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

FINAL SUBMISSIONS OF

THE ATTORNEY GENERAL OF CANADA

VOLUME II OF III

John H. Sims, Q.C.
Deputy Attorney General of Canada
Per: Barney Brucker
Lead Counsel for the Attorney General
of Canada
Department of Justice
350 Albert Street
Constitution Square, Tower 2
Suite 350
OTTAWA, Ontario
K1A 0H8

TABLE OF CONTENTS

OVERVIEW

"[O]ne of the difficulties and one of the challenges that we have is not only must we continue to fight the last war because the bad folks continue to come back and revisit things that have been successful for them in the past, but we also can't focus on that alone. We have to start -- we have to be constantly looking forward to what is the next threat that is going to emerge. So it's really a balance between the two. It's neither one nor the other. If you choose one or the other, you're likely to be surprised and unfortunately not positively."

<div align="right">

Nick Cartwright, Director Security Technology, Transport Canada
June 13, 2007

</div>

1. Like Janus, we must learn from the past and anticipate the future. These submissions address aviation security from both perspectives

2. These Submissions are presented in three parts. Parts I and II look backwards. Part I concerns the security breaches associated with the Air India bombing in June 1985. Part II examines the changes made to aviation security standards and practices following the bombing.

3. Part III summarizes the evidence respecting current aviation security programs and the challenges that lie ahead.

4. In November 2005, theMinister of Transport announced the appointment of an expert Advisory Panel to assist him in the review of the *Canadian Air Transport Security Authority (CATSA) Act*[1]. The *Act*, which came into force on April 1, 2002 required the

---

[1] Refer to the News Release of Transport Canada dated November 23, 2005, No. H251/05.

Minister of Transport to complete a review of the provisions and operation of the legislation during its fifth year and report to Parliament on the results. The Minister directed the Panel to examine the provisions and operation of the *Canadian Air Transport Security Authority Act* to ensure that the legislation provides a sound and adequate statutory basis for CATSA's aviation security mandate and to provide advice on future aviation security requirements and other developments that may impact on CATSA's future operations. The Panel submitted a report on these matters in December 2006 entitled "Flight Plan: Managing the Risks in Aviation Security".[2] On September 4, 2007, the Minister of Transport announced that some of the CATSA Panel's recommendations would be implemented immediately, while others would require additional time, effort and consideration.

5.   As part of their mandate the Minister also tasked the Panel with determining whether further changes in practice or legislation are required to address specific aviation security breaches associated with Air India Flight 182, particularly those relating to the screening of passengers and their baggage. In this regard the Panel's mandate was precisely the same as that with which the Commissioner was charged by the Terms of

---

[2]   For example, see the Advisory Panel's Report, Canada, Review of the *Canadian Air Transport Security Authority Act* – Flight Plan: Managing the Risks in Aviation Security – Report of the Advisory Panel (Ottawa: CATSA Act Review Secretariat, 2006) (Chair: Dr. Reg Whitaker) (also referred to as Exhibit P-169) (hereinafter refered to as "Flight Plan").

Reference. In February 2007 the Panel delivered a separate Report in respect of this aspect of its mandate entitled "Air India Flight 182: Aviation Security Isues".[3]

6.   The members of the Panel testified before this Commission. Parts I and II of these Submissions draw heavily on the findings of the Panel contained in its report on Air India Flight 182 and the testimony of its members at this Inquiry. Part III is similarly informed by the findings of the Panel set out in Flight Plan as well as testimony of the Panel Members before the Commissioner and describes the standards, practices and programs that Transport Canada has in place to deal with current and emerging issues of aviation security.

7.   A comment on the Commissioner's mandate is appropriate here. On its face, that mandate in this area is limited. The Commissioner may make findings and recommendations as to whether further changes in practice or legislation are required to address the specific aviation security breaches associated with the Air India Flight 182 bombing, particularly those relating to the screening of passengers and their baggage.[4]

8.   Commission counsel interpreted this mandate broadly and led evidence concerning a wide range of aviation security issues. The Government concurred with this approach. Aviation security is a complex web of intersecting issues, practices and responsibilities. Passenger and baggage screening are but two of many measures employed to promote

---

[3]   Exhibit P-157, CATSA Panel Report, *Air India Flight 182: Aviation Security Issues*, (hereinafter P-157, CATSA Panel Report). (Also known as P-101, CAF0160). **Please note**: page numbers refer to the book page numbers and not the Ringtail page numbers).

[4]   Subparagraph (b)(vii), Order in Council, P.C. 2006-293.

aviation security and must be considered in the context of the entire aviation security program.

9.   Aviation security issues are complex and mutable. New issues may arise suddenly and demand immediate attention.   Their resolution requires vigilance, experience and cooperation among all those who share responsibility for aviation security.

10.   These submissions will demonstrate that the Government of Canada (including Transport Canada) has played and continues to play a significant role in making, fostering and anticipating the change necessary enhance and promote aviation security in Canada and around the world.   It is hoped that they will also provide the Commissioner with a comprehensive overview of the current challenges and initiatives and therefore an appropriate context for his findings and recommendations.

PART I: AVIATION SECURITY IN JUNE 1985

11.   Part I of this Volume considers the aviation security at the time of the Air India bombing. Part I is divided into three subsections. The first outlines how in 1985 different organizations had roles and responsibilities in Canadian aviation security. The second subsection sets out how the law, policies and practice of aviation security worked generally in 1985. The third subsection considers Air India's security, and how the aviation security system failed to prevent the bombing of Flight 182.

A.   JUNE 1985: ROLES AND RESPONSIBILITIES

12.   Aviation security is complex, dynamic and ever-changing. It cannot be accomplished by government alone; it requires the participation of all the many players involved in civil aviation.

13.   The evidence before the Commission was that in June 1985, aviation security was the responsibility of many, including Transport Canada, the RCMP, air carriers (including Air India and Air Canada) and private contractors (like Burns Security).

14.   The primary responsibility for the screening of passengers, baggage and luggage lay with air carriers. Transport Canada assisted this task by providing a sterile environment at airports. The RCMP were under contract with Transport Canada to provide airport security, including regular patrols and a first response to dangerous situations. All three entities had interlocking duties in the case of emergencies and high threat situations.

Transport Canada's Responsibilities

15.   Transport Canada was the Government of Canada body with authority over national civil aviation security.[5] The *Aeronautics Act* was the primary source of Transport Canada's authority over civil aviation. Transport Canada is the

---

[5]   Exhibit P-157, CATSA Panel Report, p. 8.

regulatory agency with authority over civil aviation.[6] Transport Canada also owned and operated all Canadian international airports.[7]

16.   In 1985, Transport Canada was directly responsible for the following aspects of aviation security at international airports like Pearson and Mirabel:

1.   Implementing physical security measures (e.g. doors, locks, gates, fences) to establish air-side and ground-side boundaries;

2.   Providing sterile passenger hold areas;

3.   Designating restricted areas in airports;;

4.   Establishing personnel and vehicle control systems (including pass cards for restricted areas);

5.   Establishing check points to facilitate the inspection of passengers and carry-on baggage;

6.   Providing, maintaining and calibrating metal detectors and x-ray scanners for passengers and carry-on (<u>not checked</u>) baggage;

7.   Posting security signs;

8.   Designating security officers;

9.   Developing training material for security officers;

10.   Providing security and police to prevent unauthorized access to non-public areas of airports;

11.   Providing armed police patrols on airside of designated international airports; and

12.   Providing on-site law enforcement to respond to calls for assistance from security screening personnel.[8]

---

6   Exhibit P-157, CATSA Panel Report, pp. 8 – 9.

7   Exhibit P-101, CAC0528, 17 April 1986 at p. 6 of 54.

17.   Collectively, these functions were directed towards ensuring the integrity and sterility of the airport. Transport Canada kept the internal and external boundaries of the airports secure and also facilitated the air carriers' own security programs.

18.   Although Transport Canada was not responsible for ensuring the security of the private air carriers, it did undertake to monitor the air carriers' security plans, as will be discussed below.

Air Carrier Responsibilities

19.   Air carriers were responsible for ensuring the security of their aircraft by screening passengers, baggage and cargo.[9]

20.   The regulations under the *Aeronautics Act* placed the responsibility for aircraft security upon the air carriers by requiring all air carriers to establish, maintain and carry out security procedures. These security procedures involved, *inter alia*, a system for searching passengers, their personal belongings, baggage and cargo, and another for preventing unauthorized cargo and baggage from entering the aircraft.

---

[8]   See s. 5 of the *Aeronautics Act* and the *Security Regulations*, as well as civil aviation Security Manual TP 769 and Airport Branch Policy and Standards. See also Responsibility Chart. See also P-128, p. 15. See also Exhibit P-101, CAF0012 at p. 2 of 6.

[9]   Exhibit P-157, CATSA Panel Report, p. 9.

21.   An internal Transport Canada document which was introduced through the

testimony of Dale Mattson itemized the air carrier's role in aviation security:

Air Carrier Responsibilities

- Conduct Preboard Passenger Screening
- Monitoring/Testing Contracted Security Service
- Security of Baggage/Cargo
- Security of Air Carrier Facilities/Aircraft
- Security Plan[10]

22.   As the CATSA Panel noted, "it is clear that the onus was on the air carrier to

design and implement security systems for passenger and baggage screening."[11]

In testimony before the Inquiry, Dr. Bourgault stated:

"If I may add to this, the logic at that time, again, is that all air
carriers were responsible for what was loaded aboard their planes
and by any means it was to be loaded on, they had to make sure
that was not to be loaded was not to be aboard."[12]

23.   The air carriers were also responsible for determining if – based on the

information available to them – there was a specific threat against their aircraft.

If so, they had an obligation to inform Transport Canada and the RCMP of this

specific threat so that emergency protocols could be engaged.[13]

---

[10]   Exhibit P-101, CAF0012, at p. 2 of 6. See also Evidence of Dale Mattson, Transcript, Vol. 29, p. 3168.

[11]   Exhibit P-157, CATSA Panel Report, p. 9.

[12]   Evidence of Jacques Bourgault, Transcript, Vol. 36, p. 4324.

[13]   Exhibit P-101, CAF0077 at p. 31 of 37 and *Aeronautics Act, Air Regulations,* s. 812.

24.   The air carriers subcontracted some of their security responsibilities to security companies or to larger air carriers like Air Canada.[14] Air India struck such an agreement with Air Canada for the security screening of its flights, availing itself of Air Canada's contract with the Burns security company.

RCMP Responsibilities

25.   Transport Canada fulfilled its responsibility to provide law enforcement for aviation security by forming an agreement with the RCMP. Under this agreement, the responsibilities of the RCMP airport detachments included:

1. providing a response for pre-boarding passenger screening points;

2. man guard posts;

3. crowd control;

4. the control of vehicular and pedestrian traffic;

5. protecting airports from unlawful entry, sabotage, theft, fire or damage;

6. operating a lost and found;

7. attending motor vehicle accidents;

8. respond to violations of the Criminal Code and other incidents until the arrival of the police of primary (i.e. local) jurisdiction;

9. Disseminating relevant intelligence information;

10. Formulating, disseminating and auditing security arrangements like Emergency Procedures.[15]

---

[14]   Exhibit P-157, CATSA Panel Report, p. 14. See also P-101, CAA0118 at p. 2 of 6.

[15]   Exhibit P-101, CAF0014. See also Exhibit P-157, CATSA Panel Report, p. 14; P-101, CAA0182; P-101, CAA0180, p. 16; and the Evidence of Dale Mattson, Transcript, Vol. 30, p. 3175. See also P-101, CAC0528 at pp. 6-8 of 54.

26.   The RCMP were to respond to requests for assistance in passenger/luggage check-in and loading.[16]

27.   The RCMP did not have primary criminal jurisdiction over certain airports like Pearson, where the Peel Regional Police had ultimate authority over the enforcement of the Criminal Code.[17] In the case of a major incident (like the investigation of a bomb threat), the local police would be called to the airport to exercise their primary jurisdiction.[18] The RCMP Policy reflected their understanding that the air carriers were responsible for searching their aircraft.[19]

28.   The individual RCMP airport detachments reported to their respective Division Headquarters and also to the RCMP's Airport Policing Branch at headquarters. The main role of the Airport Policing Branch was to set policy, coordinate efforts, liaise with Transport Canada and act as a central locus for threat assessments.[20]

Conclusion with Respect to Roles and Responsibilities

29.   Transport Canada, the RCMP and the air carriers each had their own security function at the airport. However, these duties should not be examined in

---

[16]   Exhibit P-101, CAA0182.

[17]   Evidence of Gary Clarke, Transcript, Vol. 27, p. 3095.

[18]   Exhibit P-101, CAC0310 at p. 12 of 17.

[19]   Exhibit P-101, CAF0310 at p. 13 of 17. See also the sworn affidavit of Robin Ward at Exhibit P-101, CAA0369 , p. 3 of 3.

[20]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2764.

isolation. Each also had other obligations that would have to be balanced in order to keep the airports running as the public expected. The air carriers had a responsibility to provide efficient service, and a practical need to run a business. Transport Canada balanced security with a respect for privacy, the need to facilitate air travel and the careful husbandry of public funds.[21] The RCMP operated under a contract with Transport Canada but still viewed themselves as independent peace officers.

---

[21]   For a discussion, see Evidence of Dale Mattson, Transcript, Vol. 29, pp. 3253-3254.

B.   AVIATION SECURITY IN PRACTICE IN JUNE 1985

30.   This section will examine how in 1985 Transport Canada, the RCMP and air carriers worked together in practice to ensure aviation security.

31.   Canada's security regime grew out of international standards and agreements formed under the auspices of the United Nations. Canada was at the forefront of promoting and exceeding these international standards. The emerging Canadian safety regime took the form of amendments and additions to the *Aeronautics Act* and its *Regulations*.

32.   One of the central pillars of the aviation security regime was the "security programme" that the *Aeronautics Act* required every air carrier to implement. This plan set out what measures the air carrier undertook to employ in order to keep its flights safe from dangerous passengers and cargo. Transport Canada had a role in regulating these security programmes; however, it was not a clearly defined role in 1985.

33.   Another important component of aviation security was the services provided by the RCMP under contract to Transport Canada.

34.   Finally, this section will examine how threat information was communicated between the various players responsible for aviation security, and how these players responded by enhancing security.

Canada's Compliance with International Standards

35.   From 1985 to the present, Canada has strived to be a leader in aviation security.[22] Canada has always been an active member of the International Civil Aviation Organization ("ICAO").[23] Canada has provided the Chair of the Aviation Security Panel of Experts; Chair of the Ad-hoc Group of Specialists on Detection of Explosives; and Co-Chair of the ICAO Universal Security Audit Program Working Group. Canada also provides certified inspectors for the Universal Audit Program

36.   From 1944 onwards, international standards for civil aviation were established by ICAO, which was composed of contracting states operating under the aegis of the United Nations.[24] Even before ICAO enacted binding standards for air carrier security, Transport Canada initiated a national civil aviation security program at major airports in 1970 that was based on ICAO's recommendations.[25]

37.   As a result of a rising number of hijackings of aircraft in the early 1970's, ICAO members (including Canada) adopted Annex 17 to the Chicago Convention.[26] Annex 17 standardized the obligation to "take the necessary measures to prevent

---

22   See, for example, P-138 at p. 8 of 47.

23   Exhibit P-138, p. 8 of 47.

24   Exhibit P-157, CATSA Panel Report, p. 5.

25   Exhibit P-138, p. 8 of 47.

26   Exhibit P-157, CATSA Panel Report, pp. 5 and 7.

weapons or any other dangerous devices, the carriage or bearing of which is not authorized, from being introduced by any means whatsoever… ".[27] Further, Annex 17 recommended that States should establish the necessary procedures to prevent explosives from entering aircraft.[28]

38.   Canada introduced security provisions into the *Aeronautics Act* in 1973, preceding the ratification of Annex 17 in 1974.[29]

39.   Annex 17 contained both standards and recommendations. Standards are mandatory requirements to which contracting States had to conform. Recommendations are recognized as "desirable" measures.[30]

40.   The standards required member States to establish a civil aviation security program and required air carriers to adopt a security program and apply it in proportion to the threat environment.[31]

41.   The CATSA Panel correctly noted that the focus of ICAO's attention in 1985 was the prevention of hijacking:

> As of June 23, 1985, the aviation security measures being applied both internationally and domestically were focused on the

---

[27]   Exhibit P-157, CATSA Panel Report, p. 5.

[28]   Exhibit P-157, CATSA Panel Report, p. 6.

[29]   Exhibit P-138, p. 12 of 47.

[30]   Exhibit P-157, CATSA Panel Report, p. 6.

[31]   Exhibit P-157, CATSA Panel Report, p. 6.

inspection and screening of passengers and their cabin baggage, and not the checked baggage that was placed in the hold of an aircraft.[32]

42.   However, recommendations under Annex 17 and in ICAO's Manual of Security Measures (a practical guide to assist States and air carriers) were intended to forestall bombing and sabotage. For instance, ICAO recommended that "special at risk flights" be subject to checked baggage screening, passenger-bag reconciliation and the off-loading of unaccompanied baggage.[33] The CATSA Panel found that these precautions placed the responsibility on air carriers and not on government to take the necessary action.[34] The Panel also found that under the ICAO manual, "special at risk flights" meant flights against which there was a *specific threat*.[35]

43.   Canada's security program in 1985 was in line with the standards of other countries.[36] In its evaluation of Canadian security, the CASB [Canadian Aviation Safety Board] reported that Canadian security arrangements in place

---

[32]   Exhibit P-157, CATSA Panel Report, p. 7.

[33]   Exhibit P-157, CATSA Panel Report, p. 7.

[34]   Exhibit P-157, CATSA Panel Report, p. 47.

[35]   Exhibit P-157, CATSA Panel Report, p. 47.

[36]   Exhibit P-157, CATSA Panel Report, p. 16.

prior to 23 June 1985 met or exceeded the international requirements for civil air transportation.[37]

44.   The Seaborn Report also found that Canada met or exceeded international aviation standards.[38] This was confirmed by testimony before the Commission.[39]

45.   Unfortunately, being in line with ICAO and other nations was not enough to prevent the Air India disaster from occurring in Canada. The legacy of the Air India tragedy was change, change in Canada's standards and practices and change in standards and practices internationally.

The Legislation and Regulations

46.   Understanding the events of June 1985 also requires an appreciation of the legal regime governing Transport Canada, the RCMP and the air carriers with respect to aviation security.

47.   In 1985, the *Aeronautics Act* authorized the Governor in Council to make regulations requiring the owner or operator of aircraft registered in Canada or foreign aircraft landing in Canada to establish, maintain and carry out "such security measures as may be prescribed by the regulations for the observation,

---

[37]   Exhibit P -157, CATSA Panel Report, p. 67.

[38]   Exhibit P-157, CATSA Panel Report, p. 66.

[39]   Evidence of Jean Barrette, Transcript, Vol. 37, pp. 4501-4502.

inspection and search of persons, personal belongings, baggage, goods and cargo."[40]

48.   The *Act* also prohibited a foreign air carrier from landing in Canada unless security measures equal to those in Canada were taken.[41] Finally, the *Act* made it a criminal offence for a person to board an aircraft without submitting to an authorized search.[42]

49.   Therefore, the *Aeronautics Act* contemplated that the onus for aircraft security would rest on the owners and operators of those aircraft. Subsection 5.1(2) provided that the Minister of Transport could carry out additional security measures if such measures were promulgated by the Governor in Council.

50.   As an enforcement measure, s. 5.1(11) created a summary conviction offence for violating any regulation made under the Act.

51.   The pertinent regulations enacted under the authority of s. 5.1 of the *Aeronautics Act* include the *Civil Aviation Security Measures Regulations* (which apply to domestic air carriers) and the *Foreign Aircraft Security Measures Regulations*. The *Civil Aviation Security Measures Regulations* was brought into force on April 4, 1974, and the *Foreign Aircraft Security Measures Regulations* on

---

[40]   Sections 5.1(1) and (1.1) of the *Aeronautics Act*. For copies of the applicable legislation and regulations as they existed in 1985, see Department of Justice Compendium entitled "Aeronautics Legislation Regulations and Standards (as at June 1985)", Exhibit P-165.

[41]   Sections 5.1(1.2) and (2) of the *Aeronautics Act*.

[42]   Sections 5.1(3) and (11) of the *Aeronautics Act*.

September 8, 1976. The provisions of these two regulations are largely identical.

52.   Section 3 of the *Foreign Aircraft Security Measures Regulations* set out the security measures required of foreign air carriers:

> 3(1)   Every owner or operator who lands foreign aircraft at aerodromes in Canada shall establish, maintain and carry out security measures at aerodromes consisting of
>
>> (a)   systems of surveillance of persons, personal belongings, baggage, goods and cargo by persons or by mechanical or electronic devices;
>>
>> (b)   systems of searching persons, personal belongings, baggage, goods and cargo by persons or by mechanical or electronic devices;
>> …
>> (f)   a system of identification that prevents baggage, goods and cargo from being placed on board aircraft if it is not authorized to be placed on board by the owner or operator;

53.   Under s. 4, the Minister of Transport was authorized to require that owners and operators provide Transport Canada with a security plan:

> 4.   The Minister may, by order, require an owner or operator of foreign aircraft to submit to the Minister, within such time as the order proscribes a description of the security measures that he has established, is maintaining and is carrying out or that he intends to establish, maintain and carry out.

54.   At the same time the Regulations were brought into force, the Minister issued Orders for both domestic and foreign air carriers. The Order for foreign air

carriers, called the *Order Respecting Civil Aviation Security Measures for Foreign Aircraft*, provides at s. 3:

> Every owner or operator who lands foreign aircraft at aerodromes in Canada shall, within sixty days after this Order comes into force, submit to the Minister a written description of the security measures that it has established, is maintaining and is carrying out or that it intends to establish, maintain and carry out.

55.   This legislative scheme did <u>not</u> provide Transport Canada or the Minister of Transport with an explicit mandate to approve, monitor, or enforce security programmes. As Transport Canada has said, the Regulations were designed more for a policy of voluntary compliance rather than enforcement.[43]

The Oversight Program

56.   The regulations under the *Aeronautics Act* required air carriers to submit security programmes to Transport Canada. Although there was no legislative authority for Transport Canada to go further, internal policy required that Transport monitor the air carriers' compliance with their own security programs.[44]

57.   The Regulations and Orders under the *Aeronautics Act* did not prescribe the kind of security procedures that were required of air carriers, but established a baseline. A security plan was to contain a written description of the security procedures that the carrier was to carry out for the protection of passengers,

---

[43]   Exhibit P-101, CAF0593 at p. 6 of 14.

[44]   See Department of Justice Compendium entitled "Aeronautics Legislation Regulations and Standards (as at June 1985)", Exhibit P-165.

crews and aircraft.[45] Among other things, a programme was to include a system for screening passengers, baggage, cargo and aircraft "by means of mechanical or electronic devices designed to prevent or deter the carriage of weapons, explosives and other dangerous articles aboard the aircraft."[46]

58.   The CATSA Panel described the situation in the following terms:

> The *Regulations* and *Orders* did not prescribe the kind of
> system… or the procedures that carriers were required to follow.
> In reality, the term "system" was somewhat vague, leaving a
> degree of interpretation and flexibility as to how air carriers
> should design and implement such systems. However, the ICAO
> *Security Manual* was available, and did offer concrete suggestions
> on security processes and procedures.[47]

59.   Transport Canada provided guidelines to assist air carriers in determining what items should be considered a weapon or other dangerous object.[48] Transport Canada also provided air carriers with training materials covering the responsibilities of security officers, the operation of metal detectors and x-ray devices, and the methods of physical search (even though it was the air carriers who were ultimately responsible for the delivery of training to their staff).[49]

---

[45]   Exhibit P-138, p. 13.

[46]   Exhibit P-138, p. 13.

[47]   Exhibit P-157, CATSA Panel Report, pp. 9- 10.

[48]   Exhibit P-138, p. 13.

[49]   Exhibit P-157, CATSA Panel Report, p. 13.

60.   In June of 1985, Transport Canada did not have any authority to approve security programs. However, in practice, Transport Canada accepted these security programs, offered suggestions and expected responses.[50]

61.   In their report on the Air India disaster, the CATSA Panel stated that the *Civil Aviation Security Measures Regulations* and the *Foreign Aircraft Security Measures Regulations* of the day required Transport to make biannual inspections of each air carrier.[51] This is not correct. Transport was not required under any legislation or regulation to monitor the security programmes of air carriers. Rather, internal Transport policy required bi-annual inspections.[52] Dr. Whitaker of the CATSA Panel himself seemed to acknowledge this fact when he testified before the Commission that "Clearly there was no <u>legal</u> requirement on Transport Canada to actually monitor, it was really up to them." [Emphasis added.][53]

62.   Once the security program was in place, Transport Canada's oversight of air carrier security was limited.[54] Transport Canada employed approximately 11

---

[50]   For instance, see the exchange between Transport Canada and Air India over Air India's security program: Exhibit P-101, CAA0118 and Exhibit P-157, CATSA Panel Report, pp. 15-20.

[51]   Exhibit P-157, CATSA Panel Report, p. 11.

[52]   Exhibit P-101, CAF0593, at p. 2 of 14.

[53]   Evidence of Dr. Reg Whitaker, Transcript, Vol. 36, pp. 4366-4367.

[54]   Exhibit P-157, CATSA Panel Report, p. 45.

inspectors nationwide for the period from 1972 to 1985.[55] The CATSA Panel

found that Transport's inspectorate did not have sufficient resources for this

self-appointed task. Inspections were sporadic rather than cyclical.[56]

63.   Although there is general agreement that Transport Canada's security

monitoring was limited, there is a conflict in some of the evidence as to how

limited it actually was. When asked during cross-examination about Transport

Canada's oversight role, Dr. Whitaker of the CATSA Panel stated:

> There seems to have been essentially non-existent [oversight], as
> they acknowledge themselves in retrospect. Despite the fact that
> they had made certain undertakings, as you refer to here, to
> monitor from time to time, they simply did not.[57]

64.   However, Dale Mattson, who was the Manager of Safety and Security at Pearson

for 20 years, described the monitoring program in these terms:

> The small inspector group was, they were security officers that
> were attached to the Civil Aviation Security Branch [at Transport
> Canada]. I think there was one security officer for each of our
> regions across Canada and they were responsible for the airports
> in the province that they had been assigned to.
>
> …The regional security officer would come out and carry out an
> inspection or he would receive information either from the airport
> management group or we would get information from operations
> or observe something ourselves or a complaint from another
> source may be issued that the carrier was not complying. We
> would raise this with the Regional Civil Aviation Security Officer

---

[55]   Exhibit P-157, CATSA Panel Report, p. 11.

[56]   Exhibit P-138, p. 21; Exhibit P-157, CATSA Panel Report, pp. 11-12.

[57]   Evidence of Dr. Reg Whitaker, Transcript, Vol. 36, pp. 4366-4367.

<u>and his first initiative would be to come out and meet with the air carrier, identify the problem, verify that it was valid and at that point get a commitment from them that they would correct their procedure and resolve it locally. If, in fact there was objection to doing that, then he would escalate it to the Civil Aviation Branch at Headquarters level</u> where it may go to a level where they decided that they were either going to take some sanctions to get some financially or otherwise, and I'm not sure just what criteria they use to make that determination.[58] [Emphasis added.]

65.   Therefore, Mr. Mattson suggests that some security lapses would be addressed through dialogue with the air carrier. It is unclear from the evidence whether this dialogue was informal or reduced to a written record.

66.   Mr. Mattson also testified that as a manager at Pearson, he was involved in some inspection work on an *ad hoc* basis:

> Occasionally, they [the Civil Aviation Security Branch] would ask us to carry out an evaluation or monitoring within our technical ability to see how things were going.

> At the time, I don't even recall that we had a checklist to follow, but we had certainly a general understanding of what the requirements were and if we were in the terminal and passing through various points, we certainly took the time to see how things were going at screening points. But we didn't – we did not monitor every element of the requirements of the CIV AV security plan.
>
> …
>
> And the only time that we were able to assist in the monitoring process was if there had been an event of if we'd be especially requested to do so by the Civil Aviation Security Branch at Headquarters.[59]

---

[58]   Evidence of Dale Mattson, Transcript, Vol. 30, pp. 3387 to 3389.

[59]   Evidence of Dale Matteson, Transcript, Vol. 30, pp. 3386 to 3387.

67.   The Commission did not call evidence from any persons who were inspectors at the Civil Aviation Security Branch during 1985. However, accepting Mr. Mattson's recollections, it is an overstatement to say that Transport's oversight was non-existent.

68.   Transport Canada's enforcement powers were limited in 1985 by the law. Penalties for non-compliance with security measures were contained in the *Aeronautics Act*.[60] Non-compliance was punishable as a criminal offence by summary conviction. The only regulatory/civil enforcement measures were sending a letter of reprimand or revoking the air carrier's right to fly in and out of Canada.[61]

69.   Transport Canada was aware that this legal regime was unclear and unsatisfactory, and was working to correct the situation.[62] Proposals to amend the existing legislation arose both outside Transport Canada (the Dubin Commission of Inquiry into Aviation Security) and within Transport Canada (from the Aeronautics Act Task Force).[63] At the time of the Air India tragedy, a bill was coming through Parliament that proposed to enlarge the Minister of Transport's powers to make regulations for aviation security.[64] In anticipation

---

[60]   *Aeronautics Act*, s. 5(11).

[61]   Exhibit P-101, CAC0517 at p. 5 of 5.

[62]   Exhibit P-101, CAF0593. See also Exhibit P-157, CATSA Panel Report, p. 45.

[63]   Exhibit P-157, CATSA Panel Report, p. 10.

[64]   Exhibit P-157, CATSA Panel Report, p. 10.

of this bill, Transport Canada was drafting updated regulations dealing with things like special risk flights.[65]

70.   The CATSA Panel's Report on the Air India tragedy may be taken as suggesting that the Government of Canada and Parliament failed to adequately prioritize legislative improvements to aviation security. It is submitted that this Commission has no evidentiary record to assess this issue. There is no evidence as to (1) why amendments to the *Aeronautics Act* were not passed by Parliament before June 1985; (2) the other priorities before Parliament during the relevant period; (3) the challenges involved in determining and drafting the appropriate amendments.

71.   As the CATSA Panel noted, following the Air India disaster, the regulations were amended to enhance Transport Canada's powers of oversight. The Minister of Transport was given the authority to approve security procedures for a broad range of security purposes and air carriers were required to carry out the approved procedures.[66] Additionally, in February 1986, Transport Canada issued the first edition of approved security procedures for air carriers which addressed the security of passengers, personal belongings, carry-on baggage, checked baggage, cargo, security equipment and security officers.[67] As the

---

[65]   Exhibit P-157, CATSA Panel Report, p. 11.

[66]   Exhibit P-157, CATSA Panel Report, p. 69.

[67]   Exhibit P-157, CATSA Panel Report, p. 69.

CATSA Panel found, these were the first of many changes that would be made over the course of the next years to aviation security.[68]

Aerodrome Security and Policing

72.   As part of the operation of airports, Transport Canada established an *Airport Policing and Security Program* on October 13, 1972,[69] outlining a series of responsibilities, which were to be carried out at international, domestic and secondary airports across Canada.[70] As has already been noted, at international airports, on-site police and security were provided through agreements with the RCMP.[71]

73.   The Memorandum of Understanding between Transport Canada and the RCMP ("the MOU") was first formalized in 1972.[72] It was revised in 1975,[73] and amended in 1979.[74] The final agreement provided for RCMP services at Pearson and Mirabel airports (among others).[75]

---

[68]   Exhibit P-157, CATSA Panel Report, pp. 70-72.

[69]   Exhibit P-101, CAC0528 at p. 6 of 54.

[70]   Evidence of Dale Mattson, Transcript, Vol. 30, p. 3175.

[71]   Exhibit P-101, CAC0528 at p. 6 of 54. The airport policing and security duties were also carried out by a Corps of Commissionaires.

[72]   Exhibit P-101, CAA0001.

[73]   Exhibit P-101, CAA0010.

[74]   Exhibit P-101, CAA0005.

[75]   See also the Evidence of Dale Mattson, Transcript, Vol. 30, p. 3174.

74. Under the MOU, Transport Canada reimbursed the RCMP for all of the costs for the airport detachments.[76] Treasury Board approved funds and resources required to implement and maintain the *Airport Policing and Security Program.* Since the RCMP were under contract to Transport Canada, Airport General Managers (Transport Canada's employees) were responsible for ensuring that resources were utilized in the most cost-effective manner.

75. Another important feature in an airport's security apparatus was the Airport Security Committee. Security Committees were established at Canadian international airports in 1970. The Committees coordinated and resolved security issues between the RCMP, Transport Canada, air carriers, businesses operating in the airport, and support services. These Security Committees did not have any legal mandate over enforcement.

76. In June 1985, the Chair of the Airport Security Committee at Pearson International Airport was Dale Mattson.[77] He testified before the Commission that the Committee met quarterly with the mandate of coordinating "the security measures that were required by the various agencies who operated facilities at the Airport whether it was the police agency, their air operators, or air carrier operators, ground handling agencies, anybody that had a stake in the security – in the airport operation at Pearson was invited to attend our security

---

[76]   Exhibit P-157, CATSA Panel Report, p. 14.

[77]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3172.

committee."[78] The Security Committee provided a forum for the discussion of concerns and security plans.[79]

77.   Potential threats to specific air carriers and additional security requirements would often be discussed in a smaller forum involving the air carrier, Transport Canada and the police.[80]

78.   Mr. Mattson also testified that there was a Transport Canada employee at Pearson with the position of "Policing officer" who was "the direct liaison" with the airport's RCMP operational non-commissioned officer.[81] Mr. Mattson himself also communicated directly with the RCMP.[82]

Security Control of Airport Workers

79.   The CATSA Panel summed up the security control of airport workers in the following terms:

> Employees of air carriers, as well as contracted screening
> personnel, were to display proper identification, and at Transport
> Canada airports where a restricted area pass and personnel
> identification system had been established, these employees were

---

[78]   Evidence of Dale Mattson, Transcript, Vol. 30, p. 3172.

[79]   Evidence of Dale Mattson, Transcript, Vol. 30, p. 3172. See also CAA0118 at pp. 5 and 6 of 6.

[80]   Evidence of Dale Mattson, Transcript, Vol. 30, p. 3172.

[81]   Evidence of Dale Mattson, Transcript, Vol. 30, p. 3170.

[82]   Evidence of Dale Mattson, Transcript, Vol. 30, p. 3170.

to be issued a combination pass-identification card by the airport manager.[83]

80.   Transport Canada issued security passes for airport employees upon the request of air carriers and other employers at international airports. All airport employees were required to wear passes in order to access restricted areas. Transport Canada set up a system of security guards and other employees to monitor access points.

81.   The Commission did not call sufficient evidence to provide an accurate picture of how the security pass system functioned in international airports like Pearson in 1985.

Screening of Passengers and Baggage in General

82.   In June of 1985, the focus of security screening both internationally and domestically was on preventing hijacking.[84] As such, passengers and their carry-on baggage were subjected to much greater scrutiny than checked baggage.[85] Passengers and carry-on baggage were screened with metal detectors and x-ray equipment, but – for regular flights – there was no requirement that checked baggage be screened with x-ray machines, explosive sniffers or other detection methods. Similarly, before the Air India bombing, ICAO did not

---

[83]   Exhibit P-157, CATSA Panel Report, p. 13.

[84]   Exhibit P-138, p. 12 of 47.

[85]   Exhibit P-157, CATSA Panel Report, p. 7.

recommend that checked baggage be subjected to security screening on regular flights.[86]

83.   In general, air carriers entered into contracts with private security companies (like Burns) to provide personnel to operate the security equipment and carry out the screening.[87]

84.   Transport Canada provided hand-held metal detectors, walk-through metal detectors and carry-on baggage x-ray inspection devices to support the air carriers in screening passengers and their personal items.[88] Transport Canada inspected this equipment regularly and maintained it in working order.[89] Transport Canada was not responsible for providing equipment to inspect checked baggage, and did not inspect any equipment utilized for this purpose.[90]

85.   The CATSA Panel noted the following screening procedures for air carriers:

> Air Carriers were required to ensure that checked baggage was accepted only by authorized agents… Unaccompanied bags were required to be cleared by a responsible employee of the carrier, and suspicious bags were to be searched before being loaded.[91]

---

[86]   Exhibit P-157, CATSA Panel Report, p. 7.

[87]   See, for example, Exhibit P-101, CAA0118 at p. 2 of 6.

[88]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3237.

[89]   Exhibit P-157, CATSA Panel Report, p. 14.

[90]   Exhibit P-157, CATSA Panel Report, p. 12. See also Exhibit P-366 at p. 2.

[91]   Exhibit P-157, CATSA Panel Report, p. 13.

86.   The detection equipment used in 1985 was cruder and less reliable than the equipment used today.[92] The CATSA Panel noted that the x-ray equipment was "very different"[93] and would not have been able to detect most explosives, but a "trained and skilled" operator may have been able to detect metallic wiring and timing hardware.[94] However, just as technology was less sophisticated in 1985, so was the approach to training the operators of the x-ray equipment.[95] We have no way of knowing whether the bag that contained the bomb that destroyed Air India Flight 182 was screened by an Air India x-ray unit and, if it was, whether it made it through anyway.[96]

87.   At the time of the Air India tragedy, Transport Canada had been working closely with the National Research Council to develop a reliable explosives vapour detection system, but it was not yet ready for use in Canadian airports.[97]

Intelligence and Threat Assessment in Aviation Security

88.   Until the creation of CSIS in 1984, the RCMP Security Service was the sole agency designated to analyze intelligence regarding threats. RCMP threat assessments dealing with aviation security were first cleared with Transport

---

[92]   Evidence of Nick Cartwright, Transcript, Vol. 42, p. 5079.

[93]   Exhibit P-157, CATSA Panel Report, p. 15.

[94]   Exhibit P-157, CATSA Panel Report, p. 14.

[95]   Evidence of Nick Cartwright, Transcript, Vol. 42, p. 5224.

[96]   Evidence of Nick Cartwright, Transcript, Vol. 42, p. 5086.

[97]   Exhibit P-157, CATSA Panel Report, p. 15.

Canada headquarters, and then disseminated to designated Transport Canada officials, air carrier employees and RCMP airport detachments.[98] In 1984, CSIS was added to this mix since it assumed the Security Service's mandate over threat assessments.[99] However, the RCMP's Airport Policing Branch retained a role in requesting and disseminating threat assessments.[100]

89.   At the time of the Air India bombing, Transport Canada's Director of Departmental Security and Director of Civil Aviation Security received threat information from a variety of sources, including the RCMP's Airport Policing Branch, CSIS and other organizations.[101] The Director of Civil Aviation Security disseminated this threat information as needed – however, the CATSA Panel found that this dissemination was not formalized into policies and procedures, and that it was also inhibited by the classified nature of some of the information.[102] Due to the death of Transport Canada officials, the Commission did not hear testimony concerning the threat assessment and dissemination activities of Transport Canada Headquarters.[103]

---

[98]   Exhibit P-157, CATSA Panel Report, pp. 35-36.

[99]   Exhibit P-157, CATSA Panel Report, pp. 35-36.

[100]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2772.

[101]   Some of the other organizations providing threat information included Canadian air carriers; the Air Transport Association of Canada (ATAC); ICAO; and the United States Federal Aviation Administration (FAA). See also Exhibit P-366, question II.1.

[102]   Exhibit P-157, CATSA Panel Report, pp. 36-37.

[103]   There is some documentary evidence on the record: see Agreed Statement of John Cook, Exhibit P-367, and Statement Regarding Headquarters Intelligence Practices circa 1985, Exhibits P-364.

90.   Notwithstanding the difficulties identified by the CATSA Panel, the evidence before the Commission discloses that the various players in aviation security cooperated and communicated with each other continuously about the threats to civil aviation in general, and against Air India specifically.[104]

91.   An example of the threat assessments Transport Canada received from CSIS is the telex dated May 28, 1985, pertaining to the visit of Prime Minister Rajiv Gandhi in Canada,[105] and a follow-up Threat Assessment on June 5, 1985.[106]

92.   Transport Canada also received warnings of threats directly from Air India, such as the letter dated May 27, 1985, from Herbert Vaney (Air India) that was copied to Transport Canada and the RCMP.[107] However, the dissemination of information was imperfect. For example, Transport Canada did not receive the "June 1st Telex", as will be discussed below.

93.   Transport Canada discussed threat information with the other civil aviation partners during Airport Security Committee meetings. An example appears in

---

[104]   See Evidence of Dale Mattson, Transcript, Vol. 29, pp. 3214-3215:

"The procedure that I understood was used, was information was shared by the RCMP at the headquarters level with our Civil Aviation Security Branch. They in turn would consult us at the site and say, have you got any further information; we have this information; we're evaluating it. And basically that's where it ended. They, along with the RCMP, made an assessment of the threat and our Civil Aviation Security group then made the decision as to the posture that should be maintained at our airport."

[105]   Exhibit P-101, CAB0851 at p. 2 of 15.

[106]   Exhibit P-101, CAA0190.

[107]   Exhibit P-101, CAA0159.

the minutes of the meeting between Air India (Mahedra Saxena), Transport
Canada (Dale Mattson, D. Ciccotelli, J. Beall and C. Byers), Air Canada (D.
McCullough), and RCMP (S/Sgt. Robin Ward) on January 8, 1985, to discuss
the Air India security plan:

> S/Sgt. Ward is to check with R.C.M.P. Security Service [sic] to
> determine if they have any additional information relating to the
> overall threat assessment.
>
> …
>
> Mr. Saxena also provided the members with a copy of a Notice of
> possible Terrorist threat activity. Mr. Saxena assured S/Sgt. Ward
> that R.C.M.P. and Transport Canada will be provided with notice
> of all threats, as well as updated lists of suspect persons.[108]

94.   Threats to aviation security were reviewed annually by the RCMP (later by
CSIS) and submitted to Transport Canada as part of an annual RCMP report on
policing and security at airports.[109] RCMP members provided a briefing to
meetings of the National Civil Aviation Security Committee.

95.   The RCMP's Airport Policing Branch was another recipient of threat
assessments and information. Primarily, the RCMP received threat assessments
from CSIS (or the Security Service) in order to set security levels at the affected
airports, as will be discussed in the following section.[110]

---

[108]   Exhibit P-101, CAA0118 at p. 5 of 6.

[109]   Exhibit P-101, CAF0562.

[110]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2772.

96.   The RCMP's Airport Policing Branch would seek threat assessments of its own

volition or upon the request of another player in aviation security. For example,

before Air India commenced operations in Canada (at Mirabel) in 1982, the

Mirabel Detachment asked RCMP HQ for a threat assessment in order to

answer Air India's request for "acute security".[111] The Airport Policing Branch

replied that the Security Service's threat assessment indicated no specific threat

and that the threat level did not warrant further RCMP security. RCMP HQ

informed Transport Canada of this position.[112]

97.   The threat assessment scheme in Canada in 1985 involved a constant dialogue

between the various players. An example of this dialogue is when, in early June

1985, the RCMP Airport Policing Branch knew that the threat against Air India

was high, but did not have any information indicating a specific threat.[113] Air

India made frequent requests for additional security to the RCMP.[114] In turn the

RCMP asked CSIS on June 6, 1985, for any new information with respect to the

threat against Air India.[115] CSIS replied to RCMP HQ on the same day, stating

that the threat level remained high but they were not aware of any specific

threat.[116] RCMP HQ then passed this threat assessment to the RCMP at Pearson

---

[111]   Exhibit P-101, CAA0020.

[112]   Exhibit P-101, CAA0021.

[113]   Exhibit P-101, CAA0198.

[114]   Exhibit P-101, CAA0198.

[115]   Exhibit P-101, CAA0198.

[116]   Exhibit P-101, CAA0199.

Airport with a request that the Pearson detachment (through Headquarters) if extra security would be provided for Air India with advice to External Affairs.[117]

98.   However, as the CATSA Panel noted, this complex system suffered from a lack of clear policy and procedure.[118] This sometimes resulted in confusion, such as when the wrong branch of the RCMP requested a threat assessment from CSIS regarding the threat posed by Sikhs to Air India.[119] However, the testimony heard by the Commission was that such glitches were usually remedied when officers would simply "walk down the hall" in order to advise verbally their colleagues of any new information.[120] The RCMP were aware that expediency sometimes led to overly informal communication between the various agencies, and they periodically attempted to remedy this.[121]

99.   Such informality may seem lax by today's standards, but it is important to bear in mind that the state of communications and office functionality was very different in 1985 than it is today. There were no facsimile machines, limited computer use, and paper files. As Dale Mattson testified with respect to the communication of threats, "[a] lot of our communication with Headquarters was

---

[117]   Exhibit P-101, CAA0201.

[118]   Exhibit P-157, CATSA Panel Report, pp. 36-37.

[119]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2802ff, and Exhibit P-101, CAA0103.

[120]   Evidence of R.E. Muir, Transcript, Vol. 27, p. 2913.

[121]   See, for example, Exhibit P-101, CAA0048.

relayed via telephone…".[122] From the RCMP's perspective, Joe MacDonald stated that the most urgent matters would often be dealt with by way of a face-to-face meeting.[123] The developing state of technology led to a greater reliance on relationships, the telephone and verbal briefings.

100. The CATSA Panel noted that in the mid-1980's, aviation security intelligence was still focussed on hijacking because that was the threat with the highest visibility in the 1970's and early 1980's. The CATSA Panel calls this an instance of "fighting the last war instead of the next".[124] In aviation security, matters are not that simple. In his testimony before the Commission, Mr. Nick Cartwright was asked to comment on the balance between fighting the "last war" versus fighting the "next one":

> …one of the difficulties and one of the challenges that we have is not only must we continue to fight the last war because the bad folks continue to come back and revisit things that have been successful for them in the past, but we also can't focus on that alone. We have to start – we have to be constantly looking forward to what is the next threat that is going to emerge. So it's really a balance between the two. It's neither one nor the other. If you choose one or the other, you're likely to be surprised and unfortunately not positively.[125]

101. At the time of the Air India bombing, both the Canadian authorities and air carriers such as Air India were aware that time-delayed explosives posed a

---

[122]   Evidence of Dale Matteson, Transcript, Vol. 29, p. 3230.

[123]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2846.

[124]   Exhibit P-157, CATSA Panel Report, p. 35.

[125]   Evidence of Nick Cartwright, Transcript, Vol. 42, p. 5231.

threat to civil aviation.[126] However, under the statutory regime that existed at that time, the RCMP's security activities focussed on the prevention of hijacking, whereas the interdiction of explosives on checked baggage was entrusted to the air carriers. Air India was well aware of its responsibility in this regard and took special measures to fulfill it.

Security Levels at Canadian Airports

102. The Commission heard evidence that in 1985 the RCMP at airports used a system with 5 security levels, each with escalating safety measures in order to protect air carriers. In its submissions to the Honourable Bob Rae, the RCMP reported as follows:

> In 1983 the RCMP developed a five (5) level security measures program whereby the level of security to an airline was determined based upon the nature of a given threat [citation omitted]. Level one was in effect at all times, but the security level would heighten depending upon the threat received, to a maximum level five.[127]

103. This 5-point security system arose in 1983 at Mirabel Airport's RCMP Detachment as a checklist with the increasing security levels.[128] This checklist was labelled as originating from Mirabel and was introduced into evidence before the Commission (P-101, CAA0025, "hereinafter the "the Mirabel

---

[126] Exhibit P-157, CATSA Panel Report, p. 39; and Exhibit P-101, CAC0528 at p. 15 of 54.

[127] Exhibit P-101, CAA0035, p. 8 of 55.

[128] Exhibit P-101, CAC0528, at p. 10 of 54. See also Evidence of Gary Clarke, Transcript, Vol. 28 p. 3110.

Checklist').[129] A national checklist or a local checklist for Pearson was not located or put before witnesses at the Inquiry.[130]

104. Transport Canada did not use the 5 level security system. In testimony before the Commission, Dale Mattson stated that he was not familiar with the Mirabel checklist and that it was an operational document confined to the RCMP.[131]

105. The level of security adopted at Pearson was set by the Officer-in-Charge of Airport Policing Branch at RCMP Headquarters[132] based on threat assessments from CSIS (or the Security Service before CSIS's creation).[133] CSIS performed most of the analysis of the intelligence contained in the threat assessments, leaving it to the RCMP to gauge the proper response.[134] Joe MacDonald, who set this level as part of his duties as acting Officer-in-Charge, testified that a "high" threat would correspond to level 4 on the Mirabel chart.[135]

---

[129]   See the Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2766.

[130]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3112.

[131]   Evidence of Dale Matteson, Transcript, Vol. 29, p. 3214.

[132]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2767.

[133]   Evidence of Joe MacDonald, Transcript, Vol. 27, pp. 2771 to 2772.

[134]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2772.

[135]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2775.

106. The RCMP Detachment at an airport would have the discretion to increase the security level to respond immediately to an emerging threat.[136]

107. There is some uncertainty as to whether the Mirabel chart was a national policy and how rigidly it was to be adhered to. The RCMP's submissions to the Honourable Bob Rae suggest that the Mirabel checklist was a policy.[137]

108. Sgt. Joe MacDonald testified that the Mirabel checklist was "basically adopted" nationally.[138]

109. Superintendent Gary Clarke, who was the Officer-in-Charge of the Security and Policing Detail at Pearson from 1981 to 1984 (and the Officer in Charge of Protective Policing in Toronto in June 1985, where he oversaw the Pearson Detail),[139] testified that he could not confirm that the Mirabel checklist was a national policy, even though it was used as a guideline.[140]

110. An RCMP memorandum dated May 25, 1983, was placed before Supt. Clarke during his examination. This memo was from Inspector Vermette, the then head of the Airport Policing Branch, and was addressed to the RCMP in "C" Division

---

[136] Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2874.

[137] Exhibit P-101, CAA00335, at p. 8 of 55.

[138] Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2766.

[139] Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3029 and 3030.

[140] Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3098-3099.

(Quebec).[141] The memo states that Insp. Vermette did not think the Mirabel policy should be adopted nationally because local Airport Managers and Airport Detachments ought to have the flexibility to determine their own resource allocation, especially given a time of budgetary pressure.[142] Inspector Clarke was asked on cross-examination if this document meant that the Mirabel checklist was a national policy:

MS. BRENZALL: So if I understand this, and I ask you to correct me if I'm wrong, this is basically saying to Mirabel, "No, we cannot set this as a national policy across the country."

MR. CLARKE: That's correct.

MS. BRENZALL: Is that correct?

MR. CLARKE: Yes.[143]

111. Specifically referring to the Mirabel security checklist, Insp. Clarke stated in cross-examination that it was a guideline and not a policy:

MS. BRENZALL: And we have noted that there's no national policy, so can you describe what the effect of this document was?

MR. CLARKE: This would have to be used as a guideline ---

MS. BRENZALL: Yes.

MR. CLARKE: --- for all other airports, right across Canada.

---

[141]   Exhibit P-101, CAA0034.

[142]   See also Exhibit P-101, CAC0528 at pp. 12-15 of 54.

[143]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3098.

MS. BRENZALL: But it's a guideline, not a policy as to ---

MR. CLARKE: That's all it is. It's a guideline, not a policy.[144]

112.   One reason that the Mirabel checklist was not a firm national policy is that different airports had different security capabilities.[145]

113.   Upon re-examination, Insp. Clarke stated that he used the Mirabel checklist as a guide, both nationally and at Pearson. However, he restated that it was not a national policy because it was not labelled as such.[146] Commissioner Major summed up the uncertainty around the Mirabel checklist accurately in the following exchange with Inspector Clarke and Commission counsel:

THE COMMISSIONER: There may exist national policy that looks the same as the Mirabel. We haven't got any evidence as to when it became a national policy. Whether it's national policy, obviously Mr. Rae was told, and whoever told him thought it was national policy, but I don't know if we can go any farther than that. It's clear that that's what he was told and that's what you believe.

MR. CLARKE: That's what I believe.

---

[144]   Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3098-3099.

[145]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3099. See also Exhibit P-101, CAC0517 at p. 4 of 5. An example of the different security capabilities of airports is that the RCMP Pearson Detachment did not have access to a back-up explosive sniffer dog, so they relied on a specially trained "hand-search" team. Mirabel had access to a back-up dog but had no hand search team.

[146]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3111.

MR. KAPOOR: Fair   enough,   sir.   Thank   you,   Mr.
                              Commissioner.[147]

114.   Ambiguity about the status of the Mirabel checklist runs through the RCMP

        Report to the Honourable Mr. Bob Rae, the documentary record (like the

        Vermette memorandum)[148] and in the testimony before this Commission. This

        may be an unfortunate result of attempting to reconstruct complex policy 23

        years after the fact. The Attorney General of Canada submits that the

        preponderance of evidence indicates that the Mirabel checklist was policy at

        Mirabel airport and was actively used as a guide nationally (and at Pearson).

115.   The status of the Mirabel checklist is significant because for level 3 threats and

        above, it states "Use the services of the dogmaster." At the time of the bombing,

        Air India flights were at level 4, but the RCMP dog master was in training with

        his dog. This issue will be explored further below.

Definition of a Specific Threat in the Aviation Security Regime

116.   The final component of Canada's aviation security regime that must be analyzed

        before examining the events pertaining directly to Air India is the definition of a

        "specific threat". In 1985, the existence of a specific (versus a general) threat

---

[147]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3112.

[148]   Exhibit P-101, CAA0034.

engaged a series of important procedures.[149] Under the *Aeronautics Act,* Air Regulation s. 812 provides:

812(1)   Where the owner or operator of an aircraft receives or is informed of a threat considered to be against the safety of a specific aircraft or flight, he shall immediately take all such measures as are reasonably necessary to ensure the safety of the aircraft and the protection of the passengers and crew members, including

(a)   in every case, advising the appropriate police and aerodrome authorities and the pilot-in-command of the aircraft of the circumstances of the threat; and

(b)   in the case where the aircraft is on the ground, ensuring that
(i)   the aircraft is moved to a place of safety on the aerodrome, as directed by the aerodrome authorities, and
(ii)   the aircraft, the passengers and their personal belongings and the baggage, goods and cargo on board the aircraft are examined.

117.   Thus, this regulation provides a special regime for a "specific threat". A "specific threat" is defined as a threat "against the safety of a specific aircraft or flight". Such a threat triggers extraordinary measures, such as the isolation of the aircraft in a place of safety, and an examination of the aircraft, passengers, baggage and cargo. This regulation was enacted on April 4, 1974.

118.   The meaning of "specific threat" in the aviation security regime is further delineated by Transport Canada policy. A Transport Canada policy entitled, "Policy, Standards, and Guidelines for the development of an Airport

---

[149]   See Exhibit P-157, CATSA Panel Report, p. 46.

Disaster/Emergency Plan and the Conduct of Exercises at Transport Canada

Airports" sets out procedures for dealing with and preventing aviation disasters,

including the bombing of aircraft.[150] Section 1.01 contains a definition of bomb

threats:

<u>Bomb Threat</u> – normally divided into two categories:

> (a) a specific threat – a statement giving time of activation, location, type of bomb or even complete details;
> (b) a non-specific threat – in which the caller makes a single statement that there is a bomb on an aircraft, in the terminal building or on airport property.[151]

119.   Transport Canada's policy also throws light on (1) who is to determine that a

threat is "specific", and (2) what is to be done in case of a specific threat:

> (ii)The affected air carrier is responsible for the safety of passengers and for conducting search operations involving their property and other cargo. Examination of the aircraft, the passengers, their personal belongings, and baggage, goods, and cargo on board the aircraft is conducted under Section 812 of the <u>Air Regulations</u>…
>
> *The air carrier has the responsibility to determine whether the bomb threat is or is not against a specific aircraft or flight. If the threat is not regarded as being against a specific aircraft or flight, the carrier must decide upon and assume responsibility for whatever action is taken.* Section 812 of the <u>Air Regulations</u> require [sic] that Transport Canada, the police, and the pilot-in-command of the aircraft be advised of the circumstances when the threat is considered to be against a specific aircraft or flight.[152]

---

[150]   Exhibit P-101, CAF0077.

[151]   Exhibit P-101, CAF0077 at pp. 7-8 of 37.

[152]   Exhibit P-101, CAF0077 at p. 31 of 37.

[Italics added.]

120. Under this policy, Transport Canada expected the air carriers to take responsibility for assessing when a threat becomes sufficiently detailed to point to a specific flight. This is part of the air carrier's general responsibility for ensuring the safety of their flights and for screening any potentially dangerous materials. However, this policy did not detract from the Transport Canada Airport Manager's generalized responsibility to protect civil aviation operations from acts of terrorism, or from the RCMP officers' duties as peace officers.[153]

121. Air India was advised that they would be responsible for carrying out threat assessments and notifying the RCMP and Transport if a threat arises. This is clear from the minutes of the meeting between Air India (Mahedra Saxena), Transport Canada (Dale Mattson), and RCMP (S/Sgt. Robin Ward) on January 8, 1985, to discuss the Air India security plan:

> Air India was advised that it is Transport Canada's procedure that the Air Carriers carry-out threat assessment procedures. If the Air Carrier determines the situation to be a threat and R.C.M.P. are notified, Transport Canada and/or R.C.M.P. will take over.[154]

122. A specific threat is not the same thing as a high threat. In his testimony, Sgt. Joe MacDonald, the former acting Officer-in-Charge of the Airport Policing Branch at RCMP Headquarters, testified to this:

---

[153] See, for example, the Evidence of Dale Mattson, Transcript, Vol. 29, pp. 3177-3178.

[154] Exhibit P-101, CAA0118 at p. 5 of 6.

'High' I considered as serious, but we have nothing specific, nothing specific.[155]

123.   Dale Mattson testified before the Commission that the definition of "specific threat" contained in the "Policy, Standards, and Guidelines for the development of an Airport Disaster/Emergency Plan and the Conduct of Exercises at Transport Canada Airports" was in use at Pearson in 1985.[156] This definition is consistent with the one used by the RCMP and reflected in their policy document for emergency threats at Pearson Airport.[157]

124.   The CATSA Panel correctly determined that at the time of the bombing of Flight 182, neither Transport Canada nor the RCMP were aware of any specific threat against Air India.[158]

---

[155]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2775.

[156]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3220.

[157]   Exhibit P-101, CAC0310 at p. 13 of 17.

[158]   Exhibit P-157, CATSA Panel Report, p. 38.

C. ISSUES SPECIFIC TO AIR INDIA

125. This section will analyze the stringent security regime for Air India and how that regime failed on June 22, 1985.

126. This analysis will commence with an overview of Air India's operations in Canada, its security programme, and the employees in charge of its security programme (including an unclear chain of command on June 22). We will also examine the frequent consultation between Air India and Government authorities to ensure that Air India had security measures that were appropriate to the threat level.

127. We will then consider the mistakes that allowed the time bomb to enter Air India Flight 182, including a failure by all involved to widely distribute threat information, and breaches by CP Air and Air India of their own security programmes and policies.

128. In this section we will also attempt to dispel some of the misconceptions surrounding the events of June 22, 1985, including allegations that the "June 1st Telex" was a specific threat to Air India Flight 182; that a dispute between Transport Canada and the RCMP led to a reduction in security at Pearson; that the Air India aircraft had no physical protection at Pearson; that the RCMP were supposed to search the aircraft with a sniffer dog at Pearson even though there was no specific threat; and that Flight 182 left Mirabel before a sniffer dog could search it completely.

Air India's Operations at Mirabel and Pearson Airports

129.   On October 2, 1982, Air India commenced services in Canada, a weekly trip from Mirabel to New Delhi each Saturday.[159]

130.   Air India's weekly air service expanded on January 19, 1985, to include Pearson Airport in their itinerary.[160] At the time of the bombing, Air India was providing one weekly flight from Canada to India which commenced at Pearson and picked up additional passengers at Mirabel.

131.   Air India struck agreements with Air Canada, availing itself of Air Canada's contract with the Burns Security Company, for the provision of security screening for its flights at Pearson and Mirabel.[161]

132.   The regional headquarters with authority over Pearson and Mirabel was Air India's New York Offices.[162] Mr. Puri was the manager of Air India's Canadian operations in Montreal.[163]

133.   Mr. Sarwal was the Airport Manager based in Montreal.[164] He was also in charge of the flight from Pearson.[165] Under normal circumstances, Mr. Sarwal

---

[159]   Exhibit P-101, CAC0528 at p. 10 of 54.

[160]   Exhibit P-157, CATSA Panel Report, p. 18. Evidence of Herbert Vaney, Transcript, Vol. p. 11625.

[161]   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11730.

[162]   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11729.

[163]   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11729.

would have final authority over operations in these airports, including Air India's security program.[166]

134.   Herbert Vaney was the Area Sales Manager in Toronto and the most senior Air India official based solely in Toronto.[167] His duties included promoting Indian tourism, managing the Toronto Air India office and dealing with travel agents.[168] Mr. Jainul Abid was the Area Sales Manager for Mirabel.[169] He would assist in preparing the Mirabel flight for departure until the Airport Manager arrived at the airport.[170]

135.   Mr. Saxena was the Air India Security Manager based in New York.[171]

136.   Under Mr. Saxena was Mr. Desouza, another security officer based in New York.[172] Mr. Desouza would come to Canada to help supervise the weekly Air India flights.

---

[164]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11648.

[165]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11648.

[166]   Exhibit P-101, CAA0119, p. 2 of 2.

[167]   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11735.

[168]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11624.

[169]   Evidence of Jainul Abid, Transcript, Vol. 89, p. 11693.

[170]   Evidence of Jainul Abid, Transcript, Vol. 89, p. 11694.

[171]   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11730.

[172]   Evidence of Jainul Abid, Transcript, Vol. 89, pp. 11695 and 11723.

137. Mr. Yodh was an Air India Airport Manager in New York at the JFK Airport.[173]

Air India Employees' Authority over Air India Flight 182

138. On June 22, 1985, Mr. Sarwal was on vacation.[174] The CATSA Panel noted that in his absence, it was not clear who was in charge of Flight 182.[175] The evidence called by this Commission did not resolve this ambiguity – rather it exposed a conflict over who was in fact responsible for Air India's security programme at Pearson and Mirabel.

139. Mr. Yodh and Mr. Desouza came to Toronto from New York to assist with Flight 182. They helped board the flight in Pearson and then flew in the "Kanishka" to Mirabel, where they assisted in the boarding there.[176]

140. According to Mr. Chopra, the current Air India representative, Mr. Yodh came to replace Mr. Sarwal during his absence.[177] However, Mr. Chopra testified that Mr. Desouza had ultimate authority over security.[178]

---

[173] Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11731.

[174] Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11656-11657.

[175] Exhibit P-157, CATSA Panel Report, p. 26.

[176] Evidence of Jainul Abid, Transcript, Vol. 89, p. 11696.

[177] Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11731.

[178] Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11731.

141.   Mr. Yodh, on the other hand, stated that he reported to Mr. Vaney, and it was Mr. Vaney (in consultation with Mr. Desouza) who had final say over Air India's security.[179]

142.   According to Mr. Vaney, Mr. Yodh was designated as Airport Manager and had final responsibility for Air India's security.[180] Mr. Vaney stated that he had no authority over the airport manager.[181]

143.   Mr. Abid concurred with Mr. Vaney, and testified that Mr. Yodh had ultimate authority over the Air India flights on June 22, 1985.[182]

144.   Mr. Desouza stated that Mr. Vaney had ultimate authority since he was "Station Head". Mr. Vaney denied this assertion.[183]

145.   Mr. Vaney stated in his testimony that the he had no role in managing the airport operations or handling security.[184] The documentary record is clear that Mr. Vaney was present with Transport Canada and RCMP at meetings concerning

---

[179]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11666.

[180]   Evidence of Herbert Vaney, Transcript, Vol. 89, pp. 11653 and 11658.

[181]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11660.

[182]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11700.

[183]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11667.

[184]   Evidence of Herbert Vaney, Transcript, Vol. 89, pp. 11624-11625.

Air India's security,[185] but he stated in his testimony that he has no recollection of his participation.[186] Mr. Vaney also wrote letters to Canadian authorities such as the RCMP that passed on information relating to threats, but he testified that the transmittal of such information was "automatic" and part of his "standing instructions"[187] because he himself was "without knowledge in these matters".[188] He testified that he had no responsibility to implement Air India's security program, and the duty to do so would fall upon Mr. Sarwal.[189] However, Mr. Chopra contradicted Mr. Vaney on this point, stating that as the senior Air India officer in Toronto, he would be responsible for following-up on security requests.[190]

146.   This conflict indicates that there was confusion within Air India over who had ultimate responsibility to ensure that Air India's security programme was properly executed.

Air India Security Program

147.   In accordance with the *Foreign Aircraft Security Measures Regulations*, Air India submitted a security plan to Transport Canada in 1982 when it

---

185   See, for example, "Office Note" prepared by H. Vaney on May 31, 1985, Exhibit P-345 regarding a meeting with the RCMP.

186   Evidence of Herbert Vaney, Transcript, Vol. 89, pp. 11629-11630 and 11650-11651.

187   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11632.

188   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11638.

189   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11649.

190   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11735.

commenced Canadian operations.[191] The stated purpose of this security programme was, *inter alia*, to prevent any explosive device from coming on board an Air India aircraft.[192]

148. Air India's security programme provided for 2 levels of security: standard and emergency measures.

149. As the CATSA Panel noted, the standard security programme provided that (1) unaccompanied baggage must be associated with a *bona fide* passenger before being loaded; and (2) checked baggage from "no show" passengers must be offloaded.[193]

150. The emergency procedure further provided that (1) all baggage should have a valid tag; (2) all unaccompanied baggage should be held for 24 hours or inspected physically; and (3) the checked baggage of a "no-show" should not be loaded in the first place.[194]

---

[191] Exhibit P-101, CAF0070, at p. 1 of 3.

[192] Exhibit P-157, CATSA Panel Report, p. 16.

[193] Exhibit P-157, CATSA Panel Report, pp. 17- 18.

[194] Exhibit P-157, CATSA Panel Report, pp. 17-19.

151. Prior to commencing operations in Pearson, Air India amended its security to plan to add new measures, including the examination of checked baggage by x-ray machine and/or PD-4 sniffer before loading.[195]

152. These measures were more extensive than was required by Canada's *Foreign Aircraft Security Measures Regulations* or by the ICAO Security Manual for special-risk flights.[196]

Transport Canada and RCMP Monitored Air India's Security

153. Transport Canada and the RCMP consulted extensively with Air India on Air India's security programme.

154. After Air India first submitted its security programme to Transport Canada in 1982, Transport Canada's Director of Civil Aviation Security wrote to Mr. Sarwal acknowledging receipt of the security programme, and later indicating three areas of concern.[197] Air India responded with changes to the programme and, in a subsequent letter, the Director of Civil Aviation Security concluded that "it is a commendable program that meets the requirements of Canadian legislation."[198] This exchange illustrates Transport Canada giving informal

---

[195] Exhibit P-157, CATSA Panel Report, p. 18; and letter from Sarwal to Mattson, Exhibit P-101, CAA0119.

[196] Evidence of Dale Mattson, Transcript, Vol. 30, p. 3383. Exhibit P-101, CAA0226, p. 18.

[197] Exhibit P-157, CATSA Panel Report, p. 16. These three areas of concern are not germane to the bombing of Air India Flight 182.

[198] Exhibit P-157, CATSA Panel Report, p. 17.

approval to a security programme even though the *Aeronautics Act* gave it no formal authority to do so.

155. The Director of Civil Aviation Security also stated that Transport would monitor the security programme from time to time, and that matters requiring corrective action would be brought to Air India's attention.[199]

156. On January 8, 1985, Mr. Saxena met with Transport Canada officials (including Mr. Mattson) and S/Sgt. Robin Ward of the Pearson RCMP Detachment in order to discuss Air India's security programme prior to commencing flights from Pearson.[200]

157. Mr. Saxena requested a greater RCMP presence around the Air India aircraft in order to deter hijacking and other security breaches. Mr. Mattson informed Mr. Saxena that additional security would be provided for Air India's first flight, and that if Mr. Saxena wished for extra officers after that, they would be provided to Air India at cost. Mr. Saxena replied that he would observe the flight prior to determining additional requirements.[201] It is apparent from the minutes of this meeting that Mr. Saxena desired additional security but was hesitant about paying for it.

---

[199]   Exhibit P-157, CATSA Panel Report, p. 17.

[200]   Exhibit P-101, CAA0118.

[201]   Exhibit P-101, CAA0118, at p. 4 of 6. See also Exhibit, P-101, CAA0119.

158.   Mr. Saxena also requested that all baggage be checked by an RCMP explosive sniffer dog.[202] Mr. Mattson turned down this request but noted that the dog would be available to check suspicious baggage. This is consistent with the CATSA Panel's finding that sniffer dogs' role in screening regular checked baggage was "limited to screening suspect bags", not all baggage on a given flight.[203] Gary Carlson testified that the functional limitations of his dog Thor mean that he could not be available to check every Air India flight and if he did check an entire flight, it would take 5-6 hours.[204]

159.   Transport Canada and the RCMP had further discussions with Air India regarding the security programme on January 18, 1985.[205] At that time, RCMP members tested Air India's PD-4 explosive vapour detection device and found it to be "ineffective" at detecting gunpowder.[206] Transport Canada and Mr. Sarwal were informed of this fact.[207] Mr. Sarwal was also told that the RCMP explosive sniffer dog would be available as needed to examine suspicious baggage.[208] However, Cst. Carlson told Mr. Sarwal that he couldn't check every piece of luggage as this would be more than Thor could handle and would make

202   Exhibit P-101, CAA0118 at p. 4 of 6.

203   See Exhibit P-157, CATSA Panel Report, p. 15.

204   Evidence of Gary Carlson, Transcript, Transcript, Vol. 28, pp. 3019-3021.

205   Exhibit P-101, CAA0369.

206   Exhibit P-101, CAA0369 at p. 2 of 3.

207   Exhibit P-101, CAA0369 at p. 2 of 3; and Evidence of Gary Carlson, Transcript, Vol. 28, p. 2996.

208   Evidence of Gary Carlson, Transcript, Vol. 28, p. 2996.

him ineffective for any other calls at the airport involving an actual bomb threat.[209] Mr. Sarwal did not request any further assistance from the RCMP.[210]

160.   On January 19, 1985, Air India's first flight landed and departed from Pearson. During a routine patrol to the baggage room, S/Sgt. Ward and Cst. Carlson found Burns Security using the PD-4 to screen Air India baggage notwithstanding their warning to Mr. Sarwal that it didn't work.[211] The RCMP officers tested the device using plastic explosive, and again found it inoperative.[212] Cst. Carlson informed Burns staff that the services of Thor were available as needed.[213]

161.   Even though the RCMP brought the ineffectiveness of the PD-4 sniffer to Air India's attention, it was up to Air India to remedy the problem. Dale Mattson testified that when Air India implemented security measures that exceeded Transport Canada's requirements (such as screening checked baggage with an x-ray or a PD-4 sniffer), he did not believe Transport Canada had a role in monitoring those extra measures.[214] RCMP witnesses also testified that since

---

[209]   Exhibit P-101, CAC0268 at p. 2 of 2.

[210]   Exhibit P-101, CAA0234 at p. 5 of 9.

[211]   Exhibit P-101, CAA0369 at p. 3 of 3.

[212]   Exhibit P-101, CAA0234 at p. 5 of 9.

[213]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 2997.

[214]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3200. See also Commissioner Major's comments at Vol. 29, pp. 3240-3243.

baggage screening was the air carriers' responsibility, it was not the RCMP's role to tell Burns or Air India how to discharge their duties.[215]

162.   Transport Canada monitored Air India's first flight from Pearson to ensure compliance with the security programme.[216] After the inaugural flight from Pearson, officials from Transport Canada and RCMP met to debrief on the security arrangements for the flight.[217] Since the flight was without incident, and since Air India did not request increased RCMP presence, the RCMP reverted to routine patrols from January 26, 1985, until March 30, 1985.[218]

163.   From the beginning of Air India's operations in Canada to June 1985, there was frequent collaboration and coordination between Air India, the RCMP and Transport Canada over threats to Air India and the appropriate security response.[219] However, Transport Canada's inspectors did not formally evaluate Air India's compliance with its own security programme after the first flight from Pearson,[220] a failure noted by the CATSA Panel.[221] Notwithstanding this finding, the evidentiary record called by the Commission demonstrates that both

---

[215]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3079; and Evidence of Joe MacDonald, Transcript, Vol. 27, pp. 2826 to 2828.

[216]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3199.

[217]   Exhibit P-101, CAC0528 at p. 34 of 54; and Exhibit P-101, CAA0121.

[218]   Exhibit P-101, CAC0528 at p. 34 of 54.

[219]   For an overview see Exhibit P-101, CAA0234 at pp. 1 to 7 of 9.

[220]   Evidence of Dale Mattson, Transcript, Vol. 29, pp. 3199 to 3200.

[221]   Exhibit P-157, CATSA Panel Report, pp. 55-57.

the RCMP and Transport Canada worked with Air India to expose the weaknesses in their security programme, draw them to Air India's attention and offer assistance.

Additional RCMP Security for Air India Flights

164.   Due to the heightened threat environment, the RCMP increased the security on Air India's Canadian flights. However, Mr. Saxena stated in a questionnaire that Canadian authorities did not provide extra security:

Question: Were there any difficulties in obtaining additional security from Canadian authorities during that period?

Answer: Air India did not get additional security, that is all I remember. [222]

165.   Mr. Saxena's statement is inaccurate and at odds with the testimonial and documentary evidence before this Commission.

166.   At Mirabel Airport, the RCMP enhanced their security for Air India from time to time based on increased threats.[223] On June 16, 1984, the RCMP raised the security level on the Mirabel checklist to level 4 (a high threat level).[224] This high alert lasted <u>continuously for over a year</u> (until the Air India bombing in 1985), and involved *inter alia* (1) the RCMP liaising with Air India before the

---

[222]   Exhibit P-365 and Exhibit P-366, p. 4, Questions III.3 and III.5.

[223]   Exhibit P-101, CAC0528 at pp. 12 to 15 of 54.

[224]   Exhibit P-101, CAC0528 at pp. 10 and 16 of 54.

arrival and departure of each flight, (2) increased surveillance and (3) a RCMP

presence at the airline ticket counters.[225]

167.   At Pearson Airport, the RCMP provided enhanced security for the inaugural

flight, involving an increased police presence at the ticket counter, passenger

screening areas and around the aircraft.[226] The same higher security was

provided in April 1985 in response to threats,[227] and throughout the entire

month of June 1985.[228] However, the RCMP would not attend the baggage

room since (1) the screening of baggage was the air carrier's responsibility and

(2) RCMP officers were not trained in the operation of the x-ray.[229]

168.   The CATSA Panel found:

> In June 1985, Air India had expressed <u>great satisfaction</u> with the
> services of the RCMP during a heightened threat situation. Extra
> RCMP policing was provided for all Air India flights at Pearson
> International Airport…[230] [Emphasis added.]

---

[225]   Exhibit P-101, CAC0528 at p. 11 of 54.

[226]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2788.

[227]   Exhibit P-101, CAC0528 at p. 37 of 54.

[228]   Exhibit P-101, CAC0528 at p. 40 of 54.

[229]   Exhibit P-101, CAC0528 at p. 36 to 37 of 54.

[230]   Exhibit P-157, CATSA Panel Report, p. 41.

169.   Additionally, on July 7, 1984, the Indian High Commissioner expressed his approval of the security measures implemented by the RCMP and Transport Canada on behalf of Air India.[231]

170.   Mr. Saxena's aforesaid allegation comes from an unsworn questionnaire. The Attorney General did not have the opportunity to test Mr. Saxena's claims through cross-examination. The Attorney General submits that his statement should be accorded very little credibility.

RCMP Overtime at Pearson Airport

171.   In early June 1985, a conflict developed between Transport Canada officials at Pearson and the RCMP over whether extra security should be provided to Air India. Transport Canada did not want to authorize the overtime pay that would be required if the RCMP were to provide this extra security.[232]

172.   The Transport-RCMP Memorandum of Understanding[233] set out mechanisms to resolve such situations. Pursuant to the MOU, on June 19, 1985, Inspector Clarke and Ed Warrick, Transport Canada's Pearson Airport General Manager, met and agreed that the Safety and Security Officer, Dale Mattson, should

---

[231]   Public Production #2153 at p. 18 of 54.

[232]   Exhibit P-157 CATSA Panel Report, p. 42, especially footnote 71.

[233]   Exhibit P-101, CAA0003 and Exhibit P-101, CAA0005.

provide the extra security despite the cost concerns.[234] In the words of Inspector

Clarke:

> …as a result of the meeting, we resolved the differences that did
> exist with the relationship between [Mr. Mattson] and my
> people… and as far as I am concerned it was a most useful
> meeting; very congenial and he seemed to listen very intently to
> what we had to say regarding it.[235]

173.   It is possible that this dispute was exacerbated by the fact that Mr. Mattson did

not have the security clearance necessary to view CSIS Threat Assessments that

the RCMP were using to set the security level. However, Mr. Mattson testified

that Transport Canada officials at headquarters could view the document, and

they would assess Transport Canada's response.[236] In any case, the CATSA

Panel stated that sharing this information likely would not have avoided the

dispute.[237]

174.   The CATSA Review Panel correctly found that this dispute was irrelevant vis-à-

vis preventing the Air India disaster.[238] Moreover, while this dispute was being

resolved, the extra policing was provided.[239] At no time was there a gap in the

---

[234]   Exhibit P-101, CAC0445

[235]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3045.

[236]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3243.

[237]   Exhibit P-157, CATSA Panel Report, p. 43.

[238]   Exhibit P-157, CATSA Panel Report, p. 43.

[239]   Exhibit P-157, CATSA Panel Report, p. 43.

security which Transport Canada and the RCMP were responsible for providing at Pearson Airport.[240]

175. Although there was no practical damage caused by the "overtime issue", it does expose that in 1985 there were difficulties in the way Transport Canada and the RCMP communicated about threat levels (thus highlighting the importance of an organization like ITAC today). It also illustrates that setting the appropriate security level at Pearson was at times a process of negotiation.[241] The CATSA Panel was very critical of this lack of clear authority in both their testimony before the Commission[242] and in their written report.[243]

Free Security

176. During cross-examination in the Inquiry, a few Government of Canada witnesses were asked whether they took the threat warnings from Air India less seriously due to the belief that Air India wanted free security.[244] There is no evidence supporting the allegation that Transport Canada or the RCMP skimped on security simply because they thought Air India was attempting to offload security costs.

---

[240] Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3096 to 3097.

[241] Evidence of Dale Mattson, Transcript, Vol. 29, p. 3242; and Exhibit P-101, CAC0445. Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3040-3042 and pp. 3044-3045.

[242] Evidence of CATSA Panel, Transcript, Vol. 36, p. 4311.

[243] Exhibit P-157, CATSA Panel Report, pp. 40-43.

[244] Evidence of Warren Sweeney, Transcript, Vol. 26, p. 2740 and Exhibit P-101, CAC0517.

177. Documents are the best evidence in historical cases. There are dozens of exhibits that show that the RCMP and Transport Canada appreciated the threats to Indian interests including Air India.[245]

178. The fact that the Government of Canada took the threats seriously is also evident from the testimony before this Inquiry:

> MR. SWEENEY: I don't think that was ever the case, that we looked on it as crying wolf. We took every threat seriously…. We took the appropriate action on each and every flight.[246]

And:

> MR. KAPOOR: So from your perspective, sitting where you were, the threats were taken seriously?
>
> MR. MUIR: Absolutely.[247]

And:

> MR. CLARKE: It wasn't just the RCMP. It was everyone. We all knew that this threat assessment was high. We knew there was a severe danger and everyone at the airport, even the baggage handlers, the people that worked on the – the ramp rats underneath the aircraft, they knew. The aircraft was handled with kid gloves all the time it was there…[248]

---

[245] Exhibit P-101, CAA0099; CAA0103; CAA0146; CAA0147; CAA0166; CAA0199; CAA0221; CAB0121; CAB0148; CAB0216; CAB0236; CAC0207; CAC0243; CAC0290; CAC0316; CAC0327; CAC0329; CAC0331; CAC0332; CAC0338; CAC0339; CAC0349; CAC0355; CAC0361; CAC0390; CAC0430; CAC0449; CAC0451; CAC0455; CAC0459; CAE0170; CAE0177; CAE0179.

[246] Evidence of Warren Sweeney, Transcript, Vol. 26, p. 2740.

[247] Evidence of R.E. Muir, Transcript, Volume 28, p. 2943.

[248] Evidence of Gary Clarke, Transcript, Volume 28, p. 3056.

179.   As these submissions have already canvassed, Transport Canada, the RCMP and
        the air carriers each had a defined role in aviation security. The Government of
        Canada took the every threat against Air India seriously and implemented
        security if warranted. However, this did not relieve Air India of its own duties to
        maintain security in those areas for which it was responsible (like screening of
        passengers, baggage and cargo).

180.   The RCMP and Transport Canada assigned protective services based upon threat
        assessments,[249] not upon speculation with respect to Air India's cost saving-
        measures.

The June 1st Telex – Background and Dissemination

181.   In late May, 1985, Air India passed a series of messages containing threat
        information to the Government of Canada.[250] This information led to a meeting
        between Air India and the RCMP on May 30, 1985, to discuss enhanced
        security.[251]

182.   On June 1, 1985, Air India's Chief of Vigilance and Security Manager in
        Bombay disseminated a telex to Air India offices worldwide warning of threats
        to Air India aircraft:

---

[249]   Evidence of Lloyd Hickman, Transcript, Volume 18 at p. 1709.

[250]   Exhibit P-101, CAA0159; CAA0161; CAA0164. See also Exhibit P-101, CAC0528 at pp. 32 - 35.

[251]   Exhibit P-101, CAC0528 at p. 39 of 54.

…received from intelligence agencies reveal the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage.[252]

183.   This telex suggested extensive counter-measures directed at Air India:

…calls for meticulous implementation of counter sabotage measures for flights at all airports… <u>basic responsibility for counter sabotage measures is that of airlines</u>…[253] [Emphasis added.]

184.   These counter-measures include: (1) physical identification of registered baggage; (2) close supervision by a responsible officer over personnel performing duties in the aircraft; (3) use of explosive sniffers (PD-4's) and dogs to check registered baggage "may be used"; and (4) random physical checks of registered baggage "particularly in places where explosive sniffers are not available."[254]

185.   Mr. Vaney at the Air India office in Toronto forwarded this message to the RCMP detachment at Pearson, where it was received by S/Sgt. Ward on June 4, 1985.[255] Mr. Vaney stated in the letter that he would appreciate the RCMP "arranging the suitable action". It appears that Mr. Vaney saw this new information as being of the same genre as the information that came in at the end of May 1985, since he noted that:

---

[252]   Exhibit P-101, CAA0185.

[253]   Exhibit P-101, CAA0185.

[254]   Exhibit P-101, CAA0185.

[255]   Exhibit P-101, CAA0184.

> This refers to correspondence resting with our letter of May 29,
> 1985 and meeting held in the R.C.M.P. office, Airway Centre,
> Toronto on May 30, 1985 pertaining to security measures.[256]

186.   This information was passed to the RCMP, but Air India did not distribute it to the other parties involved. There is no documentary evidence indicating that Mr. Vaney or anyone else at Air India forwarded the June 1st telex to Transport Canada.[257] Mr. Sarwal had previously informed Mr. Mattson that Transport Canada would be alerted of any threats coming in against Air India.[258]

187.   Even though Air India had commercial agreements with both CP Air and Air Canada, Air India did not pass the June 1st telex to them either in order to assist their baggage handling process.[259] There is no evidence indicating the telex was sent to Burns security.[260] These omissions are troubling given that Air Canada, CP and Burns were the organizations that would be screening the luggage checked aboard Air India flights.

---

[256]   Exhibit P-101, CAA0184.

[257]   Exhibit P-157, CATSA Panel Report, p. 40.

[258]   Exhibit P-101, CAA0118 at p. 5 of 6.

[259]   Evidence of T.N. Kumar, Transcript, Vol. 37, p. 4467.

[260]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11641.

188.   The RCMP Pearson Detachment forwarded the June 1st telex to the RCMP Airport Policing Branch at Headquarters on June 5, 1985. The Pearson detachment requested orders on what security to implement.[261]

189.   Upon receiving the telex, Sgt. MacDonald at Headquarters requested a threat assessment from CSIS.[262] However, Sgt. MacDonald failed to pass the June 1st telex itself to CSIS.[263] In his testimony, Sgt. MacDonald acknowledged that in general, CSIS should be given all information pertaining to threats.[264]

190.   CSIS replied on the same day that the threat level against all Indian missions in Canada was high (including Air India), but that there was no specific threat against Air India.[265] RCMP HQ shared this information with the Pearson detachment,[266] which was already providing Air India with high security.[267]

191.   Speculating about what might have happened if the RCMP had shared the June 1st telex with CSIS is difficult given what we know in hindsight. CSIS officer Ray Kobzey testified that it would have been helpful if CSIS had the information contained in the telex, especially since the reference to time-delay

---

[261]   Exhibit P-101, CAA0208.

[262]   Exhibit P-101, CAA0198.

[263]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2818.

[264]   Evidence of Joe MacDonald, Transcript, Vol. 27, pp. 2771 to 2772 and 2819.

[265]   Exhibit P-101, CAA0199.

[266]   Exhibit P-101, CAA0201.

[267]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3056.

bombs, threats in June and suicide squads may have twigged CSIS to a different interpretation of the "blast" heard in Duncan, British Columbia.[268] However, it must be borne in mind that the documents show that CSIS was already privy to contemporaneous information suggesting that (1) Sikh extremists were contemplating hijacking aircraft and (2) there was "a recent wave of terrorist bombings by Sikhs in India".[269] It is not clear whether the June 1st telex would have actually enhanced CSIS's knowledge of the dangers of Sikh extremism. *Ex post facto* speculation either one way or another will usually be self-serving, so the matter will not receive further comment.

The June 1st Telex: Not a Specific Threat

192.   The June 1st telex did not contain a specific threat against Flight 182. As these submissions have already canvassed, a "specific threat" is information that points to a certain flight as an identifiable target.[270] The June 1st telex was not directed solely against the weekly Air India flight from Canada – rather it was sent from Bombay to all Air India offices worldwide. It was directed to all Air India flights operating in June 1985.[271]

---

[268]   Evidence of Ray Kobzey, Transcript, Vol. 32, pp. 3810 to 3811.

[269]   Exhibit P-101, CAA0160 at pp. 5 and 6 of 6. See also regarding plans to bomb Indian consulates, see P-101, CAC371 and CAB0243.   For transistor radio bombs being used in India, see CAF0113.

[270]   Exhibit P-101, CAF0077 at pp. 7-8 of 37; s. 812 of the *Aeronautics Act* and the Security Regulations; and Exhibit P-101, CAC0310 at p. 13 of 17.

[271]   Evidence of Herbert Vaney, Transcript, Vol. 89, pp. 11640-11644.

193.   In his testimony, Inspector Clarke testified that when he received the June 1st telex at Pearson, he did not think it was a specific threat.[272] He also stated that the fact that there was only one Air India flight a week from Pearson did would not make this telex a specific threat.[273]

194.   Similarly, Sgt. MacDonald did not think that the June 1st telex was a specific threat.[274]

195.   In June 1985, Inspector Dawson, who was in charge of the Pearson Detachment, judged that the June 1st telex was not a specific threat.[275]

196.   Mr. Vaney was not asked during examination-in-chief if he thought the June 1st telex was a specific threat. However, on cross-examination, he did testify that he was not aware of any specific threat against Air India Flight 182.[276]

197.   In his unsworn questionnaire, Mr. Saxena suggests that the threat information against Air India amounted to a specific threat since there was only one flight a week from Pearson/Mirabel. This seems to disregard the fact that the June 1st telex was sent out worldwide and applied to all Air India flights for the month of June. Had Mr. Saxena actually been aware of a specific threat targeting Air

---

[272]   Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3055 to 3056.

[273]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3056.

[274]   Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2822.

[275]   Exhibit P-157, CATSA Panel Report, p. 40.

[276]   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11691.

India, he was obligated by law (s. 812 of the *Air Regulations*) to inform Canadian authorities so that the aircraft could be isolated, unloaded, and all passengers and baggage paraded on the tarmac.[277] He did not provide this alert to Canadian authorities, which suggests that in June 1985, he did not consider the threat against Air India flight 182 to be of that nature.

198.   The CATSA Panel correctly acknowledged that the June 1st telex was not a specific threat: "…the fact remains that amid all the general threat warnings issued, there was never a *specific* threat identified against a particular Air India flight."[278] The June 1st telex was tragically accurate, but warning as it did all Air India operations for an entire month, it was not a specific threat to Flight 182.

Response to the June 1st Telex

199.   The June 1st telex was explicitly addressed to Air India operators and concerned the screening of baggage, which was an air carrier responsibility. This fact was acknowledged several times throughout the testimony before the Commission.

---

[277]   Exhibit P-157, CATSA Panel Report, p. 41.

[278]   Exhibit P-157, CATSA Panel Report, p. 38, emphasis in the original.

200.   Sgt. Joe MacDonald testified that he believed the action outlined in the June 1st telex was the responsibility of Air India.[279] This position is echoed by the comments of Inspector Dawson written on June 5, 1985.[280]

201.   Herbert Vaney, the Air India employee who forwarded the June 1st telex to the RCMP, testified that the security response to the telex was the responsibility of Air India in consultation with other organizations (Burns, the RCMP).[281] With respect to an earlier telex, he testified that, in general, Air India would take care of special measures for baggage screening:

> THE COMMISSIONER: You see a number of threats here and suggestions are probably should be guarded against; to your understanding, who was supposed to do this?
>
> MR. VANEY: The control would be Montreal, Regional Director in New York, and the security set up in New York.
>
> THE COMMISSIONER: Of Air India?
>
> MR. VANEY: Of Air India. Oh yes, of Air India.[282]

202.   Rajesh Chopra, the current manager of Air India's Canadian operations, also testified about the responsibility for the June 1st telex. Mr. Chopra stated that it

---

279   Evidence of Joe MacDonald, Transcript, Vol. 27, pp. 2820 to 2821.

280   Exhibit P-101, CAA0208, p. 2 of 2.

281   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11644.

282   Evidence of Herbert Vaney, Transcript, Vol. 89, p. 11638.

would be up to Air India (and specifically Mr. Desouza) to decide what

measures were required in response to the telex:

MR. KAPOOR:	And just looking at that document, if I can, it's Tab 2 of your material, Mr. Commissioner, you'll see that there are a number of steps asked to be taken. And one of them is -- and I want to ask you in particular with step number 5 [regarding sniffer dogs]…
	But Mr. Chopra, is it Air India's responsibility in those days to take care of that issue?
MR. CHOPRA:	It will be the decision of Mr. Desouza to evaluate the problem prevailing or if some items have been found to evaluate the extent of danger, the threat and then take a decision on that.[283]

203. When the CATSA Panel members appeared before the Commission on May 30,

2007, Dr. Whitaker also gave his view of the importance of the advisory in the

June 1st telex for dogs and random hand searches:

DR. WHITAKER:	It's certainly significant. I should point out that in fact Air India did make a request, a specific request at Pearson in advance of the ill-fated flight for dogs, although in fact there was only one dog, as I understand it, at Pearson at the time.
	They were turned down on the basis that they were simply not – the resource was not there, except for dealing with identified suspicious bags but that they couldn't designate a dog for the entire flight.

---

[283]   Evidence of Rajesh Chopra, Transcript, Vol. 89, p. 11734.

But that having been said, that <u>random check of all registered baggage as an alternative certainly could have been called for under the circumstances</u>. We have no evidence that this was done.[284]
[Emphasis added.]

204.   Although the June 1st telex mentions that explosive sniffer dogs "may" be used, it was the responsibility of Air India to request that the RCMP at Pearson use their one dog (Thor) to screen specific bags.[285] Both Burns[286] and Air India[287] had been told this. Such a request was never made.[288]

205.   In his testimony, Dr. Whitaker seemed reluctant to fault the Government of Canada for it's response to the June 1st telex:

DR. WHITAKER: …one has to say that in fact, extra protection was offered, so it was provided, and was deployed. But within the context of a non-specific threat, a generalized but non-specific threat and that additional – additional RCMP manpower and so on were in fact deployed.

So you know, it's hard to – you can't really criticize the Government of Canada, I think, for its response, it did respond within the limits of the rules that were there at the time.

---

[284]   Evidence of CATSA Panel, Transcript, Vol. 36, pp. 4336-4337.

[285]   Exhibit P-101, CAA0118.

[286]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 2997.

[287]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 2996.

[288]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3005.

> Obviously in retrospect, a great deal more should have been done on all sides, including on Air India's side, but there was a response.[289]

206. In response to the June 1st telex and other warnings, the RCMP and Transport Canada provided extra security for Air India according to their mandates.[290]

CP Air Security and the Interlining of Baggage

207. This Inquiry did not call extensive evidence with respect to CP Air's involvement with the tragedy of Air India Flight 182. The CATSA Panel dealt with this issue comprehensively in their Air India Report and these submissions will touch on the Panel's most salient findings.

208. CP's 1985 security programme and internal regulations provided that (1) baggage could only be checked to a destination for which the traveller had a valid ticket; (2) checked baggage shall be removed if a passenger chooses not to board an aircraft; and (3) unaccompanied baggage "shall normally not be carried."[291]

---

[289]   Evidence of CATSA Panel, Transcript, Vol. 36, p. 4337.

[290]   Exhibit P-157, CATSA Panel Report, p. 41.

[291]   Exhibit P-157, CATSA Panel Report, p. 21.

209. The facts relating to the check-in of "M. Singh" and "L. Singh" on CP flights are well known.[292] It was a breach of CP Air's policy when the CP clerk interlined M. Singh's bag to Toronto when he did not have a valid ticket.[293]

210. It was also a breach when the bag was not removed when M. Singh failed to board the aircraft. The CATSA Panel testified that CP Air's own regulations were violated by allowing M. Singh's bag to travel without him:

MR. ANAND: So there's no doubt on the basis of CP's own policies and regulations that this bag should have been taken off?

DR. WHITAKER: That's correct.[294]

211. Furthermore, in their testimony before this Inquiry, the CATSA Panel explained that CP Air should have alerted Air India in Toronto that M. Singh was a no-show:

MR. HEED: …CP Air would have known as soon as that flight left or even moments before, that there was a no-show, M. Singh not showing for the flight and they should have alerted the Air India and the Air India system that the fact that he was a no-show.

MR. GOVER: And that's according, Mr. Heed, to practice at the time ---

---

[292]   Exhibit P-157, CATSA Panel Report, p. 25.

[293]   Exhibit P-157, CATSA Panel Report, pp. 58 to 59; and Evidence of the CATSA Panel, Transcript, Vol. 36, pp. 4319 to 4321.

[294]   Evidence of the CATSA Panel, Transcript, Vol. 36, p. 4359. The Panel also noted that by not removing M. Singh's baggage, CP Air was in violation of an IATA recommendation that the baggage of a no-show be offloaded from aircraft: Evidence of the CATSA Panel, Transcript, Vol. 36, p. 4323.

MR. HEED: That's the practice at the time.[295]

212. These were human failures.[296] Though the evidence is limited, it appears that these errors were isolated. CP Air was prominent within the International Air Transport Association, a trade organization promoting standards and practices in the industry.[297] Transport Canada witness Jean Barrette testified that he was not aware of systemic security breaches during the mid-1980's on CP Air's part.[298]

213. Even though CP Air fed passengers and baggage to Air India, neither Air India nor Transport Canada informed CP Air of the heightened threat environment around Air India flights. The CATSA Panel called this an example of "myopia syndrome",[299] noting that such a warning may have encouraged CP employees to exercise more caution.[300] However, the CATSA Panel also noted that in 1985, it was not the common practice to communicate threats against one air carrier to another air carrier.[301]

---

[295] Evidence of the CATSA Panel, Transcript, Vol. 36, p. 4352.

[296] Evidence of the CATSA Panel, Transcript, Vol. 36, p. 4319.

[297] Evidence of Rodney Wallis, Transcript, Vol. 37, p. 4504.

[298] Evidence of Jean Barrette, Transcript, Vol. 37, p. 4504.

[299] Exhibit P-157, CATSA Panel Report, p. 59.

[300] Exhibit P-157, CATSA Panel Report, p. 40.

[301] Exhibit P-157, CATSA Panel Report, p. 40.

The Testimony of Brian Simpson

214.   The Commission called the testimony of Mr. Brian Simpson, who was a part-time janitor at Pearson Airport in June 1985.[302] Mr. Simpson testified that on June 22, 1985, he boarded Air India Flight 182 at Pearson in order to satisfy his curiosity about its interior.[303] He claimed that he was not challenged on boarding the aircraft,[304] that it was deserted,[305] and that he saw no guards (Burns or RCMP) around the airside corridor.[306]

215.   Mr. Simpson's story lacks credibility. Not only does it contradict the statements of several Burns guards and RCMP officers that were made in the days following the bombing, but the chronological timing of his entry on to the aircraft is impossible given Mr. Simpson's own statements.

216.   With respect to the timing of this visit, Mr. Simpson testified that he visited the aircraft at the very beginning of his shift.[307] He testified during examination in

---

[302]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3639.

[303]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3642.

[304]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3644.

[305]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3643.

[306]   Evidence of Brian Simpson, Transcript, Vol. 32, pp. 3544 to 3645.

[307]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3695.

chief that he likely started his shift on June 22nd at 1pm or 1:30pm, but it may have been 3pm or 3:30pm.[308]

217.   The Air India aircraft did not land at Pearson until 2:30 pm.[309]

218.   During cross-examination, Mr. Simpson corrected himself that he most likely started his shift at 3pm or 3:30pm.[310] He could not specify exactly when he boarded the aircraft, but stated that he did it as soon as he walked down the length of the terminal after starting work.[311] However, the cleaners were not off the aircraft until 4:30 pm[312] or, in some cases, past 4:40pm.[313]

219.   Mr. Simpson testified that when he boarded the aircraft, the passengers from India had already left and the interior had been cleaned.[314]

220.   This means that Mr. Simpson could not have boarded the aircraft "at the beginning of his shift" since the aircraft was not cleaned until at least one hour after he had begun working.

---

[308]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3640.

[309]   Exhibit P-157, CATSA Panel Report, p. 26.

[310]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3695.

[311]   Evidence of Brian Simpson, Transcript, Vol. 32, pp. 3695 to 3696.

[312]   Exhibit P-101, CAF0153, Exhibit P-101, CAF0147. See also the Evidence of Brian Simpson, Transcript, Vol. 32, pp. 3695 to 3696 where he states that it takes about 1.5 hours to clean a 747.

[313]   Exhibit P-101, CAF0144.

[314]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3643.

221.   If Mr. Simpson attempted to enter the aircraft after 4:40pm (after the cleaners left), there are multiple contemporaneous statements indicating that he would have encountered several Burns guards and RCMP officers.

222.   One week after the bombing, Cst. Anderson gave a statement saying that on June 22, 1985, she was guarding the bridge between the lounge and the aircraft continuously from the flight's landing until 5:00 pm, at which time she was relieved by Cst. Tulikorpi.[315] She challenged anyone boarding the aircraft,[316] and there is a document corroborating this.[317] Cst. Tulikorpi remained at the bridge until 6:50pm, at which point he was relieved.[318]

223.   There were two Burns guards on the aircraft from the time it landed: Peter Zammit[319] and Rae Ann Belasco.[320] Their statements to police on the week following the disaster corroborate each other insofar that neither of them left the aircraft except for a few minutes around 6pm, when they were instructed to

---

[315]   Exhibit P-101, CAF0140.

[316]   Exhibit P-101, CAF0140.

[317]   Exhibit P-101, CAF0145.

[318]   Exhibit P-101, CAF0152.

[319]   Exhibit P-101, CAF0150.

[320]   Exhibit P-101, CAF0155.

assist with checking passengers *as they boarded the aircraft*.[321] This evidence is also backed-up by their co-worker[322] and their supervisor.[323]

224.   These statements were made in the immediate aftermath of the bombing, and are based upon recent recollection. Mr. Simpson, on the other hand, had nothing to use to refresh his memory 22 years after the fact.[324] He does not recall sharing his experiences with anyone in the aftermath of the bombing,[325] notwithstanding that it was the most significant aviation disaster in Canadian history. It is submitted that Mr. Simpson was mistaken when he stated that he boarded flight 182 on a whim on June 22, 1985.

Air India's Screening on June 22, 1985 at Pearson

225.   The CATSA Panel Report on Air India has already provided a detailed examination of the circumstances surrounding Air India's screening of Flight 182 at Pearson Airport. The Attorney General of Canada wishes to highlight the following pieces of evidence.

226.   The "Kanishka" arrived at Pearson from Frankfurt at approximately 2:30 pm.

---

[321]   Exhibit P-101, CAF0139.

[322]   Exhibit P-101, CAF0149.

[323]   Exhibit P-101, CAF0139.

[324]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3704.

[325]   Evidence of Brian Simpson, Transcript, Vol. 32, p. 3701.

227.   Air Canada handled the check-in process for Air India, but there was no attempt to correlate baggage to passengers,[326] with the result that it was impossible for Air India to fulfill it's own security programme, which required that (1) unaccompanied baggage be associated with a *bona fide* passenger before being loaded; (2) checked baggage from "no show" passengers must be offloaded;[327] and (3) all unaccompanied baggage should be held for 24 hours or inspected.[328] The CATSA Panel reiterated during their testimony that this inability to reconcile baggage to passengers meant that Air India could not identify a rogue piece of luggage like M. Singh's bag:

DR. WHITAKER: Well, I think evidently that passenger bag reconciliation carried out with any degree of diligence should have identified that bag as unidentified – as unaccompanied and had it removed.

And, however that was dealt with subsequently, it would have been off the flight. I mean, that's clearly the point. Once you reach this stage where the bag had actually gotten onto the CP flight and had landed at Pearson. All the other security measures that were – additional security measures that had been taken around flight 182 all turned out to be superfluous…[329]

---

[326]   Exhibit P-157, CATSA Panel Report, p. 26.

[327]   Exhibit P-157, CATSA Panel Report, pp. 17- 18.

[328]   Exhibit P-157, CATSA Panel Report, pp. 18 and 61.

[329]   Evidence of the CATSA Panel, Transcript, Vol. 36, p. 4351 (and see also p. 4328).

228.   At approximately 2:15 or 2:30 pm, Burns guards commenced screening the

baggage for Flight 182 by using an x-ray machine pursuant to Air India's

security programme.[330] However, Burns staff did not use the PD-4 sniffer at

first, notwithstanding the fact that it was part of the security programme and

was one of the measures cited in the June 1st telex.[331] This was problematic

because even though its usefulness was negligible, it is possible that the PD-4

would have detected something that the x-ray could have missed.[332]

229.   The x-ray machine ceased functioning after scanning 50 to 75% of the baggage.

Such breakdowns were a common occurrence and Air India was aware of that

fact.[333] The machine was not calibrated on a regular basis,[334] even though its

internal mechanism was constantly disturbed by frequent movement.[335]

230.   When the x-ray machine broke down, Mr. Desouza of Air India instructed Burns

staff to continue screening using only the PD-4 sniffer.[336] He did this

notwithstanding the RCMP's warnings that the PD-4 was ineffective.[337] No one

---

[330]   Exhibit P-101, CAF0139 at p. 3 of 4.

[331]   Exhibit P-157, CATSA Panel Report, p. 53.

[332]   Exhibit P-157, CATSA Panel Report, p. 53.

[333]   Exhibit P-101, CAF0156 at p. 2 of 2.

[334]   Exhibit P-101, CAA0235 at p. 2 of 3.

[335]   Exhibit P-101, CAC0517 at p. 4 of 5.

[336]   Exhibit P-101, CAF0139 at p. 3 of 4.

[337]   Exhibit P-101, CAA0369 at p. 2 of 3; and Evidence of Gary Carlson, Transcript, Vol. 28, p. 2996.

from Burns or Air India informed the RCMP that there were problems screening luggage. Mr. Vaney, Mr. Yodh and Mr. Desouza were all present, but it is unclear who was ultimately in charge. There does not seem to have been any discussion about what back-up procedures to adopt.[338]

231. Neither Burns nor Air India attempted any systematic or random physical inspection of the baggage that had not been x-rayed.[339] The Burns supervisor on duty stated to police that Mr. John Desouza was anxious that security procedures not delay the flight:

> John was concerned about not having the flight delayed because
> of security. He asked if it was possible if they could put the
> baggage through a little faster. I told him that they were trained to
> make an adequate search and I refused to tell them to speed it
> up.[340]

232. The remainder of the baggage was screened with only the PD-4.

233. Eventually, Flight 182 departed from Pearson and landed at Mirabel at 9:00 pm. There was a functioning x-ray machine at Mirabel that was used to screen the checked baggage that was originating from that airport.[341] There is no evidence of any discussion between the Air India managers at Mirabel (Messrs. Yodh,

---

[338]   Evidence of Herbert Vaney, Transcript, Vol. 89, pp. 11651 to 11655.

[339]   Exhibit P-157, CATSA Panel Report, p. 27.

[340]   Exhibit P-101, CAF0139 at p. 3 of 4.

[341]   Exhibit P-157, CATSA Panel Report, p. 28.

Desouza and Abid) about running the unscanned luggage from Pearson through the machine at Mirabel.[342]

234.   The CATSA Panel found that it was a human error for Air India personnel to fail to direct hand searches following the breakdown of the x-ray machine.[343] This was also a violation of their security programme.[344] The Panel put it thus:

> Air India… appeared unwilling to impose serious inconvenience on its passengers as the price of greater security… Hand searching of checked baggage would have been highly effective, although more costly, time-consuming and inconvenient; this was not undertaken.[345]

235.   Hand searching for Flight 182 could have been performed by the RCMP if Air India had called for them.[346] It is not clear why such a request was not made.

236.   As these submissions have already noted, Dale Mattson testified that when Air India implemented security measures that exceeded Transport Canada's requirements (such as screening checked baggage with an x-ray or a PD-4 sniffer), Transport Canada had no role in monitoring those extra measures.[347]

---

[342]   Evidence of Mr. Abid, Transcript, Vol. 89, pp. 11697-11698.

[343]   Exhibit P-157, CATSA Panel Report, p. 60.

[344]   Exhibit P-157, CATSA Panel Report, p. 61.

[345]   Exhibit P-157, CATSA Panel Report, p. 42.

[346]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3105.

[347]   Evidence of Dale Mattson, Transcript, Vol. 29, p. 3200. See also Commissioner Major's comments at Vol. 29, pp. 3240-3243.

This is echoed by the RCMP witnesses.[348] Air India's "extra" measures were not required by Canadian legislation, so it was up to Air India to ensure their integrity, as part of their more general duty to ensure the security of their own aircraft.

Air India's Screening on June 22, 1985 at Mirabel

237.   Burns Security guards screening luggage at Mirabel identified three suspect bags destined for Air India Flight 182.[349] Air India personnel were notified of this suspect luggage at 9:10pm by Air Canada.[350] Air India personnel decided not to board the luggage on the aircraft.[351]

238.   Air India did not notify the RCMP (or Transport Canada) about the suspect luggage, despite the fact that Air Canada advised them to do so.[352] Finally, at 10:00 pm, Air Canada informed the RCMP that there were 3 suspect bags. A few minutes later, an RCMP officer came to the baggage area and requested to speak with an Air India official, who asked him to wait 10-15 minutes.[353] When

---

[348]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3079; and Evidence of Joe MacDonald, Transcript, Vol. 27, pp. 2826 to 2828.

[349]   Evidence of Daniel Lalonde, Transcript, Vol. 29, at pp. 3115 to 3166.

[350]   Exhibit P-101, CAE0249 at p. 8 of 25.

[351]   Evidence of Mr. Abid, Transcript, Vol. 89 at pp. 11705 to 11723.

[352]   Exhibit P-101, CAE0249 at p. 8 of 25.

[353]   Exhibit P-101, CAC0528 at pp. 27 to 28 of 54.

the Air India officer arrived, he informed the RCMP officer that Flight 182 had departed already.[354]

239. It is evident that the events of June 22, 1985 continue to haunt former Sûreté du Québec Police Service dog handler Sgt. Serge Carignan, the officer who was called to attend Mirabel Airport to investigate these bags, pursuant to the contingency plan of the RCMP Mirabel Detachment.[355]

240. Sgt. Carignan suggested that a full search of the contents of Air India Flight 182 may have prevented the downing of the aircraft. This may be true, but a full search of the aircraft was not feasible given the fact that the RCMP had just been contacted five minutes prior to the aircraft's departure. It does not seem that the Air India personnel regarded these bags as a "specific threat" that would trigger the emergency procedure under s. 812 of the *Air Regulations*. Sgt. Carignan was not called in to Mirabel to search Flight 182: the RCMP asked for his services after the aircraft had left so that he could examine the suspect bags only.[356] As well, it should be noted that Gary Carlson testified that it was not unusual to have a canine team called in to look at detained baggage after the aircraft that was to carry the bags had already departed.[357]

---

[354]   Exhibit P-101, CAC0528 at p. 28 of 54.

[355]   Evidence of Daniel Lalonde, Transcript, Vol. 29, pp. 3162 to 3163.

[356]   Exhibit P-101, CAC0528 at pp. 27 to 28 of 54.

[357]   Evidence of Gary Carlson, Transcript, Vol. 28 at p. 5004.

Explosive Detection Dogs on June 22, 1985

241.   The CATSA Panel Report noted that in 1985, bomb sniffer dogs were one of the best tools available for interdicting explosives at airports.[358] This led the Panel to conclude that the bomb that destroyed Flight 182 "would likely have been detected" if a dog was used to screen the baggage placed on that flight at Pearson.[359] There was no bomb sniffer dog at Pearson on June 22, 1985, because he was on training in Vancouver.[360] This leads to the questions (1) was it improper for Pearson's dog to be on training on that day? (2) was there a back-up plan in the dog's absence? (3) would the dog's presence have made a difference?

242.   The Attorney General of Canada submits that it was not improper for Pearson's dog to be on training on June 22, 1985, because training was a necessary to keep the dog effective, and the RCMP at Pearson provided for sufficient back-up in his absence (i.e. the hand-search team).

243.   The RCMP at Pearson Airport had one bomb sniffer dog, Thor. In the mid-1980's, there were only five or six bomb sniffer dogs in Canada.[361] Supt. Gary Clarke stated that even six dogs was a "luxury" given their rarity.[362]

---

[358]   Exhibit P-157, CATSA Panel Report, pp. 14 to 15.

[359]   Exhibit P-157, CATSA Panel Report, p. 41.

[360]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 2999.

[361]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3018.

244.   Thor's handler, S/Sgt. Carlson, testified about the capabilities of sniffer dogs,
        but he also noted some of their limitations.[363] It would take between 5-6 hours
        to search an entire aircraft and its contents.[364] They required an annual
        evaluation of their skills.[365] The dog's search would be most effective if it was
        supplemented with the efforts of a trained team of "hand searchers".[366]

245.   The CATSA Panel also discussed the effectiveness and limitations of explosive
        sniffer dogs. It found that "dogs are not capable of working for extended
        periods" and that the key to maintaining effectiveness was "continuous training
        and periodic revalidations of proficiency… which reduces availability... "
        [emphasis added.][367]

246.   Therefore, training was vital to keep Thor effective and this training would
        reduce his availability.

247.   It was not against RCMP policy to have Thor absent in June 1985. During the
        Inquiry, Commission counsel suggested to witnesses that "the Mirabel
        Checklist" was an RCMP policy that required the RCMP at Pearson to "use the

---

362   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3107.

363   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3004.

364   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3021.

365   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3004.

366   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3004.

367   Exhibit P-157, CATSA Panel Report, pp. 15 and 109.

services of a dogmaster" for every flight with a security rating of 3 or above (including the Air India flights in June 1985).

248.   As these submissions have already discussed, it is unlikely that the Mirabel checklist was a firm policy at Pearson. It is also unclear to this day what the Mirabel checklist signifies by "use the services of a dogmaster" since dogs were used whenever there was a specific threat and not in other circumstances.[368]

249.   In any case, S/Sgt. Carlson testified that the RCMP Pearson Detachment did have an operational policy manual in effect in 1985 that required the use of the bomb sniffer dog (in conjunction with the hand search team) <u>whenever there was a specific bomb threat against an aircraft</u>, but not requiring their presence in other circumstances.[369] This manual did not otherwise distinguish between high and normal threat levels.

250.   This manual is consistent with the findings of the CATSA Panel, who stated that in 1985, sniffer dogs were reserved for special circumstances: (1) a specific bomb threat against an aircraft, (2) suspicious baggage; (3) and unattended

---

[368]   See the Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2860, in relation to the Mirabel checklist that the dogmaster was always available if there was a bomb threat or suspect luggage, no matter what the threat level was. See also, Evidence of Gary Carlson, Transcript, Vol. 28, p. 3027, where Gary Carlson testified that he and Thor were not required to be present for Air India flights in June 1985 even though they were at a heightened security level. It is difficult to square this with the Mirabel checklist being "policy" at Pearson.

[369]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3022 and Public Production #2965 at p. 13 of 17.

baggage in the airport.[370] Sniffing an entire flight and its baggage is a taxing activity that could leave the dog unable to fulfill other duties, so they were not used to search whole aircraft except in the contingency of a specific threat.[371] In other situations, the onus was on air carriers to screen baggage and identify "suspect bags" to the police, who could then employ the dog in a targeted fashion.[372]

251. Because there was only one dog available at Pearson, the Pearson policy manual for emergency situations specified back-up procedures in the case of a bomb threat: (1) use of a hand search team alone, and/or (2) requesting that Mirabel send its sniffer dog on the next flight.[373]

252. Even when Thor was available, the practice at Pearson was to use a hand search team to assist him.[374] The hand search team was a unit of RCMP officers who had been specially trained to physically search aircraft and luggage for explosives.[375] Hand searches take longer and may not be as powerful as a dog,

---

[370]   Exhibit P-157, CATSA Panel Report, p. 15. See also the Evidence of Nick Cartwright, at Vol. 42, p. 5112, and the Evidence of the CATSA Panel, Transcript, Vol. 36, p. 4331.

[371]   Exhibit P-101, CAC0268 at p. 2 of 2.

[372]   Exhibit P-101, CAC0268, at p. 2 of 2 and Evidence of Gary Carlson, Transcript, Vol. 28, p. 3019.

[373]   Exhibit P-101, CAC0310, at p. 16 of 17 and Evidence of Gary Carlson, Transcript, Vol. 28, p. 3024.

[374]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3023 and Exhibit P-101, CAC0310, at p. 16 of 17.

[375]   Evidence of Gary Carlson, Transcript, Vol. 28, pp. 3023 to 3024.

but they are an important safety measure, which the CATSA Panel called "highly effective." [376]

253.   At Mirabel, there was a different policy. In the absence of their explosive sniffer dog, Mirabel relied on a dogmaster from the Sûreté de Quebec.[377] The RCMP at Pearson did not have this luxury since the local police did not own a bomb sniffer dog.[378]

254.   Therefore, in the absence of a dog, the RCMP at Pearson had a policy of providing the next best safety measure: a physical search by a team of trained officers.[379] This option was available on June 22, 1985. As both Supt. Clarke and S/Sgt. Clarke testified before the Commission, if Air India had called for RCMP assistance after the x-ray machine broke down, the RCMP hand search team would have opened up and screened the un-scanned baggage.[380] Supt. Clarke stated that he would have expected Air India to do this.[381]

255.   Would the presence of Thor at Pearson have made a difference for Air India Flight 182? The evidence suggests no.

---

[376]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3007 and CATSA Panel, p. 42.

[377]   Evidence of Serge Carrignon, Transcript, Vol. 26, p. 2664.

[378]   Evidence of Gary Carlson, Transcript, Vol. 28, p. 3000.

[379]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3108.

[380]   Evidence of Gary Clarke, Transcript, Vol. 28, pp. 3104 to 3107 and Evidence of Gary Carlson, Transcript, Vol. 28, p. 3022.

[381]   Evidence of Gary Clarke, Transcript, Vol. 28, p. 3106.

256. The Air India and Burns employees who were screening the luggage for Flight 182 never requested the dogmaster's assistance or informed the RCMP that the x-ray had broken down.[382] It was their responsibility to do this since their role was "to design and implement security systems for passenger and baggage screening."[383] The RCMP only assisted if called upon.[384] In fact, Air India had never asked for the services of the dogmaster to search suspect bags,[385] even after these services had been offered.[386]

257. It is possible that the failure to ask for assistance on June 22 is a result of the fact that it was unclear which Air India employee had ultimate responsibility on June 22, 1985, or because Air India officers were reluctant to incur any more delay. There is no direct evidence before the Commission on this crucial point.

The Duty to Warn the Public

258. During testimony before the Commission, some parties raised the question of whether there is a legal or ethical duty on Government officials to warn the public that there are threats against an air carrier like Air India.

---

[382] Evidence of T.N Kumar, Transcript, Vol. 36, pp. 4464 to 4465.

[383] Exhibit P-157, CATSA Panel Report, p. 9.

[384] Evidence of Joe MacDonald, Transcript, Vol. 27, p. 2894.

[385] Evidence of Gary Carlson, Transcript, Vol. 28, pp. 3005 and 3019.

[386] Exhibit P-101, CAC0268 at p. 2 of 2.

259.   The expert panellists Mr. Rodney Wallis and Dr. Reg Whitaker agreed that imposing a duty to warn the public was an impractical and imprudent idea. Mr. Wallis could not envision a situation that would justify such an extraordinary step.[387]

260.   Dale Mattson testified that in 1985, he was not aware of any legal duty to advise the public that there was a high threat level against Air India.[388]

261.   The Attorney General of Canada submits that the Commission did not hear sufficient evidence on this complex legal question to allow for a proper analysis. Just a handful of witnesses offered their opinion on the merits of imposing such a duty,[389] but there was no thorough investigation of (1) if and when the public is ever warned in Canada; (2) if any other countries impose a duty to warn upon their governments; and (3) the policy and legal implication of warning the public, including liability to air carriers whose operations are compromised by speculative or classified intelligence.

The Rae Report

262.   When the Commission was hearing evidence on the issue of aviation security, the allegation was made during some testimony that Transport Canada and the

---

[387]   Evidence of Reg Whitaker, Transcript, Vol. 38, pp. 4593; and Evidence of Rodney Wallis, Transcript, Vol. 41, p. 5063.

[388]   Evidence of Dale Mattson, Transcript, Vol. 29, pp. 3258 to 3259.

[389]   See also Evidence of Gary Clarke, Transcript, Vol. 28, p. 3072; and Evidence of Dale Mattson, Transcript, Vol. 29, pp. 3258 to 3259.

RCMP had misinformed the Honourable Bob Rae during his inquiries into the Air India bombing. This matter must be addressed briefly.

263. On April 26, 2005, the Government of Canada appointed the Honourable Bob Rae to the position of Independent Advisor with a mandate to provide the Government with independent advice on whether there were outstanding questions of public interest with respect to the terrorist bombing in 1985 of Air India Flight 182.

264. Mr. Rae's mandate was not to inquire into the facts and make findings. Rather, it was to review material relating to the tragedy, including domestic and international proceedings, the findings and recommendations of investigations and inquiries and the security measures introduced since 1985, with a view to identifying outstanding questions and options for addressing them. In his own words, his report was not "a definitive account of every event related to the Air India disaster but rather an assessment of the issues that need to be examined more fully."

265. Throughout the summer and fall of 2005, Government officials collected historical documents and provided them in a timely fashion to Mr. Rae. The information they provided to him was complete and correct based on their review of the material available to them at that time. However, the process of briefing Mr. Rae was ongoing. Mr. Rae discharged his mandate in a summary manner, releasing his final report on November 23, 2005. Any inaccuracies in

information given to Mr. Rae were a result of this abbreviated process, complicated as it was by the voluminous material and its historical nature.

Conclusion on Aviation Security Before and During June 1985

266. Aviation security in 1985 was a network of criss-crossing roles and responsibilities that failed to protect Flight 182 from the bomb that destroyed it. This grievous failure changed the way that the Government of Canada approached aviation security and allocated responsibility for protecting aircraft. The words of Dale Mattson are perhaps most apt:

> MR. SHORE: Last question. Would you have done anything differently on that -- recognizing the tragedy that ultimately happened, with the bombing of the flight?
>
> MR. MATTSON: Listen, I can tell you that there was a lot of things that we have learned from the lesson of Air India that could have been done different. The tragedy and the loss of all those poor souls is a small measure of the fact that it's had a major impact on how Transport Canada now looks at providing security at airports. We have new regulations. We have security systems which are light years ahead of what were in place at the time. We have placed a lot more specific responsibilities on the parties involved in operating aircraft in and out of our airports. Of course, if I'd had the tools and the authority and the knowledge of hindsight, any one of us would have done something to prevent this tragedy from occurring. I mean, at that time the question that you ask is a question that I am sure everybody has asked of themselves.
>
> Based on the tools that I had in my hands at that time, what happened was tragic. I did not have any tools to deal with that at that time. Now, there's lots of additional measures that have been taken. I mean I find this a very very difficult question to respond to.[390]

---

[390] Evidence of Dale Mattson, Transcript, Vol. 29, p. 3259.

267.   June 22, 1985, was a watershed moment for Canadian aviation security. The next section of these submissions will describe the measures that the Government took to respond to the tragedy in the aftermath of the tragedy, and how aviation security has continued to evolve to this day.

PART II: THE CANADIAN RESPONSE TO THE AIR INDIA BOMBING

268.   Transport Canada's response to the Air India bombing is described in detail in Chapter 4 of the CATSA Panel's Report on the Air India disaster and will not be reiterated here.[391] The Government of Canada relies upon that chapter as an accurate summary of Transport Canada's response. However, there are some points worthy of emphasis.

269.   First, Transport Canada's response was swift. Within hours, Transport Canada had directed Canadian and foreign air carriers to amend their security programs to provide for improved screening of passengers and carry-on baggage, physical inspection of all checked baggage on international flights and a 24-hour hold on air cargo.[392]   New wide aperture x-ray equipment was ordered and the procedures were refined to permit hand-searching or x-ray screening of checked baggage on all international flights (and for domestic flights in respect of which

---

[391]   Exhibit P-157, CATSA Panel Report, pp. 65-82.

[392]   Exhibit P-157, CATSA Panel Report, pp. 68-69.

a threat had been made). These measures remained in place until full passenger-baggage match was introduced in 1986.[393]

270. Second, Transport Canada's response was comprehensive and led to a major reform of aviation security regulation. The Government of Canada recognized the need for an immediate, practical review of aviation and airport security and requested the Interdepartmental Committee on Security and Intelligence to undertake that review under the direction of Blair Seaborn, its Chairman. The review was completed by September 1985, its findings and recommendations contained a report that came to be known as the Seaborn Report.[394]

271. The recommendations were sweeping in scope and led to important changes in practice and policy:[395]

- Immediate implementation of passenger baggage reconciliation on international flights;

- Development of an enhanced alert level to be put in place for enhanced security situations;

- Establishing background security checks for airport workers and other individuals requiring access to restricted areas of airports;

- Establishing clear lines of authority between aviation security players;

- Establishing a security awareness program;

---

[393]   Testimony of Jean Barrette, Transcript, Volume 37, 31 May 2007, pp. 4485, 4509.

[394]   Testimony of Jean Barrette, Transcript, Volume 37, 31 May 2007, p. 4502; Exhibit P-157, CATSA Panel Report, pp. 65-67.

[395]   See Appendix B to the CATSA Panel Report, Exhibit P-157, pp. 119-120.

- Training for security stakeholders which included enhanced training for personnel doing pre-board screening;

- Funding for new technology, in other words putting in place funding to support new research in development programs for development of new technology;

- More rigorous oversight of the aviation system by Transport Canada, the development of a security inspection and monitoring program, and the hiring of additional aviation security inspectors;

- Improved dissemination of classified threat assessments and significant purchasing and deployment of secure phone systems. The intent was to deploy more secure phone systems to facilitate the exchange of security information.[396]

272.   The Seaborn Report became a strategic action plan for Transport Canada. Jim Marriott described its importance in this way:

> It outlined a large number of practices recommended to further enhance aviation security. And the department very aggressively pursued implementation of all recommendations in the Seaborn Report over the course of the coming years, in conjunction with and in coordination with other federal government departments that had security responsibilities, and, of course, in conjunction and in coordination with the aviation industry, airlines, airports and labour groups within airports and airlines for that matter. So it was really a roadmap to take aviation security in Canada from where it was in the aftermath of 1985 to a new and much higher ground.[397]

273.   Transport Canada took advantage of the 1985 amendments to the *Aeronautics Act* to enlarge and improve the security regulations and measures affecting foreign and domestic air carrier operations and, where necessary, develop rules to implement the Seaborn recommendations. The Seaborn report was not a

---

[396]   Testimony of Jean Barrette, Transcript, Volume 37, 31 May 2007, pp. 4502-4503.

[397]   Testimony of Jim Marriott, Transcript, Volume 37, 31 May 2007, pp. 4504-4505.

quick fix but a long-term plan for the improvement of aviation security standards over years.[398]

274.   The Seaborn Report also had significant international implications as Mr. Marriott further explained:

> I think it's also important to recognize that not only was it a significant report for Canadian aviation security but also for international aviation security….[T]he recommendations implemented by Canada became standards against or benchmarks against which international aviation   security evolved and looked to. And I'd use as an example the recommendation in the Seaborn Report that airport workers be subjected to comprehensive background checks. That program, known at the time as the Airport Restricted Area Access Clearance Program, was introduced in the fall of 1986. It was a program that essentially required that any airport worker, at our largest airports, undergo a series of background checks to establish their -- that they did not represent a threat if allowed to circulate freely in a restricted area.
>
> That's a program that was, as I say, began in the fall of '86 and it was a number of years later, a number of years after that that the standard emerged in ICAO Annex 17, essentially requiring a similar kind of program be established by ICAO contracting states around the world. So that recommendation in the Seaborn Report I think was a leading example of how Canada was leading the world in aviation security.[399]

---

[398]   Exhibit P-157, CATSA Panel Report, pp. 69-72. See also Exhibit P-162 for a summary of other Canadian responses to the bombing.

[399]   Testimony of Jim Marriott, Transcript, Volume 37, 31 May 2007, p. 4505.

275.   Rodney Wallis of IATA concurred. He was consulted during preparation of the
report and was pleased to see it come out so quickly. It led to the development
of international standards that continue to apply today.[400]

276.   This illustrates the third feature of Canada's response to the bombing, its
international dimension. Canada pushed hard at ICAO and in other forums for
immediate reform of aviation security standards, particularly those respecting
passenger-baggage reconciliation. Rodney Wallis also testified to this point:

> It [the concept of passenger-baggage reconciliation] was taken to
> ICAO. ICAO ran with this idea. I have to say pushed very hard
> by the Canadian representative on the council. Canada were
> really running with this, that they had been hurt, obviously, by the
> bombing, and they were taking this forward.

> So there was a two-prong attack, if you like. You have got the
> Canadian council member and you have got IATA, representing
> the airlines, coming from different ways and pushing forward to
> get something on the record. We didn't always see eye-to-eye
> and I have mentioned previously that Dan Fiorita, representing
> Canada, wanted a very simplistic approach; you know, no
> passenger, no bag, et cetera. No unaccompanied baggage. The
> airlines couldn't have that because there were many reasons why
> unaccompanied baggage had to be carried.

277.   There can be no doubt that the Air India bombing was a significant turning point
in the development of aviation security standards and practices in Canada.

278.   The same is true of the international response, as Rodney Wallis again made
clear:

---

[400]   Testimony of Rodney Wallis, Transcript, Volume 37, 31 May 2007, p. 4507.

> [Air India Flight] 182 is very important also because of what it
> created. It created an awareness within the aviation industry that
> things were changing and that things had to happen. Really, the
> rules which exist in aviation security today emanate from that
> time. The rules that were developed out of the Air India bombing
> are as valid today as they were then, and this is extremely
> important.[401]

279. It is simply wrong for observers such as Professor Razack to assert, as she did in her report, that there were few changes made to aviation security and that there was no sense of urgency following the bombing.[402] The testimony of Mr. Barrette, Mr. Marriott and Mr. Wallis and the findings of the CATSA Panel in Chapter 4 of their report make it abundantly clear that Transport Canada made immediate and important changes that continue to this day.

280. The CATSA Panel compared the response of Canada and international aviation authorities and concluded in these terms:

> Despite the tragedies in the aviation industry and the rapid
> investigations that followed, world aviation authorities and air
> carriers were slow in reacting and making all the changes
> necessary to close the gaps. Canada acted more promptly and
> with greater determination than most other nations in
> implementing changes to aviation security, in some cases acting
> before ICAO standards had been developed. For example,
> passenger-baggage matching, which had been recommended in
> the Seaborn Report, was implemented in Canada for international
> flights in 1986, whereas the ICAO standard did not take effect
> until 1989.

---

[401] Testimony of Rodney Wallis, Transcript, Volume 35, 29 May 2007, p. 4209.

[402] 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, pp. 19, 24.

281.   The CATSA Panel went on to observe that its recommendations to address current deficiencies in aviation security resemble many of those made in the Seaborn Report.   Later in its Report, the CATSA Panel found that Canada now has a much more robust aviation security system than it did in 1985 with more layers in the security system and improved standards and enforcement. Although aviation security has a much higher priority, there are many new and continuing challenges.[403]   Those challenges are the subject of Part III of these submissions.

---

[403]   Exhibit P-157, CATSA Panel Report, pp. 93-94 and, more generally, Chapter 6 at pp. 93-112.

PART III: CURRENT CIVIL AVIATION
SECURITY ISSUES

INTRODUCTION

282.   These submissions focus on the current aviation security challenges facing Canada.

283.   Responsibility for aviation security is shared among Transport Canada, other government departments and agencies, air carrier, airport operators, shippers, and individuals.[404]   However, these submissions will address the roles and responsibilities of Transport Canada, discuss current and ongoing aviation security issues and describe the programs and initiatives Transport Canada has in place to address these issues.

284.   These submissions demonstrate that Transport Canada has created a robust and responsive aviation security program. Among the lessons learned from the Air India bombing is that the aviation security program must be vigilant and flexible, cognizant of past events, responsive to current issues and anticipating and planning for new and different challenges.[405]

285.   Nick Cartwright spoke to the balance between experience and anticipation when discussing screening technology:

---

[404]   Flight Plan, p. 27.

[405]   Testimony of Jean Barrette, Transcript, Volume 38, 1 June 2007, p. 4568.

> It's a question of trying to take advantage of the knowledge and experience that we've developed over the years in the development and the evaluation of those [tools] and making sure we don't forget that when we have a new challenge . . . sometimes the existing tools, which have been surpassed or replaced by better technology can come back again in a different role with a different threat.[406]

286.   The purpose of these submissions is to describe the roles and responsibilities of Transport Canada and the initiatives has undertaken to address the security lessons of the past and the security challenges of the future.

287.   These submissions should be read in conjunction with the summary of the current aviation security system made by *CATSA Act* Review Panel.[407] Transport Canada accepts that summary as accurate for the purposes of these submissions.

A.   ROLES AND RESPONSIBILITIES OF TRANSPORT CANADA

288.   Transport Canada has been designated as Canada's national civil aviation security authority. In that capacity, it is responsible for developing aviation security policy, establishing standards in security regulations, measures and other regulatory instruments, promoting compliance with those standards through inspection and enforcement, managing the security clearance of airport

---

[406]   Testimony of Nick Cartwright, Transcript, Volume 42, 13 June 2007, p. 5232.

[407]   Exhibit P-157, CATSA Panel Report, Chapter 6.

workers and providing intelligence information to CATSA, airport operations and air carriers.[408]

289.   The *CATSA Act Review* Advisory Panel consulted industry stakeholders and recorded the consensus that Transport Canada, with its wide mandate for the transportation sector as a whole, is the most appropriate authority for aviation security, permitting a better level of integration of security with more general transportation policy. The Panel saw an advantage to the existing arrangement and recommended that responsibility for aviation security remain with the Minister of Transport.[409]

290.   The Chair of the Panel, Dr. Reg Whitaker, expressed the opinion in testimony before this Commission that the stakeholders involved in the consultative process had based their views on "sound reasoning, and that is that security has to be integrated in as seamless a way as possible within the aviation sector as a whole".[410]

291.   Transport Canada's security system is multi-layered, comprehensive and complex, as was noted in the testimony of Jim Marriott:

> [w]e in Canada advocate a multi-layered system of aviation security, each layer helping to reinforce and complement the

---

[408]   Flight Plan, p. 26.

[409]   Flight Plan, p. 31, sec. 2.1.

[410]   *Ibid.*

other…[411]

292.   The program seeks to mitigate threats within a national and international
        context, while balancing public security, the needs of an efficient, viable
        aviation industry and Canadian values, including privacy and human rights.
        Jean Barrette, the Director of Security Operations, discussed this "triangle" of
        considerations:

> In anything we do in security, we always look at the triangle, as I
> call it. Security, which is your ultimate objective. Finding
> wisdom and taking into account that we have to create an
> environment commensurate to good business; that's the business
> that our colleagues in the air care (*sic)* industry are in. And the
> third one is keeping in mind the rights and values of our Canadian
> citizens.[412]

293.   Jim Marriott, the Director, Aviation Security Regulatory Review, testified that a
        strong program of consultation is crucial in striking the balance among the three
        considerations and achieving an effective security system:

> That dialogue with the industry enables the industry to inform the
> department – advise the department on the cost implications of a
> proposed new requirement. It also helps enable the department to
> carry out a full assessment of costs against security benefits of a
> new security requirement and to inform decisions about whether
> security – proposed security requirements should be adjusted or
> changed in any way.[413]

---

[411]   Evidence of Dr. Reg Whitacker, Transcript, Vol. 39, p. 4642.

[412]   Evidence of Jean Barrette, Transcript, Volume 38, p. 4567.

[413]   Evidence of Jim Marriott, Transcript, Volume 38, p. 4566.

294.   Transport Canada, as an organization, welcomes critiques[414] and reviews of its programs as a means of ensuring that Canada's aviation security system is among the best in the world.[415] The working relationships between the various departments and agencies engaged in Canada's current aviation security regime are collaborative and cooperative.[416]

295.   Transport Canada actively seeks renewal and innovation. According to Jean Barrette:

> …you achieve [*an* effective *security system*] through constant monitoring of the system, making sure that in fact you do have a flexible aviation security program, one that is responsive to the situation at the time and finding the wisdom to react in a timely manner but not as a stultified organization, but working interdepartmentally not only nationally, but working internationally as well with our colleagues of other states.[417]

---

[414]   Evidence of Jean Barrette, Transcript, Volume 39, p. 4795.

[415]   Two illustrations of external reviews of the Department, which are germane to the Commission's mandate, are the Advisory Panel's Reports, Flight Plan: and Exhibit P-157 (CATSA Panel Report), both of which were requested by the Minister of Transport.

[416]   For example, since 2004, Transport Canada has chaired the Interdepartmental Working Group on Aviation Security (IWGAS), a proactive and coordinated collective of federal departments and agencies tasked with assessing potential threats to aviation and national security posed by proposed air links to Canada. Intelligence data, coupled with a threat-risk assessment of the proposed air link determines the relative risks (if any) and, as appropriate and possible, either mitigates those risks or rejects the air link outright. The IWGAS also periodically reviews existing air links, when required, to assess new and emerging threats to existing services. This process, championed by the Privy Council Office as a Best Practice in security coordination and collaboration, has served as a template for a similar, multi-departmental review on marine security issues.

[417]   Evidence of Jean Barrette, Transcript, Volume 38, p. 4568. See also evidence of Jim Marriott, Transcript, Volume 37, p. 4544.

296.   The strong, consultative processes within the Department are illustrated by the formation, in 2006, of the Advisory Group on Aviation Security (AGAS).[418] The creation of this organization was initiated by Transport Canada in recognition that key elements of Canada's aviation community (carriers, airports, aviation-industry employees and the Canadian Air Transport Security Authority (CATSA), all have legislated responsibilities pertaining to aviation security.[419] AGAS meets twice annually to receive updates on various aviation security files, as well as to provide input through a consultation mechanism on the future direction of aviation security issues and concerns.

297.   In order to maximize the Department's access to industry expertise AGAS has created various working groups and ad hoc committees to study specific issues, with a view to crafting a collective way forward. Fred Jones of the Canadian Airports Council outlined the role of the AGAS subcommittees:

> There are five subcommittees. They are aerodromes, security screening, air carrier, and most recently there have two additional technical committees created to deal with cargo security and with security management systems. Canadian Airports Council and a number of its members are represented, not only on AGAS, but also on the technical committees which deal with more of the nuts and bolts of how to make it happen that AGAS which is at a more strategic or policy direction discussion level.[420]

---

[418]   Evidence of Jim Marriott, Transcript, Vol. 38, p. 4566.

[419]   Evidence of C. Hall, Transcript, Volume 64, p. 7993 [A sixth has since been added to deal with the Aviation Security Regulatory Review].

[420]   Evidence of Fred Jones, Transcript, Volume 65, p. 8116. Note: Another subcommittee has recently been created to deal with the aviation security regulatory review.

298.   Transport Canada recognizes this collaborative approach as vital in addressing

complex aviation security challenges with shared responsibilities.

B.   CANADA'S ROLE IN THE INTERNATIONAL ARENA

299.   Canada, as the host country of the International Civil Aviation Organization

(ICAO) headquarters in Montréal, has long had a policy of meeting and

exceeding international security requirements, so that Canada can remain at the

global forefront of aviation security. The direct result of this philosophy is a

regulatory regime, which meets and in many areas exceeds the international

benchmarks set by ICAO.

300.   One illustration of this was Canada's unilateral decision to ensure passenger-

baggage reconciliation immediately following the Air India tragedy, a

requirement not universally mandated by ICAO until after the terrorist attacks

of September 11, 2001. Rodney Wallis, the former Director of Security for

IATA praised Canada's leadership in seeking to implement this initiative

domestically as well as in the international forum:

> The effect of Air India on the industry at that time was
> tremendous and you have already detected that -- from what I
> have said there, when we mentioned treating a passenger and his
> baggage as a single entity, this was the birthplace, if you like, of
> passenger and baggage reconciliation…. It (passenger baggage
> reconciliation) was taken to ICAO. ICAO ran with this idea. I
> have to say pushed very hard by the Canadian representative on
> the council. Canada were really running with this, that they had
> been hurt, obviously, by the bombing, and they were taking this
> forward [Emphasis added].[421]

---

[421]   Evidence of Rodney Wallis, Transcript, Volume 37, p. 4477.

301.   In subsequent testimony, Rodney Wallis again reiterated Canada's role in championing passenger-baggage reconciliation in the aftermath of the Air India tragedy:

> Canada were *(sic)* at the forefront. I mean, Dan Fiorita was vociferous; he was correctly aggressive in trying to push the Canadian viewpoint through ICAO; he was extremely active and Transport Canada were clearly supporting their Minister at ICAO. Canada were *(sic)* at the forefront, without any shadow of a doubt, at that time.[422]

302.   In 2004, the Government of Canada demonstrated its continued strong commitment to aviation security by inviting the International Civil Aviation Organization (ICAO) to accelerate its planned audit of Canada's aviation security regime under the ICAO Universal Security Audit Program (USAP). As a result, an in-depth review of Canada's regulatory regime, policies and its operational effectiveness occurred in May 2005[423], ahead of a planned 2006 or 2007 audit**.** ICAO measured Canadian compliance against the global benchmark of Standards and Recommended Practices (SARPs) and confirmed that Canada's aviation security was inherently sound. A corrective action plan was put in place to address ICAO recommendations and in May 2007, a standard follow-up visit by ICAO officials expressed satisfaction with the progress made.

303.   Transport Canada's leadership role within the international community is demonstrated by its participation on committees, working groups and programs,

---

[422]   Evidence of Rodney Wallis, Transcript, Volume 39, pp. 4755-4766.

[423]   Evidence of Jim Marriott, Transcript, Volume 39, p. 4711.

such as the ICAO Ad-Hoc Group of Specialists on the Detection of Explosives, the ICAO Aviation Security Panel, the International Explosives Technical Commission and Co-Chair of the ICAO Universal Security Audit Working Group.[424]   Canada (through the Department), chairs the G8 Transportation Security Group and contributes to the Department of Foreign and International Trade's Counter-Terrorism and Capacity Building Program.

304.   Mr. Barrette described to the Commission, the Counter-Terrorism and Capacity Building Program in his testimony last spring (2007):

> Mr. Wallis touched very, very well earlier in his testimony about the state of affairs in certain countries; the fact they don't necessarily have the money --they have the competence and we have for many, many years worked through what we called a program in Foreign Affairs called a Human Security Program, which is now changed to the Counter terrorism Capacity Building Program, in providing funding as well as contribution in kind; in other words, Canadian specialists to work along side with ICAO representatives to fund training programs. But (not) only to fund training programs for the sake of providing a program and leaving the state but making sure that there is in fact a follow up.[425]

305.   Transport Canada is a participant in other international organizations such as European Civil Aviation Conference, Western Hemisphere Transport Initiative, and the Group of Experts in Aviation Safety, Security and Assistance, International Air Transport Association, Asia Pacific Economic Cooperation

---

[424]   Evidence of Jean Barrette, Transcript, Volume 30, p. 4714.

[425]   Evidence of Jean Barrette, Transcript, Volume 39, p. 4744.

(APEC) and Airports Council International (ACI), and works closely with such groups in a cooperative manner to enhance aviation security more broadly.

C.   OVERSIGHT FOR NATIONAL CIVIL AVIATION SECURITY

306.   Canada's National Civil Aviation Security Program is contained in a series of documents that capture "all of the requirements applicable to the aviation security industry, the airlines, the airports, the aviation security requirements applicable to the Canadian Air Transport Security Authority".[426] Comparing Canada's National Civil Aviation Program with the ICAO requirements (outlined in Annex 17) for a National Security Program, Jim Marriott explained:

> The documents, our national inspection and enforcement
> program, our Transport Canada oversight of the system that
> documents the relationships that Transport Canada has with many
> other of our security providers in the federal community…this
> documentation provides the level of documentation envisaged by
> Annex 17…..[427]

307.   As was noted in the CATSA Advisory Panel's Report on the Air India Flight 182 tragedy,[428] oversight for national civil aviation security is provided by Transport Canada through a national group of 105 Security and Emergency Preparedness (SEP) Inspectors, who are responsible for monitoring compliance with the regulations, measures, orders and various other transportation security agreements. The SEP inspectors conduct security inspections for air carriers;

---

[426]   Evidence of Jim Marriott, Transcript, Volume 39, p. 4791.

[427]   *Ibid.*

[428]   Exhibit P-157, CATSA Panel Report, p. 105.

airports and CATSA security processes. Additionally SEP inspectors perform security audits (both domestically[429] and internationally[430]) and conduct tests of screening checkpoints and equipment, cargo facilities, restricted area access control and aircraft security. This inspectorate is also mandated to review security incidents, investigate alleged violations and conduct follow-up visits where deficiencies have been detected. The largest airports in Canada have SEP inspectors on site; the smaller airports receive regular visits by inspectors.

D.   CHANGES TO THE LEGISLATIVE AND REGULATORY REGIME

308.   Two current and significant departmental initiatives that will impact the legislative and regulatory regime for aviation security are the Aviation Security Regulatory Review and the research and anticipated adoption of a security management systems (SeMS) approach to security.

The Aviation Security Regulatory Review

309.   Following a range of recommendations regarding the need to update and enhance the aviation security regulatory framework,[431] the Department made it a priority to respond to the demands of the current and foreseeable aviation security environment and launched a comprehensive review of the aviation security framework to achieve this end. Jim Marriott characterized this

---

[429]   Evidence of Jim Marriott, Transcript, Volume 39, p. 4788.

[430]   Evidence of Jean Barrette, Transcript, Volume 37, p. 4541.

[431]   Flight Plan, pp. 86 – 97.

initiative as "..a program that is going to be executed over the coming years to reposition the Canadian aviation security framework, in light of developments both nationally and internationally in aviation security…"[432]

310.   The review is a multi-year project with an anticipated completion date of 2011.

311.   The scope of the review includes all aviation security regulatory instruments emanating from the *Aeronautics Act* and the *Canadian Air Transport Security Authority Act*. The focus of the review is on the revitalization of the regulatory framework structure as well as the overall regulatory approach.

312.   In order to meet the objectives of the review as out-lined in section 11 and 12 above, the Department is actively engaging key, national and international aviation security partners, all of who have significant roles in preventing unlawful interference with civil aviation. The security partners include: airport operators and users; the Canadian Air Transport Security Authority, and air carriers.

Security Management Systems

313.   The adoption of a security management systems (SeMS) approach to security is a Transport Canada priority. It is expected to be the next significant improvement in aviation security and to help move the industry beyond passive

---

[432]   Evidence of Jim Marriott, Transcript, Volume 39, p. 4790.

compliance with regulations towards proactive, collaborative management of

critical issues. Jim Marriott described the objectives of the approach this way:

> In the context of security, this (SeMs) is the approach that
> Transport Canada will be taking over the - has been taking and
> will continue to be taking over the coming years. To focus on or
> to change the security culture within the transportation
> community in the country, and more specifically the aviation
> community, to focus on a constant improvement environment, an
> environment that is perhaps less punitive with respect to
> identifying deficiencies and one that is more open to recognizing
> that deficiencies will happen in a system where there is great
> complexity, and tremendous levels of passengers.[433]

314.   A SeMS approach will bring a new layer of security to existing prescriptive or

performance-based regulatory regimes by proactively identifying and mitigating

critical security risks that may still be outstanding for reasons such as

operational differences or a rapidly changing threat environment, with the result

that operators will have flexibility in selecting risk control strategies to mitigate

and address these gaps. The *CATSA Act* Review Advisory Panel endorsed a

SeMs-based approach in its Report, *Flight Plan*.[434] The Chair of the Advisory

Panel, Dr. Whitaker compared the merits of an SeMs approach with

performance-based regulatory regimes:

> We feel that a [prescriptive] framework which was useful and
> important (prescriptive) to impose at the time has now become a
> kind of dead weigh of the past in many ways and that it is better
> to move to a – and the safety – aviation is a model here. They
> (Civil Aviation) <u>moved from a prescriptive to results-based</u>

---

[433]   Evidence of Jim Marriott, Transcript, Volume 37, p. 4544.

[434]   Flight Plan, Recommendation 4.4, p. 89.

[435](#)

[emphasis added.]

315.   Consequently, as part of an operator's integrated risk management system, a SeMS builds upon other systems such as safety management systems and emergency management systems. A Security Management System will require legislated entities to develop a security program articulating how they intend to operationalize their security commitment.

316.   The use of a SeMS approach is becoming a global best practice. Along with notable individual operators, international organizations embracing a SeMS approach include: ASIS; the International Air Transport Association (IATA), which mandated its version of SeMS in March 2007, and the International Organization for Standardization, which released ISO SeMS standards for Air Cargo Supply chains.

317.   Canada's recently completed survey of SeMS - related best practices among G8 countries, is an indicator of growing international acceptance within these governments.

318.   An Advisory Group on Aviation Security (AGAS) SeMS Technical Committee, consisting of key government, industry, unions and security stakeholders, as well as security experts, provides feedback, input and expertise.[436] IATA is a

---

[435]   Evidence of Dr. Reg Whitaker, Transcript, Volume 38, p. 4625.

[436]   Evidence of Fred Jones and Jim Bertram, Transcript, Volume 65, p. 8115.

regular observer, and ICAO and ACI are briefed to help ensure international operability and to promote acceptance and development of a SeMS approach internationally.

319.   An aviation SeMS internal working group includes representatives from every key area of Transport Canada's Safety and Security. It provides expertise, input, insights and advice on all significant policy development activities.

320.   The SeMS policy and action research activities are closely aligned with three other major aviation security initiatives: Air Cargo Security, the Aviation Security Regulatory Review, and the Airport Security Designation Review. The requirements of the 2010 Olympic Secretariat are also being considered. A master project plan has been developed to ensure alignment and facilitation of relevant timelines, activities and deliverables.

321.   The final G8 SeMS Best Practices report was presented for to the G8 members in February 2008. With the approval of the G8 member countries, a version could be subsequently released to aviation security stakeholders.

E.   *CATSA ACT* REVIEW – STATUS OF THE IMPLEMENTATION OF RECOMMENDATIONS OF THE REPORT OF THE ADVISORY PANEL

322.   As was out-lined paragraph 6, Volume II of these Submissions, the Minister directed the *CATSA Act* Review Advisory Panel to examine the provisions and operations of the *Canadian Air Transport Security Authority Act* to ensure that the legislation provides a sound and adequate statutory basis for CATSA's

aviation security mandate and to provide advice on future aviation security requirements and other developments that may impact CATSA's future operations. In December 2006, the Panel submitted the results of its review, along with 48 recommendations in its report entitled, *Flight Plan: Managing the Risks in Aviation Security.*

The Implementation Process

323.   Transport Canada and CATSA have accepted most of the recommendations and have jointly developed action plans to study the details required for implementation.

324.   Transport Canada and CATSA have established an ADM level steering committee to oversee the implementation of the recommendations

325.   Of the 48 recommendations:

- 14 recommendations will be implemented by April 1, 2008, in accordance with the Prime Minister's decision;

- 11 recommendation will be completed with the regulatory review and when funding is approved for security improvements;

- 4 recommendations no longer apply. (For example, since the Prime Minister has decided that CATSA will remain a Crown corporation, the recommendation related to a departmental organization is no longer relevant.)

- The balance of the recommendations are still under review.

326.   The Minister receives regular briefings on the status of the implementation process and will brief cabinet accordingly.

Recommendations – Management and Governance

327.   The Prime Minister has confirmed that CATSA will remain a Crown corporation reporting to the Minister of Transport with its current mandate and that aviation security will remain part of Transport Canada.

328.   The financial administration of the Air Carrier Protective Program will be transferred to the RCMP on April 1, 2008. The Airport Policing Contribution Program, which ensures that Class I and II airports maintain enhanced protective policing services and security arrangements for key areas, will be transferred to Transport Canada as of April 1, 2008. Both transfers will be implemented in order that CATSA can focus on its core mandate – Aviation Screening.

329.   Recommendations related to increased financial and operational flexibility will be implemented in 2008.

330.   Transport Canada and CATSA will also implement recommendations that ensure that CATSA receives all the intelligence required and that both organizations have a continuous learning environment in 2008.

331.   Transport Canada has initiated a regulatory review, which will be completed in three years.

Recommendations – Security Enhancements

332. Significant planning work has been completed to prepare for implementation of recommendations related to increased non-passenger screening, screening at fixed base operations, vehicle search, improved oversight by CATSA, improved communications and expansion of the Restricted Area Identification Card program.

333. Actual implementation of these enhancements to larger airports as a minimum, and to conduct pilot projects will require significant additional funding. Until this funding is approved, the 11 recommendations related to security enhancement cannot be implemented.

F.   SCREENING OF PASSENGERS AND THEIR BAGGAGE AND THE USE OF TECHNOLOGY IN AVIATION SECURITY SCREENING

334. In accordance with its enabling legislation, CATSA is responsible for the delivery of "effective and efficient screening of persons who access aircraft or restricted areas through screening points, the property in their possession or control and the belongings or baggage that they give to an air carrier for transport". The legislation also specifies that the delivery of screening services must be done in a consistent manner, and in the public interest.

335. Pre-Board Screening (PBS) involves screening passengers and their carry-on baggage. It is the most visible and public aspect of CATSA's operations. Some 5,200 screening officers carry out the security screening of close to 40 million passengers and their belongings per year.

336.   In the screening process, passengers and their carry-on baggage are inspected to ensure that prohibited items, such as knives, firearms, incendiary devices, explosives, or any other threat items appearing in Transport Canada's Prohibited Items List are not carried into the restricted area of airports or onto aircraft. For example, on a five-screening officer screening line, one inspects boarding passes, one operates the X-ray machines, one searches carry-on bags, one operates the Explosive Detection Trace (EDT) equipment and one uses the walk-through metal detector (WTMD) or hand-held metal detector (HHMD).[437]

337.   All carry-on bags must be X-rayed at PBS, and all passengers must pass through the WTMD. In addition, random searches are conducted on X-rayed bags and on passengers who pass through the WTMD.

338.   As a result of the August 2006 discovery by British authorities of an alleged plot to use liquid explosives to attack trans-Atlantic flights, Transport Canada implemented new measures prohibiting liquids, gels and aerosols through PBS checkpoints at Canadian airports. Additional measures included random physical searches of domestic passengers, and physical searches and footwear scans of U.S.-bound passengers. These measures were developed by Transport Canada as the regulatory body and put into effect by CATSA as the operating authority.[438] Both Jean Barrette[439], Director, Security Operations, Transport

---

[437]   When there are fewer than five officers on a line, some of these roles are combined.

[438]   Evidence of Jean Barrette, Transcript, Volume 39, pp. 4841 – 4843.

[439]   *Ibid* at p. 4841.

Canada and Dr. Reg Whitaker, Chair, *CATSA Act* Review Advisory Panel, testified as to the collaboration between Transport Canada and CATSA in "the implementation of the new security measures that were required, and in a very, very short space of time, and actually quite admirably in terms of communication to the public and so on that the new rules were in effect at the…. airports".[440]

339.   The measures have been relaxed somewhat to allow certain small quantities of liquids, gels and aerosols passing through PBS in carry-on luggage in one-litre sealable, transparent plastic bags, but CATSA continues to deal with throughput and financial challenges in implementing the measures. Pierre Cyr, Vice President, Strategic and Public Affairs, CATSA discussed the issue of financial challenges, stating that, "what we (CATSA) realized in the liquids and gels situation, and it is part of the recommendation of the five year review, is that we need some financial flexibility for special events".[441] [442]

340.   In addition to PBS, screening officers use specialized explosives detection system (EDS) equipment to screen over 60 million pieces of passengers' checked baggage per year.

---

[440]   Evidence of Dr. Reg Whitaker, Transcript, Volume 38, p. 4585.

[441]   Evidence of Pierre Cyr, Transcript, Volume 39, pp. 4843 – 4844 (As was noted in submission 29, above, this recommendation will be implemented in 2008).

[442]   Flight Plan, Recommendation 6.3, p. 145.

341. Over its first four years of operation, CATSA purchased, installed, tested, and maintained leading edge EDS equipment and systems at the 89 designated airports across Canada.   These systems comprised thousands of pieces of equipment.   EDS configurations are flexible and depend on the individual airport's passenger volumes and available space. For example, Canada's major airports saw the installation of EDS equipment in-line with the terminal's baggage handling system. CATSA also provides training, certification and re-certification for screening officers to enable them to screen checked baggage using the EDS equipment.

342. Following the initial national deployment of the Hold Baggage Screening (HBS) systems, CATSA has now turned to equipment maintenance, testing and evaluation of current equipment, and contingency plans, as well as life-cycle management of its deployed equipment, all of which have costs associated with them.

Recruitment, management, training, turnover and testing of screeners

343. Sections 6 and 7 of the *CATSA Act* provide CATSA with three options for delivering screening which are: third-party service provider (screening contractor); direct employment (CATSA's own employees); and through agreements with aerodrome operators.[443]

---

[443]   Evidence of Jim Marriott, Transcript, Volume 39, p. 4804.

344.   In 2004 - 2005, CATSA reviewed its service delivery options and elected to continue with the existing third-party model.[444] Under this model, the service provider is responsible for the administrative and human resource management of the screening officer workforce. This option provides a high level of security at a cost that reflected CATSA's initial five-year funding envelope and additional two-year program integrity funding. CATSA's Board of Directors and management reviewed the screening service delivery options in advance of the 2008 - 2009 expiration of the current contract extensions[445], to ensure that CATSA is operating under the option that is most appropriate.

345.   CATSA's oversight activities at the 89 designated airports are currently performed by regional and operations managers. These regional and operations managers carry out, among many other responsibilities, oversight and monitoring activities across domestic, international, and trans-border PBS lines, as well as for HBS and non-passenger screening (NPS).

346.   The need for screening officers is increasing, while overall high levels of turnover in particular airports are hampering efforts to recruit and retain qualified screening personnel. This is particularly reflected in areas where there is a high demand for workers in other sectors, which allows the labour force to be selective in their employment. In 2006 - 2007, the national turnover rate at

---

[444]   *Ibid.*

[445]   Evidence of P. Cyr, Ibid at p. 4805.

all designated airports was 25%, up from the 15% in 2005 - 2006.[446] CATSA believes that while responsibility for recruitment lies with the screening contractor, one of the potential keys to managing these challenges is to build a foundation for a viable and satisfying screening officer career that attracts more recruits and offers career progression opportunities.[447] In addition, CATSA has taken direct action to improve retention in those areas of the country where the labour market is particularly competitive.[448]

> CATSA is responsible for the purchase and integration of screening equipment deployed to designated airports and reimburses airport authorities for eligible costs related to the installation of that equipment. CATSA owns more than 2,500 pieces of critical security equipment for PBS, HBS and NPS to help screening officers conduct screening effectively. In cooperation with CATSA, Transport Canada establishes the list of equipment that has been demonstrated to meet or exceed designated performance standards. CATSA has responsibility for the testing, use, maintenance and replacement planning of the equipment.

---

[446]   Note that the 13% turnover rate cited by then-Vice President of Law & Strategy Pierre Cyr at the Commission of Inquiry applied to Class I airports only. (See evidence of P. Cyr, Transcript, Volume 39, p. 4807) The figures provided here cover all designated airports.

[447]   Evidence of P. Cyr, Transcript, Volume 39, pp. 4807-4808.

[448]   The increase in the 2006/07 annual attrition rate over 2005/06 could be attributed, in part, to two causes:

a) Edmonton and Calgary are in unique economic environments where it is difficult to attract and retain qualified screening personnel. By removing Edmonton and Calgary from the data, the national turnover rate for 2006/07 is 20% - 5 percentage points lower - highlighting the impact of Alberta's competitive labour market on the national turnover statistics. (Also see evidence of P. Cyr, Transcript, Volume 39, pp. 4806-4807); b) In 2006/07, CATSA created a new entry-level position that would allow screening officer candidates to work on the screening line as a Service Ambassador while their security clearances were being processed. Service Ambassadors are not certified screening officers. The lengthy security clearance process leads many screening officers to seek employment elsewhere. Prior to having the Service Ambassador level, these recruits were not employed with the Screening Contractor and as such, were not included in the screening personnel numbers and therefore were not part of the turnover statistics. (Also see evidence of P. Cyr, Transcript, Volume 39, p. 4806).

347. There are a number of considerations, which drive the equipment/technology component of CATSA's business. These include passenger growth, life-cycle management, international standards, threat response, efficiency and reliability. In discussing the challenges that face CATSA in the assessment of new and emerging technologies in aviation security, Mr. Nick Cartwright, Director, Security Technology, Transport Canada stated:

> What we are facing now…is people are looking at how we do more and how we do it better. We have what we call evolving or spiral standards that are designed to take advantage of the technology enhancements that exist now and will exist in the next few years for both, the trace explosive detection for passengers and their bags. So countries are taking – defining targets, say within two years, we want to do this and within five years. And Canada is looking to taking that same approach. It is one of continuous improvement.[449]

348. Mr. Cartwright further elaborated that this approach accomplishes two objectives.

349. "(O)ne is to devise (*sic)* the stakeholders in terms of the airlines and airports as to what the future lies so that they can do some planning of their own. It is certainly useful for CATSA as a definition of what it needs to be thinking about in terms of direction from the regulator."[450]

350. CATSA provides comprehensive training, certification and re-certification of screening officers. Screening officer recruits are not only trained but must

---

[449]   Evidence of Nick Cartwright, Transcript, Volume 42, pp.5149 -5150.

[450]   *Ibid* at p. 5150.

demonstrate their skill levels in order to be certified. In addition, current screening officers must be re-certified every two years.

351. As the policy-maker and regulator, Transport Canada occupies the lead role in overseeing the security of Canada's entire air transport system.[451] Transport Canada's infiltration testing program serves to reinforce safety and security standards and is conducted system-wide. Transport Canada's infiltration test results serve as performance indicators and provide CATSA with a random measure of screening officer compliance with regulations.[452]

352. CATSA is working in coordination with Transport Canada to continue to develop a testing program for PBS and HBS that will encompass all the Transport Canada requirements and CATSA's legislative mandate.

G. AIR CARGO SECURITY MEASURES, INCLUDING ITS OPERATIONAL MODEL, RESPONSIBLE ENTITY AND SCHEDULE FOR IMPLEMENTATION

353. Transport Canada is making "significant strides in improving air cargo within Canada,"[453] in line with the Advisory Panel's Recommendation, 2.6.[454] This project began in 2004, prior to the release of the Panel's Report.

---

[451]   Evidence of Jim Marriott, Transcript, Volume 39, p. 4820.

[452]   *Ibid*.

[453]   Evidence of Stephen Conrad, Transcript, Volume 42, p. 5199.

[454]   Flight Plan, p. 174.

354.   Transport Canada, in collaboration with Canada Border Services Agency (CBSA), is leading the Air Cargo Security (ACS) Initiative to develop an enhanced and comprehensive ACS Program for Canada. The Initiative is founded on a two-pronged approach[455]: hardening of supply chain security and improving air cargo screening. This two-pronged approach includes developing supply chain security programs for air carriers, freight forwarders and shippers and assessing and developing screening technologies and protocols.[456]

355.   The first 'prong' of the ACS initiative, the hardening of supply chain security, is focused on two projects. The first project will assess and develop supply chain security programs for air carriers, freight forwarders and shippers in order to identify low-risk cargo. The second project will support the supply chain security programs by developing a Secure Supply Chain Management System (SSCMS). The SSCMS will provide the government with a tool to facilitate the identification of "secure partners" among participating air carriers, freight forwarders and shippers and to effectively manage program participation. As part of the supply chain security enhancements and to avoid a duplication of efforts in similar programs,[457] Transport Canada and CBSA are assessing the potential for interoperability regarding supply chain programs – specifically Transport Canada programs and CBSA Partners in Protection (PIP).

---

[455]   *Ibid*, p. 5184.

[456]   The ACS Initiative also incorporates the Security and Prosperity Partnership (SPP) deliverable for a comparable secure supply chain program with the U.S. and Mexico.

[457]   *Ibid* at p. 5186.

356. The second 'prong' of the ACS initiative is focused on assessing and developing the screening technologies and protocols to improve screening of high risk or targeted cargo. Participation in this project will be open to air carriers, freight forwarders and shippers participating in the secure supply chain programs. As well, potential alternative service delivery options for screening, such as the Canadian Air Transport Security Authority (CATSA) [458] and CBSA,[459] will also be assessed on behalf of freight forwarders, air carriers and shippers.[460]

357. Transport Canada has established minimum-security standards for the supply chain programs and is working with the U.S. to obtain mutual program recognition even during this developmental stage.

358. In June 2007, Transport Canada provided the freight forwarder community with the necessary documents to participate in the supply chain project, including the enhanced security standards. To date, approximately 120 freight forwarders have indicated an interest in participating in the project and are at various stages of enrolment. Over the next year, Transport Canada will be working to expand that number to anywhere between 300 and 500 participants. Transport Canada has named the freight forwarder program the Regulated Agent Program, which

---

[458] CATSA has not yet been assigned a role by the Minister.

[459] *Ibid* at pp. 5188-5189.

[460] The ACS initiative includes the Security and Prosperity Partnership deliverable for a comparable air cargo security program with the U.S.

is targeted to be comparable to the existing U.S. Indirect Air Carrier (IAC) Program.

359.   In terms of developing a management system to support this phase of the initiative and determine the long-term needs of the program, Transport Canada is currently working with a contractor to have the SSCMS in operation by late spring.

360.   In preparation for populating the system, Transport Canada currently has received approximately 16,000 names of "known shippers" from air carriers and freight forwarders who have already expressed an interest to participate in the Secure Supply Chain Programs.   These "known shippers" will become Registered Shippers after undergoing a validation process, which will be one of the operational components of the SSCMS.   Transport Canada is continuing to seek industry participation, which is expected to result in significantly more shipper information.

361.   As air carriers are currently regulated under the *Air Carrier Security Measures*, Transport Canada is assessing options with industry to enhance existing program requirements, which will apply to all air carriers operating at the 89 designated airports.[461]

---

[461]   Evidence of Stephen Conrad, Transcript, Volume 42, p. 5216.

Improving Air Cargo Screening

362. The selection criteria to identify suitable industry sites for evaluating air cargo screening equipment for transportation security purposes have been completed. In order to apply the selection criteria, Transport Canada has completed two rounds of cargo data collection (size, weight, commodity, etc.) at key sites across Canada. A third round has begun and concluded in September 2007. CBSA has also planned an initial data collection exercise for border security purposes.

363. Transport Canada has completed screening models for unconsolidated cargo (break bulk) in order to validate the screening models, which began in winter 2007 and will continue through 2008. Current research regarding screening technologies indicates that technologies for screening consolidated (bulk) and palletized cargo for explosives detection is still in the development stage. Given the new U.S. Bill requiring 100% screening, explosives screening detection equipment may not be available for operational deployment by 2010.

364. Transport Canada is also establishing a framework with CATSA[462] that will assess the potential of leveraging expertise developed in passenger screening for air cargo screening.[463]

---

[462]   CATSA has not yet been assigned a role by the Minister.

[463]   Evidence of Stephen Conrad, Transcript, Volume 43, pp. 5188-5189.

Responsible Entities

365.   While "(t)he overall responsibility will still remain with Transport Canada"[464]

for the security of the supply chain, Transport Canada is evaluating the potential

to leverage other government organization capacity for service delivery options

such as the Canada Border Services Agency and the Canadian Air Transport

Security Authority.[465]   However, consistent with our international partners, the

regulated responsibility and associated costs is still expected to rest primarily

with the air carriers, freight forwarders and shippers.

Schedule for implementation – Air Cargo Security Program

366.   The targeted date for the Secure Supply Chain Management System for all

"Regulated" Supply Chain Programs as well as Registered Shippers to be

operational is September 2008.

367.   The collection of Known Shipper data from industry continues; at present,

Transport Canada has collected information on approximately 16,000

companies. The anticipated date that these companies will become Registered

Shippers after undergoing a validation process is April 2008.

368.   Transport Canada is continuing to work with the TSA in regards to developing

comparable and mutually recognized Supply Chain Programs including new

"Certified" concepts being piloted in the USA.

---

[464]   Ibid, p. 5196.

[465]   Ibid, pp. 5188-5189.

369.   Transport Canada is performing operational trials (test beds) in various cargo environments utilizing a variety of x-ray, trace and various specialty solutions. The completion date for these operational trials is March 2009.

370.   Transport Canada continues to hold information sessions with stakeholders and industry.   The Air Cargo Security Supply Chain regulatory & compliance program framework will be drafted taking into account stakeholder concerns and is expected to be completed by December 2008.

371.   Recommendations for the full implementation of the Air Cargo Security program and funding requirement will be presented to Cabinet in December 2008.

372.   The Report on Security Prosperity Partnership (SPP) commitments for Air Cargo Security for comparable air cargo security programs with the U.S. and Mexico to ensure the secure and efficient movement of goods will be completed by June 2008.

H.   PERIMETER SECURITY

Measures for Non-Passenger Screening (NPS): Individuals and Vehicles
Non-Passenger Screening

373.   On November 5, 2002, Transport Canada introduced a program to randomly screen non-passengers (airline personnel, airport employees, refuelers, caterers, cleaning and maintenance personnel, and ground handlers) entering restricted

areas at airports. The responsibility for carrying out the program duties was assigned to the Canadian Air Transport Security Authority (CATSA).

374. In February 2004, the first phase of the Non-Passenger Screening Program was implemented, requiring CATSA to select, at random, non-passengers and to search them and their belongings. On December 1, 2004, CATSA completed the first phase of the NPS program. CATSA has not yet been funded to implement phase two - development of a vehicle search program.

375. CATSA's NPS activities are classified as either Terminal NPS (i.e. operating within the air terminal building) or Aircraft NPS (i.e. operation on the loading bridge or jet way of randomly selected U.S. - destined flights).[466]

376. NPS takes place at 28 major Canadian airports. The eight largest, Class I airports, have greater NPS coverage that correspond to the assessment that these airports are higher risk. Hours of NPS operation are generally 16-20 hours per day at Class I airports.

377. NPS activities are focussed on restricted area access points in the Air Terminal Building. At Class I airports, CATSA uses a combination of permanent NPS checkpoints and roving teams of screeners that move between various access points, to increase the unpredictability of the program.

---

[466] On a daily basis, approximately 1200 non-passengers are subjected to NPS. The current daily non-passenger population among the 28 airports is estimated at 100,000.

378. In December 2006, the *CATSA Act* Review Panel recommended that CATSA move from "random" non-passenger screening to "continuously present" at all entry points and that vehicle searches be performed at Class I airports.[467] Dr. Reg Whitaker, (Chair of the Advisory Panel), explained in his testimony the rationale informing the Panel's recommendations with regard to NPS, as well as the distinction which the Panel made between Class I and Class II airports:

> First of all, we are very much aware, and having spent a long time traveling all over the country and visiting a range of Canadian airports and Mr. Heed here has many years of hands-on experience in this regard, that a one-size-fits-all approach to Canadian airports is really not a very good idea. We have 89 designated airports and they range from everything from Pearson in Toronto, which is one of the world's busiest and largest international airports, to you know small places like Iqaluit and Campbell River and so on, which are very, very small operations. Now, we think there are deficiencies certainly in the non-passenger screening process, but we think it can be addressed best by focusing where the problem is and that is at the largest airports, the Class One airports as they are known and at some Class Two airports on a risk basis, where we would call for a system of what we call random continuous screening of non-passengers.[468]

379. NPS programs are becoming more prominent worldwide, notably within the United Kingdom where 100% vehicle and NPS are carried out upon entering airport-restricted areas.

---

[467] Flight Plan, [recommendations 3.2(a) and 3.2(b)), p. 65.

[468] Evidence of Dr. Reg Whitaker, Transcript, Volume 38, p. 4627.

Vehicle Screening

380.   In Canada, vehicles are subject to only cursory, visual examination by airport operators at a limited number of vehicle access gates. In the post-September 11, 2001 environment, airport operators have reduced the number of vehicle access points leading to the air terminal building and the commercial apron, which is where they are required to conduct visual inspections.

381.   Most airports have one to three primary vehicle access points, with an estimated total of 59 such gates at the 28 Class I and II airports.[469]

382.   Transport Canada and CATSA are currently working together to propose enhancements to the Canadian Non-Passenger Screening program and the Vehicle Search program. In particular, Transport Canada and CATSA are developing options that will enhance NPS and vehicle searches at Canada's Class I airports with minimal adverse impact on industry stakeholders.

Restricted Area Identity Card (RAIC)

383.   On November 5, 2002, the Minister of Transport directed TC and CATSA to develop and implement an enhancement to the restricted area pass system that incorporates biometric technology and the use of centralized databanks to support the issuance, verification, cancellation and tracking of the cards.

---

[469]   23 at Class I; 36 at Class II.

384.   The Restricted Area Identity Card (RAIC) verifies that the person who was issued the card is the same person presenting the card at a restricted area access point, that the card is valid and that the individual has a current security clearance.

385.   The enhancements apply to local airport cards and cards that are valid for multiple airport use.   The RAIC was implemented at Canada's 29 major airports.

386.   The RAIC, as the name implies, is an identity card. It does not provide access to restricted areas of airports by itself, as such areas are, and will remain, the proprietary responsibility of aerodrome operators.[470] Aerodrome operators may choose to add capabilities (such as access control, etc.) to RAICs and link the card to their existing access control systems.

387.   Mr. Nick Cartwright described how the RAIC functions in his testimony:

> This is really the implementation of that biometric process. So we have cards that provide tamper resistant proof of two things, is they verify that you are who you say you are. In other -- this is the use of the fingerprint or the iris to identify you as the individual to whom the card was issued originally. And it validates that you still have a current clearance. It's a smart card, it basically has a little computer chip on it and the data is stored on the card and that card is in possession of the individual. So the comparison is done between you and the information stored on the card. It is not against a major database somewhere. And then the third thing that is checked is even if you have the card and even if you are who you say you are, do you have the right of access at that point?

---

[470]   Testimony of Jim Bertram, Transcript, Volume 65, 24 October 2007, p. 8170.

> And it may be that you have a card, you have a clearance, but you are not supposed to be there.[471]

388.   The Phase 1 development process included a technical stream (technical standards, conceptual design and operational trials) and a policy/regulatory stream (requirements for implementing and operating the system and consultation process).[472] Extensive stakeholder consultations, involving airport operators, air carriers and labour groups, were held throughout the development of this program.

389.   Amendments to the *Canadian Aviation Security Regulations*, the *Aerodrome Security Measures* and the *Security Screening Order* came into effect on December 31, 2006. These amendments constitute the regulatory framework for the RAIC program.

390.   On February 1, 2007, all Class I and II aerodromes were in compliance with RAIC regulations. No person can access the restricted area unless they have a RAIC in their possession.[473]

391.   Phase 1 of RAIC deployment focused on areas within Air Terminal Buildings ("ATBs"). A second phase is required to address all other areas within the

---

[471]   Evidence of Nick Cartwright, Transcript, Volume 42, p. 5163.

[472]   Jim Bertram of the Greater Toronto Airports Authority and Fred Jones of the Canadian Airports Council described administrative recourse procedures for removal and reinstatement of RAICs: Transcript, Volume 65, 24 October 2007, pp. 8169-8172.

[473]   To date, over 98,000 airport workers have been issued a RAIC.

airport's security perimeter, including vehicle gates, Fixed Base Operators, and

tenant facilities.

392.   Jean Barrette compared the merits of a geo-fencing system with the RAIC

system in his testimony:

> (G)eo-fencing would allow you to track that -- that individual.   A
> shortcoming with geo-fencing is that if Jean Barrette decides to
> take his pass off his person, leave it somewhere in the cargo area,
> walk over to the air terminal building, well, geo-fencing does not
> provide much to you, because what it is telling you is basically
> you are still in the cargo area. So there is some added benefits to
> geo-fencing, <u>but in the context of the Receipt Area Identification
> Card, we did not saw this as a wise investment, nor added value
> to the Receipt Area Identification Card.</u>[474] [Emphasis added.]

393.   Nick Cartwright expressed similar reservations about a geo-fencing system

during his testimony:

> The difficulty is you have to have something on you that acts as
> the transponder, if you will, or the identifier. If you chose to put it
> down on the ground or leave it with your buddy, then it would not
> necessarily identify you. Normally, geo-fencing responds to an
> impulse from the source. Then you would have to have other
> systems that, say, should there be anybody in that area. If there's
> nobody allowed in that area, then even motion detection and
> things like that could surface that you are somewhere where
> you're not.[475]

394.   Mr. Barrette concluded by explaining that the RAIC system, when viewed as an

additional layer of security to the entire security framework currently in place,

provided a more substantial benefit:

---

[474]   Evidence of Jean Barrette, Transcript, Volume 39, p. 4815.

[475]   Evidence of Nick Cartwright, Transcript, Volume 42, pp. 5165-5166.

> (With) RAIC, once you have dealt with the identification - validation of the pass -- once you have controlled access to the area, this is supplemented by patrols conducted by the airport authority; by awareness program that goes over Restricted Area Identification Card; receive -- receive upon issuance of that Restricted Area Card; as well as overall security awareness training by airport employees to recognize as well as challenge those individuals that are seen either not wearing a pass or working in an airport area they really do not have any business.[476]

395. To reiterate what was discussed earlier in these submissions, significant planning work has been completed to prepare for the implementation of recommendations related to increased non-passenger screening, vehicle search, and expansion of the Restricted Area Identification Card program.

I. CATSA'S ORGANIZATION MODEL, ROLES AND RESPONSIBILITIES

Governance

396. CATSA reports to Parliament through the Minister of Transport and is entirely funded by appropriations from the federal Consolidated Revenue Fund.

397. CATSA is governed by a Board of Directors that brings valuable business and aviation industry experience and perspective. Review Panel member, Dr. Jacques Bourgault explained the Panel's recommendation to increase the remuneration of CATSA Board members:

> Quand on a regardé cette affaire-là, très rapidement on est arrivé à la conclusion que le niveau de rémunération était -- on n'a pas écrit mais on a passé ridiculement bas compte tenu à la fois de l'engagement qui était demandé à ces gens-là et de la responsabilité qu'ils encouraient, parce que si jamais il y avait

---

[476] *Ibid.*

une tragédie et qu'elle était attribuable ne serait-ce qu'en partie ou qu'elle risquerait d'être attribuable à l'agence de sécurité, eh bien, ces gens-là seraient impliqués dans des procès pendant très longtemps. Probablement que leur responsabilité serait couverte mais leur temps pour se défendre et tout ça serait immense. Alors, on est convaincu que ces gens-là ne sont pas payés au niveau où ils le seraient.[477] [478]

398.   A Chief Executive Officer manages CATSA's day-to-day operations, including the CATSA workforce and the provision of contracted security screening services at Canadian airports.

399.   The Minister of Transport is responsible and accountable to Parliament and Canadians for the activities of both Transport Canada and CATSA. The diagram (Annex A) describes CATSA's governance framework and its contractual relationship with the private sector that deliver security-screening services at Canadian airports.

400.   CATSA's senior management team, led by a President and Chief Executive Officer (CEO), is shown at Annex A.

---

[477]   Evidence of Dr. Jacques Bourgault, Transcript, Volume 38, p. 4648.

[478]   *(Unofficial translation of evidence of Dr. Bourgault)* When we looked at this, we quickly came to the conclusion that the low level of pay that was of these people for the amount of responsibilities that they have because if ever there would be a tragic incident that they would be liable, it could or would be the responsibility of that security agent therefore, these people would be implicated in legal proceedings for a long time. Probably their responsibility would be covered but their defense cost would be of great. So we are convinced that those people are not paid at the level they should be paid.

Roles and Responsibilities

401.   Transport Canada is Canada's designated national civil aviation security regulator, under standards established by ICAO. CATSA has been assigned by the Minister of Transport specific aviation security programs to operate. In order to carry out its mandates responsibilities, CATSA has developed Standard Operating Procedures (SOPs) to help ensure consistent screening across the country and compliance with Transport Canada regulations.

J.   FIXED BASE OPERATORS

402.   Existing aviation measures at Canada's 89 designated airports allow commercial flights to depart Fixed Base Operations (FBOs) and /or other locations away from Air Terminal Buildings (ATBs) without screening the passengers.

403.   The Advisory Panel, in its Report, *Flight Plan* recommended that screening of passengers be extended to Fixed Base Operations Including General Aviation operations) where the size of the operation warrants.[479]

404.   Dr. Reg Whitaker described FBO operations in his testimony :

> (F)ix-base operations include corporate jets, privately chartered
> jets and at the moment these are in facilities which don't have any
> screening capacity.[480]

---

[479]   Flight Plan*, Recommendation 2.7.*

[480]   Evidence of Dr. Reg Whitaker, Transcript, Volume 38, p. 4632.

405.   Dr. Whitaker went on to express his views as to why FBO operations had not been captured by the screening requirements of scheduled, commercial flights:

> (T)he notion…..has always been that, well they (private charter operators) know who their customers are.[481]

406.   Transport Canada has been looking at FBO operations since 2004.   The submissions below will provide an overview of the initiatives to date, as well as the current status of the expansion of screening procedures to FBO operations.

407.   In the Spring of 2004, Transport Canada launched a comprehensive review of unscreened commercial flights. The Department also held consultation sessions in Calgary, Ottawa and Halifax.

408.   Recommendations were based on: consultations with stakeholders; risk assessment; considerations of international standards and best practices; the effect that any changes to current procedures for FBOs would have on industry operations as well as delivery of screening service and funding issues. The listed considerations were distributed for comment in September of 2005. Following an assessment of stakeholder input, additional consultations were held in 2006.

409.   Further work on recommendations was displaced last year by other aviation security priorities.[482]   Work on the expansion of screening requirements resumed earlier in 2007.

---

[481]   *Ibid.*

410. Transport Canada officials believed that expanding screening requirements in a phased manner represented an optimal course of action. Stakeholders, in turn, were advised of this and expressed no concerns regarding such an approach.

411. In early 2007, Transport Canada officials developed a first phase of screening requirements with a plan to introduce them in late 2007, with the focus of the first Phase (Phase 1) requirements directed at flights available to the general public, such as scheduled commercial flights and sunspot destinations.

412. However, during discussions with CATSA, the Authority expressed strong concerns that it could not support the planned Phase 1 requirements without additional funding. This resulted in a decision not to proceed with Phase 1 as planned.

413. CATSA has developed a business case for FBO screening, initially involving the four largest airports in Canada (Calgary, Montreal, Toronto and Vancouver).

414. Despite delays associated with the federal budget process, security requirements to commercial flights operating to or from locations away from Air Terminal Buildings at designated airports remain a departmental priority. These requirements are being reviewed to achieve a more consistent level of security across all commercial operations.

---

[482] Other aviation security priorities for 2007 included: Restricted Area Identity Card Regulations, Hold Baggage Screening requirements, Identity Screening Regulations and most recently, security measures and directives regarding liquids, gels and aerosols and the associated Interim Order.

415.   The Department remains committed to working in partnership with industry and

CATSA with the goal of developing enhancements that are economically viable,

operationally efficient and ensure an appropriate level of security.

K.   GENERAL AVIATION SECURITY

416.   From the Transport Canada perspective, General Aviation (GA) encompasses

the operation of aircraft for the purpose of leisure, business, aerial work and

instructional flying, as well as all charter flights that depart away from the ATB.

GA does not include regularly scheduled commercial passenger aircraft or cargo

transport.

417.   In March 2002 and November 2003, Transport Canada issued advisories to the

GA community; these advisories outlined procedures to be considered by the

community to reach and sustain an increased level of vigilance in daily

operations.

418.   Transport Canada is examining the feasibility of screening certain passengers

enplaning at selected FBOs, before departure.

419.   At the August 2007 Security and Prosperity Partnership Leaders' Summit in

Montebello, the leaders agreed: to develop mutually acceptable approaches to

screening for radiological and other similar threats, which will include general

aviation pathways, and to continue to undertake cooperative or joint research to

manage such threats.

420.   A GA Task Team has been created within the U.S. – Canada Transportation Security Cooperation Group and has convened several times to date by teleconference or meetings.

421.   Transport Canada and the Canada Border Services Agency (CBSA) co-lead the GA Task Team, which includes Public Safety Canada and the Department of Foreign Affairs and International Trade.

422.   Canadian work in the science and technology area of radiation and nuclear detection is led by the Centre for Security Science (CSS), a joint office of Defence Research and Development Canada and Public Safety Canada.

423.   Transport Canada participates in the federal government's Chemical, Biological, Radiological-Nuclear and Explosives (CBRNE) research and Technology Initiative, led by CSS. The objective of this initiative is to enhance Canadian capacity against CBRNE threats through the development of science and technology solutions.[483]

424.   In September 2007, the U.S.A. published the Notice of Proposed Rule-Making for private <u>aircraft</u> (*emphasis added)* arriving and departing the U.S.A., proposing requirements for an Electronic Advance Passenger Information System to provide information for assessing threats onboard these aircraft.

---

[483]   In the U.S.A., work on nuclear detection and reporting architecture is the mandate of the Domestic Nuclear Detection Office.

425. Canadian Government agencies and departments, led by Transport Canada's Intelligence Branch, plan to conduct a threat assessment, targeting early 2008 for completion. A follow-up risk assessment would be completed by the spring of 2008.

426. Canada is prepared to work with other countries on assessing the risks posed by GA and developing adequate strategies to mitigate the risks.

L. PERIMETER SECURITY MEASURES

427. See Section "H" at pages 136 to 142.

M. USE OF TECHNOLOGY IN SCREENING

428. See Section "F" at pages 123 to 130.

N. USE OF BEHAVIOURAL ANALYSIS AS A SECURITY SCREENING MEASURE

429. Behaviour Pattern Recognition (BPR) or Behaviour modelling is also known as Screening Passengers by Observational Techniques (SPOT). These are all methods of utilizing behaviour observation and analysis techniques to identify potentially high-risk people. For instance, aircraft passengers that exhibit suspicious behaviours, such as physical and physiological, may be required to undergo additional screening to determine if they are indeed a threat.

430. BPR is based on law enforcement techniques worldwide, including procedures used at Israel's Ben Gurion Airport, which is ranked among the most secure

airports in the world. As a transportation security tool, BPR was first used in the aviation sector and then extended to other modes, including rail, mass transit and marine.

431.   An illustration of nonverbal surveillance is illustrated by the case of Ahmed Ressam, also known as the "Millennium Bomber". Ahmed Ressam was convicted and given a prison sentence of 22 years in a plot to bomb Los Angeles International Airport on December 31, 1999. Ressam crossed into Washington State from British Columbia via the Port Angeles ferry on December 14, 1999. The inspector stated that something "nonverbal" told her to take a closer look at Ressam and his vehicle. (Ressam appeared nervous and sweaty.) U.S. *Customs Today* magazine touted the intercept and praised the customs officers for responding to nonverbal clues.

432.   In today's current aviation environment, several countries are already using BPR techniques in their airports and mass transit systems.   (Examples of organizations using BPR include: Great Britain's Heathrow Express employees (rail link transit between downtown London and Heathrow Airport); U.S. Park Police and Statue of Liberty personnel, TWU Local 100 members in New York City; University of Maryland Police and numerous U.S. airports).

433.   Racial profiling is often raised as an issue with BPR. In many cases, people who voice concern about behavioural pattern recognition being laden with racial profiling also point out that different ethnic groups have a different version of

"normal" behaviour, and that thus, race and ethnicity must be considered as well.

434. Although an initial false positive causes no substantive harm, the final on-the-spot decision to deny the boarding of a passenger has significant negative consequences. It is thus clear that it is absolutely imperative to fully understand the process and to determine what legal actions would result in an on-the-spot decision to prevent boarding of a ticket-holding passenger.

435. Transport Canada is currently researching BPR in order to learn more about its practices and techniques.

O.   PASSENGER PROTECT PROGRAM

436. In June 2007, Transport Canada launched the Passenger Protect Program. In both the development of the program as well as its on-going operation, the department has worked closely with the Office of the Privacy Commissioner, as was heard in the testimony of Brion Brandt:

> We've (Transport Canada) been very deliberate in terms of working with the Privacy Commissioner and ensuring that Memorandum of Understanding are in place with air carriers, the same sort of things with CSIS and the RCMP in terms of how this program will work, how information will be handled and shared.

437. Under the program, air carriers check the names of passengers against a Specified Persons List (SPL). The SPL is a list of individuals whose actions led to a determination that they may pose an immediate threat to aviation security, should they attempt to board an aircraft.

438.   The program was established under the authority of the *Aeronautics Act* (section 4.8.1) and the *Identity Screening Regulations*. These legislative measures establish the legal grounds to compel airlines to: verify passenger names; prevent an individual from boarding an aircraft; and protect personal information. The *Identity Screening Regulations* also establishes penalties for non-compliance.

439.   The program is a stand-alone program under the Director General, Security and Emergency Preparedness and is housed within the Intelligence Branch of Transport Canada. Specifically, Transport Canada Intelligence supports the program through the development of the Specified Persons List (SPL) within the Department, in collaboration with CSIS and the RCMP in the context of the Passenger Protect Program as was out-lined in testimony given by Brion Brandt then Director, Security Policy (Transport Canada):

> The principal relationships, as far as the program goes in terms of
> implementation and operationalization, relate to Transport
> Canada receiving information from law enforcement and
> intelligence sources -- specifically the RCMP and the Canadian
> Security Intelligence Service -- to determine who would pose a
> threat to aviation security based on very clear guidelines that have
> been published, so that the types of actions, the types of
> behaviour that would lead to someone being specified as a person
> of the block list, is very clear.[484]

440.   In order to be identified as a Specified Person, the following guidelines are used in determining whether an individual may pose an immediate threat to aviation security:

---

[484]   Evidence of Brion Brandt, Transcript, Volume 40, p. 4859.

- An individual who is or has been involved with a terrorist group, and who, it can be reasonably suspected, will endanger the security of an aircraft or aerodrome or the safety of the public, passengers or crew members.

- An individual who has been convicted of one or more serious and life-threatening crimes against aviation security.

- An individual who has been convicted of one or more serious life-threatening offences and who may attack or harm an air carrier, the passengers or crew members.

441.   As was described by Brion Brandt in his testimony, the identification of an individual as a Specified Person" is not based on behavioural profiling methods used in Behaviour Pattern Recognition (BPR).

> What the guidelines in establishing who should be on the Specified Persons List try to do is treat people's behaviour or actions in terms of supporting the reason why. So in other words, **those people who've been engaged in certain activities in the past; so past actions, past behaviour.** *(emphasis added)* No, the program beyond that doesn't deal with examining people's behaviour within the airport context, those sorts of things. It's more this is the behaviour that led to someone being specified for the Specified Persons List. Here they are at the airport attempting to board a flight and that's where the -- you know, the next part of the action takes place. But it's not based upon any kind of profiling of individuals or examining their behaviour in that airport context.[485]

442.   Every 30 days, the Specified Persons List Advisory Group (SPLAG) must meet. The SPLAG consists of one member each from Transport Canada, CSIS and the RCMP. Any SPLAG member may nominate an individual that falls within the above guidelines. During the SPLAG meeting, the information and evidence related to a nominated individual is presented, reviewed and challenged by the

---

[485]   Ibid at p. 4891.

members. A recommendation will then be forwarded by the SPLAG to the Minister of Transport, who will review the recommendation and then decide to designate the individual as a Specified Person or not. Should there be a dissenting opinion amongst the members of the SPLAG, that opinion will also be made known to the Minister of Transport in order that the Minister can make a fully informed decision. Furthermore, every 30 days, the SPL is reviewed to ensure the validity of the list and when required, make updates or deletions.

443. Should an individual be denied boarding by Transport Canada (section 4.76 of the *Aeronautics Act*), the individual may make an application to the Office of Reconsideration (OoR) to have their inclusion on the SPL reviewed by an independent advisor. The independent advisor reviews the information presented by the individual as well as the original information used to designate the individual, then makes a recommendation to the Minister of Transport to either uphold or overturn the decision to designate the individual as a Specified Person.

P. CANADIAN AIR CARRIER PROTECTIVE PROGRAM (CACPP) AND AIRCRAFT PROTECTIVE OFFICERS (APO's)

444. In late 2001, the Government of Canada established the Canadian Air Carrier Protective Program (CACPP), to provide Aircraft Protective Officers (APOs) on board selected flights.

445. The Royal Canadian Mounted Police (RCMP) is responsible for the daily operational and administrative functions of the CACPP. The RCMP provides

covert, specially-trained officers on-board Canadian commercial aircraft. The

RCMP APOs are placed on commercial aircraft based on a threat-risk analysis.

RCMP Superintendent Alphonse MacNeil (Officer in Charge of the CACPP),

elaborated further on the process and tools that are utilized in determining the

placement of APO's on commercial aircraft:

> …[W]e utlized the RCMP's National Security Investigations Section, Criminal Intelligence Sections and we have a unit based in those sections called the Civil Aviation Protective Intelligence Unit that's attached to the APO program. They have developed for us what we refer to as a threat matrix and it's an internationally-accepted tool that has been utilized since the first couple of years of the program actually. That tool takes specific attributes; it builds them in and makes determinations on what flights we should be on.[486]

446.   While funding for the program is currently managed through the Canadian Air

Transport Authority, the administration of the CACPP will be transferred to the

RCMP as of April 1, 2008.[487]

447.   In 2006, the International Civil Aviation Organization (ICAO) and the European

Union recognized In-Flight Security Officers (IFSOs) as an important element

of aviation security.

448.   With the international recognition of IFSOs there is ongoing work being done to

develop international standards for the conduct of their activities.

---

[486]   Evidence of Alphonse MacNeil, Transcript, Vol. 65, p. 8066.

[487]   Transport Canada News Release, *Minister Cannon Announces Outcome of the* Canadian *Air Transport Security Authority Act Review,* September 4, 2007 (See Flight Plan, Recommendation 3.3, p. 67).

449.   Currently, there are many such IFSO programs in operation worldwide.   In addition to these programs, several other countries use IFSO personnel on an ad hoc basis.

450.   Transport Canada, as the lead Department for transportation security policy and regulations, is responsible for the regulatory framework guiding Canadian IFSO operations and the management of requests by foreign countries to have their IFSOs enter Canada.   The Department of Foreign Affairs and International Trade (DFAIT) serves as the liaison with foreign governments that seek permission for their IFSOs to fly into Canada.

451.   Canada works with other countries to put in place necessary arrangements for IFSOs on a reciprocal basis, to ensure compliance with sovereignty and domestic law.

Q.   BALANCING SECURITY MEASURES WITH PRIVACY AND HUMAN RIGHTS

> You remember the famous triangle that I talked about – previous testimony about <u>ensuring security, but at the same time balancing the respect for our civil liberties for the Charter of Rights in Canada, while at the same time creating an environment commensurate to good business, to good aviation systems</u>. So those are the three kinds of balancing acts, three basic pillars that we work on….. (w)e firmly believe that with the Passenger Protect Program, once we put it in place and once we start working with it, it will provide us with enough information and provide *bona fide* confirmation whether the system works well or not and then at the right time move to the next step.[488] [Emphasis added.]

---

[488]   Evidence of Jean Barrette, Transcript, Volume 40, pp. 4893-4894.

452.   The implementation and development of any new passenger assessment system requires consultation with Canadian air carriers and respect for human rights and privacy.

453.   In June 2007, Transport Canada launched the Passenger Protect Program. As was discussed in Section O (Passenger Protect Program) of these submissions, under the program, air carriers check the names of passengers against a Specified Persons List (SPL); that is, a list of individuals whose actions led to a determination that they may pose an immediate threat to aviation security, should they attempt to board an aircraft.[489]

454.   The *Privacy Act* of Canada protects the personal information of Canadians and persons within Canada. It does not cover non-Canadians abroad.

455.   Passenger Protect will be limited to the exchange of personal information about individuals whose names match those on the Specified Persons List (SPL). Information on other passengers or individuals is not exchanged.

456.   Additional information that may be exchanged in order to resolve false positive situations is both consensual and voluntary.

---

[489]   Numerous countries, including the United States, Australia and New Zealand are already moving toward advanced passenger assessment systems.

457.   Transport Canada has worked closely and regularly with the Office of the
       Privacy Commissioner (OPC) to make privacy a cornerstone of the Passenger
       Protect program:

> We've (Transport Canada) been very deliberate in terms of
> working with the Privacy Commissioner and ensuring that
> Memorandum of Understanding are in place with air carriers, the
> same sort of things with CSIS and the RCMP in terms of how this
> program will work, how information will be handled and
> shared.[490]

458.   Passenger Protect meets all requirements under the *Privacy Act* to ensure that
       information exchange is both limited and protected. This has been confirmed
       by a Privacy Impact Assessment that has been submitted to the OPC and the
       Commissioner Major.

459.   In response to suggestions by the OPC, Passenger Protect has incorporated
       features that exceed the requirements of the *Privacy Act*. Examples include:

- Public availability of guidelines for inclusion on the SPL;

- Limiting the size of the SPL Advisory Group;

- Creation of an Office of Reconsideration;

- Public Awareness campaign, including materials for both air carriers and
  police emphasizing the need for privacy protection;

- Memoranda of Understanding with air carriers, CSIS and the RCMP
  outlining steps to be taken to protect personal information;

- Unauthorized disclosure of the SPL is a criminal offence.

---

[490]   Evidence of Brion Brandt, Transcript, Volume 40, p. 4881.

460. Transport Canada continues to consult regularly with the Office of the Privacy Commissioner on implementation of the various privacy components of the project.

R.   RISK ASSESSMENT

461. Commission Counsel tendered Dr. William Leiss as an expert in risk communications, risk perception and risk management to testify concerning risk management theory and how it applies to civil aviation security programs.[491]

462. Dr. Leiss explained the elements of risk-based decision-making, including risk assessment[492] and the development and application of a risk matrix.[493]

463. Dr. Leiss testified that the use of risk-based decision-making began in the early 1980s.[494] There were some risk-assessment procedures in use in 1985 but there was no systematic approach followed at that time.[495] Canada was one of the first countries to develop an official standard but that occurred in 1997.[496]

---

[491] Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007.

[492] Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 11959-11968.

[493] Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 11969-11970.

[494] Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, p. 11962.

[495] Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, p. 11969.

[496] Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 11962-11963.

464. The witness emphasized that development of a risk matrix required the exercise

of judgment based on all available information:

> You have to make a judgment to assess the information you have,
> all of it, all of what you've mentioned and more, to discriminate
> between what   would be a genuine increase in threat, i.e., there
> is an intention to bring down one of these airliners as soon as
> possible, discriminate that from another type of intention would
> be to seek to cause economic damage and to leave it at that.

> You have to look at your evidence. You have to make a judgment
> how do I evaluate the sources of this evidence and….ask…what
> level of confidence do I have in the data….[I]n this case [a
> warning of a threat to an Air India flight], you would have to
> make another judgment about credibility….[497]

465. Elsewhere he stressed the importance of context.

466. Notwithstanding his caution, Dr. Leiss did not hesitate to offer an opinion

concerning the risk posed by the June 1 telex:

> You're off the end of the scale. Because in that business, even at
> that point you could probably say you never get specific warnings
> like that. And now of course we can say with more confidence
> after another twenty some years….

> So I would say this should have leapt off the page, especially at
> the time, I mean, many years later it would of course leap off the
> page, but even at the time when you have enough of a history
> from the '70s through the '80s of airline hijackings at least you
> almost never get such a specific type of warning.[498]

---

[497]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 11972-11973.

[498]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 11981-11982.

467.   Under cross-examination, Dr. Leiss was careful to explain that before venturing

a further opinion as to who was responsible for taking action, he would have to

make certain assumptions about the information environment at the time:

> You have to put that in context, ask yourself "What is the
> information flow on terrorism risk coming in to any particular
> area?" So let's say it's RCMP and anybody else in Canada who
> has responsibility. Was everybody in the same room at any
> point? Who was getting it? What were they getting?[499]

468.   One of the contextual facts that Dr. Leiss failed to understand at first was that

Air India had passed on the June 1 telex to the RCMP without comment and

without taking any action. This surprised him:

> That sounds bizarre to me. So you know, there is shared
> responsibility here. So it seems bizarre that you would get such a
> specific threat and then just hand it to somebody else and say
> well, do whatever you want with this. It's just bizarre. I mean it
> seems that someone in the organization was not taking their own
> security plan seriously…..

> [G]iven the specificity of the threat collectively, in terms of Air
> India's corporate responsibility, it seems appalling that you would
> not follow up, you would not find out what would be done with
> that information. You would not insist on having an immediate
> meeting, a further dialogue of trying to see whether you could
> actually work out a common plan….[500]

469.   On further cross-examination, Dr. Leiss conceded he had not seen any other

documents pertaining to the June 1 telex, indeed that he had not read the telex

itself. He did not know that it had been sent to Air India stations across the

---

[499]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, p. 12013.

[500]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 12024-12025.

world. He conceded that it would not be fair to assess the impact of one telex in isolation from the full pattern of information flow.[501]

470.   Accordingly, Dr. Leiss' opinion that the June 1 telex raised risk "off the end of the scale" should be accorded little weight.

471.   Turning to the specific risk assessment practices currently employed in aviation security, Dr. Leiss reviewed the CATSA Risk Management Program and found it to be professional, well-organized.[502]

472.   Dr. Leiss did not have an opportunity to review the current risk assessment practices employed by Transport Canada as these were not requested by Commission counsel.[503]   Relevant documents have since been provided to the Commission for review.

---

[501]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 12035-12037.

[502]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 11986-11989.

[503]   Testimony of Dr. William Leiss, Transcript, Volume 91, 7 December 2007, pp. 12042-12043.

AFTERWORD

473. Transport Canada wishes to thank the Commissioner and Commission counsel for the opportunity to address aviation security challenges and initiatives. The Department remains ready to provide such additional information as the Commission may require to meet its mandate. Finally, Transport Canada looks forward to the Commissioner's findings and recommendations in due course.

ANNEX A: CATSA Organizational Chart

```
                    ┌─────────────────┐
                    │  President and  │
                    │      CEO        │
                    └────────┬────────┘
                             │
                    ┌────────┴────────┐
                    │ Executive Vice  │
                    │ President and   │
                    │      COO        │
                    └────────┬────────┘
         ┌──────────┬────────┼────────┬──────────┐
  ┌──────┴────┐ ┌───┴────┐ ┌─┴──────┐ ┌┴───────┐ ┌┴────────┐
  │ VP and    │ │ Vice   │ │ Vice   │ │ VP and │ │ Vice    │
  │ Chief     │ │ Pres.– │ │ Pres.- │ │ Chief  │ │ Pres.-  │
  │ Financial │ │ Strat. │ │ Oper.  │ │ Tech.  │ │ People  │
  │ Officer   │ │ & Pub. │ │        │ │ Officer│ │         │
  └───────────┘ └────────┘ └────────┘ └────────┘ └─────────┘
```