

February 29, 2008

The Honourable Mr. John C. Major, Q.C.  
Commissioner  
Commission of Inquiry into the Investigation of  
the Bombing of Air India Flight 182  
P.O. Box 1298, Station "B"  
Ottawa, Ontario K1P 5R3

Dear Commissioner Major:

**RE: AIVFA Final Written Submission**

On behalf of the Air India Victims' Families Association (AIVFA), co-lead counsel Mr. Norman Boxall and I provide you with AIVFA's final written submission.

We take this opportunity to express our appreciation for the privilege of appearing before you in this Inquiry. We are also grateful for the cooperation we enjoyed in working with lead counsel, Mr. Mark Freiman, as well as other members of the legal team and Commission staff.

It is our hope that our collective efforts will assist you in your current deliberations.

Sincerely,



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# **Where is Justice?**

## **AIVFA Final Written Submission Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182**

**February 29, 2008**

**Ottawa, ON**



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# TABLE OF CONTENTS

<b>Introduction</b> .....	<b>12</b>
<b>Canada’s Inadequate Response to the Victims of the Air India Bombing: “Tears and sympathy are just not enough”</b> .....	<b>14</b>
(i) <i>Introduction</i> .....	14
(ii) <i>Summary of Testimony by AIVFA Family Members</i> .....	14
(iii) <i>The Post-Bombing Experience of AIVFA Members</i> .....	59
(iv) <i>The Inadequate Post-Bombing Response by the Canadian Government</i> .....	60
(v) <i>The Canadian Government Remains Unprepared Today</i> .....	61
(vi) <i>Recommendations</i> .....	62
<b>Pre-bombing: Systemic Intelligence and Institutional Failure</b> .....	<b>65</b>
(i) <i>Introduction</i> .....	65
(ii) <i>Intelligence Failure: CSIS</i> .....	65
(a) <i>The Intelligence Cycle</i> .....	65
(b) <i>Intelligence Tasking Failure</i> .....	66
(c) <i>Intelligence Collection Failure</i> .....	70
(d) <i>Intelligence Assessment Failure</i> .....	74
(e) <i>Intelligence Dissemination Failure</i> .....	78
(f) <i>Conclusion</i> .....	80
(iii) <i>Institutional Failure: RCMP, Vancouver Police, and Transport Canada</i> .....	80
(a) <i>Introduction</i> .....	80
(b) <i>RCMP</i> .....	81
(c) <i>Vancouver Police Department</i> .....	87
(d) <i>Transport Canada</i> .....	89
(iv) <i>Conclusion</i> .....	90
(v) <i>Outstanding Issues</i> .....	91
(a) <i>Intelligence Analysis</i> .....	91
(b) <i>Information Sharing: Legislation and Interpretation</i> .....	93
(c) <i>Systemic Discrimination</i> .....	94
(d) <i>Addressing Hate</i> .....	95
(vi) <i>Recommendations</i> .....	96

<b>Post-bombing Investigation and Prosecution: Ineffective Cooperation Wrought by the Challenge of Moving from Intelligence to Evidence.....</b>	<b>99</b>
<i>(i) Introduction.....</i>	<i>99</i>
<i>(ii) The Challenges Created by the Establishment of CSIS .....</i>	<i>100</i>
<i>(ii) The Problems with CSIS Wiretap Translation and Transcription.....</i>	<i>103</i>
<i>(iii) The Lack of Continuity of CSIS Wiretaps .....</i>	<i>105</i>
<i>(iv) Restrained CSIS Wiretap Disclosure .....</i>	<i>107</i>
(a) Introduction .....	107
(b) Intercepts of Bombing Suspect Mr. Talwinder Singh Parmar .....	109
(c) Parmar Tape Erasures.....	111
(d) SIRC: Compensation Cover Up .....	113
(e) Conclusion.....	115
<i>(v) Source Mishandling.....</i>	<i>115</i>
(a) Introduction .....	115
(b) Ms. “E” .....	116
(c) Mr. “A.” .....	120
(d) Conclusion.....	121
<i>(vi) RCMP Task Force Problems.....</i>	<i>121</i>
<i>(vii) Post 9/11: A More Serious Attempt at RCMP and CSIS Cooperation.....</i>	<i>123</i>
<i>(viii) Outstanding Issues .....</i>	<i>126</i>
<i>(iv) Recommendations.....</i>	<i>130</i>
<b>Strengthening Aviation Security .....</b>	<b>134</b>
<i>(i) Introduction.....</i>	<i>134</i>
<i>(ii) The Bombing of Air India Flight 182: Intelligence, Human, Corporate, and Regulatory Failures.....</i>	<i>135</i>
(a) Intelligence Failure.....	135
(b) Human Failure.....	136
(c) Corporate Failure: Air India .....	138
(d) Regulatory Failure.....	142
<i>(iii) Post-Bombing: Aviation Security Today.....</i>	<i>142</i>
<i>(iv) Current Gaps in Aviation Security .....</i>	<i>144</i>
(a) Lack of a More Results-based Regulatory Approach.....	144
(b) Unwritten National Civil Aviation Security Program.....	144
(c) Rigorous Security Awareness Programs Missing .....	144
(d) No Air Cargo Program .....	145
(e) Perimeter Insecurity.....	146
(f) General Aviation Operations: Additional Missing Layers of Security.....	146
<i>(v) Conclusion.....</i>	<i>148</i>

(v) <i>Recommendations</i> .....	149
<b>Combating Terrorism Financing</b> .....	<b>151</b>
(i) <i>Introduction</i> .....	151
(ii) <i>The Present State of Affairs</i> .....	152
(a) <i>Introduction</i> .....	152
(b) <i>Insufficient Financial and Human Resources</i> .....	153
(c) <i>Poor Information Dissemination and Exchange</i> .....	154
(d) <i>Insufficient Regulation and Oversight of the Non-Profit Sector</i> .....	155
(e) <i>Insufficient Review and Public Oversight of the Charitable Sector</i> .....	156
(f) <i>Conclusion</i> .....	157
(iii) <i>The U.K. Experience: Charity Commission of England and Wales</i> .....	157
(iv) <i>Recommendations</i> .....	159
<b>Prosecuting Terrorism: Trial by Single Judge is Inappropriate</b> .....	<b>162</b>
(i) <i>Introduction</i> .....	162
(ii) <i>Trial by Jury</i> .....	163
(a) <i>Elimination of Jury Trials Raises Serious Issues</i> .....	163
(iii) <i>Concerns Raised Regarding Three-Judge Panels</i> .....	164
(a) <i>Decreased Legitimacy</i> .....	164
(b) <i>Problems of Length and Complexity</i> .....	165
(c) <i>Fact-Finding: Three Judges may not be an Improvement</i> .....	165
(d) <i>Resource Concerns</i> .....	165
(e) <i>The Challenges of Unanimity</i> .....	166
(f) <i>Constitutional Difficulties</i> .....	166
(iv) <i>Conclusion</i> .....	167
(v) <i>Recommendations</i> .....	168
<b>Witness Protection:</b> .....	<b>170</b>
(i) <i>Introduction</i> .....	170
(ii) <i>Lack of Research on Witness Protection Programs</i> .....	170
(iii) <i>Formal Witness Protection Programs</i> .....	171
(iv) <i>Protection of Witnesses Outside Existing Formal Witness Protection Programs</i> .....	172
(v) <i>Public Confidence in Witness Protection</i> .....	172
(vi) <i>The Courts Role in Witness Protection</i> .....	173
(vii) <i>Conclusion</i> .....	173
(viii) <i>Recommendations</i> .....	174
<b>Conclusion:</b> .....	<b>176</b>

<i>(i) Where is Justice?</i> .....	176
(a) Pre-bombing .....	176
(b) Government Response to the Bombing.....	177
(c) Post-bombing Investigation and Prosecution .....	178
<i>(ii) The Justice AIVFA Seeks</i> .....	179

## ~ In Remembrance ~

Aggarwal, Rahul • Ahmed, Indra • Ahmed, Sarah  
Alexander, Dr. Anchanatt Mathew • Alexander, Simon  
Alexander, Annamma • Alexander, Reena • Alexander, Simon Jr.  
Allard, Colette Morin • Anantaraman, Bhavani • Anantaraman, Aruna  
Anantaraman, Rupa • Asirwatham, Ruth • Asirwatham, Sunita  
Asirwatham, Anita • Aurora, Shyla • Bajaj, Anju • Balaraman, Saradambal  
Balaraman, Narayanan (Rodger) • Balasubramanian, Ramachandran  
Balsara, Freddy • Beauchesne, Gaston • Bedi, Saroj • Bedi, Anu  
Bedi, Jatin • Berar, Jogeshwar Singh • Berry, Sharad • Bery, Neelam  
Bery, Priya • Bery, Aditya • Bhagat, Adush • Bhalla, Nirmal • Bhalla, Manju  
Bhalla, Dalip Kumar • Bhardwaj, Harish • Bhasin, Rima  
Bhat, Muktha • Bhat, Praveen Deepak • Bhat, Parag Vijay  
Bhat, (Sadarangani) Chand Motiram • Bhat, Siddhant • Bhatt, Vinubhai  
Bhatt, Chandrabala Vinubhai • Bhatt, Bina Vinubhai  
Bhatt, Tina Vinubhai • Bhinder, Capt. Satwinder Singh • Bisen, Leena Deep  
Castonguay, Rachelle • Chandrasekhar, Sukumar • Chatlani, Nita  
Chatlani, Mala • Chatlani, Marc Charles • Cheema, Shingara Singh  
Chopra, Jagdish • Chopra, Shampari • Chug, Ratna Kaur  
Daniel, Varghese • Daniel, Celine • Daniel, Ruby Ann • Daniel, Robyn  
Das, Ruby • Das, Anita • Das, Arindar • DeSa, Anthony Sebastian



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Dhunna, Rajesh • Dhunna, Suneal • Dinshaw, Jamshed  
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Furdoonji, Homai • Gadkar, Anita • Gambhir, Santosh • Gambhir, Angeline  
Gambhir, Julie • Gaonkar, Shyama • Ghatge, Sangeeta • Gogia, Bhagwanti  
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Gossain, Aparna • Gossain, Arun • Grewal, Daljit Singh • Gupta, Anumita  
Gupta, Santosh • Gupta, Shashi • Gupta, S. (Shashi) • Gupta, Arti  
Gupta, Amit • Gupta, Rajesh • Gupta, Swantantar • Gupta, Vandana  
Gupta, Vishal • Gupta, Ramwati • Hanse, Narendra Singh  
Harpalani, Rashmi • Harpalani, Deepa • Harpalani, Sumanta  
Jacob, Bulivelil Koshy • Jacob, Aleykutty • Jacob, Jissey • Jacob, Jancey  
Jacob, Justin • Jain, Om Prakash • Jain, Rani Indu • Jain, Ruchi  
Jain, Rikki • Jain, Anoopuma • Jaipuria, Mala • Jalan, Devkrishan  
Jalan, Shila • Jalan, Anita • Jalan, Vinay • James, Annie Josephine  
Jethwa, Dr. Zebunnisa • Jethwa, Dr. Umar • Job, Aleykutty • Job, Teena  
Jutras, Rita • Kachroo, Mohan Rani • Kaj, Leena Fatej • Kalsi, Indira  
Kammila, Rama Devi • Kapoor, Santosh • Kapoor, Sharmila  
Kapoor, Sabrina • Kashipri, Neli • Kashipri, Athikho • Kaur, Gurmit  
Kaur, Parmjit • Kaushal, Bishan Ram • Kelly, Barsa • Khan, Rahamathulla  
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Khera, Rashi • Kochher, Sandeep • Kumar, Manju • Kumar, Kevin  
Kumar, Ramachandran • Kumar, Chitra • Lakshmanan, Kanaka

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Mehta, Chandralekha • Mehta, Nilesh • Mehta, Neesha • Merchant, Natasha  
Minhas, Balwinder Kaur • Minhas, Kulbir Kaur • Molakala, Prabhavathi  
Mukerji, Nishith • Mukerji, Shefali • Mukhi, Renu • Mullick, Deepak  
Murthy, Susheela • Murthy, Bhavani • Murthy, Narayana  
Murugan, Gnanendran • Murugan, Sumithra • Murugan, Lavanya  
Murugan, Ramya • Nadkarni, Deven • Nadkarni, Rahul  
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Paliwal, Mukul • Patel, Babubai • Patel, Bipan Kumar • Patel, Marazban  
Patel, Mohanbhai • Phansekar, Rita • Puri, Veena • Puri, Ashu • Puri, Amit  
Quadri, Syed Qutubuddin • Quadri, Shaiesta • Quadri, Rubina  
Quadri, Arishiya • Quadri, Atif • Radhakrishna, Nagasundara  
Radhakrishna, Jyothi • Radhakrishna, Thejus • Raghavan, Suseela  
Raghuveeran, Vasantha • Raghuveeran, Rajiv • Rai, Kiranjit Kaur  
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Rauthan, Pooja • Rodricks, Elaine • Sabharwal, Meghana • Sadiq, Sugra  
Sagi, Sujatha • Sagi, Kalpana • Sagi, Kavitha • Saha, Bimal Kumar  
Sahu, Ram • Sahu, Pradeep K. • Sahu, Pushpa • Sakhawalkar, Dattatraya  
Sakhawalkar, Usha • Sakhawalkar, Sanjay • Sakhawalkar, Surekha

Sakhawalkar, Sunil • Sankurathri, Manjari • Sankurathri, Srikiran  
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Sharma, Versha • Sharma, Neeraj • Sharma, Shyamala Narain  
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## **Introduction**

The bombing of Air India Flight 182 on June 23<sup>rd</sup>, 1985, was first and foremost a Canadian tragedy. This tragedy appears to have been perpetrated by Canadians against Canadians and others. Of the 329 innocent victims, most were Canadians. They were spouses, parents, children, friends, co-workers, neighbours, and loved ones. 29 families were completely wiped out, 32 families left with one spouse, 8 couples lost all their children, and two children lost both parents. Over 80 victims were children 12 years of age and under. The magnitude of those affected by this tragedy reaches into the thousands and spans continents. Its reverberations and the pain caused by this heinous act of terrorism are still deeply felt today, more than 22 years later.

The Air India Flight 182 tragedy was Canada's introduction into the modern age of terrorism. At that point in time, it was the single worst act of terrorism against the traveling public known to the world. According to commentary by Thomas Walkom, "...while Air India never grabbed this country's attention in the way the 2001 twin tower attack did, Canadians should not be sanguine. As a proportion of the population, the 331 people killed in 1985 are equivalent to the 3, 044 murdered in N.Y. and Washington 16 years later."<sup>1</sup> The Air India Flight 182 bombing was Canada's 9/11 awakening – or certainly should have been as the world was moving into a more dangerous period.

This tragedy, and its lessons to be learned, are perhaps more relevant today than had this Inquiry been held twenty years ago. While we waited long to address these issues, the time is now to understand what happened, why it happened, and how to avoid such a tragedy from ever happening again. We face even greater threats today from home grown terrorism; terrorism similar to what caused the bombing of the Air India Flight 182.

This is why this Commission of Inquiry has been so important in today's world, albeit more than two decades after the catastrophe. The Air India Flight 182 tragedy speaks directly to the complexities of our current world. This is what motivated the Air India Victims' Families Association (AIVFA) to continue in its advocacy efforts to push for an Inquiry through all these years; not simply for themselves but for the benefit of all Canadians and all those who look to Canada for guidance, as a beacon for other nations.

With the Air India Flight 182 Inquiry now concluded, we need to fully synthesize and understand what this Inquiry has taught us, with a view to improving national security, the protection of Canadians, and the manner in which government responds to and assists victims of terrorism. Ultimately, the best memorial for the loved ones lost and the thousands of families impacted by this horrific tragedy is that Canada, as well as other nations, implement policy, legislative, regulatory, and procedural changes, in addition to all possible preventative measures so as to ensure that those lives cut short in such a heinous way were not lost in vain.

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<sup>1</sup> Thomas Walkom, "Unanswered questions" *The Toronto Star* (17 March 2005).

It is our hope that the submissions by AIVFA will assist Commissioner Major as he deliberates on the testimony provided by the scores of witnesses from whom the Inquiry has heard and the thousands of documents brought to the attention of this Commission of Inquiry.

# **Canada's Inadequate Response to the Victims of the Air India Bombing: "Tears and sympathy are just not enough"**

## **(i) Introduction**

For 22 years, AIVFA wanted to be heard. AIVFA wanted to ensure that light would be shed on the reprehensible act of violence that was the Air India Flight 182 tragedy, a terrorist bombing which caused immeasurable sorrow and grief upon all those connected to its victims. This Inquiry provided an opportunity for the victims of this Canadian tragedy to be heard and to share some of what they suffered. Those who spoke did so eloquently. Canadians now understand, better than ever before, the human dimensions of this catastrophe.

This Commission heard emotional testimonials of lives affected in countless ways. AIVFA is grateful for having had the opportunity to seek a closure that was not available before this Inquiry, through the sharing of stories of personal tragedy with fellow Canadians. Testimony by AIVFA members covered the lives lived by those who perished in the Air India Flight 182 bombing, the emotional, psychological, and financial impact of losing loved ones, and the hopes and aspirations for this Commission of Inquiry with respect to its Terms of Reference.

In particular, the testimony submitted respectfully by AIVFA members revealed their crushing sadness and the truly inadequate and unacceptable response by the Canadian government to them as victims of terrorism. This devastation and the loss of the potential of those who died in this terrorist act were poignantly expressed in the Commission's first Report, "The Families Remember." AIVFA appreciates the manner and sensitivity in which the content of this, the first Report, was issued.

While we are critical and will express our deep concerns about the inadequacies of the Canadian government in the manner in which it dealt with the families of the victims of Air India Flight 182, we have only praise and heartfelt respect for the manner in which the Irish opened their arms and hearts to the family members who came to Ireland in their state of shock and grief to retrieve the remains of their loved ones. To today, the Irish have demonstrated warmth and love by their feeling to those who suffer in this tragedy. An edited synopsis of the testimony provided by each AIVFA member that appeared as a witness follows.

## **(ii) Summary of Testimony by AIVFA Family Members**

### **Dr. Bal Gupta:**

- I am a physicist and an engineer and a Canadian citizen. My late wife, Ramwati Gupta, was murdered in the Air India Flight 182 bombing. I thank the Prime Minister, Mr. Stephen Harper, who established this Commission of Inquiry. I expect this Commission to get answers to the questions raised in the Terms of Reference.
- My late wife was a jolly, loving and family-centered person. In June 1985, we had been married for over 20 years and we had two sons, 12 and 18 years old. After coming to

Canada, we visited our relations in India every four or five years. It was four years after our last visit to India in 1981 and we had planned to take a trip to India in 1985. Our whole family had confirmed seats to go on an Air India flight on July 6, 1985. However, one seat became available for Air India Flight 182 and my wife decided to book a flight on June 22, 1985, so that she could spend two extra weeks with her parents before the rest of the family was to arrive in India. On June 23, I was awakened at 5:30 a.m. by a phone call from a very close friend who told me to listen to the radio, which informed me of the tragedy.

- The government of Canada did not set up any information line and did not offer any other administrative or emotional help immediately after the tragedy. Air India set up an information phone line and kept its offices open on Sunday. It was the only source of information to families. Air India offered to take two family members from each family to Ireland, so on June 25, my younger son, Susheel, and myself flew to Cork, Ireland. At the Cork airport, the Indian Ambassador's wife, Mrs. Dr. Razia Doshi, received every single family member arriving at the airport.
- Every Irish person, from men and women on the street to taxi drivers, to nuns, to Garda, to nurses, provided every possible physical and emotional support to the families. In addition to the Irish, there were India and American embassy staff at the Cork Regional Hospital, but no Canadian embassy staff were seen on site until after an interview I gave to CTV News on June 29, 1985. The next day, on June 28<sup>th</sup>, we saw some Canadian officials on scene at the Cork Hospital for the first time five days after the tragedy.
- Upon returning home to Canada, there was no emotional, psychological, physical or administrative help or grief counselling or guidance from any government agency. The legal wrangling with lawyers over the settlement agreement was very taxing. The Canadian government's contribution was very small. I don't think it was much more than a \$1,000,000.00 total package to all the 329 families.
- Since that faithful day in June 1985, my sons and I have suffered immeasurable pain and suffering. My late wife's parents never recovered from the loss of their eldest child until their death. All happy occasions, for example, my sons winning a game, passing examinations, getting awards, getting married, myself getting a promotion or an award or some recognition, have been tainted by an underlying pain. In the absence of any help or counselling from the government, the families shared each others pain and helped each other as much as possible.
- The families have worked very hard to keep together. We were and are a very diverse group brought together by this tragedy. We informally started the Air India 182 Victims Families Association in 1987. Right from the beginning we asked for an effective investigation and prosecution of the culprits and for an Inquiry into the Air India Flight 182 bombing. No Inquiry was promised and no responsible government Minister or Royal Canadian Mounted Police (RCMP) officer apprised the families about the state of the criminal investigation until June 1995. Often, and I have no qualms in saying that, we, the families, felt like we were being treated as second-rate citizens of Canada.



- In April 2005, Parliament passed a Private Members Bill asking for an Inquiry and all opposition members of Parliament as well as five Liberal Members of Parliament supported this Bill. The Honourable Bob Rae was appointed to examine Air India related matters. Finally, Prime Minister Stephen Harper ordered an Inquiry in May 2005.
- With respect to the Inquiry, tears and sympathy are just not enough. The families and Canadians at large hope that this Commission will be able to point out clearly which deficiencies and problems in many areas outlined in the Terms of Reference of this Inquiry existed before, around, and following the Air India tragedy, and at the same time will point out those deficiencies and problems which continue to exist today. It is also hoped that this Inquiry will suggest remedies to prevent the recurrence of similar tragedies in the future.
- I also have a request. Although it is not strictly within the Terms of Reference, I would like to see some friendly advice by the Commissioner to the government about how to treat victims' families in terrorism-related cases and also of the need for an automatic establishment of a Commission of Inquiry into such cases. We would not like any victims of terrorism to be treated the way we have been treated. The Commission's findings and recommendations may possibly start a recovery from the loss of faith in the capability of the Canadian government to prevent terrorism and deal appropriately with the aftermath of terrorism acts.

**Mr. Deepak Khandelwal:**

- I lost both of my older sisters age 19 and 21, in the bombing of Air India Flight 182. They were both Canadian citizens. In June 1985, I was 17 years old and finishing my last year of high school in Saskatoon. My sisters were going back to India to attend our uncle's wedding. It was a very happy time for our family. All three of us were going to be in university. We were a happy family of five. The bombing was the beginning of many potential happy situations being taken away from my family.
- The next couple of years were very hard. The pain and suffering has continued for the last 21 plus years. I became an only child because of the bombing. There are painful reminders of loss on a regular basis, such as every birthday, anniversary or holiday, all without my sisters.
- I believe that there were many failures that led to this preventable tragedy before June 23rd, 1985. There is also a serious issue of how inhumanely and disrespectfully the government has treated the victim families in the past 21 years. I, along with all Canadians are looking to you Mr. Commissioner, to make sure the deficiencies that lead to this event are exposed so that this type of preventable tragedy never happens again in Canada.
- I would like to see this Commission identify deficiencies and make actionable recommendations with respect to the following issues, such as: the effectiveness of Canadian government agencies, i.e. the RCMP and the Canadian Security Intelligence Service (CSIS), deficiencies that existed in the assessment by government officials on the potential threat posed by Sikh terrorist, and aviation security.

- I deeply believe that racism has affected how the families have been treated in the past 21 years. If the victims had been Caucasian, how differently would they have been treated? How would the subsequent criminal investigation have differed? Would the families have been constantly told lies throughout the whole process?
- All Canadians, Commissioner Major, are counting on you. We have waited 21 years for this Inquiry and the truth to come out. Please don't let us down like everyone else.

**Ms. Rama Bhardwaj:**

- I was born and married in India. My connection to Canada began in 1967 when my husband, an engineering architect, came here to work. He found success here. He landed in Montreal in 1967. He moved to Toronto and was offered a good position in Brampton. I came to Canada in 1969 and my two sons arrived in December 1970. My son Harish perished in Air India Flight 182. He was born in India in 1966. He was a bright and loving young boy. He was very close to his brother and parents. At the time of the bombing, he graduated with an average of 94.5 percent. He had been accepted into the University of Toronto medical program with full scholarship. He was a talented child, an all-rounder placing first in music, math and biology and earning an Efficiency Award Trophy.
- At 2:00 a.m. a friend called at my house and told me that one of the Air India flights had been blown out of the sky. It was my cousin from London who first informed me about the crash but said there were some survivors. The second call came from Air India and my friend answered because I was upset. A third call was my brother who was cursing about the situation. People started to come to our home. After realizing the situation, after it began to sink in, I was so overwhelmed that I fainted. Meanwhile, my husband had arrived in Delhi on a separate flight and was expecting Harish to be there to receive him. When he learned of the bitter truth, he fainted at the Delhi Airport. He went to Cork to locate Harish but his body was never found. I was in no condition to travel to Cork and face the chaotic situation there.
- No government official ever showed any support, moral or otherwise. It was unthinkable cold treatment. It was our grief. There was no sympathy or support. We were left to face this horrible crime alone. We never received any communication or support from the government or from Air India.
- We were Canadian citizens. The government of Canada seemed to think this was an Indian tragedy. I remember on the second anniversary of the bombing there were speeches on how the Air India victims' families were being cared for. That was untrue. My surviving son Jatindr, who was very close to Harish, is still dealing with Harish's death to this date. He does not talk about it. My husband Parkash had a heart attack in 1986 because of the grief, stress and financial strain.
- I still feel very alone. People say that time is a big healer. It's not true. You never get over a tragic loss like this.

**Ms. Jayashree Thampi:**

- I lost my husband and my daughter on Air India Flight 182. We were married in May of 1974. He got a job offer in Montreal and we decided to move to Canada in 1976. My daughter was born on December 14, 1977. My husband and daughter booked their ticket for Air India Flight 182 from Montreal to attend a wedding and to visit families. Since I did not have enough vacation days, I decided to join them a couple of weeks later.
- On the morning of June 23, 1985, I was asleep when the phone rang around 6:30 in the morning. It was a friend calling from Montreal with the news of the disaster.
- I went to Cork, Ireland, with my sister. I don't remember seeing any Canadian government officials there. I never found the bodies. No Canadian official offered us any help. After a few weeks, I returned to Toronto. Nobody from the Canadian government ever called to see how I was doing. There was no offer of counselling from Air India or the government. The only thing I remember is the kindness of the Irish people.
- After my son was involved in an Air France non-fatal accident at Pearson International Airport in Toronto some years later, Air France offered counselling to my family and I accepted the offer. The therapy allowed me to start dealing with the issues I had never dealt with before. I got involved in the creation of the memorial for the victims of Air India Flight 182.
- The establishment of this Commission has been a consolation for the families and we are grateful for the conviction of the Prime Minister in living up to his pre-election promise. Mr. Commissioner, I feel that the Inquiry should not be guided by the rules of expediency but by the relentless pursuit of truth so that the failures will be analysed and any potential security lapses will be identified, incompetence and any ineptitude will be relieved, and appropriate recommendations to stem such lapses will be made.
- A few of the issues I wish to see this Inquiry address are: how did the system fail, has the government taken any serious administrative and executive decisions in reprimanding the officials whose ineptitude caused this disaster, and have they done enough to avoid such bungling of investigations in the future? Will the Commission be able to provide a recommendation for the automatic adoption of a three-judge system today for terrorist cases, and will the Commission be able to look into the details of the culture of fear and intimidation that prevails in different communities? Will the Commission be able to set guidelines as to the government's role in providing support for the families of victims of terrorism? I know that the Commission cannot penalize the individuals who are responsible for this crime. However, I personally would like to see the Commission bring out into the open the systemic errors in the operation of the various agencies that culminated in the loss of 331 innocent victims.

**Ms. Zerina Pai:**

- I am originally from India. I arrived in Canada four years ago. My brother was an assistant

flight purser with Air India. He had flown for 7 or 8 years and was only 37 when he died. He was unmarried.

- My brother made friends very easily. As a kid he would pick up the strangest people in the world because they were poor and didn't have proper clothing and they were hungry. He would feed them and literally give them the shirt off his back. His name was Noshir. As we grew older, he turned into a responsible man taking care of his two young sisters. He would drive me to school.
- I knew so many families on that plane. My best friends, S.P. and Joy and their son, who was my godson, Ratik Singh, were all on that flight. We lived in each other's homes.
- On the day of the tragedy, the phone rang. It was my ex-husband on the phone. He asked me if I was sitting down. He told me that the plane had gone down and there were no survivors. When my mother heard the news, she passed out on the floor. My father began running around the house, turning on the TV, radio, anything to try and catch the news. I tried to call Air India but nobody picked up the phone. As news spread, people started calling our home. All I could think of was that I needed to ring my good friends, S.P. and Joy; maybe they could help. Then I realized they were gone as well. It was late evening around 9:00 p.m. when two Air India representatives came to our house and asked if there was anything they could do for us. I said I wanted to go to Cork and they arranged it for me. I left with my parents for Cork that night.
- When we arrived in London, the Cabin Crew Association had people there who met families of the crew. When I arrived in Cork, I went directly to the hospital. The people of Cork were fantastic. There were priests, nuns, and social service workers to help us at the hospital. We had strangers walk up to us and console us. The Consul General of India had people meet us at the airport to take us to our hotels or to the hospital. Going through this process was the most difficult thing I have ever done.
- In the aftermath of the bombing, we never heard from the Indian government except for a condolence letter from Rajiv Gandhi. We received a couple of calls from Air India accountants who wanted to do the settlement. There was a ton of pressure to settle. I said we were not ready to go through something like this as in our religion we have prayers every day for the first month. We kept getting calls and finally we set a date, and after I signed, I remembered the Air India representative standing up, shaking my father's hand and saying, "It has been a pleasure." And my father said, "Not under these circumstances". My parents gave all the money to charity. Once we settled, we never again heard from Air India.
- After the loss of my brother, my parents never recovered. My mother didn't leave the house for 15 years, save and except for temple and then home. She never went to a wedding or party for 15 years. To her, the loss of her own son, her firstborn, meant her life was over. My father also never recovered. He lost all interest in his businesses and sold them one by one. The only thing he refused to sell was his home because his children grew up there. To this day my brother's room is intact. His books are still there. His hats still hang there.

- My role in all this was to hold the family together. My mother was so out of it. There was so much emotional pressure on me at the time. I quit my job. Between Air India and the government, something could have been done to ease our pain. India is not the sort of country that believes in counselling but I think Air India, as an international organization, should have offered us some help.
- I cannot believe it has taken 20 years and so much money and we still have no closure for any of the families and have been unable to punish the killers. Look at the USA and how they pursued the Lockerbie bombers. To me the real tragedy is that no one has been held accountable for this tragedy. This is a true Canadian tragedy. I would hope that from this Inquiry we would learn from the stories we have to tell so that no Canadian or any family has to go through what we are still going through. I would hope that something is done to improve security at airports. There has been no accountability from the governments of Canada or India and neither have the security agencies been held accountable for what happened.

**Dr. Padmini N. Turlapati:**

- I am a paediatrician. My husband, Lakshminarayana, also known as Babu, is a chartered accountant. We've lived in Canada for 24 years. After working in Nigeria for 10 years, we immigrated to Canada in 1982 for the sole purpose of giving our two sons a broader perspective and dreamt of providing them with better opportunities and education. My children loved Canada. Sanjay, 11 years old, born on December 30, 1970, was my oldest son. He was brilliant, bright, dignified, mature and gentle beyond his years. Deepak, 8 years old, born October 1973, my second son, was also very bright, full of life and zest.
- In 1985, both my children did well and won numerous academic and athletic awards. In the summer I wanted them to go to India and spend time with their grandparents, aunts, uncles and cousins. The children were 11 and 14 years of age that June of 1985. We bought tickets six months prior and my husband was going two months later to bring them back. Deepak was going unaccompanied. Air India had agreed that Sanjay could go with his brother so they wouldn't be separated.
- After the Air India Flight 182 departed, my husband and I went to bed and at about 6:15 the telephone rang. Babu answered the telephone and he collapsed. I ran into the drawing room, put on the television and that is how I found out. I called my brother-in-law in Chicago, a friend in Toronto and my brother in India who was getting ready to receive the children. I told him to break the news gently to my 83-year-old father and 72-year-old mother. I packed my luggage and then I sat with Babu in front of the television. Friends came and went and we sat without any contact from the government, any social agency or Air India for about 4 days. The government totally neglected us, and to add insult to the injury, Brian Mulroney sent condolences to Ghandi.
- We left for London on the 26<sup>th</sup> of June. In the UK, friends and family received us as we proceeded to Ireland with my brother and friend. In Cork, Ireland, we were received by Irish personnel who took us to a hotel in Cork. There we were received by Mr. Doshi, the India Ambassador to Ireland, and his wife, Mrs. Doshi, who along with locals had

prepared Indian food. There was no one from the Canadian Embassy. All through this, the Irish nurses and nuns were supportive. The Irish took us by bus to the site in Ahakista, 80 miles from where the crash had taken place. The local Irish opened their hearts and homes to all of us and brought us flowers, rice and candles. They offered to bury our dead in the church ground and even offered to cremate if we so wished. Their unconditional love humbles me even today.

- We were only able to locate Sanjay's body. We took Sanjay's body in the casket provided by the Irish to India as per my mother's request. During this entire time, no one from Canada met or spoke to us. When we reached Bombay, there was no representative from Air India or the Indian government.
- I learned that the Indian Civil Service were informed of a possible threat and took security measures to safeguard the airports, bus stations, trains, etc. I also learned that intelligence had made Ghandi aware of possible threats to Air India Flight Number 182. The Canadian government was informed and that explained why the flight had a separate entrance with all that security in Toronto. I could not stomach the thought that such callous neglect was possible and it broke my heart.
- Within two weeks, I was back in Newfoundland. I never had a social worker or the support of a psychiatrist. I coped on my own. Likewise, my husband was in Toronto by himself. No one called me either and no services were offered. I lost my father in 1986 as he could not recover from the loss and my mother and siblings were further traumatized. My life seemed aimless and purposeless except for working.
- Each year my husband and I have gone to Ahakista, Ireland, on a pilgrimage for a week to ten days. The Irish have nurtured and sustained us through all these years at all levels. But for their unconditional love, I would never have been able to believe in humanity.
- In 1995, my siblings came for the 10<sup>th</sup> anniversary of the Air India Flight 182 bombing and then onto Canada. The tragedy has shattered their lives as well. They looked up to me now in place of our parents and I was touched. I thought things would get easier with time. Parents are not supposed to outlive their children.
- For 20 years we had asked for a public Inquiry, which was stalled because of the investigation. Not only had no one taken responsibility but at each step the system had failed us. However late they started the public Inquiry. For me it is paramount, more than a ray of hope, that maybe someone will look into this mega mess and give us some answers. For 21 years, we have hung in limbo with no closure as living dead. We want to know how, where and why the system failed us Canadians. I cannot take the guilt of sole responsibility that as a mother I put both my sons on that plane. I cannot look into their eyes in pictures and say any more, forgive me. I have to be able to say "Your deaths were not in vain and those who were responsible will be accountable, justice will be served irrespective of colour and creed in Canada". My mind goes out to those in witness protection who live in fear for their lives. I want to know that the government can and will protect those in the witness protection while trying to get to the root of the problem. I have special interests in knowing and finding out what happens to the funds for Palestine and

Sikh Temples.

- As for myself, I have no dreams or future, I just live day by day. My husband, recently retired, and will soon be working on the private trust in memory of our children, set-up for underprivileged children. We, and all the families started a memorial fund in 2000 and since then, the families have been given scholarships yearly, both in Ireland and in Canada.
- In summary, I would like to find the answers to the following questions: How did the government agencies responsible for safety and security of Canadians in Canada ignore the threats they knew against Air India Flight 182; why did the RCMP and CSIS suddenly stop the surveillance of criminals they were shadowing days before the tragedy; how do you stop criminals intimidating witnesses willing to testify against those who commit the crimes; how do you change the current judiciary system and ensure that cases of this magnitude are heard and decided by a bench of at least three judges; how do you recognize all of those associations that are involved in criminal activities and prevent them from collecting funds for their activities?

**Mr. Susheel Gupta:**

- I was born in India in 1972 but came to Canada when I was only six months old. Canada has really always been my home. It is with great pride that I call myself a Canadian citizen. I grew up much like any other child living in Canada. I played hockey, was a Cub Scout, and had a paper route. Sadly, because of the Air India bombing, I had a mother for only 12 years of my life.
- On the morning of the Air India disaster, I woke to the sound of our home phone ringing at around 6:30 in the morning. Soon our house was full with family members and I remember my father getting very angry with whom ever he called in the government as that unknown individual indicated that they were not interested in assisting, that he should call Air India. Canadian government officials did not seem to care at all. This was not their tragedy to deal with but India's. It didn't matter that we were Canadian citizens.
- My dad and I travelled to Ireland. When we arrived in Ireland at the airport, Mrs. Doshi, the Indian Ambassador's wife to Ireland, greeted us. But there was no Canadian official at the airport. It's a strange thing to say but if there's any place in the world where my mother could have been murdered, I am happy it was Ireland. The generosity and kindness we received was something I have never experienced anywhere else in the world to this day in my life.
- On one particular day as we were departing the Cork hospital, my father expressed anger to a reporter and her camera man as he informed them that there was not "one damned Canadian official" here and we were not receiving any support, guidance or information from our own government. That night, the interview aired back in Canada on CTV National News. It was the first media piece that let Canadians know that there were no Canadian government officials and that they had not responded and were taking no role in

assisting the victims families in Ireland. The next morning at around 7:30 a.m. Irish time, the phone rang in the hotel. It was a Canadian government official I believe from London, England, at the embassy. That official let my father know there would be someone in Ireland shortly. Certainly the timing of this official's telephone call was no coincidence after the airing of that TV interview.

- When we got back to Canada our family was devastated. I was devastated. My father struggled to be both my mother and father for both my brother and I, while at the same time he was mourning the loss of his wife. There was not a grief counsellor, not a social worker, not a doctor and certainly no government official to help. All we had were our family friends.
- Unfortunately, from the first day of this mass murder, most Canadians failed to recognize it as a terrorist activity and failed to respond to the needs of the victims. As a nation we somehow failed to prevent this tragedy. More importantly, we failed also to incorporate this terrorist attack into our history. As a result, we have collectively acted as if terrorism has never happened here, as if we are somehow immune from the current threat of global terrorism. We always have thought of terrorism as occurring somewhere else, but terrorism in Canada has already been a fact of life and the sooner we learn from it, the better.
- With respect to the Terms of Reference, I am personally deeply concerned about our laws in relation to the financing of terrorists, terrorists organizations and the relationship of these organizations to political interests. Moreover, I want to know as a proud Canadian that CSIS and the RCMP are working together. That's what I'd like to know. I'd like to know if that is the case, effectively working together to protect my family, all Canadians and myself.

**Mr. Murphy Subramaniam:**

- I came to Canada in 1969, joined George Brown College to study further in industrial technology for one year. In 1972, I went back home to India. I got married to Lakshmi and a few months later she joined me here in Canada. Our first child was born in 1975. One or two days after the birth of my daughter, she became very ill and passed away at Sick Kids Hospital. Our second child Veena, was born in November 1975.
- Veena enjoyed learning piano and swimming. She had been working on her knitting skills before the trip and there were so many things Veena wanted to do and be. She had such potential. Veena brought home her report card. Her grades were all A's.
- At around 6:00 a.m., a friend of mine called and asked whether I was up or still sleeping. He told me to watch TV as there was some important news coming on. A few seconds later, my daughter's babysitter telephoned and asked whether I watched the news on TV. When friends started coming over, then I turned on the television and saw that they were pulling bodies out of the water. I went upstairs and cried.
- I went to Ireland with my brothers. Canadian officials did not contact us, but I received a



letter of condolence from then Prime Minister Mr. Brian Mulroney. The relatives of the victim's family were given free passage and all of it was arranged by Air India. I flew from Toronto to Heathrow. At Heathrow, Air India set up a room with photographs of victims. I was asked whether I could identify any of the bodies from the photographs displayed in the room. I was so emotional I could not do the identification. There was no assistance provided to us at Heathrow by the Canadian government, no psychologist, no counsellors. We comforted each other.

- When we landed in Cork, the government of Ireland made arrangements in cooperation with Air India staff. The Indian Ambassador was very helpful and supportive. I don't recall there being any Canadian staff on hand.
- On my third day in Cork, we were given a particular time to go to the hospital. At the hospital, one of the staff nurses was assigned to us and she was with us until we departed Cork. I found my wife's body but my daughter's body was never recovered. I took my wife's body in a casket to Bangalore. Air India arranged for us to take an Air Lingus flight to London and from there, by Air India, to Bangalore.
- In 1998, in the name of my wife and my daughter, I established a scholarship award yearly to meritorious students in the final year at an India College where my wife graduated. I also started one at my daughter's public school in Canada.
- My company was very supportive. They gave me six months holiday with pay and again on the first year anniversary I was given three months. My company even collected money for me. I donated it all to Sick Kids Hospital and gave it in the name of my wife. The Canadian government never contacted me to help me. They may have sent a condolence letter but nobody ever came. Bal Gupta organized for the families to meet with a psychiatrist on weekends.
- I would like to know who was responsible for this disaster? How did the government agencies responsible for safety and security of Canadians ignore the threats they knew existed against Air India and allow Flight 182 to leave Canadian soil with so many Canadian lives in danger? Why did the RCMP and CSIS suddenly stop the surveillance? How can we stop criminals from intimidating witnesses who are willing to testify against them? How can we recognize all those associations that are involved in criminal activities from collecting funds for the criminal activities and preventing them from being recognized as charitable organizations for tax purposes?
- This disaster could have been averted. We should have been told that Air India was a target. Had I known, I never would have let my family travel.

**Ms. Esmie Alexander:**

- I was born in Kerala, India, and was married in 1968. I immigrated to Canada with my husband in 1971. I am a Canadian citizen. I have three children; Robbie, the eldest, is 36; Tania is 33; and Jamie is 31. My father and mother were already living in Canada when we came here, so my husband could complete his post-graduate medical degree. My husband

was very well liked and respected. Anyone who came to meet him even once thought of him as a friend. His motivation in coming and training in Canada was to gain skills in the medical profession that he could bring back to India where he could help those who were less fortunate. We had planned to go back to India as soon as the children were old enough to be in Canada on their own. I remember attending at talk about relationships between husbands and wives and realized that my husband had all the qualities of an ideal husband. He was understanding, supportive, loving, and enjoyable to be around and valued my opinion.

- Prior to my husband travelling on Air India, we received news from India that my mother-in-law was ill and we all felt that he should go to India to see her. He was the only child that could make sure all her affairs were in order.
- At about 6:00 a.m., a distant relative of my mother called us. Upon hearing the news, I screamed and put the phone down. In the days afterwards, my father came and dealt with all the paperwork and arrangements. I was not in any state of mind to do anything. I can still remember the look on Rob's face when he found out. I have pictures of Jamie before and after. I could see the changes on their faces.
- In the months after this happened, the government said they would provide us with counselling, but I didn't follow up on this and never ever heard anything from their side. Once we knew there was no support from the government, I relied on my church community for support. I don't remember anyone from Air India contacting us. In a time when we needed the support of this country with deficiencies that they perpetuated, there was no support at all. The government should have helped to make victims' families lives easier. With a bit of support many lives could have been different.
- I hope this public Inquiry can fix some of the deficiencies that caused this tragedy to occur. I hope no one has to go through anything like this ever. I hope the Commissioner will operate openly and make meaningful recommendations to the Prime Minister. I hope something changes in our legal system that cannot convict known terrorists in our country. I hope that support to the families in its different forms will be looked at. We as Canadian deserve it.

**Mme. Monique Montpetit-Castonguay:**

- I am married to Maurice Castonguay, the brother of Rachelle who died in the Air India bombing. At the time of the bombing Rachelle was 32 years old, single with no children.
- For 21 years, the circumstances surrounding the tragedy of Air India Flight 182 have remained enigmatic. It is necessary that changes to the laws and regulations in Canada are brought about in order to prevent a similar disaster from occurring again in Canada.
- In the first days after the explosion, there was not any official government messages addressed to the families that were done in our own Official Language (French). Some of the Castonguay family members do not speak English, especially Rachelle's own mother.

On June 27, 1985, a representative of the RCMP communicated with our family. However, no body from the government helped us.

- In the autumn of 1986, Mr. Salim Jiwa revealed the political content of the bombing plot of Air India Flight 182, to us in a book. It was a terrorist group that was at the origin of this collective assassination. Rachelle had nothing to do with this internal war. We had no way other than the media to keep us informed. It seems that information was provided (to some degree) only to the families of Indian descent involved.
- With respect to the trial, the RCMP and provincial authorities in the province of British Columbia endeavoured to keep families of the victims informed, however, in our country with two Official Languages, all the information and material that was made available to us was made available in English only. Someone from the BC Victim Services contacted Rachelle's father from time to time by phone to discuss, in French, the latest news during the trial preparation and duration of the trial.
- The gesture on the part of the federal government to defray a part of the costs of travel for the 20<sup>th</sup> anniversary of the Air India disaster was highly appreciated. However, when I tried to get more information about the ceremony in Ireland, this was another occasion where the families that were not of Indian descent were excluded from the circle of knowledge about the ceremony events. I was not aware then of the existence of the Air India Victim Families Association either.
- The Air India Inquiry is our last chance to clarify all that was the tragedy in our country's democratic system. Since this collective assassination, the members of our family have passed through a whole a range of feelings relating to mourning, the initial shock, the refusal to believe, anger, and sadness. Acceptance should be the last stage for us. A normal mourning lasts six months to four years. However, for twenty-one years, the course of the criminal investigation, the resumption of communications after years of silence, the law suit, the unbelievable verdict, the meetings, the interviews of the media and the reading of books published on Air India, have brought us back to the beginning of the process of mourning over and over again.
- It is of primary importance that the Air India Inquiry gets to the bottom of things. For example, in 1985, the mandate of the RCMP and CSIS did not envision collaboration between these organizations. However, without collaboration in the future between these two organizations, the planning of other deplorable terrorist actions will occur. This public Inquiry grants an opportunity and possibility for family members of the victims to complete their mourning.

**Mr. Mahesh Chandra Sharma:**

- There were four members of my family on Air India Flight 182. I will be talking about three of them. My wife's name was Uma Sharma. She was a very bright student. At the time of the Air India bombing, my children were 14 and 11. My daughter Sandhiya was

very bright. My other younger daughter always assisted me with my fashion and I still miss her opinion.

- On the morning of June 23<sup>rd</sup>, 1985, I got a phone call from my friend who dropped my family off at the airport. He told me to listen to the radio. Afterwards I went to Cork, Ireland with my brother to identify the bodies. I am happy that my brother was the one who identified the bodies because I wanted to remember them the way I saw them the last time.
- My biggest problem was after I lost my family there was no communication with the government. We had no particular support from the Canadian government to counsel us. With respect to compensation, we were asked to sign on a dotted line to release CP Air, CSIS, RCMP, government of India, government of Canada, and Air Canada. That was not the right thing to do. Our government should have given us some sort of counselling before we did this.
- Terrorism is one thing that you cannot stop. It doesn't matter what you plan they are always a step ahead. We have to make sure that there is some sort of mechanism in place to assist people if something happens again.
- I attended the verdict in the Air India trial in March 2005. The verdict shocked me. After the verdict I was interviewed on television and I believe I was the only person who said we should have at least two or three judges. I know the Lockerbie trial had three judges in that instance.
- I understand there was friction between the RCMP and CSIS. This friction brought nothing except it delayed the investigation and delayed the trial. This should not have happened. A lot of people think had it been an Air Canada plane, it would have been different. I don't believe in that. There was no racism here. The only thing present was that the government of Canada was not competent enough to deal with this problem. It was the first time that such a monstrosity happened and they had no idea what to do. Until then, they did know the friction that existed between CSIS and the RCMP and what was going on. I hope that in the future these two organizations work together so that we can live safely in this world.

**Mr. Rob Alexander:**

- I lost my father, Doctor Anchanatt Mathew Alexander, a family physician, and Chief of Staff at a local hospital. Losing a father at such a young age has meant losing the mentoring and moulding of character and confidence that a father would usually instil in his children. I was only 15, my sister 11 and my brother 10, and my mother 40 years of age when my father died in the Air India bombing. The void that he has left can never be filled.
- My father was not originally supposed to travel on Air India Flight 182. My mother had booked him on an Air France flight. However, a family acquaintance that worked for Air India offered a first class ticket on Air India for the same price as his Air France ticket. We

cancelled the Air France ticket, all along not knowing of any bomb threat against the airline even though certain government agencies may have known of more specific threats.

- After the Air India crash, we did not know whom to call and we were not contacted by any government agency, or representative from Air India. It was almost a day later when we got word that there were no survivors. We found out on the news. No one from the Canadian government or from Air India called us to let us know that.
- In late October 1985, after a few months, we received a call that my father's body had been recovered. This call was from the Foreign Affairs Department. My father's body was the last body to be recovered in the recovery effort in the Atlantic Ocean. Prior to this contact, I don't think there was any other government contact whatsoever with our family or any other family for that matter. In particular, there was no form of support from the government or by Air India in the form of grief counselling or other forms of support that could have been useful.
- I do not like to live in the past but the outstanding questions are too big to leave unanswered for us as victims' families and as the Canadian public. I want to understand what happened in the RCMP/CSIS dealings. I want to know why there was no contact made by the Canadian government when more than 75% of the victims were Canadian taxpayers. Why was the criminal trial in BC handled the way it was? The government obviously has and had the resources to provide support in that tragic situation so why wasn't it offered to us? My feeling is that this wasn't recognized as a Canadian tragedy until very recently and that it did not really matter to them. There has been no accountability in over 21 years; it is time there was some accountability. We have waited too long.

**Ms. Anita Gupta:**

- My only sister Mita was murdered on Air India Flight 182. She was 16 years old. I am providing my statement to the Inquiry because perhaps by telling my story a future victim of a violent and terrible crime will not have to do the same, will not have to wage a fight just to have a long overdue and necessary dialogue about our approach to preventing and prosecuting terrorists acts, surveillance of terrorist organizations, as well as our approach to helping victims of terrorism.
- My parents and I did not find out about the bombings until late in the afternoon on June 23<sup>rd</sup>, 1985. In some ways I remember that day as the last day I was a child but in other ways it feels like part of me has been stuck at 11 years old ever since.
- The truth is that my sister was not unlike the other children that died on Air India Flight 182. She was gloriously normal, but so special to me and to those who knew her because she was ours. The one thing that strikes me most about my sister is what a truly good friend she must have been. The stolen opportunity to become friends with my sister is my continuing loss. The five-year age difference seemed enormous when we were eleven and sixteen, but in a normal lifespan we would have had so much time as we grew up together

celebrating with each other the joys of life, like our weddings, choosing our careers, raising our children, as well as supporting each other through the sadness, such as the death of my parents.

- With respect to the Terms of Reference for this Inquiry, I would like to know how our present system deals with tracking down monies that support the activities of known terrorist organizations in Canada. I would also like to know what happens to the assets of organizations once they are banned as a terrorist group. I also have several questions regarding the current relationship, not just the policies, but also the actual workings between CSIS and the RCMP. I have to wonder for what purpose was CSIS conducting surveillance prior to the bombings? If there was adequate justification to conduct the surveillance, wouldn't it have only been logical to actually understand the language of the information gathered? We are not a country without the resources of speakers of many tongues, and this was true 20 years ago.
- Our strategy for terrorism and acts of mass murder can't be simply that we will try to prevent them. We must be prepared to deal with such things when they happen because they will happen. I am also astounded that there is no assignment or acceptance of responsibility, or accountability, by individuals following what happened in the Air India disaster. I wonder why we do not expect accountability and culpability from members of our investigative and enforcement agencies when things go very wrong? If we do not expect accountability from our agencies, why in the world would we expect better behaviour in the future?
- One of the Terms of Reference refers to the protection of witnesses in cases in which there is serious threat of intimidation and bodily harm. Sadly, if any lesson can be learned from the Air India investigation and trial, perhaps it is how ill equipped we are in dealing with witnesses, identifying them, fostering trust with them, interviewing them, and protecting them.
- I think back to 1985 and I believe that there was one Air India flight a week leaving from Toronto. There were clear threats to Air India's safety expressed to the Canadian government. If there was a clear threat to a specific airline and there was only one flight a week, how hard would it have been to take extra steps?
- Although it is not officially a Term of Reference, one of the issues that keeps coming up in testimony is the need for available and appropriate mental health care for victims of terrorism. I know from speaking with Canadians who have lost their loved ones in 9/11, that need for affordable and lasting care from a therapist trained in grief and trauma remains to date.

**Mr. Krishna Bhat**

- I came to Canada with my wife in 1974. Our son Deepak was born in 1976. In 1983, we moved to Sherwood Park, Alberta. After we came to Alberta, my wife Muktha was able to stay home full time with our son while I worked. This was a very happy time because

when she was working, we both were on shift work and saw very little of one another. We had a happy home. She was active in the community, involved in the church and enjoyed singing. She was a very talented classical singer. She was also good at knitting and making her own dresses. Deepak was a very talented boy and a good piano player. He liked track and field at school.

- Originally, the three of us were supposed to travel together to India on July 6, 1985, but Muktha's niece from New Delhi called and asked her to come early and spend some time with them. As a result, Muktha and Deepak left early on June 23, 1985. I stayed behind and intended to follow them in a couple of weeks.
- I took Deepak and Muktha to the Edmonton International Airport that morning at 8:00 a.m. I left for work around 6:00 p.m. that day. At around 3:00 a.m., I turned the radio on to CBC. I heard the news that an Air India flight had disappeared off the air traffic control screen. You can't believe how I felt.
- After it happened, my friends and neighbours came to be with me. I felt I did not belong to this world or my mind was totally obliterated or a strange feeling of void or helplessness prevailed around me. After the disaster, I went to Ireland with my brother-in-law. When we arrived, there was no Canadian presence in Ireland. The High Commissioner from India was there and he had contact with the family. We felt at home in Ireland. After a few more days, some Canadian officials arrived. I described one of them as having his hands in his pants' pocket all the time. They did not comfort us. Ultimately, I went to Cork. They found my wife but not my son.
- After the disaster, I was not offered any counselling. Instead, I threw myself into my work just to get myself through the day. My co-workers were also very kind during this time and on the anniversary of the disaster.
- I remember now that the Wednesday before they left, I heard a report on CBC News that the ISYF, International Sikh Youth Federation, warned all Sikhs not to travel by Air India. Why weren't we advised not to fly? Why didn't the Canadian authorities take these threats seriously? I do not understand how at the height of Sikh militancy they could have overlooked such comments. Why was the surveillance on militant Sikhs called off at that time? I understand that threats were made at a gathering at Madison Square Gardens that 50,000 people would die. How could they ignore that? What more was required to wake up CSIS and the RCMP? I felt like I was totally in the dark during the investigation. I can't believe that CSIS tapes were mistakenly erased at a time when the entire world was looking at this tragedy. We are not a banana republic. Are we supposed to believe that CSIS was such a Mickey Mouse operation? If we are just supposed to believe that this was a case of incompetence, was someone fired?
- I would like to say that I am a great admirer of Doug Henderson and the way he assisted us, as well as Gary Bass and Maryam Majedi, from Victim Services. Nunziata needs a special mention. These people shared our pain and fought for us. I also want to give thanks to Kim Bolan. She put her life on the line and went to Punjab as an investigative reporter. Such people give us a lot of hope. She was very brave not to let go. I also think Bob Rae is

a very genuine person.

- I recall at some point after the disaster there was an attempt at a civil claim. It felt to me the conclusion was mainly driven by the lawyers for Air India, not by our lawyer. Perhaps the settlement would have been a whole lot different had this tragedy happened to mainstream Canadians. The settlement was peanuts.
- Right from the beginning, I felt that the public, particularly our leaders, assumed it to be purely an East Indian issue, a bunch of East Indians travelling to India by Air India plane that was blown apart in open skies by Indian thugs, so why bother? It was not considered to be a Canadian issue at all. Were these not talented children, including Deepak...the future of Canada?
- I hope the Inquiry can bring some answers. This tragedy must not be allowed to repeat. I do not want Canada to be known as a safe haven for terrorists.

**Mr. Promode Sabharwal:**

- My daughter travelled from India to Canada for holidays in 1985. She spent three months in Montreal before returning to India on the 23<sup>rd</sup> of June. She was going home to my wife and my son in India. She was 12 years old when she died on Air India Flight 182. My daughter had ambitions to become a leader in the field of teaching; she was very outgoing and very bright.
- At the time of the tragedy I was living in London but after the tragedy I decided to move to Montreal and I had my family come after two years to stay. It was a fresh start. Only in about the last three or four years did I have any contact with government officials.
- I support this Commission. I don't think the Commission can recommend compensation but I think it should be done. For those who originally received compensation, it was not enough.

**Ms. Chandra Vaidyanathan:**

- I lost my kid brother who was 13 years younger than me and the darling of our family of three children. Even now when I think about the Air India disaster, I sometimes end up with nightmares and sleepless nights, thus affecting my routine life and straining my relationship with others on occasion. My brother Krishan had a good sense of humour, loved animals, and was very loyal to his friends.
- My mother, more than anyone in the family, has suffered the most with the loss of her sweet boy. After she heard the news of this tragedy, she went into dark depths of despair, never to recover. While the Canadian officials in Canada were remiss in providing counselling services to the victims' family, the Irish officials and the Irish people in the Town of Cork were extraordinarily kind and compassionate throughout the entire ordeal to my living brother and mother.



- With respect to the Terms of Reference for this Inquiry, I feel that the knowledge of security threats against Air India in intelligence circles should have resulted in fore warning. I hope that a warning to the Canadian population will take place in the future as a code red or orange, as is issued in the US from time to time. Moreover, what evidence was destroyed either intentionally or unintentionally by certain institutions? If there were failures or incompetence in the government, will this Inquiry be courageous enough to highlight these, so all Canadians can take note and react? As a follow up of this Inquiry, would the Commission ensure that all recommended changes are made and reported to Canadians on an ongoing basis and ensure the recommendations are followed through?

**Ms. Perviz Madon:**

- At the time of the disaster, I was in India with my children. My husband could not travel with me as he was a professor at Marine College. I am a Canadian citizen but I travelled to India to visit friends and family.
- My husband was an excellent instructor. He often assisted students with their studies outside of the class and at no charge. As a husband and father he was always a very proud man. He was proud not only of his parents and his brother, but he was extremely proud of his children and me, his wife. He was a devoted and loving father. He was a good provider.
- After I heard about the tragedy, I flew to London, England. Those were hard days. I was not with my children. Upon arriving in London, I realized that I had left my children so far away and as such, I constantly kept in touch with my brother-in-law who had a phone, so that I could talk to them. I think they must have felt I abandoned them. Upon the Irish authorities calling us and letting us know it was okay for families to travel to Ireland, we decided to leave for Ireland. I was one of the so-called lucky ones to have found my husband's body. We identified his body based on the ring that was still on his finger. It was our wedding band and it had my name inscribed on the inside portion of the ring.
- I do not recall receiving any assistance from any Canadian officials while in Ireland. I think the only people that really helped us at that time was Air India personnel.
- Upon my return to Canada I was a widow with two young children and no body from the Canadian government came to ask if they could be of assistance to me. I think the only time somebody from the government contacted us was the RCMP when they called me once or twice to find out whether my husband wasn't the one carrying the bomb in the suitcase.
- I think that when it is a matter of putting people's lives in harms way, it is the duty to warn the public who can then decide whether they want to fly on that particular airline or not. Would you put your own wife and your own child and your own father or your own mother on that flight if you knew those flights were threatened?

- If the families hadn't kept this Air India issue in the public attention, I don't think I would have had an opportunity to share my story with Canadians. I strongly believe that whatever we got in the last 21 years has been our hard work, our perseverance, our fight, and I don't see why we had to do that. Just the other day there was highway that collapsed in Montreal. Automatically they are talking of an Inquiry. Did anybody have to start lobbying and say, "Hey, we need an Inquiry for this"?
- I love this country. This is my home. I am, of course, a proud Indian because everybody knows I am Indian. I look Indian but I am also a very proud Canadian. I raised two Canadians. They were born here. My husband wished to emigrate because he believed in this country. I did not think my country would let me down so badly. I feel that maybe, as Mr. Rae said, that if the victims were Anglo-Saxon passengers on an Air Canada flight that maybe the outcome would have been different.
- With respect to whether a trial of this magnitude should be left in the hands of a single judge, we were actually hoping for a jury to sit on the criminal trial, but it is the prerogative of the defendants to choose whether they want jury or judge. So they went with the judge obviously, and I think, in hindsight from now, for a trial of this magnitude we should have a panel of at least three judges, because it all came down to one judge's interpretation of the law.
- With respect to the tapes that were erased, I honestly believe that had these tapes been properly used, legally transcribed, documented and not erased, they would have been a great tool for the prosecuting team.

**Ms. Natasha Sam Madon:**

- I have a Masters in Criminology from the University of Toronto. My life has been consumed by the Air India tragedy and it was this tragedy that pushed me in the direction of my current career. I lost my father, Sam Madon, on Air India Flight 182.
- Unlike many Canadians, my 9/11 happened sixteen years prior, on June 23<sup>rd</sup>, 1985. While only four-and-a-half years old at the time, I too can recall the precise moment I was informed of the tragedy. I will likely never forget the moment while sitting in the back of a taxi cab in Bombay, when my then eight-year-old brother had to explain to me that our father had been killed. Losing my father at the age of four has left a void in my life that will undoubtedly never be filled. I will never have the comfort of having more than a handful of memories of him to turn to, as I was robbed of my father at such a young age. What has prolonged my pain is the fact that at the age of twenty five I feel as though I have spent a vast majority of my life waiting for some explanation as to how and why such an act of terror occurred.
- After twenty-one years, it is not asking too much to be able to obtain some of the answers to my burning questions that have haunted me for the greater part of my life, questions such as: whether this tragedy could have been avoided with the greater cooperation of RCMP and CSIS; was protocol simply being followed throughout the criminal

investigation, or was it grave negligence that plagued this investigation from the very beginning; while Canadian policies and legislation were created soon after 9/11, what have Canadian security agencies learned from Air India Flight 182; is the Canadian criminal justice system adequately set up to deal with cases of this magnitude; are there alternative ways available, perhaps a panel of judges rather than one, that would improve the manner in which the justice system responds to these types of crimes; whether the existing legal and law enforcement mechanisms address the real issues of witness intimidation and the impact it has on legal outcomes; and finally, does the Canadian government truly have a handle on emerging terrorist groups and their ability to legally raise funds under the guise of their non-profit status?

- While this Inquiry has been called through duress of what can only be described as a great Canadian tragedy, I believe it has the potential to do a great deal for the future of all Canadians.

**Mr. Eric Beaudesne:**

- I lost my father, Gaston Beaudesne in the Air India tragedy. My father was a real bon vivant. He just loved life to the fullest. My dad was a pharmacist and his actual job was to replace other pharmacists when they went on vacation. So we would travel around Ontario and Quebec and it was something he enjoyed doing. He also travelled extensively throughout the world and enjoyed this a lot. My father and mother were estranged when I was young and we were reconnecting as father and son prior to the events in 1985. In the years preceding his death we actually saw quite a bit more of each other and I think we were really starting to develop a good strong relationship.
- I was on the bus at the time listening to my Walkman when I heard about the explosion and the crash of Air India Flight 182. However, I didn't connect the dots. I had no idea what airline he was taking. It was not until a couple of days later when my Mom and my stepfather and my sister all got together and they told me that they felt he was on the plane. When we confirmed that my father was on Air India Flight 182 and had perished in the disaster, we arranged through Air India for my sister to travel to Ireland.
- I don't think the Canadian government felt any responsibility for helping us in any way. We received no contact at all. There was nobody to help us to offer any sort of support, either emotional or logistical. There was nobody there to call us to offer any kind of counselling at all. I felt as if this was an invisible tragedy because it happened on another airline that was not a Canadian airline and it happened to people, a majority of whom were from one particular part of Canadian culture.
- I think that what happened to us after the disaster was indicative of a complete departure from the government of any responsibility or acknowledgement of a part in this tragedy. I guess the thing that shakes me the most is that there was no Canadian ownership of this. It made me feel a certain sense of shame in my country because I think in a certain sense nobody was embracing this as a Canadian tragedy. They felt that these people who died on the flight weren't Canadians.

- I truly believe that the government still owes us, family members, a deep apology. The government has a definite lack of accountability. It hasn't taken responsibility and it is indicative of the invisibility of this tragedy. I think it is ironic to think that a lot of things that have been done recently had nothing to do with Air India, in terms of our security. It all came from 9/11. All the new legislation that came up, all the security measures, all these things came from an American tragedy, but this Canadian tragedy was virtually swept under the carpet. I think that the Canadian government should be held to account for its inability to protect us and its inability to prevent this tragedy. It's inability to understand what had happened. It failed us utterly and has left a bad taste in my mouth for more than twenty-one years.
- I am hoping that the Commission can review the idea of a tribunal system when it comes to crimes of such a horrendous scope as terrorism and mass murder. In such situations, it may not be feasible for a jury to sit the amount of time it would take to try a case of such magnitude. Alternatively, however, I find it unreasonable to place the responsibility of determining guilt or innocence on the shoulders of one man, in such a circumstance as was done to Justice Josephson. However, I cannot underscore the personal importance to me of having the government stand up and take responsibility for the failures they have made from the beginning to the end, and to apologize for them. For me, personally, that would bring a great deal of comfort.

**Dr. and Mrs. Ramji Khandelwal:**

- We lost both of our daughters on Air India Flight 182. My oldest daughter, Chandra and my younger daughter, Manju. At the time of the disaster, Chandra was twenty-one and Manju was nineteen.
- In 1980, I became a Canadian citizen and all three of my children became Canadian citizens in 1983 and my wife became a Canadian citizen in the year 2000.
- In June 1985, my daughters were travelling on Air India Flight 182 to attend their uncle's wedding on June 27<sup>th</sup>. The tragedy that was Air India Flight 182 could have been worst for my family if we had gone through with our original plan. Originally, except me, all four of them were booked on that flight. My wife and all three children. My wife decided to go to India two weeks before so that she could spend more time with the family and our son, at the last minute, decided it was more important to attend a computer club at the University of Calgary.
- My daughter Chandra, at the time of the disaster, had passed second year pharmacy at the University of Saskatchewan and was promoted to third year and she was to start third year that September. She was also a great musician. She had a poem on her desk and she believed it and practiced it and it simply said, "Give the world the best you have and the best will come back to you." I think that poem really says a lot about her.

- My daughter Manju completed her first year of medicine and was promoted to second year to start in September at the time of the Air India disaster. She was an academically talented person. She was an avid reader and had a photographic memory. Like her sister, she also liked music. She used to play the clarinet. We are really proud of both of these girls. In the aftermath of the tragedy, my wife and I became a nervous wreck when we started to get nightmares just remembering that we will never see our daughters again in our lives. Our son Deepak has lost his youth and he started to act as a mature person to deal with the situation. The stress put lots of strain on our family.
- In the ensuing years after the Air India tragedy, the struggle to get questions answered was an uphill battle. It was very frustrating. We also started to think that nobody wanted to do anything because we are Canadians of Indian origin. Nobody really ever contacted us as to whether we needed anything or any help.
- With respect to the Terms of Reference, I hope that some recommendations will come out of this Inquiry that will shed light on the issue of judge versus jury with respect to cases involving terrorism. In my personal opinion, a tribunal of three judges would be better than just one judge in these complicated cases. Our last hope is this Inquiry, and we hope this Inquiry will answer our questions. I think we also have to do something so that these associations which get a charitable number and then are really terrorist-based, do not get money. We have to make sure that Canada is not a haven for terrorists or terrorism.
- It is our hope that such a tragedy never happens again and that all efforts are made to prevent any such tragedy in the future. This can only be done by knowing what went wrong, who is responsible for this bombing, and how we can fix it so that such things never are repeated in the future again. We are putting our fullest trust in you Mr. Commissioner, and we hope that you will not let us down.

**Ms. Renee Saklikar:**

- I lost my aunt, Dr. Zebunnisha Jethwa and her husband, my uncle, Dr. Umar Jethwa on Air India Flight 182. My mother who lives in New Westminster, British Columbia, was her youngest sister and I am testifying today in order to read a statement by her.
- The Air India bombing destroyed something in my mother who has never been quite the same since. I often think of my cousin, Irfan, being a world away waiting for his parents return and then receiving news that his parents had died in the bombing. He had to grow up alone as he was ten or maybe eleven years old at the time.
- My aunt, Dr. Zebunnisha Jethwa, was a particular boon for the Muslim women of the area in India because Muslim women generally did not want to see male doctors for obstetrics. In 1985, Umar and Zebunnisha attended a medical conference in Florida. Irfan remained in India. My mother convinced them to come pay a visit to Canada and they agreed and spent three weeks in Canada, about ten days in Vancouver with my Mom and ten days in Toronto with my other uncle. When my Mom heard the news of the Air India disaster she was inconsolable. She was in no shape to go to Ireland to identify the bodies. In Ireland,

they found Zebunnisha's body. They did not find Umar's body and they returned Zebunnisha's body to India. On hearing that her body was returning to the City of Ankleshwar in India, my aunt's hometown, the town closed. Forty thousand people gathered at the City's railway station awaiting the arrival of her body. My aunt was a loss to her son and her entire family. She was also a loss to a generation of Indian women who could not afford medical services, and relied on her for free or less expensive medical services.

- I think the whole notion of what it means to be Canadian for me is quite idealized and despite my education as a lawyer, I found the aftermath of living with the trial and everything about the investigation leading up to the trial, forced me to question my own belief in Canada as a just and inclusive society. I think for a long time it did not seem to matter to other Canadians, to friends and family, and to other good people. There never really was a feeling of how this disaster was our 9/11.
- With respect to the policy of multiculturalism in Canada, in 1985 and throughout the following decade continuing to the present day, there existed and exists, what I think of as an ethnocentric attitude in Canada, that may have contributed to Canadian government officials not realizing that they had to recruit and hire into the federal Public Service a diverse workforce of men and women, with sufficient language skills as well as historical and cultural education, to be able to understand the subjects of their surveillance. There may have been a lack of sophistication in the approach Canada took to handling sub-cultures which significantly hampered the ability of government agencies to work with the Crown in successfully preparing a case against the accused. I think a lack of a genuine multicultural perspective and the almost surrendering to superficial and exaggerated differences regarding dress and food and dance, might cause a blindness to warning signs that extremists points of view are being allowed to flourish. Official multiculturalism might allow for unscrupulous and criminal elements to take advantage of Canada.
- If we are serious about being a multicultural society, we might have to move beyond food and dance recognition and actually have a discussion about core values like the rule of law. Canada might be a bit soft and might need to educate all citizens on the rule of law, so that it is not an abstract idea and that if you disagree with someone you can't just blow them up, and if you do blow them up, you will be punished. There may be a tendency in this country to allow too much of a "ghettoization" of communities in Canada which directly hampered the investigation of Air India, specifically this idea that if people don't genuinely believe that you cannot threaten or kill or you will be punished, then the intimidation and threatening witnesses becomes much more pervasive.
- Thank you, Mr. Commissioner, for the opportunity to speak and for listening to our questions. I hope our personal statements and comments will be of some use to you and that you will be able to bring some good out of so much pain.

**Ms. Smita Bailey:**

- I lost my grandmother, Shakuntala Sharma. I also lost my cousins, Sandhya Sharma and

Swati Sharma. Sandhya was 14 years old and Swati was 11 at the time of the Air India Flight 182 disaster. I was very close in particular with my cousin Sandhya. It wasn't just like having a cousin; she was like my sister and we spent summers together during summer holidays and we had a very, very close bond. I was also very close to my aunt, Dr. Uma Sharma.

- Before the Air India Flight 182 disaster, I was an honour student. My elder cousin, Sandhya, was very modest but also a very excellent student, achieving marks in the 90-95 percent range.
- In 1985, my grandmother came to visit us in Canada. She stayed with me for the spring of 1985 at our house. I shared my room with her. She decided that she would fly from Edmonton to where we were living in Montreal to spend a bit more time with my uncle and aunt and cousins in Montreal, and then fly back to India with my aunt and two cousins. I was supposed to fly back with them to India as well. However, I changed my mind.
- After the tragedy, the biggest thing I lost was my hope. I didn't know how to grieve. I didn't know how to express myself. I found I lost my concentration and it was such a struggle. I did not receive any support, in the form of guidance or counselling from the Canadian government.
- When I was younger I used to be quite naïve and innocent and I remember I always the best of people. I didn't know that people could hate so much that they could kill innocent strangers on such a mass scale. But what was worse is afterwards people didn't care and the government didn't seem to care. I thought it was because we were a bunch of Indians; we deserved to die.
- After working on the victims' families memory book, I felt like I was breaking down so I sought help from a psychologist who helped me go through the grieving process, which I hadn't gone through before. She said that I was suffering from post-traumatic stress. My mom internalized her grief. She tried just to be strong and carry through. She can't talk about my grandmother and her daughter without crying. It was such a huge impact on our family.
- With respect to the Swiss Air tragedy, I paid attention to it because after the Air India Flight 182 tragedy, I became more sensitized to anything involving air accidents. People seemed to pay attention to it and have compassion towards it, and I remember them saying that counselling was provided after. More recently, I was watching the news again and there was a collapse of the overpass outside of Montreal, and the media was interviewing a representative of the municipal government who reported that the flags of Quebec were at half-mast because they had lost 5 of their citizens. The fact that they just said, "These were five of our citizens", was such a beautiful statement because it embraced everybody as being Canadian and they cared about them as they should.
- In terms of the criminal investigation and trial process, I had no idea that anybody was doing anything with respect to a criminal investigation. I grew up thinking that nobody –

nobody cared about this. Nobody mentioned it. It wasn't important and 15 years later in 2000, we were contacted by two very kind people who approached us, Doug Henderson and Kate Galiford of the RCMP and they said that they wanted to notify the families of the victims and to let them know that an investigation had been carried on all those years and it was important for them to inform us. They said they were sorry and I was just quite taken by the fact that somebody said they were sorry for what we had gone through and that we didn't know anything was going on. Our family did not know of an Eastern Families Association, nor did we know about a lawsuit or class action proceeding. The only contact we had, was when Doug Henderson and Kate Galiford talked to us.

- With respect to attending the trial, my observations were that Victim Services was very supportive. They would come and sit by us and hold our hand and say to stay strong and don't let the accused bother us. With respect to aviation security, it would be nice to have a little bit more consistency. Sometimes they confiscate certain items, and sometimes they don't, there is no consistency between airports. In addition to that, I also wanted to express that we seem to be very reactive here. We aren't proactive. Despite the fact that we have information and we know that we can prevent things, we don't seem to take action unless other countries seem to do it, namely the US. Years ago, we knew that planes could be used as weapons. We didn't do anything about that. There was nothing done. And now that 9-11 has happened, now we're looking into being more realistic and saying that these issues can occur.
- I really hope that nobody else has to go through this. It has been painful to have to suffer for 20 years and I wish that things could have changed the past but if something happens it should be taken care of quickly and efficiently and I don't think people should be made to feel like they are not part of a country.

**Ms. Mukta Laforte:**

- The crash of Air India Flight 182 was the single-most driving factor in changing my outlook on life and dreams, my emotions and health. I was 19 years old at the time of the explosion on my way to Vancouver after one week of camping in our beautiful Rocky Mountains. My friend and I were driving and listening to tunes on the radio when the news came on.
- I turned around and after driving 17 hours straight through the night, fog and rain, I arrived at home at 5:00 a.m., just when my mother was going out the door to catch a flight. She had just lost her mother, sister and two nieces. Upon arriving in Ireland, she was greeted by the generosity and caring of the Irish. The newcomers identified their kin and in doing so were forced to do something that should never have happened. The Irish were right there. Where was the Canadian contingent? I lost my best friend, my grandmother and also my aunt and two first cousins who had been on the plane.
- My words cannot describe how many times optimism was undermined, not only in the last year but in this last week. How did this affect me? My cousins were smart at their studies, easily bilingual, excellent swimmers, well liked and respected and missed by their friends. The optimism of their future had also died. If optimism is crushed in so many respects



what happens, man ceases to live and instead just exists. That is mainly what I did for the next 19 years.

- In June of 2005, I was informed of the memorial in Ireland. When I heard about this, I was amazed that the Irish people were taking such interest, but on visiting Ireland, I came to realize that this had impacted their lives almost as much as our own.
- At the Air India memorial, I heard Paul Martin speak in such a concerned way. As Prime Minister at the time, I was surprised since the government had shown minimal to no acknowledgement that this was even a tragedy involving their citizens. My jaw dropped I am sure when Mr. Martin said that he is proclaiming June 23<sup>rd</sup> to be a National Memorial Day, not just for the victims of this tragedy but for the victims of terrorism everywhere. The flags across Canada would be half-mast on every June 23<sup>rd</sup>. I thought, finally, the Canadian government is taking steps to claim ownership of their own responsibilities and actions.
- It is time to make changes so that the disheartened people like myself, Canadian citizens who elect their government, do not have to be that way but instead can start to believe again in a country that I know somewhere has people that can get together and identify the different components of the tragedy, the events leading up to it and after it, and ensure preventative measures are put in place for any such future occurrences of terrorism and also how to deal with the survivors of terrorism and their own stresses. Children sing the National Anthem each day at school. Shouldn't the adults heed the words now? "I stand on guard for thee". It also refers to protecting the persons living in this country.

**Ms. Usha Sharma:**

- My husband emigrated from India to live in Canada and after two years, I joined my husband in 1972 in Canada. My husband became a Canadian citizen in 1976 and I became a Canadian citizen in 1983. In 1985 my mother came to visit me in Canada.
- My relationship with my family changed after the Air India disaster. We were very close. However, after this event, everyone thought that I was the person to be blamed for killing one of my sisters and my mother because I invited her to come to visit me in Canada. After the disaster I left for Ireland the next day and identified the body of my mother. I still have pictures of her in my mind from the pictures that were posted on the walls in the hospital in Cork, Ireland. Afterwards, I went to India and did all the burial rituals.
- With respect to the Terms of Reference, when Air India was getting threats regarding their flights, why was Air India Flight 182 allowed to fly? Before machines were invented, people checked luggage manually. Because the X-ray machine had failed, was it okay to send the luggage without checking it thoroughly? When baggage without a passenger was booked on the flight connecting to Air India Flight 182, why was this luggage allowed to travel without a passenger? I did not, nor did my family, get any emotional support, nor financial support, nor any kind of counselling. Who is going to be blamed? No one, because no one did anything. If people died, so what? Minorities always suffer.

- Since the Air India disaster, my family is not the same. My sisters are not the same. The closeness is gone forever. I hope something constructive will come out of this public Inquiry.

**Ms. Shridhar Sharma:**

- The Air India bombing of Flight 182 killed four family members. Shakuntala, Uma, Sandhya and Swati are four members of our family who were aboard Air India Flight 182 leaving from Montreal to Delhi in India. This victim family to date got no support, either emotional or mental, or compensation from the government. No guidance, direction or options in seeking help of any sort, including financial. All we got is consistency in isolation and depression.
- Maybe this current Inquiry will end up laying the future course of action. The then Prime Minister of Canada washed his hands by sending condolences to the Indian Prime Minister over the Indian Airline disaster. There's no trauma counselling or post-traumatic counselling. There was no attempt to compensate the terrorist victims, at least not us.

**Ms. Donna Ramah Paul:**

- I am testifying here today before the Inquiry not to ask for sympathy from Canadians. I don't need pity. I don't need consideration. I don't need mercy. I want justice from the Canadian government, CSIS and the RCMP.
- I have been in Canada for thirty-six years. I didn't run away from my country. I came to this country as an educated person. I didn't come here as a refugee. I didn't come here asking for money. I came here to contribute what skills I have got. I work hard and pay taxes. After the Air India disaster, I wanted a little bit of justice and a little bit of moral support when I needed it from the government but they were not there for me. I lost my family and my children and the government was not there for me. The Prime Minister of Canada called the Prime Minister of India offering condolence and sympathy after the Air India disaster. Why was the Prime Minister of Canada calling to offer condolences to the Prime Minister of India when I was not given anything? Where was Canada in this disaster?

**Mr. Ramachandran Gopalan:**

- We lost my younger brother, Mr. Krishnakumar Gopalan. We call him Kishen. He was 10 years younger than me and was only 23 years old when he departed. I have come from India to share with you the thoughts of my mother primarily.
- Krishnakumar was a landed immigrant in Canada and he got his degree in Mechanical Engineering from Carleton University, here in Ottawa. It's sad that he graduated only a couple of days before the tragedy. He did not even live to see his own photograph of his graduation. He also excelled in his sports. He was the team captain of his college team.

After graduation, he was hired by the aerospace firm Pratt and Whitney in Toronto. He wanted to travel to India before starting this job in order to get his mother's blessing and bring her to Canada. He promised her that once he got his job, he would set up a house for her and provide her all the opportunities to go ahead and get back into her routine with respect to music, which she was hoping that she would get a chance to revive in this country, but the whole thing went to waste after the Air India tragedy.

- Once we reached Ireland, like the previous speakers noted, the Irish authorities were really helpful. They took care of us very well and went beyond what was necessary to make sure we were happy and to see that our problems were being addressed properly. I do not have any words to describe their generosity, their kindness, especially the nurse who took care of us and even when I went for the 20<sup>th</sup> anniversary memorial, she could identify us. Even after retirement she was there to participate in the memorial service and recollected all those incidents that took place when we were there to identify the body. I also think I will fail my duty if I don't mention the Irish communities' thoughtful action of putting up an Air India memorial. The Ahakishta community, the place where the memorial has been put up, I believe every year the children from the school go and play music at the very same time the accident was supposed to have happened, indicated by the sundial there. In particular, one gentleman by the name of Mr. David Twomey, helped us a lot. He, by his actions in Ireland, became our family friend and I believe he visits the memorial every year. We as a family are deeply thankful to him and we keep exchanging mail even today.
- As a result of the tragedy, my mother withdrew from all her activities, withdrew herself into a shell. She had formed a group in Canada and was planning to expand this when she came with Kishen. However, after the tragedy, life was not one of heights of hope but depths of despair for her.
- We do many things to remember Kishen. We arrange for feeding at an orphanage every year, all these 21 years, on the anniversary of his death. We also donate money to a local Lions Hospital, which was built when my parents were members of the Lions Club Hospital and they were on the committee, which built that hospital. So we conduct free eye surgery for a deserving patient every year on that date. In Canada, we created a longstanding scholarship for Carleton University Mechanical Engineering students. In India, we also created a scholarship in the school where he was studying. Because it is electrical and computer skills, we instituted a scholarship award in his memory to the top ranking computer science student from that school.
- Canada's failure to solve the puzzle of the Air India tragedy, whatever be the reason, be it lethargy, incompetence and carelessness in the investigation process, long drawn out legal system, botched up evidence gathering, lack of political will to get to the bottom of it, has allowed the people who carried out the plan so successfully to escape the consequences of their actions. This will remain a nasty chapter in the history books of Canada and will continue to bring immense grief to thousands of people who are directly and indirectly affected by this senseless tragedy.
- Despite the status of Canada as an advanced industrial country with its technical

superiority, space technology, and vast amount of resources, one cannot fathom how the criminals have still not been identified and prosecuted successfully. I feel this Commission should undertake in-depth study and review the laws and regulations of governance with respect to security and immigration. Why did CSIS and the RCMP fail in their duty to forewarn Air India, government and the airport staff about the threat the plane carried in spite of having evidence with them? Why was some CSIS evidence destroyed either intentionally or unintentionally? Whatever be the reason my request to this Commission is to evaluate all the issues carefully and bring out all the facts even if they are not complimentary to the Canadian government and its interests. Why is it not possible for the Canadian justice system to handle a sensitive case in a totally different manner, like it is being done in India, where usually such sensitive cases are heard by more than one judge, maybe a bench consisting of three judges or five judges?

- I am confident that this Commission will attempt to unravel the circumstances surrounding the tragedy and will be quite thorough and free from any political influence, and the new revelations will be pointed and progressive so that future generations do not suffer such incalculable grief.

**Mr. Mohammad Irfan Umar Jethwa:**

- At the age of 12, I lost my parents in the Air India Flight 182 bombing tragedy. Presently I am 33 years old and still wondering what went wrong on the day of the tragedy. Both of my parents were doctors and they graduated from colleges from the same state of Gujarat. I still remember they used to tell me that they wanted to serve mankind and money would come naturally. Serving mankind was better than anything else they taught me. They used to treat poor and needy people free of charge and even paid for their medicines. Both of them were working very hard day and night and had very strenuous professional lives for many years. They decided to go on a vacation. They visited Europe first, the United States and then Canada.
- On June 23, 1985, at approximately 7:00 a.m., I got up from sleep. I was at my aunt's house. My cousin tuned in the local radio station. All of us were stunned to hear that Air India Flight 182 was missing from the radar screen. This event changed the course of my life. A 12-year old boy, darling of the house, so pampered was suddenly turned into an orphan with very few good and honest relatives around. It is very hard for me to explain how my relatives treated me through all these years. Most of them did everything for their own good. I grew up learning how mean this world was. None of the governments of Canada or India ever cared to ask what was the only son of Dr. and Mrs. Jethwa doing?
- This public Inquiry is like the silver lining outside a dark cloud. I fully agree with the issues mentioned in the Terms of Reference of this Inquiry. It is my request to you, Mr. Commissioner, to treat all victims' kin the same from now on. Those who were killed were humans and it should not matter if they were Canadians or non-Canadians. Humans are humans. All humans should benefit from the outcome of this Inquiry.

**Mr. Mandip Singh Grewal:**

- When I was 12 years old, I lost my beloved father, Daljit Singh Grewal, to the Air India tragedy. My father was born on January 3, 1943, in the village of Kila Raipur in India. In 1969 he emigrated to Canada and shortly after he married my mother, Jagit Kaur. My father was a compassionate and loving man who believed in truth, loyalty and true friendship. He had the gift of giving without the expectation of receiving anything in return. He was dedicated to his family, friends and work. My father was very proud of us.
- My father was travelling to India to visit his ailing mother. On the morning of June 24, I was at my uncle's house and was awoken by he telephone ringing non-stop. I saw my uncle frantically looking through his papers to locate the travel agency's telephone number. I remember all my family and my father's friends rushing through the front door. My father's body was never found. The sudden loss of my father was devastating. My best friend was taken from me in a heartbeat and my whole world was shattered. I was forced to grow up fast and take on many more responsibilities. We will never have the opportunity to celebrate any of life's milestones or daily joys of my father. It saddens me that his grandchildren will never have the opportunity to experience his love.
- I am disappointed at how the investigation was handled prior to and after the bombing. It saddens me that there was no support or guidance from the Canadian government for victims' families. Many of the deceased were Canadian citizens whose families were suffering without any support or guidance from the government.
- I request that the following questions be addressed in the next phase of the Inquiry: What was the motivation behind why CSIS erased the tapes? Why did CSIS not have enough Punjabi-speaking translators so that they could interpret the tapes effectively and in a timely manner? Why did the RCMP and CSIS agents not take any form of action when they heard the test bomb in Duncan? I understand that two days prior to the bombings, CSIS surveillance of Parmar and his associates was abandoned. I would like an explanation as to why the surveillance was abandoned and upon what grounds they took this action? Who authorized this abandonment and what authority did they have to do so?
- My wife and I visited Ireland last year for the 20<sup>th</sup> anniversary and we felt an overwhelming sense of warmth, comfort, longing and respect that we will never forget. The way in which we were treated and acknowledged compels us to return and visit Ireland again and again.

**Mr. Haranhalli Radhakrishna:**

- I was born in India in 1938 and came to Canada in 1964 to do my doctorate work in engineering at the University of Waterloo. I became a landed immigrant in 1968 and a Canadian citizen in 1973. I started a family in Canada with my wife, Nagasundara, and two lovely children.
- In 1985, my wife was 37 years old when the accident took place. She was very social and a very friendly person. She helped with many social activities, especially in the school

activities of our children, and the Girl Guides. My daughter who was thirteen in 1985, had a particular interest in humanitarian issues. She always talked about working with people in distress and she had some kind of a spiritual insight and she was a rare child indeed. My son who was eight in 1985 was bright and active. He was a very friendly person and had no inhibitions. He would have grown up to be a fine young man and successful in any career of his choice.

- Both my children really wanted to go to India to visit their cousins, nephews and nieces. Since their decision to go had been made literally in the last minute, I was not able to plan around my work so I planned to join my family a month later.
- Losing my wife and two children completely changed my life forever. I had no contact from any of the Canadian officials at any stage. Air India was the only primary source of information. About four to five days after the crash, we left Cork, Ireland. The tickets were arranged and paid for by Air India. In Cork, I identified the bodies of my wife and son but they could not find my daughter's body. She is still probably in the bottom of the ocean. We took the bodies to India. Air India and the Irish hospital made all the arrangements for shipping the bodies. If it had not been for the support of my friends' things would have been even worse. We had no social support of any kind from any level of the government. It's only when the families got together that we were there for each other.
- In spite of the fact that this was the largest mass murder in recent Canadian history, there were no victims services offered to us. We did not receive any type of counselling to cope with this immense tragedy in our lives. In my case, I did not even receive any assistance from the government in my effort to bring one or two of my nearest family members from India to Canada to help me in rebuilding my family. The victims of the Air India tragedy struggled to convince politicians that this was a Canadian tragedy; that this was Canada's burden.
- What do I expect from this Inquiry? We have endured unthinkable loss. Our pain has been aggravated by the burden of struggling to make the government take the necessary action from the day of this tragedy in June 1985. We want answers to many unanswered questions left behind by this colossal human loss. Now that it has reached the stage of a public Inquiry, we hope that the Inquiry will get to the bottom of how things were handled or mishandled by the various agencies responsible, how they failed, first in averting the tragedy then later in bringing the terrorists to justice. I would strongly urge this Commission to examine and document all the socio-political factors, besides the technical aspects contributing to such negligence of failure. My concern today is that Canada has many little groups whose motives and activities may be harmful to Canadians.
- I sincerely hope that this Inquiry is not going to be a mere exercise in appeasing the victims' families but will attempt to address the real issues and offer many solutions. Let this Inquiry be a wake-up call, not a whitewash.

**Mr. Rattan Singh Kalsi:**

- I lost my beloved daughter, Indira Kalsi, who was twenty-one years old. Parents should die in their old age in front of their children, not the other way around.
- My daughter used to tell me, “Dad, would you show us your roots? We’d like to see the village where you were born. We’d like to travel with you.” I decided to travel to India two weeks ahead because my children who grew up in Canada were unfamiliar with India and I wanted to check their accommodations. Upon learning of the airplane bombing, I travelled to Ireland to try to identify a body but was unable to locate Indira’s body. The Irish people were very nice and good to us.
- With respect to the Terms of Reference, I ask you Mr. Commissioner to make Canada a safer place by stopping people from funnelling money overseas to buy bombs to kill innocent people. That must be stopped. I also ask that if it is possible, that you Mr. Commissioner, request that the Canadian government help the victims of the Air India tragedy to buy the house that is in front of the memorial in Ireland, so that when we go over there we can rest there. I always wanted to buy that house but I don’t have that kind of money.

**Ms. Ann Venketeswaran:**

- Both Canada and I lost the most caring and wonderful man I have known to the Air India Flight 182 bombing. T.K. Venketeswaran was a true Christian Canadian man who gave so much of himself to better our Canadian society. On January 29, 1966, we were married in the Salvation Army. We were a happy couple. We shared ourselves with our community. We often billeted visiting young people from other churches. On June 3, 1970, Esther was born. On August 11, 1971, our son David was born. After the Air India disaster, my children thought that I was to blame for encouraging their father to go, that I made him lose his life. Through tears they said that I had sent him to his death.
- I found out about the bombing while I was working a night shift. Since I was in no shape to travel to Cork, Ireland, my daughter, Esther, who was fifteen years old at the time of the disaster travelled to Cork, accompanied by our Minister. As a result of the disaster, I found it hard to cope and I had financial worries about the future and of getting my children through university, of making repairs to the home, and my career. No one ever called me to offer support to our family. Over the years, I actively petitioned politicians to let them know about our plight but nothing came from my letters. In 1987, I voluntarily asked to be committed to the Homewood Sanatorium in Guelph, Ontario. I was so overcome with grief and isolation I couldn’t stop crying. I had heard that the program had helped others. So I decided to give it a try. My son David dealt with his grief through drugs and alcohol and I felt at that time that I lost another loved one. However, he eventually got through it and is clean and sober today.
- The concerns I would like addressed by this Inquiry are two main concerns. I would like the Commission to address the lack of support and compensation for family members.

When we lost TK, we lost not only a loving and caring person, we also lost a wonderful husband and father and the security that his occupation would have provided the entire family. We were doing well when we lost TK so tragically and suddenly. Since then we have learned to go without. I received a small pension from TK's old work places, along with the government pension. But in all, it adds up only to \$20,000 per year. We all feel that a lot of our life has slipped by and we had no say. This situation has permanently altered our lives.

- My second concern is multiculturalism in Canada. While it is a good thing, we have simply taken it too far. While trying to accommodate all the diverse cultures in Canada, we have treated the extreme movements in a deferential manner. This allows Canada to be a place where terrorists can get away with things that they would never be able to do elsewhere. People should not be able to hide behind multiculturalism to spread hate and division within our Canadian communities. We are too lenient. We need to define ourselves as Canadians. Canadians against terrorism, Canadians against divisions within communities and hatred of others.

**Ms. Esther Venketeswaran:**

- I lost my father, Trichur Krishnan Venketeswaran, when I was fifteen years old. My life before the bombing was that of a normal typical teenage girl. I played the piano. I joined the 4-H Club. I enjoyed going to youth group. I was my dad's "little love". For fifteen years the man I called father taught me the value of hard work, loving God, and being courageous enough to make a stand for what you believe in.
- My father was returning to the land of his birth, India, to attend the wedding of his youngest brother, my uncle Seetharaman. I lost my father on June 23<sup>rd</sup>, 1985. I was an utterly devastated fifteen year old girl. My life changed forever. I was never to be the same person I was before the disaster. Going through the remainder of my teen years without a father's love, care, comfort and guidance was indescribably painful. The Air India tragedy defines who I am as a person and everything I do in my life has been coloured by this backdrop example of international terrorism. Serious, withdrawn, angry and depressed came to describe my nature instead of bright, happy, positive and extroverted.
- I am not alone in not having a father, but the way in which the airplane disaster has been handled by the Canadian government has added great insult to injury and fuelled raging indignation. Initially, I did not see any value in this Inquiry. However, my stance has softened considerably since then, especially in view of seeing many of the families share their private stories of pain. If my fellow country men and women can learn from the example of my family and my suffering through terrorism and draw insight, inspiration and knowledge about how to better equip future victims of terrorism, I consider it the highest privilege and honour to serve my country, Canada, in this way.
- I believe compensation issues need to be addressed by the Commission. We lost a husband, a father, decision maker, and breadwinner. I cannot even begin to list the numerous financial and economic consequences resulting from the impact of the Air India



bombing that have impacted my life and my family. Words, plaques and platitudes don't carry the same weight or seriousness as handing a victim a compensation package that takes into account the financial, economical, physical and emotional losses a person suffers through an act of terrorism.

- I hope this Inquiry is not another fruitless exercise in repackaging some of the old information we have learned over the years and that is now all readily available on public record, or part of an appeasement process that is wasting valuable taxpayer dollars in a misguided effort to serve social justice. Compensation for me would mean justice for twenty-one years and counting of suffering, the inaction of an indifferent government, the indignity of a trial, being forced to go along with this Inquiry, and the economic, emotional and psychological impoverishment. While in a civilized society we cannot resort to vigilante justice, we can ensure in the aftermath of innocent bloodshed that the family members most affected are well taken care of in both body and soul. Compensation would mean closure on the past.

**Mr. Chandar Sain Malhotra:**

- My second son, Atul, was a passenger on the ill-fated Air India Flight 182. He was a young man born in Delhi, full of promise and a good future. He was just 26 years old and working as an engineer with Indian Airlines. My son had just started his life when we lost him. He was travelling to North America on a holiday to see a bit of the world and visit relatives in Toronto.
- I heard about the crash from the media and immediately called my brother in Toronto to confirm whether my son had actually taken that flight. Once my brother confirmed that my son had boarded the flight, he made arrangements for himself to travel to Cork. I was in no position to travel to Ireland to search for the body of my young son. I was totally lost and could barely understand what was happening around me. My brother told me that the Irish people were extremely helpful and warm.
- After losing my son so suddenly and unexpectedly, I was a finished man. I lost all my energy; I do not know how I survived those days. What I saw at the trial made me very frustrated with the Canadian justice system. When I heard about this Inquiry, two of the Terms of Reference stood out as issues that have concerned me for some time. First, I feel that to deal appropriately with terrorism cases, the Canadian criminal justice system and its rules of evidence must be changed. In these complex cases, the hands of the judge should not be tied by what is being said by the witnesses. The judge must have more investigative powers to uncover the truth of the matter. The strictness of the evidence rules combined with the burden of proof beyond a reasonable doubt will not work in dealing with terrorist activities. Terrorists do not leave much evidence behind and it makes it difficult to convict. I feel that the burden to decide these complex cases, which often rely on more circumstantial than direct evidence, should not be placed on a single judge, but rather a bench of two to three judges.

- Second, after spending over 30 years with India Airlines, I have some insight into the deficiency of aviation security and the challenges that still need to be faced. On June 22, 1985, the baggage was placed on the flight without the passenger on board. This is a basic flaw. Today, we have to worry about suicide bombers. The problems created by the terrorists change constantly and we must ensure that our system changes adequately to react to them. More stringent checks of both the booked and hand baggage is needed.

**Ms. Krishna Sharma:**

- I lost my husband, Om Prakash Sharma, in the Air India disaster. We got married when I was fourteen years old and my husband was sixteen years of age. Our family was not rich by any standard but my husband was a very hardworking individual and he always encouraged me, inspired me and supported me. He always helped his brothers and sisters progress and make advancements in each of their own lives.
- We had eight children, five daughters and three sons. My husband was the principal at a local middle school. His salary was not sufficient to be able to give a good life to each of our eight children. That is why he decided to come to Canada. It was neither an easy decision nor a minor step to come here, leaving behind his eight children. What made it possible was our ability to give strength and encouragement to each other. It was based on this kind of encouragement that we were able to manage fourteen years while still living apart from each other. Slowly as my children grew up they decided that they would move to Canada as well. By 1985, I was still in India looking after my mother-in-law and father-in-law. My husband used to come to India every year to visit me. In 1985, he decided to visit me again. He wanted to come to India to get my daughter, Saroj, engaged.
- The thought kills me every moment of every day of my life, that for the first fourteen years we lived separately and when the time finally came for us to be reunited, these terrorists killed my husband. I have become totally handicapped because of this tragedy, because my husband was everything for me. He was the one who earned the money and ran the entire expenses of the household. I was not able to help in any monetary form and the government here was no help either. My children were compelled to make compromises in their own lives because of our situation after the tragedy.
- I would like that the government learns and educates itself as a result of this Inquiry and that any potential donors to these terrorists are shut down permanently.

**Ms. Saroj Gaur:**

- I lost my father in the Air India tragedy. My father, Om Prakash Sharma, was a school principal in India, a father of three children, my Mom's husband, with two brothers and three sisters.
- In 1980 when he came to India, I expressed my interest to come to Canada. He sponsored me in 1981. I got my visa and joined him in May. He was so happy with my immigration.

- I found out about the Air India disaster when I was in Toronto after moving there to get a job. My father had arranged accommodation with one of his friend's daughters. Upon arriving at this house, I was informed of the news. I didn't know these people. My Dad is the one who arranged my accommodation with them. I came for the time to Toronto and it was the first news for me. I had no money so I couldn't fly to Newfoundland. I didn't know people here so I couldn't borrow their money. I never worked so I didn't have any savings. I felt like I had no roof or ground. I was in shock.
- Twenty-one years have passed since the Air India tragedy. The questions we had the very first day are the same questions we have now: How was it possible to bomb a plane? Why did the RCMP not catch these people? Why are these people living free in Canada? Why did the airport security fail at the time?
- From this Inquiry I expect security in the future so we can board a plane without any fear, so that my children can fly without any fear.

**Ms. Neelam Kaushik:**

- My family and I have been waiting for the last twenty-one years for justice to be served. That's a long time to wait when you are living with the constant pain and agony of losing your father at a young age. As a result of the tragedy, I had to drop my courses at University and I lost tuition for that semester because it was too late for a refund. I totally lost my mental balance and I isolated myself. I had to work part-time in order to continue my education. The anger and frustration my family felt at the Canadian system for not producing anything constructive regarding this case, resulted in us taking our anger out on each other. Our family that was once very close drifted apart to the point that we don't even talk to each other anymore, and that's very disheartening for our mother.
- It pulls at my heart every time I think of how the system has failed us again and again in regard to this case. First of all, how could such a law exist in a country like Canada that when the biggest mass murder was being planned and the Canadian investigation services had knowledge of this, not only did they get away with not informing the police, they also managed to destroy the tapes and nobody questioned this serious irresponsible action. Secondly, how did the airport authorities neglect to detect the explosive device? I have lost complete faith in the Canadian government, police department, intelligence agencies, airport security and our so-called justice system since the Air India disaster. I believe a large-scale investigation should be launched into the practices of the Criminal Justice Inquiries Compensation Board for the neglect of awards to victims of terrorism.
- My father was a very humble man, with many responsibilities as the eldest of a large family. In my family there were eight siblings, plus our extended family. Two of my father's sisters were widowed so we had full responsibilities for those families too. He took care of the finances while my mother took care of the house. For these reasons, it is very important for the Commission to strongly recommend to the Canadian government that my mother be compensated for what she has endured in the last twenty-one years. My parents

worked hard to build a better life for us and our extended family, in addition to living apart for fourteen years for financial reasons.

- After my father's death, my oldest brother from the United States flew to Cork, Ireland, to find our father's body. It was never recovered. Without the body we were denied the ability to perform many of the official religious rituals that in our culture is the way we find closure. In our religion if you don't die a peaceful death your soul will not find salvation.
- The victims' family had to create their own support network amongst themselves. It would have helped a great deal if the government of Canada had programs that could have helped my mother learn how to raise children in a Canadian social system and how to obtain a job. We felt we were treated differently because this was not a tragedy with "mainstream white" Canadians. Just like they have a support system for recovering alcoholics we should have a support system for those who suffer from terrorist-related or other sudden unexpected deaths.
- When one becomes a Canadian citizen and chooses to spend the rest of their life here they are declaring their loyalty to this country. If that person decides to promote hatred and raises funds to kill innocent Canadians, then the authorities should automatically deport that individual to their country of origin. Their Canadian passport should be forfeited so that that person cannot escape to another country and their dual citizenship should be revoked.
- It was 9/11 that opened the eyes of the government of Canada to terrorism and they started banning some of the terrorist organizations in this country. It is time that we, as Canadians, get together and decide not to have a repeat of June 23<sup>rd</sup>, 1985. We have to learn from past mistakes. It is very important that terrorists do not make Canada into a launching pad for criminal activities. This is not the time to whitewash onward. Somebody has to take responsibility.

**Ms. Veena Sharma:**

- I was born in New Delhi, India. I moved to Newfoundland, Canada, with my brother Prem in 1983 to join my sister, Saroj, my brother, and my father.
- My father was the eldest in the family. He had three sisters and two brothers in India. My parents got married at a very young age; my father was only sixteen and my mother was fourteen but they did not start their married life until my mother was sixteen. My parents were living in a joint family. Being the eldest in the family, he was responsible to care for my aunts and uncles financially, emotionally, and morally. He was a role model to them. He wanted to give us and his brothers and sisters better lives so he applied for a job in Canada and accepted a teaching job in Newfoundland.
- My father used to come to India during his summer holidays for two months. His arrival day was like a festival to all of us.

- Once my father was settled in Canada, my brother Ram and sisters, Saroj and Neelam, joined him in Canada. He opened a convenience store for my brother. He had a small but strong supportive Indian community in Grand Falls, Newfoundland. My father was not only well-known amongst the Indian community but he was known in Grand Falls and Middle Arm, Newfoundland as well. He was a very caring and loving person.
- In 1985, my father was preparing for the yearly trip to India and was looking forward to bringing my mother to Canada so we all could be united. He was happy and excited. My mother was still in India taking care of my grandfather because he did not want to live with his other sons or daughters. India was having a lot of terrorist and political problems at that time. There were lots of rumours about Air India security. My mother was scared and requested that he cancel his trip, but he did not take her concerns seriously.
- After the tragedy, my brother went to Ireland to take care of the formalities with respect to my now deceased father, and to take care of the formalities with the Canadian Embassy to bring my mother to Canada. I saw that my mother on her arrival in Canada was weak, pale and was looking older than her age. All of our dreams were shattered.
- Personally this tragedy has affected me emotionally and financially and has left me with feelings of insecurity. If a person is sick, you can prepare yourself but when they have left their home with a smile on their face and they are gone just like that, it is not easy for families to move on. I was not able to finish my education. We missed him on each occasion such as my high school graduation or family wedding.
- After the disaster, Air India did call us and tell us what the next steps should be. We had some financial support but it was only from friends and family in our community. There was nothing from the government of Canada in terms of support.
- I would like to see the laws in Canada become stricter. Laws are lenient in Canada in comparison to other countries. The government should do proper background checks before granting any type of visa to anyone. Proper training should be provided to security employees, baggage handlers and to related workers. They should be trained to handle crisis or emergency situations. The government should find out the sources of funding from criminal and terrorist activities and punish those organizations who continue to support and provide this funding.

**Ms. Madhu Gaur:**

- I lost my father, Om Prakash Sharma, in the bombing of Air India Flight 182. I was a young wife waiting a long waited return of my father to India. He never arrived and we have felt his loss every day. I am the fourth child in my family. My father was always affectionate with me. We were a happy family of eight children; three sons and five daughters living in Canada, India and the USA. My father worked to make our dreams a reality. My father was a man of excellent character and was well respected in Canada. He was a man of education who contributed much to Canada.

- On the day of the bombing, I travelled from Jodhpur to Delhi to receive my father when he arrived in India. The news came as a shock. Our lives took a 180-degree turn after we lost my father. Losing a parent is a great loss that cannot be fulfilled. We found support from friends and family elders. However, we did not ever find justice from the Canadian justice system.
- My hope for the Inquiry is that it will make recommendations that ensure this type of tragedy never occurs again. We must look at the Canadian system to determine what is preventing the punishment of the perpetrators of this crime. I applaud the courage of the Canadian government in establishing this Commission of Inquiry after the close of the criminal trial that left so many disappointed. The decisions you make in this Inquiry are important ones that mean a lot to people around the world.

**Mrs. Amarjit Bhinder:**

- At the outset on behalf of my family, children and myself, I wish to thank everyone for this Inquiry and the people of Canada for all their concern for the families of the victims. I also wish to thank the seamen who put their own lives in danger to pull victims from the sea. My heart goes out to the Irish people, hospital and administrative authorities of Ireland for their compassion shown at the time of the crash and during the memorial service in Ireland. I would also like to thank the media all over the world for supporting our cause for such a long period.
- In October 1977, my husband, Captain Satwinder Singh Bhinder, was selected by Air India to be a pilot. We were not given the opportunity to enjoy my husband's life for a very long period. Destiny cut short the life of a brilliant pilot and a person whose vision was unparalleled in Air India and whose intelligence rare to find. He was tall, handsome, intelligent and a very honest man. He loved his small world, which had his wife and two little children. Ever since our son, Ashamdip started to speak, he used to express the desire that, like his dad, he too wanted to be a pilot. Our son did become a pilot but was not lucky enough to fly as his father's co-pilot.
- I was supposed to travel with my husband from Canada back to London on Air India Flight 182 but decided to stay home with my family. This was first time that I ever said no to a foreign trip as I am very fond of seeing new places. On the 23<sup>rd</sup> of June 1985, I felt very uncomfortable right from the early morning. I was missing him terribly. At about 3:30 p.m. the doorbell rang and one of our close friends was standing at the door. He said an accident had taken place with Air India Flight 182. I lost control over myself. My children heard my cries and they too started howling. I can never forget their faces.
- Air India officials came to our house that evening. Air India asked us if we wanted to go to Cork. My children and I went to Cork later. No one from the Canadian government had contacted us till then, but the arrangements made by the India High Commissioner were good and they made us feel very comfortable. My state of mind did not permit travel immediately but Air India was considerate enough to let us travel later in July 1985. His body was never found, nor any of the crew members.

- We became penniless. I did not have enough money to make two ends meet. We had no regular income other than my husband's salary. The Indian Pilots Guild came to our rescue by giving us a cheque of 55,000 Rupees. By the end of July, I got some dues from Air India as well. We received no compensation from the Canadian government. Crew members do not have tickets. So the family members did not even get the equivalent of up to a maximum of \$75,000 US insured against their ticket.
- We did not know how to handle our lives without him. I could not fulfil my husband's dream of sending my daughter to England after she finished high school. Financially it was not viable. My children miss their father tremendously. It was very tough to raise two young children with a demanding full time job with Air India that I started after my husband's death. The grades of my children suffered in school.
- As we understand from various sources, Kanishka is known as a Canadian tragedy. Why is it so? It was and continues to be an international tragedy. The majority of the passengers were of Indian origin and settled in Canada. Because the Canadian government believed it was solely a Canadian tragedy, compensation was given to families of only Canadian victims. Air India Flight 182 took off from Canada and its safety and security was wholly and solely the responsibility of Canadian authorities. We too have been through many hardships in our lives and have had to struggle constantly, both emotionally and financially, just to keep going and stay afloat. There is still time for Canada to show the families that this is their moral responsibility to see that this small gesture can make some difference to the ones who have been ignored and have been suffering too long, by the Canadian government providing the money to the families of the victims of Flight 182.
- Whose responsibility is it to ensure that a flight departing from a particular country takes off safely, without compromising the safety of the people on board the aircraft? Who is responsible for the lapse in security that led to an explosion and consequently the loss of 329 lives on board the ill-fated aircraft? Was the Canadian government unaware of the Indian army attack the Golden Temple? Did the Canadian government not get any warning or intelligence reports to safeguard Indian interests in Canada, including Air India?
- We hope that no one has to endure the pain, the struggle, and the uncertainties that we have had to face over the last twenty-one years. The Inquiry will not be able to answer all our questions about who committed this crime and why. But we have no choice but to console ourselves and hope that finally there will be a conclusion to the Air India tragedy.

**Mr. Tahir Sadiq:**

- My name is Ali Tahir Sadiq, and I lost my mother, Sugra Sadiq in the bombing of Air India Flight 182. After university in India, I immigrated to Canada in April 1970 with the hopes of living a peaceful and better life.
- Our mother was a passenger on Air India Flight 182. She volunteered as a nurse and then joined in the first batch of female students of medical school. She graduated with

distinction. She went on to lead the movement to create jobs for women doctors at government hospitals. After a successful and distinguished completion of a whole tenure of service, she retired at the highest level and she was always an anchor in the circle of the medical profession.

- Our parents decided to immigrate to the safety of Canada. For me my mother was everything, right from childhood. In Toronto she used to teach her mother tongue to the students of the University of Toronto. In Sunday school she taught religion. We remember our mother and the many people she has touched, people she cared, educated and inspired to follow her profession. She was a woman ahead of the times, an anchor for a large family and many friends. Those she left behind were left helpless without her.
- My sister was the first to find out about the bombing. Her colleague told her. My phone rang at 9:00. My brother told me the news. I then went to the Air India office. We were hooked to the radio. No official was giving us any news or support. Finally, my brother bought a ticket from the USA and flew to Cork from there. The rest of the family soon followed. By the grace of God we found the body. My brothers brought it after 3 or 4 days to London. We then flew it back to Canada.
- I was put in a humiliating and painful situation by the RCMP shortly after the bombing. While I was still grieving for my mother, the RCMP started phoning me. They called my home and my office to schedule an interview with me. The interview was very insulting. They did not hide the fact that they were treating me, someone who had just lost his mother, as a suspect. They thought that I was the person that put the bomb on the plane or was paid to do it.
- Our concerns with the Inquiry are why the government ignored the information given to them about this plan, why CSIS erased the tapes, why one of the CSIS officers was allowed to resign without getting charged for erasing the tapes, why Canadian justice agencies were late to take action and why could they not successfully prove guilt? I also wonder why the judge does not have the full right to ask questions, especially of a witness which appears to be evading questions? I also wonder why the government of Canada did not help us at all? I wish that the government would help the families pursue their case in a civil court. My families have lost their earning members and prospects for the future. If we cannot prosecute the perpetrators to a reasonable doubt standard in the criminal court, the government should assist the victims to prosecute to a balance of probability standard in civil court. Something must be given to the families who are still suffering to make up for lack of support over the years. We must understand the reasons and consequences of these crimes in order to understand the importance of appropriate punishments and support for the victims.

**Mrs. Sheroo D. Dumasia:**

- The Air India disaster was the day my husband, the late Dara D. Dumasia, flight engineer of Air India 182, was snatched away from me so cruelly. My husband worked for 31 years at Air India. He was due to retire from service on October 30, 1985. He left behind me and my two daughters, Dilshad and Farnaz. Our lives were shattered. We were



absolutely inconsolable in our grief. Nothing that anyone would do or say would stop our tears from flowing.

- He was the only male member in our family and the only earning member. Lack of security was immense, both financially and emotionally.
- The verdict “not guilty” seemed to be a mockery of the entire case. As my daughter said, 20 years later it was still the same. With justice denied, we cried again. To us, the family members of the victims of Air India Flight 182, it seems to be inconceivable that after so many years the culprits still walk shamelessly and fearlessly free, and all I can say is the cross we bear is heavy indeed; the price we pay unfair.

### **Mr. Ratheish Yelevarthy**

- I am the eldest son of the late Y. Nayudamma, who was a victim of the Kanishk tragedy. I had various interests prior to the tragedy but later confined myself to my work and my family and listening to Gianni, a Greek musician, in whose music I still continue to derive solace. I still remember my father used to take me for long walks during my childhood. He used to teach me about life.
- My father wrote some very interesting thoughts in his journal, thoughts I wish to share. “I have no regrets. I who lived a full life; loved, enjoyed, worked hard, contributed to the country...My assets are not in the bank. My assets are my friends in all parts of the world ...”.
- In the aftermath of the Air India tragedy, my mother just could not take the shock and attempted to take her life even though she was a doctor. She was declared in critical condition and she had to be air-lifted to the US, but was not fit to go. I had to leave for Cork to trace the remains of my father. Upon arrival in Cork, motherly understanding and affection were showered on us by the people of Cork. The Air India disaster changed my way of looking at life. I had to return without the remains of my father. After only a few hours in Cork, I had to rush back to India to see my mother. I flew back in silence only to arrive to the next blow; the news that my mother had died from her suicide before I could reach her. Family rituals for my parents were held. There was a large gathering to mourn them. After this, my son died of accidental drowning.
- Life has never been the same after my father’s death for all the family members and some of his grandchildren never got to see him. He would have given us high moral support.
- This brings me to the depressing subject of terrorism. In my opinion, it was a cocktail of poor communications and shoddy intelligence work procedures. We have on hand a problem with terrorism that could be a monster in the next decade and we should not be surprised. I call it the terrorism industry. It will be a part of life and make the most profitable business of the century for some. People will judge not by immediate reaction or verbal statement, but by what actually we do against terrorism.

### **Dr. Chandra Sankurathri**

- My wife's name was Manjari, my son's name was Sirkiran, and my daughter was Sarada. My wife and my children were going to India in June of 1985 to attend the marriage of my brother-in-law, which was supposed to be in August of that year. I was supposed to join them a month later and we were all planning to travel before school started again in September.
- My reaction to the Air India disaster was one of disbelief. It took me almost three years to erase what had happened, and I studied a lot to cope with the situation because it was not easy. That was the most difficult part of my life. As a result of this tragedy, I felt I had to be productive in my life, so that I could be useful to other people. With that intent, I left Canada in 1988, to start working with people, mostly children, in India.
- In India, I started a foundation to honour my lost loved ones. It's called the Manjari Sankurathri Memorial Foundation. It is a registered charity in Canada. Given that I wanted to work with children in India, I helped to start a school in memory of my daughter that is called the Sarada Bidyalayam. This school covers free schooling to all the poor children in that area. In addition to this, we also started a hospital, an eye hospital, named after my son. It is called the Sirkiran Institute of Ophthalmology, which covers quality eye care with compassion, which is equitable, accessible and affordable to all in the region.
- I would like to acknowledge all the supporters in Canada, in this cause to fight illiteracy and blindness in the region. Other than that, I am really happy about this Inquiry. I hope this Inquiry will prevent further loss like this and further suffering to many people.

### **Ms. Dianne Beauchesne:**

- How do you say goodbye to a loved one? Even if we are prepared it doesn't make it any easier. The last time I spoke with my father, Gaston Beauchesne, I was mad with him before he left on Air India Flight 182. I told him I loved him but it was forced. That memory stays with me for the rest of my life. The next time I saw my father was in Ireland when I had to identify him in the morgue. I feel guilty that I did not have the bravery to touch him at the morgue. I decided that I did not want anyone back home to see my father in death.
- My father was a pharmacist and loved all nationalities and was a true person of the world.
- When I heard news of the crash, I had not been able to cry. After I identified my father, I went through feelings of total desperation to total exhilaration. My exhilaration came from being able to take my loved ones body home. I felt guilty that I got to take my father's body home, when so many others could not find their loved ones.
- I eventually cried because my father would not be able to see me graduate or marry or see me make accomplishments in my life that he would be proud about. It was so unbearable.

- The government of Canada wanted me to fill out a form to quantify how much my father was worth to me. How often did I see my father and how close were we? Why are these questions relevant when I am trying to grieve? How can I put down on paper a whole potential of a life remaining?
- My father was not supposed to be on Air India Flight 182. His other flight was overbooked. Why did Air India Flight 182 have seat openings? Why were there seat cancellations? Were people in the know? Nobody told us that there were threats against Air India.
- Our main questions revolve around what had led up to threats being made and being known by CSIS. Why did they not share their information with the RCMP or other factions of government that may have put higher security or some warning for those booked on the flight?
- I was woken up by the phone ringing in the early morning. I couldn't believe the news. I thought I was still dreaming. When I told my mom, she crumpled to the floor. I tried to comfort her.
- In Cork, Ireland, I did not get treated as a family of the victims because I was Caucasian. The government didn't care because they didn't see this as a Canadian tragedy. However, the Irish people treated us with open arms and took care of me. If it wasn't for the Irish people, the horrible situation wouldn't have been made better. My experience in Cork was that the Irish cared more about this than the Canadians did.
- When will we find peace? When can we move on with our lives? When will we rest that their lives were not lost in vain and that something good will come out of this? 21 years later is too late.
- My father was born in Quebec. My father was brought up to be understanding and compassionate of other languages and races. He was somebody who embodied the multicultural spirit. He loved people. My father was Canadian. We are Canadian.
- If inquiries were done sooner, Lockerbie might have been prevented. Why did it take 9/11, an American act, to get people to wake up to terrorism? The Canadian government did not take ownership. We are looking for answers. We are looking for some kind of closure, someone taking responsibility for what happened and to admit that many mistakes occurred. What can we do with Canadian policies to fix things? We have to protect Canadian citizens from those that want to harm us. We need to revisit Immigration policy. I care to have some answers and changes that should have been done a long time ago. Can the Commission help us find some answers? Can we equip ourselves for terrorism court cases? Can our government lead us to somewhere a bit better than where we are today?
- I did not receive any type of assistance from the Canadian government, such as grief counselling and nor did my brother. We were never approached by the Canadian government.

### **(iii) The Post-Bombing Experience of AIVFA Members**

The sentiment that the Canadian government's response was woefully inadequate to the victims of the Air India Flight 182 bombing was a consistent theme in the testimony provided by AIVFA members. In the aftermath of the Air India Flight 182 bombing, according to the testimony by AIVFA members summarized above:

- without a comprehensive terrorist response plan in place, the government failed to immediately establish and maintain effective informational lines of communication with the families of the victims;
- upon arrival in Cork, Ireland, the government failed to meet and assist all families of the victims;
- while in Cork, Ireland, government officials were unprepared to assist families with all facets of the tragedy, such as transportation of bodies back to Canada and burials/cremation, etc.;
- the government did not communicate to the families of the victims in both Official Languages;
- the government did not offer any administrative or emotional support in the form of grief counselling or other forms of social assistance;
- the financial compensation by the government was insufficient and no offer of legal assistance was provided by the government to assist families in negotiating compensation;
- the criminal investigation and eventual laying of criminal charges was long, drawn out, and ineffective, in addition to failing to adequately keep families of the victims informed;
- the government waited 21 long years to establish a Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182;
- in the end, the government failed to take any responsibility and hold itself accountable for its part in preventing the Air India Flight 182 bombing, in addition to failing to effectively investigate the bombing and prosecute those responsible for it; and
- the Canadian government failed to fully recognize the Air India Flight 182 bombing as a terrorist incident and failed to incorporate this tragic event into its collective conscience and history, and as such, the families believed that they were ignored and that this tragedy was not seen as a Canadian tragedy.

While AIVFA recognizes that in the initial aftermath of the Air India Flight 182 disaster, government officials such as Mr. Scott Heatherington, Mr. Gavin Stewart, Mr. Daniel Molgat,

Mr. Terry Sheehan, and Mr. David Dewhirst, among others, made efforts to assist families of the victims in an empathetic manner, this does not absolve the government of responsibility for a woefully inadequate response to the needs of the victims of the Air India Flight 182 bombing.

#### **(iv) The Inadequate Post-Bombing Response by the Canadian Government**

In testimony before this Inquiry, government officials acknowledged that the consular response to the Air India Flight 182 disaster by the Canadian government was deficient and could be improved. The government press release with toll-free hotline information for persons in Canada to call their government with respect to the disaster was released in an untimely fashion, two days after the bombing at 4 p.m. on June 26<sup>th</sup>, instead of as soon as possible after the disaster.<sup>2</sup> By this time, many families of the victims had understandably already departed for Ireland and the lack of information from the Canadian government on how families could contact them, was a source of frustration for families. Upon arrival in Cork, Ireland, an overwhelmed staff of consular officials attempted to assist families of the victims. The human resources needed to fully assist the families of the victims were grossly underestimated. According to Mr. Stewart, “There was a period where we were stretched. There’s no doubt about it.”<sup>3</sup> Mr. Molgat echoed this sentiment when he testified that, “With the benefit of hindsight I would have asked for more people from the beginning.”<sup>4</sup>

The small group of consular officials that were deployed to assist families of the victims lacked the full complement of appropriate resources and skill sets to respond effectively. This served to add to the discontentment and frustration of the families of the victims present in Cork. At the Cork airport and at hotels in and around Cork where families of the victims were staying, the disaster response by government officials was hampered because it was not always immediately apparent to families of the victims who the delegation of Canadian government officials in Cork were who could provide assistance. According to Mr. Stewart, “...we were a group of people in suits...It wasn’t clear when they were talking to us, especially outside of Jury’s Hotel, that we were representatives of the Government of Canada...We indicated to them verbally but we didn’t have maple leaf flags on our shirts or anything like that.”<sup>5</sup>

None of the seven consular officials deployed to Cork spoke Hindi, Punjabi, or Urdu fluently.<sup>6</sup> Mr. Molgat testified that he only had the opportunity on occasion to speak friendly conventional phrases in Urdu to family members.<sup>7</sup> The consular response did not employ a Hindu, Sikh, or Muslim religious figure capable of providing religious guidance for grieving families. According to Mr. Stewart, “No, we didn’t employ anyone, any person as giving religious guidance.”<sup>8</sup> Mr. Molgat also acknowledged that, “...none of us were trained social workers or counsellors.”<sup>9</sup> This further exasperated the already stressful circumstances under which families

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<sup>2</sup> Testimony of Mr. Terry Sheehan, *Transcript of Proceedings* (Vol. 13), p. 1240.

<sup>3</sup> Testimony of Mr. Gavin Stewart, *Transcript of Proceedings* (Vol. 13), p. 1171.

<sup>4</sup> Testimony of Mr. Daniel Molgat, *Transcript of Proceedings* (Vol. 13), p. 1191.

<sup>5</sup> Testimony of Mr. Gavin Stewart, *Transcript of Proceedings* (Vol. 13), p. 1195-96.

<sup>6</sup> Testimony of Mr. Gavin Stewart, *Transcript of Proceedings* (Vol. 13), p. 1163.

<sup>7</sup> Testimony of Mr. Daniel Molgat, *Transcript of Proceedings* (Vol. 13), p. 1164.

<sup>8</sup> Testimony of Mr. Gavin Stewart, *Transcript of Proceedings* (Vol. 13), p. 1165.

<sup>9</sup> Testimony of Mr. Daniel Molgat, *Transcript of Proceedings* (Vol. 13), p. 1169.

in Cork were grieving.

All the while in Canada, government officials were attempting to respond to a major terrorist incident without the benefit of a written guidance document of policies and procedures. According to Mr. Sheehan, with respect to whether there was a particular written document or a policy or procedure that he or other government officials could turn to in order to assist with responding to a terrorist incident involving mass casualties, “No, no, not at all.”<sup>10</sup> When the federal government did manage to organize a counselling program co-funded by the provincial government of Ontario, it appears that they failed to provide adequate notice about the availability of this program to the families of the victims, as many of them testified that the federal government never contacted them for any purpose after June 1985.<sup>11</sup>

### **(v) The Canadian Government Remains Unprepared Today**

Unfortunately, despite the passing of much time since the Air India Flight 182 tragedy in June 1985, the Canadian government continues to remain unprepared today to effectively respond to the needs of the families of the victims of a future terrorist attack. In the event of a terrorist incident today, a manual drafted to respond to natural disasters, not terrorism, guides the government’s response. This manual, *Government of Canada Standard Operating Procedures in Response to Natural Disasters Abroad*, fails to document clear procedures for establishing a presence, building an office, and establishing lines of communication, etc.<sup>12</sup> Likewise, the contingency plans for Canadian consulates do not address responses specific to a terrorist episode. In light of this, Mr. Desjardins stated that, “And you’re right in your suggestion, maybe this policy could be refined to include those or a separate set of guidelines be developed. That’s a fair suggestion...I guess the policy would be more complete if it was, indeed.”<sup>13</sup>

Reforms that would serve to improve the response by the Canadian government to a terrorist incident remain unimplemented. Although it is a need that the government has identified, they do not possess rapid deployment teams that can be deployed on short notice to respond to a terrorist incident. According to Mr. Desjardins, “That is something that we have as a plan which we have not implemented because we don’t have the resources required to do that...”<sup>14</sup> Even if the government had the resources to deploy such a team, they do not train consular officials to be conversant, or at the very least, competent in a variety of languages that correspond to the ethnic makeup of Canada.<sup>15</sup> Mr. Desjardins also indicated that having a single point of contact for families within the government in the aftermath of a terrorist attack would “[d]efinitely” be an improvement.

The bombing of the World Trade Center in New York City on September 11, 2001, sixteen years after the Air India Flight 182 bombing, attests to the poor state of Canada’s current preparedness to respond effectively to the needs of the families of the victims of a future terrorist attack. Ms.

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<sup>10</sup> Testimony of Mr. Terry Sheehan, *Transcript of Proceedings* (Vol. 13), p. 1239.

<sup>11</sup> Testimony of Mr. Terry Sheehan, *Transcript of Proceedings* (Vol. 13), p. 1246.

<sup>12</sup> Testimony of Mr. Robert Desjardins, *Transcript of Proceedings* (Vol. 14), p. 1295.

<sup>13</sup> Testimony of Mr. Robert Desjardins, *Transcript of Proceedings* (Vol. 14), p. 1311-1312.

<sup>14</sup> Testimony of Mr. Robert Desjardins, *Transcript of Proceedings* (Vol. 14), p. 1299.

<sup>15</sup> Testimony of Mr. Robert Desjardins, *Transcript of Proceedings* (Vol. 14), p. 1301.

Maureen Basnicki, founding director of the Canadian Coalition Against Terror, lost her husband on 9/11. Expressing how frustrated she was by the manner in which the Canadian government failed to respond to her needs as a victim of terrorism, Ms. Basnicki testified about how the government neglected to communicate with her and assist her in the aftermath of 9/11. Ms. Basnicki cited the significant length of time it took to obtain a death certificate from the government, that the government neglected to assist her with arrangements to bring her husband's remains back to Canada, and that the government afforded her no special consideration such as forgiveness of her late husband's taxes that fell into arrears, as evidence of the poor response by government officials to her situation. Stated simply, "I did not get help from our federal government after 9/11."<sup>16</sup> One need only imagine the devastation that falls upon a close loved one of a victim of terrorism, to realize the assistance that must be provided in the days after a terrorist attack.

## **(vi) Recommendations**

In light of the experience of AIVFA members with respect to the Canadian government response abroad and at home to the Air India Flight 182 bombing, the following recommendations are provided so that Canadian victims of a future terrorist-motivated tragedy do not have to endure what AIVFA members did in the aftermath of their loss:

### **1. Government Terrorist Response Policy & Procedure**

- Development of a Terrorist Response Policy and Procedure document to coordinate the government's response at federal and provincial levels to a terrorist incident, in addition to contingency plans for Canadian consulates that specifically address response by consular offices to a terrorist incident involving Canadian citizens.

### **2. Government Communication & Administrative Action Plan**

- **In the immediate aftermath of a terrorist incident:** Execution of an effective government Communication and Administrative Action Plan that among other things, provides timely information in both Official languages to the families of the victims of a terrorist attack vis-à-vis an Internet website, 1-800 telephone number, and multi-media news releases.
- **In the short-term after a terrorist incident:** Timely administrative assistance provided by government to help with such things as obtaining passports and visas on an expedited basis, and facilitating the transportation, home or elsewhere, of bodies of deceased family members.

<sup>16</sup> Testimony of Ms. Maureen Basnicki, *Transcript of Proceedings* (Vol. 13), p. 1265.

### 3. “1-800” Government Victims’ Families Liaison Officer

- **In the immediate aftermath of a terrorist incident:** Establishment of a dedicated toll-free government Victim’s Families Liaison Officer who will serve as a “one-stop shop” for communication by telephone in both Official languages with families of the victims.
- **In the period after a terrorist incident:** Continued assistance provided by the dedicated toll-free government Victim’s Families Liaison Officer with respect to on-going communication during any subsequent criminal investigation and trial.

### 4. Government Rapid Deployment Team

- Establishment of a government Rapid Deployment Team with the full complement of appropriate skills and resources, including relevant language skills (at a bare minimum both Official languages) and cultural background, adequate physical resources including Canadian government identification-related materials, adequate human resources with relevant training in such things as grief counselling and religious/spiritual guidance, in order to respond effectively and in a sensitive manner, while ensuring every effort is made to accommodate the unique needs of families of the victims of terrorism, wherever in the world a large terrorist tragedy involving Canadian citizens occurs.
- Part of the effort of any government rapid deployment team should be the establishment of Family Assistance Centres in the aftermath of a terrorist incident as a central place for victims of the families to gather near the location of a terrorist incident. At these Centres, families of the victims would receive information and appropriate support from all relevant agencies without immediate need for referral elsewhere.

### 5. Government-funded Counselling

- **In the immediate aftermath and period after a terrorist incident:** Provision of government-funded counselling for grieving families of the victims that is made available on an on-going basis, in provinces and cities across Canada.

### 6. Government-funded Financial Assistance

- **In the immediate aftermath of a terrorist incident:** Immediate provision by the government of interim financial assistance to families of the victims in need where appropriate and necessary, for such things as travel to and accommodation at the location of a terrorist disaster, etc.
- **In the short-term after a terrorist incident:** Provision of government-funded financial assistance to families of the victims in need where appropriate and necessary, for such things as burial/cremation, etc.



- **In the period after a terrorist incident:** Adequate and timely government financial compensation, as well as the availability of government-funded legal counsel to assist with all facets of the consideration of compensation and related negotiations. In addressing compensation, the government should avoid applying a strictly legal assessment with respect to its potential liability. The government should recognize the suffering families of the victims of a terrorist attack experience, in addition to the devastating economic and psychological impact, and loss that a terrorist attack can have on families.

## **7. Establish a Federal-Provincial Victims of Terrorism Coordinating Agency**

- The federal and provincial governments should collaborate to establish an agency to coordinate efforts between federal and provincial jurisdictions and extra-territorial jurisdictions on behalf of families of the victims. This agency should provide free legal services to the families of the victims, assisting them in accessing compensation, and in dealing with insurance and estate matters.

## **8. Implement a Two-Year Tax Exemption for Canadian Victims of Terrorism**

- A two-year tax exemption so that Canadian terrorism victims will not be subject to federal income taxes for the year in which they died and also for the previous year, in addition to exempting from gross income, amounts received from the government in the form of compensation.

## **9. Public Acknowledgement**

- **In the immediate aftermath of a terrorist incident:** In a timely and appropriate manner, the government should provide a clear public acknowledgement of the loss of Canadian lives.
- **In the short-term after a terrorist incident:** Honour the victims of a terrorist attack by appropriate means, such as flying flags across Canada at half-staff.
- **In the period after a terrorist incident:** With input from the families of the victims of terrorism, consideration by the government of a permanent memorial where appropriate.

## **10. Public Interest-Based Presumption in Favour of Inquiry**

- A public interest-based presumption in favour of the establishment of a full public Commission of Inquiry, with respect to the circumstances that led to a terrorist incident, and the appropriate response by government to the recommendations reached by such Inquiry.

## **Pre-bombing: Systemic Intelligence and Institutional Failure**

### **(i) Introduction**

The Air India Flight 182 bombing disaster was a product of intelligence and institutional failure. The “intelligence cycle” breakdown within CSIS led to an intelligence failure. This contributed in part to the institutional failure that was systemic among Canadian government institutions, including the RCMP and Transport Canada. Much like dominos, the impact of this widespread intelligence and institutional failure across government agencies, compromised the safety and security of all Canadians, ultimately leading to the death of 331 innocent souls.

Under section (b)(i) of the Terms of Reference of this Commission of Inquiry, the Commissioner is to make findings and recommendations with respect to whether “deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985, or in their response to that threat, whether any changes in practice or legislation are required to prevent the recurrence of similar deficiencies in the assessment of terrorist threats in the future.”

In their testimony before the Inquiry, AIVFA family members asked this Commission to find answers to their questions. Specifically, “How did the government agencies responsible for safety and security of Canadians in Canada ignore the threats they knew against Air India Flight 182...”<sup>17</sup> According to AIVFA member Mr. Murphy Subramaniam, “How did the government agencies responsible for safety and security of Canadians ignore the threats they knew there were against Air India and allowing Flight 182 to leave Canadian soil with so many Canadian lives in danger?”<sup>18</sup>

In their own way, Canadian government institutions and their officials failed to thwart the threat posed by Sikh extremism, by failing to direct the appropriate resources to understand the threat, by failing to appropriately assess the threat based on available information, and by failing to cooperate on an inter-agency level to prevent the bombing.

### **(ii) Intelligence Failure: CSIS**

#### **(a) The Intelligence Cycle**

The fundamental expectation of the citizenry of a nation, the essential compact between citizen and country, is that their government will protect them. In order to fulfill this expectation, the government and its agencies must protect society, which includes protection from terrorist threats. In Canada, CSIS produces intelligence in order to provide timely advance warning to government departments and agencies about activities that may reasonably be suspected of constituting threats to national security.

The concept of an “intelligence cycle” encompasses the nature of the tasks carried out by CSIS.

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<sup>17</sup> Testimony of Dr. Padmini N. Turlapati, Transcript of Proceedings (Vol. 2), p. 199.

<sup>18</sup> Testimony of Mr. Murphy Subramaniam, Transcript of Proceedings (Vol. 4), p. 417.

The intelligence cycle describes the four main tasks undertaken by CSIS. The first one is tasking. Tasking concerns government direction and planning. CSIS responds to direction from the federal government about intelligence priorities for areas of concentration and focus. Intelligence priorities are re-evaluated on an on-going basis to ensure that resources are being directed as planned to priority areas and emerging concerns.

The second task is intelligence collection. The collection of raw data is the preliminary phase of CSIS's advisory role to government. Information from the public, different agencies of government such as the RCMP, foreign governments and its agencies, and technical intercepts of communications are combined with information from open sources such as newspapers, foreign broadcasts, and the Internet.

The third task is intelligence assessment. Intelligence assessment involves sifting through the collected raw information and analyzing it for its relative worth or value. Government relies on security intelligence prepared by CSIS following the intelligence collection stage of the intelligence cycle. CSIS uses its knowledge of regional, national, and global trends to analyze and assess the quality of all types of information collected, and organizes it in an effort to create useful security intelligence.

The final task is dissemination. Dissemination is the timely conveyance of intelligence, in an appropriate form and by suitable means, to those who need it. This task ensures that critically assessed information is provided to decision makers in government so that appropriate actions may be taken in order that the government meet its responsibility to protect its citizenry. The RCMP relies on threat assessments from CSIS to determine the level of security necessary to protect foreign diplomatic missions and Canadian VIPs. Transport Canada uses threat assessments when considering security concerns for the travelling public.

Unfortunately, if any one of the intelligence cycle components are neglected or poorly performed, breakdowns in an intelligence cycle can occur. Intelligence cycle breakdowns lead to intelligence failures. According to Professor Wark, "Intelligence failures lead to profound breakdowns in decision making. And intelligence failures can often lead to catastrophic losses of life on all kinds of scales from Air India..."<sup>19</sup> In applying the concept of an intelligence cycle to the Air India disaster, Professor Wark testified that with respect to Air India, "From my perspective, we're in the presence of a clear intelligence failure...I think Canadian intelligence failed in 1985."<sup>20</sup> The Air India Flight 182 bombing was a product of intelligence tasking failure, intelligence collection failure, intelligence assessment failure, and intelligence dissemination failure.

### **(b) Intelligence Tasking Failure**

The failure to prevent the Air India Flight 182 bombing stemmed, in part, from the failure of the government to place a high priority on issues related to Sikh extremism and to devote sufficient resources to following the increasing threat posed by Sikh terrorists living in Canada. At the time of the separation of the RCMP Security Service from the RCMP and the creation of CSIS,

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<sup>19</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1445.

<sup>20</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1446.

operational resources devoted to the issue of Sikh extremism were insufficient. According to Mr. O'Brian, "My recollection is that, at the time of separation the operational resources of the service were something like 75 per cent for counter-espionage and 25 per cent for the rest."<sup>21</sup>

In fact, the priority afforded to counter-terrorism within CSIS was so low that in 1984 Sikh extremism was not identified as a separate requirement on its own. According to Daryl Zelmer, who was a former desk officer in the Threat Assessment Unit at CSIS, "At that time there was no intelligence requirement for Sikh extremism...In other words, it was a subset of another of a larger intelligence requirement that took in other issues. It was not specifically identified as a requirement on its own."<sup>22</sup> For Mr. Zelmer, "It [Sikh extremism] was a low priority. And yes, it was, we did not understand it to the extent that we would have liked."<sup>23</sup>

Similarly, in the spring of 1984, when Mr. Robert Burgoyne was transferred to the Western Europe & Pacific Rim Desk at the former RCMP Security Service, the focus related still to the ongoing cold War. At this time, a little more than a year before the Air India bombing, only 50 percent of Mr. Burgoyne's time was devoted to Sikh extremism issues. It was not until the fall of 1984 that this desk, now situated within the newly created CSIS, was recognized as the Sikh Desk. Mr. Ray Kobzey, a former investigator with CSIS, echoed the sentiments of Mr. Burgoyne. In the words of Mr. Kobzey, "Organizationally, it [Sikh extremism] was low on the priority list...Prior to Golden Temple, the issue of Sikh activism/extremism was a lower priority within the Counter-Terrorism Unit of CSIS and its predecessor service, Security Service, DOPS."<sup>24</sup>

The lack of government direction and planning with respect to the issue of Sikh extremism is perhaps best summed up by the testimony provided by William Warden, Canada's former High Commissioner in India. It is worth quoting Mr. Warden at length:

I think I would have to say that there was an uneven appreciation in Canada on the part of departments and agencies with respect to what was happening, as far as my perception was concerned...I was not at all convinced that there was an adequate appreciation in 1984 certainly of what was happening... there were people in Ottawa or agencies in Ottawa that in my impression should have been giving full attention to this matter. It tended to suggest to me...that there was not a sufficient appreciation of a threat. And I found that quite surprising in the sense that the kind of information that we were transmitting in this kind of message seemed to me to be pretty straightforward and give a pretty clear indication of what was happening. And when they were taken together, they should have created, I thought, shall I say, a greater sense of urgency, a greater appreciation of the significance of the threat that was building up.<sup>25</sup>

Poor tasking by the federal government and the resulting low priority for Sikh extremism issues

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<sup>21</sup> Testimony of Mr. Geoffrey O'Brian, Transcript of Proceedings (Vol. 17), p. 1553.

<sup>22</sup> Testimony of Mr. Daryl Zelmer, Transcript of Proceedings (Vol. 23), p. 2321.

<sup>23</sup> Testimony of Mr. Daryl Zelmer, Transcript of Proceedings (Vol. 23), p. 2368.

<sup>24</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 32), p. 3722-24.

<sup>25</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2387-88.

manifested itself in an understaffed Threat Assessment Unit at CSIS. Mr. John Henry, formerly in charge of the Counter-terrorist Branch at CSIS, informed the Inquiry that, “As a rule, there was just the two of us [Messieurs Glen Gartshore and Bob Burgoyne].”<sup>26</sup> Consequently, “We were very very busy. It was quite a common practice to do the day’s shift, go home and have supper with the wife and kids and come back to the office for a few hours. This would occur two or three evenings a week, lengthy periods at the time...I think I would have like a couple of more [employees] at the time.”<sup>27</sup>

With respect to Mr. Burgoyne, he was alone in his responsibilities at the Sikh Desk until March 1985. In his testimony, Mr. Russell Upton, formerly in charge of the Sikh Desk, noted that a position for a third analyst to work with Mr. Burgoyne was not filled until after the Air India bombing. When CSIS came into being, it was intended that there would be fourteen individuals, both section heads and analysts reporting to Mr. Upton. However, Mr. Upton only had seven of those positions filled. He felt that he had insufficient resources to adequately cover the problem of Sikh extremism.<sup>28</sup> According to Mr. Upton:

I recall a period between March 1985 and September 1985 as being extremely busy and somewhat an unsettled time. At Headquarters we lacked analytical resources. New analysts, some of whom required training experience, filled positions and constant program change and priority ranking occupied a great deal of my time and effort... In my opinion, we did not have a complete analysis of Sikh terrorist developments in Canada leading up to the Air India and Narita Airport explosion. This area of terrorism was a new one to us. We possessed limited understanding of this complex subject. Our overall resources were limited, both from the standpoint of field sources and resources, and Headquarters analysis expertise.<sup>29</sup>

Poor tasking also manifested itself in an absence of training available to CSIS officials. Former RCMP Sergeant Mr. Warren Sweeney testified that he was not aware of any training provided to members of the old RCMP Security Service who were going to join the new civilian CSIS agency. In addition, Mr. John Henry testified that although the Intelligence Analysis Course he took dealt with threat assessment and assessing potential threats to a degree, “...it didn’t really have that much relevance to what I was doing.”<sup>30</sup> Mr. Borgoyne also testified that there was no training given to him during his time in the RCMP Security Service to assist him in dealing with Sikh extremism issues and that he was not personally comfortable being held out as the unit’s Sikh expert. Likewise, Messieurs Gartshore and Upton also testified to the absence of specific training in Sikh terrorism and extremism.

Poor tasking by the federal government with respect to the Sikh extremism issue also seriously affected their ability to obtain source coverage and judicially authorized observation of who

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<sup>26</sup> Testimony of Mr. John Henry, Transcript of Proceedings (Vol. 25), p. 2532.

<sup>27</sup> Testimony of Mr. John Henry, Transcript of Proceedings (Vol. 25), p. 2545-46.

<sup>28</sup> Testimony of Mr. Russell Upton, Transcript of Proceedings (Vol. 31), p. 3571-72.

<sup>29</sup> Testimony of Mr. Russell Upton, Transcript of Proceedings (Vol. 31), p. 3602. See also Document # CAD-0154, Public Production #0649.

<sup>30</sup> Testimony of Mr. John Henry, Transcript of Proceedings (Vol. 25), p. 2545.

would turn out to be a prime suspect in the bombing, Mr. Talwinder Parmar. Mr. Jacques Jodoin, former Director General, Communication Intelligence and Warrants at CSIS, testified that in light of the limited source coverage CSIS managed to obtain, they were in a poor position to provide timely intelligence with respect to any planned acts of terrorism.<sup>31</sup> Consequently, CSIS found itself in the position of having to seek a warrant to intercept the communications of Mr. Parmar. Despite this known deficiency in CSIS's source coverage, Mr. Kobzey was only tasked to put together information in support of obtaining a warrant against Mr. Parmar in August 1984, less than one year prior to the bombing.

At the same time, with Sikh extremism being poorly tasked as lower on the list of priorities, there was delay in obtaining the warrant against Mr. Parmar. According to Mr. Zelmer, "The previous factor about it being lower on the list of priorities, it would be a consideration"<sup>32</sup> for where the CSIS Warrant Committee would place it on their list of priority applications. Even after obtaining the Parmar warrant, which took five long months to obtain, lower priority tasking by the federal government meant that insufficient CSIS Physical Surveillance Unit coverage was devoted to observation of Mr. Parmar when he left his house. According to Mr. Kobzey:

No, I did not get enough PSU [physical surveillance unit] coverage in my mind as an investigator. However, I was one half of a two-man desk that was one component of a multi-desk counterterrorism unit and a counterintelligence unit and a counter-subversion unit, all of whom were competing fiercely for scarce PSU resources in the form of two teams. ... Now, counterterrorism in that day, CSIS was, as the Security Service had been before, primarily concerned with the Cold War issues as they affected the Government of Canada, and there was a greater degree of priority attached to CI targets, meaning the USSR, Soviet Bloc, People's Republic of China, and counter-subversion and ourselves and CT, we took a backseat to those targets at that time.<sup>33</sup>

Ultimately, for Mr. Kobzey, "There were far too many demands on far too scarce resources with respect to Physical Surveillance Unit. It was this fierce competition for resources, unfortunately."<sup>34</sup>

Nevertheless, by May 1985, some Canadian government officials started to notice a change. According to Mr. Warden, "But nonetheless, I have to say that by May of '85, I did feel that finally the machinery was starting to get its act together and in fact information was coming in from – you know, there was a lot of close interaction on the part of the agencies; the Indian Government had its excellent sources in Canada, the CSIS, the RCMP, and people were starting to pull together."<sup>35</sup> However, from a tasking perspective, this development was too little too late.

On May 28, 1985, less than one month prior to the Air India bombing, Mr. Mel Deschenes, former head of counter-terrorism at CSIS, sent a document to all regions on the subject of Sikh

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<sup>31</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 23), p. 2264-65.

<sup>32</sup> Testimony of Mr. Daryl Zelmer, Transcript of Proceedings (Vol. 23), p. 2368-69.

<sup>33</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 32), p. 3773.

<sup>34</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 33), p. 3838.

<sup>35</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2388.

extremism.<sup>36</sup> The document notes that CSIS Headquarters recognizes the potential for terrorism and that it is obliged to provide the government with timely and accurate intelligence and assessment of the situation as it develops with respect to Sikh extremism. As a result, the document states that all priority attention is now being afforded to the area of Sikh extremism until at least mid-June of 1985. This document then states that the CSIS Headquarters is requesting that all regions provide this area of Sikh extremism priority attention during the period in question from the end of May to mid-June of 1985. Given the recognized seriousness of the developing threat posed by Sikh extremism, the government failed to sufficiently task CSIS in advance of the Air India Flight 182 bombing.

With respect to the Interdepartmental Sikh Terrorism Task Force established on May 17, 1985, formed to coordinate Canada's response to the Sikh terrorist threat, Mr. Warden testified that "well certainly I had felt that this kind of coordination should have occurred much earlier, probably at the latest in late 1984. I simply felt that there was a lack of coordination on the part of Canadian departments and agencies and while I was gratified, I suppose that at this point they had finally set up something, a formal coordinating group. At the same time, I did feel it was inaction that was taken late in the day."<sup>37</sup>

The result of the tasking-based intelligence failure on the part of CSIS was that ominous "red flags" were present, warning of the possibility of an impending terrorist incident. According to Mr. Upton, "...I can truthfully say that I – we were getting red flags all over the place and I felt it was only a matter of time before it was – they were going to hit us good. ... I felt it was only a matter of time before the terrorist element in the Sikh community were going to hit us good, due to the signals that were up, you know that?"<sup>38</sup> Nevertheless, Mr Upton was not prevented from going on vacation around June 20, 1985, just a few days prior to the bombing.

### **(c) Intelligence Collection Failure**

The Air India Flight 182 bombing reveals an intelligence collection failure. This failure is symptomatic of the intelligence tasking failure with respect to Sikh extremism. According to Wesley Wark, "...what we see in the detailed record of the pre-bombing CSIS information collection effort, was an inability to take full advantage, I would say, of that targeting, an inability to sustain physical surveillance on key targets, in particular Mr. Parmar, and the inability to make full use of the wire tap information, the electronic surveillance, again, conducted against Mr. Parmar."<sup>39</sup> All of the above are clear indication of an intelligence collection failure.

In Canada, at the time before the Air India Flight 182 bombing, there was a small group of Sikh extremists. According to evidence before this Commission of Inquiry, there were approximately 350 individuals that could be fairly characterized as Sikh extremists.<sup>40</sup> For Mr. Gordon Smith, a former Deputy Minister of Political Affairs in the Department of Foreign Affairs, 350 individuals

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<sup>36</sup> Document # CAF-0124.

<sup>37</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2402.

<sup>38</sup> Testimony of Mr. Russell Upton, Transcript of Proceedings (Vol. 31), p. 3614.

<sup>39</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1495.

<sup>40</sup> Document # CAE-08023217.

out of a population at that time of 120,000 Sikhs, was a relatively small number that CSIS might have wanted to target for surveillance.<sup>41</sup> In fact, in the case of the Air India Flight 182 bombing, it appears that while CSIS managed to target the right person for surveillance, namely Mr. Parmar, it failed to be sufficiently organized and prepared to obtain authorization to intercept the communications of Mr. Parmar in an efficient and timely manner, and after finally obtaining authorization to intercept, to take full advantage of the targeting it applied to this suspect.

Prior to the creation of CSIS in July 1984, the preparation necessary to ensure a smooth transition was not completed. According to Mr. Kobzey, “From my understanding, the Government of Canada felt it was incumbent upon them to have the new agency created and in place on a certain timeframe, and I don’t believe the timeframe allowed for the transition team was sufficient for them to do everything and I’m sure they would have liked to do.”<sup>42</sup> Specifically with respect to the preparation for the new warrant regime under CSIS, Mr. Jodoin noted that, “you could tell that there was very little obviously.”<sup>43</sup>

With the creation of CSIS, old RCMP Security Service *Official Secrets Act* warrants had to be converted to *CSIS Act* warrants. CSIS had until December 31, 1984, to convert old warrants to new warrants. As such, CSIS was fully occupied during this time trying to get their 110 warrants converted and the result was that the processing of new warrant applications was delayed. According to Mr. Jodoin, in mid October 1984, “I sent a memo to everybody saying, ‘unless you can make a strong case, even if it’s a Level 4, but you’re going have to put additional recommendations and show us that it is urgent, and otherwise we will not consider it. We will block it.’ Not me personally, but the Warrant Committee did not want to have to have more warrants to block the machinery.”<sup>44</sup>

At the same time, the conversion of old warrants was delayed by the new CSIS warrant approval process, which is very legalistic and bureaucratic. Under the RCMP Security Service and its predecessor legislation, the *Official Secrets Act*, to obtain a warrant was rather simple. A short brief written to the Solicitor General would suffice. However, under the *CSIS Act*, it was five or six months to go from a Level 4 approval, or five to six months from the date of the original affidavit, to the date of the approval in Federal Court. Mr. Jodoin testified that, “Obviously it was too slow, but it was par for the course at the time, considering the resources and the complications – the complex system that we had to go through.”<sup>45</sup> This was unacceptable.

The Parmar warrant application was crucial for the investigation of Sikh extremism in Canada before the Air India Flight 182 bombing. In fact, as of February 21, 1985, CSIS knowledge of Mr. Parmar and the other key Sikh extremists, namely Messieurs Gill and Bagri, had not advanced beyond what was known in September 1984.<sup>46</sup> As such, the Parmar warrant application stressed the limited success to date from relying solely on other investigative procedures and that a warrant was necessary because of the threat Mr. Parmar posed to the security of Canada. The

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<sup>41</sup> Testimony of Mr. Gordon Smith, Transcript of Proceedings (Vol. 24), p. 2493.

<sup>42</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 38), p. 3819.

<sup>43</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 23), p. 2246.

<sup>44</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 23), p. 2254. See also, Document # CAB-1045.

<sup>45</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 23), p. 2278.

<sup>46</sup> Document # CAF-0111. Testimony of Mr. Russell Upton, Transcript of Proceedings (Vol. 31), p. 3592.



final paragraph of the Parmar warrant application stated that, “At present, support for Parmar and the Babbar Khalsa appears to be minimal. However, our assessment of Parmar is that he is the most radical and potentially dangerous Sikh in the country with a close circle of like-minded associates. Together they pose a serious threat, particularly when viewed in the context of their vocal activities.”<sup>47</sup>

Unfortunately terrorists do not wait for the conversion of old warrants. In a letter written by Mr. Zelmer, four months after the Parmar warrant application had been submitted, the lack of an intercept against the communications of Mr. Parmar represented “...the dominant deficiency to the advancement of our investigation.”<sup>48</sup> Nevertheless, despite urgings for the processing of the Parmar warrant application to be expedited, processing took a total of five long months. According to Mr. Kobzey:

My attitude about the delay; I felt it was unreasonable. I felt it was unacceptable that it was taking five months to put through a document... And to be put on the back burner when I learned about the delay, due to the conversion of the other warrants, I felt that we have an emergent situation taking place here in the field and housekeeping matters with respect to converting *Official Secrets Act* warrants to CSIS Section 21(1) warrants, taking priority over an emergent terrorist-extremist activities in the field, I didn't feel personally that was a wise way to go.<sup>49</sup>

The tragedy of this delay relates to the collection of intelligence by CSIS and what they could have learned in that five-month time delay. According to Mr. Kobzey, “It was frustrating, Sir, and it was disappointing, and what was lost in terms of information or knowledge or what could have been done with that knowledge we'll never know, but that's one of the heartbreaks of this entire investigation, is that time delay, from a personal perspective.”<sup>50</sup> Undoubtedly, another frustrating aspect for Mr. Kobzey was that during this same time, another serious warrant that had been applied for, which related to a Western European target, took only two days to fully process.<sup>51</sup>

Mr. Kobzey also testified that had the Parmar warrant been in place faster, he may have obtained information that would have allowed him to have argued for and attained further resources, such as precious Physical Surveillance Unit resources. Unfortunately, the intelligence tasking failure of prioritizing counter-intelligence over that of counter-terrorism meant that even after the Parmar warrant application had been approved after a five-month process, CSIS did not devote intelligence collection-based Physical Surveillance Unit observation to Mr. Parmar for almost

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<sup>47</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 23), p. 2263.

<sup>48</sup> Document # CAB-0194.

<sup>49</sup> Testimony of Mr. Raymond Kobzey, Transcript of Proceedings (Vol. 33), p. 3780-81. See also, Testimony of Mr. Glen Gartshore, Transcript of Proceedings (Vol. 31), p. 3539. According to Mr. Gartshore, with respect to the Parmar warrant, “I suppose looking back, then, it was probably not being processed in a very timely manner...”

<sup>50</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 32), p. 3750-51. This sentiment was shared by Mr. Henry Jensen. In his testimony, he noted that because of the warrant application process delays, the work was often done for nothing. According to Mr. Jensen, “And often times, it's rendered useless because of perishable information. You have to be able to strike fast.” Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5367.

<sup>51</sup> Testimony of Mr. Glen Gartshore, Transcript of Proceedings (Vol. 31), p. 3540.

two months. The request for Physical Surveillance Unit coverage of Mr. Parmar was made on April 4, 1985, however coverage was not granted until June 1, 1985. In fact, coverage of Mr. Parmar on June 4, 1985, only came about as a result of Mr. Kobzey approaching the Deputy Director General Operations and putting in a request personally to him for coverage as it was getting close to the visit of Indian Prime Minister Gandhi. According to Mr. Kobzey:

And, the priority was a Russian target and he was reluctant to provide coverage for the Sikhs and it required a bit of verbal arm twisting on my part, which removed me from his Christmas card list, to put it mildly, but I made a business case that, in the event that something happened to Mr. Gandhi, a proceeding such as this would likely ensue and that it would be incumbent upon us to ensure that we devoted resources to the target, Mr. Parmar, to ensure that we covered all bases.<sup>52</sup>

Even after obtaining Physical Surveillance Unit coverage of Mr. Parmar, CSIS called it off on June 21, 1985, the day before the two bombs were loaded at Vancouver International Airport and tagged for two Air India flights heading in opposite directions around the world. Consequently, the inefficient CSIS warrant approval process was an intelligence collection failure because it inhibited the ability of CSIS to collect crucial intelligence on one of the prime suspects prior to the Air India Flight 182 bombing. According to Mr. Kobzey:

And what we're saying is a possibility exists that had the warrant been up, information might have been gleaned from that technical resource that would have given us some understanding of what was happening and would have indicated contacts, et cetera, that would be of value and that would have enabled me or my colleague, Dave Ayre, to put together a business case for coverage on specific individuals [i.e. Messrs. Bagri and Gill] who may have come in contact with our target, or cover off meetings or whatever we might have learned.<sup>53</sup>

To the dismay of AIVFA, the lengthy delay for processing warrant applications still exists today. According to Mr. Kobzey, "As far as my personal knowledge of the situation, all I can say, Sir, is I've been a member of the Mounted Police since 1990 and in conversation with my CSIS counsel, DOJ counsel, I've been apprised that the situation is essentially lengthy still, and I've heard testimony that it still takes several months to put a warrant through."<sup>54</sup>

Lastly, the 1992 Security Intelligence Review Committee (SIRC) Report made it clear that CSIS's capacity to fully exploit the technical surveillance of Mr. Parmar was lacking, primarily due to a lack of in-house translation capabilities in the critical period prior to the Air India Flight 182 bombing. Although the approval of the Parmar warrant took five-months to process, the BC CSIS region did not employ a Punjabi translator until June 1985.<sup>55</sup> As a result, two days before the Air India bombing, approximately one hundred audio surveillance tapes remained untranslated, despite the fact that Mr. McLean testified to the fact that there were likely 80,000 plus Indo-Canadians in the lower BC mainland that spoke Punjabi, and that the vast majority of

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<sup>52</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 33), p. 3795.

<sup>53</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 32), p. 3775.

<sup>54</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 32), p. 3750-51.

<sup>55</sup> Document # CAD-0184.

this population was able to speak English as well.

#### **(d) Intelligence Assessment Failure**

Collection and assessment of intelligence are synergistic tasks. Deficiencies in one will lead to deficiencies in the other. According to Wesley Wark, "...one of the answer to why we got it wrong is that assessment always flows from good intelligence collection. We didn't have, finally, targeted enough intelligence collection; therefore, assessment was bound to be affected but also, I don't think, have the resources in place or sufficient maturity within CSIS at the time to do a really good threat assessments..."<sup>56</sup> It is clear that deficiencies in intelligence collection, including inadequate physical surveillance coverage and the inability to utilize wiretap surveillance on a timely basis because the CSIS BC region had no suitable translator to handle Punjabi, affected intelligence assessment and reporting before the Air India Flight 182 bombing. As a result, what CSIS was not able to do was to get beyond general appreciations of the threat, or to take full advantage of the limited intelligence gathering operations it had in place.

To begin with, the focus by CSIS on airline hijackings rather than bombings reflects an inability to imagine alternative outcomes. According to Wesley Wark, "...the actual shape of the Air India bombing clearly took the RCMP as much by surprise as it did CSIS and they were in some respects looking for other potential outcomes in terms of threats that they understood and this is where there clearly were elements of an intelligence assessment failure."<sup>57</sup> In fact, the 1992 SIRC Report found that of the over 70 threat assessments dealing with Sikh extremism and aviation security that were disseminated by CSIS between July 14, 1984 and June 1, 1985, with respect to those threat assessments concerning aviation security, the focus was hijacking.

This may have stemmed from the fact that CSIS largely inherited the old RCMP's Security Service professional culture upon its inception. With the bulk of CSIS employees being former RCMP Security Service employees, new CSIS employees may have fell subject to the "tyranny of the case file"<sup>58</sup> approach. This meant that CSIS was institutionally biased in favour of information gathering by operational program, i.e. counter-intelligence and counter-terrorism, rather than advice to government. According to Brodeur, "It means that the service [CSIS], instead of being looking forward to prevent—to prevent incidents or attacks or attempts by terrorists, is actually focused in solving a past crime. And secondly it means that it does not really produce what is called strategic intelligence..."<sup>59</sup>

A disaster like the one that occurred with respect to Air India Flight 182 was not inconceivable in 1985. In fact, the conventional wisdom about terrorism, that it was focused on symbolic targets with minimal casualties, was already eroding by the early 1980s. The series of suicide attacks against American diplomatic facilities in Beirut Lebanon, in addition to the U.S. marine barracks at Beirut International Airport in 1983, as well as the 1984 suicide bombings of the U.S. embassy and attempted assassination of the Emir of Kuwait, all pointed towards a new and developing terrorist mentality of the need for greater lethality. According to Professor Bruce

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<sup>56</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1497.

<sup>57</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1500.

<sup>58</sup> Testimony of Mr. Jean-Paul Brodeur, Transcript of Proceedings (Vol. 18), p. 1721.

<sup>59</sup> Testimony of Mr. Jean-Paul Brodeur, Transcript of Proceedings (Vol. 18), p. 1721.

Hoffman:

The terrorists themselves seem to become convinced around the early mid-1980s that they had to escalate, that they had to carry out, not just more daring, more spectacular, but also more bloody acts of terrorism to obtain the same amount of publicity and attention that more discrete acts might have gotten for them in years past.

At the same time of this development, “We see revenge now playing a more important element than before” and “...an inclination now to inflict higher levels of violence against the hated government that’s accused of oppression or against a rival ethnic group or against what is seen by the terrorist as a predatory majority population as providing a new justification for a different kind of terrorism of higher lethality.”

The growth of religious terrorism fuelled the growing increase in the severity of terrorist attacks over the 1980s. The radical Sikh movement that emerged in the early 1980s, very much conformed to the characteristics of religious terrorism and its penchant for greater human carnage. The radical Sikh movement of this era was more intensely religious than its predecessors, advocating the use of violence towards the attainment of political legitimacy for Sikh identity religious nationalism. In other words, what had started out as a movement for an autonomous Sikh state known as Khalistan, turned into a religious crusade and it became an instrument of a religious violence to provide power to those who had little power before. Thus, although the conventional wisdom about terrorism in and around the time of the Air India bombing in June of 1985 was focused on the threat of hijacking with respect to aviation security, this was changing.

Indeed, given the rise of religiously motivated Sikh militancy in the early 1980s and the corresponding trend towards greater terrorist inflicted casualties, the potential for a disaster like that of Air India was known. Therefore, “...there wasn’t any particular reason, really, why we should have been so obsessively concerned with hijackings as opposed to bombings given some recent incidents and some recent warnings.” What this early lack of attention to the potential of airline terrorist bombings represents is an intelligence assessment failure. Threat assessments by CSIS failed to probe alternative threat scenarios, especially when it came to the possibility of Sikh terrorists targeting Air India flights.

With respect to the actual threat assessments prepared by CSIS, Mr. Wark noted in his testimony that the 1992 SIRC Report found a low quality of performance when it came to threat assessments on the part of CSIS. The threat assessments that CSIS issued in the period leading up to the Air India bombing were deficient due to the fact that they lacked specifics. According to Mr. Wark, “...these threat assessments were very general in nature.”<sup>60</sup> According to Mr. Henry, CSIS almost never collected enough details to categorize any terrorist threat as a “specific” threat in the months leading up to the Air India Flight 182 bombing. According to Mr. Henry, “when we use the term ‘specific’ it meant that we had something that we could pass on

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<sup>60</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1496.

and [police] could act upon it.”<sup>61</sup> In most cases there were not specific threats available in the assessments provided by CSIS to various government agencies. In fact, Mr. Henry could only recall one occasion where there was a specific threat level, and Mr. MacDonald, of the Airport Policing Branch within the ‘P’ Directorate at RCMP Headquarters, testified that he could not recall ever receiving a threat assessment that referred to a specific threat.<sup>62</sup> Clearly, CSIS set the threshold for a “specific threat” too high.

Almost every Air India flight leaving from Canada prior to the Air India Flight 182 bombing, attracted numerous warnings.<sup>63</sup> With respect to threats to airlines departing from Canada between June 1984 and June 1985, Air India was the subject of more threats than most, if not all other airlines combined: “It was probably more information on Air India, yes. There were only two of really any concern at the time and you weren’t getting them, for instance, on Air Canada and WestJet and whatnot. So it was a small area really.”<sup>64</sup>

Given that Air India was only flying once a week from Canada, CSIS ought to have treated the persistent and numerous threats against Air India, especially during the month of June 1985, as a specific warning and drafted their threat assessments to reflect this reality. If CSIS had done this, the bombing of Air India Flight 182 may have been averted because those agencies responsible for the security of Air India, including the RCMP, Transport Canada, and Burns Security, may have been more vigilant. According to Mr. Jansen, former Deputy Commissioner of Operations for the RCMP, “Well, I’ve always carried the view that this was the biggest and most disastrous civil intelligence failure that Canada has faced ... I firmly believe that. I for one feel that somehow, somewhere there were some dots that could have been linked and should have been linked and had that been done then who knows? It might have been preventable.”<sup>65</sup>

At the same time, in its intelligence assessment work, CSIS demonstrated a lack of analytical rigour. The CSIS Threat Assessment Unit would often visit Mr. Burgoyne at the Sikh desk when it had been tasked to provide a threat assessment to a client. Mr. Burgoyne would provide the Unit with information necessary for their threat assessment. Afterwards, the Unit would disseminate their threat assessment to their consumer, often VIP Security within the ‘P’ Directorate of the RCMP. However, Mr. Burgoyne testified that the assessments the Unit would send out, were practically verbatim based on what he supplied to them.<sup>66</sup> In other words, the CSIS Threat Assessment Unit was recycling the work by Mr. Burgoyne at the Sikh Desk without providing any further analysis, effectively failing to provide the more thorough intelligence assessment the circumstances required.

In fact, Mr. Gartshore testified that he never saw raw data, and instead relied to a great extent on his staff that would have analyzed the raw data, such as Mr. Burgoyne.<sup>67</sup> However, as was noted earlier, Mr. Burgoyne did not have a significant background and/or training in the fields of Sikh

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<sup>61</sup> Testimony of Mr. John Henry, Transcript of Proceedings (Vol. 25), p. 2512.

<sup>62</sup> Testimony of Mr. John Henry, Transcript of Proceedings (Vol. 25), p. 2538.

<sup>63</sup> Document # CAC-0517.

<sup>64</sup> Testimony of Mr. J.B. MacDonald, Transcript of Proceedings (Vol. 27), p. 2833.

<sup>65</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5455.

<sup>66</sup> Testimony of Mr. Bob Burgoyne, Transcript of Proceedings (Vol. 31), p. 3450.

<sup>67</sup> Testimony of Mr. Glen Gartshore, Transcript of Proceedings (Vol. 31), p. 3552.

terrorism and extremism. Consequently, the intelligence assessments of the raw data provided to Mr. Gartshore would have likely suffered from a lack of analytical understanding and experience.

A particularly unfortunate CSIS episode, replete with analytical misgiving, which ended up having grave consequences for the post-bombing investigation, was what came to be known as the “Duncan blast incident.” CSIS managed to trail key Air India bombing suspects Messieurs Parmar and Reyat and an unidentified male, on the day they tested a bomb in Duncan, British Columbia. On that day in June 1985, CSIS agents Ms. Lynne Jarrett (formerly Ms. McAdams) and Mr. Larry Lowe, followed Mr. Parmar and his associates to a wooded area and they heard a blast. According to Ms. Jarrett, “About 13 minutes after [arriving at the Duncan Blast test area], there was an extremely loud bang, very sharp, very clear. It caused me to swear and I actually, literally, came off the seat. It startled me, it was so loud.”<sup>68</sup> Ms. Jarrett testified that she had never heard a sound like that before and that after Mr. Lowe returned the car, he told her that it sounded like a gun had gone off.

After searching for shell casings, and finding none, neither Ms. Jarrett nor Mr. Lowe questioned their analysis that the blast was from a gun. This, despite the fact that the blast startled Ms. Jarrett so much it caused her to swear and come off her seat inside a parked car, and that information was known at that time about a wave of transistor radio disguised bomb explosions in Northern India commemorating the first anniversary of the storming of the Golden Temple. Apparently, Sikhs in India were known to be experimenting with bombs and timers less than a month prior to the Air India bombing.<sup>69</sup> It appears as if these CSIS agents possessed a tunnel vision that focused their assessment solely on guns given the known assassination threat to Mr. Ghandi, to the exclusion of all other manifestations of the Sikh threat.

Unfortunately, this CSIS assessment related failure had wider ramifications. Mr. Kobzey testified that had Mr. Lowe made reference to the Duncan Blast sounding like it could have been dynamite, instead of a blast from a gun; he would have taken steps to ensure an officer and/or a dog was sent to the Duncan blast site. According to Mr. Kobzey, “Then things would have taken a completely different turn. Options are right out there. For one thing, I wouldn’t have gone sailing [Mr. Kobzey went on vacation just days prior to the Air India Flight 182 bombing]. ... Now, had he phrased it differently, it would have triggered a different response. However, we were looking at an assassination attempt on Mr. Ghandi and the focus was on that kind of event and it was just perhaps a case of tunnel vision.”<sup>70</sup>

If this was not enough, although CSIS passed this information about the Duncan blast to the RCMP the very next day, they asked that the RCMP not do any follow-up work. According to Gary Bass, “Yes, the RCMP were asked not to do anything with it. They were asked to treat it as secret.”<sup>71</sup> Mr. Bass testified that he still feels that this was a missed opportunity to identify a mystery man involved in this incident who is believed to be at the heart of the bombing

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<sup>68</sup> Testimony of Ms. Lynne Jarrett, Transcript of Proceedings (Vol. 22), p. 2187.

<sup>69</sup> Document # CAF-0113.

<sup>70</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 33), p. 3805-06.

<sup>71</sup> Testimony of Mr. Gary Bass, Transcript of Proceedings (Vol. 87), p. 11250.

conspiracy. “I’m saying there is a real missed opportunity here that we’re still chasing 22 years later that where we might have identified him during that week, because the theory is, is that he helped, right or wrong, that he helped Reyat build the bombs,” noted Mr. Bass.<sup>72</sup> Unfortunately, “The part that I wonder about, I think about quite a lot actually, is how things had turned out differently with respect to identify this individual. He was there for a week at Reyat’s house. And he didn’t go back on the ferry that night with Parmar...”<sup>73</sup>

The man, dubbed Mr. X, accompanied Messieurs Parmar and Reyat to Duncan, BC, on the day of the test bombing. Afterwards, Mr. X remained on Vancouver Island with Mr. Reyat for several days, while Mr. Parmar returned to Vancouver alone. To this day, the unknown Mr. X remains a significant part of the on-going Air India criminal probe.

### **(e) Intelligence Dissemination Failure**

With the birth of CSIS in 1984, intelligence did not flow smoothly from CSIS to the RCMP.<sup>74</sup> Mr. Wayne Douglas, who worked at that National Criminal Intelligence Service (NCIS) at “E” Division of the RCMP, testified to the relationship between NCIS and the RCMP Security Service, with respect to obtaining security intelligence. According to Mr. Douglas, “Well, it started back in about ’71 or ’72 and I was on Special L Squad and we had a very good working relationship. We would pretty well anytime go up to the [RCMP] Security Service building and go in there and sit down and have an informal chat and move around the building ... So, it was part of the family, although I say there were some restrictions on movement but the relationship was very good and the free flow of information.”<sup>75</sup> However, “When they changed over to CSIS I believe in around 1984 was it ... that it was still a good relationship except the flow of information, if we required information, we were under directions to put it through the – what was called the CSIS liaison man...”<sup>76</sup>

The timeliness of dissemination of intelligence was also an issue for the RCMP after the creation of CSIS. The decision to carve out the old RCMP Security Service from the RCMP, and create a new separate agency, CSIS, with intelligence mandated to CSIS and the RCMP to rely on this intelligence generated by CSIS, was a “very flawed approach.”<sup>77</sup> The separation of the intelligence and law enforcement functions led to untimely delays in the sharing of crucial intelligence by CSIS with the RCMP and other government agencies. Despite the fact that in an effort to overcome this problem with an agreement between CSIS and the RCMP to share intelligence on a timely basis, Mr. Jensen felt that there was no mechanism to ensure this happened.

The creation of CSIS also created difficulties for the RCMP when they obtained intelligence information from CSIS. One such difficulty related to the caveats CSIS would put on the sharing of intelligence, which prevented the RCMP from sharing the intelligence it obtained from CSIS

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<sup>72</sup> Testimony of Mr. Gary Bass, Transcript of Proceedings (Vol. 87), p. 11248.

<sup>73</sup> Testimony of Mr. Gary Bass, Transcript of Proceedings (Vol. 87), p. 11248.

<sup>74</sup> The examples that follow in this section are not exhaustive but simply illustrative of the problem.

<sup>75</sup> Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), p. 4036.

<sup>76</sup> Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), p. 4036.

<sup>77</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5361.

with other agencies, such as municipal and provincial police forces. Mr. Jensen testified to the affect this had on the RCMP. According to Mr. Jensen, “And that, of course, made the relationship between the RCMP and these municipal and provincial forces difficult because they would claim the RCMP is withholding information from them. And that was true, only because they had to, not because they wanted to.”<sup>78</sup>

Beyond the problems that the establishment of CSIS created for various agencies, primarily the RCMP, CSIS neglected to disseminate its intelligence broadly. For example, Mr. Douglas testified about a number of instances when intelligence from CSIS concerning Sikh terrorists such as Messieurs Parmar, Bagri and Gill, was not disseminated to him at the RCMP. A CSIS threat assessment that outlined that three Sikh extremist groups had emerged in Canada and were known internationally to be active in the Vancouver area, in addition to outlining the three primary BC-based persons known to be members of the Babbar Khalsa, a group that advocated violence in its pursuit of an independent state of Punjab, was apparently not disseminated to Mr. Douglas. According to Mr. Douglas, “Just for the record, as far as that document [CSIS threat assessment], I have no recollection of ever receiving this.”<sup>79</sup> In his testimony, Mr. Douglas noted other instances of CSIS information that he was unfamiliar with and ultimately unsure whether he received.<sup>80</sup>

At the same time, CSIS threat assessments disseminated to branches of the RCMP were not always disseminated to other relevant RCMP branches or relevant provincial police authorities, or other agencies. For example, a CSIS threat assessment that described the arrest of a member of the Sikh Student Federation at Vancouver International Airport prior to departure to London, which indicated that a barrel of a machine gun with 100 rounds of ammunition was found in the suspect’s luggage, was sent to the RCMP VIP Security Branch, but not to Airport Policing.<sup>81</sup> Similarly, with respect to the November 1984 bomb plot against Air India, Mr. Sweeney, who worked at the NCIB/NSE unit at RCMP Headquarters, testified that he did not receive all intelligence disseminated by CSIS that went to Airport Police and the VIP Security Branch of the RCMP.<sup>82</sup> On the other hand, Mr. Axel Hovbrenner, a member of the Vancouver Integrated Intelligence Unit (VIU) within the Vancouver Police Department, testified that he did not get any CSIS intelligence for the work product or threat assessments that they prepared.<sup>83</sup> Similarly, Don McLean with the Vancouver Police Department, testified that he did not receive any intelligence with respect to intelligence suggesting that, “Parmar is the man accused of murder in India who was arrested and detained in West Germany for two years prior to returning to Canada in October 1984. Mr. Singh stated that Parmar group is keeping a very low profile and is

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<sup>78</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5399-5400.

<sup>79</sup> Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), p. 4050.

<sup>80</sup> For example, Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), pgs. 4051, 4052, 4053, 4055, 4058, 4059, 4060, 4064, 4065 re no record of June 1<sup>st</sup> telex going to Mr. Douglas, p. 4072 re Khauna Tapes. With respect to the Khauna Tapes, according to Mr. Douglas, “And I have no recall of—you know, Mr. Pushpinder Singh and his—you know, his statement at the time about just wait and see in two weeks from reading what you just read here as far as I know the VPD took no action on this.” See Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), p. 4072.

<sup>81</sup> Document # CAB-0207. See Transcript of Proceedings (Vol. 34), p. 4022-23.

<sup>82</sup> Testimony of Mr. Warren Sweeney, Transcript of Proceedings (Vol. 25), p. 2597.

<sup>83</sup> Testimony of Mr. Axel Hovbrenner, Transcript of Proceedings (Vol. 33), p. 3875.



working on a highly secret project.”<sup>84</sup> It appears that to the extent that information exchange occurred, it occurred in a haphazard fashion, and often on an informal person-to-person basis rather than a more formal basis.

## **(f) Conclusion**

The Air India Flight 182 bombing was an intelligence cycle failure. It was a product of an intelligence tasking failure, intelligence collection failure, intelligence assessment failure, and intelligence dissemination failure. With all of these separate parts of the intelligence cycle being interdependent, a failure in one led to a failure in another, ultimately leading to the culmination of a massive threat to the safety and security of those Canadians aboard Air India Flight 182. On June 23, 1985, Canadian intelligence failed.

## **(iii) Institutional Failure: RCMP, Vancouver Police, and Transport Canada**

### **(a) Introduction**

Prior to the Air India Flight 182 bombing, Mr. Warden was routinely called into the Indian Ministry of External Affairs to be lectured on Canada’s poor response to the threat posed by the Sikh terrorist element within Canadian society. According to Mr. Warden:

I think I would have to say that there was an uneven appreciation in Canada on the part of departments and agencies with respect to what was happening, as far as my perception was concerned. I felt that certainly at the level of the Foreign Ministry of External Affairs, with which I was in direct contact most of the time, that there was appreciation there of the situation. With respect to other agencies and departments of government, I was not at all convinced that there was an adequate appreciation in 1984 certainly of what was happening. ... I have seen some pieces which suggest that the view of the agency – of one or more agencies at least – was that it was sort of a minor – the threat was considered minor at this point in ’84, and it suggested to me or in effect tended to, shall we say, confirm the feeling I had had at that time, that there were people in Ottawa or agencies in Ottawa that in my impression should have been giving full attention to this matter. It tended to suggest to me reading some of these pieces and one in particular, that there was not a sufficient appreciation of a threat. And I found that quite surprising in the sense that the kind of information that we were transmitting in this kind of message seemed to me to be pretty straightforward and give a pretty clear indication of what was happening. And when they were all taken together, they should have created, I thought, shall I say, a greater sense of urgency, a greater appreciation of the significance of the threat that was building up.<sup>85</sup>

In fact, Mr. Warden felt that the “government machinery” as a whole was incapable during the

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<sup>84</sup> Document # CAC-0290.

<sup>85</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2387-88.

period prior to the bombing of making a “determined show of political will” to address the threat of Sikh extremism, that was so clearly building to a crescendo. According to Mr. Warden:

...right up to today I still have that feeling of frustration that the government machinery did not seem able to get its act together and to really step in at an early stage and to make it very clear that we were not going to accept the roughing up of diplomats in Canada without consequences. And it seemed to me if these things had been pursued vigorously, if they'd been pursued in a robust fashion, that, whether or not convictions had been delivered, it would have served the purpose of making a statement, a very clear statement to the people in question who were involved in this, that we were not going to tolerate it, and I think if we had done this from a very early stage on, it might have served to take the wind out of the sails with some of these people and may have served to thwart the further development of the kind of plot that was brought to full realization on June 23<sup>rd</sup>.<sup>86</sup>

The Canadian government and its department responsible for aviation security, Transport Canada, in addition to the RCMP and the Vancouver Police Department (VPD), did not appreciate the very real threat posed by Sikh extremism prior to the Air India Flight 182 bombing. Consequently, these institutions did not attach sufficient priority to dealing with the emerging Sikh terrorist threat, in addition to failing to devote sufficient resources to combating this threat. In fact, much like CSIS, these institutions demonstrated tasking, collection, assessment, and dissemination failures of their own.

#### **(b) RCMP**

Mr. Wayne Douglas, former Sergeant in the Criminal Intelligence Unit at “E” Division of the RCMP in Vancouver, testified about the lower priority and insufficient resources devoted to issues of Sikh extremism. Mr. Douglas stated that, “It’s difficult to put a percentage on it because we were not fully focussed on Sikh extremism. It was definitely picked up and got a lot busier once the Golden Temple was invaded...”<sup>87</sup> Demonstrative of this lower priority for the British Columbia RCMP, was a lack of resources devoted to the Sikh threat. According to Mr. Douglas, “Well, back in 1984...I think in the whole RCMP there was 14 Indo-Canadian members. I think two are Vancouver.”<sup>88</sup>

In fact, for many within the RCMP, crime prevention requires criminal intelligence and a lack of resources effectively meant that the RCMP could not perform its mandate. According to Mr. Jensen, “No. We didn’t have the resources to do it. We were gutted as I said. I attribute this to a naivety of parliamentarians and government, and to believe that you could make this change, take 2200 resources away from the RCMP and expect it to carry on with its mandate, which was inadequate.”<sup>89</sup> The “gutting” of the RCMP by the federal government was felt across many departments relevant to national security, including RCMP VIP security and RCMP Airport

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<sup>86</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2384.

<sup>87</sup> Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), p. 4029.

<sup>88</sup> Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 24), p. 4109.

<sup>89</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5457.

Policing. According to Mr. Lloyd Hickman, a former RCMP Inspector, “I never, in all my years in VIP, had as many resources as that I would have liked to have had.”<sup>90</sup>

Similarly, despite increased airport security requirements, the government was cutting costs at the same time. According to a document filed at the Inquiry, one of the most significant problems facing Airport Policing was diminishing human resources, such that “The end result of cutting our personnel is that a level will eventually be reached where we will not have the resources to supply the extra security required, requested by the various foreign airlines.”<sup>91</sup> “We were constantly being bombarded with reductions in staff,” testified Mr. Gary Clarke, a former RCMP airport security chief.<sup>92</sup> Similarly, Mr. MacDonald testified that the Airport Policing Branch of the RCMP could not provide supervision or inspection of Transport Canada’s implementation of security levels specified by the RCMP because he was a one-man operation and “Probably didn’t have the money either.”<sup>93</sup>

A result of the insufficient resources available to the RCMP was an absence of training. There was no training in threat assessment or terrorism more generally. RCMP Sergeant Sweeney testified that “I wasn’t trained in threat assessments while I was in the Security Service or in NCIB [National Criminal Intelligence Branch].” Mr. Sweeney testified that he was unaware of any training that was available at the time prior to the Air India bombing. However, he did seem to recall that the RCMP Training Division, developed an Extremism Terrorism course, sometime after the Air India bombing.<sup>94</sup>

With respect to the collection of important Sikh threat-related information, it appears that the RCMP may have dropped the ball when it mattered most. Mr. James Bartleman, who was Director General of Intelligence Analysis and Security at the then Department of External Affairs, testified that during the week of the Air India Flight 182 bombing, he found a document in his daily intercept package from the Canadian Security Establishment (CSE), which indicated that Air India was being targeted the weekend of June 22 to 23, 1985. It was raw and unevaluated intelligence.

According to Mr. Bartleman, although this CSE intercept could be regarded as just another one of a dozen documents:

...I took it seriously. I knew that there was a meeting going on in the Operation Centre. I believe it was of the ad hoc group on Sikh terrorism that I had set up, but it could have been another meeting dealing with Sikh terrorism. But in any case, I knew they were down there so I took the document and I put it in a secure folder and I walked down to the meeting and I asked the senior RCMP officer present if I could speak to him privately. ... His reaction startled me. He flushed and told me that of course he had seen it and that he didn’t need me to tell me how to do

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<sup>90</sup> Testimony of Mr. Lloyd Hickman, Transcript of Proceedings (Vol. 34), p. 3994.

<sup>91</sup> Document # CAA-0034.

<sup>92</sup> Testimony of Mr. Gary Clarke, Transcript of Proceedings (Vol. 28), p. 3078.

<sup>93</sup> Testimony of Mr. J.B. MacDonald, Transcript of Proceedings (Vol. 27), p. 2876.

<sup>94</sup> Testimony of Mr. Warren Sweeney, Transcript of Proceedings (Vol. 25), p. 2605.

his job. And so I said fine.<sup>95</sup>

Despite some testimony that questioned the veracity of Mr. Bartleman's testimony<sup>96</sup>, for Mr. Bartleman "I know what I saw and that is fixed in my memory."<sup>97</sup> Indeed, Mr. Warden was not surprised at all by Mr. Bartleman's revelation. "I was not surprised to see that, because I knew there was all this information, and from what I'd seen, I didn't think we were dealing with the brightest lights on the street and it seemed to me that it was inevitable that this kind of thing was bound to be in the system somewhere and to come out," testified Mr. Warden.<sup>98</sup>

Indeed, testimony from Mr. Graham Pinos (and Michael Anne MacDonald<sup>99</sup>) about a conversation he had with Mr. Mel Deschenes, then CSIS's Director of Counter-Terrorism, to the effect that, "An element of Sikhs was in the Indian community in Canada, and that he perceived them as being dangerous, you know. Likely they'd bring a plane down,"<sup>100</sup> lends some credence to Mr. Bartleman's testimony, despite the fact that there were some minor discrepancies between what he remembered from June of 1985 and what he told the Air India prosecutors in 2002. Although Mr. Deschenes never used the words bomb, according to Mr. Pinos, "His words were 'take a plane out of the sky' and that expression to me is, you know, blow a plane out of the sky, knock him out, but take a plane out was a weird phraseology which I remembered."<sup>101</sup>

At the same time, like CSIS, the RCMP also failed to treat the persistent and numerous threats against Air India, especially during the month of June 1985, as a specific warning. On June 1, 1985, Air India in Bombay, India, sent a telex to Air India at Toronto's Pearson International Airport saying, among other things, "an assessment of threat received from intelligence agencies reveal[s] the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time-delay devices in the aircraft or registered baggage." On June 3, 1985, Air India provided this telex, which came to be known as the June 1<sup>st</sup> telex, to the RCMP. Despite the fact that Mr. Sweeney testified that, "A specific threat would be this plane, this date, this time, by Sikh extremists, backed with other information and other intelligence,"<sup>102</sup> given that Air India was only flying once a week from Canada, the June 1<sup>st</sup> telex along with a number of pieces of intelligence information and sources available to the RCMP at the time, clearly should have demanded that this threat against Air India be regarded by the RCMP as a specific threat in the circumstances.

Shockingly, Mr J. B. MacDonald of the RCMP requested a threat assessment from CSIS based on the June 1<sup>st</sup> telex but did not send CSIS the telex itself. According to Mr. MacDonald, "I

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<sup>95</sup> Testimony of Mr. James Bartleman, Transcript of Proceedings (Vol. 22), p. 2108-109.

<sup>96</sup> See *e.g.* Testimony of Mr. Pierre LaCompte, Transcript of Proceedings (Vol. 90).

<sup>97</sup> Testimony of Mr. James Bartleman, Transcript of Proceedings (Vol. 22), p. 2133.

<sup>98</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2389.

<sup>99</sup> Testimony of Mr. Michael Anne MacDonald, Transcript of Proceedings (Vol. 30), p. 3286. According to Mr. MacDonald, upon learning of the Air India Flight 182 bombing, "I immediately reflected back on what Mr. Deschenes had said to me when he was leaving and my immediate reaction was, 'Even when they know something is going to happen, they can't stop it.'"

<sup>100</sup> Testimony of Mr. Graham Pinos, Transcript of Proceedings (Vol. 30), p. 3347.

<sup>101</sup> Testimony of Mr. Graham Pinos, Transcript of Proceedings (Vol. 66), p. 8182.

<sup>102</sup> Testimony of Mr. Warren Sweeney, Transcript of Proceedings (Vol. 26), p. 2716.

didn't send that, no.”<sup>103</sup> Mr. MacDonald also failed to send this document to Transport Canada, as Mr. Dale Mattson testified that he did not recall seeing it. Failing this, the RCMP also neglected to disseminate it within their own ranks. Likewise, Mr. Sweeney of the RCMP testified that “No, the first time that I saw that Telex was in the review of the articles [before this Inquiry].”<sup>104</sup> As a result, one of the unfortunate ramifications of this deficient dissemination within the RCMP was that other RCMP officials could not respond properly to the threat posed by Sikh terrorism. According to Mr. Kobzey, who also did not see the June 1<sup>st</sup> telex:

This would have been extremely helpful. It would have been an additional piece of information that I had – pardon me, that I could have gone to Mr. Osborne with, with respect to the request for PSU coverage. ...A document like this would have brought in my options with respect to discussing the need for surveillance with Mr. Osborne. I believe that if I had seen this, I would have been a little more emphatic. ...So, this would have meant more to me and it would have given me an opportunity to ask for extended surveillance for the entire month, and certainly the reference to the loud explosion, in my mind, reflecting on this from 21 years later, I believe that, as the Commissioner said, we would have treated that loud noise a lot differently.<sup>105</sup>

Unfortunately, the June 1<sup>st</sup> telex is not the only instance of the RCMP failing to disseminate information to CSIS.<sup>106</sup> With respect to threat related information and documents in the possession of Mr. MacDonald, it appears from the record that some of these items were sent to CSIS and some of them were not. There was no rhyme or reason to the dissemination of information from the RCMP to CSIS. According to Mr. MacDonald, “Again, discretion. Discretion of the person.”<sup>107</sup> Similarly, Mr. R. E. Muir testified that with respect to his office, only “If I thought there was a need, then CSIS would surely get it, yes...In my mind, I guess it was a judgment call.”<sup>108</sup>

There are also numerous other instances, beyond the crucial June 1<sup>st</sup> telex, where information does not get disseminated appropriately enough within the ranks of the RCMP. There are a number of documents that emanate from Air India but for which there is no record of them going to RCMP Headquarters. One such document noted that “One [redacted] of the Richmond Hill Gurudwara, New York has been chosen leader of this Shahidi Dal, one [redacted] Das, who has also joined this Dal, has volunteered to carry a bomb in his accompanied baggage with a view to blowing up an Air India plane in order to draw attention to the demands of Sikhs.”<sup>109</sup> Mr. MacDonald at RCMP Headquarters testified that he was surprised that he did not get this

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<sup>103</sup> Testimony of Mr. J.B. MacDonald, Transcript of Proceedings (Vol. 27), p. 2867. See all testimony of CSIS official Mr. Henry who testified that, “I never seen it [June 1<sup>st</sup> telex], until I was shown this document [at the Inquiry].” Testimony of Mr. John Henry, Transcript of Proceedings (Vol. 25), p. 2539.

<sup>104</sup> Testimony of Mr. Warren Sweeney, Transcript of Proceedings (Vol. 26), p. 2732.

<sup>105</sup> Testimony of Mr. Ray Kobzey, Transcript of Proceedings (Vol. 33), p. 3810-11.

<sup>106</sup> For example, see Document # CAA-0174. This document is an example of information that came in on the ground level at Pearson International Airport in Toronto from Air India, that goes up to RCMP Headquarters, but does not get disseminated to CSIS.

<sup>107</sup> Testimony of Mr. J. B. MacDonald, Transcript of Proceedings (Vol. 27), p. 2867.

<sup>108</sup> Testimony of Mr. R. E. Muir, Transcript of Proceedings (Vol. 28), p. 2932-33.

<sup>109</sup> Document # CAA-0084.

document,<sup>110</sup> in addition to other documents, which included warnings of potential hijackings, airline bombings, and suicide attacks. Undoubtedly, this made it difficult for Mr. MacDonald to his job, which included responsibility for setting security levels at Canadian airports.

In addition, there are instances where CSIS threat assessments go to VIP Headquarters at RCMP but do not go to the Criminal Intelligence Unit of the RCMP. CSIS threat assessments concerning the three main Sikh extremists active in the Vancouver area at the time, namely Messieurs Parmar, Bagri and Gill, often did not get sent to Mr. Douglas at the Criminal Intelligence Unit of the RCMP.<sup>111</sup>

There are also a number of unfortunate instances where information in the possession of the RCMP does not go to the Airport Policing Branch of the RCMP.<sup>112</sup> It was crucial for information to go to this Branch because they were tasked with responsibility for setting the security level at airports. Threat information that came into the RCMP VIP Security Branch at the time prior to the Air India Flight 182 bombing, dealt with Indian diplomats, among other things, but it also deal with in some measure, threats to Air India, an Indian government owned operation. Mr. Clarke also testified that the RCMP had no communication with the airline ticket counter or on the ground staff with respect to threat levels.

With respect to the November 1984 bomb plot against Air India, Mr. Sweeney of the RCMP testified that he did not see a telex that was sent from CSIS to RCMP Airport Police and the RCMP VIP Security Branch, which confirmed that a member of CSIS and RCMP Sergeant Joe MacDonald had a conversation on October 24, 1984, about a possible high jacking of an Air India plane. The Vancouver Police Department (VPD) informed CSIS and RCMP CIS (Criminal Intelligence Section) that Person 2 was interviewed by the VPD. Person 2 disclosed knowledge of plans to blow up an Air India 747 plane in November en route to India from Montreal. A CSIS threat assessment confirmed that there was a real possibility that Sikhs would damage an Air India plane. However, as previously mentioned, Mr. Sweeney did not have the benefit of this CSIS threat assessment.<sup>113</sup>

In addition, a search warrant executed in January 1986 for Person 1 and Person 2's phone tolls, showed phone calls between Person 1 and W in September, October, and November 1984. It also revealed two phone calls to Reyat in October, 1984. One call had also been made by Person 2 to W in July 1984. By virtue of these telephone calls, there was a demonstrated connection to Reyat. However, Mr. Sweeney did not have access to this information either. Mr. Sweeney testified that if he had this information at the time, with respect to Person 2, he would have viewed him more than just "tying up loose ends."<sup>114</sup> Furthermore, Mr. Sweeney did not have knowledge that Person 1 passed a polygraph test on the information he passed to the police. The polygraph noted that the information provided by Person 1 and Person 2 had been substantiated. Ms. Jarrett also testified that she did not know of Person 1 or Person 2 or the information they

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<sup>110</sup> Testimony of Mr. J. B. MacDonald, Transcript of Proceedings (Vol. 27), p. 2836.

<sup>111</sup> See *e.g.* Document # CAA-0110. See also, Transcript of Proceedings (Vol. 34), pgs. 4051-4053, 4055, 4058-4060, 4064, and 4072.

<sup>112</sup> See *e.g.* Document # CAA-0099 and CAA-0103.

<sup>113</sup> Testimony of Mr. Warren Sweeney, Transcript of Proceedings (Vol. 25), p. 2597.

<sup>114</sup> Testimony of Mr. Warren Sweeney, Transcript of Proceedings (Vol. 25), p. 2633.

had revealed about a November bomb plot, which may have changed the assessment of the Duncan test blast by her and Mr. Lowe.<sup>115</sup>

There was a documented failure of dissemination from the RCMP to the VPD. To facilitate the flow of information between these two agencies, the VPD had a Vancouver Integrated Intelligence Unit (VIU). This was an intelligence-gathering unit for organized crime. However, a sub-component of this unit was terrorism/extremism. The RCMP had a presence at VIU, which was called National Criminal Intelligence Service (NCIS). With respect to dissemination between the RCMP NCIS and VIU, Mr. Axel Hovbrenber, who was a member of the VPD, testified that, "Certainly, my impression, while I was there, was that, not only were there parallel structures and parallel organizations, but there was also parallel mandates as well. Very rarely did we work together as a truly integrated unit."<sup>116</sup> Moreover, Mr. Hovbrenber noted that, "Very limited integrated approach. I was trying to recall whether we actually worked on in integrated file and I can't recall us doing that in the four years that I was there."<sup>117</sup>

According to Mr. Hovbrenber, the information sharing was one-sided. The RCMP had access to VIU files, but the VIU did not have the same access to RCMP files. According to Mr. Hovbrenber:

Information is the life-blood of intelligence and certainly from an intelligence's perspective, our job is to discern patterns and we require as much information as possible in order to make the appropriate analysis of that information. ... The RCMP have protected information, quite rightfully. Certainly from an intelligence's perspective, having those type of caveats does prevent an officer who's at the ground level from getting information that may be able to assist in discerning other patterns as they are receiving information as well.<sup>118</sup>

In his capacity at VPD, Mr. Hovbrenber did not receive intelligence about a meeting where it was decided to hijack an Air India aircraft and that a committee, consisting of Mr. Bagri had been formed to draw up plans to orchestrate the hijacking.<sup>119</sup>

With respect to the fatal June 22-23, 1985 weekend, the RCMP failed to follow the conditions of its own level of protection it had implemented for all Air India flights from Canada. From June 16, 1984 to June 22, 1985, as a result of escalating violence in India, the RCMP increased security for Air India to Level 4 protection, the second highest level of security available for airlines at Canadian airports.<sup>120</sup> Level 4 protection for Air India's once-a-week flights was in

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<sup>115</sup> Testimony of Ms. Lynne Jarrett, Transcript of Proceedings (Vol. 22), p. 2203.

<sup>116</sup> Testimony of Mr. Axel Hovbrenber, Transcript of Proceedings (Vol. 33), p. 3872.

<sup>117</sup> Testimony of Mr. Axel Hovbrenber, Transcript of Proceedings (Vol. 33), p. 3873.

<sup>118</sup> Testimony of Mr. Axel Hovbrenber, Transcript of Proceedings (Vol. 33), p. 3916.

<sup>119</sup> See Document # CAA-0103 and CAA-0099. See also Document # CAB-0207, CAC-0293, and CAB-0269.

<sup>120</sup> The highest level of protection was level 5. Mr J.B. MacDonald testified that the only difference between Level 4 and Level 5 protection was that an Air India vehicle would be present under a Level 5 situation. According to Mr. MacDonald, "No sir, not a big difference." See Testimony of Mr. J.B. MacDonald, Transcript of Proceedings (Vol. 27), p. 2791-92. This begs the question as to what the point was of Level 5 protection compared to Level 4 protection, if all it meant was essentially one more automobile airside? This suggests that a greater level of

effect at Toronto's Pearson International Airport. Level 4 protection entailed, among other things, an RCMP dog master checking any reported suspect luggage or package and searching the passenger section of the Air India aircraft before departure."<sup>121</sup> Nevertheless, despite the heightened level of security for Air India flights departing Pearson International Airport during June 1985, the RCMP neglected its responsibility under Level 4 protection to have an RCMP Dog Master present at the airport for Air India Flight 182.

In fact, the evidence at the Inquiry revealed that the RCMP Dog Master was not present at any flights in the month of June 1985 and that he was ordered to Vancouver on June 21, 1985, along with all bomb dogs and handlers for the RCMP. Mr. Gary Carlson, the RCMP Dog Master, testified that he was in Vancouver with his dog Thor, for a training course.<sup>122</sup> Mr. Carlson testified that to have his dog search the checked baggage that had not already been screened by the x-ray machine before it broke down on the day of Air India Flight 182, he would have needed about an hour and a half to two hours to screen the baggage with his dog. Given that Air India Flight 182 was delayed by about three hours at Pearson International Airport because an engine in need of repair had to be loaded onto the wing of Flight 182, this would have provided Mr. Carlson and Thor enough time to search the baggage had he not been in Vancouver at the time. Sadly, Mr. Carlson noted that if he had had an opportunity to search the baggage, he had the confidence that Thor would have found the bomb.

Upon arrival of Air India Flight 182 in Montreal from Toronto, the RCMP Dog at Mirabel airport was also away on training in Vancouver. With the detection of three suspicious pieces of luggage, the RCMP called Mr. Serge Carignan, a dog handler with Quebec's provincial police, and his dog Arko, to assist with searching the plane and luggage. However, Air India Flight 182 had already departed by the time Mr. Carignan and his dog arrived at Mirabel airport. According to Mr. Carignan, "Well, I've always wondered, first thing, why, if I was called to search an airplane and some luggage, why the airplane had left or why did they leave—why did they let the airplane go before I arrived there. I did not have a chance to search that airplane, and I believe if I had had a search—a chance to search it, things might have turned out differently."<sup>123</sup> Although Mr. Carignan was not told he was being called to Mirabel airport because of a bomb threat, what other reason would the RCMP have to call a bomb-detecting dog and his handler unless there was the suspicion?

### **(c) Vancouver Police Department**

Mr. Don McLean, a former BC police officer, testified that much like the RCMP, the problem of Sikh extremism was not generally understood within the VPD at the time prior to the Air India Flight 182 bombing. According to Mr. McLean, "The majority of the department was Caucasian. They did not understand the degree of the cultural diversity that was within the community itself. This was one of the reasons that the [Indo-Canadian] Liaison Team was developed, so that we

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protection was needed for Level 5, in order to make moving from Level 4 to Level 5, a true increase in aviation security.

<sup>121</sup> Document # CAA-335. See also Testimony of Mr. Serge Carignan, Transcript of Proceedings (Vol. 26), p. 2672.

<sup>122</sup> Testimony of Mr. Gary Carlson, Transcript of Proceedings (Vol. 28), p. 2999.

<sup>123</sup> Testimony of Mr. Serge Carignan, Transcript of Proceedings (Vol. 26), p. 2671.



could actually deal with that cultural diversity.”<sup>124</sup> However, despite awareness of the lack of cultural understanding of the BC cultural community, the BC Indo-Canadian Liaison Team only employed two constables, namely Mr. McLean and Mr. Tony Smith. Neither constable was of Asian background, likely as a result of the fact that there were a limited number of police officers of racial background in the VPD at the time, and with an Indo-Canadian community of over 100,000 members in BC at the time, both Messieurs McLean and Smith were busy. According to Mr. Hovbrenber, “I don’t think that given the level of threat I believe the more resources could have been used, not only by CSIS, but by all law enforcement.”<sup>125</sup>

In October 1984, Mr. Crook, a VPD officer, became aware of an individual who had approached police about information in relation to a bomb plot. Mr. Crook and another police officer were tasked with interviewing Person 2 about this information, but were told not to promise anything in exchange for information. The interview with Person 2 revealed what came to be known as the November 1984 bomb plot to bomb at least one Air India plane in retaliation for the storming of the Golden Temple by the Indian government. During the interview, Person 2 revealed that Person 1 was involved in the bomb plot. Mr. Crook testified that he felt that Person 2 was willing to divulge the names of those involved in the plot, if it was not for the insistence of his lawyer, to obtain something in exchange for this information.

However, Mr. Crook was not aware of the fact that the individual identified as Person 1 had previously gone to the police with information about this bomb plot. With respect to whether Mr. Crook would have changed his approach to his interview of Person 2 if he had known that Person 1 had previously gone to the police about the bomb plot, Mr. Crook testified that, “Yes, I believe it would have...If I had known that of what Person 2 was saying, I think I would have not only pursued this particular interview a little more vigorously, in spite of the lawyer’s objections, but I might well have stayed in that room until such time as I at least got the names of the people that were involved. I would have had a different approach to this interview.”<sup>126</sup> Furthermore, “I think my approach at that point would have been to get the people involved in that meeting who were able to offer up the assurances that the lawyer was asking for Person 2 before any additional information was coming forward, I would certainly have pushed for that to happen as soon as possible.”<sup>127</sup>

Likewise, Mr. McLean testified about a lack of knowledge with respect to the November 1984 bomb plot. Mr. McLean intercepted communication on June 12, 1985, involving a meeting between Mr. Khurana and members of the International Sikh Youth Federation (ISYF), in which a ISYF member proclaimed in response to a complaint that no ambassadors or counsel had been killed, “you will see! Something will be done in two weeks!” However, prior to this intercept, Mr. McLean did not know that Person 2 had been interviewed by Mr. Crook, and that Person 1 had provided information to the VPD about the November 1984 bomb plot, not to mention the general threats to Air India that existed at the time.

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<sup>124</sup> Testimony of Mr. Don McLean, Transcript of Proceedings (Vol. 21), p. 2022.

<sup>125</sup> Testimony of Mr. Axel Hovbrenber, Transcript of Proceedings (Vol. 33), p. 3918.

<sup>126</sup> Testimony of Mr. Rick Crook, Transcript of Proceedings (Vol. 20), p. 1911.

<sup>127</sup> Testimony of Mr. Rick Crook, Transcript of Proceedings (Vol. 20), p. 1911.

Mr. McLean testified that if he had known prior to the June 12<sup>th</sup> intercept or shortly thereafter, about this information, “I would have conducted it – my investigation – during the debriefing and afterwards – differently, yes.” The differences would have related to, “The questions and the people I would see or seek out, to get more information. ... We would have got him [Mr. Khurana] more directly involved, yes.”<sup>128</sup> As such, despite working in the same VPD, information sharing was deficient. Informal arrangements for information sharing led to inconsistent results and not all the information that would have been expected to be shared, was actually shared.

#### **(d) Transport Canada**

Transport Canada’s aviation security role included that of policy maker, regulator, and compliance monitoring on behalf of the government of Canada. In all three of these areas, Transport Canada failed. Transport Canada monitored Air India’s inaugural flight from Canada in 1984 and was satisfied that Air India was carrying out procedures that they had committed to under the Civil Aviation Security Measures, such as the screening of checked baggage by x-ray machine or PD-4 Sniffer. In fact, Mr. Mattson testified that, even without the screening of checked baggage by x-ray machine or PD-4 Sniffer, which went beyond the airline safety regulations at the time, he would have viewed Air India’s Security Plan as appropriate. According to Transport Canada, “It appears that Air India did meet the requirements of the Foreign Aircraft Security Measures Regulations at Lester B. Pearson International Airport, on the 22<sup>nd</sup> of June, 1985. There are obvious weaknesses in the system, i.e., lack of training evident in regards to Burns Security personnel; however, it is still a system, good, bad, or indifferent. Our regulations simply require a system, with no measure of quality.”<sup>129</sup>

Mr. Mattson also testified that with respect to the issue of interlined baggage from CP Airlines to Air India, he saw that as Air India’s responsibility to verify the origination of luggage. At the time, there was no regulatory requirement concerning the handling of interlined luggage, according to Mr. Mattson.

In addition, when the RCMP specified a certain level of security at Pearson International Airport, based on its assessment of the threat posed by Sikh extremism, Transport Canada questioned its necessity. Although Transport Canada was to implement the level of security specified by the RCMP for Canadian airports, according to documentary evidence filed at the Inquiry, Transport Canada did not consider it necessary to place extra RCMP security personnel on Air India flights. However, according to Mr. Clarke of the RCMP, “...it was my view that there was a renegeing on the part of it, that they [Transport Canada] were not following the rules of the *Memorandum of Agreement* by not letting us do our job. I mean it was our view, because of the intelligence we had, we knew what we were doing. And we considered it essential that this overtime for these extra people be paid for. And it is my view that he [Mr. Dale Mattson] had renegeed on that promise.”<sup>130</sup> Although this dispute did not ultimately affect the RCMP coverage provided as it was agreed that the issue of money for the overtime would be addressed later, this

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<sup>128</sup> Testimony of Mr. Don McLean, Transcript of Proceedings (Vol. 21), p. 2017.

<sup>129</sup> Document # CAF-0143.

<sup>130</sup> Testimony of Mr. Gary Clarke, Transcript of Proceedings (Vol. 28), p. 3043.

episode demonstrates the failure by Transport Canada to adequately assess the threat to Air India posed by Sikh terrorism.

Similarly, although Air India expressed interest in obtaining the services of an RCMP handler and dog to search checked baggage prior to each flight, Transport Canada refused. According to Mr. Mattson, “Transport Canada is not prepared to call in police dog to check baggage on all flights. If a bag is determined to be highly suspect, the Dog Master will be asked to respond.”<sup>131</sup>

With respect to compliance monitoring by Transport Canada, a small inspectorate group within Transport Canada handled this responsibility. This small inspectorate group were security officers that were attached to the Civil Aviation Security Branch of Transport Canada. According to Mr. Mattson, the airport managers did not have security officers to perform this compliance monitoring function because of limited resources.<sup>132</sup> Instead, “Air carrier inspections were carried out by Transport Canada inspectors...Resources were limited and inspections were sporadic rather than cyclical.”<sup>133</sup>

What this demonstrates is a policy-making and regulatory failure on the part of Transport Canada, as they saw these additional security procedures, such as the screening of checked baggage and procedures with respect to interlined luggage, as additional procedures that Air India had determined were necessary and not the government of Canada. Transport Canada failed to see the necessity of determining that policy and regulatory changes were needed to implement these additional security procedures, and greater resources were needed to ensure compliance monitoring of these additional security procedures.

In other words, the government of Canada through Transport Canada failed to take a leadership position by implementing policy and regulatory changes prior to the Air India Flight 182 disaster, which if implemented, may have served to prevent this tragedy. In fact, shortly after the bombing, the Government of Canada introduced stringent requirements that forbid the carrying of checked baggage on international flights unless the passenger was already on board, in addition to a general overhaul of the regulatory framework that introduced new regulations. In the period prior to the bombing of Air India Flight 182, it seemed impossible for Transport Canada to make a determined show of governmental will to deal with the threat posed by Sikh terrorism.

#### **(iv) Conclusion**

Intelligence and institutional failure led to the bombing of Air India Flight 182. The intelligence cycle collapse within CSIS led to an intelligence failure that contributed to the institutional failure that was systemic among Canadian government institutions, including the RCMP, the Vancouver Police Department, and Transport Canada. Canadian government institutions and officials neglected to direct the appropriate resources to understand the threat posed by Sikh extremism, failed to appropriately assess this threat based on available information, and failed to

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<sup>131</sup> Testimony of Mr. Dale Mattson, Transcript of Proceedings (Vol. 29), p. 3190.

<sup>132</sup> Testimony of Mr. Dale Mattson, Transcript of Proceedings (Vol. 30), p. 3385-86.

<sup>133</sup> See Transcript of Proceedings (Vol. 30), p. 3387-88.

cooperate effectively to prevent the bombing. According to Mr. Warden, Canada's High Commissioner in India at the time, the reaction in the aftermath of the Air India Flight 182 bombing in the international community, certainly India, was "'Well, look, we told you so.' I mean that—it was said to me in words as simple as that."<sup>134</sup>

## **(v) Outstanding Issues**

### **(a) Intelligence Analysis**

The architecture of Canada's counter-terrorism intelligence effort is dated. According to Professor Hoffman, "My view, and it's not meant to be dismissive or derogatory, is that it's anachronistic and the reason I say that is virtually every other country similar to Canada, whether it's the United States, the United Kingdom, Australia, in the aftermath of 9/11 have recognized that the intelligence priorities and requirements that existed during the pre-9/11 Cold War era were not relevant to the new kinds of sub-state, transnational network threats that we face in the 21<sup>st</sup> century."<sup>135</sup> Thus, Canada lacks a national strategy on how to deal with terrorism. According to Mr. Thomas Quiggin, "There is no stated national strategy in Canada on what our goals are, vis-à-vis our counterterrorism efforts...[this is] the biggest single problem in Canada right now is our lack of a national direction or a lack of a national strategy."<sup>136</sup>

Similarly, according to Professor Hoffman, "We have to move away from a collection-based intelligence model to an analysis-led intelligence model."<sup>137</sup> Under an analysis-led model, information is analyzed and decisions are made as to what further information needs to be collected. This information is then collected, sent back up for further analysis, which leads to more analysis, and more instructions for collection. For Professor Rudner:

Yes it is but I want to emphasize that it's not analysis for the sake of analysis. It's ultimately for the sake of interventions calibrated interventions in the terrorism cycle, so yes it's a feedback loop, it constantly builds our knowledge in the terrorism cycle, so yes it's a feedback loop, it constantly builds our knowledge of the threat, identifies the vulnerabilities of the people who pose the threat and guides the interventions of the intelligence community and the law enforcement agencies in preventing proactively that threat to happen. It's preventative. You don't want to wait for the forensic.<sup>138</sup>

Consequently, with an analysis-led intelligence model "...you can't escape the need for a centralized, coordinated and integrated intelligence structure of having some entity or some office that's responsible or that functions as a clearing house for the collection, collation, analysis and dissemination of all the relevant intelligence. And indeed this, I think, has become

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<sup>134</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2393-94.

<sup>135</sup> Testimony of Mr. Bruce Hoffman, Transcript of Proceedings (Vol. 94), p. 12505.

<sup>136</sup> Testimony of Mr. Thomas Quiggin, Transcript of Proceedings (Vol. 91), p. 12048-49.

<sup>137</sup> Testimony of Mr. Bruce Hoffman, Transcript of Proceedings (Vol. 94), p. 12512. Professor Rudner agreed with Professor Hoffman. According to Rudner, "We're not there. We are still in the domain of the—call it a traditional paradigm of collection-led intelligence..." See Testimony of Mr. Rudner, Transcript of Proceedings (Vol. 92), p. 12244.

<sup>138</sup> Testimony of Mr. Martin Rudner, Transcript of Proceedings (Vol. 92), p. 12258.

the preferred approach in post 9/11.”<sup>139</sup>

Effective individualized intelligence collection by individual specific government agencies, without any coordination and collation, completely undermines efforts to “connect the dots.”<sup>140</sup> This centralizing, coordinating, and integrating role with respect to national security intelligence is not currently being performed by an office or agency in Canada. A national security coordinator, if it existed, could be an office, which deals with the senior levels of different agencies at the collection level and the law enforcement level. Analysts from different government agencies would report to this coordinator. In an analysis-led intelligence model, the analysis flows to the coordinator to the centralized authority, who uses that analysis to disseminate to the collecting communities.

This coordination effort would best mesh with an “all-of-government approach” to combating terrorism. According to Professor Rudner, “There is no one who has the capacity in Canada to link together all the activities required for what we’ll call—the Australians call an all-of-government approach to intervening in the terrorism cycle. For example, some of the interventions are by law enforcement. Some may be security Intelligence. Some may be signals Intelligence. Others may be regulatory authority over explosives, over passports. So what we’re calling for as part of the new paradigm is all-of-government approach.”<sup>141</sup>

Lastly, several witnesses at this Inquiry testified about the challenges with respect to sharing that third party information creates because of caveats that information from foreign allies not be shared outside of CSIS. With respect to the issues third party information creates for CSIS with respect to the sharing of information with domestic police forces, Superintendent Mr. Tremblay testified that, “Well the information is shared with the Service [CSIS] with the caveat that it is not to be disclosed outside of the Service. Should we break that trust or that caveat, it would seriously limit our ability to collect from that third party and in certain cases you’d have an intelligence service running blind which is not an ideal situation.”<sup>142</sup>

In a recent Federal Court of Canada decision, CSIS was denied warrants for overseas electronic intercepts against nine Canadians and a foreigner. Since its inception, CSIS has been largely restricted by law to domestic operations, although it has argued in recent years for permission to carry out overseas espionage, saying their hands are tied if suspects leave Canada and that threats to national security are international. Compounding the problem is the fact that the CSE is barred from listening in on conversations between Canadians outside of Canada, creating a grey area not monitored by either the CSE or CSIS. On the other hand, the U.S. Central Intelligence Agency and Britain’s MI6 routinely engage in foreign espionage. As such, because those wishing to cause harm to Canada do not restrict their movements to Canada’s borders when it comes to international terrorism, consideration ought to be given to expanding the mandate of CSIS to intercept communications abroad and the mandate of the CSE to listen in on conversations between Canadians abroad.

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<sup>139</sup> Testimony of Mr. Bruce Hoffman, Transcript of Proceedings (Vol. 94), p. 12513.

<sup>140</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 94), p. 12510-11.

<sup>141</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 92), p. 12244-45.

<sup>142</sup> Testimony of Mr. Larry Tremblay, Transcript of Proceedings (Vol. 96), p. 12791.

## **(b) Information Sharing: Legislation and Interpretation**

At the same time, informal arrangements for information sharing led to inconsistent results and insufficient sharing. According to Mr. McLean, with respect to the need for some directives and policies and coordination to ensure that all intelligence that is gathered is shared, “it would be helpful to have some form of directive.”<sup>143</sup> In this respect, legislative reform is necessary to promote better cooperation between the RCMP and CSIS. Similarly, information sharing within the RCMP and with other municipal police forces such as the VPD prior to the Air India Flight 182 bombing was done on an ad hoc and discretionary basis. Written directions or policies so that RCMP personnel would know when and with whom to share information would be useful.<sup>144</sup> As such, both legislation and directives appear to be necessary to ensure the thorough and timely dissemination of information between the RCMP and CSIS and within the RCMP. According to Sergeant Turner, “Obviously, legislation is the best route. It sets in stone the procedures. At this particular time we just have cooperation and that’s what we must depend on...But what’s left behind are those processes, that will satisfy both agencies’ greater interests, and I think it’s, you know—it would be troublesome if we were to rely on personal relationships.”<sup>145</sup>

With respect to legislation, legislative clarity needs to be brought to the *CSIS Act*. With respect to section 12<sup>146</sup> of the *Act*, “strict necessity” does not apply to the retention of information. According to Professor Roach, “It seems to me that if you look at Section 12 both grammatically and functionally, the requirement of strict necessity is meant to qualify the collection by investigation or otherwise of intelligence. It’s at that point that CSIS should only collect information that is strictly necessary. But once CSIS has passed that hurdle and it does collect information then Section 12 requires it to analyze and retain that information and intelligence.”<sup>147</sup> Mr. Zaccardelli also testified about changes that need to be made to the *CSIS Act*. The *Act* says CSIS “may” pass information it has obtained of criminal offences to the RCMP but does not use the word “must” or “shall.” For Mr. Zaccardelli, “...we’ve spent over 20 years of window dressing; the window is still the same; we need a new window.”<sup>148</sup>

Likewise, the Integrated Threat Assessment Centre, housed at CSIS Headquarters, requires attention. According to Professor Rudner:

And it’s time, almost four years later, to put real flesh, as in capability, onto the framework or onto the skeleton. So, for example, for the proper staffing of ITAC, the proper professional development of the ITAC analysts hasn’t yet begun. The proper building up in Canada of a capacity to train the trainers

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<sup>143</sup> Testimony of Mr. Don McLean, Transcript of Proceedings (Vol. 35), p. 4152.

<sup>144</sup> Testimony of Mr. Wayne Douglas, Transcript of Proceedings (Vol. 34), p. 4114.

<sup>145</sup> Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 82), p. 10480.

<sup>146</sup> Section 12 of the *CSIS Act* reads as follows: “The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.”

<sup>147</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10394.

<sup>148</sup> Testimony of Mr. Giuliani Zaccardelli, Transcript of Proceedings (Vol. 86), p. 11063.

hasn't yet begun. We have in all Canada a single couple of weeks preliminary – and I mean elementary – training course for analysts assigned to analytical capabilities which is absolutely rudimentary, that is not my comment and it would be an objective comment by the analysts themselves. We have no capacity to properly prepare people for the function. In that sense we need flesh on the frame work.<sup>149</sup>

It is also necessary that Canada lay a foundation for a security culture in Canada. Creating a security culture in Canada can manifest itself in a number of ways. “There does seem to be, from my perspective, a need for a sustained ongoing ability on the part of the public and the academic community in this country to keep thinking about these [national security] issues,” according to Professor Wesley Wark.<sup>150</sup> According to Mr. Quiggin, “One of the things that I find fascinating is that the Canadian government doesn't sponsor an arm's length think tank that would focus specifically on security, extremism, terrorism, national security, these kinds of issues.”<sup>151</sup>

### **(c) Systemic Discrimination**

The manner in which Canada responded to the threat posed by Sikh terrorism prior to the Air India Flight 182 bombings is evidence of systemic discrimination. This issue continues to exist and has not been adequately addressed. According to Mr. St. John, “Well, I think there was a popular conception in Canada that somehow the Canadians of Indian origin on board Air India 182 were Indian citizens from India, and that it wasn't our crisis and it wasn't our problem. And I think that persisted for a very long time and I know that many of the families feel that way to this date.”<sup>152</sup> Mr. Dosanjh echoed the comments of Professor St. John, noting that there was a sense among the victims of the violence that Canadian institutions perceived the Sikh terrorism as a “tribal” issue.<sup>153</sup> As a result of this attitude, “You had the situation at the Golden Temple in India and then suddenly a wave of hatred, violence, threats, hit lists, silencing of broadcasters, journalists, activists happened, and I believe that the institutions of our society were unable to understand or comprehend it to any great degree at that time and were not able to deal with it. So we were left to fend for ourselves.”<sup>154</sup> In other words, Sikh terrorism was “just another ethnic thing” and “...perhaps there might have been a tendency to take them less seriously.”<sup>155</sup>

A Report by University of Toronto professor Ms. Sharene Razack entitled, *The Impact of Systemic Racism on Canada's Pre-bombing Threat Assessment and Post-bombing response to the Air India Bombings*, states that the RCMP would have acted differently if the target of the pre-bombing threats had been an American airline. According to her Report, “In a nutshell, systemic racism operates when all lives do not count the same and when those charged with protection are not inspired to do their best to ensure that no life was lost. In this context, we

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<sup>149</sup> Testimony of Mr. Martin Rudner, Transcript of Proceedings (Vol. 92), p. 12259.

<sup>150</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1502.

<sup>151</sup> Testimony of Mr. Thomas Quiggin, Transcript of Proceedings (Vol. 91), p. 12060. Professor Rudner also laments Canada's impoverished research capabilities in the field of terrorism. According to Professor Rudner, there are fewer than ten academics involved in intelligence and security studies, and several of them are retired.

<sup>152</sup> Testimony of Mr. Peter St. John, Transcript of Proceedings (Vol. 37), p. 4524.

<sup>153</sup> Testimony of Mr. Ujjal Dosanjh, Transcript of Proceedings (Vol. 80), p. 10199.

<sup>154</sup> Testimony of Mr. Ujjal Dosanjh, Transcript of Proceedings (Vol. 80), p. 10168.

<sup>155</sup> Testimony of Mr. William Warden, Transcript of Proceedings (Vol. 24), p. 2412.

would have to ask what would have been the response in 1985 if there had been a series of terrorist threats against the United States.”<sup>156</sup> The Report notes that CSIS did not have Punjabi translators available to listen to crucial wiretaps of bombing mastermind Mr. Parmar that were eventually erased, that police forces were predominantly white and English-speaking in 1985, and that the RCMP had no explosive-sniffing dogs on duty to check airline baggage the weekend of the bombing because they had all been sent to Vancouver on a training course.

#### **(d) Addressing Hate**

There are many possible points of intervention in the cycle of terrorism. In July of 1984, Mr. Bagri called for the murder of 50,000 Hindus. Although Mr. Bagri was charged and acquitted in the Air India Flight 182 bombing, he was never charged for his violent speech. According to Professor Rudner, “...in terms of effective counter-terrorism, to me, each stage of this cycle offers points of intervention. When people spoke the way that they did, and said what they did by way of incitement and fomenting hatred, we had to intervene at that propaganda stage of the cycle to prevent the ultimate attack on Air India.”<sup>157</sup> A review of Canada’s anti-hate laws in order to see if they are adequate in prosecuting terrorist propaganda, incitement, and the glorification of violence is necessary. According to Mr. David Hayer, “I think another one is a hate crime legislation can be used more effectively if they try to—need to make some changes there so when these groups—usually if they’re involve in terrorism, they’re usually also involved in hate crimes. Maybe you can get them that way.”<sup>158</sup>

Likewise, several witness also commented about Canadian politicians attending events organized by Sikh militants. In particular, testimony was directed at an April 2007 Sikh parade in Surrey, BC at which several of the floats carried photographs of Air India mastermind Mr. Parmar, honouring him as a martyr. According to Ms. Isabelle Martinez, “...if that had been Osama bin Laden there, I doubt very much that the police would have been leading on horse, proudly, the head of that parade.”<sup>159</sup> Careful consideration of which cultural celebrations politicians attend ought to be given by all political parties.

Consideration of the corrosive effects of a distorted view of an official policy of multiculturalism that encourages ethnic “ghettoization” may also be necessary, as Mr. Dosanjh suggested in his testimony. According to AIVFA family member Ms. Renee Saklikar:

I wonder if we are serious about being a multicultural society that we might have to move beyond food and dance recognition and actually have a discussion about core values like the rule of law. We might be a bit soft and not grappling with the need to educate all citizens on the rule of law, and so that it’s not just an abstract idea that if you disagree with someone you can’t just blow them up, and if you do blow them up, you will be punished. And I think for many of us that’s the whole problem with the verdict, it forces us to question our belief in that. It may be that the accused knew very well what they were doing was wrong and they seem to have gone

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<sup>156</sup> Exhibit # P-387, p. 3.

<sup>157</sup> Testimony of Mr. Martin Rudner, Transcript of Proceedings (Vol. 92), p. 12238.

<sup>158</sup> Testimony of Mr. David Hayer, Transcript of Proceedings (Vol. 75), p. 9590.

<sup>159</sup> Testimony of Ms. Isabelle Martinez, Transcript of Proceedings (Vol. 76), p. 9588.



to great lengths to hide their involvement, but perhaps there is a tendency in this country to allow too much of a ghettoization of communities which directly hampered the investigation of Air India, specifically this idea that if people don't genuinely believe that you can't threaten or kill or you'll be punished, then the intimidation and threatening of witnesses becomes much more pervasive and it's very worrying.<sup>160</sup>

## **(vi) Recommendations**

In light of the intelligence and institutional failures of Canadian government institutions and officials that led to the bombing of Air India Flight 182, the following recommendations are provided:

### **1. Develop a National Security Strategy**

- The federal government should develop a focused National Security Strategy that among other things sets out Canada's goals vis-à-vis combating terrorism and implements measures in this regard.

### **2. Implement an “All-of-Government Approach” to Combating Terrorism and other National Security Threats**

- Implement an effective and comprehensive government-wide approach to combating terrorism and other global national security threats such as pandemics, supply-chain shocks, environmental degradation, SARS, HIV and AIDS, and critical infrastructure failures.

### **3. Establish an Office of National Security Coordination**

- Establish and fund a National Security Coordination Office so that agency-specific collection of intelligence is coordinated and collated, so as to effectively perform intelligence analysis and “connect the dots” in order to most effectively combat terrorism.

### **4. Implement an Analysis-led Intelligence Model**

- Intelligence and enforcement agencies of the government of Canada, including the Office of National Security Coordination, should implement a terrorism prevention-based Analysis-led Intelligence Model.

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<sup>160</sup> Testimony of Ms. Renee Saklikar, Transcript of Proceedings (Vol. 7), p. 704.

## **5. Enable CSIS and the CSE to Intercept Communications Abroad**

- In order to effectively combat terrorism that is an increasingly international phenomenon, amend the *CSIS Act* to expressly provide CSIS with the mandate to intercept communications abroad, in addition to enabling the CSE to listen in on conversations between Canadians outside of Canada.

## **6. Amend the *CSIS Act* to make Intelligence Sharing Mandatory**

- Amend the permissive nature of section 19<sup>161</sup> of the *Act* so that instead of “may”, CSIS “shall” disclose to the police information that may be used in the investigation or prosecution of an alleged contravention of any law of Canada or a province.
- Related to this recommendation, CSIS shall adopt an interpretation of section 12 of the *Act* so that “strict necessity” qualifies the collection of intelligence by CSIS and not the retention of intelligence by CSIS.

## **7. Enhance ITAC**

- Enhance the capability of the Integrated Threat Assessment Centre at CSIS through enhanced training and professional development of ITAC analysts, etc.

## **8. Develop Written Information Sharing Policies and Procedures at the RCMP**

- The RCMP should develop written policies and procedures designed to formally direct the sharing of information within the RCMP and with external agencies, such as provincial and municipal police forces.
- Implement an organizational culture that emphasizes a “need to share” among relevant government agencies engaged in national security and intelligence analysis.

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<sup>161</sup> Section 19 of the *CSIS Act* reads in part, 19. (1) Information obtained in the performance of the duties and functions of the Service under this Act shall not be disclosed by the Service except in accordance with this section. (2) The Service may disclose information referred to in subsection (1) for the purposes of the performance of its duties and functions under this Act or the administration or enforcement of this Act or as required by any other law and may also disclose such information, (a) where the information may be used in the investigation or prosecution of an alleged contravention of any law of Canada or a province, to a peace officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged contravention may be taken.”(emphasis added)

## **9. Establish The Kanishka Centre for Anti-Terrorism and National Security Studies**

- The federal government should provide funding for the establishment of an academic Centre of Excellence to be known as The Kanishka Centre as a living memorial to the victims and families of the bombing of Air India Flight 182. This multi-disciplinary Centre within a University setting, would bring together expertise and discourse from policy, operational, and academic communities to address the study of terrorism prevention and its related fields, with the intent of working with and assisting governments in this endeavour.

## **10. Amend the *Criminal Code* to make it an Offence to Glorify Terrorist Activity for the Purpose of Emulation**

## **11. Political Parties and MPs must Remain Cognizant of the Cultural Functions to Attend**

- All political parties and MPs must remain vigilant against attending cultural functions, which in any form or manner, support suspected terrorist(s) or designated terrorist organizations. In this regard, it is important that the recommendation with respect to the Canada Revenue Agency making publicly available, information about applicants who have been denied charitable status because of suspected terrorist links, be implemented, so that MPs and Canadians can consider appropriate cultural functions to attend.

## **12. Refocus Canada's Multiculturalism Policy**

- In order to facilitate integration into Canadian society and to repress the development of "home-grown" terrorism, refocus Canada's Multiculturalism policy along the following pillars: responsibilities for all (all Canadians have a civic duty to support those basic structures, principles, and values such as the rule of law, democracy, and equality), respect for each person (subject to the law, all Canadians have the right to express their own culture and beliefs and have a reciprocal obligation to respect the right of others to do the same), and fairness for each person (all Canadians are entitled to equality of treatment and opportunity).

## **Post-bombing Investigation and Prosecution: Ineffective Cooperation Wrought by the Challenge of Moving from Intelligence to Evidence**

### **(i) Introduction**

The investigation and prosecution of the Air India Flight 182 bombing was doomed from the start because of the challenge of moving from CSIS-obtained security intelligence to RCMP-useful evidence for a criminal trial. This was not as a result of any unwillingness on the part of either agency to see the case solved and the perpetrators brought to justice, but because of the challenges created by the political decision to remove the Security Service from the RCMP and establish CSIS.

Under section (b)(ii) of the Terms of Reference of this Commission of Inquiry, the Commissioner is to make findings and recommendations with respect to whether “problems in the effective cooperation between government departments and agencies, including the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, in the investigation of the bombing of Air India Flight 182, either before or after June 23, 1985, whether any changes in practice or legislation are required to prevent the recurrence of similar problems of cooperation in the investigation of terrorism offences in the future.”

In their testimony before the Inquiry, AIVFA family members expressed dissatisfaction with the post-bombing investigation. According to AIVFA family member Mr. Ramachandran Gopalan:

However, Canada’s failure to solve the puzzle of this Air India tragedy, whatever be the reason, be it lethargy, incompetence and carelessness in the investigation process, long drawn out legal system, botched up evidence gathering...lack of political will, to get to the bottom of it...has allowed the people who carried out the plan so successfully to escape the consequences of their actions. This will remain a nasty chapter in the history books of Canada and will continue to bring immense grief to thousands of people who are directly and indirectly affected by this senseless tragedy.<sup>162</sup>

AIVFA family member Mr. Krishna Bhat testified that, “I can’t believe that CSIS tapes were mistakenly erased at a time when the entire world was looking at this tragedy. We are not a banana republic. Are we supposed to believe that CSIS was such a Mickey Mouse operation? If we are just supposed to believe that this was a case of incompetence, was someone fired?”<sup>163</sup> Lastly, AIVFA family member Ms. Anita Gupta pointed out that, “Sadly, if any lesson can be learned from the Air India investigation and trial, perhaps it is how ill equipped we are in dealing with witnesses, identifying them, fostering trust with them, interviewing them, protecting them, keeping them alive.”<sup>164</sup>

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<sup>162</sup> Testimony of Mr. Ramachandran Gopalan, Transcript of Proceedings (Vol. 8), p. 832.

<sup>163</sup> Testimony of Mr. Krishna Bhat, Transcript of Proceedings (Vol. 5), p. 532.

<sup>164</sup> Testimony of Ms. Anita Gupta, Transcript of Proceedings (Vol. 5), p. 517-18.

In addition, under section (b)(iii) of the Terms of Reference of this Commission of Inquiry, the Commissioner is to make findings and recommendations with respect to “the manner in which the Canadian government should address the challenge, as revealed by the investigation and prosecutions in the Air India matter, of establishing a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial.” AIVFA family members have expressed dissatisfaction with the post-bombing prosecution. According to AIVFA family member Mr. Chandar Sain Malhotra, “First, I feel that to deal appropriately with terrorism cases, the Canadian criminal justice system and its rules of evidence must be changed.”<sup>165</sup>

It is crucial that the lessons learned from the post-bombing investigation and prosecution of Air India Flight 182 be addressed in a fashion that truly provides for important and lasting change with respect to the manner in which national security investigations and prosecutions are conducted today and in the future.

## **(ii) The Challenges Created by the Establishment of CSIS**

In 1984, CSIS was created to advise the Government of Canada on threats to national security. CSIS legislation was passed into law in the days before the close of Parliament in June 1984 and was proclaimed into force just two weeks later. In the haste to create CSIS, the government’s focus was on passing legislation and overlooked were the significant resource, policy, and operational challenges that would have to be met in order to make the relationship between CSIS and the RCMP fully functional.<sup>166</sup>

At its inception, the fledging CSIS lacked resources.<sup>167</sup> Beyond having to share facilities with the RCMP in the beginning, according to Mr. Chris Scowen, a CSIS secondment, “We weren’t terribly well staffed in many of our sections right after transition. There were, if you look at the org charts now, many vacant positions that were not filled and were not filled for sometime after transition.”<sup>168</sup> A lack of resources also meant that CSIS employees had to type out their own business cards.<sup>169</sup> According to Mr. Jim Warren, former Director of the Counter-Terrorism Branch at CSIS, “So to say we weren’t really ready to do our job, I think that’s a fair comment...we weren’t up and running at full speed on the 16<sup>th</sup> of July, 1984, or indeed through until probably the end of 1988 before we actually felt comfortable.”<sup>170</sup>

A tangible example of the challenges the transition created for communication, was the issue of access to the Canadian Police Information Centre (CPIC). In the pre-CSIS era, RCMP Security Service officers had access to CPIC. According to Jensen, it was a “...data bank that would deal with persons of interest, and it enabled someone who was interested in a particular target to get

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<sup>165</sup> Testimony of Mr. Chandra Sain Malhotra, Transcript of Proceedings (Vol. 9), p. 932. The testimony of Mr. Malhotra was a video presentation. See Exhibit # P-75 for transcript of remarks.

<sup>166</sup> According to Mr. Henry Jensen, “If you’re asking my judgment as to whether or not Canada was ready to implement the *CSIS Act*, I thought it was ill prepared. That would be my impression, that there was haste.” See Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5454.

<sup>167</sup> Testimony of Mr. Jack Hooper, Transcript of Proceedings (Vol. 50), p. 6262-63. See also Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6009.

<sup>168</sup> Testimony of Mr. Chris Scowen, Transcript of Proceedings (Vol. 50), p. 6122.

<sup>169</sup> Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 66), p. 8279.

<sup>170</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5941-42.

an unsolicited message back whenever a police officer somewhere in Canada had a chance encounter with a given person. It was a good intelligence tool.”<sup>171</sup> However, after the creation of CSIS, CSIS employees lost access to CPIC because they were no longer police officers.<sup>172</sup>

At the same time, the hiving off of CSIS from the RCMP Security Service left a difficult criminal intelligence void for the RCMP to fill. The idea behind intelligence-led policing is that it was not good enough for the RCMP to simply respond to crime after it happened, but instead gather criminal intelligence in an attempt to be pro-active and prevent the commission of a crime.<sup>173</sup> Mr. Robert Simmonds, former RCMP Commissioner, testified that at the time CSIS was created, he wanted the RCMP to retain some capacity to gather intelligence on terrorists. According to Mr. Henry Jensen, former RCMP Deputy Director of Operations:

Well, first of all, in the lead up to the development of the decision to separate the security service from the force, we, on the operational side, certainly made it known that there would be a huge gap. In other words, the intelligence function in the area of security information and intelligence related to criminal acts was gutted. And, as a consequence of that gutting, we knew that we would face difficult problems ahead.<sup>174</sup>

Consequently, the RCMP was left without resources to adequately deal with Sikh extremism because those resources had migrated to CSIS. “After 1984 there was a degree of limitation on our [RCMP] ability to develop that information,” according to Mr. Simmonds.<sup>175</sup> The RCMP found itself dependent on CSIS for criminal intelligence concerning terrorists.

However, CSIS collected intelligence with the intention that it would remain secret, for fear of divulging investigatory methodologies and the identity of sources. Within intelligence circles, knowledge of intelligence is often on a “need to know” basis. On the other hand, the RCMP collected information with the intention that at some point it is going to be made public, as part of the process of discovery and trial during a criminal prosecution. This reality, namely that the RCMP was unable to guarantee the confidentiality of CSIS information, coupled with broad disclosure requirements in the law, specifically *Stinchcombe*, which were developing in the period leading up to the Air India Flight 182 bombing and afterwards, were “...a source of uncertainty for an organization”<sup>176</sup> like CSIS.

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<sup>171</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 18), p. 1646.

<sup>172</sup> Another significant challenge after the creation of CSIS existed with respect to SIGINT. At this time, the RCMP lacked a SIGINT registry for the timely receipt of CSE [Canadian Security Establishment] material, which could be useful with respect to protective policing decisions it had to make. The Counter-terrorism Unit of CSIS also temporarily lost its access to SIGINT as a result of its relocation from CSIS headquarters. See Public Production Set 20, Document # 3024.

<sup>173</sup> See Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5359.

<sup>174</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 44), p. 5358. It was felt that a fundamental weakness of the 1984 MOU between CSIS and the RCMP, was its emphasis on the one-way flow of intelligence from CSIS to the RCMP. CSIS was to have a monopoly on threat assessments and security intelligence, and it was incorrectly assumed that the RCMP would have next to nothing to contribute with respect to security intelligence from its own sources and knowledge.

<sup>175</sup> Testimony of Mr. Robert Simmonds, Transcript of Proceedings (Vol. 74), p. 9364.

<sup>176</sup> Testimony of Jean-Paul Brodeur, Transcript of Proceedings (Vol. 18) p. 1730.

With respect to *Stinchcombe*, for CSIS it was “...tantamount, in some ways, to handing—handing the keys to the church to the devil—to the devil. So we were trying to find some ways of avoiding that, to the extent we could,”<sup>177</sup> in the aftermath of the bombing. This was because of the fact that once CSIS provided documents to the RCMP, the next step would be providing witnesses to explain those documents, with anything provided to the Crown likely being disclosed to the defence. As such, things broke down where the RCMP started to depend on CSIS for their main evidence, instead of just for investigative leads.<sup>178</sup> An RCMP telex filed at the Air India Inquiry highlights the manifestation of the concerns CSIS had about disclosures it made to the RCMP:

First, RCMP will not be allowed to access to transcripts/tapes...information assessed by CSIS as relevant to this investigation will be provided to RCMP in summary form, under third-party rule<sup>179</sup>...CSIS information is not to be used for judicial purposes such as Part IV authorizations, search warrants, court briefs, et cetera...CSIS information is to be used only as investigative leads and in a manner that will not jeopardize the existence and integrity of sources/sub-sources [intercepts and human sources]...the management of a criminal investigation should not result in the blending of their [CSIS] information with data of a criminal nature, likely to be used as evidence.<sup>180</sup>

At the same time, in its mind, CSIS was not in the business of collecting evidence. Unlike the old RCMP Security Service, CSIS did not intercept wiretap communications or deal with human sources in a manner so that any intelligence derived from these sources would meet evidentiary standards acceptable in a court of law. This fact, coupled with the possibility that confidential CSIS information could be disclosed in terrorism trials due to prosecutorial disclosure obligations, created the conditions for a frustrating and uncooperative working relationship between both agencies.

According to Mr. Turner, for 10 years following the bombing, “It was a much more difficult relationship. There were all sorts of issues, primarily on disclosure; the passing of information; access to tapes, wiretaps. It was a very difficult relationship; there were frequent bickering...”<sup>181</sup> Former RCMP Commissioner Mr. Giuliani Zaccardelli noted that:

...the creation of CSIS actually forced the men and women of CSIS and the RCMP to work under a very difficult and almost unworkable regime. That’s the essence of the problem here. So the exchange takes place but every time it was a laborious process. It was a very difficult and frustrating process by both organizations, for both organizations, because the legislation was difficult and then you have an interpretation that at times, or most of the times, was given to that legislation which exacerbated the problem and therefore you have men and

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<sup>177</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5839.

<sup>178</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 72), p. 9124.

<sup>179</sup> Third-party rule is when CSIS received information from an agency and wishes to pass it to another agency, they would have to get permission from the originating agency.

<sup>180</sup> Document # CAA-0331.

<sup>181</sup> Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 66), p. 8271.

women on both sides who are very frustrated with this whole process.<sup>182</sup>

Unfortunately, in the aftermath of the Air India Flight 182 bombing, there was no time to sort out these problems and issues: “We had not really had time to get our minds around some of these issues before Air India happened. The Service was only – it was less than a year old I guess when Air India happened. And the policies we had were policies, to the extent we had policies, were inherited from the RCMP. There were a lot of rabbits running, as it was, and so there wasn’t a lot of time to sit back and sort of get our mind around some of these issues and try to see how we would deal with them.”<sup>183</sup>

An early attempt to address the concerns between the RCMP and CSIS manifested itself in a liaison program, in an attempt to facilitate the exchange of information between both agencies. Unfortunately, the liaison program had its problems. According to Mr. Robert Wall who was on the Taskforce, the liaison program simply transferred information back and forth between CSIS and the RCMP.<sup>184</sup> The program did not attempt to resolve the issues that had developed, which prevented the thorough exchange of information between the two agencies. The liaison program was simply a delivery function and was not a coordinating function. Undoubtedly, given the nature of the issues at play during this period with respect to the exchange of information, coordination at the senior management levels of both CSIS and the RCMP may have been fruitful in the early days post-bombing.

In any event, from the perspective of CSIS, the liaison program was “essentially a one-way street.”<sup>185</sup> According to Mr. Warren, “As I said, I think the RCMP had a real logistics problem moving intelligence around because it’s a very decentralized structure.”<sup>186</sup> In addition, the sharing of information was often as much a function of the personalities involved, as it was any formal structure that was put in place to facilitate exchange. “If there’s trust built up between individuals, then information tends to flow a lot quicker than if there is an aura of suspicion that surrounds the relationship,”<sup>187</sup> according to Mr. Warren.

### **(iii) The Problems with CSIS Wiretap Translation and Transcription**

Upon assuming their responsibilities at CSIS, monitors, transcribers, and translators testified about not receiving instructions and policy briefings with respect to what to look for on intercepts, what material to retain from the tapes, and who was to make the decision to retain a tape. They were to look for signs of “subversive activity.” According to the policy document referred to as the “TAPP [Technical Aids Policy and Procedures] Manual”, an RCMP Security Service operational manual, tapes should be kept for a minimum of 10 days and to a maximum of 30 days.

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<sup>182</sup> Testimony of Mr. Zaccardelli, Transcript of Proceedings (Vol. 86), p. 11029.

<sup>183</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5875.

<sup>184</sup> Testimony of Mr. Robert Wall, Transcript of Proceedings (Vol. 76), p. 9707.

<sup>185</sup> Testimony of Mr. John Stevenson, Transcript of Proceedings (Vol. 62), p. 7656.

<sup>186</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5907.

<sup>187</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5908. See also Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 66), p. 8341. According to Mr. Turner, “I think personalities played a part.”



Vancouver Monitor #1 never read the TAPP Manual, was not given any specific instructions and learned whatever he needed to know on the job.<sup>188</sup> According to Vancouver Monitor #3, “I was instructed by a supervisor in 1978, when I started working in the monitor room. I don’t recall seeing any written policy or instructions.”<sup>189</sup> Similarly, Vancouver transcriber Ms. Betty Doak did not have the TAPP Manual available to her, although she knew of its existence by word of mouth.<sup>190</sup> The fact that these CSIS monitors and transcriber did not see the TAPP Manual, is confirmed by Mr. Kobzey, because according to him the Manual is a need-to-know document, such that not everyone could see the policy that they were implementing.<sup>191</sup> Mr. Ayre, the other Vancouver CSIS intelligence officer who worked with Mr. Kobzey on Sikh files noted that, “I was never briefed, nor had any knowledge of the requirements of the TAPP Manual as it pertains to the retention or the destruction of taped intercepts.”<sup>192</sup> Moreover, Mr. Upton, Chief of Counter-terrorism at CSIS Headquarters, stated that, “I never read the TAPP policy at that stage.”<sup>193</sup>

With respect to what CSIS employees understood was the reason for why they should retain tapes, eight different employees had eight inconsistent definitions about significant “subversive activity.”<sup>194</sup> To Ms. Doak, it meant trying to overthrow the government by violent means; something more than protest and dissent. On the other hand, Ottawa Translator #1 stated that, “I couldn’t define that to you. Any activity that is subversive to Canada, that’s the best I can do.”<sup>195</sup>

However, translators did not have a police background, nor did they have an intelligence-gathering background within CSIS itself. One could not expect them to be knowledgeable about what was significant “subversive activity” in a national security context. With respect to Ms. Doak, she relied on her past experience as a translator to determine what information on the tapes was valuable and warranted reporting. Her recollection was that she did not consult with the BC transcriber, nor could she ever recall receiving feedback on the report she submitted. According to Mr. Jodoin, translators should receive instruction before listening to tapes and should receive feedback and follow up as the investigation is on-going.<sup>196</sup> Nevertheless, although it was inconsistent with the expectations of his superiors, Mr. Ayre acknowledged that he never read all the translators or transcribers notes, choosing to periodically review it and rely on the “translator’s innate knowledge and experiences,”<sup>197</sup> although as was noted above, the translators were not trained investigators.

In regards to who was supposed to decide who was going to retain a tape, in a document filed at the Inquiry, Mr. Ayre noted that, “No, not at all. I didn’t care about that; I didn’t worry about that. That is not my compartment.”<sup>198</sup> According to Mr. Claxton, to retain tapes without approval

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<sup>188</sup> Document # CAD-0151.

<sup>189</sup> Document # CAD-0166.

<sup>190</sup> Document # CAD-0148.

<sup>191</sup> Document # CAA-0164.

<sup>192</sup> Document # CAD-0135.

<sup>193</sup> Document # CAD-0138

<sup>194</sup> Mr. Mark Freiman, Transcript of Proceedings (Vol. 49), p. 6103.

<sup>195</sup> Document # CAD-0155.

<sup>196</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 49), p. 6081.

<sup>197</sup> Document # CAD-0160.

<sup>198</sup> Document # CAD-0183.

from CSIS Headquarters violated TAPP Manual procedure. On the other hand, Mr. Smith, a Vancouver Counter-Terrorism Section Head claimed that, “Anyone who saw a need to retain could initiate the action. First responsibility should be the investigator.”<sup>199</sup> Unfortunately, this was not in sync with what Mr. Claxton, as an investigator, actually thought.

With respect to what the actual Monitors thought, as they were the ones ultimately responsible for the erasures, four Monitor Operators in Vancouver were erasing tapes ten days after their recording date [interception]. Other Monitors thought that the policy was that tapes were to be erased ten days after the tape was processed [transcribed].<sup>200</sup> Yet still, ten days following submission of the report to the investigator was the opinion of Monitor Mr. Pokoj<sup>201</sup>, whereas Translator 1a in Ottawa kept all tapes in the office until they were finished with all of them<sup>202</sup>, and Mr. Kobzey instead, erased tapes fourteen days after listening to them.<sup>203</sup> As such, if the policy was to erase tapes ten days after transcription, and knowing that there was a backlog of tapes, a genuine question arises as to whether some of the tapes might have been erased prior to being transcribed.<sup>204</sup>

Thus, at transition and for a significant time up to and including the Air India Flight 182 bombing, significant confusion existed with respect to what to look for on intercepts, what material to retain from tapes, and who was to make the decision about tape retention. No instruction or policy briefings were given in order to clear confusion, no CSIS specific documentation or manuals had been created, and access to the only available documented assistance, the RCMP Security Service’s TAPP Manual, was on a need-to-know basis.

#### **(iv) The Lack of Continuity of CSIS Wiretaps**

The RCMP Taskforce knew who blew up Air India Flight 182 right after the catastrophe. According to Mr. Turner, “...Air India really was ‘solved’ the day it went down. It was the gathering of evidence afterwards (that was the problem).”<sup>205</sup> Canada’s political leaders at the time, in addition to the senior management at CSIS and the RCMP, had not turned their minds to the issue of how in a post-RCMP Security Service world, CSIS intelligence could be turned into RCMP evidence in a timely fashion and in a manner that would meet the evidentiary requirements of criminal trials.

After the creation of CSIS, CSIS eliminated any ability to ensure full continuity with respect to intercepted wiretaps. As such, CSIS disabled itself from collecting information to an evidentiary standard in its intercepts. According to Mr. Jodoin, “Yes, it was intentionally done.”<sup>206</sup> As such,

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<sup>199</sup> Document # CAD-0130.

<sup>200</sup> See Documents # CAD-0148, CAD-0163, and CAD-0158.

<sup>201</sup> Document # CAD-0152.

<sup>202</sup> Document # CAD-0155.

<sup>203</sup> Document # CAD-0160.

<sup>204</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5826. Mr. Atkey testified that he was “Not entirely” disabused of the notion that some of the CSIS tapes might have been erased before they were listened to. See Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 5988.

<sup>205</sup> Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 66), p. 8295.

<sup>206</sup> Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 49), p. 6038.

there was nothing that allowed the court to be sure that the intercept is what was in fact collected at first instance. The tapes were not taken aside and preserved with a slave copy and a master copy. In a nutshell, it boiled down to the fact that CSIS in its day-to-day business did not “view a tape or an optical disc or any other carriage vehicle as a record. That is why we [CSIS] routinely destroy them.”<sup>207</sup> Elaborating on this notion, Mr. Hooper testified that:

Intercepted material is captured on a tape. The tape is translated. The product is transcribed. The material goes to an intelligence officer for assessment. The intelligence officer drafts a report. Everything that is relevant, we put our trust in the translator to extract. Everything provided by the transcriber that is relevant, we trust the intelligence officer to put into a report, and once that process is completed, essentially the tape to the Canadian Security Intelligence Service is done ... and sure, the physical tape to those other entities [RCMP] is much more precise than it is to us because we are not collecting evidence. I have heard a great deal of to-ing and fro-ing about, you know, how many tapes were destroyed, how many existed, when the tapes were – quite frankly, I don’t want to sound flippant here but once we have done our job and we have put our record in based on the information on the tape that is relevant, quite frankly, who cares when it is destroyed, quite frankly.<sup>208</sup>

Nevertheless, in a memorandum of February 18, 1985, Mr. Jacques Jodoin laid out protocol for CSIS wiretaps and retention of tapes made by the agency, that was sent to all regional warrant coordinators. Although it was perceived as merely suggesting a practice of tape retention for the purposes of renewal applications and not official CSIS policy, according to the memorandum:

One of the concerns identified by the Headquarters Branch, warrant coordinators, was that they were not always in a position to report in detail, information derived from technical intercepts. This was particularly evident in those situations where the intercepted communication significantly incriminated a target subject in subversive activity or that which was contentious in nature or open to interpretation. This kind of information has been identified by the HQ Desk Analyst as an essentially and very important requirement when it comes to reflecting such activities in an Affidavit.<sup>209</sup>

In order to solve this problem, Mr. Jodoin proposed a solution whereby tapes “...are to be kept for one year or to coincide with the renewal date of the warrant, whichever comes first, unless requested to forward same to Headquarters beforehand.”<sup>210</sup> Thus, where there was information on tapes that bore on threats to national security or that was ambiguous, contentious, or open to interpretation, that information would be saved in three ways: summary, verbatim transcript, and the original portion of the tape itself. Had this memorandum been complied with, portions of the Parmar tapes may have been retained as a result of the lower threshold set out in this

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<sup>207</sup> Testimony of Mr. Jack Hooper, Transcript of Proceedings (Vol. 50), p. 6216.

<sup>208</sup> Testimony of Mr. Jack Hooper, Transcript of Proceedings (Vol. 50), p. 6274.

<sup>209</sup> Document # CAA-0125.

<sup>210</sup> Document # CAA-0125.

memorandum.

In the end, despite the fact that CSIS viewed itself as not in the business of collecting evidence, if anything it intercepted turned out to be useful to a criminal prosecution by the RCMP, it would have to be in a form that would be admissible in a court of law. Translated summaries of intercepted communications would not be admissible.

## **(v) Restrained CSIS Wiretap Disclosure**

### **(a) Introduction**

Before the McDonald Royal Commission of the late 1970s, which recommended abolishing the RCMP Security Service and establishing CSIS as a separate civilian security service, there was an effective relationship of cooperation between the RCMP Security Service and the policing side of the RCMP. The RCMP Security Service would gather intelligence and the policing side of the RCMP would use that intelligence to enforce the law. According to testimony by Henry Jansen, formerly with the RCMP, “We had no difficulty gaining access to that intelligence. It was a cooperative arrangement. Our files were opened to Security Service; Security Service files were opened to us.”<sup>211</sup> Had the Air India Flight 182 bombing happened under the mandate of the RCMP Security Service instead of CSIS, “The [RCMP] Security Service would be directed by the [RCMP] Commissioner or the Deputy Commissioner, who would contact his Director General of the RCMP Service. And that would be that.”<sup>212</sup>

However, with the creation of CSIS, the focus was on establishing its civilian nature and ensuring its separation from the RCMP by “silos” with separate and distinct powers, functions, and mandates. The separation of the two agencies was apparent in the then *CSIS Act*, and in particular, with respect to the permissive nature of intelligence disclosure by CSIS to other agencies such as the RCMP under its governing legislation. Section 19.2(a) of the then *CSIS Act* provided that CSIS “may disclose information for the purpose of the performance of its duties and function under the Act.”<sup>213</sup> The then *CSIS Act* did not make the disclosure of information by CSIS mandatory.

In fact, according to CSIS agent Mr. John Stevenson, “What we had to protect was our sources, our methodologies and everything else that is germane to the proper functioning of any intelligence service in the western world. We couldn’t open up our house and let everything go out; what would be left with?”<sup>214</sup> Furthermore:

But certainly attempts to get documents and information from CSIS in a timely way was a difficult process and it was made difficult, I think, by in part the *CSIS Act* itself and, indeed, in reviewing documents I did see documents which suggested that CSIS had, in fact, on occasion sought legal opinions about the sharing of information with the RCMP under certain circumstances and those

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<sup>211</sup> Testimony of Mr. Henry Jensen, Transcript of Proceedings (Vol. 18), p. 1636.

<sup>212</sup> Testimony of Mr. Chris Scowan, Transcript of Proceedings (Vol. 50), p. 6138.

<sup>213</sup> Testimony of Geoffrey O’Brian, Transcript of Proceedings (Vol. 17), p. 1555 (emphasis added).

<sup>214</sup> Testimony of Mr. John Stevenson, Transcript of Proceedings (Vol. 62), p. 7713.

legal opinions were not of the sort that would have encouraged open sharing of information. And the CSIS responsibilities were different than those of the RCMP and I think they felt obliged to move very, very cautiously and they – and indeed they did move cautiously and often times to the frustration of the investigators who, of course, wanted all of the information; wanted it now and wanted to be able to move on it expeditiously.<sup>215</sup>

Recognizing the need for CSIS and the RCMP to work together, then Solicitor-General, James Kelleher, issued a Directive to the effect that, “While I believe that the exchange of liaison officers will considerably facilitate cooperation in the counter-terrorism field, I expect, as a matter of policy and in accordance with ministerial direction, that in all fields there will be immediate passage by CSIS to the RCMP of intelligence relevant to RCMP security enforcement Part IV and protective security responsibilities.”<sup>216</sup>

At the same time, a Memorandum of Understanding (MOU) between CSIS and the RCMP was signed in 1984. The MOU was based upon the McDonald Commission’s focus on the need for proper legal regimes to surround security and intelligence work, and for the separation of mandates and powers between CSIS as a civilian security service, and the RCMP. This MOU established that neither CSIS nor the RCMP would have unrestricted right of access to the operational records of the other agency. However, the MOU made information sharing mandatory. According to Jensen, “Well my understanding and reading is that it was not discretionary. It was mandatory.”<sup>217</sup> It was understood by Jensen, that this would include raw data made available in a timely fashion to prevent a terrorist act.

However, in practice, the reality was much different. For example, CSIS only offered “snippets” of its surveillance report on bombing suspect Mr. Malik when the RCMP asked for this information from CSIS in the spring of 1987. CSIS requested that the RCMP take no investigative action without prior consultation with CSIS, because CSIS did not wish to see its on-going investigation conflict with the RCMP’s on-going investigation. Where CSIS agents did share information in a forthwith manner with the RCMP, they were reprimanded by superiors. For example, when Mr. Parmar called together his closest supporters in early 1988 and warned them not to betray him by telling police about his involvement in the bombing<sup>218</sup>, a conversation which was surreptitiously recorded by CSIS, CSIS agent Mr. Grierson shared this information with the RCMP immediately, and was subsequently “slammed” by his superiors at CSIS Headquarters.

It is not surprising then that Mr. Ron Dicks, the RCMP liaison officer to CSIS in Toronto at the time, expressed his frustrations in the following way: “Well, I don’t mean to diminish the

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<sup>215</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 81), p. 10403-04. See also Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 66), p. 8341. According to Mr. Turner, “We [CSIS] were still grappling with what can we give the RCMP and what we can’t.”

<sup>216</sup> Document # CAC-0041.

<sup>217</sup> Testimony of Henry Jensen, Transcript of Proceedings (Vol. 18), p. 1651.

<sup>218</sup> According to Mr. Parmar, “If someone implicated me or gets me arrested for planting the bomb, that person would have been an insider. How any other person can do who doesn’t know anything?” See Testimony of Mr. Mervin Grierson, Transcript of Proceedings (Vol. 75), p. 9470.

importance of dotting the I's and crossing the T's, but certainly it wasn't a process whereby there was free flow of discussion. Most things had to be – particularly if it related to the flow of information, it had to be pre-authorized, pre-discussed and only after that could the flow take place. So conversations between me and my counterparts at CSIS were quite often, as I put it, restricted or limited.”<sup>219</sup>

No doubt the hurried manner in which the old RCMP Security Service was disbanded played a role. It meant that CSIS had not yet developed its own professional culture at the time of the Air India bombing. In the early years of CSIS, both pre- and post-bombing, it was essentially the old RCMP Security Service. CSIS employees were predominantly former RCMP Security Service employees. It is possible that much like the RCMP Security Service, CSIS operated as a “higher competitive organization,”<sup>220</sup> engaged in investigative work in the aftermath of the Air India bombing. According to Mr. Brodeur, “The mere fact that they [RCMP and CSIS] would be both policing agencies in the large sense of the word...would imply that they would compete against each other and perhaps not share all the information that needed to be shared.”<sup>221</sup>

Lack of its own professional culture or not, the principal reason for restrained disclosure from CSIS to the RCMP appears to have been the legal obligation of the Crown to disclose to the accused in a criminal trial. In the aftermath of the McDonald Commission and the creation of CSIS, both agencies were left to sort out the nature of their working relationship vis-à-vis Memoranda of Understanding, without definitive guidance from Parliament. This meant that the most integral part of their relationship, disclosure from CSIS to the RCMP, was compromised, resulting in a painfully slow exchange of information as CSIS struggled with how best to comply with its legislative and institutional obligations. This reality made it difficult for the RCMP to move in as an expeditious fashion as they would have liked to, and ultimately led to a delay in the laying of charges.<sup>222</sup> A workable solution in place prior to the Air India Flight 182 bombing would have facilitated the flow of information and possibly secured convictions at trial.

### **(b) Intercepts of Bombing Suspect Mr. Talwinder Singh Parmar**

Four days after the Air India Flight 182 bombing on June 23, 1985, RCMP Superintendent Lyman Henschel of the Vancouver Integrated Intelligence Unit (VIU) and Randy Claxton, Head of CSIS in BC, had a conversation with respect to intercepts relevant to the bombing. During this conversation, it was not confirmed to Mr. Henschel that CSIS had any directly relevant intercepts concerning the bombing investigation, however Mr. Claxton advised him that any incriminating evidence of CSIS installations [wiretaps and/or electronic intercepts] would immediately be isolated and retained for continuity.<sup>223</sup> According to Mr. Henschel, who left these discussions with a high opinion and trust in Mr. Claxton, “Yes, whether there was a large amount, it was my

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<sup>219</sup> Testimony of Mr. Ron Dicks, Transcript of Proceedings (Vol. 62), p. 7565. Mr. James Jardine reflected the sentiments of Mr. Dicks, when he testified that the relationship with CSIS and the RCMP Air India Task Force was not open and not cooperative, and CSIS's attitude towards him was less than forthright. See Testimony of Mr. James Jardine, Transcript of Proceedings (Vol. 47), p. 5661.

<sup>220</sup> Testimony of Mr. Jean-Paul Brodeur, Transcript of Proceedings (Vol. 18), p. 1717.

<sup>221</sup> Testimony of Mr. Jean-Paul Brodeur, Transcript of Proceedings, (Vol. 18), p. 1717.

<sup>222</sup> Testimony of Mr. Norman Inkster, Transcript of Proceedings (Vol. 81), p. 10343.

<sup>223</sup> Testimony of Mr. Lyman Henschel, Transcript of Proceedings (Vol. 46), p. 5525. See also, Document # CAA-0260.

view, from our conversations, that CSIS would—would retain possession and isolate any relevant material.”<sup>224</sup>

In fact, Mr. James Jardine, who was the Crown counsel for British Columbia with respect to the prosecution of Mr. Reyat, testified that some time during the three-week period around July 1, 1985, he asked that intercepts be retained for use by the prosecution. According to Mr. Jardine, “...if there are watchers there will likely be wire.”<sup>225</sup> However, Mr. Claxton claims that the first instruction he received from CSIS Headquarters Policy Centre to preserve tapes from the Parmar intercepts was February of 1986.

Despite this lag in time from the date of the bombing until he received instructions to preserve tapes, Mr. Claxton neglected to inform the RCMP, through persons such as Mr. Henschel and RCMP Inspector Mr. Hoadley, of the existence of Parmar tapes prior to the bombing. Mr. Claxton understood that the policy of CSIS at the time was that there did not have to be a request from the RCMP for CSIS to preserve relevant intercepts or to grant access to intercepts to the RCMP, yet Mr. Claxton did not inform the RCMP of the existence of pre-bombing Parmar tapes. How could have the RCMP requested access to tapes that they did not know existed? It was essential that CSIS volunteer information about the existence of pre-bombing tapes to the RCMP, because otherwise the RCMP would not know such tapes existed. Despite agreeing that it was important for CSIS to volunteer information of the existence of pre-bombing tapes, Mr. Claxton did not expressly tell Mr. Hoadley of the RCMP about the existence of such tapes.

RCMP Sergeant Michael Roth, who headed up the liaison unit between the RCMP and CSIS found out about the existence of CSIS intercepts on July 24, 1985. He felt that, “...we [the RCMP] may have been able to do more to stop the destruction of the tapes,” if he had been made aware of the existence of the Parmar tapes early on after the bombing.<sup>226</sup> After gaining access to CSIS transcriber notes, on August 7, 1985, Mr. Roth was informed that he would no longer have access to the transcriber notes, but would instead have access to Sitreps. However, to the RCMP, Sitreps were less useful, in that they were a synopsis or a summary of information that was cleansed for the protection of material, whereas the transcriber notes were a raw form of data. Thus, from August 7, 1985 to September 8, 1985, Mr. Roth was denied access to CSIS transcriber notes. According to Mr. Roth, “Mr. Commissioner, yes. That would definitely impede the progress or the speed of the investigation, in my opinion, yes.”<sup>227</sup>

On September 9, 1985, Mr. Hoadley had managed to arrange renewed access to CSIS transcriber notes for Mr. Roth and Mr. Solvason. However, CSIS denied them copies of transcriber notes and as such, Mr. Roth had to dictate the transcriber notes into a Dictaphone machine, and then afterwards, the dictation had to be transcribed by hand, thus slowing the investigatory process for the RCMP in the early part of the bombing investigation. On September 18, 1985, Mr. Roth was informed that his access to transcriber notes, which included access to translator notes, had been suspended again by CSIS. Mr. Roth testified that he believed the reason for being denied access again was that CSIS believed that the RCMP was using CSIS information in an affidavit in

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<sup>224</sup> Testimony of Mr. Lyman Henschel, Transcript of Proceedings (Vol. 46), p. 5561.

<sup>225</sup> Testimony of Mr. James Jardine, Transcript of Proceedings (Vol. 47), p. 5663.

<sup>226</sup> Testimony of Mr. Michael Roth, Transcript of Proceedings (Vol. 46), p. 5648.

<sup>227</sup> Testimony of Mr. Michael Roth, Transcript of Proceedings (Vol. 46), p. 5623.

support of a warrant with respect to the post-bombing investigation, and CSIS was worried about its confidential information being made public in a warrant.

The access difficulties the RCMP had with respect to CSIS information posed difficulties for the investigation. Mr. James Jardine testified that as a result of insufficient disclosure of information from CSIS to the RCMP, it was difficult to obtain authorization for warrants because the RCMP could not provide a judicial officer full, fair and frank disclosure. CSIS felt that their information should only be used as an investigative lead and not to obtain warrants.

Consequently, despite repeated requests for access to CSIS information between July 1985 and November 1985, no progress was made, other than the materials that had been released to Mr. Solvason and Mr. Roth in September 1985. With respect to this information that was made available by CSIS to Messieurs Solvason and Roth, “It is all hearsay; it is just a question of whether it is first-hand hearsay, second-hand hearsay, or third-hand hearsay.”<sup>228</sup> In his opinion, no criminal court would admit into evidence translated summaries of intercepted private communications, because translated summaries would leave the interpreter open to missing the meaning of the conversation and being inaccurate as to the content of conversations, in addition to missing the intent of the persons communicating in a foreign language. Thus, the form that CSIS disclosure took in addition to the slow pace with which CSIS made disclosure available hampered the RCMP criminal investigation. According to Mr. Jardine, “Well, not only would it not be sufficient disclosure but what evidence would I be able to call in the trial? I need witnesses to be able to tell me what their observations were, to be tendered before the court. So report materials were not going to be admissible in a criminal trial.”<sup>229</sup> At the same time, the longer it took for CSIS to share information with the RCMP, the less likely there was to be a successful investigation and the less likely there was to be a successful prosecution.<sup>230</sup>

### **(c) Parmar Tape Erasures**

“In my view, any intercept activity on—on a prime suspect in the crime should probably result in a decision to retain all tapes, all—all material.”<sup>231</sup> Nevertheless, of the 210 wiretaps that were recorded during the months before and after the bombing, 156 were erased. These tapes continued to be erased even after terrorists such as Mr. Parmar had become the primary suspects in the bombing investigation.

Learning of the CSIS tape erasures that occurred sometime during the fall of 1985, by a television appearance by Mr. Reid Morden, then CSIS Director, Mr. Jardine scribbled four words on a piece of paper: inconceivable, incomprehensible, indefensible, incompetence. According to Mr. Jardine, “If, in fact, that CSIS has destroyed tapes of the private communications of Mr.

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<sup>228</sup> Testimony of Mr. James Jardine, Transcript of Proceedings (Vol. 47), p. 5687.

<sup>229</sup> Testimony of Mr. James Jardine, Transcript of Proceedings (Vol. 47), p. 5692.

<sup>230</sup> According to the testimony of Jean-Paul Brodeur, the more that a homicide investigation extends over time, the less likely it will be solved. In his words, “The generalization, of course, is that the probability that you will solve the case decreases dramatically as time passes and probably after two weeks, it is getting to be very low.” See Testimony of Mr. Jean-Paul Brodeur, Transcript of Proceedings (Vol. 18), p. 1734.

<sup>231</sup> Testimony of Mr. Lyman Henschel, Transcript of Proceedings (Vol. 46), p. 5539. Similarly, according to Mr. Jodoin, “In hindsight I would say, I think they should have froze everything and just keep everything, but that’s just hindsight.” See Testimony of Mr. Jacques Jodoin, Transcript of Proceedings (Vol. 49), p. 6066.



Parmar which they intercepted in June of 1985, we have lost a major piece of evidence which would be essential to the unfolding of the narrative at any subsequent trial.”<sup>232</sup> These tapes would have been useful either to demonstrate a person’s involvement or to demonstrate a person’s lack of involvement in the bombing. In his verdict in the Air India Flight 182 bombing trial of Messieurs Malik and Bagri trial, Justice Josephson cited “unacceptable negligence” by CSIS when it erased wiretaps of the bombing suspects.

Consequently, in testimony before the Inquiry, Mr. Jim Warren of CSIS testified that, “Well, I think CSIS has acknowledged and does acknowledge the error in destroying the tapes.”<sup>233</sup> According to Mr. Warren:

The only conclusion that I was able to come to was that the tapes had been destroyed in accordance with the policy that was our default mode, if you will, for tapes and that apparently no one had thought to give the order to move it out of a default situation into a different situation...And so I really do believe to this day that that was the reason. It was oversight. Why it happened, I don’t know, but it was oversight. Nobody gave the order and things just kept rolling on as if nothing had happened and the people who were at very junior levels were actually in this process of destroying the tapes. In the absence of any instructions from above, kept doing what they had always been doing.<sup>234</sup>

Unfortunately, one “...would have thought, Commissioner, that that might have occurred with the Director of CSIS at that time, and that—or certainly someone working immediately under the Director would have sent it out in order, don’t erase anything even though we have the standing erasure policy.”<sup>235</sup>

Nevertheless, CSIS maintained that nothing of significance existed on the erased Parmar tapes. In other words, there was not a “smoking gun” in the pile of tapes waiting to be listened to. Mr. Morden noted that he wished the Parmar tapes had been retained “...only because it would have made very clear what there was and more to the point what there wasn’t in the tapes...”<sup>236</sup> However, Mr. Warren noted that a telephone call about killing India Prime Minister Gandhi ought to have raised some suspicions of possible subversive activity more than two months prior to the bombing. According to Mr. Warren, “...it looks to me as the kind of thing that I probably would have kept...I don’t know what was running through the heads of the people [at CSIS] that had to make the decision at that time.”<sup>237</sup> Notes from CSIS translators of other wiretap exchanges between Messieurs Parmar and Hardial Singh Johal for example, contain code words, such that on the day the airline tickets were purchased, Mr. Parmar asks Mr. Johal, “Did he write the story?” Such information, if the original tape had been maintained, would have been useful in an attempt to prove a conspiracy at trial.

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<sup>232</sup> Document # CAF-0168.

<sup>233</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5895.

<sup>234</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5817-18.

<sup>235</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6006.

<sup>236</sup> Testimony of Mr. Reid Morden, Transcript of Proceedings (Vol. 88), p. 11431.

<sup>237</sup> Testimony of Mr. Jim Warren, Transcript of Proceedings (Vol. 48), p. 5938.

#### **(d) SIRC: Compensation Cover Up**

In 1986, Mr. Atkey and SIRC came to the position that they felt that SIRC was not getting complete answers from CSIS with respect to the tape erasure issue. According to Mr. Atkey, with respect to the information they did receive from CSIS concerning this issue, “We felt this sometimes raises as many questions as it answered. So that by that point we had, I think in January at our meeting, where I had asked for the response and it hadn’t come, we had pretty well decided we were going to have an inquiry.”<sup>238</sup> However, SIRC backed away from a more formal type of Inquiry after the Deputy Attorney General and the Commissioner of the RCMP asked that SIRC not launch an Inquiry when the RCMP was on the cusp of getting criminal convictions, such as those that were proceeding against Mr. Reyat at that point in time.

In deciding not to launch a more formal Inquiry into CSIS tape erasures, “There was also the issue of civil proceedings which were taken into consideration by us.”<sup>239</sup> According to a document filed at the Air India Inquiry, “SIRC will likely not get a complete picture as all parties actively involved will not be inclined to cooperate and will be somewhat protective because of the ongoing civil actions and the criminal investigation.”<sup>240</sup> At the same time, there was also the question of whether SIRC could do an adequate Inquiry with its limited resources. “We sensed that the government, at that time—certainly the system, if you will—was not inclined to grant additional resources for the purposes of an inquiry at that time,” according to Mr. Atkey.<sup>241</sup> This was because a SIRC Inquiry would be prejudicial to the civil compensation case.

According to Mr. Atkey, “I think it would be, as you put it, not helpful to the government’s case in terms of not just embarrassing but it might cost the government more money in terms of any adverse finding that might have been made respecting CSIS.”<sup>242</sup> As such, with respect to whether it could appear that the government was attempting to delay full knowledge of the facts about CSIS tape erasures until they solved their civil litigation with family members of the victims of the Air India Flight 182 bombing, Mr. Atkey testified, “That’s an implication that one can draw.”<sup>243</sup> Thus, AIVFA family members and all other family members of the victims of the bombing were prejudiced in their civil actions against the government by not having the information that a SIRC Inquiry would have produced.<sup>244</sup>

Eventually, SIRC did examine the issue of CSIS tape erasures, but in a much more limited manner, in its 1991-92 SIRC Annual Report. Internal documents tabled at the Air India Inquiry show that the RCMP initially opposed any kind of review for fear of letting SIRC delve too deeply into police operations, but reluctantly agreed to go along with a more limited SIRC review because the SIRC exercise would be less sweeping than the alternative of a Royal

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<sup>238</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 5993.

<sup>239</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 5999.

<sup>240</sup> Document # CAF-0301.

<sup>241</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6000-01.

<sup>242</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6016-17.

<sup>243</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6017.

<sup>244</sup> According to Mr. Atkey, “That’s correct.” See Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6017.

Commission.<sup>245</sup> Another memorandum tabled at the Air India Inquiry suggested that it might not be wise for the RCMP to rely solely on the argument that a full Inquiry would undermine the separate criminal investigation because the public might conclude that the RCMP was trying to block an Inquiry for fear that investigative shortcomings might be exposed.<sup>246</sup> According to Mr. Goral, "...it could be perceived as a cover-up."<sup>247</sup>

Ultimately, the 1991-92 SIRC Annual Report was critical of CSIS for its erasures of wiretaps but concluded it was unlikely that any critical evidence had been lost. However, former RCMP Sergeant, Mr. Terry Goral, testified that many RCMP investigators do not share the same opinion that crucial evidence was not lost as a result of the CSIS tape erasures.<sup>248</sup> Supporting the assertion he made in a 1996 memorandum, that the primary potential problem with the case was the non-availability of certain tapes, Mr. Gary Bass testified that, "Had CSIS cooperated fully from June 23 onward, this case would have been solved at that time...There is a strong likelihood that had CSIS retained the tapes between March and August 1985, that a successful prosecution against at least some of the principals in both bombings could have been undertaken."<sup>249</sup> For Mr. Bass, "If in fact, someone in the RCMP made statements that there were no intercepts of evidentiary value, they are clearly wrong. If the RCMP did not make that statement, other concerns are raised,"<sup>250</sup> hinting at the possibility of a cover-up.

At the time of this SIRC investigation into CSIS tape erasures, Mr. Goral testified that the RCMP did not want to complicate their continuing criminal investigation into the Air India Flight 182 bombing by being overly critical of CSIS.<sup>251</sup> At the same time, Mr. Goral testified that the RCMP's response to the SIRC Inquiry should be consistent with past public statements by the then RCMP Commissioner, to the effect that CSIS tape erasures did not hinder the RCMP investigation.<sup>252</sup> As such, the RCMP offered a "sugar-coated" version of its relations with CSIS and downplayed disputes with CSIS with respect to failures by CSIS to share evidence and the erasure of tapes by CSIS. Thus, Mr. Goral testified that SIRC's conclusion with respect to the lack of any value the RCMP placed on information on the erased tapes was based on a misunderstanding. According to Mr. Goral, "...so it is often said that there was nothing on the tapes and that we agree with that. However, if you read further they talk about 50 tapes that are reviewed... And that there was no significant criminal information uncovered on these 50 tapes... Well, those are only 50 tapes out of a couple hundred tapes."<sup>253</sup>

Under questioning by Commission counsel Mark Freiman, with respect to whether SIRC's Report may not have been entirely accurate with respect to tape erasures, Mr. Goral testified,

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<sup>245</sup> See, e.g. Document # CAA-0831.

<sup>246</sup> Document # CAA-0815.

<sup>247</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9193.

<sup>248</sup> Mr. Gary Bass characterized the 1992 SIRC Report's conclusion that the RCMP and CSIS agreed that there was nothing important on the erased tapes, as a "gross inaccuracy." See documents referred to in the Testimony of Mr. Gary Bass, Transcript of Proceedings (Vol. 87).

<sup>249</sup> See document referred to in the Testimony of Mr. Gary Bass, Transcript of Proceedings (Vol. 87), p. 11200.

<sup>250</sup> See document referred to in the Testimony of Mr. Gary Bass, Transcript of Proceedings (Vol. 87), p. 11198.

<sup>251</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9208.

<sup>252</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9214.

<sup>253</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9219.

“On that issue, yes.”<sup>254</sup> Mr. Goral testified that the RCMP did get some leads out of the summaries of the tapes, which suggests that the actual tapes would have been useful for the criminal investigation. Consequently, former SIRC Chair Mr. John Bassett drew a conclusion from the briefing the RCMP provided to SIRC that was not in line with the RCMP’s position on CSIS tape erasures as outlined in an internal RCMP document.<sup>255</sup> Thus, to a great extent, what the RCMP told the SIRC Inquiry was “scripted” in advance by the RCMP under the guise of the Solicitor General’s Working Group that was struck in 1991 to coordinate a cohesive federal government response to an Inquiry, such as the eventual SIRC-led Inquiry.<sup>256</sup> According to Commissioner Major, unfavourable inferences could be drawn as a result of the “scripting” at issue.<sup>257</sup> In the end, the SIRC Inquiry conclusion to the effect that CSIS tape erasures did not hinder the RCMP investigation were accepted and later applied to other government documents and decision-making, which ultimately delayed the implementation by the federal government of a full public Inquiry for close to 15 years.

### **(e) Conclusion**

When push comes to shove, public safety—in the form of arrest and prosecution—must take precedence over longer-term intelligence needs of CSIS. Mr. Atkey agreed with this suggestion, pointing out that, “Yes, they were [CSIS]—they were cautious, again, in applying the rule of common sense that the Service were—were concerned about protecting sources, protecting methods of operation, protecting relationships with foreign States and honouring caveats that might have been given in terms of exchanging information and those are—are legitimate policy concerns but sometimes they are trumped or overridden by attempts to assist law enforcement in obtaining prosecution.”<sup>258</sup>

Unfortunately, in the case of Canada’s biggest mass murder investigation, the interests of CSIS trumped those of the RCMP investigation. CSIS was handcuffed by its own hasty implementation, during which issues of the disclosure of CSIS intelligence to the RCMP and the use the RCMP could make of that intelligence as evidence in a national security related prosecution, had not been adequately addressed. The same issues of delayed disclosure by CSIS to the RCMP plagued the handling of sources between both agencies.

### **(vi) Source Mishandling**

#### **(a) Introduction**

With respect to terrorist investigations, both CSIS and the RCMP may legitimately be going after the same pool of potential sources, each for their own respective reasons. According to Mr. Warren, “Oh yes, indeed, because we are basically both ploughing the same ground many times, only the police are doing it because there’s a crime or an apprehended crime for which they want to collect evidence to take the matter to court and let justice be done. And us [CSIS] because we

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<sup>254</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9214.

<sup>255</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9220. See Document CAA-0750.

<sup>256</sup> Testimony of Mr. Terry Goral, Transcript of Proceedings (Vol. 73), p. 9246.

<sup>257</sup> Comments of Commissioner John C. Major, Q.C., Transcript of Proceedings (Vol. 73), p. 9256.

<sup>258</sup> Testimony of Mr. Ron Atkey, Transcript of Proceedings (Vol. 49), p. 6011.

had a function of forewarning government of future acts of terrorism, serious violence, and so we would both be basically working the same area but for very different ends, if I can put it that way.”<sup>259</sup> Difficulties arise when CSIS develops a source for its own reasons and that source shares information relevant to the investigation of a terrorist offence, as was the case with both Ms. E. and Messieurs A. and Z. Deficiencies in source handling by both CSIS and the RCMP detrimentally affected the investigation of the Air India Flight 182 bombing.

With respect to CSIS, much like the problems that surfaced with respect to the disclosure of intelligence from CSIS to the RCMP, lack of continuity in CSIS source handling procedures in addition to insufficient instruction of CSIS agents in the policy relevant to their source-related tasks, affected the usefulness of information gleaned from interviews of sources by CSIS agents. At the same time, in the post-bombing period, source handling by CSIS was also plagued by untimely disclosure to the RCMP, such as several years later with respect to the source known as Ms. E. With respect to the RCMP, they mishandled sources by the manner in which they approached them once informed of their existence by CSIS.

**(b) Ms. “E”**

Ms. E. was a former friend of Mr. Bagri. Ms. E. provided statements to CSIS and the RCMP in the years following the bombing, which implicated Mr. Bagri in the bombings. Her account was of a late night visit by Mr. Bagri to her home on the eve of the Air India Flight 182 and Narita bombings, to borrow a car. Mr. Bagri asked to borrow her vehicle to take baggage to the airport. Ultimately, Ms. E. was willing to talk to CSIS but not the RCMP.

With respect to sources such as Ms. E., CSIS agent Mr. William Laurie who was responsible for source development with CSIS’s Counter-Terrorism Section, testified that, “What we found when we used various approaches [with sources] was that if they thought that we were the police, they were more reluctant to be cooperative and sometimes it was more successful if we explained from the beginning that we were not the police.”<sup>260</sup> This was important for CSIS because “It was very clear by just about everyone we spoke to that people held strong views about the Air India bombing, but there was a generalized fear that if they cooperated with the police, then it would endanger themselves and they would end up in a court proceeding that they didn’t want to participate in.”<sup>261</sup> Ms. E. made this abundantly clear to Mr. Laurie. “She couldn’t have made it more clear. She stressed it over and over again that she would not, for the reasons stated, ever cooperate with the police and that if the police came she would deny everything. In retrospect, it seems that she has. When I was trying to get the initial information from her and she was dying to tell me while I was appealing to her emotional side I was explaining to her that I was not a peace officer and I did not have the power to compel her to go to court,”<sup>262</sup> testified Mr. Laurie.

With respect to sources, CSIS was not in a hurry to develop them because they were looking for quality long-term sources, whereas the RCMP was less patient with sources and would want as

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<sup>259</sup> Testimony of Mr. James Warren, Transcript of Proceedings (Vol. 72), p. 9112.

<sup>260</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7396.

<sup>261</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7398.

<sup>262</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7412.

much information from the source as soon as possible, in order to investigate and prosecute the bombing as quickly as possible. According to former CSIS Deputy Director Mr. James Warren:

The police, and I realize that they do run sources into areas like organized crime and that sort of thing, that are fairly long-term, but one presumes it always has an end game; the idea of going to court... With CSIS or any intelligence service, our goal is to try to establish long-term penetration sources of organizations which hopefully, will over time—over many years in some cases, be able to work their way up through the organization to the point where we are informed about the plans and the intentions of that organization. That’s our objective so that we can do our job with just a forewarned government.<sup>263</sup>

Another difference was that the RCMP travelled in pairs when going to interview a source for evidentiary reasons, which was more intimidating than interviews conducted by CSIS. To interview Ms. E., Mr. Laurie travelled alone. In addition, Mr. Laurie testified that he did not have to take notes during his interviews with Ms. E., which otherwise might cause a source to be less than forthright, unlike the RCMP which did so for evidentiary reasons. Moreover, CSIS did not give thought to witness “contamination” because CSIS source handling “...was done without thought to the possibility or the fact that maybe that person—that we [CSIS] were contaminating that person as a police witness because that was never out intent to go in that direction anyway. It wasn’t our job.”<sup>264</sup>

As a result of Ms. E’s fear about contact with the police and her insistence that she would not cooperate with the RCMP and would deny all knowledge about Mr. Bagri, Mr. Laurie requested that CSIS headquarters allow him to retain contact with Ms. E. to get what information he could from her prior to passing any of her information to the RCMP.<sup>265</sup> Nevertheless, Mr. Laurie experienced frustration with the mixed messages he received from his CSIS superiors with respect to whether he should be attempting to acquire information about the bombing. According to Mr. Laurie, “No. The best description would be that it was an inconsistent message and it changed frequently and sometimes it would be an instruction to be aggressive and do what you can, and then the next day would be quite the opposite and it would be no, we’re contaminating an investigation, so do not do that today. We are getting clarification and we will have to see until tomorrow. And over a period of months the message was very unclear.”<sup>266</sup>

CSIS Headquarters responded by suggesting that Mr. Laurie prepare two photo albums for the purposes of confirming or trying to identify who the two unidentified males were that Mr. Bagri suggested would go with him to the airport in Ms. E’s car. This request from CSIS headquarters is similar to police-type work. According to Mr. Laurie, “The only other time I had ever prepared photo line-ups was when I was a policeman and, you’re right, it does seem like police work.”<sup>267</sup>

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<sup>263</sup> Testimony of Mr. James Warren, Transcript of Proceedings (Vol. 72), p. 9110-11.

<sup>264</sup> Testimony of Mr. James Warren, Transcript of Proceedings (Vol. 72), p. 9116.

<sup>265</sup> Document # CAA-0553i. According to this document, “If, because of policy or legal requirement we must pass information to a policy agency, considerable effort will be required to protect the source’s identity in order to prevent the source from walking away.”

<sup>266</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7398.

<sup>267</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7424.

Thus, given the fact that CSIS feared that if they turned Ms. E. over to the RCMP, that valuable evidence would be lost for the prosecution of the bombing, CSIS was forced to undertake police-type work.<sup>268</sup>

Mr. Laurie also brought a concealed tape recorder to record two interviews. On one occasion, the tape did not work. On another occasion, the tape worked, but Mr. Laurie did not retain the tape, although he was aware of the significance of the information Ms. E. was sharing with him, and that the information would likely find its way into court. According to Mr. Laurie:

Well, I believe that the best that I can do in my role as an intelligence officer, is to make my written report as accurate as I can and I have done that...I don't have a method of keeping or destroying notebooks or tapes or any of that sort of stuff. It is something that I've got to baby-sit now. I don't have a way of doing—I don't have an exhibit log; I don't have somebody that guards the room that it is in. I don't need it and it is destroyed the same way they all are... This service is so new and we are being given such guidance not to do anything the way the police do it. We are no longer the police and in fact there is movement afoot to try to remove any of the people who used to be in the police as quickly as possible...it wouldn't have been unreasonable of me to presume that at some point this information, and perhaps even the individual, is going to be passed to a police agency and they can get their own tape because they are the ones that preserve evidence and I do not.<sup>269</sup>

The above tape handling procedures of CSIS agent Mr. Laurie raises the same concerns with respect to the lack of continuity of CSIS Parmar wiretaps that was explored above. In fact, at trial, the destruction of the Ms. E. interview tapes was made the subject of a *Charter* application. Justice Josephson found that there was a breach of the *Charter* rights of the accused and that it was unacceptable negligence to have destroyed the tapes. As such, Mr. Laurie agreed that there were compelling reasons for the retention of tapes and notes when a CSIS agent is dealing with a potential criminal witness.<sup>270</sup>

With respect to note taking by CSIS agents when interviewing sources, the first policy came into force in 1979, under the RCMP Security Service. CSIS did not create a policy to replace this RCMP Security Service policy until 1992. The 1979 policy stated, “Where there is reason to believe that a Security Service investigation will result in court appearances being necessary for whatever reason, the responsible investigator will ensure that a separate notebook be maintained and retained securely for each case.”<sup>271</sup> However, Mr. Laurie was not aware of this policy when he was a member of the RCMP Security Service, or while he was a member of CSIS.<sup>272</sup>

According to Mr. Laurie:

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<sup>268</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7437.

<sup>269</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7432-33.

<sup>270</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7542.

<sup>271</sup> Document # CAA-1057.

<sup>272</sup> According to Mr. Laurie, “No. I have never known a member of the Security Service or the CSIS that either was aware of this or practiced this.” Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7469.

Now after CSIS was created—it was created because there was—and I am paraphrasing but there was a need to do things differently from the police, and that was something that was constantly brought up. We are not them. We don't have peace officer status. We don't do things that the police do. We don't have to do some of the things that they have to do and we can do things that they can't do. So the notion that we—you know, in retrospect that we have to adhere to this policy [re note-taking for evidentiary purposes] that the police had for keeping notes is pretty far removed, especially considering the amount of work that was being done and, you know, that—the time.<sup>273</sup>

Thus, although Mr. Laurie was a former RCMP Security Service agent, he appears to have been unaware of the policy on note taking of source interviews. If CSIS, who neglected to replace the 1979 policy with an updated CSIS version until 1992, had made this policy known to its agents at the time, Mr. Laurie may have taken notes of his interviews with Ms. E. This is especially true in light of the fact that because Ms. E. had told Mr. Laurie that she wanted to help catch those who bombed Air India Flight 182, this moved his interviews with Ms. E. out of the realm of intelligence gathering and more into the realm of criminal investigation.

Although Mr. Laurie suggested a gradual transfer of Ms. E. to the RCMP by himself could possibly be successful<sup>274</sup>, he testified that he never received a reply or instructions to do so from CSIS headquarters. Instead, he received a telex from CSIS Headquarters informing him that “The source [Ms. E.] will remain under our control until we deem it necessary to turn her over to the RCMP. The RCMP will not interview the subject at this time...keeping the above in mind, be advised that CSIS has been cooperating with the RCMP by providing relevant information to them. We are of the opinion that sources provided us with historical information only and any information which is of a criminal matter cannot be corroborated.”<sup>275</sup> However, in his testimony, Mr. Laurie informed the Inquiry that, “Well, I disagreed with it, the assessment of the information. I believed that the information was more than historical. I also believe that it is incorrect to say that all of the information cannot be corroborated. Looking at it, it strikes me that it is an excuse to not pass it.”<sup>276</sup>

Eventually, Mr. Laurie found out that the source and the information she had provided was passed to the RCMP. Mr. Laurie was never informed of this development. However, afterwards, Mr. Laurie testified that he was surprised that in subsequent contacts with Ms. E., she never mentioned to him that the RCMP had contacted her. When Mr. Laurie met with the RCMP to discuss Ms. E., he learned that the RCMP, at least at the divisional level in BC, was unaware or appeared unaware of the existence of Ms. E. According to Mr. Laurie, “Well, you can see I had been under the impression from Mr. Garneau that he had passed it because that's what he told me. The fact that the gentlemen [with the RCMP] were unaware of this information led me to believe that either it hadn't been passed as I was told or else it had been passed and had not been filtered down to the division from Headquarters.”<sup>277</sup>

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<sup>273</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7537.

<sup>274</sup> Document # CAF-0424.

<sup>275</sup> Document # CAF-0348.

<sup>276</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7450-51.

<sup>277</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7475.



Eventually, however, Ms. E. is transferred to the RCMP. Mr. Laurie and an RCMP officer interview Ms. E., and she reiterates that she will not go to court to testify and that she will commit suicide because she is afraid for her children and herself. In a second interview, with RCMP officers Blatchford and Rautio, Ms. E. changed her story in a material way, putting two weeks between the Narita and Air India Flight 182 bombings and the visit by Mr. Bagri.<sup>278</sup> Thus, the RCMP concluded Ms. E. was not a reliable witness.

It was not surprising that Ms. E. changed her story, given the fact that she told Mr. Laurie she would if the police ever approached her. Nevertheless, the RCMP is to be blamed for the manner in which they approached this source. According to Mr. Laurie, “I indicated to them that one of the reasons I thought that I had been successful was the fact that I was not intimidating and I went alone. That was a non-starter for them. They were absolutely going to do it their way. All they wanted from me was to make an introduction and stand back.”<sup>279</sup>

### **(c) Mr. “A.”**

CSIS agent Mr. Neil Eshleman testified that a potential key witness that promised important evidence about the Air India Flight 182 bombing was lost after a tug-of-war between CSIS and the RCMP. In exchange for information, Mr. A. asked for anonymity and a reward, which the Canadian government refused to provide. No specific details of what Mr. A. told CSIS were revealed at the Inquiry, but it was described as “specific information with respect to the Air India bombing that can be corroborated.” Mr. Eshleman testified that he thought Mr. A. was a valuable source that ended up angry with both CSIS and the RCMP after he was pressured to become a witness. According to Mr. Eshleman, “He simply had the best potential up until that time of any individual that we had meetings with. It was a lost opportunity that shouldn’t have occurred...It was detrimental to both organizations.”<sup>280</sup>

Mr. Eshleman testified about the difficulties of cultivating sources within minority communities. According to Mr. Eshleman, “I felt that there was the same obstacle within the Sikh community as there is with a number of minority communities when you’re speaking to them about issues. They come from a culture where there is a distrust of Security Intelligence Service and there is a distrust of police forces.”<sup>281</sup> As such, “I think the organization, CSIS, had an advantage over the RCMP...The information that they were or could be offering us was in all likelihood not going to end up putting them in the court process.”<sup>282</sup>

With respect to Mr. A., Mr. Eshleman testified that the source relationship ended abruptly through the actions of the RCMP. The RCMP demanded that CSIS sever ties with Mr. A. RCMP officers essentially showed up at the sources’ door and demanded answers. Documents entered at the Inquiry demonstrate that the RCMP officers that surprised Mr. A. at his home acknowledges

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<sup>278</sup> Document # CAA-0792(i).

<sup>279</sup> Testimony of Mr. William Laurie, Transcript of Proceedings (Vol. 61), p. 7476.

<sup>280</sup> Testimony of Mr. Neil Eshleman, Transcript of Proceedings (Vol. 75), p. 9435.

<sup>281</sup> Testimony of Mr. Neil Eshleman, Transcript of Proceedings (Vol. 75), p. 9380.

<sup>282</sup> Testimony of Mr. Neil Eshleman, Transcript of Proceedings (Vol. 75), p. 9381.

that, “We got off on wrong foot.”<sup>283</sup> According to Mr. Eshleman, “As a source handler with considerable background, it’s not what I would’ve done...if you are trying to develop Mr. A. as a source, you’re wanting to develop a rapport with him and you’re not getting off particularly on a comfortable footing if you’re placing him in an uncomfortable position” by surprising him at home.<sup>284</sup> Eventually, the RCMP concluded that Mr. A. had nothing of value to offer as a source.

#### **(d) Conclusion**

It is obvious from the handling of sources during the post-bombing period that there were a number of agencies, including the RCMP and CSIS, trying to get information from the Sikh and Indo-Canadian community, and this impeded the ability of the RCMP to get necessary information for the purposes of prosecution. At times, it appeared as if two independent investigations were being conducted by CSIS and the RCMP, which undoubtedly led to some confusion within the BC community about who to trust.

At the same time, a lack of continuity in CSIS source handling procedures and untimely disclosure of source-related information to the RCMP impeded the ability of the RCMP to pursue a successful prosecution. The fact that the RCMP mishandled sources by the manner in which they approached them in an effort to obtain evidence, did not assist the investigation. Ultimately, a process in place prior to the Air India Flight 182 process would have aided the handling of sources between CSIS and the RCMP.

#### **(vii) RCMP Task Force Problems**

The RCMP Task Force established to solve the bombing and prosecute those responsible for it was inhibited in its effectiveness by what was described as poor management decisions and a “poisonous work environment”. Immediately after the bombing, those connected to the investigation expressed dissatisfaction with the direction of the RCMP investigation. According to Mr. Hovbrenber, “It took—in my—in remembering back, it took about two to three weeks for them to do the things that I thought should have been done in the first week and that was to introduce some of those individuals who, as most of us knew or who were in the intelligence field, believed responsible for that—that act, that tragic act. So, in the initial phases, I was feeling frustrated in relation to the lack of space—space my perception of any sort of movement and any sort of enforcement activity against those individuals. So I didn’t necessarily attribute it to any bad will on the part of the RCMP.”

Mr. McLean testified that initially post bombing he was asked to provide his assistance by the RCMP, however after a month to a month and a half of going out and using his resources that he had cultivated over the years, Mr. McLean testified that the RCMP stopped using his assistance. According to Mr. McLean, “I became the token muni...I became Uncle Tom so to speak of showing people that we are integrated—we are using the municipalities to help us, and they continued on to their own investigation in their own direction. So I found that I was getting more and more not involved in the investigation. So then I just went back to doing what I was

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<sup>283</sup> See document referred to in the Testimony of Mr. Neil Eshleman, Transcript of Proceedings (Vol. 75), p. 9431.

<sup>284</sup> Testimony of Mr. Neil Eshleman, Transcript of Proceedings (Vol. 75), p. 9430.

normally doing within the community, dealing with the community as a whole.”<sup>285</sup>

Mr. Solvason testified that, “During the first couple of years, everything I think that could have been done was done. Everybody worked very hard. After that, things began to degenerate a bit.”<sup>286</sup> As early as 1988, he pushed for RCMP investigators to develop a conspiracy case against Sikh extremists suspected in the bombing, but he was largely ignored. Eventually his recommendation was resurrected years later, when new officers were brought onto the Task Force. Mr. Solvason’s approach eventually led to the belated prosecution of two suspects, Mr. Malik and Mr. Bagri. Mr. Solvason also testified that another member of the Task Force suggested a million-dollar reward, only to be rejected, and have the recommendation implemented several years later. According to Mr. Solvason, Staff Sergeant Mr. Bob Wall and Inspector Ron Dicks virtually disbanded the Air India Task Force, leaving only a single officer to keep a watching brief. Mr. Solvason testified that he eventually quit the Task Force in frustration, due in part to personal conflicts with superiors.

In an exit interview, RCMP Sergeant Maile expressed dissatisfaction with the Taskforce and investigation. According to the exit interview:

Another area of concern was the direction the Air India investigation had taken following what Maile described as a major breakthrough only days before his retirement in the form of a written statement from an individual. He indicated to members that he would be happy to come back to assist in interviewing some key individuals, some of whom he cultivated for a considerable period of time to gain their confidence. He does not feel the investigation is being given the priority it deserves and the evidence he obtained has not been utilized in the best possible manner. Apparently, following his retirement, other members went to interview the person who had given him the statement and they made no progress whatsoever which Maile indicated was not surprising, since he worked hard to be in the confidence of the individual. He said by addressing the situation he was fulfilling a promise made to a number of members in NSIS who had been very dissatisfied and frustrated with the way things were being handled by Staff Sergeant Wall. Particularly, however, it was a situation he felt compelled to address and have documented, as there were a number of problems relating to Staff Sergeant Wall and the disruptions he was causing at NSIS.<sup>287</sup>

Mr. Laurie also made his services available to the Taskforce when it wanted to interview Ms. E. again in 1992, after Mr. Laurie had left CSIS and returned to the RCMP, but the offer was never taken up. Not surprising, issues of poor morale developed on the Taskforce by the early 1990’s. According to Sergeant MacDonell, “There were some issues with morale, I believe.”<sup>288</sup>

Over the years, the Air India Task Force migrated into the National Capital Security Offences

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<sup>285</sup> Testimony of Mr. Don McLean, Transcript of Proceedings (Vol. 35), p. 4162.

<sup>286</sup> Testimony of Mr. Robert Solvason, Transcript of Proceedings (Vol. 89), p. 11586.

<sup>287</sup> See document referred to in the Testimony of Mr. Ron Dicks, Transcript of Proceedings (Vol. 62), p. 7623-24. See Exhibit # P-246, Tab 27.

<sup>288</sup> Testimony of Mr. Laurie MacDonell, Transcript of Proceedings (Vol. 76), p. 9648.

Task Force, which became the National Capital Security Offences Section, which became the National Capital Security Investigations Section. As such, it lost its dedicated function and became a blended part of an RCMP unit. With respect to whether it would have been helpful to have a dedicated unit to be able to maintain continuity and corporate knowledge, Mr. Blachford testified that, “Oh, most definitely.”<sup>289</sup> In 1995, when officers were assigned again to the Task Force with the Air India Flight 182 bombing investigation as their sole focus, progress was seen again. In the end, “Yes. Yes, it could have been helpful to leave it as the task force and that remained its sole being,” according to Mr. Blachford.<sup>290</sup>

### **(viii) Post 9/11: A More Serious Attempt at RCMP and CSIS Cooperation**

The 9/11 attacks drove the RCMP and CSIS to cooperate more closely. According to Mr. R. Andrew Ellis, the CSIS Director General for the Toronto Region, “I think times have changed.”<sup>291</sup> The current RCMP Commissioner and Director of CSIS agree. According to Commissioner Elliott, “...we have a much better situation now with respect to the cooperation and flow of information between our two organizations than we had in the past.”<sup>292</sup> According to CSIS Director Mr. Jim Judd, “My sense would be that a lot of change have taken place over the last several years. We are more used, I think, to working with each other at all levels.”<sup>293</sup>

The federal government set up Integrated National Security Enforcement Teams (INSET) in April of 2002, which include the RCMP, CSIS, local police, Canada Border Services Agency personnel, etc. It was recognized that Canada needed to have a much broader, more comprehensive response to national security matters. There are four INSET's: Vancouver, Toronto, Ottawa, and Montreal. For the other areas of Canada, there are National Security Criminal Investigative Sections, one in every province, except for the provinces where INSET's exist. A useful tool for the RCMP with respect to its INSET-related duties, is the Secure Police Reporting Operational System (SPROS), which allows a single file to be created and accessed across Canada. According to Mr. Mike McDonell, “The virtue of SPROS is that any member of the RCMP who has the security clearance required to work national security criminal investigations can get into the system and see exactly where that file is at that moment in time.”<sup>294</sup>

The RCMP/CSIS 2006 MOU, is “A fairly radical departure, in terms of how they express the nature of the CSIS/RCMP relationship.”<sup>295</sup> A new concept of partnership permeates the MOU, which reflects the thrust of the 2004 National Security Policy, which calls attention to the need for an integrated national security effort. The emphasis is now on the ability of both the RCMP and CSIS to interact and share in a joint venture in combating threats to Canada. This memorandum also talks about expanding secondments between the two agencies at the senior levels.

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<sup>289</sup> Testimony of Mr. Bart Blachford, Transcript of Proceedings (Vol. 63), p. 7833.

<sup>290</sup> Testimony of Mr. Bart Blachford, Transcript of Proceedings (Vol. 63), p. 7833.

<sup>291</sup> Testimony of Mr. R. Andrew Ellis, Transcript of Proceedings (Vol. 82), p. 10533.

<sup>292</sup> Testimony of Mr. William Elliott, Transcript of Proceedings (Vol. 90), p. 11807.

<sup>293</sup> Testimony of Mr. Jim Judd, Transcript of Proceedings (Vol. 90), p. 11855.

<sup>294</sup> Testimony of Mr. Mike McDonell, Transcript of Proceedings (Vol. 95), p. 12624.

<sup>295</sup> Testimony of Mr. Wesley Wark, Transcript of Proceedings (Vol. 16), p. 1473.

On May 15, 2007, the RCMP Policy on National Security Criminal Investigations came into effect, in response to among other things, the Arar Commission findings. According to Superintendent Rick Reynolds, “Yes, it is a post-9/11 document. It’s also recognition of our own findings in relationship to national security and how we best investigate national security which is a very centralized process which is different from our standard criminal investigation which tends to be a more decentralized process.”<sup>296</sup> The RCMP has also adopted the Major Case Management system for all its major cases. Major Case Management is a methodology for managing and leading major investigations which provides accountability, clear goals and objectives, planning, utilization of resources and control over the speed, flow and direction of the investigation.

In Vancouver, the RCMP has established a new Joint Counter-terrorism Unit with the Vancouver Police Department. The five person squad will be headed by the department of VPD Deputy Chief, Steve Sweeney, with three members from the VPD and two RCMP members. A Memorandum of Understanding between the RCMP and VPD is currently being drafted for the Vancouver INSET. According to Mr. Sweeney, “...we will have a pretty solid linkage as far as the communication goes within the City of Vancouver.”<sup>297</sup>

With respect to facilitating cooperation between the RCMP and CSIS, the Joint Management Team (JMT) approach has been adopted. JMT’s emerged on an ad hoc basis around specific events, such as in the immediate aftermath of 9/11. According to Mr. Jack Hooper, “It’s a model that I think has some utility...but JMT’s have proven to be, if not a useful standing device, a useful vehicle, for dealing with intense periods of interaction between the Service [CSIS] and law enforcement [RCMP] where there is a high probability that our information would be required to support, in the end, a criminal prosecution.”<sup>298</sup> With JMT’s, “Our [CSIS] approach really is, you know; show everything we have to the RCMP in terms of targeting and let them decide what they feel meets their threshold. Which again is one of the things we were trying to achieve; this notion and that, you know, somehow we weren’t revealing everything. The idea was, here it is, and let’s discuss.”<sup>299</sup>

Formal source de-confliction is also currently practiced by CSIS and the RCMP, every two months. Under source de-confliction, both CSIS and the RCMP review active cases in order to determine which cases the RCMP should take sole jurisdiction of and which cases compromise security intelligence targets for which CSIS should take or retain jurisdiction. According to Mr. McDonnell, “I think that the first point is that we come aware, we attempt to be fully aware of each other’s targets, each other’s concerns and each other’s priorities...And then, from that point forward, there is a discussion as to the methods we’re using and the direction we’re taking and ensuring that we are in roles of support and not in conducting inquiries or surveillance that might trip upon one another.”<sup>300</sup> If a de-confliction issue cannot be resolved at the local level, it is brought to the attention of the JMT at the National Headquarters, which provides assistance and guidance as required. In this context, the JMT is the final arbiter, because issues never reach the

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<sup>296</sup> Testimony of Mr. Rick Reynolds, Transcript of Proceedings (Vol. 52), p. 6482.

<sup>297</sup> Testimony of Mr. Steve Sweeney, Transcript of Proceedings (Vol. 83), p. 10608.

<sup>298</sup> Testimony of Mr. Jack Hooper, Transcript of Proceedings (Vol. 50), p. 6244.

<sup>299</sup> Testimony of Mr. Luc Portelance, Transcript of Proceedings (Vol. 88), p. 11482.

<sup>300</sup> Testimony of Mr. Mike McDonnell, Transcript of Proceedings (Vol. 95), p. 12627.

JMT level.<sup>301</sup>

Another initiative aimed at increasing cooperation between the RCMP and CSIS is the secondment program. The secondment program is not like the old liaison program where liaisons would simply transmit information back and forth between the two agencies.<sup>302</sup> According to Mr. Hooper, “I think this has just been a tremendously successful experiment...So we have that secondment arrangement at the management level but we also have it at the working level in the larger regions as well. And I think, in my experience, we are picking precisely the right people to fulfill those roles and I think the benefit derived far outweighs those benefits that accrued the old liaison officer program.”<sup>303</sup> CSIS and the RCMP also enter into joint training sessions, whereby CSIS officers are educated on the elements of certain offences, among other things.

With respect to CSIS intercepts, witnesses before this Inquiry testified about the changes that have occurred. According to Mr. John A. Gillies, “Certainly, the way this functions currently with the BC region offices is that those individuals who are tasked to listen to the intercepted material work within the same unit as the intelligence officers...I would go as far as to describe it as very intimate relationship between the communication analyst and the investigator.”<sup>304</sup> With respect to a theoretical future investigation in which the RCMP found out about crucial CSIS wiretaps, and whether the RCMP would be able to access those tapes, Mr. Portelance testified that, “Well, the answer is yes, but it’s not yes in theory because we have done that. I personally had been involved when I was Director General of Quebec Region, not just for the RCMP, but with other law enforcement bodies in Quebec, whereby we had information which was of significant importance and they wanted to listen themselves to see if they would draw the same conclusions.”<sup>305</sup>

With respect to source handling between the RCMP and CSIS, CSIS testified to the cooperative nature of the current relationship. Mr. Ellis testified that the source mishandling that occurred with respect to Ms. E. would not occur today. According to Mr. Ellis, “In today’s context we would be directing our intelligence officer who is dealing with Ms. E., after consultation both with our headquarters and with the local INSET, to do everything our intelligence officer could to convince Ms. E. to deal with law enforcement.”<sup>306</sup> Moreover, Mr. Ellis testified that CSIS has shed its reluctance to share information with the RCMP that might threaten to reveal secret sources. “If they deem it to be critical to protecting human life, we will move mountains in order to make that happen.”<sup>307</sup> Lastly, Superintendent Malizia testified that the RCMP would retain the CSIS agent as a “go-between” for transitioning a CSIS source to the RCMP. According to Mr. Malizia, “Mr. Commissioner, it’s my opinion that we definitely would do that. Anything that we

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<sup>301</sup> Testimony of Mr. R. Andrew Ellis, Transcript of Proceedings (Vol. 82), p. 10540.

<sup>302</sup> According to Superintendent Mr. Tremblay, a current CSIS secondment from the RCMP, “Yes, definitely. It’s—my role was not—has not been and is not in liaison.” Testimony of Mr. Larry Tremblay, Transcript of Proceedings (Vol. 96), p. 12764.

<sup>303</sup> Testimony of Mr. Jack Hooper, Transcript of Proceedings (Vol. 50), p. 6252-53.

<sup>304</sup> Testimony of Mr. John A. Gillies, Transcript of Proceedings (Vol. 82), p. 10536.

<sup>305</sup> Testimony of Mr. Luc Portelance, Transcript of Proceedings (Vol. 88), p. 11489.

<sup>306</sup> Testimony of Mr. R. Andrew Ellis, Transcript of Proceedings (Vol. 82), p. 10533.

<sup>307</sup> Testimony of Mr. R. Andrew Ellis, Transcript of Proceedings (Vol. 82), p. 10538.

could do to help us further the investigation and prevent.”<sup>308</sup>

### **(ix) Outstanding Issues**

What transpired following the bombing of Air India Flight 182 leaves much to be desired. Unfortunately, the Canadian government ignored the lessons available to it as a result of the bombings in the immediate period and years afterwards. It took the events of 9/11, sixteen years later, for the Canadian government to respond to the threat posed by terrorism. Today, much work remains to be done, as is highlighted by many important outstanding issues that remain to be properly addressed.

First of all, there are additional challenges in preventing terrorism by having intelligence and enforcement agencies separated. The enormous body of evidence produced at this Inquiry substantiates this fact. Nevertheless, according to Professor Hoffman, “I think these things can be achieved through leadership and guidance from the top and then seeing it through to execution. I don’t think it necessarily necessitates creating new organizations.”<sup>309</sup> In other words, political will is necessary. “This has to be—if it’s not a priority for whomever, the chief executive of a country is, and for that cabinet or that government, it’s not going to be a priority for the individual agencies,”<sup>310</sup> testified Professor Hoffman.

In the event of a tragedy similar to that of the Air India Flight 182 bombing, the rules must be clear as to how intelligence is going to be shared. According to Mr. Inkster, “I think that anything that introduces the need for caveats, that introduces the need for unreasonable delay, introduces a way where you’re not getting all the information into the pot to determine whether or not it has merit in respect of the investigation. The only people who benefit from that are those who are responsible for the event.”<sup>311</sup> In this respect, *Stinchcombe* is a significant concern for CSIS that still exists. This case articulated a significant requirement of disclosure on the Crown, which came to include significant disclosure by CSIS, even though the CSIS disclosure in question may have been acquired for a purpose far removed from the criminal investigation. As such, with respect to transitioning intelligence into evidence, the legal architecture around the prosecution of national security offences is inadequate.

The central issue is the disclosure of sensitive CSIS intelligence in a criminal trial. For Mr. Turner, “How do we protect sensitive third party information, source information which is directly relevant to the defence case?”<sup>312</sup> For Professor Roach, part of the problem is that no one is really quite sure what *Stinchcombe* is about? There are many different interpretations that exist with respect to disclosure requirements stemming from this case. As a result, Professor Roach thinks there is merit in attempting to clarify in a statutory form what the disclosure obligations are under law.<sup>313</sup>

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<sup>308</sup> Testimony of Mr. James Malizia, Transcript of Proceedings (Vol. 82), p. 10464.

<sup>309</sup> Testimony of Mr. Bruce Hoffman, Transcript of Proceedings (Vol. 19), p. 1853.

<sup>310</sup> Testimony of Mr. Bruce Hoffman, Transcript of Proceedings (Vol. 19), p. 1853.

<sup>311</sup> Testimony of Mr. Norman Inkster, Transcript of Proceedings (Vol. 81), p. 10333.

<sup>312</sup> Testimony of Mr. Bill Turner, Transcript of Proceedings (Vol. 66), p. 8325.

<sup>313</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10401.

In addition, Professor Roach suggested that consideration be given to adding statutory structure and framework and statutory options in order to make terrorism prosecutions more workable. Professor Roach pointed to the Malik and Bagri prosecutions, in which defence lawyers were allowed, on an undertaking not to disclose information to their client, to inspect some CSIS material in the case. This prevented section 38 proceedings in both of these prosecutions, which would have split the trial between the Federal Court and provincial court systems.<sup>314</sup> Another area of concern is cases where CSIS is the single source of information for law enforcement prosecution, and it exercises its option to seek protection of confidential information under section 38 of the *Canada Evidence Act*. As a result, law enforcement is left with no evidence to present. If there were a means in these cases by which information of this nature could be protected, “In theory, yes. If there was a mechanism, yes, they would increase the likelihood of sharing [between CSIS and the RCMP].”<sup>315</sup>

Another important potential reform option espoused by Professor Roach was to move to a one-court process instead of the current bifurcated process involving provincial Superior Courts and the Federal Court of Canada with respect to prosecutions involving disclosure issues related to national security. According to Professor Roach, “...the most important reform is to move to an efficient and fair one-court process that allows a trial judge, perhaps assisted by the accused’s lawyer, who might have a security clearance, perhaps assisted by a special advocate, but allows the trial judge to look at all the information and to make a decision about whether the disclosure of that information is necessary for a fair trial. And if we allow the trial judge to do that, I think we can have decisions that are both efficient and decisions that are fair to the accused.”<sup>316</sup> Commissioner Major noted that “...it seems to me one court, just by ordinary rules of efficiency, would be a smoother, easier, faster system, if we were dealing with one court rather through the Federal Court, then to the Superior Court and so on and so forth.”<sup>317</sup>

At the same time, Professor Roach envisions the need for a culture change on the part of CSIS, so that they have a greater regard for evidential standards in the collection of counter-terrorism intelligence. According to Professor Roach, “I think what is necessary is a little bit of culture change and a little bit of recognition within our intelligence community that at least when it comes to counter-terrorism investigations, they should be aware that they should keep in mind evidential disclosures...So I would be gratified if there was somewhat more of what we see in the public discussion from [the U.K.’s] MI5 with respect to evidential standards coming from our security intelligence community.”<sup>318</sup>

Related to instilling a culture change at CSIS, is the greater use of *Criminal Code* wiretap warrants over CSIS wiretap warrants because of concerns related to the enhanced constitutionality of *Criminal Code* warrants. Mr. Roach testified about the changes that have been made to the *Criminal Code* wiretap procedure that make these warrants more attractive and

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<sup>314</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10403-04.

<sup>315</sup> Testimony of Mr. Larry Tremblay, Transcript of Proceedings (Vol. 96), p. 12784.

<sup>316</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10414.

<sup>317</sup> Comments of Commissioner John C. Major, Q.C., Transcript of Proceedings (Vol. 55), p.6850.

<sup>318</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10396-97. Mr. Roach was struck by the contrast between MI5’s public recognition of the importance of evidential and disclosure standards and CSIS’ fairly consistent emphasis that it is not concerned with the collection of evidence.



more plausible for use in terrorism cases. According to Professor Roach, “That’s right. The 2001 amendments of the *Anti-Terrorism Act* removed the requirements of investigative necessity from the *Criminal Code* warrant scheme, which has a very high threshold. That no longer applies when seeking a *Criminal Code* warrant in a terrorism investigation. The same amendments allowed for a maximum one-year duration for a *Criminal Code* terrorism warrant. And then finally, the new crimes in the *Anti-Terrorism Act*, of course, have created expanded grounds for a warrant.”<sup>319</sup> Thus, “So to me, it is not crystal clear that it is always going to be that much more difficult to get a *Criminal Code* warrant and I think if you have a choice between the two, for many reasons relating to constitutionality...it seems to me that the best course would be to get a *Criminal Code* wiretap warrant.”<sup>320</sup>

Related to the issue of wiretaps is that modern communications technology is making it tougher for police to eavesdrop on terrorists. In his testimony, Toronto Police Chief Mr. Bill Blair, appealed to lawmakers to help by reforming outdated wiretap legislation to ease the job of investigators. According to Mr. Blair, “It’s an issue of lawful access and it is, in particular with the emerging new technologies of telecommunications in our society, it’s become a very real challenge for law enforcement to keep up and, for example, these devices which we all carry on our hips—the Blackberry, there are—law enforcement faces some very, very significant challenges in intercepting those communications.”<sup>321</sup>

Mr. Warren testified about the public good with respect to prosecutions. For Mr. Warren, the public good is obvious in cases such as the Air India Flight 182 bombing, and achieving prosecution of that crime. According to Mr. Henschel, with respect to who gets the first crack at witnesses, “...I would think at that stage where the crime has occurred, that the prime responsibility would fall to the criminal investigation side of the house and we are taking the statements and you may have ongoing investigative follow-up from one witness to another and so on.”<sup>322</sup> However, “But there’s ground in between I guess where you’re not really sure and the problem becomes who does make that decision?”<sup>323</sup>

For Mr. Zaccardelli, there must be an independent head of any “super body” or coordinating body that sorts out battles between agency “warlords.” According to Mr. Zaccardelli, “Because I doubt that if you put six or seven warlords in a room, it’s going to be a long time before you get the warlords to give up their jurisdiction, and I can tell you I know what warlords are like because I was a warlord once...So to avoid dealing with warlords for seven years, you can reduce that by having somebody who has the credibility and the stature to actually bring that group together and make them work for the good of Canada.”<sup>324</sup> Mr. Hooper also noted that involvement of Crown counsel at an early stage with respect to JMT’s is useful for when national security investigations may flip over to criminal prosecutions.<sup>325</sup>

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<sup>319</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10399.

<sup>320</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 81), p. 10400.

<sup>321</sup> Testimony of Mr. Bill Blair, Transcript of Proceedings (Vol. 83), p. 10638.

<sup>322</sup> Testimony of Mr. Lyman Henschel, Transcript of Proceedings (Vol. 46), p. 5535.

<sup>323</sup> Testimony of Mr. James Warren, Transcript of Proceedings (Vol. 48), p. 5831.

<sup>324</sup> Testimony of Mr. Giuliani Zaccardelli, Transcript of Proceedings (Vol. 86), p. 11077-78.

<sup>325</sup> Testimony of Mr. Jack Hooper, Transcript of Proceedings (Vol. 50), p. 6245.

On a related note, with respect to sources and the handling of a source as between the RCMP or CSIS, there needs to be consideration given to who the final arbiter is with respect to which agency gets jurisdiction over a particular source. According to Mr. Ellis, “I don’t think there is an ultimate umpire... There are issues, there are some sticky issues, and they usually get resolved very quickly at the Joint Management Team, and that is below the Commission and the Director Level. They are, I suppose, in the current context, the final arbiter.”<sup>326</sup>

With respect to national security investigations, about 75 investigators currently staff INSET. However, based on workload, which is presently high, there are not enough investigators. According to Inspector Jagoe, “Right now, we have on staff approximately 75 investigators and clearly based on our work load, that is quite high at the present time, we don’t have enough investigators. So as a result, based on a project-by-project demand, we will go out and second other investigators to come into INSET and work on a short-term basis to meet the investigation requirements.”<sup>327</sup> There was also need expressed for an apparatus to move into place quickly in the aftermath of a terrorist incident. According to Mr. Henschel, “I think that would be the most important thing to do. And of course—how to say this—to have personnel designated or pre-designated to fulfill the intent of that apparatus, if they can move in quickly and smoothly...”<sup>328</sup> into place.

A related challenge is funding for provincial and municipal INSET partners. According to Superintendent Malizia, “One of the challenges for our partners is funding and it is something that is certainly ongoing. But, I think in the future, if there could be a capacity for federal funding towards our municipal and provincial partners to be able to integrate more their resources in the INSETs to have a larger contingent.”<sup>329</sup> Under increased funding, the RCMP could pay for more secondments to the INSET.

Concerns about review and oversight also continue to plague national security investigations by the RCMP. Given that the RCMP operationally leads INSET’s, SIRC has very limited capacity to review their activities. Joint operations highlight the limitation of SIRC’s mandate in an increasingly operationally integrated national security sector. There is currently no one civilian oversight body for the national security responsibilities of the RCMP as they intersect with various other agencies through INSET.

Last, but certainly not least, the concern that systemic racism played a role in the way this terrorist bombing was addressed, continues to cast a cloud over the Air India investigations. Systemic discrimination affected the manner in which officials responded to warnings before the Air India bombing and the investigation afterwards. According to a Report by University of Toronto professor, Ms. Sharene Razack, “When police, political, and media elites all consistently treated the Air India bombings as a foreign event, it is not surprising that Canadians do not recall June 23, 1985. As a nation, we were not shaken, transformed and moved to change our

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<sup>326</sup> Testimony of Mr. R. Andrew Ellis, Transcript of Proceedings (Vol. 82), p. 10540. Mr. Inkster agrees, noting that, “I would agree with you that there needs to be an arbiter.” See Testimony of Mr. Norman Inkster, Transcript of Proceedings (Vol. 81), p. 10369.

<sup>327</sup> Testimony of Mr. Jamie Jagoe, Transcript of Proceedings (Vol. 82), p. 10446.

<sup>328</sup> Testimony of Mr. Lyman Henschel, Transcript of Proceedings (Vol. 46), p. 5567-68.

<sup>329</sup> Testimony of Mr. James Malizia, Transcript of Proceedings (Vol. 82), p. 10497.

institutional practices for a tragedy we considered had little to do with us.”<sup>330</sup>

The victim’s relatives of the Air India Flight 182 bombing, felt that their skin colour was a factor from the day of the bombings. According to the Razack Report:

Once the terrible events of the bombings unfolded, there was still no sense of urgency, certainly not the kind that one would expect given that so many Canadians had died in the biggest terrorist bombing to date. This is surely a powerful indicator that racism influenced events both before and after the bombings...Perhaps the most compelling evidence that racism is part of the responses to the Air India bombings comes from the families of the victims and from Indo-Canadians generally. Almost without exception, Indo-Canadians and South Asians more generally. Almost without exception, Indo-Canadians and South Asians more generally, experienced the Air India bombings as the kind of event where you remember what you were doing when you first heard the news...<sup>331</sup>

## **(x) Recommendations**

In light of the challenges in moving from intelligence to evidence because of the creation of CSIS, and the difficulties this caused for the investigation and prosecution of the Air India Flight 182 bombing, the following recommendations are provided:

### **1. Develop a Greater Regard for Evidentiary and Disclosure Standards in the Collection of Intelligence in Counter-Terrorism Investigations by CSIS and other Intelligence Agencies**

- In terrorism investigations, CSIS and other intelligence agencies should constantly evaluate the likelihood of a subsequent prosecution and the effect that a prosecution could have on secret intelligence. Where possible, they should collect and retain information to evidentiary standards.
- Canada’s security intelligence agencies should work with foreign partners to obtain amendments to caveats that restrict the disclosure of information for purposes of prosecution.
- Implement greater use of *Criminal Code* authorizations for electronic surveillance in terrorism investigations where prosecutions are expected.

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<sup>330</sup> Exhibit # P-387, p. 9.

<sup>331</sup> Exhibit # P-387, p. 24-25.

## **2. Implement Strategies to Prevent Serious Harm done by the Disclosure of Information**

- Draft and implement legislation that clarifies the disclosure requirements of the Crown under law (i.e. *Stinchcombe*).
- Draft legislative guidance for requests for production from CSIS when it is determined to be a third party not subject to *Stinchcombe*.
- Consider codifying and expanding privileges so that CSIS informers can also benefit from the police informer privilege.
- Consider providing for confidential disclosure and inspection of relevant intelligence by defence counsel and providing defence counsel the option of security clearances, in order to avoid section 38 (*Canada Evidence Act*) litigation, which may shorten the length of trials.

## **3. Adopt a “One-Court Process” for Determining National Security Confidentiality Claims**

- Either provide designated provincial superior trial court judges, experienced in complex criminal trials, the ability to determine national security confidentiality claims by the federal government under section 38 of the *Canada Evidence Act*, or grant exclusive jurisdiction to the Federal Court in national security prosecutions.
- Related to this recommendation, consider repealing subsection 38.09 of the *Canada Evidence Act*, which allows for decisions about national security confidentiality to be appealed to the Federal Court of Appeal and possibly further to the Supreme Court of Canada under section 38.1. Another consideration might be to provide time limits for pre-trial appeals from a section 38 determination.

## **4. Adopt Bill C-416**

- The federal government should adopt the Private Member’s Bill C-416, *An Act regulating telecommunications facilities to facilitate the lawful interception of information transmitted by means of those facilities and respecting the provision of telecommunications subscriber information*. In this regard, the federal government should update wiretap legislation on a continual basis so that it is in step with emerging new technologies so that intelligence and law enforcement remain capable of lawfully intercepting communications.

## **5. Establish an Independent National Security Coordinator**

- Within the Office of National Security Coordination, establish the position of a National Security Coordinator, independent of the both the RCMP and CSIS, who can effectively provide determinations of where the public good lies between the intelligence needs of CSIS and the prosecutorial ambitions of the RCMP, and when required, determine which agency gets jurisdiction over a witness/source in conflicts arising between particular criminal investigations and security intelligence operations.

## **6. Effectively Fund INSETs**

- Ensure sufficient and continued funding of INSET.
- The federal government should provide full funding for provincial and municipal INSET's.

## **7. Establish an RCMP Standby Terrorist Task Force**

- The RCMP should establish a standby Terrorist Task Force, with pre-designated personnel and resources, in order to responded rapidly to the need for a terrorism investigation and eventual prosecution.

## **8. Implement National Security Review of the RCMP**

- Implement an independent mechanism to review of the RCMP's national security activities for compliance with laws, policies, and international obligations and for the standards of propriety expected in Canadian society. It is further recommended that Canadians would be better served by such an independent review body being the same in dealing with both the RCMP's national security activities and CSIS.

## **9. Revisit Compensation to the Families of the Victims of Air India Flight 182**

- Although this Inquiry is precluded from making any findings as to whether the government of Canada would be civilly liable to the families of the victims of Air India Flight 182, like the recommendations provided for by Justice O'Connor in the Arar Commission, "in addressing the issue of compensation, the Government of Canada should avoid apply a strictly legal assessment of its potential liability."<sup>332</sup>

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<sup>332</sup> Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Public Works and Government Services Canada, 2006), p. 363.

- In this light, the financial compensation should be reviewed to correct the inadequate amounts for which families of the victims of Air India Flight 182 settled in light of the new evidence revealed at this Inquiry that families were prejudiced in their civil actions against the government by not having all the information that their government possessed.

## **10. Issue a Formal Apology**

- The Prime Minister on behalf of the government of Canada and all Canadians should issue a public apology to all victims of the Air India Flight 182 bombing, with respect to the inadequate response provided by the government in the aftermath of the bombing, the intelligence and institutional failures on the part of government agencies, such as CSIS, the RCMP, and Transport Canada, and the ineffective cooperation on the part of government agencies, namely CSIS and the RCMP, that detrimentally affected the post-bombing criminal investigation and prosecution.

## **Strengthening Aviation Security**

### **(i) Introduction**

The aviation system and airplanes have been and will continue to be the targets of terrorist attacks. According to Professor Peter St. John, “Aircraft are so symbolic, are so powerful in the public mind, you almost have to attack through aircraft to advance your terrorist notions, today.”<sup>333</sup> Canada must remain ever vigilant against the threat to its aviation security system.

Under section (b)(vii) of the Terms of Reference of this Commission of Inquiry, the Commissioner is to make findings and recommendations with respect 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.”<sup>334</sup>

In their testimony before the Inquiry, AIVFA family members asked this Commission to “identify deficiencies and make actionable recommendations” with respect to aviation security. AIVFA member Ms. Smita Bailey testified that Canada is too reactive and not proactive enough when it comes to aviation security.<sup>335</sup> According to AIVFA member Mr. Chandar Sain Malhotra, “The problems created by the terrorists change constantly and we must ensure that our system changes adequately to react to them. More stringent checks of both the booked and hand baggage is needed.”<sup>336</sup>

At the same time, AIVFA members wanted answers from Air India, with respect to their security concerns about Flight 182. According to AIVFA member Ms. Usha Sharma, “Before machines were invented, people were checking manually. Because [x-ray] machine and power failed, so it was okay to send the luggage without checking thoroughly? When two baggages without passenger were booked, was it proper to go without passenger?”<sup>337</sup>

Despite a foreboding awareness of the threat to its flights, Air India failed to respond appropriately to the heightened threat environment in which it operated flights from Canada in 1985. Air India, and Air India alone, who was responsible for checking baggage for all its flights, relied on poorly trained and unmonitored Burns Security employees to use unreliable x-ray and PD-4 Sniffer technology to screen baggage, all the while neglecting to check baggage or use passenger-baggage reconciliation “...that would have saved the day”<sup>338</sup> by preventing the bombing of Air India Flight 182.

Understanding what led to the terrorist bombing of Air India Flight 182, the present state of aviation security in Canada, and what needs to be done to strengthen aviation security is crucial because, “Terrorists don’t stand still and they analyze the kind of security that we have and think

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<sup>333</sup> Testimony of Mr. Peter St. John, Transcript of Proceedings (Vol. 35), p. 4224.

<sup>334</sup> Testimony of Mr. Deepak Khandelwal, Transcript of Proceedings (Vol. 1), p. 83.

<sup>335</sup> Testimony of Ms. Smita Bailey, Transcript of Proceedings (Vol. 7), p. 724.

<sup>336</sup> See Exhibit # P-74, Testimony of Chandra Sain Malhotra, Transcript of Proceedings (Vol. 9), p. 932.

<sup>337</sup> Testimony of Ms. Usha Sharma, Transcript of Proceedings (Vol. 7), p. 747.

<sup>338</sup> Testimony of Dr. Rodney Wallis, Transcript of Proceedings (Vol. 37), p. 4421.

of ways of getting around it and think of imaginative ways, as happened in 9/11, of inflicting terror.”<sup>339</sup>

## **(ii) The Bombing of Air India Flight 182: Intelligence, Human, Corporate, and Regulatory Failures**

In 1985, Canada was not ready for aviation-based terrorism in the form of the Air India Flight 182 bombing. The national security defences of Canada were insufficiently robust and could not sufficiently anticipate terrorist threats other than hijackings or hostage-takings. Although:

you could see the movement gathering for something extreme because of the things that were being said by the leaders of this movement in Canada. And you get a sense of this, the growing political sense of angry confrontation and frustration over the issue of Khalistan. And I don't think that Canadian airport security or Transport Canada, or any of our security people, were ready for Air India.<sup>340</sup>

According to Professor St. John, the notion of bombing an aircraft was known in 1974. For Professor St. John, airline hijackings before the Air India Flight 182 bombing were building up to a crescendo. According to Professor St. John, “...And it's almost predictable that a series of events will build up until the big bang occurs. And Air India was the 10<sup>th</sup> and the big bang event, as far as the Khalistan independence movement was concerned. And therefore, to that degree, it was predictable. We could anticipate that something might happen.”<sup>341</sup> In fact, in a paper presented to the 4<sup>th</sup> International Aviation Security Conference in April of 1985, Mr. Wallis warned about the “use of sophisticated timing and other devices by terrorists or other criminals capable of evading discovery during screening processes, will demand responsive action by aviation security specialists and those involved in hi-tech detection device development.”<sup>342</sup> Unfortunately, the Canadian government and its agencies such as CSIS failed to anticipate what was to come.

### **(a) Intelligence Failure**

The failure to anticipate the Air India Flight 182 bombing stemmed from multiple failures, specifically intelligence failure, human failure, [corporate failure,] and regulatory failure.<sup>343</sup> With respect to the intelligence failure that led to the Air India Flight 182 bombing, there was a “...lack of central coordination and direction of the intelligence gathering process and the intelligence dissemination process in 1985....”<sup>344</sup> The intelligence tasking of CSIS at the time was still predominately oriented towards Cold War era priorities, with the result that Sikh extremism was not given the attention it deserved. There was “...an incapacity of the system to direct its attention in a very focussed way...there really was a serious lack of clear authority and

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<sup>339</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 38), p. 4646.

<sup>340</sup> Testimony of Mr. Peter St. John, Transcript of Proceedings (Vol. 35), p. 4231.

<sup>341</sup> Testimony of Mr Peter St. John, Transcript of Proceedings (Vol. 35), p. 4222-23.

<sup>342</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 35), p. 4255.

<sup>343</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 36), p. 4309.

<sup>344</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 36), p. 4310.



clear lines of communication to bring the various threat assessments that were out there and to bring them to bear right there at the airport where the decision had to be made.”<sup>345</sup>

In fact, Dr. William Leiss, a risk analysis expert, testified that in light of the series of telexes and tips with respect to threats prior to the Air India Flight 182 bombing, including the June 1<sup>st</sup> telex, the RCMP and other agencies should have considered stopping all Air India flights leaving Canada in June of 1985 until the threat had been properly assessed. According to Mr. Leiss, “So, as I say for this business, airline security, I would say that it is extremely rare to get such a specific piece of information and that would—I think if you asked almost anybody that would raise your level of concern to the highest possible level so that you would be at that point basically pulling out the stops. You might even ground the flights until you had a better handle...”<sup>346</sup>

For Dr. Leiss, Canadian authorities did not have the proper tools to do a proper risk assessment, and consequently did not respond accordingly. At the time, Canada lacked a more results-based regulatory regime; a regime proactive in nature that responds to potential threats in advance and subjects them to a risk assessment. The numerous warnings against Air India, including the June 1<sup>st</sup> telex, according to Dr. Leiss, “...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 that you almost never get such a specific type of warning. I mean—so I would have said, ‘why didn’t the alarm bells go off everywhere and what did the RCMP do with the information?’”<sup>347</sup>

With respect to intelligence dissemination, although there was a general but enhanced threat environment surrounding Air India flights in June of 1985, which had been communicated to CSIS and the RCMP and down to Pearson International Airport and Mirabel Airport, there seems to be no evidence of any transmission of the threat against Air India to airports or airlines that connected flights to Air India in Toronto, such as Vancouver International Airport and the now defunct Canadian Pacific (CP) Airlines. Mr. Chern Heed, the Manager of Vancouver International Airport in 1985 testified that, “I was on the ground at the time at an airport and the information certainly wasn’t getting through to us at ground level for sure.”<sup>348</sup>

## **(b) Human Failure**

With respect to human failure, CP Airlines and its employees were unaware of the threat to Air India in 1985. Undoubtedly, if all air carriers in Canada, including CP Airlines, with flights connecting to Air India had been warned that Air India was operating under heightened security alert, CP Airlines and its employees may have exercised more caution. In fact, Air India officials, T.N. Kumar and Rajesh Chopra, testified that Air India had not forwarded to CP Airlines a telex dated June 1, 1985, from Air India’s Head Office, warning of bomb threats or

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<sup>345</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 36), p. 4311-12.

<sup>346</sup> Testimony of Dr. William Leiss, Transcript of Proceedings (Vol. 91), p. 11982.

<sup>347</sup> Testimony of Dr. William Leiss, Transcript of Proceedings (Vol. 91), p. 11982.

<sup>348</sup> Testimony of Mr. Chern Heed, Transcript of Proceedings (Vol. 36), p. 4312.

sabotage attempts targeting the Air India that month.<sup>349</sup> Although with the benefit of hindsight, there were warning flags from the manner in which M. Singh booked his interlined ticket from CP Airlines to Air India, such as the fact that he bought a ticket in a “last-minute fashion” only a few days before, changed the names on the ticket, paid cash, and then created a disruption at the ticket counter by demanding in an aggressive and bullying manner that his luggage be interlined to India despite not having a reservation on Air India, “...if there had been a system in place and people had been trained and alert to these kind of indicators and empowered to do something about it, then something could have been done about it but none of those conditions were in place in 1985.”<sup>350</sup>

Nevertheless, according to CP Airlines own policies and regulations, if a passenger who has checked in for a flight decides not to travel, his checked baggage shall be removed from the flight. According to Dr. Whitaker, the baggage for M. Singh should have been taken off the CP Airline flight that connected to Air India.<sup>351</sup> Furthermore, “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 [someone that has a boarding pass, seat allocation, confirmed reservation, but does not actually board the flight]...that’s the practice at the time.”<sup>352</sup>

According to Mr. Kumar of Air India, “a simple telex or a communication would have been sent [from CP Airlines]. I didn’t see any. For Air India, there was no passenger.” Similarly, in his testimony, Mr. Chopra stated, “that the system that was in force at the time for passengers from connecting points in Canada. We have gone through the files and I didn’t see any passenger transfer manifest. There was no intimation from CP Air to Air India of the number of passengers connecting, leave alone the baggage.”<sup>353</sup> As such, for Air India, the interlined baggage of M. Singh was not unaccompanied, but unauthorized.

Unaccompanied luggage has been described as a bag which belongs and is associated with a passenger but for some reason is not travelling with that passenger. On the other hand, unauthorized luggage is when there is unaccompanied luggage that has infiltrated an airline, i.e. when it does not have the authority of the airline to be on it. Consequently, according to Air India, even though section 4.1.1 of the Air India security program provided that, “Unaccompanied baggage must be associated with a *bona fide* passenger and his documents before it is boarded,” the baggage of M. Singh in this case was not unaccompanied but was unauthorized, and according to Mr. Chopra, if Air India had been informed that M. Singh had not boarded his flight in Vancouver, Air India would have off-loaded his baggage.

Likewise, despite section 4.1.5 of the International Air Transport Association’s (IATA) Aircraft and Airport Security Procedures, which recommended that all baggage loaded onto an airplane, except expedite baggage, belongs to passengers who were travelling on the flight, Air India

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<sup>349</sup> Nor did Air Canada get this warning, even though Air India had contracted Air Canada to handle its baggage and ticket counter at Pearson International Airport in Toronto.

<sup>350</sup> Testimony of Mr. Chern Heed, Transcript of Proceedings (Vol. 36), p. 4345.

<sup>351</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 36), p. 4359.

<sup>352</sup> Testimony of Mr. Chern Heed, Transcript of Proceedings (Vol. 36), p. 4352.

<sup>353</sup> Testimony of Mr. Rajesh Chopra, Transcript of Proceedings (Vol. 37), p. 4391.

representatives at the Inquiry testified that Air India could rely on the originating airline [CP Airline] that had interlined a passenger and a bag, to comply with this Recommendation. Thus, “Unfortunately, there was a loophole and everybody recognizes that now,” according to Mr. Wallis.<sup>354</sup>

### **(c) Corporate Failure: Air India**

A letter outlining the threat to Air India preceded every Air India flight since the inaugural flight from Canada.<sup>355</sup> According to Mr. Wallis, “Air India was operating under high risk. They had invoked emergency procedures. So in effect, they were almost putting this on the same level as a specific risk.”<sup>356</sup> In fact, according to the former Assistant Director of Security at Air India, Mr. M.N. Saxena, “The specific threat to Air India was already existing where Air India was identified and since Air India had only one flight, non-existence of flight number becomes irrelevant and to me, ever since that threat [June 1<sup>st</sup> telex] was received it was specific for AI 182.”<sup>357</sup> As such, could other things have been done? Yes, Air India could have checked each piece of baggage by hand and/or “They could have reconciled. It was a procedure that had been used elsewhere. It normally relied on passengers and baggage being put together and having identification at that stage.”<sup>358</sup> In other words, although the specific security arrangements Air India had in place at that time in 1985 in Canada exceeded normal practice, Air India could have opted to check each piece of baggage and/or perform passenger-baggage reconciliation for all its flights departing Canada. It appears that another airline operating under high risk alert out of Canada at that time in 1985, namely El Al Airlines, had greater security arrangements in place than did Air India at the time, at a greater inconvenience to its passengers.

Air India, and Air India alone, was responsible for checking baggage for all its flights. Despite a foreboding awareness of the threat to its flights, Air India failed to respond appropriately to the heightened threat environment, contracting with poorly trained Burns Security employees, using baggage screening technology that it knew to be unreliable, all the while neglecting to check each piece of baggage and/or use passenger-baggage reconciliation “that would have saved the day”<sup>359</sup> by preventing the bombing of Air India Flight 182.

In practice, the additional security arranged for by Air India, was little more than “smoke and mirrors.” In June 1985, Mr. Daniel Lalonde was employed as a security person, working for Burns Security. With respect to training, Mr. Lalonde testified that, “Essentially, I was shown a video on how to operate an x-ray machine and that lasted approximately say, half an hour to an hour, and I was instructed by other people who were doing same jobs as I was actually doing it.”<sup>360</sup> Mr. Lalonde went on to explain that “...I think pretty much everyone was involved was minimum wage type and I am not sure that everyone was focussed on – including myself – or didn’t understand how critical what we were doing was for the safety of all the passengers.

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<sup>354</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 37), p. 4411.

<sup>355</sup> Document # CAC-0517.

<sup>356</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings, (Vol. 37), p. 4415-16.

<sup>357</sup> Exhibit # P-365.

<sup>358</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 37), p. 4415-16.

<sup>359</sup> Testimony of Dr. Rodney Wallis, Transcript of Proceedings (Vol. 37), p. 4421.

<sup>360</sup> Testimony of Mr. Daniel Lalonde, Transcript of Proceedings (Vol. 29), p. 3116.

Certainly it could have been done by more experienced, more – better trained, more focussed people who paid more attention to what they were doing no doubt, and I include myself in this.”<sup>361</sup>

Other Burns Security employees substantiated this testimony. With respect to x-ray security specifically, Mr. Abufazal Khan noted that:

when I first started to work with Burns Security I didn't receive any instruction or training about the job. After a couple of months, they, Burns, gave us an hour of classroom training and showed us slides of what to look for in baggage, our dress code, types of bombs to look for and also guns to look for. I don't believe I could tell what a bomb looked like if I saw one. I have worked about 275 hours in the past eight months with Burns. I had no previous security experience prior to working for Burns Security.<sup>362</sup>

Anseem Nanji, another Burns Security employee, claimed that the only course he received from Burns Security was a first-aid and CPR course.<sup>363</sup>

In addition, Air India's own security plan for flights prior to the bombing of Air India Flight 182 was poorly operationalized. Burns Security had a contract with Air India, which included security at the bridge door leading to the aircraft and security inside the aircraft from the time that passengers disembark upon flight arrival until flight departure.<sup>364</sup> The documents filed at the Inquiry appear to indicate the absence of anyone from Burns Security under the aircraft.<sup>365</sup>

Mr. Brian Simpson, who was employed in Cabin Services at the time in question, testified that he went on Air India Flight 182 after the aircraft had been cleaned. He testified about going into the cockpit and sitting in the Captain's chair. He also testified that he did not see anyone else on the aircraft while he was on it, nor did he see anyone at the door to the aircraft or near the aircraft itself. In fact, the documents entered at the Inquiry show that two Burns Security guards were on Air India Flight 182 while it was being cleaned, but that there was a period of time during which neither of the two security guards were on the plane.<sup>366</sup> According to Mr. Simpson, “There was no regard for the private security guards that were hired to do the screening. Unlike most members of the RCMP, the special constables [stationed at airports] were not held in any particular esteem. We always knew, or we thought we always knew, that it was just an easy sift in the breach anywhere. Generally, particularly in my early years, the airport security was regarded as a joke.”<sup>367</sup>

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<sup>361</sup> Testimony of Mr. Daniel Lalonde, Transcript of Proceedings (Vol. 29), p. 3129.

<sup>362</sup> Document # CAF-0157.

<sup>363</sup> Document # CAF-0159.

<sup>364</sup> Document # CAF-0089.

<sup>365</sup> Documents filed at the Inquiry that are relevant to Air India's security plan include: CAF-0070, CAA-0118, CAF-0089, CAF-0071, CAF-0143.

<sup>366</sup> Documents filed at the Inquiry that support the testimony by Mr. Brian Simpson include: CAF-0142, CAF-0143, CAF-0155, CAF-0150, CAF-0149, and CAF-0152.

<sup>367</sup> Testimony of Mr. Brian Simpson, Transcript of Proceedings (Vol. 32), p. 3684.

With respect to the screening equipment, Transport Canada's Mr. Mattson testified that the pre-boarding passenger screening was provided for by Transport Canada, with the human resources for this equipment provided for by Air India. However, with respect to the additional equipment to screen checked baggage, such as the x-ray machine and PD-4 Sniffer, this was the responsibility of Air India. Mr. MacDonald of the Airport Policing Branch of the RCMP echoed this sentiment. According to Mr. MacDonald, "The checking of the baggage is the responsibility of the airline."<sup>368</sup>

Unfortunately, significant problems existed with the equipment Air India used to screen baggage. From the time the x-ray machine was installed by Air India at the Pearson International Airport, several mechanical failures plagued its optimal performance. It was known that the calibration of the unit was delicate and that it could be easily misaligned through continued movement, given that the x-ray machine had to be moved each time, twice a week, from its storage place, for use by Air India.<sup>369</sup>

With respect to the PD-4 Sniffer, on January 18, 1985, it was tested. Mr. Gary Carlson, a former RCMP dog handler at Pearson International Airport who tested this device, found it ineffective beyond an inch. According to Mr. Carlson:

I had a vial of gun powder which I brought to this test, requested that I place this out. It was agreed that I could do that. I placed it in the bottom of a garbage can, put the lid back on, waited a few minutes and then the Burns Security people, whoever it was, took the device around trying to get a reaction. There was no reaction from the machine. ... The security guard said there was no reaction, so to make it – to see where we could get any reaction, I then placed it on top of the garbage can and opened the lid right up and it wasn't until the sniffer came within an inch of the container for the gun powder that the machine reacted to it.<sup>370</sup>

Beyond Mr. Carlson, RCMP officers were present, in addition to Mr. Mattson with Transport Canada, and Mr. Ashwani Sarwal, a representative from Air India. Mr. Mattson testified that "Mr. Sarwal was advised at the time that—sorry—advised at the time that we had no faith whatsoever in this device and we did not see how it would be effective in detecting an explosive in a suitcase."<sup>371</sup> He also recalled that a recommendation was made by an RCMP officer present during the testing, for Air India not to rely on PD-4 Sniffer for checked baggage inspection purposes.<sup>372</sup>

On the fatal June 22-23, 1985 weekend, after screening of some of the checked baggage by Burns Security using Air India's x-ray machine, the machine broke down. Statements provided by Burns Security employees, indicate that Air India used the PD-4 Sniffer, despite knowing of its limited effectiveness in detecting explosives.<sup>373</sup> At the same time, a senior official at Air India

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<sup>368</sup> Testimony of Mr. Joe MacDonald, Transcript of Proceedings (Vol. 27), p. 2894.

<sup>369</sup> Document # CAC-0157.

<sup>370</sup> Testimony of Mr. Gary Carlson, Transcript of Proceedings (Vol. 28), p. 2993-94.

<sup>371</sup> Testimony of Mr. Dale Mattson, Transcript of Proceedings (Vol. 29), p. 3204.

<sup>372</sup> Document # CAA-0369.

<sup>373</sup> Document # CAF-0143.

was more pre-occupied with ensuring Air India Flight 182 was not delayed because of security, or financially affected detrimentally by any delay caused by security precautions. In a statement taken after the bombing, Mr. Michael Ciuffreda, supervisor for Burns Security, stated that Mr. John D'Souza, Air India Security Supervisor for Flight 182, asked if it was possible if Burns Security employees could speed the screening of checked baggage to ensure no further delay to Flight 182.<sup>374</sup> Similarly, in a conversation overheard by Mr. Lalonde, involving either a Transport Canada or Air Canada official and an Air India official (thought to have been Mr. D'Souza), Mr. Lalonde recalled the following:

Well, essentially the conversation – I don't recall words but I recall that it had to do with time and money and how much it cost for a flight or for a plane to be kept on the ground ... Well, from my point of view, John [D'Souza] was definitely – this fellow was in charge...and I think that, from what I saw and heard that, you know, the money or the cost of keeping the plane on the tarmac was very high and pretty much in conjunction with the other fellow, they decided to send the plane because of that factor.<sup>375</sup>

Despite the fact that a regulatory requirement may not have existed for positive baggage-passenger verification, Mr. Mattson testified that in a situation where an x-ray machine fails and the back-up PD-4 Sniffer device is ineffective, the procedure that ought to have been used by Air India was positive baggage-passenger verification. According to Mr. Mattson, "If they [Air India] felt that they had a significant threat then the procedure that was normally used was a positive baggage-passenger verification and that occurred by having the passenger identify his bag, positively identify his bag, every passenger. That certainly was not done."<sup>376</sup>

Undoubtedly, "If you had the opportunity or capability of doing other or more things than that, then certainly that would probably have been a wise or a good decision to make at that time."<sup>377</sup> According to Mr. Wallis, "I mean there has been massive development in technology since those days, but in the '80s, the x-ray was cosmetic more than effective. Sniffers were new technology and I've already said people would have preferred to have worked with dogs, but passenger and baggage reconciliation could be achieved easily."<sup>378</sup>

Thus, according to Mr. Cartwright of Transport Canada, "The real message from this [the Air India Flight 182 bombing] is technology is not always the answer. Technology doesn't always work."<sup>379</sup> Given the fact that Air India had an x-ray machine in Toronto that had failed 50 to 75 percent through screening of Air India Flight 182, and Air India decided to use a PD-4 Sniffer explosive detector that had previously been shown not to have worked on at least a couple of occasions, and an RCMP dog handler and his dog was unavailable at Mirabel Airport, not to mention the numerous threats against Air India, including the June 1<sup>st</sup> telex, Air India should have delayed an already delayed departure of Air India Flight 182, in order to resolve security

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<sup>374</sup> Document # CAF-0139.

<sup>375</sup> Testimony of Mr. Daniel Lalonde, Transcript of Proceedings (Vol. 29), pgs. 3122, 3129.

<sup>376</sup> Testimony of Mr. Dale Mattson, Transcript of Proceedings (Vol. 29), p. 3250.

<sup>377</sup> Testimony of Mr. Nick Cartwright, Transcript of Proceedings (Vol. 42), p. 5152.

<sup>378</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 35), p. 4256-57.

<sup>379</sup> Testimony of Mr. Nick Cartwright, Transcript of Proceedings (Vol. 42), p. 5174.

issues by either checking each piece of baggage and/or passenger-baggage reconciliation. With respect to whether passenger-baggage reconciliation at the very least would have been a reasonable decision, Dr. Whitaker testified, “Absolutely, yes.”<sup>380</sup>

#### **(d) Regulatory Failure**

Lastly, with respect to regulatory failure, a new government regulation had been proposed prior to the Air India Flight 182 bombing that would have implemented passenger-baggage reconciliation. Dr. Whitaker testified that:

In part. It is a great irony that in fact the amendments to the *Aeronautics Act* were brought into – into being just in the immediate aftermath of Air India, but that was not in fact because they put it together as a result of that. It had been in fact in the pipeline for some time, along with all the regulations that followed from the changes to the *Aeronautics Act* and it is quite clear that if in fact those new regulations had been in effect that things might have turned out very differently, but they were not and it’s unfortunate that it simply took so long to actually reach that point. The Air India tragedy just happened just before.<sup>381</sup>

In addition, the changes to the *Aeronautics Act* were going to provide a much more firm regulatory basis upon which Transport Canada was to take a much more active role in terms of approval of security programs and also to monitor these programs for compliance. Prior to these statutory and regulatory amendments being adopted almost immediately after the Air India Flight 182 bombing, compliance monitoring was essentially non-existent. “Despite the fact that they [Transport Canada] had made certain undertakings...to monitor from time to time [Air India], they simply did not. Clearly there was no legal requirement on Transport Canada to actually monitor. It was really up to them.”<sup>382</sup>

#### **(iii) Post-Bombing: Aviation Security Today**

After the Air India Flight 182 bombing, “There was a complete and different attitude...”<sup>383</sup> According to Mr. Jean Barrette of Transport Canada:

A number of measures were immediately put in place following the Air India incident; enhanced passenger carry-on baggage screening...we had ordered at that time x-ray equipment. So during the period, we were waiting for the equipment to arrive on sites and that equipment was deployed at airports on international flights. We immediately implemented physical inspection of checked baggage...additional handheld units, metal detection units, as well as walk-through metal detectors were also deployed at airports and immediately applied a 24-hour hold on cargo and physical search of x-ray inspection of cargo.<sup>384</sup>

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<sup>380</sup> Testimony of Mr. Whitaker, Transcript of Proceedings (Vol. 36), p. 4370.

<sup>381</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 36), p. 4314.

<sup>382</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 36), p. 4367.

<sup>383</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 36), p. 4288.

<sup>384</sup> Testimony of Mr. Jean Barrette, Transcript of Proceedings (Vol. 37), p. 4509.

In addition, the 1985 Seaborn Report entitled, *Report on Security Arrangements Affecting Airports and Airlines in Canada*, completed a thorough review of airline and airport security, making a number of recommendations that were implemented over the course of several years. Seaborn's recommendations included: passenger-baggage reconciliation on international flights; implementation of enhanced alert levels; background security checks on airport workers; training for security stakeholders; establishment of a security awareness system; funding for new screening technology; more rigorous oversight of aviation security by Transport Canada; improvements in the dissemination of threat assessments; and improvements to check baggage security.

At the international level, prior to 1985, the International Civil Aviation Organization (ICAO) Security Manual was scarce on standards and mandatory requirements under the Chicago Convention. However, post-bombing, Annex 17, the security Annex, was amended to make what were previously recommendations into standards, in addition to increasing the number of standards. After the events of 9/11, the ICAO Aviation Security Panel convened to consider and implement comprehensive amendments to Annex 17, which included, among other things, international cooperation relating to threat information, security of passengers and their cabin and hold baggage, in-flight security personnel, protection of the cockpit, the management of responses to acts of unlawful interference with an airline, etc. As a result, among other reforms, there was an increasing deployment of checked baggage x-ray systems, more capable of detecting explosives. This incrementally found its way through international airports and domestic ones, until completion and full deployment of this equipment in Canada at 89 designated airports at the end of 2005.

Ms. Georgina Graham of IATA testified that since January 1, 2006, a regulation has existed that all baggage that goes into the hold of an aircraft must be screened.<sup>385</sup> Captain Craig Hall of the Air Line Pilots Association International confirmed that currently, Canada is exceeding ICAO standards because Canada now has positive bag match plus hold baggage screening on both international and domestic flights. Consequently, Canadians can have confidence that the system of matching passengers and baggage that is now employed in Canada would likely prevent a bomb being placed in baggage by a passenger who does not board the aircraft. A second level of protection is provided by the x-ray screening of all checked baggage.

With respect to the combination of factors that failed to raise red flags with respect to the booking by M. Singh in June of 1985, Mr. Yves Dugay, Senior Director of Air Canada Security and Chairman of IATA Security Committee, testified that today security indicators would have identified M. Singh's transaction as suspicious and it would have been referred to his Department. In addition, Air Canada has trained call centre booking agents who are cognizant of indicators of a suspicious nature. Nowadays, if an interlined bag is properly tagged for interlining, there is transmission information from the interlining airline to Air Canada through an interface where Air Canada receives information to the effect that, in their departure control, the interlined bag is identified, whether or not the seat is confirmed.

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<sup>385</sup> Testimony of Ms. Georgina Graham, Transcript of Proceedings (Vol. 66), p. 8216.



At the same time, technology has advanced significantly from what was available in 1985. Tracing vapour detection technology for explosives was under development but was not available for deployment until after 1985. “Puffer” technology, which is a large portal that works by blowing warm air on the surface of an individual, that effectively dislodges particles that may be on an individual, is available today, albeit costly. There is also a sophisticated new machine that allows a detailed scan of a passenger’s body using millimetre wavelength technology. This technology generates a computer image of a person as they enter a scanning chamber, revealing any hidden weapons or impermissible objects.

#### **(iv) Current Gaps in Aviation Security**

Despite the passing of twenty-two years since the Air India Flight 182 bombing and several years since 9/11, Canadian air travellers remain vulnerable to terrorist attacks. Canada lacks a greater results-based regulatory approach to aviation security, a written national civil aviation security program, and rigorous security awareness programs at all airports. In addition, there are some known gaps in Canada’s aviation security that need to be addressed without delay. These include the need for an effective air-cargo screening regime, better perimeter security at airports, and security of general aviation operations.

##### **(a) Lack of a More Results-based Regulatory Approach**

Financial and human resources are finite. Lacking a greater results-based regulatory regime means that aviation security in Canada is more reactive than proactive. A results-based regulatory regime is more proactive by its nature so that one is not reacting but responding to potential threats in advance and subjecting them to a risk assessment. It helps to prioritize multiple risks. This is the approach that is currently under development at Pearson International Airport in Toronto and will be fully implemented by mid-2008. The fact that Transport Canada has not adopted more of a results-based regulatory regime is a critical gap.

##### **(b) Unwritten National Civil Aviation Security Program**

The underlying foundation of results-based regulatory regime is a written national civil aviation security program. A civil aviation security program is an integrated set of plans that covers the federal, provincial, municipal and sectoral operators in Canada’s aviation industry. Unfortunately, Canada has taken the position that despite Annex 17 of ICAO, which requires each member state to establish a written civil aviation security program, it complies with the spirit of Annex 17 through its various aviation-related legislation and regulation. Not having a civil aviation security program also means that the mandated requirement to have a national civil aviation security committee and airport security committees is effectively ignored under Annex 17. The fact that Canada does not have a written civil aviation security program is a crucial gap in aviation security.

##### **(c) Rigorous Security Awareness Programs Missing**

Another gap in aviation security in Canada is the absence of rigorous security awareness programs at all airports. Dr. Sweet testified that, “All people—anybody who works at the airport should have some type of security awareness training, whether it’s the janitor or whether it’s the

pilot or whether it's the airport manager.”<sup>386</sup> According to Captain Hall, “I think it really comes down to engaging people...and by engaging people...I think we can do a very, very good job of fostering a greater security awareness amongst airline employees, amongst airport employees...”<sup>387</sup> In fact, this gap is so important to fill because it is “...one of the very important factors to guard against complacency is to ensure that aviation security is within the culture and the DNA of the industry.”<sup>388</sup>

#### **(d) No Air Cargo Program**

Presently, air cargo is the biggest gap in aviation security in Canada. Dr. Kathleen Sweet testified that:

...I think that Osama Bin Laden has a penchant for the aviation industry, they will go for the cargo hold and that we have focussed so much on passengers and passenger baggage that we have failed to recognize that there is a huge part of that aircraft that is loaded up with pellets of cargo that is moved around with passengers on board and how and where and when that cargo was screened is a huge gap, not just here in Canada but in the United States as well.<sup>389</sup>

Mr. Stephen Conrad of Transport Canada testified that starting in 2004, Transport Canada started an examination of air cargo security. This evaluation resulted in a recommendation for a second phase of program development, funded to a total of \$26 million over two years in federal budget 2006, for design and pilot testing, with the final design for a Canadian air cargo security program to be developed over the next couple of years. The focus of the program will be security of the air cargo supply chain and air cargo screening. However, the Air India Flight 182 bombing happened over twenty years ago. Why does Canada not have policies in place for the security of air cargo in the way it does for carry on and checked baggage, especially in light of the fact that almost three-quarters<sup>390</sup> of the cargo carried on airlines operating in Canada is carried in the cargo hold of passenger airplanes?

Currently, Air Canada has an x-ray machine for air cargo in London, U.K. and Paris, France, but there is no equivalent technology in Canadian airports because it is not mandatory. Mr. Yves Duguay at Air Canada testified that at three major airports in Canada (Vancouver International Airport, Pearson International Airport in Toronto, and Pierre Elliott Trudeau International Airport in Montreal), some air cargo is currently being searched physically, although Air Canada screens 100 percent of non-exempt cargo in the above noted cities that is destined for the United States. Mr. Duguay also noted that Air Canada regulates itself against the concept of “known shipper.”

However, under this concept of “known shipper”, at various stages of the process from the

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<sup>386</sup> Testimony of Ms. Kathleen Sweet, Transcript of Proceedings (Vol. 41), p. 4193.

<sup>387</sup> Testimony of Mr. Craig Hall, Transcript of Proceedings (Vol. 64), p. 7946.

<sup>388</sup> Testimony of Ms. Georgina Graham, Transcript of Proceedings (Vol. 66), p. 8214.

<sup>389</sup> Testimony of Ms. Kathleen Sweet, Transcript of Proceedings (Vol. 41), p. 4942.

<sup>390</sup> According to Mr. Whitaker, “...roughly 70 percent of air cargo in this country [Canada] is carried on passenger flights.” See Testimony of Dr. Reg Whitaker, Transcript of Proceedings (Vol. 38), p. 4629.

manufacture of the goods up to the loading of the goods on an airplane, there is no requirement for screening of the goods<sup>391</sup> or security inspections of manufacturing facilities and operations. It is not surprising then that Mr. Wallis testified that, “Now, I’ve seen lots of things relative to known shippers in Canada and I believe that the interpretation of known shipper in the Canadian sense is totally wrong and it needs to be looked at again,”<sup>392</sup> because in Canada there is no certification or verification of known shippers in Canada currently.<sup>393</sup>

On the other hand, a Regulated Agent Program moves “...responsibility for applying security controls away from the airport where time and space mitigate against conducting the necessary security controls. So basically you expand the perimeter of the airport out to encompass the warehouses of these people, and you apply the necessary security controls to cargo at those points.”<sup>394</sup> Under a Regulated Agent Program, a government agency would “have somebody there checking their facilities, checking their bills of lading and checking their documentation”<sup>395</sup> to ensure standards are met and maintained for the security of air cargo. According to Dr. Sweet, “If you don’t make it mandatory, they are not going to do it, because security is often the bottom line budget item.”<sup>396</sup>

#### **(e) Perimeter Insecurity**

Perimeter security at airports in Canada is still another aviation security gap. The 1985 Seaborn Report discussed the problem of unauthorized access to airfields and airside, yet still to this day, more needs to be done. According to Dr. Sweet, “Too many people with access, too many people with access to the flight line. And this is where access control comes in.”<sup>397</sup> To date, the installation of the Restricted Area Identification Card (RAIC) system remains incomplete. With respect to airport employee security checks, a gap that did not used to exist now exists as a result of the fact that, “A credit check is no longer required as a part of that process to get a transport security clearance,” despite the fact that Mr. Heed feels “...it’s an important indicator of a security risk that person represents.”<sup>398</sup>

#### **(f) General Aviation Operations: Additional Missing Layers of Security**

Thirdly, with respect to the security of general aviation operations, a number of pertinent gaps in security exist. A current vulnerability exists because of fixed-base operations. According to Dr. Whitaker:

fixed-base operations include corporate jets, privately chartered jets and at the

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<sup>391</sup> According to Senator Colin Kenny, there is essentially no screening of air cargo by known shippers or otherwise in Canada today.” Testimony of The Honourable Mr. Colin Kenny, Transcript of Proceedings (Vol. 38), p. 4700. See also, Testimony of Mr. Yves Duguay, Transcript of Proceedings (Vol. 43), p. 5296.

<sup>392</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 35), p. 4249.

<sup>393</sup> Testimony of Mr. Chern Heed, Transcript of Proceedings (Vol. 38), p. 4650.

<sup>394</sup> Testimony of Mr. Rodney Wallis, Transcript of Proceedings (Vol. 41), p. 5005.

<sup>395</sup> Testimony of Ms. Kathleen Sweet, Transcript of Proceedings (Vol. 41), p. 4948.

<sup>396</sup> Testimony of Ms. Kathleen Sweet, Transcript of Proceedings (Vol. 41), p. 4948.

<sup>397</sup> Testimony of Ms. Kathleen Sweet, Transcript of Proceedings (Vol. 41), p. 4945.

<sup>398</sup> Testimony of Mr. Chern Heed, Transcript of Proceedings (Vol. 38), p. 4641.

moment these are in facilities that don't have any screening capacity and you know, the notion is, I guess, has always been that, well they know who their customers are. But there are – some of these are very, very large planes and the potential for being commandeered and turned into weapons à la 9/11 is certainly something that can't be – that can't be simply – you know, ignored.<sup>399</sup>

In addition, aviation security gaps remain with respect to intelligence dissemination. With respect to whether members of the Air Line Pilot's Association feel that they are provided with adequate access to intelligence concerning threats to civil aviation interest, Captain Labbé testified that, "Je vais vous répondre que non."<sup>400</sup> Likewise, Mr. Fred Jones of the Canadian Airports Council testified that, "Through the Airports Council, our members have articulated concerns with respect to the access to intelligence, but also to the timely access to intelligence."<sup>401</sup>

At the same time, Canadians who are preparing to travel often have next to no information with respect to the level of threat that may exist against a particular airline at a particular point in time. AIVFA family member Mr. Krishna Bhat testified that, "I remember now that the Wednesday before they left, I heard a report on CBC News that the ISYF, International Sikh Youth Federation, warned all Sikhs not to travel by Air India. Why weren't we advised not to fly?"<sup>402</sup> According to AIVFA family member Ms. Chandra Vaidyanathan, "I feel the knowledge of such incidents that was looming to happen in the intelligence circle should have resulted in forewarning. The hope that this warning to the population will take place in the future as Code Red or Orange as issued in the U.S."<sup>403</sup> According to Professor Hennessy, "I think we could identify a threshold and say what point do you start warning people you have a threat."<sup>404</sup> If such a system had been in place in June of 1985, especially considering the heightened threat environment in which Air India was operating at the time, AIVFA family members may not have travelled on that fateful Flight 182.

Furthermore, a potential gap in aviation security exists as a result of the fact that Transport Canada is not actively considering a program of behavioural analysis, or "behaviour pattern recognition." Mr. Jim Marriott testified that Transport Canada does not have an active program to examine the potential benefits of behavioural analysis. According to Captain Hall, "Behavioural profiling is a very, very useful tool. I want to, at the very outset, emphasize that we are in no way talking about racial profiling here, in any way...However, behavioural profiling, observing how people act, observing their demeanour, this could be a very useful tool. The Israelis are past masters at it. They are extremely good. They wrote the book on it; they know how to do it."<sup>405</sup>

Moreover, a very real gap in aviation security is the inability to attract and retain qualified airport

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<sup>399</sup> Testimony of Mr. Reg Whitaker, Transcript of Proceedings (Vol. 38), p. 4639.

<sup>400</sup> Testimony of Mr. Jean Labbé, Transcript of Proceedings (Vol. 64), p. 8001.

<sup>401</sup> Testimony of Mr. Fred Jones, Transcript of Proceedings (Vol. 65), p. 8119.

<sup>402</sup> Testimony of Mr. Krishna Bhat, Transcript of Proceedings (Vol. 5), p. 531.

<sup>403</sup> Testimony of Ms. Chandra Vaidyanathan, Transcript of Proceedings, (Vol. 6), p. 586.

<sup>404</sup> Testimony of Mr. Michael Hennessy, Transcript of Proceedings (Vol. 14), p. 1357.

<sup>405</sup> Testimony of Mr. Craig Hall, Transcript of Proceedings (Vol. 64), p. 7966.

screening employees. Airport screening employment is low paying with little or no room for career advancement. Mr. Pierre Cyr explained in his testimony before the Inquiry that CATSA would "...like to develop for our screening officers some kind of career path so that they have an incentive to stay with us longer. We're looking at specializing the job, like maybe some people will be specialized in whole baggage system, which requires a different set of qualities and also we are reviewing what we call the minimum working conditions which the *CATSA Act* allows us to do."<sup>406</sup>

Lastly, regulation ranging from prescriptive to results-based is a continuum rather than a dichotomy. There has been and will continue to be room for prescriptive regulation. In this vein, Dr. Sweet expressed concern about the lack of supervision of passenger-baggage reconciliation systems. According to Dr. Sweet, "We don't supervise how they maintain and run their passenger baggage reconciliation system. We don't go in and check that if it isn't an inter-line bag, that it has been screened, that it's been opened. They can say anything they want, but until you watch them and make sure they are doing it, how can you be sure that it's happening. Do you trust everybody who works for the airlines?"<sup>407</sup> Transport Canada's decision to eliminate regular safety audits of Canadian airlines may lead to the lack of on-going supervision of passenger-baggage reconciliation systems.

## **(v) Conclusion**

The Air India Flight 182 bombing was a result of intelligence, human, corporate, and regulatory failures. Despite the ominous threat environment that existed at the time, Air India used poorly trained Burns Security employees to screen baggage with unreliable and questionable screening technology, all the while neglecting to use fail-safe security measures that would have prevented the bombing of Flight 182—checking each piece of baggage and/or passenger-baggage reconciliation.

Although passenger-baggage reconciliation is now an aviation security requirement post-bombing, a number of glaring threats to aviation security still exist. Canada must move to fill these gaps in aviation security now. Professor St. John testified that "...one of the besetting problems in Canada [is] that we don't think that we're worthy of attack by terrorists. I am convinced that we're going to be proved wrong in the future over this."<sup>408</sup> If this is not to become our unfortunate fate, then Canada's political leaders must exercise leadership today. Canada cannot fill these current aviation security gaps, many of which should have already been filled in the years following the Air India Flight 182 bombing and 9/11, without political will. According to civil aviation security expert Mr. Moses Alemán, "...if it doesn't start at the top it's never going to work. Because you've got to have laws, you've got to have direction from the top – the people at the top have to agree, and then 'we have to spend the money to do this, this, this and that.' Otherwise, it's going to fall apart."<sup>409</sup>

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<sup>406</sup> Testimony of Mr. Pierre Cyr, Transcript of Proceedings (Vol. 39), p. 4807-08.

<sup>407</sup> Testimony of Ms. Kathleen Sweet, Transcript of Proceedings (Vol. 41), p. 4963.

<sup>408</sup> Testimony of Mr. Peter St. John, Transcript of Proceedings (Vol. 38), p. 4575.

<sup>409</sup> Testimony of Mr. Moses Alemán, Transcript of Proceedings (Vol. 35), p. 4259-60.

## **(v) Recommendations**

In order that Canada remain ever vigilant against the threat to its aviation security system, the following recommendations are provided:

### **1. Adopt a more Results-based Regulatory Framework**

- Implement a more results-based approach to aviation security regulation, so that multiple risks are prioritized and aviation security is proactive rather than reactive.

### **2. Adopt a Written National Civil Aviation Security Program**

- Adopt a National Civil Aviation Security Committee and Airport Security Committees.

### **3. Implement more Rigorous Security Awareness Programs at all Airports**

- Create and instil a culture of security awareness in all airport employees.

### **4. Fast-track Implementation of a Mandatory Air Cargo Security Program**

- Prioritize implementation of a mandatory program of air cargo screening and whole supply chain security, with oversight by government or a government-approved entity.

### **5. Enhance Airport Perimeter Security at Class 1 Airports**

- Complete installation of the Restricted Area Identification Card on a priority basis and expand it to all 89 designated airports in Canada, in addition to reinstating credit checks under the Transport Security Clearance Program, providing random non-passenger screening on a continual basis at all entry points to restricted areas of Class 1 airports, and extending non-passenger screening to include searches of vehicles entering restricted areas of Class 1 airports.

### **6. Extend Screening of Passengers to Appropriate Fixed-Base Operations**

- In light of the threat posed by unsecured fixed-based operations, implement passenger and baggage screening at fixed-based operations.

### **7. Adopt a “Need-to-Share” Approach at all Airports**

- Provide for the appropriate and timely dissemination of intelligence to all staff levels of airports.

## **8. Consider Implementing Behavioural Pattern Recognition Programs at Class 1 Airports**

- Transport Canada should undertake the study of behavioural pattern recognition, not racial profiling, for implementation at all Class 1 Airports, as an additional layer of security.

## **9. Professionalize Airport Screening Occupations**

- Provide the airport screening profession with the opportunity to make a career out of aviation security, through the possibility of promotion, etc.

## **10. Implement a Passenger-Baggage Reconciliation Oversight Program**

- In light of the importance of passenger-baggage reconciliation to aviation security, implement a program to monitor for compliance with the requirement to reconcile passenger and baggage. In this regard, Transport Canada's decision to eliminate regular safety audits of Canadian airlines, part of which includes auditing for compliance with federal aviation regulations, should be revisited.

## **11. Implement a National Aviation Security Advisory System for High Risk Flights**

- Implement a publicly accessible system for informing passengers of high-risk flights, and security measures being taken to reduce the security threats to these flights.

# **Combating Terrorism Financing**

## **(i) Introduction**

Terrorism financing is a method of supporting terrorism. “Money is the life blood of a terrorist organization. Understanding, identifying and tracking the financial structure which supports terrorist organizations is a significant factor in the overall investigation of terrorism and the prevention of future terrorist attacks.”<sup>410</sup> Canada is susceptible to terrorism financing. According to Mr. Rick Reynolds, “We are a nation that’s made up of basically immigrants who have contacts all around the world. We have representation of numerous terrorist organizations in Canada at different levels and different levels of threat than are associated to it.”<sup>411</sup> As such, Canada cannot divorce itself from the threat that terrorism financing poses because “If we fail to do our part, of course, what normally happens is that these organizations will move to where they are less restricted or that they have the most opportune operating environment and we can’t afford to have them have that here in Canada.”<sup>412</sup>

Under section (b)(iv) of the Terms of Reference of this Commission of Inquiry, the Commissioner is to make findings and recommendations with respect to “whether Canada’s existing legal framework provides adequate constraints on terrorist financing in, from or through Canada, including the constraints on the use of misuse of funds from charitable organizations.”

In their testimony before this Inquiry, AIVFA family members expressed their grave concern about the financing of terrorism in Canada. According to AIVFA family member Susheel Gupta, “First, I’m personally deeply concerned about our laws in relation to the financing of terrorists, terrorists organizations and the relationship of these organizations to political interests.”<sup>413</sup> AIVFA family members Dr. and Mrs. Ramji Khandelwal testified that, “...we have to do something so that these associations or whatever they call it which get a charitable registration number and then they are really terrorist and the terrorist money goes abroad to do terrorist activities, and think Canada has to do something so that this never happens, this good Canadian money does not go for terrorist activities. We have to make sure that Canada is not a haven for terrorist or terrorism.”<sup>414</sup>

Understanding the present state of Canada’s efforts to combat terrorism financing, and what needs to be done to strengthen capabilities in this area is vital. Canadians are at risk from terrorist acts financed domestically and internationally. At the same time, people abroad are at risk from terrorism and dying in terrorist attacks that are illegally financed from Canada. It is important that Canada responds appropriately to this risk to its citizens and citizens of the world.

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<sup>410</sup> Exhibit # P-232.

<sup>411</sup> Testimony of Mr. Rick Reynolds, Transcript of Proceedings (Vol. 55), p. 6828-29.

<sup>412</sup> Testimony of Mr. Rick Reynolds, Transcript of Proceedings (Vol. 55), p. 6828-29.

<sup>413</sup> Testimony of Mr. Susheel Gupta, Transcript of Proceedings (Vol. 2), p. 228.

<sup>414</sup> Testimony of Dr. and Mrs. Ramji Khandelwal, Transcript of Proceedings (Vol. 6), p. 662.



## **(ii) The Present State of Affairs**

### **(a) Introduction**

Canada's current terrorism financing regime is a result of 9/11.<sup>415</sup> According to Mr. Blake Bromley:

I mean, we need to remember that the antiterrorism legislation had nothing to do with Air India. Air India is a Canadian tragedy and a quarter of a century before we brought in our antiterrorism legislation, India had brought in its own domestic legislation on foreign contributions dealing with charitable money coming into India. When I used to travel in India in the 80s, I was told that it was aimed at Canada. I was told it was aimed at Vancouver – they didn't want money going from Sikh temples to Khalistan, you know, for terrorist activities. We did nothing for 16 years after the Air India Inquiry until something happened in New York and a different country said, 'You know, we've got to have this global war on terror,' and brought in this massive legislation.

Unfortunately, the world, including Canada, took sixteen years to turn its attention to the threat posed by terrorism financing.

Prior to 2001, terrorism financing offences did not exist. There was not really an investigational focus on terrorism financing.<sup>416</sup> With the passage of the *Anti-Terrorism Act* in 2001, several terrorism financing offences were included within the *Act*, and Canada's legislation with respect to money laundering, was amended to include terrorism financing. This legislation as it is now known, is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*. Under the *PCMLTFA*, Parliament gave a pre-existing entity, the Financial Transactions and Report Analysis Centre of Canada (FINTRAC), the mandate to collect and analyze financial data to combat terrorism financing.

On December 14, 2006, Bill C-25, *An Act to Amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act*, received Royal Assent, although not all provisions of the legislation have been proclaimed into force yet. With this Act, Canada attempted to address a number of deficiencies in its legislation and fulfill commitments made to the Financial Action Task Force (FATF), an inter-governmental body of G-7 countries dedicated to developing and promoting national and international policies to combat money laundering and terrorism financing.

This legislation aims to enhance the client identification, record-keeping and reporting measures applicable to financial institutions and intermediaries. It establishes a registration regime for money services businesses and foreign exchange dealers. In addition, it allows FINTRAC to disclose additional information to law enforcement and intelligence agencies, and to make disclosures to additional agencies. It also amends the Income Tax Act to allow the Canada

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<sup>415</sup> Testimony of Mr. Jim Galt, Transcript of Proceedings (Vol. 55), p. 6939.

<sup>416</sup> Testimony of Mr. Rick Reynolds, Transcript of Proceedings (Vol. 55), p. 6818.

Revenue Agency to disclose to FINTRAC, the RCMP, and CSIS, information about charities suspected of being involved in terrorism financing. Unfortunately, this specific provision is not in force yet.<sup>417</sup>

### **(b) Insufficient Financial and Human Resources**

According to Mr. Keith Morrill, Director of the Criminal, Security and Treaty Law Division of the Department of Foreign Affairs, “Well, in my view, yes, Canada is living up to its obligations” internationally.<sup>418</sup> Domestically however, the implementation of Canada’s international commitments and domestic legislation with respect to combating terrorism financing, is hampered by insufficient financial and human resources. Mr. Rick Reynolds, Officer-in-Charge of the National Security Criminal Operations Branch of the RCMP, testified that, with respect to human and financial resources, “I can tell you what we ask for in the initial instance which was in 2001. We asked originally, or projected, about 126 personnel to address both the intelligence and the investigation...Currently, while at this point initially we received 17 or sufficient funding for 17, and most recently we received additional funding to allow us to put another 33 positions in place.”<sup>419</sup> In reply, Commissioner Major expressed dismay that the resources allocated to tracking terrorist fundraisers were slim. According to Commissioner Major, “It’s like strangling a snake, in a manner of speaking. You cut the head off, not much happens to the rest of the body.” Commissioner Major went on to state “...I don’t want you [Mr. Reynolds] to be critical of your political masters but I can be. It seems to be inadequate...if you ask for 126 and six years later you have somewhere around 50, it just seems to me it speaks for itself.”<sup>420</sup>

Likewise, Mr. Jim Galt, Head of the Financial Analysis Unit of the Human Sources Operational Support Branch at CSIS Headquarters, noted in his testimony that, “I think it’s fair to say...there are not enough resources...We are not able at this point to take on all operational files within the Service, mainly because of resourcing issues. So we have—we have gone through an exercise of creating a priority list of operational files that we look at, and with more resources obviously, I could expand that list. So resources are always an issue.”<sup>421</sup> Mr. Galt currently has a staff of 6 employees, two who are contract employees and one who is seconded from another government department. Noting that senior managers at CSIS are currently considering a plan to “beef up” his unit, Mr. Galt indicated that CSIS could use double or triple the staff that it now has to gather intelligence on terrorism financing. This understaffing is indeed unfortunate, because as Commissioner Major has rightly pointed out, “And it follows, doesn’t it, that the success—the ultimate prosecution of terrorism financing or money laundering depends on the ability of your [Mr. Galt’s] group to provide intelligence to allow enforcement [i.e. the RCMP] people to do their work.”<sup>422</sup>

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<sup>417</sup> Exhibit # P-382, Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Terrorism Financing: Dossier*, p. 20.

<sup>418</sup> Testimony of Mr. Keith Morrill, Transcript of Proceedings (Vol. 54), p. 6719.

<sup>419</sup> Testimony of Mr. Rick Reynolds, Transcript of Proceedings (Vol. 55), p. 6837-38.

<sup>420</sup> Comments of Commissioner Mr. John Major, Q.C., Transcript of Proceedings (Vol. 55), p. 6839-40.

<sup>421</sup> Testimony of Mr. Jim Galt, Transcript of Proceedings (Vol. 55), p. 6910.

<sup>422</sup> Comments of Commissioner Mr. John Major, Q.C., Transcript of Proceedings (Vol. 55), p. 6838.

### **(c) Poor Information Dissemination and Exchange**

Another aspect hampering Canada's efforts to combat terrorism financing effectively, is poor information dissemination and exchange between federal government agencies and their federal/provincial counterparts. In order for partnerships to be successful, two-way communication is essential. In his presentation with respect to the *Report of Findings as a Result of the Interviews of Regulated Entities on the Topic of Terrorist Financing In, Through and Out of Canada*<sup>423</sup>, Mr. Brian Tario of Deloitte testified about the "big black hole," which stems from "...the inability of FINTRAC [in addition the RCMP and CSIS] to be able to go back and actually report back to the people that are sort of at the front of the process to say, 'You've been helpful. You've been of great assistance and that type of thing.'"<sup>424</sup> According to Mr. Tario, "It's just that there is so much reporting and the reporting goes in. It's a one-way street into FINTRAC and what's coming back is not what they would like to see in terms of their ability to assist to a greater extent."<sup>425</sup>

Each one of the regulated entities (i.e. financial institutions such as banks) that Mr. Tario interviewed, reported that they are very willing to assist in the fight against terrorism financing, but they feel that they lack current information, tools, and understanding. Not surprisingly then, Mr. Tario's study highlighted the fact that there is not a good understanding of what actually constitutes terrorism financing by those who are on the front line. Consequently, only a small percentage of regulated entities interviewed, have actually submitted a suspicious financial transaction report to FINTRAC. Thus, according to Commissioner Major, "The one common theme is that there is a lack of flow of information, that they collect intelligence but we don't see much by way of...reporting back to the people who supply the information."<sup>426</sup>

On the flip side, Ms. Janet Difrancesco, Assistant Director for Macro-Analysis and Integration within the Operations Sector at FINTRAC, lamented that when FINTRAC provides case disclosures, "It's fair to say that we don't systematically have a process to get feedback on that... We don't have a systematic process to get that kind of feedback from law enforcement or from the intelligence community but we do receive it informally and we're very appreciative to get any kind of feedback that we do get from them."<sup>427</sup> Likewise, Mr. Mark Potter, Assistant Director for Government Relationships at FINTRAC, noted that FINTRAC has had to "...rely on is anecdotal and ad hoc information that we've gleaned from our interactions with these partners about our contribution to investigations, charges, and prosecutions."<sup>428</sup> It would be useful for FINTRAC to receive this feedback, both positive and negative, in order to improve their disclosures and boost staff morale. This feedback would also enable FINTRAC to establish a "more robust performance measurement framework."<sup>429</sup>

Similarly, Ms. Diane Lafleur, Director of the Financial Sector Division at the Department of

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<sup>423</sup> Exhibit # P-241.

<sup>424</sup> Testimony of Mr. Brian Tario, Transcript of Proceedings (Vol. 60), p. 7355.

<sup>425</sup> Testimony of Mr. Brian Tario, Transcript of Proceedings (Vol. 60), p. 7355.

<sup>426</sup> Comments of Commissioner John C. Major, Q.C., Transcript of Proceedings (Vol. 60), p. 7381.

<sup>427</sup> Testimony of Ms. Janet Difrancesco, Transcript of Proceedings (Vol. 56), p. 7014.

<sup>428</sup> Testimony of Mr. Mark Potter, Transcript of Proceedings (Vol. 56), p. 7025-26.

<sup>429</sup> Testimony of Mr. Mark Potter, Transcript of Proceedings (Vol. 56), p. 7026.

Finance, indicated that she knows that her Department does not advise FINTRAC about which charities are deregistered, although “It’s important for FINTRAC to have...It could be important for FINTRAC.”<sup>430</sup> Ms. Lafleur believes there will be better information sharing in the future because of legislative changes under Bill C-25, *An Act to Amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act*. With respect to the Canada Revenue Agency (CRA), Ms. Donna Walsh, Director of the Review and Analysis Division in the Charities Directorate, noted that although the CRA supplies information to CSIS and the RCMP, there is no set procedure for them to report back to the CRA about whether or not the information led to a successful prosecution. For Ms. Walsh, “That would be useful information, yes.”<sup>431</sup>

Mr. Ron Townshend, the Registrar with the British Columbia Registry Services for provincial not-for-profits or “societies” as they are known in BC, also pointed out that he has never been approached by other Canadian agencies involved in combating terrorism financing, to have a discussion about the non-profit sector. Mr. Townshend believes that “...there are opportunities there for us to provide or have a means to provide information. I think that might be helpful.”<sup>432</sup> In his testimony, Professor David Duff of the University of Toronto law faculty echoed this sentiment by calling for better coordination between the CRA and provincial regulatory bodies that oversee non-profits.

At the international level, Mr. Kenneth Dibble of the Charity Commission for England and Wales believes that the battle against terrorism financing could be aided by improved information sharing between countries vis-à-vis their respective financial monitoring agencies. Currently, there are no formal arrangements between the Charity Commission for England and Wales and the CRA or similar regulatory bodies in other countries. Although Mr. Dibble noted that informal information sharing does take place between agencies, including with the CRA, he testified that if the British identify a charity that is a front group for a terrorist organization, they do not automatically contact the CRA.

#### **(d) Insufficient Regulation and Oversight of the Non-Profit Sector**

At the provincial level in Canada, the largely unregulated non-profit sector represents a significant vulnerability to Canada’s efforts to combat terrorism financing. Non-profit organizations do not fall under the jurisdiction of the CRA, which concerns itself with registered charities. Mr. Townshend testified that a charity can be deregistered by the CRA for charitable tax purposes, but it can continue to operate as a non-profit organization. At the same time, the deregistered non-profit organization can use the word “charity” in its name.

Mr. Townshend testified about the reasons why a terrorist organization would want to register as a non-profit organization. According to Mr. Townshend, “One is they gain legitimacy by being a registered society in British Columbia,” so that Canadians think they are donating to a bona fide charity, and “secondly, if they want to have—if they have a bank account they’re usually

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<sup>430</sup> Testimony of Ms. Diane Lafleur, Transcript of Proceedings (Vol. 54), p. 6794.

<sup>431</sup> Testimony of Ms. Donna Walsh, Transcript of Proceedings (Vol. 57), p. 7120.

<sup>432</sup> Testimony of Mr. Ron Townshend, Transcript of Proceedings (Vol. 57), p. 7219.

required to. So they might not have a choice. They might open a bank account and in order to funnel the funds through they might have to register with us in any case,<sup>433</sup> thus using their status as a non-profit corporation to be an incorporated entity, in order to be able to open a bank account for the purposes of terrorism financing.

Unfortunately, there is no monitoring of the approximately 80,000 non-profit organizations currently. According to Mr. Townshend, "...there's certainly no monitoring that goes on in my office. Obviously, we don't get the financial statements anymore...",<sup>434</sup> adding that reporting requirements became more limited in 2004 under BC provincial legislation. Also, Mr. Blake Bromley of the Benefic Group, a lawyer working almost exclusively with charities for about 25 years, noted that there is no effective oversight or regulation of religious temples that may be involved in terrorism financing.<sup>435</sup>

### **(e) Insufficient Review and Public Oversight of the Charitable Sector**

Although financial statements are required under the CRA's regulatory framework, they do not need to be audited financial statements.<sup>436</sup> With the understanding that if audited financial statements became necessary, they would be made more robust than they are currently, Mr. Carter testified that he thought that would be useful.<sup>437</sup> At the same time, less than one percent of charities are currently audited in Canada. According to research by Professor Duff that was presented at the Inquiry, "...there are 82,000 registered charities in Canada. And the most recent number of audits, 596, is a miniscule percentage, less than 1 percent being audited...[That] is actually a lower rate of audit than happened in early to mid-90s."<sup>438</sup>

Also, Mr. Duff suggested that the CRA should make all applications for charitable status public, so as to allow for public scrutiny and comment before the charitable status is granted. According to Mr. Duff:

And I don't know why, you know, it seems to me once you approach the government, you ask for charitable status, you're asking for this benefit, it seems to me as though – it's a good argument you've lost your right to the privacy and why shouldn't that information or application be made public and that then can be a signal to other members of the community about who's applying for charitable status. Public interest organizations can monitor this and there can be a broader analysis or assessment of whether organizations should get charitable status in the first place, not waiting simply until they get it.<sup>439</sup>

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<sup>433</sup> Testimony of Mr. Ron Townshend, Transcript of Proceedings (Vol. 57), p. 7208.

<sup>434</sup> Testimony of Mr. Ron Townshend, Transcript of Proceedings (Vol. 57), p. 7217.

<sup>435</sup> Testimony of Mr. Blake Bromley, Transcript of Proceedings (Vol. 67), p. 8438.

<sup>436</sup> Testimony of Mr. Terrance Carter, Transcript of Proceedings (Vol. 67), p. 8411-12.

<sup>437</sup> Testimony of Mr. Terrance Carter, Transcript of Proceedings (Vol. 67), p. 8413.

<sup>438</sup> Testimony of Mr. David Duff, Transcript of Proceedings (Vol. 85), p. 10902.

<sup>439</sup> Testimony of Mr. David Duff, Transcript of Proceedings (Vol. 85), p. 10903-04.

## **(f) Conclusion**

The present state of affairs reveal a reluctant Canada that embraced the fight against terrorism financing some sixteen years after Canada's worst act of terrorism in its history. Although legislation has been passed and regulatory mandates expanded, work remains to be done. Financial and human resources need to be increased, information dissemination and exchange needs to be enhanced, the non-profit sector needs regulatory oversight, and the charitable sector needs enhanced review and public oversight.

Whether any of the above deficiencies are directly or indirectly responsible, less than one percent of the tens of millions of dollars identified as going to terrorists from Canada in 2006 was frozen by government agencies. To date, no certificates declaring a charitable organization to be involved in terrorist activity have been issued by the CRA. At the same time, FINTRAC cannot cite a single case in which the intelligence gathered by it was used in a prosecution related to terrorist financing.

## **(iii) The U.K. Experience: Charity Commission of England and Wales**

The Charity Commission of England and Wales is the central regulator and registrar for charities in England and Wales. The Commission has a budget of just over \$30 million and the number of employees is approximately 500. The more broad powers held by this Commission as compared to the CRA in Canada, include the power to conduct covert investigations, remove trustees, and seize assets of charities suspected of terrorism financing. According to Mr. Dibble, there is the power:

to suspend pending removal of trustees, officers, agents or employees and to appoint an interim manager to the exclusion of the trustees of the charity... More prominent and remedial powers are to remove trustees, officers, agents or employees, to direct application of charity property... [the Commission] may completely reconstruct a charity's constitution or it may transfer the assets of a charity to another charity where that charity can effectively carry out its work and it can do that without any application from the trustees of the charity. It is an act the Commission can make of its own motion.<sup>440</sup>

Thus, where trustees are abusing the intent of the charity, the Commission has the authority to unilaterally remove them, subject to a statutory right of appeal. The objective is not to deregister a charity where terrorism financing or other breaches of the trust are occurring, but instead to remove and appoint new trustees to make the charity run properly. Where there are concerns about trustees that have not reached the threshold for removal, the Commission can proactively monitor the affairs of the charity over several years.<sup>441</sup>

The Commission is also working towards formalizing closer working relationships with other regulators in government agencies, such as criminal law enforcement agencies, to ensure optimal

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<sup>440</sup> Testimony of Mr. Kenneth Dibble, Transcript of Proceedings (Vol. 59), p. 7282-83.

<sup>441</sup> Testimony of Mr. Kenneth Dibble, Transcript of Proceedings (Vol. 59), p. 7322.

information dissemination and exchange. According to Mr. Dibble,

...we are developing what we called memorandums of understanding which are full documents with those organizations, which set out clearly the mutual roles and responsibilities of each organization and then goes to establish sort of gateways for information and evidence-sharing...So what we are looking to have in about 12 months is a sort of fully engaged relationship model with all the main regulators where charities may be involved potentially in wrongdoing so that we can receive information quickly from them and them from us.<sup>442</sup>

In his testimony, Mr. Dibble pointed out that "...one of the benefits of drawing up a formal document of engagement with the other regulator is to point out the need for feedback following a piece of information..." because in the past "we pass the information, we hear nothing. We don't know what has happened to it. We don't inquire. What we are trying to do is to formalize these arrangements so requirement of a memorandum of understanding might be that they respond in due course as to what was done in that particular case."<sup>443</sup> Mr. Paul Newham, Detective Inspector within the National Terrorist Financial Investigations Unit of the Metropolitan Police in London, U.K., testified that, "I think, from a personal point of view, what is good about the UK experience is the synergy between the intelligence community and law enforcement and moreover, the synergy between the public-private partnership; the ability to work with gov officials."<sup>444</sup>

The Commission is also currently developing a faith and social cohesion unit to build civic capacity and leadership in the charitable sector in order to prevent the development of extremism and radicalization within the U.K. "We want to work with the faith communities to encourage the registration of relevant organizations to bring them into the regulated sector. And then we want to promote both those and others which are already within the regulated sector, testified Mr. Dibble.<sup>445</sup>

Lastly, the Commission requires the filing of audited financial returns, completed by an independent auditor. There are various thresholds within the legislation that govern the necessity for financial statements to be audited professionally or examined by an independent financial examiner. Mr. Dibble also testified that in the U.K., non-profit organizations are unable to use the word "charity" in their names.<sup>446</sup>

Undoubtedly, it is difficult to compare the U.K. system as described above, with the Canadian system, because England has a unitary political structure whereas Canada has a federal political structure. To develop an alternative to the current Canadian regulatory framework for charitable and non-profit sectors would be a daunting task because of the jurisdictional issues between the federal and provincial levels of government. For Mr. Terrance Carter of Carter's Professional Corporation, "I think that the main issue should be what can you do with the regulatory structure

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<sup>442</sup> Testimony of Mr. Kenneth Dibble, Transcript of Proceedings (Vol. 59), p. 7236.

<sup>443</sup> Testimony of Mr. Kenneth Dibble, Transcript of Proceedings (Vol. 59), p. 7246-47.

<sup>444</sup> Testimony of Mr. Paul Newham, Transcript of Proceedings (Vol. 58), p. 7255.

<sup>445</sup> Testimony of Mr. Kenneth Dibble, Transcript of Proceedings (Vol. 59), p. 7312.

<sup>446</sup> Testimony of Mr. Kenneth Dibble, Transcript of Proceedings (Vol. 59), p. 7318-19.

that you currently have? And I don't think that the focus should be upon changing the regulatory structure but working with what you have."<sup>447</sup>

On the other hand, the CRA Charities Directorate is beginning to make in-roads in having coordination of discussions with their provincial counterparts and provinces, particularly in Ontario, with the Public Guardian and Trustee of Ontario, which deals with charities and charitable property.<sup>448</sup> According to Mr. Carter:

To the extent that there can be more dialogue between the federal bodies and the provincial bodies, that would help charities in having one set of expectations. The concern is that you don't want to have the federal regulator coming up with somewhat different or even slightly different requirements than their provincial counterparts. And I recognize from reading the testimony that it doesn't appear, as far as I can tell, that the provincial regulators are currently focussed on anti-terrorism legislation – but they may. And to the extent that there is to be jurisdiction exercised by the provinces, I would recommend that it would be important to coordinate those activities with those of the federal regulators.<sup>449</sup>

As such, the charitable sector would benefit from having one set of regulatory expectations, and given that provincial regulators are not in the field of combating terrorism financing to the extent the federal government is, in addition to the fact that it is important for provinces to coordinate their regulatory initiatives with the federal government, adopting a regulatory model along the lines of the Charity Commission of England and Wales ought to be examined.

#### **(iv) Recommendations**

In order that Canada enhance its capability to combat terrorism financing, the following recommendations are provided:

### **1. Consider Adopting the U.K. Charity Commission Model**

- The federal government should work cooperatively with the provinces and territories, to consider reforming the Canadian regulatory framework for charitable and non-profit sectors, in order to adopt where possible, the jurisdiction, structure, powers, and modis operandi of the Charity Commission of England and Wales.

<sup>447</sup> Testimony of Mr. Terrance Carter, Transcript of Proceedings (Vol. 67), p. 8417.

<sup>448</sup> Testimony of Mr. Terrance Carter, Transcript of Proceedings (Vol. 67), p. 8408.

<sup>449</sup> Testimony of Mr. Terrance Carter, Transcript of Proceedings (Vol. 67), p. 8408-09.



## **2. Fast Track Implementation of Bill C-25**

- Fast track the implementation of all remaining sections of the *Act to Amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act*, that have not been proclaimed into force.

## **3. Increase Financial and Human Resources**

- Review for adequacy, the levels of financial and human resources across all government agencies responsible for combating terrorism financing, and where appropriate, increase financial and human resources.

## **4. Enhance Information Dissemination and Exchange through MOU's**

- By means of formal Memoranda of Understanding where appropriate, enhance information dissemination from government agencies to regulated entities and from regulated entities to government agencies, in addition to enhancing information exchange between different government agencies, between federal government agencies and their provincial counterparts, and between federal agencies and their international counterparts. Effective implementation of this recommendation will mean, among other things, that the CRA makes publicly available, information about applicants who are denied charitable status because of suspected terrorist links.

## **5. Implement a Robust Performance Measurement Framework**

- Implement a robust Performance Management Framework at government agencies such as FINTRAC, to effectively track and report on agency contribution to investigations, charges, and prosecutions.

## **6. Implement Reform and Regulatory Oversight of the Non-profit Sector**

- Reform the non-profit sector by preventing non-profit entities from using the word “charity” in their name, in addition to implementing regulatory oversight of the non-profit sector by requiring the reporting of financial statements, audited where appropriate.

## **6. Enhance Review and Public Oversight of the Charitable Sector**

- Require audited financial statements where appropriate and increase the auditing of charities by the CRA or CRA-approved entity, in addition to making publicly available on-line for public review and comment, all applications for charitable status, before status is granted.

## **7. Produce and Update a Publicly Available On-line Database for Lawful Charities**

- Produce and update a publicly available on-line database so that Canadians can feel comfortable that the charities they choose to donate to are legitimate and do not support the financing of terrorism.

## **8. Establish Federal and Provincial Government Faith and Social Cohesion Units**

- Establish a Faith and Social Cohesion Unit in appropriate federal and provincial bureaucracies, to work with faith communities to encourage registration in order to bring religious temples, etc., into the regulated charitable and/or non-profit sector.

## **9. Endorse Bill S-218 and Bill C-346**

- Endorse both Bills in order to permit claims in Canada against foreign states that sponsor any other groups that have been listed as terrorist entities by Canada, in addition to adding a new section to the *Criminal Code of Canada* to provide a civil cause of action to anyone who has suffered damages as a result of a breach of any of the *Anti-Terrorism Act* provisions, which includes knowingly financing terrorism. Bill S-218 contains a clause that would permit suits by victims of terrorist attacks occurring on or after January 1, 1985, effectively allowing victims of the Air India Flight 182 bombing to consider and pursue civil remedies.

## **Prosecuting Terrorism: Trial by Single Judge is Inappropriate**

### **(i) Introduction**

The Air India trial proceeded before Justice Josephson of the British Columbia Superior Court, sitting without a jury. An overview of the proceedings is set out in the background Commission dossier entitled, *The Management of Terrorist Mega Trials*. The *Criminal Code* required that due to the nature of the charges, (murder and conspiracy to commit murder) and the fact that the case proceeded by direct indictment, that the trial would be by judge and jury unless the accused elected and the Crown consented to the trial proceeding before a Judge sitting alone.<sup>450</sup> On February 24, 2003, Messieurs Malik and Bagri re-elected, with the Crown's consent to have their case tried by judge alone. The trial commenced on April 28, 2003, and concluded on March 16, 2005, with the release of Justice Josephson's reasons concluding that the involvement of both accused had not been proven beyond a reasonable doubt and thus both accused were acquitted.

The shock, pain, grief, and disillusionment felt by the families cannot be adequately expressed in these submissions. The government not only failed to protect their loved ones, it also failed to successfully investigate and prosecute those responsible for this heinous crime. The searing pain of this stark reality prohibits the ability of the families to get any feeling or sense of closure from the trial.

Under section (b)(iv) of the Terms of Reference of this Commission of Inquiry, the Commissioner is to make findings and recommendations with respect to "whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, including whether there is merit in having terrorism cases heard by a panel of three judges." This particular Term of Reference is extremely broad, although it includes one item identified specifically—whether there is merit in having terrorism cases heard by a panel of three judges?

The specific inclusion with respect to three judge panels is undoubtedly in response to the families concern that the trial had proceeded before a single judge. Family members identified what they believed were factual errors in the judgment and questioned Justice Josephson's findings of credibility. These concerns were identified in the Report by the Honourable Bob Rae, entitled *Lessons to Be Learned*. At this Inquiry, AIVFA family members expressed concerns about the trial having proceeded before a single judge. Their testimony emphasized several common themes. According to AIVFA family members, the magnitude of the crime, with respect to its heinous nature and the loss of hundreds of lives, required that more than one person hear the case. Secondly, it was felt that multiple judges would allow for the judges to engage in a consultative reasoning process just as a jury does, which would assist in fact finding. Thirdly, the burden to decide these complex cases should not be placed on a single individual.<sup>451</sup> AIVFA

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<sup>450</sup> *Criminal Code*, R.S.C. 1985, c. c-46, sections 473, 565(2), 577.

<sup>451</sup> Testimony of Dr. Padmini Turlapti, Transcript of Proceedings (Vol. 2), p. 199. See also Testimony of Mr. Mahesh Candra Sharma, Transcript of Proceedings (Vol. 5), p. 497, Testimony of Ms. Perviz Madon, Transcript of Proceedings (Vol. 6), p. 618, Testimony of Ms. Natasha Sam Madon, Transcript of Proceedings (Vol. 6), p. 627, Testimony of Dr. and Mrs. Ramji Khandelwal, Transcript of Proceedings, (Vol. 6), p. 660.

family members remain of the view that trials such as the Air India trial should not be heard by single judge.

## **(ii) Trial by Jury**

Trial by jury is reserved for the most serious offences in Canada. AIVFA family members had hoped for and expected a trial by jury for the Malik and Bagri prosecutions. Pursuant to sections 469 and 558 of the *Criminal Code*, an accused charged with murder will be tried by a court composed of a judge and jury unless the accused elects for a trial by a Judge alone and the Crown consents to proceeding without a jury. However, it was explained to AIVFA family members that a jury trial would not be viable and would likely end in a mistrial. A review of the main concerns of AIVFA family members confirms that their concerns would have been met with a trial by judge and jury. In the minds of AIVFA family members, twelve minds are better than one.

Under a judge and jury model, jurors interact and deliberate together and are well equipped to make correct determinations of credibility and ultimately deliver the appropriate verdict. Unanimous decisions by a jury remove the burden from any single judge to make such an important decision, and a unanimous decision of a jury has greater legitimacy and public acceptance than the opinion of a single judge. The position of AIVFA is that the most serious of crimes, such as deadly terrorist attacks, should be tried by the process that is reserved for them; namely trial by judge and jury.

### **(a) Elimination of Jury Trials Raises Serious Issues**

In this Inquiry, evidence was led about the concerns of having a jury trial because of the length of terrorist prosecutions. For the most part, these concerns with respect to jurors were directed at the length of trials and not their substance. There was a concern that a jury may not be able to fully comprehend and appreciate all of the evidence in a lengthy trial and that it may not be fair to the jurors to require them to perform their civic duty for a significant length of time.

However, the elimination of a jury in criminal trials, whether it is for a terrorist offence or any other lengthy trial, raises serious issues. First and foremost is the accused's constitutional right to trial by jury as protected by section 11(f) of the *Charter*. This could only be abrogated by constitutional amendment, use of the notwithstanding clause, or use of section 1 of the *Charter* to uphold an amendment to the *Criminal Code* to dispense with trial by jury as a reasonable limit in a free and democratic society.

With respect to constitutional amendment, the likelihood of any such amendment is fraught with what are likely insurmountable hurdles. Likewise, the likelihood of Parliament using the notwithstanding clause to eliminate the accused's right to trial by jury is unlikely. With respect to an amendment to the *Criminal Code*, Professor MacFarlane proposed an amendment to the *Code* to allow for an application by either the accused or the Crown to a trial judge to dispense with a

jury when a fair trial would be impossible because of a trial's length.<sup>452</sup> However, in order for this proposal to succeed, it would have to survive *Charter* challenge and the courts would have to invoke section 1 of the *Charter* and find that this proposed law was a reasonable limit on an accused's right to a trial by jury. Beyond the fact that it is impossible to predict how the courts would respond to such an amendment, short of a Reference to the Supreme Court of Canada, there are a number of problems inherent in removing the right to a jury trial, such as the certain complex and extensive pre-trial litigation, including interlocutory appeals and delay, that would ensue.<sup>453</sup>

It is important to emphasize that when trial by jury is removed, it is not only the accused that loses his or her right to trial by jury, but also society loses its interest in having important criminal trials determined by a jury. With respect to the Air India trial, victims of the bombing of Air India Flight 182 lost their opportunity to have the case heard and determined by twelve members of the community.

### **(iii) Concerns Raised Regarding Three-Judge Panels**

AIVFA members believe that a decision of a three-judge panel would have increased legitimacy. Intuitively, three judges would be superior to a single judge. Multiple judge panels are used in Canada for appeals to the provincial Courts of Appeal, the Federal Court of Appeal and the Supreme Court of Canada. In addition, in many other areas such as parole hearings or mental health hearings, decisions are made by a panel and not a single person. However, evidence presented at this Inquiry raised concerns about the viability of a three-judge panel in a criminal trial.

#### **(a) Decreased Legitimacy**

In his testimony, Mr. MacFarlane stated that when proceedings depart from the norm, there is likely to be searing criticism at both national and international levels. For example, the Lockerbie trial has been the subject of scathing criticism nationally and internationally. The Lockerbie trial has been characterized as a classic "show trial," a spectacular miscarriage of justice, which has sullied the Scottish criminal justice system.

Professor Roach emphasized that there is a necessity to be very cautious before moving towards special procedures for a certain subset of trials related to terrorism prosecutions. Three-judge panels will likely lead to decisions with separate reasons, and differences of opinion on the facts, credibility of witnesses, and the weight to be attached to individual pieces of evidence. This development will only serve to bring the administration of justice into disrepute.

Legitimacy of the ordinary criminal process is absolutely crucial. Canada has a well-respected criminal justice system and it is important that the Canadian criminal justice system, including its

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<sup>452</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 79), p. 10063.

<sup>453</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings, (Vol. 95), p. 12558.

judges, should not be put in a position of having their legitimacy and integrity challenged.<sup>454</sup>

### **(b) Problems of Length and Complexity**

Three-judge panels are not responsive to the problems of length and complexity. A three-judge panel creates more problems, complexity, and ultimately longer trials. This includes complex pre-trial litigation and interlocutory appeals, not to mention the additional layer of complexity that would result in an appeal from a trial decision by a panel of three judges. Undoubtedly, a new procedure will result in and generate considerable litigation of its own, resulting in significant delay. In addition, many difficult questions arise with respect to implementing three-judge panels. For example, what would the threshold be for the invocation of a three-judge panel? How would this threshold be determined and who would determine if it was reached?<sup>455</sup>

### **(c) Fact-Finding: Three Judges may not be an Improvement**

At an intellectual level, it is intuitive to believe that three judges would be better than one at fact finding.<sup>456</sup> However, at a practical level this may not be true especially in protracted proceedings. Three judges do not provide the representativeness and collective common experience of the community that twelve jurors provide. At the same time, three judges as opposed to one judge may not increase representativeness significantly.<sup>457</sup>

Judges by training and in practice do not deliberate in the manner juries do. Judges are independent and may not work together. Substituting three judges for one judge may only result in three independent determinations. Undoubtedly, at one point in time it may have been reasonable to point to the Lockerbie trial as an example of the success of three-judge panels with respect to determining the facts. However, in June 2007, the Scottish Criminal Cases Review Commission determined that the original judicial panel of three judges misapprehended a fact that was critical to the case and decided to set aside the original conviction, referring the case back to the High Court for re-trial.<sup>458</sup>

### **(d) Resource Concerns**

The testimony at this Inquiry indicated a serious concern with respect to limited judicial resources if a panel of three judges is required to hear a lengthy criminal trial. This concern stems from the necessity of maintaining a quorum of three judges. The greater the number of judges and the longer the trial, the greater the risk that quorum may be lost. This would place the trial at risk of a mistrial, or it would necessitate some system of alternate judges, which would

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<sup>454</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 78), pgs. 9908-09, (Vol. 79), p. 10066, (Vol. 95), p. 12575. See also Testimony of Mr. Kent Roach, Transcript of Proceedings, (Vol. 95), pgs. 12558, 12571-72.

<sup>455</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 79), p. 10065, (Vol. 95), pgs. 12571, 12576. See also Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 95), pgs. 12558-59, 12570, 12573, Testimony of Mr. Ralph Steinberg, Transcript of Proceedings (Vol. 93), p. 12364.

<sup>456</sup> Testimony of Mr. Michael Code, Transcript of Proceedings (Vol. 88), pgs. 11404, 11420. See also Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 79), p. 10079.

<sup>457</sup> Testimony of Justice Ruth Krindle, Transcript of Proceedings (Vol. 94), p. 12426

<sup>458</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 78), p. 9908, (Vol. 79), pgs. 10067, 10079.

further deplete resources. The experts that testified at this Inquiry agreed that resources and maintaining a quorum were significant problems.<sup>459</sup>

### **(e) The Challenges of Unanimity**

The evidence before this Inquiry indicated that in Ireland, three-judge panels for the prosecution of some terrorist incidents are not required to be unanimous and that a majority verdict is sufficient. In the event of a dissenting opinion, the dissenting opinion is not made public and the judgment of the court is delivered as a decision of the court without indicating if it was unanimous or a simple majority.<sup>460</sup>

However, acquiring decisions of a three-judge panel to be unanimous is not consistent with the Canadian legal system and its traditions. Professor Roach pointed out that the unanimity principle was at odds with our legal traditions.<sup>461</sup> Mr. Code testified that in Canada there is a duty for judges to give reasons in their decisions.<sup>462</sup> Prohibition on minority judges expressing an opinion was also viewed as an infringement on the independence of the judiciary and a violation of section 7 of the *Charter*.<sup>463</sup>

In addition, experts at this Inquiry expressed the opinion that the decision of a three-judge panel would have to be unanimous in order to convict and a dissenting opinion would result in an acquittal.<sup>464</sup> The practical result of requiring a three-judge panel to be unanimous in order to convict is that there would likely be more acquittals.<sup>465</sup>

### **(f) Constitutional Difficulties**

In his testimony before this Inquiry, both Professors Roach and MacFarlane pointed out the fact that there may be significant constitutional problems with respect to the creation of a new criminal court.<sup>466</sup> The Supreme Court of Canada has held that the core jurisdiction of the Superior Courts cannot be taken away by either level of government without a constitutional amendment.<sup>467</sup> Furthermore, there may be limits to the ability of Parliament to create a new core of criminal jurisdiction as section 91(27) of the *Constitution Act, 1867*, expressly excludes the

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<sup>459</sup> Testimony of Mr. Brent Thompson and Mr. Michael Comeau, Transcript of Proceedings (Vol. 92), p. 12133. See also Testimony of Justice Ruth Krindle, Transcript of Proceedings (Vol. 94), p. 12425, Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 95), pgs. 12567, 12558, Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12566.

<sup>460</sup> Evidence at the Inquiry is that Ireland was driven to create three-judge panels for certain terrorism prosecutions because of security concerns for jurors, witnesses, and judges sitting alone. Fortunately, Canada does not have this history or issue of similar security concerns.

<sup>461</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 95), p. 12564-65.

<sup>462</sup> Testimony of Mr. Michael Code, Transcript of Proceedings (Vol. 88), p. 11401-02.

<sup>463</sup> Testimony of Mr. Kent Roach and Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12587.

<sup>464</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12563

<sup>465</sup> Testimony of Mr. Michael Code and Mr. Pierre Lapointe, Transcript of Proceedings (Vol. 94), p. 12495. See also Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12589

<sup>466</sup> Testimony of Mr. Kent Roach, Transcript of Proceedings (Vol. 95), p. 12560, Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12561.

<sup>467</sup> *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725.

establishment of new courts of criminal jurisdiction.<sup>468</sup>

#### **(iv) Conclusion**

According to Mr. MacFarlane, “We have such a long history of jury trials and, for the most part, I believe that our experience has been the juries work very hard at arriving at the right decision. They’ve served us well for hundreds of years. They’re the bedrock of our criminal justice system—the Supreme Court has repeatedly commented on that. I believe that juries have served us well and we should be very, very slow to move away from them.”<sup>469</sup> Despite the apparent logic and common sense that three-judge panels are better than one, the expert evidence before this Inquiry is that three-judge panels would create serious problems if they were implemented in Canada’s legal system. AIVFA family members remain steadfast that trials of this seriousness and public importance should not be heard by a single judge. As such, the manner in which to address the concerns of AIVFA family members is that terrorist prosecutions of a nature similar to that of the bombing of Air India Flight 182, must not be determined by a single judge but that these most important criminal trials be heard and determined by a jury.

Although the Air India trial involved complex procedural and evidentiary issues, in the end the verdict hinged on the credibility of the five main witnesses.<sup>470</sup> Thus, the issues that ultimately needed to be decided by the Trier of Fact were matters ideally suited to a jury. Moreover, legitimacy and public acceptance with respect to the above types of decisions such as the credibility of witnesses, is enhanced when made by a jury. This was recognized by Justice Josephson, in a speech he delivered to a conference in Ottawa in 2007: “I would have loved a jury trial to have made the factual findings in that case...I think there’s better acceptance of a verdict from a jury in the community, whether they convict or acquit.”<sup>471</sup>

AIVFA submits that a judge alone should not hear terrorist trials of a nature similar to that of the Air India Flight 182 bombing prosecution. AIVFA is mindful of the difficulties and hardships to jurors who have to sit on lengthy criminal trials. Nevertheless, this civic duty is crucial to the administration of justice.

The increasing length of criminal trials has been a matter of considerable concern and study.<sup>472</sup> Professor MacFarlane testified to the importance of a culture shift and sharper more focused practice to maintain trials to a reasonable length.<sup>473</sup> Initiatives to improve the criminal trial process need to be implemented so that criminal trials by jury remain viable, particularly in the most important of criminal cases, such as terrorist prosecutions. In the words of Commissioner Major:

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<sup>468</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12559-60.

<sup>469</sup> Testimony of Mr. Bruce MacFarlane, Transcript of Proceedings (Vol. 95), p. 12576.

<sup>470</sup> *R. v. Malik and Bagri*, [2005] B.C.S.C. 320 at paras. 1285-1345.

<sup>471</sup> Honourable Justice Ian Josephson, “The Judicial Experience In Adjudicating National Security” (Lecture presented to the The Administration of Justice and National Security in Democracies Conference, June 2007), online: [http://www.carleton.ca/cciss/conferences/justice/justice\\_program.htm](http://www.carleton.ca/cciss/conferences/justice/justice_program.htm).

<sup>472</sup> See Exhibit # P-300: *Background Dossier: The Management of Terrorist Mega-Trials*.

<sup>473</sup> Testimony of Bruce MacFarlane, Transcript of Proceedings, (Vol. 78), p. 9938.



Well, coping with those cases goes, not so much to the form in which they're tried, as the evidence that is available and the ability to find, within the Charter, ways of more effectively investigating terrorist activities, and where you have the trial and how you have it, it seems to me to be the second concern. The first concern is finding the terrorist and not being fractured by several different agencies not communicating with themselves so that we don't know what the evidence is. It's important that the trial be fair but I think we've got a history of fair trials. We don't have a history of efficiency in rooting out terrorists.<sup>474</sup>

## **(v) Recommendations**

In order that Canada effectively prosecute terrorism offences publicly, legitimately, and credibly, the following recommendation is provided:

### **1. Terrorism Prosecutions must not be Heard by a Single Judge**

- AIVFA family members do not support trial by a single judge sitting without a jury in terrorism prosecutions. AIVFA families emphatically remain of the view if the verdict is delivered without a jury, that a verdict of a panel of three judges as opposed to a single judge is required and would have increased credibility and acceptability. If a panel of three judges is not viable in Canada, the AIVFA families are of the opinion that these types of trials should not be conducted before a single judge. Therefore, the trials must of necessity, be heard by a court composed of a judge and jury.
- In light of this recommendation, the Canadian criminal justice system needs to be reformed in order to enhance the efficiency by shortening the length of terrorist trials in order to preserve the right to trial by jury. Problems of lengthy criminal trials should be addressed and the removal of the community's right to a public jury trial is an inappropriate response to problems of length. The *Canada Evidence Act* should be amended and legislation should be enacted so that issues of national security can be determined by the trial judge, eliminating the delays and problems by having applications to the Federal Court in terrorist cases. Pre-trial motions should be streamlined case managed, and completed prior to the selection of a jury so that the actual time the jury is required to sit is reduced and the trial proceeds in an efficient manner. In addition, other procedural reforms should be considered to improve the jury system. Consideration should be given to the provision of alternate jurors or reducing the number of jurors required to maintain the trial and deliver a verdict. Jurors in lengthy trials should receive accommodation for any hardship, including increased remuneration. Jury trials are the foundation of a criminal justice system and the challenges facing them can and must be addressed. Simply defaulting to a trial by a single judge is not a reasonable or appropriate response to the challenges surrounding jury trials.

<sup>474</sup> Comments of Commissioner John C. Major, Q.C., Transcript of Proceedings (Vol. 95), p. 12577.

- In the event that the criminal justice system cannot be improved to preserve the right to trial by jury, then three-judge panels should be constituted to hear these serious criminal trials. The elimination of a jury trial invokes constitutional considerations and if this was to take place, the appropriate response would be to create a court composed of a three-judge panel to hear those cases in which a jury is not viable.
- The Terms of Reference of this Inquiry require consideration of whether changes to legislation or existing practices are required to address the unique challenges presented by terrorism cases. If consideration were to be given to a trial without a jury, legislation would be required to constitute a court composed of three judges. However, the current law does not require changes in legislation to require a jury trial in a murder case. The *Criminal Code* requires the accused to elect and the Crown to consent to proceeding before a judge without a jury. All that is required to prevent trials before a single judge and ensure trial by jury is a change in practice. AIVFA submits that the Crown should consider the public interest in having a jury as paramount in cases such as the Air India trial, and withhold their consent to the trial proceeding without a jury unless new legislation is enacted creating three-judge panels.

## **Witness Protection:**

### **(i) Introduction**

The criminal justice system is entirely dependent on the police being able to obtain information to further an investigation, in addition to witnesses being available to provide evidence at trial. If persons are intimidated, threatened or otherwise put at risk of harm, they may be unlikely or unwillingly to either provide police with information or testify in court. The Air India investigation and prosecution provides a stark example of an investigation in which witnesses were either reluctant or would not come forward with information.<sup>475</sup>

It is therefore imperative that persons with information feel safe to come forward with their information and that once they do, they are protected from harm. This is particularly true in a terrorist investigation when due to the nature of the crime, potential witnesses will be fearful of coming forward. In these types of investigations, often the key witness(es) will have personal proximity to the accused in planning or participation or will have social proximity to the terrorist or their sympathizers, making their protection all the more important.<sup>476</sup>

Mr. Tara Singh Hayer was an outspoken newspaper editor rejecting violence and terrorism and was an important prospective witness in the Air India Flight 182 bombing investigation. Mr. Hayer survived an attempt on his life in August 1988. However, on November 18, 1998, he was murdered outside his own home. Tragically, the surveillance equipment installed by the police was not functioning at the time of his murder and potential critical evidence was not obtained that may have led to the successful investigation of his murder.<sup>477</sup> Mr. Hayer's murder and the subsequent inability of the police to prosecute anyone for this offence confirmed the community's perceived fear, thus making it more difficult in this or any future investigation to obtain the willingness of individuals to provide the authorities with information in their possession.

### **(ii) Lack of Research on Witness Protection Programs**

There is universal acceptance of the importance of protecting witnesses. Although, this Inquiry commissioned research and testimony on the subject was heard, very little independent research on witness protection programs exist.<sup>478</sup> The lack of independent research, coupled with the fact that the subject matter is complex and its very nature makes it resistant to public scrutiny, means that it is difficult to comment on the subject in a specific manner. Nevertheless, it is likely that the existing measures are problematic and insufficient.<sup>479</sup>

This Inquiry played an important initial role in bringing the problems and challenges involved in witness protection to the public's attention. In addition, some research was conducted and some

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<sup>475</sup> In the Air India trial, a reluctant witness was known as "Ms. E." See *AIVFA Final Submission*, p. 116.

<sup>476</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*

<sup>477</sup> Testimony of Mr. David Hayer, Transcript of Proceedings (Vol. 76), pgs. 9528-33, 9570-79.

<sup>478</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 7.

<sup>479</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 71.

improvements recommended. In order to follow up the work of this Commission, further research is necessary.

### **(iii) Formal Witness Protection Programs**

Formal witness protection programs are for witnesses most at risk of serious harm. Their success can be measured in variety of ways. For example, one can measure the success rate in protecting the witness, the quality of life the witness has in the program, the programs ability to attract witnesses to come forward, and the success rate of prosecutions using witnesses in witness protection.

On the available data, it appears formal witness protection programs have been successful in protecting witnesses from serious bodily harm or death.<sup>480</sup> On the other hand, they may not have had the same success in providing a reasonable quality of life to witnesses. Apart from the research conducted for this Commission, there have been no studies conducted measuring success in providing good quality of life to witnesses.<sup>481</sup> Nevertheless, it is recognized that participation in such programs can have serious negative effects on individuals.

Witness protection program participants have described their experiences in such programs as “one of the worst things that you could ever do to an individual”; something that you would not wish for your “worst enemy.”<sup>482</sup> However, the risk of harm to individuals is so great they must give up the foundation of their lives so they can stay alive. Given that witnesses have given up the foundation of their lives, there must be an effective complaint and redress mechanism to ensure that witnesses are provided with a reasonable quality of life.<sup>483</sup>

The success rate of formal witness protection programs in attracting witnesses or conducting successful prosecutions using witnesses in witness protection remain largely unknown. Research or independent reviews must be conducted to determine how successful witness protection programs are in attracting witnesses, in addition to how successful prosecutions are using such witnesses.

The Inquiry heard conflicting evidence on the extent to which investigative practices, prosecution practices, and witness protection must be kept separate. There may be a need for separate agencies.<sup>484</sup> Undoubtedly, there should be a separate agency between the investigative and the protective units, and there currently is an insufficient “firewall” between the protective unit and the investigative unit.<sup>485</sup> An independent agency to run the overall administration of the witness protection program would lack expertise and it does not make sense to set one up.<sup>486</sup> Creation of another agency to administer the witness protection program is unnecessary. However, due to the power imbalance between the RCMP and the individual requiring

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<sup>480</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 62-65.

<sup>481</sup> Comment of Commission Counsel Mr. Louis Seveno, Transcript of Proceedings (Vol. 77), p. 9746.

<sup>482</sup> Testimony of Mr. Geoff Frisby, Transcript of Proceedings (Vol. 70), p. 8830.

<sup>483</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 37.

<sup>484</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 59.

<sup>485</sup> Testimony of Geoff Frisby, Transcript of Proceedings (Vol. 70), p. 8827.

<sup>486</sup> Testimony of Mr. Raf Souccar, Transcript of Proceedings (Vol. 71), p. 8969.

protection, legislation with increased powers for the Public Complaints Commission of the RCMP to be allowed to do an independent audit is required.<sup>487</sup>

#### **(iv) Protection of Witnesses Outside Existing Formal Witness Protection Programs**

The importance of formal witness protection programs to individuals at greatest risk is acknowledged, however given the serious repercussions and the understandable reluctance of individuals to enter into such programs, there must be an effective second tier of protection available. This is an area of particular concern to AIVFA family members. Protection of second tier witnesses must be enhanced.

Mr. Hayer is a poignant and tragic example of a second tier type of witness for whom the protection provided was inadequate and failed. It is recognized that even with no shortage of funds there are certain circumstances in which a witness cannot be protected, either because they don't want to be or because of the fallibility of any system which cannot guarantee 100 percent witness protection. Nevertheless, all reasonable steps identified following an individualized risk assessment must be taken to protect witnesses who wish to remain in the community. Their protection must be recognized as a priority within the administration of justice.

#### **(v) Public Confidence in Witness Protection**

If a community is fearful, citizens in that community will be reluctant or unwilling to come forward to the police. This will frustrate both the ability of the police to investigate and the societal interest in bringing offenders to justice. In order to confront this reality, a wide range of issues must be addressed.

The police must establish the trust of their local communities. Communities, especially tightly knit ethnic communities, must feel safe. Members of the community must believe that they will not be on their own and that the police and other government authorities will help and protect them. In part, this means that the authorities must respond firmly to any incident of witness intimidation and prosecute those who intimidate witnesses vigorously. The police ought to treat interference with witnesses as seriously as they would treat interference with a member of the police. When a witness such as Mr. Hayer is murdered, the investigation should be given the same priority as when a police officer is murdered. The failure to successfully investigate and prosecute an offence involving witness intimidation leads to a belief by the perpetrators that they can get away with it and a corresponding belief in the public that the police are powerless to protect them, thus discouraging witnesses from coming forward in the future.<sup>488</sup>

Furthermore, it is critical that the credibility of witness protection measures in Canada is improved particularly in the minds of those communities whose collaboration in the future will be essential to prevent terrorism. Low credibility affects the very ability to convince witnesses and informants to come forward, which is necessary to combat all crimes including terrorist acts.

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<sup>487</sup> Testimony of Mr. Paul Kennedy, Transcript of Proceedings (Vol. 70), pgs. 8875, 8887.

<sup>488</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 18-21.

In this regard, stricter *Criminal Code* sentences upon conviction for witness intimidation may assist. Moreover, it is important that current and future counter-terrorism practices not render these communities even more vulnerable to intimidation.<sup>489</sup>

## **(vi) The Courts Role in Witness Protection**

There are a number of court-related procedures available to assist in the protection of witnesses. In this regard, the use and admissibility of pre-trial statements as evidence is important. The discretion of the trial judge to exclude members of the public from the court, to make orders prohibiting publication of the identity of a witness or allowing witnesses to testify using a pseudonym would also assist. With greater use of these procedures would come greater public awareness of court-related measures designed to protect witnesses, which may encourage more witnesses to participate in terrorist prosecutions.

The use of anonymous witnesses per se is not normally allowed in Canada. However, there have been cases in which persons were allowed to testify under a pseudonym.<sup>490</sup> Mr. Grierson testified that legislation might need to be adopted to deal with the criminal trial process and the ability for witnesses to testify anonymously.<sup>491</sup> In addition, consideration should be given to legislation that would allow innocent bystanders or other witnesses in appropriate circumstances to testify anonymously.<sup>492</sup> In this vein, it has been suggested that consideration should also be given to protecting the identity of CSIS employees if their testimony is necessary in a prosecution, in order to facilitate the court's access to important CSIS evidence.<sup>493</sup> Although, it is recognized that the use of anonymous witnesses involves a number of complex procedural and substantive issues, the issue requires further investigation and consideration. Finally, it is important that the existence of these measures available to the court be known publicly and that they be used in appropriate cases.

## **(vii) Conclusion**

Witness protection is a complex problem and there is no simple solution or quick fix. The complexity of the problem cannot become justification for complacency. This Inquiry has made an important first step in highlighting problems and challenges in witness protection. However, much more needs to be done if these problems are to be addressed.

Canada's criminal justice system relies on witnesses voluntarily coming forward and testifying. When there is a threat to the safety of a witness, real or perceived, it inhibits them from coming forward with their information. As such, a culture change within the administration of criminal justice is needed. The criminal justice system must treat threats, intimidation, and violence perpetrated on witnesses in a serious way by dealing with it as if such acts were perpetrated on a police officer, Crown attorney or judicial officer. At the same time, witness protection, particularly to those witnesses outside the formal witness protection programs, has not received

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<sup>489</sup> Exhibit # P-271: *Protecting Witnesses and Collaborators of Justice in Terrorism Cases*, p. 15-16.

<sup>490</sup> Comments of Commissioner John C. Major, Q.C., Transcript of Proceedings (Vol. 71), p. 8977.

<sup>491</sup> Testimony of Mr. Mervin Grierson, Transcript of Proceedings (Vol. 75), p. 9510.

<sup>492</sup> Testimony of Mr. Raf Souccar, Transcript of Proceedings (Vol. 71), pgs. 8959, 8965.

<sup>493</sup> Testimony of Mr. Larry Tremblay, Transcript of Proceedings (Vol. 96), p. 12775.

the public attention or priority it requires from the authorities involved in the criminal justice system. Furthermore, any long term success in witness protection will require within all of our communities the belief in the importance of coming forward to assist the police concurrent with the communities' belief that in so doing they will be kept safe and free of harm. To meet these challenges requires the government and police authorities to make an enhanced commitment to witness protection.

### **(viii) Recommendations**

In order that Canada effectively protect witnesses, the following recommendations are provided:

#### **1. Importance of Witness Protection must be Recognized as a Priority**

- Increase resources, increase cooperation amongst police forces, improve training, and in jurisdictions where numbers warrant, dedicate specific officers to witness protection. Most importantly, there must be enhanced protection available outside the existing formal witness protection program to allow witnesses to remain safely within the community.

#### **2. Investigations of Witness Intimidation must be Given Priority**

- Threats, intimidation, assaults, or murder of witnesses must receive the same priority as if the acts were perpetrated on a police officer. Persons performing their civic duty in providing information or evidence deserve the highest level of protection. The authorities must respond vigorously to threats and not wait until actual acts of violence occur.

#### **3. Train Police Investigators and Prosecutors in the Witness Protection Measures Available at Court**

- Programs should be established to increase public awareness of court-related protections available for witnesses. Police and prosecutors should ensure that applications are made to Courts to provide these protections in appropriate cases, including applications to allow witnesses, including CSIS employees, to testify anonymously.

#### **4. Implement an Effective Complaint and Redress Mechanism for Witness Protection Program Participants**

- An effective complaint and redress mechanism must allow for review and accountability to ensure that witness protection programs attract witnesses, protects them, provides a good quality of life for them, and that such witnesses add value to prosecutions.

## 5. Adopt the Recommendations of Assistant Commissioner Souccar<sup>494</sup>

- The RCMP Witness Protection Program is the only program created by legislation<sup>495</sup> and thus recognized by the *Witness Protection Act*. Therefore, section 11 of the *Witness Protection Act*, which prohibits disclosure of information about a protectee, only applies to persons in the RCMP Witness Protection Program and does not apply to prohibit disclosure of information about persons who are being protected by other police forces. Mirroring legislation is required so that persons who are involved in witness protection at the provincial or municipal level are protected from release of information about them that could put them at risk.
- Legislation should be enacted to mandate everyone to fully cooperate with witness protection programs. Both government and private agencies operate under legislation, regulations, or policies that may prohibit or restrict the release of information thus hindering witness protection programs. Section 18 of the *Witness Protection Act* mandates government of Canada agencies to cooperate with the *Witness Protection Act* subject to confidentiality requirements imposed by any other Act. This provides “comfort immunity” to government of Canada agencies to cooperate with the Witness Protection Program. There is no similar requirement or authorization for non-government agencies. It is recommended that a legislative amendment be enacted to create a form of “comfort immunity” for private agencies so that they too are able to cooperate with the RCMP by providing documentation for a change of identity. Legislation must be enacted to not only authorize but mandate cooperation with witness protection programs.
- Enact a legislative amendment to allow the RCMP to provide police-to-police assistance without being required to take on the responsibility of admitting someone to the RCMP Witness Protection Program. Currently, the RCMP program is the only witness protection program specifically created by legislation. However, other police forces also have witness protection programs. From time to time, these other police forces may request RCMP assistance with respect to a specific individual and the existing legislation requires the RCMP to accept the individual into the RCMP program if they provide assistance. It would be helpful if the RCMP were permitted to provide police-to-police specific assistance without being required to accept full responsibility and admit the protectee into the RCMP program.
- Research should be conducted and consideration given with an aim to establishing an integrated National Witness Protection Program<sup>496</sup>. The RCMP submitted a proposal<sup>496</sup> at this Inquiry, which is a good starting point for discussion with respect to the creation of an integrated National Witness Protection Program.

<sup>494</sup> See Testimony by Mr. Raf Souccar, Transcript of Proceedings (Vol. 70), p. 8936-37, (Vol. 71), pgs. 8959, 8962-66.

<sup>495</sup> Manitoba recently introduced Bill C-5: *The Witness Security Act*, which received 1<sup>st</sup> Reading on Nov. 27, 2007.

<sup>496</sup> Exhibit # P-273.



## **Conclusion:**

If the tragedy of the loss of so many innocent souls aboard Air India Flight 182 on June 23, 1985, over 80 of which were children 12 years of age and under, coupled with the emotional, psychological, and financial impact felt by the families of the victims was not enough of a burden to bear, in a stunning decision heard around the world, the Air India trial of two B.C. Sikh separatists returned a verdict of not guilty in March of 2005.

The shock, pain, grief, and disillusionment felt by the families cannot be adequately expressed in these submissions. The government not only failed to protect their loved ones, it also failed to successfully investigate and prosecute those responsible for this heinous crime. The searing pain of this stark reality prohibits the ability of the families to get any feeling or sense of closure from the Air India trial.

At the beginning of this Inquiry, Canadians heard, many for the first time, emotional testimonials by families of the victims. A theme that ran through each of those testimonials was a simple plea; a plea not for retribution against the perpetrators of Canada's largest mass murder in history, but a plea for justice.

### **(i) Where is Justice?**

#### **(a) Pre-bombing**

In the period prior to the bombing, the Canadian government failed to make a determined show of political will to address the threat posed by Sikh terrorism in Canada. The lack of priority and insufficient resources devoted to this threat manifested itself in the form of intelligence and institutional failures on the part of key government agencies. The intelligence failures of CSIS contributed to the institutional failure that was systemic among Canadian government institutions, including the RCMP and Transport Canada. Where is the justice in the failure of the government to protect the lives of its citizens?

Where is the justice:

- in the fact that CSIS was ill prepared to obtain in a timely manner, authorization to intercept the communications of key bombing suspect Mr. Talwinder Singh Parmar, and in the fact that it was incapable of exploiting the warrant once obtained because of insufficient in-house Punjabi translation capabilities and inadequate physical surveillance coverage;
- in CSIS threat assessments that lacked analytical rigour and that were disseminated in an untimely fashion to the RCMP, and in a more limited fashion, to other government agencies;
- in not informing Canadian Pacific (CP) Airlines and its employees of the threat to Air India in 1985, since its flights from Vancouver connected to Air India flights in Toronto, in order that CP employees may have exercised more caution when M.

Singh demanded in an incessant fashion, that his bags be interlined through to India despite not having a confirmed reservation on Air India Flight 182;

- in an understaffed and poorly trained RCMP that failed to disseminate crucial intelligence to CSIS or Transport Canada such as the June 1<sup>st</sup> telex, which revealed the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time delay devices in the registered baggage of Air India airplanes;
- in ignoring the intelligence Mr. James Bartleman had that indicated Air India was being targeted by terrorists the weekend of June 22 and 23<sup>rd</sup>, 1985;
- in an RCMP that neglected its responsibility to have an RCMP Dog Master present for Air India Flight 182, by having all RCMP Dog Masters and dogs away on training in Vancouver;
- in a Transport Canada that questioned the necessity of and at times refused additional RCMP security for Air India flights in June 1985, and;
- in a Transport Canada that failed to devote sufficient resources to compliance monitoring of aeronautic regulations and airline security plans, in addition to failing to take a leadership position by implementing policy and regulatory changes prior to the bombing, such as passenger-baggage reconciliation, which if implemented, would have prevented the tragedy?

With respect to Air India, where is the justice in the fact that despite a foreboding awareness of the threat to its flights in the month of June 1985, it failed to respond appropriately to the heightened threat environment? Where is the justice:

- in the fact that Air India, who was solely responsible for checking baggage for all its flights, relied on poorly trained and unmonitored Burns Security employees to use unreliable X-ray and PD-4 Sniffer technology to screen baggage, all the while neglecting to check baggage by hand or perform passenger-baggage reconciliation, which would have prevented the bombing;
- in the fact that Air India appeared more concern about costs than security by having Flight 182 take off from Mirabel Airport before Quebec Provincial Police Dog handler, Mr. Serge Carignan and his dog Arko, arrived to search the plane and baggage?

### **(b) Government Response to the Bombing**

In the immediate aftermath of the bombing, a very small group of consular officials deployed to Ireland to assist families of the victims, lacked the full complement of appropriate resources and skill sets to respond effectively to the tragedy. None of the consular officials spoke fluent Hindi, Punjabi, or Urdu, and the consular response did not employ an appropriate religious figure or trained social worker to assist grieving families. Mr. Commissioner, where is the justice in the

woefully inadequate response by the Canadian government in the aftermath of the bombing?

In spite of the tremendous magnitude of the catastrophe that was the Air India Flight 182 bombing, Canada and Canadians did not immediately recognize it as a terrorist attack against Canadians. Acceptance of this reality was long in coming. Where is the justice in having to wait over 20 years for families of the victims of the bombing of Air India Flight 182 to share their stories with Canadians?

### **(c) Post-bombing Investigation and Prosecution**

The post-bombing investigation and prosecution made it obvious that in the haste to create CSIS, Canada's political leaders at the time, in addition to the senior management at CSIS and the RCMP, had not turned their minds to the issue of how best to transform intelligence into evidence. Viewing itself as not in the business of collecting evidence, upon its inception CSIS did not intercept wiretap communications or deal with human sources in a manner so that any intelligence derived from these sources would meet evidentiary standards acceptable in a court of law. This fact, coupled with the inability of the RCMP to guarantee the confidentiality of information CSIS shared with the RCMP because of prosecutorial disclosure obligations, created the conditions for an uncooperative working relationship between both agencies in which the flow of information was severely compromised.

Where is the justice in an investigation and prosecution doomed from the start because of the lack of preparedness to deal with the challenge of moving from CSIS-obtained intelligence to RCMP-useful evidence that would meet the evidentiary requirements of a criminal trial?

With respect to the post-bombing investigation and prosecution, where is the justice:

- in the fact that CSIS monitors, transcribers, and translators did not receive instructions and policy briefings concerning what to look for on intercepts, what material to retain from the tapes, and who was to make the decision to retain tapes;
- in the erasure of CSIS wiretaps of prime suspect Mr. Parmar, compiled in the months before and after the bombing;
- in the fact that no one at the senior management level of CSIS thought, in the aftermath of the bombing, to order retention of all tapes despite the standing erasure policy at the time;
- in the fact that the Security Intelligence Review Committee was persuaded in 1986 not to launch an Inquiry into CSIS tape erasures because it would be prejudicial to the civil compensation case by families of the victims against the government, in the sense that an Inquiry might cost the government more money in terms of any adverse findings that might have been made regarding CSIS;

- in the lack of continuity in CSIS source handling procedures, and the untimely disclosure of source-related information to the RCMP, which impeded the ability of the RCMP to pursue a successful prosecution;
- with respect to the manner in which the RCMP mishandled sources they approached, once informed of their existence by CSIS;
- in an RCMP Task Force inhibited in its effectiveness by poor management and a “poisonous work environment”, and;
- in the fact that ultimately, the interests of CSIS trumped those of the RCMP investigation and prosecution, despite the Air India Flight 182 bombing being Canada’s largest mass murder in its history?

## **(ii) The Justice AIVFA Seeks**

The justice the families seek rests solely in your hands of this Commission of Inquiry. This is why this Commission of Inquiry is so important, albeit more than two decades after the catastrophe. According to Indian political and spiritual leader Mahatma Gandhi, “There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts.” This Commission of Inquiry has an important opportunity if it seizes it, in the findings and recommendations it makes, to be the court of conscience Mr. Gandhi spoke about.

Mahatma Gandhi also proclaimed, “Be the change that you want to see in the world.” Canada now has an opportunity to be that change. That change is the justice AIVFA family members seek in the recommendations this Inquiry will make. In this light, AIVFA submits the recommendations included in this submission. A complete list of recommendations is also included as an Appendix to this submission.

AIVFA wishes to express its gratitude to Prime Minister Stephen Harper for establishing this Inquiry and to this Commission for providing family members with an opportunity before a formal public hearing, to share their stories and express their feelings and to determine, as was proposed from the work of the Honourable Bob Rae, the “Lessons to be learned.”

However, the time to learn from our past mistakes through concrete recommendations for change, though long overdue, is now. The best memorial for the loved ones lost and the thousands of families impacted by this horrific tragedy is that Canada, as well as other nations, implement policy, regulatory, and procedural changes, in addition to all possible preventative measures, so as to ensure that those lives cut short in such a violent way were not lost in vain.

This is an opportunity for Canada to get it right. This is an opportunity for Canada to be a beacon to other countries. As former Canadian Prime Minister and Nobel Peace Prize winner, Lester B. Pearson, said Canada’s “national condition is still flexible enough that we can make almost anything we wish of our nation. No other country is in a better position than Canada to go ahead with the evolution of a national purpose devoted to all that is good and noble and excellent in the human spirit.” The task is now in the hands of this Commission to advise the government of

Canada and for the government of Canada to be motivated by the wisdom we expect this Commission to impart, so that justice can be done.