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AIVFA Supplementary Reply Submissions
to the Response by the Attorney General of
Canada concerning new documentary
disclosures

Commission of Inquiry into the Investigation of the
Bombing of Air India Flight 182

January 7, 2009

Ottawa, ON

Joint Counsel to Air India Victims Families Association (AIVFA)





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Joint Counsel to Air India Victims Families Association (AIVFA)

INTRODUCTION

1. The Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 granted an opportunity for Parties to provide the Commission with final submissions responding to the different Terms of Reference of the Inquiry. AIVFA submitted its final submissions on February 29, 2008.
2. Subsequent to the delivery by AIVFA of its final submissions and the formal close of public hearings, the Commission produced new documentary disclosures to counsel for the families, starting in October 2008, through to and including, December 1, 2008.
3. On December 12, 2008, AIVFA provided written submissions with respect to the new documentary disclosures made available to counsel for the families since the formal adjournment of the Inquiry in February 2008.
4. On December 24, 2008, the Attorney General of Canada (AGC) provided submissions in response to the supplementary submissions made by AIVFA, concerning the new documentary disclosures.
5. AIVFA takes this opportunity to provide the following supplementary reply submissions to the response by the AGC concerning new documentary disclosures.

PRODUCTION OF NEW DOCUMENTARY DISCLOSURES

6. In its submissions, the AGC spends several pages responding to criticism by counsel for the families concerning the production of new documentary disclosures after the formal adjournment of the Inquiry in February 2008.
7. AIVFA reiterates its submissions set out at paragraph 3 of its December 12, 2008, written submissions with respect to the new documentary disclosures. Providing these documentary disclosures after the formal adjournment of the Inquiry prevented AIVFA and other Parties from cross-examining witnesses or making oral and/or written submissions on their contents, which would have yielded far greater value to the work of the Commission, than the process that was afforded counsel for the families.

MONITORING OF CIVIL AVIATION SECURITY

8. At paragraph 16 of its submissions, the AGC admits that “inspectors were few and resources were apparently very limited.”
9. AIVFA appreciates that the government has provided an admission, albeit late, with respect to the fact that civil aviation security inspectors and resources were limited prior to the June 1985 bombing.
10. At paragraph 17, the AGC states that, “Regulatory standards were minimal at the time and there was no basis to compel carriers to comply with, let alone exceed, the provisions of their security

plans. Transport [Canada] had already recognized the problem and legislative changes were to come into force just a few days after the bombing which would strengthen enforcement options.”

11. However, AIVFA reiterates its submissions provided in paragraph 43 of its March 20, 2008, written submissions in reply to Volume II of the final submissions by the AGC. The onus should be on the government to produce evidence to refute the fact that the government of Canada failed to adequately prioritize legislative improvements to aviation security. In the absence of such evidence, it stands that the government failed to see the urgency in implementing policy and regulatory changes prior to the Air India Flight 182 bombing.
12. At paragraph 18, the AGC states that “in 1985 detailed regulation and aggressive enforcement were not yet standard practice.”
13. In response, AIVFA reiterates its submissions at paragraph 38 of its December 12, 2008, written submissions with respect to the new documentary disclosures. The sole responsibility for insufficient and ineffective regulation with respect to enforcement of civil aviation security rests with the government. Why did it take the government so long to act with respect to changes to aeronautic regulations when it knew so much about the increasing threat to civil aviation posed by bombings prior to the June 1985 Air India Flight 182 bombing?

RISK MANAGEMENT PROCEDURES

14. At paragraph 25 of its submissions, the AGC states that, “Moreover, Dr. Leiss’ opinion in regard to the June 1 telex is the product of some 25 years of hindsight. Before accepting that opinion, the Commissioner should consider such other matters as the reaction of other governments and authorities around the world to this telex, any assessments of its significance made by the Government of India and Air India, the reasons for their apparent lack of response to the telex and the reasons why Air India did not give it to Transport Canada. The Commissioner heard no evidence on these contextual points. The Attorney General of Canada respectfully submits that without that evidence, it would be inadvisable to rely on the opinion of Dr. Leiss.”
15. In response, AIVFA respectfully submits that both the government of Canada and Air India were capable of providing evidence to this Commission with respect any necessary “contextual points” concerning risk assessment, but failed to do so.

PROJECT SPAWN

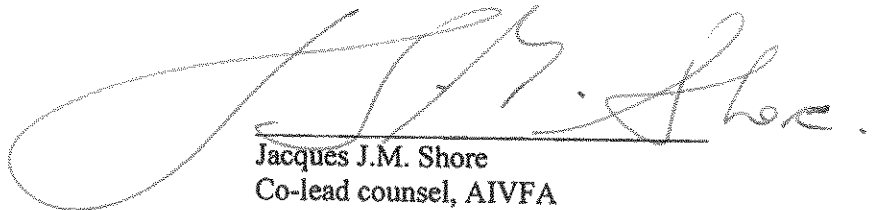
16. At paragraph 27, the AGC admits that in light of the findings of Project Spawn, “the Government has adopted a five-point plan to drive organized crime from Canadian airports.” In a related footnote number 9, the AGC states that, “The focus of Project Spawn concerned activities of organized crime at major Canadian airports particularly in respect to theft, smuggling and importation of drugs and narcotics. Any connection between the Spawn report and the Inquiry’s Terms of Reference is most remote.”
17. In response, AIVFA submits that the findings of Project Spawn and the subsequent need for the government of Canada to adopt a “five-point plan” to respond to the threats to civil aviation

security pinpointed by Project Spawn is evidence of existing civil aviation security failure post Air India Flight 182 bombing and the terrorist events of 9-11. In addition, AIVFA reiterates its submissions at paragraph 58 of its December 12, 2008, written submissions with respect to the new documentary disclosures. Where opportunities exist for theft, smuggling and the importation of drugs and narcotics at Canadian airports, opportunities exist for terrorist motivated smuggling of bombs, etc. AIVFA further respectfully submits that it is a sad state of affairs to see the result of this report after efforts had presumably been made over the years to ensure that adequate security and safety is provided to the traveling public.

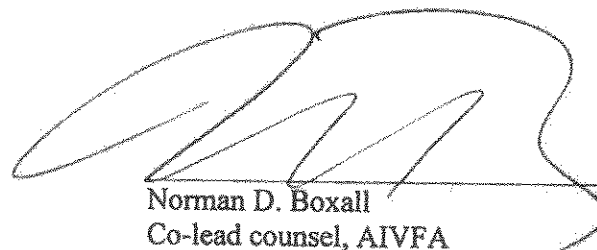
CONCLUSION

18. AIVFA appreciates the opportunity to provide the Commission with its supplementary reply submissions to the response by the AGC concerning the new documentary disclosures. AIVFA looks forward to the Commissioners' final report and recommendations.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7TH DAY OF JANUARY, 2009.



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