



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

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**FINAL SUBMISSIONS OF  
THE ATTORNEY GENERAL OF CANADA  
VOLUME I OF III**

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## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND TO ESTABLISHMENT OF CSIS .....	11
	A. Introduction.....	11
	B. The MacKenzie Commission and the McDonald Commission.....	11
	C. The Passage of the <i>CSIS Act</i> .....	13
	D. Institutional Change after the <i>CSIS Act</i> .....	19
	E. Challenges of the <i>CSIS Act</i> .....	22
	F. The Threats to Canada in 1984-1985.....	25
	G. Conclusion with Respect to the Background.....	29
III.	RECOGNIZING THE THREAT OF SIKH TERRORISM.....	31
	A. Introduction.....	31
	B. CSIS Threat Assessments .....	32
	C. Receiving & Acting on Threat Information in the RCMP.....	33
	D. RCMP Protective Policing.....	36
	E. VIP Security Branch .....	36
	F. Other Involved Agencies .....	38
	1. VIU.....	38
	2. CISBC.....	38
	3. Indo-Canadian Liaison Team (ICLT).....	39
	G. CSIS: Dealing with the Threat of Sikh Terrorism .....	39
	1. Resources and Priorities at CSIS.....	39
	2. The CSIS Threat Assessment Unit: People and Roles 1984-1985.....	45
	3. The Sikh Desk 1984-1985 .....	46
	H. CSIS Warrant Acquisition .....	51
	1. RCMP Security Service Policies Transferred to CSIS.....	51
	2. A New Warrant Regime .....	53
	3. Intercept Retention Policies at CSIS .....	54
	4. The Parmar Warrant .....	55
	5. Translation Capacity.....	58
	6. CSIS Translators and Transcribers: Training and Supervision .....	60
	7. Retention of CSIS Intercepts .....	62

I.	The Department of External Affairs and Sikh Terrorism Pre-Bombing.....	63
J.	RCMP and Sikh Extremism Pre-Bombing .....	68
	1. Sources of Information .....	68
K.	Specific Incidents and the Response Pre-bombing .....	70
	1. The November 1984 Plot.....	71
	2. The Duncan Blast .....	72
	3. Khurana .....	78
	4. Plan to Hijack an Air India Aircraft .....	79
	5. Parmar’s Secret Project .....	80
	6. The Testimony of James Bartleman .....	81
	7. Mel Deschenes.....	91
IV.	HUMAN SOURCES BEFORE AND AFTER THE AIR INDIA BOMBING .....	94
A.	CSIS’s Approach to Human Sources .....	94
B.	Consideration of the Challenges posed by Sources for the RCMP.....	99
	1. Cultivating Sources of Information .....	99
	2. Difficulties Cultivating Sources in the Indo-Canadian Community .....	100
	3. When Information is Obtained from Sources.....	100
	4. RCMP Assessments of Sources and their Information .....	101
	5. Specific Source Issues .....	102
	a) Ms. E. ....	102
	b) Person 1 and Person 2 (November Plot) .....	107
	c) Hayer .....	108
	d) Mr. Z. ....	109
	e) Mr. A.....	112
	6. Conclusion.....	118
V.	THE RCMP INVESTIGATION .....	119
A.	Overview .....	119
B.	The Commencement of the Investigation .....	122
C.	The Investigators.....	123
D.	File Management.....	125
E.	Resources for the Investigation.....	126
F.	Morale .....	127
G.	RCMP Information Sharing.....	128

1.	RCMP Information Sharing Internally .....	128
2.	RCMP Information Sharing with CSIS .....	130
H.	Certain Aspects of the Investigation .....	133
1.	Parmar Confession.....	133
2.	Sharing Information with the Government of India .....	134
3.	SIRC Review .....	135
4.	Allegations of Racism .....	138
VI.	THE AIR INDIA INVESTIGATION FROM CSIS’S PERSPECTIVE.....	140
A.	CSIS’s Jurisdiction/Mandate .....	140
1.	Parmar Tape Erasure .....	149
B.	Cooperation with the RCMP and the AGBC.....	150
C.	CSIS Targets .....	152
D.	“Investigative Leads” .....	154
E.	Interface between RCMP and the AGBC Leads to Changing Instructions to CSIS .....	158
F.	Liaison Officers Between CSIS and the RCMP .....	165
VII.	THE SITUATION TODAY .....	168
A.	Threat Assessments.....	168
1.	ITAC.....	168
2.	Integrated Assessment Branch.....	172
3.	RCMP Threat Assessment Section.....	173
B.	CSIS and the RCMP Today .....	174
1.	Complementary Mandates.....	174
2.	Information Sharing Between CSIS and the RCMP .....	176
3.	Information Sharing Within the RCMP and Beyond .....	179
4.	INSETs .....	180
5.	The RCMP’s Major Case Management.....	182
6.	Retention of Information by CSIS.....	183
7.	Need for Ongoing Intelligence .....	184
8.	Intelligence to Evidence .....	185
C.	Conclusion .....	188
VIII.	OTHER ISSUES ARISING FROM THE INQUIRY .....	191
A.	Canada’s Consular Response.....	191

B. Subsequent DEA Activities Concerning Sikh Extremism.....	193
C. Allegations of Systemic Racism .....	195
APPENDIX 1: Caveats .....	203
APPENDIX 2: Human Sources .....	206
APPENDIX 3: Threshold for obtaining intercepts .....	209
APPENDIX 4: Operational Policies: Note-Taking Policy .....	212
APPENDIX 5: CSIS Chronology of Threats.....	216

## I. INTRODUCTION

1. The bombing of Air India flight 182 was a confluence of events and circumstances ending in the deaths of 329 persons aboard the flight and another 2 persons at Narita airport, Japan. In establishing and providing resources for this Inquiry the Government has provided for an independent, wide ranging and transparent process to examine the investigation of the bombing in the context of providing forward looking recommendations in the fight against terrorism. In doing so it has not only recognized the long standing concerns of the families of the victims for a public Inquiry. It has also demonstrated a commitment to honour the memory of those who were lost.
2. These submissions focus on the evolution of the Government's efforts to meet the challenge posed by terrorism from the early 1980's to the present day in recognition of a fundamental responsibility to ensure public safety with minimal impairment to individual rights and freedoms
3. It is in the Government's interest to await the considered recommendations of this Commission. As such these submissions will not offer or urge particular recommendations but will rather attempt to identify areas of concern which might benefit from the work of this Commission. Where legislation, program or policy is thought to be germane to an area or topic under review by the Commission these submissions will attempt to bring such matters to the Commission's attention.

4. The sweeping Terms of Reference, the limited amount of time available to deal with 25 years of history, the voluminous documentation, fading memories and the unavailability of potential witnesses, whether due to health reasons or the simple passage of time, made this Inquiry a formidable challenge for all concerned.
  
5. In an effort to meet this challenge the Government of Canada exercised its best efforts to make all relevant information available to the Commission whether by arranging interviews for Commission counsel of present and former Government employees, securing the attendance at the hearings of those of such persons requested by Commission counsel to give testimony at the Inquiry, arranging or facilitating meetings between Commission counsel and representatives of law enforcement and security intelligence agencies of foreign governments, the provision of documentation to Commission counsel, requesting the lifting of caveats from third parties in respect of information contained in certain documents, making files available at various agencies for inspection by Commission counsel, and working with Commission counsel to reach consensus on redactions to sensitive information in order that documents chosen by Commission counsel to be exhibits contain as much information as possible. As such Canadians have an opportunity to understand the landscape as it was in June, 1985 with respect to the threat posed by Sikh extremism in Canada, efforts made to deal with that threat and the limitations and problems that existed in doing so, the response to the tragedy, the subsequent investigation and prosecutions and the steps Canada has taken to meet the challenge posed by global terrorism today and those that lie ahead.

6. This Inquiry heard from 244 witnesses. 104 of these witnesses were provided with legal representation by government counsel as present or former Canadian Government employees attached to 12 departments or agencies. In preparation for the hearings these witnesses as well as many other present and former Canadian Government employees were interviewed by Commission counsel with the assistance of Government counsel. Regardless of whether or not called as witnesses, many such persons were interviewed by Commission counsel a number of times. Approximately 17,300 documents have been provided by Government counsel to Commission counsel in either electronic or hard copy format from which Commission counsel have selected 3,750 documents to be filed as public exhibits. As of the date of these submissions the Commission has entered 4,339 exhibits.
7. The Commission received unredacted copies of all documents provided by Government counsel. Those documents that the Commission chose to make exhibits were redacted by Government counsel in accordance with various forms of privilege, the most pertinent of which to the Inquiry was national security privilege. From time to time Government counsel and Commission counsel disagreed as to whether privilege was appropriately claimed. The Terms of Reference and the Rules of Procedure and Practice of this Commission as well as arrangements agreed to between Government and Commission counsel provided for procedures by which such disagreements could be resolved. Failure to resolve these disagreements between counsel could ultimately lead to application for



Judicial Review in the Federal Court and in respect to issues of National Security privilege, the procedures contained in s. 38 of the *Canada Evidence Act*<sup>1</sup>.

8. In February, 2007 the Commissioner expressed his concern about possible resort to such procedure and the ensuing delays that may occur. Government counsel, along with Commission counsel, worked arduously to ensure that matters of privilege were resolved without resort to judicial intervention and consequent delay. In all cases, Government and Commission Counsel were able to resolve disagreements as to privilege and no applications to the Federal Court were brought.
  
9. The Terms of Reference and the Rules of Practice and Procedure of this Commission also contemplated and provided for evidence to be received in camera<sup>2</sup>. On a number of occasions where sensitive information was involved Government counsel proposed to Commission counsel that evidence be heard in camera. All such offers were rejected however once again in all such cases, Government counsel and Commission counsel reached agreement on the manner in which such information could be dealt with in public even though it was open to either of them to pursue the matter in Federal Court. As such, it may be the case that the Commission did not receive some evidence. On the other hand, all the evidence presented in this Inquiry was received by the Commission in public and is thus available to all Canadians.

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<sup>1</sup> Inquiry Terms of Reference (m)(n)(q); and Inquiry Rules of Procedure and Practice s. 8, 31; *Canada Evidence Act*, 1985 c. C-5, as amended s.38.

<sup>2</sup> Inquiry Terms of Reference (m)(n)(q); Inquiry Rules of Procedure and Practice s. 8, 23, 53, 61; *Canada Evidence Act*, 1985 c. C-5, as amended s.38.

10. The Terms of Reference of this Commission include a number of broad topics or areas of inquiry which of necessity need be addressed in these submissions in like manner. For example this Commission will want to assess the law enforcement and security intelligence landscape in 1985 and evaluate what changes have occurred to the point where we are today, whether those changes are positive and whether any further changes might benefit. In doing so the Commission will look to those Terms of Reference dealing with threat assessment, cooperation between CSIS and the RCMP, the relationship between security intelligence and evidence, the impact of disclosure in criminal prosecutions and the need to protect national security information, procedures in the *Canada Evidence Act* for dealing with national security information as well as the capacity of the criminal justice system to cope with a prosecution of a terrorist offence which almost inevitably will involve sensitive information subject to claims of national security privilege.
  
11. In regard to threat assessment, it is important to compare and contrast the policy and practice relating to threat assessment and the gathering and sharing of information as it was in 1985 with the situation today. In that respect it is necessary to consider the creation and evolution of CSIS from the RCMP Security Service, the mandates and roles of both the RCMP and CSIS and how their members understood their respective mandates and roles in 1985, how they dealt with each other and the development of both agencies to where they operate today. Today Canada has ITAC, staffed with representatives from over 12 federal and provincial agencies, the Ontario Provincial Police and the Sureté du Québec. The RCMP has established integrated national security enforcement teams (INSETS), to co-ordinate anti-terrorism programs and procedures, not

only between their own members but among other law enforcement and Government agencies.

12. Similarly in looking at the evolution of the relationship between CSIS and the RCMP one must understand the background to the creation of CSIS, the policies and procedures of the RCMP and CSIS in the early days and how their respective members perceived the role of law enforcement and the gathering of intelligence and how they perceive those roles today. It is also necessary in the context of this relationship to consider the difference between security intelligence and evidence and particularly the use of intelligence as evidence, a theme which cuts across a number of the Terms of Reference and a conundrum which has existed for years and has not successfully been resolved by any Western democracy despite ongoing efforts to do so.
13. In addition as part and parcel of the consideration of the relationship between CSIS and the RCMP is the ability of the intelligence service to protect sources and preserve ongoing investigations given the obligation upon the Crown to provide disclosure in the criminal prosecution process. Thus the relationship between security intelligence and evidence ultimately engages an accused's right to full answer and defence and the state's need to protect certain sensitive information. This is particularly so given "the constitutionalization of the criminal trial" a situation where the focus of the trial is on the police investigation based on various Charter rights of the accused<sup>3</sup>.

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<sup>3</sup> Evidence of George Dolhai, Transcript, Vol. 86, pp. 11109-10. This comment was made in the context of discussion of a development of jurisprudence following the Supreme Court of Canada decision in *Stinchcombe* coupled with the attacks based on various *Charter* rights that can be launched on the conduct of an investigation.

14. It is also important to note that while the Terms of Reference of this Inquiry are broad and sweeping they are not infinite. For instance much evidence was heard from family members who testified in the first stage of the Inquiry as to the response or perceived lack thereof of the Canadian Government to their plight in the aftermath of the bombing. In light of such evidence it was felt that evidence of the consular response from Government witnesses should be offered to the Commission despite the absence of this aspect in any of the Terms of Reference. In December, 2007 the Commissioner issued a report on Phase 1 of the Inquiry entitled “The Families Remember”.<sup>4</sup> In his introduction to the report the Commissioner noted “this first report is being released before the Inquiry is complete because the families of the victims of the Air India tragedy have already waited too long for their stories to be told.” As stated in the concluding statement to the report by the Commissioner there were no recommendations associated with the first stage of the Inquiry<sup>5</sup>. It is submitted that such approach was a fit and appropriate manner of dealing with such evidence.
15. Similarly in both stage 1 and 2 of the Inquiry evidence from a number of witnesses called by Commission counsel touched upon considerations at play relating to the advisability of calling a public inquiry or the timing of such an inquiry. Comments of the Commissioner, Commission counsel, and counsel for the various parties and the manner in which some of the evidence had to be presented throughout this Inquiry illustrate how difficult it is to hold a public inquiry while there is still an ongoing investigation. It is not

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Consequently, much of the conduct of a criminal trial may focus on the police investigation independent of the elements of the offence the accused is alleged to have committed.

<sup>4</sup> *The Families Remember*, p. 5.

<sup>5</sup> *Ibid*, p. 178.

difficult to imagine the difficulties that might have been encountered at an earlier time. Despite that reality it is submitted that even given an interpretation of the widest latitude the Terms of Reference do not include a review of the decision to hold or not hold a public inquiry and the timing of same. The fact is an inquiry was ordered which is now in its final stages and conclusions as to whether the Inquiry should have been held earlier or not are outside the mandate of this Commission.

16. A great deal of evidence was presented at the Inquiry. Even so much evidence could not be presented due to the need to conduct and complete the Inquiry in a timely fashion. Commission counsel chose to call evidence to highlight certain events, both prior to and after the bombing in an attempt to provide context and to illustrate broader themes. Subsequent portions of these submissions will address some of the events which Commission counsel chose to highlight but time does not permit 25 years of history to be exhaustively canvassed. Accordingly these submissions can and will address only some of the evidence introduced at the Inquiry a good deal of which will be relevant to a number of the Terms of Reference.
17. These submissions are presented in three volumes in an attempt to where possible address specific Terms of Reference. Volume I will concern largely sections b(i) and b(ii), threat assessment and CSIS/RCMP cooperation respectively. Volume II will concern section b(vii) of the Terms of Reference, Aviation Security. Volume III will deal with the remaining Terms of Reference, sections b(iii) to b(vi), which for the most part involve policy issues relevant to the investigation and prosecution of terrorist acts. While some topics, for instance terrorist financing, can for the most part be dealt with by discreet

submissions other topics such as the relationship between security intelligence and evidence cut across a number of the Terms of Reference and cannot be easily confined.

18. It should not be lost on anyone that this Commission enjoys the benefit of hindsight approximating 25 years in many instances. The Government actors confronted with the tragic events which occurred and their aftermath did not have that benefit. Therefore even though the Terms of Reference speak to the matter, it is worthy to note once again what this Inquiry is not about prior to delving into the substance of these submissions. As the Prime Minister stated in the House of Commons of Commons on May 1, 2006 “this Inquiry is not about retribution, nor about replaying the criminal trials that took place in Vancouver from 2003 to 2005.”
19. In “Spring of Fear”, the SARS Commission report on the outbreak of SARS which plagued Toronto in 2003, the late Justice Archie Campbell, sitting as Commissioner of that Inquiry said:

It is too easy to seek out scapegoats. The blame game begins after every public tragedy. While those who look for blame will always find it, honest mistakes are inevitable in any human system. There is always more than enough blame to go around if good faith mistakes made in the heat of battle are counted in hindsight as blameworthy<sup>6</sup>.

Justice Campbell went on to note:

More important than blame is to find out what happened, to figure out how to fix the problems, to learn something from these tragedies, to give a legacy of betterment to those who died<sup>7</sup>.

So are those words apropos to this Inquiry.

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<sup>6</sup> The SARS Commission, *Spring of Fear*, Vol. 1, December 2006 per Justice Archie Campbell at p. 19.

<sup>7</sup> *Ibid.*

20. With these caveats in mind these submissions are intended to provide the context in which the federal Government operated at relevant times. It is hoped they will provide some answers as to how this terrible event could have happened and be of assistance in formulating recommendations to address the present and future challenges posed by terrorism in order that we may avoid a similar event happening again.

## II. BACKGROUND TO ESTABLISHMENT OF CSIS

### A. INTRODUCTION

21. The Air India disaster, its investigation and prosecution began with a series of events, decisions and actions that long predate June 23, 1985. Understanding this historical record illuminates not just the disaster itself, but also the institutional and individual lessons learned that continue to this day. The Air India bombing occurred at a time when the primary focus of national security concerns was on counter intelligence as opposed to counter terrorism and when the primary responsibility for intelligence collection and analysis had been placed with CSIS, a recently established civilian intelligence agency with no law enforcement powers.
22. This section will look at this historical background with a focus on the passage of the *CSIS Act* and its general implications for Canadian national security. The relationship between CSIS and the RCMP as it relates specifically to Sikh extremism and Air India will be canvassed with more detail subsequently in these submissions.

### B. THE MACKENZIE COMMISSION AND THE MCDONALD COMMISSION

23. Confidential security intelligence advice about anticipated threats is crucial to Government. Originally, this was entrusted to the RCMP, which developed a special branch to fulfil this task. In 1966, the Government of Canada directed the MacKenzie Commission to inquire into Canada's national security. The Commission's 1969 report



recommended a move away from the RCMP as the source of security intelligence in favour of a civilian based agency.

24. The government of the day responded to the MacKenzie Commission's report with a commitment to an increasingly separate security intelligence structure within the RCMP. A civilian Director General was appointed and RCMP's national security branch became known as the Security Service. Under the *Official Secrets Act*, the Solicitor-General was given the authority to issue authorizations for the surveillance and interception of communications in support of national security investigations.
25. The theme of national security was revisited by the 1977 McDonald Commission, which was directed to *inter alia* report on policies and procedures regarding national security. The Commission's 1981 recommendations distinguished the autonomy afforded to law enforcement activities (which are subject to checks and balances in the public forum of criminal trials) from security/intelligence activities where increased executive direction and accountability are required since there is no public review in the courts. The McDonald Commission strengthened the MacKenzie Commission recommendations to move to a civilian based agency oriented to information gathering and analysis.
26. Professor Wark testified about the circumstances leading up to the creation of the Canadian Security Intelligence Service (CSIS). He noted the relationship of the service coming into being and the recommendations of the related Commissions of Inquiry:

CSIS was very much a product of finding some recommendations arrived at by a Royal Commission of Inquiry, led by Justice McDonald that had been put into place in the late 1970's in order to investigate allegations of

illegal activities on the part of the RCMP security service, in the context of the role that the security service had played in trying to disrupt potential threats, especially in Quebec, from violent Quebec separatism. The McDonald Commission found specifically that there had indeed been abuses of the law, and believed that a new institutional setup was required in order to prevent such abuses in the future...

It also found, more generally, that in the McDonald Commission's view, and this also supported previous findings, particularly the MacKenzie Commission -- Royal Commission of Inquiry in 1969, that there were intrinsic issues of intelligence, performance and capacity that were probably beyond the ability of a police force, trained in police methods, and recruiting from a particular pool of candidates, probably some issue, complex issues, to do with threats and understanding about domestic and global politics that perhaps, a police service, with a very different mandate and culture, if you like, were not best suited to perform.<sup>8</sup>

27. The factual underpinnings that gave rise to the McDonald Commission made significant change inevitable. Soon after the McDonald Commission issued its report, the Government of Canada began considering and drafting legislation to respond.

### **C. THE PASSAGE OF THE CSIS ACT**

28. Geoffrey O'Brien testified about his first hand knowledge of the initial stages of the creation of CSIS:

I was part of the transitional group that was set up when the McDonald Commission's second and third reports were tabled, made public. I was not on August 25, 1981 when the government published the second and third reports of the McDonald Commission. The government announced that they were accepting the central recommendation of McDonald and they were going to create a separate civilian service. And so the government set up a transitional group.

It was a group of about five or six or seven people reporting to the Solicitor General of the day, the Honourable Bob Kaplan, and our job

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<sup>8</sup> Evidence of Professor Wesley Wark, Transcript, Vol. 16, p. 1434.

was to look up McDonald and what he had said, figure out what made sense and what didn't make sense, make recommendations to Cabinet, and be involved in the policy and organizational development work that would lead to the creation of what became CSIS. So I became a part of that transitional group in September of 1981. Eighteen months later the first piece of legislation was tabled and as you know, about 14 months later the CSIS Act was passed. So I was part of that group.<sup>9</sup>

29. The initial legislative response to the McDonald Commission was characterised as being an attack on civil liberties. The special committee of the Senate reporting on the proposed legislation noted that there might be a more “appropriate balance between collective and individual security”; the legislation was withdrawn.
30. The Government of the day then made a second attempt at addressing the McDonald Commission recommendations. The Government introduced legislation in January 1984 that was proclaimed in force in July of the same year creating the Canadian Security Intelligence Service (CSIS).<sup>10</sup> The Commission heard testimony about the difficult timing of the passage and proclamation of the *CSIS Act*:

Mr. Freiman: It was in fact the last piece of legislation passed by that government, was it not?

Mr. O'Brien: I believe it was. It was passed and proclaimed I think two days before Parliament recessed in June 1984, 10 days or two weeks before the newly appointed Prime Minister John Turner called the election. Yes that's right.<sup>11</sup>

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<sup>9</sup> Evidence of Geoffrey O'Brien, Vol. 16, p. 1524.

<sup>10</sup> For a complete discussion of this issue, See “The Canadian Security Intelligence Service” by Philip Rosen for the Library of Parliament, January 2000.

<sup>11</sup> Evidence of Geoffrey O'Brien, Vol. 16, p. 1532.

31. The *Canadian Security Intelligence Service Act* (CSIS Act) terminated the previous Security Service in the RCMP and established a civilian security intelligence function pursuant to an explicit statutory charter with a defined mandate, a system of judicially authorized warrants for intrusive investigations and a review body - the Security Intelligence Review Committee (SIRC). Dr. Wark testified about the recommendations to split the two organizations (CSIS and RCMP) as follows:

Sure. The most important distinction from my perspective was that CSIS was understood to be a civilian service with no peace officer powers, no law enforcement powers; its task was to advise the Government of Canada on threats to national security. It would be an intelligence collection and assessment and dissemination body, and it would be contrasted with the role of the RCMP in the original concept of this separation of mandates and duties in that the RCMP would continue to have its law enforcement mandate in the national security field. The RCMP would be the body that would need to conduct security intelligence investigations that might lead to criminal prosecutions in court.

But nevertheless, the McDonald Commission, the parliamentary committee debates and the CSIS act (sic) very much attempted a kind of surgical division of mandates and argued that in creating a civilian intelligence service it was important to invest that intelligence service with -- essentially a monopoly of responsibility over intelligence collection and assessment. It stripped the RCMP of really any role as it conceived of it at the time in intelligence.<sup>12</sup>

32. Enormous thought and policy analysis went into the MacKenzie and McDonald Commission's recommendations, as well as into the subsequent debates in the Government about how to respond. As Mr. O'Brien testified, the goal was to create a model for how an intelligence service should operate in a modern democracy:

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<sup>12</sup> Evidence of Professor Wesley Wark, Transcript, Vol. 16, pp. 1436-37.

It was certainly part of the balance that McDonald, MacKenzie, the government, Senator Pitfield were trying to create.

One of the fears was that, if you had a security service that had the power to enforce security -- to take measure to enforce security, there were dangers attendant to that. In other words, it became a law unto itself; it became a world unto itself; and there had been a whole bunch of -- you know, books, articles, so on and so forth, about what are the dangers of Intel services. And one of the dangers, I think, is that they do just that.

And so, McDonald was very strong, and the government certainly -- the government agreed with that, that it was in the interests of democracy to separate those two things. So that, when you are investigating broadly -- and we'll come to that and we'll see how broadly the service can, legally, investigate -- when you are investigating broadly, you do not want the people who have collected that information broadly to be able to take measures to enforce security on the basis of that. You want them to inform someone who then takes action.

And so, whether it's on the classic espionage front, where it tends to be, I guess, two possible actions. If it's a foreign person, we inform the Department of Foreign Affairs and they take action. Or again, if it's a Canadian, it may become a question for law enforcement. But, whatever it is, the next step is someone else's step.<sup>13</sup>

33. Supporters argued that these were defining steps in the relationship between citizens and government. There were some dissenting views among members of the RCMP who felt that the split ought not to have happened.<sup>14</sup>
34. The creation of CSIS's mandate required a careful balance. Sections 12 and 19 of the *CSIS Act* illustrates the attempt to meet both the requirements of the protection of collective security and respect of individual rights:

12. The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and

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<sup>13</sup> Evidence of Geoffrey O'Brian, Vol. 17, p. 1545.

<sup>14</sup> See, for example, the Evidence of Henry Jensen Vol. 18, p. 1652.

intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.

19. (1) Information obtained in the performance of the duties and functions of the Service under this Act shall not be disclosed by the Service except in accordance with this section.

(2) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose such information,

(a) where the information may be used in the investigation or prosecution of an alleged contravention of any law of Canada or a province, to a peace officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged contravention may be taken;

(b) where the information relates to the conduct of the international affairs of Canada, to the Minister of Foreign Affairs or a person designated by the Minister of Foreign Affairs for the purpose;

(c) where the information is relevant to the defence of Canada, to the Minister of National Defence or a person designated by the Minister of National Defence for the purpose; or

(d) where, in the opinion of the Minister, disclosure of the information to any minister of the Crown or person in the federal public administration is essential in the public interest and that interest clearly outweighs any invasion of privacy that could result from the disclosure, to that minister or person.<sup>15</sup>

35. The *CSIS Act* further defined CSIS' mandates in ss. 13 to 16:<sup>16</sup>

(a) Security assessments

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<sup>15</sup> R.S.C. 1985, C-23.

<sup>16</sup> Evidence of Geoffrey O'Brian, Vol. 17, pp. 1555 and 1556.

- (b) Advice to Ministers
  - (c) Collection of Information concerning foreign states and persons.
36. The governance model established by the *CSIS Act* set Canada apart from most Western democracies.<sup>17</sup> At the stroke of a pen, CSIS was invested with prime responsibility for security intelligence collection and assessment as well as a separate accountability structure. As such, the *CSIS Act* (like the *Canadian Charter of Rights and Freedoms* and the *Privacy Act*) is an integral part of the architecture supporting individual interests and placing strict limits on the use and disclosure of information gathered by the State.
37. This change in governance also opened an unresolved debate about the extent that information gathered by an intelligence agency can be used in support of a criminal investigation. This issue is complicated by many factors, including the fact that CSIS can intercept communications under a different legal test than the one that the Criminal Code provides for police.
38. At the time the *CSIS Act* was passed, Parliament also created the *Security Offences Act*. Section 6 of this Act gave the RCMP primary responsibility for the investigation and prevention of any criminal offence arising out of conduct constituting a threat to the security of Canada within the meaning of the *CSIS Act*, or any offences in which the victim is an internationally protected person within the meaning of section 2 of the *Criminal Code*. Thus the RCMP and CSIS were given separate but complementary mandates concerning threats to national security.

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<sup>17</sup> Ibid, Vol. 16, p. 1534.

39. The *CSIS Act* was proclaimed in force two weeks after its passage through Parliament.

#### **D. INSTITUTIONAL CHANGE AFTER THE CSIS ACT**

40. From the time of the passage of the *CSIS Act*, an institutional and cultural shift began that was at first barely perceived at the working levels of the RCMP and CSIS who shared training and background in large measure.<sup>18</sup> The immediate institutional differences between CSIS and the RCMP would include the following:

- CSIS was more responsive to ministerial direction, especially since its mandate was to advise government. The RCMP, on the other hand, maintained an institutional independence suitable for a police force.
- The RCMP pursued its mandate principally by apprehension and prosecution of criminals while CSIS pursued its mandate by providing analysis and advice.
- Reviews of the respective interventions by the RCMP and CSIS in the lives of Canadians occurred in different fora. The Courts and public perceptions of safety provided reviews for the RCMP while CSIS reviews generally occurred in the reports of SIRC, the Inspector-General and Ministerial direction.

41. The message to the RCMP and CSIS was that this was a new era that established a clear separation between the responsibility for gathering information and intelligence and the responsibility for investigating, and prosecuting criminal activity.<sup>19</sup>

42. The Solicitor-General of the day emphasized the separate roles and mandates of the two agencies with written instructions to CSIS, issued within 15 days of its creation:

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<sup>18</sup> Evidence of Glen Gartshore, Transcript, Vol. 31, p. 3517.

<sup>19</sup> P-308, *Executive Summary - the Unique Challenges of Terrorism Prosecutions: Towards a Workable Relation Between Intelligence and Evidence* by Kent Roach, p. 6.



Ms. McCann: ...It's my understanding that the Solicitor General at the time indicated to both the RCMP and CSIS that, since information provided by a CSIS investigation is unlikely to be usable in enforcement work, the RCMP will be required to investigate and collect the evidence required.

Mr. O'Brian: Yes.<sup>20</sup>

43. It is a key point that the then Solicitor-General noted that intelligence produced by CSIS was unlikely to be useable in enforcement work. The use and retention of CSIS's information is a central idea in the new *CSIS Act*. Mr. Reid Morden developed this idea in the following terms:

You have to go back to the genesis of the service and why it came into being. If it came into being as the result of the recommendations of not one but two Royal Commission's of Inquiry -- and the second one which in fact triggered action by the government to create CSIS, the McDonald Commission.

Although the—probably the greatest amount of media attention has been given on some of the activities of the RCMP Security Service in terms of burning barns and so on, but I think if you read the McDonald Commission report and findings you'll see that one of the major, if not the major concerns of Justice McDonald was the -- virtually -- and I'm paraphrasing here -- indiscriminate holdings of information on Canadians that at that time were part of the -- were part of the RCMP Security Service holdings.

Now, out of that comes the CSIS Act and within the CSIS Act, I think the very important provision of Article 12, which enjoins the service to collect, only to the degree strictly necessary, the information. And from that I think grows the policy that says you collected -- you're not collecting evidence, you're collecting information which can be turned into intelligence. If it doesn't appear to meet the test of Article 12 then this should be destroyed as opposed to being retained, as it had been previously.<sup>21</sup>

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<sup>20</sup> Evidence of Geoffrey, O'Brian, Transcript, Vol. 17, p. 1616.

<sup>21</sup> Evidence of Reid Morden, Transcript, Vol. 88, p. 11430.

44. The *CSIS Act* created a responsibility to protect information. As these submissions will illustrate in particularized detail, the disclosure of CSIS's information was governed now by a legislative test, not by operational law enforcement requirements:

The context of the times in 19—the early 1980's, I think one should and could recall, were post-Watergate, post the creation of freedom of information in first of all Sweden and then the United States in the late 1970's. That was all part of, I think, the idea of what governance was in the early 1980's and what section 19 to drill down and to speak to it specifically, what Section 19 specifically says, I think is that, it recognizes that and says look, you are going to be collecting a whole bunch of personal and sensitive information, CSIS, in carrying out your job. Section 19 is the only section under the CSIS Act and which provides the capacity, the legislative authority for CSIS to disclose information...<sup>22</sup>

45. This responsibility to protect information was felt throughout the CSIS organization, as Mr. James Warren testified:

We would share intelligence with the police on matters relevant to their mandate. That didn't mean -- I want to be crystal clear on this -- that we just passed everything that we had to them without any kind of analysis or consideration.

I mean, we still had to exercise that discretion that was available to the Director under section 19 of the Act but, yes, that's what we were expected to do and I think Parliament equally expected the RCMP to stay out of that strictly intelligence collection function in the area of terrorism even while recognizing that terrorism was a crime.<sup>23</sup>

46. CSIS was created in response to a perceived flaw in having an intelligence service based with a law enforcement agency. The intelligence and law enforcement functions were separated and became directed by differing mandates. While CSIS personnel were

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<sup>22</sup> Evidence of Geoffrey O'Brian, Transcript, Vol. 17, p. 1555.

<sup>23</sup> Evidence of James Warren, Transcript, Vol. 73, p. 9175.

substantially the same as in the days of the Security Service, the organization's leadership felt it had been directed to change. The RCMP had to accommodate a significant loss of its operations and staff, including a loss of some of its analytic capacity. The changes arising out of the McDonald Commission opened a gap between security and law enforcement agencies. Addressing the dynamic changes that this implied affected the management and operational resources of both organizations.

### **E. CHALLENGES OF THE *CSIS ACT***

47. The proclamation of the CSIS Act two weeks after its passage through Parliament set the stage for a series of legal, policy and operational challenges for both the RCMP and CSIS. The scope of these challenges was outlined in the testimony of Geoffrey O'Brien:

Now, there had been a huge amount of planning, and so on and so forth. However, I think in today's world, when one looks back and says that, "We will pass legislation, creating a new agency" and proclaim it in force two weeks later, that's a challenge. And so we faced all of the normal challenges, I guess, of a new organization, which operationally, of course, had, in most cases, the continuity but had a whole range of different systems put on top of it.

...and I suppose one could add to that, if you wanted, that on September the 4<sup>th</sup> I think it was, there was a new government elected and, therefore, the people -- the political world that had been thinking about and responsible for and had been part of the design of the CSIS Act and the CSIS system, there was a new government in place who did not have that background or did not have that experience.<sup>24</sup>

48. This had a cumulative impact on those who were charged with creating the new organization of CSIS, as Mr. Upton noted:

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<sup>24</sup> Evidence of Geoffrey O'Brien, Transcript, Vol. 17, p. 1560.

Naturally it had an effect on me. It was a steep learning curve. I mean we had - - when we - - with the McDonald Commission and what followed, we were under a whole new set of -- we had a whole new mandate, and the requirements were tightened up on how we proceeded to get the job done under the new legislation. We had to familiarize ourselves, at least -- all of us in a sense had to learn quickly, and study, you know, the new changes, the new regulations, the new legalities of it all. It was quite a -- it was quite a stressful time on people making these adjustments. And I'm only touching on a few. We had new personnel coming in. Some of the members that we'd had previously had left and stayed with the RCMP, or gone, but bridged back as we called it.<sup>25</sup>

49. The conversion of all warrants to intercept communications issued to the former Security Service into CSIS warrants was an additional challenge during the first year of CSIS operations that will be examined in greater detail later in these submission
50. The administrative changes that would establish the new CSIS organization's policies and procedures became a lower priority than the ongoing work of the newly created agency. Mr. Warren testified about the challenge of writing the CSIS policies during the early days of the Service:

So to say we weren't really ready to do our job, I think that's a fair comment, but we couldn't just set things aside and get the policy into place.<sup>26</sup>

51. This environment contributed to the uncertain and evolving scheme of cooperation between CSIS and the RCMP. As noted by former prosecutor, Mr. Jardine who testified at the Inquiry:

I believe that the persons [at CSIS] trying to answer the questions that were brought to my attention during the course of all of this period of

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<sup>25</sup> Ibid., p. 3575.

<sup>26</sup> Evidence of James Warren, Transcript, Vol. 48, p. 5941.

time were providing information pursuant to their policy and pursuant to their interpretation of their act and that the concerns that they had with respect to the privacy interests of the targets, at least in their minds, precluded them from being open.

So it was not open to them, at least in my understanding, to be voluntarily forthcoming.<sup>27</sup>

52. Mr. Warren testified about the RCMP endeavours to accommodate the changes that had occurred with the passage of the *CSIS Act*.

... And there had been other indications that troubled us slightly; that the RCMP may see -- might see the road ahead as essentially the recreation of a security service.

So there became a whole question here of whether you were opening the door to kind of a data transfer which was never intended by the Act; never intended by the government in creating a separate service, I think.<sup>28</sup>

53. Former Commissioner Simmonds testified at the Inquiry about the RCMP efforts to accommodate the removal of the Security Service from its jurisdiction:

One of the good things they could do was look at terrorism and that was in their statute, but the statute did not say that they should have -- necessarily have primacy in that area. It became policy, if I can put it that way, to say -- to indicate that they should and the police should stay out of it, but really the problem then was -- you know the whole protective policing responsibilities, the whole of our crime prevention in terms of serious crime whether it's organized criminal -- what is called organised crime, or subversive crime, or terrorism which is the worst form of crime, almost in my view, we suddenly didn't have the capacity or, according to policy as it existed at the time, the right to dig in there deeply which is absolutely essential to our work.<sup>29</sup>

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<sup>27</sup> Evidence of James Jardine, Transcript, Vol. 47, p. 5713.

<sup>28</sup> Evidence of James Warren, Transcript, Vol. 48, p. 5912.

<sup>29</sup> Evidence of Simmonds, Transcript, Vol. 74, p. 9328.

54. He also testified about plans that were shared about increasing the resources of the RCMP:

So during the -- I agreed I would stay on and between 1981 and 1984 there were many, many meetings basically centered on the Privy Council Office and often chaired by the Secretary of the Cabinet and sometimes by other associates of his, into developing this new service and the statute that went with it. And if you look at some of those documents which I'm sure you have, you will see that early on the Commissioner of the RCMP as represented by myself, was that we had to get on and we had to establish a good security service. But you'll also see that from time-to-time the issue would be raised, "But what about the RCMP?" because during the -- during the conversation that I had had with the Prime Minister, one of the reasons he asked if I would consent to stay on for a period of time was to ensure that in the -- in helping to develop this new organization and being one of the persons that would be involved in that, that I would also -- I was also the person at that moment that was probably best equipped to discuss the needs of the RCMP in this overall approach to national security.

And I at the time had hoped to establish something analogous with a security service within the force because, as I said earlier, both the MI5 and the security service ability had gone with the new service and most of the files and I wanted to recreate that and it was clear that that was not going to be allowed as such.<sup>30</sup>

#### **F. THE THREATS TO CANADA IN 1984-1985**

55. This same period of transition in Canadian security intelligence/law enforcement was also a time of significant environmental changes that changed the profile of the threat to Canada.
56. In the mid-1980's, the nature of the threat to Canada and national governments was beginning to change. Throughout the Cold War, the primary threat to national security was state sponsored espionage, but this began slowly to change to an emphasis on

terrorism. In addition, a change was occurring in the profile of terrorism and its array of tactics that increased the consequences of terrorist acts from symbolic attacks to attacks by religious/national groups seeking international attention by way of a 'body count'. Mr. Hoffman, an expert on terrorism, testified about the changing tactics of terrorists during the 1980's:

What we've seen in long-term patterns of terrorism across the board is the targeting of innocent civilians for purposes of fear and intimidation. The numbers may differ, and for reasons I described, in the 1980's the number grew larger to ensure publicity and attention.<sup>31</sup>

57. Not only was the goal of terrorism shifting, but so were the groups that were practicing it. In a short period of time, Sikh extremism emerged as a major threat. During the Inquiry, Mr. Burgoyne, who was employed by CSIS in 1984 and working on Sikh extremism issues, testified about these changes:

Mr. Gover: Right. And just to give us an idea, by the fall- let's start with the spring of 1984- - roughly what percentage of your time devoted to Sikh extremism issues?

Mr. Burgoyne: I'd say 50 percent

Mr. Gover: And then, by the fall when you said you were mainly focused on Sikh extremism issues?

Mr. Burgoyne: The increase was rapid. I'd say about 100 percent by mid-fall."<sup>32</sup>

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<sup>30</sup> Ibid., p. 9338.

<sup>31</sup> Evidence of Bruce Hoffman, Transcript, Vol. 19, p. 1804.

<sup>32</sup> Evidence of Bob Burgoyne, Transcript, Vol. 30, p. 3400.

58. Mr. O'Brian testified about the overall change in the emphasis of CSIS activities:

My recollection at the time of separation the operational resources of the service were something like 75 percent for counter-espionage and 25 percent for the .... And now it is about 75, 80 percent counter-terrorism versus 30 percent – it sounds awful to say the rest, but for the other parts of the threat definition.<sup>33</sup>

59. CSIS was created, in part, to deal with terrorism. Coming out of the MacKenzie and McDonald Commissions, the Government of Canada recognized that terrorism required a multi-pronged and coordinated response:

There is an intelligence response to terrorism; there's a law enforcement response to terrorism; there's a customs response to terrorism; there's a foreign policy response to terrorism; there is a transportation safety response; there are a number of responses to this phenomenon; intelligence is one. What governments then have to do is describe and proscribe how that process works; first of all, in itself and then how that process works and serves the other parts of that response and system.<sup>34</sup>

60. At the same time, the RCMP continued to operate under its legislated mandate as peace officers charged with the duty to preserve the peace and prevent crime as well as the primary responsibility in relation to any offence found in s. 2 of the *Security Offences Act*. An initial bridge in the differing mandates between the two agencies (RCMP and CSIS) was attempted by a 1984 CSIS-RCMP Memorandum of Understanding, which continued in force to the time of the Air India bombing.<sup>35</sup>

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<sup>33</sup> Evidence of O'Brian, Transcript, Vol. 17, p. 1553.

<sup>34</sup> Evidence of O'Brian, Transcript, Vol. 17, p. 1542.

<sup>35</sup> Exhibit P-101, CAA0076.



61. The first MOU between CSIS and the RCMP sought to set out a framework for the sharing of information, but also contributed to the uncertainty coming from CSIS and RCMP headquarters during the early investigation of the Air India bombing. The complicating factor was that where the MOU suggested that the passage by CSIS of information to the RCMP on criminal matters is obligatory, it contradicted the *CSIS Act*, which gave the Director of CSIS discretion in that respect. It is highly doubtful that a MOU could supersede the statutory provisions of an Act of Parliament in a case such as this. This prompted operational confusion between the two agencies on the obligation or discretion to share information.
62. In the view of former Deputy Commissioner Jensen, the RCMP were seeking to address issues that had arisen during the creation of CSIS:

Other concerns absolutely. For instance, a major one would be: should they or should they not? Is it discretionary? Well, in the lead-up to the creation of CSIS there was a cabinet directive that said while the statute says that it's permissive, in other words may...

--- the memorandum of understanding makes it mandatory -shall.<sup>36</sup>

63. Other terms in the MOU would become the source of uncertainty and debate between CSIS and RCMP following the Air India bombing, specifically access to operational records like CPIC<sup>37</sup> and the use of caveats to limit dissemination, use or action.
64. The MOU provided only for the intelligence function to be contributed by CSIS; the process of translating intelligence into evidence was overlooked in a structure that was

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<sup>36</sup> Evidence of Henry Jensen, Transcript, Vol. 44, p. 5365.

designed principally for a Cold War environment where actual Security Offences Act prosecutions and ‘court ready’ evidence were infrequent. It must be remembered that this was not simply a case of “fighting the last war and not the next one”: in 1985, espionage and state sponsored terrorism were still posed significant threats to Canada.

### **G. CONCLUSION WITH RESPECT TO THE BACKGROUND**

65. In 1984 and 1985, Canada’s national security establishment experienced a tectonic shift as a result of quickly implemented legislative change. This sea-change was an attempt to redefine the delicate balance between collective security and the individual rights and freedoms that were enjoying a new period of legal recognition during this same period. The security service’s statutory mandate to collect, keep and disseminate information was an integral part of this change, and represented a clear break from the practices of the RCMP Security Service.
66. This legal and policy change had significant effects on the ground. The RCMP had to replace lost resources after its intelligence branch was excised, while CSIS was left with recruiting its new staff and replacing any who had left during the transition. The relationship between CSIS and the RCMP, while defined in law and perhaps in the minds of the lawmakers, had not been fully explored in practice, where inevitable difficulties would have to be solved on a case-by-case basis. The division between the RCMP and CSIS created a gap that would have to be filled by forging new practices and relationships.

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<sup>37</sup> Evidence of Michael Roth, Transcript, Vol. 46, p. 5622.

67. The terrorist attack against Canada on June 22, 1985, occurred less than one year after the creation of CSIS and before this gap could be completely filled. The result was an immediate and dramatic challenge to the two agencies to increase cooperation while successfully accomplishing their separate mandates. It is impossible and indeed fruitless to speculate on whether the timing of Canada's paradigm shift may have facilitated the bombing or inhibited the subsequent prosecutions. However, these submissions will highlight how this relationship has evolved since this period and what lessons Canada has tried to learn from that tragedy.

### III. RECOGNIZING THE THREAT OF SIKH TERRORISM

With the aid of hindsight it is easy to identify missed opportunities to have prevented the attacks, and it is tempting to leap from that observation to the conclusion that the failure to prevent them was the result not of bad luck, the enemy's skill and ingenuity, the inevitability that some surprise attacks will succeed, the personal failings of some individuals, or the difficulty of defending against suicide attacks or protecting a well-nigh infinite range of potential targets, but rather of systemic failures in the intel and security apparatus.<sup>38</sup>

#### A. INTRODUCTION

68. The Terms of Reference for this Inquiry mandate the Commissioner to investigate the following two issues:

**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,**

**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,**

69. The following submissions will address these two Terms of Reference, first dealing with the Government of Canada's assessment of the threat of Sikh terrorism prior to the Air India bombing, and then moving to the cooperation of Government departments and

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<sup>38</sup> Posner, Richard. *Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11*. Lanham, MD: Rowman & Littlefield, 2005 (in cooperation with Hoover Institution, Stanford, CA), pp. 19-20.

agencies in the course of the Air India investigation. However, it must also be borne in mind that challenges of using security intelligence in a criminal trial – the Commission’s third Term of Reference – is another theme that runs across Volume I.

70. An analysis of Canadian officials’ assessment of the threat of Sikh terrorism begins with an understanding of how the newly created CSIS generated threat assessments based on intelligence and distributed them to agencies like the RCMP for action on the ground.

## **B. CSIS THREAT ASSESSMENTS**

71. The CSIS’s role is to investigate threats to the security of Canada by collecting and analyzing information and intelligence; it then reports to and advises the Government of Canada (GOC) about these threats. This has been, and continues to be, the mandate of the Service since its creation in 1984.
72. One means through which CSIS advises government on threats to national security is through threat assessments, which warn the Federal Government of threats to Canada and Canadian interests, both at home and abroad. It is one of the main lines of defence against terrorism and as such the Government must rely largely on the counter-terrorism (CT) branch of CSIS for information.<sup>39</sup>
73. A CSIS threat assessment is part of the continuous intelligence cycle: after a threat assessment is issued, CSIS continues to investigate the threat, conducting surveillance, write reports, analyse all information from sources domestic and international, and then

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<sup>39</sup> Exhibit P-101, CAF0632, Study of, Report on, and Recommendations Relating to Process for Acquisition of Warrants by CSIS, by the Honourable George Addy, Q.C., dated April 1992, p. 11.

CSIS issues new threat assessments. It is the responsibility of the agency receiving a CSIS threat assessment to decide how best to disseminate the information internally, and how to allocate resources to mitigate the threat.<sup>40</sup> Threat assessments are written to be as accurate and detailed as possible (without revealing targets or sources), so that the RCMP and other agencies with a responsive role can allocate valuable resources appropriately.<sup>41</sup> From 1984 – 1985, information from all sources, including the RCMP, was processed by the operational desks at CSIS headquarters, which were responsible for drafting the threat assessment and characterizing a particular threat as “high”, “moderate” or “no known threat”.<sup>42</sup>

74. CSIS analysts focused on who was behind the threat, what their capabilities were, and what means they might have to achieve them.<sup>43</sup> Analysts were always mindful of the source of the information and would not issue a threat assessment based solely on a foreign agency’s warning absent independent CSIS analysis.<sup>44</sup>

### **C. RECEIVING & ACTING ON THREAT INFORMATION IN THE RCMP**

75. The RCMP had an extremely limited role in producing threat assessments following the creation of CSIS. While the RCMP did obtain some information relating to threats to national security, CSIS was, for the most part, responsible for gathering intelligence in

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<sup>40</sup> Evidence of John Henry, Transcript, Vol. 25, p. 2555; See Evidence of Kim Taylor, Transcript, Vol. 89, p. 11764.

<sup>41</sup> Evidence of John Henry, Transcript, Vol. 25, pp. 2535-36 and 2544.

<sup>42</sup> Evidence of John Henry, Transcript, Vol. 25, p. 2508; Evidence of Bob Burgoyne, Transcript, Vol. 31, pp. 3444-45 and 3450.

<sup>43</sup> Evidence of Bob Burgoyne, Transcript, Vol. 31, pp. 3454 and 3476.

<sup>44</sup> Evidence of Bob Burgoyne: Vol. 31, pp. 3451, 3477, 3493.

this area and producing threat assessments. The RCMP were, to a large extent, the consumers of threat assessments and similar intelligence information.

76. It is important to understand the structure of the RCMP and some of its interaction with other agencies in order to appreciate how information was transmitted about Sikh extremism in 1984 and 1985.
77. Following the loss of the Security Service, the RCMP had to reorganize and redeploy its personnel. One such change involved the formation of National Security Enforcement Units (“NSEU”) within the National Crime Intelligence Branch (“NCIS”). After the creation of CSIS, Commissioner Simmonds of the RCMP sought funding from the Government in Canada, in part to compensate for the loss of resources and capacity.<sup>45</sup> Some of this funding went into the new NSEU. It was made clear when the Government of Canada provided these resources that these were not to be investigative units that would duplicate CSIS’s functions.<sup>46</sup>
78. The NSEU were responsible, in part, for carrying out a liaison function between the RCMP and CSIS as well as other law enforcement agencies. This liaison function had been envisaged prior to the creation of CSIS and was implemented at the split.<sup>47</sup> The NSEU concentrated on the collection, coordination and dissemination of criminal

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<sup>45</sup> Evidence of Bob Simmonds, Transcript, Volume 74, pp. 9338-9340.

<sup>46</sup> Evidence of Bob Simmonds, Transcript, Volume 74, p. 9340.

<sup>47</sup> Exhibit P-101 CAC0017; Evidence of Mike Roth, Vol. 46, p. 5600.

intelligence as it related to terrorism and criminal extremism.<sup>48</sup> Mike Roth was assigned to the NSEU in Vancouver.

79. The general practice of the RCMP was to create Task Forces or Joint Forces Operations to conduct large, complex or multi-jurisdictional investigations that would overwhelm traditional investigatory units such as Major Crime or Drug Units. In the pre- and immediate post-bombing era, NCIS had limited human resources and would feed the information collected in the course of duties to traditional investigatory units or task forces. However, some investigations of a less complex nature were conducted by NCIS including some investigations concerning terrorism or criminal extremist activities. NCIS had a limited capacity to investigate, due in part to their small numbers. For instance, Wayne Douglas explained that there were only two NCIS members in Vancouver.<sup>49</sup> NCIS would often feed information to investigative units and also assisted other enforcement sections, including NSEU, through the development of tactical and strategic intelligence. NCIS also worked closely with intelligence units of other Canadian police departments. Integrated intelligence units were created in Vancouver, Victoria and Edmonton and further enhanced these relationships.
80. The National Crime Intelligence Branch (NCIB) at RCMP National Headquarters set the policy directions for these units. National Security Enforcement Section, within NCIB, was responsible for assisting divisional Criminal Operations (CROPS) officers in

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<sup>48</sup> See the Report of the Honourable Bob Rae, Exhibit P-101, CAA0335. In addition, the NSEU were responsible for the preparation of threat assessments for visits of Internationally Protected Persons and designated VIP's as well as the dissemination of terrorist alerts.

<sup>49</sup> Evidence of Wayne Douglas, Vol. 34, p. 4028.



coordinating national security related criminal investigations.<sup>50</sup> It would also liaise with NCIS and task those sections with follow-up investigations.

#### **D. RCMP PROTECTIVE POLICING**

81. The RCMP's Protective Policing Division (hereinafter "P" Directorate) was the unit with responsibility for the national protective security program. In order to fulfill its mandate, "P" Directorate was a major recipient of threat assessments from CSIS and other information regarding threats. "P" Directorate was further divided into branches, including the VIP Security Branch and Airport Policing Branch. Evidence at the Inquiry demonstrated that there was information sharing between VIP and Airport Policing.<sup>51</sup> Airport Policing and their role in aviation security will be considered in Volume 2 of these submissions.

#### **E. VIP SECURITY BRANCH**

82. VIP Security Branch was charged with protecting individuals such as the Prime Minister, Governor General, cabinet ministers, Federal Court judges, visiting dignitaries as well as the protection of embassies and consulates. VIP would seek and receive intelligence and threat assessments primarily from CSIS. They would also receive intelligence from foreign embassies, External Affairs, RCMP field units and local police forces of jurisdiction. The latter would be transmitted through the VIP units which were located in the divisions. In the case of visiting diplomats VIP security Branch would receive

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<sup>50</sup> Exhibit P-101, CAA0335, RCMP Submission to the Honourable Robert Rae, p. 7 of 55.

<sup>51</sup> Evidence of Lloyd Hickman, Transcript vol. 34, p. 4018; Evidence of J.B. MacDonald, Transcript, Vol. 27, pp. 2793-94.

notification of the visits and would then solicit relevant information and threat assessments from CSIS and the VIP field units. This information would be used by the operational units to determine a threat level for a particular situation. This threat level was then used to assign the level of protection required for a particular set of circumstances, such as bodyguards, property guards or motorcade procedure.

83. VIP Security Branch did not have any investigative mandate nor did they produce intelligence. They were a consumer of intelligence for the above-noted purpose. If there was an intelligence failure, VIP officers on the ground would become the last line of defence.
84. The VIP field units were administered out of division headquarters and reported through the CROPS officer at the division level. As was the case with Headquarters, the field units did not have an investigative mandate. VIP Security Branch at Headquarters would task these field units directly for information and intelligence. The units would then seek information from local partners such as CSIS, various police forces, other RCMP units and report the information directly to VIP Security Branch in Ottawa.
85. VIP Security Branch would set a security level and the divisions were responsible for implementing that level as set out in the Operations Manual. Divisions could not reduce the security level without going back to Headquarters but they could increase the level based on local conditions.<sup>52</sup>

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<sup>52</sup> Exhibits P-114-116, Organization charts; Evidence of Lloyd Hickman, Transcript, Vol. 18, p. 1696 et seq.

## F. OTHER INVOLVED AGENCIES

### 1. VIIU

86. The RCMP was not the only agency that would receive CSIS threat assessments. Another law enforcement agency, the Vancouver Police Department, played an important role in the Canadian response to Sikh extremism in British Columbia in 1984-1985. There was a unit called the Vancouver Integrated Intelligence Unit comprised of members of the Vancouver Police Department and RCMP NCIS members. This unit collected and shared information on various criminal matters including Sikh extremism. Members of VIIU worked in the same physical area and exchanged a great deal of information amongst themselves, often informally.<sup>53</sup>

### 2. CISBC

87. Another entity with a role to play in Canada's assessment of the threat of Sikh terrorism in 1984-1985 was the Criminal Intelligence Service, British Columbia ("CISBC"). This unit was the British Columbia component of the Criminal Intelligence Service Canada, a government organization which collected information provided to it by the feeder law enforcement agencies. CISBC collected information on individuals or businesses and loaded it into a searchable national data system called ACIIS. In 1984, CISBC's primary focus was organized crime. Although RCMP members were part of the CISBC, the

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<sup>53</sup> Evidence of Wayne Douglas, Transcript, Vol. 34, pp. 4027-4030; Evidence of Supt. Axel Hovbrender, Vol. 33, p. 3872.

organization itself was independent of the RCMP and information was input from various police forces.<sup>54</sup>

### **3. Indo-Canadian Liaison Team (ICLT)**

88. In response to the size of the Indo-Canadian community in BC's lower mainland, the Vancouver Police Department created a unit dedicated to working in that community. Aside from dealing with disputes at temples or within families the two members investigated problems with Sikh extremism.<sup>55</sup>

## **G. CSIS: DEALING WITH THE THREAT OF SIKH TERRORISM**

### **1. Resources and Priorities at CSIS**

89. The Minister of Public Safety (in 1985 the Solicitor General) sets general priorities for CSIS such as "advising the government of the possibility of a terrorist attack occurring in or originating from Canada or affecting Canadian citizens or assets abroad." The Minister expects comprehensive threat assessments in an evolving, international landscape, and flexibility within the finite resources allotted to the CSIS. The Service is expected to achieve this by managing risk.<sup>56</sup> A security intelligence agency must decide which potential threats to national security are important, but even among serious threats,

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<sup>54</sup> Evidence of Robert Stubbings, Transcript, Vol. 33, pp. 3929-3932.

<sup>55</sup> Evidence of Don McLean, Transcript, Vol. 21, pp. 2020-2021.

<sup>56</sup> Security Intelligence Review Committee Annual report, 2006-2007. This report quotes from the Ministerial Direction given to the Service for 2006-2008.

daily operational priorities have to be set. Such decisions are necessary to manage risk, something the Minister expects of CSIS HQ and its Regional offices.<sup>57</sup>

90. The RCMP Security Service investigated Cold War targets for years; resources for its Counter Intelligence (CI) and Counter Subversion (CS) units far outweighed an emerging Counter Terrorism (CT) unit. It has been observed that Canada's experience with terrorism had been limited before Air India; nevertheless, a number of serious incidents ensured that the Counter Terrorism unit was a permanent and functioning mechanism of the Service.
91. On April 8, 1982, Turkish Commercial counsellor Kani Güngör was paralyzed after an attack by Armenian terrorists at his Ottawa apartment. On August 23, 1982, the Turkish military attaché to Canada, Colonel Atilla Altikat, was assassinated by Armenian terrorists in Ottawa while sitting in his vehicle at a traffic light.
92. After its creation in 1984, the new Canadian Security Intelligence Service inherited all Security Service investigations, and considered ongoing threats from Armenian extremists as serious and imminent.<sup>58</sup> Armenian terrorists seized the Turkish embassy in

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<sup>57</sup> For instance, it is only a bad management decision to pull the Physical Surveillance Unit off of one target in favour of another if there was intelligence that the first posed a specific threat. Otherwise, the decision is one of managing risk that HQ – and the Minister – expects.

<sup>58</sup> The Armenian investigation at CSIS was rated Intelligence Requirement number one. See evidence of Jack Hooper, Transcript, Vol. 50, pp. 6199-6275 and the Statement of Archibald McArthur Barr, Exhibit P-392.

Ottawa on March 12, 1985, killing a young Canadian security guard.<sup>59</sup> These lethal acts of terrorism made Armenian extremism an intelligence priority for CSIS.<sup>60</sup>

93. Sikh extremism had been on the radar of the Security Service since 1981, when Talwinder Singh Parmar began to agitate in Canada, declaring himself the overseas leader of a separatist group advocating an independent Sikh state of Khalistan. On May 7, 1982,<sup>61</sup> a threat assessment sent to the RCMP's VIP section advised that Parmar was viewed by the Government of India as a terrorist. He was not yet known to have threatened any Indian diplomat in Canada, but he was a person of interest to the Service. Investigators reported on incidents threatening Indian interests in Canada<sup>62</sup> and by April 11, 1984, the Security Service began to investigate Sikh extremist activity in Canada. The Security Service viewed Sikh extremists as being opportunists who might avoid heavily protected, highly visible targets such as the Indian High Commissions and the consulates in favour of "soft" targets such as Sikh moderates, Hindu leaders and Air India.<sup>63</sup>
94. On June 5, 1984, the Indian Government military stormed the Sikh Golden Temple at Amritsar. Over eighty Indian soldiers died, many more were injured, and the government reported that 493 Sikhs had been killed. The sanctity of the Sikhs' holiest shrine had

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<sup>59</sup> Other incidents such as the "FLQ Crisis", the bombing of a Litton Industries factory on October 14, 1982 by the Squamish Five, and the bombing of Montreal's Central Station on September 3, 1984 killing three, demonstrated that Canada was certainly not immune to violence generated by political motives.

<sup>60</sup> Evidence of Russel Upton, Transcript, Vol. 31, p. 3604.

<sup>61</sup> Exhibits P-101, CAB0024, CAB0026.

<sup>62</sup> Evidence of Ray Kobzey, Transcript, Vol. 32, pp. 3721-3724.

<sup>63</sup> Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3459 and 3501; Burgoyne testified also about knowledge of Parmar's July 1984 Toronto speech which Bagri followed up in NYC: advocating the killing of 50,000 Hindus. See also TA dated June 12, 1984 (Exhibit P-101, CAB0071).

been desecrated. Indian Prime Minister Indira Gandhi was assassinated on October 31, 1984 by two of her Sikh bodyguards on the grounds of her official residence. Full-scale anti-Sikh rioting broke out across India, and at minimum 2,717 Sikhs were killed. CSIS understood well the potential for violence that these incidents created in a generation of Canadian Sikhs.<sup>64</sup> Hardly underestimated, these events would underpin many of CSIS' intelligence reports, situation reports ("sitreps") and threat assessments in the coming year.

95. CSIS adopted the priorities and targeting authorization practices of the Security Service. Generally CSIS, through the Operational Priorities Review Committee, (OPRC) authorized investigative powers in an incremental fashion, thus:

- Level one: open source monitoring, such as books, magazines, newspapers, internet;
- Level two: existing human sources and physical surveillance unit coverage;
- Level three: "limited investigation" with ability to develop human sources and direct them to acquire information; and
- Level four: "full investigation" including requests for s.21 *CSIS Act* warrants.

96. The new Service was staffed by intelligence personnel from the former Security Service who were familiar with the threat to national security posed by Sikh extremism. CSIS Headquarters tasked the Regions to collect information about Sikh terrorist groups in

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<sup>64</sup> Exhibit P-392, Statement of Archibald McArthur Barr, at paragraph 32; see also Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3466: "*I think having a good understanding of what was happening in the Punjab gave us a better appreciation for what we might expect over here.*" and Exhibit P-101, CAA0104: "*Sikhs in Canada continue to be strongly influenced by events in India. Because of this I feel it important to bring you up to date concerning recent events in the Punjab.*" Other examples include Exhibits P-101, CAF0113, CAB0243 and CAB0230.

Canada.<sup>65</sup> Parmar had been in custody in Germany for a year and had returned to Canada in July of 1984.<sup>66</sup> The Service authorized a full investigation of Parmar on October 25, 1984.<sup>67</sup> CSIS reported that B.C. Region viewed Ajaib Singh Bagri and Surjan Singh Gill as extremists with close ties to Parmar.<sup>68</sup> A level 4 investigation of the Babbar Khalsa (BK), the group Parmar purported to represent, and its leadership was authorized on January 30, 1985.<sup>69</sup> On May 28, 1985, HQ instructed the Regions to consider Sikh extremism files as their top priority until at least mid-June, when Prime Minister Rajiv Gandhi was expected to complete a North American tour.<sup>70</sup> There were active Sikh Extremism (SE) investigations across the country although the focus certainly was on B.C., Toronto, Windsor and Montreal.<sup>71</sup>

97. The Deputy Director of National Requirements, Archie Barr, was responsible for developing and managing national investigations and analytical programs dealing with all of CSIS' operational files: Counter Espionage, Counter Terrorism and Counter Subversion. This directorate deployed CSIS resources based upon incoming intelligence and subsequent analysis. CSIS was staffed with a well-functioning CT unit, but the need

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<sup>65</sup> Exhibit P-101, CAF0102.

<sup>66</sup> The GOI failed in their extradition requests of both Germany and Canada. Canada did not have an extradition treaty with India.

<sup>67</sup> Exhibit P-101, CAB0139; See also Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3468 "*We definitely saw him as wanting to be the top Sikh extremist leader.*"

<sup>68</sup> Exhibit P-101, CAA0104.

<sup>69</sup> Exhibit P-101, CAB0187. Note also the evidence of Bob Burgoyne, Transcript, Vol.31, p. 3455: in June of 1984, the Security Service was still not certain whether the BK existed as a discrete entity. See also Exhibit P-101, CAB0061. By October of 1984 at least, CSIS did: See Exhibit P-101, CAA0101.

<sup>70</sup> Exhibit P-101, CAB0236.

<sup>71</sup> See also Exhibit P-101, CAB0315. The Manitoba Region commented on June 17, 1985: "While nothing of great note occurred during Gandhi's visit, we must not become complacent."



for this unit grew much larger – and faster – than the Service anticipated.<sup>72</sup> The intelligence landscape was changing quickly and the decision was eventually made to phase out CSIS’ counter-subversion activities entirely. Nevertheless, it was the opinion of Mr. Barr that the further “shift of resources from counter intelligence to counter terrorism could have and should have been faster.”<sup>73</sup>

98. The Desk at HQ was not staffed to a maximum – in fact, Bob Burgoyne was the sole analyst on the Desk<sup>74</sup> – and the first recruits had yet to start their training at Borden.<sup>75</sup> Both Glen Gartshore and Russel Upton, to whom Burgoyne reported, testified that the Desk was overworked. There was no specific training course offered in respect of Sikh extremism. Analysts at the Desk at HQ and investigators in the field took initiative and researched in their “spare time”. The field was producing intelligence that was being analyzed accurately by HQ.<sup>76</sup> Every threat received by the Sikh Desk at HQ was taken seriously, requiring an assessment of its context, its antecedents and a consideration of possible corroboration. The resulting reports were sent back out to the Regions,

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<sup>72</sup> Exhibit P-392, Statement of Archibald McArthur Barr, para. 30.

<sup>73</sup> Exhibit P-392, Statement of Archibald McArthur Barr, paras. 39-42.

<sup>74</sup> CSIS CT Org Chart at Exhibit P-141. During the period starting from approximately the fall of 1984 to the spring of 1985, Mr. Burgoyne was the only analyst on the HQ Sikh desk, as Mr. Dexter was on language training and there was one position unfilled until after the bombing (Evidence of Russell Upton, Transcript, Vol. 31, pp. 3570-72).

<sup>75</sup> Camp Borden saw three classes of new recruits trained from September 1985 to early 1987. Subsequently training of new employees took place at HQ.

<sup>76</sup> Bob Burgoyne’s modest evidence aside, there has never been any evidence produced to demonstrate a lapse in Mr. Burgoyne’s analytical capability. See Appendix to this Volume for a chronology of threat reports and assessments July 1984 to June 1985. The analysts on the Sikh desk, in particular Bob Burgoyne, produced accurate and timely threat assessments concerning the threat posed by Sikh Extremism. Mr. Burgoyne felt that he was not an expert and did not have enough training, but stated that he had a good idea of the Sikh extremist threat. The Inquiry similarly heard no evidence of any lack of effort or attention on the part of the field investigators in the Sikh Extremism investigation. Evidence of Bob Burgoyne: Transcript, Vol. 30, p. 3404-06.

providing investigators and analysts across the country a good sense of the threat landscape.

99. In British Columbia, Ray Kobzey and Dave Ayre were looking for people who had access to Parmar and his associates, the BK, and the International Student Youth Federation (ISYF), another Sikh separatist group. The community however was reluctant to be seen to be working with the authorities, particularly RCMP, and to a lesser extent the Security Service or CSIS. Indo-Canadians feared retribution, beatings and general violence, either against themselves or family in Canada or overseas. The Parmar group itself was insular, withstanding penetration. Parmar was surveillance conscious and trusted few outside of his own immediate circle of friends and family.<sup>77\</sup>

## **2. The CSIS Threat Assessment Unit: People and Roles 1984-1985**

100. CSIS's Threat Assessment Unit ("TAU") served as the conduit in the Service for threat assessments, the main consumer of which was the RCMP's "P" Directorate.<sup>78</sup> There were no percentages or probabilities attached to a threat assessment. A non-specific "high" threat assessment presented its own difficulties, however, given that it obliged the RCMP to make difficult resource allocation decisions.<sup>79</sup> Former RCMP Supt. R.E. Muir,

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<sup>77</sup> Evidence of Ray Kobzey, Transcript, Vol. 33, p. 3821; Evidence of Ujall Dosanj, Transcript, Vol. 80, p. 10173.

<sup>78</sup> Evidence of John Henry, Transcript, Vol. 25, pp. 2506-07 - And within "P" Directorate, it was largely the "VIP Security Branch" that received the TAs, though some TAs did go to the RCMP Airport Policing Unit as well.

<sup>79</sup> Evidence of Lloyd Hickman, Transcript, Vol. 18, pp. 1695, 1703, 1704. Also, see Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3449, where Bob Burgoyne testified that the Sikh desk would endeavour to provide background and context that would be helpful to "P" Directorate in assessing the risk. John Henry testified that he thought there was a very good liaison relationship with "P" Directorate and in particular with Lloyd Hickman of the VIP Security Branch. He understood that CSIS provided as much information as possible in terms of the basis of their threat assessments, and that sometimes the intelligence simply wasn't there. See Evidence of John Henry, Transcript, Vol. 25, p. 2511 and 2543.

the Officer-in-Charge of VIP Security Branch from 1977 to 1986, testified that the CSIS threat assessments were very useful and without question helped him understand the gravity of Sikh extremism in Canada, and painted the gravity of the situation quite clearly for them.<sup>80</sup>

### 3. The Sikh Desk 1984-1985

101. It is difficult, if not impossible, to speculate how events would have unfolded had the Sikh Desk been at full complement prior to the bombing. What is known is that the Sikh desk provided analyses and assessments that formed the basis of approximately 70 detailed and comprehensive threat assessments related to Sikh extremism during the preceding year.<sup>81</sup> Thirteen of those threat assessments referred to threats to Air India itself, while the rest related to the security of Indian Missions and diplomats in Canada.<sup>82</sup> An excellent example of the type of material available to the Regions and the RCMP summarizing CSIS' understanding of Sikh extremism in Canada is found in a report

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<sup>80</sup> Evidence of R.E. Muir, Transcript, Vol. 28, pp. 2925-2926.

<sup>81</sup> See Exhibit P-101, CAB0902, 1992 SIRC report, p. 27, s.1.3. Examples of some of the more detailed TAs include: Exhibits P-101, CAB0063 (June 8, 1984), CAA0104/CAB0153 (from October 26, 1984, and includes discussion on the situation in India and Canada and profiles Parmar, Gill and Bagri), CAB0203 (hand-written version March 27, 1985; actual telex is CAA0142 dated April 1, 1985), CAB0218 (April 12, 1985), CAB0236 (May 24, 1985 references upcoming Gandhi visit to the US), CAA0187 (June 5, 1985, includes current assessment of the Sikh situation in Canada leading to Gandhi's visit and Golden Temple Anniversary), and CAB0321 (June 18, 1985, follow-up threat assessment to May 24, 1985 and June 5, 1985, now that those two events have passed). Threat Assessments were as detailed as they could be without revealing specific targets and sources of information.

<sup>82</sup> Exhibit P-101, CAB0902, 1992 SIRC Report, p. 27. Also note the evidence of John Henry, Transcript, Vol. 25, p. 2548: John Henry testified that Air India was generally considered by CSIS to be included as part of any threat towards the Indian Government, since Air India was considered a government operation. John Henry also testified that the TAU had 952 messages out in the year prior to the bombing.

dated June 20, 1985.<sup>83</sup> Despite the lack of a full complement of staff, the field continued to report to HQ and threat assessments continued to be issued.<sup>84</sup>

102. The threat assessments referring in whole or in part to threats to Air India rarely contained specific mention of bombings,<sup>85</sup> but all threats were assessed and reported. CSIS received information from the Indian Consul General that the Air India office in Toronto received a bomb threat on June 21, 1984. The CSIS threat assessments of June 25, 1984, and July 5, 1984 reported this bomb threat and, noting that extremist elements appeared to be broadening their base of support, assessed the threat to Indian interests in Canada as high.<sup>86</sup> In October of 1984, CSIS received information about a plot to blow up an Air India plane during November of 1984; this was assessed and reported in the threat assessments issued October 26, 1984.<sup>87</sup> This plot will be considered more fully below.

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<sup>83</sup> Exhibit P-101, CAB0327 dated June 20, 1985.

<sup>84</sup> In BC Region, there were other capable investigators to cover for the absence of Mr. Kobzey (such as Dave Ayre), and at CSIS HQ Chris Scowen was covering the position of Mr. Deschenes and Mr. Upton. Evidence of Ray Kobzey, Transcript, Vol. 33, p. 3812. Evidence of Chris Scowen, Transcript, Vol. 50, pp. 6128-30.

<sup>85</sup> Bombings in general have historically been quite uncommon in terms of aviation terrorism (see Appendix 3 of *Lessons to be learned: The report of the Honourable Bob Rae, Exhibit P-35*). The thirteen TA's referred to flights being generally "at risk" (Exhibit P-101, CAB0071), "suicide attacks" (Exhibit P-101, CAB0076), being "sabotaged" (Exhibit P-101, CAB0082), telephone "bomb threats" to Air India offices in the summer of 1984 (Exhibits P-101, CAB0093, CAB0094, CAB0098, CAB0121 and CAB0218), and "hijacking" (Exhibits P-101, CAB0149, CAB0153 and CAB0219). Only the "November plot" TA referred to plans to blow up an Air India 747, and this was to take place in November of 1984 (Exhibit P-101, CAB0154). The last one that referred to Air India, issued June 6, 1985 (Exhibit P-101, CAA0194), simply said that CSIS is not/not aware of any specific threat to the airline.

<sup>86</sup> Exhibit P-101, CAB0094, June 25, 1984. Exhibit P-101, CAB0098, July 5, 1984, noted that the anti-Indian sentiment among Sikhs may become increasingly focused against Air India, most likely to be telephone bomb threats, but did not rule out more violent actions

<sup>87</sup> Exhibits P-101, CAB0153 and CAB0154: Note in CAB0154, the TAU agreed that the possibility exists that the potential for Sikh Extremists damaging an Air India aeroplane is real. In CAB0153, a much lengthier TA covering all recent information on Sikh Extremism, the assessment is that Parmar, Bagri and Gill together pose a serious threat.

103. CSIS investigators and analysts were concerned about threats to the Indian High Commissioner and other Indian diplomats in Canada, given previous attacks on the Indian Consulates and Consuls General.<sup>88</sup> Moderate Sikhs including prominent BC lawyer Ujjal Dosanjh were also the subject of vicious attacks.<sup>89</sup>
104. CSIS was receiving reports from Alberta where 300 Firearms Certificates had been issued to Indo-Canadians in the previous few years, and in 1984 a militant Sikh leader conducted rifle handling and firearms training for Edmonton Sikhs at a local rifle range.<sup>90</sup> In Windsor, two Sikhs purchased an Uzi machine gun in Detroit and an RCMP search of Avtar Singh Kooner's residence on June 11, 1985, turned up an un-registered hand gun.<sup>91</sup> In Vancouver, on March 11, 1985, the RCMP seized pieces of an Uzi machine gun at Vancouver International Airport from a Sikh Student Federation (SSF) member travelling to London, England.<sup>92</sup> With the assassination of Indira Gandhi on October 31, 1984, and the detection of the New Orleans assassination plot targeting a visiting Indian Cabinet

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<sup>88</sup> Acting HC Fabian was assaulted in Winnipeg on July 18, 1984. See Exhibit P-101, CAB0113 and TA dated October 26, 1984, Exhibit P-101, CAB0153. There were attacks on the Indian Consulates and Consul Generals Residence in Vancouver in 84/06 and 84/08, reflected in a TA dated April 1, 1985 (Exhibit P-101, CAB0207). There was a shooting in front of the Indian Consulate in Toronto on November 14, 1982. See Exhibit P-101, CAB0041. In Exhibit P-101, CAB0026, dated May 10, 1982, Ray Kobzey reports on the egg-throwing incident at the Vancouver airport against a visiting Indian High Commissioner, reflecting his concern that Sikh activists were intent on embarrassing the Canadian Government with acts of violence. Also see the threat assessments at Exhibits P-101, CAB0063 re reports of "hit squads"; Exhibit P-101, CAA0142 re attacks on Consulates and seizure of the Uzi; Exhibit P-101, CAB0153, re the assault on Fabian by Winnipeg Sikhs and the potential establishment of "suicide squads" in Canada (includes Bob Burgoyne's assessment of Parmar as "the most radical and potentially dangerous Sikh in the country"); and Exhibits P-101, CAB0218, CAB0225 and CAA0187 re the potential for demonstrations/marches.

<sup>89</sup> Evidence of Ujjal Dosanjh, Transcript, Vol. 80, p. 10173. Dosanjh was assaulted in February of 1985.

<sup>90</sup> Exhibit P-101, CAB0321.

<sup>91</sup> Exhibits P-101, CAB0321, the June 18, 1985 threat assessment, and CAB0304, the June 14, 1985 sitrep.

<sup>92</sup> Exhibit P-101, CAB0207: the Uzi was seized along with 100 rounds of ammunition, and the other part of the Uzi was located in the possession of the travelling companion who was arrested at Heathrow Airport.

Minister, CSIS investigators and analysts were focused on possible assassination attempts.<sup>93</sup>

105. Every threat report received by the Sikh Desk was assessed.<sup>94 95</sup> This included threats conveyed by the Government of India.<sup>96</sup> CSIS advised of specific threats and “non-specific” threats, depending whether the information received was detailed or could be corroborated.<sup>97</sup> At no time prior to the bombing did CSIS obtain information about a specific threat to an Air India flight.<sup>98</sup>
106. Despite the lack of specific information regarding threats to Air India flights, most threat assessments noted patterns of threats made over the year and the heightened threat environment. CSIS had received threats concerning consulates, missions, shootings, kidnappings, sabotage, assaults, hit lists, among others<sup>99</sup> and was not in a position to predict what was going to happen.<sup>100</sup>

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<sup>93</sup> Exhibits P-101, CAB0156 and CAB0321 regarding the New Orleans assassination plot.

<sup>94</sup> Evidence of Burgoyne, Transcript, Vol. 31, pp. 3451 and 3493.

<sup>95</sup> Russell Upton testified that the general sentiment on the Sikh Desk was an anxiousness to get to the bottom of the problem: everyone was aware of the seriousness of the threat of Sikh extremism. See Evidence of Russell Upton, Transcript, Vol. 31, pp. 3576 et seq.

<sup>96</sup> The Government of India conveyed warnings on numerous occasions during the year prior to the bombing, some more specific than others (i.e. Exhibit P-101, CAB0088) but despite their many warnings, until the bombings, nothing ever materialized (aside from demonstrations on key dates). Bob Burgoyne noted that the sheer volume of information was not in itself corroboration, but rather the assessment was based on the general situation in India and a general feeling of excitement in the Sikh community in Canada. He said that “having seen these threats come in and seeing the activities mounting in support of the Sikh cause, I think this was somehow related to why we were assessing it as high.” Evidence of Bob Burgoyne, Transcript, Vol. 31, pp. 3476-78.

<sup>97</sup> Evidence of John Henry, Transcript, Vol. 25, p. 2515-16. John Henry testified that in order for a threat to become a “specific threat” for the purposes of a threat assessment, a certain amount of corroboration was required. Such corroborating information was never obtained by CSIS.

<sup>98</sup> Exhibit P-101, CAB0321, dated June 18, 1985, is one of the last TAs prepared prior to the bombing.

<sup>99</sup> See Appendix to this Volume for a chronology of threats.

<sup>100</sup> Evidence of Ray Kobzey, Transcript, Vol. 33, pp. 3860-3862.

107. Two significant events in early June of 1985 had come and gone without incident: the anniversary of the storming of the Golden Temple on June 6, 1985, and Indian Prime Minister Rajiv Gandhi's visit to the United States during the week of June 11-15, 1985.<sup>101</sup> CSIS nevertheless assessed the continuing threat as "high". In a June 7<sup>th</sup> summary of recent events in Vancouver, Ray Kobzey wrote:

The lack of activity on the part of the local Sikh Extremist/Activist movement is almost eerie. Perhaps the Rally/Demonstration scheduled for the Little Mountain Park on 1985 06 08 will provide the platform for their concerns.<sup>102</sup>

108. The Regions were also advised to continue intelligence gathering and source debriefing to support the next threat assessment. A June 18, 1985 threat assessment advised that the threat of Sikh extremism was only slightly less serious than it was at the time of the last assessment.<sup>103</sup> This report provided a summary of the events that had placed agencies on high alert prior to "Genocide week" (the anniversary of the Golden Temple assault and its aftermath) and Rajiv Gandhi's visit to the United States. CSIS advised that the possibility of a terrorist attack had not abated; extremists would have been well aware of the heightened security during these weeks, but would not give up their goals. It concluded with the assessment that: "These same extremists/terrorists are no less determined to realize their ambitions and to think that they have abandoned their caused

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<sup>101</sup> Evidence of Russell Upton, Transcript, Vol. 31, p. 3600 and see also Exhibit P-101, CAB0256 on June 5, 1985. See also Exhibit P-101, CAF0124(i): May 28, 1985, re top priority attention to be afforded this area due to Golden Temple anniversary and Gandhi visit as well as the earlier strep of May 3, 1985 at Exhibit P-101, CAB0225. On June 19, 1985, after the Gandhi visit ended, the Regions were told daily streps were no longer required (Exhibit P-101, CAB0323).

<sup>102</sup> Exhibit P-101, CAB0269 of June 7, 1985.

<sup>103</sup> The June 18, 1985 TA, Exhibit P-101, CAB0321, was a follow-up to the May 24, 1985 assessment; it was sent to a list of recipients including VIP Security, NCIB, SOLGEN, EA, TC, Immigration Intelligence, Customs Intelligence, and all CSIS regions and districts. See also Exhibit P-101, CAA0215, the June 14, 1985 request from HQ to the Regions to update their assessments now that Genocide week and Gandhi's visit have passed.

(sic) would be naïve on our part.”<sup>104</sup> Both CSIS Headquarters and the Regions recognized that the passage of the two events without incident meant only that something may happen in the near future.

109. However, even immediately after the Air India bombing, when resources were pulled from other intelligence requirements to assist with Sikh extremism, BC Region lacked trustworthy and reliable human sources that might corroborate or explain information obtained from the technical assets.<sup>105</sup>

## H. CSIS WARRANT ACQUISITION

### 1. RCMP Security Service Policies Transferred To CSIS

110. The Commission called extensive evidence about the technical intercepts that CSIS had on Sikh extremists such as Talwinder Singh Parmar in 1985.
111. In 1985, CSIS’s policies with respect to technical intercepts came from the RCMP’s Security Service. At the creation of CSIS, the Government of Canada envisioned the requirement for a policy regime to guide former Security Service employees in their new role as CSIS employees, and included the following passage in the *CSIS Act*:

65. (1) All orders, rules, regulations and other statutory instruments in force on the coming into force of this section that are made under the *Royal Canadian Mounted Police Act*, as they apply to the security service continue in force thereafter in respect of the Service as if they were made under this Act or are revoked or replaced pursuant to this Act.

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<sup>104</sup> Exhibit P-101, CAB0321, p. 4.

<sup>105</sup> Evidence of Russel Upton, Transcript, Vol. 31, pp. 3603. Upton testified that this remained CSIS’ “greatest problem”. See also Exhibit P-101, CAD0154, p.10.



(2) All decisions, directions, contracts, leases, licences, authorizations, consents, approvals, declarations, designations, nominations, appointments, permits, recognitions and other documents in force on the coming into force of this section that are made, given, or issued under the *Royal Canadian Mounted Police Act* as they apply to the security service continue in force thereafter in respect of the Service as if they were made, given or issued under this act until they expire or are replaced or rescinded pursuant to this Act.<sup>106</sup>

112. The enabling legislation set out a grace period of four months to execute warrants under the *Official Secrets Act*:

(3) The Director and employees may, during a period of four months after the coming into force of section 88, execute warrants that were issued pursuant to section 16 of the *Official Secrets Act* prior to the coming into force of section 88 as if the Director and employees were specified by the warrants as persons who may make an interception or seizure.<sup>107</sup>

113. The CSIS had inherited policies applicable to a police force that were no longer relevant to a civilian security intelligence agency, and were no longer followed as they had little connection to the work of a non-policing (evidence – gathering) agency. Time was needed to determine the operational realities of CSIS, and the practical changes that its new mandate would bring about.<sup>108</sup> Not surprisingly, none of the manuals contained any direction or advice in respect of applications for the judicial authorization of intercepts under s. 21 of the *CSIS Act*.

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<sup>106</sup> Bill C-21 *Canadian Security Intelligence Service Act*.

<sup>107</sup> Bill C-21 *Canadian Security Intelligence Service Act*.

<sup>108</sup> Exhibit P-392, Statement of Archibald McArthur Barr, paras. 44-45.

## 2. A New Warrant Regime

114. Warrant acquisition policies and procedures were created as CSIS employees wrote applications under s. 21 of the new *CSIS Act*.<sup>109</sup> Unlike the previous *Official Secrets Act* regime which required only the Minister's approval to implement a warrant, judicial expectations were considerably more robust and demanding.
115. The Act was meant to allow CSIS to be effective in fulfilling its statutory role while ensuring that civil rights were respected.<sup>110</sup> Nowhere was this more important than in the area of judicial warrants under s. 21 of the new *CSIS Act*. The Act gave wide-ranging, intrusive powers to the Service if it could convince one of the newly designated Federal Court judges to authorize the warrant. Neither the Service, its lawyers nor the Federal Court had a roadmap, let alone experience, with such a system.<sup>111</sup> *“There was much uncertainty, yet no one could provide guidance based on actual experience.”*<sup>112</sup>
116. A new and complex internal system of checks and balances – amounting to more than twenty discrete steps between CSIS and the Solicitor General – became the “warrant

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<sup>109</sup> See *CSIS Act*, s. 21. See Appendix 2 – Thresholds for Obtaining Intercepts.

<sup>110</sup> Exhibit P-101, CAF0632, Study of, Report on, and Recommendations Relating to Process for Acquisition of Warrants by CSIS, by the Honourable George Addy, Q.C., dated April 1992, p. 12. See also Exhibit P-101, CAB0902, 1992 SIRC Report. SIRC Report of 1990-1991, wherein the role of CSIS was explained, p. 1: “To ensure an appropriate balance between an effective service and a responsible service.”

<sup>111</sup> Policies and best practices were created as the affidavits were written and as the Court provided feedback during the applications themselves. There was initially “no clear idea as to what ingredients were necessary to constitute a case.”

<sup>112</sup> See Exhibit P-101, CAF0628, J.A.M Deschenes, DGCT, January 21, 1985. “The problem was compounded by the Legal Advisors’ lack of familiarity with terminology, the intelligence mindset and work experience. Clear signals were also not forthcoming from the Federal Court.” See also note dated January 21, 1985 at P-101, CAF0629, Every application was successful. See also Evidence of Ray Kobzey, Transcript, Vol.32, p. 3748.

acquisition process”, a process which generally took five months to complete<sup>113</sup> and changed very little over the next twenty years.<sup>114</sup> Approximately 110 *Official Secrets Act* warrants were put through this process in the first six months after CSIS was created in order to “convert” them to *CSIS Act* warrants. These affidavits were written by the desk personnel, who had ongoing operational responsibilities.<sup>115</sup> The work however was viewed as being a test of the very credibility of the new Service before the Federal Court.<sup>116</sup>

### 3. Intercept Retention Policies at CSIS

117. Historically, CSIS policies have reflected the balance sought by the *CSIS Act*: information that did not meet a standard of “strictly necessary” would not be reported and would not be retained. The Federal Court authorizes an intercept on the basis of s. 21 of the Act and according to *Charter* jurisprudence.<sup>117</sup> But the Federal Court is authorizing CSIS to intercept on a very broad basis: reasonable grounds to believe there is a *threat to national security* and a warrant is needed to investigate the threat; there is no requirement to believe that a criminal offence has been or will be committed. The authorization permits interception of private communications of an individual for a duration of up to

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<sup>113</sup> Evidence of Darryl Zelmer, Transcript, Vol. 23, pp. 2346. Darryl Zelmer testified that this was de rigeur when he left the Service in 2004, unless CSIS required an ‘emergency’ warrant for an imminent or short-duration threat.

<sup>114</sup> Director Jim Judd testified that he instituted a one-month turnaround for warrants as at 2005 which is generally working today.

<sup>115</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, (p. 2250, 2295 and 2267).

<sup>116</sup> Jacques Jodoin, Report on the Conversion Process at Exhibit P-101, CAF0630.

<sup>117</sup> *Hunter v. Southam*, [1984] 2 S.C.R. 145. See Appendix 3 on the issue of thresholds. Note that even as of February 18, 1985, Mr. Jodoin’s memorandum to the Regions set out an extended test CSIS applications would have to meet: the ‘two-pronged’ test of reasonable grounds to believe there was a threat to national security, plus the original s.21 *CSIS Act* test showing investigative necessity. See also Evidence of Randil Claxton and Exhibit P -199, p. 45-54 (April 30, 2002).

one year, and many are renewed for many more years. 70-80% of the contents of such communications may be innocent, irrelevant conversations (of family members, for instance), and CSIS policy was to not report such conversations. A *by-product* of collecting intercept communications in the counter-terrorism field is its potential relevance to a criminal prosecution, but CSIS does not collect information for criminal prosecution purposes and furthermore has never been directed to do so by a Minister or any of its varied review bodies.<sup>118</sup>

#### 4. The Parmar Warrant

118. BC Region requested a warrant to intercept Parmar's communications on July 14, 1984<sup>119</sup>. By August of 1984, Ray Kobzey of the CSIS BC Region had drafted a summary of information that would be the basis for CSIS' affidavit in support of an intercept against Parmar<sup>120</sup>. A "subject evaluation report" (SER) described Parmar as a threat to national security and recommended a "level 4" investigation on September 17, 1984.<sup>121</sup> By October 17, 1984, Mr. Kobzey was asking CSIS Headquarters to consider the need

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<sup>118</sup> See Exhibit P-101, CAF0715. In fact, in its 1987-1988 Report, SIRC flatly stated that it would be inappropriate for CSIS to maintain intercepts only for the purpose of a potential criminal investigation: "With regard to the erasure of tapes, it would be most improper for the Service to let wiretap tapes accumulate indefinitely in case they might eventually prove useful to the police. (p. 10)". See also P-392, Statement of Archibald McArthur Barr and Evidence of Luc Portelance, Transcript, Vol. 88, at p. 11493 "[CSIS drew] the conclusion long ago that the standard or the threshold at which we operate where we obtain Federal Court warrants, there's an expectation out there that we are not collecting evidence because, really, if we were doing that our belief is we would simply be a branch of law enforcement." "[We have] never been directed by the Government of Canada to collect evidence. We believe it changes the ethos of our organization and if the government sees it otherwise, as a result of recommendations to the Commission, we will abide by that but it's been a fairly profound existentialist debate in terms of why we were created and whether or not it's appropriate for us to conduct ourselves in that fashion" – Cross-examination of Luc Portelance, Transcript, Vol. 88, p. 11535.

<sup>119</sup> Exhibit P-101, CAF0119, July 27, 1984.

<sup>120</sup> Exhibit P-101, CAB0144 of October 17, 1984. See also Evidence of Ray Kobzey.

<sup>121</sup> Exhibit P-101, CAB0139; Director Finn authorized the level 4 investigation on October 25, 1985 (Exhibit P-101, CAB0162).

for an intercept on Parmar as “urgent”.<sup>122</sup> Parmar was considered “the most radical and potentially dangerous Sikh in the country with a close circle of like-minded associates.”<sup>123</sup> Parmar was also believed to be intimidating the moderate Sikh community in an attempt to secure their significant charitable contributions to the gurdwaras.<sup>124</sup> HQ was working on the warrant “on a priority basis” by the end of October.<sup>125</sup> The backlog of *Official Secrets Act* warrants stood in the way of any new application however unless the target posed an “imminent threat” to the security of Canada.<sup>126</sup>

119. The affidavit in support of the intercept warrant was completed on December 13, 1984, and the multi-step warrant process completed on January 28, 1985.<sup>127</sup> But the Solicitor General’s department’s concerns respecting “portability” would delay the warrant another month and a half.<sup>128</sup> Both BC Region and HQ staff were concerned: Daryl Zelmer at HQ wrote, “[i]ndeed the lack of this intercept represents the dominant

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<sup>122</sup> Exhibit P-101, CAB0144.

<sup>123</sup> Exhibit P-101, CAB0153.

<sup>124</sup> Evidence of Ray Kobzey, Transcript, Vol. 32, p. 3764.

<sup>125</sup> Exhibit P-101, CAB0147; Daryl Zelmer wrote that the Parmar warrant should be considered “urgent”; see also Exhibit P-101, CAB0170.

<sup>126</sup> Evidence of Daryl Zelmer, Transcript, Vol. 23, pp. 2312-2372. See also P-101, CAB0174.

<sup>127</sup> Exhibits P-101, CAB0174 and CAA0122.

<sup>128</sup> Exhibits P-101, CAB0188; CAB0191; CAB0196; CAA0138; Archie Barr signed the affidavit on March 8, 1985: P-101, CAA0333; the application received ministerial approval on March 11, 1985: Exhibit P-101, CAA0129; to be clear, CSIS was not asking to have gurdwaras intercepted...just Parmar’s home was at issue...Evidence of Ray Kobzey, Transcript, Vol. 32, p. 3770.

deficiency to the advancement of our investigation.”<sup>129</sup> The Federal Court authorized the warrant on March 14, 1985,<sup>130</sup> and it was installed on March 25, 1985.<sup>131</sup>

120. Mr. Kobzey assessed the problem of obtaining the intercept as follows:

You don't get what you want all the time and I was asking for a tool, a resource; I got it. It was unfortunate that the delay was so long...The bigger issue is what could we have learned in that five months time lag...that is the tragedy of that particular five-month process for that particular warrant.<sup>132</sup>

121. Addy J., retired, of the Federal Court in 1992 reviewed the CSIS warrant process,<sup>133</sup> finding that the 3-6 month time frame prevented CSIS from achieving its mandate, part of which was to report threats to national security to the Solicitor General in a timely fashion.<sup>134</sup> He found nevertheless that the length of time it took to process a warrant was “not in any way due to an indifference or laxity on the part of anybody involved in the process.”<sup>135</sup>

On the contrary, I was very impressed with the esprit de corps, the devotion to duty, the interest in the work and the enthusiasm...They are remarkable and indeed, quite outstanding.

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<sup>129</sup> Exhibit P-101, CAB0194; see also Exhibit, P-101, CAB0171.

<sup>130</sup> Exhibit P-101, CAD0024.

<sup>131</sup> Exhibit P-101, CAB0206.

<sup>132</sup> Evidence of Ray Kobzey, Transcript, Vol. 32, p. 3772.

<sup>133</sup> See Exhibit P-101, CAF0632. Criticisms included “over-inclusion of information by CSIS in its affidavits” (p. 17); “too many cooks in the kitchen” (p. 19); “a bureaucratic nightmare” (p. 21); extra-jurisdictional involvement by the Solicitor-General’s office (p. 27); CSIS was too cautious due to a fear of rejection of a warrant application (p. 87).

<sup>134</sup> Exhibit P-101, CAF0632, Study of, Report on, and Recommendations Relating to Process for Acquisition of Warrants by CSIS, by the Honourable George Addy, Q.C., dated April 1992, p. 23.

<sup>135</sup> Exhibit P-101, CAF0632, Study of, Report on, and Recommendations Relating to Process for Acquisition of Warrants by CSIS, by the Honourable George Addy, Q.C., dated April 1992, p. 89.

122. Given the priority of the conversion of 110 warrants, only a few completely original *CSIS Act* warrants were considered in the first year. The Parmar warrant was one that both the field and HQ considered a necessary investigative tool.

### 5. Translation Capacity

123. Before contemplating a warrant application, CSIS generally ensures it has adequate translation capacity to process the intercepted product.<sup>136</sup> Absent translation capacity, an intercept warrant against a target who speaks a foreign language would be of limited value and would not be pursued by CSIS.<sup>137</sup>
124. The absence of an in-house BC Region Punjabi translator when the Parmar warrant was approved by the Federal Court on March 14, 1985 meant that intercepted Punjabi conversations would have to be sent to CSIS HQ in Ottawa for translation. The Ottawa-based Punjabi translator was an experienced intelligence monitor and was in a position to ask investigators questions.<sup>138</sup> The delay occasioned by temporarily sending the tapes to Ottawa was not significant and, in fact, outsourcing intercepted product to other Regions for translation is a sound practice that continues to this day.<sup>139</sup>
125. When the Parmar warrant became operational on March 27, 1985, three factors influenced its processing time. First, the Parmar intercept produced an unusually high

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<sup>136</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2279; Kobzey, Transcript, Vol. 32, p. 3745.

<sup>137</sup> Evidence of Luc Portelance, Transcript, Vol. 88, pp. 11499-00.

<sup>138</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, pp. 2282-83.

<sup>139</sup> Evidence of Luc Portelance, Transcript, Vol. 88, pp. 11498-00.

volume of tapes, much of it in Punjabi.<sup>140</sup> Second, recruiters found that potential Punjabi translators were reluctant to work for CSIS because they risked alienation in their community if perceived to be complicit in the Canadian Government's investigation of Sikh extremism.<sup>141</sup> Finally, hiring Punjabi translators that were capable of being security cleared to the required "top secret" level proved difficult in view of the 20-year Canadian residency requirement.<sup>142</sup>

126. Following a cross-country search, on May 28, 1985, CSIS hired someone who could translate Punjabi into English for BC Region.<sup>143</sup> When the translator commenced work on June 6, 1985, a backlog of 130 to 132 unprocessed tapes had developed in both BC Region and Ottawa.<sup>144</sup> By June 21, 1985, BC Region was still coping with a backlog of approximately 100 unprocessed tapes.<sup>145</sup>
127. Because CSIS' primary concern in the post-bombing period was the prevention of a future attack, it prioritized the processing of the most recent Parmar intercepts rather than the backlogged pre-bombing tapes.<sup>146</sup> There is no reason to believe that the translators

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<sup>140</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2286; Evidence of Jacques Jodoin, Transcript, Vol. 49, p. 6064; CAD0192; CAD0173, p. 2255.

<sup>141</sup> In his testimony Jacques Jodoin described that CSIS' biggest problem in recruiting Punjabi translators was the "threat to their life" from other community members. *See* Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2309; Evidence of Jim Warren, Transcript, Vol. 48, p. 5944.

<sup>142</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2279. In one instance, CSIS' attempt to expedite the hiring of a Punjabi translator by lowering the security clearance was nearly met with disastrous consequences when the new translator quit suddenly after he recognized a family member's voice on one of the intercepted conversations. *See* Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2280; Evidence of Bill Turner, Transcript, Vol. 66, p. 8289.

<sup>143</sup> Exhibit P-101, CAB0234.

<sup>144</sup> Exhibit P-101, CAB0902, 1992 SIRC Report, p. 75.

<sup>145</sup> *Ibid.*

<sup>146</sup> The 1992 SIRC Report concluded that this "may have been a reasonable position from the point of view of current intelligence on Sikh extremism targets". *See* Exhibit P-101, CAB0902, p. 79. Also, former CSIS



and transcribers responsible for creating the backlog of tapes would permit erasure without first processing them.<sup>147 148</sup> There is no evidence that CSIS failed to process every single intercept it collected pursuant to the Parmar warrant.<sup>149</sup> All of the Parmar tapes were listened to, analyzed and, where appropriate, distilled into intelligence reports that exist to this day.

128. CSIS' response to the Air India and Narita bombings was to immediately expand its target coverage to include other known Sikh extremists believed to have been responsible for the Air India tragedy.<sup>150</sup> Acting on the working principle that interception without adequate Punjabi translation capacity in this instance was preferable to not intercepting at all, CSIS went forward with additional warrants.<sup>151</sup> The Service's backlog of tapes was not eliminated until October 25, 1985.<sup>152</sup>

## 6. CSIS Translators and Transcribers: Training and Supervision

129. The translators (responsible for the foreign language content on an intercept) and transcribers (responsible for the official language content on an intercept) processing the Parmar tapes were experienced and operated under the supervision of seasoned CSIS

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member Bill Turner testified that "once Air India had gone down it was, 'Oh, my God, what are they going to do next?'" See Evidence of Bill Turner, Transcript, Vol. 66, p. 8293.

<sup>147</sup> On a similar note, those 54 pre-bombing Parmar tapes that Cst. Sandy Sandhu listened to were *also retained* by the translators during the months prior to the February 1986 edict for the express purpose of preserving CSIS' intelligence needs as they had not been processed by CSIS yet.

<sup>148</sup> Evidence of Jim Warren, Transcript, Vol. 48, pp. 5826, 5858, 5926 and 5945.

<sup>149</sup> Exhibit P-101, CAB0902, 1992 SIRC Report, p. 90.

<sup>150</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, pp. 2309-10.

<sup>151</sup> Exhibit P-101, CAB0402 (July 5, 1985).

<sup>152</sup> Exhibit P-101, CAA0357 (October 24, 1985); 1992 SIRC report at Exhibit P-101, CAB0902, pp. 76 - 80.

investigators. BC Region transcribers worked closely with investigators so they could identify conversations germane to CSIS' investigation into Sikh extremism.<sup>153 154</sup>

130. In an interview thirteen years after the Air India bombings, the Ottawa-based translator did not recall being specifically briefed on the Parmar warrant.<sup>155</sup> The translator did not seek specific instruction on the Parmar line from investigators Kobzey or Ayre, but was provided with the affidavit used in support of the warrant as well as the background material about Parmar that supported CSIS' authorization to allow a full investigation of him.<sup>156</sup>
131. When BC Region hired its own Punjabi translator, Ray Kobzey specifically instructed the translator to alert investigators to any conversations that appeared evasive or unusual.<sup>157</sup> The "coded language" identified, isolated and reported by the translators would become the very basis for later allegations that CSIS had erased Parmar tapes without knowing the potential criminal intelligence they possessed. After Mr. Kobzey left for vacation on

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<sup>153</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2302-03; of Ray Kobzey, Transcript, Vol. 32, p. 3791-92; See D.W. Ayres' testimony at the Reyat trial at Exhibit P-101, CAD0173, p. 2260; Exhibit P-199, p. 22.

<sup>154</sup> Today, translators and transcribers work alongside investigators to ensure a cohesive unit: Evidence of Duncan Lane, Transcript, Vol. 82, p. 10536; of Bill Turner, Transcript, Vol. 66, p. 8291; of Luc Portelance, Transcript, Vol. 88, pp. 11487-88.

<sup>155</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, pp. 2282-83; The Ottawa-based Punjabi translator was interviewed on July 30, 1998. See Exhibit CAD0184, p. 23.

<sup>156</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2283-84.

<sup>157</sup> See D.W. Ayres' testimony at the Reyat trial at Exhibit P-101, CAD0173, p. 2254; Evidence of Ray Kobzey, Transcript, Vol. 33, p. 3813. The "coded" language first identified and isolated by the translators became the basis for allegations that CSIS had erased tapes that would have been crucial to the RCMP's case.

June 7, 1985, CSIS investigator David Ayre met with the translator on a daily basis to review notes and refine instructions.<sup>158</sup>

132. The BC Region English transcriber was on vacation during the week prior to the bombing. In her absence, the Punjabi translator was entirely capable of translating the Punjabi content as well as transcribing the English content.<sup>159</sup> In fact, the translator routinely played a more significant role than the transcriber with respect to the Parmar warrant because the vast majority of the intercepted conversations were in Punjabi.<sup>160</sup> Aside from briefings, listening to hours of intercepted conversations allows translators to develop an intimate understanding of a target.<sup>161</sup>

### **7. Retention of CSIS Intercepts**

133. As indicated in the testimony of Jim Warren, in February 1986 CSIS were instructed by legal counsel to retain all intercept material relevant to the Air India civil litigation which had been commenced in the Fall of 1985 following the bombing. As Mr. Warren testified this was not a change in CSIS policy but a matter specific to the civil litigation and in

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<sup>158</sup> Mr. Ayre specifically instructed the BC Region translator to make note of Parmar's family and associates, all telephone contacts (domestic and international), the nature and degree of Parmar's involvement in any group or organization, his financial situation particularly as it related to the support of any organization, Parmar's participation in activities that could be construed as posing a threat to the safety of any person, any indication of involvement with arms, explosives, munitions or military training, any criminal activity involving violence, beatings or bombings in support of Babbar Khalsa objectives. See D.W. Ayres' testimony at the Reyat trial at Exhibit P-101, CAD0173, pp. 2256-58.

<sup>159</sup> Exhibit P-199, p. 23.

<sup>160</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2286 and Vol. 49, p. 6064; Exhibits CAD0192; CAD0173, p. 2255; and Exhibit P-199, p. 64.

<sup>161</sup> Evidence of Jacques Jodoin, Transcript, Vol. 23, p. 2282.

accordance with requirements imposed on parties to such litigation to retain and preserve documents.<sup>162</sup>

### **I. THE DEPARTMENT OF EXTERNAL AFFAIRS AND SIKH TERRORISM PRE-BOMBING**

134. The Commission also heard evidence with respect to the role that the Department of External Affairs (“DEA”) played in 1984-1985 with respect to the assessment of the threat of Sikh terrorism.
135. The DEA received information through its diplomatic contacts with representatives of foreign governments either through its posts abroad or through contact with such representatives here in Canada. This was also the case with information concerning the activities or possible activities of Sikh extremists in Canada and how those activities were perceived by the Government of India. In accordance with its responsibilities in such matters Foreign Affairs passed such information along to the RCMP and CSIS.<sup>163</sup>
136. The Commission heard evidence from William Warden who from 1983 to 1986 was stationed in New Delhi as the Canadian High Commissioner to India. Despite repeated expressions of concern regarding the actions of Sikh extremists in Canada made to him Indian authorities in New Delhi through diplomatic exchanges during a period from June through October 1984 by and passed on by him to DEA headquarters in Ottawa, Mr. Warden’s perspective was that such concerns were not taken seriously by authorities in

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<sup>162</sup> Evidence of Jim Warren, Transcript, Vol.48, pp.5862-63.

<sup>163</sup> Evidence of Gordon Smith, Transcript, Vol. 24, pp. 2436-46. Also see Exhibits P-101, CAF0060, CAF0062 and CAF0068 which outline the role of Foreign Affairs in connection with receipt and dissemination of intelligence information re: terrorist threats.

Canada as they did not result in actions to prosecute or otherwise clamp down on the actions of Sikh extremists in Canada directed against Indian diplomats and interests.<sup>164</sup>

137. Mr. Warden testified that Canada did not begin to pay serious attention to the threats of Sikh extremism until May of 1985 at which time “There was a lot of close interaction on the part of the agencies: the Indian Government had excellent sources in Canada, the CSIS, the RCMP and people were starting to pull together.”<sup>165</sup>

138. While Mr. Warden had the ‘impression’ or ‘feeling’ that those outside of External Affairs had insufficient appreciation of the situation in 1984 of what was happening in India, it would be inaccurate to conclude that concerns with respect to Sikh terrorism were ignored by the Canadian Government until May, 1985.<sup>166</sup> The evidence indicates Mr. Warden’s concerns were made known to Government Authorities.<sup>167</sup>

139. As indicated in an internal memorandum prepared by DEA officials for the Deputy Prime Minister and Secretary of State for External Affairs, in June 1984, the Canadian

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<sup>164</sup> Evidence of William Warden, Transcript, Vol. 24, pp. 2382-83.

<sup>165</sup> Evidence of William Warden, Transcript, Vol. 24, p. 2388

<sup>166</sup> Evidence of William Warden, Transcript, Vol. 24, p. 2387-88.

<sup>167</sup> A review of the exchange of telexes between DEA headquarters in Ottawa and the Canadian High Commission in New Delhi indicates that the concerns of the India Government expressed to Mr. Warden were received by Ottawa and responded to. In addition, it is evident that information pertinent to Indian interests in Canada was passed on to the RCMP and CSIS. See the various telexes and communications between DEA Headquarters and Canadian High Commission in New Delhi and DEA and RCMP, CSIS and other agencies covering the period June 1984 to June 22, 1985 contained in Exhibit P-101, in various tabs from CAE0015 – CAE0202.

Government at the highest levels were aware of and were being briefed on the situation in India, and on issues related to Sikhs, Punjab and Canada-India relations generally.<sup>168</sup>

140. The same memorandum details that a threat against Air India offices and aircraft was communicated to the police and Transport Canada and measures were taken in response.<sup>169</sup>
141. It is also clear that the concerns of India were being communicated to the relevant parties, for example the undersecretary of State wrote to the Deputy Commissioner of the RCMP with security concerns which resulted in a security upgrade to protect Indian Government personnel and properties. These security upgrades resulted in the provision of 75 RCMP members acting as accommodation, site security and as escorts for Indian diplomats and personnel for several months.<sup>170</sup>
142. Gordon Smith, testified that Sikh extremism was taken very seriously in the DEA and at a high level. Mr. Smith testified he was very aware of the threat from Sikh extremists having read Mr. Warden's numerous telegrams and met with Indian officials on various occasions.<sup>171</sup> It was also his experience that "when the Indian authorities raised issues with us, we in turn raised them with CSIS and RCMP."<sup>172</sup>

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<sup>168</sup> Exhibit P-101, CAE0053: Memorandum for the Deputy Prime Minister and Secretary of State for External Affairs from P. Ducharme, South and Southeast Relations Division dated June 26, 1984.

<sup>169</sup> Exhibit P-101, CAE0053: Memorandum for the Deputy Prime Minister and Secretary of State for External Affairs from P. Ducharme, South and Southeast Relations Division, June 26, 1984.

<sup>170</sup> Exhibit P-101, CAE0107: Letter to Deputy Chief of Protocol, M.F. Doyle, from Officer in Charge VIP Security Branch, RCMP Supt. R.E. Muir dated October 1, 1984.

<sup>171</sup> Evidence of Gordon Smith, Transcript, Vol. 24, pp. 2436-37

<sup>172</sup> Evidence of Gordon Smith, Transcript Vol. 24, pp. 2437-38

143. In addition RCMP P Directorate had access to the diplomatic traffic flowing between DEA headquarters and Canadian embassies and High Commissions abroad. Telegrams of relevance would be directed to appropriate Canadian agencies such as RCMP, CSIS and others.<sup>173</sup>
144. Canadian constitutional law and privacy legislation also played a part in the response which the Canadian Government could deliver in regard to concerns voiced by the Indian Government. As Mr. Smith explained the Canadian privacy legislation played a part in the ability to provide the Indian Government with information about people who may have been involved in extremist activities. As Mr. Smith explained this was a constant theme in discussions with representatives of the Government of India. Canadian authorities went as far as they could.<sup>174</sup> The *Charter of Rights* also had implications in respect of limits that might be placed on freedom of expression. These concerns were communicated to the Indian Government by the Prime Minister among others.<sup>175</sup>
145. In any case, by spring 1985 concerns of Sikh extremism were a priority for several Canadian Government agencies. An example of the attention paid to Sikh extremism at DEA and at other agencies can be found in Exhibit P-101, CAE0223, which is a chronology from April 10, 1985 to June 23, 1985 outlining some measures taken by the Department of External Affairs in response to the threat of Sikh terrorism.

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<sup>173</sup> Evidence of James Bartleman, Transcript, Vol. 22, pp. 2126-27.

<sup>174</sup> Evidence of Gordon Smith, Transcript, Vol. 24, p. 2437.

<sup>175</sup> Exhibit P-101, CAE0130, letter January 1985 from Prime Minister Mulroney to Prime Minister Rajiv Gandhi.

146. As indicated in this document a series of inter-departmental meetings were held chaired by DEA and involving RCMP, CSIS, PCO, Solicitor General and CSE. At these meetings a whole range of issues related to Sikh extremism and terrorism were discussed including threats to the security of Indian officials, proposals for a tripartite working group with the U.K. and U.S.A. on sharing information and analysis on Sikh extremism, the establishment of an ad hoc working group to consider over the long term the whole question of Canada/India relations on security issues and in the short term to monitor the Sikh threat.
147. As the evidence has disclosed the DEA pressed concerns relayed by Indian Government representatives of threats to Indian interests in Canada including Air India flights to Canadian law enforcement and security agencies. As previously noted this action resulted in additional RCMP personnel to provide security for Indian diplomats and missions. As well DEA supported the provision of additional security measures for Air India flights which arrangements were provided by the RCMP including for the June 22, 1985 Air India flight.<sup>176</sup> As expressed elsewhere in these submissions, contrary to the testimony of Mr. Bartleman no information was received by DEA indicating a specific threat to the June 22, 1985 Air India flight.

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<sup>176</sup> Exhibit P-101, CAE0201: Telex June 20, 1985 RCMP to External Affairs.



## J. RCMP AND SIKH EXTREMISM PRE-BOMBING

148. The RCMP also had knowledge of some of the actions or crimes committed by Sikh extremists in the pre-bombing period.<sup>177</sup> As outlined below, the RCMP were gathering and disseminating information on Sikh extremism and terrorism in various ways.

### 1. Sources of Information

149. It is important to understand how the RCMP gathers information in order to appreciate the various sources of information available to them. In addition to the receipt of information from CSIS, NSEU's, VIU and other law enforcement and Government agencies, the RCMP gathered relevant information in the regular performance of their duties.

150. In 1984-1985, RCMP officers investigated many criminal incidents involving members of the Indo-Canadian community, including Sikhs, in various jurisdictions in Canada. While the RCMP were not the police force of jurisdiction in areas with sizeable Indo-Canadian communities such as Vancouver, the Greater Toronto Area, and Montreal, two of the largest RCMP detachments in Canada, Surrey and Burnaby, had large Indo-Canadian populations. The detachments also had sizeable General Duty contingents attending and investigating calls. Former Corporal Alex Johnson of the RCMP Surrey detachment was assigned to work in the Indo-Canadian community and, particularly, with the temples in the area. Corp. Johnson also had regular liaison with the ICLT of the

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<sup>177</sup> It is extremely unlikely, however, that the knowledge would be shared equally amongst all members of such a large organization which is spread across the country. Efforts to accomplish that were made however.

VPD.<sup>178</sup> In the course of his duties, he produced a paper which was intended to provide basic knowledge about Sikhs, their history, culture, way of life and religion to RCMP officers in Surrey.<sup>179</sup>

151. Calls for service remain the primary means of contact between the police and community members. First supervisors and then officers assigned as “readers”, review the resulting files for, in part, information which should be disseminated outside the detachment. This process leads to information flowing to other units within the RCMP, such as NSEU and “P” Directorate. Information also flowed to other agencies such as VIIU and CISBC.<sup>180</sup> Through the institution of the Liaison Officers, information also flowed to CSIS from the RCMP. On occasion, as testified to by Mike Roth, information was also passed outside the Liaison Officer program.<sup>181</sup> Conversely, relevant information received by the Vancouver ICLT members flowed to VIIU, CISBC, NSEU and CSIS. Information from other police forces across the country would be sent to criminal intelligence and national security units and often to CSIS. In this way much information was shared
152. Sgt. MacDonell explained that as a member of the RCMP’s NCIS section in Surrey, he investigated specific criminal acts but was also trying to gather intelligence in the community and that he was aware of the national picture and that others should have the information he and his partner had gathered at times. The information would be reported

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<sup>178</sup> Evidence of Don McLean, Transcript, Vol. 35, pp. 4149, 4174.

<sup>179</sup> Exhibit P-101, CAF0713.

<sup>180</sup> Evidence of Don McLean, Transcript, Vol. 35, pp. 4127-29; Evidence of Axel Hovbrender, Transcript, Vol. 33, p. 3876.

<sup>181</sup> Evidence of Mike Roth, Vol. 46, pp. 5600, 5603-04.

to the District Intelligence Officer for further dissemination and particularly significant information was often shared by a phone call.<sup>182</sup>

153. Many incidents investigated by police were understood to be, and were treated as, disparate criminal acts. Skirmishes for control of gurdwaras between fundamental and moderate Sikhs and various assaults were certainly investigated and information was shared. The events were not understood, however, as indicators that a major terrorist criminal act was in the offing. It is only with the benefit of hind-sight that some of these incidents can be understood as indicators of the events which would unfold.
154. The Government of Canada recognized the growing problem of Sikh extremism on other fronts. An Inter-departmental Task Force on Sikh Terrorism was established in Ottawa in May of 1985 under the Chairmanship of Gerald Skinner, Director of Emergency Preparedness, Department of External Affairs.<sup>183</sup> The RCMP participated in this group.

#### **K. SPECIFIC INCIDENTS AND THE RESPONSE PRE-BOMBING**

155. The Commission called evidence with respect to a number of specific incidents involving Sikh extremism that predated the bombing of Air India Flight 182. Viewing these events through the lens of hindsight may result in a distorted perspective. As in recent cases of Islamic terrorism, post-attack analysis often reveals many pre-attack indicators which were not recognized as such at the time. While the majority of the incidents discussed in

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<sup>182</sup> Evidence of Laurie MacDonell, Transcript, Vol. 76, pp. 9609-9610.

<sup>183</sup> See Exhibit P-101, CAF0062 at p. 7; Evidence of James K. Bartleman, Transcript, Vol. 22, p. 2101.

the following section could not accurately be considered pre-attack indicators, the analogy to post-attack analysis is apt.

### 1. The November 1984 Plot

156. An Agreed Statement of Fact outlining the relevant events was drafted by Commission and Government counsel and entered into evidence at the Inquiry.<sup>184</sup> In brief, the police received information independently from two individuals about a plot to bomb an Air India Aircraft commencing in May of 1984. One of the individuals had apparently hired the other to supply explosives. No tangible steps were taken in support of the plot. Each of the individuals had extensive criminal records as well as motivation to provide information to the police in return for some form of benefit. While keeping their possible motivation in mind, an investigation was conducted into their allegations. Information was reported and distributed within the RCMP and shared with CSIS, External Affairs, Transport and the VPD.<sup>185</sup>
157. The VPD, RCMP and CSIS conducted various interviews, at times singly and at times together, and exchanged information. RCMP Headquarters in Ottawa remained involved and questioned “E” Division both before and after the Air India bombing. Concerns about the reliability of the sources and the information remained.<sup>186</sup> The investigation expanded to include people in another city and the police force of that city was contacted in order to obtain information and assistance. The investigation into these allegations

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<sup>184</sup> Exhibits P-120a and P-120b (Addendum).

<sup>185</sup> Exhibits P-120 and P-120b (Addendum).

<sup>186</sup> *Ibid.*

was pursued vigorously both before and after June 23, 1985. Although analysis of telephone records showed that one long distance call had been made to Reyat's home by an unknown acquaintance of one of the individuals, no evidence has been found to link this plot to the bombings.

## 2. The Duncan Blast

158. On June 4<sup>th</sup>, 1985, CSIS was conducting surveillance on Talwinder Singh Parmar. He travelled by ferry to Vancouver Island then Duncan, British Columbia, with an unknown male who has come to be referred to as "Mr. X". In Duncan, he and Mr. X met with Reyat. All three got into Reyat's car and drove to a location in a forested area outside of town. Parmar and Reyat then left the car and walked into the bush. A few minutes later, the surveillance officers heard a single, loud report. The senior CSIS operative, Larry Lowe, who was a hunter, believed the sound was that of a high calibre handgun being discharged<sup>187</sup>. Reyat and Parmar then returned to the vehicle, which then returned to Reyat's residence.
159. The CSIS operatives did a quick search of the area, but found nothing<sup>188</sup>. The next day, Doug Henderson of the Duncan RCMP Detachment was contacted by a CSIS member requesting assistance. Henderson was told that CSIS had been conducting surveillance on

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<sup>187</sup> Exhibit P-101, CAB0580, p. 7 of 11. In an interview conducted on December 17, 1985, Mr. Lowe described the sound as "a loud bang like a rifle or an overload. I have heard and dynamited stumps myself and this bang or explosion did not seem as contained or muffled. That is why I felt it was a rifle shot."

<sup>188</sup> As it took the RCMP 3 searches, post-bombing, to locate the blasting cap, this is not surprising: Exhibit P-101, CAA0307.

a target who travelled with Reyat into the bush and a gunshot was heard. Henderson was asked to supply any “local intelligence”.<sup>189</sup>

160. Henderson learned that Reyat had a Firearms Acquisition Certificate, and that he had two firearms registered in his name. Later that same day, Ray Kobzey called Henderson to advise that the inquiries and surveillance related to “radicals of the East Indian community”. Kobzey asked that the file be classified “secret” and indicated that if further assistance was required, he would advise. The last step taken by Doug Henderson was to update Kobzey that the firearms registered to Reyat had been re-registered<sup>190</sup>. Nothing further was requested by Kobzey, and Henderson took no further action.
161. The information relating to the Duncan incident was also supplied to VIIU which reported it on June 6, 1985.<sup>191</sup>
162. CSIS had no forewarning about the trip to Duncan<sup>192</sup>, and the Parmar intercept provided no further information in respect of Parmar and Reyat’s activities on that day.<sup>193</sup> Circumstances also did not permit the PSU team to take any photos of the three individuals involved in the test blast. Though it has been suggested that there were no

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<sup>189</sup> Exhibit P-101, CAA0193.

<sup>190</sup> Evidence of Lynn Jarrett, Transcript, Vol. 22, pp. 2154-2186; Evidence of Ray Kobzey, Vol. 32, Transcript, pp. 3793-3805; Exhibits P-101, CAA0193 and CAA0188.

<sup>191</sup> Exhibit P-101, CAA0196 is the VIIU report, which illustrates continuing collaboration between local police forces, CSIS and even the FBI and USSS. See also Evidence of Axel Hovbrenner, Vol. 33, pp. 3606-3609.

<sup>192</sup> Ray Kobzey’s response to Don McLean’s evidence.

<sup>193</sup> The CSIS intercept for June 4, 1985, was transcribed June 11, 1985, and there was nothing of significance reported from it when it was transcribed (and this would have been with the benefit of “hindsight” since the events of June 4<sup>th</sup> would already be known). There is nothing significant reported from any days of the Parmar intercepts on or around the time of the June 4<sup>th</sup> test blast. It would be reasonable to conclude that if they had had any forewarning, they would have been better prepared for the surveillance to end up at the ferry terminal in

cameras with the surveillance team, it is entirely possible that the PSU team would have had a camera in one of the cars.<sup>194</sup> Larry Lowe was an experienced PSU member working with Lynne Jarrett; however, taking photographs during the ferry ride while keeping cover may not have been practical.<sup>195</sup>

163. Significant planning can go into a surveillance operation, but it is primarily an operation of opportunity and circumstance, dictated by the actions and movements of the target. A surveillant must use common sense and do what is reasonable in the circumstances.
164. As soon as it became clear that terrorist bombs had blown up Flight 182 and killed the baggage handlers in Narita, the investigators turned their eyes back to the events of June 4<sup>th</sup>, 1985 in Duncan, British Columbia. What had been understood and accepted as the sound of a gunshot had to be re-examined in light of the tragic new events.
165. Mr. Lowe's perception of the sound he heard was a blast from a gun. A reasonable conclusion at the time, nevertheless it was mistaken. The tendency to second-guess Larry Lowe's identification of the blast as a gunshot ought to be avoided. Human judgment is not infallible, and Mr. Lowe's extensive experience with guns leads him to this deduction.<sup>196</sup> Mr. Lowe had limited familiarity with explosives; someone else may have

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Vancouver, but the evidence is that it caught the PSU team completely by surprise. See Response of Ray Kobzey of May 29, 2007, P-403.

<sup>194</sup> Evidence of Lynne Jarrett, Transcript, Vol. 22, p. 2157, where she stated that she was not provided with a camera and didn't believe there was a camera in her car, but at pp. 2207-8 she says she did not know if any of the other team members had one and admitted it was possible that they did.

<sup>195</sup> Evidence of Ray Kobzey, Transcript, Vol. 33, pp. 3814-3817. Also note that the PSU report from that day, at Exhibit P-101, CAB0250, says that the goal of surveillance that day was "to obtain photos of Parmar"

<sup>196</sup> There has been concern expressed about Larry Lowe's ability to hear. In his December 17, 1985 statement, found at Exhibit P-101, CAB0580, he states that he has tone loss in his left ear but that his ability to hear this

perceived the sound quite differently. Until the bombings occurred, nobody came to the conclusion that the “blast” originated from a bomb.

166. The Duncan Blast must also be considered in the context of the time it occurred. On June 4<sup>th</sup> CSIS also knew of the upcoming visit of Rajiv Gandhi to North America the week of June 12<sup>th</sup>. This visit was of significant concern in light of the threat information coming in. RCMP and CSIS were working with the United States Secret Service to cover the threat from Canadian extremists.<sup>197</sup>
167. Information regarding the Duncan blast was in fact closely connected to threats against Gandhi made at a meeting of Sikh extremists in Vancouver on June 3<sup>rd</sup>, the day before Parmar travelled to Duncan. The information was that three persons at that meeting were “plotting to assassinate Rajiv Gandhi”.<sup>198</sup>
168. Further, there was other information that Sikh extremists in Canada were interested in firearms. CSIS had learned that about 300 Firearms Acquisition Certificates had been issued to East Indians in Edmonton over the past several years, mostly for the purchase of small calibre handguns.<sup>199</sup> Also there were a number of incidents relating to Sikhs and

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sound would not have been affected. There is no evidence that Larry Lowe was incapable of hearing this sound properly.

<sup>197</sup> Exhibit P-101, CAA0214.

<sup>198</sup> Exhibit P-101, CAA0200, para. 6.

<sup>199</sup> Exhibit P-101, CAB0316, CAB0321.



firearms in June of 1985, prior to the bombing: information relating to UZI's in Windsor, coming in from Detroit; and gun-related arrests of Sikhs in Windsor.<sup>200</sup>

169. Although there were isolated references to bombings in the information CSIS was receiving<sup>201</sup> the vast majority of the threat information coming in related to hijackings or attacks on embassies. Where bomb information came in, it sometimes related back to embassies, which were more protected targets than other Indian interests, such as Air India.<sup>202</sup>
170. After June 4, 1985, CSIS PSU teams covered Parmar for 17 straight days.<sup>203</sup> PSU resources were in high demand, and this intense coverage could not continue indefinitely.<sup>204</sup> A significant CSIS counter-intelligence target was arriving in Vancouver on June 21<sup>st</sup>, and the PSU was directed to follow him. Nothing observed by the PSU in the seventeen day period after the Duncan blast necessarily warranted further coverage of Parmar on that weekend. The manager who made the decision was not called as a witness at the Inquiry, but he would have considered whether continued coverage would ultimately be counter-productive. It is dangerous to engage in wholesale speculation about what might have been.

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<sup>200</sup> Evidence of Ray Kobzey, Transcript, Vol. 33, pp. 3859-60. See also para. 101-109 of Submissions Re: "the Sikh Desk, 1985/85".

<sup>201</sup> Exhibits P-101, CAB0093, CAB0094, CAB0218 – all refer to June 1984 bomb threat telephone call to Air India. Exhibit P-101, CAB0243 references uncorroborated information that "radical and violent Sikhs from Western Canada have been discussing plans to bomb the Indian High Commission in Ottawa and/or the Indian consulate in Vancouver, around 1985-06-06. See also Exhibit P-101 CAB0243 and CAF0113. See also Evidence of Ray Kobzey, Transcript, Vol. 32, pp. 3805-06.

<sup>202</sup> Evidence of Robert Burgoyne, Vol. 31, p. 3459.

171. Ray Kobzey felt he did not receive enough PSU coverage for Parmar:<sup>205</sup>

“However, I was one half of a two-man desk that was one component of a multi-desk counterterrorism unit and a counterintelligence unit and a counter-subversion unit, all of whom were competing fiercely for scarce PSU resources in the form of two teams...”<sup>206</sup>

172. It becomes impossible to separate the fact of the bombing from the events in Duncan, after June 23<sup>rd</sup>, 1985. The context of the events and knowledge must be considered as they stood at the time of the event. It should not, it is submitted, be considered a fault not to recognize the sound in the woods as a bomb rather than a gunshot. The comprehension of that sound was a judgment of common sense, informed by the surrounding threat environment known to everyone at the time.

173. The RCMP provided the assistance required to CSIS, and CSIS pursued its investigation. The implications were being analysed and assessed by CSIS according to the best information they had available at that time. The fact of the bombings themselves provided a horrible clarity to investigators and analysts across Canada, but a review of reports and threat assessments still did not show them how they could have predicted the events of June 23, 1985.<sup>207</sup>

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<sup>203</sup> CSIS conducted surveillance of Parmar for 4 days in April 1985, 12 days in May 1985, and beginning May 29<sup>th</sup>, for 23 days straight, until 2145 p.m. on June 21, 1985. Evidence of Kobzey, Transcript Vol. 33, p. 3811 (says he received surveillance coverage for “several days” afterwards).

<sup>204</sup> Evidence of Ray Kobzey Transcript, Vol. 32, p. 3773.

<sup>205</sup> Evidence of Ray Kobzey, Transcript, Vol.33, p. 3794; Exhibit P-101, CAB0209. Mr. Kobzey requested physical surveillance of Parmar on June 4, 1985.

<sup>206</sup> Evidence of Ray Kobzey Transcript, Vol. 32, p. 3773.

<sup>207</sup> Evidence of Ray Kobzey, Transcript Vol. 33, pp. 3805-06; Evidence of Bob Burgoyne, Transcript, Vol. 30, pp. 3434-35; Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3483.

### 3. Khurana

174. This incident relates to a meeting which took place on June 12th, 1985 at the residence of Sarabjit Khurana in British Columbia. In response to a challenge by a third party to the effect that “no ambassador or consuls killed yet”, it was reported that an individual known as Pushpinder Singh stated, “That they should wait two weeks to see something. They will then show the community they are serious”. Shortly after the meeting, Khurana advised Don McLean of the VPD that this statement was, in fact, made.<sup>208</sup>
175. Most, but not all, of the meeting was recorded by the Vancouver Police Department and there have been many efforts over the years to translate the resulting tape. None of the translations report the statement Khurana claimed to have heard but, as noted, not all of the meeting was captured on the recording. These translations have resulted in quite different versions of the statements on the tape.<sup>209</sup>
176. VPD provided this information to CSIS and a June 18<sup>th</sup>, 1985 threat assessment sent to VIP Security (amongst others) recounted this incident generally, without context or names and along with other information.<sup>210</sup> Officer McLean attended at the Richmond RCMP detachment and provided a debriefing on June 23<sup>rd</sup>, 1985.<sup>211</sup> The RCMP had little information about this incident prior to the bombing and certainly nothing to indicate that it was particularly significant. Axel Hovbrender of the VPD stated:

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<sup>208</sup> Evidence of Don McLean, Transcript, Vol. 21, p. 1985.

<sup>209</sup> Exhibit P-391, Public Productions 3335 & 3333.

<sup>210</sup> Exhibit P-101, CAA0220. It is not clear whether or when the CSIS situation report of June 14<sup>th</sup> was seen by the RCMP.

<sup>211</sup> Evidence of Don McLean, Transcript, Vol. 21, p. 1986.

My first instinct, in relation to that comment, was another hothead beating his chest and saying, “You watch.” And we were hearing a lot of that, within the community. There was a lot of threats; intimidation; talks about hit lists. So my first reaction was, “It’s somebody beating their chest saying, ‘Oh, you watch in two weeks’ time.”<sup>212</sup>

177. After the bombing this matter was investigated by both the VPD and the RCMP. Mr. Khurana was, for the most part, contacted by VPD members with the Task Force who had a previous relationship with him. VPD and the Task Force also extensively investigated those present at the meeting. It was learned that Pushpinder Singh was a member of the ISYF and not the BK (Parmar’s group). Parmar and the BK became the focus of the investigation at a comparatively early stage. Notwithstanding this focus the RCMP also continued to investigate those present at the meeting and conducted interviews with many people on this point over the years. This matter has been thoroughly investigated over the years and no link to the Air India bombing has in any way been substantiated.<sup>213</sup>

#### **4. Plan to Hijack an Air India Aircraft**

178. A small piece of information was received from the Indian High Commission on October 9<sup>th</sup>, 1984, indicating that Ajaib Singh Bagri was involved in a plan to hijack an Air India aircraft somewhere in North America. The information was received by External Affairs, who passed it to VIP Security, who in turn forwarded it to CSIS for a threat assessment as well as sharing it with Airport Policing. Airport Policing then ensured it was passed on to

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<sup>212</sup> Evidence of Supt. Axel Hovbrender, Transcript, Vol. 33, p. 3921

<sup>213</sup> Evidence of Inspector Lorne Schwartz, Transcript Vol. 51, p. 6346 & 6359; Exhibit P-391, Public Productions 3341 & 3342.

Transport Canada and Air India officials at Mirabel which was the only Canadian airport Air India flew out of at that time.<sup>214</sup>

179. The information was forwarded to the people who required it at the time: those involved in diplomatic protection and airport policing. However, there were few details provided to act upon. There were no details about how the hijacking was to take place, possible timing nor about the location, other than “North America”.
180. Bagri was already known to CSIS<sup>215</sup> and to Axel Hovbrender of VPD at the time this information was received.<sup>216</sup> The information indicated that he was connected with Parmar but in reality it did little more. This was simply a piece of information that, while of concern and to be noted and assessed, did not lead anywhere.

### **5. Parmar’s Secret Project**

181. Another small piece of information was received from the Indian High Commission before June 22, 1985. The following was included with other information:

One of the most dangerous groups around at the moment is probably Parmar’s group located in Burnaby. Parmar is the man accused of murder in India, who was arrested and detained in West Germany for two years prior to returning to Canada in October 1984. Mr. Singh stated the Parmar group is keeping a very low profile and working on a highly secret project<sup>217</sup>

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<sup>214</sup> Exhibits P-101, CAA0099 and CAA0103; Evidence of Joe McDonald, Transcript, Vol. 27, pp. 2802-06; Evidence of Dick Muir, Transcript, Vol. 27, pp. 2911-13.

<sup>215</sup> Exhibit P-101, CAB0144.

<sup>216</sup> Evidence of Axel Hovbrender, Transcript, Vol. 33, p. 3887.

<sup>217</sup> Exhibit P-101, CAC0290.

182. From the description provided, it is clear that the person referred to is actually Talwinder Singh Parmar. The fact that he and his group were “working on a highly secret project” is nothing more than a confirmation of what was already known to both law enforcement and the intelligence community: Parmar was dangerous and he was up to something. This information was provided in April 1985; CSIS was already intercepting the communications of Parmar at that time. This information did not provide any actionable intelligence which could be used to prevent whatever secret project Parmar was involved with.
183. Each of these discrete and separate incidents, even taken together show that in the period before the Air India bombing the threat was high. With hindsight some have said “surely they should have known”. It is submitted, however, that even the most astute analyst, examining these disparate pieces of information (including the June 1<sup>st</sup> telex which is addressed elsewhere in these submissions) would still not have had enough information to prevent the tragedy which took place on June 23<sup>rd</sup>, 1985.

### **6. The Testimony of James Bartleman**

184. Some of the most surprising and it is submitted, inaccurate testimony at the Inquiry, was given by the Honourable James K. Bartleman who at the time of his testimony was the Lieutenant Governor of Ontario. At relevant times in 1985 Mr. Bartleman was the Director General of Intelligence, Analysis and Security in what was then the Department of External Affairs.<sup>218</sup>

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<sup>218</sup> Evidence of James Bartleman, Vol. 22, p. 2094.

185. In light of reports from various sources concerning growing activity of Sikh extremists, Mr. Bartleman initiated a proposal resulting in the establishment in May, 1985 of an ad hoc inter-departmental working group on Sikh terrorism which met at a DEA under the chairmanship of Gerald Skinner, Director of the Emergency Preparedness Division in Mr. Bartleman's bureau at DEA<sup>219</sup>.
186. Mr. Bartleman testified that earlier in the week of June 23, 1985, while going through the daily intercept package he received from the Communications Security Establishment ("CSE"), he found a document which indicated that the Air India flight leaving Toronto on June 22, 1985 was targeted for attack. He described the CSE document as raw unevaluated information in that it had not been assessed.<sup>220</sup>
187. Mr. Bartleman knew that on the same day a meeting of the aforementioned ad hoc interdepartmental committee was taking place at DEA. He put the document in a secure folder and went to the meeting where he pulled aside the senior RCMP officer attending the meeting and showed him the document and asked him if he had seen it. Mr. Bartleman knew to approach this particular RCMP officer as the RCMP officer's name was indicated on the CSE document. According to Mr. Bartleman the RCMP officer told him that he knew all about the document and to mind his own business. Mr. Bartleman testified the RCMP officer hissed at him. He had never been treated that way in his career and he has never forgotten the incident<sup>221</sup>.

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<sup>219</sup> Evidence of James Bartleman, Vol. 22, pp. 2104-2105

<sup>220</sup> Evidence of James Bartleman, Vol. 22, pp. 2101 and 2108.

<sup>221</sup> Evidence of James Bartleman, Vol. 22, pp. 2108-2110.

188. Although there was a chain of command and reporting line in place at DEA in which Mr. Bartleman reported to ADM, Michael Shenstone and DM Gordon Smith, he did not pass on the information that he claims to have seen to them nor to any other person in DEA or in the Canadian Government Security and Intelligence community in which he occupied an important position. This included the post-disaster DEA and Inter-Departmental meetings which Mr. Bartleman attended where information was discussed which included pre-bombing events. His evidence was that once he brought the information to the attention of the RCMP officer who told him that the information was known, he had done everything that could be expected of him as the information was in the hands of those who were responsible for acting on it<sup>222</sup>.
189. Although Mr. Bartleman has never forgotten his encounter with the RCMP officer he could not recall the identity of the RCMP officer beyond the point that the officer was in plain clothes. Nor did he take any action to report the officer's conduct to RCMP superiors, some of whom he knew well or to his own superiors at DEA<sup>223</sup>.
190. Mr. Bartleman acknowledged that his immediate superiors Messrs. Shenstone and Smith were cleared to see the same information as he was. As well there were a number of analysts in the intelligence and analysis division of DEA who could see the same

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<sup>222</sup> Evidence of James Bartleman, Vol. 22, pp. 2094, 2109, 2118, 2136. For instance see para. 38 of Statement of Archibald McArthur Barr filed as Exhibit P-392: "CSIS had a very good working relationship with the Communications Security Establishment ("CSE") and received information daily from the agency. We were able to establish and maintain a good relationship by sharing the most sensitive information. Mr. Bartleman has testified that during the week of June 17, 1985 he saw a specific warning that Air India departing Toronto would be targeted. At no time did I become aware of a piece of information suggesting an imminent threat to Air India during the week of the bombings. Even after the bombings, at no time during meetings at CSIS or at the many meetings with RCMP, DEA and the Solicitor General did such an alleged threat surface. I was copied on Minutes of IAC meetings attended by Mr. Bartleman after the bombings and these did not surface such information from him. I have not seen anything to substantiate any part of this allegation."



information if they requested it. Mr. Bartleman testified he was under no obligation to report information of this type up the line to his immediate superiors nor does he recall ever discussing the information with analysts in DEA who would have been entitled to see the information even though it would have been consistent for him to do so. Further he acknowledged this type of information would have been available to a number of senior persons in other departments of Government which included persons who sat on some of the intelligence committees of which Mr. Bartleman was a member.<sup>224</sup> Yet Mr. Bartleman is the only person who claims to have seen such information and even then only 22 years later.

191. In contrast to Mr. Bartleman's testimony, Gordon Smith, former Deputy Minister at DEA and the DM immediately superior to Mr. Bartleman described the main concerns he had upon hearing Mr. Bartleman's evidence. Those were that Mr. Bartleman did not notify his superiors about information he claimed to have seen, that he did not speak of it following the disaster at meetings at which many senior bureaucrats attended and that no one else in government appears to have known about it.<sup>225</sup> Mr. Smith testified that in his view Mr. Bartleman would have been under an obligation to report the information up the line. Mr. Smith would have felt an obligation to notify the Minister of External Affairs. Further this information would have become known to a number of persons fairly rapidly<sup>226</sup>.

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<sup>223</sup> Evidence of James Bartleman, Vol. 22, pp. 2110, 2139 and 2140.

<sup>224</sup> Evidence of James Bartleman, Vol. 22, pp. 2120-2122 and 2130-2132.

<sup>225</sup> Evidence of Gordon Smith, Vol. 24, pp. 2473-75.

<sup>226</sup> Evidence of Gordon Smith, Vol. 24, p. 2472.

192. William Warden, who in June 1985 was the Canadian High Commissioner to India stationed in New Delhi testified that if he had received information Mr. Bartleman claims to have seen he would have been “running all over the place with it” and that in the context of the events of the time he could not imagine that he would “have done anything other than stirred up quite a hornet’s nest”. Mr. Warden would have seen himself under the obligation to have been in touch immediately with a number of people in External Affairs as well as other departments not only the RCMP as the information would have been of keen interest to a number of persons. And that would have been of keen interest not only to a number of persons in the halls of external affairs but other departments as well. Mr. Warden had never heard of the existence of such a document. It was also his evidence that information of this kind would be discussed at post disaster meetings<sup>227</sup>.
193. Mr. Bartleman’s evidence is also troubling when seen in light of evidence given by Lloyd Hickman who in June 1985 was RCMP Inspector, special projects within the Department of Protective Policing in Ottawa. Mr. Hickman was the senior RCMP officer in attendance at the ad hoc interdepartmental committee meeting at DEA on June 18, 1985 and does not recall any attendance of Mr. Bartleman at the meeting, was never shown any document by Mr. Bartleman, although he was cleared to receive CSE information and found it inconceivable that an RCMP officer would have reacted to Mr. Bartleman in the manner in which Mr. Bartleman described he was treated by the RCMP officer at the June 18, 1985 meeting at DEA<sup>228</sup>.

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<sup>227</sup> Evidence of W. Warden, Vol. 24, pp. 2429-2432

<sup>228</sup> Evidence of Lloyd Hickman, Vol. 34, pp. 4010-15.

194. Mr. Hickman also testified that if information of the type referred by Mr. Bartleman had come to his attention, he would have run it up the line and down the line to make sure it went to his Director, to Airport Policing and to all persons involved in protective work across the RCMP. In addition he would have sent it to CSIS for an evaluation and reported any feedback to RCMP operations personnel.<sup>229</sup>
195. On December 6, 2007 the Inquiry heard testimony from Bill Sheahan and Pierre LaCompte, two former employees of CSE. Mr. Sheahan testified as to the manner in which information is received and processed by CSE and from there distributed to government departments and in particular how those functions were carried out in June 1985 at which time Mr. Sheahan was the CSE client relations officer (CRO) embedded at DEA.
196. Mr. Sheahan explained that CSE is and was Canada's foreign signals intelligence ("SIGINT") agency. He explained that the SIGINT process involves the collection of data by CSE which is unintelligible by humans until it is processed by machines. The product of that processing phase is referred to as "traffic" which is then taken and stored in searchable electronic databases accessible to CSE SIGINT analysts. The CSE analyst pieces together a story from various bits of information CSE has intercepted in a form usable to CSE's clients. The product of this work of the CSE analyst is a written report referred to as an "end product report" which paraphrases or summarizes various communications intercepted by CSE. It is such end product reports that are shared or distributed to CSE's clients. It is for CSE's clients to assess or evaluate these end

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<sup>229</sup> Evidence of Lloyd Hickman, Vol. 34, p. 4019.

product reports as CSE does not perform those functions. Notwithstanding that, clients may often refer to an end product report as raw intelligence.

197. It is an end product report which Mr. Bartleman, or any persons at DEA or in other departments of Government would receive from CSE<sup>230</sup>. As explained by Mr. Sheahan, CSE had sole responsibility for controlling the release of SIGINT within the Canadian Government. End product reports did not have names of addressees on the face of the report when disseminated by CSE. A Government department could disseminate SIGINT reports to appropriately cleared individuals within their departments but not outside of their department without prior approval from CSE<sup>231</sup>.
198. End product reports in 1985 were distributed to DEA either by way of bulk pulls which were sent to the DEA secure registry where they could be accessed by persons with the appropriate security clearance such as Mr. Bartleman or to senior officials by personal service from the CRO who had access to CSE information via a secure computer terminal installed at DEA.<sup>232</sup>
199. Mr. Sheahan was the embedded CRO at DEA in June, 1985 and provided personal service to 19 senior DEA officials including Michael Shenstone and Gordon Smith. Mr. Sheahan would see all CSE information which was available to DEA and from that select

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<sup>230</sup> See evidence of Gordon Smith, Volume 24, p.2450-51 and evidence of Bill Sheahan, Volume 90, p.11925-6.

<sup>231</sup> Evidence of Bill Sheahan, Volume 90, p. 11906-9.

<sup>232</sup> Evidence of Bill Sheahan, Volume 90, p. 11903-11905, 11941, 11943. In 1985 the CRO program was a pilot program which had been established in 1984. It provided for an embedded CSE CRO who would have secure computer terminal access to CSE information through computers installed at Government agencies. The initial Departments where this service operated were DEA, PCO, Finance and Industry Trade and Commerce. This program has subsequently expanded to serve numerous Government departments and agencies.

the CSE information that he took to the DEA senior officials. The same information would be available to Mr. Bartleman in the CSE material delivered to the DEA registry. Mr. Sheahan also kept a weekly log of all of the CSE SIGINT material he showed to the senior DEA officials he serviced which also identified which officials were shown which material. Mr. Bartleman was among those provided with a weekly copy of this log<sup>233</sup>.

200. Messrs. Sheahan and LaCompte described the steps they would have taken had a CSE document containing the information which Mr. Bartleman testified he saw come to their attention. According to their evidence this information would have been treated extremely seriously and brought to the attention of a number of persons in a number of departments of Government in short order<sup>234</sup>. Also it would have been of importance to CSE to make known their discovery of such information to as many agencies as possible to enhance their own reputation<sup>235</sup>.
201. It was the evidence of Pierre LaCompte that on June 23, 1985 after the loss of the aircraft he was called to an emergency meeting at DEA. Upon his arrival he was asked if there was anything in the SIGINT reporting of CSE that would have indicated an advance warning of the threat to the Air India Flight 182. Mr. LaCompte thought that he had

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<sup>233</sup> Evidence of Bill Sheahan, Volume 90, p. 11906, 11910-11. CSE located weekly logs produced by Mr. Sheahan including the log for the week of June 17-21, 1985. That log was inspected at CSE by Commission counsel and counsel for Mr. Bartleman. It contains no mention of the report Mr. Bartleman claims to have seen.

<sup>234</sup> Evidence of Bill Sheahan, Volume 90, p. 11911-12. An example of what would be expected to occur was provided in the evidence of Pierre LaCompte who on November 8, 1984 accessed a CSE end-product report which indicated an attempt would be made to hijack an Air India flight from Montreal and explode the plane over Frankfurt. Mr. LaCompte, although a junior person, insisted immediately on a meeting with the Deputy Minister of Transport and also took the information to other government departments. The report turned out to be an example of circular reporting as it simply dealt with information which had been previously reported through various RCMP investigations. The event which was the subject of the report never occurred. Evidence of Pierre LaCompte, Vol. 90, pp. 11915-20.

<sup>235</sup> Evidence of Gordon Smith, Vol. 24, p. 2474.

recalled something and attempted to access the CSE database through the secure computer installed at DEA but was unable to effect the connection. He returned to CSE to search the database and located a November 1984 end-product report which referred to an earlier threat that had not materialized. This report had turned out to be an example of circular reporting in that it was simply information which had earlier been reported by law enforcement within Canada. Mr. LaCompte sent the report to Mr. Lavertu at DEA. Mr. LaCompte's understanding was that it was to be shown to Mr. Bartleman.<sup>236</sup>

202. Mr. Bartleman testified that following his attendance at the meeting where he showed the document to the RCMP officer he put it back with other documents following which it was taken away in due course to be shredded or sent or returned to CSE.<sup>237</sup>
203. As explained by Mr. Sheahan and Mr. LaCompte, in June 1985 traffic was not retained by CSE except in some cases where it may have been attached to the end product report produced from it. However all end product reporting in June 1985 and today is retained in electronic databases at CSE. These databases have been searched and also made available to Commission Counsel for search. No such document as testified to by Mr. Bartleman has been located. Neither Mr. Sheahan nor Mr. LaCompte saw or heard of such information as testified to by Mr. Bartleman.<sup>238</sup>

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<sup>236</sup> Evidence of Pierre LaCompte, Vol. 90, pp. 11920-22.

<sup>237</sup> Evidence of James Bartleman, Vol. 22, p. 2143.

<sup>238</sup> Commission Counsel attended at CSE on November 30, 2006, March 7, 2007 and July 13, 2007 either for interviews or to inspect documents including all end product reports from June of 1985. They were also offered access to CSE computer databases to make their own searches in an attempt locate the report Mr. Bartleman claims he received. See also the evidence of Bill Sheahan, Vol. 90, pp. 11903, 11910-11, 11938-40, 11944, 11950.

204. Mr. Bartleman testified that he had been informed that in an effort to find anyone else who may have seen the information the Department of Justice interviewed a number of individuals whose names were provided to Mr. Bartleman through his counsel, most of which names he recognized, as very senior people who would have had processed intelligence and the right to see such information. Mr. Bartleman's counsel was advised none of such persons had ever seen or heard of such information as of the time of Mr. Bartleman's testimony.<sup>239</sup>
205. There were a number of non-specific threats to Air India flights from Toronto and Montreal in the spring of 1985. Extra security measures were put in place for flights from Montreal and Toronto and in fact extra security was provided for the Air India flight departing from Toronto and Montreal on June 22, 1985. Confirmation of the provision of such extra security of Air India flights in June was contained in several communications passing between DEA and the RCMP and various other departments and in particular between RCMP and DEA with regard to increased security for June 22 Air India flight<sup>240</sup>. Some of these communications were directed to Mr. Bartleman's attention and others would have been accessible to him as they were directed to personnel that reported to him. It may be that over time Mr. Bartleman may have confused one of such documents for something else. After 22 years of silence any other explanation is simply

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<sup>239</sup> Evidence of James Bartleman, Vol. 22, pp. 2110, 2132. Department of Justice counsel provided Mr. Bartleman's counsel with a list of 28 persons who had been interviewed by Department of Justice counsel which persons would either have had access to the same information as Mr. Bartleman, or who were at the June 18 meeting of the ad hoc committee at DEA or subsequent meetings of committees where it would be expected the issue would come up or who would have delivered such information to various senior people in government. Although a number of persons listed had been interviewed by Commission Counsel only Gordon Smith, Dick Muir, Lloyd Hickman and Glen Gartshore were called as witnesses by Commission Counsel. Messrs. LaCompte and Sheahan who were also interviewed by Commission counsel were called as witnesses by Government Counsel on December 6, 2007.

inconceivable. The fact is the CSE document that Mr. Bartleman believes he saw never existed.

## 7. Mel Deschenes

206. CSIS was aware of a range of possible threats to the security of Indian missions, personnel, citizens and property, including Air India in the period prior to the bombing. What CSIS did not know with specificity was “against whom, what, when or where” the Sikh extremist threat would reveal itself.
207. Three witnesses were called at this Inquiry to suggest that CSIS knew and ignored a specific threat to Air India.<sup>241</sup> Graham Pinos and Michael Ann Macdonald testified that they attended a rogatory commission in Los Angeles during the week before Air India 182 and Narita airport were bombed. Mr. Deschenes, Director General Counter Terrorism from CSIS, was present in Los Angeles to make submissions if issues relevant to the s. 36 of the *Canada Evidence Act* were raised.
208. At the Air India Inquiry, Pinos alleged that Deschenes said two things in L.A.: (1) that CSIS was concerned about “rogue elements of the Indian security service”<sup>242</sup>; and (2) that he was afraid they would “blow a plane out of the air”.<sup>243</sup> Pinos later admitted that even though he gave a written, signed statement to Mr. Doust in 2002 (one of the prosecutors

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<sup>240</sup> Exhibit P-101, CAE0201.

<sup>241</sup> Mr. James Bartleman, Graham Pinos and Michael Anne Macdonald.

<sup>242</sup> Interestingly, MacLean’s Magazine on August 5, 1985 at p.13 reported of the Kirpal investigation: “...authorities were also giving consideration to another, startling theory: that a renegade group of Indian intelligence experts might have planted a bomb themselves in an effort to discredit militant Sikhs...”

<sup>243</sup> Testimony, Vol. 30, p.3364; at p.3347 he stated “Likely they’d bring a plane down.”



on the *Malik and Bagri* murder trial), he did not mention anything similar to “blowing a plane out of the air”. The police officer who first interviewed Pinos in 2002 stated categorically that had Pinos even mentioned anything similar, such a statement would have been recorded in his notes.<sup>244</sup> Mr. Pinos, a former federal prosecutor, rationalized this very serious omission by saying the following:

...this is not putting bread and butter on my table...I really don't care what Doust is doing out West; it's of no interest to me whatsoever...<sup>245</sup>

209. Michael Anne Macdonald's allegation was that Mr. Deschenes, citing an urgent problem with Sikh extremists in Vancouver, left L.A. suddenly when he was expected to attend the rogatory hearings.<sup>246</sup> She admitted at the Inquiry, however, that the night before he left, it was known to counsel and police that the judge presiding had suffered a serious illness and would fly home: the hearings would not continue with evidence the next day.
210. Mr. Deschenes was not called as a witness.<sup>247</sup> His statement dated November 25, 1988<sup>248</sup> was entered into evidence and is clear: the rogatory commission was being adjourned, and since there was therefore no reason to remain in L.A., Mr. Deschenes went home to

<sup>244</sup> Inquiry, Vol. 63, p.7922; Inspector Best also wrote in his notes that Pinos specifically stated, “Deschenes never said anything about a bomb.” Even more curious, Pinos in 2002 stated to the police and the Crown that Deschenes returned to L.A. a few days later with specific details about the buckling of the floors of AI 182. At the Inquiry he admitted that Deschenes never returned to L.A. with such information; he now said that Deschenes shared this information in Ottawa. Bill Turner, a CSIS member assigned to the Air India trial to bring the perpetrators to justice, testified that there was never any suggestion that CSIS knew about the details of the damage to AI 182 before the findings of the Kirpal Commission were widely published in 1986.

<sup>245</sup> Evidence of Graham Pinos, Transcript, Vol. 66, p. 8181.

<sup>246</sup> It was not surprising that Ms. Macdonald, not having made a written note of this alleged exchange, and giving evidence 23 years later, was not exactly clear: “I am positive it was before there was knowledge of Justice Lacey being ill. About that *I'm pretty sure.*” Evidence of Michael Anne Macdonald, Transcript, Vol. 30, p.3283.

<sup>247</sup> He was interviewed by Commission counsel in regard to a number of matters including his reasons for leaving Los Angeles on June 20, 1985.

<sup>248</sup> Exhibit P-101, CAF0115.

Ottawa. In this statement "Mr. Deschenes stated categorically that he was "certainly not aware of any specific or immediate threat" to Air India.<sup>249</sup> Given all of the circumstances, both Pinos and Macdonald's evidence on such a crucial issue as foreknowledge of a specific threat ought to be rejected.

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This statement is also consistent with information given by Mr. Deschenes to the RCMP in an interview conducted December 17, 1990 by RCMP officers Rautio and Blachford and CSIS legal counsel Wright and Assad. See Exhibit P-101, CAD0003 at p.8 of the document/Ringtail p.10; and with information provided by Mr. Deschenes to Crown counsel, Len Doust in a telephone interview conducted April 24, 2002, see Exhibit P-136.

## IV. HUMAN SOURCES BEFORE AND AFTER THE AIR INDIA BOMBING

211. The use of human sources before and after the Air India bombing was a recurring theme in the evidence before this Inquiry. Both CSIS and the RCMP made extensive use of human sources, although their approach to these sources and the use to which they put their information is distinct. This section of the Attorney General's submissions will examine the approach of CSIS and the RCMP in turn.

### A. CSIS'S APPROACH TO HUMAN SOURCES

212. Human sources are probably a security intelligence agency's most important resource.<sup>250</sup> Human sources are people who volunteer unique information or who cooperate with security intelligence agencies when requested to do so. Upon direction, some human sources will knowingly place themselves in a position to obtain information at considerable personal risk.<sup>251</sup>

213. In most cases developing a human source is contingent on CSIS keeping the individual's identity confidential.<sup>252</sup> The Service cannot effectively discharge its mandate without providing these assurances of confidentiality.<sup>253</sup> The *CSIS Act* enjoins the Service to protect the identity of confidential human sources.<sup>254</sup> Because confidentiality is often the

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<sup>250</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9109, Evidence of Chris Scowen, Transcript, Vol. 50, p. 6155.

<sup>251</sup> This risk extends to a human source's family as well as to their reputation. *See* Evidence of Jim Warren, Transcript, Vol. 72, p. 9113, Evidence of Merv Grierson, Transcript, Vol. 75, p. 9483.

<sup>252</sup> Evidence of Neil Eshelman, Transcript, Vol. 75, p. 9385, Evidence of Jim Warren, Transcript, Vol. 72, p. 9109, Evidence of Chris Scowen, Transcript, Vol. 50, p. 6137.

<sup>253</sup> Evidence of Merv Grierson, Transcript, Vol. 75, p. 9520.

<sup>254</sup> *Canadian Security Intelligence Service Act*, s. 18.

*sine qua non* of a human source's cooperation with the Service, it is not surprising that a source may sever all contact with the Service should his identity be compromised.<sup>255</sup>

Human sources are much more willing to speak with an intelligence service, which has no authority to compel them to become witnesses, greatly diminishing the likelihood of their exposure.<sup>256</sup>

214. In line with the Service mandate to provide continuing advice to the Government of Canada, CSIS concentrates on developing long-term human sources that are capable of obtaining a broad range of information encompassing many issues and targets. Whereas law enforcement must be wary of a human source's motivations and interests for fear they may reflect negatively before the courts, CSIS is not so encumbered.<sup>257</sup> In the context of an investigation, CSIS may supply information to a source with the intention that it be used to obtain further information; this interaction could preclude the source from providing evidence in a criminal proceeding.<sup>258</sup> CSIS may offer to intercede on behalf of the source with Government in a favourable way.<sup>259</sup> This type of inducement risks contaminating any potential evidence that a source turned witness might provide.

215. Throughout the Air India investigation, CSIS shared information with the RCMP, including sensitive information obtained from human sources. For the reasons outlined

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<sup>255</sup> Evidence of Jack Hooper, Transcript, Vol. 50, pp. 6234 and 6272.

<sup>256</sup> Evidence of Mervin Grierson, Transcript, Vol. 75, p. 9486, and of Neil Eshleman, Transcript, Vol. 75, p. 9381-9382.

<sup>257</sup> Evidence of Neil Eshleman, Transcript, Vol. 75, pp. 9389-90 CSIS simply seeks to understand these motivations and manage a source's rationale for cooperation.

<sup>258</sup> Evidence of Neil Eshleman, Transcript, Vol. 75, p. 9424.

<sup>259</sup> Evidence of Jim Warren, Transcript, Vol. 72, pp. 9115-9116. While the Service may make a case for a source, it cannot and does not make promises.

above, CSIS sought to keep confidential the identities of its human sources while providing the RCMP with the significant criminal information the sources had to offer.<sup>260</sup>

In some instances, the information provided to the RCMP by CSIS included an overlay of analysis that assessed the information's reliability as opposed to simply disclosing raw data provided by sources.<sup>261</sup>

216. CSIS recognized the inevitability of passing criminal-related information obtained from human sources to the RCMP during the Air India investigation; however, the Service weighed a number of factors in determining the timing and extent its disclosure. These factors included:

- The imminence of a threat to physical safety of an individual
- The likelihood that CSIS' ongoing investigation will be compromised<sup>262</sup>
- The access the source has to unique information
- The nature of the criminal information provided by the source
- The length of CSIS' association with the source vis-à-vis the relevance of its criminal intelligence
- The importance of the source in reporting on other CSIS targets
- The likelihood of such disclosure being shared beyond the RCMP
- The seriousness of the criminal offence, whether already having taken place or anticipated; and,
- The source's willingness to cooperate with the RCMP<sup>263</sup>

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<sup>260</sup> Evidence of Neil Eshleman, Transcript, Vol. 75, p. 9385; Evidence of William Laurie, Transcript, Vol. 61, pp. 7412-13, 7417; Evidence of Merv Grierson, Transcript, Vol. 75, pp. 9476, 9483, 9518-19. All speak to the need to keep the identities of sources confidential. See also Evidence of Jack Hooper, Transcript, Vol. 50, p. 6232.

<sup>261</sup> Exhibit P-101, CAF0348 and CAF0406. See also Evidence of Jack Hooper, Transcript, Vol. 50, pp. 6221-22; Evidence of William Laurie, Transcript, Vol. 61, p. 7476; Evidence of John Stevenson, Transcript, Vol. 62, pp. 7654-55, 7678-80; Evidence of Neil Eshleman, Transcript, Vol. 75, pp. 9411-2; Evidence of Merv Grierson, Transcript, Vol. 75, pp. 9459-60; Exhibit P-101, CAA0553(i).

<sup>262</sup> Losing a human source to a prosecution could mean losing the one asset capable of informing the Government of Canada about a particular threat to national security.

217. CSIS' paramount consideration is source identity and safety.
218. Nevertheless, in rare instances CSIS will disclose to the RCMP a human source's identity without the source's express permission if important criminal information is at stake<sup>264</sup>. Further, if there was an imminent threat of a serious criminal act and the disclosure of the source's identity was crucial to prevent it, CSIS would err on the side of disclosure. CSIS was concerned about the RCMP's ability to contain/protect the identity of human sources. Headquarters directed the Regions that no information that would identify a human source should be passed to the RCMP, but that in the event of an emergency where life was threatened, the Region could go ahead with disclosure and report immediately to HQ.<sup>265</sup>
219. While the possibility of a CSIS human source having information of interest to law enforcement is not uncommon, it is not an everyday occurrence<sup>266</sup> and the decision to cooperate with law enforcement is ultimately that of the individual source.<sup>267</sup> A person

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<sup>263</sup> Evidence of Jack Hooper, Transcript, Vol. 50; Evidence of Chris Scowen, Transcript, Vol. 50; Evidence of Merv Grierson, Transcript, Vol. 75; Evidence of Neil Eshleman, Transcript, Vol. 75; Evidence of William Laurie, Transcript, Vol. 61; and Evidence of John Stevenson, Transcript, Vol. 62 all speak to these issues.

<sup>264</sup> The evidence of Chris Scowen, Transcript, Vol. 50, p. 6145, says if CSIS came across the smoking gun, "all bets are off". See Appendix 3 to this Volume concerning Human Sources.

<sup>265</sup> Exhibit P-101, CAB0682 of November 13, 1986.

<sup>266</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9109.

<sup>267</sup> Former CSIS DDO Jack Hooper testified that human sources are not "switches on a pair of copper wires", See Evidence of Jack Hooper, Transcript, Vol. 50, p. 6236, Portelance, Transcript, Vol. 88, p. 11507.

who provides information clearly relevant to a criminal investigation would be encouraged to speak to the police.<sup>268</sup>

220. CSIS sources provide information on any number of targets and threats, much of it irrelevant to a criminal investigation. CSIS will protect the nature of the relationship and tasking in respect of the source's participation in investigations not relevant to the criminal case.<sup>269</sup>

221. In the Air India context CSIS and the RCMP sought ways to cooperate where human source issues intersected the interests of both organizations. There was some consideration given to allowing one CSIS handler to continue his interviews on behalf of the RCMP; at other times it seemed clear that the RCMP intended to "take over" the source.<sup>270</sup> It appeared to be the assumption of CSIS that any purely criminal source would be disclosed to the RCMP – and that criminal intelligence from a CSIS source would also be shared.<sup>271</sup> There have been occasions in which the Service and the RCMP have exploited a human asset at the same time, for different reasons.<sup>272</sup>

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<sup>268</sup> Ms. E: typically, CSIS would report information from its source interviews, and this reporting would be accessible by the RCMP L.O. If CSIS had information that appeared to corroborate earlier assertions by a source, the corroboration would likely make its way into a report. CSIS would not have considered Ms. E's repetition of any part of her story to Willie Laurie to be "corroboration" of that story.

<sup>269</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11513.

<sup>270</sup> Eshleman and Laurie's experiences with Mr. Z and Ms. E – Evidence of Neil Echelman, Transcript, Vol. 75 and Evidence of Willie Laurie, Transcript, Vol. 61.

<sup>271</sup> Evidence of Jim Warren, Transcript, Vol. 73, pp. 9179 – 9181.

<sup>272</sup> Evidence of Jim Warren, Transcript, Vol. 73, p. 9156; Evidence of Jack Hooper, Transcript, Vol. 50, 6235.

## **B. CONSIDERATION OF THE CHALLENGES POSED BY SOURCES FOR THE RCMP**

222. Law enforcement agencies like the RCMP have a fundamentally different relationship with sources than intelligence services have. The police deal with sources for a variety of purposes, but one fundamental reason is that sources are vital for criminal prosecution. The possibility that a source may become a witness at trial creates a distinct and complex dynamic between the police and the source: issues of motivation, confidentiality, trust and reliability are priorities. Managing this complex relationship is a matter of judgment rooted in experience and expertise in police work.

### **1. Cultivating Sources of Information**

223. Police attempt to cultivate sources by various means. One of the most important ways of doing this is by community contact and involvement.

224. As noted earlier, law enforcement obtains a great deal of information about the community when responding to calls for service. “Community Policing” is another potentially fertile area of information. The RCMP has for many years utilized this principle as a corner stone of their mandate. The development and nurturing of relations with citizens at all levels affords the police insight into the community and specific crimes. Each relationship with a member of the community is different and each individual within a community is a potential source. It can be challenging at any time to turn an individual into a source but there are particular challenges to be faced when working with insular ethnic communities.



## 2. Difficulties Cultivating Sources in the Indo-Canadian Community

225. The weight of the evidence at the Inquiry from various witnesses was that it was difficult to find individuals who were willing to be sources, let alone witnesses, in the Indo-Canadian community.
226. Although a number of individuals did provide information to law enforcement, many others were unwilling to do so. Some brought their fear and distrust of police from India, a country with a dramatically different police culture.<sup>273</sup> Others were afraid that it would become known that they were providing information to the police and there was also a fear of reprisal from others within the Sikh extremist community.<sup>274</sup>
227. The RCMP undoubtedly attempted to recruit sources within the Indo-Canadian community and did have some success.<sup>275</sup>

## 3. When Information is Obtained from Sources

228. The RCMP regularly seeks information from sources and will often do so on the basis that the source is a confidential informant whose identity will not be disclosed.<sup>276</sup> While some informants do provide information to the police in confidence for lengthy periods, quite often the RCMP are looking for a source to provide evidence.

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<sup>273</sup> Evidence of Wayne Douglas, Transcript, Vol. 34, p. 4040.

<sup>274</sup> Evidence of Don McLean, Transcript, Vol. 35, pp. 4131 to 4132.

<sup>275</sup> Evidence of Laurie MacDonell, Transcript, Vol. 76, p. 9612.

<sup>276</sup> Terminology in this area was not used consistently throughout the Inquiry. Generally, it is accepted that the term 'source' can apply to casual or community sources. An 'informant' is someone who has given information pursuant to an explicit or implicit promise of confidentiality and their identity is protected. CSIS uses the term 'directed source' whereas law enforcement would characterize that person as an 'agent'. For law enforcement an agent's identity cannot be protected.

229. Fundamental problems arise when the source's information is required to assist in the laying of charges and prosecution of an offence, and the source is unwilling to either talk to police or become a witness. The police cannot force an informant to become a witness.
230. If the source is entitled to informant privilege, it cannot be waived without the source's consent. The police cannot force an informant to become a witness but can only try to persuade and convince them to do so.
231. There is no right way to gain the trust of a source or to turn a source or an informant into a witness or to ensure that a witness is forthcoming. The determination of when to press an individual or when to back away so as to not antagonize them is often a subjective decision based on experience and instinct. Needless to say, techniques vary amongst officers and what is effective with one source may not be effective with another.

#### **4. RCMP Assessments of Sources and their Information**

232. Recipients of information from sources must constantly assess not only the validity of the information being communicated to them but the motivations of the individual communicating that information. Officers must consider whether the source has an ulterior purpose for providing the information. Do they want money or a benefit with respect to charges they are facing or other benefits such as immigration? Could they be providing false information to avoid becoming a witness, to pass the blame on to someone else or out of a personal vendetta?
233. In order to protect the viability of a potential prosecution, the police must consider such factors in order to ensure that their investigation is not being misled, that they are not

proceeding based on information that is inaccurate, misleading or an outright lie. Relying on sources who lie leads to findings of abuse of process, stays of proceedings or, the worst result, wrongful convictions.

### **5. Specific Source Issues**

234. The Commission called evidence about specific sources and their relationship with the RCMP during the Air India investigation. These specific cases should be examined in light of the foregoing considerations, since they illustrate the problems and tensions that can arise for the police.

#### **a) Ms. E.**

235. Ms. E. is the pseudonym of the woman whom Bagri visited prior to the Air India bombing and whose car he allegedly asked to borrow in order to take luggage to the Vancouver International Airport. Ms. E did not provide this information in 1985 during initial interviews with the RCMP. She also offered different and conflicting versions of this event at various interviews conducted by the RCMP and CSIS after 1985. Ultimately she was a witness at Bagri's trial and testified under a pseudonym. Ms. E was not placed in the witness protection program and did not want protective measures although she did indicate at various times that she was fearful.<sup>277</sup> She did, however, receive the standard protection offered to other witnesses as the trial approached.

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<sup>277</sup> Evidence of Douglas Best, Transcript, Vol. 63, pp. 7858-59.

236. The RCMP first interviewed Ms. E after learning that CSIS employees had observed Parmar drop off an unknown male, believed to be a person of particular interest to the investigation, at what was then Ms. E's address on June 9<sup>th</sup>, 1985. After two interviews with the homeowner at that address, the RCMP learned that Ms. E. had rented an apartment there at the time. The RCMP conducted two interviews on November 29 and December 3, 1985.
237. Ms. E told the RCMP that she was a friend of the Bagri family, that the Bagri family had visited her previously and that Aijab Bagri had come to her apartment on June 9<sup>th</sup>, 1985. She provided limited information about Bagri, claimed that he did not discuss the Khalistan cause with her. She also indicated that she had no knowledge of Parmar other than seeing him at the temple.<sup>278</sup>
238. Ms. E was again interviewed by the RCMP on December 16<sup>th</sup>, 1985 and she provided similar information to the previous visit. She advised the investigators that she had already been interviewed previously and she did not wish to continue contact with them.<sup>279</sup> With hindsight, the significance of Ms. E's information was not appreciated as the RCMP were focussed on targets other than Bagri.
239. Beginning in September, 1987, Willie Laurie of CSIS interviewed Ms. E, and explained that CSIS could keep her information confidential.<sup>280</sup> Ms. E. advised him that Bagri was at her residence the night before Air India; that he wanted to borrow her car; that only the

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<sup>278</sup> Exhibit P-101, CAA0383(i).

<sup>279</sup> Exhibit P-101, CAA0383(i).

<sup>280</sup> Evidence of Willie Laurie, Transcript, Vol. 61, pp. 7412-13.

luggage would be making the trip; that she was afraid of him; that he had threatened her and that she believed that Bagri and Parmar were responsible for the bombing. She also advised Laurie that she would not talk to the police and had not provided the details to them that she had given him because she was afraid.<sup>281</sup> In a subsequent interview she again indicated her unwillingness to speak to the police.<sup>282</sup> CSIS was concerned that if the RCMP were advised of this information and approached the source she would not cooperate with anyone.<sup>283</sup>

240. At a meeting in Ottawa on another matter in the late fall of 1987, CSIS provided some information to RCMP officers Cummins and Hart about Ms. E. She was not identified and CSIS advised that she refused to meet the RCMP.<sup>284</sup> Subsequently, in response to a request from the RCMP, CSIS advised that the unnamed source was unable to identify the individuals in the car with Parmar.<sup>285</sup> After a request by “E” Division for more information, RCMP Headquarters provided additional information.<sup>286</sup> Laurie conducted additional interviews with Ms. E. which were later shared with the RCMP.<sup>287</sup>
241. Following the Watt-McKay file review, the RCMP requested further information from CSIS regarding Ms. E.<sup>288</sup> CSIS subsequently provided more detailed information about

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<sup>281</sup> Exhibit P-101, CAF0397 at p. 2 of 5 (Tab 14 of P-251, Index to Inspector Best’s documents). See also Evidence of Doug Best, Transcript, Vol. 63, pp. 7886-7; and P-101, CAA0553(i).

<sup>282</sup> Exhibits P-101, CAF0424 and CAA0562(i).

<sup>283</sup> Exhibit P-101, CAA0553(i).

<sup>284</sup> Exhibit P-101, CAA0615.

<sup>285</sup> Exhibits P-101, CAA 0610, CAA0783.

<sup>286</sup> Exhibit P-101, CAA0615

<sup>287</sup> Exhibit P-101, CAF0397

<sup>288</sup> Exhibit P-101, CAA0773.

the source, after which the RCMP realized they had already interviewed Ms. E. twice in 1985.<sup>289</sup> Arrangements were then made to interview Laurie and to arrange to have Laurie introduce an RCMP member to Ms. E on October 19<sup>th</sup>, 1990 and the RCMP interviewed her again on October 22<sup>nd</sup>, 1990.<sup>290</sup> At this interview Ms. E advised, that Bagri had borrowed her car after the Air India bombing but before the bomb exploded at Narita.<sup>291</sup> The investigators who conducted the interview considered her to be unreliable based on the substantial discrepancies in her information.<sup>292</sup>

242. Ms. E was interviewed on June 21, 1991 by RCMP members Solvason and Maile. They were working on source development and were unaware that she had been interviewed previously. She advised them that she was concerned for her safety; did not want to be a witness and reverted to her original statement to Laurie. She was advised that the police would require a written statement from her.<sup>293</sup> Maile interviewed Ms. E on April 6<sup>th</sup>, 1992 and again advised her that a written statement was required.<sup>294</sup> She told him that she was concerned for the safety of her family here and India. On May 11<sup>th</sup>, 1992 Maile obtained a written statement from Ms. E.<sup>295</sup> Ms. E declined to review the statement when approached by another officer after Maile's departure from the RCMP.<sup>296</sup>

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<sup>289</sup> Exhibit P-101, CAA0777.

<sup>290</sup> Exhibit P-101, CAA0792(i).

<sup>291</sup> Exhibit P-101, CAA0792(i).

<sup>292</sup> Exhibit P-101, CAA0792; Evidence of Bart Blachford, Transcript, Vol. 63, p. 7786.

<sup>293</sup> Exhibit P-101, CAF0387.

<sup>294</sup> Exhibit P-101, CAF0359.

<sup>295</sup> Exhibit P-101, CAF0386.

<sup>296</sup> Exhibit P-101, CAF0387.

243. Following her refusal to speak to the RCMP in 1992, Ms. E was not approached by them for some period of time. In 1996 a very experienced source handler, who had also worked at CSIS for many years, was designated to approach Ms. E. again.<sup>297</sup> Doug Best (“Best”) contacted Laurie to determine the best way to approach her and developed various options to obtain her evidence.<sup>298</sup>
244. Best sought out and interviewed Ms. E a number of times between 1996 and 1998 and ultimately obtained a written statement from her.<sup>299</sup> He described their relationship as cordial with “no stress as such.”<sup>300</sup> Best also indicated that he never discussed anything of substance in the presence of anyone other than her and her husband.<sup>301</sup> During one of their discussions the issue of what would happen if Ms. E didn’t respond to a subpoena came up and Best advised Ms. E that the RCMP would be forced to arrest her in such a case. Best testified before the Commission that this was not said in a threatening manner and this was certainly not the way in which the RCMP wanted to proceed, nor did he think she understood it that way. He was simply advising her of the possible results of failing to appear.<sup>302</sup>
245. Best was aware that Ms. E was very nervous about testifying and attempted to obtain specific information about her fears. Best discussed the types of security measures which

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<sup>297</sup> Evidence of Insp. Doug Best, Transcript, Vol. 63, pp. 7851, 7857 and 7913.

<sup>298</sup> Exhibit P-101, CAF0394, Evidence of Inspector Doug Best, Transcript, Vol. 63, pp. 7856-7857.

<sup>299</sup> The interviews are summarized in Exhibit P-101, CAF0423, (Tab 16 of Exhibit P-251 Index to Inspector Best’s documents); Evidence of Insp. Doug Best, Transcript, Vol. 63, p. 7855.

<sup>300</sup> Evidence of Insp. Doug Best, Transcript, Vol. 63, p. 7874.

<sup>301</sup> Evidence of Insp. Doug Best, Transcript, Vol. 63, p. 7895.

<sup>302</sup> Evidence of Insp. Doug Best, Transcript, Vol. 63, p. 7894.

could be made available but Ms. E. declined all such measures.<sup>303</sup> The RCMP did, however, institute certain measures such as security patrols for Ms. E as they did for other witnesses.<sup>304</sup>

**b) Person 1 and Person 2 (November Plot)**

246. As noted above, this matter was extensively investigated pre-bombing. However, the RCMP also followed up on this matter post-bombing to ensure that this plot had no connection with the events of June 23, 1985.

247. As usual when considering the reliability of the information, investigators considered the motivation of the people providing the information. Rick Crook of the VPD, who interviewed Person 2, noted that Person 2 was facing very serious criminal charges and that Crook understood that Person 2's primary hope in cooperating with police was to obtain bail and, perhaps, some consideration on his charges.<sup>305</sup> Crook also noted, that while he was testing credibility he asked for Person 2's account of the criminal charges he was facing and found him to be dishonest and untruthful.<sup>306</sup> He also wondered whether Person 2 was telling the story to the police to get himself out from under the story in case another person was giving the police information about it.<sup>307</sup> As a police

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<sup>303</sup> Evidence of Insp. Doug Best, Transcript, Vol. 63, pp. 7858-59, 7890, 7915.

<sup>304</sup> Evidence of Insp. Doug Best, Transcript, Vol. 63, p. 7911.

<sup>305</sup> Evidence of Rick Crook, Transcript, Vol. 20, p. 1881.

<sup>306</sup> Evidence of Rick Crook, Transcript, Vol. 20, p. 1914.

<sup>307</sup> Evidence of Rick Crook, Transcript, Vol. 20, p. 1924.



officer he was "...always looking towards the motivation and veracity of what's being said..."<sup>308</sup>

**c) Hayer**

248. The Inquiry heard evidence relating to Tara Singh Hayer. Following the admission of this evidence (some of which was first learned about on the day of testimony of Bob Solvason), the Government of Canada located further documents relevant to the evidence. Government counsel notified the Commission and provided copies of the documents.
249. Without the benefit of these documents to refresh their memories, witnesses had to rely on their recall of events and the documents that had been entered. With the benefit of the information in the new documents, corrections and clarifications can be added to the evidentiary record.
250. For example, S/Sgt. Solvason testified that approval for operational travel to England was not given in a timely manner. In fact, the document containing the travel authorization demonstrates that this approval occurred within days of the request. S/Sgt. Solvason did not have this document to review prior to his testimony. Another document confirms that it was Hayer's decision to travel to England and states clearly the purpose of this travel was for reasons of his own rather than to assist the RCMP.

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<sup>308</sup> Evidence of Rick Crook, Transcript, Vol. 20, p. 1926.

251. It is submitted that although the new documents were discovered after the witness testimony, they nevertheless should be taken into consideration when the evidence relating to Tara Singh Hayer is reviewed. They will be filed as public exhibits as soon as possible and the Government of Canada will offer supplementary submissions concerning Hayer that will consider these documents.

**d) Mr. Z.**

252. Mr. Z was a source for CSIS, and he advised them on October 12, 1986 that he had learned that two Sikhs had assisted Parmar and Bagri by checking the luggage containing the bombs at the CP Air Counter. On Oct. 16, 1986, Mr. Z further advised of the identities of the two Sikhs, and that one of them had a connection to Bagri.<sup>309</sup> This information was clearly relevant to the criminal investigation, and was recognized by CSIS as such. The existence of the source information, without identification was disclosed to the RCMP on Nov. 18, 1986.<sup>310</sup>

253. The RCMP's review of the information, however, that they may know the identity of the CSIS source who was also an RCMP source being handled by Solvason. This was discussed at a meeting with CSIS on Nov. 25, 1986.<sup>311</sup> It was agreed at that meeting that CSIS would take the lead, and that the source would not be disturbed or contacted by the RCMP. It was suggested by the RCMP that Solvason "didn't even have to know about

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<sup>309</sup> Exhibit P-101, CAA0506; Mr. Z Agreed Statement of Facts B.

<sup>310</sup> Exhibit P-101, CAA0509(i)

<sup>311</sup> Exhibit P-101, CAA0510(i)

this latest lead".<sup>312</sup> It was further agreed at the meeting that there would be close liaison between CSIS and RCMP, to ensure that as the RCMP prepared the necessary ground work to act on the CSIS information there would be no overlaps to jeopardize the developing lead.<sup>313</sup>

254. It was subsequently learned, however, that not only was the RCMP familiar with the source, they had in fact already learned the same information some time earlier.<sup>314</sup> Mr. Z had advised Solvason and MacDonell in early October of information he had received about two Sikhs who were identified as being responsible for bringing the explosives to the airport.<sup>315</sup>

255. A CSIS internal memo to Jim Warren dated Dec. 10, 1986, outlined the sequence of events that led to CSIS not being aware of the RCMP's involvement with Mr. Z.<sup>316</sup> While the RCMP had indicated to CSIS that they were intending to pursue certain initiatives, and asked if this would impinge on anything CSIS was pursuing, the dots simply had not been connected. As noted by the author of the memo,

There is certainly no perception at the working level of the RCMP that CSIS was trying to withhold information or be anything other than completely cooperative. This could be likened to a case where the left hand was not totally aware of what the right hand was doing.<sup>317</sup>

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<sup>312</sup> *Ibid*, p. 2

<sup>313</sup> *Ibid*.

<sup>314</sup> Exhibit P-101, CAA0512(i).

<sup>315</sup> Exhibit P-290, Mr. Z, Admission A.

<sup>316</sup> Exhibit P-101, CAB0689(i).

<sup>317</sup> *Ibid*, p. 3.

256. Although the RCMP and CSIS were working very hard to maintain a co-operative relationship, this did not mean that the RCMP shared every detail of every initiative with CSIS. It was important for CSIS to be aware in general of where the RCMP was operating, and what areas they were looking at; it was also important that the RCMP fulfill its obligations under the Memorandum of Understanding and share information relevant to CSIS' mandate. As noted in the memo quoted above, there was nothing sinister or underhanded, nor was it negligence or a failure. It was the kind of information lapse that was bound to happen on occasion in an investigation of this scope and size, even where both parties are being diligent and making every effort to fulfill their obligations.
257. The discovery that Mr. Z was speaking to both agencies and telling them the same thing was obviously cause for concern. However, the response by both agencies was a careful, measured one which attempted to preserve the viability of the source for the purposes of both. Ultimately, the needs of the criminal investigation took priority, and as was clearly anticipated at the meeting of Nov. 25, the RCMP eventually took primary control of the lead.<sup>318</sup> This is entirely appropriate, as the information, if it could be pinned down, was clearly of central importance to the criminal investigation.
258. The question of whether law enforcement or security intelligence should take priority when a source has information which is relevant to both is a vexed and difficult one. It must be stated, however, that the case of Air India was unique. Three hundred and thirty one people were dead. Arguably, there was no long-term objective that could outweigh

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<sup>318</sup> Exhibit P-101, CAA0510(i); and the evidence of Neil Eshleman, Vol. 75, p. 9416.

the law enforcement imperative to fully investigate and make every effort to bring to justice those responsible for this horrific act. Several witnesses spoke to the highly unusual situation and processes which the tragedy engendered within CSIS and the RCMP.<sup>319</sup>

259. When the RCMP took the lead on the Mr. Z information, they followed up and investigated thoroughly<sup>320</sup>, on occasion with the assistance of CSIS,<sup>321</sup> including the use of polygraphs.<sup>322</sup> The police were unable to verify the information provided by Mr. Z, and the lead dissolved into another dead end.

**e) Mr. A.**

260. The story of Mr. A was told by way of an Agreed Statement of Facts<sup>323</sup> which summarized and compressed the content of documents that could not be produced publicly. Commission Counsel and the Government of Canada agreed that, in order to protect sensitive information and notably confidential source information, certain details simply could not be included and that any identifiers had to be removed from the material. The Agreed Statement reflected the sincere effort of all parties to come to an

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<sup>319</sup> Evidence of James Warren, Transcript, Vol. 72, p. 9125; Evidence of Eshelman, Transcript, Vol. 75, p. 9416; Evidence of Merv Grierson, Transcript, Vol. 75, p. 9481.

<sup>320</sup> Exhibit P-101, CAF0450; Exhibit P-290, Admission E, Exhibit P-101, CAF0451; Exhibit P-290, Admission F; Exhibits P-101, CAF0452; CAF0453.

<sup>321</sup> Exhibit P-290, Admission D.

<sup>322</sup> Exhibits P-101, CAF0454, CAF0455, CAF0456 and CAF0457.

<sup>323</sup> Exhibit P-291, Mr. A. Agreed Statement of Facts.

appropriate balance between the need for public information and the protection of sensitive information.<sup>324</sup>

261. As a result of the agreement and the fine balance that had to be struck, certain details could not be included. This of necessity constrains the ability of the Government of Canada to address certain issues. This must be kept in mind in considering the evidence.
262. The Agreed Statement told part of the story of Mr. A, the confidential source who first came to the attention of CSIS and then to the RCMP. This was elaborated on by those witnesses who were able to speak to it and should be considered in conjunction with the evidence of those witnesses.<sup>325</sup>
263. By all accounts, Mr. A was a difficult source to manage. He provided CSIS with some information, but refused to divulge any significant detail until he received assistance from them on some personal matters.<sup>326</sup> Ultimately, he has never provided the information he claimed to have to anyone (including “other authorities” besides CSIS and the RCMP<sup>327</sup>). The potential information that seemed so promising at the time has never been realized.<sup>328</sup>

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<sup>324</sup> Submissions of Mark Freiman, Vol. 75, p. 9374.

<sup>325</sup> Exhibit P-291, Mr. A. Agreed Statement of Facts; Evidence of Bob Wall, Vol. 76; Evidence of Neil Eshleman, Vol. 75; Evidence of Mervin Grierson, Vol. 75.

<sup>326</sup> Exhibit P-291, Mr. A. Agreed Statement of Facts, boxes 3, 31. Evidence of Neil Eshleman, Vol. 75, 9417-18, 9424.

<sup>327</sup> Exhibit P-291, Mr. A. Agreed Statement of Facts, box 3.

<sup>328</sup> Evidence of Bob Wall, Vol. 76, pp. 9685-86; Evidence of Neil Eshleman, Vol. 75, p. 9436; Exhibit P-291, Mr. A. Agreed Statement of Facts, boxes 48, 49, 74 and 79.

264. Mr. A claimed to have knowledge of the Air India disaster,<sup>329</sup> which could have been important to the criminal investigation.<sup>330</sup> The RCMP felt that it should take the lead with Mr. A because of the criminal nature of the information, and they needed full information regarding the source.<sup>331</sup> Acting without full knowledge of what it was Mr. A claimed to have, the RCMP had to attempt to preserve Mr. A and his information as potential evidence in a courtroom.
265. Because CSIS does not need to worry about the information they receive being admissible in court they have greater flexibility in dealing with a source with potentially useful information. As Neil Eshleman testified, Mr. A was seeking “assistance from the government with certain problems that he had”. In return, he was offering “much greater detail surrounding Air India”.<sup>332</sup>
266. Although Mr. A did provide some information, it was far from complete and he claimed that he could provide much more.<sup>333</sup> The catch 22 was that he would not provide information without guarantees from the Canadian Government<sup>334</sup>; the Government (in the form of the RCMP) would not make promises until they were sure what he had to offer was of value.<sup>335</sup> This is a vexing dilemma. It is essentially a judgment call that must involve a weighing of the potential value of the information, the cost of the promises

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<sup>329</sup> Exhibit P-291, Mr. A. Agreed Statement of Facts, boxes 1, 2, 3 and 4.

<sup>330</sup> Exhibit P-291, Mr. A. Agreed Statement of Facts, boxes 9 and 11.

<sup>331</sup> Exhibit P-291, Agreed Statement of Facts, boxes 9, 19 and 45.

<sup>332</sup> Evidence of Neil Eshleman, Vol. 75, p. 9418.

<sup>333</sup> Exhibit P-291, Agreed Statement of Facts, box 3, 4, 6, 31, 34, 39 and 51; Evidence of Neil Eshleman, vol. 75, p. 9418-19.

<sup>334</sup> Exhibit P-291, Agreed Statement of Facts, box 3, 4, 34 and 42; Evidence of Neil Eshleman, vol. 75, p. 9424.

<sup>335</sup> Exhibit P-291, Agreed Statement of Facts, boxes 34, 49, 51, 59 and 69.

sought (including the impact on future evidentiary value), and the potential risk to the public interest in making the promises that are sought.

267. Because of the agreements reached in coming to the Agreed Statement and the need to protect the sensitive information and the identity of the source, the factual background behind the weighing of these circumstances cannot be explored in this forum. It appears that CSIS and the RCMP came to different conclusions on this front. Neil Eshleman felt that Mr. A's demands were reasonable.<sup>336</sup> Bob Wall did not provide his opinion in testimony as to the reasonableness of Mr. A's demands,<sup>337</sup> but it is evident from the Agreed Statement that the RCMP were not prepared to meet his demands without knowing what he had to offer. The logical inference is that their opinion about the reasonableness of the demands, and the weighing of the various factors involved, was different from that of CSIS.<sup>338</sup>

268. As noted, we cannot explore the reasons for this difference of opinion in a public forum. It can be said, however, that the difference in mandate and responsibilities between CSIS and the RCMP surely informed their respective positions. If it turned out that Mr. A did indeed have evidence which could potentially be used in a criminal prosecution, it was the responsibility of the RCMP to ensure that the viability of that evidence be preserved for the future. Making promises, providing rewards, and accepting the word of a source of unknown reliability would be ideal conditions for an abuse of process application, or at

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<sup>336</sup> Evidence of Neil Eshleman, vol. 75, p. 9420.

<sup>337</sup> Evidence of Bob Wall, Vol. 76, p. 9715.

<sup>338</sup> Exhibit P-291, Agreed Statement of Facts, box 49; 59, 69 and 74.



the very least a finding by the trier of fact that the evidence is unreliable and incredible and must be rejected.

269. The RCMP has an obligation, in looking at the information provided by any person to them, to assess the reliability and credibility of all its sources of information and must constantly weigh the good and the bad, what is known about motivations, problems, favours being requested and benefits being sought. They must do this in order to be able to accurately assess the value of the information being provided to their investigation and its potential utility, whether as a simple investigative lead, the basis of a search warrant or wiretap application or actual evidence to be heard in court.
270. With these considerations in mind, the RCMP took all reasonable steps to get Mr. A's evidence, to investigate his claims, to attempt to corroborate the little information he did provide.<sup>339</sup> They encountered obstacles along the way because of the caveats placed on the information by the Third Party.<sup>340</sup> While the RCMP clearly recognized the importance of respecting caveats and agreements made with other agencies, their frustration in finding themselves unable to access what could be critical information to the most important investigation they'd ever undertaken is understandable. Ultimately, in the Mr. A situation, these issues were resolved and the information was provided.<sup>341</sup>
271. As Bob Wall explained, the approach taken in speaking to Mr. A was informed by what they knew about him and there was a considered strategy behind attempts to obtain his

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<sup>339</sup> Exhibit P-291, Agreed Statement of Facts, boxes 3, 9, 13, 14, 19, 29, 34, 35, 44 – 53, 57-66, 68, 72, 74, 77, 79, and 80-82.

<sup>340</sup> Exhibit P-291, Agreed Statement of Facts, boxes 5, 7, 9, 11, 12, 15, 19 - 21, 25,36, 37, 48, 51 and 55.

co-operation.<sup>342</sup> It was evident that this would be an uphill battle, given Mr. A's repeated insistence to CSIS that he would not talk to the police and would not go to court.<sup>343</sup> But the importance of the potential he offered was such that the responsible agencies agreed that the effort had to be made.<sup>344</sup> In hindsight, it seems clear that unless his demands were met Mr. A would not be forthcoming.

272. While they investigated Mr. A and attempted to get his co-operation, it was critical that the RCMP maintain control over his possible evidence. It was for this reason that CSIS was asked to step away from Mr. A.<sup>345</sup> There could be no risk of 'contamination' of Mr. A's evidence due to promises made and rewards offered by other agencies, or even by the RCMP themselves.<sup>346</sup> The reality is that while both CSIS and RCMP may make every effort to find ways to cooperate, share information, even attempt to find ways to share or co-manage sources,<sup>347</sup> it may not always be possible to actually "share" sources between intelligence and law enforcement.<sup>348</sup> Equally, it may not always be possible to preserve a source for intelligence once the law enforcement imperative has taken hold. As has been noted previously in these submissions, the unique and tragic nature of the Air India

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<sup>341</sup> Exhibit P-291, Agreed Statement of Facts, boxes 36, 45, and 55.

<sup>342</sup> Evidence of Bob Wall, Vol. 76, pp. 9682-85. Note the Neil Eshleman had the same assessment of Mr. A's ego and sense of "self-importance": Evidence of Neil Eshleman, Vol. 75, p. 9432. See also P-291, Agreed Statement of Facts, boxes 35, 44, 45, 48, 49, 51- 52, 55, 58, 59, 60-63, 65, 67, 71-72, 74 and 76

<sup>343</sup> Exhibit P-291, Agreed Statement of Facts, boxes 4, 42, 63 and 78.

<sup>344</sup> Evidence of Neil Eshleman, Vol. 75, p. 9422; P-291, Agreed Statement of Facts, boxes 35, 44- 45, 49, 51- 52, 58-63, 67, 71-72, 74 and 76

<sup>345</sup> Exhibit P-291, Agreed Statement of Facts, boxes 67, 71-72.

<sup>346</sup> Evidence of Neil Eshleman, Vol. 75, pp. 9424-25.

<sup>347</sup> Evidence of Duncan Lane, Andrew Ellis, and John Lane, Vol. 82, pp. 10533-34; Evidence of Supt. James Malizia, Sgt. Trevor Turner, Insp. Jamie Jagoe, and Insp. Ches Parsons, Vol. 82, pp. 10462-65.

<sup>348</sup> Evidence of Luc Portelance, vol. 88, pp. 11513-15; Evidence of Jack Hooper, Vol. 50, 6234 – 37.

bombing meant that in some cases, CSIS made sacrifices so that law enforcement could pursue the objective of bringing the perpetrators of this most heinous crime to justice.<sup>349</sup>

273. The purposes of the two agencies in attempting to speak to Mr. A were fundamentally at odds: CSIS was interested in his long term potential as someone well-connected to a world that they need to develop intelligence in; the RCMP was interested in developing evidence that would be admissible in a court of law. The enduring difficulty was that neither agency had the full picture of what exactly Mr. A could provide, as he was the sole custodian of that information and was not forthcoming.

## 6. Conclusion

274. This section explored the considerations and tensions in the development of human sources for the RCMP and CSIS after the bombing of Air India. This aspect of the Air India investigation was one of the most difficult since it involved dealing with individuals who had their own motivations, methods and goals for offering information, some highly laudable, some highly suspect. Source development was further complicated by the necessity for negotiation between CSIS and the RCMP, since it was not always clear how to prioritize and maximize the various interests at play (the intelligence interest in a long-term source vs. the possibility of a witness for a trial). It is vital to keep in mind that the CSIS and RCMP members were operating without the benefit of hindsight that we have now, making decisions based on their training, experience and intuition while attempting

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<sup>349</sup> Evidence of James Warren, volume 72, p 9125; Evidence of Neil Eshelman, Vol. 75, p. 9416; Evidence of Merv Grierson, Vol. 75, p. 9481.

to forge a personal relationship with their sources. It is easy to examine these decision, but harder to make them.

275. Following on this examination of sources, the next two sections of Volume 1 look at other aspects of the Government of Canada's investigation into the bombing of Air India Flight 182. The next section focuses on the RCMP's criminal investigation, followed by an examination of CSIS's post-bombing activities.

## **V. THE RCMP INVESTIGATION**

### **A. OVERVIEW**

276. Just as it was impossible to examine twenty-two years of an investigation at this Inquiry, it is not possible to summarize all the evidence heard at the Inquiry on these points. Instead, a brief overview of the investigation will be provided followed by a discussion of some areas which have been of particular interest at the Inquiry.
277. The Air India and Narita bombing investigations are, by far, the most extensive investigations ever undertaken by the RCMP. At one point, more than 200 RCMP investigators and support staff were involved. The amount of information and intelligence being collected or analyzed daily by the RCMP created a large scale investigation never before or since experienced by the Force, spanning three continents and six countries.<sup>350</sup>

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<sup>350</sup> Exhibit P-101, CAA0335, RCMP Submission to the Honourable Robert Rae, p. 11.

278. The overriding problem for investigators in the Air India bombing has been a lack of evidence. As opposed to Narita Airport, most of the wreckage of Flight 182 was on the floor of the Atlantic Ocean and any wreckage that was recovered was seized by the Indian Government.<sup>351</sup> The closed nature of Parmar's terrorist group and the intimidation of the East Indian community by radical Sikhs also contributed to the lack of evidence.<sup>352</sup>
279. Notwithstanding these and other difficulties, the RCMP never abandoned the investigation although there were undoubtedly times when there were few leads to follow and limited action to take. Two senior investigators were brought in to review the investigation and attempt to determine if there were any further avenues which could be explored. They found that the investigation had been "conducted in a very thorough and professional matter" and identified certain areas which should be followed up<sup>353</sup>. Upon completion of the review the identified areas were pursued vigorously.<sup>354</sup>
280. Substantive charges were brought in 1986 against Reyat and Parmar but the charges were dismissed against Parmar.<sup>355</sup> Reyat was convicted in 1991 following extradition proceedings and his appeal was dismissed by the Court of Appeal in 1993.<sup>356</sup>

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<sup>351</sup> Evidence of Gary Bass, Transcript Volume 87, p. 11310-11311, RCMP Submission to the Honourable Bob Rae, p. 30.

<sup>352</sup> Exhibit P-101, CAB0144; Evidence of Ujall Dosanjh, Transcript, Vol. 59, pp. 10181-82.

<sup>353</sup> Exhibit P-101, CAF0343(i), Watt – MacKay review.

<sup>354</sup> See, for example, Evidence of Ron Dicks, Transcript, Vol. 62, p.7568.

<sup>355</sup> Evidence of James Jardine, Transcript, Vol. 47, pp. 5707-08.

<sup>356</sup> Jim Jardine explained that, in his opinion, they did not have the evidence to support conspiracy charges at the time. Evidence of James Jardine, Transcript, Vol. 47, p. 5689; Judgment in *R. v. Malik & Bagri*, [2005] B.C.J. No. 521 at p. 206.

281. By 1995 the costs of the RCMP investigation had exceeded \$20 million and there had been three expeditions to the crash site to recover evidence from the ocean floor. Following three years of negotiating approvals, in June of 1995, the RCMP offered a reward of \$1 million for information leading to an arrest.<sup>357</sup>
282. Under Inspector Gary Bass a further review was conducted beginning in 1995. Bass' analysis ultimately documented the many challenges and problems involved in proceeding to trial with the cases should sufficient evidence be available. He noted that proceeding would undoubtedly be difficult, costly, embarrass the RCMP, CSIS and the Canadian Government. Nonetheless, the Task Force was revitalized and further funds, people and time were devoted to an effort to bring the perpetrators to justice.<sup>358</sup>
283. It was essential to prove that the plane had been brought down by a bomb and that the bomb was located towards the rear of the plane where the Vancouver luggage had been loaded.<sup>359</sup> Imagery analysis and other developing technologies were used. The aircraft skin was reconstructed for the 2003 trial of Bagri and Malik using a combination of reproduced parts and pieces of the actual wreckage which had been in the possession of the Indian Government and shipped to Canada.<sup>360</sup>
284. The trial was long and complex, undoubtedly the most difficult in Canadian history.<sup>361</sup> Notwithstanding the intense efforts of the police and Crown, the accused were acquitted

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<sup>357</sup> Exhibit P-101, CAA0923; Evidence of Gary Bass, Transcript, Vol. 87, p. 11179.

<sup>358</sup> Evidence of Gary Bass, Transcript, Vol. 87, pp. 11316. Exhibits P-101, CAA0952, CAA0930.

<sup>359</sup> Evidence of Gary Bass, Transcript, Vol. 87, pp. 11311-12.

<sup>360</sup> Exhibit P-101, CAA0335, RCMP Submission to the Honourable Bob Rae, p. 30.

<sup>361</sup> Exhibit P-101, CAA0335, RCMP Submission to the Honourable Bob Rae, p. 15.

following the trial.<sup>362</sup> However, Justice Josephson corroborated the Crown's theory and found that Air India was destroyed by a bomb originating from Vancouver International Airport. The investigation continues to this day.

## B. THE COMMENCEMENT OF THE INVESTIGATION

285. The initial RCMP response to the Air India bombing came from Richmond Detachment which had jurisdiction of the Vancouver International Airport. Within days the investigation evolved into a task force and became known as the Air Disaster Task Force.<sup>363</sup> A team of investigators and analysts was quickly established by pulling people with different skills from various units.<sup>364</sup>
286. The task force had components in British Columbia (E), Quebec (C), Alberta (K), Ontario (O) as well as at Headquarters. Reporting mechanisms were quickly established. Headquarters was heavily involved in the Air India investigation. Information was, as a matter of course, shared with Headquarters and Headquarters provided a great deal of oversight and direction<sup>365</sup>
287. It was a challenge at the commencement of the investigation to find space and other necessities for the investigators who were rapidly being assigned to the Task Force. In particular, E Division Headquarters simply did not have vacant room for the Task Force

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<sup>362</sup> *R. v. Malik & Bagri*, [2005] B.C.J. No. 521.

<sup>363</sup> The name of the group investigating the Air India/Narita bombings changed over time as did its place in the structure of the RCMP. For these submissions, the term Task Force will be consistently used.

<sup>364</sup> Exhibit P-101, CAF0438, p. 20; Evidence of Robert Wall, Transcript, Vol. 47, p. 9663; Evidence of Lyman Henschell, Transcript, Vol. 46, p. 5544

<sup>365</sup> Evidence of Robert Wall, Transcript, Vol. 76, pp. 9667-69; Exhibit P-101, CAF0504.

to take over. While it was undoubtedly inconvenient for all concerned the evidence on this point was that this did not negatively affect the investigation.<sup>366</sup>

### C. THE INVESTIGATORS

288. It is impossible to provide exact numbers of full and part-time investigators devoted to the Air India investigation. People were seconded or borrowed from various RCMP units and used on a short or long term basis as required. Although there was a core group of approximately 92 investigators dedicated entirely to the Air India investigation, the number of members seconded in the early stages of the investigation numbered approximately two hundred across Canada. In total, the RCMP estimates that there were approximately 356 investigators involved in the Air India/Narita investigations.<sup>367</sup>

289. These investigators brought various strengths to the Task Force. As Staff Sgt. Bob Wall stated:

In terms of handling major investigations, there was a great talent pool from varying backgrounds, Criminal Intelligence to Serious Crime investigation. I was blessed with a lot of very good people very quickly and early on. .... we had a good broad spectrum of investigative ability.<sup>368</sup>

290. There was a substantial degree of continuity with respect to a number of members of the Task Force. Bob Wall, for instance, commenced working on June 26<sup>th</sup>, 1985 and remained in various positions for nine years. At a certain point he wanted to transfer out of the area but was not allowed to do so in order that there be continuity in the

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<sup>366</sup> Evidence of Robert Wall, Transcript, Vol. 76, p. 9606.

<sup>367</sup> Exhibit P-101, CAF0438, p. 20.



investigation<sup>369</sup> Deputy Commissioner Bass started in 1995 and remains heavily involved today while Jim Cunningham joined in 1990 and was the file coordinator from 1995 until 2004.<sup>370</sup> There are many such examples. From 1995 forward, the RCMP have employed a system of “over-ranking” to retain continuity of investigators and to retain file knowledge in furtherance of the investigation.<sup>371</sup>

291. There were relatively few Indo-Canadian officers in the VPD and the RCMP in 1984 and 1985. The numbers have changed quite dramatically over the years. In 1990, the year the RCMP first began to record this type of information, 14 members self-identified as being South Asian/East Indian. On April 1, 2006 that number had grown to 238 members.<sup>372</sup> Don McLean indicated that there is now an Indo-Canadian Officers Association comprising municipal and RCMP members.<sup>373</sup>
292. Former Commissioner Inkster described his efforts and success at recruiting visible minorities into the RCMP.<sup>374</sup> It should be noted, however, that it takes some period of time following recruitment to train members to fill various roles.

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<sup>368</sup> Evidence of Robert Wall, Transcript, Vol. 76, pp. 9661 and 9715.

<sup>369</sup> Evidence of Robert Wall, Transcript, Vol. 76, p. 9712.

<sup>370</sup> Evidence of Gary Bass, Transcript, Vol. 87, p. 11289; Evidence of Jim Cunningham, Transcript, Vol. 87, pp. 11336 and 11340.

<sup>371</sup> Evidence of Jim Cunningham, Transcript, Vol. 87, p. 11337.

<sup>372</sup> Exhibit P-101, CAA1072, p. 5. It should be noted that members are not required to identify their heritage, it is entirely voluntary.

<sup>373</sup> Evidence of Don McLean, Transcript, Vol. 21, p. 2021.

<sup>374</sup> Evidence of Norman Inkster, Transcript, Vol. 81, p. 10314.

#### D. FILE MANAGEMENT

293. The file management system used by the RCMP during the course of the investigation evolved as technology improved. While the various systems may seem ineffectual and cumbersome by today's standards they were the best available at the time. At the beginning of the investigation, which was also a time when computerization was in its infancy, the TIP system was used. This was a manual carding system, using index cards which provided a cross-reference to various files or TIPS. Every piece of information or investigative lead which came in was made the subject of a TIP. The file coordinator provided oversight and assistance on the system.<sup>375</sup>
294. The manual card system was supported by an electronic computerized indexing system known as PIRS.<sup>376</sup> The PIRS system allowed investigators across the country and at Headquarters to conduct a search which would retrieve information and, also, indicate where further information relevant to that search was held.<sup>377</sup> Also, at the outset, ciphered telexes were used to send information to investigators across the country as well as to Headquarters. A new computerized system, a database known as "DIB", which allowed narrative searching capabilities, was quickly added and further improvements took place over the course of the investigation.<sup>378</sup> While the system, at any given point, was not perfect it improved with time and technology and, even at the outset, the system allowed investigators to search for and, in most instances, find the information they were seeking.

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<sup>375</sup> Evidence of Jim Cunningham, Transcript, Vol. 87, p. 11137 .

<sup>376</sup> Evidence of Jim Cunningham, Transcript, Vol. 87, pp.11321-11322.

<sup>377</sup> Evidence of Robert Wall, Transcript, Vol. 76, pp. 9663 and 9705.

<sup>378</sup> Evidence of Robert Wall, Transcript, Vol. 76, pp. 9667-78.

....when you talk about the TIPS system, we're looking back to 1985....we were in the infancy of computerization within the RCMP at that particular point. I think there's a great many people who would agree that in the day and in the era of this particular disaster, the TIP system was the best system in place....So is it the best system at the time? Yes, it was. If we tried to use this system today, would it be the best? Absolutely not. And we have evolved<sup>379</sup>

295. In summary, the system was not perfect, and, at times there was difficulty experienced by members in retrieving information.<sup>380</sup>

### E. RESOURCES FOR THE INVESTIGATION

296. As noted earlier, there were approximately two hundred investigators, across Canada seconded to the Air India investigation in the early stages of the investigation. At that point there was a large of number of investigative initiatives to pursue. Bob Wall, the senior non-commissioned officer at the Vancouver Task Force, testified that he received resources as required and Commissioner Inkster indicated that while there were always questions when new resources were sought they were provided when a case was made.<sup>381</sup> As the avenues which could effectively be pursued diminished some investigators were returned to their home units. A core group of Air India investigators always remained with the Task Force. As Inkster noted, there is:

... an ebb and flow in investigations, and there certainly were times in this investigation where all information sources seemed to be drying up; that there wasn't much new to investigate, but there was never a point in

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<sup>379</sup> Evidence of Jim Cunningham, Transcript, Vol. 87, p. 11336. The demonstrated ability to retrieve information from the files in 2007, while not without some difficulties, demonstrates the basic efficiency of the file management system in place. Although some documents or notes are not available they are few in number and hardly surprising given the massive amount of documentation in the file.

<sup>380</sup> Evidence of Jim Cunningham, Transcript, Vol. 87, p. 11319.

<sup>381</sup> Evidence of Robert Wall, Transcript, Vol. 76, pp. 9704; Evidence of Norm Inkster, Transcript, Vol. 81, p. 10378.

the history of the investigation, during my tenure, where there were not always a series of officers working on it, sometimes as high as 200 and sometimes it would go down into the 20s and 30s, 25.<sup>382</sup>

297. Numbers were lower in the late 1980's to early 90's as there were fewer avenues of investigation to pursue. At that time however work was on-going for the extradition of Reyat, preparation for Reyat's trial and on-going Air India initiatives including another dive to the crash scene. Additionally, it was recognized that Sikh extremist investigations conducted by NSIS which were not directly related to Air India might produce useful information. Prosecutions were pursued with the specific goal of demonstrating to the Indian community that individuals were not above the law and in the hope that this might entice individuals to come forward to the police with their information.<sup>383</sup>

#### **F. MORALE**

298. There were also, at times, disagreements amongst officers about the way aspects of the investigation should be pursued and some personality conflicts between individuals. Disagreements and conflicts in the workplace are, needless to say, unfortunate but not uncommon. The tensions can run particularly high in a long-term investigation which takes its toll in terms of morale and direction and people's opinions on which way it should proceed.<sup>384</sup> As Ron Dicks testified:

Various people bringing different kinds of talent and skill sets to the table and, from time to time, those talents and skill sets may very well disagree with one another in terms of day-to-day activity. But certainly I'm not

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<sup>382</sup> Evidence of Norm Inkster, Transcript, Vol. 81, p. 10376-77.

<sup>383</sup> Evidence of Laurie MacDonell, Transcript, Vol. 76, pp. 9613-14; Evidence of Bob Solvason, Transcript, Vol. 89, pp. 11568-69.

<sup>384</sup> Evidence of Robert Wall, Transcript, Vol. 76, p. 9708.

aware of where that -- when it did exist -- where that compromised the investigation, notwithstanding the fact that particular investigators might even not like each other but -- or disagree on how things are proceeding. But at the end of the day, everyone knows what needs needs to get done and they put their personal differences aside and move on with accomplishing that particular task.<sup>385</sup>

299. Notwithstanding the content of Sgt. Maile's exit interview with RCMP Staffing, it is clear from the Status Report that he authored on January 22<sup>nd</sup>, 1992, that source development and other initiatives were being pursued during this period and he was involved in that process.<sup>386</sup> Not all initiatives sought by investigators were ultimately approved by those with that authority but, again, such decisions must be made by those with the responsibility to do so and there may be disagreement with those decisions.

## **G. RCMP INFORMATION SHARING**

### **1. RCMP Information Sharing Internally**

300. As noted previously, the bombing of Flight 182/Narita unleashed an investigation the size and scope of which was unprecedented in Canadian law enforcement history. Of necessity, as the investigation got underway, the RCMP had to learn how to manage an investigation of this scope as they went, and they made every effort to find the most efficient, productive ways to manage the investigation.
301. It is unrealistic to expect every investigator working on the Air India file to have full and complete knowledge of the file. This would be virtually impossible, unworkable as well

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<sup>385</sup> Evidence of Ron Dicks, Transcript, Vol. 62, p. 7648. Dicks could not recall any other similar complaints by investigators of the type considered at the Inquiry. The dearth of complaints is itself noteworthy. Dicks noted that there was a human resources procedure to deal with employee dissatisfaction in addition to the normal supervisory channels. Solvason acknowledged that when a complaint was made appropriate action was taken: Evidence of Robert Solvason, Transcript, Vol. 89.

<sup>386</sup> Exhibit P-101, CAF0411.

as unnecessary and inefficient. For instance, the Constable who is taking direction from his superiors to interview specific people, or follow up particular leads, needs to know enough to allow him or her to do the job well. In some cases it may be helpful or necessary to know a lot about the file, while in other cases that may not be necessary. The degree of knowledge needed will be a function of the particular task.

302. What must be available to anyone working on the investigation is a general knowledge of the file, and the ability and willingness to know what information they need and how to retrieve it if they don't have it. As outlined earlier, the file management system used by the RCMP from the outset of the investigation provided the tools for all investigators, either independently or with the assistance of the file coordinator, to be able to do that. As with all systems created and managed by human beings, human error will affect the viability of those tools. Some people will be diligent and will ensure they have everything that they need; others will do a surface piece of research, assume they have everything they need, and proceed on mistaken or ill-informed assumptions.
303. In addition to those tools, there were the usual methods of communication to investigators: daily briefings for the key investigators at "E" Division<sup>387</sup> and regular reporting to Headquarters in the form of situation reports and daily telexes which were routinely disseminated to the other divisions which were involved in the investigation. The people who needed to know what was happening in the investigation were kept apprised through these methods. As other investigators developed a need to know more,

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<sup>387</sup> Evidence of Mike Roth, Vol. 46, p. 5610.

through their tasks or workload, the tools were available to find out what they needed to know.<sup>388</sup>

304. Former Staff Sgt Robert Solvason (“Solvason”) testified that when he decided to pursue an interview with Ms. E, he was not aware of the fact that she had previously been interviewed. He did a cursory check, found nothing, and proceeded to interview her.

305. However, the information was all there and could have been found by Solvason, as Jim Cunningham<sup>389</sup> and Ron Dicks<sup>390</sup> testified. The systems were in place to allow investigators to access the information they needed, but it did require the investigators to take some necessary steps. Solvason was an experienced investigator and should have known to do his homework first. He acknowledged that he did not make a very serious attempt.<sup>391</sup>

## **2. RCMP Information Sharing with CSIS**

306. In the days immediately following the tragic events of June 23<sup>rd</sup>, 1985, the RCMP and CSIS marshalled all resources in a determined effort to investigate what had happened and determine whether there was a continuing threat.

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<sup>388</sup> Information dissemination was not perfect, of course. It would be impossible to ensure that every investigator who had been involved in the file was aware of all developments. At times, information which was widely known changed or turned out to be incorrect. Particularly, in the case of information which was not essential to the on-going investigation not all members would be aware.

<sup>389</sup> Evidence of Jim Cunningham, Transcript, Vol. 87, p. 11339.

<sup>390</sup> Evidence of Ron Dicks, Transcript, Vol. 62, p. 7616.

<sup>391</sup> Evidence of Robert Solvason, Transcript, Vol. 89, pp. 11578, 11617-18.

307. Part of this process included setting up mechanisms specific to the investigation for sharing information between CSIS and the RCMP. There had been a Liaison Officer (“LO”) program in place since 1984; these resources were now re-allocated and dedicated to the Air India investigation. By June 27<sup>th</sup> 1985, LO’s had been identified and put to work on both sides: Jim Francis was the CSIS officer who would serve as the LO to the RCMP, and Mike Roth, already functioning as the LO was the RCMP officer who would act as his counterpart at CSIS.<sup>392</sup> Further liaison officer programs were subsequently developed, including one at Headquarters.<sup>393</sup>
308. Without doubt there was a significant volume of information that passed from CSIS to the RCMP. It is also clear that there were difficulties and misunderstandings along the way as to what could be passed, should be passed, and under what restrictions and limitations. The fact remains that both organizations worked hard to try and find solutions to the difficulties and restrictions imposed on them by their mandates and imperatives. Although relations were sometimes strained, everyone rolled up their sleeves to get the work done.<sup>394</sup>
309. CSIS and the RCMP did come to an understanding that anything that did arise in the context of the criminal investigation that was germane to the Service’s mandate would be shared. The reciprocal liaison officer program was put in place immediately in order to facilitate information sharing. The liaison program was “intended to facilitate the flow of

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<sup>392</sup> Exhibit P-101, CAA0802.

<sup>393</sup> Evidence of Bill Turner, Transcript, Vol. 66, p. 8297.

<sup>394</sup> Evidence of John Stevenson, Transcript, Vol. 62, p. 7658; Evidence of Mike Roth, Transcript, Vol. 46, pp. 5606-5610; Evidence of Ron Dicks, vol. 62, p. 7629; Evidence of Bill Turner, Vol. 66, p. 8297.



information between [the RCMP and CSIS], particularly as it relates to terrorism. Each liaison officer [was] granted access in the opposite agency to files and material relevant to responsibilities of the service and the force.”<sup>395</sup>

310. As Mike Roth testified,

The duties principally was to be the conduit between CSIS and the RCMP to ensure that the flow of information whether it was criminal or whether it was biographical data that flew back and forth and was uninterrupted between the two agencies. And it would be an official transfer of information between the two agencies.<sup>396</sup>

311. Mr. Stevenson testified that as the CSIS liaison officer, his role was “to ensure that information was passed to the “E” Division task force; to go through E Division on a daily basis.”<sup>397</sup> The unit heads or the research and analysis unit selected the information that was to be passed to the RCMP and the RCMP LO was also able to make requests.<sup>398</sup> The RCMP also had obligations towards the Service, namely, “to advise and consult CSIS Liaison Officer on all matters where it is perceived that the criminal information will be of interest to CSIS activities in the area of counter-terrorism”.<sup>399</sup> The arrangement was for CSIS to “notify the RCMP division immediately, should such vital evidence be determined and to make it available as quickly as policy determined”.<sup>400</sup> The

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<sup>395</sup> Exhibit P-246, Exhibit P-101, CAC0052.

<sup>396</sup> Evidence of Mike Roth, Vol. 46, p. 5600.

<sup>397</sup> Evidence of John Stevenson, Transcript, Vol. 62, p. 7654.

<sup>398</sup> Evidence of John Stevenson, Transcript, Vol. 62, pp. 7654-7655.

<sup>399</sup> Exhibit P-101, CAA0511.

<sup>400</sup> Exhibit P-101, CAD0019(i).

RCMP would seek its own judicial authorizations, e.g. Part IV authorizations to wire tap, and notify CSIS before commencing the wire tap.<sup>401</sup>

## H. CERTAIN ASPECTS OF THE INVESTIGATION

312. Without doubt this Inquiry could not examine all aspects of this lengthy investigation and has focussed on specific facets. This portion of the submissions will address some of the specific issues upon which the Commission focussed.

### 1. Parmar Confession

313. The Inquiry heard evidence from R. S. Bains and Sarabjit Singh, members of the Punjab Human rights Organization (“PHRO”), about the purported confession of Talwinder Singh Parmar shortly before his death in 1992. Parmar appears to have admitted, in part, involvement in the Air India and Narita bombings and advised of the identity of Mr. X.<sup>402</sup> The PHRO witnesses completed gathering their information in January 2006 and contacted the RCMP, amongst others, to pass on their information.<sup>403</sup>
314. The RCMP had, in fact, already been in possession of this information about Parmar’s alleged confession since 1997. Due to the need to protect the original sources of the information, counsel from the Commission and the Department of Justice prepared an

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<sup>401</sup> Evidence of Lyman Henschel, Transcript, Vol. 46, p. 5530. It has been suggested that the RCMP improperly used CSIS information in support of the September 19, 1985 Affidavit by Walden. Whether due to a miscommunication or not, officers understood that they had permission from Joe Wickie to use the CSIS material in the Affidavit. Evidence of Bob Wall (incorrectly identified as MacDonell), Transcript, Volume 76, pp. 9674 to 9675; Evidence of Bob Solvason, Volume 89, p.11554.

<sup>402</sup> Evidence of Sarabjit Singh and Rajvinder Bains, Transcript, Vol. 51, pp. 6281-6316; Exhibit P-216.

<sup>403</sup> Evidence of Sarabjit Singh and Rajvinder Bains, Transcript, Vol. 51, p. 6302-3.

Agreed Statement of Facts<sup>404</sup>. This document briefly outlines the steps the RCMP took to obtain this information, the analysis applied to the information compared to what had already been established as well as some of the follow-up investigation. The Inquiry also heard from Lorne Schwartz and Jim Cunningham who provided an overview of the investigation and described their personal involvement in it.<sup>405</sup> Clearly, the RCMP pursued this information appropriately in a timely manner while acknowledging the difficulties in locating and interviewing people outside the country.

## **2. Sharing Information with the Government of India**

315. In June of 1986 an investigation revealed that Canadian citizens who were members of the Babbar Khalsa were acting in concert with Indian nationals to commit criminal acts in India.<sup>406</sup>
316. The charges were extremely serious. They included acts of sabotage in India including blowing up the House of Parliament. They included a plot to kidnap the children of senior Indian officials.<sup>407</sup>
317. The RCMP, like other police forces, exchanges information, with foreign law enforcement agencies in accordance with established procedures in connection with their

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<sup>404</sup> Exhibit P-101, CAF0334.

<sup>405</sup> Evidence of Lorne Schwartz, Transcript, Vol. 51, pp. 6317-71; Evidence of Jim Cunningham, Transcript, Vol. 52, pp. 6378-6456.

<sup>406</sup> Exhibit P-101, CAF0336.

<sup>407</sup> Document Presentation, Transcript, Vol. 52, p. 6504.

official duties and responsibilities in relation to the enforcement or administration of the law.<sup>408</sup>

### 3. SIRC Review

318. During the Inquiry, some RCMP witnesses were questioned about the RCMP's position on a SIRC review or a Commission of Inquiry in the late 1980's. The possibility of a Commission of Inquiry and the SIRC Review came at a time when Reyat's conviction was under appeal and a new trial could have been ordered.<sup>409</sup> The Court of Appeal could have ordered a new trial. Crown prosecutors and the RCMP were also concerned that an Inquiry or the SIRC review might negatively affect the on-going investigation.<sup>410</sup> In 1991 the RCMP were collecting evidence from the crash scene at the bottom of the ocean.<sup>411</sup> There was never an effort to prevent either an Inquiry or SIRC review but, rather, concern about the timing of these processes. Former Commissioner Inkster testified that the potential impact on civil litigation was noted by lawyers who were setting out all factors so that any potential outcomes would be considered and Terry Goral indicated that the civil litigation was not significant for the RCMP.<sup>412</sup>

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<sup>408</sup> Exhibit P-101, CAF0336.

<sup>409</sup> *R. v. Reyat*, [1991] CanLII 1371, May 10, 1991; (1993) 80 C.C.C. (3) 210 (C.A). The appeal was finally dismissed in March of 1993.

<sup>410</sup> Evidence of Norm Inkster, Transcript, Vol. 81, p. 10345.

<sup>411</sup> Evidence of Gary Bass, Transcript, Vol. 87, p. 11314 per Ms. Brenzall.

<sup>412</sup> Evidence of Terry Goral, Transcript, Vol.73, p. 9229.

319. When the SIRC Review proceeded in 1991, SIRC asked the RCMP for a general briefing on the issues, noted that they required only limited information and asked the RCMP to consider six specific areas for briefing purposes.<sup>413</sup>
320. A Working Group was established to coordinate the response to SIRC by the Government of Canada agencies. There was undoubtedly an effort to provide the necessary information to SIRC without directly attacking other agencies.<sup>414</sup> On-going relations had improved and that relationship was important and needed to be fostered.<sup>415</sup> Nonetheless, information was provided to SIRC about a number of the challenges in the RCMP/CSIS relationship and during the course of the investigation. The RCMP's written briefing to SIRC noted, for instance, that "It would be wrong, however, to conclude that difficulties in our relationship were not experienced"<sup>416</sup> "The investigation put great strains on both agencies. There were difficulties and disagreements...."<sup>417</sup> "These negotiations took a long time to resolve"<sup>418</sup> SIRC wrote to Commissioner Inkster and stated that they found the RCMP briefing helpful and noted how cooperative the officers had been.<sup>419</sup>

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<sup>413</sup> Exhibits P-101, CAA0866 and CAA0858.

<sup>414</sup> Exhibits P-101, CAA0838 and CAA0856.

<sup>415</sup> Evidence of Norman Inkster, Transcript, Vol. 81, p. 10350.

<sup>416</sup> Exhibit P-101, CAA0881, p. 3 (Tab 57 to P-311, Index to Books prepared for the evidence of Commissioner Inkster).

<sup>417</sup> Exhibit P-101, CAA0881, p. 3 (Tab 57 to P-311, Index to Books prepared for the evidence of Commissioner Inkster).

<sup>418</sup> Exhibit P-101, CAA0881, p. 15 (Tab 57 to P-311, Index to Books prepared for the evidence of Commissioner Inkster).

<sup>419</sup> Exhibit P-101, CAA0882, p. 15.

321. SIRC had a great deal of information in support of their Review. They had access to all CSIS documents except Cabinet confidences<sup>420</sup> Four full-time SIRC researchers and a consultant worked from October 1991 through to September 1992 on the Review. They had access to approximately 61,129 pages of material including communications with CSIS Headquarters, the Regions, and information exchanges from CSIS to other federal agencies including the RCMP.<sup>421</sup> Clearly, SIRC had access to a great deal of information which set out in detail the issues that had arisen in this area. They produced a report of more than 100 pages plus attachments.<sup>422</sup>
322. The RCMP made diligent efforts to provide accurate information to SIRC as it did in its Report to Bob Rae. A few unintentional misstatements were made when relying on file material. Such inadvertent mistakes are hardly surprising given the volume of material to be sorted and analyzed.<sup>423</sup> The RCMP do regret, however, any inaccuracies in the information they provided.
323. Suggestions were made at various times during the hearings that concern with respect to the civil litigation was an inappropriate factor in respect of the timing of the SIRC review. It was clear from the evidence that CSIS was at all times open to a SIRC review as the provision for same was contained in its statute.<sup>424</sup>

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<sup>420</sup> Evidence of Ron Atkey, Transcript, Vol. 49, p. 5968.

<sup>421</sup> Exhibit P-101, CAB0902.

<sup>422</sup> Exhibit P-101, CAB0902.

<sup>423</sup> For instance referring to “the” telex rather than “a” telex.

<sup>424</sup> Exhibit P-101, CAF 0285

324. As indicated in the testimony of Ronald Atkey, who for a time was Chairman of SIRC, SIRC in early 1989 had decided to proceed with a study into CSIS activities in regard to the destruction of Air India flight 182. As a result of discussions with the Deputy Attorney General, Mr. Atkey agreed to defer the inquiry.<sup>425</sup>
325. The SIRC review eventually proceeded between October 1991 and September 1992 with its report being released in November 1992. As Mr. Atkey indicated in his testimony that review was of the same breadth and scope as he had envisioned for the review planned for the Spring of 1989.<sup>426</sup>
326. Suggestions that deferral of the SIRC Inquiry was aimed at keeping information from litigants in the civil process are unfounded. As Mr. Atkey confirmed in his testimony the obligation upon parties in civil litigation includes a full panoply of requirements for disclosure and production of documents with remedies available in the event of default or perceived default. The concerns relating to civil litigation involved several matters none of which affected the rights of the parties in that litigation.<sup>427</sup>

#### **4. Allegations of Racism**

327. The Inquiry has heard assertions from a number of witnesses that the response to, and the investigation of, the bombing of the Air India flights was less than it would have been had it been an Air Canada flight with the majority of people being white-skinned.

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<sup>425</sup> Exhibit P-101, CAF0305, CAF0287, CAF0308, Evidence of Ron Atkey, Transcript Vol. 49, p.6021.

<sup>426</sup> Evidence Ron Atkey, Transcript Vol. 49, p. 6022-6023.

<sup>427</sup> P-101, CAF0301, Although this document is not a document of the Department of Justice but rather of a employee of SIRC it does set out various issues none of which affect the rights of parties to the litigation.

328. In his report, *Lessons to be Learned*, the Honourable Bob Rae found no evidence of racism on the part of anyone in a position of authority.<sup>428</sup>
329. RCMP witnesses vehemently rejected any suggestion that they were any less motivated to see justice done because of the colour of the victim's skins.<sup>429</sup> They worked hard, they tried their best. Bob Wall described the punishing hours that he and other members of the Task Force worked.<sup>430</sup>
330. In his testimony, Lyman Henschel spoke about the effect that this investigation had on the RCMP officers:

But I should point out to you too that a lot of grinding hard work was done by many, many people on this case and it has left its mark indelibly, un-erasable, in every one of them we suspect; just as it has on me. I don't want to throw out a "poor me" attitude here but those are the facts, that everyone kind of jumped into the trenches and positions they were put in...And -- and did their utmost... I just wanted to make that clear. In my view credit is deserved --- by people that had to undertake these horrendous responsibilities.<sup>431</sup>

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<sup>428</sup> Exhibit P-35, p. 12.

<sup>429</sup> Evidence of Wayne Douglas, Transcript, Vol. 46, p. 4111.

<sup>430</sup> Evidence of Robert Wall, Transcript, Vol. 76, p. 9713, "...the hours were exceptional. There were a lot of dedicated police officers that worked long, long hours".

<sup>431</sup> Evidence of Lyman Henschel, Transcript, Vol. 46, p. 5568.



## VI. THE AIR INDIA INVESTIGATION FROM CSIS'S PERSPECTIVE

### A. CSIS'S JURISDICTION/MANDATE

331. CSIS was created specifically to be an independent, non-policing civilian agency. The CSIS mandate is to “collect, by investigation or otherwise ... and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and to report to and advise the Government of Canada.”<sup>432</sup> At the same time, the Government of Canada gave the RCMP primary responsibility to perform duties assigned to peace officers in relation to national security offences.
332. The roles of CSIS and the RCMP were explained in Solicitor General Bob Kaplan's letter to the Commissioner and the Director on July 29, 1984.<sup>433</sup> These in turn were reflected in the 1984 MOU.<sup>434</sup>
333. The bombings at Narita and of Air India 182 were demonstrations of both an acute threat to national security *and* national security offences.
334. The *CSIS Act* provided a mechanism in section 19(2) for those occasions when CSIS and RCMP mandates intersected. The Director of CSIS was entrusted with the discretion to make a conscious decision whether to share information:

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<sup>432</sup> Section 12 of the *CSIS Act*, R.S.C. 1984.

<sup>433</sup> Exhibit P-101, CAA0081.

<sup>434</sup> Exhibit P-101, CAA0076.

s.19(1) Information obtained in the performance of the duties and functions of the Service under this Act *shall not be disclosed by the Service* except in accordance with this section.

s.19(2) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act...and *may also disclose such information,*

(a) where the information *may be used* in the investigation or prosecution of an alleged contravention of any law of Canada or a province, to a peace officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged contravention may be taken;

335. If the RCMP were permitted open access to and full discretion to use CSIS information, innocent people could be drawn into a criminal investigation solely on the basis of a link to a CSIS target.<sup>435</sup> The 1991 Ministerial Directive from the Solicitor General replaced that of 1980 and spoke to the “exceptional circumstances” in which “CSIS intercepted material or the records derived from them” would be appropriately used by the RCMP in a judicial forum.<sup>436</sup>
336. A liaison officer program was established with the RCMP to identify information that might be relevant and useful to a criminal investigation. It was the responsibility of that officer to read CSIS counter-terrorism reports and liaise with RCMP investigators to keep them abreast of possible criminal activity surfaced by CSIS.
337. The “civilianization” of the RCMP Security Service on July 16, 1984, had fundamental implications for the role and function of CSIS employees. No longer police officers with

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<sup>435</sup> See for instance Jim Warren’s Evidence, Transcript, Vol.72, p. 9112; Vol.73, p. 9154.

<sup>436</sup> Exhibit P-101, CAA0809 of April 10, 1991.

the power to arrest, they were also not in the business of keeping detailed interview notes for use in a criminal trial, retaining intercepts to ensure continuity for a trial, warning suspected criminals of their constitutional rights, or following a modern evolution of jurisprudence that would revolutionize the collection of information for evidentiary purposes.<sup>437</sup> As a direct result, the Government of Canada Security Intelligence Transition team (SIT) directed that CSIS would not require facilities to store information to an evidentiary standard,<sup>438</sup> which directly influenced the manner in which CSIS processed intercept tapes.

338. The day CSIS was formed, former Security Service officers carried on with the same work. Operational imperatives continued – with a smaller employee base and with the significant burden of converting all *Official Secrets Act* warrants into *CSIS Act* warrants. Policy would have to be written as operations highlighted the differences in approach to that of a police agency.<sup>439</sup>
339. When the bombings occurred, CSIS was in a position to identify the most likely perpetrators of this criminal act. A number of witnesses at the Inquiry were asked whether CSIS employees were told to “solve the case”; this phrase has been attributed to Mr. Archie Barr, the Deputy Director of National Requirements of the CSIS.<sup>440</sup> If Mr.

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<sup>437</sup> Evidence of Jim Warren, Transcript, Vol. 48, pp. 5828-29; Exhibit P-392 Statement of Archibald McArthur Barr, para.69; Exhibit P-101, CAA0041 and *R. v Stinchcombe*, *supra*.

<sup>438</sup> Exhibit P-101, CAA0041, Archibald Barr’s memo to Regions.

<sup>439</sup> Evidence of Chris Scowen, Transcript, Vol. 30, p. 6121: “it was like walking on eggshells in the early days of CSIS”; legal advice was frequently sought in respect of parameters of CSIS operations and policy construction.

<sup>440</sup> See Exhibit P-392, Statement of Archibald McArthur Barr, para. 4.

Barr did utter these words, it was never his intention to have CSIS usurp the criminal investigation function of the RCMP.

340. Mr. Barr, a key proponent of the civilian mandate, said that he didn't intend to charge the CSIS with "solving" the crime in a criminal law enforcement context.<sup>441</sup> Bob Burgoyne explained what he thought Mr. Barr meant:

I believe we had a pretty good base of information... But I think the comment made, "We're going to solve Air India" was the fact that we had the knowledge base and, I think, we ... had a pretty good idea who the perpetrators were behind this... Archie Barr...was the one to set the context...we had the knowledge base and we would be able to provide assistance to the police, which would help them out in their investigation  
...<sup>442</sup>

341. Mr. Burgoyne agreed with Commissioner Major that the statement was a rallying cry, an encouragement to CSIS employees: "we had good knowledge and we (were) going to put that to use."<sup>443</sup>

342. The primary figures in the Sikh extremist milieu were known to the CSIS and the RCMP, and to other policing agencies. These included Parmar and his associates in British Columbia and Ontario. CSIS had been watching Bagri's activities for some months before the bombing and had had difficulties arranging an interview with him,<sup>444</sup>

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<sup>441</sup> The term would have been known colloquially through the CSIS which was populated by former Security Service employees. Having for the most part come from the RCMP, all levels/echelons would have retained similar lexicons of speech. What is abundantly clear is that Archie Barr, above all, had taken the McDonald Inquiry recommendations to heart: by policy, direction and deed, he espoused the separation of security intelligence and law enforcement mandate and actions. See also Exhibit P-392, Statement of Archibald McArthur Barr.

<sup>442</sup> Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3486.

<sup>443</sup> Evidence of Bob Burgoyne, Transcript, Vol. 31, p. 3487.

<sup>444</sup> See Exhibit P-101, CAF0031/or CAF0110 dated February 1, 1985.

investigators were expecting to conduct an interview of Bagri in February, 1985, at the RCMP E Division offices.<sup>445</sup> The RCMP had access to documents outlining CSIS's interest in Bagri and others, given their liaison access and their position on the International Terrorism Working Group.

343. CSIS investigators had a good working relationship with both municipal and provincial forces.<sup>446</sup> The RCMP and other policing agencies in British Columbia and Ontario were aware of the risks posed by Sikh extremists and were pursuing their own criminal investigations.<sup>447</sup> Before the RCMP engaged with the US Secret Service in interviewing both Parmar and Gill in Vancouver, Detectives Shirlaw and Hovbrender provided a briefing on behalf of CSIS. Afterwards, the RCMP debriefed CSIS.<sup>448</sup> There appeared to be a working understanding of the separate jurisdictions and mandates between law enforcement and CSIS, and routine sharing of information. The Air India and Narita bombings and the investigations that ensued however showed that insufficient groundwork had been laid in respect of the roles and responsibilities of the RCMP and CSIS in the case of a terrorist event.

344. CSIS had a solid understanding of the main groups and individuals responsible for the Sikh extremist threat in Canada, and knew this threat did not expire with the events of June 23, 1985. Rather, CSIS had a continuing mandate to investigate the probability that another tragedy would occur. The RCMP shouldered the responsibility for bringing the

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<sup>445</sup> Exhibit P-101, CAF0031, dated January 18, 1985, at p. 14.

<sup>446</sup> See Evidence of Axel Hovbrender, Transcript, Vol.33, p. 3917, and Evidence of Warren Sweeney.

<sup>447</sup> Exhibit P-101, CAB0304 dated June 14, 1985.

<sup>448</sup> Exhibits P-101, CAB0290 dated June 12, 1985, CAA0876 and CAA0213.

perpetrators of the crime to justice. It was the CSIS responsibility to identify the capacities of the BK and the ISYF, as well as those of any other individuals implicated in acts of Sikh extremism. The RCMP would not be in a position to advise the Government of Canada of the ongoing threat. Further acts of terrorism did of course occur,<sup>449</sup> and there was no end to the threats that continued to emanate from the Sikh extremist milieu.<sup>450</sup>

345. On June 27, 1985, BC Region was reporting to CSIS HQ that, “[w]e have recommended to RCMP NSIS that they might wish to consider examining the area of the explosion in Port Alberni, Vancouver Island in the company of one of our PSU; an explosives expert will visit the site tomorrow with our surveillant.”<sup>451</sup> Neil Eshleman, an investigator at CSIS who transferred onto the Sikh Desk immediately post-bombing noted that he was talking informally within days with the RCMP.<sup>452</sup> If there were policies that were being formulated at HQ in respect of information-sharing, it appears quite clear that BC Region was advising the RCMP – at least informally – about the key CSIS targets.
346. CSIS HQ immediately ordered the Regions to give “priority attention” to debriefing community sources and to the interpretation and analysis of technical intercepts on Parmar.<sup>453</sup> The Regions were ordered to intensify their interview programs on the Sikh

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<sup>449</sup> Exhibit P-101, CAE0486: On May 26, 1986 Malkiat Singh Sidhu, an Indian cabinet minister, was shot outside of Vancouver. See Exhibit P-101, CAA1046 at p. 10: On August 28, 1988 Indo-Canadian Times editor Tara Singh Hayer was shot...and then assassinated in November 1998.

<sup>450</sup> See for instance Evidence of Bill Turner, Transcript, Vol. 66, p. 8268; Exhibit P-101, CAB0233 dated May 16, 1987.

<sup>451</sup> Exhibit P-101, CAA0261 dated June 27, 1985. Errata : actually Duncan, BC.

<sup>452</sup> Evidence of Neil Eshleman, Transcript, Vol. 75, pp. 9375-77.

<sup>453</sup> Evidence of Glen Gartshore, Transcript, Volume 31, p. 3547. See also Exhibit P-101, CAA0245 or P-391, RR025 of June 25, 2006 “Adequate resources should be deployed to investigate these incidents. The Solicitor

file.<sup>454</sup> HQ released an update on Sikh extremism and the potential for future violence, as well as CSIS' ongoing intentions for investigating the threat.<sup>455</sup> If the RCMP were not engaged in their criminal investigation in a given region, Regions were expected to proceed with a "complete investigation".<sup>456</sup> CSIS HQ reorganized its staff to deal with the increase in information arriving from Regions which had also diverted resources from other files to the Sikh extremist file.<sup>457</sup> The Regions were tasked with reporting about their operational plans, the RCMP investigative effort, and the extent of liaison with the RCMP and local police.<sup>458</sup> HQ was clear in its direction to the Regions:

The intensity of our current coverage of the East Indian community in Canada makes it imperative that we now look beyond the short term objectives and plan the long term commitment that will be required to enable CSIS to provide ongoing advice to the Government of Canada on threats to the security of Canada that originate within this community... We must devise a national coordinated plan into which our current activities can be integrated.<sup>459</sup>

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General's Office, the Dept of External Affairs and the Prime Minister's office have all expressed special interest in these incidents, and are tasking this HQ for briefings". See also P-101, CAA0253 of June 28, 1985: "undertake a comprehensive interview program of East Indian communities throughout B.C.; ...develop intelligence on local Sikh activity, gather information on the bombing incidents and develop human sources for future needs...five targets have been established...". This document outlines targets and Ray Kobzey to work on warrant applications.

<sup>454</sup> See the SIRC Review into Air India, p. 51 of 197, Exhibit P-101, CAB0902.

<sup>455</sup> Exhibit, P-101, CAA0246.

<sup>456</sup> Exhibit P-101, CAA0238 of June 24, 1985.

<sup>457</sup> Evidence of Kobzey, Burgoyne, Upton, Gartshore, Transcripts, Vols. 30-31. Exhibit P-101, CAB0495: 7 August 1985 summarizes. BCR had a total of 13 people working in the SE area; five doing warrants and analysis, one working full-time with the Air Disaster Task Force and Bob Smith coordinating the group. BCR had interviewed 64 people at that point; surveillance was very difficult.

<sup>458</sup> Exhibit P-101, CAA0266 of June 28, 1985.

<sup>459</sup> Exhibit P-101, CAA0280 of July 18, 1985; see also P-101, CAB0456 of 29 July "the CSIS mandate in regard to the investigation of AI dictates that we maintain strictly an intelligence gathering role..." See also Eshleman at Exhibit P-101, CAA0525 of February 10, 1987: "(CSIS') responsibility was to gather intelligence on the extremist milieu in an attempt to determine the extent of the activities, persons and numbers involved and future intentions...Any information remotely connected to these disasters was supplied to the RCMP."

347. CSIS generally avoided interviewing its own main targets, knowing that the RCMP suspected them of having committed the murders.<sup>460</sup> On the other hand, both HQ and BCR were liaising with their RCMP counterparts in order to apprise them of information obtained from ongoing debriefing of all CSIS sources.<sup>461</sup> When CSIS did interview Bagri at his home in Kamloops, the resulting report was shared.<sup>462</sup> Surveillance efforts were shared and coordinated.<sup>463</sup>
348. Toronto and Quebec Regions began a comprehensive interview program in the Sikh communities with a two-fold purpose: to ensure that the community was aware of CSIS' intention to closely monitor the situation and to provide opportunities for source development.<sup>464</sup> By August 1986 the CSIS and RCMP were meeting to “standardize the efficient and thorough dissemination of relevant information...” The passing of investigative leads was primarily the responsibility of BC Region to RCMP “E” Division.

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<sup>460</sup> Exhibit P-101, CAA0299(i). See also Exhibit P-101, CAF0625.

<sup>461</sup> Exhibit P-101, CAB0440 of July 19, 1985: CSIS Toronto Region personnel briefed RCMP Cst. Reg King on the organizational structure of the BK and the ISYF, concentrating on the extremists; Exhibit P-101, CAA0296 of July 31, 1985; Exhibit P-101, CAA0299(i) of August 2, 1985; see Exhibit P-101, CAA0379(i) written by Sgt. Roth dated November 25, 1985: summary of ten volumes of CSIS material given to RCMP including surveillance reports, observation post reports, daily situation reports, transcripts and source notes. CSIS interview program post-bombing included Dosanj, Hayer, Khalon, Bains, Brar and (among 36 people) In the year before its renewal application for the Parmar warrant, CSIS interviewed in excess of 120 individuals; link analyses had been done, though human sources were not yet helpful. See December 27, 1985 CAB0582. This document is detailed concerning the investigation against Parmar and highlights the difference between security intelligence and law enforcement.

<sup>462</sup> Exhibit P-101, CAA0261 of June 27, 1985 is a sitrep including an interview with Bagri – sitreps were shared with the RCMP. See also Exhibit P-101, CAF0031.

<sup>463</sup> Exhibit P-101, CAB0440 of July 19, 1985.

<sup>464</sup> Exhibit P-101, CAB0495(i) of August 7, 1985.



CSIS' mandate was made clear: "Long after the RCMP has moved on to other criminal issues, Sikh extremism will remain a CSIS responsibility."<sup>465</sup>

349. In early 1988, Reyat's arrest was imminent. The RCMP were cautioning CSIS against interviewing in BC Region. BC Region for its part was asking HQ for direction: if the RCMP weren't pursuing investigative leads passed to them by the CSIS, at what point could CSIS recommence its investigation? The RCMP was concerned that CSIS would contaminate an ongoing criminal investigation. CSIS was concerned that since the Air India and Narita bombings it had not actively pursued its own interests in those suspected of being involved.<sup>466</sup> Mr. Warren had advised the RCMP in the summer of 1987 that once their investigations were complete, CSIS would aggressively pursue its interests. But the RCMP investigation was ongoing, and its list of suspects or persons of interest was now so broad as to dissuade CSIS from doing much work in this area. CSIS was aware also of the distinct risk of being drawn into the criminal prosecution if its investigation of its Sikh extremism targets were pursued.
350. Archie Barr wrote a memorandum on February 25, 1987 explaining the nature of CSIS' support to the RCMP.<sup>467</sup>

We have helped the RCMP to understand how the crime was committed and to ID suspects, but there is insufficient evidence to support

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<sup>465</sup> Exhibit P-101, CAB0666 of August 15, 1986; see also Jim Warren's cross examination, Transcript, Volume 73, at p. 9175-76 - Mr. Boxall suggested that once the Sikhs were put behind bars there was no need for a CSIS investigation... "*Well, they would be, but not necessarily their colleagues...that was really our job...not to look at the crime that's happened but the crimes that may happen in the future...sure you put some people behind bars...but that doesn't mean the problem has gone away by any means.*"

<sup>466</sup> Exhibit P-101, CAA0627(i) of January 29, 1988.

<sup>467</sup> Exhibit P-101, CAB0711 CSIS also provided a link analysis chart with a chronology of events to the RCMP. See CAB0717 dated March 24, 1987.

convictions; this is not the role of CSIS. We can shed new light on this crime and provide a comprehensive database against which to test information developed by the police...everyone should cooperate closely with the RCMP...

### **1. Parmar Tape Erasure**

351. The erasure of CSIS intercept tapes has been extensively examined by Courts and review agencies previously.<sup>468</sup> In addition, a substantial amount of evidence on this topic has been heard at this Inquiry. The Attorney General of Canada does not propose to review this evidence in these submissions but, rather, to suggest conclusions which may be drawn from this body of work and evidence.
352. In June of 1985, approximately one year after the separation of CSIS from the RCMP, both agencies were working to ascertain their respective roles and responsibilities and determining how best to work together. CSIS was governed by new legislation and were attempting to apply it to their day to day operations. The RCMP was learning how to work with a new agency and without their former Security Service.
353. CSIS followed policy as they understood it and erased the tapes. The RCMP did not write to request that CSIS retain the tapes and it never occurred to most officers that the tapes would be erased. It also appears clear that during the Henschel/Claxton discussions of June 26<sup>th</sup> and 27<sup>th</sup>, 1985 each man understood that they had reached agreement on

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<sup>468</sup> Exhibit P-101, CAB0902, SIRC Review at page x of y; *R. v. Malik & Bagri*, [2005] B.C.J. No. 521; P-101, CAA0335, RCMP Submission to the Honourable Bob Rae.

retention of the tapes. Unfortunately, they each appeared to understand that agreement differently.<sup>469</sup>

## **B. COOPERATION WITH THE RCMP AND THE AGBC**

### **General Comments**

354. The *CSIS Act* is meant to allow wide powers of investigation but imposes unprecedented levels of review to ensure that collection of information falls within CSIS' mandate. CSIS collects large amounts of information, but it must do so for the purpose of assessing threats to national security and advising the Government of Canada about those threats.
355. The CSIS is a centralized organization (as was the Security Service before) in which information is funnelled to the centre, further analyzed, and dispensed from there. Most authorities to target and all warrants to intercept emanate from CSIS HQ, human sources are managed by HQ, and decisions to allow its information to be used in a judicial process, or to identify a source would be made by HQ.<sup>470</sup> The CSIS database is unified and information is accessible to all employees with a need to know. Generally, a CSIS file is viewed as one file and everything the Service collects is expected to be placed directly or referenced on that one file. As a result, CSIS HQ has significant control over its investigations and intelligence.<sup>471</sup>
356. The centralization of CSIS is meant to engender accountability in the Minister. It should come as no surprise, then, that the Minister is highly dependent upon the Director of the

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<sup>469</sup> Exhibit P-101, CAF0166, June 26, 1985.

<sup>470</sup> Jim Warren, Transcript, Vol.73, p. 9181.

<sup>471</sup> Jim Warren, Transcript, Vol. 73, p. 9163.

Service to know what CSIS is doing and to exercise principled discretion in respect of the use of sensitive information.<sup>472</sup> Section 19(2) of the Act gives the Director the discretion to disclose Service information – from human sources, intercepts, foreign sources or investigating officers in Canada – to law enforcement for investigation or prosecution.

357. CSIS often provides information to the RCMP before it meets a criminal threshold. It would be inappropriate for a number of reasons to oblige CSIS to pass all information from its counter-terrorism investigations to the RCMP. First, the breadth of information collected by CSIS would be overwhelming to police. Second, CSIS would not be in a position to respect third party caveats, and if foreign information were not protected, CSIS would cease to receive it.<sup>473</sup> Third, in order to continue to recruit human sources, CSIS must be able to protect their identities. An *obligation* to pass on all of a source's criminal-related information would seriously jeopardise that relationship.
358. In the Air India investigation, CSIS distinguished the sharing of the fruits of its investigations from sharing the names of the sources of its intelligence products. Further, CSIS intended that its information would be protected and obtained an agreement with the RCMP that CSIS information would be used only as “investigative leads” unless CSIS authorized further use. While these two premises were ultimately eroded if not

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<sup>472</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9127; Vol. 73, p. 9153.

<sup>473</sup> Canada is a net importer of intelligence. CSIS provides assurances to foreign governments that its intelligence will be protected; on this basis, CSIS receives a considerable amount of information. Evidence of Director Judd, Transcript, Vol. 90, p. 11861. See also Arar Canada (AG), Canada (O'Connor Commission) [2007] F.C.J. No. 1081, paras. 77-78: “...the third party rule is of essence to guarantee the proper functioning of modern police and intelligence agencies....Disclosure would adversely affect its flow and quality.” See Appendix 2, on Caveats.

fully abandoned over the course of the Air India investigation, nevertheless they were clearly policies communicated to RCMP HQ and the Regions soon after the disasters.<sup>474</sup>

### C. CSIS TARGETS

359. Information about the “context” of the Sikh extremist threat had been shared – in the reports RCMP liaison had access to and via threat assessments – during the year prior to the bombing.<sup>475</sup> Chris Scowen wrote to the Regions advising they were not to share names of targets of s. 21 warrants themselves. However, BC Region was sharing all daily reports which showed the names of all CSIS targets and Parmar’s associates and his conversations with them. When further lines were installed on further targets, the identities of the subjects intercepted – except, it appears, for Bagri – were shared with the RCMP.<sup>476</sup>

360. Ajaib Singh Bagri was the subject of a number of CSIS reports in 1984 and early 1985. In the summer of 1984, Bagri accompanied Parmar to a Toronto conference where Parmar gave a speech predicting that Sikhs would kill 50,000 Hindus, harass Hindus and embassies, blow up embassies and in general take revenge against the Hindu

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<sup>474</sup> See for instance Exhibit P-101, CAA0299(i) of August 2, 1985. Chris Scowen writing: “To respond to your specific requests: 1) Surveillance activities of CSIS and Special O in Vancouver are coordinated daily to avoid duplication and preserve scarce resources. All information produced by either organization is shared. 2) The targets of CSIS warrants obtained by s.21 of the CSIS Act ... will not be identified. The only exception would be where the identity of a given target was a required element in a criminal prosecution the decision to then release such information for criminal purposes be addressed by the Solicitor General. All information produced by our warrants that impact on your investigation will be passed at the local level...”

<sup>475</sup> Randil Claxton’s evidence at the trial of Malik & Bagri, exhibit P-199, p. 20 (document page number) or p. 23 of 225. There was increasing Sikh activism in B.C. in 1984, and Sikh militancy was aggravated by the Indian military’s attack on the Golden Temple. The RCMP had an interest, and Deputy Commissioner Venner, Assistant Commission Don Wilson and Inspector Les Holmes were each aware of the unrest and the fact that Parmar was the source of the problem.

<sup>476</sup> Exhibit P-101, CAA0354 of October 24, 1985.

Government. Parmar was unable to cross the American border and Bagri attended a later conference in New York City on his behalf, repeating Parmar's message to the World Sikh Federation.<sup>477</sup> On October 12, 1984, Bob Burgoyne wrote of Bagri's recent tour to Europe and his plan to hijack an Air India plane to force the release of seven hijackers, citing him as a close consort of Parmar and the one who might be willing to commit violent acts on Parmar's behalf.<sup>478</sup> This was sent to the RCMP VIP section on October 26, 1984.<sup>479</sup> CSIS reported that trial dates for Sikhs in Winnipeg charged with assaulting Indian High Commissioner Fabian were set for December 1984 and Burgoyne reminded the Regions to consider the political intentions of their supporters. In the same report, Burgoyne discussed the backgrounds of the Sikhs who were advocating violence, specifically naming Parmar, Bagri and Gill.<sup>480</sup> Bagri became a formal target of the CSIS in January, 1985 as part of the larger BK target authorization, and his trips with Parmar as outlined above would be repeated in various CSIS reports over time.

361. CSIS surveillance reports were used post-bombings by the RCMP to investigate Bagri's movements; the RCMP would uncover the fact that Bagri was visiting the residence of Ms. E when he travelled to Vancouver. As CSIS' investigation of Bagri progressed, pertinent information was provided to the RCMP through CSIS' daily reports and briefing.<sup>481</sup>

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<sup>477</sup> Exhibit P-101, CAA0110, August 24, 1984.

<sup>478</sup> Exhibit P-101, CAB0143 of October 12, 1984; see also Exhibit P-101, CAA0103 of October 14, 1984.

<sup>479</sup> Exhibits P-101, CAF0627, CAA0104, CAB0152.

<sup>480</sup> Exhibit P-101, CAA0104 of October 24, 1984.

<sup>481</sup> See Exhibit P-101, CAF0631.

362. Bagri's communications were intercepted intermittently over the next two years, starting December 23, 1985. CSIS did not inform the RCMP specifically of the fact of its intercept on Bagri during that time. The conversations that CSIS viewed as important however were reported and made available to the RCMP.
363. All of the CSIS targets became the RCMP's chief suspects in its investigation of the bombings.

#### D. "INVESTIGATIVE LEADS"

364. The 1984 Memorandum of Understanding outlined the Solicitor General's expectations for the sharing of information as between the RCMP and CSIS. CSIS would rely upon the following paragraph to protect its intelligence even while sharing information with the RCMP:

The receiving agency shall not initiate action based on the information provided without the concurrence of the providing agency.

365. CSIS provided its intelligence reports to the RCMP for the purpose of *investigative leads*. The intention was to give the RCMP relevant information in respect of context, conversations, meetings and other activities of the Sikh extremists and their associates in order that the RCMP would focus on the likely perpetrators of the bombings. The RCMP was expected to protect this information unless and until CSIS headquarters gave express authorization for its use in any judicial forum.

366. In September, 1985, the RCMP HQ agreed that information coming from CSIS intercepts would not be used in court,<sup>482</sup> but the RCMP wanted access to the translators' work ("transcripts" of intercepted communications) to ascertain whether any possible criminal leads had been missed. CSIS HQ also controlled RCMP access to "raw information", that is, the physical tapes themselves, or original notes of the translators and transcribers.<sup>483</sup> Before the RCMP could listen to tapes or read verbatim translations, the officers undertook that they would not use such information in a *Criminal Code* warrant unless and until they had express permission from CSIS HQ. As CSIS HQ debated the propriety of allowing law enforcement full access to this material, it was alternately instructing BC Region to allow and then to disallow access to this "raw", or original, material. The documentation filed at this Inquiry shows that while CSIS HQ was grappling with this problem, BC Region and the RCMP were frustrated by what they saw as inconsistency. The RCMP did have access to the Parmar transcripts, and asked to review the transcript of another target, Johal.<sup>484</sup>
367. The conversation in respect of the use that the RCMP could make of CSIS information was ongoing. RCMP "E" Division and CSIS BC Region agreed that CSIS would use a broad definition of relevance in its decisions to share information, but that this information would be used for investigative rather than evidentiary purposes.<sup>485 486</sup>

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<sup>482</sup> Exhibits P-101, CAB0548 and CAB0551.

<sup>483</sup> Evidence of John Stevenson, Transcript, Vol. 62, p. 7659-63; Exhibit P-101, CAF0430, November 20, 1989.

<sup>484</sup> Exhibit P-101, CAB0553 of September 17, 1985.

<sup>485</sup> Exhibit P-101, CAA0328 of September 26, 1985; on October 25, 1985, CAA0355, BCR is commenting on RCMP access "against today's broadened search criteria rather than the criteria used two or three months ago".

<sup>486</sup> Exhibit P-101, CAA0357 of October 25, 1985.



368. The RCMP wrote an affidavit dated September 19, 1985 in support of an application for a Part IV warrant to intercept Parmar, Lal Singh, Reyat, Gill, Johal and Pawa on the basis of information provided by CSIS.<sup>487</sup> CSIS HQ had not authorized the use of its information in this manner, and on September 25, 1985 made it clear to RCMP HQ that this should not happen again.<sup>488</sup> It is possible that BC Region had indicated a willingness to obtain permission from HQ on behalf of the RCMP to use CSIS information;<sup>489</sup> Bob Wall testified that he believed Joe Wickie of CSIS BC Region had actually given permission. On October 21st, 1985, Holmes was asking CSIS for further information in respect of CSIS' other major Sikh extremist targets, again on the basis that the information would not be used in a search warrant application.<sup>490</sup> On October 24, 1985, the RCMP asked permission to use CSIS information for *Criminal Code* search warrants on Parmar, Johal, Reyat, and Gill, among others.<sup>491</sup>
369. By January 14, 1986, the RCMP were asking CSIS for assistance with intercepting a meeting involving Parmar. CSIS agreed to assist the RCMP, but again HQ was concerned as to whether it was legally defensible to share any product with the RCMP who could not intercept the meeting given that there was not portability feature in its Part

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<sup>487</sup> Exhibit P-101, CAA0324. Exhibit P-101, CAB0553 of September 17, 1985; CAB0554 of September 20 is Jodoïn's response that BCR can continue to disclose the Parmar transcripts but would have to await a legal opinion on the Johal request.

<sup>488</sup> Bob Wall's notes dated September 25, 1985.

<sup>489</sup> See RCMP submissions in respect of Bob Wall's evidence lead by Commission Counsel.

<sup>490</sup> Exhibit P-101, CAA0349 of October 21, 1985.

<sup>491</sup> Exhibit P-101, CAA0354 of October 24, 1985.

IV warrant. The conclusion was that CSIS would share information for “investigative leads”.<sup>492</sup>

370. In April of 1986, CSIS was reviewing its intelligence and reporting to the RCMP about possible connections between Malik and the other CSIS targets.<sup>493</sup>

371. There was not a universal or consistent understanding in the RCMP of the concepts of “investigative leads”.<sup>494</sup> CSIS was relying on a conceptual separation of sharing information without losing control of it, something law enforcement found frustrating where, as here, the quality of the information in CSIS’ possession was not necessarily reproducible.

372. CSIS was eventually receiving requests for information on many of their Sikh targets around the country. The RCMP’s investigations now extended to Toronto, Windsor and Montreal; its “Project Colossal” was dependant to a large extent on CSIS generated information and its demands were continuous and far-reaching. During the crisis that the Air India and Narita bombings presented, policy surrounding the parameters of information-sharing was being developed by CSIS HQ, and of key concern was the broad disclosure that CSIS was making to the RCMP.

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<sup>492</sup> Exhibit P-101, CAB0588: Evidence of Chris Scowen, Transcript, Vol. 50, pp. 6150-6151.

<sup>493</sup> Exhibit P-101, CAB0602 of April 3, 1986.

<sup>494</sup> Exhibit P-101, CAA0450 of June 16, 1986; CAB0667 of June 27, 1986. Operation Colossal and Sidhu attempt murder information.

### E. INTERFACE BETWEEN RCMP AND THE AGBC LEADS TO CHANGING INSTRUCTIONS TO CSIS

373. James Jardine, the Assistant Crown Attorney of the Attorney General of British Columbia (then), was initially assigned, on a part-time basis, to prepare materials in support of a *Criminal Code* application for an authorization to intercept private communications in July of 1985. Mr. Jardine was not assigned to the case full-time until the spring of 1986.<sup>495</sup> Mr. Jardine came to believe that he would require full access to all of the material on CSIS' Sikh extremism files, but it is not the case that Mr. Jardine asked for "everything" CSIS had in its possession on the file from the beginning.<sup>496</sup> This expectation on the part of Jardine, which went unfulfilled, likely fuelled some of the friction between the prosecutor and CSIS.

374. On September 17, 1985, Deputy Commissioner Venner, Superintendent Holmes (for the RCMP), and Claxton and Wickie (for CSIS) met in Vancouver, and Deputy Commissioner Venner advised:

- Jardine wants access to the CSIS 'technical product' and the freedom to use it for evidence;
- Jardine is also certain that there is an agreement between the AGBC and CSIS to provide information for evidentiary purposes;
- Jardine believes he needs full access to thwart a future possible allegation of inadequate Crown disclosure.<sup>497</sup>

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<sup>495</sup> Evidence of James Jardine, Transcript Vol. 47, pp. 5683-5686.

<sup>496</sup> Contrary to what James Jardine suggests at Vol. 47, pp. 5686-5692.

<sup>497</sup> Exhibit P-101, CAB0553.

375. Venner disagreed: in his opinion, Jardine should not worry about what he did not have possession of, since the RCMP had disclosed all *they* possessed concerning the targets. Venner saw problems if Jardine continued to insist on "full disclosure" and to using CSIS information as evidence. Venner advised that the RCMP was satisfied with the use of CSIS information for investigative leads.<sup>498</sup>
376. On November 20, 1985, Mr. Jardine was advised by the RCMP that CSIS had erased its tapes except for those processed by Constable Sandhu. Mr. Jardine advised the RCMP of his opinion that the intercept product – that is, the summaries that were written by the translators – would not be admissible as evidence against Reyat and Parmar. On March 14, 1986, however, Mr. Jardine appeared to be re-considering his initial opinion; now he asked the RCMP to pursue details concerning the policy on processing and erasure tapes to enable him to assess their potential admissibility in court.<sup>499</sup>
377. On May 6, 1986, Supt. Holmes of E Division wrote to CSIS BC Region asking for particular information “concerning any authorized intercepts of private communications” intercepts for charges they would lay against “Reyat et al”. It asked for methodologies by which intercepts were conducted, transcribed, translated, summarized and to what extent verbatims were made, and “dates of destruction of the evidence”.<sup>500</sup>

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<sup>498</sup> Exhibits P-101, CAA1032, CAA1089(i), CAA0609 and CAB0553.

<sup>499</sup> Exhibit P-101, CAF0168 at March 14, 1986; Evidence of James Jardine, Transcript, Vol. 47, pp. 5705-5708.

<sup>500</sup> Exhibit P-101, CAD0070 of May 6, 1986. Further, it is on the bottom of this document that a handwritten note reflecting a conversation with Belanger indicated Warren should wait before responding, as there were other matters that might be added to the request: CAF0278.

378. Supt. Holmes noted that Mr. Jardine was interested in evaluating the weight of the Crown's overall case against Reyat. Only CSIS intercepts between the dates of *March 27 to June 24, 1985, inclusive* were requested. He advised CSIS BCR that "Jardine is generally aware... that CSIS material would be of little if any evidentiary value but wants to state for the record that he had evaluated the intercepts and considered their worth when making his decision whether or not to proceed with the prosecution."<sup>501</sup> BC Region responded to HQ on May 9, 1986. On May 22, 1986, Chris Scowen, Deputy Director General of Counter Terrorism at CSIS, wrote a note at the bottom of BCR's May 9<sup>th</sup> answers; Supt. Belanger of RCMP HQ had advised CSIS to put the request on hold until CSIS heard back from him.<sup>502</sup>
379. In the meantime, the RCMP was requesting information from CSIS' Ontario and Quebec investigations, surveillance witnesses for trial, explanations and supporting documentation and witnesses in respect of tape retention.<sup>503</sup>
380. RCMP HQ pursued the May 9, 1986 request on September 21, 1987,<sup>504</sup> advising that RCMP had yet to receive answers. In his September 24<sup>th</sup> reply, Jim Warren of CSIS advised that many of the answers had already been given in the context of other interactions between CSIS and Crown prosecutors on the Atwal matter and the Hamilton

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<sup>501</sup> Exhibit P-101, CAB0613 of May 9, 1986; BCR sent their local information to CSIS HQ and would refer the request to CSIS HQ for the formal response, and was waiting for HQ's authority to send verbatims as requested.

<sup>502</sup> Exhibit P-101, CAF0278 of May 22, 1986.

<sup>503</sup> Exhibit P-101, CAA0391 of December 3, 1985; CAA0417 of March 13, 1986; CAD0070 of May 6, 1986; see also Evidence of Jim Warren, Transcript, Vol. 48, p. 5837.

<sup>504</sup> Exhibit P-101, CAA0558.

conspiracy.<sup>505</sup> Jim Warren's letter of September 28, 1987 answered the original May 9, 1986 questions in detail, but asked for clarification in respect of just which intercepts Mr. Jardine now wanted information. Mr. Warren also warned that detailed information may not be available in respect of the date of erasure of any particular tape.<sup>506</sup>

381. On October 5, 1987, CSIS received a request from the AGBC that went much further than the earlier requests. The demand now included copies of *all tapes, transcripts, reports, logs, surveillance notes, any other raw intelligence, and all relating to six of CSIS' targets*. CSIS agreed to provide Mr. Jardine with the information on the condition that it would be delivered to the RCMP and used only as investigative leads.<sup>507</sup> While enclosing the material requested, Mr. Warren noted that the Service had no mandate to collect evidence in support of a criminal prosecution. For this reason, the "continuity" of a tape was not maintained, nor was it a priority.<sup>508</sup> It is in this letter that Mr. Warren raised the spectre of s.36.1 of the *Canada Evidence Act*, stating "courts have recognized the importance of protecting national security to the point...they are prepared to curtail the extent of disclosure...", asking for the RCMP's cooperation in balancing "these sometimes conflicting values as the final decisions on prosecution and disclosure must be made." After having agreed to the use of CSIS information as "investigative leads", the RCMP were now finding that CSIS intended to stand by its policies if it meant protecting sources, third party information and methods of operation. On December 16, 1987, the

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<sup>505</sup> Exhibit P-101, CAA0599.

<sup>506</sup> Exhibit P-101, CAA0563.

<sup>507</sup> Exhibit P-101, CAA0581 October 19, 1987; see also CAA0595(i) of November 30, 1987 in which Jim Warren writes a more comprehensive, detailed explanation of CSIS' intercept practices and policies, although he notes (as he had in the past) that processing and erasure dates are not necessarily accurate.

<sup>508</sup> Exhibit P-101, CAA0595(i) of November 30, 1987.

RCMP noted a concern that the *Canada Evidence Act* protections may just “scuttle the prosecution”.<sup>509</sup>

382. For CSIS, the record of an electronic intercept has historically been the finished intelligence report.<sup>510</sup> The value of an intercept tape ends once its intelligence has been harvested; when that process is complete the tape becomes superfluous, a by-product of the intelligence gathering process. Because continuity of intercept tapes was – and still is – not relevant to the mandate of CSIS, CSIS did not assign a high priority to accounting of its processing of tapes. This was frustrating for Mr. Jardine who was very concerned now about an emerging “abuse of process” motion brought by Reyat’s defence lawyers – as was Mr. Warren who was now being criticized by the prosecutor for not having an exact record of processing and erasure dates of each tape.<sup>511</sup>

383. There was no ‘litigation department’ at CSIS that might have fielded the demands and addressed the expectations of the AGBC. Jim Warren was responsible for responding to the varying requests made over time by the RCMP and the AGBC. Once the AGBC received some information, a new request would inevitably follow for more.<sup>512</sup> Mr. Jardine viewed CSIS as an extension of the RCMP and a reservoir of information which

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<sup>509</sup> Exhibit P-101, CAA0606.

<sup>510</sup> Evidence of Jack Hooper, Transcript, Vol. 50, p. 6215; Barr Affidavit, para.70.

<sup>511</sup> Mr. Justice Jardine gave evidence at the Inquiry that he felt he was not being given straight answers. It is clear from the documentation that Mr. Warren was trying to obtain specific answers in respect of the accounting of the processing of the tapes but was unable to do so: Evidence of James Jardine, Transcript, Vol. 47, pp. 5713-16; Evidence of Jim Warren, Transcript, Vol. 48, pp. 5855 and 5859-61.

<sup>512</sup> Evidence of Jim Warren; Evidence of Merv Grierson; Exhibit P-101, CAA0595 of November 11, 1987; SIRC review Exhibit P-101, CAA0609 of December 18, 1987.

could be used as potential evidence.<sup>513</sup> The Solicitor General's department was surprised at the breadth of the demands of the AGBC to have disclosure of all of CSIS' information: there was a concern that CSIS' ability to conduct future operations may be compromised.<sup>514</sup> There existed a lack of understanding and a common lexicon as between CSIS and the AGBC, and CSIS was concerned that cooperation itself would likely lead to public disclosure of sensitive information.

384. All of the CSIS information that was shared with the RCMP would likely be disclosed to the accused in accordance with the Crown's duties in a criminal trial.<sup>515</sup> The Air India murders established the primacy of prosecution, without doubt. However, CSIS still had a job to do in investigating the Sikh extremist threat.<sup>516</sup>

385. Jim Warren explained his view of the problem at the time:

I think it was always the intent of the Act...that parallel investigations would go on. There would be an investigation with the police towards the end of a prosecution - a collection of evidence, bringing it before court, and an ongoing investigation by security intelligence service in terms of future threats. So I think that's the way the system is supposed to work. Where it starts to break down, I think, is where the police start to depend upon the intelligence as their main evidence stream and that just doesn't...seem to be able to work.<sup>517</sup>

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<sup>513</sup> Exhibit P-101, CAF0176; Evidence of Jim Warren, Transcript, Vol. 48, pp. 5958-59; Evidence of James Jardine, Transcript, Vol. 47, p. 5685.

<sup>514</sup> Exhibit P-101, CAF0009 of December 31, 1987.

<sup>515</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9124; Evidence of James Jardine, Transcript, Vol. 47, pp. 5675-5678.

<sup>516</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9125.

<sup>517</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9126.



386. Eventually, CSIS witnesses were called to give evidence on the Reyat trial. Justice Paris found that CSIS was not negligent in having erased the Parmar tapes. He found that: “...[a]s to the erasure of the tapes, it is clear that that occurred strictly as a result of the then existing administrative routine. There was obviously no question of improper motive in that regard.”<sup>518</sup> Reyat was convicted.

387. Some observations can be made in respect of the attempts on all sides to address the evidentiary issues.

- Over a period of time, the AGBC continued to qualify his opinions as to the admissibility of CSIS intercepts, as he came to understand the complexities of the case;<sup>519</sup>
- In early correspondence, the RCMP appeared to think it unlikely that CSIS intercepts would be admissible, but would later pursue the information about the intercepts on behalf of the Crown;
- CSIS was reluctant to allow its surveillance staff to testify in open court without protections;<sup>520</sup>
- CSIS was receiving requests from RCMP in each of the regions actively investigating Sikh extremism (Vancouver, Toronto, Montreal);
- As CSIS provided information in response to RCMP/AGBC requests, inevitably, additional follow-up questions were posed;
- This process generated frustration on all sides. It was clear that there was a lack of understanding of each other’s mandates and ‘language’;
- Face to face interaction between CSIS and the AGBC was irregular at best, and usually occurred when tensions were at their highest;

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<sup>518</sup> Exhibit P-101, CAA0808 of March 13, 1991.

<sup>519</sup> Exhibit P-101, CAF0168 of March 14, 1985.

<sup>520</sup> Exhibit P-101, CAA0417 of March 13, 1986; Evidence of James Jardine, Transcript, Vol. 47, pp. 5697-5700.

- The AGBC eventually wanted to see all of CSIS' holdings in case CSIS held relevant material it had not disclosed;<sup>521</sup> and,
- Each of the AGBC, the RCMP and CSIS worked with bona fide intention to assist in the prosecution while fulfilling their respective mandates.

#### F. LIAISON OFFICERS BETWEEN CSIS AND THE RCMP

388. A Liaison Officer program between CSIS and the RCMP was established shortly after the creation of CSIS in accordance with direction from the Solicitor General.<sup>522</sup> Mike Roth headed the liaison unit, which was situated at the VIIU. The LO program at the time was very informal and compared to today also very one-dimensional (information typically flowed mostly from CSIS to the VIIU/RCMP) but it was intended as the official channel for the transfer of information between the two agencies. Within days of the bombings, the two agencies agreed that Mike Roth and another RCMP officer would be the formal liaison officers for the criminal investigation.

389. The LO was a conduit between CSIS and the RCMP to ensure that the flow of information was uninterrupted.<sup>523</sup> Sgt. Roth had access to and was reading CSIS reporting, including situation reports. It was open to him to request that CSIS provide a copy of a report to the RCMP. Mr. Roth testified that prior to the Air India bombings the CSIS/RCMP liaison program worked very well.<sup>524</sup>

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<sup>521</sup> Exhibit P-101, CAF0168 of March 14, 1986.

<sup>522</sup> Kaplan's Direction at Exhibit P-101. CAA0081, July 29, 1984.

<sup>523</sup> Evidence of Mike Roth, Transcript, Vol.46, p. 5600. He did note, however, that occasionally information was passed through unofficial channels, and not the Liaison Unit.

<sup>524</sup> Evidence of Mike Roth, Transcript, Vol. 46, pp. 5603-5604.

390. A formal program was not instituted until December of 1986.<sup>525</sup> In the interim, CSIS headquarters debated the parameters of liaison and its propriety.<sup>526</sup> The CSIS executive was primarily concerned about whether the liaison officer ought to have unfettered access to CSIS information when the police were not subject to the controls that had been imposed upon the new Service.<sup>527</sup>
391. CSIS was also concerned about Addy J.'s warning that if CSIS routinely passed information to the RCMP, the foundations of its traditional claims under s.36 of the *Canada Evidence Act* might be eroded, as the Court may conclude that the information has lost its fundamental character of state secret.<sup>528</sup> The Parmar file was at least connected to potential criminality; but on what basis would CSIS justify full access to all counter-terrorism intelligence on all groups and individuals whether or not they had committed criminal offences? The MOU itself stated that neither agency would have unrestricted right of access to the operational records of the other agency.
392. Deputy Commissioner Inkster wanted an RCMP liaison officer to be present at discussions regarding CSIS sources.<sup>529</sup> CSIS's position was that it would not ask the

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<sup>525</sup> Exhibit P-101, CAF0266.

<sup>526</sup> Evidence of Jim Warren, Transcript, Vol. 78 p. 9155.

<sup>527</sup> Evidence of Jim Warren, Transcript, Vol. 78 p. 9157; see also Exhibit P-101, CAA0492 of September 5, 1986 SIRC reference; see also CAA0341 of October 1986.

<sup>528</sup> *Haroutine (Harout) Kevork, Raffic Balian and Haig Gharakhanian (Applicants) v. The Queen and Mel Deschenes, Director General of the Bureau of Counter Terrorism, Canadian Security Intelligence Service (Respondents)*, [1984] 2 F.C. 753, para.32.

<sup>529</sup> Exhibit P-101, CAA0504 of October 22, 1986.

RCMP to identify all of its sources, and neither should the RCMP demand this of CSIS.<sup>530</sup>

393. The Terms of Reference for the RCMP/CSIS LO exchange are dated November 24, 1986,<sup>531</sup> however, confusion continued to exist even into June of 1987 in respect of the distinction between liaison access to information and the right to “disclosure” of that information for law enforcement uses.<sup>532</sup> The two processes for sharing information included a general reporting of CSIS information to the RCMP and access by the RCMP LO to CSIS information. CSIS and the RCMP continued to meet over the years in an attempt to smooth the process and to educate,<sup>533</sup> but the police could not guarantee the anonymity of CSIS sources and confidentiality of CSIS information that was used in court; disclosure to the public would compromise those sources, methods of operation and third party information.<sup>534 535</sup>

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<sup>530</sup> Evidence of Jim Warren generally, Transcripts, Vols. 42, 72 and 73.

<sup>531</sup> Exhibit P-101, CAC0037 of November 24, 1986; CSIS HQ asked the Regions to make the program a success...CSIS COOP 1.0044 of January 8, 1987; Jim Warren encouraging wider sharing of P-101, CAC0057 of September 2, 1987.

<sup>532</sup> Exhibit P-101, CAF0272 of June 16, 1987. “The CSIS will provide the RCMP any information it may develop concerning AI, but only after CSIS HQ has been advised. In this area of cooperation, we are learning as we go along.”

<sup>533</sup> Exhibit P-101, CAF0276 of September 18, 1987.

<sup>534</sup> Exhibit P-101, CAF0277.

<sup>535</sup> On May 5, 1988, Director Morden was writing to the Regions to underline the importance of the relationship with the RCMP. CSIS’ full policies regarding the LO program and the use that could be made of CSIS intelligence by law enforcement were detailed in its Operational Manual of May 31, 1992. See Exhibit P-101, CAA0644 and Exhibit P-101, CAA0896 of May 31, 1992.

## VII. THE SITUATION TODAY

394. The 22 years since the bombing of Air India Flight 182 have seen enormous change in the way that Canada approaches national security. This section deals with two broad areas of national security that are central to the Commission's mandate as it looks from 1985 into the future: the way Canada assesses threats to national security, and the manner in which the RCMP and CSIS cooperate in order to fulfil their mandates.

### A. THREAT ASSESSMENTS

#### 1. ITAC

395. One of the most important goals of the Government of Canada is to prevent terrorist acts. The whole of Government is engaged in this endeavour. Information sharing and integration is a key component to the current threat assessment capabilities of the Government of Canada. Since October 15<sup>th</sup>, 2004, A significant development in accomplishing this goal is the creation of the Integrated Threat Assessment Centre ("ITAC"), which is currently housed within CSIS.

396. ITAC is comprised of representatives from 13 agencies or departments<sup>536</sup> and two provincial police forces that are seconded to it. Its mandate is to provide an integrated response to threats that might emerge or are presently unfolding in the national security sphere. ITAC members work to identify national security priorities, contribute information from each of their home data systems on potential threats, and pool their

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<sup>536</sup> These 13 organizations are those with a national security mandate and include: PSC, CSIS, CBSA, CSE, DND, DFAIT, PCO, TC, CSC, FINTRAC, RCMP, OPP and SQ. See Evidence of Daniel Giasson, Vol. 89, p. 11760.

collective analysis in order to respond to threats in a timely and effective manner. ITAC utilises the CSIS central data system. One of the important features of ITAC stems from its collective method of information sharing. A particular agency might be prohibited from disclosing information to another individual agency or department; however, since each is part of the collective housed at CSIS, the particular agency need only to adhere to the protocol it has with CSIS, not with each other. Effectively, each representative is sharing information with CSIS within the purview of ITAC; therefore they are effectively sharing with each other.

397. ITAC is considered a community resource, whose primary objective is to produce comprehensive and timely threat assessments, which are distributed within the intelligence community and to first-line responders, such as law enforcement. The assessments, based on intelligence and trend analyses, evaluate both the probability and potential consequences of threats. Although other agencies continue to have threat assessment capacity, the idea is that ITAC is the single voice of TA's as they relate to terrorism threats for the Government of Canada.<sup>537</sup>
398. ITAC produces two types of threat assessments: one "tactical" and the other "strategic". The strategic threat assessments tend to be longer term in nature, define terrorism trends, and provide more context to threats. The tactical threat assessments are prepared by the Threat Assessment Unit (TAU), formerly based in the CSIS Intelligence

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<sup>537</sup> Evidence of Daniel Giasson, Vol. 89, pp. 11750 and 11765. Note: CSIS no longer has its own TAU as that is now part of ITAC.

Assessments Branch (IAB) but relocated to ITAC as of April of 2007.<sup>538</sup> Tactical TAs are generally much shorter than the strategic TAs, and serve as timely, tactical reporting that is intended to provide a degree of forewarning for a specific and impending threat, in order to assist the consumer in the formulation of an appropriate response to an upcoming or emerging matter.<sup>539</sup> Notably, just as in 1985, these TAs advise the recipient about the relevant details of a threat, from a security intelligence perspective, but they do not give advice as to how the department should respond to the threat.<sup>540</sup> It is up to the department's own threat assessment section to take the appropriate action.

399. Both types of TAs are intelligence driven and may either be self-generated, in anticipation of interest by the government in material available in the open media or received from various intelligence sources, or initiated as the result of a specific request from a particular department.<sup>541</sup> The analyst responsible for its preparation has direct access to CSIS indices and to most of those of other government departments through their respective representatives in ITAC.<sup>542</sup> The appropriate CSIS operational units (desks) are also consulted when preparing either type of TA.<sup>543</sup>

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<sup>538</sup> As a result of this move, CSIS no longer has a formal TAU, but everything that the CSIS TAU did before is still done by the TAU within ITAC. The move essentially broadened the CSIS TAU resource base.

<sup>539</sup> Evidence of Kim Taylor, Transcript, Vol. 89, p. 11763; Evidence of Daniel Giasson, Transcript, Vol. 89, p. 11755.

<sup>540</sup> Evidence of Kim Taylor, Transcript, Vol. 89, p. 11764 .

<sup>541</sup> Evidence of Daniel Giasson, Transcript, Vol. 89, p. 11756 and Evidence of Kim Taylor, Transcript, Vol. 89, pp. 11763-64, and 11768-69.

<sup>542</sup> Evidence of Daniel Giasson, Transcript, Vol. 89, pp. 11758-59 - ITAC has access to the RCMP database SPROS, through the RCMP rep at ITAC. The TAU typically looks only at what is in CSIS' database and open info, but they can go to the other departments' databases if required.

<sup>543</sup> Evidence of Kim Taylor, Transcript, Vol. 89, p. 11767.

400. The aim of threat assessments has not changed over the years. TAs are designed to gather information into a readable, authoritative package offering insights from a security intelligence perspective, as well as context, on the matter being addressed. The tactical TA writer still assigns a threat level to the assessment, which levels are now defined within the TA itself. The threat level assigned depends upon intent and/or capability of the entity of concern as well as such factors as past history and pre-incident indicators.<sup>544</sup> The TAU will also distribute specific TAs in situations where, for example, there is intelligence that something is going to take place in a specific location, against a specific target, by a specific mode of attack.<sup>545</sup>
401. Tactical TAs are generally disseminated to eleven core government departments and others as warranted, whereas the more strategic TAs routinely receive wider distribution amongst those same core departments as well as their applicable stakeholders.<sup>546</sup> ITAC products, including tactical TAs, are released in both classified and unclassified versions if possible, so as to ensure distribution to the widest possible audience.
402. CSIS continues to have an assessment function distinct from ITAC. While ITAC generally focuses on terrorism threats, the operational units within CSIS produce assessments within their respective areas of responsibility touching on all types of threats as defined under the *CSIS Act* (s.2). These assessments are disseminated by means which include, but are not limited to, the CSIS Intelligence Assessments Branch

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<sup>544</sup> Exhibit P-350 contains definitions of levels as printed on the back of TAU TAs or “Lasers” as they are now called.

<sup>545</sup> Evidence of Kim Taylor, Transcript, Vol. 89, p. 11772.



(IAB). Typically, the assessments produced by the IAB contain an even longer term outlook than the “strategic” TAs prepared by ITAC. They do not issue the formal “tactical” type of TAs like those of the TAU within ITAC. The IAB also looks at all risk elements (vulnerabilities) as part of the CSIS advisory function for the Government of Canada, whereas the ITAC products set out the facts and do not provide specific advice.<sup>547</sup>

## 2. Integrated Assessment Branch

403. The IAB has approximately 20-25 subject-matter experts who produce strategic analyses of priority issues and identify emerging threats or issues which could affect the security of Canada, using information collected through Service investigations, diplomatic reporting, open information and allied sources. IAB also manages CSIS’s Information Centre, which provides the best access to all relevant open information on security-related issues in the country. Intelligence assessments take various forms and, similar to ITAC, are triggered by the subject matter analysts themselves, by a request of the Service’s operational branches, or at the behest of different departments requiring an analysis of the security implications of specific issues. The IAB also participates, along with CSE and the RCMP, in the production of Threat and Risk Assessments, which are prepared in response to requests from specific departments on the entire spectrum of

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<sup>546</sup> The core departments are CBSA; CSE; CSIS; DFAIT; DND; FINTRAC; PCO; PSC / GOC; PWGSC; RCMP; and TC. It is the responsibility of the core departments to disseminate the strategic TAs further to their stakeholders.

<sup>547</sup> Paragraph can be referenced to evidence of Daniel Giasson, Transcript, Vol. 89, pp. 11774-75.

threats, such as to specific government facilities and programs. IAB products are disseminated widely within the Government of Canada and also to foreign partners.<sup>548</sup>

### 3. RCMP Threat Assessment Section

404. Members of the RCMP's Threat Assessment Section, including the Officer in Charge of that Section, Neil Passmore of CSIS, testified about the current situation for the RCMP. The RCMP's Threat Assessment Section (TAS) provides threat assessments primarily to support the RCMP's protective mandate.<sup>549</sup> The TAS also provides assistance on occasion to the National Security Criminal Operations Branch.<sup>550</sup> The threat assessments the TAS produces are primarily tactical products,<sup>551</sup> and will be used by operational units to make decisions about protective measures to be taken.
405. In performing their duties, members of the TAS may task INSETs or NSIS units to obtain information. The TAS also routinely receives information from CSIS, DND, DFAIT, and ITAC, as well as other agencies.<sup>552</sup> Once the threat assessment has been completed, a threat level will be assigned and the assessment will be forwarded to the requesting unit. On occasion, on a case-by-case basis, the TAS will forward the assessment to someone in addition to the requester, if that is deemed necessary.<sup>553</sup> If there are caveats on the information, the TAS will have to go back to the originators of

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<sup>548</sup> Evidence of Louise Doyon, Transcript, Vol. 96.

<sup>549</sup> Evidence of Supt. Reg Trudel, Sgt. Dan Mayer, and Neil Passmore, Vol. 96, p. 12801.

<sup>550</sup> *Ibid*, p. 12807.

<sup>551</sup> *Ibid*, p. 12808, 12802.

<sup>552</sup> *Ibid*, p. 12809; Exhibit P-399, Tab 6, p. 8.

<sup>553</sup> *Ibid*, p. 12809.

the information for their consent. If recipients lack the appropriate security classification, the assessment may be adapted so it can be disseminated.<sup>554</sup>

406. The threat information put together by the TAS is available to national security investigators across the country through the SPROS database.<sup>555</sup>

## **B. CSIS AND THE RCMP TODAY**

### **1. Complementary Mandates**

407. The Air India and Narita tragedies occurred before CSIS and the RCMP could fully explore how their complementary mandates should be balanced and negotiated in the difficult and unpredictable circumstances of a major terrorist investigation. Clearly the “greater good” lay in prosecuting those responsible for these crimes. But identifying whether the greater good lies in prosecution or in a continuing security intelligence operation or another kind of response is an ongoing issue for the agencies that often requires judgment on a case-by-case basis.
408. The working relationship between CSIS and the RCMP has evolved to the point where information is shared regularly and at an earlier stage. There is a commitment to understanding each other’s mandates. Both agencies have established relationships and systems which ensure that this cooperative effort is institutionalized.

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<sup>554</sup> *Ibid*, p. 12811 – 12, 12831

<sup>555</sup> *Ibid*, p. 12819

409. This cooperation will not provide the answers to all of the issues that this Commission of Inquiry was asked to consider. The relationship is better than it has ever been, but goodwill on the part of the RCMP and CSIS will not alter the legal difficulties that the agencies encounter in a major terrorist investigation.
410. CSIS accepts that one of the most powerful tools in combating terrorism is the engagement of law enforcement.<sup>556</sup> That said, a very minor portion of what CSIS investigates ever becomes relevant to a criminal investigation, even though 60-70% of CSIS' current work is in the field of counter-terrorism.<sup>557</sup>
411. CSIS is highly motivated to move some of its targets to departments or agencies of the federal Government that will take action, whether it is Immigration, Border, Customs, Foreign Affairs, Charities, the RCMP or other law enforcement agencies.<sup>558</sup> The direction this takes becomes clear from the context of the threat being investigated, and from CSIS' ongoing discussions with its partners.
412. The RCMP's approach to national security has also been changing. A new dimension was added to its law enforcement duties with the enactment of the *Anti-Terrorism Act*: the criminalization of terrorism. As a result the RCMP developed, then introduced, Integrated National Security Enforcement Teams (INSET's) into four major Canadian cities to augment its existing National Security Investigation Sections.

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<sup>556</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11512.

<sup>557</sup> Evidence of Luc Portelance, Transcript, *supra*, p. 11474: "And for the most part, having satisfied ourselves that they do not think it meets their threshold, we pursue our investigation."; Evidence of Larry Tremblay, Transcript, Vol. 96.

<sup>558</sup> Evidence of Luc Portelance, *supra*, p. 11477.

413. More changes resulted from the Analysis and Recommendations stemming from the factual phase of Justice O'Connor's Inquiry (Part I). This led to the RCMP centralizing control over all national security investigations.
414. The RCMP National Security Criminal Investigation (NSCI) Governance Framework and NSCI Policy flowed from this process and, now, all operational files, including all National Security-related threat assessments, are under centralized control.<sup>559</sup>
415. Tangible examples of centralized control include: administering domestic and international partnerships; controlling foreign information sharing; and establishing policies for all facets of national security criminal investigations.

## 2. Information Sharing Between CSIS and the RCMP

416. CSIS is predisposed and has taken the decision to disclose aggressively to allow the RCMP to determine whether a law enforcement response is the appropriate one.<sup>560</sup> CSIS has allowed the RCMP to listen to CSIS intercepts in certain cases.<sup>561</sup> In some circumstances, CSIS would share its entire holdings on a file.<sup>562</sup> While CSIS may identify a conspiracy through the course of its investigations,<sup>563</sup> nevertheless, a

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<sup>559</sup> The NSCI Governance Framework and Policy are subject to amendments as operational demands evolve, as new legislation or inter-agency agreements are developed and as new external review mechanisms come on-line.

<sup>560</sup> Evidence of Luc Portelance, *supra*, pp.11484-11485.

<sup>561</sup> Evidence of Luc Portelance, *supra*, p. 11490.

<sup>562</sup> Evidence of Regional Director Generals Duncan Lane, Any Ellis and John Gillies, Vol. 82, commencing at p. 10522.

<sup>563</sup> The goal of any investigation is to better understand the threat and to report to government on both the degree and intensity of the threat. CSIS collects information/intelligence relating to the activities engaged in by a particular individual or group and is particularly interested in knowing with whom those individuals have a relationship.

concerted effort is being made to allow the RCMP to satisfy itself as to whether a criminal threshold has been reached on a given CSIS file. This means that information is shared long before it meets a criminal threshold.<sup>564</sup> This practice ensures that today, a target such as Parmar would be known early on to the RCMP, who would then ideally seek their own *Criminal Code* Part VI warrant rather than rely on CSIS intercepts.<sup>565</sup>

417. CSIS will not necessarily disclose the identity of a human source. However, the information elicited from the source is shared.
418. There are a number of mechanisms established for CSIS to share information with the RCMP. Formal disclosure and advisory letters alert the RCMP to specific information and set out the use that can be made of it. Threat assessments provide contextual and general information on the threat landscape and specific threats to national security.
419. A comparatively recent development is the establishment of the Joint Management Team. The JMT is not a mechanism by which the agencies manage cases together; it has been characterized as the “joint management of the relationship” and is designed to transcend relationships.<sup>566</sup> The Assistant Deputy Director of Operations at CSIS<sup>567</sup> liaises regularly with an Assistant Deputy Commissioner at the RCMP *to present every single counter-terrorism investigative authority*. The Regional Directors General also

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<sup>564</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11485 ; CSIS investigators are being trained however to identify a criminal offence : See also p.11488; Evidence of Larry Tremblay, Vol. 96, that CSIS does not need to know the elements of a criminal offence because the threshold is so low for sharing.

<sup>565</sup> Evidence of Luc Portelance, Transcript, Vol. 88, pp. 11497-98. It may also mean that today RCMP INSET would have begun an investigation of Parmar prior to the bombings.

<sup>566</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11480.

<sup>567</sup> CSIS HQ : third in command.

meet with their counterparts in the RCMP in order to ascertain whether CSIS' intelligence approaches or meets a criminal threshold.

420. These meetings also serve to mitigate duplications of effort, needless expenditures of scarce human and financial resources and damage to the integrity of investigations. They also include what is colloquially known as “deconfliction” processes.<sup>568</sup>

421. RCMP A/Commissioner Mike McDonell testified that joint management of potentially conflicting investigations is primarily practiced at the INSET and CSIS Regional level and that there is generally little to do at his level but to facilitate the smooth flow of information.<sup>569</sup> He also provided insight into the new Memorandum of Understanding between CSIS and the RCMP, stating that both agencies had adjusted their respective behaviours (in the context of national security) over the course of sixteen to eighteen months then drafted a new Memorandum of Understanding which reflected that changed behaviour

422. An RCMP officer is presently seconded to CSIS and manages one of CSIS' most important investigations. An evolution of the mechanisms for effective and efficient sharing has taken place,<sup>570</sup> where the mindset of the agencies is to cooperate.

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<sup>568</sup> Exhibit P-101, CAA0233, pp. 45-55.

<sup>569</sup> Evidence of Mike McDonell, Vol. 95, pp. 12630-31, 12654.

<sup>570</sup> See, for example, the Evidence of Luc Portelance, Jim Judd, Jack Hooper, and Larry Tremblay.

### 3. Information Sharing Within the RCMP and Beyond

423. Sharing national security information within the RCMP has greatly improved in recent years. The RCMP has one database to link National Security Criminal investigators, including its INSET partners, across Canada, called SPROS.
424. SPROS has been described as an information hub which provides real time uploading, accessing and monitoring capabilities across the country.<sup>571</sup> Monitoring by headquarters also provides centralized control by allowing headquarters oversight.<sup>572</sup>
425. Headquarters uploads the raw data which is then accessed by field investigators at RCMP Integrated National Security Enforcement Units and National Security Investigation Sections (discussed below). Routing of this information through Headquarters ensures that the significance of the information is assessed across a wide spectrum of national security operations, from domestic investigations and protection of VIP's through to international investigations.
426. RCMP Inspector Parsons also explained in his testimony a further integrated concept, the Joint Intelligence Group (JIG). The partners in the JIG receive the information uploaded to SPROS. This "feed" is utilized to provide tactical threat assessments, to assist in the protection of members of the Canadian Executive and to contribute to strategic assessments by ITAC.<sup>573</sup>

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<sup>571</sup> Inspector Ches Parsons and Superintendent Jamie Jagoe spoke to the benefits of SPROS during their evidence at the Inquiry, Vol, 82, p. 10451.

<sup>572</sup> *Ibid.*, p. 10452.

<sup>573</sup> Vol. 82 at p. 10452-10453.



427. A commitment to information sharing and an integrated approach to national security enforcement are reflected in the Canadian Association of Chiefs of Police Common Framework on National Security.

#### 4. INSETs

428. The RCMP are committed to the principle that counter-terrorism efforts require an integrated approach. Following the events of September 11, 2001, the RCMP reorganized the National Security Investigation Sections (NSIS) in large urban centres into Integrated National Security Enforcement Units (INSETs). Like the NSIS units, the INSETs have a mandate to carry out the RCMP's responsibility to prevent and investigate national security offences.<sup>574</sup>

429. The strength of the INSETs is that they integrate RCMP members with representatives from municipal police, provincial police and federal partners (such as the Canada Border Services Agency and Citizenship and Immigration Canada).<sup>575</sup>

430. The purpose of the creation of the INSETs was to enhance the RCMP's capacity for the collection, sharing and analysis of intelligence amongst partners; to create an enhanced investigative capacity to bring targets to justice; and to enhance partner agencies' collective ability to combat national security threats.

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<sup>574</sup> Evidence of Jamie Jagoe, Vol. 82, November 23, 2007 at p. 10445.

<sup>575</sup> Evidence of Jamie Jagoe, Vol. 82, November 23, 2007 at pp. 10445-10446.

431. INSETs have been formed in Vancouver, Toronto, Ottawa and Montreal. In smaller centres, the NSIS fulfill the same function as the INSETs, but these units are not integrated with partner agencies in the same way.
432. The INSET's mandate of national security enforcement is complementary to CSIS's security intelligence function. This involves cooperation, such as a formal deconfliction meeting every 60 days to ensure that the INSETs and CSIS are aware of each other's targets.<sup>576</sup> The INSET will commence criminal investigations after receiving information passed from CSIS.<sup>577</sup> In general, however, the INSETs use the same channels as the rest of the RCMP when exchanging information with CSIS, including the system of disclosure letters and advisory letters.<sup>578</sup>
433. With their complementary mandates, the INSETs and CSIS share the goal of preventing terrorist acts in Canada. When he testified before the Commission, Inspector Jagoe gave the following evidence with respect to the working relationship between his INSET and CSIS:

...I am of the firm belief and have no doubt in my mind whatsoever that the Service is motivated to work with the police and go to all extents possible to share information with us of the type you're describing.

And I can tell you when I am having negotiations with senior members of the Service and others, it always comes down to public safety and prevention. And every decision that we make collectively around these discussions are based on what is in the greater good and based on public safety. And I can assure you that there is a high level of cooperation.<sup>579</sup>

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<sup>576</sup> Evidence of Jamie Jagoe, Vol. 82, November 23, 2007 at p. 10449.

<sup>577</sup> Evidence of Jamie Jagoe, Vol. 82, November 23, 2007 at p. 10448.

<sup>578</sup> Evidence of Jamie Jagoe, Vol. 82, November 23, 2007 at p. 10448.

<sup>579</sup> Evidence of Jamie Jagoe, Vol. 82, November 23, 2007 at p. 10476.

## 5. The RCMP's Major Case Management

434. Chief Superintendent Bob Paulson testified to the RCMP's current approach to an investigation of major crimes. This approach includes the principles of Major Case Management (MCM), the Office of Investigative Standards and Practices (OISP) and an initiative called "Quick Start". These tools allow investigators "to hit the ground running" in the event of a disaster or large criminal investigation.<sup>580</sup>
435. The central component of MCM is the command triangle. The key position is the Team Commander, supported underneath by the Lead Investigator and the File Coordinator. The investigation's success depends upon choosing qualified individuals given that each of the three positions has specified roles and responsibilities.<sup>581</sup> The OISP was initiated by C/Supt Paulson in British Columbia and performs oversight of major investigations, as well as the development and administration of an accreditation process to build a pool of qualified team commanders. The RCMP is planning to implement OISP across Canada.
436. "Quick Start" is a proactive approach to the effective use of resources and the removal of impediments to a rapid start to an investigation. Leaders from support sections of the RCMP meet and take responsibility for the various needs of an investigation. The principle behind this is that police officers should concentrate on investigating and support services personnel should facilitate the provision of infrastructure, human resources and supplies to.

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<sup>580</sup> Evidence of C/Supt Paulson, Volume 95, pp 12590-99 and Exhibit P-384.

<sup>581</sup> Exhibit P-384.

## 6. Retention of Information by CSIS

437. CSIS investigates a wide range of activities that may present a threat to national security but is admonished to collect information only to the extent that it is “strictly necessary”.<sup>582</sup> It retains information on activities that may on reasonable grounds be suspected of constituting threats to the security of Canada, but it should be clear that CSIS retains such information for a very long period of time.<sup>583</sup>
438. Technology has reached a point where vast quantities of information can be digitally retained without an unwieldy resource drain.<sup>584</sup> However, when dealing with massive amounts of information, the ability to retrieve particular information becomes a challenge.<sup>585</sup> Even though CSIS continues to collect information strictly for intelligence purposes<sup>586</sup>, following the September 11, 2001 attacks the Service now routinely retains all reported conversations in certain counterterrorism investigations.<sup>587</sup> Retention of certain intercepted material beyond the proscribed 30-day limit can now be ordered by Regional Directors General or the Deputy Director of Operations.<sup>588</sup>

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<sup>582</sup> Section 12 of the *CSIS Act*.

<sup>583</sup> Evidence of Luc Portelance: Transcript, Vol. 88, p. 11490: CSIS retains every single report ever written on any matter in its central database.

<sup>584</sup> Evidence of Andrew Ellis, Vol. 82, Transcript, p. 10549; Evidence of Luc Portelance, Vol. p. 11357.

<sup>585</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11357.

<sup>586</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11492-93; of Jim Judd, Transcript, Vol. 90, p. 11884.

<sup>587</sup> This retention accounts for approximately 10 to 20 per cent of all intercepted material. See Evidence of Luc Portelance, Transcript, Vol. 88, p. 11491 ; of Jim Judd, Transcript, Vol. 90, pp. 11860 and 11875.

<sup>588</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11491.

439. Finally, CSIS now retains the original intercept whose contents are disclosed to the RCMP and CSIS would retain intercepts on a target like Parmar beyond the requisite 30-day period based on their potential intelligence value.<sup>589</sup>

### **7. Need for Ongoing Intelligence**

440. There have been suggestions at the Inquiry that CSIS ought to step back from its investigation once a criminal event occurs, but CSIS cannot cede its responsibilities to the RCMP once a criminal event occurs. The Service has an ongoing intelligence responsibility to the Government of Canada. “Deconfliction” may be the term of cooperation in the present day counter-terrorism landscape, but implicit in this concept is the understanding that CSIS has an ongoing intelligence responsibility before, during and after a criminal event. CSIS may have assets or sources in that respect that the RCMP would not have, and it is likely that CSIS would have an intercept or surveillance or both preceding a terrorist act. Even if the RCMP decides to pursue a criminal investigation, CSIS will have a continued responsibility to advise the Government about the threat. It would be difficult to fulfill this mandate without these assets.<sup>590</sup>

441. CSIS was not established separate and apart from the RCMP to be a feeder agency for law enforcement; rather, the broad investigative powers of the Service were established with the intent that its information would not be used in a criminal proceeding without

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<sup>589</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p. 11498.

<sup>590</sup> Inspector Parsons stated that “Just because we take a criminal target and pursue a criminal investigation does not, nor should not, preclude the service from engaging in its security intelligence activities; essentially you can run on a parallel track. It’s not problematic.” Evidence of Inspector Parsons, Transcript, Vol. 82, p. 10457.

consideration of the consequences by the Director. The mandate of the Service is to focus its resources on understanding and advising government about threats to the nation's security. The idea of "investigative leads" is for the security intelligence service to give law enforcement enough information to allow law enforcement to pursue a criminal investigation of a threat to national security.

### **8. Intelligence to Evidence**

442. It has been suggested during the Inquiry that CSIS ought to have altered its mode of operation in its dealings with people who would become sources on the Sikh extremist file.<sup>591</sup> Should CSIS take verbatim notes or surreptitiously tape such a source's conversations? Instead of highlighting the fact that CSIS is not an enforcement body, should CSIS warn the source that anything he says might lead him into the witness box? Should CSIS co-handle any post-offence source with the RCMP? In order to protect the source from disclosure in a criminal trial, it is suggested that CSIS not "direct" the source in any way. It has even been suggested that CSIS should refuse to continue its relationship with a source that has refused to cooperate with the police.<sup>592</sup>

443. Much of what CSIS does in the field looks like what law enforcement does. The Service conducts interviews, keeps records of those interviews, intercepts communications, and puts patterns and pieces of information together to obtain a coherent picture of a phenomenon. It is the purpose for which CSIS engages in these

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<sup>591</sup> This often arose in Mr. Boxall's questioning of CSIS and RCMP witnesses in respect of source issues, for instance see Evidence of Jim Warren, Transcript, Vol. 73, p. 9165 and following.

<sup>592</sup> Mr. Boxall's cross-examination of Jim Warren, Transcript, Vol. 73, p. 9172.

activities that is very different. The breadth of a CSIS investigation extends well beyond the scope of a criminal investigation; the intersection of the two should not mean that all CSIS information regarding a particular target or phenomenon would be relevant to law enforcement. Timelines are different, especially in the case of a non-imminent threat. An investigation that does not elicit full answers immediately does not represent a problem for CSIS. A large amount of information obtained by CSIS originates outside of Canada, with caveats, but also with attendant issues concerning reliability and corroboration. There is no enforcement capability of CSIS, however, it was and is intended that CSIS' information could be shared – at the discretion of an accountable Director – with enforcement agencies.

444. The intersection between law enforcement and Service jurisdictions is never more delicate than when the Service has a well-established human source with but one “slice” of criminal intelligence to offer. Assuming the source's willingness to assist law enforcement in its prosecution, CSIS may well need that source to continue his work in the larger intelligence operation. If it is determined that law enforcement needs take priority, it would be preferable that only that portion of the source's work in the criminal milieu should be disclosed to the accused. But for the Service to also change its source handling practices *ab initio* in order to increase the probability the criminal information will be admissible in court is not desirable or practicable.<sup>593</sup>

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<sup>593</sup> Evidence of Luc Portelance, DDO CSIS, Transcript, Vol. 88, p. 11514; one could also say that it would not make a difference as that ship has already sailed...CSIS cannot know what might be important later to an eventual criminal investigation – even the police would not know this – and CSIS meanwhile must obtain the information relevant to its mandate.

445. CSIS' efforts did produce information relevant to the RCMP's investigation of the Narita and AI bombings. In fact, the key witnesses and evidence (aside from forensics) at both the *Reyat* trial and that of *Malik and Bagri* would be CSIS sources or employees. Willie Laurie took the initiative in 1987 to follow up an old CSIS surveillance report about Bagri's frequent attendance at what would turn out to be Ms. E's address. While Mr. Laurie did not write a verbatim account of each interview with her, his reporting became the "principled hearsay" admitted into evidence by Josephson J. and the lynchpin of the Crown's case against Bagri. The physical surveillance unit that followed Reyat, Parmar and a third man to Duncan gave evidence at the trials, using their surveillance reports to assist their memories. Another person interviewed by CSIS, "Ms. D", became yet another witness at the trial.<sup>594</sup>

446. In respect of the suggestions that CSIS should be considering taking steps to improve the reliability of its information for court purposes, the CSIS Director Mr. Judd noted:

"...certainly on the retention front as I said earlier with respect to many terrorist investigations, we have adopted the practice of retaining intercepts. With respect to other activities we could adjust surveillance practices to meet a standard – a police standard if you will – but (purpose behind the)...establishment of CSIS was to create a resident intelligence service, not a law enforcement service. That said, it could obviously be tailored in specific cases to make adjustments accordingly but I think a wholesale approach of turning the organization to evidentiary standards would be impossible to manage."<sup>595</sup>

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<sup>594</sup> See footnotes at paragraph 501.

<sup>595</sup> Evidence of Jim Judd, Transcript, Vol. 90, p.11860.



447. CSIS does not collect information and intelligence “to an evidentiary standard”<sup>596</sup> just in case it might be helpful sometime in the future to law enforcement agencies. A valid question is whether by collecting to such a standard the Service becomes a police agency with security intelligence capabilities. In his July 29, 1984 letters to Commissioner Simmonds and Director Ted Finn, Solicitor General Bob Kaplan explained the distinction between the new Service and the RCMP:

The investigative powers and authorities accorded to each organization differ in their nature, range and scope... Where it becomes apparent (likely through CSIS or joint investigation) that a national security offence has been or is about to be committed, the RCMP must ensure that appropriate action is undertaken to satisfy its enforcement responsibilities. **Since information provided by a CSIS investigation is unlikely to be useable in enforcement work**, the RCMP will be required to investigate and collect the evidence required.<sup>597</sup>

### C. CONCLUSION

448. The two agencies have separate, distinctive mandates which, given their breadth and importance, must be performed by specialists. Where there is an intersection of the mandates, specifically where a criminal event occurs during an investigation of a threat to national security, CSIS should be in a position to advise the RCMP of information already collected so as to allow the RCMP to pursue its criminal investigation in a timely, efficient manner. For CSIS to continue to discharge its responsibilities, however, it must be able to protect to the greatest extent possible its sources, employees, third

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<sup>596</sup> For the purpose of this discussion, we will assume it means “collecting, retaining and preserving continuity of all raw information for possible use in a criminal prosecution”. This standard changes over time with the jurisprudence and technical capabilities and expectations pursuant to the Canadian Charter of Rights and Freedoms and the Canada Evidence Act. See Evidence of Luc Portelance on “collecting “evidence”, Transcript, Vol. 88, commencing at p. 11494.

<sup>597</sup> Exhibit P-101, CAA0081 at p. 12.

party information and methods and its ability to continue its security intelligence investigation.

449. The Commission of Inquiry heard evidence that the CSIS and the RCMP are in the position of deciding whether a security intelligence investigation should continue and whether a criminal investigation ought to proceed. The two ought not to be mutually exclusive. The Commission was encouraged to consider legislative solutions that would enable and protect both mandates and permit of a fair trial.
450. The current state of “criminal prosecution disclosure” jurisprudence, including all of the cases applying the principles of *R. v. Stinchcombe*, presents an obstacle for sharing security intelligence with the police. Once the RCMP have possession of the information, it is subject to possible disclosure whether or not the RCMP actually use the information for any judicial purpose. This alone has overwhelming implications for both CSIS’ ability to fulfil its mandate and indeed the RCMP and the Crown’s ability to proceed with a fair and timely trial.
451. The *Canada Evidence Act* does not provide any guarantees of protection of information at a trial. Section 38 provides a mechanism for *applying* to protect information that is a national security concern, and that application occurs long after the information has been used to support a criminal charge. Other sections of the *Criminal Code* provide for the *possibility* of protecting the identity of witnesses. While the *CSIS Act* is clear in s.18 that CSIS must protect the identity of human sources, clarity is needed to confirm the legal protection afforded to CSIS sources in a criminal trial. No jurisprudence or

legislation insulates CSIS's wider collection of information and intelligence from sweeping disclosure orders of a criminal court.

452. The mindset of the RCMP and CSIS is currently one of early consultation, and mechanisms exist now to institutionalize that accepted imperative. The agencies' concerted efforts to cooperate and understand one another however will not resolve the legal issues surrounding the movement of intelligence to evidence.

## VIII. OTHER ISSUES ARISING FROM THE INQUIRY

### A. CANADA'S CONSULAR RESPONSE

453. The Commissioner has already issued a report on Phase I of the Inquiry, *The Families Remember*, which dealt with evidence heard in the first stage of the Inquiry. Some of this evidence concerned the consular response of the Canadian Government to the disaster. Despite its treatment in Phase I, further evidence was presented at Phase II of the Inquiry dealing with the consular response and as well comments were made with respect to the response by some counsel in their final oral submissions.<sup>598</sup> Accordingly it is appropriate that the Government make some comment to respond.
454. In doing so the Government repeats and relies on its written submissions regarding Phase I of the Inquiry filed September 24, 2007, which contain a brief detailed summary of the Consular response and the conditions under which that response was delivered.
455. The following is a brief summary of the key points that arise from those submissions:
- a) Efforts to contact victims' families :
    - i) consular bureau in Ottawa worked from incomplete lists and contacted as many family members as possible until a definitive list was provided by Air India on June 30;<sup>599</sup>
    - ii) DEA officials in Ireland visited most of the hotels and bed and breakfasts in Cork area in search of Canadian relatives and met with them;<sup>600</sup>

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<sup>598</sup> Evidence of Sherene Razak, Transcript, Vol. 96; Oral submissions of Families Counsel, Transcript, Vol. 97.

<sup>599</sup> Evidence of Gavin Stewart, Transcript, Vol. 12, p.1125; Exhibit P-92, Tab 20, p. 91, "Air India Disaster Meeting, June 25/85"; tab 21, p. 96, "Situation Report – 0800 25 June 1985".

<sup>600</sup> Evidence of Gavin Stewart, Transcript, Vol. 12, pp. 1128-31.

- iii) Press releases were issued by government on June 24, 1985 and thereafter;<sup>601</sup>
- b) Emotional support provided by Canada:
  - i) Members of the consular team were in Cork beginning June 24 until July 12, 1985 and were available 7/24 to address needs and concerns of family members in Ireland;<sup>602</sup>
  - ii) Government of Canada with the province funded a counselling hotline in Ontario employing 200 full-time and volunteer workers providing information on psychiatric, legal and financial services;
  - iii) Grant to the Flight 182 Relief Program to act as a focal point for community contact and liaison for problems related to the crash;
  - iv) Created info guide to services for bereaved families;
  - v) Toll free hotlines in Montreal, Vancouver and Toronto and
  - vi) Funded travel for community representatives to Cork one year later to commemorate the victims.<sup>603</sup>

456. The Consular effort and response to the disaster shepherded by DEA was to that time the largest single consular operation DEA had mounted in history.<sup>604</sup> When reviewing the Canadian response and evaluating its timeliness it is essential to consider the efforts and the time taken to contact everyone in light of the communications capacity of 1985. From the moment the tragedy became known efforts were immediately taken to identify victims and contact their families. It should not be forgotten that the capacity for immediate communication which we expect and rely on today simply did not exist in 1985; there were no cell phones, e-mail or internet access. In the absence of a formal

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<sup>601</sup> Exhibit P-92, Tab 18, p. 82, Press Release, dated June 24, 1985; Evidence of Daniel Molgat, Transcript, Vol.12, p.1147-48, 1216-17; Evidence of Scott Heatherington, Transcript, Vol.4, p. 405-7.

<sup>602</sup> Evidence of Daniel Molgat, Transcript, Vol. 13, p.1160-61

<sup>603</sup> Paras, ii) to vi) - Evidence of Daniel Molgat, Transcript, Vol. 13, p. 1170, p. 1207; Exhibit P-215, Heritage Canada Documents – “List of Contacts for Information and Assistance re: AI Flight 182”; letter to Prime Minister Mulroney from Minister of State for Multiculturalism Jack Murta; Memo to Minister of State – “Multiculturalism re; Multiculturalism Sector Involvement in AI Incident” dated March 3, 1986.

<sup>604</sup> Evidence of William Sheahan, Transcript, Vol. 13, p. 1237.

requirement for air carriers to maintain accurate passenger manifests, Government personnel had to work from inaccurate and incomplete passenger lists for the first few days. Therefore contact of family members occurred over a few days instead of a few hours. As a result, it is inappropriate to evaluate the Canadian response in 1985 in relation to what that response could be in 2008.

#### **B. SUBSEQUENT DEA ACTIVITIES CONCERNING SIKH EXTREMISM**

457. Following the tragedy the Government of Canada moved to adopt a strategy to deal with Sikh extremism on a number of fronts. This effort was centered in the Department of the Solicitor General but the Department of External Affairs was the principal point of coordination within the Canadian Government on the issue of Canada-India relations and its Sikh dimension. DEA had assumed this role because the foreign policy aspects of this relationship were most significant, particularly Canada's relationship with India and the desire to combat international terrorism.
458. Elements of the strategy included provision of visible support to moderate Sikhs and restoration of the reputation of the Sikh community.<sup>605</sup>
459. Some criticism was levelled at the DEA that it failed to respond adequately to requests from Sikh communities to discuss their concerns by meeting with certain groups or providing another appropriate agency to meet with them.<sup>606</sup>

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<sup>605</sup> Exhibit P-101, CAE0498, Aide Memoire, Government's Response to Sikh Extremism in Canada.

<sup>606</sup> Exhibit P-101, CAE0442, Memorandum to the Secretary of State for External Affairs from D. R. Saunders and H.G. Pardy, South and Southeast Asia Relations Division dated March 21, 1986, at p.1.

460. DEA is aware of only one request made to them during the relevant time period for a meeting. This request was made by the Federation of Sikh Societies of Canada (FSSC) in 1986 to meet with the Secretary of State for External Affairs, the Honourable Joe Clark.<sup>607</sup>
461. The FSSC had at times been quite strident in its criticism of the Indian Government and had openly advocated the creation of an independent Sikh state of Khalistan carved out of the existing state of India. Because of their desire to separate from India it was determined that it would be inappropriate for a Minister involved in the management of Canada's foreign policy to meet with any representatives of the organization.<sup>608</sup>
462. There were concerns that such a meeting could carry a highly symbolic message to either the government of India or the Sikh community in Canada which would be clearly contrary to Canada's interests. It was determined that it would be more appropriate for department officials to meet with the representatives of the Federation.<sup>609</sup> Accordingly Gar Pardy, Director of South and Southeast Asia Relations Division of DEA offered to meet with representatives of the FSSC.<sup>610</sup>

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Also see Exhibit P -101, CAE0458: Letter to Gar Pardy from Mohinder Singh Gosal, President of FSSC, dated April 17, 1986.

<sup>607</sup> Exhibit P-101, CAE0442: Memorandum to the Secretary of State for External Affairs from D. R. Saunders and H.G. Pardy, South and Southeast Asia Relations Division dated March 21, 1986, at p.1. Also see Ex P -101, CAE0458: Letter to Gar Pardy from Mohinder Singh Gosal, President of FSSC, dated April 17, 1986:

<sup>608</sup> Exhibit P-101, CAE0442: Memorandum to the Secretary of State for External Affairs from D. R. Saunders and H.G. Pardy, South and Southeast Asia Relations Division dated March 21, 1986, at p. 2.

<sup>609</sup> Exhibit P-101, CAE0442: Memorandum to the Secretary of State for External Affairs from D. R. Saunders and H.G. Pardy, South and Southeast Asia Relations Division dated March 21, 1986, at p. 3.

<sup>610</sup> Exhibit P-101, CAE0464: Letter Gar Pardy to Mohinder Singh Gosal President FSSC dated April 28, 1986.

463. As the documentation demonstrates the Government of Canada continued its efforts to address Sikh extremism on all fronts both domestically and in dealings with the Indian government and to be responsive to the concerns of moderate Sikhs.<sup>611</sup>

### C. ALLEGATIONS OF SYSTEMIC RACISM

464. A good number of the family members in their testimony during phase one of the Inquiry testified that they felt racism played a role in the manner in which they were treated. Some family members felt that racism was a factor both in the manner in which attention was paid or not paid to pre-bombing events and in the post-bombing investigation. Contrary to the conclusion reached by the Honourable Bob Rae in that regard<sup>612</sup> that view was shared by an expert witness, Professor Sherene Razack who was retained by families counsel to examine the Inquiry's documents to the extent that she could in the time available in order to offer an opinion on where racism operated in the pre-bombing and post-bombing context.<sup>613</sup>

465. In her paper which was filed as an Exhibit with the Commission, Professor Razack identified a number of actions and instances both pre and post bombing which to her indicated a racist approach by Government of Canada officials to the victims both in the pre and post bombings.<sup>614</sup>

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<sup>611</sup> Exhibit P-101 This is illustrated in numerous documents dated from the early fall of 1985 and contained in the CAE series of Ex P-101

<sup>612</sup> Exhibit P-35: Lessons to be Learned, Report of the Honourable Bob Rae, p. 4; Evidence of the Honourable Bob Rae, Transcript, Vol. 6, pp. 560-62.

<sup>613</sup> Evidence, Sherene Razack Transcript, Vol. 96, p. 12730.

<sup>614</sup> Exhibit P-387: Impact of Systemic Racism on Canada's pre-bombing threat assessment and post-bombing response to the Air India Bombings, Opinion of Professor Razack.



466. In her paper, and in her oral evidence, Professor Razack, in defining systemic racism, commented on the murky distinction between systemic and individual, covert and overt, and intentional and unintentional; “systems involve people and motivation is notoriously hard to discern either an individual behaviour or when it shapes systems that disadvantage some groups.”<sup>615</sup>

467. Professor Razack opined in her paper that:

if the series of actions that ended with the bombings can be shown to have unfolded because it was assumed that the victims would in fact be mostly of Indian ancestry, that is to say that if government, transport and security personnel were able to throw cautions to the winds because they were not sufficiently worried about the possible outcome of doing so, then we can say that systemic racism was a factor.<sup>616</sup>

468. Professor Razack went on in her paper to highlight a number of events or instances which she accepted as fact as evidencing racist actions and attitudes. Accordingly in her paper at least, racism affected the manner in which individuals employed by various Canadian Government agencies carried out their duties and contributed to both this tragic event and ultimately the unsuccessful prosecution of Malik and Bagri that followed years later. Any distinction between the actions of individuals and institutional practices or policies was not apparent.

469. It is submitted that Professor Razack did not have access to a sufficient body of data upon which to base her conclusions, nor even sufficient time to dissemble the limited body of information that she was provided with which she accepted as fact even though it appears

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<sup>615</sup> Exhibit P-387, p. 3.

much of it was inaccurate or open to different interpretations. All of which militates against the conclusions she reached.<sup>617</sup>

470. Universal practices applied uniformly to all airlines such as monitoring by Transport Canada are seen as racist by Professor Razack in respect to Air India. Similarly, present day regulations imposed by American authorities upon all airlines flying to Washington, D.C. are somehow attributed as evidence that a different standard of treatment for Air India existed in 1985 despite the fact that extra security was in place for all Air India flights and that such level of security was not provided for any other airline with the exception of El Al.<sup>618</sup>

471. The evidence in this Inquiry established that Air India was responsible for a number of security measures including the screening of checked baggage, yet according to Professor Razack any fault that may have existed in security measures taken by Air India could not be attributed to racism due to the absence of the factor of race.<sup>619</sup> Conversely, any deficiencies in measures taken by Canadian agencies can be attributed to racism presumably because of colour differences. It is submitted that such a corollary is not logically sound and leads to a conclusion that once color (read race) is introduced no further evidence is necessary to the analysis.

472. It is submitted that there are numerous factual errors contained in Professor Razack's report and in her testimony which should cast doubt on her conclusions For example;

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<sup>616</sup> Exhibit P-387, p. 3.

<sup>617</sup> Evidence of Sherene Razack, Transcript Volume 96, pp. 12728-12731

<sup>618</sup> Exhibit P-387, pp. 3 and 4.

attribution of fifty Indian personnel in Cork which figure she attributed to the Kirpal Report,<sup>620</sup> acceptance that dog handler Serge Carignan was called to Mirabel airport to inspect all of the luggage on Air India flight 182 which departed before he arrived rather than the three bags never placed on the airplane,<sup>621</sup> the provision by Indian Government representatives of special viewing facilities at the hospital in Cork for loved ones to view the remains of their deceased relatives,<sup>622</sup> that CSIS felt the Government of India was exaggerating the threat of Sikh terrorism and that the threat assessment of Sikh terrorism was low,<sup>623</sup> that the main official at Department of Transport Headquarters was never briefed or trained in any way on the issue of Sikh extremism<sup>624</sup>, and that certain family

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<sup>619</sup> Evidence of Sherene Razack, Transcript Volume 96, pp. 12738-39.

<sup>620</sup> Exhibit P-164: Kirpal Report – The report does not indicate the number of Indian personnel in Cork nor those devoted to attending to concerns of the families.

<sup>621</sup> Evidence of Sherene Razack, Transcript, Vol. 96, pp. 12758-59; Evidence given in the Aviation Security phase established that in the absence of fresh intelligence from the time the flight left Toronto until it left Montreal no bags loaded in Toronto would have been searched in Montreal. The only bags that were to be searched were the three bags which as they had been deemed suspicious in Montreal were never loaded on to the plane. Consequently the plane left rather than await the arrival of a dog to search through the bags which could be shipped on a subsequent flight of Air India or another carrier. Also see Vol. II, Part I of the AGC's Final Submissions at paras. 239-242.

<sup>622</sup> Exhibit P-387, p. 20; Evidence of Sherene Razack, Transcript, Vol. 96, pp. 12749-50; Exhibit P-164: Kirpal Report, p. 9-13. A review of the Kirpal Report makes it clear that it was the Irish authorities who provided the viewing arrangements at the hospital. Professor Razack's reaction on being so advised was that it didn't matter whether it was the Irish or the Indians it was not the Canadians. Similarly, although she made reference to the Indian Ambassador and his wife meeting Ms. Pada at the airport in Cork and escorting her to her hotel (Exhibit P-387, p. 20), she had no knowledge as to how many planes bearing relatives of the victims were met by the Indian Ambassador nor even if he spoke Punjabi. (Evidence of Sherene Razack, Transcript, Vol. 96, p. 12750.) It was the evidence of Daniel Molgat that the Indian Ambassador was not able to meet every flight (Evidence of Daniel Molgat, Transcript, Vol. 12, p. 1159.) Canadian Officials from DEA met all aircraft bearing relatives which landed in Cork from June 27 to July 12, 1985. They had missed the earliest flights as they had not yet established their presence in Ireland and did not have advance notice that relatives were arriving. (Evidence of Gavin Stewart, Transcript, Vol. 12, p. 1125-26; Evidence of Daniel Molgat, Transcript, Vol. 12, pp. 1141-43. and Vol. 13, p1184)

<sup>623</sup> Exhibit P-387, p. 17; Evidence of Sherene Razack, Transcript, Vol. 96, pp.12745-46. Numerous CSIS threat assessments were produced as exhibits in the Inquiry and in the several months leading up to the bombing consistently assessed the threat as high.

<sup>624</sup> Exhibit P-387, p. 11. This reference in the report is to Dale Mattson who was the Manager of Safety and Security at Pearson International Airport, he was not the main Department of Transport Official at Pearson Airport let alone at Transport Headquarters in Ottawa.

members did not receive a single letter of condolence from the Federal Government,<sup>625</sup> are some such errors.

473. In other respects Professor Razack either ignored or was not provided with material information which ought to have seriously given pause to some of the conclusions she reached. For example she appears to have accepted without question the evidence of former Lieutenant Governor, James Bartleman, as to his receipt of information about a specific threat to the Air India flight on June 22, 1985 which he passed to the RCMP based on a McLean's magazine article published shortly after the testimony without considering the considerable body of evidence that it is submitted conclusively proves that Mr. Bartleman's recollection was not accurate.<sup>626</sup>
474. Referring to Commission Dossier No. 2 (Exhibit P-102), she comments on a memo by then CSIS Deputy Director of Operations, Archie Barr (Exhibit P-101, CAA0040), that CSIS had not been collecting evidence and so had no need to retain the tapes as if that memo had been written after the bombing when it was dated April 5, 1984 and solely concerned physical storage requirements as a result of the new status and mandate of

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<sup>625</sup> Exhibit P-387, p.22; Evidence of Sherene Razack, Transcript, Vol. 96, pp. 12750-51. In her report Professor Razack quoted from the testimony of Mr. Rai to make the point that families did not receive a single letter of condolence from the Federal Government. Exhibits P-93 and P-94 contain many letters of condolence to family members of the victims. A copy of the letter to Mr. and Mrs. Rai is contained as the last document of Exhibit P-93. Letters of condolence to all passengers that could be identified as Canadians were sent, signed by the Prime Minister and are contained in Exhibits P-93 and P-94.

<sup>626</sup> Exhibit P-387, p. 10. The statement in the report was taken from a McLean's magazine article published May 28, 2007 and accessed by Professor Razack on-line on November 23, 2007. It does not appear that Professor Razack read the testimony of Mr. James Bartleman, the testimony of Gordon Smith, William Warden, Lloyd Hickman, Pierre LaCompte, Bill Sheahan and other Government officials who testified as to never having heard of such information. Also see paras. 186 to 207 of these Submissions .

CSIS i.e. that it had no policing powers, did not collect evidence and therefore would not require physically to maintain tapes.<sup>627</sup>

475. Again referencing Commission Dossier No. 2 (Exhibit P-102) she refers to “another memo (Ex. P-101 CAB 0125) by the Director General of Communications (of CSIS) that advised the contrary” omitting to mention that the same paragraph of the dossier from which she extracted her reference notes that the memorandum was never policy and related to information to be used in warrant renewals.<sup>628</sup>
476. Her knowledge of the actions of the Canadian Government and its representatives following the bombing as to identification of the event as a Canadian tragedy appears to be poorly researched and less than balanced. For instance she was unaware that William Warden, Canadian High Commissioner to India, pressed the fact that the bombing was a Canadian tragedy with Indian Foreign Secretary in New Delhi.<sup>629</sup> In fact, it would appear that she may not have had the opportunity to review Mr. Warden’s evidence but instead relied on a quote from a newspaper article, published in the Saskatoon Star Phoenix on May 11, 2007 which she accessed on-line on November 23, 2007.<sup>630</sup>
477. She also appeared to have been unaware of or ignored the testimony of numerous government and former government employees who testified at the Inquiry as to the impact the tragedy had on them and the effort that was put in to attempting to solve it

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<sup>627</sup> Exhibit P-387, p. 19. See also statement of Archibald McArthur Barr, Exhibit P-392, para. 43.

<sup>628</sup> Exhibit P-102, p. 29. The memorandum referred to is that of Jacques Jodoin, dated February 18, 1985 found at Exhibit P-101, CAB 0125. Also see Evidence of Jacques Jodoin, Transcript, Vol. 49, pp. 6044 and 6050.

<sup>629</sup> Evidence of William Warden, Transcript, Vol. 24, pp. 2407-08.

<sup>630</sup> Exhibit P-387, p. 9.

although she did acknowledge that people worked very hard and felt very strongly they had not discriminated.

478. She attributes comments of Bruce Hoffman during his testimony at the Inquiry on March 9, 2007 dealing with why the Air India bombing did not receive wider international attention than the Lockerbie bombing to the Canadian Government when a review of the transcript clearly indicates that Professor Hoffman knew little or nothing about the activities and reactions of the Canadian Government and was offering his comments in another context entirely.<sup>631</sup>
479. She was unaware of the much of the evidence about efforts of Canadian officials to contact families and provide them with information and support as well as various commemorative events.<sup>632</sup>
480. She was unable to say what the reaction of Canadian Government officials and employees would have been had the Air India plane contained mainly white passengers other than it would have been more than it was.<sup>633</sup>
481. Similarly in regard to actions taken by Canadian authorities in the area of aviation security after the bombing such as the Seaborn Report, the Canadian Aviation Safety Board investigation, regulations put into place and amendments to legislation, her

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<sup>631</sup> Exhibit P-387, p. 22; compare with Evidence of Bruce Hoffman, Transcript, Vol. 19, pp. 1847-52.

<sup>632</sup> Evidence of Sherene Razack, Transcript, Vol. 96, p. 12751. Much of this is detailed in the Phase I Submissions of the Attorney General of Canada and is contained in Exhibits P-92 to P-94 which Professor Razack had not reviewed.

<sup>633</sup> Evidence of Sherene Razack, Transcript, Vol. 96, pp. 12746-47. For a summary of the response of Canadian Authorities in the area of Aviation Security see Vol. II, Part II of the AGC's Final Submissions at paras. 268-271.

evidence was that although it was a significant response there would have been a greater level of activity if the deceased passengers were white. No particulars of what such greater response would have entailed were offered.<sup>634</sup>

482. It is submitted that Professor Razack's opinion does not assist the Commissioner in one way or another in regard to suggestions of racism whether systemic or individual that may have played a part in this tragedy or its aftermath. Her evidence really does nothing other than echo the feelings of some of the family members who feel that racism was a factor. Perhaps the Honourable Ujjal Dosanjh, in his testimony at the Inquiry on November 21, 2008 put it most succinctly, "it's just a feeling... I have no empirical data to give you".<sup>635</sup> Unfortunately notwithstanding all of the evidence that has been heard to the contrary and regardless of whether there is a sound basis for it, many family members may continue to hold that view.

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<sup>634</sup> Evidence of Sherene Razack, Transcript, Vol. 96, p. 2748.

<sup>635</sup> Evidence of Ujjal Dosanjh, Transcript, Vol. 80, p. 10211.

## APPENDIX 1: Caveats

483. During its proceedings, the Commission frequently heard evidence with respect to “caveats” that both domestic and foreign agencies place on documents containing their intelligence. Both the RCMP and CSIS place caveats on info they disseminate and receive information with caveats from other agencies or each other. A proper understanding of caveats is vital in order to understand the way that intelligence is shared in Canada and abroad. This section will focus on CSIS – however, it applies to the RCMP as well since they have a policy to caveat information shared internationally.
484. Caveats are placed on almost every document that an intelligence service shares with domestic partners and international allies. Caveats are an important method of protecting human, technical, and third-party sources of information. Through caveats CSIS is able to maintain a degree of control over the dissemination and eventual use of information it either obtained through investigation or that was passed from a third-party agency. The protection of sources is paramount to an intelligence service’s business, and Canada’s status as a net importer of intelligence makes caveats and compliance with them all the more critical.<sup>636</sup> Canada values its allies and needs to be able to demonstrate that it can be trusted with their information. In the same way that CSIS respects the caveats of the third-party agencies, it expects that its caveats will be respected in kind.
485. At first glance it is tempting to dismiss caveats as simple boilerplate; however, their banal language serves a purpose. The wording of caveats is designed to not provide indications

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<sup>636</sup> Evidence of Jim Judd, Transcript, Vol. 90, p. 11861.



as to the information's origin.<sup>637</sup> Viewed through the caveat it is very difficult to ascertain why the information being passed is sensitive to the originating party, it is therefore inappropriate to second-guess the decision regarding the importance of the source behind that information.

486. There are two basic varieties of caveats. First, CSIS places caveats on its own information when sharing it with domestic agencies. These caveats are meant to prevent further dissemination as well as control how the information is used. Second, this information from third-party agencies often times is caveated, which in turn prevents CSIS from further disseminating the information without the originating party's consent. Caveats limiting further disclosure are a common international practice.

487. The international intelligence community expects Canada to respect its caveats, and constant requests to lift caveats would demonstrate that CSIS failed to appreciate their importance. There are situations where CSIS receives caveated information from a third-party that it considers critical to another domestic agency, typically law enforcement. In these cases, CSIS will request permission from the originating agency to share the information.<sup>638</sup> In exceptional circumstances, however, where an imminent threat is assessed on the basis of the third party information, CSIS would immediately share the information with law enforcement and deal with any fallout from the third party later.<sup>639</sup>

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<sup>637</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9117, says: "You don't want to be indicating because of a particular wording of a caveat that it's coming from a technical source as opposed to a human source or from another third-party relationship."

<sup>638</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9118.

<sup>639</sup> Evidence of Jim Warren, Transcript, Vol. 72, p. 9118 – recalling an incident where he went back immediately to an agency and said "I can't respect the caveat... and so I'm going to let the police know about this incident"

488. The dilemma with passing caveated material to law enforcement is that the police then become seized of unique information and knowledge that they are precluded from using in a regular investigative manner. Though CSIS can lobby a third-party to lift the caveat, in some instance this will not be possible. In these situations, CSIS' relationship with the police can become strained; the perception being that CSIS is withholding information when in reality the Service is struggling to balance the interests of justice with the interest in maintaining their capacity to receive information from that third party source going forward.
489. The importance of caveats in the national security context was recently re-affirmed in Justice O'Connor's *Report of the Events Relating to Maher Arar*.<sup>640</sup>

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because I have to" and the agency said that they understood but cautioned CSIS to be careful with the information.

<sup>640</sup> *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar: Analysis and Recommendations*, Recommendations 9 and 11.

## APPENDIX 2: Human Sources

### Whether Consent Needed Before CSIS Passes Source Information:

490. CSIS takes the protection of its human sources very seriously. Human sources are viewed as important long-term assets that must be protected. It is an offence to disclose the identity of a source under s. 18 of the *CSIS Act*, except in certain circumstances when CSIS exercises its discretion to share information pursuant to s. 19(2) of the *Act*:

#### *Offence to disclose identity*

**18.** (1) Subject to subsection (2), no person shall disclose any information that the person obtained or to which the person had access in the course of the performance by that person of duties and functions under this Act or the participation by that person in the administration or enforcement of this Act and from which the identity of

(a) any other person who is or was a confidential source of information or assistance to the Service, or

(b) any person who is or was an employee engaged in covert operational activities of the Service can be inferred.

#### *Exceptions*

(2) A person may disclose information referred to in subsection (1) for the purposes of the performance of duties and functions under this Act or any other Act of Parliament or the administration or enforcement of this Act or as required by any other law or in the circumstances described in any of paragraphs 19(2)(a) to (d).

#### *Authorized disclosure of information*

**19.** (1) Information obtained in the performance of the duties and functions of the Service under this Act shall not be disclosed by the Service except in accordance with this section.

(2) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose such information,

(a) where the information may be used in the investigation or prosecution of an alleged contravention of any law of Canada or a province, to a peace officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged contravention may be taken;

- (b) where the information relates to the conduct of the international affairs of Canada, to the Minister of Foreign Affairs or a person designated by the Minister of Foreign Affairs for the purpose;
- (c) where the information is relevant to the defence of Canada, to the Minister of National Defence or a person designated by the Minister of National Defence for the purpose; or
- (d) where, in the opinion of the Minister, disclosure of the information to any minister of the Crown or person in the federal public administration is essential in the public interest and that interest clearly outweighs any invasion of privacy that could result from the disclosure, to that minister or person.
491. The sharing of information related to a human source, whether it is the identity of the source or particular information obtained from the source, is clearly permissible under the *CSIS Act*, and it follows therefore that the source's consent is not required for this to occur. The information would be shared, however, with individuals holding appropriate clearance and having a need to know. This limited sharing does not constitute a breach of the confidentiality provided to a source by whichever agency originally provided it. Indeed, such information has been shared on a confidential basis with this Commission without waiving the privilege attached to it.
492. The importance of sources to the work of CSIS is well documented. Despite the fact that source information can be shared by CSIS, when doing so it is generally framed in a manner to disguise its origin. When law enforcement subsequently request more information about the source, which is fairly typical, CSIS must balance what is generally a short-term law enforcement need versus the Service's long term investigative goals. Notwithstanding the importance of confidential human sources to CSIS, the Service can disclose their identity to the RCMP with a view that the RCMP approach the source to enlist his cooperation. This determination is made on a case-by-case basis in situations where the source has important criminal information, and the **public good outweighs the**

**long term value of the source.** That said, the disclosure of a source's identity to the RCMP does not necessarily mean the intention is to 'hand over the source'. In some instances, however, CSIS will approach the source to obtain consent to disclose his identity to the police, even though this is not required, and will **work with the police in persuading the source to become a witness.**<sup>641</sup>

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<sup>641</sup> Evidence of Jack Hooper, Transcript, Vol. 50 p. 6236: "Human beings are not switches on a pair of copper wires." Also note the Evidence of Chris Scowen, Transcript, Vol. 50, p. 6145, where he says that if they had come across the "smoking gun", all bets would have been off.

### APPENDIX 3: Threshold for obtaining intercepts

493. Witness testimony given at the Inquiry has been at times unclear on whether there is a difference in the legal thresholds required for CSIS and the police to (a) initiate an investigation and, (b) obtain a warrant to intercept communications. There is no difference between the "CSIS threshold" and the "police threshold" in either case.
494. To commence an investigation law enforcement require reasonable grounds to *suspect* an offence has been or is being committed; reasonable grounds to believe is only required at the point of arrest. The same threshold of reasonable grounds to suspect applies to CSIS when initiating an investigation, albeit for the purposes of investigating threats to the security of Canada.<sup>642</sup>

12. The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.

495. Likewise, the threshold of reasonable grounds to believe under s. 21 of the *CSIS Act* and Part VI of the Criminal Code are identical; the difference being its application to the investigation's subject matter. With respect to the *CSIS Act*, it is reasonable grounds to believe a warrant is required to investigate a threat to the security of Canada, and in **the**

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<sup>642</sup> Evidence of Luc Portelance, Transcript, Vol. 88, p.11534.

**case of a *Criminal Code* investigation, it is reasonable grounds to believe an offence has either been or will be committed.**<sup>643</sup>

21. (1) Where the Director or any employee designated by the Minister for the purpose believes, on reasonable grounds, that a warrant under this section is required to enable the Service to investigate a threat to the security of Canada or to perform its duties and functions under section 16, the Director or employee may, after having obtained the approval of the Minister, make an application in accordance with subsection (2) to a judge for a warrant under this section.

496. In order for section 21 of the *CSIS Act* to conform with section 8 of the *Charter of Rights and Freedoms*, it has been judicially interpreted to require that CSIS have reasonable grounds to believe not only that a warrant is required to investigate the threat, but also that a threat to the security of Canada exists.<sup>644</sup> In *R. v. Atwal*,<sup>645</sup> the Federal Court of Appeal examined the constitutionality of section 21 of the *CSIS Act* and held that section 21 must have the minimum criteria demanded by section 8 of the Charter to authorize a search and seizure, that is, the judge must be satisfied on reasonable and probable grounds that a threat to the security of Canada exists and that a warrant is required to facilitate its investigation.

497. In his testimony, Geoffrey O'Brian distinguished section 21 of the *CSIS Act* with its *Criminal Code* equivalent in the following terms:

MS. McCANN: Mr. O'Brian, can I just take you back to a question that Mr. Freiman was speaking to you about, and that was the

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<sup>643</sup> Paragraph 185(1)(c) of Part VI of the Criminal Code says that an application for an authorization must state "the facts relied upon to justify the belief that an authorization should be given together with particulars of the offence,..."

<sup>644</sup> Evidence of Director Judd, Transcript, Vol. 90, pp. 11879-80.

<sup>645</sup> (1987), 36 C.C.C.(3d) 161 (FCA) at p. 183.

threshold of a warrant? So, the legal threshold of a warrant, and I believe that Mr. Freiman was saying -- talking about the difference between reasonable suspicion and/or in reasonable and probable grounds. And I just wonder whether you could address Section 21 and confirm for Mr. Commissioner that the threshold for the CSIS warrant is that of reasonable grounds to believe?

MR. O'BRIAN: Yes.

MS. McCANN: And the difference between the Criminal Code wording, if you will, and the CSIS Act wording is that the -- or -- and the threshold that you're speaking of is the reasonable suspicion that there will be a threat to the national security of Canada.

MR. O'BRIAN: Yes. I mean, I think I would come back to it -- I always think about it in -- what the threshold is, and then what it is that you have to believe.

MS. McCANN: Right.

MR. O'BRIAN: So, in Part 6.1 (sic) of the Code, for the criminal world, it's reasonable and probable grounds to believe an offence has either been or will be committed. In the CSIS Act, Section 21, to obtain a warrant, it's reasonable and probable grounds to believe that the warrant is required to investigate a threat and the threat, of course, as we talked about earlier with Mr. Freiman, is fairly broadly defined in terms of words which include not just crimes, but activities directed toward or in support of crimes.

MS. McCANN: And that's what gets you in earlier than the police for (inaudible)?

MR. O'BRIAN: Absolutely.<sup>646</sup>

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<sup>646</sup> Evidence of Geoffrey O'Brian, Transcript, Vol. 17, pp. 1613-1614.



#### APPENDIX 4: Operational Policies: Note-Taking Policy

498. Some evidence before the Inquiry raised the issue of CSIS's policy about note-taking when CSIS operatives interview sources.
499. As has already been noted, a transition period followed the establishment of CSIS in 1984 to facilitate the transfer of the RCMP Security Service's duties, functions and staff to CSIS.<sup>647</sup> Certain RCMP Security Service-era policies were retained until CSIS was in a position to create its own.<sup>648</sup> The Security Service policy entitled Operational Bulletin on Investigator's Notebook and Note-taking was among those adopted by CSIS.<sup>649</sup> This policy came-into-force May 28, 1979 but was not re-written for specific CSIS use until March 31, 1992.<sup>650</sup>
500. It is unclear from the evidence whether investigators were aware of the note-taking policy as it had applied to the RCMP Security Service, and if it continued to apply after the creation of CSIS. For example, one aspect of the 1979 policy was the requirement to keep two notebooks if an investigator believed that a Security Service investigation would result in a court appearance. Willie Laurie, a former Security Service member who joined CSIS in 1984, testified that he was not aware of the policy on separate notebooks or of anyone actually following that policy, both in his Security Service-era

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<sup>647</sup> Sections 62-69 of the *Canadian Security Intelligence Services Act*, 1984, C-21.

<sup>648</sup> Section 65 of C-21, in particular (2) says "All decisions, directions, contracts, leases... as they apply... continue in force as if they were made under this Act..." See also paragraph 45 of Archibald McArthur Barr's statement, P-392 to the effect that policy had to be created in response to the realities of the operational world and hence it would take time to discover the practical changes that the new mandate would require.

<sup>649</sup> Exhibit P-101, CAA0007.

<sup>650</sup> Exhibit P-101, CAA1057. Also note that the Policy Task Force, while examining all Bulletins contained in the Operations Manual to determine whether they continue to be relevant for the Service, on September 17, 1987, put the old SS bulletin forward as requiring a re-write to CSIS standards (p. 1 of Exhibit P-101, CAA0007).

and at CSIS.<sup>651</sup> Archie Barr, a veteran of the RCMP-Security Service, swore that he could not recall keeping separate notebooks or information separate for criminal investigations.<sup>652</sup> Equally, Mr. Barr has no recollection of the law enforcement Ops Manual guidelines in this area being adopted in the Security Service manual, nor does he recall anyone ever using dual notebooks in the Security Service.<sup>653</sup>

501. Notes taken by former CSIS member Willie Laurie's during his interviews of Ms. E highlight some important questions. First, does CSIS have a role in gathering evidence in a form that can be used in court? Second, what is the evidentiary standard that must be met for Service information to be admissible in court? On the latter point, despite the fact that Willie Laurie did not retain his sparse interview notes<sup>654</sup>, the reports prepared by Mr. Laurie immediately upon his return to the office were ultimately accepted into evidence in the trial of Malik and Bagri as an exception to the hearsay rule, as having met the evidentiary standard required for them to be used as reliable hearsay proof of the contents of Ms. E's statements to Mr. Laurie.<sup>655</sup>

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<sup>651</sup> Evidence of William Laurie, Transcript, Vol. 61, pp. 7466-69.

<sup>652</sup> P-392, Statement of Archibald McArthur Barr, paragraph 12.

<sup>653</sup> P-392, Statement of Archibald McArthur Barr. Expressing a contrary recollection, Henry Jensen, who was never a member of the Security Service, testified that he did recall the dual notebook policy (Vol. 18, pp. 1637-41)

<sup>654</sup> Evidence of William Laurie, Transcript, Vol. 61, pp. 7417-18: he states that he did not take notes during the first interview on September 10, 1987, but afterwards he quickly wrote down approximately 4-6 key words on a scrap of paper in the car so that when he went back to the office to prepare his report, 15 minute later, he could remember everything they had talked about. The same is true for his second interview with Ms. E on September 24, 1987. He did not take notes during the interview jotted a few things down in the car immediately after the interview, proceeding to the office to draft his report within the hour (pp. 7429-30). It is these scraps of paper that were not retained.

<sup>655</sup> In *R. v. Malik and Bagri*, 2004 BCSC 299, Justice Josephson accepted Willie Laurie's reports from the September 10<sup>th</sup> and 24<sup>th</sup> interviews as having met the test for threshold reliability under the principled approach to the rule against hearsay, but in the subsequent decision in *R. v. Malik and Bagri*, 2004 BCSC 554, Josephson ruled that akin to the destruction of the Parmar warrant tapes, the destruction of these notes (and tapes and transcripts) was unacceptably negligent on the part of the Service. Ultimately, in the decision at trial, found at *R.*

502. With respect to the issue of whether it is even the role of the Service to gather evidence for court, Willie Laurie and others testified that this issue is a continuing problem for CSIS.<sup>656</sup> Despite the fact that Willie Laurie was immediately aware that the information Ms. E was giving him meant he would likely end up in court one day, he followed established practice, wrote his report and discarded his original jottings. In general, notes are simply one way the Service records information. Once the information is in the CSIS database, the original notes or tapes have no further use to CSIS. What is important to CSIS is the intelligence gleaned therefrom.<sup>657</sup>

503. Notwithstanding that it is not the mandate of CSIS to collect evidence for court, CSIS operational note-taking policies allow for the possibility that an employee may witness an event crucial to the investigation of a criminal act. The current CSIS policy on Operational Notes, related to the destruction of notes reads as follows:

#### Destruction of Notes

3.5 Once the relevant information is reported, the notes must be destroyed, except in the following circumstances:

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*v. Malik*, [2005] B.C.J. No 521, Justice Josephson ruled that despite the statements having earlier been ruled admissible and reliable to a certain threshold level for reliability, under a more rigorous test for conviction, taking into account all the evidence at trial, he found that a reasonable doubt existed as to the ultimate reliability of Ms. E's hearsay statements to Mr. Laurie.

<sup>656</sup> Evidence of William Laurie, Transcript, Vol. 61, p. 7414: he says that one of the differences between the way he operates and the way the police operate is that he makes a point of not taking notes of everything the subject of his interview is saying to him. One reason is that in his view it would cramp the flow of the interview and people would not open up to him. He was also concerned about people subsequently putting different interpretations on what the witness said, despite the fact that they were not present at the interview.

<sup>657</sup> Evidence of Jack Hooper, Transcript, Vol. 50, p. 6215 – he is referring to tapes, but makes the point that the base record for the Service is the intelligence report and the tape merely the vehicle; the same applies to notes.

- i) When information in notes, such as a sketch or diagram, cannot be transcribed into a report, the relevant portion of the notes may be retained on file;
- ii) When information contained in the notes may be crucial to the investigation of an unlawful act of a serious nature and employees may require their notes to refresh their memories prior to recounting the facts of an event.

NOTE: “Unlawful activity of a serious nature” is any criminal act that poses a threat to life or property and is an indictable offence or is one on which the crown may elect to proceed by indictment (e.g. activities relating to murder, bombing or hijacking).<sup>658</sup>

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Also note that in section s.3.6.1 of OPS-217, the decision to bring this information to the attention of the police and the subsequent retention of the notes will be made by the Regional Director Generals. Important considerations remain such as whether the police of jurisdiction are able to obtain their own independent evidence, and whether disclosing the notes will compromise a CSIS operation or an employee or source identity.

## APPENDIX 5: CSIS Chronology of Threats

### CHRONOLOGY OF THREAT REPORTS AND ASSESSMENTS 1984 TO JUNE 1985

- **March 29, 1984** CAB0048: general threat of *shootings or bombings*
  - **April 2, 1984** CAB0050: threat of *bombing of the IHC*
  - **April 4, 1984** CAB0051: information of *unknown reliability* indicates a **group** of 36 Sikhs being sent from India to **kill moderate Sikhs**.
  - **June 7, 1984** CAB0661: in the coming weeks threats of **kidnapping or a murder attempt** against an Indian official, an **AI employee** or staff at the Indian tourist offices.
  - **June 14, 1984** CAB0076 : concern for AI premises and flights: **suicide attacks against AI**. AI has never been the target of attack by extremists. However AI may be the soft target Sikhs will use.
  - **June 18, 1984** CAA0044. *sabotage*
  - **June 22, 1984** CAB0088: Indian consul general advises that **AI rec'd a bomb threat**; no further information available.
  - **June 22, 1984** CAB0090: a **hit list** being distributed amongst the Sikh community
  - **Attacks on Indian consulates June 1984 and August 1984: reviewed on April 1, 1985 report CAA0142**
  - **August 24, 1984 BGP 1.0187** : references Parmar in T.O. and then **Bagri in NYC** conference on July 28<sup>th</sup>; gave a speech saying: 1. Sikhs will **kill 50,000** Hindus; 2. Sikhs will harass Hindus and embassy, HC and consulate personnel; 3. They will **blow up embassies**; 4. They will not sit back but will take revenge from the Hindu Government.
- October 10, 1984** CAA0101: HQ reporting that Sikh extremists based in foreign countries have been planning to stage some **spectacular violent activity** including, among other things, **“blowing up an AI plane”** - “Bagri one of the most dangerous” extremists...
- **TA October 24, 1984** CAA0104: 8 page explanation of Indian unrest and its impact on Canadian Sikhs: trial dates of the 4 Sikhs from Winnipeg who assaulted HC Fabian. Chauhan allegedly planning to organize **“suicide squads”** in CAN and the UK to get even with Gandhi. Three groups of interest in CAN. Three main characters in CAN are

all members of the BK and who advocate violence (Parmar, Bagri and Gill). Detailed analysis of each and their roles within the BK.

- **TA** talks about *hijacking*: **October 26, 1984**: CAB0154
- **October 26, 1984**: CAB0153 talks about ‘*suicide squads*’ as per Chauhan report above. This document came out after CAB0154
- **TA October 31, 1984**: CAB0156 *assassination of Indira Gandhi*. We see something explosive coming. St Martin RCMP called and JH is writing the TA which goes back out to VIP with CSIS views on the problem. **Threat high**
- **January 16, 1985** CAB0185: “According to HC - Sikh extremists planning some **spectacular actions ...**”
- **TA April 1, 1985**: CAA0142 Arrest of **Sikhs on planes** with portions of *UZI gun and ammunition*. (This is a TA in response to a P5 from RCMP.) TA is high.
- **April 10, 1985** CAB0215 Purewal and Bowal arrests surrounding the **Uzi** information above. In paragraph 4, after citing *unconfirmed reports giving rise to concern about the security of the consulate general in T.O.....*: “There have been **unconfirmed reports** of plans to **hijack** an AI flight around the time of Baisakhi, with particular threat to flight AI-181 reaching T.O. on **Saturday, April 13, 1985.**”
- **April 11, 1985** CAB0216: “There is indication that an AI **flight 181 to T.O. on Saturday is to be hijacked.**” VIP security branch has informed Airport policing. (See also Aide Memoire CAB0215 dated April 10, 1985)
- **TA April 12, 1985** CAB0218; CAB0217: two anniversaries coming up. Miller was in VIP security branch. Info to criminal side and to airport policing branch. Gives background and **references last year’s bomb threat** to AI and says while threat is high, there is **no specific info about hijacking**. “*There is no information that there will actually be a hijacking.*” CAB0217 was incorporated into this TA by JH.
- **May 3, 1985** CAB0225 : CSIS is concerned about a number of things, across a broad spectrum. 1) Sikhs travelling to USA from CAN; 2) Sikhs conspiring with USA Sikhs; 3) Sikhs making a statement in Canada of violence... all are possible.
- **May 15, 1985** CAF0113: media reports from India show *tension and violence* in the Punjab.
- **TA May 24, 1985** CAB0236 dealt with the visit of Gandhi in the USA ... any high profile leader coming to NA at the time of an anniversary is important. **References what happened last year when almost had a riot in Vancouver.** Also references **list of names of Sikhs who refuse to boycott AI flights**

- **May 27, 1985** CAB0239: IR#1 is Armenians; IR#2 is Sikhs. There is concern for foreign missions, personnel and Air India offices.
- **May 31, 1985**: CAB0243 “By hand” (in person) from CSIS to VIP security: Reliable source re: **radical Sikhs bomb IHC in Ottawa or Vancouver June 6<sup>th</sup>**. Sikh desk would also get a copy. See also CAB0324 June 19, 1985.
- **June 5, 1985** CAA0188: **Duncan blast Sitrep.**  
CAA0188 – Summary of Duncan surveillance report - to desk and TA.
- **June 6, 1985** CAF0067: **Nothing new has developed.**
- **June 6, 1985** CAB0259: Airport policing to Henry... update requested from TA unit since the last TA in October 1984 (even though TA of April 12, 1985 CAB0218 was provided to Airport policing) didn't have any information of a specific threat.
- **TA June 6, 1985** CAA0194: HQ to Airport policing and VIP: threat is high, including AI. No specific threat to the airline.
- **June 7, 1985** CAB0269: Kobzey “lack of activity is almost eerie.” Para 8. Sikhs were so active in BC that when nothing happens they are surprised.
- **June 12 – 15, 1985** **Gandhi visit**
- **June 14, 1985** CAB0306: Don McLean of ICLT informs of the Khurana meeting.
- **June 14, 1985** CAC0438 : Canadian connection to foiled Gandhi assassination plot.
- **June 17, 1985** CAB0311: searches in Windsor : Kooner and Agimal didn't have weapons in the house.
- **June 17, 1985** CAB0315: BCR “While nothing of great note occurred during the Gandhi visit, *we must not become complacent.*”
- **TA June 18, 1985** CAB0321: **from Dexter/Deschenes. Going out to the community. Follow-up TA to May 24, 1985 (Easton to everyone)** Threat assessment post-genocide week. Militant Sikh factions are quietly arming themselves for reasons we can only speculate at this time (Windsor Sikhs buying guns in Detroit) ... illegal Sikh saying to “wait two weeks to see something. *They will show the community they are serious.*” Alberta 300 FACs issued to East Indians... passports in Toronto... For all reasons assess threat as “being only slightly serious than it was at the time of the last assessment.”