

Opening Remarks

By

The Honourable John C. Major, C.C., Q.C

On the release of the Report of the

Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182

The bombing of Air India Flight 182 on June 23, 1985 was an act of terrorism. Three hundred and twenty-nine persons – passengers and crew – died in the North Atlantic off the coast of Ireland. The majority of the passengers were Canadian; one quarter of the victims (82) were under the age of thirteen. Their families still grieve for them here in Canada.

The bomb that blew up Air India Flight 182 was manufactured in Canada as part of a plot that was developed in Canada. The bomb was hidden in luggage that was placed on a Canadian plane in Vancouver and later transferred to Air India 182 in Toronto which stopped in Montreal to pick up additional passengers before it commenced its fatal flight. Another bomb was placed on a Canadian plane in Vancouver, in luggage destined for an Air India flight, and exploded in Narita, Japan, killing two baggage handlers.

I stress that this is a Canadian atrocity. For too long the greatest loss of Canadian lives at the hands of terrorists has been somehow relegated outside the Canadian consciousness.

For this reason, in December 2007, we released our first report – “The Families Remember” – to chronicle the human toll inflicted by terrorists. The moving testimonials described the unfulfilled potential, the broken dreams, and the loss of great leaders, high achievers, and role models – young and old. All were loved and their families were left to struggle with unimaginable suffering. Their stories are Canadian or have a strong Canadian connection.

But the story of Air India Flight 182 goes beyond the loss of life, as terrible as that is. This was the largest mass murder in Canadian history. A cascading series of errors contributed to the failure of our police and security forces to prevent this atrocity. The level of error, incompetence, and inattention which took place before the flight was sadly mirrored in many ways for many years, in how authorities, Governments, and institutions dealt with the aftermath of the murder of so many innocents: in the investigation, the legal proceedings, and in providing information, support and comfort to the families.

Our task was not easy. Our work commenced more than twenty years after the Air India plane, Kanishka, was destroyed. Memories fade, files and other information disappear, and the fear of criticism often coloured how government agencies responded to our Inquiry.

I am proud that this Commission of Inquiry was conducted publicly. There were no secret hearings in which any evidence was taken. The public has a right to know what happened and why it was allowed to happen and, if errors were made on the part of our law enforcement and security agencies, what they were and which agencies were responsible.

In our report, no blame is placed on any individuals, but we do note that various institutions and organizations did not fulfill their responsibilities. While our terms of reference were broad and all encompassing, it was not our task to review the work of our legal system. It was never part of our mandate to identify the perpetrators of this crime.

There were seven Terms of Reference in the Commission's mandate:

Threat Assessment – Were there deficiencies in how Canada's government agencies assessed the threat posed by Sikh terrorism before and after June 1985?

Interagency Cooperation – What was the nature and level of cooperation between the RCMP, CSIS, Transport Canada and other government agencies and what changes are required to prevent a recurrence of the Air India tragedy?

These two issues are dealt with in detail in Volume Two.

The Relationship between Security Intelligence and Evidence – Volume Three of this Report substantively examines this critical relationship and how it impacts on criminal trials

Terrorist Financing – Is the current Canadian legal framework adequate to deal with these individuals and organizations, including charitable organizations who supply funds to terrorist organizations. All of Volume Five examines this issue.

Witness Protection – Do current practice and legislation provide sufficient protection to persons who agree to be witnesses at terrorism trials? This issue, along with protection of sources during investigations is dealt with in Volume Three.

Prosecution of Terrorism Cases – Are there unique challenges associated with the prosecution of terrorism cases, and are there changes in legislation and practice required? This too is dealt with in detail in Volume Three.

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Aviation Security – The Terms of Reference required us to look at the practices and legislation dealing with the screening of passengers and their luggage. But early on we determined that this in itself would be inadequate because aviation security goes well beyond this. So in Volume Four we have taken a broader approach to our review of aviation security in Canada – from 1985 to the present.

The issues are complex. The amount of information that has been amassed over 25 years is voluminous. Our responsibility has been to review, analyse, and digest it all in accordance with our Terms of Reference for the benefit of all Canadians. The result is a report that spans five Volumes.

What we found was often surprising and disturbing. Overall, the Government of Canada and its agencies in 1985 were not prepared for a terrorist act like the bombing of Air India Flight 182. Although the threat of sabotage was well-known by the early 1980s, Canadian agencies still focused on hijacking and operated as if it was the primary threat. Communications within and between security, law enforcement and transport agencies were often flawed or non-existent. Agencies relied on different concepts of risk and what constituted a threat to security. A lack of awareness of the threat of Sikh terrorism at the agency level led to inadequate procedures and practices, and employees were often poorly trained. This reflected a culture of complacency.

There was a great deal of information available to CSIS and the RCMP before the bombing of Air India Flight 182 that should have called for enhanced security procedures and vigilance. In addition to the information that Mr. Bartleman testified that he had seen, this included highly classified CSE information of clear potential relevance that was not provided to CSIS, and a Telex in early June 1985 from Air India warning of the potential for bombs being hidden in luggage. CSIS did not see this information either, because the Telex was not passed on to anyone by the RCMP. I should point out, as I do in the report, that erroneous information on this point was provided by the RCMP to Bob Rae whose investigation led to the creation of this Commission of Inquiry. This alone is disturbing, but there were other instances we discovered where government agencies were not always forthcoming to this Commission.

Many specific examples of aviation security lapses are detailed in the report. But the example of Brian Simpson was particularly striking. As a summer employee he boarded Flight 182 at Pearson Airport in Toronto without detection on the afternoon of June 22, 1985. He had complete access to the aircraft from the Cockpit to the equipment at the rear. The attempts by Government counsel to discredit this witness were ineffectual; as were their similar efforts with Mr. Bartleman and Staff Sergeant Solvason. Mr. Simpson's evidence revealed numerous weaknesses in security.

During the investigation that followed the bombing, and is continuing to this day, CSIS and the RCMP were unable to cooperate effectively, or sometimes at all. This was particularly apparent when it came to human sources. There were individuals in the Sikh community who claimed to have knowledge about the bombing and its perpetrators. The Agencies failed to obtain that information, to preserve it for use as evidence, or to offer adequate protection to those individuals. Instead, they engaged in "turf-wars", failed to share information, and adopted a misguided approach to the sources. In the end, of the three individuals who were to be the key witnesses in the Air India trial, one was murdered before the trial began, one feigned memory loss because she was too frightened to testify, and one was forced to enter the Witness Protection Program two years earlier than planned, due to the RCMP's inadvertent disclosure of her identity. Another source ended up never providing the information he was thought to have, and that information remains unknown.

Almost immediately after the bombing, the government of the day, and subsequent governments, chose to speak with “one voice”. This approach continued up to and through our hearings and continues still. This made our assignment more difficult and often frustrated our attempts to find out what really went wrong. The Final Submissions of Government counsel tended to paint a picture of harmony and understanding, where little existed. At the same time, and somewhat inconsistently, the Government argued, “That was then, this is now” basically suggesting that whatever weaknesses or deficiencies existed in 1985 have been fully recognized, analysed, and rectified in the present day. This Commission rejects that position. There remains a failure to recognize what went wrong, why, and what should be done today. In addition, there is a need for reform of our institutions which must not have to wait for the urgency that would arise from another terrorist attack

We make numerous recommendations to better manage the intelligence / evidence relationship. Primary amongst these is our recommendation that the role of the National Security Advisor in the Privy Council Office be enhanced. This is a crucial and fundamental requirement to achieve better co-ordination across the many agencies that have national security responsibilities.

We also recommend the creation of a Director of Terrorism Prosecutions, appointed by the Attorney General of Canada. Because of the difficulties that arose with destruction of potential evidence (for example, the Parmar tapes), we make recommendations on modernizing the collection and retention of evidence in CSIS. We also make recommendations dealing with disclosure of intelligence and various privileges, including police informer privilege. We recommend that the Canada Evidence Act be amended so that the trial court in a terrorism prosecution will be responsible for making decisions on National Security Confidentiality, rather than continuing the present two court system with responsibility divided between the Federal Court of Canada and the Superior Court in the Province conducting the trial. As well, we endorse the use of security cleared Special Advocates to challenge government claims of National Security privilege, and the passage of legislation to clarify the scope of this privilege.

Because of the special circumstances of witnesses in terrorism cases, we recommend a new position – the National Security Witness Protection Coordinator to manage the protection of those who are willing to risk their well-being to assist in the prosecution of terrorists.

We also make recommendations on the management of complex terrorism prosecutions and, after much consideration, reject the notion of moving to a three-judge system. We believe that such a system would be no more effective than the current system.

In the area of aviation security, we make additional recommendations. We conclude that security measures have to be applied in mutually reinforcing layers in order to address all vulnerabilities in the system. We call for government and other responsible parties to close the remaining gaps in the civil

aviation security system, especially with respect to air cargo and airport security inside the terminal, airside in general aviation areas, and on the perimeter. We note the recent announcement by the Government of Canada to allocate resources for new air cargo security measures. However, a comprehensive approach is still essential.

We stress the need for a national risk management protocol that includes all of the major players in the security system – intelligence, law enforcement, transport, air carriers and contracted services. Through public education, Transport Canada and other responsible agencies should “foster a culture of security awareness and consistent vigilance.” This includes proper training of front line workers as well as other airport personnel.

In addition to our specific recommendations, we make four observations which bear mention.

First, we believe that the RCMP is not properly structured to deal with terrorism prosecutions. There is a need for greater specialization and a more concentrated focus on the means for investigating and supporting the prosecution of national security offences. Perhaps the time has arrived to re-assess the role of the RCMP in providing contractual policing services in many of the Provinces

Second, Canada has a great deal to learn about terrorism – why it exists and how it operates. To this end, we are proposing the development of an academic centre to study terrorism and counterterrorism – similar to the Security and Defence Forum sponsored by the Department of National Defence.

To commemorate the victims of the Air India bombing, we propose that the Government name this “The Kanishka Centre”.

Third, this Commission believes that there would be great merit in a demonstration of solicitude by the present Government for the families of the victims of the bombing. To this end, we propose the creation of an independent body to “recommend an appropriate *ex gratia* payment and to oversee its distribution.”

The families, in some ways, have often been treated as adversaries, as if they had somehow brought this calamity upon themselves. This goes against the Canadian sense of fairness and propriety. Our report sets out the inherent injustice of what has transpired in terms of the treatment of the families of the victims to date at the hands of previous Governments. The time to right that historical wrong is now.

Finally, a Commission ends once its report has been submitted. But, there is too much at stake, there are still too many risks, to allow our Report and our recommendations to be read, discussed, and then forgotten without any follow-up action being taken. We strongly urge the Government to establish some sort of an oversight mechanism to report on how our recommendations are being addressed: those that have been implemented; those that have been rejected; and those that require further study.

The Government needs to take responsibility to avoid further failures and to prevent a return to a culture of complacency. The finest tribute that could be paid to the victims of the bombing of Air India Flight 182 would be the creation of a rigorous aviation security system. This will require cooperation and resources – but, most importantly, leadership from the highest levels of government. Canada owes this legacy to the victims and their families.

The issues that we addressed are issues that also confront us today, albeit in a different context, as much as they did 25 years ago. Our allies are faced with essentially the same challenges. I hope that this report will not only assist our Government but others as well.