

**FURTHER SUPPLEMENTARY SUBMISSIONS TO THE COMMISSION  
OF INQUIRY INTO THE INVESTIGATION OF THE BOMBING OF AIR  
INDIA FLIGHT 182**

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1. These are the further supplementary submissions of the Family Interests Party, and in particular, its members Mrs. Lata Pada, Mr. Satrajpal (Fred) Rai, Ms. Lorna Kelly, and Mr. Kalwant Mamak.

2. On February 28, 2008, after many months of hearings had ended and documentary discovery apparently completed, we made our final submissions with respect to the issue of aviation security. Over six months later, beginning in or around October 2008 and continuing until mid November 2008, the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182 (the "Commission") released new documents to the parties. In response to these documents, we made supplementary submissions which were provided to the Commission on December 12, 2008.

3. Following the tendering of those submissions, as well as submissions in reply to those made by other parties, the parties then received additional disclosure from the Commission. From February 11 to March 16, 2009 the Commission made a number of new documents available for the parties to review. These submissions are in response to that disclosure, as well as to the 2009 Status Report of the Auditor General of Canada (the "2009 Status Report") released at the end of March 2009.<sup>1</sup> Although the 2009 Status Report was not made an official document in this Inquiry, given the importance of this Inquiry for the Family Interests Party, and for Canadians in general, and the relevance of this Report to aviation security, the input of parties with standing on such a report is necessary.

#### *Aviation Security*

4. One of the documents released since our last submissions, is a Secret Report on a National Counter-Terrorism Program created in 1984.<sup>2</sup> This report sets out the threats posed to Canadian security by terrorists, noting that "topping the list of types of attack preferred by terrorists is bombing." The Report further states that "it is anticipated that civil aviation generally, because of the nature of its operations, will remain a vulnerable target to terrorist demands."

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<sup>1</sup> Office of the Auditor General of Canada. *Status Report of the Auditor General of Canada to the House of Commons*. (2009)

<sup>2</sup> Doc. CAF 0875.

5. In addition, the Report reaches the following conclusion:

In the early 70's, Transport Canada and the air carriers implemented security measures at airports in Canada to safeguard civil aviation against acts of unlawful interference. The measures are considered to be adequate to prevent or deter hijackings but are not adequate to prevent the introduction of explosives or incendiary devices in checked baggage, cargo, mail and stores to be carried on board aircraft.(emphasis in original)

6. Indeed, it was the inadequacy of the Canadian aviation security regime that allowed the bombing of Flight 182 to occur, a conclusion which was reached by the parties long before this document was provided to us.

7. One other document released by the Commission since our last submissions further confirms this conclusion. A Transport Canada Internal Audit Branch Report done approximately one month after the bombing of Flight 182 exposes a number of significant security gaps in Canadian aviation security at Mirabel, Pearson and Vancouver international airports.<sup>3</sup>

8. For example, the Audit Report indicated that, in Vancouver, gates were regularly left open and unguarded, access to restricted areas was insecure, airport staff were untrained, and screening of passengers and cargo was done improperly. Similarly at Pearson, the Audit Report revealed that Pearson's airport security plan had not been updated since 1981 and that it did not maintain a current list of vulnerable locations. According to the Audit Report, it took Pearson an astonishing thirty-six hours to achieve full alert status after receiving notice of a hijacking. Further, the Audit Report concludes that "various penetration tests conducted periodically by the carriers themselves as well as observations and testing by regional and airport personnel have established that the screening of persons and carry-on baggage does not ensure complete security of sterile areas." Also, "control over baggage tags is inconsistent due to improper storage at unattended check-in counters and control over access to accepted baggage awaiting loading is weak."

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<sup>3</sup> Doc. P457.

9. The final submissions, as well as the supplementary and reply submissions of this party, all demonstrate that the aviation security regime in Canada was seriously deficient prior to the bombing of Air India Flight 182. This Audit Report is therefore not surprising, and it provides further evidence that our conclusions about the deficiencies of the Canadian regime were correct.

#### *Airport Personnel and Access to Secure Areas*

10. As set out in our final submissions, the security gap in relation to airport personnel is not a new problem. The Seaborn Report discussed the problem of unauthorized access to airfields in 1985,<sup>4</sup> the Senate Committee noted it in 2003,<sup>5</sup> and the Advisory Panel, in 2006, expressed "concerns about how easy it seems to be for unauthorized persons to move into and within restricted areas of airports, especially the larger ones." The Panel described this as a "major lacuna in Canada's aviation security".<sup>6</sup>

11. The 2004 Report of the Auditor General also found that the access of persons to secured areas of the airport remained problematic. The Report in 2004 found that there were individuals with Transport Canada clearance who worked in restricted areas of airports in Canada and who also had criminal backgrounds, associations with known criminals and involvement in criminal conspiracies. The 2009 Status Report also refers to an RCMP study from 2008 which concluded that there were more than sixty airport employees with criminal links at some of Canada's largest airports and that many organized crime groups were found working within or using these airports.<sup>7</sup> One particular case highlighted in the 2009 Status

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<sup>4</sup> Seaborn, *Security Responses Affecting Airports and Airlines in Canada*, (September 24, 1985) at p. 5 [*Seaborn Report*] (Doc. CAF0039).

<sup>5</sup> Standing Senate Committee on National Security and Defence, "The Myth of Security at Canada's Airports," (January 2003), p. 89 [*The Myth of Security*].

<sup>6</sup> Canada, Review of the Canadian Air Transport Security Authority Act – Flight Plan: Managing the Risks in Aviation Security – Report of the Advisory Panel (Ottawa: CATSA Act Review Secretariat, 2006) (Chair: Dr. Reg Whitaker) at p. 54.

<sup>7</sup> Canada, Review of the Canadian Air Transport Security Authority Act – Flight Plan: Managing the Risks in Aviation Security – Report of the Advisory Panel (Ottawa: CATSA Act Review Secretariat, 2006) (Chair: Dr. Reg Whitaker) at para. 1.51.

Report involves an individual who had assault and weapons convictions and was under investigation for a murder relating to drug smuggling at a large airport.<sup>8</sup>

12. Part of the reason for this failure to adequately screen airport employees is discussed below in the context of the inability of Transport Canada and the RCMP to effectively share information, but another reason for the failure to prevent individuals with criminal backgrounds from accessing secured areas at airports is because Transport Canada does not search all available databases for information about an individual.<sup>9</sup> One of the conclusions of the 2009 Report is that:

While [Transport Canada and the RCMP] have a memorandum of understanding for conducting security clearances of individuals working at airports, the process does not include checking against all criminal intelligence banks. Transport Canada may be granting clearance for access to restricted areas at airports to high risk individuals with criminal links.<sup>10</sup>

13. The 2009 Status Report also concludes that Transport Canada has not developed criteria for reviewing applications for secure area passes, but makes its approval decisions in relation to 'problematic applications' on a case by case basis.<sup>11</sup> This means that a person with a criminal background who applies for security clearance may be approved to work in Canadian airports. Because Transport Canada has not defined any specific considerations, it is impossible to know how frequently this occurs and, as a result, "Transport Canada may be granting clearance to high-risk individuals for work in secure areas of Canada's airports."<sup>12</sup>

### *Information Sharing*

14. The Auditor General begins the 2009 Status Report by noting that "tragic events such as the Air India disaster in 1985 ... demonstrate the need for effective security intelligence

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<sup>8</sup> 2009 Status Report, para. 1.55.

<sup>9</sup> 2009 Status Report, para. 1.50.

<sup>10</sup> 2009 Status Report, para. 1.87.

<sup>11</sup> 2009 Status Report, para. 1.54.

<sup>12</sup> 2009 Status Report, at para. 1.56.

by government organizations.<sup>13</sup> However, she then ends her report with the following conclusion:

Gaps remain in the coordination and integration of security efforts among government agencies, where we found a number of cases where there was a failure to achieve integration or to deal with problems efficiently and effectively. We found 16 instances where departments and agencies have reported legal barriers to information sharing. The government has not completed its research into, nor provided consistent guidance to departments on, managing the balance between the privacy of individuals and requirements to maintain the security of the nation. This has led to poor sharing of information among government departments.<sup>14</sup>

15. Two of the government agencies who seem unable to effectively share information so that Canada's aviation security can be maintained are the RCMP and Transport Canada. The RCMP, for example, terminated its Memorandum of Understanding with Transport Canada regarding information sharing in 2007 because, among other things, it did not comply with the recommendations of the Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.<sup>15</sup> A new Memorandum of Understanding has not been reached since then; the 2009 Report simply notes that one is being negotiated.

16. On a practical level, the 2009 Status Report also notes that, as a result of this failure to share information, once a job applicant has been identified by the RCMP as requiring further investigation, Transport Canada often provides much of the information in a redacted form.<sup>16</sup> Similarly, the RCMP often doesn't provide Transport Canada with complete information on job applicants because third party providers of information, including municipal police officers, have not given their permission to do so.<sup>17</sup>

17. This leads to the conclusion that "progress on the sharing of information for the security screening of individuals working at airports is thus unsatisfactory" and also to the recommendation that "Transport Canada and the RCMP should increase efforts to share

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<sup>13</sup> 2009 Status Report, at p. 2.

<sup>14</sup> 2009 Status Report, at para. 1.86.

<sup>15</sup> 2009 Status Report, at para. 1.53.

<sup>16</sup> 2009 Status Report, at para. 1.52.

<sup>17</sup> 2009 Status Report, at para. 1.53.

information on individuals who have applied for security clearance to work in airports."<sup>18</sup> For those familiar with this inquiry, this recommendation is familiar, that it has been repeated again and again for many years.

### *Systemic Discrimination*

18. One of the documents released since our last submission is a confidential memo prepared in January 1986 which describes a report of the Canadian Aviation Safety Board ("CASB") prepared for the Kirpal Inquiry.<sup>19</sup> The author of this memorandum, P.B. Sheppard, Director of Civil Aviation Security in 1985, describes how the CASB asked its staff to prepare a report "on the accident" to be used in the next round of the Kirpal Inquiry.

19. The report, which apparently suggested that the destruction of Air India Flight 182 was the result of an explosion in the forward cargo department, appears to have been highly criticized not only by the author of the memorandum but also by the Canadian government. For example, this memorandum indicates that the Department of Justice's lawyer strongly disagreed with submitting the report before he could review it and that "it could not be presented to the Kirpal Inquiry if it had any information which was not in line with other facts being brought forward through the Canadian input into the Kirpal inquiry."

20. Further, the memorandum notes that, although there did not appear to be any factual errors, "the report is probably more damaging because of the way it is written and what it does not say than for what it does say." One of the problems with the report that is noted in the memorandum is that it "condemns Burns and Transport Canada for not having adequately trained people." This conclusion was reflected at paragraphs 97 and 98 of our final submissions: training is a key element of aviation security, one which has been, and continues to be dangerously inadequate.

21. The memorandum also notes that, in discussing the CASB report:

The statutory role of the CASB itself was questioned on why they would write the report when it was an Indian Government investigation of an Indian registered aircraft over the high seas.

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<sup>18</sup> 2009 Status Report, at paras. 1.87 and 1.57.

<sup>19</sup> Public Production 4364.

The only other Government that should have been involved by law is the United States Government because they were the country that manufactured the aircraft.

22. We submit that this statement is further evidence supporting the conclusion of Dr. Razack that "there is nothing to indicate that the government considered the crash as a Canadian tragedy and its victims primarily Canadian."<sup>20</sup> We therefore repeat our position at paragraph 162 of our final submissions that "while there were many factors which played a part in the failure to prevent the bombing, race undoubtedly played a role in how Canada responded, particularly in the area of aviation security."

### CONCLUSIONS

23. The submissions made by this Family Interests Party in its original submissions have not changed as a result of the subsequent disclosure of new documents and the release of the 2009 Status Report. Indeed, these documents only support our position that serious and dangerous problems persist in today's aviation security regime. We anticipate that the issues raised by us in relation to aviation security will be specifically addressed in the Commission's final report.

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<sup>20</sup> Razack, "Opinion: The impact of systemic racism on Canada's pre-bombing threat assessment and post-bombing response to the Air India Bombings." (November 25, 2007) Exhibit P-387 at p. 25.