

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

WeirFoulds LLP
Barristers & Solicitors
Suite 1600, The Exchange
Tower
130 King Street West
P.O. Box 480
Toronto, Ontario M5X 1J5

Raj Anand
(LSUC #19763L)
April D. Brousseau
(LSUC #53935J)

Tel: 416-365-1110
Fax: 416-365-1876

1. These are the supplementary reply submissions of the members of the Family Interests Party whom we have represented before this Commission of Inquiry.

2. The supplementary submissions of the Attorney General of Canada make sweeping statements which are largely defensive and unfortunately dismissive of the supplementary representations of the families' counsel filed earlier this month. Accordingly, it serves no purpose to submit any extensive reply. A few points, however, should be noted.

Late production of documents to the families

3. In an effort to respond to the families' criticisms about late production of documents and information to them after the conclusion of hearings, the Attorney General claims at paragraphs 10 and 11 of his recent submissions that the supplementary submissions of the families collectively refer to 34 documents. He then asserts that an unspecified "27 of the 34 documents...were available to Commission counsel during the hearings" and he describes "the remaining [sic] 6 of the 34 documents".

4. The principal difficulty with these assertions is that they do not address, much less contradict, the complaint that the families did not receive notice or production of the documents and information from anyone until after their opportunity to question witnesses, supplement the record and make final submissions on testimony led in open hearings had passed.

5. Secondly, like some of the subsequently produced briefings, the Attorney General's claims give rise to more questions than answers. In this case, some of the documents are grouped in footnote 5 according to their date of production to the Commission, which does not provide any useful information to the families, who were not party to those transmittals.

Aviation security as an ongoing process

6. Paragraph 12 of the Attorney General's supplementary submissions dismisses concerns about his counsel's private briefings on the basis that aviation security is the

subject of ongoing policy development and "debate in consultative legislative and other for a better suited to deal with these matters than this inquiry." This reasoning effectively negates the families' status as a party with standing like the Government of Canada. It also diminishes the terms of reference of the inquiry promulgated by the same Government which accord the Commissioner every right to deliberate, obtain input from the families and reach conclusions regardless of what judicial, policy making or legislative processes may occur in the meantime.

Monitoring of aviation security

7. The Attorney General puts forward three surprising justifications for lax and inadequate security in the six months before the bombing of Air India Flight 182.

8. First, paragraph 16 admits that "inspectors were few and resources were apparently very limited"; speculates that this may have resulted from "competing priorities, budgets or the monitoring of other carriers" on which the Attorney General chose to call no evidence; and asserts that the Commissioner should conclude from this absence of evidence that no inappropriate policy decisions were made. Respectfully, the Commissioner should conclude that the Government utterly failed to place significance and priority on aviation safety in the face of many danger signs that were evident to it.

9. Second, paragraph 17 admits that there were "minimal" regulatory standards at the time, but claims that Transport Canada lacked the legal authority before the bombing to effect changes, and did so shortly after the bombing. The principal problem is that this claim is not valid; the regulatory changes that came into effect within days after the bombing were evidently within the legislative authority of the Governor in Council. Even if the claim were true, it was the Government of Canada that bore responsibility for the failure to exceed "minimal regulatory standards".

10. Third, paragraph 18 compounds the defensiveness by alleging that "in 1985 detailed regulation and *aggressive enforcement* were not yet standard practice" (italics added). Again, whose responsibility was this state of regulation, despite the information widely known to the Canadian government that we outlined in paragraphs 21 to 24 of our supplementary submissions?

Risk assessment and Dr. Leiss

11. The Attorney General occupies more curious ground in seeking to diminish Dr. Leiss' opinion given during his testimony and subsequent affidavit. Paragraph 25 of the supplementary response submissions lists a series of facts that are said to provide context to the government's reaction (or non-reaction, more properly) to the June 1, 1985 Air India telex. After describing the Indian and Canadian airline and governmental context on June 1, 1985, the Attorney General says: "the Commissioner heard no evidence on these contextual points....without that evidence, it would be inadvisable to reply [sic] on the opinion of Dr. Leiss." Again, who was better placed than the Government of Canada and Air India, both of them parties with standing at this inquiry, to fill in any contextual information that might have been relevant to this crucial issue of risk assessment? Did either of these parties complain at the time that such evidence should have been called or make any effort to adduce it?

12. The Family Interests Party whom we represent thanks the Commissioner and his counsel for their work throughout and looks forward to receipt of the Commissioner's final report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



Raj Anand
Counsel for this Family Interests Party