

Order In Council P.C. 2006-293**BEFORE THE COMMISSION OF INQUIRY
INTO THE INVESTIGATION OF THE BOMBING OF AIR INDIA FLIGHT 182**

**NOTICE OF MOTION FOR THE APPLICATION FOR STANDING
OF THE WORLD SIKH ORGANIZATION OF CANADA**

(Pursuant to Rule D12 of the Rules of Procedure and Practice)

TAKE NOTICE that the WORLD SIKH ORGANIZATION OF CANADA hereby applies to this Commission, pursuant to Rule D12 of the *Rules of Procedure and Practice*, for an Order:

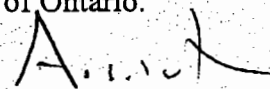
- a) Permitting the World Sikh Organization of Canada to participate in this Inquiry;
- b) Make an opening submission;
- c) Apply for leave as the Inquiry proceeds to examine specific witnesses, if appropriate, on the protocols and rules in place for Canadian officials in cases of investigation of Air India Flight 182 bombing, both generally and as illustrated by the Air India case;
- d) Apply for leave as the Inquiry proceeds to make submissions, if appropriate, on the scope of the Inquiry's mandate or other procedural matters that may affect the perception of this Inquiry's ability to achieve the mandate established by its terms of reference;
- e) Make a closing submission on matters that arise in the course of the Inquiry; and
- f) Such further and other grounds as counsel may advise and as permitted by this Inquiry.

AND FURTHER TAKE NOTICE that the Motion shall be made on the following grounds:

1. Pursuant to Rule D10 of the *Rules of Procedure and Practice*, the Commissioner has the jurisdiction to allow any interested person(s) to intervene before the Court if the Commissioner is satisfied that the person is directly and substantially affected by the mandate of the Inquiry or portions thereof.

2. The WSO represents clearly ascertainable interests and perspectives essential to the Commissioner's mandate, which ought to be separately represented before the Inquiry;
3. This Inquiry raises matters related to the alleged threat of "Sikh" terrorism, and as such, the WSO, as an international and national representative body for Sikhs in Canada, has a legitimate concern and interest in the outcome of this Inquiry as it raises a number of important issues regarding the nature and extent of the global stereotyping this case has brought to the Sikh community.
4. Many of the victims of the tragedy were of the Sikh faith, and the individuals investigated for this crime were also of the Sikh faith – the perspective of the WSO, a national and international Sikh human rights organization, is essential to the Commissioner's mandate;
5. The Applicants have a direct and substantial interest in contributing to the proper development of the substantive law and procedures governing the conduct of states and officials in relation to ensuring early detection and elimination of terrorism.
6. The WSO has special expertise and knowledge of the issues raised by this Inquiry, thus the submissions advanced by it will be of assistance to the Commissioner.
7. The WSO represents a large constituency of Canadians whose views are not represented by the parties in this Inquiry, and who are directly affected by the outcome of this Inquiry.

DATED this 5th day of July, 2006, in the City of Ottawa, Province of Ontario.



AJIT SINGH SANDHU
Director of Administration WSO

Per: Palbinder K. Shergill
Counsel for the Proposed Party
World Sikh Organization of Canada

This Notice of Motion is filed by Palbinder K. Shergill, of the Law Firm, Shergill and Company, Trial Lawyers, Suite 211-9547 152nd Street, Surrey, B.C., V3R 5Y5, telephone (604)588-7337; Facsimile (604)588-7338; email: palbinder@shergilllaw.com

Order In Council P.C. 2006-293**BEFORE THE COMMISSION OF INQUIRY
INTO THE INVESTIGATION OF THE BOMBING OF AIR INDIA
FLIGHT 182**

**MEMORANDUM OF ARGUMENT
FOR THE APPLICATION FOR STANDING
OF THE WORLD SIKH ORGANIZATION OF CANADA**

PART 1: STATEMENT OF FACTS**A. OVERVIEW**

1. The World Sikh Organization of Canada ("WSO") is applying for special standing at the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. By bringing this Application, the WSO wishes to:
 - (a) Make an opening submission on:
 - i. whether any systemic issues relating to the assessment of the potential threat posed by "Sikh" terrorism prior to 1985, and the response to that threat by Canadian government officials, have been resolved and, if not, the further changes in practice or legislation that are required to resolve them,
 - ii. whether any systemic 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, have been resolved and, if not, the further changes in practice or legislation that are required to resolve them,
 - iii. 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,

- iv. whether Canada's existing legal framework provides adequate constraints on terrorist financing in, from or through Canada,
 - v. whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases, and
 - vi. whether the unique challenges presented by the prosecution of terrorism cases are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, in particular whether there is merit in having terrorism cases heard by a panel of three judges.
 - vii. 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.
- (b) Apply for leave as the Inquiry proceeds to examine specific witnesses, if appropriate, on the protocols and rules in place for Canadian officials in cases of investigation of Air India Flight 182 bombing, both generally and as illustrated by the Air India case.
 - (c) Apply for leave as the Inquiry proceeds to make submissions, if appropriate, on the scope of the Inquiry's mandate or other procedural matters that may affect the perception, of this Inquiry's ability to achieve the mandate established by its terms of reference.
 - (d) Make a closing submission on matters that arise in the course of the inquiry.
2. The WSO would like to make both written and oral submissions to the Commission.

B. BACKGROUND: THE WORLD SIKH ORGANIZATION OF CANADA

3. The WSO is a non-profit international umbrella organization, registered in 1984 in New York, U.S.A. It is an international human rights organization, with a mandate to promote and protect the interests of the Sikh Diaspora, as well as to promote and advocate for the protection of human rights for all individuals, irrespective of race, religion, gender, ethnicity, and social and economic status.

4. Sikhism is a major world religion, and ranks in numbers in the top 5. There are approximately 22 million Sikhs worldwide, with 12 million residing in India, and the balance spread out around the world. Approximately 700,000 Sikhs have settled in North America, with more than half of them (about 400,000) living in Canada. Approximately 25,000 Sikhs reside in Quebec, 25,000 in the Maritimes, 150,000 in Ontario, 150,000 in B.C., and the balance spread throughout the Prairies and Northern provinces and territories.
5. The WSO has a 51-member General Assembly from five regions of the world, namely Canada, United States of America, United Kingdom, India and other countries.
6. The WSO was registered with the Government of Canada on December 2, 1984, as a non-profit organization, under the name World Sikh Organization of Canada, and has the following primary national objectives:
 - a) to foster understanding and good will towards all nations, creeds, persuasions and faiths;
 - b) to act as a representative body and spokes-body of the Sikhs of Canada and help resolve differences amongst members and member organizations;
 - c) to liaise with government and non-government agencies and to apprise them of the interests of the Sikhs;
 - d) to encourage, develop and maintain close relationships with similar and like-minded organizations throughout Canada;
 - e) to do all such things not inconsistent with the doctrines and ethics of Sikhism and the law of the land as are conducive to the attainment of the objectives of the World Sikh Organization of Canada.
7. In Canada the WSO has a National Assembly which consists of the National Electoral college (elected delegates from local chapters of the WSO from all over Canada), and the Senate of Sikh Organizations (Sikh organizations at various levels across Canada). Delegates from the Five Regions of Canada compose the national Executive Council.

8. The WSO works in cooperation with over 60 Sikh societies or organizations within Canada (representing over 300,000 Sikhs) to advocate on behalf of Sikh interests in Canada. These interests include religious, social, legal, and cultural.
9. The WSO has been actively involved in addressing major social issues in Canada since 1984. As part of this involvement, and with the view to fostering better understanding and accommodation of all peoples, the WSO has: prepared submissions to governmental and non-governmental agencies and organizations; presented at and hosted conferences with and for community groups, police boards, politicians, inter-faith organizations, schools, universities, and various other non-profit entities; and conducted training and educational workshops in communities throughout Canada.
10. The WSO has been invited to make submissions, presentations, and act in a consultative capacity to national and international government and legislative committees, tribunals, and non-governmental entities, on constitutional and human rights issues, as well as other matters. For example, the WSO has done the following:
 - a) Consultative Status with the United Nations Economic and Social Council (from 1993 to 1995);
 - b) Presentation to the World Conference Against Racism (2001);
 - c) Consultations with the Refugee Review Tribunals of Australia, United States and the Canadian Immigration and Refugee Board;
 - d) Presentation to the Standing Committee on Justice and Human Rights, on Bill C-36, Canada's Anti-Terrorism Legislation; Presentations to Canadian Senate and House Committees on Bills C-16/C-18 (Citizenship and Immigration);
 - e) Presentations to Canadian Senate and House Committees on Bills C-16/C-18 (Citizenship and Immigration);
 - f) Consultations and Submissions to the Canadian Department of Foreign Affairs on issues of foreign policy, including Mutual Legal Assistance Treaties;

- g) Consultations with Canadian Department of Employment and Immigration on immigration policy development;
- h) Consultations with the Ministry of Multiculturalism; and
- i) Consultations with Committee reviewing Canada Customs and Revenue/Solicitor General policies on non-for profit and charitable status for cultural organizations (2000-2001).

C. PREVIOUS INTERVENTIONS BY THE WSO

11. The WSO has been granted Intervener Status in the following cases:
 - a) *Multani v. Commission scolair Marguerite-Bourgeoys* (2006 SCC 6) which considered the right of a Sikh student to carry his kirpan while attending school;
 - b) *The League for Human Rights of B'Nai Brith Canada v. Syndicat Northcrest et al.* (SCC No. 29252 – reserve judgment of the Court) which considered the appropriate test to be applied when considering a claim for freedom of religion;
 - c) *Moise Amselem et al. v. Syndicat Northcrest et al.* (SCC No. 29253 – reserve judgment of the Court) which considered the right of a condominium owner to build a succah hut on the balcony during the Jewish festival of succat;
 - d) *Commission Scolair Marguerite-Bourgeoys v. Multani* (Que.CA No. 500-09-012386-025 – which judgment is under appeal in this present case) which considered the rights of a Sikh student to carry his *kirpan* while attending school;
 - e) *Grant et al. v. Attorney General (Canada)*, [1995] 1 F.C. 158 (F.C.A.) leave to appeal to Supreme Court of Canada denied, which considered the right of the RCMP to amend its dress code regulations to allow a Sikh officer to wear a turban while on duty; and
 - f) *Grant et al. v. Attorney General (Canada)*, [1994] F.C.J. No.1001 (F.C.T.D.), in which the WSO was permitted to cross examine witnesses, present evidence, and make written and oral submissions to the Court.
12. Further, the WSO has acted in a consultative capacity to the Alberta Human Rights Commission, and the Ontario Human Rights Commission (amongst others), while cases were pending before both those tribunals regarding the accommodation of Sikh articles of faith.

13. WSO has been lobbying parliamentarians for an inquiry commission on the Air India tragedy since 1985 and has appeared at the following committees and commissions;
 - a) the report of the Honourable Bob Rae entitled *Lessons to Be Learned* of November 23, 2005,
 - b) the 1991-1992 Security Intelligence Review Committee review of Canadian Security Intelligence Service activities in regard to the destruction of Air India Flight 182.

PART II: GROUNDS FOR THE APPLICATION

A. SUFFICIENT INTEREST

14. The WSO, as an international and national representative body for Sikhs in Canada, has a legitimate concern and interest in the outcome of this leave application. The Sikhs comprise one of the major faith groups in Canada.
15. The Commissioner may grant standing to any person or group who can establish that they have a substantial and direct interest in the subject matter of this Inquiry. Standing before a Commission of Inquiry gives the individual or group the right to take part in proceedings as directed by the Commissioner and to make submissions to the Inquiry.
16. If granted standing, the WSO would make submissions where submissions are allowed, and if permitted to examine the witnesses, it would do so through its legal counsel.
17. The Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 is established under Part 1 of the Inquiries Act and allows the Commissioner to hold hearings, either in public or in camera, anywhere inside or outside Canada in order to provide a report on the following questions:
 - a) whether any systemic issues relating to the assessment of the potential threat posed by Sikh terrorism prior to 1985, and the response to that threat by Canadian government officials, have been resolved and, if not, the further changes in practice or legislation that are required to resolve them,

- b) whether any systemic 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, have been resolved and, if not, the further changes in practice or legislation that are required to resolve them,
 - 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,
 - e) whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases, and
 - f) whether the unique challenges presented by the prosecution of terrorism cases are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, in particular whether there is merit in having terrorism cases heard by a panel of three judges,
 - 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.
18. The above issues are of significant concern to all Canadians, and particularly the Sikh community, who has a direct and substantial interest in the subject matter of this inquiry. Not only does the inquiry directly deal with issues related to the alleged threat of "Sikh" terrorism, but many of the victims of the tragedy were of the Sikh faith, and the individuals investigated for this crime were also of the Sikh faith.
19. WSO's longstanding concern, involvement, and influence in national security, intelligence and policing issues in Canada and its acknowledged expertise in these areas means it has a direct and substantial interest in the rights of not only Canadian Sikhs, but all or any citizens whose rights and freedoms are similarly at risk. Indeed the WSO's specific and persistent call for this very inquiry with terms of reference that match very closely with what has ultimately been ordered demonstrates that it has a substantial

interest in the outcome of the Inquiry.

20. The procedures and methods of investigation this Inquiry adopts may become an important precedent not only in Canada, but internationally as well. Canada's legal system is recognized as having a high regard for procedural fairness and due process. It is anticipated that the findings of this Inquiry may contribute substantially to the development of the law and practice governing procedures for reviewing the conduct of government officials in relation to carrying their espionage functions and making them accountable to the elected representatives.
21. It is anticipated that the Inquiry will make findings of fact and law about the conduct of Canadian investigative agencies, and whether their conduct was consistent with taking necessary steps to prevent this tragedy. It is also anticipated that the findings of this Inquiry may be regarded as precedent not only in Canada but elsewhere. The Applicants have a direct and substantial interest in contributing to the proper development of the substantive law governing the conduct of states and officials in relation to ensuring early detection and elimination of terrorism.
22. The Air India Flight 182 Bombing case raises a number of important issues which are of critical interest to WSO, regarding the nature and extent of the global stereotyping this case has brought to the Sikh community.
23. The WSO also has a substantial and direct interest in the Factual Inquiry in that information resulting from this Inquiry will be directly relevant to the work that the WSO does in assisting individuals with complaints about CSIS, the RCMP, OPP and other security-intelligence agencies.
24. In this respect, WSO represents the interests of all Canadians. It has a unique interest in ensuring that Canadian legislation, institutions, policies and practices are designed to protect those interests and to prevent failures such as those that would appear to have occurred in this case. This interest is

broader than that of any one individual or of any specific constituent group.

25. The result of interpreting the subject matter of the Inquiry more narrowly, would be that the only persons to have a substantial and direct interest would be the relatives of the victims and members of the investigative agencies. Clearly this would result in a paucity of perspective that would not be in the interest of a full and complete Inquiry.

B. USEFUL AND DISTINCT SUBMISSIONS

26. Because of its expertise on issues related to equality and religious rights, the WSO can assist this Commission in responding to the above questions. The WSO can comment on whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases; whether there is merit in having terrorism cases heard by a panel of three judges; whether the unique challenges presented by the prosecution of terrorism cases are adequately addressed by existing practices or legislation; and the principles regarding internal accountability mechanisms to ensure transparency and accountability in the conduct of investigations and to safeguard the rights of people of all ethnic and cultural backgrounds. All issues which are of significant importance to all Canadians.
27. The WSO has made numerous submissions on issues relating to the protection of the rights of Canadians, irrespective of their religious beliefs and practices, and has successfully worked and continues to work with governmental and non-governmental organizations in aiding such accommodation.
28. The WSO has expertise and a different perspective to the argument, given its research and preparatory work; it will be able to make a useful contribution to the national importance of the issues raised in the Inquiry all without injustice to the immediate parties.
29. Seeking standing in the Inquiry is very similar to the test applied for

determining whether or not intervenors should be permitted before the courts. Our courts have determined that it is only when the Court has an opportunity to hear different perspectives on an important question that it is able to fully and effectively adjudicate the issues. The participation of interveners which are composed of groups of individuals or associations that have a specialized knowledge in the issues raised before the Court, allows for the full exploration of different perspectives in the legal context.

Reference re Workers Compensation Act; See also *Commission scolaire Ancienne-Lorette – Montcalm c. Commission des droits de la personne du Québec**, (1994) 58 Q.A.C. 315 [1993] R.D.J. 643 (C.A.) and *Société canadienne d'indemnisation pour les assurances de personnes c. Services de santé du Québec*, (1993) 56 Q.A.C. 181, [1993] R.D.J. 394 (C.A.) where the court confirmed a more liberal approach in granting intervenor status in cases involving rights and freedoms and other matters of public interest.

30. The grounds used to determine if a group or individual should be given standing, can best be illustrated by examining other cases where it has been granted.
31. In the *APEC Inquiry* the British Columbia Civil Liberties Association was given full standing even though there were dozens of individual complainants with similar perspectives, all of whom received full standing and full public funding.
32. In *Re Black Action Defence Committee and Huxter, Coroner*, [1992] O.J. No. 2741, the Ontario Divisional Court overturned the decision of the coroner to deny standing to the Urban Alliance on Race Relations for Metropolitan Toronto. The court held that a coroner must have regard to the preventative role of an inquest and its role in allaying public concerns. The Alliance was found to have a "unique expertise" in cross-cultural sensitivity and had the clear confidence of many visible minority groups including the black community. In coming to this decision, the Court referred to the *Ontario Coroners Act*, R.S.O. 1990, c. C.37, which states that a person who applies shall be designated as having standing before an inquest if the person "is substantially and directly interested in the inquest."

33. In *Re Pham*, [2004] A.J. No. 245, the Alberta Provincial Court considered an application by the CBC for standing at a public fatality inquiry. The court reviewed much of the case law relating to standing, including cases requiring that a person be "substantially and directly interested" and concluded that:

It is obvious from the cases that at Coroner's inquests in the province of Ontario, the trend is towards granting standing to individuals or groups who may, by virtue of their expertise or their larger public interest be able to contribute to the preventative function of a fatality inquiry.

Notwithstanding the obvious difference in wording between the relevant sections, i.e. a person "substantially and directly interested in the inquest" (Ontario) and "an interested person" (Alberta), the cases are applicable to the present application for standing. The cases demonstrate a continuing commitment to the principle that fatality inquiries must remain public. As well, the cases also demonstrate that the preventative function of a fatality inquiry is now becoming as important as the investigative function. Standing is becoming more inclusive. Disparate groups with no obvious connection to the event are being given standing on the basis of a public interest and/or an expertise in areas that in some instances are peripheral to the matter under inquiry....

34. Standing was granted in the *Walkerton Inquiry* to a number of environmental groups who had no obvious connection with the event, but who had a clear interest in the environmental issues that were raised. Standing was also given to farmers' associations, and a foundation interested in the question of private or public ownership of the water system.
35. In his ruling on Standing and Funding in the *Walkerton Inquiry* Commissioner O'Connor said:

My first criterion has been to ensure the Inquiry is thorough. When in doubt, I have opted in favour of inclusion. In doing so, I recognize there will be overlapping positions and a potential for duplication.

Ontario, Parliamentary Inquiry, Appendix E (II), Report of the *Walkerton Inquiry*, Ontario, Queen's Printer, 2002

36. In the *Kaufman Commission on Proceedings Involving Guy Paul Morin*, the Commissioner noted he was charged with a threefold mandate:

investigative, advisory and educational. To help him in fulfilling his mandate, he granted standing to such diverse groups as the Association in Defence of the Wrongly Convicted, the Criminal Lawyers Association, the Ontario Crown Attorneys' Association, the Canadian Bar Association, the Law Union, and various police associations. These organizations were granted standing because of their substantial and direct interest in the systemic component of the subject matter of the inquiry.

Ontario, Parliamentary Inquiry, Report of the Kaufman Commission on Proceedings Involving Guy Paul Morin (Ontario: Queens Printer, 1998).

37. Based on the above, it is submitted that the purpose of an inquiry is to not only find out what happened, but also to find out why it happened, so that future incidents can be prevented and the public can be reassured that the fundamental rights and freedoms of Canadian citizens are being respected and protected. In this manner, a public inquiry must of necessity, include investigative, preventative and public confidence components.
38. It is respectfully submitted that these components are strengthened with the participation of organizations such as the WSO.

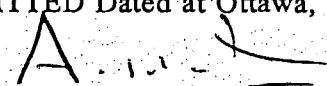
PART III: SPECIFIC FORMS OF STANDING REQUESTED

39. **Opening Statement** WSO requests an opportunity to make a brief opening statement, setting out the perspective of its application on the factual and legal issues that frame the mandate of the Commission.
40. **Leave to Apply to Examine Witnesses** At this stage WSO does not seek an order giving it an open-ended right to examine or cross-examine witnesses. However, we request leave to apply, if appropriate, to examine individual witnesses. WSO seeks an order giving it leave to apply, with appropriate notice. WSO would apply for leave only where we believe the particular expertise of the organization could bring a

special focus to a witness' evidence thereby assisting the Inquiry.

41. *Leave to Apply to Make Submissions on Scope and Procedural Matters* The Inquiry's terms of reference appear to be framed so as to allow the Commissioner wide latitude in deciding what questions he wishes to have answered, and what procedures the Inquiry should follow, to fulfill its mandate. At this time WSO does not seek standing to make submissions on all points of law, procedure, or evidence that may come before the Inquiry. However, WSO seeks an order giving it leave to apply, with appropriate notice, to make submissions on points where its expertise may be of assistance to the Inquiry.
42. *Leave to Make Final Submissions* WSO seeks standing to make oral and written submissions on all matters that come before the Inquiry. It is anticipated that the WSO's submissions would not focus on responsibility of individual officials, but may comment on Canadian practices and procedures more generally. It is not anticipated that the WSO would take a position on the facts the Inquiry should find, but would make submissions on the basis of their special expertise, on the legal implications that could follow if the Inquiry finds certain allegations of fact to be true.

ALL OF WHICH IS RESPECTFULLY SUBMITTED Dated at Ottawa, Ontario on 5th July, 2006.


AJIT SINGH SAHOTA, D.B.A.
Per: Palbinder K. Shergill
Counsel for the Proposed Party
World Sikh Organization of Canada

This Notice of Motion is filed by Palbinder K. Shergill, of the Law Firm, Shergill and Company, Trial Lawyers, Suite 211-9547 152nd Street, Surrey, B.C., V3R 5Y5, telephone (604)588-7337; Facsimile (604)588-7338; email: palbinder@shergilllaw.com

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

AFFIDAVIT OF AJIT SINGH SAHOTA

I, Ajit Singh Sahota, of the City of Ottawa, Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

1. I am the Past President of the Applicant, World Sikh Organization of Canada (“WSO”), and the current Director of Administration, and as such have personal knowledge of the facts and matters set out herein, except where stated to be based on information and belief, and where so stated, I believe them to be true.
2. The WSO wishes to apply for standing in this Inquiry in order to make submissions to the Inquiry, examine witnesses, make closing arguments, and participate in any other manner requested by its legal council from time to time and as permitted by the Commissioner.
3. This application for standing is prompted by the WSO’s longstanding request for a commission of inquiry into the Air India tragedy, and its decades of work towards promoting and protecting the interests of Canadians of both Sikh and non-Sikh heritage. The decision of the Inquiry will have a serious and far-reaching impact on Canadians of the Sikh faith, for whom the WSO acts as a representative body.

The WSO

4. The WSO is a non-profit international umbrella organization, registered in 1984 in New York, U.S.A., as an international organization, with a mandate to promote and protect the interests of the Sikh Diaspora, as well as to promote and advocate for the protection of human rights for all individuals, irrespective of race, religion, gender, ethnicity, and social and economic status.

5. Sikhism is a major world religion, and ranks in numbers in the top 5. There are approximately 22 million Sikhs worldwide, with 12 million residing in India, and the balance spread out around the world. Approximately 700,000 Sikhs have settled in North America, with more than half of them (about 400,000) living in Canada. Approximately 25,000 Sikhs reside in Quebec, 25,000 in the Maritimes, 150,000 in Ontario, 150,000 in B.C., and the balance spread throughout the Prairies and Northern provinces and territories.

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- a) to foster understanding and good will towards all nations, creeds, persuasions and faiths;
- b) to act as a representative body and spokes-body of the Sikhs of Canada and help resolve differences amongst members and member organizations;
- c) to liaise with government and non-government agencies and to apprise them of the interests of the Sikhs;
- d) to encourage, develop and maintain close relationships with similar and like-minded organizations throughout Canada;

- e) to do all such things not inconsistent with the doctrines and ethics of Sikhism and the law of the land as are conducive to the attainment of the objectives of the World Sikh Organization of Canada.

8. In Canada the WSO has a National Assembly which consists of the National Electoral college (elected delegates from local chapters of the WSO from all over Canada), and the Senate of Sikh Organizations (Sikh organizations at various levels across Canada). Delegates from the Five Regions of Canada compose the national Executive Council.

9. The WSO works in cooperation with over 60 Sikh societies or organizations within Canada (representing over 300,000 Sikhs) to advocate on behalf of Sikh interests in Canada. These interests include religious, social, legal, and cultural.

10. The WSO has been actively involved in addressing major social issues in Canada since 1984. As part of this involvement, and with the view to fostering better understanding and accommodation of all peoples, the WSO has: prepared submissions to governmental and non-governmental agencies and organizations; presented at and hosted conferences with and for community groups, police boards, politicians, inter-faith organizations, schools, universities, and various other non-profit entities; and conducted training and educational workshops in communities throughout Canada.

11. The WSO has been invited to make submissions, presentations, and act in a consultative capacity to national and international government and legislative committees, tribunals, and non-governmental entities, on constitutional and human rights issues, as well as other matters. For example, the WSO has done the following:

- a) Consultative Status with the United Nations Economic and Social Council (from 1993 to 1995);
- b) Presentation to the World Conference Against Racism (2001);
- c) Consultations with the Refugee Review Tribunals of Australia, United States and the Canadian Immigration and Refugee Board;

- d) Presentation to the Standing Committee on Justice and Human Rights, on Bill C-36, Canada's Anti-Terrorism Legislation;
- e) Presentations to Canadian Senate and House Committees on Bills C-16/C-18 (Citizenship and Immigration);
- f) Consultations and Submissions to the Canadian Department of Foreign Affairs on issues of foreign policy, including Mutual Legal Assistance Treaties;
- g) Consultations with Canadian Department of Employment and Immigration on immigration policy development;
- h) Consultations with the Ministry of Multiculturalism; and
- i) Consultations with Committee reviewing Canada Customs and Revenue/Solicitor General policies on non-for profit and charitable status for cultural organizations (2000-2001).

Previous Interventions by the WSO

12. The WSO has been granted Intervenor Status in the following cases:
- a) *Multani v. Commission scolair Marguerite-Bourgeoys* (2006 SCC 6) which considered the right of a Sikh student to carry his kirpan while attending school;
 - b) *The League for Human Rights of B'Nai Brith Canada v. Syndicat Northcrest et al.* (SCC No. 29252 – reserve judgment of the Court) which considered the appropriate test to be applied when considering a claim for freedom of religion;
 - c) *Moise Amselem et al. v. Syndicat Northcrest et al.* (SCC No. 29253 – reserve judgment of the Court) which considered the right of a condominium owner to build a succah hut on the balcony during the Jewish festival of succat;
 - d) *Commission Scolair Marguerite-Bourgeoys v. Multani* (Que.CA No. 500-09-012386-025 – which judgment is under appeal in this present case) which considered the rights of a Sikh student to carry his *kirpan* while attending school;
 - e) *Grant et al. v. Attorney General (Canada)*, [1995] 1 F.C. 158 (F.C.A.) leave to appeal to Supreme Court of Canada denied, which considered the right of the RCMP to amend its dress code regulations to allow a Sikh officer to wear a turban while on duty; and

- f) *Grant et al. v. Attorney General (Canada)*, [1994] F.C.J. No.1001 (F.C.T.D.), in which the WSO was permitted to cross examine witnesses, present evidence, and make written and oral submissions to the Court.

13. Further, the WSO has acted in a consultative capacity to the Alberta Human Rights Commission, and the Ontario Human Rights Commission (amongst others), while cases were pending before both those tribunals regarding the accommodation of Sikh articles of faith.

14. WSO has been lobbying parliamentarians for an inquiry commission on the Air India tragedy since 1985 and has appeared at the following committees and commissions;

- a) the report of the Honourable Bob Rae entitled *Lessons to Be Learned* of November 23, 2005,
- b) the 1991-1992 Security Intelligence Review Committee review of Canadian Security Intelligence Service activities in regard to the destruction of Air India Flight 182.

Sufficient Interest

15. The WSO has participated in prior proceedings inquiring into the Air India tragedy, and in so doing, showed sufficient interest in the outcome of those proceedings.

16. The issues raised in this Inquiry's mandate, are of significant concern to all Canadians, and particularly the Sikh community, who has a direct and substantial interest in the subject matter of this inquiry. Not only does the inquiry directly deal with issues related to the alleged threat of "Sikh" terrorism, but many of the victims of the tragedy were of the Sikh faith, and the individuals investigated for this crime were also of the Sikh faith.

17. WSO's longstanding concern, involvement, and influence in national security, intelligence and policing issues in Canada and its acknowledged expertise in these areas means it has a direct and substantial interest in the rights of not only Canadian Sikhs, but all or any citizens whose rights and freedoms are similarly at risk. Indeed the WSO's specific and persistent call for this very inquiry with terms of reference that match very closely with what has ultimately been ordered demonstrates that it has a substantial interest in the outcome of the Inquiry.

18. The procedures and methods of investigation this Inquiry adopts may become an important precedent not only in Canada, but internationally as well. Canada's legal system is recognized as having a high regard for procedural fairness and due process. It is anticipated that the findings of this Inquiry may contribute substantially to the development of the law and practice governing procedures for reviewing the conduct of government officials in relation to carrying their espionage functions and making them accountable to the elected representatives.

19. It is anticipated that the Inquiry will make findings of fact and law about the conduct of Canadian investigative agencies, and whether their conduct was consistent with taking necessary steps to prevent this tragedy. It is also anticipated that the findings of this Inquiry may be regarded as precedent not only in Canada but elsewhere. The WSO as a representative body for Sikhs, has a direct and substantial interest in contributing to the proper development of the substantive law governing the conduct of states and officials in relation to ensuring early detection and elimination of terrorism.

20. The Air India Flight 182 Bombing case raises a number of important issues which are of critical interest to WSO, regarding the nature and extent of the global stereotyping this case has brought to the Sikh community.

21. WSO also has a substantial and direct interest in the Factual Inquiry in that information resulting from this Inquiry will be directly relevant to the work that the WSO does in assisting individuals with complaints about CSIS, the RCMP, OPP and other security-intelligence agencies.

Useful and Distinct Submissions

22. Because of its expertise on issues related to equality and religious rights, the WSO can assist this Commission in responding to the above questions. The WSO can comment on whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases; whether there is merit in having terrorism cases heard by a panel of three judges; whether the unique challenges presented by the prosecution of terrorism cases are adequately addressed by existing practices or legislation; and the principles regarding internal accountability mechanisms to ensure transparency and accountability in the conduct of investigations and to safeguard the rights of people of all ethnic and cultural backgrounds. All issues which are of significant importance to all Canadians.

23. The WSO has made numerous submissions on issues relating to the protection of the rights of Canadians, irrespective of their religious beliefs and practices, and has successfully worked and continues to work with governmental and non-governmental organizations in aiding such accommodation.

24. The WSO has expertise and a different perspective to the argument, given its research and preparatory work; it will be able to make a useful contribution to the national importance of the issues raised in the Inquiry all without injustice to the immediate parties.

25. The WSO has expertise and a different perspective to the argument, given its research and preparatory work.

Conclusion

26. In this application, the Commissioner is being asked to consider matters which will have a profound impact and over reaching effect on the manner in which cases of similar nature will be handled in Canada. Given the stated mandate of the Commission to inquire into "Sikh" terrorism, this Inquiry will have an impact on all Canadians, and particularly those of the Sikh faith.

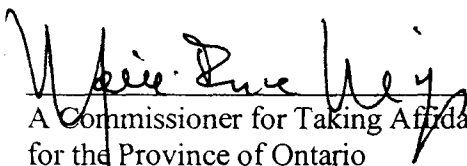
27. This Inquiry involves important legal issues relating to the investigation and prosecution of alleged terrorist acts, which issues transcend the immediate interests of the victims. These are issues of public interest, which will have a profound impact on social policy, and the implementation of procedures to combat future acts of terrorism.

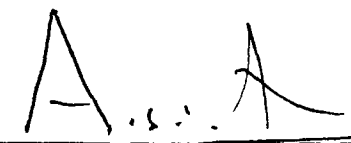
28. The WSO believes that it has a legitimate and demonstrated interest in the subject matter, and will be able to provide a unique and useful perspective. The WSO represents a large constituency of Canadians whose views are not represented by the parties in this leave application.

29. If standing is granted, the WSO's participation will not cause any delay in these proceedings.

30. The World Sikh Organization respectfully requests that the Commissioner grant it leave to participate in this Inquiry, in the manner and to the extent requested in this Application.

SWORN BEFORE ME at Ottawa, Ontario)
on July 6th, 2006)


A Commissioner for Taking Affidavits in and)
for the Province of Ontario)


AJIT SINGH SAHOTA
Director of Administration
World Sikh Organization Canada