

Final Submissions by the Canadian Coalition Against Terror (C-CAT) to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182

January 31, 2008

We wish to thank Commissioner John C. Major for the opportunity to convey our positions on issues that are so significant to us. We do not believe that Canada's current policies effectively meet the needs of terror victims or do enough to protect other Canadians from joining their ranks. However, we are confident that this Inquiry will provide insightful recommendations for addressing such shortcomings.

A. The Treatment of Terror Victims is an Essential Component of Counterterrorism Efforts

We commend the Government of Canada for establishing this long-overdue Inquiry, which has enabled the Air India families to play a central role in the identification of mistakes and the search for solutions. This stands in contrast to the somewhat neglectful posture taken by previous Canadian governments with respect to its victims.

Canada's inadequate responses over the last two decades to the needs of terror victims is a prism through which it is possible to discern the flawed presumptions about terrorism underlying the thinking of past Canadian governments.

Canadian governments have for the most part viewed and reacted to terrorism through the lens of ordinary criminal conduct. Accordingly, responses to terror attacks have focused on gathering evidence for criminal investigations and ultimately trials, ensuring that the accused receives the full panoply of rights, and attempting to prove guilt beyond a reasonable doubt. This perception resulted in policies that contributed to the failures prior to the Air India bombings and to the failures in meeting the needs of the families in its aftermath. Until the commencement of the Inquiry, these victims had been peripheral figures within the governmental response to the tragedy, as they would be in any criminal justice process in which the victim is not an official party to the proceedings.

In our view, however, terrorism should not be viewed as ordinary criminal conduct and its victims should not be treated as peripheral figures in the prosecution of a crime. Unlike other types of criminality, the victimization of civilians goes to the heart of terrorism. Whereas the primary interest of most criminals is not to destroy themselves or society as a whole, the objective of terrorist attacks is to inflict maximum death, damage and horror on society – for military and/or ideological purposes. And while criminals for the most part avoid large-scale massacres of uninvolved persons, the primary purpose of terrorist activity is to create victims – the more the better – because victims are the vehicle through which terrorist goals are achieved. Crime can exist without mass murder and may in fact benefit from avoiding it; terrorism cannot. Terror victims, therefore, are not collateral damage in a conventional war between states. They are not by-products of

another circumstance. They were neither caught accidentally in a drive-by shooting, nor targeted personally for the purpose of a specific gain – be it economic or otherwise. Rather, they are the involuntary front-line soldiers in a war waged by terrorists, and our policies should reflect this reality.

Failing our victims is not only an injustice. It is a failure to deal with what terrorism is, and a failure to strengthen our society against terrorist success. The front-line soldiers in this new war are unarmed civilians who have little defense against other “civilians” who are the agents of terror both here and abroad, and the experience of these victims will define the contours of this war. The extent to which we can limit the impact of terrorism on victims will dictate the effect of terrorism on our society and the confidence of our society to weather this storm. Our ability to diminish that impact must therefore be a central component in any policy deliberations regarding terrorism.

Some countries have clearly recognized terrorism as a distinct category of violent behaviour, and terror victims as a unique category of victim. As a result, these countries have implemented policies that provide extensive support services and compensatory packages to terror victims.¹ Canada should provide comparable services to its own victims of terror. Canadian government policy with regard to terror victims should reflect their special status in this unprecedented conflict.

B. An Insider’s Perspective on the Challenges Encountered by Canadian Terror Victims

In 2006, C-CAT commissioned a brief by John Muise about his experience working with terror victims and crime victims at the Ontario-Office for Victims of Crime. His post there provided him with a unique vantage point of the victims and the systems that are intended to serve them.

Mr. Muise is a recently retired veteran of the Toronto Police Service, having held the rank of Detective Sergeant. Six of the last seven years of his career in law enforcement were spent on secondment to the Ontario-Office for Victims of Crime. As Manager of Special Projects, he provided direct advice on matters pertaining to the support of crime victims, enhancement of public safety, and reform of the criminal justice system to protect the most vulnerable. A first of its kind in Canada, the Ontario-Office for Victims of Crime was an arms-length advisory agency to the provincial Attorney General. It provided advice on issues of public safety, support for crime victims and the criminal justice system generally. An added feature included a special victims unit that managed particularly difficult crime victim files.

Mr. Muise dealt extensively with Canadian 9/11 victims in the aftermath of the attacks on the World Trade Center, and was the recipient of the Governor General’s Queen’s

¹ For instance, France provides full compensation for personal injury or death caused by an act of terrorism that occurred either on French territory, and in the case of French nationals, outside of France. Compensation covers pain and suffering, income losses, rehabilitation, medical expenses, vocational training and maintenance.

Golden Jubilee Medal for this work.

Mr. Muise recalled struggling to find a way to assist Canadians in the immediate moments after the 9/11 events:

That evening I worked late into the night preparing a proposal for government consideration. We recommended an immediate response comprised of professional victim service provision on the ground in New York, and a long-term response to the complicated and varied needs of Ontario victims and their families that would continue long after this terrorist attack.

He also recalled the provincial and federal governments' responses to the attacks:

Despite arguably falling outside their mandate, the provincial government showed leadership by responding in a quick and decisive manner. The Premier announced a response that included a \$3 million long-term 9/11 fund for Ontario victims and the immediate dispatch of a team to New York that included a victim-serving professional, an actual crime victim, a law enforcement professional (myself) and Ministry staff. The intention of the team was to insert itself within the victim intake centre and help the many Canadians that we knew would be on site and in desperate need of support.

Concurrently, certain in-house staff members at the Canadian Consulate in New York were responding as best they could under the circumstances. However, they lacked formal training in dealing with crime victims. The Chief Coroner for the Province of Ontario was already on scene, working in a respectful and sensitive way. He had previously been called in by the federal government in similar kinds of situations with respect to DNA retrieval.

What was missing, of course, was a professional victim service response on the ground in New York. Despite our group's best intentions, there was no federal framework for a proper response to the needs of the victims. As a result, the "process" that was required to insert us in the victim centre did not exist, and we were unable to help in any meaningful way with "boots on the ground". For a serving law-enforcement officer like me, the situation was extremely frustrating. Inside the heavily guarded fortress that served as the victim centre, I noticed an organization officially set up to deal with pets who had been lost, injured or killed in 9/11, but no Canadian government flag or sign in sight. The irony was not lost on my colleagues or me.

After 9/11, Mr. Muise's exposure to different types of victims led him to the following conclusions:

Crime victims can face issues involving families that are broken and in crisis and struggling with grief and fear; media intruding in their lives; financial implications including loss of livelihood and housing; dealing with the authorities and journeying through a criminal justice system that often seems uncaring and unresponsive to their needs; emotional, mental and physical trauma requiring professional and costly care without the means to pay for it...the list goes on.

These issues are significantly magnified for terror victims, especially when the terrorist attack occurs outside of the country. Terror victims can additionally expect to deal with

corpse repatriation [often involving multiple burials for body parts over a period of years]; international legal issues including compensation or lack thereof; uncaring authority figures; intense and continued media attention; and a Canadian foreign service that is neither trained nor equipped with even the basic knowledge of how to manage and deal with a victim and family in crisis.

In the future, we are likely to be dealing with terrorist attacks that are designed to target large numbers of victims. That is not usually the case in criminal situations, but it is the nature of terrorism. The end result for many families is having no body to repatriate or bury and indeed no DNA evidence confirming a death. This may seem insignificant to some but for those affected, not having that clear evidence of whether and where their loved one perished compounds the grief and impedes the life-long healing process. The lack of a proper trial can also exacerbate the sense of injustice. These are important differences between the two categories of victims, and this warrants developing specialized protocols for terror victims.

Unfortunately, he noted, while there are various services available to victims of more conventional or “garden variety” crimes, there are not services designed to address the specific challenges encountered by terror victims:

Although far from perfect, there are many positive models in place here in Canada to assist those victimized by “garden variety” crimes committed on Canadian soil. Victim service providers at the first stage are often brought in by law enforcement to assist with the immediate needs of those victimized by a serious crime. In addition, most – if not all – of the provinces also provide court-based victim support to assist crime victims through the difficult and arduous court process. Furthermore, the Correctional Service of Canada and the National Parole Board have a victim positive notification line, and financial aid is becoming increasingly available to assist families that wish to attend parole board hearings. Most provinces and territories have agencies that provide financial compensation to those victimized by serious and violent crimes. So, if a person is the victim of a “garden variety” crime within the confines of this country, a variety of organizations designed to respond to the needs of crime victims do indeed exist and will swing into action. For the most part, those services stop at the Canadian border. Moreover, the existing services do not address the unique problems faced by terror victims.

He concluded with the following comment:

It was with the best of intentions that the OVC recommended a team on the ground in New York. However, what the OVC did was really a federal responsibility and solely within their jurisdiction. There was no federal response to the Canadian 9/11 victims; there were only individual federal staff members that stepped up. There was simply no comprehensive federal plan in place, and that fact was obvious both in New York and in the long-term post 9/11. More than one Canadian victim of 9/11 has stated that the support received from the American authorities was overwhelmingly positive, in stark contrast to the response by the Canadian federal government.

Mr. Muise therefore recommended the establishment of a special victims unit within the office of the Federal Ombudsman for Victims of Crime. This unit (similar to the one that existed in Ontario at the time of 9/11) would deal with those individuals victimized by

crime and terrorism abroad, as well as any terrorist attack that occurs on Canadian soil. He explained this recommendation as follows:

The recent creation of the new federal ombudsman office is a good one and we applaud it. We believe it is appropriately situated as a federal agency to have as a specific operational function the responsibility set out in the recommendation above.

The professionals working in the special victims unit can respond around the world as necessary in real time and where the crime, tragic incident or act of terrorism is large-scale, they can rely on links and protocols in place with local Canadian victim serving agencies to use those resources to attend in other locations around the world. They can swing into action to assist the Canadian Foreign Service in supporting victims abroad, including the many family members that will descend on the location to locate their loved one, dead or alive. This would not require the creation of an additional government bureaucracy but rather would involve the re-working of the existing Federal Ombudsman for Victims of Crime Office that is presently in place in Ottawa.

This office should identify the framework and protocols needed to respond to the needs of victims when terrorism strikes. In addition, an ongoing and approved budget line should exist to allow aid to flow in a timely fashion – as soon as people need assistance at that very worst moment in their lives. That budget should also allow for the ongoing needs of these victims in the long term.

C. The Lack of Improved Protocols Years After the Air India Bombings

John Muise's account of Canada's inadequate response to its 9/11 victims corroborates the observations of Maureen Basnicki, a Canadian whose husband was killed in the World Trade Center.

On November 7, 2006, Ms. Basnicki testified before this Inquiry. Her evidence disturbingly indicated that governmental responses to terror victims and terror attacks did not notably improve in the 11 years following the Air India bombings. In fact, she noted that there were striking parallels between her own story and the testimony of some of the family members of the Air India victims, such as Dr. Bal Gupta. She explained:

In 1985, the government of Canada did not set up any information lines and did not offer any other administrative or emotional help to the Air India victims. In 2001 there were also no such services offered by the government – even though more Canadians died in 9/11 than in other terrorist attack to date (with the obvious exception of the Air India bombings).

In 1985, federal government agencies provided no access to psychological, physical or administrative assistance for victims. This again was the case in 2001. In 2002, the Ontario OVC found me and provided me with some measure of comfort – I felt that they really wanted to help me.

Dr. Gupta noted that Canadian staff were not present to help the Canadian families in Ireland. I too struggled to find Canadian staff to assist me in New York. The first time I traveled to New York after Ken's murder, I went to the Canadian Consulate with other Canadian 9/11 families. However, aside from hiring a bus to take us to Ground Zero, they did not offer any

assistance to us. They kept telling us to go online to find out more information. A Canadian woman living in the U.S., who had lost her husband in 9/11, was the one who kept me most informed. As a fellow Canadian, she wanted to help me, and ultimately provided much more information to me than did the Canadian Consulate. I met Pamela Wallen, the Canadian Consul General in New York, about a year later – she stood out as someone who cared and has been at our side whenever she has been called on.

In the absence of any assistance from the government, it was the families of the victims that came together to assist each other. Like the Air India families, the 9/11 families turned to each other and to other victims for support.

In 1985, the Air India families – many of whom suffered multiple losses of immediate relatives – received no assistance from the any government agency in dealing with the complexities of pensions, insurance, RRSPs, bank accounts, and wills. In the aftermath of the WTC attacks, the Canadian 9/11 families – in a state of shock and grief – were also left to their own devices to manage these concerns.

D. C-CAT's Recommendations

The comments of John Muise and Maureen Basnicki point to the shortcomings of the present system and to the likelihood that future victims could share Ms. Basnicki's experiences unless changes are made.

C-CAT fully endorses the recommendations made by Mr. Jacques Shore on Monday, September 17, 2007, on behalf of AIVFA, which were summarized clearly by the Canadian Resource Center for Victims of Crime in their final submissions to this Inquiry.

C-CAT also recommends the following changes:

1. **Bill S-225: Civil Suits Against Local and State Sponsors of Terror:** It is C-CAT's contention that Canada's existing legal framework does not provide adequate constraints on terrorist financing in, from or through Canada. Despite the enormity of the terrorist enterprise, terror sponsorship has proven difficult to prosecute. Victor Comras, who was appointed by Kofi Annan as one of five international monitors to oversee the implementation of Security Council measures against terrorism and terror financing, has observed that: "Most major terrorism's financial abettors and supporters...have successfully avoided criminal prosecution... The record on closing down entities and institutions feeding terrorism is even more dismal."² This statement is also true in Canada. To date, no one has been criminally convicted of terror financing in Canada. C-CAT therefore maintains that the campaign against terror financing requires new and innovative strategies. As Professor Ed Morgan testified before this Inquiry and as is described in greater detail by C-CAT in its October 2007 written submissions,

² Counterterrorism Blog. "Civil Liability is Crucial in the War on Terrorism: A Response to the Wall Street Journal" by Victor Comras. October 30, 2006.

http://counterterrorismblog.org/2006/10/civil_liability_is_crucial_in.php

C-CAT has advocated for the passage of federal legislation that would allow victims of terror to launch civil lawsuits against local and state sponsors of terror in Canadian courts. These civil suits could (i) deter future acts of violence (by bankrupting or financially impairing the terrorist infrastructure through successful judgments and/or by causing terror sponsors to refrain from future sponsorship out of fear of the publicity and exposure that would result from a civil suit); (ii) hold the wrongdoers responsible (even where the criminal system has failed); (iii) compensate victims; and (iv) enable terrorist assets to be located and seized. Counterterrorism experts maintain that the legislation represents a valuable approach to combating terror financing, and will enhance counterterrorism efforts in Canada, the U.S. and the British Commonwealth. This legislation is currently in the Senate as Bill S-225 (formerly S-218).

2. Privacy and Protocols: Privacy laws prevented the government from revealing the names of 9/11 kin to the Ontario-Office for Victims of Crime (OVC), an agency that had the ability to help. Privacy concerns should not take precedence over the well being of victims. The provinces must work with Ottawa to address the legal and administrative obstacles that prevent the government from sharing critical information with agencies that are mandated to help terror victims. Moreover, there should be an appropriate system in place to inform the family of a terror victim about their loss that will prevent causing further pain to a bereaved family.
3. Agency to Coordinate Between Jurisdictions: Victims cannot coordinate efforts between jurisdictions and states in the aftermath of a terrorist attack. The provincial and federal governments should work together in establishing an office that liaises between provincial and federal bodies, and has the ability to coordinate efforts with foreign states. This office should provide free legal services to the victims, assisting them in accessing compensation funds and dealing with insurance and estate matters. Victims should not have to hire lawyers in other countries for these purposes.
4. Federal Government Cost-Sharing: While compensation for victims is currently a provincial responsibility, the criminal and international facets of terrorism establish the phenomenon as a federal matter. The federal government should therefore participate in taking care of Canadian terror victims.
5. Victims Abroad: We suggest that all provinces abide by a single standard for providing compensation to its residents who were victimized by terrorism abroad. The arguments for victims' compensation in general and for terror victims' compensation in particular are no less applicable to those who are victimized by terrorism abroad. The present policy will create a fundamental inequity in which Canadians victims from Ontario, for example, who have chosen to live abroad might receive extensive benefits from their host government, while the families of Canadians victims from the same incident who have opted to live in Ontario are not cared for by the foreign state and are denied all financial assistance from Ontario.

6. Paperwork: In order to obtain any financial assistance, Ms. Basnicki and her fellow 9/11 victims were inundated with an enormous amount of paperwork that was overwhelming for people who had just suffered severe trauma. They were also asked to submit personal documents that were never returned, which caused problems when other organizations later asked for the same documents. We therefore recommend that a federal office provide timely administrative assistance to the victims by reviewing the paperwork and streamlining the process.
7. Insurance Benefits: There have been reports that since 9/11, insurance companies are trying to exclude terror victims from receiving any benefits. Canada should revamp its insurance rules regarding terrorism, as was done in the U.S. In November 2002, the Terrorism Risk Insurance Act (TRIA) was passed in the U.S.³ The law created a government program that backs up insurance companies and guarantees that certain terrorist-related claims will be paid. TRIA requires insurers doing business in the U.S. to offer coverage for incidents of international terrorism, and reinsures a large percentage of that insured risk. Canada should develop similar policies before the insurance industry needs to deal with the problem of claims by terror victims in the event of a terror attack in Canada.

E. Conclusion

We again thank the Honourable John C. Major for his consideration. We would also like to acknowledge and praise the Air India families for their hard-fought battle over the last two decades for the establishment of this Inquiry. In pursuing this process, they have raised issues that should result in better government policies, which will spare others from suffering similar tragedies and treatment in the future. All Canadians owe them a debt of gratitude.

The Air India families must also be lauded for so elegantly and effectively engaging the Canadian public on the issue of terrorism. The Canadian public has been too apathetic about the threat posed by global terrorism. As the Senate Standing Committee on National Security noted in 2003, “Never has a combined physical and economic threat to the Canadian homeland been more palpable, but rarely have Canadians been more sanguine about their wellbeing.”⁴

We hope that this Inquiry will convey to Canadians that the Air India experience is a Canadian tragedy of significance to all Canadians, and a unique Canadian legacy of the courage and determination of “ordinary” citizens to play a critical role in fighting the scourge of terrorism. This is a legacy that should be emulated.

We fully concur with John Thompson of the Mackenzie Institute who correctly stated that although Canada's ability to react to terrorism has much improved since 2001, “all of this is for naught if the political will to fight terrorism is absent. Even in Canada political

³ <http://www.treas.gov/offices/domestic-finance/financial-institution/terrorism-insurance/pdf/hr3210.pdf>

⁴ <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/Com-e/defe-e/rep-e/rep17oct03vol1-e.pdf>

will stems from the citizenry, and fundamentally, being ready for terrorism is the business of every citizen. This is the most important asset of them all.”⁵

⁵ John Thompson & Joe Turlej, “Other People’s Wars: A Review of Overseas Terrorism in Canada,” (A Mackenzie Institute Occasional Paper), June 2003, p. 131.