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Canada

LESSONS TO BE LEARNED

The report of the Honourable Bob Rae,

Independent Advisor to the Minister

of Public Safety and Emergency Preparedness,

on outstanding questions with respect to

the bombing of ***Air India Flight 182***

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La présente publication est aussi disponible en français. Elle s'intitule Leçons à retenir : Rapport de l'honorable Bob Rae, conseiller indépendant de la ministre de la Sécurité publique et de la Protection civile du Canada, sur les questions en suspens relatives à l'explosion survenue à bord du vol 182 d'Air India.

This report is dedicated to the memory of those who died at the hands of terrorism on June 23, 1985, on board Air India Flight 182, and at Narita Airport, Tokyo, Japan.

AGGARWAL, RAHUL

AHMED, INDRA

AHMED, SARAH

ALEXANDER, ANCHANATT (ATAR)

ALEXANDER, ANNAMMA

ALEXANDER, REENA (RENA)

ALEXANDER, SIMON

ALEXANDER, SIMON JR.

ALLARD, COLETTE

ANANTARAMAN, ARUNA (ARVHA)

ANANTARMAN, BHAVANI

ANANTARMAN, RUPA (KUPA)

ASANO, HIDEO

ASIRWATHAM, ELIZABETH

ASIRWATHAM, HANNAH

ASIRWATHAM, RUTH

AURORA, SHYLA

BAJAJ, ANU (ANJUBALA) (ANJU)

BALARAMAN, MARAYANAN (RODGER)

BALARAMAN, SARADAMBAL

BALASUBRAMANIAN, RAMACHANDRAN

BALSARA, FREDDY

BEAUCHESNE, GASTON

BEDI, ANU

BEDI, JATIN

BEDI, SAROJ

BERAR, JOGESHWAR

BERRY, SHARAD

BERY, ADITYA

BERY, NEELAM

BERY, PRIYA

BHAGAT, ADUSH

BHALLA, DALIP

BHALLA, MANJU

BHALLA, NIRMAL

BHARADWAJ, HARISH

BHASIN, REEMA

BHAT, CHAND

BHAT, DEEPAK

BHAT, MUKTHA

BHAT, PARAG

BHAT, SIDHANT

BHATT, BINA

BHATT, CHANDRABALA (CHANDRA)

BHATT, TINA

BHATT, VINU (VINUBHAI)

BHINDER, SATWINDER

BISEN, LEENA

CASTONGUAY, ROCHELL (RACHELLE)

CHANDRASEKHAR, SUKMAR (SUKUMAR)

CHATLANI, MALA

CHATLANI, MARC

CHATLANI, NITA

CHEEMA, SHINGARA

CHOPRA, JAGDISH

CHOPRA, SHAMPARI (CHAMPARI)

CHUG, RATNA

DANIEL, CELINE

DANIEL, ROBYN (ROBIN)

DANIEL, RUBY

DANIEL, VARGHESE

DAS, ANITA

DAS, ARINDAR

DAS, RUBY

DESA, ANTHONY

DESOUZA, RONALD

DHUNNA, BHAG (BHAGRANI)

DHUNNA, RAJESH

DHUNNA, SHASHI

DHUNNA, SUNEAL

DINSHAW, JAMSHED

DINSHAW, PAMELA

DUMASIA, DARA

ENAYATI, ARDESHIR

FURDOONJI, HOMAI

GADKAR, ANITA

GAMBHIR, ANGI (ANGELINE)

GAMBHIR, JULIE

GAMBHIR, SANTOSH

GAONKAR, SHYAMA

GHATE, SANGEETA

GOGIA, BHAGWANTI

GOGNE, RITU

GOPALAN, KRISHNA

GOSSAIN, APARNA

GOSSAIN, ARUN

GOSSAIN, KALPANA

GREWAL, DALJIT

GUPTA, AMIT

GUPTA, ANUMITA

GUPTA, ARTI

GUPTA, RAJESH

GUPTA, RAMWATI

GUPTA, S. F

GUPTA, SANTOSH

GUPTA, SHASHI

GUPTA, SWANTANTAR (SATANTAR)

GUPTA, VANDANA

GUPTA, VISHAL

HARPALANI, DEEPA

HARPALANI, RASHMI

HARPALANI, SUMENTA

JACOB, ALEYKUTTY

JACOB, BULIVELIL

JACOB, JANCEY

JACOB, JISSEY

JACOB, JUSTIN

JAIN, ANUUPAMA

JAIN, PARASH (PRAEASH)

JAIN, RANI

JAIN, RIKKI

JAIN, RUCHI

JAIPURIA (JAIPURIYA), MALA

JALAN, ANITA

JALAN, DEVKRISHAN

JALAN, SHILA

JALAN, VINAY

JAMES, ANNIE

JETHVA, UMAR (UJY)

JETHVA, ZEBUNISKA

JOB, ALEYKUTTY

JOB, TEENA

JUTRAS, RITA

KACHROO, MOHAN

KAJ, LEENA

KALSI, INDIRA

KAMMILA, RAMA (RAMADEVI)

KAPOOR, SABRINA

KAPOOR, SANTOSH (SANTASH)

KAPOOR, SHARMILA

KASHIPRI, ATHIKHO

KASHIPRI, NELI

KAUR, GURMIT

KAUR (BASSI), PARMJIT

KAUSHAL, BISHAN

KELLY, BARSA

KHAN, RAHAMATHULLA

KHANDELWAL, CHANDRA

KHANDELWAL, MANJU

KHERA, RASHIRASHMI

KHERA, SUMAN

KOCHHER (KOCHNAR), SANDEEP

KODA, HIDEHARU

KUMAR, CHITRA

KUMAR, KEVIN

KUMAR, MANJU

KUMAR, RAMACHANDRAN

LAKSHMANAN, KANAKASABAPAPHY (KANAKA)

LAKSHMANAN, PREETHI

LASRADO, SHARON

LAURENCE, NICOLA

LAURENCE, SHYAMALA

LAZAR, SAMPATH

LAZAR, SANDEETA

LAZAR, SYLVIA

LEGER, JOSEPH (PERE)

LOUGHEED, DONALD

LULLA, MONISH

MADON, SAM

MAINGUAY, LENA (LINA)

MALHOTRA, ATUL

MAMAK, RAJINDER

MANJANIA, NASIB

MARJARA, DAVINDER

MARJARA, SEEMA

MARTEL, ALAIN

MEHTA, CHANDRALEKHA (CHANDRA)

MEHTA, KISHONECHANDRA

MEHTA, NEESHA (NISHA)

MEHTA, NILISH (NILESH)

MERCHANT, NATASHA

MINHAS, BALWINDER

MINHAS, KULBIR

MOLAKALA, (REDDY) PRABHAVATHI

MUKERJI, NISHITH

MUKERJI, SHEFALI

MUKHI, RENU

MULLICK, DEEPAK

MURTHY, BHAVANI

MURTHY, NARAYANA

MURTHY, SUSHEELA

MURUGAN, GNANENDRAN

MURUGAN, LAVANYA

MURUGAN, RAMYA

MURUGAN, SUMITHRA

NADKARNI, DEVEN

NADKARNI, RAHUL

NARENDRA, HANSE

NAYUDAMMA, YELABARTI

PADA, ARATI

PADA, BRINDA

PADA, VISHNU

PALIWAL, MUKUL

PATEL, BABUBAI (BABUBHAI)

PATEL, BIPAN (BIPIN)

PATEL, MARAZBAN

PATEL, MOHANBHAI

PHANSEKAR, RITA

PURI, AMIT

PURI, CHAMAN (ASHU)

PURI, VEENA

QUADRI, ARISHIYA (ARSHYA)

QUADRI, QUTUBUDDIN (QUTBUDIN)

QUADRI, RUBINA

QUADRI, SHAIESTA (SHAISTA)

QUADRI, SYED

RADHAKRISHNA, JYOTI (JYOTHI)

RADHAKRISHNA, NAGASUMDARA

RADHAKRISHNA, THEJUS

RAGHAVAN, SUSEELA

RAGHUVEERAN, RAJIV

RAGHUVEERAN, VASANTHA

RAI, KIRANJIT

RAMACHANDRAN, PRATIBHA

RAMASWAMY, JANAKI

RAUTHAN, BUDI (BUDHI)

RAUTHAN, POUJA (FOAJA)

RODRICKS, ELAINE

SABHARWAL, MEGHAN (MEGHANA)

SADIQ, SUGRA

SAGI, KALPANA

SAGI, KAVITA (KAVITHA)

SAGI, SUJATHA

SAHA, BIMAL

SAHU, PRADEEP

SAHU, PUSHPA

SAHU, RAM

SAKHAWALKAR, DATTATRAYA

SAKHAWALKAR, SANJAY

SAKHAWALKAR, SUNIL

SAKHAWALKAR, SUREKHA

SAKHAWALKAR, USHA

SANKURATHRI, MANJARI

SANKURATHRI, SARODA

SANKURATHRI, SRIKIRAN

SARANGI, RAJASRI

SAWHNEY, OM

SETH, AHKUR (ANKUR)

SETH, ALPANA

SETH, KARAN

SETH, SADHNA

SETH, SATISH

SETH, SHILPA

SHARMA (NARAIN), ANUJ

SHARMA, INDU

SHARMA, MANMOHAN

SHARMA, NEERAJ

SHARMA, OM

SHARMA, RINA

SHARMA, RUBY

SHARMA (NARAIN), SANDEEP

SHARMA, SANDHYA

SHARMA, SHAKUNTALA

SHARMA, SHARVAN

SHARMA (NARAIN), SHYAM

SHARMA (NARAIN), SUMITRA

SHARMA, SUSHMA

SHARMA, SWATI

SHARMA, VERSHA

SHARMA (NARAIN), VIKAS

SHARMA, UMA

SHUKLA, IRENE

SHUKLA, SUNIL

SINGH, ABHINAV

SINGH, AJAI

SINGH, AKHAND

SINGH, AMAR

SINGH, BALVIR (BALBIR)

SINGH, DARA

SINGH, JAGIT

SINGH, JOYOSREE

SINGH, MUKHTIAR

SINGH, RANJINA

SINGH, RATIK

SINGH, SHALINI

SINGH, SHOBNA

SINGH, SURENDRA

SINGH, USHA

SINHA, ANJAMI

SONI, MONEKA

SONI, PANKAJ

SONI, RINA

SONI, USHA

SRAN, PRIMAJIT (PRIMALJIT)

SRIVASTAVA, BRIJBEHERI (BRIG)

SUBRAMANIAN, GOPALSAMUDRAM

SUBRAMANIAN, JAYALAKSHMI

SUBRAMANIAN, KRISHNAN

SUBRAMANIAN, LAKSHMI

SUBRAMANIAN, SUMITRA (SUMITHA)

SUBRAMANIAN, VEENA

SWAMINATHAN, ANAND

SWAMINATHAN, INDIRA

SWAMINATHAN, PADMA

SWAMINATHAN, RAMYA

TACHETTU (THACHETTU), IVY

THAKUR, INDER

THAKUR, KANAYA

THAKUR, PRIYA

THAKUR, VISHAL

THAMPI, VIJAYA

THOMAS, MOLLY

THOMAS / KYTHAKUZHICAL, ANITA

THOMAS / KYTHAKUZHICAL, KURIAN

THOMAS / KYTHAKUZHICAL, VINOD

TRAVASSO, ANNE

TRAVASSO, C.F. (ALEX)

TRAVASSO, LORRAINE (LUCY)

TRAVASSO, LYON (MICHAEL)

TRIVEDI, NEETA

TRIVEDI, NIRMAL (NIRMALA)

TRIVEDI, PARUL

TUMKUR, CHITRA (CHITRALSKHA)

TUMKUR, RAMMOHAN

TURLAPATI, DEEPAK

TURLAPATI, SANJAY

UPPAL, KULDIP

UPPAL, PARMINDER

UPPAL, SUKHWINDER

UPRETI, GYANDRA

UPRETI, HEMA

UPRETI, VIRKAM

VAID, NOSHIR

VAZ / ALEXANDER, JULIET

VENKATESAN, GEETHA

VENKATESAN, SUKUVANAM (SUKUNANAM)

VENKETESWARAN, KRISHNAN (TRICHUR)

VERMA, BALWINDER

WADHAWA, AKHIL

WADHAWA, SERINA

YALLAPRAGADA / MURTHY, GOPAL KRISHNA

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Lessons to be Learned

In the early morning hours of June 23rd, 1985, Air India Flight 182 approached the west coast of Ireland. The flight began in Toronto, receiving passengers and luggage from connecting flights, and picking up more in Mirabel, Quebec. Children of all ages were joined by their families, looking forward to visiting their loved ones and friends in India. Most of the passengers were Canadians. Given the time of year — late June marks the beginning of summer holidays here in Canada — there were an especially large number of young adults, children and entire families traveling on the flight.

Unbeknownst to them, in the weeks prior to that flight, a group of Canadians had been planning to blow up the plane. The conspiracy was based in radical sections of the Sikh community in Vancouver and elsewhere who were pursuing the goal of an independent country, to be called Khalistan, in the northwestern province of Punjab in India.

As a result of this conspiracy, a bomb was manufactured, placed in a suitcase, and taken to the Vancouver airport, where on June 22, 1985, it was checked through on a flight from Vancouver to Toronto. In Toronto, the lethal suitcase made its way onboard Air India Flight 181, which then stopped at Mirabel and became Air India Flight 182, en route to London and Delhi.

At approximately 12:14 a.m., on June 23, 1985, the timer on the bomb detonated a charge and blew open a hole in the left aft fuselage of the plane. The aircraft, which bore the name 'Kanishka', was blown apart, falling approximately 31,000 feet below into the Atlantic Ocean off the south-west coast of Ireland.

The children going to visit grandparents, young tourists looking forward to their first experience of India, women and men of all ages, flight attendants and pilots, in short all 329 passengers and crew were killed.

It was, at that point, and up until 9/11, the worst act of terrorism against the traveling public in world history.

Meanwhile, at Narita Airport in Tokyo, a bomb exploded at approximately 11:15 p.m. on June 22, 1985, while luggage was being transferred from Canadian Pacific Flight 003 to Air India Flight 301 to Bangkok. Two baggage handlers, Hideo Asano and Hideharu Koda were killed and four other baggage handlers were injured.

Numb with grief, families traveled to Cork in the west of Ireland where they were met by an Irish population who rallied to receive them. The hospital in Cork became a temporary morgue as the grim process of collecting and identifying bodies began.

Canadian authorities were not prepared for such a disaster. Family members were overwhelmed with grief, angry that this had been allowed to happen, furious that not enough was being done to answer their questions. That grief and anger has not gone away with the passage of time.

The Canadian government joined with the government of India and the local and national governments of Ireland to

build a compelling memorial site on the southwestern shore of Ireland in 1985–1986. It is here that that the families come to remember their loved ones. Prime Minister Paul Martin led a delegation of Canadian political leaders to join the families on the twentieth anniversary of the bombing. It was the first such visit by a Canadian Prime Minister.

While statements were made in the House of Commons in the immediate aftermath of the disaster, many families continue to express their profound sense that the Air India bombing was never truly understood as a Canadian tragedy.

Let it be said clearly: the bombing of the Air India flight was the result of a conspiracy conceived, planned, and executed in Canada. Most of its victims were Canadians. This is a Canadian catastrophe, whose dimension and meaning must be understood by all Canadians.

For reasons set out below, I am recommending that a focused, policy based inquiry be held to deal with questions from this mass murder that remain unresolved. We know the location of the conspiracy that planned the bombings, and the identity of some of the conspirators; we know how the bombs got on two planes; we know the details of the bombs' detonation. We do not need to re-visit these questions. They are clearly established. What we need to know more about is how Canada assessed the threat, how its intelligence and police forces managed the investigation and how its airport safety regulations did or did not work. Twenty years later, these questions are still worth asking. The Air India bombings were the worst encounter with terrorism Canada has experienced. We cannot leave any issues unresolved.

1. Introduction

This report was prepared at the request of Anne McLellan, Deputy Prime Minister and Minister of Public Safety and Emergency Preparedness Canada. After Justice Josephson of the British Columbia Supreme Court acquitted two individuals accused of the bombing in March of 2005, I was appointed to provide independent advice to the Minister of Public Safety and Emergency Preparedness on whether there remain outstanding questions of public interest with respect to the bombing of Air India Flight 182 that can still be answered. The specific Terms of Reference of my appointment are set out as **Appendix 1** of this document. This report is not a definitive account of every event related to the Air India disaster but rather an assessment of the issues that need to be examined more fully.

I have listened to the deep concerns of the families. The acquittal of Ripudaman Singh Malik (Malik) and Ajaib Singh Bagri (Bagri) brought many memories flooding back. It also aroused again the sense of grief, anger, and frustration which they experienced from that moment in June of 1985, when they realized that their loved ones had been killed. There are issues about the response of Canadian government agencies to the bombing which clearly warrant further review.

Not all of these issues should be the focus of an inquiry, because they are very broad, and some are already the subject of widespread public debate. As Justice Josephson determined in his Reasons for Judgment, the conspiracy to bomb the two Air India flights involved individuals belonging to what became known as the Babbar Khalsa movement, a group of Sikh radicals determined to "purify" the Sikh religion and establish an independent homeland for Sikhs in Punjab, India. The families told me that they believe Canada must do more to deal with forces of extremism, even hatred, within communities that have made this country their home. They believe that Canada's politicians have not been sufficiently sensitive to the risks of festering solitudes within communities breaking out into violence.

They pointed to the evidence of a culture of fear within communities that has stopped people telling the truth about what happened. Two potential witnesses in the Malik and Bagri trials were killed. These murders, while still under active investigation, have not yet led to criminal charges. Kim Bolan, a reporter with the Vancouver Sun, has written a recent book on Air India that documents many efforts at silencing and intimidating her and others in the Sikh community critical of extremism. In the course of my work I encountered many in the Sikh community deeply troubled by threats of violence, the past misuse of Gurdwaras (temples) for political purposes and the abuse of charitable fundraising for extremist causes.

These issues are not unique to any one community. To make them the subject of a public inquiry would be a vast and unmanageable exercise. But they need to be the subject of continuing government review and action. Canadians should be able to express their opinions without fear of intimidation. Charitable organizations should

not be abused. The law in these matters is clear enough. It should be enforced.

The wide debate that has engulfed many countries about the potential for terrorist attacks has, very naturally, deeply affected those whose lives have been shattered by the Air India bombing. They quite naturally ask why it took 9/11 to galvanize opinion, to introduce the *Anti-Terrorism Act*, to list certain terrorist groups. Quite naturally, they ask why the bombing of Air India Flight 182 did not move the Canadian government to act more decisively against the threat of terrorism. This is not so much a subject for an inquiry as it is for a deeper searching in which all Canadians, and their political leaders need to engage. Why did the murder of 331 people not do more to shake our complacency?

The families have also expressed their deep hurt at their isolation from their fellow Canadians. There was little recognition of their loss. The civil lawsuit dragged on for some years, until being settled in 1991. Emotional and psychological support was hard to find. Canadians did not embrace this disaster as their own.

Twenty years after the bombing, and with the support of the B.C. Attorney General, family members produced a book of memorial to their loved ones. It is impossible to open the book at any page and not feel the deepest sense of loss and hurt. Whole families — children of promise, parents of achievement and kindness — were murdered. What happened was not an accident. No conflict in any homeland, no religious or ethnic dispute, no ideology can justify what happened. Many Canadians think that it was "9/11" that initiated us into the modern world of terrorism. It should have been June 23, 1985.

I must report that there is, to this day, a deep-seated conviction among the families that "Canada still doesn't get it", that in the debate on terrorism, freedom, and security, the balance of opinion does not and has never truly absorbed or taken into account the brutal reality of a mass murder conceived and executed in Canada. At times some family members expressed to me the thought that if their skins were white the post-bombing experience of the country might have been different. I found no evidence of racism on the part of anyone in a position of authority. The mistakes in the investigation cannot be traced to any such bias. But Canadians have to ask themselves — have we taken this tragedy seriously enough, and have we fully understood its lessons for our country?

The families' concerns also extend to the conduct of criminal trials in cases of this kind. Some have suggested that a panel of three judges would be more appropriate. While I have not suggested this as a specific question for the inquiry, it is certainly an issue worthy of study and discussion.

The Air India Review Secretariat has spent time in the last few months working with family members on issues of memorial and remembrance. The Prime Minister's meeting with the families, the trip to Ireland by political leaders, the decision to declare June 23 a national day of mourning in perpetuity out of respect for the families, and the plans to build memorials in different parts of the country — these are all worthy and necessary. They are not a substitute for an inquiry. But they are important steps in righting wrongs and providing recognition. Attention must be paid. These lives should not be lost in vain.

2. The Nature of this Review Process

In conducting this review, I have met several times with family members of the victims of the Air India bombing. These meetings occurred in Vancouver, Toronto, Montreal and Ottawa. The Prime Minister, Deputy Prime Minister McLellan, RCMP Commissioner Giuliano Zaccardelli, and Canadian Security Intelligence Service ("CSIS") Director James Judd, and Margaret Purdy, Special Advisor to the Deputy Minister of Transport Canada also attended meetings in the spring of 2005 with family members. The Prime Minister also attended the 20th anniversary commemorative service at the memorial site near Cork, Ireland on June 23rd.

I have also received detailed briefings from the RCMP in Ottawa and Vancouver, from CSIS officials in both cities, with the senior Crown Prosecutor Robert Wright and his associates in Vancouver, with the Premier and Attorney General of British Columbia, with the federal Deputy Ministers of Justice, Transport, Public Safety, and Foreign Affairs, among others.

The individuals and organizations I met with are listed in **Appendix 2**.

In addition to the transcripts of the trials of Reyat, Malik and Bagri, and the decisions in those cases, I have reviewed reports of inquiries held in Canada, (particularly the Security Intelligence Review Committee (SIRC) report of 1992), Ireland (Coroner's Inquiry), and India (the report of the Kirpal Inquiry, India's own inquiry into the Air India disaster, and the Jain Inquiry) and questioned countless officials.

I have been ably assisted by the Air India Review Secretariat, led by Taleeb Noormohamed and his staff, Michelle Sample and Chantale Lafond and by three colleagues at the law firm of Goodmans LLP, Benjamin Zarnett, David Lederman and Jenna Seguin.

3. What Occurred

In setting the context for these tragic events, it is important to understand trends underway in Canada and India. The Sikh community had established itself in Canada at the turn of the last century, but remained relatively small and stable. Changes in immigration policy in 1967 opened the door to a large increase in Sikh emigration from India, with the focus of that growth in the lower mainland of British Columbia and southern Ontario. Politics in India and the Punjab in the 1960's and 1970's were volatile. The demand for political independence for a separate Sikh based territory in the Punjab had for some years been accompanied by violence. The raid by the Indian government on the Golden Temple in Amritsar, Sikhism's holiest site, in June, 1984 and the subsequent assassination of Prime Minister Indira Gandhi by her Sikh bodyguards in November of that same year had dramatically radicalized Sikh activism in India and around the world. The movement for secession of the Punjab was supported by sections of the Sikh community in the US, the UK, Germany and Canada, and there were continuing allegations that money, arms and false passports flowed from Sikh extremists in these countries to India. Prior to the bombing of Air India Flight 182 there were a number of incidents of violence in Canada, including the attack on the acting Indian High Commissioner, as well as threats of violence on other Indian representatives in Canada.

The growth of Sikh radicalism also had a domestic, Canadian flavour. Like many religions, its adherents practiced their faith in different ways. A fundamentalist insistence on a return to the "pure practice" of Sikhism took hold as lively, and often violent, debates unfolded in gurdwaras in urban centres like Toronto and Vancouver between competing elements in the community. The words "Babbar Khalsa", the name of the organization in India and Canada that was at the heart of radical extremism in the Sikh community, means Tigers of the True Faith. The key elements of this faith were strict Sikh religious practice and an unwavering commitment to an independent Khalistan, to which must be added a ruthlessness about how these goals would be achieved.

According to information provided to me by Foreign Affairs Canada, the department received many warnings of possible terrorist actions against Indian interests in Canada during this period. This threat information was shared with CSIS and the RCMP. The department's security intelligence bureau held consultations in mid-May 1985 with Canada's mission in Delhi on the Sikh terrorist threat in Canada and India. In addition an inter-departmental committee on Sikh terrorism was established May 17th, 1985, for the purpose of better tracking and sharing of information on activities in Canada. The task force consisted of representatives of the Department of Foreign Affairs, the RCMP, CSIS and the Solicitor General, and met a number of times prior to June 23, 1985.

In his March 2005 judgment, Justice Josephson of the British Columbia Supreme Court concluded that one of the leaders of the conspiracy was Talwinder Singh Parmar.[1] Mr. Parmar came to Canada in May 1970, and became actively involved in Sikh political and religious movements as a young man. He returned to India years later and was allegedly involved in a number of violent confrontations with Indian authorities. After spending a year in custody in Germany, Mr. Parmar returned to Canada in the summer of 1984. He was described as a dangerous and violent political activist by the Indian government, and Canada received a request for his extradition on murder charges from the Indian government. This request was denied, but Mr. Parmar remained a person of interest to Canadian authorities from the time of his return to Canada, and during his trips back and forth between India and Canada. Indian police authorities in India killed Mr. Parmar on October 14, 1992.

According to the SIRC report of November 16, 1992, the first threat assessment by CSIS of Sikh political activism in Canada was made on May 1, 1984.

A warrant under the *CSIS Act* to intercept communications on Mr. Parmar was sought in the Federal Court and granted commencing March 14, 1985. This included the wiretapping of Mr. Parmar's phone. The first telephone intercept started on March 27, 1985. Surveillance on Mr. Parmar began as early as 1982, with agents being sent to follow his movements.

By his own admission, another individual, Inderjit Singh Reyat, was instrumental in the construction of the bomb that would be placed on Canadian Pacific Flight 060 heading to Toronto and later transferred to Canadian Pacific Flight 003 heading to Narita airport in Japan on June 22, 1985. Mr. Reyat also plead guilty to manslaughter in aiding and abetting in the construction of an explosive device placed onboard Air India Flight 182. Mr. Reyat is currently serving his sentence for manslaughter in British Columbia in connection with the construction of these two bombs. Mr. Reyat has refused to name any other conspirators, which led Justice Josephson to say the following about him:

> Mr. Reyat's involvement with the procurement of parts and the development of bombs used in the conspiracy to blow up Air India planes is not at issue in these proceedings. He has been convicted of offences in relation to both bombings.
>
> Mr. Reyat's credibility on the witness stand is also of little moment in relation to the outcome of this trial. That said, it is without hesitation that I find him to be an unmitigated liar under oath. Mr. Reyat endeavored to reveal as little information as possible regarding the complicity of himself and others in the offences, while attempting unsuccessfully to craft a story consistent with his plea to manslaughter and his admissions of fact in that connection.
>
> Much of his evidence was improbable in the extreme and entirely inconsistent with common sense. When caught in obvious and numerous irrationalities, he would seek refuge in memory loss or offer tentative possibilities or guesses.

[1] R. *v. Malik*, [2005] B.C.J. No. 521 (B.C. S.C.) at paras. 224–227 [*Malik*].

> The most sympathetic of listeners could only conclude, as do I, that his evidence was patently and pathetically fabricated in an attempt to minimize his involvement in his crime to an extreme degree, while refusing to reveal relevant information he clearly possesses. His hollow expression of remorse must have been a bitter pill for the families of the victims. If he harboured even the slightest degree of genuine remorse, he would have been more forthcoming.[2]

Messrs. Reyat, Parmar and others were involved in the building of at least two bombs and they tested a device while under surveillance by members of CSIS on June 4, 1985. No photograph was taken of suspects heading into the woods to test the device, and when an explosion took place, CSIS agents mistakenly believed that it was the sound of a rifle. There are differing accounts from the RCMP and CSIS as to the level of co-operation between the two services with respect to the surveillance of Mr. Parmar and his associates on that day.

On June 20, 1985, airline reservations were made for two people on two Canadian Pacific Airline flights, one for Canadian Pacific Air Flight 060 from Vancouver to Toronto and connecting Air India Flight 181/182, and the other for Canadian Pacific Flight 003 departing Vancouver for Narita airport in Japan with a connecting flight from Narita airport to Bangkok on Air India Flight 301. Although the phone number from which the phone call was made is known, the identity of the individuals who made the reservations is not; nor is it known who took the suitcases containing the bombs to the airport. What is known is that, pursuant to a commonly agreed plan, someone drove to the airport, identifying himself as passenger M. Singh, and brought with him a suitcase containing a home made bomb that would later explode and kill all the individuals aboard Air India Flight 182.

The Vancouver airport was busy that day, and the owner of the suitcase was told that he was confirmed on Canadian Pacific 060 to Toronto but remained waitlisted for Air India Flight 181 (Toronto to Montreal) and Air India Flight 182 (Montreal to Delhi). The recollection of the agent at the time, Jeanne Bakermans, was that the individual was insistent his bag should be checked all the way through from (interlined) Vancouver to Air India Flight 182. Airline rules in place at the time provided that passengers and their luggage should be checked together. Baggage should not have traveled without accompanying passengers. There was no reconciliation check between records of bags and passengers before the flight took off.

It would also appear that, while special precautions were recommended for Air India flights — for example, there was additional RCMP surveillance at the Toronto Airport — the same could not be said of connecting flights. It is important to remember that the bag was originally placed not on an Air India flight but on a Canadian Pacific flight leaving Vancouver for Toronto.

Prior to June 23, 1985, the emphasis in Canada (and internationally) was on the threat of hijacking; screening procedures focused on the prevention of the boarding of

[2] *Ibid.* at paras. 224–227.

weapons, including guns and other explosive devices in hand luggage.

On May 17, 1985, the High Commission of India presented a diplomatic note to the Department of External Affairs regarding the threat to Indian diplomatic missions or Air India aircraft by extremist elements. Subsequently, in early June, Air India forwarded a request for "full and strict security coverage and any other appropriate security measures" to Transport Canada offices in Ottawa, Montreal and Toronto and to RCMP offices in Montreal and Toronto.

I have, to this point, been unable to find any specific threat with respect to Air India Flight 182 on June 22/23, 1985.

Under the procedures established by Air India, passengers, carry-on baggage and checked baggage destined for Air India Flight 181/182 on June 22, 1985 were subjected to extra security checks. Because of the threat level assessed against the airline, Air India had more extensive security measures than almost any other Canadian or international airline. These measures were generally in accordance with the recommended procedures of the International Civil Aviation Organization (ICAO) Security Manual for special risk flights.

Air India had also requested and received extra security from Transport Canada and the RCMP for the month of June 1985. For Air India Flight 181/182, Air India provided a security officer from its New York office to oversee the security arrangements at Toronto and Mirabel. The security program at each airport was under the overall supervision of the respective Air India station managers.

From June 16, 1984 to June 22, 1985, as a result of escalating violence in India, the security measures for Air India were increased to level four. These new measures included: increased RCMP surveillance of the Air India aircraft on apron area; RCMP monitoring of the Air India arrival, departure and ticket counter area; RCMP supervisor liaison with the Air India representative regarding security operations prior to the arrival or departure of the aircraft; and the RCMP Dog Master checking any reported suspect luggage or package and searching the passenger section of the Air India aircraft before departure.

On June 22, 1985, Canadian Pacific was not under any specific threat and, therefore, normal passenger screening was carried out without additional procedures.

For all Canadian airlines, Canadian regulations before June 23, 1985, required a system of identification that prevented baggage, goods and cargo from being placed on board an aircraft if it were not authorized to be placed on board by the airline operator. However, if someone were to purchase a ticket, check their baggage and not board the aircraft, the baggage would in all likelihood have been authorized by the airline to be placed on board the aircraft. Therefore, it was possible to send baggage from one flight to be transferred to another unaccompanied by a passenger. This explains how a suitcase was interlined to Air India Flight 181/182 from Canadian Pacific 060. It was not the normal practice of airlines to interline baggage if there was not a confirmed reservation to the destination. In this case, the ticket agent in Vancouver allowed the suitcase to proceed.

The following security measures were in place at Vancouver International Airport on June 22, 1985. Airport security and policing staff were on-site. Airport security plans and procedures were in place, including coordination of both normal and emergency operation. However, according to information provided to me by Transport Canada, checked baggage was not searched, and Canadian Pacific did not conduct a head count of the passengers on board the aircraft prior to departure.

As a result, a suitcase with a bomb in it made its way onto Canadian Pacific Flight 060 from Vancouver to Toronto, ready to be transferred to Air India Flight 181/182.

In Toronto, Air India aircraft and passengers were handled by Air Canada at Toronto's Pearson International Airport (Terminal II). An RCMP officer, located in the area, monitored activities relating to the Air India aircraft. Air India passengers proceeded through the regular passenger screening checkpoint at the international departure area, and continued to a cordoned off holding area within the sterile area.

Normally all checked baggage for Air India flights was checked by an x-ray security system, which was acquired by Air India in January 1985. This unit, which was designed to handle large packages and luggage, was operated by three Burns Security personnel and was situated in the baggage make-up area of Terminal II.

Baggage to be transferred to the Air India flight arrived in Toronto on various domestic flights and was delivered to the international baggage area for x-ray examination and tagging. Domestic baggage was then placed in a container that was subsequently sealed and placed on board the aircraft. An additional security guard was also posted at the in-transit luggage belt in Terminal II to prevent unauthorized luggage from being placed on this belt.

Baggage screening for the Air India flight on June 22, 1985 commenced at approximately 2:30 p.m. local time. At 4:45 p.m. the x-ray unit became unserviceable. At that time, approximately 50–75% of the luggage had been screened. The Air India security officer supervising the baggage examination authorized the screening personnel to use a hand-held explosive vapour and trace detector (the PD4C Sniffer) to screen the remaining baggage. The Burns security personnel did this after a briefing on its operation by the Air India security officer and the baggage check was completed at 6:06 p.m. No luggage had been physically opened and searched. The x-ray devices and the PD4C Sniffer devices used to screen Air India passengers' checked baggage was acquired by Air India.

According to Transport Canada, earlier on January 21, 1985, airport security personnel, Air India personnel, the RCMP and the Peel Regional Explosives Detection unit met to evaluate the Air India security program. The RCMP Dog Master and the representative from the Peel Regional Explosives Detection unit expressed their opinion that the PD4C Sniffer was ineffective. It is also not known if the PD4C Sniffer that was used on June 22, 1985, was the same PD4C Sniffer that was evaluated at the January 1985 meeting.

It is not known if the suitcase interlined from Canadian Pacific Flight 060 on June 22,

1985 to Air India Flight 181/182 was screened before or after the x-ray machine broke down in Toronto. A PD4C Sniffer screened baggage not examined by x-ray. There are indications that the PD4C Sniffer could have been ineffective in detecting explosives, especially plastics. Rather than using the PD4C Sniffer, it would have been more effective to open all bags and physically inspect them. It would appear that this was not done.

Despite the precautions and protections that were supposed to be in place, almost everything that could have gone wrong did go wrong. The bags should never have been checked without an accompanying passenger in Vancouver. Canadian Pacific Flights 060 (Vancouver to Toronto) and 003 (Vancouver to Narita) should not have taken off without a reconciliation that would have shown no accompanying passenger for these bags aboard either flight. When the bag arrived in Toronto from Canadian Pacific Flight 060 it should not have been transferred to the Air India plane without being checked and a bag reconciliation taken.

However, the suitcase with the bomb did get through 2 airports, both in Vancouver and Toronto. The mid-air explosion off the west coast of Ireland in the early morning of June 23, 1985, was the consequence.

Nothing of this dimension had ever occurred before to Canadian citizens in peacetime. The Canadian Embassy in Dublin was small and had very limited resources. Communication before the age of the cell-phone and the hand-held wireless device was poor. While Canadian officials from Ottawa, Dublin, and elsewhere, under the leadership of Canada's Ambassador to Spain, Daniel Molgat, went to Cork to help families cope with the tragedy, it is clear that as a country we were simply ill equipped to deal with the full dimension of the disaster. I have spent some time discussing these efforts with both Canadian officials and the families. The latter feel deeply that their diverse needs were simply unmet. For their part, Canadian officials point to the long days and nights attempting to respond to the disaster, and the weight of a horrendous crime scene that they still carry with them.

Since that time, the Canadian Department of Foreign Affairs has set up an around the clock operations centre in Ottawa that can be brought together on short notice, answer questions from Canadians, and co-ordinate relief and consular efforts to help families in distress. It has been put to use to considerable effect during the tsunami relief effort and other issues affecting Canadians overseas, and is an incomparable improvement to what was available in 1985, when one duty officer would be on call at off-duty hours to muster a response. There are standing operating procedures for officers in Canada and abroad on measures to be taken to respond to a consular or other crisis.

A deeper analysis of both the experience of families and the official response is required, to ensure that lessons have been truly learned.

4. The RCMP and CSIS: Background

From the very start of the investigation into the Air India disaster, both CSIS and the RCMP were involved. The two agencies had been separated in 1984, following the report of Justice David Macdonald concerning certain activities of the RCMP. The main thrust of the Macdonald Report was that security intelligence work should be separated from policing, and that the activities of a new agency, the Canadian Security Intelligence Service, should be subject to both judicial approval for warrants, as well as general oversight review by a new body, the Security Intelligence Review Committee, as well as the office of the Inspector General. CSIS would not be a police agency, and CSIS agents would not be police officers.

The government accepted this recommendation, but it was not without controversy. Concerns were strongly expressed that the neat division between security intelligence on the one hand and policing on the other was artificial, and that in fact the lines between the two were frequently blurred.

Recognizing the need for the two agencies to work closely together, a Memorandum of Understanding (MOU) was signed July 17, 1984, in which the conditions related to the transfer and sharing of information between CSIS and the RCMP were outlined.[3] The agreement first states that "pursuant to section 12 of the *CSIS Act*, CSIS shall provide … to the RCMP as it becomes known/available to CSIS or if specifically requested by the RCMP … assessments and/or information concerning any threat to the security of Canada relevant to the role and responsibilities of the RCMP..."[4] Further, the agreement states that pursuant to section 13 and 19(2) of the *CSIS Act*, the CSIS shall provide the RCMP with information "relevant to the investigation and enforcement of alleged security offences or the apprehension thereof which fall within the primary responsibility of the RCMP pursuant to section 61(1) of the *CSIS Act*."[5] It was noted "any disagreement that can not be resolved by the Director [of CSIS] and Commissioner [of the RCMP], shall be referred to the Solicitor General for resolution."[6]

When providing direction regarding the impact of Bill C-9[7] and the creation of CSIS, then Solicitor General Robert Kaplan P.C., Q.C, M.P. wrote to CSIS Director Finn, and RCMP Commissioner Simmonds that:

> ... the separation of the security intelligence role from the RCMP must not inhibit the passage of information between the RCMP and the CSIS. The CSIS and

[3] July 17, 1984, Memorandum of Understanding between the RCMP and CSIS.

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] In January 1984, the Government introduced *Bill C-9*. This bill was revised and was passed by the House of Commons and the Senate in June 1984, and on July 16, 1984, *Canadian Security Intelligence Service Act* (an *Act to establish the Canadian Security Intelligence Service*) was proclaimed.

> the RCMP have symbiotically related duties and responsibilities in the security field. Neither organization can fully, or effectively, achieve its national security related goals without the co-operation and assistance of the other.[8]

Furthermore, one of the stated principles articulated in the document was that "the RCMP will rely on the CSIS for intelligence relevant to national security offences"[9], and that "the RCMP and CSIS will consult and co-operate with each other with respect to the conduct of security investigations."[10]

A question that has to be answered with respect to the Air India investigation is whether this consultation and co-operation in fact occurred, and whether it is occurring today.

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[8] Letter of July 24, 1984, from Robert Kaplan to CSIS Director Finn and RCMP Commissioner Simmonds, as presented by the RCMP on October 11, 2005.

[9] MOU, *supra* note 3.

[10] *Ibid.*

5. Investigation, Charges and Trial

After the bombings, more than 200 RCMP investigators and support staff were deployed to the investigation of the Air India and the Narita airport bombings. The investigation was national and international in scope. The majority of the physical evidence was uncovered at the Narita blast site and investigation surrounding Mr. Reyat's acquisition of bomb components. Searches and communication intercepts of suspects were numerous. The Air India Flight 182 crime scene generated only a minimal amount of physical evidence as the wreckage was located over 6,000 feet below the ocean's surface and only a very small portion was ever recovered.

On November 6, 1985, the RCMP conducted a search of the homes of Mr. Parmar, Mr. Reyat and three others. Following the sweep, Parmar and Reyat were arrested on weapons, explosives and conspiracy charges. The RCMP said at the time that the arrests were part of their investigation into the Air India disaster.

The charges against Mr. Parmar were dropped due to lack of evidence but Mr. Reyat was charged with three counts relating to the ignition of an explosive device in the woods outside Duncan, British Columbia and a fourth count related to a weapon found in his home during a search by police. Reyat eventually pled guilty to two counts, paid a fine of $2,000 and a stay of proceedings was entered with respect to the other two counts. Shortly after that, he took his family to Coventry, England. However, he remained a key suspect in the Air India bombings.

In February 1988, police in Britain arrested Mr. Reyat and charged him with making the bomb that exploded at the Narita Airport. He was extradited to Canada on December 13, 1989. His trial began on September 17, 1990, and lasted eight months. On May 10, 1991, he was found guilty of manslaughter by Justice Paris of the British Columbia Supreme Court and later sentenced to 10 years in prison.

Despite the arrest of Mr. Reyat, the investigators were having difficulty finding sufficient proof to charge others. While Parmar was clearly identified as a member of the conspiracy, he was killed in an encounter with Indian authorities in 1992. There were other problems regarding the establishment of a reward for information leading to a conviction. After some delay in getting approval for a reward, this was finally announced in 1995.

On October 27, 2000, Malik and Bagri were arrested in relation to the bombings. Malik and Bagri were charged jointly with eight counts under the *Criminal Code of Canada*. On June 5, 2001 Crown Counsel filed a new indictment, adding Reyat to those already charged on October 27, 2000. On the new indictment, Malik, Bagri and Mr. Reyat were jointly charged under the *Criminal Code of Canada* with the following:

- 1 count of first degree murder under section 218(1) of the Code;
- 1 count of conspiracy to commit murder under section 423(1)(a) of the Code;

- 1 count of attempted murder of the passengers and crew of Air India Flight 301 (Tokyo to Bangkok), under section 222 of the Code;
- 1 count of conspiring to cause bombs to be placed on board various aircraft, under sections 76.2(c) and 423(1)(d) of the Code; and
- 3 counts of causing a bomb to be placed on an aircraft, under section 76(2)(c) of the Code.

On February 10, 2003, Mr. Reyat pled guilty and was sentenced to five years in prison for manslaughter and the murder charges against him were dropped.

The trial of the other accused, Bagri and Malik, began in British Columbia Supreme Court in April 2003, before Justice Josephson, and closing submissions were heard December 3rd, 2004, for a total of 233 sitting days. On March 16th, 2005, Justice Josephson released his decision finding Malik and Bagri not guilty on all counts. In his ruling, Justice Josephson noted that:

> I began by describing the horrific nature of these cruel acts of terrorism, acts which cry out for justice. Justice is not achieved, however, if persons are convicted on anything less than the requisite standard of proof beyond a reasonable doubt. Despite what appear to have been the best and most earnest of efforts by the police and the Crown, the evidence has fallen markedly short of that standard.[11]

Justice Josephson found that the evidence against Malik and Bagri was not of sufficient credibility to meet the standard of proof in a criminal trial, which is guilt beyond a reasonable doubt. Unlike the Reyat trial, there was no physical evidence that could link these two particular individuals to the conspiracy. The Crown relied on several witnesses coming forward who testified as to what they said they knew and had been told. Thus, the case turned on the trial judge's view of the reliability of the testimony of the witnesses who came forward.

The trial was long and complex, the most expensive and difficult in the history of the country. Its conclusion naturally sparked a widespread debate among the families, the media, and the broader public.

The trial before Justice Josephson was significant for many reasons. First, he found that there was one conspiracy with two bombs, and that the bombs were put on board two Canadian Pacific planes departing Vancouver — one in a bag marked "M. Singh" destined for Air India Flight 182 and the other in a bag marked "L. Singh" destined for Air India Flight 301. Justice Josephson held:

> The foregoing leads to an overwhelming inference that the bomb which precipitated the destruction of Air India Flight 182 was contained in the M. Singh bag. Both suitcases were part of one conspiracy, a conspiracy that saw the successful detonation of an explosive device in the L. Singh bag linked to Mr. Reyat and Mr. Parmar. That the M. Singh bag, in all these circumstances, could have contained something other than an explosive device defies both logic and common sense.

This is an important conclusion given the number of alternative theories in respect

[11] *Malik*, *supra* note 1 at para. 1345.

of the bombings that were put forward by a variety of witnesses and other individuals.

Second, Justice Josephson recognized that Mr. Parmar was generally acknowledged by both the Crown and the defence as being the leader in the conspiracy to commit the crimes at issue.[12] This finding was important because it connected Mr. Parmar directly with the crimes.

Third, the trial process revealed that much of the information that CSIS had obtained through its investigation was not promptly shared with the RCMP.

For example, it would appear that CSIS did not advise the RCMP that a warrant had been obtained from the Federal Court to intercept communications on Mr. Parmar. There are conflicting reports as to when CSIS advised the RCMP about the wire taps that had been placed on Mr. Parmar after the bombing. There are also conflicting stories as to the extent of a separate CSIS investigation in the immediate days after the bombing and the degree of cooperation between the RCMP and CSIS at that time. Further, there are conflicting views on whether or not the RCMP asked CSIS to maintain the tapes from the wiretap it had placed on Mr. Parmar.

Fourth, the trial process revealed that many of the tapes from the Mr. Parmar wiretap had been erased by CSIS. In particular, the tapes of the Mr. Parmar intercepts from March 27, 1985, to April 8, 1985, and from April 26, 1985 to May 5, 1985 and from May 8, 1985 to June 23, 1985 had been erased by CSIS.

In addition, the physical surveillance of Mr. Parmar was intermittent in this same period. For example, there was no such surveillance on the days immediately before the bombing.

Justice Josephson noted that the destruction of these tapes was "unacceptable negligence"[13] SIRC concluded in 1992 that the destruction of the tape erasure had no material impact on the RCMP investigation. This is a not a view shared by the RCMP, made clear in the memos of February 9th and 16th, 1996, written by Gary Bass, Assistant Commissioner of the RCMP and lead investigator into the Air India disaster since 1996.

The erasure of the tapes is particularly problematic in light of the landmark decision of the Supreme Court of Canada in R. *v. Stinchcombe*[14], which held that the Crown has a responsibility to disclose all relevant evidence to the defence even if it has no plans to rely on such evidence at trial. Justice Josephson held that all remaining information in the possession of CSIS is subject to disclosure by the Crown in accordance with the standards set out in *Stinchcombe*.[15] Accordingly, CSIS information should not have been withheld from the accused.

The defence argument in the trial of Malik and Bagri was that erased tapes might

[12] *Malik, supra* note 1 at para. 1256.

[13] R. *v. Malik*, [2004] B.C.J. No. 842 at para. 22.

[14] R. *v. Stinchcombe* (1991), 68 C.C.C. (3d) 1 (S.C.C.).

[15] *Ibid.* at para. 14.

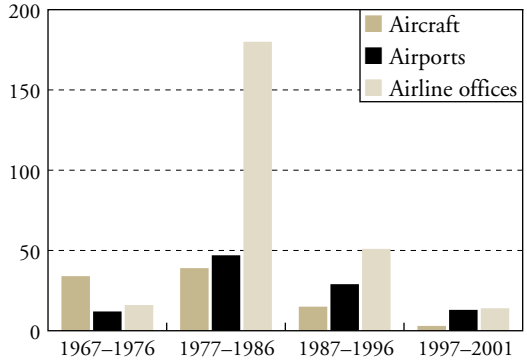
have produced information that could exonerate their clients. For that reason alone, the tapes should never have been destroyed.

The issue of the relationship between CSIS and the RCMP that was before Justice Josephson highlights the concerns about the connections between intelligence, the destruction of evidence, required disclosure and admissible evidence. It is clear that the relationship between these institutions and the interplay between intelligence and evidence requires further review.

6. Aviation Safety

Since the mid-1960s, when targeting aviation interests came into vogue, the means of attack and choice of targets have not changed that much, although there have been fluctuations in the frequency of attacks. As shown in the chart below, airports, aircraft and off-airport facilities, such as airline offices, have remained the principal targets of interest. In addition, bombings, hijackings and armed assaults remain the main modes of attack.

Bomb Attacks on Aircraft, Airports and Airline Offices 1967–2001



Source: 1967–1996 Data from Ariel Merari, "Attacks on Civil Aviation: Trends and Lessons," Lecture at the White House Commission — George Washington University Conference on Aviation Safety in the 21st Century. 1997–2001 Data from FAA Criminal Acts against Civil Aviation 2001 Edition. This was the last year of this FAA publication.

For purposes of information, I am attaching as **Appendix 3**, a list compiled by Transport Canada of terrorist incidents involving aircraft over the last 50 years.

The Air India Flight 182 incident was not the first time explosive devices were placed in checked baggage, nor would it be the last. On September 7, 1974, a Trans-World Airlines jet with 88 people aboard crashed off the coast of Greece following an explosion in the baggage compartment. Similarly, on December 21, 1988, Pan Am Flight 103 exploded over Lockerbie, Scotland, killing all 259 people on board as well as 11 on the ground. An explosive device had been hidden in a Toshiba radio cassette player in a suitcase. Examples can also be found of improvised explosive devices being assembled on board aircraft.

The attacks of September 11, 2001 represented a shift in paradigm in that the aircraft themselves were used as weapons; although suicide attacks using transportation assets is not a new phenomenon. There have been at least 20 suicide attacks since 1996, and, according to statistics, three quarters of all suicide bombings have taken place since September 11, 2001.

In terms of suicide terrorism and aviation security since September 11, had Richard Reid been successful in detonating his shoe bomb aboard American Airlines Flight 63 from Paris to Miami in December 2001, the incident would have qualified as a suicide mission. The near-simultaneous explosion of two Russian passenger aircraft on August 24, 2004, is generally believed to have been the work of two suicide bombers.

Focussing on the Air India tragedy, Indian targets around the world had been the subjects of internal and external security threats for decades. The risks associated with Air India flights to and from Canada were taken seriously. Yet disaster still struck.

Because of the ambient threat in 1985, Air India had more extensive security measures than almost any other Canadian or international carrier. Air India had, in

accordance with the *Foreign Aircraft Security Measures Regulations*, submitted a copy of its security program to the Minister of Transport. The Air India program included:

- Established sterile areas.
- The physical inspection of all carry-on baggage by means of hand-held devices or x-ray equipment.
- Control of boarding passes.
- Aircraft security.
- The off-loading of baggage of passengers who failed to board flights.
- The full screening of all passengers and carry-on baggage.
- The physical inspection or x-ray inspection of all checked baggage.
- A 24-hour hold on cargo except perishables received from a "known shipper" unless a physical search or x-ray inspection was completed.
- Security screening of all flight deck and cabin crew.
- No screening exemptions for Indian VIPs or embassy staff, including ambassadors.
- Aircraft inspections for the presence of weapons at the originating station.
- Cargo hold checks prior to loading.
- Constant surveillance of baggage on the ramp and in transit carts.
- Preparation of catering supplies and food in a secure area and measures to ensure they were not unattended while in transport.
- Inspection of catering supplies and food upon delivery to the aircraft.

As we have seen, all these additional measures were not enough to stop the conspirators from getting the bomb on the plane. Transport Canada enacted additional security measures for all Canadian and foreign carriers for all international flights from Canada on June 23, 1985, as an immediate response to the Air India Flight 182 tragedy and the baggage cart explosions at Narita Airport. These measures included:

- More rigorous screening of all passengers and carry-on baggage.
- The physical inspection or x-ray inspection of all checked baggage (international destinations).
- A 24-hour hold on cargo except perishables received from a known shipper unless a physical search or x-ray inspection was completed.
- The acquisition and deployment of 26 explosive detector units, which were in the final stages of testing and development at the time of the Air India tragedy.
- The acquisition and deployment of additional carry-on luggage x-ray units, hand-held metal detectors and walk-through metal detectors.

The Air India and Narita disasters transformed Canada's civil aviation program. These two events also changed the international environment and generated new approaches to protecting passengers, airports and aircraft around the world.

In the aftermath of the Air India tragedy, the Indian Government's Kirpal Commission of Inquiry and the Canadian Aviation Safety Board (CASB) began separate investigations.

Numerous recommendations stemming from the Kirpal Commission's report to improve aviation security and prevent the placement of explosive substances on board commercial aircraft were implemented by Canada.

As the Canadian Aviation Safety Board's mandate limited its investigation to the disaster itself, the Government of Canada felt a more holistic review of aviation security was required. It asked the Interdepartmental Committee on Security Intelligence to do a thorough review of airline and airport security. Those findings became known as the Seaborn Report, in recognition of its author, Blair Seaborn, at that time a senior official at the Privy Council Office and the Chair of Interdepartmental Committee on Security Intelligence.

Foremost amongst the changes recommended by Mr. Seaborn was the introduction of stringent requirements that forbade the carrying of checked baggage on international flights unless the passenger was also on board.

Canada was the first ICAO member country to require:

- Passenger/baggage reconciliation on international flights, a measure later extended to include domestic flights. (ICAO, in recognition of Canada's initiative as a best practice, mandated passenger-baggage match as the international standard in December 1987);
- Comprehensive background checks for airport workers;
- Removal of baggage coin lockers from major airports; and
- The banning of the use of cameras in and around security checkpoints.

Other significant improvements to Canada's aviation security regime included the following enhancements:

- The consolidation of the security functions in Transport Canada by the creation of a dedicated group, now known as the Security and Emergency Preparedness Directorate;
- Increase in the number of security inspectors and other personnel assigned to the Security and Emergency Preparedness Directorate;
- Funding of five million dollars for the development of new and innovative technologies through the Research and Development Program;
- General overhaul of the regulatory framework by creating new regulations and a graduated system in response to increased threat levels; and
- More efficient sharing of security intelligence information with domestic and international partners.

After the events of September 11, 2001 further regulatory and technical changes occurred. In the December 2001 budget, the Government of Canada allocated $2.2 billion over 5 years for:

- Creation of a new organization called CATSA to take over responsibility of pre-board screening passengers and carry-on baggage from air carriers.
- The hiring of 59 additional Transport Canada Security Inspectors across the five regions in the National Capital Region.

- Funding for aircraft security modifications (up to $30 million).
- One-time payment for increased police presence and security at airports (up to $20 million).

Other enhancements to aviation security include requiring all passengers in Canada to be subject to new limits on carry-on luggage and all passengers traveling on flights bound for the U.S. to be subject to random secondary searches prior to boarding their aircraft.

The current measures for checked baggage security are generally the same as existed immediately prior to September 11, 2001. One major enhancement however, is that checked baggage on flights to the U.S. must now be screened, using one of a number of approved configurations of conventional x-ray equipment, explosives detection equipment and physical means. By January 1, 2006, all checked baggage from Canadian airports for any destination will be subject to screening.

Given the foregoing, it would be fair to say that the regulatory environment today is improved over that of 1985.

It must also be said, however, that in a shrinking world, air transportation security and safety are only as safe as the weakest link in the chain. Canada's membership in the ICAO is one forum that should lead to more aggressive steps worldwide. While all passenger luggage will be screened in Canada by January 1, 2006, the same is not true of cargo. This is a serious gap in Canada and around the world. An ICAO security audit of member countries is not public, nor is the security plan of action a permanent part of ICAO's budget. These are major issues because they mean that whatever domestic issues are addressed, they can be undermined by weaknesses in other parts of the world.

I have toured both the Toronto and Vancouver airports in the company of officials from the airport authorities, CATSA, Transport Canada, Air Canada and Air India, and have also met with officials at the International Civil Aviation Organization in Montreal. But, as evidenced by the recent CBC investigation on "The Fifth Estate" regarding Canada's aviation security, there remain significant issues to be addressed in this area.

The Air India bombing is proof of the importance of the human factor. Better regulations and more efficient technology matter, but they are only as good as the people enforcing them. Tens of millions of people fly around the world every year, passengers in a hurry to get to their destination as quickly as they can. Security checks take time, the pressure is always there to do things quickly. Security work can be repetitive, increasing the risk of human error.

The Minister of Transportation has indicated recently that the statutory review of the legislation creating CATSA will include an analysis of security more generally. I see no point in duplicating that review, provided it is independent of government and is open to a discussion with the victims of terrorism about lapses in aviation security. In the alternative, issues of aviation security could be one of the subjects of the inquiry that I am proposing in this report.

7. Issues for Further Review

The conclusion of my work is that a further inquiry should be held to provide satisfactory answers to the following questions:

1. Was the assessment by Canadian government officials of the potential threat of Sikh terrorism in the period prior to 1985 adequate in light of the information reasonably available at the time, and was there sufficient co-ordination of a response by Canadian government agencies? If there were deficiencies in the assessment, and in the response, have systemic issues been effectively resolved, such that similar errors would not be committed today?
2. In the periods before and after June 23, 1985, were there problems in the relationship between CSIS and the RCMP and any other government departments or agencies that detrimentally affected the surveillance of terrorist suspects and the investigation of the Air India bombings, and have these problems now been resolved? If not, what further changes in practice and/or legislation are required to ensure an effective co-operation?
3. The investigation and prosecutions in the Air India matter point to the difficulty of establishing a reliable and workable relationship between security intelligence and evidence that can be used in a criminal trial. The intelligence/evidence/enforcement conundrum is not unique to Canada. Drawing on our own and other closely related experiences, how can we deal with these relationships in an effective way today?
4. There were grievous breaches of aviation security in the Air India bombing. Has Canada learned enough from the Air India bombing in terms of its public policy in this area, and what further changes in legislation, regulation, and practice are required?

I see each of these questions as falling clearly into the category of issues that still need to be addressed. The first speaks to the understandable concern that a threat, once identified, must be dealt with effectively. This is not a case of "Monday morning quarterbacking". Any analysis has to deal with the context of the time and with people working with imperfect knowledge. But a review of the record does leave a sense that there are still important issues to be faced in the area of threat assessment and subsequent action.

The second and third issues follow equally clearly from the public record and my interviews with officials. The splitting off of security intelligence functions from the RCMP, and the creation of the new agency, CSIS, came just at the time that terrorism was mounting as a source of international concern. At the time of the split, counter-intelligence (as opposed to counter-terrorism) took up 80% of the resources of CSIS. The Cold War was very much alive, and the world of counter-intelligence and counter-espionage

in the period after 1945 had created a culture of secrecy and only telling others on a "need to know" basis deeply pervaded the new agency.

The 9/11 Commission Report in the United States is full of examples of the difficulties posed to effective counter-terrorist strategies by the persistence of "stovepipes and firewalls" between police and security officials. Agencies were notoriously reluctant to share information, and were not able to co-operate sufficiently to disrupt threats to national security. There is, unfortunately, little comfort in knowing that Canada has not been alone in its difficulties in this area. The issue to be faced here is whether anything was seriously wrong in the institutional relationship between CSIS and the RCMP, whether those issues have been correctly identified by both agencies, as well as the government, and whether the relationships today are such that we can say with confidence that our security and police operations can face any terrorist threats with a sense of confidence that co-operation and consultation are the order of the day.

The intelligence-evidence debate is equally important. If an agency believes that its mission does not include law enforcement, it should hardly be surprising that its agents do not believe they are in the business of collecting evidence for use in a trial. But this misses the point that in an age where terrorism and its ancillary activities are clearly crimes, the surveillance of potentially violent behaviour may ultimately be connected to law enforcement. Similarly, police officers are inevitably implicated in the collecting of information and intelligence that relate to the commission of a violent crime in the furtherance of a terrorist objective.

Commissioner O'Connor's inquiry into the Arar case touches on these issues as well. At what point does "need to share" replace "need to know" as the prevailing culture? How do we manage the issues of privacy and rights of the subject when the firewalls between agencies come down? The test for a warrant which allows interception of communications under the *CSIS Act* and the provision of similar warrants under the *Criminal Code of Canada* are different. How do we ensure that we have achieved the right mix of protecting the rights of the individual and the need to ensure the protection of the security of the citizenry?

The fourth question points to a need to make sure we have learned all the lessons we need to learn from the breaches of aviation security at the time of the Air India bombing. As I have said above, this question needs to be answered by someone. If it is covered by the CATSA review, there is no need for it to be added as a subject for this proposed inquiry.

8. Form of Inquiry

Having said that there are questions still to be answered, I now turn to the equally important question of what kind of inquiry should be held to answer them.

The weeks before my appointment were marked by a renewal of the call for a public inquiry. This call had been originally made almost immediately after the atrocity occurred in 1985. The frustrating slowness and complexity of the criminal investigation led to more such demands. These reached a crescendo after the acquittal of Bagri and Malik in 2005.

In my meetings with family members and many others I have asked the question — a public inquiry into precisely what? To which I have received essentially three types of answers. The first is "to find out who committed this crime and to make sure they are brought to justice". The second is "to find which individuals in government and various police and security forces made mistakes and to hold them personally accountable for them". The third is "to establish what went wrong and make sure these mistakes are not repeated."

An inquiry to answer the first two questions would be either illegal or profoundly ill-advised. An inquiry to answer the third is in the public interest. It is important to understand the distinction between these different types of questions, and inquiries, because their consequences are very different.

It is a fundamental premise of Canadian law that an inquiry cannot be used to establish criminal or civil responsibility. As Justice Cory stated in *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada — Krever Commission)*, "A commission of inquiry is neither a criminal trial nor a civil action for the determination of liability. It cannot establish either criminal culpability or civil responsibility for damages."[16]

The courts have, over the last twenty years, engaged in the difficult exercise of balancing the broad public interest in getting to the bottom of difficult problems, and protecting the rights of the individual. Here, for example, is what Justice Cory said in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*:

> One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or skepticism, in order to uncover "the truth". Inquiries are, like the judiciary, independent; unlike the judiciary, they are often endowed with wide-ranging investigative powers. In following their mandates, commissions are, ideally, free from partisan loyalties and better able than Parliament or the legislatures to take a long-term view of the problem presented. Cynics decry public inquiries as a means used by the government to postpone acting in circumstances which often call for speedy action. Yet, these inquiries can and do fulfill an important function in Canadian

[16] *Canada (Attorney General) v. Canada (Commission of Inquiry on the Blood System in Canada — Krever Commission)*, [1997] S.C.J. No. 83 at para. 34.

> society. They are an excellent means of informing and educating concerned members of the public.[17]

But Justice Cory goes on to say,

> Nonetheless, it cannot be forgotten that harsh and persuasive criticisms have been leveled against them. Every inquiry must proceed carefully in order to avoid complaints pertaining to excessive cost, lengthy delay, unduly rigid procedures or lack of focus. More importantly for the purposes of this appeal is that risk that commissions of inquiry, released from many of the institutional constraints placed upon the various branches of government, are also able to operate free from the safeguards which ordinarily protect individual rights in the face of government action.[18]

Clearly, courts will be guided by the terms of reference of the inquiry, as well as by its scope. The Court struck down the inquiry in the *Patti Starr* case.[19] There the focus of the Court was on the terms of reference for that inquiry which clearly paralleled the wording of the *Criminal Code of Canada*, and referred directly to the conduct of specific individuals.

In the *Patti Starr* case, the majority of the Supreme Court of Canada found that:

> [n]o broader policy objective was present to distinguish that inquiry from a substitute police investigation… Neither the terms of reference nor the background facts leading up to the inquiry indicated that the inquiry was designed to restore confidence in the integrity and institutions of government or to review the regime governing the conduct of public officials. Any such objectives were clearly incidental to the central feature of the inquiry, which was the investigation and the making of finding of fact in respect of named individuals in relation to a specific criminal offence.[20]

The majority also found that:

> [t]he Commissioner need not make findings of guilt in the true sense of the word for the inquiry to be *ultra vires* the province. It suffices that the inquiry is in effect a substitute police investigation and preliminary inquiry into a specific allegation of criminal conduct by named, private citizens.[21]

In *Re Nelles at al. and Grange et al.*, a unanimous Ontario Court of Appeal, quoted with approval the words of Justice Riddell of the Ontario Court of Appeal from the 1930's:

> A Royal Commission is not for the purpose of trying a case or a charge against anyone, any person or any institution — but for the purpose of informing the people concerning the facts of the matter to be enquired into... The object of a Royal Commission is to determine facts, not to try individuals or institutions, and this consideration is sufficient to guide the Commissioner in the performance of his duty.[22]

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[17] *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] S.C.J. No. 36 at para. 62 [*Westray*].

[18] *Ibid.* at para. 65.

[19] *Starr v. Houlden*, [1990] S.C.J. No. 30.

[20] *Ibid.* at 1368–1369.

[21] *Ibid.* at 1369.

[22] Re *Nelles et al. and Grange et al.* (1984), 46 O.R. (2d) 210 at 215 (C.A.).

The Court went on to say:

> A public inquiry is not the means by which investigations are carried with respect to the commission of particular crimes... Such an inquiry is a coercive procedure and is quite incompatible with our notion of justice in the investigation of a particular crime and the determination of actual or probably criminal or civil responsibility.[23]

and further:

> This inquiry should not be permitted to become that which it could not have legally been constituted to be, an inquiry to determine who was civilly or criminally responsible for the death of the children, or, in the circumstances of this case in lay language simply: who killed the children.[24]

The law is clear. It is not possible to establish an inquiry that would attempt to answer the question: Who is criminally responsible for killing the passengers and crew of Air India Flight 182?

As noted above, Justice Josephson has established the identity of two of the conspirators. There are others, and a renewed criminal investigation is attempting once more to find these individuals and bring them to justice. Their identity and prosecution is a matter for the police, not for an inquiry.

Given the principle that an inquiry cannot establish civil responsibility and the fact that a great length of time has passed between now and the bombing, I am led to conclude that an inquiry focused on individual conduct by government, security and police officials would be ill-advised. Many will feel it a cruel irony that the delay in the calling of an inquiry should now affect its scope. Governments said for years that they were concerned that the holding of an inquiry might affect first the investigation of the bombing, and then the trials of Reyat, Malik and Bagri. Now that those particular trials are over, the families are understandably impatient that timeliness would be used as an argument against the very holding of an inquiry. The passage of time does not change the need for an inquiry, but it does inevitably affect its terms of reference and its focus.

The great distance of time is important because government policies have changed, practices have been amended. Many of the individuals involved in aspects of the case have retired, left public service, or died. Thus, the scope of any inquiry should focus much more on what government departments, and central agencies have actually learned, how have they changed, and what further changes are needed, than on a micro-examination of decisions made twenty years ago. The alternative would be a massive, multi-year undertaking that would immediately become embroiled in extensive litigation. Looking so intensively at the past would do little to assist enhancing security and prevention now and tomorrow — which look to the future.

To invoke the words of Justices Riddell and Cory, a commission of inquiry is not a court and it is not a trial. Its purpose is to establish facts, and to learn from them. It is not to try either individuals or institutions. Excessive cost, lengthy delay, unduly rigid procedures and lack of focus are all to be avoided.

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[23] *Ibid.* at 215–216.

[24] *Ibid.* at 217.

The internal practices of both the RCMP and CSIS with respect to this investigation continue to involve matters of national security. While the average traveler may discern the rough outlines of the security techniques currently in use at Canadian airports, many of the operational details of those processes must be kept confidential, lest their disclosure provide a road-map for those who seek to evade scrutiny. Important aspects of any review must, therefore, be conducted in camera, and not in public. It is better that this reality be faced now rather than in the middle of the inquiry. There is a public interest in knowing what happened, and in understanding what lessons have been learned, and what further lessons need to be learned. There is also a legitimate interest in protecting national security, and the reputational interest of individuals who have been engaged in public service. Under no circumstances should any inquiry be either seen, or constructed, as a punitive exercise.

Criminal responsibility is established in a criminal trial, and nowhere else. It is a given that whatever inquiry or review is conducted cannot conflict with an ongoing police investigation. An inquiry cannot retry those acquitted in a criminal trial. The RCMP investigation into the bombing, and other acts of violence that they believe to be associated with it, continue and indeed must be continued. If there are charges, they should be dealt with in a court.

There are also examples in Canada and other countries of the victims of crime pursuing civil remedies against those deemed civilly responsible for the death of their loved ones, notwithstanding a finding of "not guilty" in the criminal context. That remains an avenue open to exploration by the victims' families if they feel it is warranted.

We should not establish an inquiry to go over ground that has already been reviewed extensively. As I have described in this report, much has been set out in various commissions and reports that needs to be summarized and understood, not re-tried or re-litigated. An inquiry that is too open ended, or which attempts to answer the wrong questions, would be derailed quickly. It would raise the false expectation that an inquiry can "find out who did it" or "bring those responsible to book".

Finally, there are issues of effectiveness, cost, timeliness and complexity. Some have said that with a tragedy of this kind "money should be no object". But this misses the point that the public has a legitimate right to ask that whatever is done is carried out as efficiently and effectively as possible. The families have expressed a strong desire that whatever is done be done with some urgency, and that it should be effective. As more than one family member stated: "the best memorial for our loved ones is that we should learn lessons and make sure nothing like it ever happens again."

Families and many others have expressed a strong concern that an inquiry not become a "circus of lawyers", that it be timely, and that it produce results. I agree. The best way to respect those who died at the hands of terror is to make sure that we learn from this experience and shed a light on error with a view to improve security and provide better protection to the public.

Any inquiry has to meet the essential test of the public interest. While the concerns, frustration, anger and anxiety of the families of the victims of Air India have to be carefully considered, it is the interest of all Canadians that are paramount when considering what kind of inquiry should be held. A further inquiry must be as much about the present and the future as about the past. There is a need for a clear public reckoning with what has happened. In my work, I encountered an entirely legitimate anger that this tragedy has been insufficiently understood and embraced as a Canadian event. The Air India bombing was Canada's introduction into the modern age of terrorism. Have we learned its lessons?

9. Options

In my terms of reference, I have been asked specifically to provide the government with options with respect to further a review or inquiry. The options would appear to be as follows.

Option 1 — A Governmental Task Force

First, a governmental task force to ensure that the lessons learned from the Air India bombing have been applied effectively to Canadian institutions and public policy could be established. This task force could be chaired by a person from outside government, or by a senior public servant. It could also consist of deputy ministers and heads of agencies including: the Deputy Ministers of Foreign Affairs, Public Safety and Emergency Preparedness, Transport, Justice, Immigration and the Director of CSIS and the Commissioner of the RCMP.

The job of the task force would be to ensure that the issues described in this report have, in fact, been dealt with by governmental agencies. Regular implementation reports could be made public, and an open dialogue with the families of victims and other interested parties would continue.

The advantage of this form of review is that it is closely connected to the administration and policy of government and as such has the potential to lead to rapid changes within these agencies and/or organizations.

The disadvantages of this form of review are the following:

- insufficient independence from the very government organizations under review
- a risk that the work of the task force will get bogged down and lack momentum
- an absence of an independent third party examination and narrative
- a risk that accountability would be inadequate

Option 2 — A Cabinet Order in Council

A second option would be to establish an inquiry under Cabinet Order in Council, with a clear mandate to report within a certain time with respect to the issues that have been identified, giving the commission latitude to decide what part of its work would be held in camera, and which aspects would be public. This review would not be held under the *Inquiries Act*. The commissioner would be independent of the government, and would have independent counsel, staff, and a guaranteed budget. This option would be similar to Ontario provincial inquiry into the Bernardo police investigation, carried out by Justice Archie Campbell of the Ontario Superior Court of Justice in 1995–96. The Bernardo Inquiry was carried out swiftly and led to significant changes in administrative practice. Consultation with the families could be carried on as in the first option. The advantage of this

approach is its relative flexibility compared to the Option 3 discussed below. While a commissioner appointed under such an order would lack subpoena powers as set out in the *Inquiries Act*, this could be remedied by clear directions from responsible Ministers and heads of agencies with respect to co-operation and full disclosure, and indeed would have to be a condition precedent to its establishment. If such an inquiry were to be constituted, it should proceed on the basis of a definitive ministerial commitment, on behalf of all departments and agencies involved, to produce all available documents, files and records, and, to the extent possible, knowledgeable government employees to allow the inquirer to fulfill his or her mandate. These conditions could be set out in the order in council.

Option 3 — A Public Inquiry

A third option would to be to appoint a Commission of Inquiry under Part I of the *Inquiries Act*, with full powers of subpoena. It is a reasonable assumption that an inquiry of this kind could be more complex, expensive and lengthy than any inquiry established under the first two options outlined above, but focus in the terms of reference and direction in the Order in Council with respect to procedure could alleviate this concern to some extent.

The disadvantages of this approach would be: the complexity of issues of standing; the formal and adversarial nature of these proceedings as they have been conducted in the past; the cost, relative to the benefits; the risk of impact on the criminal investigation. Each of these points is significant. A generous interpretation of standing could complicate matters considerably, and would very definitely prolong the proceedings. Most major public inquiries have involved challenges and judicial reviews of various decisions of the commissioner. The costs of such inquiries are difficult to predict, because of the issues set out above. Finally, the compatibility with the ongoing criminal investigation remains a serious issue. The charges in this case are the most serious imaginable. Anything that created additional problems would be deeply counter-productive.

10. Recommendation

The Terms of Reference of the appointment of the Commission would have to be clearly defined under either Option 2 or 3. The focus of any inquiry should not be the conduct of individuals, but rather the answers to the specific questions set out above. My recommendation is that a single, independent commissioner should conduct the review, and that the terms of reference of the inquiry should refer directly to the need for a timely and efficient conduct of the inquiry.

There are advantages and disadvantages to each option. On balance, my recommendation to the Minister would be to pursue the second option, an order in council inquiry, provided specific assurances can be provided that full information and disclosure will be provided to the commissioner. If there is any doubt as to the level of co-operation being received from any government agency or department, the additional powers of subpoena can always be provided if necessary. Speed, flexibility, independence, and focus on the lessons to be learned should be at the heart of the design of the inquiry.

The Air India bombing was a catastrophic event in the history of this country. As Justice Cory pointed out in *Westray*, inquiries "fulfill an important function in Canadian society" as they "are an excellent means of informing and educating concerned members of the public."[25] However, in light of the questions that have already been answered and the legitimate concerns regarding excessive cost, length of possible delay and unduly rigid procedures, and the potential for lack of focus, my equally strong recommendation is that this inquiry should be seen as a policy inquiry. This will have implications for the inquiry's make-up, procedures, terms of reference and approach.

Whichever model is chosen, the families should be provided with the necessary resources to have input into the inquiry.

I would also recommend that the government move with dispatch. Canadians need the assurance that the lessons from this act of terrorism have been profoundly learned, and are being rigorously applied to current public policy. They have waited long enough.

In closing, I want to thank the government for giving me this opportunity. It has been a challenge, first because providing public policy advice in an area so fraught with emotion and conflict is difficult, second because the intellectual puzzle shrinks in comparison to the courage and example of those citizens who lost so much. There is an Irish saying that at times the world can break your heart. That certainly happened on June 23, 1985.

A few days before completing this report I was visited by a family member who left me a smiling photograph of an 11 year old girl, his sister, KiranJit Rai. She was killed on Air India Flight 182. He also showed me the letters his parents had received from her

[25] *Westray, supra* note 17.

classmates at King George Public School. They speak of a young girl full of fun, intelligent, beautiful. They wanted to let her parents know that "the whole school is crying". I have that picture on my desk to remind me what this has been all about.

KiranJit and 330 others were murdered by people living in Canada. They may have been assisted by people from other countries, but this is a profoundly Canadian event. Some of its perpetrators have been apprehended or killed; others are still at large. A twenty-year police investigation continues, and our search for answers, and for justice, can never stop. The inquiry I am recommending will not provide "closure" for the families or for anyone else. But it should provide us with further insight and better practices.

Appendix 1

TERMS OF REFERENCE

Independent Advisor to the Minister of Public Safety and Emergency Preparedness on Outstanding Questions with respect to the Bombing of Air India Flight 182

Context

The Air India bombing remains the worst terrorist incident in Canadian history. It is a tragedy felt by all Canadians, in particular those who lost family members and friends.

In the years since 1985, there have been a number of domestic and international investigations, inquiries and legal proceedings which have led to many improvements in Canada's public safety and transportation security systems.

The Minister of Public Safety and Emergency Preparedness wants an independent person to provide her with advice on what remains to be learned about this tragedy. She wants this advice based on a review of the various reports and recommendations, as well as interviews with government officials about steps taken to strengthen public safety and transportation security systems. She also wants this person to consult family members, continuing the dialogue she started with them on outstanding questions. Finally, she would like advice on options for addressing any outstanding questions.

The Minister has underlined that she is open to considering all options for moving forward, once she has received advice from the eminent person.

Mandate

The mandate is to provide independent advice to the Minister of Public Safety and Emergency Preparedness on whether there are outstanding questions of public interest with respect to the bombing of Air India Flight 182 that can still be answered given the passage of time and sets out the options for addressing any such questions. In order to provide the best possible advice, the Independent Advisor will be mandated to:

1. Review material related to the Air India tragedy, including
   - Domestic and international proceedings
   - The findings and recommendations of investigations and inquiries such as those by the Security Intelligence Review Committee (SIRC) and the Canadian Aviation Safety Board
   - Transportation and security (including law enforcement and intelligence) measures taken by Government of Canada departments and agencies since 1985
2. Consult with relevant persons, including family members of the victims of the Air India bombing, government officials including officials from the British Columbia Attorney General.

3. Provide to the Minister a written report on the issues of public interest surrounding this matter that:
    - Ascertains the questions and answers that have already been determined in whole or in part
    - Establishes whether there are any outstanding questions of public interest that can be answered today
    - Advises on options for addressing such outstanding questions

Appendix 2

MEETINGS

Members of the 9/11 Public Discourse Project
Air Canada Officials
Jeanne Bakermans
Warren Bass
Kim Bolan
Mr. Justice Archie Campbell
Honorable Gordon Campbell, Premier
Canadian Air Transport Security Authority
Hon. Ujjal Dosanjh
Family Members of the Victims of Air India Flight 182
Max Fawcett
Federal Bureau of Investigation
Foreign Affairs Canada
Guru Nanak Gurdwara Executive — Surrey, B.C.
Dave Hayer, M.L.A. (Surrey-Tynehead)
Justice William Hoyt, Bloody Sunday Inquiry, UK.
International Civil Aviation Organization
Salim Jiwa
Jim Judd, and other officials of the Canadian Security Intelligence Service
Department of Justice
Zuhair Kashmeri
Roderick Macdonald
Prime Minister Paul Martin
Canadian Ambassador to the US, Frank McKenna
Anne McLellan, Deputy Prime Minister and Minister of Public Safety and Emergency
Preparedness Canada
Wally Oppal, B.C. Attorney General
Prime Minister's Office
Dennis Richardson, Australian Ambassador to Washington, D.C. and former Director-General of Australian Security Intelligence Organization
Indian Foreign Minister Singh
Daniel Sutherland, U.S. Department of Homeland Security
Transport Canada
Vancouver International Airport Authority
World Sikh Organization
Robert Wright and associates at the B.C. Crown Office
Giuliano Zaccardelli, Gary Bass and other members of Royal Canadian Mounted Police

Appendix 3

CHRONOLOGY OF AVIATION TERRORISM 1948–2001

Source: Gero, David, *Flights of Terror — Aerial Hijack and Sabotage Since 1930* (1997)

1948

- Hijacking of CSA flight from Prague to Bratislava.

1949

- Canada — September 9th, Quebec region, near Sault Au Cochon, Quebec: a bomb exploded in a forward baggage compartment of a Quebec Airways (Canadian Pacific) DC-3; 23 people died.

1956

- New Greek Cypriot EOKA bombing campaign starts against British rule in Cyprus leading to the destruction of a British aircraft at Nicosia airport on 3 March and a Dakota on 27 April 1956. Violence continues for four years until Cyprus is granted independence.

1959

- The hijacking of a Pan Am flight during the coup in Peru hijacking of a Cuban internal flight by Raule Castro in 1959 as the first political hijacking.
- Cuban airliner hijacked by the Twenty-Sixth of July Movement and forced to attempt night landing in remote airfield in Cuba. The aircraft crashed killing seventeen of the twenty people on board.

1961

- First ever United States aircraft hijacked and forced to fly to Communist Cuba. Puerto Rican born Abntulio Ramirez Ortiz forced the National Airlines Corvair 440 to fly to Havana at gun point and was then given asylum. He was jailed for twenty years when he returned to the US in 1975.

1965

- Seven British children were injured when a grenade was thrown at the Aden airport terminal in Yemen.

1965

- Canada, British Columbia, Canadian Pacific Airlines Douglas DC-6B, mid-air collision, believed to be a sabotage act, all 52 people died.

1966

- El Condor nationalists hijack Argentine aircraft from Buenos Aires to the British ruled Falklands in a bid to bring attention to Argentina's claim to the islands. They eventually surrendered their hostages and were returned to Argentina by the British authorities.
- A DC-3 aircraft was blown up in mid-air near Aden, Yemen, killing all twenty-eight people on board. The bomb was placed in the baggage area of the aircraft.

1967

- An aircraft carrying Katangan rebel leader Moise Tshombe was hijacked en route to Ibiza, Spain, and forced to land in Algeria in a bid to extradite him to his native Congo. The Algerians kept him under house arrest until he died two years later.
- A British European Airways Comet aircraft was destroyed by a bomb, which detonated in the passenger cabin over Rhodes, Greece. All 66 people on board were killed.

1968

- A Delta Airlines DC8 was forced to fly to Havana, Cuba, in the first successful hijacking of a US commercial airliner since 1961. The hijacker was granted political asylum.
- Popular Front for the Liberation of Palestine seized an El Al Boeing 707 in Rome, Italy, and diverted it to Algeria. 32 Jewish passengers were held hostages for five weeks.
- An Israeli was killed in a Popular Front for the Liberation of Palestine machine gun attack on El Al aircraft at Athens airport, Greece. Two terrorists were captured but later released by the Greek government after a Greek aircraft was hijacked to Beirut. Three days after the Athens attack, Israeli commandos raid Beirut airport, Lebanon and blow up 13 Arab airliners worth $43 million.

1969

- Palestinian terrorists attack El Al Boeing 707 on runway at Zurich airport, Switzerland, raking the fuselage with gunfire, killing the pilot and three passengers. An Israeli sky marshal/security guard returned fire killing one of the terrorists.
- A TWA aircraft hijacked by Popular Front for the Liberation of Palestine terrorists after taking off from Rome, Italy, and forced to fly to Damascus, Syria. All of the passengers and crew were released unharmed but the terrorists exploded a bomb in the cockpit of the aircraft.

1970

- Three Arab terrorists attempted to hijack an El Al Boeing 707 at Munich airport, Germany, but are thwarted by the pilot who grappled with a terrorist in the terminal lounge. An Israeli was killed and eleven others wounded.
- "Skyjack Sunday" took place at Dawson Field, Jordan. TWA, Swissair, BOAC aircraft, along with more than four hundred hostages, were hijacked and ordered to the Jordanian airport by the Popular Front for the Liberation of Palestine. Another terrorist team tried to hijack an El Al Boeing over London but security staff foiled the attempt. The German, Swiss and British Governments all agreed to the PFLP's demands and released a number of terrorists held in their jails.

1971

- Canada — A terrorist allegedly hijacked Air Canada Flight 932 while the plane was in Thunder Bay, Ontario, to Toronto. He allegedly brandished a handgun and a grenade and demanded to be flown to Cuba.

1972

- Israeli commandos stormed a hijacked Belgian Sabena aircraft at Ben Gurion airport, Israel. Four Palestinian Black September terrorists on board the aircraft were killed and the hostages freed. One passenger and five Israeli soldiers were killed.
- The Popular Front for the Liberation of Palestine and Japanese Red Army terrorists opened fire in the passenger terminal of Lod Airport, Israel. 26 civilians were killed and seventy-eight wounded.

1973

- A Black September suicide squad attacked the passenger terminals at Athens airport, Greece, killing three civilians and injuring 55.
- Palestinian terrorists bomb a Pan Am office at Fiumicino airport, Rome, Italy. 32 people were killed and 50 injured. The terrorist then took seven Italian policemen hostage and hijacked an aircraft to Athens, Greece. After killing one of the hostages, they flew on to Kuwait. The terrorist eventually surrendered.

1974

- A British DC-b aircraft was hijacked at Dubai, UAE, by Palestinian Rejectionist Front terrorists. The aircraft was flown to Tunisia where a German passenger was killed.
- A Trans-World Airlines jet with 88 people aboard crashed off the coast of Greece following an explosion in the baggage compartment. The attack was the work of the Popular Front for the Liberation of Palestine. (Source — TC's Intelligence Branch).

1975

- Arab terrorists attacked Orly airport, Paris, France, seizing ten hostages in a terminal bathroom. Eventually the French provided the terrorists with a plane to fly them to Baghdad, Iraq.

1976

- An Air France aircraft was hijacked by a joint German Baader-Meinhof/Popular Front for the Liberation of Palestine terrorist group and its crew were forced to fly to Entebbe airport in Uganda. Some two hundred and fifty eight passengers and crew were held hostage but all non-Israeli passengers were eventually released. On 4 July Israeli commandos flew to Uganda and rescued the remaining hostages. All of the terrorists were killed in the rescue, as were three passengers and one commando.
- Popular Front for the Liberation of Palestine and Japanese Red Army terrorists attacked a passenger terminal at Istanbul airport, Turkey, killing four civilians and injuring twenty.
- A TWA aircraft en route from New York, United States, to Paris, France was hijacked by Croatian terrorists, seizing 93 hostages. The terrorists surrendered in Paris and released their hostages.

- A New York policeman was killed by a bomb left by the terrorists in a locker in Grand Central Station.

1977

- Four Palestinian terrorists hijacked a German Lufthansa Boeing 737 and ordered it to fly around a number of Middle East destinations for four days. After the terrorists killed the plane's pilot, the aircraft was stormed by German GSG9 counter-terrorist troops, assisted by two British Army Special Air Service soldiers, when it landed at Mogadishu, Somalia. All the ninety hostages were rescued and three terrorists were killed.

1978

- An aircraft was hijacked at Larnica airport, Cyprus by Arab terrorists who had just murdered a leading Egyptian publisher at a nearby hotel. After being refused permission to land at a number of Arab capitals the hijackers returned to Larnica. Egyptian commandos landed and tried to attack the plane but resulted in a gun battle with Cypriot troops. Fifteen Egyptian troops, seven Cypriot soldiers and a German cameraman were killed.
- An El Al stewardess was killed when the crew bus ambushed by the Popular Front for the Liberation of Palestine terrorists outside the Europa Hotel, London, England.
- 12 people were injured in a bomb explosion on an American Airlines flight in the United States. The so-called Unabomber is held responsible for the incident.
- An Air Florida flight from Key West to Miami, United States, was hijacked by seven Cubans and flown to Cuba, where they released their hostages and were taken into custody. Six further US aircraft were hijacked to Cuba over the next month. All the passengers were released unharmed.
- Three passengers were killed when Cubans hijacked an aircraft in Peru and demanded to be flown to the United States.
- The president of United Airlines was injured in a bomb attack in Chicago, United States, that was blamed on the Unabomber.
- Four Iranian hijackers were killed when Turkish security forces stormed a hijacked Turkish Airlines aircraft after it landed in eastern Turkey. The terrorists killed one of the 155 hostages.

1984

- A Kuwaiti aircraft was hijacked en route to Pakistan from Dubai by Iranian backed Iraqi Shia terrorists. The aircraft was forced to land in the Iranian capital, Tehran, after two Americans had been killed. The terrorists surrendered to the Iranian authorities and were later released.

1985

- A Red Army Faction bomb exploded at Frankfurt Airport, Germany, killing three people.

- A TWA Boeing 727 was hijacked en route to Rome, Italy, from Athens, Greece, by two Lebanese Hezbollah terrorists and forced it to fly to Beirut, Lebanon. The eight crew and one hundred and forty five passengers were then held for seventeen days, during which time one of the American hostages was murdered. After being flown twice to Algiers, on the aircraft's return to Beirut the hostages were released after the US Government pressured the Israelis to release four hundred and thirty five Lebanese and Palestinian prisoners.
- TWA Flight 847 was hijacked over the Mediterranean, the start of a two-week hostage ordeal. The hijackers, linked to Hezbollah, demanded the release of prisoners being held in Kuwait as well as the release of 700 Shiite Muslim prisoners being held in Israeli and Lebanese prisons. A US Navy diver was killed and 39 passengers were held hostage when the demands were not met. The passengers were eventually released in Damascus after being held in various locations in Beirut.
- An Air India Boeing 747 was destroyed by a bomb over the Atlantic, killing all three hundred and twenty nine people on board the aircraft. Sikh terrorists were blamed for the attack, which was the worst single terrorist incident to date.
- Two cargo handlers were killed at Tokyo [Narita] airport when another bomb [attributed to Sikh extremists] placed in a bag offloaded from a CP Air flight arriving from Vancouver, and en route for an Air India flight] exploded [in the transit area].
- 98 passengers and crew of an Egypt Air aircraft were held hostage by Palestinian terrorists at Luqa, Malta. Five passengers were shot by the terrorists and two died. An assault by Egyptian Force 777 commandos resulted in some 57 passengers being killed when the terrorists set off explosives in the aircraft.
- A suicide grenade and gun attacks against passenger terminals at Rome and Vienna airports by the Abu Nidal terrorist group resulted in 16 people being killed and more than 100 civilians being injured.
- A Pan Am 747 was seized by Arab terrorists in Pakistan. They killed seventeen hostages and wounded another 127 after panicking and thinking they were under attack. Pakistani security forces then stormed the aircraft and freed the hostages.

1988

- 122 people were held hostage after a Kuwaiti Boeing 747 was hijacked and diverted to Mashad, Iran, before flying on to Cyprus. The Kuwait Government refused requests by the Iranian-backed Shia hijackers to release 17 convicted terrorists. After 15 days the hijackers were granted asylum in Algeria and released their hostages unharmed.
- A Pan Am Boeing 747 was blown up over Lockerbie, Scotland, by a bomb believed to have been placed on the aircraft at Frankfurt Airport, Germany. All 259 people on the aircraft were killed by the blast which has been attributed to a number of Middle Eastern terrorist groups. Two Libyan intelligence operatives were committed in connection with this attack.

1989

- 127 people were killed when a French UTA aircraft exploded in midair over Niger. The French government issued warrants for the arrest of four Libyans.

1994

- Rwandan president Juvenel Habyarimana was killed when his aircraft was shot down by surface-to-air missile while approaching Kigali airport, Rwanda, on his return from a regional government leaders meeting. The incident sparked a massive outbreak of ethnic violence that resulted in more than a million people being killed.
- An Air France Airbus was seized by Algerian Islamic terrorists and forced to fly to Marseilles airport, France. All of the terrorists were killed when French CIGN counterterrorist troops stormed the aircraft and rescued the 170 passengers and crew, 16 of whom suffered minor injuries.

1996

- Two Cuban MiG fighters shot down a light aircraft flown by four Cuban exiles of the "Brothers to the Rescue" organization over the Gulf of Mexico.
- Six Iraqi dissidents hijacked a Sudan Airways A3l0 Airbus airliner en route from Khartoom to Jordan and divert it to Stansted, England. After negotiating with British authorities the hijackers released all of the 13 crew and 180 passengers unharmed.
- An Ethopian Airways Boeing 767 was hijacked en route from Addis Adaba to Niarobi and diverted to Australia. It ran out of fuel and crashed into the Indian Ocean near the Comoros Islands killing 123 people. Fifty-two people including two hijackers survived.

1998

- A Spanish Boeing 727 aircraft was hijacked on an internal flight, with 130 people on board. All were eventually freed unharmed after the single hijacker gave himself up.
- An Air France Flight 8969, bound for Paris from Algiers, was hijacked by the Algerian terrorist organization Armed Islamic Group (GIA). The four hijackers boarded the aircraft disguised as Air Algerie security staff. Authorities delayed departure, but were intimidated into giving the go-ahead when the hijackers killed 2 of the 227 persons on board. The French government decided not to allow the aircraft to approach Paris because its consulate in Oran, Algeria, had received an intelligence warning that the hijackers intended to blow up the aircraft over Paris. The flight crew convinced the hijackers that refueling in Marseille was required. After the aircraft touched down hours of negotiations ensued, whereupon the terrorists demanded fuel. French police commandos (GIGN) stormed the aircraft and after a 20 minute gunfight successfully rescued the 161 remaining passengers (some had been released during negotiations) and 3 flight crew.

2001

- Four passenger jets were hijacked and two of them were deliberately crashed into the towers of the New York World Trade Centre. Both 110-storey buildings were demolished within an hour after impact, killing more than 2,800 people. The third aircraft was deliberately flown into the side of the Pentagon building in Arlington, Virginia. The fourth aircraft was crashed into the ground outside of Pittsburgh. There were reports that that aircraft was headed for the White House of the US Capitol building.