of having witnessed the development of cooperation and coordination among the various Canadian security services since 1985.

(c) Terms of Reference b - (iii)

26. Congress will be able to provide important insights into the issue of terrorist fundraising in, from or through Canada, including the misuse of funds from charitable organizations, in the context of addressing the question of what the ambit of terrorist financing is. Congress is prepared to provide submissions as to what should be constrained when addressing the narrower and more technical issue of how to constrain terrorist financing. For example, should

such restraints interfere with individuals engaged in terrorist attacks; the next World Trade Centre type event; financing of groups that are organized for the purpose of committing terror; and/or the financing of groups that support terror as an ideology but do not directly participate in such acts?

27. In addition, Congress is in a position to provide recommendations on potential civil remedies by victims of terror, against foreign governments and actors who may be involved in promoting acts of terror. There are currently a number of legal impediments to effective use of potential civil remedies. This is an important issue, as such remedies could potentially act as a financial deterrent to those foreign states or other actors who may wish to target Canada and Canadians for terrorist acts.

(d) Terms of Reference b - (iv)

28. Congress has welcomed the inclusion in the *Anti-terrorism Act* of an amendment to the *Security of Information Act*, s.20 (1), which protects against “the intimidation or coercion of ethnocultural communities in Canada,” for the purpose of terrorist activity. This is important because Canada, with its very multicultural and pluralistic society (a positive model for the rest of the world), is especially vulnerable to terrorist infiltration. Congress is in a position to address how legislation could provide a useful impetus to ensure that vulnerable community members are not intimidated in the course of investigating or prosecuting terrorist activity.

(e) Terms of Reference b(v)

29. Congress has a history of addressing possible legislative measures to assist in the prosecution of terrorism cases. For example, Congress has supported an amendment to the *Criminal Code of Canada* making it clear, for greater certainty, that suicide bombings do fall within the *Code's* definition of terrorist activity. In addition, Congress has urged in the latest review of the *Anti-terrorism Act* that “religious” be retained in the tri-ad of rationales “political, religious or ideological” for terrorist activity listed by the *Anti-terrorism Act*. Congress can provide several specific suggestions, in terms of legislative change to assist in the prosecution of terrorism cases, to be considered by this Honourable Commission.

C. SUMMARY

30. Based on my more than 20 years of employment, in senior policy and advocacy positions with Canadian Jewish Congress, Congress is in a position to provide unique insight into a number of issues specified in the Terms of Reference of this Honourable Commission.

31. This affidavit is affirmed in support of the motion by Canadian Jewish Congress to be granted standing as an intervenor before the Commission, and for no improper purpose.

AFFIRMED before me at the City
of Toronto, in the Province of Ontario
this 7th day of July, 2006.


Manuel Frutschi



A Commissioner, etc.

MARC S. ANSARIAN