VOLUME ONE
THE OVERVIEW

CHAPTER VII: RECOMMENDATIONS AND OBSERVATIONS

Recommendations from VOLUME THREE: The Relationship Between Intelligence and Evidence and the Challenges of Terrorism Prosecution

CHAPTER II: COORDINATING THE INTELLIGENCE/EVIDENCE RELATIONSHIP

Recommendation 1

The role of the National Security Advisor in the Privy Council Office should be enhanced. The National Security Advisor's new responsibilities should be as follows:

- to participate in setting strategic national security policies and priorities;
- to supervise and, where necessary, to coordinate national security activities, including all aspects of the distribution of intelligence to the RCMP and to other government agencies;
- to provide regular briefings to the Prime Minister and, as required, to other ministers;
- to resolve, with finality, disputes among the agencies responsible for national security;
- to provide oversight of the effectiveness of national security activities; and
- to carry out the government's national security policy in the public interest.

In carrying our these new duties, the National Security Advisor should be assisted by a Deputy and by a staff of secondees from agencies which have national security responsibilities, such as CSIS, the RCMP, the CBSA, and DFAIT. The National Security Advisor should continue to support relevant Cabinet committees and serve as Deputy Minister for the CSE, but these duties could, if necessary, be delegated to the Deputy National Security Advisor or to another official within the office of the NSA.

Measures to enhance the role of the NSA should not be delayed until the enactment of legislation on a new national security privilege.

CHAPTER III: COORDINATING TERRORISM PROSECUTIONS

Recommendation 2

The role of the National Security Advisor should be exercised in a manner that is sensitive to the principles of police and prosecutorial independence and discretion, while recognizing the limits of these principles in the prosecution of terrorism offences. The principle of police independence should continue to be qualified by the requirement that an Attorney General consent to the laying of charges for a terrorism offence.

The Attorney General of Canada should continue to be able to receive relevant information from Cabinet colleagues, including the Prime Minister and the National Security Advisor, about the possible national security and foreign policy implications of the exercise of prosecutorial discretion.

Recommendation 3

Terrorism prosecutions at the federal level should be supervised and conducted by a Director of Terrorism Prosecutions appointed by the Attorney General of Canada.

Recommendation 4

The office of the Director should be located within the department of the Attorney General of Canada and not within the Public Prosecution Service of Canada. The placement of the proposed Director of Terrorism Prosecutions in the Attorney General's department is necessary to ensure that terrorism prosecutions are conducted in an integrated manner, given the critical role of the Attorney General of Canada under the national security confidentiality provisions of section 38 of the Canada Evidence Act.

Recommendation 5

The Director of Terrorism Prosecutions should also provide relevant legal advice to Integrated National Security Enforcement Teams and to the RCMP and CSIS with respect to their counterterrorism work to ensure continuity and consistency of legal advice and representation in terrorism investigations and prosecutions.

Recommendation 6

The Director of Terrorism Prosecutions should preferably not provide legal representation to the Government of Canada in any civil litigation that might arise from an ongoing terrorism investigation or prosecution, in order to avoid any possible conflict of interest.

Recommendation 7

A lead federal role in terrorism prosecutions should be maintained because of their national importance and the key role that the Attorney General of Canada will play in most terrorism prosecutions under section 38 of the Canada Evidence Act. The Attorney General of Canada should be prepared to exercise the right under the Security Offences Act to pre-empt or take over provincial terrorism prosecutions if the difficulties of coordinating provincial and federal prosecutorial decision-making appear to be sufficiently great or if a federal prosecution is in the public interest.

Recommendation 8

Provincial Attorneys General should notify the Attorney General of Canada through the proposed federal Director of Terrorism Prosecutions of any potential prosecution that may involve a terrorist group or a terrorist activity, whether or not the offence is prosecuted as a terrorism offence. The National Security Advisor should also be notified.

CHAPTER IV: THE COLLECTION AND RETENTION OF INTELLIGENCE: MODERNIZING THE CSIS ACT

Recommendation 9

In compliance with the 2008 Supreme Court of Canada decision in Charkaoui, CSIS should retain intelligence that has been properly gathered during an investigation of threats to national security under section 12 of the CSIS Act. CSIS should destroy such intelligence after 25 years or a period determined by Parliament, but only if the Director of CSIS certifies that it is no longer relevant.

Recommendation 10

The CSIS Act should be amended to reflect the enhanced role proposed for the National Security Advisor and to provide for greater sharing of information with other agencies.

Section 19(2)(a) of the CSIS Act should be amended to require CSIS to report information that may be used in an investigation or prosecution of an offence either to the relevant policing or prosecutorial authorities or to the National Security Advisor.

If the National Security Advisor receives security threat information from CSIS, he or she should have the authority, at any time, to provide the information to the relevant policing or prosecutorial authorities or to other relevant officials with a view to minimizing the terrorist threat. The National Security Advisor should make decisions about whether intelligence should be disclosed only after considering the competing demands for disclosure and secrecy. In every

case, the decision should be made in the public interest, which may differ from the immediate interests of the agencies involved.

Intelligence prepared to assist the National Security Advisor in his or her deliberations, and the deliberations themselves, should be protected by a new national security privilege. The privilege would be a class privilege similar to that protecting information submitted to assist with Cabinet deliberations.

Recommendation 11

To the extent that it is practicable to do so, CSIS should conform to the requirements of the laws relating to evidence and disclosure when conducting its counterterrorism investigations in order to facilitate the use of intelligence in the criminal justice process.

Recommendation 12

In terrorism prosecutions, special advocates, given powers similar to those permitted under the Immigration and Refugee Protection Act, should be allowed to represent the accused in challenging warrants issued under section 21 of the CSIS Act or under Part VI of the Criminal Code. The special advocates should have access to all relevant information, including unedited affidavits used to justify the warrants, but should be prohibited from disclosing this information to anyone without a court order. Both the judges reviewing the validity of warrants and the special advocates should be provided with facilities to protect information that, if disclosed, might harm national security.

CHAPTER V: THE DISCLOSURE AND PRODUCTION OF INTELLIGENCE

Recommendation 13

Federal prosecutorial guidelines should be amended to make it clear to those who prosecute terrorism cases that only material that is relevant to the case and of possible assistance to the accused should be disclosed. Material of limited relevance – in the sense that it is not clearly irrelevant – should, in appropriate cases, be made available for inspection by the defence at a secure location.

Recommendation 14

There is no need for further legislation governing the production for a criminal prosecution of intelligence held by CSIS. The procedures available under section 38 of the Canada Evidence Act provide an appropriate and workable framework for the trial court to determine whether production of such intelligence is warranted.

CHAPTER VI: THE ROLE OF PRIVILEGES IN PREVENTING THE DISCLOSURE OF INTELLIGENCE

Recommendation 15

The RCMP and CSIS should each establish procedures to govern promises of anonymity made to informers. Such procedures should be designed to serve the public interest and should not be focused solely on the mandate of the particular agency.

Recommendation 16

Section 19 of the CSIS Act should be amended to provide that information about an individual which is exchanged by CSIS with a police force or with the NSA does not prejudice claiming informer privilege.

Recommendation 17

CSIS should not be permitted to grant police informer privilege. CSIS informers should be protected by the common law "Wigmore privilege," which requires the court to balance the public interest in disclosure against the public interest in confidentiality. If the handling of a CSIS source is transferred to the RCMP, the source should be eligible to benefit from police informer privilege.

Recommendation 18

The Canada Evidence Act should be amended to create a new national security privilege, patterned on the provision for Cabinet confidences under section 39 of the Act. This new class privilege should apply to documents prepared for the National Security Advisor and to the deliberations of the office of the National Security Advisor.

CHAPTER VII: JUDICIAL PROCEDURES TO OBTAIN NON-DISCLOSURE ORDERS IN INDIVIDUAL CASES

Recommendation 19

The present two-court approach to resolving claims of national security confidentiality under section 38 of the *Canada Evidence Act* should be abandoned for criminal cases. Section 38 should be amended to allow the trial court where terrorism charges are tried to make decisions about national security confidentiality. Section 38 should be amended to include the criminal trial court in the definition of "judge" for the purposes of dealing with a section 38 application that is made during a criminal prosecution.

Recommendation 20

In terrorism prosecutions, there should be no interim appeals or reviews of section 37 or 38 disclosure matters. Appeals of rulings under sections 37 or 38 should not be permitted until after a verdict has been reached. Appeals should be heard by provincial courts of appeal in accordance with the appeal provisions contained in the Criminal Code. If not already in place, arrangements should be made to ensure adequate protection of secret information that provincial courts of appeal may receive. Sections 37.1, 38.08 and 38.09 of the Canada Evidence Act should be amended or repealed accordingly.

Recommendation 21

Security-cleared special advocates should be permitted to protect the accused's interests during section 38 applications, in the same manner as they are used under the Immigration and Refugee Protection Act. Either the accused or the presiding judge should be permitted to request the appointment of a special advocate.

Recommendation 22

The Attorney General of Canada, through the proposed Director of Terrorism Prosecutions, should exercise restraint and independent judgment when making claims under section 38 of the Canada Evidence Act and avoid using overly broad claims of secrecy.

Recommendation 23

The Federal Prosecution Service Deskbook and other policy documents that provide guidance about making secrecy claims should be updated to encourage the making of requests to foreign agencies to lift caveats that they may have placed on the further disclosure of information. These documents should also be updated to reflect the evolution of national security confidentiality jurisprudence. In particular, the Deskbook should direct prosecutors to be prepared to identify the anticipated harms that disclosure would cause, including harms to ongoing investigations, breaches of caveats, jeopardy to sources and the disclosure of secret methods of investigations. The Deskbook should discourage reliance solely on the "mosaic effect" as the basis for making a claim of national security confidentiality.

CHAPTER VIII: MANAGING THE CONSEQUENCES OF DISCLOSURE: WITNESS AND SOURCE PROTECTION

Recommendation 24

A new position, the National Security Witness Protection Coordinator, should be created. The Coordinator would decide witness protection issues in terrorism investigations and prosecutions and administer witness protection in national security matters. The creation of such a position would require amendments to the *Witness Protection Program Act*.

The National Security Witness Protection Coordinator should be independent of the police and prosecution. He or she should be a person who inspires public confidence and who has experience with criminal justice, national security and witness protection matters.

Where appropriate and feasible, the Coordinator should consult any of the following on matters affecting witness and source protection: the RCMP, CSIS, the National Security Advisor, the proposed Director of Terrorism Prosecutors, Public Safety Canada, Immigration Canada, the Department of Foreign Affairs and International Trade and the Correctional Service of Canada. The Coordinator would generally work closely with CSIS and the RCMP to ensure a satisfactory transfer of sources between the two agencies.

The National Security Witness Protection Coordinator's mandate would include:

- assessing the risks to potential protectees resulting from disclosure and prosecutions, as well as making decisions about accepting an individual into the witness protection program and the level of protection required;
- working with relevant federal, provincial, private sector and international partners in providing the form of protection that best satisfies the particular needs and circumstances of protectees;
- ensuring consistency in the handling of sources and resolving disputes between agencies that may arise when negotiating or implementing protection agreements (this function would be performed in consultation with the National Security Advisor);
- providing confidential support, including psychological and legal advice, for protectees as they decide whether to sign protection agreements;
- negotiating protection agreements, including the award of payments;
- providing strategic direction and policy advice on protection matters, including the adequacy of programs involving international co-operation or minors;

- providing for independent and confidential arbitration of disputes that may arise between the protectee and the witness protection program;
- making decisions about ending a person's participation in the program;
- acting as a resource for CSIS, the RCMP, the National Security Advisor and other agencies about the appropriate treatment of sources in terrorism investigations and management of their expectations;
- acting as an advocate for witnesses and sources on policy matters that may affect them and defending the need for witness protection agreements in individual cases.

The National Security Witness Protection Coordinator would not be responsible for providing the actual physical protection. That function would remain with the RCMP or other public or private bodies that provide protection services and that agree to submit to confidential arbitration of disputes by the Coordinator.

CHAPTER IX: MANAGING THE CONSEQUENCES OF DISCLOSURE: THE AIR INDIA TRIAL AND THE MANAGEMENT OF OTHER COMPLEX TERRORISM PROSECUTIONS

Recommendation 25

To make terrorism prosecutions workable, the federal government should share the cost of major trials to ensure proper project management, victim services and adequate funding to attract experienced trial counsel who can make appropriate admissions of fact and exercise their other duties as officers of the court.

Recommendation 26

The trial judge should be appointed as early as possible to manage the trial process, hear most pre-trial motions and make rulings; these rulings should not be subject to appeal before trial.

Recommendation 27

The *Criminal Code* should be amended to ensure that pre-trial rulings by the trial judge continue to apply in the event that the prosecution subsequently ends in a mistrial or is severed into separate prosecutions. The only case in which rulings should not bind both the accused and the Crown should be if there is a demonstration of a material change in circumstances.

Recommendation 28

The *Criminal Code* should be amended to allow omnibus hearings of common pre-trial motions in related but severed prosecutions. This will facilitate severing terrorism prosecutions that have common legal issues where separate trials would be fairer or more manageable. All accused in the related prosecutions should be represented at the omnibus hearing. Decisions made at omnibus hearings should bind the Crown and accused in subsequent trials unless a material change in circumstances can be demonstrated. Such rulings should be subject to appeal only after a verdict.

Recommendation 29

Electronic and staged disclosure should be used in terrorism prosecutions in order to make them more manageable. Disclosure should occur as follows:

Recommendation 30

The Crown should be permitted to provide in electronic form any material on which it intends to rely and should have the discretion to provide paper copies of such material. If the Crown decides to use electronic disclosure, it must ensure that the defence has the necessary technical resources to use the resulting electronic database, including the appropriate software to allow annotation and searching;

Recommendation 31

Material on which the Crown does not intend to rely but which is relevant should be produced in electronic format, and the necessary technical resources should be provided to allow the use of the resulting electronic database;

Recommendation 32

The Crown should be able to disclose all other material that must be disclosed pursuant to *Stinchcombe* and *Charkaoui* by making it available to counsel for the accused for manual inspection. In cases where the disclosure involves sensitive material, the Crown should be able to require counsel for the accused to inspect the documents at a secure location with adequate provisions for maintaining the confidentiality of the lawyer's work. Defence counsel should have a right to copy information but subject to complying with conditions to safeguard the information and to ensure that it is not used for improper purposes not connected with the trial;

Recommendation 33

The trial judge should have the discretion to order full or partial paper disclosure where the interests of justice require; and

Recommendation 34

The authority and procedures for electronic disclosure should be set out in the *Criminal Code* in order to prevent disputes about electronic disclosure.

Recommendation 35

It is recommended that:

a) the *Criminal Code* be amended to allow the judge in a jury trial to empanel up to 16 jurors to hear the case if the judge considers it to be in the interests of justice;

b) if more than 12 jurors remain at the start of jury deliberations, the 12 jurors who will deliberate be chosen by ballot of all the jurors who have heard the case;

c) the minimum number of jurors required to deliberate remain at 10;

d) the idea of having terrorism trials heard by a panel of three judges be rejected because it offers no demonstrable benefit; and

e) the call for mandatory jury trials in terrorism cases be rejected in view of the difficulties of long trials with juries and the accused's present ability to opt for trial by judge alone.

Recommendations from VOLUME FOUR: Aviation Security

CHAPTER IV: RECOMMENDATIONS

I. Oversight of Aviation Security in Canada

The Commission endorses the Government's decision that responsibility for national civil aviation security should remain with Transport Canada, and makes the following recommendations about oversight of aviation security:

Recommendation 1

1. Canada's regulatory regime must comply with the standards specified in Annex 17 to the Convention on International Civil Aviation ("Chicago Convention") and should comply with its recommended practices.

1.1 Annex 17 standards must be considered minimum standards that Canada should not only meet, but exceed. Canada should not permit security deficiencies that would result in it being required to file a difference with the International Civil Aviation Organization (ICAO) with respect to any Annex 17 standard.

1.2 In addition to embracing Annex 17 at its core, Canada's national regulatory regime must be informed by international best practices and must address Canada's unique threat environment.

1.3 Transport Canada should exercise robust regulatory oversight over civil aviation stakeholders through regular inspection, testing, auditing and enforcement, carried out by a sufficiently trained, qualified and resourced inspectorate.

Recommendation 2

2. In accordance with Annex 17, Transport Canada should establish and implement a single, written National Civil Aviation Security Program that comprehensively safeguards civil aviation against acts of unlawful interference.

2.1 The National Civil Aviation Security Program should set out the full slate of legislative instruments, measures, policies, practices and procedures, as well as the roles and responsibilities of Transport Canada, airport operators, air carriers, Fixed Base Operations (FBOs), the General Aviation (GA) sector, the Canadian Air Transport Security Authority (CATSA), the police of local jurisdiction, airport tenants, caterers and all other entities involved in implementing the Program.

2.2 Transport Canada should require all entities with responsibilities in civil aviation security, as outlined in Recommendation 2.1, to establish and implement written security programs that are applicable to their operations and appropriate to meet the requirements of the National Civil Aviation Security Program. At a minimum, these programs should include measures to prevent unauthorized access, assign security-related duties, respond to threats and breaches of security, and allow for periodic review and updating of the programs.

2.3 Transport Canada should require all civil aviation stakeholder programs to be submitted to it for approval.

Recommendation 3

3. The Commission supports continued coordination between all industry and government entities responsible for civil aviation security through the Advisory Group on Aviation Security (AGAS). AGAS must continue to promote collaboration, shared objectives and shared understanding, and common solutions to aviation security problems.

3.1 Transport Canada should require all airports to establish an airport security committee to help in implementing their respective airport security programs.

3.2 Consideration should be given to the inclusion of the National Security Advisor (NSA) in AGAS discussions and decisions.

Recommendation 4

4. In addition to adhering to Annex 17 standards, a regulatory regime should observe a number of key principles:

a. Ongoing, informed assessment of past, present and future threats to civil aviation, with timely proactive adjustments made to the regime as needed;

b. Adherence to an appropriate national risk management protocol, as described in Recommendation 6;

c. Effective, multi-layered and overlapping security measures, policies, practices and procedures that provide redundancies to address all significant risks;

d. A flexible, performance-based approach to regulation, in which objectives are set to meet the highest standards, with a more prescriptive approach employed where necessary because of complexities and context;

e. Robust emergency response planning, with well-defined roles and responsibilities; and

f. Establishment of a culture of security awareness and constant vigilance.

Recommendation 5

5. Independent experts should conduct a comprehensive review of aviation security every five years.

II. Risk Management

Recommendation 6

6. Transport Canada should ensure that acceptable levels of risk control have been achieved in all areas of risk pertinent to civil aviation security in Canada. In doing so, it should adopt a national risk management protocol based on best practices and using a performance standard of continuous improvement, delivering levels of risk in all relevant areas that are as low as reasonably achievable. Where acceptable levels have not been achieved, resources must be allocated on a priority basis to address the risk appropriately.

6.1 To facilitate clear communication and understanding, Transport Canada should require those responsible for aviation security to follow a common set of risk management protocols consistent with the national protocol. Transport Canada should require all stakeholders to:

a. Provide a detailed description, in their respective security programs that are submitted to Transport Canada for acceptance or approval, of the risk management protocol employed for their operations;

b. Systematically employ these risk management protocols in the development and implementation of aviation security measures, policies, practices and procedures for their operations; and

c. Promote coordinated risk management decision-making by engaging in ongoing dialogue with Transport Canada and other stakeholders through participation in AGAS and its technical committees, and elsewhere as necessary, to ensure clarity, precision and a shared understanding of terminology and methodologies.

6.2 Each year, the Minister of Transport should certify that the civil aviation security regime in Canada possesses:

a. A common set of protocols for carrying out risk management, based on current best practices;

b. A performance standard of continuous improvement, delivering levels of risk in all relevant areas that are as low as reasonably achievable; and

c. Acceptable levels of risk control in all domains of risk.

6.3 Periodic assessment of Transport Canada's risk management protocol by the Auditor General is encouraged.

Recommendation 7

7. There should be no significant gaps in civil aviation security. When a significant deficiency is identified, the best interim measures must be implemented to address the risk while more permanent measures, including technological solutions, are developed.

7.1 The civil aviation security regime must be capable of redeploying resources so that all significant threats are adequately addressed and measures do not disproportionately emphasize a particular threat, such as the threat posed by passengers and baggage.

7.2 As soon as improved equipment and measures become available, they should be deployed.

7.3 If, after a systematic risk management process, a decision is made not to implement measures that address a given threat, measures should nonetheless be designed for emergency implementation if the threat subsequently becomes imminent.

7.4 Legislative initiatives to improve civil aviation security should not be subject to unreasonable delay.

Recommendation 8

1. Transport Canada and others responsible for civil aviation security should foster a culture of security awareness and constant vigilance. As part of this endeavour, a comprehensive public education campaign should be developed to increase awareness of the measures in place for the public's protection and the role the public can play in promoting security.

III. Use of Intelligence

Recommendation 9

9. Transport Canada must provide timely, relevant and actionable intelligence information to civil aviation stakeholders, with the primary recipients being airport operators, air carriers, pilots, CATSA, FBOs and GA facilities.

9.1 Transport Canada should be guided by the "need to share" principle and should cooperate more closely with key stakeholders to ensure they receive the intelligence information they require.

9.2 Aviation stakeholders should provide Transport Canada with feedback about the quality and timeliness of intelligence they receive. Where concerns are raised, a collaborative approach to resolving those concerns should be taken.

9.3 In addition to threats related to airports and air carriers, aviation stakeholders should be kept abreast of changes to the general threat environment. Regular security briefings for all stakeholders, including front-line workers, should occur.

IV. Airport Security

Recommendation 10

10. Non-Passenger Screening (NPS) should be improved at all designated airports in Canada on a priority basis.

10.1 Full (100 per cent) NPS should be implemented upon entry to restricted areas at all Class 1 and Class 2 airports, with random NPS upon exit at Class 1 airports.

10.2 NPS upon entry at Class Other and upon exit at Class 2 and Class Other airports should be implemented as necessary, based on risk.

Recommendation 11

11. Perimeter security should be improved at all designated airports on a priority basis.

11.1 Perimeter security should be enhanced with physical and technological barriers and appropriate monitoring, based on risk.

11.2 Transport Canada should conduct intrusion tests of airport perimeters.

Recommendation 12

12. All vehicles entering airside and restricted areas at Class 1 airports should be subject to a full search, including full NPS of occupants. Vehicles entering Class 2 airports should be searched as necessary, based on risk.

12.1 Where supply chain security measures have been applied to vehicles, a search may be confined to the areas of the vehicle that have not been secured, and should include full NPS of occupants.

12.2 CATSA's mandate should be expanded on a priority basis to include searching vehicles and screening their occupants. CATSA should be provided with the necessary funding.

Recommendation 13

13. The Restricted Area Identification Card (RAIC) should be implemented at all 89 designated airports on a priority basis, and should be expanded to include perimeter security, including vehicle gates, FBOs and tenant facilities.

13.1 RAICs, Restricted Area Passes (RAPs) and temporary or visitor passes should be worn and clearly displayed at all times by all individuals who access restricted and airside areas of the airport.

13.2 All access control devices, including RAICs and RAPs, should be implemented in a manner that prevents "piggybacking," "tailgating" and other means of gaining unauthorized access.

13.3 All RAICs and RAPs, as well as employee uniforms and any other form of airport identification belonging to former airport employees, should be diligently accounted for, retrieved and/or deactivated. Appropriate penalties should be imposed for failing to return such items.

Recommendation 14

14. For FBOs and GA facilities attached to designated airports, access to the airports' airside and restricted areas should be strictly controlled through RAICs, full NPS and vehicle searches.

Recommendation 15

15. Transport Canada should improve its policies and procedures governing transportation security clearances.

15.1 Transport Canada and the RCMP should increase efforts to share information on individuals applying for a transportation security clearance to work at airports.

15.2 Transport Canada should establish a formal process, including specific criteria, for reviewing applications for security clearances made by individuals with a criminal record.

15.3 Transport Canada should reinstate credit checks as a component of the security clearance process before issuing an RAIC for non-passengers who require access to restricted areas at airports.

15.4 Transport Canada should take steps to reduce the delay in processing applications for transportation security clearances.

Recommendation 16

16. Security measures should be developed and implemented to protect public areas of air terminal buildings at Class 1 airports, based on risk.

Recommendation 17

17. All airports should develop and implement a security awareness and constant vigilance program that includes training for all airport workers employed in air terminal buildings and airside portions of airports.

V. Passenger and Baggage Screening

Recommendation 18

18. Current methods for conducting pre-board screening (PBS) are comprehensive, but improvements are required in their application.

18.1 Although technology has enhanced the ability to effectively conduct PBS, that technology should rarely be relied upon exclusively.

When selecting equipment and procedures for passenger screening, consideration should be given to individual rights, including privacy rights and the rights guaranteed under the *Canadian Charter of Rights and Freedoms*. In particular, any consideration of behavioural analysis techniques as a tool for PBS must include a thorough review. Concerns about the risk of racial, ethnic and religious profiling must be given specific and careful attention. If a decision is made to implement such a program, the following must be addressed: effectiveness of the measure; competencies, training (initial and ongoing) and testing required of those who would conduct the analysis; and oversight requirements.

18.2 Given the importance of the "no search, no fly" rule and the potential impact of security measures on individual rights, Transport Canada and the Office of the Privacy Commissioner of Canada should collaborate to devise tools and criteria to evaluate proposed security measures.

Recommendation 19

19. Although the multi-level system in place for Hold Bag Screening (HBS) is comprehensive, some improvements are required.

19.1 Baggage should never be loaded onto an aircraft without a passenger-baggage reconciliation. Interlined baggage, in particular, must be subjected to comprehensive passenger-baggage reconciliation prior to being loaded.

19.2 Consideration should be given to whether the current administrative monetary penalties for non-compliance with passenger-baggage reconciliation procedures provide sufficient deterrence and reflect the gravity of the potential consequences of non-compliance.

19.3 Although technology has enhanced the ability to effectively screen checked baggage, that technology should rarely be relied upon exclusively.

VI. Use of Technology and Explosives Detection Dogs

Recommendation 20

20. Transport Canada should ensure that all screening technology is reliable and effective. This requires assessment not only during the development and deployment stages, but also continual assessment during conditions of actual use.

20.1 Transport Canada should ensure that screening officers operating equipment are adequately trained and regularly tested to ensure their competence.

20.2 Transport Canada should ensure that screening equipment is properly maintained.

Recommendation 21

21. The use of explosives detection dogs should be evaluated and expanded as appropriate. Consideration should be given to their use in:

a. PBS and HBS;
b. Screening of air cargo; and
c. Perimeter security, including the screening of vehicles.

VII. Screeners

Recommendation 22

22. CATSA should find long-lasting solutions to resolve difficulties in the recruitment of appropriately qualified screening contractors and in the recruitment, retention, training and oversight of competent screening officers to ensure the highest quality of screening.

22.1 Because of the voluminous material that all screening officers are required to master, consideration should be given to specifying a minimum educational requirement for them in the *Designation Standards for Screening Officers*.

22.2 Given the importance of their work, screening officers should receive appropriate compensation and employee benefits to reduce difficulties in retaining them.

22.3 Because of the challenges associated with their duties, particularly repetitive, stressful and monotonous work that only rarely results in finding prohibited items, CATSA should make ongoing efforts to instill greater sense of mission and morale among screening officers:

a. Consideration should be given to creating an employment structure that provides opportunities for advancement; and

b. Consideration should be given to holding regular briefings for screening officers, particularly at Class 1 airports, to provide relevant intelligence updates, as well as information relating to prohibited items, methods of concealment and information contained in recent Transport Canada bulletins.

22.4 Screening officer duties should focus solely on preventing unlawful interference with civil aviation. Screening officers should not be mandated to search for contraband or other items that may interest law enforcement, but that are not relevant to CATSA's mandate.

22.5 Given the changing nature of threats to aviation, training of screening officers should be continuous. Training should include instruction in practical skills and in the detection of improvised explosive devices (IEDs).

22.6 Training of screening officers should be designed to foster a general culture of security awareness and constant vigilance.

22.7 CATSA should continue to use training and motivational tools such as X-ray Tutor (XRT) and the Threat Image Projection System (TIPS).

22.8 Where screening officer deficiencies are identified, immediate steps, primarily additional training, should be taken to ensure competence.

22.9 Transport Canada should define clear and consistent system-wide performance standards for CATSA, in addition to the failure rate for infiltration tests, against which compliance and effectiveness can be assessed. Performance measures should define whether CATSA's performance is satisfactory or unsatisfactory:

a. This should include agreement between Transport Canada and CATSA regarding the threshold for failure of infiltration tests and the specific elements that constitute failure; and

b. CATSA's response to failed infiltration tests should emphasize re-training, and should include documentation of corrective action taken and timely written responses to Transport Canada enforcement letters and related enquiries.

22.10 Whenever the Auditor General of Canada deems it necessary, the Auditor General should review the changes implemented by CATSA to address problems with recruitment, retention, training, testing and oversight of screening officers.

VIII. Air Cargo and Other Non-Passenger Items

Recommendation 23

23. A comprehensive system for screening air cargo (including mail) for transport on passenger and all-cargo aircraft should be implemented as an urgent priority. Canada's system of Known Shippers should be discontinued as soon as possible, and a system of Regulated Agents put in its place in accordance with international best practices. In designing and implementing the system, the Government should exceed the minimum requirements of Annex 17 of the *Chicago Convention*, with the aim of achieving the highest possible standards of air cargo security.

23.1 The Commission supports Transport Canada's proposed Air Cargo Security (ACS) Initiative and recommends its implementation on a priority basis.

23.2 Under the new regime, all air cargo to be loaded onto passenger aircraft should be screened to a level comparable to that currently provided for hold baggage.

23.3 All air cargo to be loaded onto all-cargo aircraft should be screened to a level deemed appropriate, on the basis of risk. When air cargo is

transferred from all-cargo to passenger aircraft, additional screening should be conducted commensurate with screening requirements that normally apply to air cargo carried on passenger aircraft.

23.4 Screening for air cargo should take into account the risk posed by new, emerging or otherwise unaddressed threats as they arise.

23.5 The evaluation of technologies to screen consolidated or bulk cargo should be accelerated.

23.6 A centralized screening service for all air cargo requiring screening at the airport should be considered for all Class 1 airports.

23.7 CATSA, with its screening mandate, expertise, equipment and dedicated personnel, is the appropriate authority to conduct air cargo screening services at the airport and may have a role to play in the oversight and inspection of screening by Regulated Agents. CATSA's mandate should be expanded by legislation to include the screening of air cargo.

23.8 Care must be taken to provide adequate training for all air cargo screeners. This should include rigorous testing for required competencies. The development and implementation of computer software training and screening aids should be accelerated.

23.9 Transport Canada should employ a sufficient number of security inspectors trained and qualified for inspecting, testing, auditing and enforcing the new air cargo security regime.

23.10 Funding for the ACS Initiative must ensure that it remains sustainable and can respond to emerging or otherwise unaddressed threats.

23.11 Annual progress reports on enhancements in air cargo security should be provided to Parliament by the Minister of Transport for each of the five years following release of the Commission's report.

Recommendation 24

24. The new security regime for air cargo must be governed by legislation, not by non-binding Memoranda of Understanding. The security regime should reflect international best practices.

24.1 Legislative provisions should include, but not be limited to, the following:

a. Mandatory security programs for all Regulated Agents, with formal approval from Transport Canada;

b. Clear definitions for terminology, including the terms "screen," "inspect" and "search";

c. Measures and technologies for screening air cargo;

d. Screening requirements for all Regulated Agents, whether shippers, freight forwarders or air carriers;

e. Appropriate training requirements for all Regulated Agents, their employees and sub-contractors;

f. Requirements to maintain the security of off-airport premises to a specified level wherever cargo is handled, stored and potentially accessed;

g. Requirements to maintain the security of off-airport vehicles to a specified level for the transport of air cargo to its final point of transfer;

h. Requirements for ensuring appropriate access and security controls for air cargo while on airport premises, during transfer to the aircraft and on loading onto the aircraft;

i. Mandatory security clearances, including a credit check, for all workers who have access or potential access to air cargo from the point of receipt to the point of transfer, including sub-contractors engaged to handle cargo on behalf of a Regulated Agent;

j. A system of inspection, testing, auditing and enforcement by Transport Canada or its designated agent; and

k. Methods of enforcement, including administrative monetary penalties and other penalties that reflect the potential gravity of the consequences of non-compliance.

24.2 Regulated Agent security programs should describe all measures, practices, policies and procedures applicable to air cargo security that have been, or will be, implemented by the Regulated Agent, including security awareness programs and risk management protocols.

Recommendation 25

25. A supply chain security regime should be established for other non-passenger items (such as stores and catering) that are prepared at off-airport premises before being delivered to an aircraft.

IX. Fixed Base Operations and General Aviation

Recommendation 26

26. As an urgent priority, all passengers and carry-on and checked baggage boarding flights at FBOs and GA facilities that feed into designated airports or are attached to designated airports should be screened to a level comparable to passenger and baggage screening for scheduled commercial flights.

26.1 As an equally urgent priority, all non-passengers entering such FBO and GA facilities should be screened to an acceptable level, based on appropriate risk management protocols;

26.2 All non-passenger items (including air cargo) to be placed on flights departing from such FBO and GA facilities should be screened to an acceptable level, based on appropriate risk management protocols.

26.3 On a priority basis, all FBO and GA facilities should develop and implement a security awareness and constant vigilance program that supports a "neighbourhood watch" approach to security. An accompanying training program should be developed and implemented for all personnel to foster a culture of security awareness and constant vigilance.

26.4 CATSA should oversee security screening services at FBOs and GA facilities. If CATSA's resources are engaged, additional government funding should be provided.

26.5 The aviation security requirements for FBOs and GA facilities should be governed by legislation.

XI. Duty to Warn and Transparency

Recommendation 27

27. The development of a public warning system for threats against airlines should receive further study. Issues include:

a. international experience with such systems;

b. the circumstances under which public warnings of threats have occurred in Canada;

c. the proper balance between security and industry interests;

d. the proper balance between the need for secrecy and the need to instill public confidence;

e. the appropriate threshold at which a public warning should be issued; and

f. the policy and legal implications, including possible liability to air carriers whose operations could be compromised by a public warning.

Recommendation 28

28. In general, greater transparency in aviation security is required to inspire confidence in the system, to provide assurance that resources are effectively allocated and to ensure that government and industry stakeholders remain accountable for managing this mandate.

28.1 The Commission does not recommend publishing intrusion test results. If a decision is nonetheless made to publish them, publication should only occur after enough time has passed to enable vulnerabilities identified by the tests to be addressed.

XII. Funding

Recommendation 29

29. As a core mandate directly related to national security, civil aviation security should receive sustained funding, regardless of prevailing economic circumstances, to maintain an acceptable level of security.

29.1 Funding for civil aviation security should be derived primarily from government.

29.2 Funding priorities should be directed to areas of risk that have not achieved an acceptable level of risk control, such as air cargo and control of access to airside and restricted areas of airports.

29.3 If additional funds are required for initiatives related to passenger and baggage security, the Commission supports the continuance of an Air Travellers Security Charge (ATSC). However:

a. The collection, retention and disbursement of the ATSC should be subjected to comprehensive and transparent accounting. All revenue from the ATSC should be traceable and should be used solely for civil aviation security;

b. An annual report of ATSC revenues as well as expenditures by program or department is recommended; and

c. CATSA should be the main beneficiary of funds from the ATSC.

Observations

1. In light of all the evidence before it, the Commission believes that the RCMP is not properly structured to deal with the unique challenges of terrorism investigations. There is merit in considering structural changes to allow for a greater degree of specialization and for a more concentrated focus on investigating and supporting the prosecution of national security offences. This may mean divesting the RCMP of its contract policing duties so as to simplify lines of communication and to clarify the national dimensions of its mandate as a pan-Canadian police force.

2. The funding of an academic institute for the study of terrorism – possibly to be called the "Kanishka Centre" to commemorate the name of the aircraft that was bombed on June 23, 1985 – could be an important step toward preventing future terrorist attacks while honouring the memory of those who perished.

3. The 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 that end, an independent body should be created to recommend an appropriate *ex gratia* payment and to oversee its distribution.

4. At an appropriate time the Government should provide a report detailing which recommendations of the Commission have been implemented, and which have been rejected or are subject to further study.