

ANNEXES

ANNEX A

TERMS OF REFERENCE

Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that a Commission do issue under Part I of the *Inquiries Act* and under the Great Seal of Canada appointing the Honourable John C. Major, Q.C., as Commissioner to conduct an inquiry into the investigation of the bombing of Air India Flight 182 (the "Inquiry"), which Commission shall direct

- a. the Commissioner to conduct the Inquiry as he considers appropriate with respect to accepting as conclusive or giving weight to the findings of other examinations of the circumstances surrounding the bombing of Air India Flight 182, including
 - i. the report of the Honourable Bob Rae entitled *Lessons to Be Learned* of November 23, 2005,
 - ii. proceedings before the superior courts of British Columbia,
 - iii. the 1991-1992 Security Intelligence Review Committee review of Canadian Security Intelligence Service activities in regard to the destruction of Air India Flight 182,
 - iv. the report of the Honourable Mr. Justice B.N. Kirpal of the High Court of Delhi of February 26, 1986,
 - v. the Aviation Occurrence Report of the Canadian Aviation Safety Board into the crash involving Air India Flight 182 of January 22, 1986,
 - vi. the 1985 report of Blair Seaborn entitled *Security Arrangements Affecting Airports and Airlines in Canada*, and

- vii. the reports prepared by the Independent Advisory Panel assigned by the Minister of Transport to review the provisions of the *Canadian Air Transport Security Authority Act*, the operations of the Canadian Air Transport Security Authority and other matters relating to aviation security;
- b. the Commissioner to conduct the Inquiry specifically for the purpose of making findings and recommendations with respect to the following, namely,
 - i. if there were deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985, or in their response to that threat, whether any changes in practice or legislation are required to prevent the recurrence of similar deficiencies in the assessment of terrorist threats in the future,
 - ii. if there were problems in the effective cooperation between government departments and agencies, including the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, in the investigation of the bombing of Air India Flight 182, either before or after June 23, 1985, whether any changes in practice or legislation are required to prevent the recurrence of similar problems of cooperation in the investigation of terrorism offences in the future,
 - 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, including constraints on the use or misuse of funds from charitable organizations,
 - v. whether existing practices or legislation provide adequate protection for witnesses against intimidation in the course of the investigation or prosecution of terrorism cases,
 - vi. whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, including whether there is merit in having terrorism cases heard by a panel of three judges, and
 - 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;
- c. the Commissioner to conduct the Inquiry under the name of the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182;
 - d. that the Commissioner be authorized to adopt any procedures and methods that he may consider expedient for the proper conduct of the Inquiry, and to sit at any times and in any places in or outside Canada that he may decide;
 - e. that the Commissioner be authorized to conduct consultations in relation to the Inquiry as he sees fit;
 - f. that the Commissioner be authorized to grant to the families of the victims of the Air India Flight 182 bombing an opportunity for appropriate participation in the Inquiry;

- g. that the Commissioner be authorized to recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting rates of remuneration and reimbursement and the assessment of accounts, to ensure the appropriate participation of the families of the victims of the Air India Flight 182 bombing;
- h. that the Commissioner be authorized to grant to any other person who satisfies him that he or she has a substantial and direct interest in the subject-matter of the Inquiry an opportunity for appropriate participation in the Inquiry;
- i. that the Commissioner be authorized to recommend to the Clerk of the Privy Council that funding be provided, in accordance with approved guidelines respecting rates of remuneration and reimbursement and the assessment of accounts, to ensure the appropriate participation of any party granted standing under paragraph (h), to the extent of the party's interest, where in the Commissioner's view the party would not otherwise be able to participate in the Inquiry;
- j. that the Commissioner be authorized to rent any space and facilities that may be required for the purposes of the Inquiry, in accordance with Treasury Board policies;
- k. the Commissioner to use the automated litigation support program specified by the Attorney General of Canada and to rely, to the greatest extent possible, on documents that have been previously identified for use in Canadian criminal proceedings arising from the bombing of Air India Flight 182, and to consult with records management officials within the Privy Council Office on the use of standards and systems that are specifically designed for the purpose of managing records;
- l. that the Commissioner be authorized to engage the services of any experts and other persons referred to in section 11 of the *Inquiries Act*, at rates of remuneration and

- m. reimbursement approved by the Treasury Board;
the Commissioner, in conducting the Inquiry, to take all steps necessary to prevent disclosure of information which, if it were disclosed, could, in the opinion of the Commissioner, be injurious to international relations, national defence or national security and to conduct the proceedings in accordance with the following procedures, namely,
- i. on the request of the Attorney General of Canada, the Commissioner shall receive information *in camera* and in the absence of any party and their counsel if, in the opinion of the Commissioner, the disclosure of that information could be injurious to international relations, national defence or national security,
 - ii. the Commissioner may release a part or a summary of the information received *in camera*, if, in the opinion of the Commissioner, its disclosure would not be injurious to international relations, national defence or national security, and shall provide the Attorney General of Canada with an opportunity to make submissions regarding international relations, national defence or national security prior to any release of a part or a summary of information received *in camera*,
 - iii. if the Commissioner concludes that, contrary to the submissions of the Attorney General of Canada referred to in subparagraph (ii), disclosure of a part or a summary of information received *in camera* would not be injurious to international relations, national defence or national security, he shall so notify the Attorney General of Canada, which notice shall constitute notice under section 38.0 of the *Canada Evidence Act*,
 - iv. the Commissioner shall provide the Attorney General of Canada with an opportunity to make submissions regarding international relations, national defence

or national security with respect to any reports that are intended for release to the public prior to submitting such reports to the Governor in Council, and

- v. if the Commissioner concludes that, contrary to the submissions of the Attorney General of Canada referred to in subparagraph (iv), disclosure of information contained in reports intended for release to the public would not be injurious to international relations, national defence or national security, he shall so notify the Attorney General of Canada, which notice shall constitute notice under section 38.01 of the *Canada Evidence Act*;
- n. that nothing in that Commission shall be construed as limiting the application of the provisions of the *Canada Evidence Act*;
- o. the Commissioner to follow established security procedures, including the requirements of the *Government Security Policy*, with respect to persons engaged pursuant to section 11 of the *Inquiries Act* and the handling of information at all stages of the Inquiry;
- p. the Commissioner to perform his duties without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization;
- q. the Commissioner to perform his duties in such a way as to ensure that the conduct of the Inquiry does not jeopardize any ongoing criminal investigation or criminal proceeding;
- r. the Commissioner to file the papers and records of the Inquiry with the Clerk of the Privy Council as soon as reasonably possible after the conclusion of the Inquiry;

- s. the Commissioner to submit a report or reports, simultaneously in both official languages, to the Governor in Council; and
- t. the Commissioner to ensure that members of the public can, simultaneously in both official languages, communicate with, and obtain services from it, including transcripts of proceedings if made available to the public.