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The Commission of Inquiry Into the Investigation of the
Bombing of Air India Flight 182
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From: Richard Quance, ext. 258

TO: Mr. Mark Freiman
The Commission of Inquiry Into the Investigation of the
Bombing of Air India Flight 182
Fax No: 1-613-995-3506

Re: Air India Inquiry
Our File No. 060565

Date: December 12, 2008

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December 11, 2008

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Dear Sirs:

Re: Air India Inquiry
Our File No.: 060565

Further to the November 17, 2008, briefing, the Commission's letter of December 3, 2008 and the production of further documentation relevant to the Inquiry, we submit the following additional submissions on behalf of The Family Members Of The Crew Victims of Air India Flight 182 and Indian Nationals, Air India Cabin Crew Association, Sanjay Lazar And Aleen Quraishi.

These submissions focus on the production of further documents with respect to the "nature of the threat". We expect that Mr. Anand will be making further submissions with respect to aviation security and we fully endorse those further submissions.

New Documents : Nature of the Threat

The new documentation now obtained from the Government of Canada through the continuing efforts of Commission Counsel to obtain full and frank disclosure reflect a different understanding as to the “nature of the threat” than that emphasized by Government officials in the course of their testimony before the Commission, specifically with respect to whether the nature of the threat was hijacking rather than sabotage or explosives.

In a Department of Transport Review of National Civil Aviation Security Programme Memorandum with respect to a meeting of April 11, 2009, the author states that **“sabotage/bomb threats was more of a concern than hijackings”**. [CAF-0765]

In a Transport Canada Report entitled “Evolution of Canadian Civil Aviation Security Programme” dated February, 1980, the author states:

“The recent explosions aboard U.S. aircraft and discovery of active bombs at U.S. airports would suggest that acts of sabotage rather than hijacking now pose the greatest threats to civil aviation to Canada. It is hypothesized that this changing threat is due to the deterrent value and effectiveness of the passenger screening system forcing the

mentally disturbed and criminally minded individuals to look elsewhere for ways and means to commit unlawful acts.”

It was further noted that:

“one cannot discount the possibility that mentally disturbed criminals, pranksters and possibly the political terrorists may attempt to commit unlawful acts against civil aviation targets in the future. Recent events would indicate that acts of sabotage, rather than hijacking, will be the main threats to civil aviation in the 80s.”

It was further noted that:

“The threat to civil aviation in many parts of the world from hijacking and sabotage is continuing at an unacceptably high level. Terrorists and insurgent groups could be a threat to Canadian aircrafts or foreign aircrafts carrying passengers to Canada.”

The document discussed above is Production CAF-0766.

In a letter from the Air Transport Association of Canada to Civil Aviation Security, Transport Canada, dated July 30, 1980, it is stated that:

“the serious threat to civil aviation is now perceived to be detection of the components of explosives and incendiary devices as opposed to the metal detection of guns or other similar weapons. We are most concerned that the development and provision of detection equipment in support of the National Civil Aviation Security Programme must meet the changing threats.” [Production CAF-0769]

In a paper authored by the Civil Aviation Security Branch entitled “National Air Transportation Security Plan” dated October, 1981, the author states with respect to high security risk that:

“Special security measures such as passengers/ baggage match will be taken to ensure that checked baggage does not pose a threat.”

[Document CAF-0774]

The additional documentation presented evidences the changing threat as underscored by a draft Report of Transport Canada in 1983 which recommended that in the event of “high-level threats” checked baggage should be manually searched or x-rayed, interlined baggage should be searched or scanned by x-ray and unaccompanied baggage should be refused unless searched, sealed, and held for 24 hours minimum.

Submissions of the Attorney General of Canada

In Volume II of its Final Submissions the Attorney General of Canada submits in paragraph 82 that:

“In June of 1985, the focus of security screening both internationally and domestically, was on preventing hijacking. As such, passengers and their carry-on baggage was subjected to much greater scrutiny than checked baggages. Passenger and carry-on baggage was screened with metal detector and x-ray equipment, but – for regular flights – there was no requirement that checked baggage be screened with x-ray machines, explosive sniffers or other detection methods.”

Throughout the evidence, the justification for the above appeared to be that the state of knowledge with respect to the “nature of the threat” justified the emphasis on preventing hijackings rather than sabotage and bomb threats. The documentation now produced casts serious doubt on that purported justification for the lack of security precautions respecting sabotage and bomb threats. The **real state of knowledge** with respect to the “nature of the threat” should be considered in light of the threats being posed by Sikh extremists in 1984 and 1985 and in particular the following:

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(a) The May 21, 1985, telex received by Air India which reported that terrorists were planning violent activities for the second week of June and indicating that there was a possibility that a target would be civil aviation. [CAA-0161]

(b) The June 3, 1985, telex from Air India to the RCMP Pearson detachment indicating that sabotage attempts from Sikh extremists by way of "time delay devices etc. in the aircraft or registered baggage" was likely. The telex went on to indicate that Sikh extremists might attempt to blow up an aircraft by smuggling in explosives in a registered or carry-on baggage or any other means. [CAA-0185]

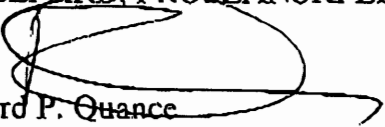
We remind you of the evidence of Dr. William Leiss given in relation to the June 1, 1985, telex, as to the rarity of receiving such a specific piece of information with respect to a threat and the highest level of precaution that should have been exercised. His evidence is even more compelling given the new documentation now produced revealing the knowledge of the "nature of the threat".

Submission

It is respectfully submitted that the new documentation further reflects the reluctance of the Government of Canada to accept responsibility and demonstrate its willingness and obligation to be accountable for its role in permitting the conception, planning and execution of the bombing of Air India Flight 182.

We thank you for this opportunity to make additional submissions.

Sincerely,
~~HIMELFARB, PROSZANSKI LLP~~


Richard P. Quance

RQ:mp

c.c. clients