Air India Flight 182

A Canadian Tragedy

VOLUME TWO

Part 1: Pre-Bombing

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VOLUME TWO
PART 1: PRE-BOMBING

CHAPTER I: WHAT WAS KNOWN ABOUT THE THREAT?

1.0 Introduction

The first issue in the Commission's mandate[1] is to decide whether there were "... deficiencies in the assessment by Canadian government officials of the potential threat posed by Sikh terrorism before or after 1985."[2] The first question is: were there intelligence failures prior to June 22, 1985?

In answering this question it is important to look at all the stages of threat assessment, commencing with the development of intelligence.

There are four phases in the intelligence cycle: tasking, collection, analysis and distribution. A significant failure in any of these will lead to what is called an intelligence failure.[3]

To help answer the question of what took place during the pre-bombing period (events prior to June 22, 1985), the Commission has focused on a series of "critical incidents" – real, but singularly dramatic, episodes that serve to illustrate gaps that occurred in the recognition of responsibility, the development of an intelligence plan, the assignment of resources and the recognition, handling, assessment and dissemination of information.

A word of caution is required. Hindsight always makes it easier to notice gaps, identify errors and point out failures. The reader is urged to digest the details of the following events. Each description may contain clues about the ways in which systems, structures and individual actions could have triggered a better or different response to pieces of information that arose in various contexts.

In the critical incidents that follow, a series of seemingly unrelated clues appear that may fit together to solve a puzzle. At the time these events took place, there was no awareness that such a puzzle existed. Thus, the Commission has a retrospective advantage.

The puzzle pieces take the form of possible leads, tips and warnings: some coming from human informants, some coming from intercepted conversations,

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1 Adapted from Remarks by Mark Freiman, Lead Commission Counsel, Transcript vol. 20, April 30, 2007, pp. 1867-1870.

2 Terms of Reference, P.C. 2006-293, para. b(i).

3 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1442-1443.

others coming from the intelligence community in other countries, still others coming from direct observation by domestic security and intelligence personnel. The pieces provide evidence of what the Canadian security and intelligence community were looking for, what they thought they knew, what they believed they did not know and how they planned to fill in information gaps.

These critical incidents are presented as a series of episodes, each illustrating a single bit of information, a potential clue or a proposed response to a known information gap. They identify potential issues with respect to the intelligence cycle and the flow of information during the period leading up to the bombing. Serving as markers for specific issues and possible difficulties in the intelligence cycle, these critical incidents also underpin the Commission's more detailed inquiry into the larger question of intelligence flow in its historical, institutional and practical contexts.

These fragments combine to form a mosaic; a larger picture that gives the reader a better appreciation of what happened. At the same time, they identify specific details that underlie the Commission's conclusions and recommendations.

References to these critical incidents appear often in the chapters that follow, and will help the reader understand the overall context in which decisions and actions were taken.

1.1 November 1984 Plot

The November 1984 Plot Revealed by Two Independent Sources

By October 1984, the RCMP had learned from two independent sources about a plot to bomb two Air India flights. Here, they are identified as Person 1 and Person 2.[4] In 1984, these two individuals, who had known each other since 1977, moved in shadowy circles in the Vancouver area. They both had extensive connections to a web of criminal activity within, and extending beyond, the BC region. Person 1 told the Inquiry of his dubious past, with a criminal record dating back to 1956 and approximately 16 convictions including theft, break and enter, armed robbery, and false pretences. For the past 15 years, however, he has had no criminal charges or convictions.[5]

On June 23, 1985, when Constable Rick Crook[6] of the Vancouver Police Department (VPD) learned of the fate of Air India Flight 182 and of the explosion

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4 The individuals and locations associated with this "critical incident" have been provided with aliases in agreement with the Government of Canada. Though Commission counsel do not accept the Government of Canada's position that the individuals associated with this story are "informants," the individuals involved are at some risk and summaries of the relevant documents were created and assembled in an agreed chronology for the purpose of entering the content into the public record before the Commission.

5 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1932-1974.

6 Crook is currently a temporary civilian employee with the RCMP and the Integrated Proceeds of Crime Section in Vancouver: Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1879.

that had taken place in Narita, his thoughts immediately returned to his October 1984 interview of Person 2,[7] and the information Person 2 had provided about a terrorist plot to bomb Air India planes. The fact that there had been two bombs, that the origin of the plot appeared to be out of Vancouver, and that there was thought to have been a connection to Sikh extremism led Crook to suspect that the plot he had learned about in 1984 was, in fact, related to the plot that had been carried out that day.[8]

The RCMP apparently had the very same suspicion.[9] Early on the morning of the bombing, Sgt. Wayne Douglas, of the RCMP's E Division National Criminal Intelligence Service (NCIS) Terrorist/Extremist unit in Vancouver, received a phone call at home from RCMP HQ in Ottawa[10] instructing him to go and speak with Person 2, who was at a remand centre in the lower mainland at the time, about the information that Person 2 had provided to police in the fall of 1984 about a Sikh extremist plot to bomb an Air India plane departing from Canada.[11]

In spite of CSIS's concern in 1984 that there was "... a real possiblity that Sikhs will damage an Air India plane,"[12] and in spite of information indicating that the plot was continuing even if it could not proceed in the time frame initially planned, the RCMP, from late November 1984 up to the date of the bombing, had taken no further steps to investigate the alleged plot.

Person 1 Forewarns of Plot: Sikh Extremists to Bomb Air India

In the fall of 1984, Person 1 was approached by, and met three times with, Person 2 and a third man called "Z"[13] to organize and actually put a bomb on an Air India plane. He was offered approximately $200,000, which included payment for the Air India bombing, as well as for his involvement in a separate plot to target Indira Gandhi. Person 1 was asked to find explosives to make a bomb with either a remote device or a time clock. He was told that the bombing was intended as revenge against the Indian government for the invasion of the Golden Temple. He was to go to Montreal to try to obtain access to the area where the maintenance work for Air India was conducted.[14] During his second meeting with Person 2 and with Z, Person 1 was shown a briefcase full of cash.[15] He said

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7 Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1880.
8 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1879-1881.
9 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2615; Exhibit P-120(c) pp. 3-4, (entry for June 23, 1985: doc. 526-3, p. 13).
10 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4096.
11 Exhibit P-120(c), entry for June 23, 1985, pp. 3-4; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p.4096.
12 Exhibit P-120(c), p. 2: (entry for Oct. 26, 1984: doc 229-3, p.5
13 Testimony of Person 1, vol. 20, April 30, 2007, p. 1931. This Z is not the same person as Mr. Z referred to in Section 2.5.5 (Post-bombing), Mr. Z.
14 The above evidence comes from Testimony of Person 1, vol. 20, April 30, 2007, pp. 1937-1958.
15 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1940-1941. An internal RCMP report dated in 1999 states, "If Person 1 was being truthful about Z being at all 3-4 meetings with Person 2 and Z actually carried the briefcase full of money to the second meeting and departed with it, then Z certainly was not totally forthcoming during his 1988 interview": Exhibit P-120(c), pp 10-11 (entry for Feb. 12, 1999: RCMP.SUPERTEXT.0001

that "…when they showed me the money and the equipment they want, I knew they were serious." Person 1 said that he had never met the masterminds of the plot and that Z was acting as the middleman, bringing Person 2 and Person 1 into the plot, but that someone behind Z was making the decisions. [16]

In 1984, Person 1 met a number of times with members of the RCMP's Vancouver Drug Squad (VDS). During these meetings, he provided information about criminal activity in the Vancouver area, including within the Sikh extremist community. In September 1984, two days after his first meeting with Person 2 and Z,[17] Person 1 provided information to the RCMP VDS about a plot to bomb Air India. An RCMP Investigation Report indicates that Person 1 told police that a group of East Indians was planning to plant a bomb on an Air India flight in Montreal that would detonate on arrival in India.[18] The RCMP Report does not contain the level of detail about the meetings recounted by Person 1 in testimony, and does not mention by name the individuals referred to in this Report as Person 2 and Z.

From the documents provided to the Commission by the Government of Canada, the identity of Z does not appear in police reports in the pre-bombing period.[19]

The information from the RCMP's VDS September 1984 interview with Person 1 was apparently passed by telephone to the Montreal Drug Squad on September 20, 1984.[20] There is no indication that it was shared with RCMP Protective Policing or with anyone in the RCMP or CSIS involved in the investigation of national security offences or in the threat assessment process. No investigation or further action was taken with this information until over a month later when strikingly similar information was received and passed to the RCMP by Rick Crook and Bill Warwick of the VPD.

Person 2 Forewarns of Plot: Two Bombs. Two Planes.

Rick Crook, then on the Strike Force Surveillance Team,[21] was told by the regional Crown counsel of an individual in custody, Person 2, who wanted to speak to the police. In early October 1984, Person 2 was arrested by the VPD on charges unrelated to Air India and was subsequently released on bail.[22] A week later,

16 Testimony of Person 1, vol. 20, April 30, 2007, p. 1941.
17 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1939-1972.
18 Exhibit P-120(c), p. 1 (entry for Sept. 1984: doc 1)
19 Z is first named in a July 10, 1985, report by Detective Dave Randhawa of the VPD. Randhawa interviewed Person 2 who identified Z as the individual who left India around the time of the attack on the Golden Temple and brought back a plan to hijack an Air India aircraft. According to Person 2, the attack was cancelled because too many people were involved. This is when the plan was raised to bomb rather than hijack an aircraft. See Exhibit P-120(c), p. 4 (entry for July 10, 1985: doc 493-3), Person 1 identified Z's possible involvement when he was interviewed by Sgt. Douglas in March 1986: Exhibit P-120(c), p. 7 (entry for March 1986: doc 16),.
20 Exhibit P-120(c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p. 26).
21 Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1879.
22 Exhibit P-120(c), p.1 (entry for Oct. 5, 1984: doc 23); Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.

Person 2 was arrested again, this time for conspiracy to commit murder (again, unrelated to Air India)[23] and was held without bail.[24]

Crook was directed to speak with Person 2 and was given instructions not to make any promises, but to get details about the alleged plot to bomb an Air India plane.[25] At the time, his general duties did not include dealing with Sikh extremism, so his understanding of the issue was limited. He and his partner, Detective Bill Warwick, interviewed Person 2 in the presence of Person 2's lawyer, and the interview was recorded. Prior to commencing, Person 2 signed a disclaimer (witnessed by the officers and Person 2's lawyer) indicating that he understood that the police had no authority to make any arrangements now, or in the future, in exchange for his information and that he was providing information about an alleged bombing of an airplane of his own free will and accord.[26] A transcript was produced from the recording. Early on in the interview, Person 2 reveals details of the alleged plot, which involved the potential use of a back-up bomb and two planes:

Officer: O.K. Let me just get it straight. They're, if I understand correctly
Person 2: Yah
Officer: There's a plot to put a bomb on an airplane right?
Person 2: They said yeah.
Officer: O.K.
Person 2: Maybe two.
Officer: Maybe two airplanes?
Person 2: Well is it two, two, two, yeah. I heard their problem, they say if it doesn't blow … what happens. They said … some extra when ….
Officer: Back up, back up
Person 2: I _____
Officer: A back up bomb?
Person 2: Yeah.
Officer: What kind of airplane?
Person 2: Air India 747.
Officer: Air India 747. Is this going to be leaving from Montreal?
Person 2: Yes.
Officer: And it's going to be, when?
Person 2: Well I don't know the exact date, you know, the time. A flight leaves only from Montreal in Canada. [27]

Because Air India was to release flight schedules on October 15th, there was not yet a proposed date for the bombings. Once the change in schedule was known, it would take 10 days to organize the bombing, at which point the "O.K." could come "any day."[28] Person 2 stated that no Sikhs were travelling on Air India

23 Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.
24 Exhibit P-120(c), p, 1 (entry for Oct. 12, 1984: doc. 23); Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.
25 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1880-1881.
26 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1882-1884.
27 Exhibit P-121, pp. 3-4. This is the original record of the transcript.
28 Exhibit P-121, pp. 37-38.

flights at the time[29], and that the purpose of the bombing was to "...strike at the government" of India and to get back at Indira Gandhi.[30] Person 2 felt that this plot was serious and would be carried out.[31]

Person 2 reported having met three to four weeks prior to the interview with a small group of people who talked about the planning and financing of the bombing.[32] Crook's impression was that the actual genesis of the plot was to be found with other unnamed individuals who were Sikhs of East Indian origin.[33] During the interview, Person 2 was asked if he would disclose the names of the individuals involved in the plot.[34] Crook said that he felt that Person 2 would provide those names, but his lawyer stopped him and requested that something be done for his client in exchange for the names.[35]

Person 2 identified Person 1 as being involved in the plan in return for financial compensation of "...more than hundred thousand."[36] Person 2's lawyer said that Person 1 had contacted him to act as a receiving agent and that a hundred thousand dollars would be put into the lawyer's trust fund on the Monday or Tuesday of that week.[37] Crook's impression was that this money was "...more-or-less proof that some money had been paid in furtherance of the plot," or was at least forthcoming.[38] At the time, Crook was unable to ascertain whether Person 2 was an integral part of the plot and whether keeping him in custody could prevent the plot from being carried out.[39] Person 2 said there was a possibility that the plot could go ahead without his involvement.[40]

Crook was unaware that Person 1 had previously and independently gone to the police with similar information about the plot. He testified that if he had known about Person 1's earlier discussions with police, he would have viewed this as a confirmation of the existence of the plot and his approach to the interview of Person 2 would have been different. He suggested that he might have stayed in the room until he obtained the names of the people involved.

After the interview, Crook met with his immediate supervisor at the VPD to brief him on what they had learned from Person 2. He also prepared a report about the interview indicating that he found Person 2 to be less than truthful but was concerned that the plan "...is a reality and may be accomplished at some time."[41]

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29 See Exhibit P-101 CAC0109, pp. 1,3 and Exhibit P-101 CAD0180, p. 106 .
30 Exhibit P-121, p. 4. See also Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1891.
31 Exhibit P-121, p. 6.
32 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1892-1893; Exhibit P-121, p. 9.
33 Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1900.
34 Exhibit P-121, p.6.
35 Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1894; Exhibit P-121, pp. 7, 13-14.
36 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1911-1912; Exhibit P-121, p. 21.
37 Exhibit P-121, pp. 21, 26.
38 Testimony of Rick Crook, vol. 20, April 30, 2007, p. 1911. The Attorney General of Canada maintains in its Final Submissions that "No tangible steps were taken in support of the plot": Final Submissions of the Attorney General of Canada, Vol. I, para. 156.
39 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1909-1910.
40 Exhibit P-121, pp. 25-26.
41 Exhibit P-120(c), pp. 1-2 (entry for October 1984: doc 231-3, pp 2-4).

Crook testified that what gave him concern that the plot could be factual was "...the absolute magnitude of what he was talking about" and that "...if this was even being spoken about that it needed to be explored as fully as possible to see if it was a factual or potential reality." Crook wanted to continue to pursue the matter himself but could not do so because the VPD did not have the ability to handle an investigation of such national scope and magnitude. After he passed on the information, Crook had no further involvement in the matter. [42]

Person 1's Attempts to Obtain Further Details of Bomb Plot from Person 2

Before Person 2 was arrested a second time and interviewed by the VPD, Person 1 met with Detective Brian Sommerville of the VPD Strike Force. Person 1 testified that he begged Sommerville not to arrest Person 2 because he "...wanted to get the final information regarding the bombing of Air India."[43] Person 1 felt that Sommerville did not take his request seriously, and Person 2 was arrested the next day.[44]

An internal RCMP report confirms that Person 1 spoke to Sommerville about the bomb plot just prior to the arrest. Sommerville reported that Person 1 told him that they wanted to get a bomb on the plane, and that he had said that he would do nothing unless $80,000 was deposited in trust in his lawyer's office.[45] According to the internal RCMP report, a tape was made by the investigator of the interview containing these comments as well as information about other investigations.[46]

Of some note, Person 1 was not shown the police reports about his dealings with Sommerville prior to his testimony at this Inquiry. In fact, that information was not declassified until a considerable time after his testimony.

Person 1's statement that Person 2 insisted on the money being put into trust is also consistent with the information relayed by Person 2 and his lawyer. This further corroborates the likelihood that the plot discussions were serious and that steps had been taken to secure a transfer of funds.

Despite the obvious national security aspect to Person 1's information, the systems in place at the time did not allow for any RCMP input at the pre-arrest stage of the VPD's investigation. It is impossible not to wonder what would have happened if CSIS or the RCMP had been involved earlier. Had the national security implications been recognized earlier, the arrest and the charges against Person 2 might have been seen as opportunities to learn more information about the alleged bombing plot.

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42 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1914-1920.
43 Testimony of Person 1, vol. 20, April 30, 2007, p. 1943.
44 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1942-1944.
45 Exhibit P-120(c), p. 1 (entry for Oct. 12, 1984).
46 Exhibit P-120(c), p. 1 (entry for Oct. 12, 1984).

RCMP Assumes Responsibility for Investigation of Plot

According to a notation made on the VPD report summarizing the results of the interview with Person 2, the information was discussed with CSIS (Jim Francis and David Ayre) and with Sgt. Wayne Douglas, then head of the RCMP E Division NCIS Terrorist/Extremist unit.[47] Although both the RCMP and CSIS initially showed interest in this plot, it took some time before it was decided that the RCMP E Division NCIS would take responsibility for the follow-up.[48]

From the very outset of its involvement in the investigation, the RCMP approached the alleged plot with extreme skepticism.[49] An RCMP analyst wrote later that, at the time, investigators did not believe Person 2's story about his alleged involvement in the plot, and were suspicious and reluctant to act on the information.[50] This reluctance continued even after the bombing.

The RCMP skepticism is evident from comparing the ways in which CSIS and RCMP E Division reported information about the plot. On October 26, 1984, CSIS reported to the RCMP Airport Policing Branch and to the VIP Security Branch on the basis of the VPD's interview of Person 2. The report stated that "...while in presence of lawyer, person 2 disclosed knowledge of plans to blow up an AI 747 aircraft in November en route to India from Montreal", and noted that CSIS felt that "...there is a real possibility that Sikhs will damage an Air India plane."[51] In contrast, on October 26, 1984, E Division sent a telex to RCMP Headquarters, reporting that information had been received of "...totally unknown reliability" that an Air India 747 would be the subject of a November bombing. The telex stated that the information had been reported in September to Montreal authorities, but had "resurfaced", thus necessitating the current message.[52] By then, NCIS knew that there were two independent sources, Person 1 and Person 2. However, NCIS did not appear to recognize any significance in this corroboration and did not inform Headquarters of this fact.[53] Four days after CSIS initially reported the Person 2 information to the Airport Policing Branch and to VIP Security, National Criminal Investigation Branch (NCIB) forwarded the NCIS telex to VIP Security (but not to Airport Policing), downplaying the importance or urgency of its contents: "…in the event you may have an interest or other information." [54] But, NCIB noted, "...since receipt of telex, further information has surfaced casting serious doubts on the validity/reliability of the information. Appears info may be fabricated."[55]

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47 Exhibit P-120(c), pp. 1-2 (entry for Oct. 1984: doc 231-3)..
48 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p.5) and entry for Nov. 1, 1984: 526-3, pp. 26-27).
49 See, generally, Exhibit P-120(c), pp. 2-3.
50 See Exhibit P-120(c), p. 6 (entry for Feb. 26, 1986: doc 518-3).
51 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p. 5).
52 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc. 239-3).
53 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4087.
54 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).
55 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29). This notation likely reflected the view of E Division as conveyed to Headquarters, because, in an internal RCMP memo, Sweeney noted that "E division felt Person 2 may be fabricating the story": Exhibit P-120(c), p. 3 (entry for Nov. 7, 1984: doc CivLit1).

Person 1 Meets Person 2 at the Remand Centre

Person 1 met twice with Person 2 at the remand centre.[56] After his first meeting with Person 2, Person 1 met with Douglas, who reported to RCMP Headquarters Person 1's confirmation that individuals were attempting to obtain materials to manufacture a bomb on behalf of interested Sikhs and that he had learned that the plan was on hold.[57] Person 1 also stated that the plans for the bombing were to be completed in November because Air India had made schedule changes in mid-October and the plotters had to be sure the flights were continuing from Montreal, Frankfurt and India.[58] The level of detail, including information about the timing of Air India's schedule changes, in the information conveyed by Person 1 is markedly similar to the detail that Person 2 gave in his interview with Crook and Warwick, which would be subsequently repeated to Douglas in his later interview. Also significant is that, in accordance with the information provided by Person 2, Person 1's statement was not that the plot would necessarily take place in November, but rather that the plans would be finalized in November.

Copies of the summary report on the interview of Person 2 had been given to CSIS and to CIS BC, [59] an agency that was at the time co-located with NCIS and staffed entirely by RCMP members.[60] The report stated that the interview had been taped, and that "two bombs" could be involved. It also said that the plot might still go ahead even though Person 2 was in custody, a fact of which Douglas was unaware.[61] Nothing indicates that this report was accessed or requested by RCMP NCIS investigators in the pre-bombing period. There is no evidence prior to, or in the years immediately following the bombing, that RCMP investigators requested a transcript of the taped interview from the VPD.[62] That transcript contained important information that was not known to Douglas until the Inquiry hearings, such as the potential involvement of two planes in the plot,[63] which undoubtedly would have led the RCMP to take a more serious approach to its investigation of the November Plot in the period after the bombing.[64]

When asked by Douglas to visit Person 2 again to seek more information about the plot,[65] Person 1 reported that Person 2 expected to be contacted in the next few days about the status of the bomb plot.[66] It should be noted that in Person

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56 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1945-1946.
57 Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984,: doc 526-3, pp. 26-27).
58 Exhibit P-120(c), p. 3 (entry for Nov. 6, 1984: doc. 526-3, pp. 36).
59 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1912-1915;Exhibit P-120(c), pp. 1-2 (entry for October 1984: doc 231-3, pp. 2-4) and p. 2 (entry for Oct. 23, 1984: doc 7).
60 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3929.
61 Testimony of Wayne Douglas , vol. 34, May 28, 2007, pp. 4085, 4094.
62 See statements of Sgt. Douglas in 1999 where he advised that he never received any reports, notes or tapes from the VPD: Exhibit P-120(c), p. 11 (entry for April 14, 1999: doc RCMP.SUPERTEXT.0001)..
63 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4085, 4094. Sgt. Douglas was quite certain that he had not seen the transcript of the VPD interview, and indicated that had he seen something such as this, given its detail, he would have remembered: Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4092.
64 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2639.
65 Testimony of Person 1, vol. 20, April 30, 2007, p. 1949.
66 Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27).

1's testimony, his version of what occurred in the two meetings with Person 2 while in custody was reversed from the version as noted in Douglas's internal RCMP report.[67] Given the passage of time, it is more likely that the RCMP report contains a more accurate chronology of events. Regardless, a review of this information would certainly have cast doubt on any inference that the danger had passed.

There is no evidence of any RCMP follow-up.

The NCIS report to Headquarters notes that there were "several differences" between Person 1 and Person 2's versions of the plot (though it does not specify what these differences were) and that the information was to be considered of unknown reliability. It further notes that there was no record of Person 2 being connected to any extremist group.[68]

After Person 1 left the remand centre, he went to Person 2's house to speak with the latter's wife. She confronted him with a transcript of a taped telephone conversation between Person 1 and Brian Sommerville of the VPD. According to Person 1, the transcript had been disclosed to Person 2's lawyer at the preliminary hearing on the charges against Person 2. Understanding that his cooperation with police had been revealed to Person 2 and his family, Person 1 severed all ties with Person 2 and the other conspirators.[69]

In the pre-bombing period, Person 1 was not contacted further about his information.[70] He was not asked to submit to a polygraph examination on the information he had provided, nor was he asked about any contacts he had with other known extremists. He was also not asked to attempt to find out more about the status of the plot. The police clearly had concerns about Person 1's motivations that led them to approach his information with extreme skepticism.[71]

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67 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1945-1946.

68 When asked what checks he would have done to determine if Person 2 had any connections to Sikh extremists, Douglas indicated that he would have looked at any information that was available on him, through his background and his former dealings, and that this would have been done with the assistance of his Corporal. At this time, Douglas indicated that he had never encountered Person 2 before and stated that, at this time, he was unaware of who the other participants were, beyond Person 1 and Person 2. He indicated, "…there were no names, it was just generalities, no specifics": Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4089-4090.

69 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1946-1948.

70 Testimony of Person 1, vol. 20, April 30, 2007, p. 1951; Exhibit P-120(c).

71 For example, in reporting Person 1's information to Headquarters, Douglas notes that "Person 1 is hard pressed for monies and has attempted to gain same from Sgt. Douglas on two occasions": Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27). See also Final Submissions of the Attorney General of Canada, Vol. I, para. 156: "Each of the individuals had extensive criminal records as well as motivation to provide information to the police in return for some form of benefit" and Testimony of Person 1, vol. 20, April 30, 2007, p. 1964.

Douglas Meets with Person 2 for the First Time

Three weeks after Douglas's last meeting with Person 1 and after he had reported to Headquarters that Person 2's story could be fabricated, Douglas met with Person 2 for the first time on November 23, 1984 in the presence of Dave Ayre of CSIS and Person 2's lawyer. A brief summary of the meeting by Douglas notes that Person 2 relayed facts similar to those he had earlier conveyed to Detectives Crook and Warwick. Person 2 said that he had been contacted approximately two months earlier by East Indians who wanted a bomb assembled and placed on an Air India plane. He was told that the plane "…would depart from Montreal in November," as changes to Air India's flights were occurring in mid-October and the plotters had to be sure of the Air India routes. Person 2 said that another individual at the meeting had consented to place the bomb on board for a fee. Person 2 would not identify the East Indians, except to say that they lived in what, for purposes of this Report, must be referred to as "x town" in "y province", and that he considered them to be financially stable.[72] A check of the individuals who visited Person 2 while in custody identified three persons who had phone numbers listed in y province. Douglas wrote to Headquarters that the identity of the subscribers would be forwarded to Headquarters once received.[73] After the interview, Person 2's lawyer told Douglas that he believed Person 2 "...knows a lot more than Person 2 is willing to discuss."[74]

There is no indication that the RCMP attempted to follow this up with Person 2's lawyer.[75]

RCMP Investigation Stalls

About four months later, on March 20, 1985, Headquarters wrote to the Divisional Intelligence Officer for E Division, pointing out that the last correspondence from E Division regarding this investigation was on November 26, 1984, and requesting a "full update", with a note that "...Your early attention and response is requested."[76]

Three weeks later, on April 10, 1985, Douglas informed Headquarters that "very little action on the November plot investigation has occurred" and "[t]here has been no further information received from any sources that would indicate *this*

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72 Exhibit P-120(c), p. 3 (entry for Nov 26, 1984: doc 526-3, p. 40),

73 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4094-4095; Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40), A few days later, Headquarters wrote to Douglas stating that x town NCIS was to be brought into the investigation once the identities of the x town subscribers were identified. The subscriber information was relayed to x town police in December 1984, but not to Headquarters NCIB: Exhibit P-120(c), p. 3 (entry for Dec..4, 1984: doc 526-3, p. 42),

74 Exhibit P-121;P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40),

75 In fact, many years after the bombing, in 1999, as part of a file review, it was discovered that deBruijn, who conducted a file review in 1986, had suggested that someone follow up with Person 2's lawyer about this statement, but it was not clear from the file whether this had, in fact, ever been done: Exhibit P-120(c), p. 11 (entry for April 27, 1999 doc: RCMP.SUPERTEXT.0001).

76 Exhibit P-120(c), entry for March 20, 1985, p. 3.

or any bombing of an Air India plane will occur."[77] [Emphasis added]
This is a strong indication that E Division NCIS was out of the loop or not paying attention.[78]

The Significance of November Plot Recognized Post-Bombing

Even after the Air India bombing, there was significant resistance and delay at E Division NCIS about a follow-up investigation of the November Plot and continuing skepticism about any possible connection between the November 1984 Plot and the bombing. Despite repeated requests by Headquarters that it be updated on the state of the investigation,[79] it was not until nine months after the bombing that E Division took steps to pursue the issue seriously. Early in 1986, as part of a Headquarters review of the November Plot tip, the significance of the fact that two independent sources had come forward with the same information was finally recognized.

In the spring of 1986, almost a year after the bombing, the RCMP again contacted Person 1 and asked him to take a polygraph on the information he had provided about the November Plot. He agreed and passed the test a few weeks later.[80] Person 1 stated that after he took and passed the polygraph there was "...a complete turn around" in terms of how the police looked at his information. Person 1 also agreed that much more attention was being paid to what he was saying after the bombing and said, "Yes. I think everybody woke up."[81]

After Person 1 passed his polygraph test in May 1986, Cpl. Donald DeBruijn concluded that "... information provided by person 1 and person 2 has been substantiated."[82] In June 1986, Chief Superintendent Norman Belanger sent a telex listing the main suspects in the RCMP Air India investigation as including "… Parmar, Johal, Gill, Bagri and *Person 2*."[83] [Emphasis added]

The post-bombing investigation of this plot uncovered disturbing information, not only that the November Plot was a real threat, but that there were, in fact, significant links in the plot narrative to the conspirators thought to be involved in the June 23, 1985 bombing of Air India Flight 182. Information uncovered post-bombing includes the following:

- Person 1 had made statements to police in September 1984 about a man in Duncan who could manufacture "nitro" for blowing up an Air India flight;[84]

77 Exhibit P-120(c), entry for April 10, 1985, p. 3 (entry for doc 526-3, p. 45).
78 This is elaborated in Section 1.12 (Pre-bombing), A Crescendo of Threats.
79 Exhibit P-120(c), pp. 4-5 (entries from Sept. 9, 1985, until Dec. 17, 1985). There was a string of seven telexes to E Division requesting responses to previous unanswered enquiries from Headquarters.
80 Testimony of Person 1, vol. 20, April 30, 2007, p. 1954; Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).
81 Testimony of Person 1, vol. 20, April 30, 2007, pp. 1964, 1974-1975.
82 Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23),.
83 Exhibit P-120(c), p. 9 (entry for June 6, 1986: doc April 23 DOJ doc).,.
84 Exhibit P-120(c), p. 6 (entry for March 10, 1986: doc 521-3).,

- The day after Person 2 was arrested, two phone calls were made from the residence of Person 1 to the residence of Inderjit Singh Reyat;[85]

- Person 1 later reported that these calls may have been made by "W", who was staying at Person 1's home during the relevant time. W was an individual reported to be associated with the ISYF. According to one police report, W was "… totally committed to the Khalistan cause and would do anything within his power to avenge the deaths of his/her relatives in the Punjab."[86] Telephone logs show contacts between W and the residence of Person 1 in September, October and November of 1984. Logs also show a call from the residence of Person 2 to W in July of 1984;[87]

- It was reported that at some point, Talwinder Singh Parmar, W, and an unnamed Sikh from x town were planning on "doing something" in India,[88] and Person 2 told the police that W was connected to Surjan Singh Gill, Talwinder Singh Parmar, and Inderjit Singh Reyat;[89]

- RCMP Constable Manjit Singh "Sandy" Sandhu said that he had seen Person 2 in association with Surjan Singh Gill, in or around late 1983;[90]

- According to Person 1, in October 1984, W and an associate intended to travel to Vancouver Island to visit someone. The associate was apparently from x town and matched the description of "Z"[91] – an individual named by both Person 1 and Person 2 as being involved in the plot;[92]

- In 1986, W independently provided information to another police force (the identity of which cannot be disclosed) that two individuals had approached Person 2, along with two white, unknown males, and had offered Person 2 a sum of money to put a bomb on an Air India plane. This would appear to be a third independent source corroborating the existence of the November Plot;[93] and

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85 Exhibit P-120(c), p. 7 (entry for April 6, 1986: doc 523-2).
86 Exhibit P-120(c), pp. 7-8 (entry for April 10, 1986: doc 523-3).
87 Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).
88 Exhibit P-120(c), pp. 7-8 (entry for April 10, 1986: doc 525-3).
89 Exhibit P-120(c), p. 9 (entry for May 26, 1986: doc 529-3).
90 Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).
91 See Exhibit P-120(c), p. 8 (entry for April 25, 1986: doc 2).
92 Exhibit P-120(c) p. 4 (entry for July 10, 1985: doc 493-3) and p. 7 (entry for March 1986: doc 16). It is not clear that Z was identified to police in the pre-bombing period as his name does not appear in reports from the interviews of Person 1or Person 2.
93 Testimony of Bart Blachford, vol. 63, October 17, 2007, pp. 7822-7823.

- While Person 2 was in custody, he had phone contact with an individual from x town who was identified as being affiliated with the terrorist group, Babbar Khalsa.[94]

These and other details about the November Plot were not recognized or discovered until long after the actual bombing of Flight 182. They support the conclusion that there were numerous missed opportunities for intelligence-gathering in the pre-bombing period that, had they been pursued, would at a minimum have provided valuable insight into important Sikh extremist participants, activities and methods of destruction contemplated.

In 1999, the RCMP noted that Person 1 was connected with individuals "...who are very likely to have been involved with one or more of our suspects in the early planning stages of placing bombs on Air India planes. These individuals are Person 2 and W."[95] Despite this statement by the RCMP, and despite the information and connections discovered after the bombing, the RCMP told the Honourable Bob Rae in a briefing that "...[t]his incident has not [*sic*] connection to the June 1985 disasters and the investigation failed to substantiate any actual plot. The RCMP was satisfied that the information provided in this regard was, and is, totally unrelated to the current ongoing criminal investigation surrounding the Air India crash."[96]

This conclusion defies reasonable explanation.

Undue skepticism on the part of RCMP investigators prevented them from looking seriously into the alleged plot. Divisional investigators continued to maintain that "...Person 2 concocted [the] story of possible bombing in order to obtain release from custody",[97] and never seemed to waiver from that belief despite seemingly independent corroboration from Person 1, who, in fact, passed a polygraph examination on his information.

Douglas testified that the RCMP file on the November Plot "...has been examined, reviewed a thousand different ways by a hundred different people", without conclusively linking the information to the bombing of Flight 182 - a fact that, in his view, "...substantiates [his] decision back then to say that [he] did not believe this information from [Person 1] and [Person 2] to be credible."[98]

This is not a conclusion that the state of the investigation in 1986 could plausibly have justified.

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94 Exhibit P-120(c), p. 5 (entry for December 6, 1985: doc 526-3, p. 56).
95 Exhibit P-120(c), pp. 10-11 (entry for February 12, 1999: doc RCMP.SUPERTEXT.0001).
96 Exhibit P-101 CAA1099, p. 2. This position has been maintained by the Government to this day. In its Final Submissions, the AG writes "The investigation into these allegations was pursued vigorously both before and after June 23, 1985. Although analysis of telephone records showed that one long distance call had been made to Reyat's home by an unknown acquaintance of one of the individuals, no evidence has been found to link this plot to the bombings": Final Submissions of the Attorney General of Canada, Vol. I, para. 157.
97 Exhibit P-120(c), p. 6 (entry for March 5, 1986: doc 526-3, p. 86).
98 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4107.

Observations

- In the pre-bombing period, the RCMP received information about a plot to bomb an Air India plane from two independent sources. Despite this corroboration, the RCMP viewed the intelligence with extreme skepticism and was reluctant to follow up on the lead.

- There were important deficiencies in the manner in which the RCMP reported the November Plot information internally as well as in the manner in which it shared relevant information with other agencies.

- These failures posed challenges for the agencies in terms of their assessment of the significance of this threat.

- When the November Plot issue was eventually followed up post-bombing, a number of important connections between the alleged conspirators and the RCMP's main suspects in the bombing of Air India Flight 182 were recognized.

- Despite seemingly clear connections to presumed participants in the bombing, the RCMP continued to deny, up to and including its submissions to Bob Rae and its testimony at this Inquiry, that there was any substance to the November bomb plot, and to maintain that there was no link to the bombing of Flight 182.

1.2 June 1st Telex

In the spring of 1985, as the string of threats against Indian interests was coming to a "crescendo",[99] officials had an impending sense that "…something was going to happen." But the answers to the questions: "...[w]here or when or what [?]" were not known.[100] The mishandling of the "June 1st Telex", as it came to be known during the hearings, demonstrates deficiencies in the threat communication and response system that was in place in 1985. These failures illustrate the dangers of compartmentalization of duties and the need for shared responsibility in aviation security.

On June 1, 1985, Air India's Chief Vigilance and Security Manager in Bombay sent a telex to Air India offices worldwide indicating that the assessment of threats received by its intelligence agencies revealed "...the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage", as well as the fact that "...Sikh extremists are planning to set up suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or [carry-on baggage] or any other means..."[101]

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99 Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2104.
100 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3044.
101 Exhibit P-101 CAA0185, p. 1.

The telex directed all Air India stations to ensure the "...meticulous implementation of counter-sabotage measures for flights at all airports."[102] It then went on to suggest five counter-sabotage measures to be implemented in order "…to prevent extremists [from] carrying out their designs." These measures included "explosive sniffers and bio-sensors (dogs)", which may be used to "...check the registered baggage" as well as "...physical random [sic] check of all registered baggage at the time of check-in at least till [*sic*] June 30, 1985 ..."[103] The telex conveyed Air India's position that airlines had the basic responsibility for counter-sabotage measures.

When Air India's Assistant Airport Manager arrived on Air India's scheduled flight at Gate 103 in Toronto's Pearson Airport on June 1st, he provided a copy of the June 1st Telex to an RCMP member there.[104] This telex was also received by Herbert Vaney, the Toronto Area Sales Manager for Air India, who forwarded it on June 3, 1985 to RCMP Inspector William Dawson, the Officer in Charge at Toronto's Pearson Airport, and requested that "suitable action" be taken in relation to this information.[105] No one at Air India forwarded the June 1st Telex to any Transport Canada officials at the airport or at headquarters, despite assurances made by Air India's Senior Security Officer that all threat reports would be forwarded to both the RCMP and Transport Canada. [106]

When Dawson received the June 1st Telex, he sent a telex to the RCMP Headquarters Airport Policing Branch, quoting the June 1st Telex in full, but stating that, in his opinion, there was no "…need for extra security by this Force on the strength of information contained in the message." From his point of view, the counter-sabotage measures suggested in the June 1st Telex were within the purview of Air India and Burns Security. He requested instructions from Headquarters about what action should be taken at the airport in response to this threat.[107] Dawson also indicated that "…this matter has not yet been discussed with local Transport Canada Safety and Security Manager but we expect his position will be similar to that of last week when they refused to authorize extra manpower or security."[108] It is unclear when, or indeed whether, this topic was ever discussed with Dale Mattson, who was the Transport Canada Safety and Security Manager at Pearson in 1985.

In response to Dawson's request, Sgt. J.B. ("Joe") MacDonald, the Acting Officer in Charge of the Headquarters Airport Policing Branch, wrote to CSIS requesting an updated threat assessment in relation to Air India. MacDonald noted that the "...last threat assessment Oct 84 indicating threat level high but no specific threat to Air India in Canada. Plse advise by telex ASAP if there is any change. We

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102 Exhibit P-101 CAA0185, p. 1.
103 Exhibit P-101 CAA0185, p. 1.
104 Exhibit P-101 CAF0586, p. 5, CAF0784.
105 Exhibit P-101 CAA0184, p. 1.
106 Exhibit P-101 CAA0118, p. 5.
107 Exhibit P-101 CAA0208, p. 2.
108 Exhibit P-101 CAF0589, p. 2.

have had a number of requests from the airline for extra security."[109] It should be noted that, in fact, there had been CSIS threat assessments received by the Airport Policing Branch subsequent to October 1984, including an April 12, 1985 assessment indicating that the possibility of action against Air India flights could not be ruled out.[110]

CSIS replied to the RCMP that the "...threat potential" to Air India was "high", but that it was not aware of any "specific threats" at the time.[111]

The RCMP briefing to the Honourable Bob Rae stated that MacDonald had forwarded the telex sent by Dawson, which contained the June 1st Telex information, to CSIS.[112] This was not the case. The request sent by MacDonald contained no reference to the actual content of the June 1st Telex, and CSIS never received the information. MacDonald testified that, in his view, "...there was no need" to share that information with CSIS.[113] The Attorney General of Canada conceded in its Final Submissions that, in general, CSIS should have been given all information pertaining to threats.[114]

The June 1st Telex was also not shared by Headquarters with other RCMP airport detachments. It was not sent to the Vancouver airport, the point of origin for CP Air Flight 060 onto which the luggage containing the bomb was boarded and interlined to Air India Flight 182. There was no record of this telex having been shared with local RCMP officials at the Mirabel detachment, nor does it seem that the content was shared with Burns Security officials who provided security screening services for Air India's Toronto and Montreal flights.[115]

The June 1st Telex was not sent to National Criminal Intelligence Branch (NCIB), the RCMP Branch in charge of analyzing threat information and producing threat assessments. The first time Sgt. Warren Sweeney, who was in charge of the terrorist/extremist desk at the National Security Enforcement (NSE) Section of NCIB, saw the telex was in preparation for his testimony before this Inquiry.[116] Nor was the June 1st Telex shared with Transport Canada officials, even though one of the obligations of the RCMP under the RCMP/Transport Canada Memorandum of Agreement was to disseminate intelligence information concerning national and international threats to civil aviation.[117]

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109 Exhibit P-101 CAA0198, p. 1.
110 Exhibit P-101 CAA0147, p. 1.
111 Exhibit P-101 CAA0199, p. 1.
112 Exhibit P-101 CAA0234, p. 8.
113 Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2865.
114 Final Submissions of the Attorney General of Canada, Vol. II, para. 189 (citing the Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2818).
115 See generally Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3115-3167. Also, Holger Kordts, who was the Branch Manager for Burns Security, he stated that the only special directions given to the guards on any occasion were in relation to a May 27th letter from Herbert Vaney (see Exhibit P-101 CAA0159, p. 1), referring to some acts of terrorism in the Punjab, and where it was requested that armed guards be placed at the aircraft and for them to pay extra attention and take measures to protect property: Exhibit P-101 CAF0538, p. 7.
116 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732.
117 Exhibit P-101 CAA0335, p. 8.

In October 1987, John Cook, who was stationed at the Civil Aviation Security Branch at Transport Canada Headquarters, learned of the existence of the June 1st Telex for the first time. Cook recognized that it was a very important document, but there was no record to indicate when the RCMP had finally provided a copy to any Transport Canada personnel. [118]

Cook wrote: "...the information contained in [the June 1st Telex] raised many questions and suggested the lack of proper action and sound judgment by Air India and the RCMP", adding "...[i]t is unbelievable that Air India officials did not distribute this document immediately to Transport Canada and other police officials and request a meeting to discuss the necessary measures to meet the perceived threat."[119] Transport Canada's Headquarters had the ability to apply "... additional procedures that were needed to address the relevant threat."[120]

Cook's reaction suggests that the content of the June 1st Telex may have warranted implementing and coordinating additional procedures beyond those that Transport Canada and the RCMP had in place on June 23, 1985. In this vein, Mattson testified that if he had seen the June 1st Telex, he would have immediately contacted the Civil Aviation Security section at Transport Canada's headquarters to see if they were aware of it, and he would have then ascertained whether the airport should introduce further security measures.[121]

A briefing document provided by Transport Canada states that on June 22, 1985, "...the threat to Air India movement was considered ambient, as Transport Canada had not received intelligence to indicate an imminent or specific threat to Air India 182."[122] While the threat in the June 1st Telex may not have fit the definition of "specific threat", as it was understood by Transport Canada, the fact that the threat applied only to the four remaining Saturday flights in June would seem to have made it an "imminent"[123] one. Cook's reaction to the document weighs in support of that conclusion, and it suggests he would have considered it appropriate to take swift action and expand the security response for these flights accordingly.

In the past, Transport Canada had taken steps to implement and ensure the coordination of additional measures in response to an uncorroborated threat of bombing directed at Air India. In June 1984, Transport Canada received threat information through Air India that Sikhs in Canada were planning to become

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118 Exhibit P-367, p. 1.
119 Exhibit P-367, p. 2.
120 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3215.
121 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3232.
122 Exhibit P-101 CAF0615, p. 2.
123 Whereas there were particular emergency protocols triggered at the airport in relation to a "specific threat" which itself had a particular and restrictive meaning (see Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime), the term "imminent threat" does not appear to have a particular meaning or to be a trigger for specific protocols in the 1985 threat-response regime. However, the context in which this concept is discussed implies that Transport Canada had the ability to take measures to address a perceived "imminent" threat. A colloquial understanding of the term would seem to imply a perception that the threat would likely manifest within a short time frame.

martyrs by blowing up an Air India aircraft. Measures taken by Transport Canada included contacting Air Canada and RCMP officials to confirm that effective security safeguards were in place and, specifically, ensuring the availability of the explosives detection dog "...for search duty to detect any explosives in lockers, baggage, cargo and aircraft." Further, after consulting with Transport Canada about this 1984 threat, the Air India Station Manager at Mirabel implemented hand-searching of all checked luggage. Transport Canada also undertook to maintain close contact with RCMP, External Affairs, and airport officials to ensure the "...rapid exchange" of intelligence and the "... adoption of any security measures required to meet the alleged threat."[124] In June 1985, in spite of the steps called for in the June 1st Telex, physical checks of registered baggage were not conducted and, in fact, there was no RCMP explosives detection dog available for the June 22nd flight at the Toronto Pearson airport.[125]

At the time that the June 1st Telex was being received by the RCMP, Headquarters had already ordered that "level 4 security" be implemented for the Air India flight in response to previous threat information which referred mostly to the possibility of hijacking.[126] When the RCMP Headquarters Airport Policing Branch received the June 1st Telex, it did not order any adjustment to the nature of the security that was already in effect.[127] This was particularly problematic because the anti-hijacking measures implemented as part of level 4 security did not address the concerns set out in the June 1st Telex, including, importantly, the threat of time-delay devices being placed in registered luggage.[128] In the opinion of a leading expert in risk analysis, the unusual specificity of the information in the June 1st Telex, combined with the already very high-risk situation in which it was received,[129] "...would have justified almost any risk-control measure you can imagine, including grounding those flights" until investigators had the chance to consult with authorities in India about their source of information.[130]

The June 1st Telex was an Air India document, and one possible explanation for what looks like a half-hearted Canadian response and follow-up is that Air India threats were generally viewed with skepticism by Government of Canada officials. At a meeting held post-bombing, which included representatives from Transport Canada and the RCMP, it was noted that almost every Air India flight was preceded by a letter outlining a threat to Air India and that this was thought to be an attempt by Air India to obtain increased security for its flights at no extra cost.[131] One RCMP official thought the June 1st Telex was a "floater",[132] meaning

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124 Exhibit P-101 CAF0161, p. 2.
125 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2999.
126 Exhibit P-101 CAA0168, p. 1; Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2798; Exhibit P-101 CAC0349, p. 3.
127 Testimony of Joe MacDonald, vol. 27, May 14, 2007, p. 2862.
128 Exhibit P-101 CAA0025, p. 1.
129 See Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11982-11983. Leiss's testimony with respect to the June 1st Telex is discussed in detail in Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.
130 Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11982-11983.
131 Exhibit P-101 CAC0517, p. 1.
132 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2736-2737.

that it was information that was provided "...in the hopes that security would be increased" or of "...gaining more security around the aircraft."[133] He came to this conclusion, even though he had no knowledge of the intelligence Air India relied on from its sources as the basis for the telex.[134]

In its Final Submissions, the Department of the Attorney General maintained the view that it is "...not clear whether the June 1st Telex would have actually enhanced CSIS's knowledge of the dangers of Sikh extremism."[135] The testimony of CSIS employees at this Inquiry was somewhat different. John Henry, who was at the CSIS HQ Threat Assessment Unit, testified that the June 1st Telex would probably have been useful to the individual writing the threat assessment, and that it contained "...more detail than [he] had seen before."[136] In the CSIS BC Region, the telex could have been an "extremely helpful" additional piece of information that might have enabled investigators to obtain more resources for the surveillance of Sikh extremist targets.[137] Such additional coverage might have avoided some of the CSIS surveillance errors at Duncan and elsewhere in British Columbia.[138] CSIS investigator Ray Kobzey testified that he would have taken the June 1st Telex seriously "...[w]hen viewed in the context of the assassination of Indira Gandhi" and that it would have led CSIS to treat the Duncan Blast "... loud noise" a lot differently"[139]

In terms of the RCMP's post-bombing investigation, while all threat information received by P Directorate, which included the June 1st Telex, was filed in central records at HQ,[140] there is no evidence that anyone at Headquarters or at the E Division Air India Task Force ever took steps to access this information in the post-bombing period.[141] This failure, in turn, explains why there is no evidence of any follow-up investigation of the June 1st Telex information.

Observations

- There were significant deficiencies in the manner in which Air India and Canadian government agencies shared the June 1st Telex. It is likely that, had Transport Canada received the telex, it would have taken steps to implement additional safety measures for Air India Flight 182. In addition, the telex would have been useful for CSIS's investigation into Sikh extremism and possible threats to the security of Air India and other Indian interests in Canada.

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133 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2745. See also, pp. 2745-2746, where Sweeney explains that such "floaters" were also received from other airlines and other countries and could relate to attacks on missions or personnel.
134 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732.
135 Final Submissions of the Attorney General of Canada, Vol. II, para. 191.
136 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2539, 2523.
137 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3810-3811.
138 See Section 1.4 (Pre-bombing), Duncan Blast and Section 1.5 (Pre-bombing), Mr. X.
139 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3810-3811.
140 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2653.
141 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9672. See also Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2653-2655.

- The June 1st Telex, given its specificity and the nature of the threat it described, made the situation inherently high-risk. That fact, combined with the fact that it was received by the RCMP during a very high-risk period, should have led authorities to take swift and deliberate action to respond to the threat. The fact that there was no investigative or security-related response to the June 1st Telex was a clear deficiency.

- Because no known attempts were made to follow up on or to corroborate the June 1st Telex information in the pre- or post-bombing periods, the original source of the information and the nature of the ultimate connection of the information to the Air India bombing remain unknown to this day.

- Following the bombing, the relevance and importance of the June 1st Telex to the post-bombing investigation should have been self-evident. The failure to follow up on it is difficult to understand.

1.3 Parmar Warrant

When CSIS was created on July 16, 1984, there were in place 250 RCMP Security Service warrants, issued under the *Official Secrets Act* (OSA) and authorized by the Minister. Prior to a December 31, 1984 deadline for the "conversion process", 110 of the RCMP Security Service warrants were selected and approved by the Federal Court as CSIS warrants. There was, in fact, no real "conversion", but rather a fresh, time-consuming multi-step warrant approval process.

Before the creation of CSIS, warrants were generally simple, two to six pages in length and approved only by the Solicitor General rather than any judicial officer. After the creation of CSIS, the process changed substantially. Jacques Jodoin, the Director General, Communication Intelligence and Warrants (CI&W), who was responsible for developing the process to ensure that the warrants would proceed to court the fastest way, said: "The process became very legalistic, very bureaucratic and very cumbersome, but we went through it."[142]

In the new process, the affidavits ballooned in size to 50 or 60 pages and took months to complete. By 1987, the warrant process consisted of 24 steps. Some of these steps were of questionable value in light of the delay they introduced. Nevertheless, the steps were developed during the conversion process, and applied to the Parmar warrant. However, the system was still in flux as CSIS seemed to muddle through trial and error as to what procedures were required.

Jodoin said that the field investigator would send a rough résumé of the case through his chain of command. A justification was required for whatever power

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142 The source for much of the information on the history of the CSIS warrant process comes from the Testimony of Jacques Jodoin, vol. 23, May 4, 2007, pp. 2245-2269.

was wanted. For the Parmar case, the important questions involved the level of resources required to implement the power, and whether they had the capability to do it.

At HQ, warrant coordinators would choose, from their individual sections, the analysts best capable of finishing the affidavit. The rough affidavit would come back to CI&W. There, on the basis of having seen hundreds of warrants, its sustainability in court would be assessed.

More work was seemingly always required, so the draft would go back through the channels, which could sometimes take weeks. When the final copy was ready, it had to go back through the chain of command, so that their senior officer could sign it before going to the Warrant Review Committee (WRC). Finally, after the WRC, the document would go to the Deputy Solicitor General for approval before being presented in court.

In 1987, for the first time, CSIS agreed to have one of its warrants used in court proceedings in *R v. Atwal*,[143] a case dealing with Sikh extremists who were allegedly involved with the shooting of Malkiat Singh Sidhu, an Indian cabinet minister, on Vancouver Island. However, the prosecution had to withdraw the Atwal warrant because of errors in the affidavit prepared by CSIS in 1985 with respect to the warrant application. The case against four alleged conspirators collapsed. This caused the resignation of the CSIS Director and brought the CSIS warrant process under considerable scrutiny. A few additional steps, predictably lengthening the process, were added to the warrant process to deal with the perceived problems with the Atwal warrant. The warrant procedure for 1987 to 1992 is shown in the Addendum to this critical incident. Although there are a few extra steps, it is basically the same as that followed for the Parmar warrant and demonstrates its flaws for an agency dealing with national security where time is invaluable.

Obtaining the Parmar Warrant

Talwinder Singh Parmar was incarcerated in West Germany in 1983, but was released on July 6, 1984 and immediately returned to Canada.[144]

Parmar had been arrested on the strength of an International Warrant issued by India for murder. It is believed that the German authorities felt that, due to the recent events in the Punjab, Parmar would not receive a fair trial in India, and thus discontinued extradition hearings.

CSIS HQ and, in particular, BC Region were concerned about the effects of Parmar's return to Canada. As soon as he arrived back he embarked on a cross-country tour in an effort to establish himself as the leading pro-Khalistani Sikh and holy leader in Canada.[145] During that tour, at a stop in Calgary on July 15,

143 (1987), 36 C.C.C. (3d) 161 (F.C.A.).
144 Exhibit P-101 CAB0139, p. 2.
145 Exhibit P-101 CAB0114, p. 1, CAB0139, p. 2.

1984, Parmar strongly urged Sikhs to "...unite, fight and kill" in order to revenge the attack on the Golden Temple in Punjab.[146]

Because Parmar was seen as a leader in the escalating tension within the pro-Khalistani movement and was uttering threats of violence, BC Region wrote to headquarters on July 13, 1984, to suggest that they might want to seek a warrant on Parmar.[147] On July 27, 1984, CSIS HQ concurred with the suggestion, encouraging that warrant coverage be initiated against Parmar.[148]

It was not until September 17, 1984 that the BC Region was able to complete all the detailed preparatory steps required and to apply for authorization permitting a full investigation (level 4), a prerequisite for applying for a judicial warrant.[149]

Urgency of the Warrant

On October 17, 1984, a request for a warrant to intercept Parmar prepared by Ray Kobzey, investigator in BC Region, and supported by his Unit Head and Chief, was submitted to the Director General of CI&W, [150] noting that the CT Section and HQ CT desk considered this to be urgent.[151]

The word "urgent" was used throughout the warrant request which also included information to support the belief that Parmar presented a threat and was inciting violence in the Sikh community.[152]

Daryl Zelmer, the warrant coordinator for the Counter Terrorism (CT) branch, was responsible for coordinating the preparation of the affidavits for the acquisition of Section 21 warrants with the relevant Desk, Legal Affairs and CI&W. On October 18, 1984, on receipt of the warrant request, despite the statement that it was urgent, Zelmer responded, asking to know the urgency of the application. Indeed, in testimony Zelmer commented that the use of the word "urgent" in the original proposal was "...standard usage in terms of the lexicon of the day". Zelmer noted that a CSIS memo dated October 1, 1984, set out the category of new warrants that would be allowed during the conversion process. The memo surprisingly stated that all regions should refrain from submitting new applications for warrants until all existing OSA warrants had been converted. The only exceptions were "...applications of justifiably urgent nature involving the potential threat or use of acts of serious violence against persons or property."[153]

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146 Exhibit P-101 CAB0114, p.1, CAB0139, p. 3.
147 Exhibit P-101 CAF0719, p. 2.
148 Exhibit P-101 CAF0119, p. 1, para. 3.
149 Exhibit P-101 CAB0139, pp. 1-5.
150 Exhibit P-101 CAB0144, pp. 1-11.
151 Exhibit P-101 CAB0144, p. 1.
152 Exhibit P-101 CAB0144; Testimony of Daryl Zelmer, vol. 23, May 4, 2007, pp. 2328-2330. Much of the following information comes from the same testimony, pp. 2312-2328.
153 Exhibit P-101 CAB0145, pp. 1-2.

On October 19, 1984, Zelmer wrote a memo to Glen Gartshore, Head of the HQ CT Sikh Desk, commenting that, although the threat of terrorism and violence regarding this warrant application was a definite possibility, an immediate assessment of the probability of such acts occurring was important. He sought Gartshore's comments and the recommendation of the Chief, Europe and Far East (E&FE) to determine whether to proceed or wait until completion of the renewal process.[154]

Russell Upton, Chief of E&FE[155] in his handwritten response on that same document, replied that the warrant must proceed on a "Priority basis" and that the application should be given "Top Priority". He concluded by stating that, "We should be able to table this for legal consideration early next week." [156]

This seems to have answered Zelmer's concerns as to the urgency. He testified that this signalled to him that this matter required urgent attention.[157]

On the same day, Gartshore sent another memo to Zelmer. He noted that Upton and his superior, the Director General CT, Mel Deschenes, were completely in agreement with moving urgently to have the warrant application for review the following week. The memo also informed Zelmer that the separate request for level 4 coverage of Parmar had been granted that morning.[158] On the same date, October 19th, a corrected copy of the warrant application was resubmitted.[159]

Warrant Application Delayed

The next correspondence referring to the Parmar warrant was dated nearly two weeks later. In the interim, Prime Minister Indira Gandhi had been assassinated, and tensions in the Indo-Canadian community were rising dramatically.

In his November 9, 1984 memorandum, Upton wrote to Deschenes noting that Vancouver region had applied for technical coverage on October 19th and that the warrant application had been with Zelmer for over a week an a half, "... no doubt caught up in the pile of renewals".[160] Upton requested that the warrant be expedited or the field would need some kind of explanation regarding the delay.

In response, Deschenes wrote to Zelmer the same day, invoking the authority of the Deputy Director National Requirements (DDR), Archie Barr. Deschenes noted some urgency in moving the new warrant application through, and

154 Exhibit P-101 CAB0146, pp. 1-2.
155 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3568-3569. The unit was also called Western Europe and the Pacific Rim. The Sikh Desk (also known as the Far East unit) was part of Upton's section.
156 Exhibit P-101 CAB0146, pp. 2-3.
157 Testimony of Daryl Zelmer, vol. 23, May 4, 2007, p. 2337.
158 Exhibit P-101 CAB0147, p. 1. However, Exhibit P-101 CAB0162, p. 1 notes that level 4 coverage was granted by the Director on October 25, 1984, six days later. Level 4 coverage was a requirement before a warrant could be obtained.
159 Exhibit P-101 CAF0144.
160 Exhibit P-101 CAB0162, p. 1.

pointed out that the DDR had agreed to treat it as a priority. He asked for Barr's help in expediting the process.[161]

The memo contains a notation, likely by Zelmer, stating that on November 16th the application was "... returned to Desk for rewrite".[162] No explanation was given as to why the application was returned to the desk for a rewrite, considering its urgent nature and the delay that had already occurred.

On November 27, 1984, Gartshore again wrote to his superiors concerning the delay in the Parmar warrant. Upton replied that, "... there seems to be some hesitancy to give this application priority attention". In comments forwarded to Zelmer, Deschenes also noted the priority and said he would appreciate "... getting it through ASAP."[163]

The next day, Dick Wallin, the Chief CI&W BC Region, made a request for a progress report. In response, Upton noted that the file was subject to high priority tasking from HQ and that the application was "of some urgency". He also noted that the desk was advised of the tremendous backlog due to the conversion process, but would like to know when the application would be considered. Two handwritten notes at the bottom of this document are of importance. The first was written by Zelmer to Gartshore and reads:

> The affidavit can possibly be ready to go in 2 days max. The question to be resolved is when to proceed. In light of renewal [illegible] is a decision that will require consultation between Mr. Deschenes and Mr. Jodoin.[164]

The second handwritten note addressed to Zelmer from D. Burke, Warrant Acquisition Control and Requirements (WAC & R, CSIS HQ) notes:

> Can't see how we can process same with current workload – unless extremely important we won't handle until early in new year.[165]

A week later, on December 3, 1984, Gartshore wrote to Upton to pass on a message from BC Region investigators regarding the delay in receiving judicial authorization to start intercepting Parmar.[166] He repeated and underscored BC Region's concern that there was "... almost non-existent source coverage on Parmar and the Babbar Khalsa and this warrant is required in order to adequately investigate their terrorist threat."[167] Upton responded on the face of this memo

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161 Exhibit P-101 CAB0160, p. 1.
162 Exhibit P-101 CAB0160, p. 1.
163 Exhibit P-101 CAB0170, p. 1.
164 Exhibit P-101 CAB0166, p. 1.
165 Exhibit P-101 CAB0166, p. 1.
166 Exhibit P-101 CAB0171, pp. 1-2.
167 Exhibit P-101 CAB0171, p. 2.

that Deschenes had asked for priority attention to be placed on obtaining the warrant. All this information was duly passed to Zelmer who, on the face of the same memo, noted a "... problem of timing in introduction through Communication Intelligence [CI&W] brought to attention of Mr. Deschenes, who will take matter up with Mr. Jodoin."

In testimony, Jodoin had no recollection of the meeting or a discussion between himself and Deschenes in regard to the Parmar warrant.[168]

On December 13, 1984, an executive summary in support of the warrant application was prepared by Robert ("Bob") Burgoyne, an analyst on the Sikh desk, and signed by Deschenes. The underlying application, however, was not approved by Barr until March 8, 1985.[169]

Meanwhile, on December 13th, Upton wrote to Wallin, advising that the affidavit had been completed and reviewed by legal counsel and that it had received tentative approval. He further stated that, "...with the completion of the renewal warrant process, we expect this warrant will be given immediate consideration." The latter sentence, however, was bracketed, presumably by the recipient. A handwritten note at the bottom of the document adds a comment about the bracketed sentence, noting that someone had spoken with Upton, and clarifying that the court process would not happen until about the 20th of that month. The note goes on to state that the writer had phoned the Desk to correct the "...wrong impression" and that "...he understands."[170] It is a shocking display of ineptitude – that it took our security service approximately five months to obtain a warrant on the known and dangerous Parmar.

Disagreement over Cause of Delays

In early 1997, the RCMP requested that CSIS provide them with a general overview of the warrant approval procedures in place in 1985. In their response, CSIS documented the procedures for obtaining the Parmar warrant based almost entirely on employee statements. The memo states that, "...[d]ue to the fact that the application to obtain a warrant against Parmar was made during the warrant conversion period following transition from the RCMP Security Service to CSIS, a decision was made at Headquarters to hold the request until the new system was in place."[171] This explanation for the delay is irresponsible. Jodoin rejected the accuracy of that statement during testimony. He claimed that while the process slowed down to ensure that it met the criteria they had established for this type of urgency, the warrant application was processed. He suggested that somebody might have misread or misinterpreted the file years later. He maintained that the warrant was pushed through the system in spite of the conversion process.[172] If that is so, why was the elapsed period from the time of the request to the time of obtaining the warrant five months?

168 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2273.
169 Exhibit P-101 CAA0115, p. 1.
170 Exhibit P-101 CAB0174, p. 1.
171 Exhibit P-101 CAD0184, p. 21.
172 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2277.

Ray Kobzey certainly felt the conversion process was the reason for the delay in obtaining the warrant and that a five-month waiting period was unacceptable. He said that an investigator's determination of "urgency" due to a serious emerging situation should have been respected by the headquarters area and treated accordingly.[173]

Warrant Portability Issue

The Warrant Review Committee (WRC) finally signed off on the Parmar warrant on January 28, 1985.[174] However, this only signalled the start of yet another difficulty. The following day, concerns were raised by Patrick Ansell, on behalf of the Ministry of the Solicitor General, about, among other things, portability issues in the Parmar warrant.

On February 26, 1985, the Chief, WAC & R filed an aide-memoire which addressed the inaction on the Parmar warrant during the month since the Warrant Review Committee had signed off on the warrant. Essentially, it discussed withdrawing the Parmar application from the ministerial consultation process until the entire issue of portability could be fully discussed with the Minister and his officials.[175] That discussion did not take place, but the aide-memoire noted that Jacques Courteau, the CSIS Legal Counsel, would be prepared to discuss this issue at the March 4th Solicitor General/Director meeting if it were decided to proceed.[176]

The aide-memoire had attached to it another document addressing the points raised by the Ministry. The issues Ansell and the Ministry were concerned about related to the provisions in the proposed warrant that would have allowed CSIS to target Parmar's work environment. Parmar described himself as a mechanic, but at the time he was said to be unemployed. More worrying to the Ministry was that the portability provision could lead to wire-taps at a gurdwara, as Parmar was calling himself a priest. Ansell was advised that portability provisions were intended to be used solely for unexpected situations where Parmar met with individuals at a location away from his residence and for a short-term duration. However, Ansell replied that the concerns of J. Michael Shoemaker, Senior Assistant Deputy Solicitor General, Police and Security Branch, might not be satisfied, and that some discussion might take place with the Minister on this issue when this warrant application was considered.

Throughout the month of February 1985, the Sikh Desk (Gartshore and Burgoyne) continued to be concerned. On February 12th, Zelmer inquired about the warrant delay and was advised of the portability issue which had yet to be discussed with the Solicitor General.[177] On February 21st, Zelmer again wrote to the WAC&R to inform them that fresh copies of the Parmar affidavit had

173 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3780-3781.
174 Exhibit P-101 CAA0122, p. 1.
175 Exhibit P-101 CAB0188, p. 1: On January 30, 1985, the warrant application was put on hold due to the concerns raised regarding portability.
176 Much of the following discussion on portability is from Exhibit P-101 CAA0138, pp. 1-3.
177 Exhibit P-101 CAB0191, p. 1.

been submitted, incorporating some requested changes. He noted pointedly, though, that there had been no notable developments and that "Indeed, the lack of this intercept represents the dominant deficiency to the advancement of our investigation."[178]

Eventually, the portability issue was resolved, with the Solicitor General accepting the original proposed language on portability, and on February 26th the affidavit was given to Barr. However, the required Ministerial consult, which had been expected for March 4th, was postponed due to the illness of John Sims, Legal Counsel for CSIS, who was away and unable to attest to the affidavit.[179]

Warrant Finally Approved – Over Five Months after Original Application

The affidavit in support of the warrant was finally signed on March 8, 1985 by Barr.[180] Three days later, on March 11th, the Honourable Elmer MacKay, the Solicitor General, signed the Minister's approval required for the warrant.[181] The notice of application for warrant was signed by the Deputy Attorney General on March 12th, scheduling the warrant to be heard before the Federal Court two days later.[182] On March 14th the warrant, including the portability provisions, was approved by the Federal Court and deemed valid from that day until March 13, 1986.[183] BC Region was notified of the success of the warrant on March 18, 1985.[184] Interestingly, a handwritten note (author unknown) attached to the notice to BC Region, completes the warrant portability story. It states:

> At a meeting with the Solicitor General on Monday March 11, 1985 (Mr. Finn, Barr, Gibson, Shoemaker, Marbury, Ms. Huntington and myself present) the question of restrictions on portability being included in draft warrants and ministerial approvals was raised. The Solicitor General agreed with my submission to the effect that ministerial policies and guidelines ought not to be incorporated into the documents; CSIS is bound by such policies and guidelines and therefore can only execute warrants subject to such polices and guidelines. The judge always has the option of adding conditions re: matters of public interest, pursuant to s. 21(3) (f) *CSIS Act*.[185]

In short, the upshot of the debate that held back the warrant application for about a month was a consensus that the debate was about a non-issue. This latter pointless delay attributable to the Ministry of the Solicitor General extended the needless earlier four-month delay at CSIS. A five-month delay in dealing with the

178 Exhibit P-101 CAB0194, p. 1.
179 Exhibit P-101 CAF0623, p. 1.
180 Exhibit P-101 CAA0333, p. 12.
181 Exhibit P-101 CAA0129, p. 1.
182 Exhibit P-101 CAA0130, p. 2.
183 Exhibit P-101 CAD0024, p. 2.
184 Exhibit P-101 CAA0133, p. 1.
185 Exhibit P-101 CAA0133, p. 3.

activities of a terrorist is inconsistent with competence, providing time enough to permit the terrorist to complete the act of terror he had planned.

Finally, on March 28, 1985, the BC Region Chief of CI&W wrote to the DG CI&W to inform him that the intercept on Parmar had been installed on March 25, 1985 – over five months after BC Region submitted an urgent application for a warrant.[186]

Kobzey told the Inquiry that this was frustrating and disappointing. He said that "...what was lost in terms of information or knowledge and what could have been done with that knowledge we'll never know, but that's one of the heartbreaks of this entire investigation, is that time delay, from a personal perspective."[187]

Wesley Wark, who appeared as an expert witness on security and intelligence, agreed, noting that "...it's an intelligence failure which is made that much more regrettable by the fact that we were probably fairly close to an intelligence success."[188]

The "what ifs" are numerous:

- What if the translators had had the benefit of listening to Parmar for a greater amount of time? Would they have developed a keener sense of their target and been able to tell when code words were being used or when secretive plans were being made?

- What if the warrant had been in place five months earlier? Would it have resulted in information that could have been used to support warrants on other key targets such as Ajaib Singh Bagri and Surjan Singh Gill?

- What if the intelligence gleaned from the wiretaps had given CSIS the ability to assess Parmar's close colleagues and perhaps approach one to be a human source to provide information even more valuable than that from the wiretaps?
- What if additional intelligence had allowed Kobzey and Ayre to make a stronger case for ongoing surveillance coverage of Parmar?[189]

- Finally, what if there had been an additional five months of intelligence? Would the combined impact of the above additional insights have provided CSIS with sufficient intelligence to prevent the bombing?

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186 Exhibit P-101 CAB0206, p. 1.
187 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3751.
188 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1495-1496.
189 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3775.

Observations

Several important observations arise from the Parmar warrant application process.

- The Parmar warrant delay was a key process and communications failure at CSIS.

- Despite Jodoin's testimony before this Inquiry, the documents show that the Parmar warrant was delayed until the conversion process was over. Whether this meant it was "put on hold" or "delayed" is irrelevant and borders on irresponsibility considering the stakes. In any event, the warrant did not go forward until the conversion process was complete, despite BC Region and HQ requesting urgent, priority and ASAP action on the warrant on practically every piece of correspondence.

- The delay in processing the Parmar warrant resulted in a vital loss of opportunity for CSIS to obtain intelligence and in an equal loss of opportunity to obtain potential evidence that would be needed by the RCMP.

- The frustration one feels by the delays caused by this Byzantine process are exacerbated when one considers that a police warrant to search a suspect's residence, arguably a greater invasion of privacy than a telephone intercept, can be obtained by a brief but effective affidavit within hours.

Addendum: CSIS Warrant Procedure 1987 to 1992

Step 1: The regional field investigator identifies a need for a warrant and consults with Regional Communications Intelligence Production (CIP), Special Operations Security (SOS) and Scientific and Technical Service (STS).

Step 2: The regional unit head reviews the application for completeness and accuracy.

Step 3: The regional chief reviews and considers existing coverage.

Step 4: The regional DDG Ops or regional OPS chief reviews and considers existing coverage, translation capabilities and position vacancies.

Step 5: The regional warrant coordinator reviews the process and confirms consultation with SOS, STS, and CIP.

Step 6: The regional DG reviews the application and recommendations and forwards to HQ.

Step 7: HQ Warrant Acquisition Control and Review (WAC&R) unit reviews the application and the requested powers.

Step 8: The branch warrant coordinator assists the analyst in preparation of the affidavit.

Step 9: The HQ desk analyst assesses the application, consults with legal, prepares the affidavit, and certifies accuracy of the facts.

Step 10: The HQ desk head reviews the affidavit and certifies that the facts and the analysis are supported by the information.

Step 11: The HQ Chief reviews the affidavit and certifies that the powers are necessary and the resources are available.

Step 12: The HQ DG reviews the affidavit and certifies it is consistent with the intelligence requirements and the priorities of the branch.

Step 13: The human source branch certifies that any source identity in the affidavit is protected and reviews the reliability assessment of human sources.

Step 14: The ADR reviews the application and ensures that the request is necessary and fits within priorities and plans for the service.

Step 15: Independent counsel reviews the application and, as required, meets with the affiant (i.e., who swore the affidavit) and with legal to assess the reliability of facts.

Step 16: The WAC&R reviews and prepares legal documents and affidavit packages.

Step 17: The Secretariat reviews and disseminates the packages and schedules the Warrant Review Committee (WRC).

Step 18: The WRC considers the application and rejects or approves it.

Step 19: The affiant makes the attestation.

Step 20: The Deputy Solicitor General (DSG) considers the application and the Solicitor General's Police and Security Branch (PSB) prepares a memo to the Minister for the DSG.

Step 21: The Solicitor General considers the application and approves or rejects it.

Step 22: The WAC&R prepares the court documents and establishes the Federal Court date and time. They also file the documents with the court.

Step 23: The Federal Court considers the application and approves or rejects it.

Step 24: The WAC&R receives the signed court documents and ensures that the affidavit and warrant and any conditions are disseminated.[190]

1.4 The Duncan Blast

The Duncan Blast incident occurred three weeks prior to the bombing of Air India Flight 182. Two CSIS surveillants followed Talwinder Singh Parmar, Inderjit Singh Reyat and a third unidentified person into the woods near Duncan, British Columbia, where they heard a large explosion. The senior surveillant believed it was the sound of a gun being discharged, although the younger surveillant thought it to be a much greater noise that literally lifted her out of her car seat. A cursory search of the area was fruitless. Parmar and Reyat were allowed to continue on their way and the third person was never identified. The issue of this person's identity continues to be a major line of investigation today (see Section 1.5 (Pre-bombing), Mr. X).

Surveillance Request

In April 1985, CSIS investigators Ray Kobzey and David Ayre requested on-going surveillance of Parmar[191] to complement the newly acquired warrant to intercept Parmar's conversations. Kobzey had previously been granted level 4 authorization which allowed him to obtain the warrant and ask for surveillance. As well as complementing the warrant, Kobzey requested ongoing surveillance due to the rising concerns over the attempted assassination of an official of the Government of India in New Orleans and the impending June visit of Prime Minister Rajiv Gandhi to the United Nations in New York.[192]

While there had been sporadic coverage of Parmar during April and May, ongoing daily coverage only began June 1, 1985.[193] On June, 4th, CSIS surveillance teams were covering Parmar. On that date, CSIS surveillants, Larry Lowe[194] and Lynne Jarrett witnessed what has come to be known as the "Duncan Blast".

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190 See Exhibit P-101 CAF0725: Study of, Report on, and Recommendations Relating to Process for Acquisition of Warrants by CSIS, April 1992, by the Honourable George Addy, pp. 102-109.
191 Exhibit P-101 CAB0209, p. 1.
192 Testimony of Ray Kobzey, vol.33, May 24, 2007, pp. 3793-3794.
193 Testimony of Ray Kobzey, vol.33, May 24, 2007, p. 3795.
194 Larry Lowe was not called to testify before the Commission due to health reasons. Instead, his testimony at the Reyat trial in September 1990 is relied upon for his observations (Exhibit P-101 CAD0007).

The Duncan Blast

On June 4th, the CSIS physical surveillance unit (PSU) set up in the vicinity of Parmar's house. However, at 9:48 AM, the surveillance team lost their targets and did not pick them up again until 2 PM.[195] In the early afternoon, Jarrett and Lowe followed a maroon car driven by Surjan Singh Gill with Parmar and a person they believed at the time was his son[196] (later referred to as Mr. X), to the Horseshoe Bay Ferry terminal. When they reached the terminal, only Parmar and his "son" boarded the ferry. According to Jarrett:

> [W]hen Parmar and the young man got out of the vehicle and headed for the walk-on passenger area, I also got out and headed into the ferry walk-on passenger area with them to board the ferry...Parmar and the young man that he was with and myself were essentially the last three people [on]. The young man actually held the door for me as we went into the walk-way to head to where you purchase the tickets.[197]

Only two of the surveillance cars were able to make it onto the ferry in time–just half of the surveillance team's usual complement.[198]

During the ferry trip, Jarrett observed Parmar attempting to make a phone call, first trying to charge it to his home phone. He could not do so because there was nobody home to approve it. Parmar told the operator that he just wanted to leave a message with Mr. Singh at 746-4918. Parmar paid $2.90 and called someone for about a minute.[199]

The ferry docked at Departure Bay in Nanaimo. Agent Lowe had also made it on board with his car and met Jarrett at the passenger pick-up where they continued to follow Parmar and his "son" who were picked up by another individual. Jarrett and Lowe then followed them to the residence of Inderjit Singh Reyat. The driver who took them there then left. At 6:30 PM, Reyat got into his car with Parmar and his "son" and drove to Auto Marine Electric in Duncan.[200] At 7 PM they left Auto Marine Electric and drove out of town at a high rate of speed, reaching speeds up to 120 km/hr.[201]

Reyat's car stopped in a wooded area and then backed south off Highway 18 along a dirt road that ended in a cement barrier. The surveillance team of Lowe and Jarrett parked their car a distance, north off Highway 18 on Hillcrest Road,

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195 Exhibit P-101 CAB0250, p. 2.
196 It was later determined that the youth was not Parmar's son. He has since been referred to as Mr. X. See Exhibit P-101 CAB0803, p. 5; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191.
197 Exhibit P-101 CAB0250, p. 3; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2163-2164.
198 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3833.
199 Exhibit P-101 CAB0250, pp. 3-4.
200 Exhibit P-101 CAB0250, pp. 4-5; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2171-2175.
201 Exhibit P-101 CAB0250, pp. 5-6.

and out of sight.[202] At that point, Lowe got out of the car and instructed Jarrett to remain in the car. He then began walking back through the woods to have a clear view of the car carrying Parmar. Jarrett remained in the car as Lowe had instructed. Lowe got within 150 to 200 yards from the Reyat car.[203]

Lowe saw the "son" return to the car and sit in the back seat. Soon after, there was a very loud bang. The sound was so loud that Lowe jumped behind a tree, believing a shot had been fired at him.[204]

Jarrett told the Commission that the passenger window was down about six inches. The "very sharp, very clear" bang was "extremely loud" and startled her so much that she swore and jumped off the car seat.[205]

Lowe described the sounds as follows:

> ...a loud explosion or bang, or rifle shot or whatever, I'm not – I couldn't describe it at that time. I thought it was a rifle shot at the time.... And it scared the hell out of me, to be honest with you, and I was hiding behind a tree and climbed further down behind the tree because I didn't know what was going on.... It was a matter of about a minute or two minutes after the sound the two individuals appeared back to the car.... The young fellow got out of the car and all three were around the back. Mr. Reyat's head disappeared as if he was putting something in the back of the trunk .... All three got back into the car at that particular time.[206]

Shortly thereafter, Lowe returned to the vehicle. He was an experienced hunter and identified the sound as a "rifle report" (i.e., the sound of a rifle being fired).[207] He requested that Jarrett radio that information, and then drove with her to the area where Reyat's car had been. Once they reached that site, Lowe instructed Jarrett to search the area for gun casings, which they did for less than a minute. They found nothing.[208]

Lowe and Jarrett then drove off to rejoin the surveillance team and to be relieved by the afternoon shift.[209] Parmar was followed by members of the CSIS afternoon shift as he returned alone to Vancouver via ferry. Once there, he was picked up by Surjan Singh Gill. CSIS BC Region had made plans to have the RCMP stop Gill's

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202 Exhibit P-101 CAB0250, p. 6; Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2179, 2181.
203 Exhibit P-101 CAD0007, p. 42.
204 Exhibit P-101 CAD0007, p. 29.
205 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2181.
206 Exhibit P-101 CAB0250, p. 6, CAD0007, pp. 10-11.
207 Exhibit P-101 CAB0250, p. 6.
208 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2182-2183; see also Exhibit P-101 CAB0250, p. 6 and CAD0007, p. 16.
209 Exhibit P-101 CAB0250, p. 7.

vehicle and search it for a weapon, but CT Chief Robert Smith called off the plan when the surveillants reported that Parmar was not carrying anything, such as a bag, which could conceal a weapon.[210]

Meanwhile, Lowe's team remained on Vancouver Island. Lowe explained in a will-say statement that they missed the ferry back to Vancouver, so they all stayed overnight in Nanaimo. The team compiled surveillance notes and Lowe phoned the Vancouver office to provide an update. They were advised that the "son" did not return on the ferry, and the team began to arrange for rental vehicles to look for the "son" on Vancouver Island. Lowe was called the next morning and told that they should return to Vancouver without completing the surveillance follow-up on the son that they had planned. Lowe commented, "I don't know whose decision that was but I guess that's hindsight."[211]

Had CSIS continued its operation on Vancouver Island they could have gathered a great deal more information on the person they believed to be the son of Parmar. The next day in Vancouver, other CSIS surveillants noted that both of Parmar's sons were dropped off at school.[212] At a minimum, the surveillants would have had to come to the conclusion that the person they were following on Vancouver Island was not Jaswinder Parmar. The identity of the young man who accompanied Parmar and Reyat to the test blast has remained a key question and an active part of the police investigation.[213]

What Information Did CSIS Pass on to Law Enforcement?

There have been complaints through the years about the completeness of the information that CSIS provided to the RCMP regarding the Duncan Blast and the sufficiency of its cooperation. As the Honourable Bob Rae succinctly put it in his report:

> 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.... 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 Parmar and his associates on that day.[214]

In addressing the issue of how much information actually reached the RCMP, and when it began to come in, Deputy Commissioner Gary Bass told the Inquiry that "...the issue is how much detail was provided, and for what purpose and with what caveats."[215]

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210 Exhibit P-101 CAB0250, p. 7, CAB0902, p. 31, CAD0130, pp. 15-16.
211 Exhibit P-101 CAA1089(i), p. 6.
212 Exhibit P-101 CAF0343(i): The Watt MacKay Report, p. 83
213 See Section 1.5 (Pre-bombing), Mr. X.
214 *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* (Ottawa: Air India Review Secretariat, 2005), p. 8.
215 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11241, 11243.

Indeed in the RCMP's Submission to the Honourable Bob Rae, "Air India Flight 182 Disaster", dated October 2005, the RCMP stated:

> Corporal Henderson was not provided with any additional details to indicate the seriousness of this information. In particular, he did not know about the guarded manner that Parmar spoke on the telephone intercepts.[216]

CSIS replied stating:

> The Service's report...the day after the Duncan test blast does not support the notion that Cpl. Henderson was not provided with any additional detail to indicate the seriousness of this information. It is clear in the CSIS report that Sikh extremism was discussed between the Service and the RCMP in respect of the event, as evidenced by the information Cpl. Henderson provided on Reyat's involvement with the local *gurdwara*.
>
> The RCMP paper notes that Parmar's identity was revealed to the RCMP later ("later identified as Talwinder Parmar"). Parmar's identity appears to have been provided **at the time** of the initial Reyat inquiry made by the Service on June 4, 1985, given that the RCMP Occurrence Report [CAA0193] states that CSIS requested "...we supply any local intelligence *on <u>them</u>*." In any event, the RCMP was made aware of Parmar's involvement in the Duncan incident, in the briefings made by the Vancouver Police and CSIS to the RCMP on 11 June, 1985.... The RCMP were aware of Parmar's history and the threat he presented...given the ongoing Interpol interest around him, the failed extradition attempt by India and his stay in a German jail. To state that the significance of the event was not known is further belied by the visit by US Secret Service and RCMP members on 12 June 1985, in anticipation of the Rajiv Gandhi visit to the United States.[217]

To this the RCMP replied:

> CSIS states that the Service alerted the RCMP of this event on the same date of the occurrence. This is misleading. Although CSIS did state they heard a gunshot, they only requested indices checks over the phone on Reyat. They provided no background information on their investigation of Parmar.[218]

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216 Exhibit P-101 CAA0335, p. 19; Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8301.
217 Exhibit P-101 CAA1088, p. 2. [Emphasis in original]
218 Exhibit P-101 CAF0814, pp. 1-2.

The following is an attempt to trace exactly what information was shared with the RCMP:

- Early on the morning of June 5th, the CSIS surveillance team manager contacted RCMP Cpl. Henderson by phone to advise him of what the team had witnessed in Duncan.[219] He indicated that CSIS was "...conducting surveillance of some of their targets who met Reyat" the previous day. It was then stated that "... Reyat and the target" went up a logging road and "...a gunshot was heard." The two parties were then followed back into Duncan. The CSIS member requested that the RCMP "...supply any local intelligence on them." Henderson found information about weapons registered to Reyat and advised accordingly.

- Later on the same morning, upon receipt of the surveillance report, Kobzey contacted Henderson by phone to advise him further on what CSIS had witnessed.[220] Kobzey indicated that the CSIS inquiries and surveillance at issue "...centres around radicals of the East Indian community."[221] Henderson provided Kobzey with some background information on Reyat and his involvement in Sikh issues in Duncan.[222]

- The report prepared by Henderson states that when he was first contacted by CSIS he was requested to provide "...any local intelligence *on them*".[223] However, when Henderson was questioned about the events in 1989, he indicated that "...the only request made by CSIS for any action was for Detachment records checks for Reyat",[224] and that his 1985 report, which did not mention Parmar's name,[225] contained "...the complete information provided to the Duncan Detachment by CSIS" on June 5, 1985.[226] Indeed, it appears from both Henderson's report and the CSIS report respecting this interaction, that Henderson only provided information about Reyat, including his address, employment, firearms and involvement with a new Sikh temple in Duncan.[227]

When Kobzey contacted Henderson, he requested that the information provided by CSIS be classified as secret. Henderson also noted in his report that "If further

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219 Exhibit P-101 CAA0193, p. 1. See also Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3797, 3801.
220 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3801. See also Exhibit P-101 CAA0188, p. 2 and CAA0193, p. 2.
221 Exhibit P-101 CAA0193, pp. 1-2.
222 Exhibit P-101 CAA0188, p. 2.
223 Exhibit P-101 CAA0193, p. 1. [Emphasis added]
224 Exhibit P-101 CAA0751, p. 1.
225 Exhibit P-101 CAA0193, pp. 1-3.
226 Exhibit P-101 CAA0751, p. 1.
227 See Exhibit P-101 CAA0188, p. 2, CAA0193, pp. 1-3.

assistance is required, they will advise."[228] Henderson later explained that his understanding was that CSIS had requested that the file be classified, and that the RCMP provide "...no follow-up assistance unless specifically requested to do so by CSIS."[229]

It seems the RCMP interpreted this to mean that they could not investigate further. D/Comm Bass told the Commission that the RCMP were asked not to do anything with information about the blast and to treat it as secret.[230] However, in cross-examination by the Attorney General of Canada, Bass conceded that this did not preclude the force from investigating further and that there was likely a presumption that this event was associated at the time with the potential assassination of Rajiv Gandhi. [231]

It was not only the RCMP Duncan Detachment that received information from CSIS about the events of June 4, 1985. A CSIS report on the Duncan Blast, dated June 5th, notes that the information was shared with RCMP VIP and E Division NCIS. This report identified Parmar as the target of the surveillance and Surjan Singh Gill as the person driving Parmar to the ferry terminal and picking him up on his return. It also referred to the sound heard as "a single, loud explosion" which was believed to have resulted from the discharge of "a large calibre handgun."[232]

At the time Kobzey and Ayre noted:

> It is difficult [at] this point to determine exactly what happened vis-à-vis the handgun. A number of scenarios come to mind, none of which are appealing. Given this, BC region is providing optimum coverage on Parmar and we are bearing in mind the investigations taking place in the Toronto/Hamilton area.[233]

Aside from the reference in the CSIS report that the information was sent to E Division VIP and NCIS, there appears to be no other record to confirm a direct transfer of information from CSIS to NCIS. It is, however, clear that the information was transmitted, at least indirectly, to NCIS in early June 1985. CSIS provided complete details of the Duncan Blast surveillance to Vancouver Police Department (VPD) members of the Vancouver Integrated Intelligence Unit (VIIU) in the days following the incident, and a VIIU report was prepared on June 6, 1985. The report contained a clear indication of Parmar's identity as the initial target of the surveillance and provided full details about his participation in the events surrounding the Duncan Blast, as well as the involvement of Surjan

228 Exhibit P-101 CAA0193, p. 2.
229 Exhibit P-101 CAA0751, p. 1.
230 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11249-11250.
231 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11310.
232 Exhibit P-101 CAA0188, pp. 1-3. Kobzey noted that the information shared with the RCMP would have included the surveillance of Parmar and the events observed at the Duncan blast itself: Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3801.
233 Exhibit P-101 CAA0188, p. 3, para. 6.

Singh Gill in driving him to and from the ferry terminal. It stated that, during the surveillance in the woods, "...the sound of a high-calibre handgun was heard (1 shot)."[234] There was additional information provided by Kobzey, that a meeting may have been held on June 3, 1985 at the house of Surjan Singh Gill.[235] At the meeting, a number of Sikhs were alleged to be plotting to assassinate Gandhi.[236] This led Kobzey to conclude at the time that the meeting might relate to Parmar's trip to Duncan the next day and, based on the apparent test-firing, Parmar was likely involved in buying or selling a weapon.[237]

The VIIU report provided no indication of any uncertainty surrounding the nature of the sound heard by the CSIS surveillants, but did provide a clear indication of the surrounding context and players involved. The report was accessible to the RCMP E Division NCIS members who worked at VIIU, and the information was most likely discussed with them in the days after the VPD received it.[238] The report was also received by the Criminal Intelligence Service BC (CISBC) on June 10, 1985 and was then available to the RCMP.[239]

A week after the Duncan Blast, the US Secret Service (USSS) and the RCMP began conducting "diffusion interviews"[240] of Sikh extremists in advance of the US visit of PM Rajiv Gandhi to dissuade them from taking any action against him. The USSS was paying close attention to Canadian Sikhs, due to a recent attempted assassination in the US of a visiting Indian minister.[241] The conspirators had ties to Sikhs in Southern Ontario and Vancouver.[242] Parmar and Gill were likely included because of information passed to the USSS by CSIS.[243] According to CSIS, Parmar was a high-profile leader with links to the Sikh communities across Canada. He travelled frequently, and had in the past entered (or attempted to enter) the US.[244]

The USSS, together with the RCMP, interviewed both Parmar and Gill on June 11, 1985.[245] Prior to that, the VPD members who authored the VIIU report briefed Cpl. B. Montgomery, Cst. M. Sandhu and the USSS agents on the reported discharge of a "high calibre handgun" in the Duncan area, and asked them

234 Exhibit P-101 CAA0200, p. 2.
235 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3808; Exhibit P-101 CAA0200, p. 2.
236 Exhibit P-101 CAA0200, p. 2.
237 Exhibit P-101 CAA0200, p. 2, CAB0264, p. 2.
238 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3907; Testimony of Wayne Douglas, vol. 34, May 28, 2007 pp. 4033-4034. All VPD VIIU files were searchable and fully accessible to the RCMP members of VIIU: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3874; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4030.
239 Exhibit P-101 CAA0862, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2222-2223.
240 Diffusion interviews refers to a procedure by which persons of interest are interviewed by the police in order to make them aware that they are on the police radar, so to speak, in the hopes that they will not proceed with whatever action they had planned.
241 Exhibit P-101 CAA1099, p. 2.
242 Exhibit P-101 CAC0438, p. 2.
243 Exhibit P-101 CAB0286, p. 1.
244 Exhibit P-101 CAB0114, p. 2, CAB0139, p. 2.
245 Exhibit P-101 CAA0871, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2228; Exhibit P-101 CAA0214.

not to jeopardize the ongoing CSIS investigation by revealing specifics of the Duncan incident or other details from the report. The USSS investigation related to the pending Rajiv Gandhi visit to Washington, DC, and there were questions for Parmar and Gill relating to that subject as well as to weaponry. The specific intent was to dissuade Parmar, Gill and their associates from any action against Gandhi, who appeared to be their target at that time.[246]

CSIS also intended to brief the RCMP and USSS prior to the diffusion interviews, but this did not occur.[247] However, CSIS did do a post-briefing session on June 13, 1985, where it was determined that "…no information was used that would place our own sources at risk".[248] Since CSIS had requested that the Duncan Blast information remain secret, it is clear that the fact that CSIS had witnessed the Duncan Blast and had surveillance on Parmar was not revealed to Parmar or Surjan Singh Gill during the diffusion interviews.[249]

CSIS Secrecy May Have Limited Threat Assessment Information to the RCMP

This CSIS concern for secrecy might explain why the Duncan Blast surveillance information, though it related to an incident occurring shortly before the Golden Temple attack anniversary and the Gandhi visit to the US and, though it involved a Sikh extremist recognized as highly dangerous,[250] was not mentioned in any of the CSIS threat assessments sent to RCMP HQ VIP Security and Airport Policing in June 1985.[251]

The Duncan Blast information was relevant from a threat assessment perspective, whether it involved firearms or explosives testing. Exercising caution to ensure the targets of surveillance are not made aware of the operations in order to be able to continue the surveillance is often necessary. However, if the CSIS policy of secrecy extended to sheltering the surveillance operations by not revealing information relevant to protective operations in threat assessments to the RCMP or other appropriate government agencies, the very purpose of the CSIS surveillance and operations was defeated.

By the same token, the RCMP itself had the information about the Duncan surveillance in its possession, through various channels, and had its own threat assessment process, but could also not include the information in the threat assessments sent to Airport Policing and VIP Security because it failed to report it internally.[252]

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246 Exhibit P-101 CAA0876, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2226.
247 Exhibit P-101 CAB0290, pp. 1-2; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2228; Exhibit P-101 CAA0214, p. 1.
248 Exhibit P-101 CAA0214, pp. 1-2; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2230-2231.
249 Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2231.
250 Exhibit P-101 CAA0110, p. 3.
251 See the following CSIS threat assessments: Exhibit P-101 CAB0249, CAA0190, CAA0199 and CAB0321, sent respectively on June 4, June 5, June 6 and June 18, 1985.
252 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

Even though the information was passed from CSIS to the RCMP, it was not passed appropriately through the RCMP CSIS liaison process. Sgt. Michael ("Mike") Roth, the head of the RCMP Liaison Unit, testified that he was not informed about the Duncan Blast until after the bombing of Flight 182. He indicated that the information in the CSIS report about the incident was precisely of the type that ought to have been received by his Unit. Had Roth received a copy of the report, he explained, he would have been able to check various RCMP intelligence files on Parmar, Gill and the BK to enable the RCMP to contextualize the information and better understand it.[253]

Bass said he understood why CSIS might not have recognized the significance of the information about the Duncan Blast because the thinking at that time was all about a potential assassination attempt on Gandhi. Given the environment at that time, he generously does not fault CSIS for making the assumptions it did. [254]

Lack of Camera Leaves Mr. X a Mystery

Bass did wonder about what might have happened had Mr. X been properly identified.

It was the surveillants' task to identify those persons who interacted with Parmar – that was part of the intelligence they were supposed to collect. In this case, the third person was not identified nor photographed, and the mystery as to who Mr. X was has remained ever since. Bass called this "...a real missed opportunity here that we're still chasing 22 years later that where we might have identified him during that week, because the theory ... is that he helped, right or wrong, that he helped Reyat build the bombs." [255]

The key question is why no photos were taken by the surveillance team on June 4, 1985. The general purpose of the surveillance was to ascertain "...the associates, contacts, movements, and activities of Parmar to obtain photographs of Parmar and all those he comes in contact with."[256] Despite the fact that one of the key goals was to obtain photos of Parmar and his associates, Jarrett was not given a camera and was only supplied with a two-way radio.[257]

MR. GOVER: Now, I've touched on the general purpose or objective of the surveillance, which included "obtaining photographs of Parmar and all those he comes in contact with", and I have quoted that verbatim. What equipment were you given to allow you to carry out your duties?
MS. JARRETT: A radio.
MR. GOVER: And in particular, were you given a camera?

253 Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5600-5606.
254 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11248.
255 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11248.
256 Exhibit P-101 CAB0250, p. 1.
257 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2157.

MS. JARRETT: No, I was not.
MR. GOVER: When we speak, as we will, of your observations of June 4th, 1985, were you able to take any photographs of Mr. Parmar?
MS. JARRETT: No, I was not.
MR. GOVER: Do you recall whether there was a camera in the car that you were in at times in the course of conducting your surveillance?
MS. JARRETT: I don't believe there was.[258]

While the Attorney General rather optimistically speculated that it "…is entirely possible that the PSU team would have had a camera in one of the cars"[259], no evidence was provided to support this defensive view. Indeed, the record shows that it was unlikely that any of the surveillance units took photos that day.[260]

MR. GOVER: Constable Jarrett, do you have any recollection of taking any photographs while conducting mobile surveillance with CSIS?
MS. JARRETT: Mobile surveillance?
MR. GOVER: Yes.
MS. JARRETT: Me, personally, I don't recall that happening.
MR. GOVER: And have you ever seen a photograph taken by any other member of the physical surveillance unit on June 4, 1985?
MS. JARRETT: No.[261]

It is plausible, but not understandable, that the lack of cameras was the result of the resource constraints affecting CSIS at the time.[262] Jarrett stated that she did not see a camera throughout the entire time she conducted mobile surveillance until she moved to conducting stationary surveillance at the observation post (OP) in July of 1985. [263] As Jarrett had been conducting mobile surveillance for CSIS since July 16, 1984,[264] this indicates that it was nearly a year before she was provided with a camera. The lack of cameras for CSIS surveillance work dealing with potential terrorists cannot adequately be excused by appealing to resource constraints.

In its Final Submissions, the AGC also relies on a statement by Kobzey, suggesting that taking photographs would not have been practical.[265] However, this statement is speculation on the part of Kobzey, who was not a member of the surveillance team and was unaware of the fact that, at least according to the evidence before the Commission, the team did not possess cameras.

Whatever the cause, the failure to obtain a photo of Mr. X was a significant missed opportunity, with the result that, to this day, the identity of Mr. X remains a key mystery in the Air India narrative.

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258 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2157.
259 Final Submissions of the Attorney General of Canada, Vol. para. 162.
260 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2210.
261 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2210.
262 See CSIS-related portions of Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.
263 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2208.
264 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2151-2153.
265 Testimony of Ray Kobzey, vol 33, May 24, 2007, pp. 3814-3817; Final Submissions of The Attorney General of Canada, Vol. I., para. 162.

The Taking of Notes

Aside from the lack of a camera, a second clear deficiency in the surveillance operation involved the notes taken by the CSIS surveillants. At the time, the general procedure was for the entire surveillance team to collectively write its surveillance report at the end of the day.[266] Jarrett stated that when she first started, CSIS surveillants did not make handwritten notes because they were not expecting to be in court, but shortly before the Duncan Blast they did start taking notes, albeit without any guidelines or training. In her testimony, Jarrett stated that the notes should have been more inclusive of the day from beginning to end rather than of one specific time frame. She acknowledged that the notes would have been much different had she expected to end up in a court of law.[267]

The Phone Number Dialled on the Ferry: Compounding Errors Affect the Investigation

Further error occurred with regard to the analysis of the phone number which Jarrett noted Parmar attempting to dial on the ferry. Jarrett recorded the number 746-4918, but was not sure about the last four digits. The number Jarrett thought she heard was recorded in the surveillance report.

However, a further note in the surveillance report states:

> Note: the phone book was checked, it was found that the 746 exchange is for Duncanm [*sic*], B.C. and a call to the operator revealed that it would cost $2.90 to call Duncan. Thge [*sic*] Duncan phone book shows that there is a Mr. T. M. Singh listed. As a lawayer [*sic*] and the phone number is 746-7121. Address: 170 Craig, Duncan, B.C.[268]

When Ayre and Kobzey received the surveillance report and wrote their report on the incident for entry into NSR, the information they included simply noted that they believed the number dialled belonged to a Mr. T. M. Singh. The report stated:

> During the trip to Nanaimo Parmar was noted making a telephone call to a lawyer in Duncan. (Note: we believe he called T.M. Singh (604) 746-7121, 110 Craig St. Duncan, BC).[269]

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266 See Exhibit P-101 CAB0250 for the surveillance report written on June 4, 1985.
267 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2157-2159.
268 Exhibit P-101 CAB0250, pp. 3-4.
269 Exhibit P-101 CAA0188, p. 1.

Significantly, later in the report, they note the information given to them by Henderson, including Inderjit Singh Reyat's telephone number (604) 746-4918.[270]

It seems that nobody noticed that this was exactly the same number noted by Jarrett.

Unfortunately, original surveillance reports at the time were not entered into NSR. Only the investigator's report was entered, and in this case it omitted Reyat's phone number. This affected the analysts at CSIS HQ and any other CSIS employees who relied on the report in NSR, since only the investigators in BC Region would have had access to the original surveillance report. Additionally, when the RCMP asked for information from CSIS, it was the reports, not the raw data (e.g., surveillance reports) that were shared. This is a concrete illustration of the pitfalls that can arise from a reliance on summaries and other modes of indirect reporting without access to the original raw data.

The consequences of this specific error are largely unknown. Certainly it appears that some CSIS employees still believe that Parmar called T. M. Singh. Was valuable time wasted tracking down why Parmar may have called "Mr. Singh" when in fact no such call took place?

Furthermore, the error shows a clear lack of knowledge about Sikhs in general. There was only one "Mr. Singh" listed in the phone book, but had the surveillance team known more about Sikhs, they would have realized that all male Sikhs go by the name "Singh", even though they may use other last names. Instead, the surveillance team relied on their flawed search of the phone book rather than the direct observations of one of their team members, an error which was repeated and compounded by the CSIS investigators who received the surveillance report.

With the most modest of hindsight, had it been known that the number Parmar called was that of Reyat, the intercept logs could have been checked and the discovery made that Parmar and Reyat had had previous contact. Parmar had arranged for other visits to Duncan in the previous month. This information was, in any event, unavailable to the investigators as the backlog of intercepts meant that the May tapes were not translated until late June and September 1985 after the destruction of Air India Flight 182.[271]

Finally, and most damaging, the phone call information was not known by the RCMP until March 1986, when Jarrett was interviewed for the expected Duncan Blast trial:

> It will be noted that [redacted] recalls the details of a telephone number and call made by Parmar from the B.C. ferry to the telephone number of Inderjit Singh Reyat. This information was previously unknown to us.[272]

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270 Exhibit P-101 CAB0188, p. 2, para. 4.
271 Exhibit P-101 CAD0184, pp. 40-52.
272 Exhibit P-101 CAF0213.

Whether or not this information could have been of use to the RCMP's investigation throughout the preceding year, it should have been available to law enforcement, especially when criminal charges were being pursued in connection with the Duncan Blast and a detailed review of the evidence was to be expected.

This incident shows the errors that can be made when information is converted into intelligence summaries, and the dangers that can therefore result from subsequently relying on such summarized intelligence. That was the consequence in this case, and it is a practice that more often than not will be inadequate with disastrous results.

A Case of "Tunnel Vision"

The Duncan Blast is an example of how narrow thinking can affect an investigation. Prior to the bombing, no one questioned the source of the loud explosion heard by Lowe and Jarrett. Their interpretation of it as a gunshot, as reported, was accepted as factual and no critical examination of the facts took place until after the tragedy.

Jarrett testified that she had little experience with guns and accepted Lowe's assumption that it was a gun.[273] Kobzey offered similar testimony:

> Basically it stemmed from his language. He's a trained observer. He's a man who is a hunter. He's familiar with weapons. He was of the opinion, at the time, that it was a weapon. Now, had he phrased it differently, it would have triggered a different response. However, we were looking at an assassination attempt on Mr. Gandhi and the focus was on that kind of an event and it was just perhaps a case of tunnel vision.[274]

Burgoyne, the analyst on the Sikh Desk at HQ, was similarly focused:

> ...over the year, we had seen a lot of Sikh activity with firearms. We had the Uzi parts being transported out of Canada to England. I was currently working on the Windsor project, where they were trying to import Uzis into Canada that same week ... so Parmar, Reyat, discharging a firearm perhaps with plans of attacking during genocide week or during the Gandhi visit to bring distraction to his visit. I think the possibility was quite real.[275]

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273 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2200.
274 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3806.
275 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3483.

Though there was information available that bombs were being used in India and that bomb threats had been made in Canada, the prevailing wisdom at the time among Canadian authorities was that an assassination was the most likely course of action for the Sikh extremists. The Duncan Blast, rather than forcing CSIS to think more broadly, was merely taken as confirmation that they were on the right track. This tunnel vision and lack of imagination may also have been reinforced by a lack of information at the local level on current threats, including those to Air India.

The June 1st Telex and Other Threat Information

The June 1st Telex[276] was sent by Air India to its various operations worldwide, warning of Sikh extremists placing time-delay devices in checked baggage. It provided a series of security steps that should be taken in order to prevent such an occurrence. This information was shared with the RCMP at Toronto Pearson Airport and transmitted to HQ Airport Policing but the information was never shared with CSIS (see Section 1.2 (Pre-bombing), June 1st Telex).[277] If the information had been shared with CSIS, it would likely have been transmitted to the regions through the NSR. Kobzey and Ayre would likely have been alerted.

Kobzey commented on the significance of the lack of this information at CSIS and how that related to the Duncan Blast:

> A document like this would have broadened my options with respect to discussing the need for surveillance with Mr. Osborne. I believe that if I had seen this, I would have been a little more emphatic. I would have had two types of threats that we could deal with ... and it would have given me an opportunity to ask for extended surveillance for the entire month, and ... we would have treated that loud noise a lot differently.[278]

Perhaps the June 1st Telex would have been enough to jolt CSIS out of its belief that it was an assassination that was being planned. Or perhaps it would have been enough to make someone think twice about what was heard in Duncan prior to the bombing.

Had the RCMP been able to report the information in its possession centrally, it would have been in a position to at least analyze the Duncan Blast surveillance information in light of the threats against Air India and the possibility of bombing raised by the June 1st Telex. Further, the RCMP had additional information which could have provided useful context for the Duncan Blast surveillance. According to intelligence received by the Duncan Detachment on June 10, 1985, following

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276 Exhibit P-101 CAA0174.

277 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3809. See also Section 3.6.2 (Pre-bombing), RCMP Failures in Sharing with CSIS.

278 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3810-3811.

a split in the local Sikh temple, extremists started a new temple whose leader, an associate of Inderjit Singh Reyat, was advocating "...selling homes and property to buy guns and 'get strong', *cut off all travel with Air India*, cut off all business with Vancouver, take revenge for any allegations."[279] Back in September 1984, an RCMP source who provided information about a plot to bomb an Air India plane (Person 1) had also referred to a man in Duncan who could manufacture "nitro" for blowing up an Air India plane.[280] As the information was not reported to the RCMP unit in charge of gathering threat information, it was neither transmitted to CSIS, nor included in an RCMP threat assessment.[281] This information would have provided further indication of the possible links between Reyat and the Duncan Blast incident, on the one hand, and threats to Air India and the risk of bombing, on the other hand.

As it was, the agencies did not appreciate the significance of the Duncan Blast in time and, on June 23, 1985, Air India Flight 182 was blown out of the sky. Once the plane went down, the critical thinking that should have occurred prior to the blast began to take place. At that point, the first thing that jumped into everyone's mind was the series of events known as the Duncan Blast.

Advance Warning of Trip to Duncan

A number of witnesses throughout the hearings testified that CSIS had advance warning of Parmar's trip to Duncan. CSIS agent, Bill Turner, testified that CSIS had advance notice of Parmar's trip to Duncan on June 4, 1985, because the agency was following his moves through wiretaps, which enabled them to see the test blast. [282] Bass also confirmed in testimony that the wiretaps provided forewarning of the Duncan Blast.[283]

Don McLean also testified that Kobzey contacted him in advance of the Duncan Blast and asked if he was aware of where Parmar had been going and whether he would be travelling to Vancouver Island.[284]

This was disputed, however, in a written response filed by Kobzey,[285] in which he stated that he and the PSU units were caught by surprise when Parmar went to Vancouver Island and, had he known in advance, the PSU would have been briefed and prepared. Instead, Jarrett was one of the last foot passengers to board the ferry and Lowe was lucky to get his car on board.

Information from Wiretap Intercepts

The AGC also submits that "...CSIS had no forewarning about the trip to Duncan, and the Parmar intercept provided no further information in respect of Parmar

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279 Exhibit P-101 CAA0276, p. 2 [Emphasis added], CAA0307, p. 3.
280 Exhibit P-120(c), p. 6 (entry for 521-3). See Section 1.1 (Pre-bombing), November 1984 Plot.
281 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.
282 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8351.
283 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11197.
284 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4138-4139.
285 Exhibit P-403: Response of Raymond Kobzey to Evidence of Don McLean, May 29, 2007.

and Reyat's activities on that day."[286] The AGC states that the CSIS intercept for June 4, 1985, was transcribed on June 11, 1985 and that there was nothing significant reported from any days of the Parmar intercepts on or around the time of the test blast.[287]

However, the wiretaps reveal ongoing contact between Reyat and Parmar throughout the month of May, including plans for two other trips to Duncan prior to the Duncan Blast trip. Had the tapes been transcribed in a timely fashion, CSIS would have had much more information, such as:

- On May 6, 1985 (translated/reported on September 11, 1985)[288] at 9:35 PM, CSIS intercepted a phone call between Parmar and Reyat. Parmar told Reyat that Surjan Singh Gill would be coming to see him tomorrow. Reyat was to meet Gill at the ferry terminal between 4:00 and 5:00 PM. Parmar also advised Reyat to come alone.[289]

- On May 7, 1985 (translated/reported on September 11, 1985)[290] at 5:13 AM, Parmar called to inform Reyat that the ferry would be docking at 4:30 PM. Later the same day, at 8:17 AM, Reyat spoke to Parmar's daughter who informed him that Talwinder was asleep, at which point Reyat asked for Surjan Singh Gill's telephone number.[291] At 8:54 AM another call was intercepted, this time from Gill (presumably calling from Parmar's house) to Reyat's father. During the conversation Gill requests that Reyat's bows and arrows be delivered to Gill as he was going to go to Duncan and needed to take them along.[292]

- On May 19, 1985 (translated/reported June 21, 1985)[293] at 6:42 PM, Reyat advised Parmar that their plan of coming to Vancouver had changed. Parmar said that they would instead go to Duncan. Reyat gave his phone number: "746-4918".[294] At 7:42 PM a second call between Reyat and Parmar was intercepted in which Parmar advised that he and Gill would meet Reyat in Nanaimo at 10:30 PM.[295]

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286 Final Submissions of the Attorney General of Canada, Vol. I, para. 162.
287 Final Submissions of the Attorney General of Canada, Vol. I, p. 73, Footnote 193.
288 Exhibit P-101 CAD0013, pp. 150, 154.
289 Exhibit P-101 CAD0180, pp. 52-58.
290 Exhibit P-101 CAD0184, p. 44.
291 Exhibit P-101 CAD0180, pp. 59-60.
292 Exhibit P-101 CAD0180, pp. 61-64.
293 Exhibit P-101 CAD0159, p. 40.
294 Exhibit P-101 CAD0013, p. 184.
295 Exhibit P-101 CAD0180, p. 74.

- On May 24, 1985 (translated/reported June 20, 1985)[296] at 6:30 AM, Reyat spoke to Surinder Kaur Parmar. He requested that Parmar call him back soon.[297]

- On May 31, 1985 (translated/reported either June 14 or June 17, 1985)[298] at 7:25 PM CSIS recorded another conversation between Parmar and Reyat in which Reyat asked Parmar to call him the next day at work.[299]

More timely translation and reporting of the wiretap intercepts would have given CSIS a good idea about whom Parmar was going to visit in Duncan.[300] Second, the CSIS investigators would have been aware of Reyat's phone number and would not have made the error they did make in thinking a lawyer named Singh was being called. Finally, knowing this was a somewhat frequent contact of Parmar, CSIS may have returned to Duncan the week following the blast, if not to investigate the test site, at least to photograph Reyat and Mr. X, who was staying with him.

Post-Bombing Investigation of the Duncan Blast

While CSIS was not able to appreciate the significance of the Duncan Blast at the time, after the Air India bombing it was CSIS, not the RCMP, which first realized the potential significance of the events observed on June 4th. Kobzey explained:

> One of the first things we discussed amongst ourselves was the blast noise that was heard; the loud noise, the report, the explosion, however it's been phrased here. And it was recommended by us investigators and our supervisors – unit heads - that the Mounted Police should endeavour to get to that site as soon as possible to look for any evidence of residue or, material indicative of an explosion having taken place there.[301]

An analyst in the Toronto Region who had been going over the files also came to the same conclusion in a memo dated June 27, 1985:

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296 Exhibit P-101 CAD0159, p. 45.
297 Exhibit P-101 CAD0180, p. 78.
298 Exhibit P-101 CAD0159, p. 51.
299 Exhibit P-101 CAD0180, p. 83.
300 Exhibit P-403, Response of Raymond Kobzey to Evidence of Don McLean, May 29, 2007, indicating that Kobzey first became aware of the existence of Reyat on June 4, 1985.
301 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3812-3813.

> Although Reyat has a .357 Mag S&W revolver registered to his name, it has not been established if the explosion heard by the BCR PSU member was a large calibre handgun or a blasting cap which would sound similar. There exists a probability that the explosion may well have been a blasting cap on a timing device being tested by Parmar and Reyat, hence the fast drive to the country, Jaswinder returning to the vehicle, and the single explosion. It would appear more probable that if Reyat and Parmar were testing a firearm that they would fire multiple rounds and not a single round or explosion as heard.[302]

That same day, CSIS recommended to the RCMP that they visit the Duncan Blast site with one of the CSIS surveillants. The RCMP Explosives Detection Unit (EDU) was requested to conduct a search[303] and did so on June 28, 1985, with the CSIS surveillant, but nothing was found.[304] It was not until a later visit on July 2, 1985 that the RCMP first uncovered objects of interest:

> Search resumed in Duncan Area. Robertson located one paper tape bundle wrapper, commonly used to secure a blasting cap, leg wires, ident., attended and photographed and fingerprinted item. S/CST Townsend locates one aluminium foil shunt. Both items indicate that a blasting cap was handled at this location. Both items discovered in the exact location of the suspect's vehicle.[305]

On July 4, 1985, the RCMP returned to the site and located "...one blasting cap shunt, approximately 7 m north, where the bundle wrapper was located."[306]

The RCMP concluded that the paper tape bundle wrapper and the two "blasting cap wire" shunts found[307] pointed to the handling of "...at least two electric blasting caps ... where suspect's automobile was reported to have parked." There was a possibility, however, that while "...coincidently, suspects may have caused a small explosion, perhaps to test a timer", and then "...removed the evidence, i.e. blasting cap, leg wires, etc", that the explosion would not have been "...of the magnitude reported" by the CSIS surveillants. The RCMP speculated that the explosion described by the surveillants "...could have been from a blasting operation in the area."[308]

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302 Exhibit P-101 CAB0363, p. 5; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2235-2236.
303 Exhibit P-101 CAA0276, p. 2; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2238.
304 Exhibit P-101 CAA0261, p. 5, para. 41, CAA0276, p. 2, CAB0371, p. 1; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, pp. 2237-2238.
305 Exhibit P-101 CAA0276, p. 3; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2238.
306 Exhibit P-101 CAA0276, p. 3; Remarks by Anil Kapoor, Transcripts, vol. 23, May 4, 2007, p. 2238.
307 See Exhibit P-101 CAA0324(i), p. 5, para. 19.
308 Exhibit P-101 CAA0276, p. 3; Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5699-5700.

Court Proceedings Related to the Duncan Blast

In November 1985, charges were laid against Parmar and Reyat in relation to the Duncan Blast events.[309] Related to those charges, on March 17, 1986, nearly a year after the bombing, Jarrett and Lowe visited the Duncan Blast test site with an explosives expert and Jim Jardine (the BC Crown prosecutor for the Duncan Blast trial and Reyat's Narita bombing trial) to conduct a sound line up test which would allow them to identify the sound actually heard during the Duncan Blast.[310] At the test, both Lowe and Jarrett identified the sound they heard as similar to that of the detonation of a blasting cap and one dynamite stick hanging from a tree.[311]

In the end, the blasting cap remnants found by the RCMP in the days following the bombing were of little assistance to the Crown in making its case against either Parmar or Reyat.[312] Jardine indicated from the beginning that the testimony of the CSIS surveillants would be necessary to go ahead with the prosecution, regardless of the use which could be made of the physical evidence.[313] Negotiations with CSIS were necessary to obtain authorization for the members of the surveillance team to be interviewed by the RCMP and to testify in court.[314] CSIS remained involved throughout the process in approving the testimony and disclosure of will-says for individual members of the surveillance teams.[315]

The physical evidence uncovered by the RCMP in July 1985 was mentioned in an "Information" to obtain a search warrant for the residence of Reyat.[316] This search, conducted four months later on November 5, 1985, discovered some of the physical evidence ultimately used to convict Reyat of manslaughter in the 1991 Narita bombing trial. When he was arrested during the November search, Reyat admitted to setting off an explosive device with Parmar on the day of the Duncan Blast, explaining that Parmar wished to "...blow up something in India", though Reyat denied that dynamite was detonated, claiming it was only gunpowder which was set off.[317]

In the end, Jardine was of the view that, even with the testimony of the CSIS surveillants, there was no evidence admissible against Parmar to show that he was in physical possession of explosives on the day of the Duncan Blast or to show his purpose in jointly possessing explosives with Reyat, since Reyat's statement to police could not be used against Parmar.[318] At trial, no evidence was called to support the one count of possession of explosives against Parmar

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309 See Exhibit P-202: Information sworn on November 7, 1985.
310 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5695-5696.
311 Exhibit P-101 CAB0669, pp. 4-5.
312 See Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5699-5700.
313 Exhibit P-101 CAA0390, CAF0187.
314 See Exhibit P-101 CAA0375, CAA0390, p. 3, CAA0391, pp. 1-2, CAA0392, CAA0393.
315 Exhibit P-101 CAA0417, pp. 1-3, CAA0425(i), pp. 1-3, CAB0669(i), pp. 1-8, CAF0215, pp. 1-2.
316 Exhibit P-201, p. 23, para. 24.
317 *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.), at 4-9, 11.
318 Exhibit P-101 CAF0168, p. 4.

in connection with the Duncan Blast, and the charge was therefore dismissed.[319] Reyat pled guilty to two of the four counts against him: possession of explosives and possession of an unregistered weapon. He was ordered to pay a $2000 fine.[320]

In the Narita bombing trial, Justice Raymond Paris found that he could not be certain, on the basis of the evidence, that it was dynamite which caused the noise heard during the Duncan Blast surveillance. He concluded, however, that Reyat's admission that he was experimenting with explosive devices for some illicit purpose was relevant evidence of conduct consistent with "...that of a person interested in the fabrication of a bomb or explosive device". This evidence was taken into account, along with the forensic evidence, to reach the final conclusion that Reyat fabricated or aided others to fabricate the bomb which exploded in Narita.[321]

Neither CSIS nor the RCMP uncovered physical evidence of a blast in Duncan prior to the Air India bombing. The items which were finally recovered at the Duncan site by the RCMP after the plane went down could not tie the key suspects to the Narita and/or Air India bombs, though they were still used to further the police investigation.

The RCMP only officially requested permission to interview the CSIS surveillance team in December 1985,[322] though it is not known what other discussions took place between the agencies on that issue. By the time the surveillants were interviewed and participated in the sound identification test in March 1986,[323] their memories of the event were undoubtedly not as fresh, and, without detailed notes, it would be even more difficult for them to recall the events.

Observations

- The Duncan Blast was an intelligence failure that reinforced CSIS's misdirected actions, which arose from the belief that the threat from radical Sikhs was the possibility of an assassination attempt.

- A continuation of the CSIS operation on Vancouver Island could have yielded much more information on the person believed to be the son of Parmar. Had the surveillants continued their investigation on Vancouver Island, they would have had to come to the conclusion that the person they were following (Mr. X) was not Jaswinder Parmar.

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319 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5707-5708. See also Exhibit P-101 CAA0421, where the RCMP indicated its agreement with the prosecution's decision not to call evidence against Parmar.

320 Exhibit P-101 CAF0168, p. 7; Testimony of James Jardine, vol. 47, September 18, 2007, p. 5686; Exhibit P-102; *Dossier 2*, "Terrorisn, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism", p. 11.

321 *R. v. Reyat*, 1991 CanLII 1371 (BC S.C.) at 9-15.

322 Exhibit P-101 CAA0391, pp. 1-2.

323 Testimony of James Jardine, vol. 47, September 18, 2007, pp. 5696-5697.

- While debate is ongoing as to whether CSIS passed on enough information for the significance of the Duncan Blast to be recognized by the various enforcement agencies, it is clear that CSIS itself did not recognize the significance of the Duncan Blast, especially after the assumption was made that it was a gun that had been discharged. It is clear that, though CSIS was able to witness the Duncan Blast, the impact of that observation was lost on the intelligence service.

- Though it was clearly relevant, CSIS did not include information about the Duncan Blast in any of the threat assessments sent to Protective Policing. The RCMP was aware of the information through various channels but did not include it in its threat assessments. As a result, Protective Policing could not put any security measures in place to respond to the threat.

- Had information about the June 1st Telex been shared with CSIS, Kobzey and Ayre would have been alerted to the threat of bombing, as it had to do with Sikh extremism. Had they seen the document and been aware of such potential, there would have been no justification to focus exclusively on the gun/assassination theory.

- The Duncan Blast incident shows the potential for errors when information is converted into intelligence summaries, as well as the dangers that can result from reliance by law enforcement agencies on summaries without direct access to raw data.

- An analysis of the wiretap evidence shows that CSIS did not have advance warning of Parmar's trip to Duncan because there was a significant backlog in the translation of the tapes. The impact of delayed availability of the wiretap information was significant and its detrimental consequences are obvious.

- Had the intercepts been translated and reported promptly or even within a few days, CSIS investigators would have been aware of Reyat's existence before June 4, 1985.

- The agencies did not appreciate the significance of the Duncan Blast in time and the critical thinking that should have occurred prior to the blast only began to take place after the Air India bombing tragedy.

- CSIS struggled with a lack of appropriate surveillance equipment, a lack of timely intercept product, a lack of available information suggesting that Air India was being targeted, and a slew of erroneous assumptions made by both the surveillance team and the investigators. The inability to look beyond the physical clues resulted in a failure to recognize the seriousness of what the agents witnessed, and was part of the lost opportunity to prevent the Air India disaster.

1.5 Mr. X

On June 4, 1985, CSIS surveillants followed Parmar, Reyat and an unidentified male to Duncan, BC where they witnessed what has now become known as the Duncan Blast.[324] At the time of the surveillance, CSIS believed that the unidentified youth was Parmar's eldest son, Jaswinder Parmar. It was many months before both the RCMP and CSIS concluded that the third person they had seen was not Jaswinder. Better attention to detail, more effective internal and external communication and proper analysis should have enabled the authorities to take advantage of the apparently numerous opportunities during the days following the Duncan Blast to identify the third person correctly.

Instead, the identity of the third person, dubbed "Mr. X",[325] has never been determined. It has been one of the most important areas of ongoing investigation for more than 20 years. As noted in the Duncan Blast episode, senior RCMP officers continue to wonder what the result might have been if there had been a proper identification of the people and the event during the week following the Duncan Blast, and properly regard this as a "real missed opportunity" because the belief is that this person helped Reyat construct the bombs.[326]

The Initial Erroneous Assumption

It is unknown who first identified Mr. X as Jaswinder Parmar. Lynne Jarrett believed it was the son on the basis of what she had been told. Ray Kobzey, in his oral testimony, stated that a surveillant made the initial assumption. He confirmed that the request for surveillance included authority to take photos of Parmar and whomever he contacted. The surveillance began with an incorrect assumption about the identity of one of Parmar's associates and the surveillants did not have a camera. [327]

The Description of Mr. X

On June 4th, the surveillance team recorded the following description of the unidentified youth:

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324 See Section 1.4 (Pre-bombing), Duncan Blast.

325 No one knows who originally dubbed the unidentified person "Mr. X", but it is a name widely used by the RCMP from very early on and indeed, also used by Justice Josephson in the Bagri and Malik trial, in the books written about the Air India disaster and at the Air India Inquiry.

326 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11247-11248.

327 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3814.

> The son is at Parmar's side ... still carrying the Adidas bag and briefcase.... Parmar's son wears black pin striped slacks, a white jacket with a stripe down one arm, a rust coloured turban and a curved knife by his side.[328]

In her testimony, Jarrett confirmed the above description of Mr. X, noting as well that he had a beard that was "…very short, almost like peach fuzz, like it wasn't fully grown." Her description was consistent with the descriptions provided by other members of the surveillance team. The question was not one of differing opinions regarding Mr. X's appearance, but of misidentification of who he was in the first place.

Discovering that Mr. X was not Parmar's Son Jaswinder

The background to this episode can be found in the Duncan Blast event. Jarrett and Lowe took the ferry from Vancouver to Nanaimo with Parmar and Mr. X and followed the targets to a wooded area where the surveillants heard a loud explosion. No photographs of Mr. X were taken.

In the weeks following the bombing of Air India Flight 182, RCMP investigators went back to the blast site with Lowe to search for evidence of explosives. It took several months before the RCMP had access to other members of the Duncan surveillance team.

Jarrett, the surveillant who got closest to Mr. X, had applied to "bridge back" to the RCMP prior to the Duncan Blast through a process, agreed upon when CSIS was created, which gave CSIS employees two years to apply for a transfer back to the RCMP if they so chose.[329] After the bombing of Flight 182, knowing that she would soon transfer back to a surveillance unit within the RCMP, Jarrett was moved from mobile surveillance, her function during the events of the Duncan Blast, to the observation post (OP) where static surveillance on Parmar's house took place. She stayed there from June 23rd until her transfer on August 16, 1985.

At the OP, Jarrett had ample opportunity to observe the comings and goings of the Parmar family, including two young men. She began to question whether she had misidentified the young man who went to Vancouver Island on June 4, 1985:

> I thought perhaps there was more than just the two sons in the residence, because by looking at them, I knew – or I was suspecting that it wasn't who had gone to the Island on June the 4th. But initially, I thought I was misidentifying the people. I didn't realize that it was the two sons that I was actually seeing.

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328 Exhibit P-101 CAB0250, p. 3.
329 The following section is based on the Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2187-2189.

Notwithstanding Jarrett's assumptions, documentary evidence shows that it is likely that Jaswinder Parmar left Vancouver for a summer job in Ontario on June 22, 1985 and did not return again until sometime between August 16 and 31, 1985.[330] That would mean that Jarrett never did have the opportunity to view him from the OP. Indeed, other CSIS surveillants admitted that they had difficulty distinguishing the two sons and often confused them.[331] Whomever Jarett saw going in and out of the Parmar residence, whether it was a few young men as she believed, or perhaps, as seems likely, only one, her initial conclusion was correct: she never did see the person identified at the Duncan Blast as Jaswinder. Nonetheless, Jarrett did not at that time communicate, either to CSIS or to the RCMP, her correct concern that the man she saw in Duncan was not Parmar's son.

Following Jarrett's return to the RCMP, she was again deployed in surveillance of Sikh targets. Her focus continued to be on Sikh extremism, particularly in relation to the Air India bombing.[332] Within the RCMP, except in the surveillance unit, there was no knowledge of Jarrett's previous CSIS experience in the Sikh extremism context because that information was treated as confidential. Incredibly, the RCMP Air India Task Force did not know that their new surveillant had been one of the two CSIS employees who witnessed the Duncan Blast and a person who could identify Mr. X.

In November 1985, while conducting surveillance for the RCMP, Jarrett came close to Parmar's two sons while following Jaswinder inside the Vancouver International Airport. At that moment, she realized without question that neither son had accompanied Parmar to the Duncan Blast and that the youth who was there was an unidentified person. Jarrett testified to these events at the Inquiry. At the airport, when she walked between Jaswinder Parmar and his brother, it struck her "...at that moment I knew that it was not Jaswinder that was in Duncan on June the 4th."

Following her discovery, Jarrett returned to the vehicle immediately and informed the team leader and Const. Brian MacDonald of the investigational unit about what she had observed and offered her conclusion that Parmar's son was not in Duncan when the explosion took place. MacDonald made a phone call immediately.

MacDonald told Jarrett that CSIS was still maintaining that it was the son who went there, but that the RCMP had already checked the school records, and knew that Jaswinder was in school.[333]

Jarrett made a formal statement to the RCMP in December and helped create a composite drawing of the young man who accompanied Parmar on the ferry to Duncan, on June 4, 1985.

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330 Exhibit P-101 CAF0343(i): Watt MacKay Report, pp. 18, 76.
331 Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 76.
332 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2188.
333 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191.

In December 1985, the RCMP finally interviewed other members of the surveillance team who had worked on June 4, 1985 and showed them photos of Parmar's sons. At least one other surveillant confirmed that neither son was Mr. X.[334]

Delay to Interview Surveillance Team

It took five or six months following the bombing before the RCMP showed photos to the surveillance team in order to identify Mr. X. Only a few days after the bombing, the RCMP became aware of Lowe, who had accompanied the Explosives Detection Unit that had searched the Duncan Blast site shortly after the bombing. The Force was not aware of the identity of other members of the CSIS surveillance team for many months.

The RCMP needed CSIS consent to interview the surveillants. The Force belatedly made an official request from CSIS for this permission on December 5, 1985.[335] Following discussions between RCMP and CSIS Headquarters, CSIS then quickly authorized the interviews and instructed its BC Region accordingly.[336]

Some time before Jarrett made her comments on November 18th, the RCMP had conducted its own checks of school records and had concluded that the third person at the Duncan Blast was not Parmar's son.[337] The evidence provides no indication of the time when the RCMP conducted these checks, but it was before Jarrett observed Jaswinder Parmar on November 18th, as MacDonald mentioned the school records to her at that time. Further, the RCMP eventually did obtain the CSIS surveillance information, which indicated that Parmar's two sons were dropped off at school on the day following the test blast, as was mentioned in the Watt MacKay Report, but there is no indication as to when the RCMP received the information.[338]

After this information was uncovered, CSIS was approached and continued to deny stubbornly that there had been a mistake in stating that it was Parmar's son who was present.[339] At that time, the RCMP had no indication that the members of the CSIS surveillance team had any uncertainty about the identity of Jaswinder Parmar as the person present on June 4th. In fact, CSIS remained "adamant" that the person was Jaswinder until one of the surveillants was shown a picture by the RCMP on December 19, 1985.[340]

It is not known exactly why the RCMP waited until December 1985 to make a formal request for permission to interview the surveillants after it found out

334 Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 75.
335 Exhibit P-101 CAA0391, pp. 1-2.
336 Exhibit P-101 CAA0390, pp. 3-4, CAA0392, CAA0393.
337 Exhibit P-101 CAB0803, p. 5. See also Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191.
338 Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 83.
339 See Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2188-2191, about her conversation with Cst. MacDonald.
340 Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 75.

that the identification of Jaswinder may have been mistaken. It is possible that the Force simply assumed that CSIS, once advised of the RCMP school records checks, would consult with its own employees prior to denying that the third person was not Jaswinder. Whatever the case, too much time elapsed before the surveillants were interviewed and shown pictures.

CSIS Failures

CSIS failed to engage in reasonable follow up. CSIS did not question its Physical Surveillance Unit (PSU) team in light of the RCMP's concerns nor, it seems, did it review its own records. Certain pieces of CSIS information should have called into question the identification of Mr. X as Jaswinder Parmar. For example, while observing Parmar on the ferry, Jarrett overheard Parmar attempting to make a collect call charged to his home phone number with Mr. X standing at his side. Jarrett overheard Parmar tell the operator that:

> He was the owner of the house, the phone was in his name, and that he was Talvinder [*sic*] Singh Parmar. His *children were at school* and his wife was not at home.[341] [Emphasis added.]

While it is possible that Parmar was not being truthful, what purpose would that have served? The surveillants might have considered this information to be a clue that the youth at his side was not his son.

Nor do the CSIS errors end here. At the end of the day on June 4th, CSIS continued surveillance on Parmar back to Vancouver and noted that "Jaswinder" stayed behind on Vancouver Island. A number of the CSIS operatives, including Lowe and Jarrett, did not make it back to Vancouver, but rather stayed on the Island. They initially made arrangements to continue following "Jaswinder Singh" the following day, June 5th. For reasons that have not been explained, CSIS cancelled these arrangements on the morning of June 5th.[342] That same morning, CSIS surveillants in Vancouver, still following Parmar, noted that his two sons were dropped off at Burnaby North High School at 8:37 AM.

Someone in CSIS ought to have noticed that their own surveillance placed "Jaswinder" in two places at once – on Vancouver Island and at school in Vancouver! As the RCMP correctly stated in an internal review, "...[this] should have convinced CSIS that Mr. X could not have been one of Parmar's sons."[343]

It is also clear that the CSIS PSU failed in its overall task which was "...to ascertain the associates, contacts, movement and activities of Parmar, to obtain photographs of Parmar and all those he comes in contact with."[344] Indeed, the record clearly demonstrates CSIS's inability to accurately distinguish between Parmar's sons.

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341 Exhibit P-101 CAB0250, p. 3.
342 Exhibit P-101 CAA1089(i), p. 6.
343 Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 83.
344 Exhibit P-101 CAB209.

The same RCMP 1989 internal review notes as follows:

> NOTE: on 85-06-23 Parmar is under surveillance with Surjit Singh Gill (and a priest from India, Bab Joginder Singh, Jetheda of Nanded, his wife, Sadhu Singh, his assistant, Joginder Singh, and his wife – see E Tip 2309). Reference is made to both Parmar's youngest and oldest son, with the oldest son observed with Parmar at Gill's residence. Jaswinder left for Toronto for the summer the previous day....
>
> On 85-07-10 CSIS surveillance is still referring to Parmar's older son, although he is in Toronto, and refer to the younger son the next day....
>
> ANALYST'S COMMENTS:
>
> Previous E2255 information indicated that Jaswinder Parmar was going to Toronto to work for the summer. It was then reasonable to assume that Jaswinder Parmar left Vancouver for Toronto on 85-06-22. [Redacted] of CSIS admits that they were mixing up Narinder and Jaswinder Parmar when making identification and with that in mind that is probably the case on 85-06-23 and 85-07-10. Although the description of the son at Vicki Manor is brief, it appears to match that of Narinder noted earlier in the day.[345]

Observations (See also Section 1.4 (Pre-bombing), Duncan Blast)

- CSIS failed to identify accurately persons coming into contact with Parmar, to the point that its surveillance teams were not even able to distinguish family members whom they would presumably have been seeing daily, if not more frequently.

- CSIS did not provide proper equipment to enable its surveillance teams to take photos and hence to be able to identify the persons at the Duncan Blast.

- CSIS did not analyze the information provided by the surveillants on both June 4th and June 5th, which would have raised questions as to the misidentification of Mr. X as Jaswinder Parmar. CSIS also did not re-examine its information in light of RCMP questions regarding the identification of Mr. X and Jaswinder Parmar.

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345 Exhibit P-101 CAF0343(i): Watt MacKay Report, p. 76.

- Except for Larry Lowe, the RCMP did not have access, and may not have sought access, to the members of the surveillance team who went to Duncan on June 4th until many months later. This lack of access proved to be crucial in misidentifying Mr. X.

- CSIS did not allow its surveillants who bridged back to the RCMP to inform the RCMP of their past experience as it related to the Air India investigation. As a result, Lynne Jarrett's surveillance experience within the Sikh community and her involvement in the Duncan incident were unknown beyond her surveillance unit at the RCMP. Even the RCMP Air India Task Force was unaware that she had witnessed the Duncan Blast and could possibly identify Mr. X.

- The PSU surveillance team was only interviewed by the RCMP five or six months after the bombing. The time that had elapsed before the surveillants were interviewed and shown pictures likely hindered their ability to remember the events clearly and, in particular, to recall the physical appearance of Mr. X.

- CSIS and the RCMP did not communicate effectively in order to clarify ongoing confusion regarding the identity of Mr. X.

1.6 Khurana Information

Advance Indications of an Extremist Attack: The Benefits of Hindsight

When former Vancouver Police Department (VPD) Constable Don McLean found out about the Air India bombing on June 23, 1985, he immediately thought about information he had received approximately two weeks earlier from one of his sources in the Vancouver Sikh community, Mr. Sarbjit Khurana. At the time, Khurana had agreed to set up and allow the VPD to record a meeting with Sikh extremists who were attempting to intimidate him. During the debriefing immediately after the meeting, he advised that a Sikh extremist leader had stated that "...something would be done in two weeks", in response to a complaint by another extremist about the lack of attacks against Indian officials. Now aware of the bombing, McLean understood that the event that was referred to in the "wait two weeks" comment was, in fact, the bombing of Air India Flight 182. He realized "that's what they meant" and regretted that he could not have found out more information earlier, largely because he was unaware that numerous threats against Air India existed at the time.[346]

When RCMP Sgt. Warren Sweeney, head of the terrorist desk at the Headquarters NCIB NSE section, was first advised of the Khurana information, he also believed that it could be connected to the Air India bombing, since the extremists were discussing plans that were to be put into action within the time frame of the actual

346 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1985, 2017-2018.

bombing.[347] The CSIS Toronto Region was also of the view that the information could be connected to the bombing, as it indicated in internal correspondence a few days after the bombing that HQ's attention should be drawn to a previous message from the BC Region reporting the Khurana information.[348]

McLean subsequently learned that one of the participants in the Khurana meeting had made statements after the bombing indicating that he had known about the crash in advance and that "...he knew it was about to be blown up."[349] McLean then concluded that there was a clear connection between the Air India bombing and the "wait two weeks" statement.[350]

The Taped Khurana Meeting

In 1984, McLean met Khurana in the course of his work with the VPD's Indo-Canadian Liaison Team (ICLT). Khurana was a Vancouver businessman, a turbaned Sikh who did not support the creation of a separate Sikh state of Khalistan and was opposed to any violence.[351] Khurana had dealings with the ICLT as a member of the Business Association for the Punjabi market.[352] He then began to provide information to the ICLT regularly about Sikh extremist organizations and their relationship with the community, as well as about political debates in the Sikh temples.[353]

Khurana was often the victim of threats and intimidation.[354] He became a complainant in a criminal matter[355] as a result of a group of Sikhs coming into his business and threatening him with a weapon because of his views about Sikh extremism and about the Ross Street Sikh temple.[356] Those charged were associated with the International Sikh Youth Federation (ISYF), a Sikh extremist organization with a significant membership which was heavily involved in acts of violence and intimidation in the community.[357] After the incident, ISYF members attempted on numerous occasions to pressure Khurana to drop his criminal complaint.[358] On June 9, 1985, he was approached by Manmohan Singh, the spokesperson for the ISYF, to set up a meeting to discuss the charges.[359] Khurana advised McLean of the proposed meeting.[360] Since the purpose of the meeting was to attempt to convince Khurana to drop criminal charges, the ICLT

347 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2572, 2641-2642.
348 Exhibit P-101 CAB0363, pp. 5-6.
349 Exhibit P-101 CAA1108, p. 2; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2018-2019.
350 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2031.
351 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1985, 1990.
352 Testimony of Don McLean, vol. 21, May 1, 2007, p. 1988. The ICLT liaised with business leaders in the Vancouver Sikh community as part of its community policing approach: Testimony of Don McLean, vol. 21, May 1, 2007, vol 21, p. 2023.
353 Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989.
354 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3910.
355 Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3910.
356 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1989-1990.
357 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4129; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3887.
358 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3911.
359 Exhibit P-101 CAC0487, p. 6; Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989.
360 Testimony of Don McLean, vol. 21, May 1, 2007, p. 1989.

and VPD members of the Vancouver Integrated Intelligence Unit (VIIU) liaised with the VPD criminal enforcement section in order to investigate a potential obstruction of justice charge.[361] Khurana agreed to set up the meeting and have the VPD record it to obtain evidence of any interference with the criminal investigation into his original complaint.[362]

Khurana provided a one-party consent for the monitoring and recording of the meeting to VPD Detective Ken McKinnon, the officer in charge of the criminal investigation into the original charges.[363] The meeting was to be both recorded and live-monitored, which meant that VPD officers would be listening in on the meeting and translating it as it was happening.[364]

ICLT members were participating in the operation to obtain information about the projected actions of the Sikh extremists who would be attending, especially the ISYF members. This was the first time the VPD had had the opportunity to intercept the actual conversations of Sikh extremists and in some ways it was viewed as the VPD's "first look inside" a Sikh extremist organization.[365]

On the evening of June 12, 1985, the meeting took place at the Khurana residence. Microphones had been installed and McKinnon and Cst. Jas Ram were present in a secure room at the rear of the residence listening to the meeting as it was being recorded. McLean and his ICLT partner were in their vehicle, watching and identifying those arriving at the residence. VPD VIIU members were also present in the area. The meeting lasted over one hour and thirty minutes.[366] Seventeen ISYF members participated, including suspected terrorists Pushpinder Singh and Lakbir Singh Brar,[367] ISYF "enforcer" Harjit Atwal, ISYF spokesperson Manmohan Singh, as well as a "major orchestrator" for the ISYF, Sukdev Sangha.[368]

Once it was ascertained that all participants had left, ICLT members and some of their VPD colleagues went into the residence and held an immediate debriefing session with Khurana to find out what had taken place during the meeting.[369] Here the ICLT learned about the activities and plans of the ISYF in June 1985.

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361 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3911.
362 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1991-1992; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3911.
363 Testimony of Don McLean, vol. 21, May 1, 2007, p. 1992; Exhibit P-101 CAC0487, p. 6.
364 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1993, 2024.
365 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1990, 1996.
366 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1996-1999.
367 Also known as Lakbir Singh Rode.
368 Exhibit P-101 CAC0487, pp. 4-5; Testimony of Don McLean, vol. 21, May 1, 2007, p. 1999.
369 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1999-2000.

The Khurana Information

ISYF Plans and the "Wait Two Weeks" Comment

During the debriefing, Khurana reported that the participants in the meeting first attempted to convince him to drop his criminal charges, including a promise to have good articles about him published in the local media and to have "...their ladies shop at his Sari stores so he could make more money". The participants then turned to discuss plans to further ISYF's extremist goals. They agreed that only one member at a time would fight those who opposed their pro-Khalistan views, in order to ensure that, if caught, only one person would be charged.[370] Manmohan Singh then pointed an accusing finger at Pushpinder Singh and said:

> No counsel have been killed, no Ambassadors have been killed!! What are you doing? Nothing!!

Pushpinder Singh replied:

> You will see! Something will be done in two weeks![371]

The two men then agreed to meet later to discuss the matter. Pushpinder Singh and the other ISYF members present also indicated that they intended to visit the Sikh Temple of Akali Singh to "...teach the temple a lesson" for taking down the picture of Sant Bhindranwale, the Khalistan movement leader who had died in the storming of the Golden Temple and whose picture had then been put up in Sikh temples across Canada.[372]

The Parmar/Pushpinder Singh Connection

The VPD learned from Khurana that during the meeting, Pushpinder Singh voiced "…a great deal of praise" for Talwinder Singh Parmar. He indicated that he had been to a meeting in Toronto with Parmar during the previous week. He claimed that he was using Parmar to bring all Sikhs in the Lower Mainland together.[373] Based on this information and information from other sources, McLean concluded that the Babbar Khalsa (BK) led by Parmar and the ISYF intended to make all Sikh temples in Vancouver, and eventually in Canada, support Sant Bhindranwale and the quest for an independent state of Khalistan.[374]

Prior to the Khurana meeting, the ICLT suspected that there might have been a connection between the BK and the ISYF and that Parmar and Pushpinder Singh might have been meeting on occasion, but had no precise knowledge of

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370 Exhibit P-101 CAC0487, p. 4; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2003-2004.
371 Exhibit P-101 CAC0487, p. 4; Testimony of Don McLean, vol. 21, May 1, 2007, p. 2004.
372 Exhibit P-101 CAC0487, p. 4; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2006-2007.
373 Exhibit P-101 CAC0487, p. 4.
374 Exhibit P-101 CAC0487, p. 3; Testimony of Don McLean, vol. 21, May 1, 2007, p. 2007.

a connection between the organizations.[375] Through Khurana, there was now evidence of a direct connection between Pushpinder Singh and Parmar and the alignment between the BK and the ISYF.[376] The information was confirmed in part by CSIS and RCMP surveillance which showed that Parmar was, in fact, in Toronto shortly before the Khurana meeting, between June 8th and 10th, and that Pushpinder Singh was believed to have been in Toronto at the time as well. Further analysis showed, however, that the person who travelled back from Toronto to Vancouver with Parmar on June 9, 1985 was not Pushpinder Singh, but Bagri, as per Ms. E's statements to police.[377] On June 5th, the CSIS Toronto Region indicated that ISYF types from BC were present in the Toronto area.[378]

The Khurana Tapes

The recording of the Khurana meeting was turned over to MacKinnon because a direct translation had to be obtained to determine whether obstruction charges could be brought.[379] Immediately after the meeting, the VPD officers present listened to a portion of the tape in Khurana's absence to ascertain the quality of the recording. According to McLean, the quality was average. Depending on their location in the room, some participants could be heard better than others.[380] Some portions of the recording were unintelligible.[381] McLean himself did not review the recording of the meeting or the notes, if any, made by the live-monitor, to see whether he could discern the "wait two weeks" comment.[382]

McLean was advised that Cst. Ram, the Punjabi-speaking VPD member who acted as a live-monitor and interpreter during the meeting, had not heard the "wait two weeks" comment.[383] However, Khurana was always adamant that the conversation had occurred as he stated.[384] Since he had proven to be a very reliable source in the course of his dealings with the ICLT, McLean was fully prepared to rely on Khurana's word.[385] The VPD members of VIIU also dealt with Khurana and confirmed that he was a "...credible source, of known reliability." Supt. Axel Hovbrender (then a constable) had no doubt about the veracity of the information reported by Khurana. There were many persons present and talking at the same time during the meeting.[386] Further, the initial conversations

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375 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1997-1998. There was some information in a VIIU report dated June 6, 1985 about a meeting at Surjan Singh Gill's residence involving representatives of the BK and the ISYF: Exhibit P-101 CAA0196, p. 2.

376 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2005-2006.

377 See Section 1.3 (Post-bombing), Ms. E.

378 Exhibit P-101 CAA0281, p. 1. See also Exhibit P-101 CAA0188, p. 3, CAA0383(i), p. 3 and CAA0528, pp. 1-2.

379 Exhibit P-101 CAC0487, p. 3; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2007-2008.

380 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2008.

381 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2013. See also Exhibit P-101 CAD0180a, p. 1.

382 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2013, 2034.

383 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2024, 2035.

384 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2014. Khurana also subsequently recounted the same information in a police statement provided to an RCMP officer in connection with the Air India investigation: Exhibit P-101 CAD0180a, p. 2.

385 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2014.

386 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3910, 3921.

were not recorded because the VPD members had not been aware of the commencement of the meeting.[387] As a result, it was entirely possible that the "wait two weeks" comment could have been made exactly as stated by Khurana, but simply could not be heard on the recording.

For the RCMP, however, despite Khurana's known reliability, the exact translation of the Khurana tapes was to become a major focus in the subsequent investigation of the Air India bombing.[388]

The VPD Khurana Report

The day after the Khurana meeting, on June 13, 1985, McLean prepared a report summarizing the information provided by Khurana, making reference to the notes taken by MacKinnon during the debriefing.[389] The report was prepared solely on the basis of the statements made by Khurana and not on any translation of the surveillance tapes. A copy of the report was provided to MacKinnon and another copy was sent to Hovbrender, a VPD member of VIIU, so that the information could be disseminated to the RCMP and CSIS.[390]

The same day, McLean also advised CSIS verbally of the information received from Khurana.[391] He did not communicate directly with the RCMP however, because he assumed that the information would be transmitted to them through VIIU,[392] given that RCMP E Division members worked in this integrated unit alongside the VPD members.[393] McLean believed that those who received his report would be in a position to respond to the threat revealed by the Khurana information.[394] However, neither the RCMP nor CSIS investigated the information and neither of them reported it in a timely manner with sufficient detail.

The CSIS Threat Assessment: Too Little Too Late?

The CSIS BC Region received the Khurana information from McLean on June 13, 1985, and included it in an internal report sent to CSIS HQ the following day. The report contained detailed information about the participants in the meeting and about the possible connection between Pushpinder Singh and Parmar, even specifying that Pushpinder Singh had returned to Vancouver with Parmar after meeting with him in Toronto. The Pushpinder Singh exchange about future plans was reported by McLean as follows:

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387 Exhibit P-101 CAD0180a, p. 1.
388 See Section 2.3.4 (Post-bombing), The Khurana Tape. In fact, some of the early RCMP translations of the Khurana tapes listed comments very similar to what was reported by Khurana.
389 See Exhibit P-101 CAC0487, pp. 3-6; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2000-2001.
390 Exhibit P-101 CAC0487, p. 3; Testimony of Don McLean, vol. 21, May 1, pp. 2008-2009, 2026.
391 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2009-2010; Exhibit P-101 CAB0306, p. 1.
392 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2011.
393 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4029, 4034; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3870-3872.
394 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2025-2026.

> Source reported that a minor confrontation occurred between Pushpinder Singh and Manmohan Singh. Manmohan stated to Pushpinder (source's recall), "You haven't done anything yet. You have not killed any Ambassadors or Consulate officials". Pushpinder was reported to reply: "You must wait for 2 weeks and then you'll see something. We will show the community we are serious."[395]

This information demonstrated an expressed intent by a Sikh extremist leader to take action within a short time to remedy the lack of killings of Indian officials. At a minimum, it should have been assessed and investigated and conveyed to those in charge of protecting Indian diplomats in order to allow them to take necessary security precautions. At the time, CSIS was in charge of providing threat assessments to the RCMP Protective Policing Directorate (P Directorate). However, CSIS did not advise P Directorate of the Khurana information received on June 13th until it was included in a general threat assessment dated June 18, 1985.[396]

The CSIS threat assessment was intended for broad dissemination to a number of agencies, including Transport Canada, the Department of External Affairs and the RCMP. As a result, it provided very little detail. The assessment reported the "wait two weeks" conversation, indicating only that it occurred between two Sikhs illegally in Canada, during a Vancouver meeting with several Sikhs in "early June."[397] No information was provided about the identity of the Sikhs involved in the conversation and, most importantly, nothing was said about their leadership role in the ISYF.[398] No information was provided about the possible connection between the ISYF and the BK which had been revealed during the Khurana meeting. In fact, the CSIS assessment did not even mention the actual date of the meeting, making it impossible for those in charge of responding to the threat to identify the "two weeks" time-period during which security might be increased.

As with most CSIS threat assessments in the pre-bombing period, the June 18th document was heavy on narrative and light on analysis. The lack of detail would have made it difficult for either the RCMP members in charge of implementing protective measures or for the NCIB members in charge of collecting "criminal intelligence", who also received a copy of the assessment, to draw conclusions about the significance of the information and the seriousness of the threat.

RCMP Failure to Report or Respond to the Threat Prior to the Bombing

On June 13, 1985, the Khurana information was available to the RCMP E Division members working at VIIU. Yet, it was not reported to RCMP Headquarters

395 Exhibit P-101 CAB0306, p. 2.
396 Exhibit P-101 CAB0321, pp. 1, 3.
397 Exhibit P-101 CAB0321, pp. 1, 3.
398 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4129; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3887.

prior to the bombing.[399] Sgt. Sweeney, who was in charge of reviewing RCMP information and preparing threat assessments,[400] did not learn about the Khurana information until the day of the bombing from McLean.[401] The RCMP also did not investigate this matter until after the Air India bombing. On June 25th, E Division reported the Khurana information to HQ for the first time and indicated that it was beginning to investigate local factions of the ISYF.[402]

Because the information was not reported, P Directorate was not advised through the RCMP threat assessment process.[403] When P Directorate received the June 18th CSIS threat assessment referring to the information, albeit without detail, no further precision was requested. On the basis of the CSIS assessment that the threat to Indian interests was "only slightly less serious" than before the anniversary of the attack on the Golden Temple and before the Gandhi visit to the US,[404] the RCMP concluded that it could not justify a decrease in the level of protection afforded to Indian missions.[405] For the Vancouver Consulate, this meant that the heightened security level implemented on May 30, 1985 in response to the then upgraded threat assessment was simply maintained. Pursuant to this security level, all Indian diplomats were provided with RCMP escorts.[406] Since May 17th, security guards had also been replaced with RCMP members who guarded the Consulate 24 hours per day.[407] As for the Khurana information, the P Directorate made no attempt to determine the beginning and end points of the announced two-week period. The general security measures implemented were not tailored to the nature of this particular threat which remained largely unknown to P Directorate.

No Pre-Bombing Connection Made to Air India

When the ICLT members found out about Pushpinder Singh's "wait two weeks" comment, they felt that the information was significant and required further investigation.[408] McLean canvassed his sources in the community to find out more about the planned ISYF action. He was not, however, specifically tasked to conduct this follow-up investigation, nor was he required to report the results to the RCMP. In fact, he was never informed about any follow-up investigation conducted by VIIU, CSIS or the RCMP and he remained unaware to the date of his testimony of whether anyone was ever tasked to follow up on the Khurana information.[409]

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399 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

400 See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

401 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2641; Exhibit P-101 CAF0035, p. 28.

402 Exhibit P-101 CAA0249, p. 1.

403 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

404 Exhibit P-101 CAB0321, pp. 3-4.

405 Exhibit P-101 CAC0449, pp. 1-2, CAC0455, pp. 1-2, CAE0223, p. 3.

406 Exhibit P-391, document 255 (Public Production # 3388), pp. 4-5.

407 Exhibit P-101 CAE0177, pp. 1-2.

408 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2004-2005, 2014, 2025. VPD VIIU member Cst. Hovbrender viewed the "wait two weeks" comment as more akin to the general threats, intimidation and boasting which were prevalent in the community at the time: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3921.

409 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2027-2028.

When he initially received the Khurana information, McLean saw the "wait two weeks" comment as a warning or signal that the ISYF would take violent action within a short time. However, based on his experience and on the information available to him about the ISYF, he believed that the comment related to an intention to attack Indian missions or personnel.[410] He had never been provided with any information about threats to Air India at the time.[411] Even the November 1984 Plot information from Person 2 was not transmitted to McLean by either the RCMP or the VPD.[412] Because McLean was not informed, it did not occur to him that the intended violent action Pushpinder Singh was referring to could relate to Air India.[413] As a result, he did not think to explore a number of possible avenues of investigation.

McLean testified that had he known about the existence of threats to Air India in June 1985, he would have conducted his debriefing with Khurana and his subsequent investigation differently. He would have asked different questions, contacted different sources and involved Khurana more directly in attempts to obtain more information.[414] He did not think to take these steps because the RCMP did not keep the VPD informed of the existence of numerous threats to Air India in 1985.[415]

Observations

- No connection was made from the Khurana information to a potential bombing of an Air India plane.

- The federal agencies in charge of investigating threats to national security neglected to report and investigate the information in a timely manner and were in no position to provide sufficient detail to Protective Policing.

- The RCMP also failed to provide threat information to the VPD, which prevented that police force from conducting necessary follow-up investigation, particularly about the possible connection to Air India.

- The information obtained through Khurana was significant because it indicated that a Sikh extremist leader intended to take action within a short time to remedy the lack of killings of Indian officials. It also provided evidence of a direct connection between Pushpinder Singh and Parmar and indicated that the BK and the

410 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2004-2005, 2017-2018, 2025, 2036-2038.
411 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2012.
412 The information was included in a VPD analytical document reporting VIIU and ICLT information: See Exhibit P-391, document 124 (Public Production # 3254), p. 64; Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.
413 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2017-2018.
414 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2017.
415 See, generally, Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

ISYF were aligning themselves. At a minimum, this information could have been assessed and investigated and those in charge of protecting Indian diplomats could have been advised to take necessary security precautions.

1.7 Testimony of James Bartleman

The Honourable James K. Bartleman testified that he saw a Communications Security Establishment (CSE) document that indicated that "Air India was being targeted the weekend of June 22nd, 23rd, 1985."[416] The Attorney General of Canada, in its Final Submissions, called Bartleman's testimony the most inaccurate testimony at the Inquiry, and categorically stated that "…the fact is the CSE document that Mr. Bartleman believes he saw never existed."[417]

The Attorney General of Canada's firm position against Bartleman's testimony is best understood in light of its long-standing claim that there was no "specific threat" to Air India Flight 182. Bartleman's testimony compels one to carefully assess the Government's claim. The lack of a "specific threat" has been an important concept, relied upon by the Government, to justify the lack of government response to the crescendo of threats against Indian interests in the spring of 1985. Accepting Bartleman's testimony would call into question the sufficiency of the government response in a way that, prior to this Inquiry, had never been done before.

The Testimony of the Honourable James K. Bartleman

At the time of his appearance before the Commission, Bartleman was nearing the end of his term as the 27th Lieutenant Governor of Ontario. Prior to assuming this position, Bartleman had had a 35-year diplomatic career in the Department of External Affairs.[418]

As noted in his evidence, it was a chance meeting with Commission counsel that ultimately led to Bartleman's appearance to testify before the Commission.[419] Initially, Bartleman was hesitant about testifying, as he felt that he might have been in a conflict situation as a result of his position as Lieutenant Governor of Ontario. After the Commission was underway, and in light of evidence heard of there being "no specific threat" to Flight 182, Bartleman decided it was his moral duty as a citizen to testify.

Lead Role in Canada's Foreign Intelligence Mandate

At the time of the Air India bombing, Bartleman held a key position within Canada's foreign intelligence and security community as the Director General

416 Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2108.
417 Final Submissions of the Attorney General of Canada, Volume I, paras. 184, 205.
418 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2091-2092.
419 Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2094.

(DG) of the Intelligence Analysis and Security Bureau in the Department of External Affairs,[420] a position he had held since September 1983. He came to that position with extensive experience in security and intelligence matters, particularly in relation to terrorism. Previously, he had been a desk officer analyst for international terrorism in the Intelligence Analysis Division of External Affairs and an Arms Control Negotiator at NATO. He spent four years following international terrorist trends, particularly in relation to Nicaragua and Grenada, as the Director of the Caribbean and Central American Division and subsequently as the Ambassador to Cuba. In his role as DG of the Intelligence Analysis and Security Bureau, he had worked to create legislation and procedures for the new civilian intelligence agency, CSIS, and prepared the Minister (Secretary of State for External Affairs) for Senate appearances on the issue of intelligence activities overall.[421]

External Affairs was the lead agency responsible for ensuring that Canada fulfill its obligations to provide adequate protection to foreign missions and personnel in Canada.[422] Bartleman's Bureau was the organization within External Affairs responsible for the implementation of this lead role.[423] The Bureau was the primary unit responsible for the collection, analysis and dissemination of foreign intelligence within the Government of Canada.[424] As DG of the Bureau, Bartleman necessarily received a broad range of intelligence items each day. His daily intelligence package would include 100 to 200 telegrams from missions abroad, copies of memoranda being sent to the Minister on various subjects, copies of intelligence reports and a pack of intercepted communications from the CSE.[425] Bartleman, with his extensive experience in intelligence issues, was uniquely equipped to evaluate the significance of this large quantity of information effectively.

The central role of Bartleman's Bureau in the foreign intelligence community was apparent by the fact that it housed the only CSE registry at External Affairs. Notably, neither the RCMP nor CSIS had an on-site CSE registry at the time.[426] Bartleman was one of the few government officials that received CSE materials from daily "bulk pull"[427] printouts directly from a CSE registry.

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420 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11925.

421 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2098-2099.

422 This obligation originates from the *Vienna Convention on Diplomatic Relations*. See Exhibit P-101 CAF0063, p. 5.

423 The Intelligence Analysis and Security Bureau was divided into three divisions: Political Analysis, Security and Emergency Planning. The Political Analysis division had the primary responsibility for analysis of foreign political intelligence. It also collected intelligence from persons entering Canada from Communist countries. The Security division was responsible for the security of posts abroad and headquarters, as well as security clearances. The Emergency Planning division operated the Operations Centre and tracked transient international terrorism in cooperation with the Political Analysis division. See Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2094-2096.

424 Exhibit P-101 CAF0063, p. 3.

425 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2094-2096, 2101.

426 Exhibit P-101 CAF0063, p. 4.

427 A "bulk pull" was a keyword query run on the CSE database. William Sheahan testified that these queries "...would produce quite big piles of material, huge piles of paper." See Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11904.

Senior government officials, including Deputy Ministers and Assistant Deputy Ministers in Bartleman's own department, relied on a Customer Relations Officer (CRO) to deliver only material that was "terribly relevant"[428] to their specified information requirements. Lower-level personnel in agencies without CSE registries (including CSIS and the RCMP) were serviced by CSE liaison officers, who brought relevant materials from CSE headquarters to their offices for review and immediate destruction.[429] In contrast, Bartleman's package of CSE materials from the registry was not filtered or vetted by CSE personnel. He had specifically requested that he receive raw, unevaluated, background information from the CSE, and noted that few higher-level officials would have asked for this kind of material, as they would not have had the time to review it all.[430]

By May of 1985, Bartleman's daily intelligence package revealed a "crescendo" of threats against Indian diplomatic and commercial interests apparent in his daily intelligence package. He took steps to prevent a repetition of the Turkish Embassy attack[431] by establishing an *ad hoc* interdepartmental working group in his Bureau to deal with the flood of threats to Indian interests. He wanted to ensure that everything possible was done, at least at External Affairs, to make sure critical intelligence information was passed on in a timely fashion to operational personnel in the RCMP. As a result of a review of the Government's response to the Turkish Embassy incident, in early June 1985 the lead responsibility for maintaining contact with the RCMP and CSIS in relation to protection of foreign assets and persons shifted from the Protocol Division to the Emergency Preparedness Division within Bartleman's Bureau.[432] This shift further solidified Bartleman's Bureau as the foreign intelligence centre within External Affairs, responsible for the analysis and dissemination of foreign intelligence to the appropriate responding agencies.

Evidence of a Threat to Air India Flight 182

Bartleman testified that, during the week before the bombings, when going through his daily intelligence intercept package from CSE, he saw an intercept which indicated that Air India was being targeted the weekend of the 22nd and 23rd. He stated that the document was raw, unevaluated information. He took it seriously, despite the many previous alarms that might have caused others to diminish the seriousness of the threats and to view each threat as another "cry wolf" incident.

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428 Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11905.

429 Testimony of William Sheahan, vol. 90, December 6, 2007, pp. 11900, 11902; Testimony of Pierre LaCompte, vol. 90, December 6, 2007, pp. 11913-11914.

430 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2101-2102.

431 Bartleman testified that he was particularly concerned about the adequacy of the Government of Canada's counterterrorism measures in the spring of 1985 because of the experience of the attack on the Turkish Embassy in Ottawa by Armenian terrorists on March 12, 1985. The event was of particular significance to him as he had learned that the Turkish Embassy had sent a diplomatic note to the DEA Protocol Division in advance of the attack warning of a possible attack and no action had been taken on it. He noted that even though his department was not responsible for receiving and transmitting diplomatic notes, he made efforts to ensure that his department did not allow a repetition of the intelligence failure that happened in the Turkish Embassy incident. See Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2102-2104.

432 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2105-2106.

He brought the document to an interdepartmental meeting taking place in the Operations Centre. He carried the document in a secure folder, walked down to the meeting and asked the senior RCMP officer present if they could speak privately. Bartleman recalled that the RCMP officer was either a superintendent or inspector, but he could not remember the officer's name.[433]

Bartleman pulled out the document and asked the RCMP officer whether he had seen it and whether the RCMP was taking any action. Bartleman testified that he distinctly remembers the response of the RCMP officer because it startled him. The RCMP member flushed and "hissed" at him, telling him that of course he had seen it and he did not need Bartleman to tell him how to do his job.[434]

Bartleman testified that he took no further action on this information up to the time he discussed the matter with Commission counsel in 2006. He testified that he had had full confidence that CSIS and the RCMP had done their job and that the tragedy had occurred despite their best efforts. Bartleman testified that he had the highest respect for CSIS and the RCMP and that he did not doubt for a minute that they had taken the necessary action beforehand. In terms of the police investigation after the tragedy, Bartleman said he felt that there was no point in going to the RCMP because he had nothing new to add.

It was not until he approached the Commission that he learned that the Government's position had been, throughout the years and at this Inquiry, that it had no knowledge of a specific threat targeting the Air India flight on June 22, 1985. As there was only one Air India flight each week from Canada, specifically via Toronto and Montreal, the threat seen by Bartleman would have to have been directed at Flight 182.[435]

The Attorney General of Canada's Response

The Attorney General of Canada urges a rejection of Bartleman's evidence. CSE searched its database, both immediately after the bombing and in the aftermath of Bartleman's testimony, and reported that in neither instance was it able to locate a specific threat such as that described by Bartleman. William ("Bill") Sheahan and Pierre LaCompte, both formerly with the CSE, testified that the "specific threat" document described by Bartleman did not exist and could not have existed. Several witnesses testified that had they seen such a document, they would have treated the information very seriously and would have been "... running all over the place with it"[436] to bring it to the attention of others.

The claims by Bartleman, on the one hand, and that of Messrs. Sheahan and LaCompte, on the other, about whether the document described by Bartleman could have existed are incompatible. The conflict on this issue necessitates a determination of the credibility of the witnesses and an assessment of the

433 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2108-2109.
434 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2109-2110.
435 Testimony of James Bartleman, vol. 22, May 3, 2007, pp. 2111-2112.
436 Testimony of William Warden, vol. 24, May 7, 2007, p. 2429.

reasonableness of the evidence. The Commission was impressed by Bartleman's calm and consistent demeanour, even in the face of an aggressive cross-examination by the Attorney General of Canada. Bartleman never prevaricated. There was no doubt that he was testifying truthfully to the best of his recollection.

However, while demeanour is an important factor to take into account in assessing witness credibility, demeanour alone is not determinative. It is also necessary to consider whether the testimony is in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in light of all the surrounding circumstances and evidence.[437] As such, what is necessary is not simply to declare an outright preference for one claim over the other, based solely on credibility, but rather to review the totality of the evidence to assess the probability and reasonableness of each purported claim.

After reviewing the evidence with these considerations in mind, the Commission concludes that there is nothing improbable or unreasonable in Bartleman's testimony, while the argument of the Attorney General of Canada is based on a number of flawed assumptions.

The Attorney General of Canada's position, and the assumptions on which it is based, can be tested by asking the following questions:

- Is the fact that CSE has not been able to locate a copy of the document described by Bartleman proof that no such document ever existed?

- Is the fact that the intelligence and security communities did not raise a general alarm proof that no information, such as that described by Bartleman, was available to them prior to the bombing? To put this latter question somewhat differently, in terms of the Attorney General of Canada's assumptions, is Bartleman's testimony, in fact, the only evidence of a "specific threat" to an Air India flight in Canada in June 1985?

The Inquiry evidence shows these questions can be answered in the negative.

The Failure to Find the Bartleman Document

Is Bartleman's evidence undermined by the inability of CSE to locate the document that he saw within their database? In the Commission's opinion, the fact that the document was not found does not undermine Bartleman's evidence because the Commission's investigation has shown that searching the CSE database is not a reliable measure of the entirety of its contents.

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437 *Faryna v. Chomy* (1952), 2 D.L.R. 354 (B.C.C.A.).

Searching the CSE Database

The document described by Bartleman would not necessarily turn up in a response to a keyword search for reasons relating not only to the potential content of the document, but also to the background, knowledge and contextual understanding of those conducting the search.

The difficulty of searching the CSE database is illustrated by that fact that LaCompte had difficulty locating a known document that he believed Bartleman (mistakenly) had in mind. LaCompte searched for a specific document that referred to a possible bombing of an Air India flight, namely an intercept concerning the November 1984 bomb plot. Like Bartleman, he had a distinct recollection of the document, as he had raised an alarm at the Department of Transport upon reading the intercept. Yet, he had difficulty finding the document during his search immediately after the bombing despite the known "specificity" of the document. The document mentioned an Air India plane, a Canadian point of departure, a plan to bomb and a time frame. LaCompte searched during an entire afternoon, but was unable to locate the document until the following morning, because he initially searched within the wrong time frame. It was only after several attempts that he finally located the document he was looking for (though not, evidently, any other documents relevant to threats to Air India that did not fit the narrow parameters he used in his search).This establishes the unremarkable proposition that the retrieval system is only as good as the inputted search parameters.

The same difficulty arose recently when, in response to Bartleman's testimony, the CSE attempted, but was also initially unable, to locate the November 1984 Plot document until LaCompte himself suggested more specific search terms.[438]

Commission counsel reported a similar result for a controlled CSE search conducted at their request. Commission counsel requested that CSE search its database in order to find three CSE intercepts referred to in the documentation produced for the Inquiry (though the references were redacted in the public documents). Two members of the Commission team obtained the requisite additional security clearance and attended several times at CSE to review the results. The first search attempts by CSE personnel turned up results that Commission counsel believed failed to correspond to the descriptions in the Commission documents. Only on subsequent attempts, using additional keywords in the search parameters provided by Commission counsel based on their own background knowledge of the Air India narrative, was the CSE able to locate the last of the documents.

These experiences demonstrate the sensitivity of CSE searches to the relevancy of the search terms chosen. It is easy to understand why it would be difficult for those unfamiliar with the document described by Bartleman to locate it within the CSE database.

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438 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11949.

Completeness of CSE Documentary Record

Other complexities present themselves in terms of reconstructing the CSE documentary record as of June 1985. While CSE document retention protocols have been clarified over the years, those in place in 1985 were unclear and did not appear to be rigorously followed.[439]

The CSE claims that all CSE reports have been retained since prior to 1985. However, a test of the database initiated by Commission counsel indicates otherwise. Commission counsel reviewed a 1997 index of CSE documents on which two documents were listed as "cannot locate." The CSE admitted that the two documents could not be found in 1997, but were now available through its efforts to reconstitute all relevant files from allied agencies.[440] However, the need for the reconstitution effort, on its own, indicates that the CSE documentary record is less than complete.

The issue is further complicated by the nature of the document as described by Bartleman. Bartleman testified that the material he saw was "...raw and unevaluated".[441] This description suggests a document different from the summary reports that Messrs. Sheahan and LaCompte delivered to their clients and different from the reporting that CSE claims to have retained from that period. Sheahan testified that raw traffic intercepted by CSE in 1985 would most likely have been destroyed; only final reports were retained.[442] As such, if the material viewed by Bartleman had been raw traffic, no record of the document would be expected to exist to this day.

Regardless of whether the material viewed by Bartleman was a summary report or raw intercept traffic, the Inquiry evidence shows that retention for both types of documents is not complete. Thus, the inability to locate the Bartleman document within the CSE records fails to serve as proof that it did not exist.

The Lack of an Intelligence and Security Response

The Attorney General of Canada contends that, had the Canadian security and intelligence community seen information of the sort described by Bartleman, it would have reacted in a determined and forceful way to raise a general alarm and would have taken protective measures appropriate to the threat. It follows from the Attorney General of Canada's argument that, since there was no general alarm and no special protective steps proposed or instituted, no such information was available and Bartleman's evidence must be mistaken.

This argument does not stand up to scrutiny. Once one gets beyond the confusion caused by the continuous insistence on the terminology of "specific

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439 Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11944.

440 In an attempt to ensure CSE had all files potentially relevant to Bartleman's testimony, the CSE reconstituted its database by requesting all relevant reports from its allied agencies and reloading them onto the CSE database. See Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11945.

441 Testimony of James Bartleman, vol. 22, May 3, 3007, p. 2108.

442 Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11944.

threat", it becomes clear that the Bartleman information is not the only example of what might less confusingly be termed a "direct threat" to an Air India flight in Canada in June 1985. The response or, more accurately, lack of response, to these other threats demonstrates that the lack of general alarm or anti-bombing security precautions prior to the June 22/23 Air India flight is no proof at all that the Bartleman document did not exist.

The Concept of "Specific Threat"

The Attorney General of Canada's response assumes that the information seen by Bartleman was obvious on its face as a "specific threat" to Air India and thus, by virtue of its content, would have triggered a widespread government response. The concept of a "specific threat" occupies a central, organizing and crucial place in the position urged by the Government of Canada. However, the evidence called at the Inquiry has shown that the Government has had no consistent definition of what constitutes a "specific threat."[443] Witnesses offered various understandings of the concept, resulting in a situation where, in the final analysis, it is unclear what is meant by the Government's claim of "no specific threat."

The "specific threat" concept was a term of art in the aviation security context in 1985 that was solely relevant as an all-or-nothing threshold for the implementation of emergency protocols at airports. The concept was relevant for threats received on the day of the flight, generally by phone, sometimes when the aircraft was already loaded with passengers and luggage. If it was determined that such a threat was "specific," an emergency protocol was put into action. This involved moving the threatened aircraft to a place of safety, offloading the passengers and the luggage already onboard, conducting a search of the aircraft and luggage using the RCMP dogmaster and undertaking a process of passenger-baggage matching. The assessment of whether or not a call-in threat was "specific" depended on the degree of detail about the threat that was provided by the caller – for example, the timing, intended target, and means of attack. This assessment normally had to be made on the spot, without the benefit of thorough intelligence analysis, so that an immediate decision could be made about whether or not to implement the emergency measures.

As would be expected, when information was received through channels, in circumstances that allowed enough time for the engagement of the intelligence analysis process, an entirely different protocol (though one ultimately ineffective for the prevention of the loading and detonation of time/delay devices in registered baggage) was to be engaged. Those assessing the threat would examine it in the light of other relevant intelligence on file and attempt to corroborate it in order to assess its veracity and the consequent need for a response. While CSIS utilized the "specific threat" term in its threat assessments

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443 For a detailed discussion of the "specific threat" concept, refer to Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.

(TAs), there appeared to be no consistent understanding of the term.[444] CSIS would call a threat "specific" only if the "...information [indicated] that something was going to happen, period, no ifs, ands, or buts"[445] and independent corroboration was available. This high threshold failed to correspond to a particular risk level, or responsive action, and was rarely met, if ever, in the year before the bombing, making the "specific threat" term of limited utility in the CSIS TAs.[446]

After the bombing, government officials immediately claimed there had been no "specific threat"[447], borrowing a term that was of limited relevance in a threat assessment context and most applicable to the narrow circumstance of an emergency call-in threat situation at an airport. As such, the Government and its agencies have excused their lack of responsive action by taking the "all-or-nothing" position that:

- unless the threat was "specific," there was no need to take heightened security measures beyond those already in force at Pearson and Mirabel Airports; and,

- that a threat was not to be understood as "specific" unless it contained details of the time, place and means of the alleged plots as well as of the identity of the alleged perpetrators.

The Commission has found numerous flaws in this approach, outlined in detail in Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat Response Regime. For present purposes, it is sufficient to note that employing this overly technical approach obscures the most important questions about the adequacy of the assessment of, and response to, the known threats in the period leading up to the bombing.

The Bartleman Document: A Specific Threat Recognized

Would the threat seen by Bartleman have been considered "specific," according to the Government's restricted definition? The Attorney General of Canada's argument is based on the assumption that the document to be found is one that even a lay person would explicitly interpret to be a "specific threat."

Bartleman testified that the document was raw, unevaluated information that indicated that Air India was being targeted the weekend of June 22 and 23, 1985. Bartleman knew that there had been many alarms raised in the previous year about potential attacks and so others might view the threat as another "cry wolf" incident. Given his position, his experience and his unique familiarity with Sikh extremism, it would hardly have been necessary for all the "i"s to be dotted or the "t"s to be crossed in the CSE intercept.

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444 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2515-2516, 2537.
445 Testimony of John Henry, vol. 25, May 8, 2007, p. 2538.
446 Testimony of John Henry, vol. 25, May 8, 2007, p. 2538.
447 Exhibit P-101 CAF0825, pp. 2-3, which documents the statements of Transport Minister Don Mazankowski in reply to questions during the House of Commons Question Period on June 25, 1985.

However, the information in the Bartleman document would not have satisfied the strict definition of a "specific threat" established by the Government. Although the document contains information regarding the time and place, it did not reveal details about the means of the alleged attack nor the identity of the alleged perpetrators. As such, it does not appear that other government officials, relying on the "specific threat" concept, would have considered the threat to be specific.

The Attorney General of Canada, in its Final Submissions to the Commission, admits that "...[t]here were a number of *non-specific* threats to Air India flights from Toronto and Montreal in the spring of 1985", and posits that, over time, Bartleman may have confused one of these documents for something else; something more specific.[448] Rather it appears that Bartleman's document may have been one of a number of *direct* threats to Air India flights in the spring of 1985 that the government agencies mischaracterized as being *non-specific*.

This possibility is made apparent when one considers the reaction of key government agencies to a threat considered to be "non-specific," the June 1st Telex.[449]

The June 1st Telex: A Specific Threat Ignored

As discussed in Section 1.2 (Pre-bombing), the June 1st Telex, the Chief Vigilance and Security Manager in Bombay sent the June 1st Telex[450] to Air India offices worldwide, including offices in Canada. Air India advised that it had received intelligence revealing "...the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage," as well as the fact that "...Sikh extremists are planning to set up suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or [carry-on-baggage] or any other means ...."[451] Air India went on to suggest five counter-sabotage measures that should be undertaken to ensure passenger safety in light of the threat. Specifically, it called for the continued use of explosives sniffers and explosives-sniffing dogs until at least June 30, 1985.[452]

From an abstract, definitional point of view, the June 1st Telex might appear to be lacking all the elements of specificity that Sgt. Sweeney testified were required to make a threat "specific," including date, location, particular target, particular means and identity of perpetrators.[453] Yet from a functional point of view, and on any reasonable reading, the telex was "sufficiently specific" that a

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448 Final Submissions of the Attorney General of Canada, Vol. I, para. 205.
449 See Section 1.2 (Pre-bombing), June 1st Telex.
450 Exhibit P-101 CAA0185.
451 Exhibit P-101 CAA0185.
452 Exhibit P-101 CAA0185. A subsequent telex sent from Air India to its worldwide offices revealed that the measures indicated in recent correspondence to deal with the heightened threat of hijacking and sabotage were to continue until the end of June 1985: Exhibit P-101 CAC0419, p. 3.
453 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2716.

trained intelligence professional would be able to understand the nature of the threat, as well as the need to assess the risk involved and to take appropriate measures in response.

Elements of Specificity

Some elements of specificity in the telex are beyond dispute. The information is specific in terms of the means, namely "time-delayed explosives" hidden in checked baggage. It is also specific as to the target, namely "an Air India plane".

What about the parameter of date?

The June 1st Telex did not indicate a particular date for the attack, but did clearly set out the month of June as the heightened period of alert. This narrowed the focus for a potential response to definite dates and times within a quite narrow time frame, namely the four days in the month of June 1985 on which Air India had its weekly flights between Canada and India. An intelligence professional, whether at CSIS, the RCMP or External Affairs, would have known that June 1985, in particular, was considered by Canadian and American officials to be a period of extremely high risk for an attack on Indian interests by Sikh extremists because of the US visit of Indian Prime Minister Rajiv Gandhi and the anniversary of the Golden Temple storming that month.

In early May 1985, a senior-level *ad hoc* interdepartmental committee on Sikh extremism was formed with representation from the RCMP, CSIS, DEA and the Solicitor General.[454] In mid-May, the Security and Intelligence Bureau at DEA held consultations with Canada's mission in Delhi about the Sikh terrorist threat in Canada and India.[455] As a result of upgraded threat assessments, by the first of June, the RCMP was affording a high level of protective security for all Indian diplomatic missions and personnel in Canada.[456] On May 31st, as a result of concerns expressed by the interdepartmental committee, External Affairs contacted RCMP Protective Policing to request that the level of security for Air India in Toronto be made consistent with that provided in Montreal.[457] In the month of June, officials involved in protective policing received "highly classified" intelligence that left them with no doubt that "...something was going to happen," though what, when and where were not known.[458] All of these facts combined would lead any well-informed recipient to pay particular notice to a threat to Indian interests targeted for the month of June 1985.

What about the parameter of "identity of perpetrators"?

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454 Exhibit P-102: Dossier 2, "Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism", p. 9.
455 Exhibit D-1: Dossier 1, "Background and Summary of the Facts", pp. 2-3.
456 Exhibit P-101 CAC0334, p. 2, CAE0177, p. 1, CAE0223, p. 2.
457 Exhibit P-101 CAA0166.
458 Exhibit P-101 CAA0240, p. 2, CAC0445, p. 5; Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040, 3044-3046, 3085-3086.

The June 1st Telex does not identify any specific person or persons as being involved in the plot. It does, however, refer to Sikh extremists as the source of the threat. Canadian government officials were aware of the identities of the prominent Sikh extremists domiciled in Canada. Just days prior to the June 1st Telex, CSIS had issued a threat assessment which was distributed widely across government agencies,[459] warning about the threat potential of the Babbar Khalsa (BK) and the International Sikh Youth Federation in Canada. CSIS reported that BK individuals in Vancouver had recently hosted a prominent UK Sikh extremist, who had warned in May 1985 that the names of Sikhs who refused to boycott Air Indian flights would be put on a hit list. BK members in Canada were connected to several threats against Air India. Parmar was assessed as the single most dangerous Sikh extremist at large,[460] and had publicly pledged in the past that Air India planes would "...fall from the sky".[461] Bagri, who had been implicated in an earlier plan to hijack an Air India plane, was assessed as easily capable of being manipulated to commit a violent terrorist act.[462] There is no doubt that the leaders of the Sikh extremist movement in Canada were well known to Canadian authorities.

What about the parameter of "place"?

The June 1st Telex did not specify "Canada" as the intended target of would-be extremists. Indeed, when pressed about the "specificity" of the June 1st Telex during his testimony, Sgt. Sweeney based his conclusion – that the telex was not "specific" – on the fact that it did not indicate a particular location.[463] Again, this observation makes little sense when applied to the broader threat assessment context in which there is time to develop a broader threat response strategy.

Canadian intelligence professionals would have known that Canada contained the second largest Sikh population outside of India, many of whom had demonstrated their agitation over the events in the Punjab over the previous year. It was also well known that within the Sikh population there existed extremist elements who had threatened bloody revenge against India and Indian interests. Moreover, Canadian officials were aware of concerns at the time that the foiling of an assassination attempt[464] on the visiting Indian Prime Minister in June could result in extremists redirecting their efforts to a less high-profile target in Canada,[465] and that, in the past, Air India in Canada had been flagged by CSIS as a "softer target."[466]

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459 Exhibit P-101 CAB0236(i), pp. 1-6.
460 Exhibit P-101 CAB0114, p. 2, CAF0132, p. 5.
461 Exhibit P-101 CAF0160, p. 33.
462 Exhibit P-101 CAA0110, pp. 2-3.
463 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2752-2753.
464 And unsuccessful weapons raids by the RCMP on the homes of two Sikhs in the Windsor/Detroit area, in connection with the upcoming Gandhi visit: Exhibit P-101 CAB0312, pp. 1-2.
465 Exhibit P-101 CAB0312, p. 2, CAC0459, p. 2. See also Exhibit P-101 CAC0356, p. 3, where in late May there were concerns expressed by RCMP Protective Policing that the Sikh extremists in the Windsor/Detroit area who were purchasing weapons might not be targeting the upcoming Gandhi visit, but could be targeting other Indian interests in Canada.
466 Exhibit P-101 CAC0133, p. 2.

In this context, it is difficult to see how an intelligence officer would not understand a threat to bomb an Air India plane in June 1985 as being at least as likely to refer to the weekly Air India flight from Toronto and Montreal as to any flight from any other location in the world. Regardless of the probability of the attack happening in Canada, in the context of the tense climate among Canadian-domiciled Sikh extremists, the threat ought to have caused a more refined operational response from the Canadian government.

Indeed, this common sense view was supported by world-class aviation security and risk management experts who testified at the Inquiry hearings. Dr. Rodney Wallis, an international civil aviation security expert,[467] argued that, given the circumstances, the June 1st Telex was specific enough to warrant extreme concern and response, in line with what would have been afforded in the case of a "specific threat" as understood by the regime in 1985:

> [I]n the case of Air India, which was operating under a high threat situation, operating with a once-a-week service out of Canada where there was a known element at war with the Indian government and anything that represented the Indian government and I have mentioned before the symbol on the tail of the airplane. We will say that's an Indian government.
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> So they were operating under this high risk situation with a once-a-week flight and the difference between that operation and specific threat becomes blurred. It becomes merged. You could argue it becomes one and the same thing.
>
> …
>
> Specific threat or high risk, I would expect it to be the same response under those circumstances.[468]

Dr. William Leiss, an expert in risk communication, risk perception and risk management,[469] stated that the June 1st Telex was as specific a warning as is possible in civil aviation security. He felt that the information should have "... leapt off the page". In light of the specificity of the information and the high-risk situation at the time, Dr. Leiss wondered "...why didn't the alarm bells go off everywhere?"[470]

From the perspective of protecting Canadians, it is clear that the information in the June 1st Telex should have satisfied all the parameters of specificity: means, target, date, identity of perpetrators and place. Contrary to the submissions of

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467 See Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4204-4205.
468 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4426-4427.
469 See Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11955-11956.
470 Testimony of William Leiss, vol. 91, December 7, 2007, p. 11982; P-433: Affidavit of William Leiss and Two Supporting Tabs (Tabs: 3 and 7).

the Government of Canada, any reasonable and responsible reading of the June 1st Telex should have resulted in an operational response to better safeguard the weekly Air India flights emanating out of Canada for the month of June 1985. Instead, the information was immediately discounted, not shared beyond the RCMP and subsequently forgotten after the bombing.

The CSE Information: Threat of Bombing Inside and Outside India

The lack of reaction to the June 1st Telex is made even more relevant by the fact that subsequent searches of the CSE database requested by Commission counsel disclosed CSE information from essentially the same time period as the June 1st Telex warning of the threat of sabotage to Air India aircraft by Sikh extremists and indicating specific security measures to be taken at all Air India stations in light of the threat. This establishes that the type of information in the June 1st Telex was known (and discounted) by at least two separate government agencies, the RCMP and the CSE.

There are strict limitations as to what may be revealed about CSE intercepts. The information is highly classified, and only a very narrow range of individuals with a need to know are given the relevant clearance. This makes discussion of the content of CSE intercepts a very delicate and sensitive issue. Accordingly, it is not possible to describe the material in much detail in this public report.

Witnesses from various government agencies testified at this Inquiry that they never saw the *information* in the June 1st Telex. It follows that these witnesses also never saw the CSE information. There is no indication that the CSE information was ever identified by CSE officers to be passed to any of the key personnel working on the assessment and response to Sikh extremist threats. It appears that CSE personnel, like the RCMP, also failed to recognize the significance of the nature of the warning in the June 1st Telex. After the bombings, when Pierre LaCompte was asked whether there had been any advance warning of a possible bombing in the CSE holdings, he recalled a November 1984 bomb threat but not the more recent CSE information.[471]

It is regrettable that two separate government agencies, the CSE and the RCMP, received critical pre-bombing information about the threat of sabotage and security measures to be implemented in response and, yet, this important information apparently went nowhere because it was reviewed by personnel without the requisite expertise to properly assess its significance. No alarms were raised. In fact, it appears that no one outside the CSE and the RCMP was notified about the receipt of this critical threat information, either before or after the bombing. For the 21 years between the bombings and the commencement of this Inquiry, the full significance of the June 1st Telex and the CSE information has gone unappreciated.

This conclusion is made even more acute when one considers that, as discussed in greater detail in Section 3.6 (Pre-bombing), Lack of Government-Wide

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471 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11921.

Coordination in the Threat Assessment, the CSE information from the same period uncovered by Commission counsel provided corroboration of the seriousness of the threat. While each piece of information may have seemed relatively inconclusive or ambiguous on its own, when pieced together by a trained analyst, a much clearer and undoubtedly alarming pattern might have been discerned. That, in fact, appears to be exactly what Bartleman did when he saw the CSE information that so concerned him, which may well have been a variant of the CSE information discussed above.

A Multitude of Direct Threats

In light of the treatment of the June 1st Telex and of the CSE information, Bartleman's testimony that he saw a document relating a threat to an Air India flight that was largely ignored is hardly surprising. It is, rather, compatible with the general government reaction to *direct* threats of this nature at the time. The Attorney General of Canada's argument is flawed in that it denies the existence of the Bartleman document on the basis that there was no "specific threat" to Air India Flight 182, while admitting that members of all government agencies were aware of a multitude of direct threats against Air India flights in Canada in June of 1985.

> Gary Clarke, the Officer-in-Charge of Protective Policing at the Toronto RCMP Division in 1985, testified that, in June of that year, the RCMP had "highly classified" information in the form of a communiqué from the Department of External Affairs that indicated special security precautions should be taken on all Air India flights to and from Canada.[472]
>
> Mel Deschenes, the Director General of Counter Terrorism at CSIS headquarters, on June 19, 1985, days before the bombing, expressed his fear that rogue elements of the Indian Secret Service would take a plane out of the sky.[473]
>
> Warren Sweeney, a Sergeant in the National Criminal Intelligence Branch of the RCMP in 1985, testified that he was aware of a threat of a general nature for nearly every Air India flight leaving Canada, including the ill-fated flight on June 22, 1985.[474]

Sgt. Sweeney's testimony that the RCMP was in receipt of threats to Air India before every flight,[475] coupled with the fact that no record of these threats has been included in the documents produced to the Commission, may also

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472 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3044-3047; Exhibit P-101 CAA0240, p. 2, Exhibit P-101 CAC0445, p. 5.
473 See Section 1.8 (Pre-bombing), Rogue Agents (Deschenes).
474 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2754, 2757.
475 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2585; Exhibit P-101 CAC0517, p. 2.

be relevant. Bartleman testified that, based on his extensive experience in intelligence matters, he took the threat information that he saw seriously, but was unable to evaluate whether the threat was in fact credible. The threat he saw could have been one of the many undocumented threats before every flight.

The Inquiry evidence does not support the Attorney General of Canada's assertion that government officials at the time would have treated the information very seriously and been "...running all over the place with it". Rather, it appears that direct threats that were sufficiently specific to indicate that Air India would be targeted in Canada were routinely discounted and subsequently forgotten.

Conclusion

Bartleman testified that, shortly before the bombing, he saw an intercept that he interpreted as intelligence indicating that the Air India flight departing Toronto and then Montreal was targeted. He showed the document to an RCMP officer, who indicated that the RCMP was aware of the underlying information. Bartleman recalled that the RCMP officer made it clear that he did not welcome Bartleman telling the RCMP how to do its job.

There is nothing inherently unlikely in any of Bartleman's testimony. To the contrary, there is a measure of confirmation on all points. The June 1st Telex and the CSE information demonstrate that information "sufficiently specific" to indicate that an Air India flight in June was being targeted for sabotage was in circulation, but that its significance was not appreciated by those who saw it. The fact that this key information disappeared from the post-bombing investigation (except for a brief mention in a document being considered for production to the families in the civil litigation[476]), not to re-emerge until its circulation was inaccurately described to the Honourable Bob Rae,[477] gives credence to the notion that the significance of such information was seemingly no clearer in the post-bombing period than it had been in the pre-bombing period.

The fact that none of the recipients of the information in the June 1st Telex actively pursued the information post-bombing shows that Bartleman was not alone in his belief that there was no use in repeating information that the relevant authorities already had and, presumably, had acted on.

Finally, the May 24, 1985 RCMP memorandum,[478] reflecting the RCMP's displeasure at being "second guessed" by External Affairs in terms of its security levels, appears to corroborate the tone and content of the subsequent confrontation described by Bartleman.

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476 Exhibit P-101 CAC0528, p. 40.
477 Exhibit P-101 CAA0234, p. 8, where the document implies in error that the content of the June 1st Telex was passed to CSIS.
478 Exhibit P-101 CAC0355, pp. 2-4.

On balance, the evidence cited by the Attorney General of Canada to discredit James Bartleman was not persuasive. Bartleman was a unique consumer of intelligence who had exceptional access to CSE materials. It was a well-accepted fact that there were many threats to Air India flights from Canada and these threats were generally discounted. In light of these surrounding circumstances, it is reasonable to conclude that James Bartleman saw a document with a direct threat to Air India Flight 182 on June 22, 1985 that other witnesses do not recollect seeing.

The Commission accepts the evidence of Bartleman, and finds that he delivered a message to the RCMP identifying a direct threat to Air India 182 the weekend of the June 22, 1985 flight. In accepting Bartleman's testimony, it is significant to note that he had nothing to gain by coming forward with his testimony, and stood only to suffer a loss to his reputation in facing government-wide efforts to impugn his credibility.

Contrary to the argument advanced by the Attorney General of Canada, the importance of Bartleman's evidence is not that it, and it alone, points to a "specific threat" to Air India Flight 182. Rather, Bartleman's evidence is important because it reveals one more direct threat in a crescendo of threats that, like the others, was neither noticed nor understood as information that should be taken seriously. The threat seen by Bartleman – like the other direct threats before it – could, and should, have led the intelligence and security communities to anticipate the outcome and to adopt appropriate anti-sabotage measures to respond to precisely the events that occurred on June 23, 1985. Clearly, they did not do so.

1.8 Rogue Agents (Deschenes)

Did CSIS Have Advance Knowledge of a Specific Threat to Air India?

To determine whether CSIS appropriately assessed the threat to Air India prior to the bombings and whether their actions after the bombings were reasonable, particularly in relation to the Parmar tape erasures, it is important to know if they had advance knowledge of a specific threat to Air India for the weekend of June 22, 1985. Michael Anne MacDonald and Graham Pinos testified before the Commission that CSIS did have such advance knowledge.

Separate Statements by CSIS DG of Counter Terrorism

During the week of June 17, 1985, Ms. MacDonald and Mr. Pinos were in the Los Angeles area in connection with a rogatory commission set up to take evidence in a case related to the shooting of the Commercial Attaché of the Turkish Embassy in Ottawa. Mel Deschenes, then the Director General of the Counter Terrorism Unit at CSIS, was also in attendance at the commission.[479]

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479 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, pp. 3270, 3278.

Both MacDonald and Pinos testified that Deschenes made separate statements to each of them, indicating that he had advance notice of a serious threat to Indian interests in Canada. After the bombing, the gravity of these statements shocked MacDonald and Pinos,[480] who believed that CSIS had advance warning of, but was unable to prevent, the Air India and Narita bombings.

Statement #1: Urgent Problem in Vancouver with Sikh Extremists

MacDonald was at the rogatory commission as Counsel for the Ontario Ministry of the Attorney General. Her responsibilities included setting up and facilitating the taking of evidence in the commission. The evidence was taken before two Commissioners, Ontario Supreme Court Justice Eugene Ewaschuk and District Justice Fred Lacey, District of New Jersey. The commission commenced on June 13, 1985 dealing with preliminary matters, and evidence was taken starting the week of June 17th. On Wednesday, June 19th, Justice Ewaschuk called counsel into chambers to inform them that Justice Lacey was ill and that, accordingly, the hearings would be postponed until the following day.[481]

Some time before she returned to court on June 20th, MacDonald had a hurried conversation with Deschenes in the hotel lobby – one she has never forgotten. MacDonald recalls that Deschenes advised her that he had to leave and gave the following reason for his departure "...all of a sudden, in the middle of things."[482]

> He had received a call from Canada. There was an urgent problem with Sikh extremists in Vancouver, and he had to leave to go to Vancouver, immediately. And he gave his apologies.[483]

At the time, MacDonald felt it was a fairly innocuous conversation. Since she was the commission facilitator, it made sense that attendees who had to leave would tell her about their departure.[484]

On June 20th, the commission hearings reconvened. Justice Ewaschuk announced that Justice Lacey had returned to New Jersey and the hearings would be adjourned *sine die* (without a specified date to reconvene). [485]

When MacDonald learned about the Narita and Air India explosions later that weekend, she immediately reflected back on her last conversation with

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480 Testimony of Graham Pinos, vol. 66, October 25, 2007, p. 8182.
481 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, pp. 3273-3281.
482 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3283.
483 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3282. See also Exhibit P-101 CAF0114, p. 2 in which a consistent recollection of Deschenes's explanation for his departure is reported by MacDonald in Jardine's minutes of an October 3, 1988 meeting.
484 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007 pp. 3282-3283; Exhibit P-101 CAF0114, p. 2
485 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3284; Exhibit P-137, p. 6.

Deschenes. She remembers thinking "...even when they know something is going to happen, they can't stop it."[486] To her, it was clear that CSIS had advance knowledge of the threat to Air India on the weekend of June 22, 1985.

Statement #2: "Rogue Elements" to Bring Down a Plane

Pinos was at the rogatory commission acting as Counsel for CSIS. He was responsible for overseeing CSIS witnesses and raising objections where necessary to protect the interests of the Service. He did not attend the proceedings regularly, but rather was given a pager and would be called to attend court if issues arose or a witness testified on matters related to Canadian national security.[487]

Pinos befriended Deschenes, who was also on a similar "watching brief". On June 19th, Pinos and Deschenes were having a casual chat over drinks at the hotel pool.[488] Pinos recalls Deschenes speaking in a way that was totally out of character for an intelligence officer. Pinos had been a Crown criminal prosecutor for 10 years and had learned that intelligence officers only told you what you needed to know. Deschenes was telling Pinos things that he had no need to know.[489]

Deschenes spoke about the nature of the Armenian terrorist threat. He then said, "They aren't our real problem, our real problem is something else."[490] The "real problem" according to Deschenes was:

> [T]here are rogue elements of the Indian Security Service operating in Canada in the ... Sikh community.... they were non-responsive; they were out of control.... and [Deschenes] perceived them as being dangerous, you know, likely they'd ... take a plane out of the sky.[491]

The next morning, June 20th, Pinos knocked on Deschenes's room door for their regular breakfast meeting, but discovered that Deschenes had checked out unexpectedly. Later that day, Pinos learned that the commission hearings had been adjourned *sine die* that morning due to Justice Lacey's illness.[492]

When Pinos learned about the Air India and Narita bombings later that weekend, he was greatly upset. He recalls saying, "Holy expletive, they knew, they knew." He had no doubt in his mind that Deschenes had prior knowledge of the Air India and Narita tragedies.[493]

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486 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3286.
487 Testimony of Graham Pinos, vol. 30, May 17, 2007 pp. 3343-3353.
488 Testimony of Graham Pinos, vol. 30, May 17, 2007, pp. 3347-3354.
489 Testimony of Graham Pinos, vol. 66, October 25, 2007 p. 8182.
490 Testimony of Graham Pinos, vol. 30, May 17, 2007 pp. 3347-3348.
491 Testimony of Graham Pinos, vol. 66, October 25, 2007, pp. 8181-8182.
492 Testimony of Graham Pinos, vol. 30, May 17, 2007, p. 3349.
493 Testimony of Graham Pinos, vol. 30, May 17, 2007, pp. 3350-3351, 3362.

Response by Mel Deschenes

Mel Deschenes did not testify at the Air India Inquiry. However, the allegations of advance knowledge were raised with Deschenes several times over the course of the Air India investigation. Deschenes's responses to these allegations are recorded in several documents, which were reviewed and entered into evidence during the Inquiry hearings.[494]

Deschenes is recorded as stating that he was not feeling well and left Los Angeles as soon as his attendance at the commission was no longer required. He claimed that the commission had suspended the hearing of witnesses on June 19th and he returned to Ottawa via Toronto on June 20th. He admitted that he may have made up a work-related excuse for his departure so that the prosecution team would not feel abandoned.[495] At another interview, he claimed that he made up the excuse to get out of a social event.[496] He insisted that his return to Ottawa was not sudden and claimed that he would have checked with Pinos before leaving.[497] He maintained that he was not aware of any advance specific or immediate threat to Air India.[498]

Timing of the Deschenes Departure

The Attorney General of Canada sought to bolster the credibility of Deschenes's narrative by attempting to undermine conflicting evidence as to the timing of Deschenes's departure offered by MacDonald and Pinos.[499] It is therefore useful to pinpoint whether Deschenes's comments to MacDonald and Pinos occurred before or after the proceedings were officially adjourned.

The most reliable record of the proceedings are the contemporaneous notes of Mac Lindsay, who was Lead Counsel representing the Attorney General of Ontario at the rogatory commission.[500] Notably, Lindsay's notes contradict Deschenes's claims and confirm the recollections of MacDonald and Pinos.

Deschenes stated that the commission suspended the hearing of witnesses on June 19th and he returned to Ottawa via Toronto on June 20th.[501] Lindsay's notes show that the proceedings on June 19th were simply adjourned until the

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494 Exhibit P-101 CAF0115, p. 1.: Letter from Deschenes dated November 25, 1988 to the Director General of Counter Terrorism at CSIS Headquarters in response to a letter from Jardine; Exhibit P-101 CAD0003, p.10: Notes of RCMP interview with Deschenes on December 17, 1990; Exhibit P-136, pp. 2-4: Notes by Corporal Best on April 24, 2002 phone interview with Deschenes.

495 Exhibit P-136, pp. 3-4

496 Exhibit P-101 CAD0003, p. 10.

497 Exhibit P-136, pp. 3-4.

498 Exhibit P-101 CAF0115, p.1.

499 See the Final Submissions of the Attorney General of Canada, Volume I, paras. 208-209. The Attorney General of Canada entered Corporal Douglas Best's notes on a 2002 interview of Pinos that stated "Pinos was never told by Deschenes that there was going to be a bomb", calling this a critical omission. In fact, Pinos testified about "planes being taken from the sky" not "bombs." Best admitted that he could not attest to whether the questions asked would have elicited a response about "planes taken from the sky." Another inconsistency about the timing of a subsequent conversation between Pinos and Deschenes is immaterial to the substantive statement made by Deschenes in Los Angeles.

500 Exhibit P-137, pp. 1-6.

501 Exhibit P-101 CAF0115, p. 1.

next day. Contrary to Deschenes's claim that the hearing of witnesses had been suspended, MacDonald testified that the hearings would have continued with evidence for the following week if Justice Lacey had been well enough.[502] In fact, MacDonald testified that Lindsay spent the remainder of the day on June 19th preparing witnesses. Furthermore, Lindsay's notes show that the commission reconvened on June 20th at 10:05 AM. Only then did Justice Ewaschuk announce that Justice Lacey had returned to New Jersey and the official adjournment.[503] Both MacDonald and Pinos testified that they did not learn this news until June 20th. Meanwhile, Deschenes claimed that he knew this information on June 19th and left Los Angeles on June 20th. The flight from Los Angeles to Toronto left daily at 12:30 PM.[504]

It is difficult to conceive how Deschenes could have learned about the adjournment on June 20th, sometime after 10:05 AM, and have had sufficient opportunity to speak to MacDonald in the hotel lobby about his intention to leave (particularly as she was in attendance at the proceedings downtown), change his airline ticket and travel to the airport in time for the flight to Toronto departing at 12:30 PM. This sequence of events is even more implausible considering Deschenes's insistence that his departure was not sudden.

The reasonable conclusion from the evidence is that Deschenes made his comments to MacDonald and Pinos before the announcement of Justice Lacey's departure and the official adjournment of the proceedings and that both MacDonald and Pinos are correct in their recall.

Observations

- Two witnesses testified that they believed that the Director General of Counter Terrorism for CSIS had advance notice of a serious threat to Indian interests in Canada on the basis of statements made to them separately.

- The Inquiry evidence does not support Deschenes's documented explanation for his early departure from Los Angeles: that it was known the hearings would not continue on June 19th and his attendance was no longer required. Nevertheless, the Attorney General of Canada continues to rely on this explanation. Its Final Submissions even incorrectly contend that MacDonald herself supports this point.[505]

- It seems bizarre that Deschenes would concoct an excuse to leave if he had a valid reason for his departure. Even more difficult to comprehend is the fact that the "excuse" he gave foreshadowed

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502 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, p. 3337.
503 Exhibit P-137, pp. 2-3, 6.
504 Testimony of Michael Anne MacDonald, vol. 30, May 17, 2007, pp. 3335-3336.
505 Final Submissions of the Attorney General of Canada, Volume I, para 209.

tragedies that actually occurred days later. The improbability of such a coincidence suggests that there must have been some truth to Deschenes's excuse; it is likely that concerns about the threat of Sikh extremists were prominent in his mind. Did he leave because of these concerns or did these concerns simply provide a needed alibi?

- It is not essential to determine whether Deschenes went back to deal with a "specific threat" to Air India. At a minimum, Deschenes was troubled by a threat to Air India, a threat he attributed to renegade elements of the Indian secret police who were "non-responsive" and "out of control."[506] Deschenes, the head of CSIS's Counter Terrorism Unit at the time, indicated that this threat was the "real problem" and accordingly, addressing this threat should also have been the top priority for the CSIS Counter Terrorism Unit.

If the sudden departure of Deschenes was to respond to a "real problem," the safety of Air India Flight 182, the overall result was a failure. We can speculate but cannot reach a conclusion about the reason for his departure. The question still remains: Did CSIS commit sufficient resources and significance to the "real problem"? It is obvious that CSIS did not.

1.9 Mr. Simpson's Visit to the Air India Aircraft

Brian Simpson testified about the security culture at Pearson International Airport in June 1985.[507] He worked at the airport at that time and witnessed a number of significant shortcomings in the airport security regime. Simpson said he came forward to the Commission in 2007 because he was frustrated about the lack of attention paid to the extremely lax security of the 1970s and 1980s.[508]

Simpson's testimony and other evidence supports the conclusion that carelessness and complacency at the Toronto airport were widespread, this in spite of the fact that RCMP special constables and private security officers were deployed to protect aircraft, screen passengers, and search baggage prior to boarding.

Increased Security for Air India Flights

At the request of Air India, the RCMP provided increased security for Air India flights in June 1985 because of the high threat level.[509] On June 22, 1985, one RCMP officer was in a marked patrol car and monitored the apron area where aircraft were stationed. Another RCMP officer in a marked patrol car was

506 Testimony of Graham Pinos, vol. 66, October 25, 2007, p. 8181; Exhibit P-101 P-136, pp. 3-5.
507 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3638-3714.
508 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3651-3652.
509 Exhibit P-101 CAC0528, p. 46.

stationed under the starboard wing of the aircraft.[510] A further RCMP officer, Special Constable Jurma Tulikorpi, was at the passenger check-in counter. At 3:45 PM, RCMP Special Constable Leo Anderson began to monitor the gate and the secondary screening of carry-on baggage. Between 5:00 PM and 6:00 PM, Anderson covered for Tulikorpi, monitoring two positions 30 feet apart.[511]

Air India had also contracted with Burns International Security to provide security guards on a regular basis. Five Burns security guards were assigned to search passengers and carry-on baggage,[512] and six others were deployed around the airport to provide other security functions. One guard was supposed to be stationed at the inside of the aircraft door and another was assigned to watch the door to the bridge leading to the aircraft.[513] Three other security guards were in the international baggage make-up room, using the X-ray scanner to examine the checked baggage destined for the flight. A final Burns guard was posted at a baggage conveyor belt to ensure that only approved baggage was placed onto it.

Simpson Boards the Air India Aircraft Unchallenged

Perhaps in an attempt to minimize his testimony, the Final Submission of the Attorney General of Canada (AGC) referred to Simpson as a "part-time janitor".[514] This is an error that must be addressed. Simpson was, in fact, an aircraft groomer in 1985. He cleaned and serviced aircraft cabins as a student member of the Cabin Services Department for Air Canada while he worked on his MBA at the University of Toronto. After obtaining his Master's Degree, he practiced law as a barrister and solicitor in Ontario for fourteen years,[515] and is presently Vice-President and CEO of a digital media company.

During the spring of 1985, Simpson and other members of the student team would assist the regular cleaning crews in servicing the flights as they arrived. At the start of each shift, Simpson would find out which flight he was supposed to work on, and then walk through the terminal along the airside corridor to the gate where the aircraft in question was located.[516] The airside corridor ran the full length of the airport and passed between the entrances to the bridges, on the one side, and the departure lounge on the other.

Simpson was working at Pearson on June 22, 1985. He initially testified that he might have started work at 1:30 PM, but subsequently conceded he more likely started at 3:30 PM. On starting his shift, he determined that he was assigned to an international flight and that he would have some time before the flight was unloaded and he could go on board.

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510 Exhibit P-101 CAF0143, p. 1.
511 Exhibit P-101 CAC0528, p. 45.
512 Exhibit P-101 CAF0143, p. 2.
513 Exhibit P-101 CAF0143, p. 2.
514 Final Submissions of the Attorney General of Canada, Vol. II, para. 214.
515 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3638.
516 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3640-3641.

Simpson set out for the international terminal in no particular rush. He testified that he invariably travelled on foot at the airport. Along his way from the domestic terminal, Simpson saw the tailfin of an Air India aircraft through a window in the airside corridor, which aroused his curiousity. He had never been aboard an Air India flight, and he knew that the aircraft had come to the airport after a flight halfway around the world.[517] Simpson was interested in taking a look at the cabin of the Air India 747, and since he had time to spare, he decided to go aboard. He had a general interest in airplanes and airports, as his father worked for Air Canada, and his family had travelled extensively.

Additionally, Simpson pointed out that the student groomers were generally interested in knowing which flights and planes would be the dirtiest and the most unpleasant to work on, in order to avoid them.[518]

Simpson walked to the international area where the Air India 747 was located. He walked to the bridge door from the airside corridor. He testified that the secure area doors, such as bridge doors, were subject to some alarming security lapses. For example, although the bridge doors were supposed to be kept locked, they were in fact frequently left open.[519] Worse, the doors were supposed to be secured by coded locks, but these access codes were often written down on the wall near the lock. The door codes themselves were easy to guess: the common practice was to use the three-digit gate number and add the prefix "four" to it. Thus, the combination to the bridge door for gate 101 would be 4101. The codes were also widely known.[520] Finally, the door codes were not changed frequently. In fact, they had apparently not been changed since at least 1979.[521]

Simpson's observations are confirmed by an August 1985 letter written by Ed Warrick, the Airport General Manager at Pearson. In his letter, Warrick cautioned that these deficiencies were "...totally unacceptable from a security viewpoint."[522]

Simpson encountered no difficulty going through the bridge door and onto the aircraft even though he had no business being on board. The *Kanishka* was a jet belonging to Air India, an airline that operated under very high threat levels. Accordingly its aircraft were to be protected by enhanced security measures. He testified that he entered and descended the bridge and boarded the aircraft. He found it dark, quiet, and empty. It had already been groomed. Simpson testified that he spent approximately ten minutes aboard.[523] He went to the galley and looked into the washrooms. He ascended the stairs on the right-hand side of the aircraft into the first class section. Finally, he went to the cockpit and sat in the captain's chair for a few moments to enjoy the view. He had access to the entire plane.

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517 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3641-3642.
518 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3641-3642.
519 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3676; Exhibit P-101 CAF0141, p. 1.
520 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3643, 3676-3677, 3691.
521 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3682; Exhibit P-101 CAF0555, p. 5.
522 Exhibit P-101 CAF0141, p. 1.
523 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3643, 3645.

Simpson testified that he saw no one aboard the aircraft, and was not challenged at any point as he entered or exited the Air India jumbo jet. He saw no one near the aircraft or at the door of the aircraft where it met the bridge, though there may have been personnel in the departure lounge. He testified that posting someone to monitor the aircraft at the head of the bridge would not cover any traffic coming up from the ramp, halfway down the bridge. For the best security, there would have had to have been someone at the aircraft door.[524]

Simpson emphasized that he would have avoided the aircraft altogether had he seen police or security guards nearby. He described his entry as a matter of acting on a whim – had he been challenged, he would not have gone aboard the plane. Nevertheless, such forays were a relatively common occurrence for airport personnel. There was little to deter someone from boarding any aircraft, whether motivated by curiosity, mischief, or criminal intent. There was no systematic record-keeping of who boarded or left an aircraft or why they were going aboard in the first place. As Simpson put it, "...[t]here was nothing stopping you."[525]

Lack of a Security Culture at Pearson

As discussed in detail in Section 2.4 (Pre-bombing), Security Culture at Canada's Airports, the culture of security at Pearson airport was lacking in many respects. Aircraft groomers and other airport staff were not briefed on security issues or otherwise encouraged to see themselves as a distinct line of security in and of themselves. Simpson, by admission, was frequently "delinquent" when it came to displaying his identification pass at the airport. He invariably put it in his pocket because it could easily be lost during work if it were clipped to his uniform.[526] He recalled that, in the period of time between his first summer working part-time at the airport while still in high school in 1974, and 1993, when he finished working at the airport, he had only been asked for his pass twice. The Air Canada personnel with whom he worked did not hold airport security in very high esteem. They saw it "as a joke"[527] and gave little respect to private security guards and RCMP special constables.

The Attorney General of Canada Challenges Simpson's Story

Simpson was subjected to an aggressive cross-examination, which challenged both his recollection of the events he described and his credibility. The AGC also forcefully asserted that Simpson was mistaken when he testified that he boarded Air India Flight 182 on June 22, 1985, and challenged the credibility of Simpson's testimony in four major areas:

Challenge 1: Simpson was uncertain as to the time he was on board the aircraft;

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524 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3644, 3648.
525 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3645-3649, 3684.
526 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3650, 3681.
527 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3684, 3697.

Challenge 2: Simpson would have been seen by the duty guards if he had been present;
Challenge 3: Simpson's memory of the events was unclear after so many years; and
Challenge 4: Simpson did not tell anyone about his experience.

Simpson's Time on Board the Plane

The AGC Final Submissions maintain vigorously that Simpson's story lacks credibility"[528] including claims of inconsistencies in his evidence as to when his shift started and a negative inference drawn from his inability to say precisely when he boarded the aircraft, as well as a claim that it was a chronological impossibility that Simpson could have visited the aircraft when he did based on the timing in his testimony. Counsel for the RCMP suggested on cross-examination that Simpson was mistaken about his observations, putting it to him that the Burns personnel were present during the cleaning of the aircraft cabin and that the cleaning took place for two hours, from approximately 2:30 to 4:30 PM.

There is a great deal of ambiguity as to how long the cleaners were aboard the aircraft, or even as to when they started. The lead station attendant for Air Canada stated that he came aboard the Air India flight at approximately 2:30 PM.[529] Others stated they came aboard at 3:00 PM,[530] and others at "about" or "approximately" 3:30 PM.[531] In all, 26 individuals gave statements to the RCMP about their presence that day.[532] Neither Simpson nor Commission counsel had access to all of these statements prior to his testimony. Only three out of the 26 individuals cleaning the aircraft stated they finished at 4:30 or 4:40 PM, and stated these times only in approximate terms.[533] Furthermore, a review by Commission counsel indicated that of the 26 interviews, 20 made no mention at all of how long they were aboard the aircraft or at what time. Given the size of the cleaning crew and the inconsistent estimates of the times involved that day, these written statements do little to rebut Simpson's evidence that he was able to board the aircraft sometime around 4:00 PM and that he found it empty.

Simpson maintained that two hours would be an unusually long time to clean an aircraft, and that one and a half hours (ending at 4:00 PM) was more likely

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528 Final Submissions of the Attorney General of Canada, Vol. II, para. 215.
529 Exhibit P-101 CAF0153, p. 1.
530 Exhibit P-101 CAF0154, p. 1.
531 Exhibit P-101 CAF0145, p. 1 and CAF0147, p. 1.
532 All 26 statements were disclosed and entered into evidence. Many of these statements were entered on December 13, 2007 as a compendium of documents on DVD as Exhibit P-391. A list of the 26 Air Canada groomers interviewed by the RCMP is available at Exhibit P-391 document 158 (Public Production # 3291). Their statements can be found at Exhibit P-101 CAF0144, CAF0145, CAF0146, CAF0147, CAF0148, CAF0153, CAF0154 and Exhibit P-391 (Public Production # 3292, 3293, 3294, 3295, 3296, 3297, 3298, 3299, 3300, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3325, 3326). These are part of an omnibus disclosure on DVD in P-391 and were assigned no CAF Tab Numbers.
533 Exhibit P-101 CAF0144, p. 1, CAF0147, p. 1, CAF0153, p. 1.

for the usual deployment of 12 to 16 people.[534] The fact that there were actually 26 cleaners aboard the aircraft on June 22, 1985 potentially reduces that time requirement. Among the widely varying estimates of time provided by the cleaning crew were statements from Air Canada supervisors that their duties required only one hour – or even just half an hour.[535]

Paul Gawronski worked at Pearson on the day of the bombing as an Air Canada station attendant foreman for cabin services. He indicated in a statement that he is "...normally on flight for one hour but it only took one-half hour to do flight 181. Notice[d] one male and one female security guard."[536]

The evidence about time aboard the aircraft is taken from witness statements from the cabin cleaners and other personnel who were present at Pearson that day. As noted, some of the 26 witness statements were not produced prior to the hearings. The AGC cross-examined Simpson on the basis of documents he had never seen.

Although the AGC Final Submissions repeated the assertion that Simpson's testimony was contradicted by statements made following the bombing, no reference was ever made to a document that corroborated Simpson's testimony. Among 11 of the 37 documents submitted as evidence on December 13, 2007[537] was a witness statement given by Vincent Ezoua to the RCMP in October 1985 in the course of their investigation of the bombing. Ezoua was a checker for CP Air Flight Kitchens, and was responsible for stocking the aircraft galley.[538] He worked at Pearson on June 22, 1985, and arrived at the aircraft at approximately 3:30 PM.[539] He stated that when he arrived, he was told there was no room in the galley for the wet bar. He decided to check for himself, and found that there was no space. Instead, he loaded the sandwiches and juice and left the wet bar behind.

When asked if he observed anything out of the ordinary, Ezoua stated that he saw a stranger coming down from the first class section of the aircraft. He described the stranger as a young man who appeared to be about 20 years old and someone he had never seen before. Significantly, Simpson testified that he had gone up to first class during his visit to the aircraft.[540] Ezoua frequently serviced Air India flights and he was sure the stranger was not an Air India agent.[541]

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534 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3707.
535 Exhibit P-101 CAF0148, p. 1, CAF0154, p. 1.
536 Exhibit P-101 CAF0148, p. 1.
537 Exhibit P-395. Commission counsel subsequently requested that the outstanding 26 documents be produced in redacted format for public disclosure in order to complete the evidentiary record.
538 Exhibit P-395, p. 74.
539 Exhibit P-395, p. 74. It should be noted that the CP Air Flight Kitchens drivers, Ralton and Dalton Lawrence, indicated in their statements that they were at the aircraft starting at 3:30 PM (see Exhibit P-395, p. 72) or 4:00 PM (see Exhibit P-395, p. 61). Ezoua noted seeing the drivers in his statement and they stated they did not see him, so he probably arrived at the aircraft somewhat later than 3:30 PM. The statements of all three were taken several months after the bombing, so these times should be considered approximate.
540 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3644.
541 Exhibit P-395, p. 75.

Ezoua did not get a good look at the young man. Given that he did not recognize the stranger, however, it is unlikely he was someone Ezoua would expect to see on the aircraft, such as a member of the regular cleaning crew or a security guard. It would appear almost obvious that the stranger was Simpson. It is certainly significant that Ezoua saw an unfamiliar young man aboard the aircraft during the afternoon of June 22, 1985, the time when Simpson testified he was aboard. In any event, Ezoua did not challenge the stranger, and carried on with his work.

Moreover, the AGC submits that had Simpson attempted to board after 4:40 PM, he would have encountered "...several Burns guards and RCMP officers."[542] Although the AGC insisted during cross-examination that there was an RCMP officer in the departure lounge, Simpson replied that while this may have been the case, he did not recall this. He testified that there was no single lounge for the Air India gate. There was a very large lounge for all international flights, and there could very well have been Burns personnel and RCMP present.[543] It does not necessarily follow that Simpson noticed them, or that they took any notice of him.

The written statements do not contradict Simpson's evidence. Special Constable Anderson provided a statement on June 30, 1985, indicating that on June 22, 1985, he was posted in the lounge area watching gate 107, which led to the bridge to the aircraft, and stated he checked the identification of anyone entering.[544] One cleaner out of the 26 who provided statements indicated that his identification pass was checked by an RCMP officer.[545] Simpson testified that, although posting someone at the bridge between the lounge and the aircraft would be effective, that person would miss anyone coming up the ramp which is halfway down the bridge.[546]

The statement of Special Constable Tulikorpi indicated that he joined Anderson at 3:45 PM, and until 6:50 PM they watched Burns security personnel hand search carry-on baggage while guarding the bridge.[547] This means that, for a time, the attention of the officers would have been away from the aircraft and the interior of the bridge where Simpson would have been. As stated earlier, in the hour between 5:00 PM and 6:00 PM, Anderson was covering for Tulikorpi, working alone and monitoring two positions 30 feet apart.

According to Burns guard Peter Zammit's statement, prior to the arrival of the cleaning crews, he and Rae Ann Belasco had completed their checks and were positioned at the aircraft door and the L-shaped area on the bridge to the plane. He stated that they would switch back and forth, relieving one another. Subsequently, the cleaning crew would be allowed on. Zammit stated the guards were flexible in their deployment and sometimes both he and Belasco

542 Final Submissions of the Attorney General of Canada, Vol. II, para. 221.
543 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3708.
544 Exhibit P-101 CAF0140, p. 2.
545 Exhibit P-101 CAF0145, p. 1.
546 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3648.
547 Exhibit P-101 CAF0152, p. 1.

were on the aircraft monitoring the cleaners.[548] It is therefore entirely possible that they were away from the aircraft at some point during these movements, whether before the cleaning crew arrived or after they left, even if only for a brief time. Simpson could well have accessed the aircraft from airside during such a window.

Counsel for both the AGC and Air India suggested during cross-examination that Simpson was able to go aboard the Air India aircraft because he was wearing an Air Canada uniform. As such, Simpson did not draw attention to himself because he "...looked like everybody else working in the airside of the airport."[549]

This line of reasoning reinforces, rather than undermines, the issues raised in Simpson's testimony. The key points were that he went aboard Air India Flight 181/182 on the afternoon of June 22, 1985, that he did so without being challenged and saw no one aboard the plane. Had he been challenged or had there been a visible police or security presence, he would not have gone aboard. Simpson testified that he often put his security pass in his pocket and had only been asked for it twice in all his time working at the airport. He evidently blended into the background and people took no notice of him, including those charged with maintaining security. Despite this, he had no business boarding the Air India aircraft, and yet there is no evidence to suggest that he was ever challenged.

Memory of the Event

The Attorney General of Canada also stated that Simpson had no documents to refresh his memory 22 years after the fact.[550] It should be noted, however, that Simpson has an independent recollection of the event, and that he provided testimony as to why the day stayed firm in his memory. Conversely, it is unrealistic to expect Simpson to have precision about these time periods after 22 years, particularly without any notes or written statement.

Simpson firmly rejected the assertions that he was mistaken and that there was no period of time when the plane would have been empty. He insisted that he had a strong recollection of the day for a number of reasons. He explained that his family had a strong connection to aviation because of his father's work, and they had lived through the aftermath of prior accidents. These disasters stayed with them. They were among the last people to see the victims alive. Simpson also testified that as soon as he got out of bed on the morning of June 23, 1985, his father told him the flight had been lost.[551]

There is another aspect of Simpson's testimony that stands out. He testified that later in his shift on June 22, 1985, he ran into a passenger agent with whom he used to work. She had in her care a number of unaccompanied minors and was escorting them to connecting flights. He had some free time, so he walked

548 Exhibit P-395, p. 49.
549 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3689, 3698, 3705.
550 Final Submissions of the Attorney General of Canada, Vol. II, para. 224.
551 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3685, 3709.

with them to the international departures area. One girl in that group, about 12 years old, was going to fly to India aboard the Air India flight. Simpson recalled talking to her about her flight, and about how brave she was for flying such a long distance on her own. He was struck by how mature and polite she seemed. They eventually parted ways, and the next day he learned that Air India Flight 182 had been lost. He met his friend the passenger agent the next day, and she confirmed that the girl had been on the flight. The image of the little girl's face would haunt him forever.[552]

Simpson's Alleged "Silence"

Another challenge made to Simpson's credibility is the Attorney General of Canada"s submission that Simpson did not recall sharing his experiences with anyone in the aftermath of the bombing.[553] When asked why he did not think to call the RCMP after the bombing to report what he saw, Simpson replied that the fact that he got on board the aircraft was a non-event. He had not seen anything or anyone that struck him as suspicious.[554] If he had seen anything out of the ordinary, or even a suspicious package, he would have taken this action.

From his perspective, the ease of getting aboard an aircraft was absolutely normal; he felt he could have stepped aboard any given aircraft that day without anyone batting an eye.[555] Simpson testified that, in the security climate of the time, there was no stigma or sanction for going aboard an aircraft without authorization, and such forays were commonplace. This evidence was uncontradicted.

In any case, there is evidence that Simpson did not remain silent. He testified that he contacted the *Toronto Sun* about his story during 1986 or 1987, and he contacted defence counsel in Vancouver during the Malik and Bagri trial. Nothing came of these efforts. He also testified, on cross-examination, that he "must have" told one of his supervisors the day after the bombing.[556] He finally came forward, in 2007, to Jacques Shore, Counsel for the Air India Victims Families Association, and was put in contact with Commission counsel.

Observations

- The Commission accepts Brian Simpson's evidence that he boarded Air India Flight 181/182 without permission on June 22, 1985, explored the interior, and was not challenged at any point in doing so, in spite of the futile and misdirected cross-examination or maybe because of the cross-examination of the Attorney General of Canada that focused on Simpson's credibility, wanting to leave the impression that the incidents Simpson described had not happened at all, that he intended to mislead the Commission. The Commission does not accept any of this.

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552 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3646-3647, 3685.
553 Final Submissions of the Attorney General of Canada, Vol. II, para. 224.
554 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3693-3694, 3710.
555 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3694.
556 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3651, 3701.

- Simpson was a candid and credible witness who presented himself as an intelligent, articulate, and highly educated individual. He was honest and frank in his testimony, even when discussing his own lapses in security as an airport worker. As a lawyer who practiced law for fourteen years, and who remains a Member in good standing of the Law Society of Upper Canada, Simpson was well aware of the need to be truthful and accurate when testifying under oath.

- Although he did not have written notes to aid his memory with respect to specific times and observations (and who in his position would have made notes of what until the subsequent event was a murder event?), there are good reasons for him to have a reliable recollection of the events of June 22, 1985. The destruction of the aircraft was a shocking and saddening event, and would have been close to the hearts of those who worked at airports and aboard aircraft on a daily basis. Simpson spoke with a young woman just before she boarded that fateful flight, and found out the next day that she had died in an act of terrible and senseless violence. He also remembers lying in bed, thinking about the aircraft's voyage and his exploration aboard, only to hear of its destruction hours later.

- Simpson evidently blended into the background and people took no notice of him, including those charged with maintaining security. Nevertheless, he had no business aboard the Air India aircraft: but there is no evidence that he was ever challenged.

- Even if Simpson had general access to aircraft, the evidence he gave was that aircraft access was frequently abused by airport personnel. While such unsanctioned activities did not contribute to the bombing of Air India Flight 182, it is clear that such free access to aircraft could result in numerous opportunities – terrorist or otherwise – by airport employees who were not highly paid, nor routinely subject to criminal record checks, and not integrated into the security culture of the airport.

- Although it was the duty of the RCMP Special Constables and Burns Security officers to challenge individuals seeking to access the aircraft, and check their identification, they kept no records of who boarded the Air India flight or for what reason.
- Despite the fact that Air India's operations were under heightened security in June 1985, there were apparently no measures in place to ensure that only those with legitimate business aboard the aircraft actually came aboard.

- On the basis of testimony from Simpson and other evidence, the inevitable conclusion must be that there was widespread carelessness and complacency at the Pearson airport in June 1985.

1.10 Serge Carignan and Arko the Explosives Detection Dog

Elsewhere in this report is a detailed discussion of the handling of the "three suspect bags" incident at Mirabel International Airport (Mirabel).[557] An important factor in this story is the immense value of "bomb-sniffing" explosives detection dogs and the tragic failure to use these resources effectively on June 22, 1985. This failure resulted from poor communications and from neglecting to implement measures that were called for in light of the malfunctioning of the checked baggage X-ray scanner and the unreliability of the baggage screening equipment at Lester B. Pearson International Airport (Pearson).

Three Suspicious Checked Bags Removed from Air India 182

Three suspicious checked bags were located at Mirabel on the evening of June 22, 1985. The first bag was found between 7:00 and 7:30 PM, and the remaining two were found shortly afterwards.[558] Although the Burns supervisor notified an Air India representative of the discovery shortly after the first bag was flagged, the RCMP was not alerted to this fact until 10:00 PM. Air Canada's operations supervisor had contacted Air India at 9:10 PM and again at 9:45 PM regarding the bags.[559] At approximately 10:00 PM, he contacted the RCMP directly, as Air India had not done so.[560] The RCMP was barely aware of the situation when Air India Flight 182 departed at 10:13 PM.[561]

When two RCMP officers arrived at the baggage area at approximately 10:00 PM, they found to their surprise that the suspect bags had been left unattended on the floor.[562] The bags were X-rayed again and isolated.[563] The RCMP explosives detection dogs were not available at either Montreal or Toronto as they were away with their masters at a training session. As discussed in Section 5.0 (Pre-bombing), The Day of the Bombing, serious consideration must be given to the question of why all of the RCMP dogs were away at the same time during a period of high threat to Air India.

SQ Explosives Detection Team Called after Flight Departure

The RCMP had an agreement with the Sûreté du Québec (SQ) specifying that the SQ would provide explosives detection dog services at Mirabel in the event that the RCMP coverage was not available. It was SQ Sgt. Serge Carignan's

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557 See Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.
558 Exhibit P-101 CAF0089, p. 11.
559 Exhibit P-101 CAE0249, p. 8.
560 Exhibit P-101 CAE0249, p. 8, CAF0087, p. 14.
561 Exhibit P-101 CAF0091, p. 2.
562 Exhibit P-101 CAA0226, p. 1, CAF0095, p. 3.
563 Exhibit P-101 CAF0095, pp. 3-4.

responsibility to assist at Mirabel in the event that the RCMP team could not.[564] Carignan and his trained explosives detection dog, Arko, were the SQ explosives detection dog team at Montreal.

Carignan and Arko had trained together to detect explosives since 1980 when Arko was ten months old. Arko was trained to detect a wide variety of explosives, such as dynamite, TNT, black powder, C-4, Detasheets, and RDX. The dog had been trained to give a passive response when he smelled explosives – he would sit down in front of the item containing the explosives. Carignan and Arko had been deployed on a number of occasions, for example, during the 1984 Papal visit to Montreal, and were even sent to Toronto in April 1985 because of a subway bombing scare. Carignan, now retired, clearly had a high opinion of Arko. He described Arko as extremely adept at detecting explosives, to the point of being capable of detecting very minute quantities.[565]

Carignan had experience searching aircraft, including Boeing 747s. It would take approximately one hour to search the baggage of a 747, and two hours to search the cabin. However, an explosives detection dog required a five to ten minute break for every 30 minutes of searching.[566]

Carignan was contacted at his home by his supervisor in the late evening of June 22nd and was asked to report to Mirabel to assist in searching an aircraft and some luggage. Preparation and travel to Mirabel took approximately 65 minutes. He arrived at the Mirabel RCMP office, expecting that, once there, he would find the baggage and cargo from the aircraft spread out on the tarmac for Arko to sniff. This had been his experience in prior aircraft searches. He also expected that he and Arko would inspect the aircraft's passenger compartment. Instead, Carignan was surprised to learn that the plane had already departed, and that he and Arko would only be required to search the three suspect bags.[567]

The dog handler and the explosives detection dog went to the bunker area and conducted the inspection at approximately midnight.[568] No explosives were detected, and after spending approximately 45 minutes at the airport, Carignan drove home.[569]

Lack of Adherence to Security Policies

In 1985, the RCMP employed a threat response system which designated a set of security responses for a given alert level. There were five threat levels in all, with level 1 always being in effect.[570] As the threat level increased, the required security responses increased as well. The RCMP had imposed level 4 security

564 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2662, 2664.
565 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2662, 2669, 2673-2674.
566 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2666, 2673-2674.
567 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2665-2667; 2682.
568 Exhibit P-101 CAF0091, p. 2, CAF0094, p.3.
569 Testimony of Serge Carignan, vol. 26, May 9, 2007, p. 2669.
570 Exhibit P-101 CAA0025, p. 1.

measures at Pearson and Mirabel airports for the month of June 1985.[571] Level 4 was the second-highest threat level, and mandated the use of a dogmaster at the airport.

The evidence points to RCMP policies that assigned a more active role to the explosives detection dog team than was actually in practice at Mirabel on June 22, 1985. A document prepared by the RCMP Airport Policing Division in April 1986 entitled "Airport Security Measures in Relation to Air India Operations in Canada" stated that level 4 security procedures included the requirement that the "RCMP dogmaster will check any suspect luggage or package and will search the passenger section of the aircraft before departure."[572] Moreover, a June 1985 Transport Canada Operations Centre briefing paper on the incident stated that in accordance with the security arrangements provided by the RCMP, there would normally be an RCMP dogmaster in the baggage area.[573]

The active presence and use of the explosives detection dog was called for at this security level, especially given that the dog would be called upon to inspect baggage and identify suspicious baggage no matter what security level was in place. The RCMP should have been contacted upon discovery of the first suspicious bag. With both its own and the Pearson-based explosives detection team away, the RCMP should have called in the SQ explosives detection team to inspect the baggage and the aircraft interior immediately. The aircraft should not have been permitted to leave before these checks were completed, particularly given the unusual break down of the X-ray machine and the inadequate PD4 used as a substitute. Collectively, these events, coupled with the incident at Mirabel, mandated greater scrutiny of all checked luggage while the plane was at Mirabel. The only explanation for the urge by Air India to depart Mirabel quickly was the cost of keeping the plane longer.

Communications and Planning Failures Lead to Tragedy

Carignan has been haunted by this tragedy and by the decision made by others to release the aircraft. He believes that, had he and Arko been able to search the unaccompanied baggage on the flight as he had wanted to on the night of June 22, 1985, they would have found the explosives.[574]

When shown a briefing document[575] provided by the RCMP to the Honourable Bob Rae which claimed that an RCMP dogmaster checked any suspect baggage and searched the passenger section of the Air India aircraft before departure, Carignan stated that this was incorrect. He had not been given the opportunity to search any part of the aircraft.[576] On its face, however, this document provides a good indication of what the RCMP evidently considered to be the

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571 See Exhibit P-101 CAA0335, p. 8.
572 Exhibit P-101 CAC0528, p. 11.
573 Exhibit P-101 CAE0249, p. 6.
574 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2671, 2678.
575 Exhibit P-101 CAF0335, pp. 8-9.
576 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2671-2672.

correct response to the situation at Mirabel. Similarly, Carignan described a document provided by Transport Canada[577] as incorrect because it too stated that the flight had been screened by an explosives detection dog prior to its departure.[578] A further Transport Canada briefing document shown to him by Commission counsel stated that there was generally an RCMP dogmaster in the Air India baggage area, but that the RCMP dog unit was away on June 22nd and had been replaced by a dog unit from the Quebec Police Force (QPF).[579] Carignan testified that this statement was also inaccurate, as he had not been posted to the baggage area and had only searched three bags. The plane had departed before he had even arrived at the airport.

Sgt. J.N. Leblanc, an RCMP member who was on duty at Mirabel that evening, directed a special constable to contact Carignan after learning that Flight 182 was airborne.[580] Although the RCMP did have the authority to recall or deny takeoff to an aircraft if they determined a threat existed,[581] Leblanc decided not to call the aircraft back given that the three suspicious bags were not aboard.[582]

Could the Bombing Have Been Prevented?

The obvious question is whether there was anything more that could have been done at Mirabel to prevent the bombing of Air India Flight 182, even allowing for hindsight. The Commission believes the answer is yes.

When the *Kanishka* departed from Pearson airport for Mirabel, the bomb was already on the plane. It was concealed within a piece of checked baggage and loaded onto a CP Air Flight at Vancouver International Airport flying to Toronto, where it was delivered to Air India. Air India scanned checked baggage for explosives using a large X-ray machine, but the machine malfunctioned on June 22, 1985, and only 50 to 75 per cent of the bags had been inspected when it ceased to operate. John D'Souza, an Air India security officer overseeing the security for the flight at Pearson and then at Mirabel, was advised of the malfunction. He instructed the Burns Security guards at the baggage handling area to use an electronic explosives detection device, the PD4, to screen the remaining bags. As discussed elsewhere in this report, the PD4 was a singularly flawed device. Tests conducted by the RCMP in January 1985 revealed that the device was so unreliable that the RCMP and Peel Regional Police Force members present at the tests concluded that they had no faith in its effectiveness whatsoever. Air India officials were aware of one of the test failures,[583] but continued to use it as a backup for the X-ray machine.

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577 Exhibit P-101 CAF0070, p. 2.
578 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2672-2673.
579 Exhibit P-101 CAF0071, p. 5. It should be noted that the document refers to a QPF dog unit, when in fact Carignan was a member of the SQ.
580 Exhibit P-101 CAF0095, p. 4.
581 See Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4384. The Transport Canada management at the Airport also had the ability to prevent an aircraft from departing.
582 Exhibit P-101 CAF0095, p. 4.
583 Air India was not informed of a second test failure conducted with a sample of plastic explosives by either Transport Canada or the RCMP.

Both Pearson and Mirabel airports had dedicated RCMP explosives detection dog teams, but they were unavailable. Carignan provided backup explosives detection dog services to Mirabel, but Pearson had no other team to call on. The RCMP emergency procedures manual for Pearson airport indicated that normally the RCMP explosives detection dog team at Mirabel would be used if the Pearson dog was unavailable.[584]

Dr. Reg Whitaker of the *CATSA Act* Review Panel said it would have been reasonable to hold back the flight's departure from Mirabel until security issues had been resolved, considering the failure of the X-ray scanner at Pearson and the quantity of baggage that had been scanned by the ineffective PD4 explosives detection device, and given the absence of any explosives detection dogs at Pearson. Such measures were especially prudent in light of the high state of alert in June 1985 and the specific measures Air India had been directed to implement meticulously in the June 1st Telex.[585] According to Whitaker, it was within D'Souza's authority to insist on checking the baggage again or implementing full passenger-baggage reconciliation. It was within his power to prevent the flight's departure. The RCMP and the Transport Canada airport management also had similar authority.[586]

On the other hand, although the use of an explosives detection dog at Mirabel would have been an effective means of addressing the security gaps that had been encountered at Pearson, Rodney Wallis, an international civil aviation security consultant to many governments, airlines and legal entities, and who was Director of Security for the International Air Transport Association (IATA) in 1985, testified that he did not believe that the use of the SQ explosives detection dog team to inspect all the checked baggage would have been called for, based on the information available to airport officials. More information would have been required to prompt officials to deplane all the passengers, unload the baggage from its containers, and place it on the ground for the dog to inspect. Once the plane departed Pearson, there was nothing more to be done. By the time it arrived at Mirabel, it was too late.[587]

Wallis felt that the best and most realistic solution would have been to ensure at Pearson that every bag was matched to a passenger aboard the flight through proper reconciliation. Had thorough passenger-baggage reconciliation been conducted at Pearson (meaning that every bag was linked back to a verified boarding passenger before it was loaded onto the aircraft), the suitcase bearing the bomb would have been identified because it would not have been matched to a passenger and would have sat alone. Air India's practice, however, was only to match the number of boarding passes issued to the number of passengers who boarded.[588] At Mirabel, once the three bags had been isolated and the decision

584 Exhibit P-101 CAC0310, p. 16.
585 See Exhibit P-101 CAA0185, p. 1.
586 Testimony of Dr. Reg Whitaker, vol. 36, May 30, 2007, pp. 4370, 4383-84.
587 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4420, 4423-4424.
588 Testimony of Rajesh Chopra, vol. 37, May 31, 2007, p. 4405.

had been made not to load them aboard, there was no passenger-baggage reconciliation, but instead there was a check on the number of passengers boarding the aircraft against the tally of boarding passes issued.[589]

Even with hindsight, it is incomprehensible that Air India officials at Mirabel were aware of the problems at Pearson and yet declined to call in the RCMP and the available explosives detection dog team at the first opportunity to ensure that no explosives had slipped past the malfunctioning X-ray machine or the useless PD4. The June 1st Telex pointed to a special threat to Air India flights during the month of June, and Air India had been directed to implement anti-sabotage measures meticulously for the entire month. The RCMP too had implemented heightened security for all Air India flights at Pearson and Mirabel in the month of June, based in part on the airline's urging. They too could have recalled the aircraft based on the threat it faced. At a time when no security measure should have been overlooked, few of the authorities responsible for the safety of Air India Flight 182 responded with any sense of purpose to the numerous failures and warning signs that day. Had the officials on the ground at Mirabel been alert to the threat level and the security failures of the day, they might have been motivated to take the additional precautions referred to by Wallis. Such information could have led to actions that the RCMP told the Hon. Bob Rae had been taken.

Observations

- In January 1985, Air India had revised its security program to include additional measures which provided whenever a suspicious bag was located, the passenger to whom it belonged would be contacted and asked to open the bag. If the passenger could not be located, the bag would be isolated, and the RCMP and an explosives detection dog would be brought in to examine the bag in question.[590] No Air India representative at Mirabel took any of these steps once the suspicious checked bags were identified. The aircraft was allowed to depart with those passengers on board and without any attempt to alert the RCMP.

- The RCMP had imposed level 4 security measures at Pearson and Mirabel airports. In 1985, the RCMP employed a five-level threat response system which designated a set of security responses for a given level of alert. Level 4 was the second-highest threat level, and mandated the use of a dogmaster at the airport.
- The RCMP should have been contacted upon discovery of the first suspicious bag. With its own explosives detection dog units away, the RCMP should have called in the SQ explosives detection dog unit to inspect the baggage and the aircraft interior.

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589 Testimony of Jainul Abid, vol. 89, December 5, 2007, p. 11699.
590 Exhibit P-101 CAA0118, p. 2.

- Compounding failures at Pearson and Mirabel resulted in a decision to allow the flight to depart without the use of an explosives detection dog. In light of the failure of the X-ray scanner at Pearson, the ineffective PD4 sniffer device, and the absence of an explosives detection dog at Pearson, Air India should have taken swifter and more decisive action at Mirabel both in contacting the authorities and following the prescribed procedures.

- Air India failed to take decisive action and contact the RCMP once the suspicious checked bags were identified. Concern about further delaying the already off-schedule flight and incurring further expense immediately closed the minds of the Air India personnel at Mirabel to the possibility of seriously contemplating any extra security measures.

- With knowledge that shortcuts had been taken at Pearson airport and that security may have been compromised through a failure to conduct proper passenger-baggage reconciliation, the identification of three suspect bags gave the authorities at Mirabel a second chance to do the right thing. Had they followed the required procedures, it is probable that Carignan and Arko would have detected the bomb. By ignoring procedure and delaying contact with Carignan, the aircraft was allowed to depart, and with it the last opportunity to thwart the bombing.

1.11 The Cost of Delay – Testimony of Daniel Lalonde

A Burns Security Officer Comes Forward

Daniel Lalonde approached the Commission to offer his perspective on the level of security readiness on the ground at Mirabel in June 1985. He worked for Burns International Security at Mirabel that summer. He was 18 years old, and it was his first job. Lalonde became an Ontario Provincial Police officer in 1991, and at the time of testifying held the rank of sergeant.[591]

As a security officer charged with the responsibility of protecting the travelling public and using an X-ray scanner to search carry-on baggage for weapons and other dangerous objects, Lalonde was paid the minimum wage of $4.00 an hour. He had no prior work experience, let alone security experience. His formal training for that role consisted of watching a one hour video on the operation of the X-ray scanner showing images of the types of dangerous articles to watch for, specifically a handgun and a stick of dynamite. Lalonde was then put to work and learned on the job. To his knowledge, there was no follow-up on this training, and no evaluation or testing of skills.[592]

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591 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3117.
592 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3116-3117, 3131.

Lalonde testified that he paid attention to the trials and reports connected to the bombing of Air India Flight 182, knowing that he had made a statement and might be called to give evidence. Having followed testimony about the events at Mirabel, particularly that of Serge Carignan, Lalonde came forward to the Commission.[593] Carignan, as noted, was the Sûreté du Québec dogmaster who ultimately inspected the three suspicious bags found at Mirabel with his bomb-sniffing dog, Arko, and determined they did not contain explosives. Lalonde felt that his evidence would help complete the picture of events at Mirabel on June 22, 1985.

Suspicious Bags Found During Lalonde's Shift

There was a great deal of security and police activity at Mirabel when Lalonde began his shift that day.[594] He had never before seen so many security guards posted for a single flight. Lalonde was assigned to work at a security checkpoint. He and the other guards knew there was a high alert level for the Air India flight, but he was surprised to be asked to hand-search carry-on bags even after they had been run through the X-ray scanner.[595]

Sometime before the check-in screenings were completed, Lalonde's supervisor, Réal Gagnon, directed him to assist a number of other security officers in the X-ray scanning of checked baggage.[596] Lalonde had never done this before. In fact, he had never before seen nor operated the type of X-ray machine that was in the baggage room. He had no training in screening large items like checked baggage and did not know how the images of their contents might differ from smaller bags, or what to do in the event he noticed something unusual. In responding to the events that unfolded next, he had to improvise without any instructions.[597]

During the examination of checked baggage, several bags caught the attention of the security officers. When these bags were scanned, the machine's display indicated dark, opaque areas which could not be penetrated by X-rays.[598] Such opaque areas were suspicious because they could indicate the presence of dense materials such as the metal, wiring, and explosives that make up a bomb. X-ray technology used to screen baggage in 1985 was described as primitive and "... cosmetic more than effective" by the experts who testified at this Inquiry.[599]

One suspicious bag was found between 7:00 and 7:30 PM[600], and two others were found shortly afterward. Each time such a bag emerged, Lalonde and the other Burns personnel would gather around the image on the X-ray machine's display screen and discuss their opinion of what the image indicated. Lalonde

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593 Testimony of Daniel Lalonde, vol. 29. May 16, 2007, pp. 3128-3129.
594 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3118.
595 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3118-3119.
596 Exhibit P-101 CAF0090, p. 1. See also Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3119.
597 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3120, 3136, 3139.
598 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3120.
599 Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4256-4257.
600 Exhibt P-101 CAF0089, p. 11.

testified that he concurred with the opinion that the bags were suspicious.[601] Once flagged, these suspicious bags were held aside and not loaded into baggage containers. They were placed on the floor next to the X-ray machine.

The Cost of Delay

The aviation security regime in place in 1985 placed considerable responsibility upon airlines such as Air India to ensure that commercial air travel was safe. They bore the costs of measures such as employing private security guards and any screening of checked baggage, including the cost of the X-ray scanner used for such screening. This meant that the airlines would weigh their security expenses against the need to remain profitable. Any delay was expensive. Rodney Wallis testified that, in 1985, the cost of delaying the takeoff of a wide-bodied jumbo jet like the *Kanishka* was between $10,000 and $18,000 an hour.[602]

The *Kanishka* was significantly delayed at Pearson because of difficulties encountered in loading its unusual payload, a fifth engine pod mounted to its wing. The engine had failed on a previous Air India flight and had been stored in a hangar until it could be returned to India for servicing. On June 22, 1985, Air Canada mechanics at Pearson began the installation of the engine pod onto the aircraft's left wing next to its own two engines. Several crates of engine parts were also to be loaded into the aircraft's rear cargo bay, but owing to the size of the parts, it took longer than expected to load all the components and to complete the installation of the engine pod.[603]

When Air India Flight 181/182 arrived at Mirabel at 9:10 PM on June 22, 1985, it was already one hour and twenty-five minutes behind schedule.[604]

Air India Advised of Presence of Suspicious Bags

Gagnon advised Air India's Traffic and Sales Representative, Jainul Abid, after the first bag was found.[605] Abid told Gagnon to wait for Air India's security officer, John D'Souza, who would be on the Air India flight from Toronto. D'Souza arrived at Mirabel at 9:10 PM and was met by Abid at the Air Canada counter at 9:30 PM. Abid then informed D'Souza that three suspicious bags were being held.[606]

In January 1985, Air India had revamped its security program and had included additional measures, which provided whenever a suspicious bag was located, the passenger to whom it belonged would be contacted and asked to open the bag.[607] Neither Abid nor D'Souza took this step. The plan also provided that if the passenger could not be found or did not respond after being paged, the

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601 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3137.

602 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4481-4482. See also Exhibit P 101 CAF0441, p. 6. Wallis explained that this figure was for opportunity costs alone. It did not include additional costs such as putting passengers up in hotels if the plane were delayed overnight.

603 Exhibit P-101 CAF0089, p. 7.

604 Exhibit P-101 CAB0434, p. 4.

605 Exhibit P-101 CAF0088, p. 1 and CAF0089, p. 12.

606 Exhibit P-101 CAF0093, p. 4.

607 The Air India security procedures, as well as those of the RCMP, are described in more detail in Section 1.10 (Pre-bombing), Serge Carignan and Arko the Explosives Detection Dog.

bag would be isolated, the RCMP would be advised, and an explosives detection dog would be brought in to examine the checked baggage in question. Again, neither Abid nor D'Souza took these steps.

D'Souza proceeded into the baggage area once he learned of the three bags. Lalonde testified that he was alone in the baggage room when D'Souza entered, as the other security officers had gone on to perform other duties and he had agreed to stay behind with the bags.[608]

D'Souza asked Lalonde to operate the X-ray scanner and run the three bags through it. He showed D'Souza the images of the bags and ran the bags at different angles in an attempt to obtain a clearer image of their contents.[609] As the possibility that the bags contained explosives could not be ruled out by this examination, D'Souza confirmed that the bags should not be loaded onto the aircraft.

Cost Becomes a Factor in Air India 182 Takeoff

According to a written statement provided by Lalonde after the bombing, D'Souza then wanted to speak to someone at the Air Canada office.[610] Lalonde showed him the way, leaving the baggage room unattended. At the Air Canada office, D'Souza discussed the situation with an Air Canada representative. Although D'Souza would subsequently attempt to minimize his role in the security decisions made respecting Air India Flight 182, Lalonde's impression was that he was an imposing man with a military demeanour who appeared to be firmly in charge. Lalonde remained nearby to assist D'Souza, but did not participate in the discussion, as he was young, inexperienced, and not in a position of any authority.[611]

Lalonde did overhear their discussion. He testified that it concerned time, money, and the cost of keeping an airplane on the ground. At the end of that discussion, D'Souza made the decision to clear Air India Flight 182 for takeoff. Lalonde testified that the high cost of keeping the aircraft on the ground was the deciding factor.[612]

In a statement to the RCMP three days after the bombing, Lalonde did not mention the details of the D'Souza conversation with the Air Canada representative.[613] Instead, he indicated that he had not paid attention, explaining that due to his youth, inexperience, and his inability to recall what was said in the conversation word for word, he felt nervous about giving the RCMP officers imprecise information. The officer taking his statement had grown impatient,

608 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3120. See also Exhibit P-101 CAF0090, p. 1.
609 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3121.
610 Exhibit P-101 CAF0090, p. 2.
611 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3121-3122, 3129.
612 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3122, 3129.
613 Exhibit P-101 CAF0090, pp. 1-4.

having being forced to rewrite a half a page of notes due to Lalonde's inability to provide exact times. Consequently, Lalonde decided that he would speak only on matters about which he could give precise details.[614]

Lalonde testified that he was absolutely certain about the subject matter of the conversation. He explained that the impact of such a large tragedy cemented the events of June 22, 1985 in his memory. Lalonde's shift ended at 1:00 AM on the morning of the bombing, and he remembered his parents waking him up only a few hours later and telling him about the crash. He can still replay the day's events in his head.[615]

Other evidence also indicates that Air India personnel, including D'Souza, were concerned with the costs of delay. Michael Ciuffreda, the Burns International Security supervisor for the guards providing security for Air India at Pearson in Toronto, made a statement to the RCMP on June 25, 1985.[616] He was clear that D'Souza wanted him to commence passenger and carry-on bag screening as quickly as possible. According to Ciuffreda's statement, the Air India Security Supervisor named "John" had authorized the use of the PD4 sniffer device when the X-ray scanner used by Air India to examine checked baggage at Pearson had failed. There is no doubt that the individual named "John" is John D'Souza.

Ciuffreda's statement indicates that D'Souza "...was concerned about not having the flight delayed by security." He wanted to know whether it would be possible to have the baggage examined more quickly. Ciuffreda refused to instruct the Burns guards to speed up their searches.[617] Ciuffreda reported this in a subsequent RCMP interview, stating that D'Souza had asked him to hurry up hand-searching of carry-on bags and that "...[D'Souza] didn't want a delay."[618]

For his part, D'Souza indicated in his statement to the RCMP that it was, in fact, a different Air India employee who was concerned about delays. D'Souza stated that Abid (the first Air India official to learn about the three bags) had made up his mind in advance not to delay the flight any further by taking any additional measures such as searching the flight.[619]

Air India itself had a strict policy concerning delays. In a letter dated March 15, 1985 to Air Canada's general manager at Pearson, Air India's acting airport manager for Mirabel and Pearson airports wrote about a number of problems concerning the flights to and from Toronto. He indicated that "Our Headquarters in Bombay are very perturbed ... that we are getting numerous complaints from our inbound passengers into Toronto for the lack of service received on arrival, and no flights from Toronto are departing on schedule." Following a meeting held

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614 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3127.
615 Testimony of Daniel Lalonde, vol. 29, May 16, 2007 pp. 3217-3218.
616 Exhibit P-101 CAF0139, pp. 2-4.
617 Exhibit P-101 CAF0139, p.3.
618 Exhibit P-101 CAF0142, p. 3.
619 Exhibit P-101 CAF0093, p. 14.

at Pearson to "iron out" the problems leading to delays, Air India was pleased to note that the most recent flight had been trouble-free and on schedule. The Air India manager emphasized that all flights arriving on schedule would depart on schedule, and all delayed flights would depart within two hours of the time from which the aircraft checked in at the airport. He wrote: "This 2 hours ground time for delayed flight is set by our Headquarters and is strictly followed by our network world-wide."[620]

When Air India commenced its operations from Pearson in January 1985, it immediately began to complain about the rate of pay charged by Burns for security personnel, stating it was too high. The airline sought to renegotiate, threatening to investigate what was being paid to outside security agencies.[621] Burns replied that Air India was being treated exactly the same as any other carrier.

Air India's contract with Burns also included a "no charge" policy if Burns was given three hours' advance notice of a delayed or cancelled flight.[622] In the absence of such notice, however, Burns would charge Air India a minimum of four hours for each security officer who reported for duty. This meant that if a flight was delayed without considerable advance warning, Air India would be required to pay the four-hour minimum plus any additional hours of work caused by the delay. Knowing Air India's schedule changes, Burns seemed sensitive to the carrier's monetary concerns, and assured Air India that "...all efforts will be made to cancel Security Officers in case of a delay or cancellation so as to avoid any undue financial burden on Air India."[623]

In May 1985, Air India's strict policy against delays caused some embarrassment. Some passengers complained that five pieces of their baggage had been left behind during a recent flight. Air India expressed its concerns to the Burns branch manager, who explained to Air India that the delay was a direct consequence of Air India's strict budgeting and scheduling for security matters. The security officer examining checked baggage with the X-ray machine at Pearson before the flight's departure encountered a ten-minute period when no baggage had come down the conveyor belt to the X-ray. He attempted to call Air India to see if the flight had been closed and was ready to depart, but received no answer. He contacted a second Air India representative, who said that the flight had departed. Nonetheless, the security officer waited a further ten minutes. The Burns manager explained that "...[b]eing quite aware of the client's close scrutiny and questions [concerning] unwarranted extra hours, Security Officer Noble then packed up the X-ray machine and left the baggage area .... " Sometime later, the remaining bags arrived and there was no one to inspect them or have them loaded aboard the plane. Intent on avoiding further incidents, Air India subsequently agreed to allot additional funds to pay the security officers to

620 Exhibit P-283, Tab 29, pp. 1-2.
621 Exhibit P-283, Tab 27, p. 3.
622 Exhibit P-284, Tab 39, p. 1.
623 Exhibit P-284, Tab 39, p. 1.

remain at their posts until the estimated time of the aircraft's departure.[624] That this was an issue at all is certainly indicative of the budget-conscious mentality of the airline and the times.[625]

The June 22nd evidence supports the conclusion that D'Souza was very concerned about further delay to the flight, pushed behind schedule as it was by the installation of the fifth engine pod. He asked Ciuffreda, the Burns International Security supervisor, to have his employees rush through the hand-searching of carry-on bags. Also worth considering is the question of whether D'Souza's decision at Pearson Airport to authorize the use of the PD4 sniffer device to examine checked baggage when the X-ray scanner failed may also have been influenced by his desire to eliminate further delays, especially in light of the very cursory manner[626] in which he demonstrated the scanners' use to security officers who had not operated them before.[627]

Balancing Security against Efficiency and Profitability

The balancing of security concerns against efficiency and profitability was not unique to any one airline or agency.

As the *CATSA Act* Advisory Panel noted in their report, the 1980s were a period of deregulation, downsizing, and privatization. Resources for airport security were scarce, an example being the "thinly stretched" 11 regional inspectors responsible for inspecting the approximately 70 air carriers operating at dozens of airports across Canada, and for enforcing the regulations governing both aviation security and the transportation of dangerous goods. As the report stated, "All planning for security measures was taken within this framework of cost limitation and reduction."[628]

The cost-cutting mentality prevalent in aviation security circles in the 1980s included a 1985 proposal by the Office of the Auditor General to reduce the RCMP presence at Canada's 10 major airports by up to 50 per cent and to replace them with commissionaires and private security guards, for a savings of approximately $4.5 million per year. The Auditor General's Office urged this

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624 Exhibit P-284, Tab 60, pp. 1-2.

625 An Air Canada "Memogram" dated May 26, 1985 recounts a slightly different version of this chain of events. According to the handwritten document, the five Air India bags were refused by security when they arrived at 6:15 PM, some 20 minutes prior to the departure of the flight. The document indicated that the guards "only get paid until 1800." The guards, who by that time were no longer being paid, evidently failed or refused to examine the bags by X-ray, and Air India refused to load unscreened baggage. The flight departed without them, causing some consternation on the part of Air Canada, and the author of the note expressed the concern that "…to-day we have five bags next time it could be 25." See Exhibit P-283, Tab 30, p. 1.

626 Exhibit P-283, Tab 35, p. 1. The statement of A.D. Coutinho of Burns Security indicates that D'Souza explained how the hand scanner worked and demonstrated its use with a match.

627 Exhibit P-101 CAF0142, p. 6. Ciuffreda indicated in his statement that to his knowledge James Post, the Burns employee who used the PD4 sniffer to examine checked baggage for the Air India flight when the X-ray scanner failed, had never used the device before. He did not train Post in its use.

628 Exhibit P-157, pp. 21, 54.

measure, arguing that "...these challenges have to be met to reduce security costs to a level closer to aviation industry's standards and maintain them in balance with security risks to civil aviation."[629]

A 1983 draft report prepared by Transport Canada's Management Systems Branch, reporting on the findings of the Aircraft Cargo/Baggage Security Measures Study, made the following observations concerning the relationship between the air carriers and other parties along with their security procedures and methods of enforcement:

> Security costs money and delays service. As a result, profit-conscious carriers are tempted to reduce the level of effort involved in maintaining preventative security measures, the effect of which would be a general lowering of one's guard. This would be a very dangerous policy to follow, for the ability to cope with an extreme condition if and when it should arise would be eroded to such a degree that overkill decisions would be made when an emergency arose which would cost more, cause more disruption, delays to services and bad publicity than the emergency warrants.[630]

In July 1984, Transport Canada prepared a position paper on security baggage checks at airports. In the discussion of current challenges, the paper noted problems associated with the use of private security officers to carry out the carriers' security responsibilities. In particular, the reduced incidence of hijackings, the small number of weapons found by private security guards during baggage searches, "...plus poor pay, frequent turnover of staff and lack of support or recognition by air carrier personnel, make it difficult to maintain a well-trained, motivated and competent group." The paper emphasized the need for continuous training and noted that carriers were "...being reminded of their responsibilities in this area."[631]

Lalonde testified about his general observations of security at Mirabel International Airport in the summer of 1985. He pointed out that security was in the hands of inexperienced employees who earned minimum wage and who were not necessarily focused on their jobs, or who likely did not fully understand how critical their job was to the safety of passengers. This was despite the fact that tasks such as screening passengers and baggage and properly operating X-ray scanning equipment required attention, skill, and diligence. He testified that:

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629 Exhibit P-101 CAF0655, pp. 5, 23. This followed the decision by Transport Canada to phase out the RCMP presence at eight major "Class II" domestic airports. For its part, however, the response by Transport Canada's Director of Civil Aviation Security to the recommendations of the audit report was unequivocal: "Had you checked with the security and intelligence community, I am sure you would have been convinced that now is not the time for such a move as Canada is seen as a 'weak link' internationally and recent reports to Cabinet say that we must be increasing the visibility of the police presence." See Exhibit P-101 CAF0660, p. 1.

630 Exhibit P-101 CAF0565, p. 20.

631 Exhibit P-101 CAF0644, p. 5.

> Certainly it could have been done by more experienced, better trained, more focused people who paid more attention to what they were doing no doubt, and I include myself in this.[632]

The investigation of the bombing of Air India Flight 182 revealed that many Burns Security personnel were unqualified to do their jobs. Low pay, minimal training, and high staff turnover evidently created a situation where employees were poorly motivated and failed to perform well.[633] The Canadian Air Safety Board submissions to the Kirpal Inquiry stated that "...[t]he statements taken from Burns Security personnel in Toronto indicated that a significant number of personnel, including those handling passenger screening, had never had the Transport Canada passenger inspection training program or, if they had, had not undergone refresher training within 12 months of the previous training."[634]

Where tight budgets and increasing expenses collide, tradeoffs result. Lalonde's testimony was candid and credible. He strongly suggested that the expense of further delaying the flight's departure was a significant factor in the decision to clear Air India Flight 182 to depart Mirabel.

Observations

- Neither Air India nor Burns Security officials at Mirabel Airport followed the steps required by Air India's updated security program with respect to suspicious bags.

- It is possible that monetary considerations, such as the expense caused by delay, along with related concerns such as "strict" ground time policies, were being balanced against the diligent provision of security to the passengers of Air India Flight 182.

- It is troubling that an aviation security regime would have entrusted the implementation of many security measures to profit-minded entities operating in an environment with limited regulation and severely constrained inspection and enforcement.

- Many Burns Security personnel were not qualified to do their jobs. They were both poorly trained and poorly motivated, and provided security of dubious quality.

- The lesson to be learned is that when corners are cut in the interests of expediency and cost-effectiveness, the consequences can be devastating.

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632 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, p. 3129.
633 Exhibit P-157, p. 24.
634 Exhibit P-101 CAF0089, p. 9.

1.12 A "Crescendo" of Threats

Numerous Warnings of Impending Violence

The evidence heard at the Inquiry demonstrates that CSIS, the RCMP, the Department of External Affairs (DEA), local police forces and Transport Canada were collectively in possession of the following information about threats to Air India and Sikh extremism:

- A plot to bomb one and possibly two Air India planes was being hatched by Sikh extremists in the fall of 1984 (see Section 1.1 (Pre-bombing), November 1984 Plot). One conspirator was arrested for other reasons, but there was information suggesting the plot was not abandoned;

- In the fall of 1984, Ajaib Singh Bagri, a member of the Babbar Khalsa (BK), a radical Sikh extremist organization, was allegedly nominated to a committee to plan the hijacking of an Air India plane;[635]

- In January 1985, a prominent UK Sikh activist visited the BK in Vancouver. In the past, this person had said that the names of Sikhs who did not boycott Air India would be put on a "hit list";[636]

- In February 1985, outspoken moderate lawyer Ujjal Dosanjh was beaten with a pipe and nearly killed. He subsequently wrote to the Prime Minister to warn him of the potential for violence in the Sikh community;[637]

- In March 1985, a member of the International Sikh Student Federation (ISYF), another Sikh extremist organization with significant membership and involvement in acts of violence, was arrested at the Vancouver airport with part of an Uzi machine gun;[638]
- In the spring of 1985, it was reported that Talwinder Singh Parmar's group, the BK, was working on a "...highly secret project."[639] Parmar was considered by CSIS to be "...the greatest threat in Canada to Indian diplomatic missions and personnel";[640]

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635 Exhibit P-101 CAA0099, CAA0103. See also, Exhibit P-101 CAA0101, p. 2 and CAA0110, p. 3.
636 Exhibit P-101 CAB0851, p. 6.
637 Exhibit P-101 CAA1099, p. 1; Testimony of Ujjal Dosanjh, vol. 80, November 21, 2007, p. 10173.
638 Exhibit P-101 CAB0207, p. 2, CAB0851, p. 6, CAC0290, p. 3. Note that the Sikh Student Federation was the same organization as the ISYF: Testimony of Don McLean, vol. 21, May 1, 2007, p. 1992.
639 Exhibit P-101 CAC0290, p. 3.
640 Exhibit P-101 CAB0221, p. 2.

- On June 1, 1985, Air India warned of the likelihood of sabotage attempts against Air India planes by Sikh extremists using time-delayed devices, which could be placed in registered baggage (See Section 1.2 (Pre-bombing), June 1st Telex);[641]

- In early June 1985, Vancouver area Sikh extremists, Parmar and Inderjit Singh Reyat, conducted suspicious explosives experiments in the forest, resulting in a loud blast, at the time (mistakenly) believed to involve firearms (See Section 1.4 (Pre-bombing), Duncan Blast);

- During the same period, Reyat was involved in a new temple in Duncan whose leader was advocating cutting off all travel on Air India;[642]

- In early June 1985, an unknown number of Sikhs from Vancouver and Toronto were planning to attend a meeting in New York to establish policy for the violent resolution of problems;[643]

- During a June 12, 1985 meeting involving ISYF members, a prominent Sikh extremist stated, in response to questions about the lack of attacks on Indian officials, that something would happen "in two weeks" (See Section 1.6 (Pre-bombing), Khurana Information);

- Throughout the month of June 1985, Parmar was involved in suspicious conversations with his associates about "mailing letters." He specifically instructed an associate to obtain cash a few days before the tickets for the June 22nd Air India flight 181/182 and the C.P. Air Flight to Narita were picked up and paid for in cash;[644]

- In June 1985, the RCMP received "highly classified" intelligence that left officials with no doubt that "...something was going to happen", and led to the conclusion that special security precautions for all Air India flights to and from Canada were necessary;[645]
- Three days before the bombing, CSIS Counter Terrorism Director General Mel Deschenes indicated that his biggest fear was that rogue Indian agents would take a plane out of the sky (See Section 1.8 (Pre-bombing),Rogue Agents (Deschenes)); and

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641 Exhibit P-101 CAA0185.
642 Exhibit P-101 CAA0276, p. 2.
643 Exhibit P-101 CAB0269(i); Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3893-3894.
644 See, generally, Exhibit P-101 CAD0180 and Exhibit P-102: Dossier 2,"Terrorism, Intelligence and Law Enforcement – Canada's Response to Sikh Terrorism", pp. 38-41.
645 See Exhibit P-101 CAA0240, p. 2, CAC0445, p. 5; Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040, 3044-3046, 3085-3086.

- Shortly before the bombing, DEA received highly classified information about a threat to target an Air India flight (See Section 1.7 (Pre-bombing), Testimony of James Bartleman).

Continuous Threats to Indian Interests in Canada

In addition to this information, government agencies received numerous warnings and significant information about threats to Indian interests in Canada, including threats to Air India, throughout the lengthy period preceding the bombing. The threat information came from all sources, including individuals in the community,[646] official warnings from the Government of India,[647] warnings issued by Air India Headquarters,[648] and ongoing police and intelligence investigations.[649]

The situation became increasingly alarming, especially after the June 1984 attack on the Golden Temple by the Government of India. For RCMP officers involved in protecting foreign missions and airports, there was a sharp increase in concern, and a "flurry" of reports from various sources about the threat of Sikh extremism, in the year after the invasion of the Golden Temple.[650] Between June 1984 and June 1985, Air India was the subject of more threats than any other airline.[651] For the Terrorist/Extremist unit of the RCMP National Criminal Intelligence Section (NCIS) in British Columbia, dealing with Sikh extremism became the "...predominance of the workload"[652] after June 1984. The level of concern at CSIS had already risen, and authorization was sought for the highest level of investigation.[653] CSIS ultimately was to give "Top Priority attention" to Sikh extremism in the spring of 1985.[654] The intelligence agency prepared numerous threat assessments about Indian interests and Sikh extremism during the year preceding the bombing.[655] Of the 70 threat assessments issued between July 14, 1984 and June 1, 1985, 13 either mentioned, or were devoted entirely to, the threat to Air India.[656]

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646 See, for example, Exhibit P-101 CAC0164, CAC0168, CAC0359, CAC0364, CAC0383, CAC0397. See also Section 1.6 (Pre-bombing), Khurana Information.

647 See, for example, Exhibit P-101 CAA0211, CAB0097, CAB0244, CAC0262, CAC0279, CAC0293, CAC0316, CAC0325, CAC0337, CAC0401,

648 See, for example, Exhibit P-101 CAA0083, CAA0084, CAA0161, CAA0164, CAA0185.

649 See, for example, Exhibit P-101 CAB0169, CAC0220, CAC0312, CAC0405 (RCMP investigations), Exhibit P-101 CAC0269, p. 3 (Metro Toronto Police investigation), Exhibit P-101 CAA0147, CAB0205, CAB0243 (CSIS investigations).

650 Testimony of R.E. Muir, vol. 27, May 14, 2007, pp. 2909-2910, Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3033-3034.

651 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2833; Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3248-3249.

652 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4028-4029.

653 Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3521.

654 Exhibit P-101 CAF0124(i), p. 1.

655 See, for example, Exhibit P-101 CAA0110 (October 26, 1984), CAC0235, Exhibit P-101 CAA0113 (December 6, 1984), Exhibit P-101 CAC0267 (January 18, 1985), Exhibit P-101 CAC0276 (February 21, 1985), Exhibit P-101 CAB0197 (February 27, 1985), Exhibit P-101 CAB0205 (March 28, 1985), Exhibit P-101 CAB0207 (April 1, 1985), Exhibit P-101 CAA0147 (April 12, 1985), Exhibit P-101 CAB0221 (April 25, 1985), Exhibit P-101 CAB0851, pp. 3-8 (May 24, 1985), Exhibit P-101 CAA0165 (May 30, 1985), Exhibit P-101 CAB0249 (June 4, 1985), Exhibit P-101 CAA0190 (June 5, 1985), Exhibit P-101 CAA0199 (June 6, 1985), Exhibit P-101 CAB0321 (June 18, 1985).

656 Exhibit P-101 CAB0902, p. 36. Already in March 1984, the Security Service wrote about the threat to Air India: Exhibit P-101 CAC0105, pp. 3-5.

The information received by Canadian agencies warned of possible attacks on Indian missions,[657] assaults against Indian diplomats and kidnappings of Indian officials,[658] as well as threats against Hindus or moderate Sikhs in general.[659] Information was provided about the threat posed by particular individuals, including Talwinder Singh Parmar, and about possible plots hatched in Canada to attack Indian high officials outside of Canada.[660] There were indications that extremists were arming themselves or formulating plots to acquire weapons.[661] Government agencies were informed about numerous threatening letters sent from Canada to Indian officials in Canada and abroad.[662] Canadian agencies were also advised of the threats issued by Sikh extremists, such as the BK threat to kidnap or kill the Vancouver Indian Consul General in June 1984,[663] Parmar's public warning to the Indian Government that "...they'll pay a price for attacking the temple,"[664] his invitation to "...unite, fight and kill" and his resolution that Sikhs would "...kill 50,000 Hindus."[665]

Possibility of Bombing

The Government was informed early on of the possibility that Sikh extremists might resort to bombing. In 1984, Sikh extremists were reported to be organizing "suicide squads" in Canada and the UK.[666] There were frequent threats of bombing aimed at Indian missions in Canada.[667] Parmar vowed that

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657 See, for example, Exhibit P-101 CAC0364, pp. 1-2, CAB0243 (May 31, 1985: plot to bomb Indian High Commission in Ottawa and Indian Consulate in Vancouver on June 6, 1985); Exhibit P-129, p. 2 (May 17, 1985: possible attack on Indian mission during Gandhi visit).

658 See, for example, Exhibit P-101 CAC0205, p. 3 (August 1984: threat that car of armed Sikhs was coming to make trouble for the flag-raising ceremony at the Indian Consul residence), CAC0290, pp. 3-4 (April 3, 1985: possible attacks on Vancouver Consul General), CAC0293, p. 3 (April 4, 1985: possible assault on Vancouver Consul General), CAC0316, p. 3 (May 1, 1985: plot to attack Vancouver Consul General).

659 See, for example, Exhibit P-101 CAB0048, pp. 1-2, CAC0104, p. 3 (March 1985: threats to moderate Sikhs and Hindus), CAC0312, p. 3 (April 23, 1985: possibility that "hit groups" will be sent to Canada), CAC0359, p. 3 (May 29, 1985: broadcast that hit squad already in Canada to kill Sikhs).

660 In 1982, the Security Service warned that Parmar was connected with terrorist groups: Exhibit P-101 CAB0024, p. 1. The threat posed by Parmar was discussed in numerous subsequent threat assessments: See, for example, Exhibit P-101 CAA0110, pp. 2-3, CAB0221, p. 2, CAC0235, p. 3. In June 1985, information was received about meetings held to plan the assassination of Gandhi: See Exhibit P-101 CAA0196, p. 2, CAC0401, p. 2

661 See, for example, Exhibit P-101 CAB0081, p. 1 (June 1984: seizure in Bombay of weapons that originated in Canada), CAC0220, pp. 2-3 (September 21, 1984: identity of Winnipeg Sikhs believed capable of killing and possibly arming themselves), CAC0356, p. 3 (May 28, 1985: Sikh extremists in Windsor/Detroit buying weapons to target Gandhi visit or Indian interests in Canada).

662 See, for example, Exhibit P-101 CAB0221, pp. 1-2, CAB0851, p. 6 (in 1981 and 1984, threatening letters from the BK, postmarked in Vancouver, received by officials in India; in April 1985, threatening letter signed by the BK received by the Indian High Commission in Canada), Exhibit P-101 CAC0262, pp. 2-3 (January 9, 1985: letter sent from Toronto threatening to assassinate Gandhi), Exhibit P-101 CAC0279, pp. 2-4 (March 1, 1985: letter sent from Ottawa to High Commission of India with Gandhi photo and "target next" note), Exhibit P-101 CAC0312, p. 3 (April 23, 1985: letter sent to the Indian High Commission in Canada).

663 Exhibit P-101 CAC0112, p. 2 (June 5, 1984: telephone threat indicating that the Acting Consul General in Vancouver or his family would be kidnapped by the BK and that the ACG would be "liquidate[d]"). See also Exhibit P-101 CAB0221, p. 2.

664 Exhibit P-101 CAB0103.

665 Exhibit P-101 CAA0110, p. 2.

666 Exhibit P-101 CAA0110, p. 2.

667 See, for example, Exhibit P-101 CAB0243, CAC0187, p. 2, CAC0364, p. 2, CAC0397, pp. 2-3.

Sikhs would, among other things, "...blow up embassies."[668] CSIS investigator Ray Kobzey was concerned that Parmar, because of his contacts, could "...have had access to people within the Sikh community elsewhere who had the expertise to put together the technical drawings, manual, what have you, to enable these explosive devices ... that could be used."[669]

Direct Threats to Air India

Canadian agencies also received information about threats to Air India. The Government of India issued numerous warnings of threats to Air India flights in Canada.[670] Air India also regularly reported threats to its flights.[671] In 1984, Air India offices received bomb threats by telephone.[672] Throughout the period preceding the bombing, the threat information about Air India included numerous references, not only to possible hijackings,[673] but to the possibility that Sikh extremists or other terrorists would attempt to bomb Air India planes.[674] There was specific mention of "suicide squads"[675] and explosives concealed in luggage.[676] Air India regularly requested that anti-sabotage measures be

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668 Exhibit P-101 CAA0110, p. 3.

669 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3754.

670 See, for example, Exhibit P-101 CAA0149 (April 12, 1985: plan to hijack Air India Flight 181 to Toronto on April 13, 1985), CAA0152, (April 16, 1985: possible hijacking of any major airlines to pressure Kuwait to release prisoners), CAC0263, p. 3 (January 9, 1985: threats of hijacking of Air India flights out of Montreal and Toronto), CAC0339, p. 2 (May 17, 1985: possible hijacking of Air India aircraft during Gandhi visit).

671 See, generally, Exhibit P-101 CAC0517, p. 2, which reports that *almost every flight* was preceded by a threat information letter from Air India. According to RCMP Sgt. Sweeney, this would have included the June 22, 1985 flight: Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2591-2592, Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2757. However, such a threat was not mentioned in the airport policing chronology prepared by the RCMP for the Rae review: See Exhibit P-101 CAA0234, pp. 8-9.

672 See Exhibit P-101 CAA0050 (June 1984: phone threat indicating that the Saturday, June 16th flight would be sabotaged), CAA0147, para. 5 (referring to threats received in summer 1984).

673 See, for example, Exhibit P-101 CAA0042, CAA0043 (April 1984), Exhibit P-101 CAA0088, CAA0089 (late August 1984), Exhibit P-101 CAB0902, pp. 21-22 (September 1984), Exhibit P-101 CAA0096, CAA0097 (October 1984: information that there would be one hijacking of an Indian aircraft every month), Exhibit P-101 CAC0263, p. 3 (January 9, 1985), Exhibit P-101 CAA0146, CAA0149 (April 12, 1985: possible hijackings), Exhibit P-101 CAA0152 (April 16, 1985: any major airline). Exhibit P-101 CAC0419, pp. 4-5 (April 25, 1985); Exhibit P-129, p. 2; Exhibit P-101 CAA0159, p. 1 (late May 1985).

674 See, for example, Exhibit P-101 CAC0129, p. 2, CAB0076, p. 1 (June 12, 1984: information that 20 Sikhs were planning to launch a "suicide attack" against Air India); CAA0083, CAA0084 (July 1984: information that Sikh terrorist volunteered to carry a bomb in his baggage with the intent of blowing up an Air India aircraft), CAC0143, p. 3 (July 1984: threat letter to Indian consulate with threat of "blowing of Boeing"), CAC0193, pp. 2-3 (July 1984: threat letter listing threats to Gandhi and plan to explode a plane leaving Montreal, London and the USA), CAA0088, CAA0087 (August 1984: Syrian and Lebanese terrorists planning to place an explosive device on board an international aircraft), CAA0101, p. 1 (October 10, 1984: Sikh extremists planning spectacular violent activity, including blowing up an Air India plane), Exhibit P-101 CAA0035, CAA0045 (terrorist group in Europe intended to place an exploding device in a suitcase on board an international aircraft to detonate in flight). See also Section 1.1 (Pre-bombing), November 1984 Plot.

675 See, for example, Exhibit P-101 CAB0076, p. 1, CAC0129, p. 2.

676 See, for example, Exhibit P-101 CAA0035, CAA0045, CAA0083, CAA0084,.

implemented.[677] The airline warned specifically of the need to exercise special care in checking registered baggage[678] and electronic items like transistors, tape recorders and two-in-one cameras.[679]

Canadian agencies were otherwise aware of both the increased likelihood of sabotage of airplanes and of the possibility that Air India might increasingly attract the attention of extremists as a target. In 1983, the RCMP Security Service had warned that hijackings were less of a threat to civil aviation than bombings.[680] In 1984, the Security Service indicated that Air India could be perceived by extremists as a "softer target," than more high-profile and well-protected diplomatic targets.[681]

Escalating Violence in Canada

Not only was a vast amount of information received about the Sikh extremist threat, but violence could be observed on the ground in Canada.[682] Violent demonstrations were held regularly. Indian missions were attacked and the safety of Indian officials was threatened many times.[683] In some cases, the protests resulted in events being disrupted or cancelled,[684] in property damage being caused,[685] in police officers being assaulted[686] and even shot,[687] and in Indian diplomats being physically assaulted.[688] After the Golden Temple attack, members of the BK began "...to speak very vocally about the need for revenge."[689]

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677 See, for example, Exhibit P-101 CAA0053, CAA0054 (June 1984: unspecified threat requiring anti-hijacking and anti-sabotage measures), Exhibit P-101 CAA0161 (May 1985: vigilance on electronic items and registered baggage), Exhibit P-101 CAA0185 (June 1, 1985: special measures for registered baggage in light of time-delayed explosive devices threat), Exhibit P-101 CAC0419, pp. 2-3, CAA0205 (June 7, 1985: anti-sabotage measures to continue to the end of June 1985).

678 See Exhibit P-101 CAA0161, CAA0185.

679 See Exhibit P-101 CAA0024, pp. 1-2, CAA0028, CAA0037, CAA0161, CAA1093.

680 Exhibit P-101 CAB0902, p. 36.

681 Exhibit P-101 CAB0071, pp. 1-2.

682 Exhibit P-101 CAA1099, p. 4.

683 See, for example, Exhibit P-101 CAB0207, p. 2 (1984 attacks by the ISYF on Vancouver Consulate and Consul General residence), Exhibit P-101 CAC0271, pp. 2-4 (January 29, 1985: security increased to level 5 for Dhar visit – the situation would have become physical and dangerous without the increase and help of local police).

684 See Exhibit P-101 CAB0197, p. 2, CAC0208, p. 4.

685 See, for example, Exhibit P-101 CAC0111, pp. 1-2 (June 4, 1984: two Sikhs entered the Vancouver Consulate with swords and caused damage to property), Exhibit P-101 CAB0067, p. 1 (June 9, 1984: Sikh extremists removed a flag from the window of the Indian Consulate in Vancouver and attempted to burn it), Exhibit P-101 CAC0205, pp. 2-3 (in August 1984: demonstrators entered into the Vancouver Consul General's residence and ultimately broke windows on his vehicle). See also Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3885-3886.

686 Exhibit P-101 CAC0205, p. 3, CAC0208, p. 4.

687 Exhibit P-101 CAA1099, p. 1 (in November 1982: officer shot when violence broke out at a demonstration at the Indian Consulate in Toronto).

688 The Indian Acting High Commissioner was assaulted during a demonstration in Winnipeg: Exhibit P-101 CAC0285, p. 2, CAE0065, p. 1. The Toronto Indian Consul General complained that a member of his staff was assaulted during a demonstration when his turban was knocked off, but the Toronto police decided not to pursue the matter further: See Exhibit P-101 CAC0203, p. 2, CAC0205.

689 Testimony of Ray Kobzey, vol. 33, May 23, 2007, p. 3730.

There was an "...increase in weapon-related activity" among Sikh extremists.[690] In the Vancouver Sikh community, extremist groups engaged in "...vicious attacks against moderate Sikh leaders."[691] "Violence at the temples and assaults on people who spoke out against extremists" were increasingly frequent.[692]

Threat of Violence Reaches a Peak in June 1985

The situation escalated as June 1985 approached. In the months preceding the bombing, Sikh extremist groups in Canada were "...continuing to organize and ... enjoying success and increased membership."[693] In April 1985, prominent Sikh extremists were making plans for the anniversary of the storming of the Golden Temple and were discussing the strategy to be followed during Prime Minister Rajiv Gandhi's visit to the USA in June.[694] In the Vancouver Sikh community, acts of violence and intimidation became even more frequent, and more threat information was received.[695] In May 1985, a radical Sikh extremist faction in the US was discovered to have been planning the assassination of Prime Minister Gandhi, a fate suffered by his predecessor and mother, Indira Gandhi, and then falling back to a plan to attack an Indian Minister of State convalescing in New Orleans.[696] The FBI was still searching for two of the Sikhs involved.[697] Vancouver, Toronto and Windsor Sikhs were discovered to be involved in the plot.[698] Windsor/Detroit Sikh extremists were trying to smuggle Uzi machine guns into Canada and there was concern they could be targeting Indian interests here.[699] On June 17th, CSIS expressed concern that despite recent disruption efforts, the BK would simply regroup and strike at a "...less high-profile target."[700]

In the spring of 1985, Canadian agencies received information about a "...wave of terrorist bombings" by Sikh extremists in India.[701] The incidents involved explosions in public transportation facilities or on street corners, often caused by the detonation of "...crude radio bombs".[702] As of late May, CSIS was greatly concerned about "...the terrorist potential" of Sikh extremists.[703] CSIS and police investigators in Canadian communities had reason to believe that local Sikh

690 Exhibit P-101 CAA1099, p. 4.
691 Exhibit P-101 CAB0207, p. 2.
692 Exhibit P-101 CAA1099, p. 4.
693 Exhibit P-101 CAB0207, p. 1.
694 Exhibit P-101 CAB0902, p. 27.
695 Testimony of Axel Hovbrender, vol. 32, May 24, 2007, p. 3914.
696 Exhibit P-101 CAB0851, p. 8, CAB0902, p. 28.
697 Exhibit P-101 CAB0851, p. 8.
698 Exhibit P-101 CAC0438, p. 2.
699 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3434; Exhibit P-101 CAC0356, p. 3.
700 Exhibit P-101 CAB0312, pp. 1-2.
701 See Exhibit P-101 CAB0230, p. 1, CAB0321, p. 2, CAB0851, p. 8, CAC0325, p. 2, CAC0328, p. 2, CAC0364, p. 4. See also Exhibit P-101 CAC0327, p. 2, for the RCMP assessment that those bombings and other events in India caused the personnel in Indian missions to be concerned about the current security measures in place to protect them.
702 Exhibit P-101 CAB0851, p. 13, CAC0325, p. 2.
703 Exhibit P-101 CAF0124(i), p. 1.

radicals were planning violent actions.[704] "[T]he possibility of violence within the international Sikh community appeared imminent."[705]

Air India indicated that the threat to its flights would be heightened during the month of June 1985.[706] The airline specifically warned of the threat of bombing using time-delayed devices,[707] and requested that anti-sabotage measures be applied throughout the month of June.[708] At that time, Air India was the object of a boycott by most Sikh temples in Canada.[709]

As of June 18, 1985, when CSIS wrote its last threat assessment prior to the bombing of Air India Flight 182, Sikh factions were "...quietly arming themselves"; the "...incidence of terrorist attacks in India had not abated" and the "...extremists / terrorists [were] no less determined to realize their ambitions."[710] On June 17th, the RCMP requested that the "bomb squad" conduct an explosives vapour detector sweep at the Indian High Commission.[711] By late June 1985, RCMP officials involved in Protective Policing had concluded, based on the intelligence at the time, the situation in India and Canada, and the general "vibes"[712], that the threat was "...reaching a peak,"[713] and that they had "...better be careful."[714]

Findings

All this information was available, but the Government of Canada failed to prevent the Air India tragedy. The evidence heard at the Inquiry reinforces the view that information was not adequately reported, analyzed or shared among the agencies involved. As a result, a proper security response was not implemented. Whether the bombing would have been prevented, had this not been the case, is a matter for speculation. The deficiencies in the threat response are clear and not subject to any speculation.

Individually, the various critical incidents and threats to Indian interests in Canada, including Air India, present an array of clues leading up to the deadly attack on Air India Flight 182. When taken together, these clues would lead even the most casual observer to conclude that the Government of Canada, Air India,

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704 See Exhibit P-101 CAB0902, p. 32 (the CSIS Edmonton office reported local radicals to be planning something, probably violent); Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2017-2018, 2036 (McLean knew the ISYF was planning violent action and that this was confirmed when he received the Khurana information: See Exhibit P-101 CAC0487, p. 4).

705 Exhibit P-101 CAB0321, p. 2.

706 See Exhibit P-129, pp. 1-2; Exhibit P-101 CAA0159, p. 1, CAA0161, CAA0164.

707 Exhibit P-101 CAA0185. See Section 1.2 (Pre-bombing), June 1st Telex.

708 Exhibit P-101 CAC0419, pp. 2-3.

709 Exhibit P-404, p. 3.

710 Exhibit P-101 CAB0321, pp. 3-4. Similarly, on that same day NCIB issued a threat assessment indicating that the threat to Indian missions remained high and that a "…lesser figure could possibly be targeted": Exhibit P-101 CAC0459, p. 2. See also Exhibit P-101 CAC0444, p. 2.

711 Exhibit P-101 CAC0441, p. 2; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2717-2719.

712 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3047.

713 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3047-3048.

714 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3048.

and others had a wealth of knowledge and a myriad of opportunities to discover and prevent the bombing. Clearly, crucial policies, systems and organizations must have failed. The questions that need to be answered are:

- **Who was responsible for threat assessment and response?**
- **Were they prepared to handle the threat? and**
- **What went wrong?**

These questions will be analyzed in the sections that follow and, where possible, answers will be provided or observations will be made on those incidents that may cause doubt to linger.

VOLUME TWO
PART 1: PRE-BOMBING

CHAPTER II: THREAT ASSESSMENT AND RESPONSE

2.0 The Intelligence Cycle and Intelligence Community

Was the bombing of Air India Flight 182 the result of a failure by the Government of Canada to properly assess and respond to the threat of Sikh extremism in Canada? This question has never been satisfactorily answered by the reviews undertaken to date.[1]

This chapter addresses the results of the Commission's investigation into the adequacy of the Government of Canada's assessment of, and response to, the Sikh extremist threat leading up to the Air India bombing. It begins with a description of the "intelligence cycle," which will be useful as a conceptual tool to probe the adequacy of intelligence analysis systems. Next is a description of the threat assessment community within the Government of Canada, the agencies involved and their respective roles, in particular CSIS and the RCMP. Subsequent sections will analyze the actions of each department and agency involved, along with the Government of Canada as a whole, and ask whether these actions led to intelligence failure(s) that contributed to the Air India tragedy, and, if so, where and why?

The Seaborn Report, issued in September 1985, concluded that intelligence cannot be relied on to predict, and thus forestall, specific acts of terrorism, and placed reliance instead on "…a regime of sufficient rigorous security" to deter terrorists.[2]

> Generally speaking, information respecting specific projected terrorist targets is rarely forthcoming. Thus efforts to improve sources of information will likely at best achieve results only in the long term and even then the degree of uncertainty will

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1 See Exhibit P-105, Wesley Wark, "The Intelligence-Law Enforcement Nexus: A study of co-operation between the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, 1984-2006, in the Context of the Air India terrorist attack" in Vol 1 of Research Studies: Threat Assessment RCMP/CSIS Co-operation [Wark Paper on Intelligence Law Enforcement Nexus], Professor Wark reviewed the Seaborn report and the 1992 SIRC Study of Air India. The Seaborn Report avoided dealing with whether Air India was an intelligence failure by emphasizing minimalist expectations on the role of intelligence to counterterrorism threats. The 1992 SIRC study called attention to weaknesses in the CSIS intelligence, but refrained from calling the incident an intelligence failure.

2 Exhibit P-101 CAF0039, p. 3. The Seaborn Report was the first Government of Canada review of the Air India disaster. Blair Seaborn, who was the Intelligence and Security Co-ordinator, was commissioned by the Solicitor General to investigate the role of intelligence, *inter alia*, in aviation security matters. Seaborn issued his report on September 24, 1985.

> necessarily remain high. It is not, therefore, practical to rely on intelligence as the principal, let along the sole, means of countering terrorism …. The principal value in intelligence lies in assisting authorities to determine levels of security appropriate to the perceived threat. [3]

The SIRC report, issued in November 1992, assessed the adequacy of CSIS intelligence production and dissemination, concluding that CSIS intelligence assessments lacked analysis and detail. However, they found that "…no assessment contained any specific information concerning a threat to Air India Flight 182"[4] and that CSIS had disseminated all relevant assessments to the RCMP.

In March of 1985, the Government of Canada assessed the adequacy of federal counterterrorism measures in light of the seizure of the Turkish embassy by Armenian extremists.[5] The Government found that aspects of the government counterterrorism measures were handled in an *ad hoc* manner. The review identified several areas for improvement in the Government's threat assessment and response, but these improvements were not effectively implemented before the Air India bombing.

The Commission has undertaken a review of whether there were deficiencies in the Government's threat assessment and response regime that resulted in a failure to prevent the bombing of Air India Flight 182.

The concept of "intelligence failure" is not without its own complexities and controversies. The challenge in studying intelligence failures is to distinguish between unrealistic expectations about the performance of the intelligence community and reasonably avoidable weaknesses in the intelligence process.[6] Richard Betts wrote, in his seminal paper on intelligence, that "…intelligence failures are not only inevitable, they are natural."[7] By this, he meant that intelligence cannot be expected to detect any and all threats or to prevent them from coming to fruition. By contrast, Professor Wesley Wark warned against accepting this "tolerance for disaster" concept.[8]

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3 Exhibit P-101 CAF0039, p. 2.
4 Exhibit P-101 CAB0902, p. 28.
5 Exhibit P-101 CAF0063. This document, entitled "A Review of Federal Counter-Terrorism Arrangements," is an interdepartmental review of the Government's response to the Turkish Embassy seizure by Armenian extremists on March 12, 1985 and to the subsequent bomb threat to the Toronto transit system received on March 26, 1985, presumably by Armenian terrorists. See also Exhibit P-101 CAF0004.
6 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1445-1446.
7 Richard Betts, "Analysis, War and Decision: Why Intelligence Failures are Inevitable," World Politics, 31, no. 1 (October 1978), p. 89.
8 Wark Paper on Intelligence-Law Enforcement Nexus, p. 153.

> The idea behind studying intelligence failure is to try and understand the weaknesses of the intelligence process, as well as to put into some kind of realistic perspective our expectations of what intelligence services can deliver on. The difficulty with intelligence services is that they operate in a world of theoretical perfection. Intelligence services are meant always to find the truth, and always to find the truth in advance, to be able to make predictions about how very complex domestic and international systems might work out. That is our expectation of intelligence. That is the expectation of the standard that intelligence services have to live up to. Intelligence failures occur when intelligence services don't live up to those expectations. One of the challenges of studying intelligence failures is really to know when you are in the presence of a failure and when you're in the presence of an unrealistic expectation.[9]

In terms of the Air India bombing, the issue of "intelligence failures" is tied to questions of whether the failure to detect and/or prevent the bombing through intelligence was "inevitable" or "avoidable", and whether the failures were due to systemic errors in the intelligence process or to the incorrect handling of intelligence information within that process. In either case, the study of the "intelligence failures" should lead to a review of the overall system to determine possible improvements that would reduce the likelihood of a recurrence. It is also necessary to keep in mind the benefit of hindsight, and refrain from easy criticism that does not account for the context under which failures occurred.

The relevant questions to be asked are:

- Who was responsible for the assessment of, and response to, the threat of Sikh extremism?

- What was the historical context and what were the major influences affecting the Government's assessment and response to the threat of Sikh extremism?

- What went wrong with the threat assessment and response system? Were these systemic or local deficiencies? Were they inevitable or avoidable?

The Intelligence Cycle: A Framework for Review of Intelligence Failures

Professor Wesley Wark introduced the concept of the intelligence cycle as a useful conceptual tool to identify and assess intelligence failures. This model can help in an assessment of the component parts of a threat assessment system.

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9 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1445-1446.

This permits the identification of any breakdown or failure within the system.[10]

The intelligence cycle consists of the four principal tasks, as described by Professor Wark.[11]

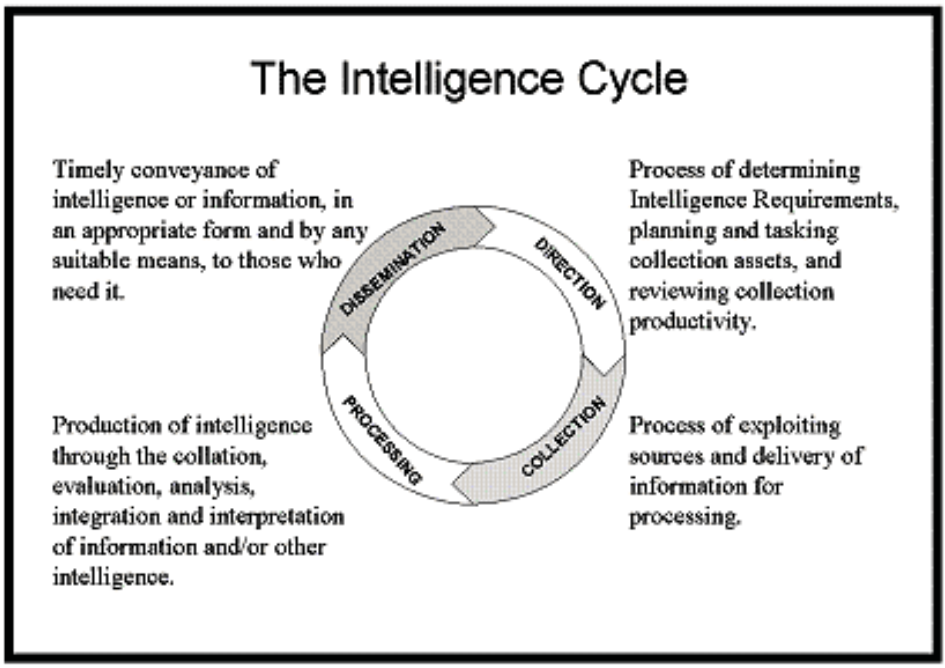

Figure 1: Intelligence Cycle

The cycle begins with tasking. This includes the setting of investigative priorities for the intelligence community as a whole by the government, as well as internal directives that reflect the priorities of individual agencies. Tasking depends on guidance from public officials to set collection requirements, and to review and revise these requirements as the nature of the threat changes with time. Tasking priorities guide the choice of investigative techniques and the allotment of resources. Proper tasking is critical in the face of the reality of limited resources, to ensure that resources are directed at the most serious and emerging threats to security.

The second component is collection, which refers to the gathering of raw information through various sources in response to a tasking order. These sources include:

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10 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1443-1444.

11 The description of the intelligence cycle is based on the Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1442-1443. Open source documents were also consulted: See, for example, The Central Intelligence Agency, "The Intelligence Cycle", online: Federation of American Scientists <http://www.fas.org/irp/cia/product/facttell/intcycle.htm> (accessed October 16, 2009).

- Open sources, which include print and broadcast media, official government documents, research publications, and other published material;

- Investigative techniques, which include community interviews, human sources, physical surveillance and technical interception of communications;

- Information sharing with other government departments and foreign partner agencies.

Collection efforts are conducted to further inform and clarify the investigative priorities identified by the government.

The cycle then moves to analysis, which is the stage at which the collected raw information is converted into finished intelligence. This involves assessment of the information's reliability and relevance, and consideration of the information in its overall global context. The finished intelligence provides judgments about the implications of threats of concern to the government. This intelligence product can be used to advise the government on the threat posed, for purposes of devising policy or operational measures to combat the threat.

The fourth component in the intelligence cycle is dissemination. This involves the distribution of finished intelligence product to relevant decision-makers in government, who can use it to develop informed policies and direct appropriate operational responses. This final step also informs the first step of the next cycle – the government uses the finished intelligence to assess and redefine the tasking priorities for the intelligence community.

The National Counterterrorism Community: Roles and Responsibilities

In 1985, Canada's national counterterrorism strategy was implemented through the cooperation of various government agencies.[12] The Solicitor General was the lead Minister responsible for the national counterterrorism strategy. CSIS had primary responsibility for the collection, assessment and production of *domestic* security intelligence. The RCMP was responsible for determining the appropriate level of protection, based on the CSIS threat assessments, and for coordinating the threat response with other government agencies. The DEA had primary responsibility for the collection, assessment and production of *foreign* security intelligence and for the response to terrorist threats abroad. Other agencies, including the Communications Security Establishment (CSE), Department of National Defence (DND), Transport Canada (TC), Canada Employment and Immigration Commission (CEIC), Revenue Canada and local police forces provided specialized intelligence and assisted in threat responses.

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12 Exhibit P-101 CAF0875.

In 1985, there was a recognized need for greater interdepartmental assessment of security threats and coordination of threat responses.[13] The Interdepartmental Committee on Security and Intelligence (ICSI) was formed in 1972 to provide a forum for interdepartmental assessments for strategic intelligence. The Intelligence and Security Coordinator position was created within the Privy Council Office (PCO) in February 1985.

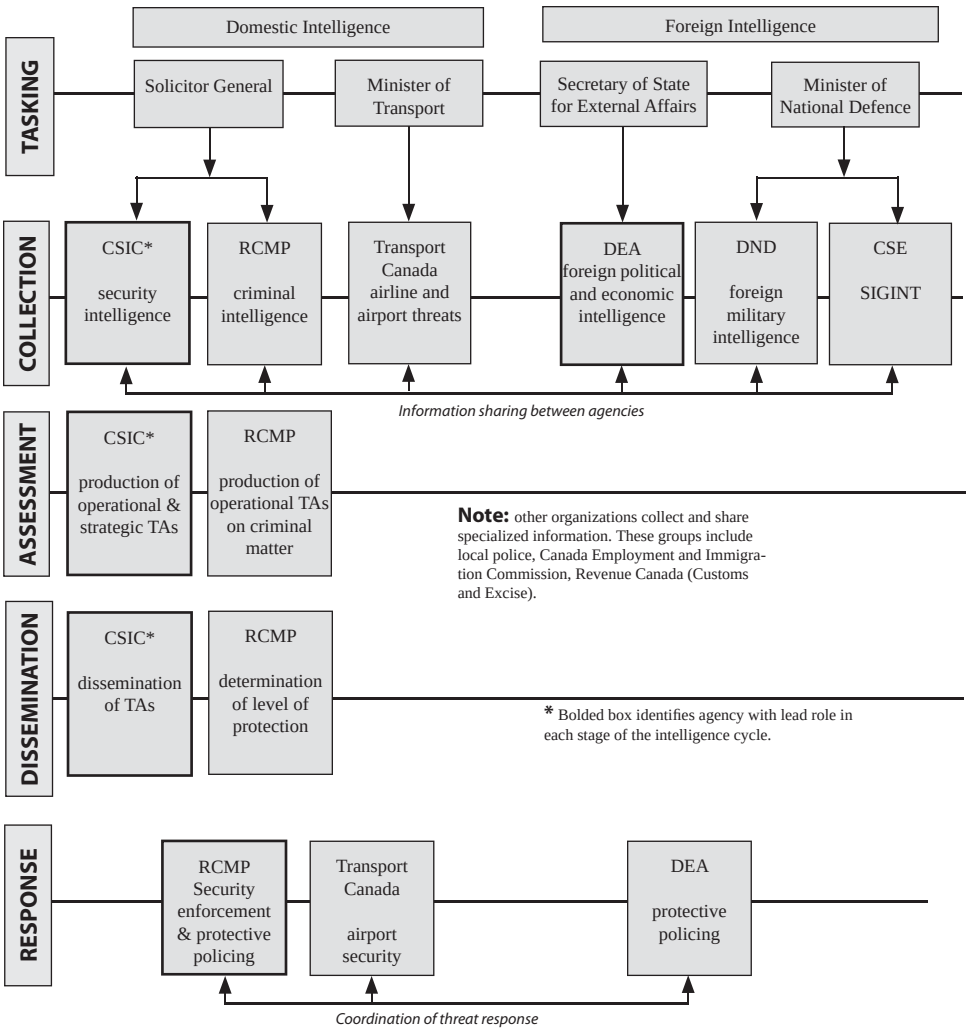

Figure 2: National Counterterrorism Community (1985)

13 Exhibit P-101 CAF0063, p. 2.

The following section provides a general outline of the organizational structure within the Government of Canada, set up to undertake the assessment of, and response to, terrorist threats within Canada.[14] The internal structure of each respective government department and agency is described elsewhere in this report. Chapter III (Pre-bombing), What Went Wrong?, addresses the adequacy of these structures, policies and practices, and in particular, the question of whether failures occurred in the Government's assessment of, and response to, the threat to Air India in the pre-bombing stage.

Solicitor General and other Ministers

The Prime Minister of Canada is ultimately accountable to Parliament for the security and integrity of Canada. In 1985, this function was delegated to the Solicitor General. The Solicitor General had the lead role for the planning and coordination of Canada's federal counterterrorism program. The Solicitor General oversaw the activities of CSIS and the RCMP, the lead agencies responsible respectively for the assessment and response to threats to the security of Canada. Upon the creation of CSIS, the RCMP and CSIS were purposely placed under the common direction of the Solicitor General, in an effort to mitigate the effects of the separation of security intelligence investigations from law enforcement. The Solicitor General was responsible for resolving disagreements between CSIS and the RCMP about the sharing of information.

The Solicitor General was assigned a key role in the control and management of the new civilian service. The MacKenzie and McDonald Commissions[15] had recommended political direction over security intelligence operations, in contrast to law enforcement, which, in conformity with the principles of police and prosecutorial independence, was to continue without political direction. Ministerial approval was required for all CSIS warrant requests for investigations targeting organizations or individuals.[16]

Ministers of other involved agencies, including the Secretary of State for External Affairs, the Minister of National Defence, the Minister of Transport and the Minister of Employment and Immigration, set their own departmental intelligence priorities and were accountable for the activities of the organizations that reported to each of them. Ministers were responsible for participating in interdepartmental efforts to coordinate threat assessment and response, such as the Interdepartmental Committee on Security and Intelligence (ICSI).

The Royal Canadian Mounted Police

The RCMP had primary responsibility to perform peace officer duties in relation to offences arising from conduct constituting threats to the security of Canada

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14 The description of each agency's role and responsibilities are based on Exhibit P-101 CAA0076, CAF0002, CAF0004, CAF0039, CAF0063 and various provisions of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 [*CSIS Act*].

15 See Section 2.1 (Pre-bombing), The Civilianization of Security Services, for detail regarding the MacKenzie and McDonald Commissions.

16 *CSIS Act*, s. 21.

(security enforcement) or offences against internationally protected persons (protective policing). Part IV of the *CSIS Act*, which became the *Security Offences Act*, clarified the RCMP's lead role in these two areas.

The RCMP collected and assessed information relevant to its security enforcement and protective policing mandates, as well as to its general criminal investigations. The *CSIS Act* transferred the responsibility to collect, assess, report and advise on threats to the security of Canada (security intelligence) from the RCMP Security Service to the newly-formed CSIS. When CSIS was created, the RCMP was directed to rely on CSIS for intelligence relevant to its investigations of national security offences. In turn, the RCMP was responsible for passing to CSIS any information relevant to national security threats.[17]

The RCMP had the lead role in determining the appropriate level of protection to afford in response to threats within Canada, and in coordinating these responses. These decisions were to be based on all information and intelligence available, particularly CSIS threat assessments. Threat response was often a multi-agency operation. The RCMP provided security to diplomatic personnel and premises in consultation with DEA and provided airport security and policing at designated Canadian airports in collaboration with Transport Canada.

Canadian Security Intelligence Service

The primary mandate of CSIS is to collect, analyze, produce and disseminate intelligence on threats to national security and to advise the Government of Canada on such threats (security intelligence). While CSIS was assigned primary responsibility for threat assessment, it had to rely on other agencies and departments to take appropriate responsive action. The system was premised on CSIS disseminating meaningful intelligence product to the appropriate responding agencies, to allow for a timely and informed response.

CSIS collected security intelligence through a broad range of investigative techniques, including human and technical sources as well as open sources. CSIS relied on information from liaison officers stationed abroad, as well as on partnerships with foreign agencies and other government departments. The *CSIS Act* recognized that other domestic and foreign organizations would acquire information relevant to threats to the security of Canada and allowed CSIS to enter into "cooperative arrangements" to facilitate sharing of information.[18] CSIS relied on DEA for foreign political and economic intelligence, on CSE for signals intelligence, on DND for military intelligence and on the RCMP and other police forces for intelligence on domestic threats. Several agreements were entered into around the time the agency was created, to clarify the primacy of CSIS in intelligence collection and the need for close cooperation with other agencies. CSIS was intended to be a repository for intelligence from all sources, from which it could produce comprehensive threat assessments relevant to the needs of the Government.

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17 The respective roles of the RCMP and CSIS after July 16, 1984 (Creation of CSIS) are discussed in Exhibit P-101 CAA0076 (1984 MOU: Transfer and Sharing of Information), CAA0081 and CAF0030.

18 *CSIS Act*, s. 17

External Affairs

The Department of External Affairs (DEA) collected and disseminated foreign political and economic intelligence obtained from its diplomatic missions and contacts.[19] The foreign intelligence collected by the DEA would be used to inform the domestic threat assessments produced by CSIS.

The DEA was responsible for ensuring that Canada fulfilled its obligations under the *Vienna Convention on Diplomatic Relations* to provide adequate protection to diplomatic personnel and premises in Canada. It played a liaison role, passing threat warnings received from foreign diplomatic missions and governments to the Canadian intelligence and security community and advocating for an appropriate threat response. DEA would advise the RCMP on the degree of protection it believed should be accorded to a particular mission, based on its specialized knowledge of international affairs. The RCMP retained the responsibility, ultimately, for determining the actual level of protection to be afforded. In cases where the DEA felt that the appropriate response was not being provided, it could make representations at higher levels.

Communications Security Establishment

The Communications Security Establishment (CSE) was responsible for the collection and dissemination of foreign signals intelligence (SIGINT).[20] SIGINT was gathered through the interception of foreign radio, radar and other electromagnetic transmissions. SIGINT was an important source of timely information on the diplomatic, military, economic, security and commercial activities, intentions and capabilities of foreign governments, individuals and corporations. The Government of Canada had partnerships with allied agencies for the sharing of SIGINT information. Due to the highly sensitive nature of the SIGINT product, the CSE maintained exclusive control over the collection and dissemination of SIGINT within the Government of Canada.

Transport Canada

Transport Canada had the lead role in planning and directing the development and implementation of policies, procedures and legislation pertaining to the security of the Canadian transportation system, including airports and airlines. The Minister of Transport was responsible for leading the management of a terrorist incident involving an aircraft in flight.

Aviation security in Canada was governed by Regulations imposed under the *Aeronautics Act*, which obligated federal aviation authorities and air carriers to observe specified security standards. Transport Canada was responsible for establishing the overall security standards for airports and airlines, and

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19 Additional information on the roles and responsibility of the DEA was found in Exhibit P-101 CAF0060, CAF0062, CAF0068 and Testimony of Gordon Smith, vol. 24, May 7, 2007, p. 2448.

20 Additional information on the roles and responsibility of the CSE was found in "The Communications Security Establishment – Canada's Most Secret Intelligence Agency" prepared by Philip Rosen, Senior Analyst, September 1993, online: Depository Services Program <http://dsp-psd.tpsgc.gc.ca/Collection-R/LoPBdP/BP/bp343-e.htm> (accessed November 27, 2009)..

for providing some physical security equipment at airports. Air carriers were responsible for applying the security standards for passengers, baggage and cargo, and for ensuring security within individual aircraft. Threat information could also be provided by individual air carriers, or by their respective governments, to the RCMP, Transport Canada or DEA.

Interdepartmental Committee on Security and Intelligence

The Interdepartmental Committee on Security and Intelligence (ICSI) was established in 1972 to review intelligence and proposals to be delivered to the Cabinet Committee on Security and Intelligence (CCSI), and to exercise general oversight of the federal counterterrorism establishment.[21] ICSI furnished general policy guidance to ensure that ministers received the required information and advice from the intelligence community. Membership of ICSI was at the deputy minister level, and included the RCMP Commissioner and CSIS Director, as well as deputy level representatives from CSIS, RCMP, DEA, DND, DOJ, Solicitor General, Treasury Board, CEIC and PCO.

ICSI oversaw the activities of two committees: the Security Advisory Committee (SAC) and the Intelligence Advisory Committee (IAC). The SAC considered and provided coordinated advice to ICSI on proposals for security policies and procedures. It provided ICSI with joint assessments of the internal security situation in Canada. The SAC was chaired by the Deputy Solicitor General and the committee comprised senior officials from PCO, Treasury Board, DOJ, DEA, DND, CEIC, CSIS, RCMP and CSE. The IAC, on the other hand, pooled and reviewed intelligence and threat analyses from various sources within government, and ensured that intelligence was properly disseminated. The IAC was chaired by the PCO Intelligence and Security (I & S) Coordinator and membership was also at the deputy minister level.

In 1985, these groups were responsible for coordinating the interdepartmental assessment of strategic intelligence intended for providing advice to Government. The groups met infrequently and thus did not play a major role in the management of operational intelligence, which remained the primary responsibility of CSIS.

Privy Council Office

The PCO Intelligence and Security Coordinator, Blair Seaborn, was appointed in February 1985, and had principal responsibility for all security and intelligence matters. The Coordinator played an increasingly important role in the Government's efforts to improve the federal counterterrorism program. On behalf of the Prime Minister, Seaborn was responsible for monitoring the measures of individual government departments to counter terrorism and for providing recommendations to improve these measures. He completed post-

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21 Additional information on the roles and responsibility of the ICSI was found in Exhibit P-101 CAF0874 and CAF0877.

mortem analyses of the Turkish embassy storming in March 1985[22] and the Air India and Narita bombings,[23] producing reports that recommended several changes to the Government's CT program.

2.1 The Civilianization of Security Services

The MacKenzie Commission

The civilianization of the RCMP Intelligence Service began long before the creation of CSIS. In 1966, Maxwell MacKenzie was named head of the Royal Commission on Security (the "MacKenzie Commission"), and was charged with analyzing the RCMP Special Branch following a lapse of security at a federal institution. The Commission's mandate was to investigate security procedures in government as well as to inquire generally into the question of Canada's national security.[24]

The MacKenzie Commission report, produced in 1969, included the controversial recommendation that the RCMP's security function be separated from the police force – stemming from the finding that its security intelligence functions were incompatible with law enforcement. This problem existed, according to MacKenzie, because of the Special Branch's sole reliance on members of the RCMP, who lacked sufficient sophistication and powers of analysis to discharge fully its security intelligence role.[25] A police service, with its distinctive mandate and culture, was not suited to these functions.

The government of the day rejected civilianization as a whole but settled on a compromise.[26] In 1970, the newly renamed RCMP Security Service (SS) remained part of the RCMP, but John Starnes, a career diplomat and, more importantly, a civilian, was named Director General. However, this compromise did not achieve the desired results. Many years later, John Starnes wrote in his memoirs, "In my view, the MacKenzie Commission should have received much more attention. The government should have been much firmer in dealing with the RCMP's largely emotional and sometimes unrealistic objections to the idea of having a security service divorced from the RCMP."[27]

The MacKenzie Commission also recommended that legislation be introduced to guide the use of intrusive investigative techniques. In response to this recommendation, the Government included it in the passing of section 16 of the *Official Secrets Act* in 1974. This section mandated that the Solicitor General was to authorize the interception of communication when an investigation fell within the field of national security.[28]

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22 Exhibit P-101 CAF0063.
23 Exhibit P-101 CAF0039.
24 Philip Rosen, "The Canadian Security Intelligence Service," Parliamentary Research Branch, revised January 24, 2000, Library of Parliament, pp. 2-3 [Rosen, "The Canadian Security Intelligence Service"].
25 Rosen, "The Canadian Security Intelligence Service" p. 3.
26 "Looking Back: The case for security intelligence review in Canada" :online: Security Intelligence Review Committee <http://www.sirc-csars.gc.ca/opbapb/rfcrfx/sc02a-eng.html#9> (accessed August 26, 2008).
27 John Starnes, "Closely Guarded: A Life in Canadian Security and Intelligence" (Toronto: University of Toronto Press, 1998,) p. 135.
28 Rosen, "The Canadian Security Intelligence Service" p. 3.

The McDonald Commission

According to the McDonald Commission report,[29] during the 1970s the RCMP Security Service engaged in numerous illegal acts and practices in its attempt to disrupt potential threats arising from the FLQ crisis. In 1977, in response to these actions, the Royal Commission of Inquiry into Certain Activities of the Royal Canadian Mounted Police ("the McDonald Commission") was formed. The final report of the Commission was issued in 1981 and it recommended numerous sweeping changes.

Key among the findings was that there had been abuses of the law and that a new institutional setup was required to prevent those abuses from occurring again.[30] One of the fears was that there was a danger in allowing a security service to enforce security and, potentially, to become a law unto itself.[31] As James ("Jim") Warren (who was the Director General of Counter Terrorism at CSIS in July 1986) stated, "…it was a lot easier for a security service, if you will, to trample on the rights of Canadians." The police, if they act inappropriately, will be exposed by the court system, whereas a security service rarely, if ever, will bring matters before a court. Therefore, "…things could go on as they had in the days that McDonald was looking at indefinitely without anyone knowing."[32]

McDonald found, like the MacKenzie Commission before him, that a police force was not the most suitable type of organization to be carrying out the duties of an intelligence service that has unique needs with regard to understanding domestic and global politics. Commissioner McDonald strongly believed that Canada's interests would be better served by a more sophisticated intelligence service, one which could develop the expertise to recognize genuine threats to the security of Canada.[33] The security service would collect information broadly and inform government, who would then take action if required.[34]

The McDonald Commission recommended that the Security Service be severed from the RCMP and, in its place, a new civilian security intelligence agency be created. The new agency, lacking enforcement powers, could be more responsive to political will and subject to oversight. Its main role would be intelligence collection and assessment. As well, new regimes of accountability and review would further ensure that the problems of the past were not repeated.

The McDonald Commission defined the government's need for intelligence in order to prevent acts of terrorism and espionage and in order to keep the government informed of "…situations which may develop into serious threats."[35] It also talked about the need for the new intelligence agency to meet twin requirements: the requirements of national security and the requirements

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29 Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Freedom and Security under the Law, Secind Report-vol. 2 (Ottawa: Supply and Services Canada, 1981) [McDonald Commission, Freedom and Secuirty under the Law].
30 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1434.
31 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1545.
32 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5827-5829.
33 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1434-1435.
34 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1545.
35 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1540.

of democracy.[36] According to Geoffrey O'Brian, all intelligence agencies have four components: mandate, powers, controls and review.[37] The McDonald Commission suggested that mandate and powers, which go towards fulfilling the security mandate, be balanced with controls and review, which fulfill the democratic mandate.[38]

The RCMP Security Service received a written mandate only in 1975. Building on that, McDonald felt it was very important to provide a legal framework for the intelligence function, and a new legal framework for the yet-to-be created CSIS was envisaged. It is important to note that, at the time, there was "…virtually no legislation in the world" for intelligence services. Many countries did not even acknowledge the existence of their intelligence services, let alone provide for them in law.[39]

In separating the security service from the RCMP, the McDonald Commission sought "…a surgical division of mandates." It was felt that, in creating a civilian intelligence service, it was important to invest that intelligence service with a monopoly of responsibility over intelligence collection and assessment. Therefore, the Commission recommended stripping the RCMP of any intelligence role. Collection, assessment and dissemination would all be CSIS duties. The RCMP would have to rely on CSIS for intelligence, which would come in the form of "investigative leads" that the RCMP would need to transform into evidence that could be presented in a court of law.[40] While the two organizations were mandated to work together, the purpose of creating the new organization was not to allow "…the police to do indirectly, what they could not do directly."[41]

Crucially, however, the McDonald Commission did not recommend the complete removal of the RCMP from national security work. Instead, the Commissioner recommended that the RCMP retain responsibility for the prevention and investigation of crimes against the security of Canada.[42] However, the McDonald Commission did not discuss an intelligence-gathering role for the RCMP arising out of everyday crime prevention and the apprehension of criminals.[43]

In summary, the key findings by the McDonald Commission were that:

1. Police deal with facts and evidence, usually after an event, in order to prosecute offenders in court, whereas security intelligence agencies try to anticipate and prevent events;

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36 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1542.
37 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1542.
38 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1542.
39 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1533.
40 Testimony of Wesley Wark, vol. 17, March 6, 2007, pp. 1436-1437.
41 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1576.
42 Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Policy Review: The RCMP and National Security – A Background Paper to the Commission's Consultation Paper* (Ottawa: Public Works and Government Services Canada, 2004), p. 21 [*Policy Review: The RCMP and National Security*].
43 *Policy Review: The RCMP and National Security*, p. 21.

2. A police force should maintain a degree of independence from government control, whereas security intelligence agencies should be under tight control in order to ensure they maintain respect for individual rights, and to ensure that political accountability exists;

3. The activities of a police force are subject to extensive rules through the *Criminal Code* and jurisprudence, whereas security intelligences must employ greater judgement in regards to their activities and to their relation to the mandate;

4. A security intelligence service must keep its government informed of threats to national security, while police work will normally culminate in evidence being presented in court.[44]

The McDonald Commission's key recommendation was the removal of the RCMP SS from the RCMP based on the following factors:

Appropriate Management and Personnel Policies

In order for a civilian intelligence service to be successful it must recruit "… more mature, more experienced, better-educated personnel with a variety of backgrounds."[45] A less authoritarian style of management would be beneficial to a new security intelligence service. Furthermore, past attempts to implement a separate and civilian programme within the RCMP had ended in dramatic failure. Therefore it was considered unlikely that the RCMP could adapt to such a change.

Direction and Control of Government

The separation of a national security intelligence service from the RCMP would allow improved and closer relations between security intelligence and the government, which would facilitate oversight by Parliament, the Solicitor General, and other senior government officials. The Minister responsible for national security intelligence should be actively involved in the service to allow the use of intrusive techniques to be monitored in light of the "…ramifications these decisions can have on Canada's system of government and on its relationship with other countries."[46] In the case of a police force, though, the Minister in charge and the government should only be involved in matters with significant policy implications.

A separate security service would have a better relationship with the government, as compared to the difficulties envisioned in instilling in the RCMP a culture of

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44 Independent Advisory Team in the Canadian Security Intelligence Service *People and Process in Transition: Report to the Solicitor General by the Independent Advisory Team in the Canadian Security Intelligence Service*. Gordon F. Osbaldeston, ed. Canadian Security Intelligence Service (Ottawa: Solicitor General Canada, 1987), p. 5.

45 McDonald Commission, *Freedom and Security Under the Law*, pp. 754-755.

46 McDonald Commission, *Freedom and Security Under the Law*, pp. 756-757.

accountability respecting intelligence. As a separate service, the new agency would more quickly and easily be able to develop a relationship outside of the ingrained traditions that had in the past prevented or delayed changes within the RCMP.

Trust in the RCMP

Due to the low level of public trust in the RCMP following the investigation and revelations revealed by the McDonald Commission, a new and separate security intelligence service would benefit from a fresh start.[47]

Ancillary Benefit

Two separate entities, the RCMP on the one hand and the new security intelligence service on the other, would allow a system of checks and balances to develop between the two organizations. This relationship would be required because the intelligence service would be dependant upon the police force, which alone possesses traditional police powers such as powers of arrest, of warrant execution, and of search and seizure.

Furthermore, at both the operational and the policy level, the Minister in charge would be able to assess one agency by comparing it to the other, in particular with regard to requests for more power.[48]

An Invalid Reason for Separation

A reason sometimes raised for separation of the security intelligence service from the RCMP was based on the argument that, in order to obtain information, intelligence-gatherers must act illegally, and therefore should not be a part of the police force. This argument was soundly rejected as a reason for the separation.[49]

The Security Intelligence Transition Group (SIT Group)

Soon after the tabling of the McDonald Commission report, the government announced that it was accepting the central recommendation, which was to create a separate civilian intelligence service. The Security Intelligence Transition Group (SIT Group) was formed in September 1981 with a mandate to develop a new security intelligence agency and to help transition the RCMP SS into this new agency. A great deal of its time was spent developing the legal parameters which would eventually form the basis of the *CSIS Act*.[50] The SIT Group consisted of a small group of people all reporting to the Solicitor General, the Honourable Robert Kaplan. It was led by Superintendent Archie Barr, a 25-year veteran of the

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47 McDonald Commission, *Freedom and Security under the Law*, pp. 758-759.
48 McDonald Commission, *Freedom and Security under the Law*, p. 759.
49 McDonald Commission, *Freedom and Security under the Law*, p. 760.
50 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, pp. 1531-1532.

RCMP Security Service.[51] Barr was one of the most senior officers of the RCMP Security Service. Prior to the establishment of the McDonald Commission, he was one of a number of senior officers who had written to the Commissioner asking for a Royal Commission to look into the allegations of misconduct that were emerging and to investigate the appropriate role of the Security Service.[52] A number of the members of the SIT Group also went on to play key roles in the early days of CSIS, including Ted Finn, who became the first Director, Archie Barr, who became the Deputy Director National Requirements, and others, including Jim Warren, Geoffrey O'Brian and Chris Scowen.

The job of the SIT Group was to use the McDonald Commission report as a guide and to analyze the recommendations. The SIT Group advised Cabinet and sought its direction on which recommendations to implement and how to implement them. The SIT Group wrote a report, informally called "the red book," which was roughly 300 pages long and which focused their discussions.[53]

Within 18 months of its creation, the SIT Group drafted what would become Bill C-157, the first piece of legislation tabled in May of 1983.[54]

The Pitfield Committee

In the spring of 1982, the Clerk of the Privy Council, Michael Pitfield, began a Special Senate Committee (the "Pitfield Committee") with a number of senior deputies. Over approximately 20 meetings, they debated the "…appropriate set-up for CSIS, what its relationship to government should be, what its mandate should be, what controls should be on it, how it should be reviewed."[55] They spent ten of the meetings solely on the issue of mandate, the relationship of the new service to government and the relationship of the new service to law enforcement. The Pitfield Committee's observations resulted in a bright line approach to the difference between law enforcement, defined as reactive and resulting in an open hearing of the facts in court, and intelligence, defined as proactive and secret.[56]

In 1983, the Pitfield Committee produced a report that scrutinized the McDonald Commission's findings and the distinction it drew between intelligence and evidence.[57] The Pitfield Committee "…put the final pieces

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51 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1527.
52 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1527.
53 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, pp. 1531-1532.
54 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1524-1525.
55 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, pp. 1531-1532.
56 See Exhibit P-309, pp. 11-12: Kent Roach, "The Unique Challenges of Terrorism Prosecutions: Towards a Workable Relation Between Intelligence and Evidence" [Exhibit P-309: Roach Paper on Terrorism Prosecutions].
57 Report of the Special Committee of the Senate on the Canadian Security Intelligence Service, *Delicate Balance: A Security Intelligence Service in a Democratic Society* (Ottawa: Supply and Services Canada 1983). See also Exhibit P-309: Roach Paper on Terrorism Prosecutions, for the stark distinction drawn between intelligence and evidence, first espoused by the Pitfield report and seemingly adopted by CSIS and the government from then on.

of the *CSIS Act* into shape."[58] Following the report of this Committee, most of the McDonald Commission's recommendations were accepted. However, one of the recommendations not followed was the McDonald Commission recommendation of a joint Parliamentary committee to review the actions of the intelligence service.[59] To this day that recommendation has not been enacted. However, the Pitfield description of law enforcement as generally reactive and the intelligence service as secretive and information-oriented, with a goal of investigating, analyzing and formulating intelligence, remains influential today,[60] even though it does not seem to correspond to the changed landscape created by terrorism and the legislative means enacted to counter it.[61]

2.2 Failure to Appreciate the Nature and Seriousness of the Threat

The Emerging Threat of Sikh Extremism

In the year preceding the Air India bombing, Canadian government agencies received a mass of information about the emerging threat of Sikh extremism in Canada. There was nevertheless a pervading perception across government agencies that much of the threat information about Sikh extremism was exaggerated. The threats to Indian interests that were circulating through the system were often perceived as merely noise, or "crying wolf", as opposed to any meaningful or menacing signal.

The early 1980s saw the rise of Sikh extremist violence in India. Violence against Hindus in the Punjab was increasing with the growing popularity of the charismatic Sikh fundamentalist, Sant Bhindranwale, whose rise to power was, ironically, largely attributable to political manipulation by Indira Gandhi, the Indian Prime Minister at the time. Bhindranwale initiated a violent campaign for the establishment of the state of Khalistan, and moved armed followers into the Golden Temple in Amritsar, which he proceeded to fortify. Communal violence, including acts of terrorism by Sikh extremists, was an almost daily occurrence.[62] The situation in India in early June 1984 was extremely tense, as an invasion by the Indian army to oust Bhindranwale and his Khalistani followers from the Golden Temple, Sikhism's holiest shrine, seemed inevitable.[63]

During this time, incidents began occurring within the Sikh community in Canada that indicated that the Sikh extremist threat was not just a foreign issue. Republic of Khalistan "Consulates" were established in Vancouver, Winnipeg and Toronto, with "Consul Generals" distributing Khalistani passports, postage stamps and currency to propagandize their cause. In 1981 and 1982, claims surfaced that Sikh extremists were undertaking military training and

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58 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1440.
59 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1435.
60 Exhibit P-309: Roach Paper on Terrorism Prosecutions, p. 12.
61 See Volume Three of this Report: The Relationship between Intelligence and Evidence and the Challenges of Terrorist Prosecutions.
62 Exhibit P-101 CAB0055.
63 Testimony of William Warden, vol. 24, May 7, 2007, p. 2379.

establishing links with international terrorists.[64] In May 1982, the Indian High Commissioner, upon his arrival at the Vancouver International Airport, was met by a crowd of Sikhs who threw eggs at him.[65] In November 1982, shootings occurred at a demonstration attended by Sikh groups at the Indian Consulate in Toronto.[66] On June 4, 1984, two Sikh men, brandishing swords, stormed the Indian Consulate in Vancouver.[67]

In June 1984, the Indian army stormed the Golden Temple, killing hundreds of Bhindranwale's followers and Bhindranwale himself. Hindu and Sikh communities in the Punjab region reacted in a fit of intercommunal violence that took thousands of lives. The reaction in Sikh communities to the storming of the Golden Temple became an issue that could not be ignored around the world. In Canada, the reaction was unprecedented. The storming of the Golden Temple united Sikhs in grief and anger at the desecration of their holiest shrine.[68] Demonstrations against the Indian government were staged across the country, with protestors burning Indian flags[69] and firing shots in the Indian Consulate in Toronto.[70] Indian diplomatic personnel were subject to harassment and received death threats by telephone.[71] In July 1984, the Acting High Commissioner was assaulted by five Sikh men in Winnipeg.[72]

Government of India Concern with Canadian Response

The Government of India (GOI) considered the Canadian response to the threat of Sikh extremism to be "very inadequate", and maintained that it compared unfavourably to the responses of the US and the UK.[73] The Canadian High Commissioner, William Warden, received the brunt of the Indian Government's frustration and sympathized with it. Between June and October 1984, Warden recalled being summoned to the Indian Foreign Ministry approximately 18 times to receive strong protests about Canada's lack of response.[74] From his post in New Delhi, Warden provided insight into the situation in India, warning against the "naïve" expectation that Bhindranwale's death would resolve the conflict in the Punjab, and instead, presciently predicting that as a "Sikh martyr", he would remain "…a thorn in the side of Mrs. Gandhi and her successors for many years to come."[75]

External Affairs relayed Warden's concerns to the RCMP, to emphasize the need to ensure, not only that all necessary measures be taken to protect Indian diplomats, but also that the protection be "…sufficiently visible to allay the concerns of the

64 Exhibit P-101 CAB0031.
65 Exhibit P-101 CAB0026.
66 Exhibit P-101 CAB0035.
67 Exhibit P-101 CAB0060.
68 Exhibit P-101 CAB0063.
69 Exhibit P-101 CAB0067.
70 Exhibit P-101 CAE0026.
71 See, for example, Exhibit P-101 CAB0068.
72 Exhibit P-101 CAC0222, p. 3.
73 Exhibit P-101 CAC0131, p. 3.
74 Testimony of William Warden, vol. 24, May 7, 2007, p. 2424.
75 Exhibit P-101 CAF0065.

Indian Government." DEA indicated that the situation was disturbing "…from a bilateral relations standpoint," given the important objectives Canada was pursuing with India.[76]

The GOI expressed its view that "Canada is perceived as a dangerous place for official Indians where law is enforced only occasionally and with reluctance."[77] In June 1984, at the same time that Warden was assuring the Indian Foreign Secretary that security was being upgraded for Indian interests in Canada, an armed Sikh walked into the Toronto Consulate, fired shots and slipped away.[78] RCMP Deputy Commissioner Henry Jensen instructed the VIP Security Branch to provide additional protection to Indian diplomats.[79] In August 1984, just days after the Secretary of State for External Affairs (SSEA), the Honourable Jean Chrétien, issued a strongly-worded statement denouncing the "…deplorable incidents against Indian diplomatic personnel and property in Canada"[80], organizers cancelled an event in Montreal to be attended by Indian diplomats, due to the presence of hundreds of Sikh demonstrators.[81] While arrests were made for several attacks on Indian premises and personnel, the prosecutions generally failed[82] or were delayed.[83] External Affairs advocated for prosecution of these matters, but also informed the Indian government that the Canadian government's ability to act was limited by statutory and constitutional realities, including the *Privacy Act* and the federal – provincial division of powers.[84] Eventually, the GOI sent an aide-memoire to External Affairs that made the point that it was "…to say the least … not impressed" with the Canadian government's perceived failures to adequately protect Indian personnel and property from violent acts and threats.[85] At the Inquiry hearings, Warden speculated that the Canadian government was treating the situation as "…just another ethnic thing," in the sense that it believed the issue concerned foreign, not Canadian problems, and therefore tended to take them less seriously.[86]

Prime Minister John Turner sent a letter to Prime Minister Indira Gandhi in August 1984, assuring her that Canada had accorded the highest possible level of security to Indian interests.[87] Prime Minister Brian Mulroney sent a similarly-themed letter to Prime Minister Rajiv Gandhi in May 1985, declaring that Canada remained firm in its resolve to preclude illegal anti-Indian activities.[88] By the

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76 Exhibit P-101 CAC0131, p. 2.
77 Exhibit P-101 CAE0074.
78 Exhibit P-101 CAE0026.
79 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5408; Exhibit P-101 CAC0138.
80 Exhibit P-101 CAE0083.
81 Exhibit P-101 CAE0092.
82 Exhibit P-101 CAE0096. The Toronto Provincial Crown dropped charges against the accused, who entered the Toronto Consulate and fired shots, due to the lack of Crown witnesses, after Indian diplomats refused to testify.
83 See Exhibit P-101 CAE0106 for a chronology of Sikh protests and the Government of Canada response from April to September 1984. See Exhibit P-101 CAE0149 for a description of the delay in the Uzi machine gun case due to technicalities in the offence, that is, the two accused were each carrying parts of the gun rather than the whole gun as required under Canadian criminal law.
84 Exhibit P-391, document 44 (Public Production # 3066).
85 Exhibit P-101 CAC0186, p. 2.
86 Testimony of William Warden, vol. 24, May 7, 2007, p. 2412.
87 Exhibit P-101 CAE0095.
88 Exhibit P-101 CAE0170.

end of the summer of 1984, the issue of the adequate level of protection for Indian interests in Canada was receiving attention at the highest levels of the Canadian government.[89] Beyond these high-level representations however, External Affairs found limited success in translating its concerns into responsive action by other government agencies.

Slow Recognition of Threat by Security Agencies

The RCMP Security Service – and, after July 1984, the Canadian Security Intelligence Service (CSIS) – was responsible for assessing threats to national security for the Government of Canada, but was slow to recognize the significance of the Sikh extremism threat in Canada. The general belief was that Sikh extremism was a foreign problem. The Security Service believed that any violence in Canada would be linked to events in the Punjab,[90] and would be due to "uncontrolled outbursts" by persons overtaken by emotion.[91] While the Security Service was aware that Sikhs in Canada were sending money to support action in the Punjab[92], it expressed doubt that they would resort to violence within Canada.[93]

Despite the Security Service's recognition of the sudden growth in Sikh extremism in Canada following Operation Bluestar, few resources were assigned to its investigation into the emerging movement. The lack of resources continued in the newly-created CSIS. The limited resources were mainly utilized for substantiating threat warnings and obtaining information about anticipated demonstrations on a piecemeal, reactive basis, rather than for developing a comprehensive understanding of the radical Sikh movement in Canada. CSIS received the flood of threats to Indian interests and attempted to corroborate the information. However, CSIS's investigation in the critical BC Region suffered from a lack of human sources, physical surveillance units and technical sources, as well as from a dearth of investigators and intelligence monitors to process the collected information. With few investigative resources assigned to the Sikh extremist investigation, investigators were regularly unable to find corroboration (or denial) of the threat information.

From the time of the Golden Temple storming, the threat level against Indian interests was assessed as continuously "high." The TAs warned that there was a "…real and present danger" to Indian interests in Canada.[94] However, these "high threat" warnings appeared to be based on a common sense expectation of consequences, in light of the tense climate in the Sikh community in Canada

89 Exhibit P-101 CAC0207.

90 Exhibit P-101 CAB0080 (June 18, 1984 TA notes that the propensity for problems are directly linked to the Canadian Sikh community's perception of the events in the Punjab. Warns that threat will moderate only if differences in the Punjab resolved). See also Exhibit P-101 CAB0083 (June 20, 1984).

91 Exhibit P-101 CAB0120, CAB0148 (October 22, 1984 TA warns against overlooking the "emotional characteristics of Sikhs"), CAB0197 (February 27, 1985 TA warns emotions still running high within the Canadian Sikh community).

92 Exhibit P-101 CAE0056.

93 Exhibit P-101 CAB0076 (June 14, 1984 in which CSIS tends to question the veracity of a warning of a suicide attack against Air India as relevant to Canada).

94 Exhibit P-101 CAB0092.

and India, rather than on independent investigative support. The "high general threat" warnings were commonly qualified with expressions that the threats could not be entirely discounted,[95] but that there was no independent information to corroborate the high general threat[96] or to indicate a more specific threat.[97] Analysts often tended to view the threats with scepticism, opining that threats made by Sikh extremists were exaggerated, issued more for tactical reasons than as an expression of an actual willingness to carry out violent acts.[98]

By September 1984, CSIS warned that the real threat to Indian interests would come from radical groups within the Sikh community who could take actions not sanctioned by the moderate leadership.[99] CSIS investigators increasingly focused on specific individuals as the source of the threat to Indian interests, notably Parmar, Bagri and Gill.[100] However, CSIS investigators faced challenges in obtaining technical sources and physical surveillance coverage on these targets, as they competed for these scarce resources within an organization focused on transition issues, counter-intelligence targets from the Cold War era and Armenian terrorist targets. CSIS admitted its lack of knowledge about the Sikh extremist movement in Canada, warning in June 1985 that should radical elements "…plan any action, there [was] a good possibility that CSIS will not have any foreknowledge."[101] Throughout this period, CSIS continued to warn of the high, but uncorroborated, general threat to Indian interests, including Air India. Thus, as the time of the Air India and Narita bombings approached, CSIS was an organization that was cognizant of the potentially lethal and serious threat of Sikh extremism and warning others of it, but remained ill-equipped to verify the nature of the threat, or to provide independent insight that the RCMP and other agencies responsible for threat response could use to tailor their actions.

Widespread Skepticism about the Seriousness of the Threat

Despite the "high threat" alarm that was being raised by CSIS, at the upper levels of the bureaucracy, and among some members of RCMP senior management, skepticism about the actual threat posed to Indian missions and personnel was still common within the RCMP and among some Transport Canada officials.

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95 Exhibit P-101 CAB0061 (June 7, 1984), CAB0093 (July 5, 1984), CAB0148 (October 22, 1984).
96 Exhibit P-101 CAB0148 (October 22, 1984).
97 Exhibit P-101 CAB0071 (June 12, 1984), CAB0192 (February 15, 1984), CAB0218 (April 12 , 1985).
98 Exhibit P-101 CAB0061 (June 6 , 1984 TA notes that the BK is a group of malcontents using threats to get attention and some support), CAB0105 (July 10, 1984 TA notes some speculation exists that the hit list is but an idea being used by a small militant group to increase the climate of tension in the Sikh community and to induce moderates to adopt a more extreme stance), CAB0218 (April 12, 1985 TA notes CSIS believes that telephone bomb threats made to Air India offices are probably communicated to continue to cause problems and perpetuate terrorist threats in hopes of causing unrest/retaliatory measures by the Indian Government so as to keep Khalistan alive in the minds of all Sikhs).
99 Exhibit P-101 CAB0137.
100 Exhibit P-101 CAA0105.
101 Exhibit P-101 CAB0249.

The threat warnings and accompanying requests for additional security, sent regularly by Air India, were not always viewed as indicating the existence of a real threat. The agencies developed a perception of an exaggerated volume of threat information being passed on by the GOI. After the bombing, RCMP and Transport Canada officials affirmed that "…almost every flight was preceded by a letter outlining a threat to Air India"[102] originating from either Air India or the GOI. Whether or not this was the case,[103] it seems that the perception that the warnings were numerous and constant was the motivation behind their being questioned. In its report to the Honourable Bob Rae, CSIS indicated that "…the fact that the Government of India issued so many warnings to so many departments and agencies in Canada generated the sense among recipients that they were exaggerating the threat."[104]

Even after the bombing, RCMP and Transport Canada officials continued to believe that the threat information sent by Air India on a regular basis was aimed at obtaining additional security for free.[105] Apparently, the bombing itself was not enough to bring home the fact that the threats to Air India were real. The June 1st Telex, outlining threats to bomb Air India airplanes using time-delayed devices,[106] continued to be perceived simply as a "floater"[107], a piece of information provided "…every time in hopes that security would be increased" and for the purpose of "…gaining more security around the aircraft."[108] Little thought seems to have been given to the question of why Air India would want the additional security if the threat were not real.

Members of the RCMP VIP Security Branch, charged with the protection of foreign missions in Canada,[109] denied being sceptical about the need to provide protection for Indian diplomats.

By mid-1984, a number of violent incidents involving Indian property and personnel had occurred in Canada. These included, *inter alia*, the June 1984 attacks on the Vancouver and Toronto Indian consulates, the July 1984 assault on K.P. Fabian, the Acting High Commissioner of India, and demonstrations in Vancouver that resulted in damage to the Consul General's vehicle.[110] At the hearings, Jensen testified that his impression was that the RCMP members in charge of protection were still not taking sufficiently seriously management's previous directive to increase protection.[111] He concluded, in August 1984, that the RCMP was "…under resourcing in [its] planning for the various public events at which Indian diplomats are present." He was not sure that the RCMP Divisions

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102 Exhibit P-101 CAC0517, p. 2. Sweeney was still of that view when he testified before the Commission: Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2585; Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2757.

103 See Exhibit P-101 CAA0234, which provides a chronology of the warnings received and does not record a warning before each flight.

104 Exhibit P-101 CAA1086, p. 3.

105 Exhibit P-101 CAC0517, p. 2; Testimony of Warren Sweeney, vol.25, May 8, 2007, pp. 2584-2585.

106 See Section 1.2 (Pre-bombing), June 1st Telex.

107 Testimony of Warren Sweeney, vol.26, May 9, 2007, pp. 2736-2737.

108 Testimony of Warren Sweeney, vol.26, May 9, 2007, p. 2745.

109 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2905.

110 Exhibit P-101 CAC0222. See also Exhibit P-101 CAA1099 for a list of "Major Sikh Extremist Events" compiled by the RCMP.

111 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5419.

were "…sufficiently sensitized in this regard,"[112] and he felt that they needed to be advised of the possible implications of not providing adequate protection for Indian diplomats. The Director of Protective Policing noted that "…the message is clear – PROTECT."[113]

The RCMP VIP Security branch made repeated attempts to convince DEA to agree to decrease the level of protection provided for Indian missions and personnel in Canada, as it was viewed as a significant and unnecessary drain on RCMP resources. VIP Security management was far more focused on the threat posed to Turkish diplomatic personnel by Armenian terrorists. Armenian extremist groups were described as "…organized worldwide" and as having "…clearly demonstrated their ability to carry out assassinations and murder." By contrast, the threat to Indian diplomatic personnel was described in October 1984 as "… the work of individual Sikh extremists", not "…organized terrorist groups," and as having resulted only in "…minor property damage with the exception of the assault on Mr. Fabian."[114]

VIP Security also appeared to dismiss the September 1984 CSIS warning that "…more radical and younger segments" of the Sikh community often took "… independent and precipitous actions not sanctioned by and outside the control of the moderate leadership", and as such were a "…real threat to Indian interests in Canada."[115] Instead, VIP Security management seized on a CSIS statement that some of the emotion following the assault on the Golden Temple had "…largely subsided" and that "…moderate leadership is expected to increasingly focus their efforts on the political level"[116] to argue for less protection; this despite the fact that CSIS continued to maintain that "…the move towards quiescence in the Sikh community here should not be judged as lessening the potential for problems", and concluded that the threat remained high.[117]

The RCMP also, at times, expressed scepticism about the use made by Indian diplomats of RCMP protective services, and took this as yet another demonstration that the threat was not as serious as was claimed. The fact that RCMP escorts were not consistently used by some of the Indian officials, even when available, was viewed as evidence that RCMP protection was being used as a "convenience" rather than for free security.[118] RCMP officers were of the view that the Indian diplomats sometimes used their police escort as a "chauffeur", and that they showed "…disregard for [their] own security" and appeared "… to enjoy the readily available and expensive services" provided by the RCMP, "… but seemingly for the wrong reasons."[119]

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112 Exhibit P-101 CAC0214, p. 2.
113 Exhibit P-101 CAC0214, pp. 2-3; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5418.
114 Exhibit P-101 CAC0222, p. 2.
115 Exhibit P-101 CAA0093, p. 2.
116 Exhibit P-101 CAC0222, p. 3.
117 Exhibit P-101 CAA0093, p. 2.
118 Exhibit P-101 CAC0222, p. 3.
119 Exhibit P-101 CAC0233, pp. 3-4. On October 30, 1984, VIP Security Branch once again wrote to DEA requesting permission to replace RCMP officers with private security guards in Ottawa, Toronto and Vancouver (it would seem the early October request was turned down at the time). This request is referenced in Exhibit P-101 CAC0255. However, due to the assassination of Indira Gandhi on October 31, 1984, it was decided that no lessening of security should occur at that time: Exhibit P-101 CAC0241, CAC0243.

Heightened Attention to Sikh Extremism in May 1985

In the month before the Air India and Narita bombings, the threat of Sikh extremism was given more attention, in light of the enhanced risk surrounding the anniversary of the Golden Temple storming and the US visit by Rajiv Gandhi, the successor to the assassinated Indira Gandhi. The Secretary of State for External Affairs (SSEA), the Rt. Honourable Joe Clark, expressed his personal concern that Canadian authorities accord the highest priority to the Sikh extremist threat. External Affairs formed a senior level interdepartmental working group, to coordinate activities within Canada related to the threat to Indian interests, and participated in a US/UK/Canada tripartite group to share intelligence on Sikh extremism.[120] CSIS issued a comprehensive threat assessment (TA) on the Sikh extremist movement in Canada, and distributed it widely across government agencies in Canada.[121] CSIS HQ tasked the major regions and districts to submit daily situation reports on the threat of Sikh extremism in their areas.[122] As of mid-May, the RCMP was providing enhanced protection for Indian missions and personnel as a result of an upgraded threat assessment.[123] The protection was increased for some of the consulates at the end of the month, at the request of the interdepartmental working group on Sikh terrorism.[124] The RCMP noted that it was aware that "…the next few weeks are crucial vis-à-vis the protection of Indian Missions in this country and we are continually reviewing all new intelligence, and, should the necessity arise, the protective measures will be upgraded as required."[125] In fact, additional protection for the High Commission in Ottawa was implemented on June 3, 1985, to respond to the high threat.[126] Airport officials at Pearson airport initially refused to implement additional security for Air India's operations without cost to the airline.[127] However, the intervention of the Department of External Affairs[128] resulted in a direction from RCMP Headquarters that the level of security at Pearson be raised to the level being provided at Mirabel.[129]

This prioritization of the response to the Sikh extremism threat by some agencies in May and June of 1985 appears to have been a temporary measure, in response to a perceived temporary heightening of the threat due to the anniversary of the Golden Temple storming and the US visit of Rajiv Gandhi, rather than the demonstration of a true appreciation of the long-term significance of the threat. Immediately after Gandhi's departure, the RCMP requested an updated TA from CSIS, noting its assumption that, should the events pass without serious incident,

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120 Exhibit P-101 CAE0174, CAE0178.
121 Exhibit P-101 CAB0236(i).
122 Exhibit P-101 CAB0256.
123 This appears to be referring to a May 16, 1985 NCIB threat assessment (Exhibit P-101 CAC0334) indicating that the assessment of the threat to Indian missions is high due to the situation in the Punjab as well as recent events in E Division and the recent arrest of Sikhs in the United States: Exhibit P-391, document 255 (Public Production # 3388), p. 4.
124 Exhibit P-101 CAE0223, p. 2; Exhibit P-391, document 255 (Public Production # 3388), pp. 4-5.
125 Exhibit P-101 CAE0177.
126 Exhibit P-391, document 255 (Public Production # 3388), p. 5.
127 Exhibit P-101 CAF0041.
128 Exhibit P-101 CAE0181.
129 Exhibit P-101 CAE0181, CAF0010, p. 3.

the threat level (and hence required protection) would diminish.[130] The final CSIS TA before the bombings warned that it would be naïve to think that Sikh extremists had abandoned their cause, and assessed the threat as only slightly less serious.[131] In response, the RCMP maintained the same level of protection at Indian missions and for Air India flights.[132] Despite these late efforts, the Air India and Narita bombings took place on June 23, 1985.

Conclusion

Overall, in spite of some concern expressed by the SSEA, External Affairs, CSIS and senior RCMP officers, the phenomenon of "threat fatigue"[133] and pervasive scepticism about the motivations of Air India and Indian diplomats made it difficult for Canadian officials to appreciate the true seriousness of the threat of Sikh extremism. From his vantage point in India, Warden felt that, had the actions of the Sikh extremists been pursued vigorously by the government early on, by prosecution as well as by investigation, regardless of whether convictions actually ensued, these government responses might have "…taken the wind out of their sails" and thwarted further development of plots like the Air India bombing.[134] Some of the implications of the mistaken perception that the threat was not truly serious would become evident in the failures of the various agencies and departments of the Government of Canada leading up to the events of June 23, 1985.

2.3 Inadequate Preparation for Nature of Threat

2.3.1 Recognition of the Threat of Sabotage and Weaknesses in the Ability to Respond

The Chicago Convention

In 1944, the International Civil Aviation Association (ICAO) was established by the *Convention on International Civil Aviation* ("*Chicago Convention*"),[135] under the auspices of the United Nations.[136] The ICAO became the supreme law-making body with respect to international civil aviation, and provided governments, air carriers, and airport operators with comprehensive sets of best practices and security measures for normal and high risk situations.[137] There are currently 189 contracting states within the ICAO, all of which are signatories to the *Chicago Convention*.[138]

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130 Exhibit P-101 CAE0195.
131 Exhibit P-101 CAB0321.
132 Exhibit P-101 CAE0199, CAE0201.
133 See Section 2.4 (Pre-bombing), Security Culture at Canada's Airports and Section 3.3.4 (Pre-bombing), CSIS Failures in Assessing the Threat.
134 Testimony of William Warden, vol. 24, May 7, 2007, p. 2384.
135 *Convention on International Civil Aviation,* December 7, 1944, 15 U.N.T.S 295 (entered into force on April 4, 1947) .[*Chicago Convention*]
136 Exhibit P-157, p. 15.
137 Exhibit P-157, p. 18.
138 Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4215.

Flowing from a rash of increasingly sophisticated incidents in the 1960s and 1970s, the hijacking of aircraft was, for a time, perceived as the predominant threat to civil aviation. While the first aircraft hijacking took place in 1931,[139] acts of terrorism against aviation security only became a significant concern after World War II, with the advent of the Cold War.[140] Individuals who found themselves trapped behind the Iron Curtain resorted to hijacking aircraft in desperate attempts to flee to freedom in the West. They were followed, in due course, by Cubans fleeing to the United States following the Revolution.[141] Although these early asylum-seeking hijackers were welcomed to the West as valuable political symbols, other groups began to consider using hijacking for overtly political purposes of their own. This was exemplified by the coordinated and sensational hijackings conducted by Palestinian and Iranian fundamentalist groups in the 1960s and 1970s.[142]

In 1974, the ICAO member nations responded to the hijacking crisis by adopting Annex 17 to the *Chicago Convention*, *Safeguarding International Civil Aviation Against Acts of Unlawful Interference*.[143] Each of the Annexes adopted by the ICAO Council contains standards and recommendations.[144] Signatories are obliged to comply with the international standards. The recommendations are best practices or "desirable" measures, meaning that, while the contracting states were not obliged to implement these measures, the measures were appropriate goals for more advanced and prosperous nations concerned with ensuring that their aviation security regimes were as effective as possible.

Canadian Security Response

It is worth emphasizing that ICAO standards were, and continue to be, *minimum standards*, aimed at "the lowest common denominator" in order to obtain approval from all contracting states. Rodney Wallis, in his testimony, gave the example of a poor country having to choose between having an X-ray machine at an airport and having one at a hospital.[145] As a result, the international standards will necessarily fall below those deemed appropriate, or even necessary, by advanced, prosperous nations. Such nations also have access to up-to-date intelligence about new threats and tactics, and must be expected to respond accordingly. Canada's efforts to satisfy the ICAO standards and to create a comprehensive, safe and responsive civil aviation security program have been examined with these facts in mind.

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139 Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4211.

140 In terms of sabotage, the first incident of a bomb being placed aboard an aircraft occurred in the United States in 1932. See Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4252. The first two mid-air bombings of commercial aircraft took place in 1949. The first took place in the Philippines. The second mid-air bombing of a commercial aircraft occurred on September 9, 1949 in Canada, killing 23. See Testimony of Rodney Wallis, vol. 35, May 29, 2007, p. 4207; Exhibit P-147, p. 28.

141 Exhibit P-147: p. 5. Note that following the exodus of 1959-1961, the pattern of asylum-seeking hijackings continued along a different trend, with US aircraft now being hijacked by homesick Cubans seeking to *return* to Communist Cuba.

142 Testimony of Rodney Wallis, vol. 35, May 29, 2007, p. 4207.

143 Exhibit P-151: *International Standards and Recommended Practices – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference – Annex 17 to the Convention on International Civil Aviation* – First Edition – August 1974 [Exhibit P-151:Annex 17, 1st ed.).

144 Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4216.

145 Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4218-4219; Testimony of Rodney Wallis, Vol. 36, May 30, 2007, p. 4285.

Annex 17 directed each contracting state to implement a national civil aviation security program, and to designate an authority in charge of that program. Transport Canada was Canada's representative at the ICAO, and was designated as the authority responsible for Canada's civil aviation security program. Transport Canada continues to hold these roles today.

Pursuant to the first edition of Annex 17, Transport Canada was responsible for developing a program to prevent criminal acts against civil aviation. Annex 17 also included a recommendation that each authority should work to coordinate activities between the agencies, departments, and other organizations responsible for different aspects of that program.[146]

The security measures implemented during the 1970s and early 1980s were clearly intended to minimize the risk of hijacking incidents, with a focus upon preventing potential hijackers from bringing weapons aboard an aircraft, either on their persons or in their carry-on baggage. The *Aeronautics Act* in place at the time of the Air India bombing had been amended in 1973 to enable the development of aviation security regulations that would require operators of aircraft registered in Canada to search people, baggage, and cargo as a condition of flying.

The Act included a "no search, no fly" rule, which prohibited anyone from boarding an aircraft, or placing baggage aboard the aircraft, unless authorized searches had been conducted of their persons and their belongings.[147] Prior to these amendments, no legal authority existed to search passengers and their baggage at airports prior to boarding;[148] initially the carriers voluntarily agreed to screen passengers under the authority of tariff regulations and by virtue of their power to accept or reject passengers and their baggage for transportation.[149] This was the foundation for the system of voluntary compliance with security regulations by air carriers. The *Aeronautics Act* was amended again in 1976 to expand these search requirements to operators of foreign aircraft.

To facilitate passenger screening, Transport Canada established checkpoints and sterile concourse areas at all international airports, and provided and maintained X-ray scanners and metal detectors for inspecting passengers and their carry-on baggage.[150] Despite the progress made, however, a key vulnerability remained. The aviation security measures were not designed for the eventuality that terrorists might instead engage in acts of sabotage, including bombing, which did not require them to board an aircraft at all.[151]

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146 Testimony of Moses Aleman, vol. 36, May 30, 2007, pp. 4271-4272.

147 *Aeronautics Act*, R.S.C. 1970, c. A-3, as am. by *An Act to Amend the Aeronautics Act*, S.C. 1973-1974, c.20, s. 1 [*Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74], introducing ss. 5.1(3), 5.1(4).

148 Exhibit P-101 CAF0774, p. 19.

149 Exhibit P-101 CAF0643, pp. 1-2: "During 1971-1972 Air Canada and CP Air voluntarily carried out a number of security procedures on international and trans-border flights which included the selective searching of passengers and carry-on baggage under their tariff rules. The screening was carried out by airline employees and CP Air also used the services of the CP Police."

150 Exhibit P-101 CAF0643, p. 3.

151 Exhibit P-157, p. 19.

Beyond these legislated measures, Canada's aviation security program depended greatly on the voluntary cooperation of air carriers and on their compliance with the security requirements in place.[152] The Air Carrier Security Regulations and the Foreign Aircraft Security Measures Regulations, created under the authority of the *Aeronautics Act*, [153] placed responsibility on foreign and domestic air carriers operating in Canada to develop and maintain their own security procedures. Carriers such as Air India were required to establish systems for surveillance and for searching persons, belongings, baggage and cargo by manual, technical or electronic means.[154] The carriers were required to file a written description of their security measures with the Minister.[155]

Neither the *Aeronautics Act,* nor the regulations and orders issued under its authority, provided details concerning the measures to be implemented. They did not direct the Minister to assess, approve or reject the security plans created by the carriers.

In addition to the measures outlined in the aviation security regulations and orders, the carriers were also broadly required to provide a system of identification to prevent unauthorized baggage, goods and cargo from being loaded onto an aircraft. They were, additionally, required to restrict access to their premises at airside, and protect against unauthorized access to the aircraft itself. As well, there was to be no unauthorized access to checked baggage prior to it being loaded aboard the aircraft, and it was only to be accepted by designated agents or representatives of the airline.[156]

International Convention Updated in 1981

Annex 17 was updated in 1981, resulting in some recommendations being elevated to the level of standards. The amendments also incorporated new and more detailed security requirements. For example, as a contracting state, Canada was obliged to "…take the necessary measures to prevent weapons or any other dangerous devices, the carriage or bearing of which is not authorized, from being introduced by any means whatsoever, on board an aircraft engaged in the carriage of passengers."[157]

Significantly, the second edition of Annex 17 specifically recommended that contracting states "…should establish the procedures required to prevent explosives or incendiary devices from being placed aboard an aircraft through baggage, cargo, mail and stores."[158]

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152 Exhibit P-263, p. 40.
153 *Aeronautics Act*, R.S.C. 1970 am. S.C. 1973-74, introducing ss. 5.1(1), 5.1(1.2). .
154 *Foreign Aircraft Security Measures Regulations*, S.O.R/76-593, s. 3(1)(a) [*Foreign Aircraft Security Measures Regulations*].
155 *Civil Aviation Security Measures Order*, S.O.R./ 74-227, s. 3 [*Civil Aviation Security Measures Order*].
156 *Civil Aviation Security Measures Regulations*, S.O.R./ 74-226 [*Civil Aviation Security Measures Regulations*]; *Foreign Aircraft Security Measures Regulations.*
157 Exhibit P-152: *International Standards and Recommended Practices – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference – Annex 17 to the Convention on International Civil Aviation* – Second Edition – October 1981, s. 4.1.5 [Exhibit P-152: Annex 17, 2nd ed.].
158 Exhibit P-152: Annex 17, 2nd ed., s. 4.1.14.

As of June 22, 1985, the standard security procedures in place at Canadian airports were limited to metal detection screening of passengers and the X-ray screening of carry-on baggage.[159] There was no mandatory screening requirement for checked baggage. In fact, it was up to individual airlines like Air India to voluntarily include the screening of checked baggage in their own security plans.[160]

Threat of Hijacking Diminishes and the Threat of Sabotage and Bombing Increases

Hijackings in the early 1970s became increasingly violent and lethal,[161] but the anti-hijacking measures appear to have proved effective in controlling and reducing their incidence. In 1979, for example, there were no attempts to hijack any scheduled passenger aircraft in Canada.[162] Transport Canada noted in 1980 that there had not been a single successful hijacking of a scheduled Canadian flight since 1971, and no attempts since 1974.[163] Incidents of hijacking continued around the world, but were on the decline. Of 11 hijacking incidents in the United States in 1979, 10 did not involve real handguns or explosives.[164] By 1982, worldwide hijacking attempts had "decreased dramatically" from the spate of incidents in the 1970s. There were 87 hijacking attempts (both successful and unsuccessful) around the world in 1969, and 83 in 1970. In 1982, that number had fallen to 31 hijacking incidents worldwide.[165]

As the threat from hijacking diminished in the face of tightened security, terrorists naturally began to change their tactics in order to exploit weaker points in the security measures of the day. This was clear not only in hindsight. The Inquiry heard expert testimony that, by 1974, several bombings had firmly established the threat of sabotage.[166] The evidence also clearly shows that Transport Canada formally recognized, as early as 1979, that sabotage would supplant hijacking as the predominant threat to civil aviation security.

In the spring of 1979, senior representatives from Transport Canada, the RCMP, the Air Transport Association of Canada (ATAC) and Canada's major air carriers met to discuss the Review of the National Civil Aviation Security Program.[167] Based on intelligence provided by the RCMP Security Service, the parties agreed that the threat was changing internationally, and that sabotage and bomb threats were a greater concern than hijackings.[168]

In early 1980, Transport Canada's Civil Aviation Security Branch prepared a report entitled the *Evolution of the Canadian Civil Aviation Security Program*. The report

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159 Exhibit P-101 CAF0089, p. 19, CAF0151, pp. 13-14.
160 Exhibit P-101 CAF0089, p. 19.
161 Testimony of Peter St. John, vol.35, May 29, 2007, pp. 4221-4222.
162 Exhibit P-101 CAF0163, p. 5.
163 Exhibit P-101 CAF0766, p. 5.
164 Exhibit P-101 CAF0163, p. 5.
165 Exhibit P-101 CAF0563, pp. 5-6, 8.
166 Testimony of Peter St. John, vol. 35, May 29, 2007, p. 4222.
167 Exhibit P-101 CAF0765.
168 Exhibit P-101 CAF0765, p. 2.

examined recent acts against civil aviation around the world, noting a large decline in hijacking attempts and a new rash of incidents involving sabotage. In one instance in 1979, a bomb concealed in checked baggage exploded on the ramp at John F. Kennedy International Airport in New York (Kennedy) just before it was to be placed aboard an aircraft.[169] Another bomb exploded in the hold of an aircraft during an unscheduled landing at Kennedy. Active bombs were also found at several U.S. airports that year.

Among the report's conclusions was:

> The recent explosions aboard U.S. aircraft and discovery of active bombs at U.S. airports would suggest that events would indicate that acts of sabotage rather than hijacking now post the greatest threat to civil aviation in Canada. It is hypothesized that this changing threat is due to the deterrent value and effectiveness of the passenger screening system forcing the mentally disturbed and criminally minded individuals to look elsewhere for ways and means to commit unlawful acts.[170]

In February 1980, the Joint Study Committee on Civil Aviation Security met and discussed the current intelligence provided by the RCMP Security Service, the RCMP Airport Policing Branch, and the ATAC Security Committee.[171] The Committee members included senior representatives from Transport Canada, ATAC and the RCMP. The Committee continued to accept the conclusion, reached at its meeting the year before, that a review of the intelligence indicated that there was no apparent special risk to civil aviation in Canada at that time, and that there had been no attempted attacks against Canadian airport or aircraft since 1974. Nevertheless, the Committee concluded that terrorist tactics were changing, and that continuing acts of terrorism on the international scene warranted alertness, particularly with regard to Canada's international airports.[172]

Having reviewed the intelligence for that year,[173] the decision record of the Joint Study Committee reflects the following remarkable conclusion:

> The Committee agreed that the nature of the threat was changing and acts of sabotage rather than hijacking were perceived as the main threat to the safety of the air transportation system in the future. As passenger screening procedures have proven to be an effective deterrent to prevent the carriage of unauthorized weapons and explosives in the

169 Exhibit P-101 CAF0766, p. 40.
170 Exhibit P-101 CAF0766, p. 8.
171 Exhibit P-101 CAF0163.
172 Exhibit P-101 CAF0163, p. 2.
173 The RCMP Security Service briefing can be found at Exhibit P-101 CAF0767.

> aircraft cabin there is concern that persons are now attempting to exploit the weaknesses in the security system to place explosives in checked baggage, express parcel shipments, cargo, and mail.[174]

As the evidence amply demonstrates, Transport Canada was aware of the risks of terrorism and sabotage against civil aviation in Canada long before the bombing of Air India Flight 182. The concern was so great that, in the summer of 1980, ATAC requested that Transport Canada begin developing screening techniques and equipment to detect the components of explosives in order to meet the changing threat:

> Further to our recent conversations you will recognize that the serious threat to civil aviation is now perceived to be detection of components of explosives or other incendiary devices as opposed to the metal detection of guns or other similar weapons. We are most concerned that the development and provision of detection equipment in support of the National Civil Aviation Security Programme must meet the changing threat.
>
> We therefore request that the Department of Transport initiate research and development on x-rays and/or other equipment, possibly with "double image" coupled with vapour detector for use in bomb scare or alert conditions. We believe the early development of such equipment is vital to the National Security Programme and the safety of aircraft, crew and passengers.[175]

Aviation Security Concerns in Canada

In 1982, Transport Canada released a report for the National Air Transportation Security Plan. This was a strategic planning framework, describing the existing security situation and outlining the issues that would be facing civil aviation security.[176] The goal of the plan was to develop major policies and strategies for Transport Canada's Air Administration that would foster effective measures to deter and prevent acts of unlawful interference. The issues highlighted included: the lack of regulatory authority to approve air carrier security programs; inadequate supervision of the private security companies at airports; and the absence of penalties against air carriers that violated the *Aeronautics Act*.[177] In terms of the state of aviation security in Canada, the report noted that the anti-hijacking focus of the security regime had yielded good results, and

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174 Exhibit P-101 CAF0163, p. 5.
175 Exhibit P-101 CAF0769.
176 Exhibit P-101 CAF0774.
177 Exhibit P-101 CAF0774, p. 19.

that passenger screening was a visible and effective measure.[178] Nevertheless, the report was frank in its assessment of the ability of the system to withstand acts of terrorism:

> The issue of the 'cosmetic' nature of the security program is evident as is the fact that it provides visible reassurance to the traveling public. While it appears that the deterrent value of the present system is high, it is clear that it is not capable of resisting a serious well-organized terrorist strike.[179]

In October 1982, Paul Sheppard, Director of Civil Aviation Security for Transport Canada, wrote to the RCMP requesting a threat assessment concerning the political threat to Canadian civil aviation targets in light of recent instances of terrorist activities.[180]

The RCMP Security Service provided its threat assessment in December 1982, and a cleared version was distributed to ATAC in March 1983. The threat assessment pointed to recent acts of terrorism in Canada by Armenian extremists, which demonstrated the impact that various political events could have on Canada.[181] It was the opinion of the RCMP Security Service that Canada's international airports were high-risk targets, as were foreign targets within Canada, such as Israel's El Al airlines and offices.[182] The main tactics employed by terrorists were bombings and assassination attempts; hijackings had decreased "dramatically" since the mid-1970s.[183]

The increase in acts of sabotage caused considerable concern regarding the measures in place to ensure baggage and cargo were safe and secure.[184] In light of the changing threat environment, Transport Canada's Management Systems Branch conducted a study in 1982 concerning aircraft cargo and baggage security measures.[185] Its purpose was to determine the adequacy of the existing cargo and baggage security policies and, if these were found to be inadequate, to recommend remedial measures.[186]

Proposed Regulations and Recommendations to Strengthen Aviation Security

A draft report was printed and circulated in June 1983. The report considered the state of the current cargo and baggage security measures, along with the newly drafted Air Carrier Security Regulations which were being circulated to

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178 Exhibit P-101 CAF0774, p. 9.
179 Exhibit P-101 CAF0774, p. 22.
180 Exhibit P-101 CAF0561, p. 1.
181 Exhibit P-101 CAF0563, p. 2.
182 Exhibit P-101 CAF0563, p. 3.
183 Exhibit P-101 CAF0563, pp. 5-6. This was echoed in the Report of the *CATSA Act* Review Advisory Panel, which noted that "…[a]s early as 1983, the RCMP Security Service had identified bombs as a bigger threat to aircraft than hijackings." See also Exhibit P-157, p. 49.
184 Exhibit P-101 CAF0776, p. 1.
185 Exhibit P-101 CAF0565.
186 Exhibit P-101 CAF0776, p. 1.

various stakeholders for comment. The regulations were drafted in 1982 to address the weaknesses in the system, but had not yet been implemented.[187] The regulations were included as an appendix to the report.[188]

The 1983 study made a number of important and, as is now readily apparent, prescient recommendations based on the deficiencies identified. Most notably, the draft report indicated that, while the aviation security measures in force were adequate in the low-level state of threat then in existence**,** in high-threat periods, all checked baggage should be manually searched or checked by X-ray.[189] Additionally, at a time when most airlines did not search any checked or interlined baggage, the report recommended that all interlined baggage be searched or scanned by X-ray when the threat was high.

Other recommended measures to be implemented in times of high threat included taking the precautions of sealing all bags once accepted or searched, and refusing unaccompanied baggage unless searched, sealed, and held for a minimum of 24 hours prior to loading.[190] The 1983 report also recommended placing guards in the baggage handling and plane staging areas, and exercising caution when accepting last-minute passengers and their baggage.

The study authors recognized that the aviation security regime at that time placed the largest part of the responsibility for protecting baggage and cargo upon the air carriers, and that these responsibilities would greatly increase under the draft regulations. The report also noted that the lack of terrorism incidents, combined with tight funding, made it "tempting" to relax all forms of security, but emphasized that security measures were required which would ensure that aircraft were protected from bombings and hijackings.[191]

As noted in the report, the problem with making the air carriers responsible for the security and "cleanliness" of checked baggage was that measures for checked baggage varied widely from carrier to carrier.[192] Additionally, air carrier security plans were typically general in nature. They did not contain site-specific measures, but instead contained policies and guidelines for the local site managers to follow. The air carrier security plans themselves were reviewed by regulatory authorities at the regional Transport Canada headquarters. Meanwhile, airport security plans were prepared locally and on-site by airport managers and their security officers, resulting in "…a headless plan lacking any single point accountability for ensuring that the plan is efficient and effective and that the facilities and services provided by [Transport Canada] (which are shared by more than one carrier) are properly used and become a fully integral part of the overall airport security plan."[193]

To increase the security of baggage and cargo under normal alert conditions, the report recommended that security awareness be improved at airports

187 Exhibit P-101 CAF0565, p. 17.
188 Exhibit P-101 CAF0565, p. 41.
189 Exhibit P-101 CAF0565, p. 22.
190 Exhibit P-101 CAF0565, p. 22.
191 Exhibit P-101 CAF0565, p. 7.
192 Exhibit P-101 CAF0565, pp. 16, 18.
193 Exhibit P-101 CAF0565, p. 17.

through mandatory security training programs. This was in recognition of the fact that the training requirements of the time focused only on the necessity of training passenger screening officers.[194] Given that the only regulated measures concerning checked baggage depended on the alertness and knowledge of personnel, including the air carrier ticket personnel, a lack of proper training meant that the risk from checked baggage increased.[195]

The report called for security training programs for anyone involved with patrolling check-in areas, baggage handling areas, and loading areas, as well as all air carrier personnel who processed passenger tickets. Those who were involved in the weighing, tagging, sorting, handling or loading of baggage would be required to take such training courses.[196] As called for in the draft regulations, no personnel would be allowed to perform such duties unless they had completed approved security training courses.[197]

Many of the frontline workers at airports lacked even basic security awareness, and they were frequently under pressure to be very efficient and please customers.[198] It was a harried ticket agent for CP Air who relented to the demands of "M. Singh", that his checked bag be tagged for interlining to Air India Flight 182 without a reservation, in contravention of CP Air's own security plan.[199],[200] The *CATSA Act* Review Advisory Panel wrote about the incident in its report, noting that:

> The passenger M. Singh who presented himself at the CP Air counter in Vancouver exhibited atypical behaviour that might have alerted staff that something was very wrong. Someone paid cash for two international tickets at the last minute; the names on the tickets had been changed; he demanded interlining of his bag to a flight for which he had no confirmed reservation; his manner was extremely aggressive and bullying. These factors should have flagged Mr. "Singh" as a potential risk – if staff had been trained for such signs and to make preliminary decisions based on such indicators. But of course, they had not.[201]

It was revealed during the investigation of the bombing, moreover, that many Burns security personnel performing vital screening duties at Toronto's Lester

194 Exhibit P-101 CAF0565, p. 19.
195 Exhibit P-101 CAF0565, p. 19.
196 Exhibit P-101 CAF0565, p. 9.
197 Exhibit P-101 CAF0565, p. 9. See also s. 400(a)(2)(iii) of the Draft Air Carrier Security Regulations: Exhibit P-101 CAF0565, p. 67.
198 This is discussed in Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.
199 Exhibit P-157, p. 35. See especially p. 69: "Airline employees were expected to deliver customer service, while security considerations might have figured less prominently in the training of a check-in agent…. In today's environment, we believe that the employee would be more aware of security issues, likely to be better supervised and supported …."
200 Exhibit P-101 CAF0667. This is a compilation of statements given to the RCMP by Jeanne Adams, the CP Air agent who interline tagged Singh's bag.
201 Exhibit P-157, p. 67.

B. Pearson International Airport (Pearson), including those at work on the day of the bombing, had not undergone a training program required by Transport Canada, and that many of those who had taken the program had not received any of the mandatory refresher training.

Despite its knowledge of the looming threat of bombings on airplanes and at airports, Transport Canada failed to take meaningful action to meet this threat. No remedial measures discussed in the 1983 report were in place on June 22, 1985. It is disturbing to see that the weaknesses in the aviation security measures, as well as the risks of sabotage and concealed explosives as a means of attacking civil aviation, were so well-known at least two years before the bombing of Air India Flight 182. These were not speculative risks, but well-understood dangers. In order to address these dangers, new, updated, and considerably stronger security regulations had even been drafted – though nothing had been done to enact them.

Growing Threat of Bombing to Air India in 1984

A year before the bombing of Flight 182, Transport Canada, Air India and the RCMP were again made aware of the threat posed by a bomb concealed in checked baggage. In June 1984, Sikh protests surrounding the attack on the Golden Temple prompted Transport Canada to consult with Air India and the intelligence community to determine whether a threat existed to Air India's operations in Canada, and whether extra security would be required for the Air India 747 at Mirabel International Airport (Mirabel).[202]

On June 11, 1984, the RCMP advised the Civil Aviation Security section of Transport Canada that Sikh extremists might target Air India, due to it being an "easier target" than the Indian diplomatic missions in Canada.[203] On June 12th, the assistant manager for Air India advised Transport Canada of intelligence that 20 to 25 Sikhs in Canada were prepared to become martyrs by blowing up an Air India aircraft. The alleged plot involved an individual boarding the flight and checking a piece of luggage aboard the aircraft with an explosive device inside which would explode in-flight.[204] Neither the RCMP Security Service nor the Department of External Affairs could corroborate that such a plot was in the works, but they agreed that there were "…fanatics within the Sikh community capable of performing such an act."[205]

In response, the Air India station manager implemented a number of measures for the flights on June 16, June 23, and June 30, 1984. These included hand-searching all checked baggage, including interlined baggage, subjecting all passengers and carry-on baggage to secondary searches, and imposing a 24-hour hold on cargo, along with the requirement that all cargo accepted must come from bona fide shippers. Air India also brought in extra security staff to Mirabel and met with the airport general manager, the RCMP, and

202 Exhibit P-101 CAF0161.
203 Exhibit P-101 CAF0639.
204 Exhibit P-101 CAF0161, p. 1.
205 Exhibit P-101 CAF0161, p. 1.

Air Canada security to finalize local arrangements. Transport Canada and the RCMP arranged to make the RCMP explosives detection dog team at Mirabel available during Air India's weekly flights, to search baggage, cargo, the aircraft, and airport lockers for explosives.[206] Air India did not have an X-ray machine to examine checked baggage at this time, though it made arrangements, with the approval of Transport Canada, to purchase such a device not long after these events occurred.[207]

Paul Sheppard noted that Air India was pleased with Transport Canada's cooperation and assistance, and had also requested increased security for the next three flights. Sheppard wrote in a memorandum that close ties were being maintained with Air India, the RCMP, the Department of External Affairs, the Federal Aviation Administration, and airport officials in order to ensure rapid exchange of intelligence and adoption of any security measures required to meet the threat.[208]

It is striking that the measures employed during this threat were so stringent, and the coordination between the different parties so purposeful and effective, when compared with the response to a very similar threat just one year later.

Another similar threat emerged in July 1984, when Air India's assistant manager at Mirabel forwarded another telex to the RCMP and Transport Canada warning of a threat to carry a bomb aboard an Air India flight and to blow it up to draw attention to the extremist group's demands.[209] The telex requested that all Air India stations thoroughly implement anti-sabotage measures, including inspecting checked baggage with X-ray scanners or explosives-detecting equipment, adding that baggage should be thoroughly examined on the slightest suspicion. Air India again requested the assistance of police in providing strict security coverage and implementing appropriate measures to protect their aircraft, passengers and cargo. It is clear from these warnings that the threat of sabotage and the measures needed to respond appropriately were well understood.

Transport Canada Awareness of Aviation Security Weaknesses

Transport Canada was evidently aware of many of the weaknesses in the civil aviation security regime, even before the bombing of Air India Flight 182. Not only was it apparent to Transport Canada that sabotage and the risk of explosives being placed aboard aircraft through unscreened checked baggage were pervasive risks, but Transport Canada's own threat assessment system, alert levels, and response measures were poorly implemented and inadequately defined.

In a March 19, 1985, memorandum, Sheppard reported on plans to increase civil aviation security as needed during a given situation. He indicated that

206 Exhibit P-101 CAF0161, p. 2, CAF0641, p. 1.
207 Exhibit P-101 CAF0645.
208 Exhibit P-101 CAF0645, p. 2.
209 Exhibit P-101 CAA0083, CAA0084.

a significant problem was posed by the need to disseminate any classified intelligence Transport Canada received, as it lacked any secure lines of its own. The only secure line available was through the RCMP network which linked RCMP airport detachments to headquarters. Sending intelligence reports in an emergency was a clumsy affair; Transport Canada had to telephone their security supervisors at the airports and direct them to obtain the needed information through the RCMP network. In light of these difficulties, Transport Canada had asked the air carriers, through ATAC, whether they wanted to re-establish security clearances in order to obtain material directly from Transport Canada, but this proposal was declined.[210]

In addition to the need for a secure communications network, Sheppard identified other weaknesses and concerns, including the need for complete reviews of all airport security plans and air carrier security programs, and the necessity to find a way to force the carriers to regularly update these programs.[211]

Sheppard was very concerned about the limitations of the system in place at the time. Theats had been recently made to Air India, and threats had even been received about specific suitcases containing bombs.[212] The threat required flexible measures far beyond what was then in place. Sheppard wrote:

> Our existing system was never established to prevent determined terrorist groups. What we have is basically an anti-hijack program, as opposed to anti-sabotage. The primary control in the anti-hijack program is handled by poorly-paid private security guards who are there to check for weapons on passengers or carry-on baggage. They are not there to prevent a terrorist attack or even take a weapon away from people. Their role is to use the silent alarm system to call the police.[213]

Most significantly, Sheppard was emphatic about the need to implement the draft regulations. He put it bluntly: "The New Air Carrier and Airport Security Regulations are required and should proceed with or without the new Act."[214] This is a remarkable statement. It makes it clear that, in the opinion of the Director of Civil Aviation Security, the threat of terrorism, as it was then understood, simply could not be met with the regulatory framework that was in place. Putting these new regulations in place ought to have been the highest priority for Transport Canada.

Sheppard reiterated his concerns about the limitations of the aviation security regime in a memorandum dated April 9, 1985. There, he expressed the opinion that aircraft and facilities in Canada could be targeted by terrorists "…with

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210 Exhibit P-101 CAF0083, p. 1.
211 Exhibit P-101 CAF0083, p. 2.
212 Exhibit P-101 CAF0083, p. 3.
213 Exhibit P-101 CAF0083, p. 2.
214 Exhibit P-101 CAF0083, p. 2.

very little if any advance warning,"[215] and emphasized the need for the speedy collection, analysis and dissemination of intelligence-based threat information. Such intelligence-based threats were incompatible with the "specific" and "non-specific" threat categories employed by Transport Canada. The "specific threat" paradigm relied on the premise of a detailed threat being received against a specific airline naming a specific flight and a specific day and time. A very real and imminent threat discerned through intelligence gathering would be unlikely to contain exhaustive and precise details. Instead, intelligence-based threats would reveal a threat of bombing, with an airline such as Air India as a possible target, and would allow those providing security to devote their limited resources to respond to the danger.

Contributing to this deficiency was the problem that the alert levels system, which defined the response to a given threat, was old and had not been updated. It had been developed for the 1976 Olympic Games in Montreal. However, due to the historical lack of specific threats and failures to reference the levels in subsequent planning documents over the years, there was no consistent terminology being applied by Transport Canada or by the air carriers to define threats or alerts. Sheppard observed that there were "…no standard terms or definitions for a government alert system,"[216] so different agencies and parties were instead applying their own definitions and levels.

The alert levels system imposed three alert conditions: normal, standby, and maximum alert. Some airport security plans, such as the plan at Vancouver International Airport, included these government alert levels.[217] Other security plans and emergency procedures, such as those developed at Pearson, made no mention of any security levels at all.[218] This resulted in inconsistent standards and measures across the country.

Weaknesses in Ability to Respond to a Threat

An internal Transport Canada security debriefing at Pearson in April 1985 indicated a number of serious flaws that created confusion and limited the response to a given threat situation. In particular, there was "…no consistent direction from Headquarters to determine the level of threat and procedures to be put in place."[219] This was demonstrated by inadequate and confusing instructions, and directives that conflicted with the judgment of the on-site personnel.

During the Armenian terrorism threat (discussed in the debriefing), Transport Canada Headquarters was unable to send any classified information about the threat to Pearson, as there was no secure phone or telex system in place.[220] This handicap was already known to Transport Canada, and airports like

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215 Exhibit P-101 CAF0084, p. 1.
216 Exhibit P-101 CAF0084, p. 1.
217 Exhibit P-101 CAF0083, p. 1.
218 Exhibit P-101 CAF0585, pp. 2, 7.
219 Exhibit P-101 CAF0585, p. 4.
220 Exhibit P-101 CAF0585, p. 5.

Pearson were forced to rely on the RCMP's system to disseminate intelligence about threats. The problem was that the RCMP often received this information through their own channels well in advance of Transport Canada or the airports and, worse, the RCMP were actually reluctant to pass on such information.[221] An observation repeated throughout this report is that excessive secrecy can often harm security.

At a meeting of the Vancouver Airport Security Committee, held April 30, 1985, it was noted that, although several bomb threats had recently been received, the reporting procedure, as set out in the emergency procedures manual, had not been followed.[222] The result was that Transport Canada officials at the airports were not advised that the bomb threats had been received. Additionally, there was considerable confusion about the procedures for searching aircraft for explosives, even as more bomb threats were anticipated due to labour unrest.[223]

The inability to coordinate a comprehensive response, distribute vital information, and obtain clear instructions were all serious flaws in the aviation security regime in place in June 1985. The reality is that the threat of bombing through checked baggage was anticipated well before the bombing of Air India Flight 182, yet not acted upon. The evidentiary record is replete with pointed and pressing calls to correct many obvious deficiencies in the plans and procedures designed to protect civil aviation from terrorist attacks. What is notably lacking, however, is evidence that these severe deficiencies were being systematically corrected, before the bombing snapped the parties out of a state of complacency and provided a renewed sense of urgency.

Draft regulations which would have remedied many problems (particularly with regard to enforcement) had been circulating since 1982, but were not put into place until after the bombing. The *Aeronautics Act* itself was amended on June 28, 1985. Previous attempts to amend the Act had been unsuccessful, but, considering the nature and extent of the threat, it is striking that more decisive action was not taken sooner. Undue faith was instead placed in technological measures, such as X-ray and electronic explosive detectors, and on the voluntary compliance of the air carriers with security plans which Transport Canada was not legislatively empowered to approve, monitor, or enforce.

After the bombing, the government was put on the defensive when media reports made it known that it had been warned of the threat of sabotage since at least 1982.[224] Talking points were prepared for the Prime Minister's response, including the claim that the threat of hijacking "in the late 1970s and early 1980s" had been evolving, and that security measures had evolved with them. This was simply not the case. The threat of sabotage or bombing was well understood by Transport Canada since at least 1979, as the evidence shows. Nevertheless, there had been no substantive changes to the aviation security regime since the regulatory and legislative updates of the 1970s.

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221 Exhibit P-101 CAF0585, p. 5.
222 Exhibit P-101 CAF0086, p. 6.
223 Exhibit P-101 CAF0086, p. 6.
224 Exhibit P-101 CAF0613.

2.3.2 Failure to Push Through Responsive Regulations

The *Aeronautics Act*

The *Aeronautics Act* was, and remains, the principal Canadian legal instrument governing national civil aviation. In response to increasingly violent and numerous hijacking attempts around the world, amendments were introduced in 1973 which established aviation security provisions for the first time. The amended Act enabled the Minister of Transport to adopt regulations that would require the operators of aircraft registered in Canada (and, in 1976, foreign aircraft operating at Canadian airports) to conduct searches of passengers, belongings, baggage, goods, and cargo before they would be permitted to board an aircraft.[225]

One of the most important 1973 amendments was the "no search – no fly" principle. Under the amended Act, passengers who refused an authorized search by security officers would not be permitted onboard an aircraft.[226] In addition, their bags would not be permitted aboard an aircraft if they refused a search of their person[227] or their baggage and belongings.[228]

The ICAO and the Chicago Convention

Since 1944, the International Civil Aviation Association (ICAO) has been the supreme law-making body with respect to international civil aviation.[229] Each of the 189 member states is a signatory to the ICAO *Convention on International Civil Aviation*, also known as the *Chicago Convention*. In 1974, the ICAO responded to the hijacking crisis of the late 1960s and early 1970s by adopting Annex 17 to the *Chicago Convention*, *Safeguarding International Civil Aviation Against Acts of Unlawful Interference*.[230] The aim of Annex 17 was to introduce consistent goals and measures to enhance international civil aviation security and prevent acts of terrorism. There are currently 18 Annexes to the *Chicago Convention*, each relating to a specific subject area, such as pilot licences, aircraft operation, air worthiness, meteorology, and so on.[231] The Annexes are intended for and directed to the member states exclusively. The ICAO does not provide aviation security guidance directly to airlines.[232] Instead, it lays down the standards by which member states are to require their airlines to operate.

Annex 17 contains standards and recommendations that specify security objectives for the ICAO member states.[233] Annex 17 standards are mandatory. Signatory states such as Canada are obliged to comply with the international

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225 Exhibit P-157, p. 19.
226 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(3)(a).
227 *Aeronautics Act*, R..S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(5).
228 *Aeronautics Act*, .R.S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(3)(b).
229 Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4215.
230 Exhibit P-151: Annex 17, 1st ed.
231 Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4216.
232 Testimony of Rodney Wallis, vol. 36, May 30, 2007, p. 4276.
233 Testimony of Moses Aleman, vol. 35, May 29, 2007, p. 4216.

standards established by the ICAO in each Annex. If a state was unable or unwilling to comply with one of the ICAO standards under Annex 17, it was required to provide formal notification to the ICAO Council, which would share that notice with the other states. Failing to comply with a standard could result in that state losing access to air services by being blacklisted by other countries or in a loss of insurance coverage.[234]

As noted by experts such as Rodney Wallis, the ICAO standards were designed to ensure that even the smaller and less prosperous contracting states could comply. This minimized the number of states which would have to file a notice with the ICAO that they were not meeting a given standard. Prosperous nations such as Canada were expected to regulate well beyond the minimum standards set by Annex 17. Yves Duguay, the Senior Director of Air Canada Security and Chairman of the International Air Transport Association (IATA) Security Committee, concurred that it was essential for both states and air carriers to surpass the ICAO standards, and for an air carrier to exceed even the requirements of the local jurisdiction in which it was operating.[235]

The ICAO recommendations, on the other hand, were "desirable" measures to which the contracting states "…will endeavour to conform."[236] Contracting states were not strictly obliged to implement the recommended measures, but they were appropriate and desirable goals for the aviation security program for an advanced, prosperous nation like Canada. The first edition of Annex 17 was published in 1974, and contained only a limited number of standards. Key among the first standards was the obligation to designate an authority to be in charge of that state's civil aviation security program.[237] Transport Canada was, and continues to be, Canada's representative at the ICAO, and the authority responsible for Canada's civil aviation security regime under Annex 17. Other early standards from Annex 17 included the requirement to establish an airport security program at each international airport,[238] and the requirement to ensure that any required "supporting security facilities," such as law enforcement, were provided.[239] Annex 17 also obliged states to "…require operators of aircraft … to adopt a security programme and to apply it in proportion to the threat to international civil aviation and its facilities … and shall ensure that such a program is compatible with the prescribed aerodrome security program."[240]

A second edition of Annex 17, published in October 1981 and in force at the time of the Air India bombing, incorporated a number of amendments and new standards. Some recommendations were upgraded to the level of standards, including the requirement that states establish a civil aviation security program

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234 Exhibit P-157, p. 16.
235 Testimony of Yves Duguay, vol. 43, June 14, 2007, pp. 5239-5240.
236 Exhibit P-151: Annex 17, 1st ed., p. 5 : "General Information, 1. Material comprising the Annex proper: a) Standards and Recommended Practices adopted by the Council under the provisions of the Convention").
237 Exhibit P-151: Annex 17, 1st ed., s. 3.2.1.
238 Exhibit P-151: Annex 17, 1st ed., s. 5.1.1).
239 Exhibit P-151: Annex 17, 1st ed., s. 5.1.3).
240 Exhibit P-151: Annex 17, 1st ed., s. 6.1.1).

to protect "…the safety, regularity and efficiency of international civil aviation by providing, through regulations, practices and procedures, safeguards against acts of unlawful interference."[241] As Canada's aviation authority, Transport Canada was charged with this responsibility.

Another important new standard in this edition of Annex 17 was section 4.1.5:

> Contracting states shall take the necessary measures to prevent weapons or any other dangerous devices, the carriage of which is not authorized, from being introduced by any means whatsoever, on board an aircraft engaged in the carriage of passengers.[242]

Building on the more general requirement to prevent weapons and dangerous devices from being placed aboard passenger aircraft, this edition of Annex 17 also recommended more specifically that the contracting states "…should establish the necessary procedures to prevent the unauthorized introduction of explosives or incendiary devices in baggage, cargo, mail and stores to be carried on board aircraft."[243]

In summary, the Annex 17 standards in force in 1985 obliged Canada to implement:

- Measures to prevent weapons and dangerous devices from being taken aboard aircraft (and recommended that Canada adopt procedures designed to prevent the sabotage of aircraft by the detonation of explosives concealed in baggage, cargo, mail and stores);
- A national civil aviation security program to protect civil aviation against acts of unlawful interference;
- An airport security program at each international airport;
- An airport security committee at each airport;
- The provision of "supporting security facilities" to each airport by Transport Canada; and
- The development of air carrier security programs.

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241 Exhibit P-152: Annex 17, 2nd ed., s. 2.1.4.
242 Exhibit P-152: Annex 17, 2nd ed., s. 4.1.5.
243 Exhibit P-152: Annex 17, 2nd ed., s. 4.1.14 .

Canadian Aviation Security Regulations for Air Carriers

Although aviation security had finally become a legislative priority in Canada with the 1973 amendments to the *Aeronautics Act*, the security focus was on inspecting and screening passengers and their cabin baggage. The onus for providing this security, particularly in terms of passenger and baggage screening, fell primarily upon the air carriers themselves. The regulations governing air carrier security were nevertheless quite minimal and featured little government oversight. Principally, both domestic and foreign carriers operating at Canadian airports were merely required to establish, develop and maintain a number of "systems" for accomplishing certain security objectives, such as:

> (a) systems of surveillance of persons, personal belongings, baggage, goods and cargo by persons or by mechanical or electronic devices;
>
> (b) systems of searching persons, personal belongings, baggage, goods and cargo by persons or by mechanical or electronic devices;
>
> (c) at aerodromes where facilities were available, a system that provided for locked, closed or restricted areas that were inaccessible to any person other than a person who had been searched and the personnel of the owner or operator;
>
> (d) at aerodromes where facilities were available, a system that provided for check points at which persons intending to board the aircraft of an owner or operator could be searched;
>
> (e) at aerodromes where facilities were available, a system that provided for locked, closed or restricted areas in which cargo, goods and baggage that had been checked for loading on aircraft were inaccessible to persons other than persons authorized by the owner or operator to have access to those areas;
>
> (f) a system of identification that prevented baggage, goods and cargo from being placed on board the aircraft if it was not authorized to be placed on board by the owner or operator; and
>
> (g) a system of identification of surveillance and search personnel and the personnel of the owner or operator.[244]

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244 *Civil Aviation Security Measures Regulations*. Foreign carriers like Air India were subsequently required to "establish, maintain and carry out" these security regulations under section 3(1) of the *Foreign Aircraft Security Measures Regulations*.

According to Transport Canada's *Civil Aviation Security Manual of Policies, Standards and Recommended Practices*, the regulatory requirements were designed to prevent or deter individuals from carrying weapons, explosives, and other dangerous articles aboard aircraft.[245] In furtherance of the *Act*'s anti-hijacking focus, Transport Canada provided detection devices for passenger screening check points. These devices included walk-through and hand-held metal detectors to frisk passengers, and X-ray machines for examining carry-on baggage.[246] Transport Canada did not provide any equipment for examining checked baggage.

The carriers had very little guidance in developing their security programs. The *Canadian Air Transport Security Authority Act* (*CATSA)* Review Advisory Panel found that these regulatory requirements were not defined, and that the wording of these requirements was vague and open to interpretation.[247] Although the Panel suggested that the ICAO *Security Manual* was available to assist them in developing their security systems,[248] it was, and remains, a restricted document made available only to contracting states. The states themselves are responsible for ensuring implementation of the recommended practices in the *Security Manual* and the international requirements and recommendations passed by the ICAO Council in the Annexes.

In 1973, Transport Canada issued an Aviation Notice that included "…guidance material … provided as assistance to Air Carriers asked to produce a detailed Security program in writing for the approval of the Minister," but these guidelines were limited to a list of topics the plan should address, and were little more than subject headings and restatements of the regulations. The topics to be addressed in air carrier security plans included "…verification of bona fide passengers, handling of passengers refusing inspection and search, inspection of passengers and carry-on baggage," and "…procedures intended to protect against unauthorized access to checked baggage between baggage check-in point and aircraft."[249] No further details or requirements were provided.

The air carriers were required by law to submit their security plans in writing to the Minister of Transport, [250] but the Minister actually had no legal authority or obligation to approve or reject an air carrier security plan on its substantive merits. An acceptable security plan merely needed to describe the carrier's program for carrying out the "systems" of monitoring and surveillance. There was no formal approval or review process set out in the regulations, and even though Transport Canada set a policy of conducting semi-annual inspections of the air carriers' compliance with their security plans,[251] these were not regularly conducted.

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245 Exhibit P-101 CAF0151, p. 13.
246 Exhibit P-165, Tab 10: "A Summary of the National Airport Policing and Security Program."
247 Exhibit P-157, pp. 19-20.
248 Exhibit P-157, p. 20.
249 Exhibit P-165, Tab 8: "Aviation Notice: Air Carrier Security Program," August 10, 1973.
250 Under s. 3 of the *Foreign Aircraft Security Measures Order*, Air India was required to submit "a written description of the security measures it has established, is maintaining and is carrying out or that it intends to establish, maintain and carry out" to the Minister. Domestic air carriers were obliged to submit their written descriptions of security measures by s. 3 of the *Civil Aviation Security Measures Order*.
251 Exhibit P-101 CAF0151, p. 26.

Under this aviation security regime, the standard security measures in place at Canadian airports in 1985 were the metal detection screening of passengers and X-ray scanning of carry-on baggage.[252] Passengers arriving at major airports in Canada were screened, along with their carry-on baggage, by private security officers before they could enter the "sterile" areas of the airport, which included the departure lounges and aircraft gates.

Despite the recognition of the threat to civil aviation posed by sabotage, no legislative mandate existed in June 1985 to subject checked baggage or cargo to any security screening prior to being loaded aboard a passenger aircraft. Checked baggage was moved to a secure holding area within the airport by authorized employees prior to being loaded aboard an aircraft, but unless an airline voluntarily decided that its security plan would include searches of checked baggage (as Air India did), the bags would be loaded without any screening at all.

The Attorney General of Canada emphasized in its final submissions that Canada's civil aviation security program "met or exceeded" the international requirements in place in 1985.[253] This was the opinion of the Canadian Aviation Safety Board in its submissions to the Kirpal Inquiry.[254] Jean Barrette, the Director of Security Operations for Transport Canada, also testified that Canada met or exceeded the standards set by ICAO Annex 17.[255] The Attorney General of Canada conceded that complying with these standards was not enough to prevent the bombing of Air India and that the legacy of the bombing was "…change in Canada's standards and practices and change in standards and practices internationally."[256]

Failure to Respond to the Threat of Sabotage

It is the Commission's view that the Canadian government's response to the threat of sabotage to Air India flights was inadequate. In fact, Canada's government had recognized long before the bombing that although the aviation security regime was consistent with international standards, it was nevertheless outdated, simplistic, and lacking in meaningful measures to respond to a well-understood threat.

It is particularly important to ensure that the system on the ground not only works effectively but is capable of quickly responding to changing threats. Both international and domestic legislative standards will generally lag behind intelligence and tend to focus on threats of the past. Nevertheless, as outlined earlier, Canada had recognized the potential threat of sabotage of aircraft, including the use of explosives concealed in checked baggage, as early as 1979. It was also well understood that in the face of this looming threat, Canada's

252 Exhibit P-167, p. 18.
253 Final Submissions of the Attorney General of Canada, Vol. II, para. 43..
254 Exhibit P-167, p. 55.
255 Testimony of Jean Barrette, vol. 37, May 31, 2007, p. 4501.
256 Final Submissions of the Attorney General of Canada, Vol. II, para. 45.

aviation security regime, developed in the 1970s to address the rash of political hijackings of the time, had become grossly inadequate.

The ICAO Annex 17 standards and recommendations in place in 1985 tended to focus on hijacking rather than sabotage. The Commission heard evidence, however, that the ICAO expressed growing concern over the dangers of sabotage and that, by the spring of 1985, it was pushing for measures such as passenger-baggage reconciliation in response.[257] The ICAO had also recommended that its member states develop procedures to prevent explosives from being loaded aboard aircraft through baggage, cargo, mail, and stores. Given Canada's recognition of the threat of terrorist acts of sabotage, there was good reason to move quickly and exceed the ICAO's standards by implementing a more responsive security regime.

Proposed Amendments to the *Aeronautics Act*

As the *CATSA Act* Review Panel noted, a number of bills to amend the *Aeronautics Act* had been introduced in Parliament during the 1970s, but all had died on the order paper. No further security amendments would be passed until after the bombing of Air India Flight 182. At the time of the bombing, however, a bill was before Parliament which would have significantly amended the Act and given the Minister of Transport broader powers to regulate with respect to aviation security. The bill, which stemmed from recommendations made by an Aeronautics Task Force in 1978 and a Commission of Inquiry on Aviation Safety in 1979, would have made some security practices mandatory and brought Canadian legislation in line with that of other countries.[258]

Among the most important innovations contained in the bill was a provision to impose fines on corporations convicted of violating a provision of the Act, a regulation or order respecting aviation security.[259] This would have allowed for enforcement measures to be taken against air carriers that did not comply with Canada's aviation security requirements or their own security plans.

The bill, which ironically became law just days after the bombing of Air India Flight 182, had been in the works for some time. The amendments were, in fact, the culmination of a multi-year modernization process, and not directly in response to the bombing.[260] Indeed, a Transport Canada planning document looking ahead to operations in 1985 and 1986 expected that the legislative amendments would be in place sometime in 1984.[261]

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257 Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4254-4255. Wallis gave a presentation to the ICAO in April 1985 emphasizing that: "Sabotage has to remain in the forefront of our thoughts.… Aircraft sabotage poses a greater menace as the loss of the UTA DC8 in N'Djamena last year demonstrates. Use of sophisticated timing and other devices by terrorists or other criminals capable of evading discovery during screening processes will demand responsive action by aviation security specialists and those involved in high-tech detection device development.": See Exhibit P-149, p. 8.

258 Exhibit P-157, p. 20.

259 *Aeronautics Act*, R.S.C. 1985, c. A-2, s. 7.3(5). A corporation convicted of violating a provision of the Act, a regulation or an order respecting aviation security was liable to a fine of not more than $25,000.

260 Exhibit P-263, p. 66.

261 Exhibit P-101 CAF0593, p. 10.

1982 Draft Air Carrier Security and Airport Security Regulations

In anticipation of the amendments to the Act, new Air Carrier Security Regulations and Airport Security Regulations were drafted in 1982. The draft regulations were circulated by Transport Canada to the airports and the air carriers for review and comment but unfortunately remained in draft form for the next three years. Even when the *Aeronautics Act* gained Royal Assent on June 28, 1985, the draft regulations were not put into force. Instead, they remained in draft form, leaving Canada's aviation security in precisely the same anemic regulatory position it had been in prior to the bombing. Transport Canada decided to wait until the publication of the Seaborn Report and its recommendations before further work would be done on the draft regulations. This inaction led to various enforcement failures.[262]

The draft Air Carrier Security Regulations were detailed, and incorporated a number of ICAO standards and recommendations. They applied to both domestic and foreign air carriers operating in Canada, and provided far more guidance to the air carriers in designing and maintaining effective security plans. In fact, the draft regulations specified that air carrier security plans required the review and approval of the Minister of Transport, who would also be able to direct a carrier to modify its plan if it did not sufficiently comply with the security regulations.[263] Had the draft regulations been implemented before the bombing of Air India Flight 182, they would have profoundly improved the weak and inadequate security regulations in place at the time.

Among the most significant changes, the regulations addressed checked baggage security for the first time. For example, section 400(c)(1) stated:

> Air carriers shall prevent the unauthorized carriage on board aircraft of weapons, explosives or incendiary devices aboard checked baggage.[264]

Section 400(c)(2) added a number of minimum requirements for checked baggage. These included accepting checked baggage only from ticketed passengers, providing for personal identification of all pieces of checked baggage, and preventing unauthorized baggage from being placed aboard aircraft.[265] The regulations also included special provisions for either high threat or specific threat situations,[266] and suggested ways in which air carriers could screen checked baggage.[267] In particular, section 400(c)(2)(iv) of the draft regulations stated that carriers should:

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262 See Exhibit P-101 CAF0607, pp. 2-3.
263 Exhibit P-101 CAF0565, pp. 75-76.
264 Exhibit P-101 CAF0565, p. 69.
265 Exhibit P-101 CAF0565, p. 70.
266 See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime for a discussion of the term "specific threat" as it was used in Canada at the time.
267 Exhibit P-157, pp. 57-58.

> …take additional security measures during a specific or high threat situation such as matching all checked baggage to the passenger prior to departure, x-raying or providing a manual search of all baggage using an explosive detection device or delaying transportation of baggage.[268]

Other important new measures contained within the draft Air Carrier Security Regulations included:

- Specific screening instructions concerning the inspection of passengers and carry-on baggage, including the regulatory requirement that law enforcement be notified whenever any weapon, explosive or incendiary device was found,

- An explicit requirement that private security guards inspecting checked baggage and cargo complete the training program developed by Transport Canada, or a program the Minister deemed to be equivalent;

- Increased screening measures during a high threat or specific threat situation, such as hand searching all items, using an explosives detector, or refusing personal possessions to accompany passengers;

- The requirement that air carriers screening cargo must prevent or deter unauthorized carriage aboard aircraft of weapons, explosives or incendiary devices within cargo. This included special measures during periods of high or specific threat such as 24-hour delays in shipping cargo, or searching all cargo by hand or electronic means;

- A requirement that air carriers include specific details in their security plans, such as a listing of the designated security officers providing services for the air carrier and a description of their training, as well as the procedures and guidelines used by the carrier for screening persons, personal belongings, carry-on baggage, checked baggage and cargo;

- Authority for the Minister of Transport to independently request changes to air carrier security plans where such changes were deemed necessary to civil aviation security; and

- A provision that facilitated the monitoring of air carrier security programs by requiring carriers to provide information concerning civil aviation security to the Minister as required.[269]

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268 Exhibit P-101 CAF0565, p. 71.
269 Exhibit P-101 CAF0565, pp. 66-76.

Beginning in 1982, the Airport Security Regulations were also circulated in draft form. Prior to the bombing of Air India Flight 182, Canada did not employ regulations to control security at airports, as airport security could be governed on an operational basis by Transport Canada which owned and operated Canada's major airports. The draft Airport Security Regulations came about as a result of the problems that ensued under this system: first, that the Airports Directorate for Transport Canada regulated itself and weaknesses were not always remedied; and second, that the airports that were not operated by Transport Canada only complied voluntarily with the airport security measures of the time.[270] The draft regulations included a schedule which designated the airports that would be bound by the regulations.

Many of the provisions incorporated in the draft Airport Security Regulations were already in practice at Canada's major airports in 1985. The draft regulations would merely have codified these policies and operational practices into binding regulations for all designated airports and placed them under the control of the Minister of Transport.

Among these requirements was the obligation to create airport security committees, as were already in place at airports such as Pearson, Mirabel, and Vancouver, and conduct regular meetings.[271] The committees were to be composed of members of law enforcement, the air carriers, the airport operator, and representatives of the air navigation services of the airport. The airport security committees would be responsible for developing, implementing and reviewing airport security measures, and would be required to meet at least four times a year.[272] The regulations would also have required airports to take various measures to prevent unauthorized access to restricted airport areas, including signs, fences, barriers, and access control systems such as coded door locks and security passes.

The draft regulations also obliged airport operators to:

- Adopt and maintain procedures and provide and maintain facilities for use in security situations such as bomb threats, hijackings, and bomb disposal actions;[273]

- Submit detailed airport security programs in writing to the Minister of Transport, who would have the power to accept the plans or advise that modifications would be necessary in order to comply with the security regulations;[274] (As with the draft Air Carrier Security Regulations, the Minister also had the ability to request changes to the airport security measures where necessary);

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270 Exhibit P-101 CAF0774, p. 21.
271 Exhibit P-101 CAF0565, p. 47.
272 Exhibit P-101 CAF0565, p. 47.
273 Exhibit P-101 CAF0565, p. 50.
274 Exhibit P-101 CAF0565, p. 55.

- Provide and maintain security checkpoints at which passengers and their belongings could be screened and provide and maintain security equipment such as metal detectors and X-ray scanners;[275]

- Provide covert alert systems such as silent alarms at the security screening checkpoints in order to summon police when their assistance is required;

- Establish sterile areas with restricted access in order to isolate screened passengers prior to boarding aircraft;[276]

- Designate and maintain areas of the airport where checked baggage and cargo could be received for transport by the air carriers and their authorized representatives, and provide restricted areas where this baggage and cargo could be held securely prior to loading aboard aircraft;[277]

- Arrange for a law enforcement response capacity at the airport; and

- Keep a detailed record of all law enforcement actions taken at the airport for at least 90 days.[278]

In light of the frequent security breaches that plagued many airports, a number of remedial security provisions were also included in the draft Airport Security Regulations.[279] The regulations would have authorized airport operators to close, lock or control doors and other access points that were left open or unsupervised, and directed airport tenants to take all practicable steps to prevent unauthorized access to the restricted areas of the airports. The draft regulations also called on airport operators and tenants to keep records of all keys in their possession and record the names of the individuals who were issued airport keys. Anyone to whom keys had been issued would be required to surrender those keys on demand, and would be prohibited from lending those keys to any other person. The draft regulations also made it a duty to close, secure and lock all unmanned doors, gates and other access points when not in use. Finally, the draft regulations prohibited anyone from entering or remaining in a restricted area without possessing and visibly displaying their identification card, unless authorized by the airport operator, and all passes had to be displayed or surrendered upon demand.

Lengthy Delay in Approving Regulations

The security enhancements laid out in these draft regulations were obviously intended to address a number of known security weaknesses, particularly

275 Exhibit P-101 CAF0565, p. 51.
276 Exhibit P-101 CAF0565, p. 51.
277 Exhibit P-101 CAF0565, p. 51.
278 Exhibit P-101 CAF0565, p. 58.
279 Exhibit P-101 CAF0565, p. 59.

the threat of sabotage and the vulnerability of checked baggage and cargo. Unfortunately, as the years passed, the draft regulations were no closer to being put into force. The *CATSA Act* Review Advisory Panel made the same observation, noting that, "Clearly, at the time of the tragedy, Transport Canada had already identified gaps and weaknesses in aviation security and was in the process of making legislative and regulatory changes – a process that was taking considerable time."[280]

Even within Transport Canada, signs of frustration at the failure to amend the Act and implement the new Air Carrier and Airport Security Regulations were apparent. As noted earlier, Paul Sheppard, the Director of Civil Aviation Security at Transport Canada, expressed the sense of urgency in a memorandum written in March 1985. He put it bluntly, writing: "The New Air Carrier and Airport Security Regulations are required and should proceed with or without the new Act."[281] The statement makes it clear that Transport Canada officials understood that the regulations in place were not only insufficient, but also that new ones were urgently needed.

Professor Reg Whitaker, a member of the *CATSA Act* Review Advisory Panel, testified that the amendments were tragically overdue:

> It is a great irony that the amendments to the *Aeronautics Act* were brought – into being just in the immediate aftermath of Air India, but that was not in fact because they put it together as a result of that. It had been in the pipeline for some time, along with all the regulations that followed from the changes to the *Aeronautics Act* and it's quite clear that if those new regulations had been in effect that things might have turned out very differently, but they were not and it's unfortunate that it simply took so long to actually reach that point. The Air India tragedy just happened just before.[282]

While it is apparent that the draft regulations were intended to accompany the amended *Aeronautics Act* when it was enacted, the bulk of the new aviation security requirements could have been implemented under the existing statute. The Act, as it read in June 1985, already authorized regulations governing the observation, inspection and search of persons, personal belongings, baggage, goods and cargo,[283] airport security measures,[284] and the designation of security officers and their training requirements.[285] The amended Act that came into force on June 28, 1985 greatly expanded the Minister's regulatory authority by requiring carriers and airports to adopt "…such security measures as may

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280 Exhibit P-157, p. 21.
281 Exhibit P-101 CAF0083, p. 2.
282 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4314.
283 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing ss. 5.1(1), 5.1(1.1), 5.1(1.2), 5.1(2).
284 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(2).
285 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(10).

be prescribed by the regulations or such security measures necessary for those purposes as may be approved by the Minister in accordance with the regulations."[286] Nevertheless, given the longstanding recognition of the existing aviation security regime's inadequacy, and the impatience expressed at the fact that the amendments were overdue, there is no reason that the aviation security regulations should not have been pushed through on their own.

The security measures respecting air carrier security plans and pre-board security screening, including provisions regarding the screening of checked baggage in high threat situations, could have been implemented ahead of any statutory amendments. The security regulations respecting cargo holds and inspections could also have been implemented at any time, as could the regulations setting out security guard qualification and training requirements. While no regulatory enforcement would have been possible against a carrier that did not comply with the security measures until the *Act* was amended, the evidence demonstrates that, on the whole, air carriers made meaningful efforts to comply with and to exceed the regulations already in place. Transport Canada had made a policy of supplying and maintaining the security equipment and airport facilities needed to comply with its screening requirements, and the regulations would have given the air carriers much-needed guidance as to their obligations.

Transport Canada and the Government of Canada failed to push through more responsive regulations designed to ensure that the level of security at Canada's airports was appropriate for the threat of organized terrorism. At the heart of this is the failure to amend the Act quickly in recognition of the increasing threat of sabotage as the main threat to civil aviation in Canada and internationally.

Would Implementation of the Draft Regulations Have Prevented the Bombing?

It is impossible to say with certainty that the draft regulations would have prevented the bombing of Air India Flight 182 had they been in place in June 1985. The *CATSA Act* Review Advisory Panel concluded that Air India met the requirements of the draft regulations for checked baggage in high threat situations, since Air India already examined checked baggage by X-ray scanner and by explosives detection equipment.[287] The Panel also concluded that draft regulations "…left considerable room for air carriers to use measures other than passenger-baggage reconciliation in a 'specific or high threat' situation."[288] Nevertheless, a number of considerations point to the conclusion that the draft regulations were greatly needed well before the bombing and likely could have thwarted it.

There is no dispute that Air India was under a high threat in June 1985. Had the regulations been in force, section 400(c)(2)(iv) would have directed Air India

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286 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing ss. 4.7(2)(a), 4.7(2)(b), 4.7(2)(c), 4.7(4).
287 Exhibit P-157, p. 21.
288 Exhibit P-157, p. 58.

to take additional security measures, including matching checked baggage to passengers prior to departure, X-raying or manually searching all checked baggage, or using an explosives detection device. While it is true that Air India was already X-raying checked baggage and using the PD4 explosives detection device in the event the checked baggage X-ray scanner was unavailable, the regulatory requirements would have placed Transport Canada in a much different position with regard to these measures and their implementation by air carriers such as Air India.

First, as the owner and operator of Canada's major airports, Transport Canada provided and maintained the X-ray scanners and metal detectors employed by the air carriers in conducting passenger and baggage screening.[289] Had the draft regulations been in place, it is very likely that Transport Canada would have undertaken to provide additional security equipment, such as checked baggage X-ray scanners, to be used as needed under the regulations. By November 1984 – seven months before the bombing – Transport Canada had been seriously considering the purchase of large, mobile checked baggage X-ray units for use as needed.[290] By April 1985, Transport Canada had concluded that it was "evident" that checked baggage X-ray scanners were required at Pearson.[291] Transport Canada would have been responsible for the maintenance of these machines and, presumably, would have taken a less casual attitude towards their movement and calibration than Air India had. Alternatively, Transport Canada might have prescribed basic standards for screening equipment, as it did in 1986.[292] Even if Air India had continued to use its own X-ray scanners, the failure of its X-ray machine at Pearson on June 22, 1985 could have been remedied by the provision of a Transport Canada replacement.

Second, under the proposed Air Carrier Security Regulations, the Burns personnel operating the checked baggage X-ray machine would have been required to be trained and qualified security officers. The evidence presented showed that many of the Burns personnel were untrained and inexperienced; indeed, one guard candidly stated to investigators: "I don't believe I could tell what a bomb looked like if I saw one."[293] Transport Canada designed the training program for security officers conducting passenger screening, and would have been in the position of creating appropriate training programs for security officers screening checked baggage. Had these personnel been trained and qualified officers, they would, in all likelihood, have been more attentive, professional, and capable.

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289 Exhibit P-165, Tab 10, p. 3. Under the National Airport Policing and Security Program, Transport Canada would "…provide detection devices and facilities for passenger security inspection check-points. Provision will also be made for law enforcement response to emergencies at the passenger screening points."

290 Exhibit P-101 CAF0581, p. 2.

291 Exhibit P-101 CAF0585, p. 5.

292 Exhibit P-157, p. 79: "In February 1986, Transport Canada issued the first edition of approved security procedures that were applicable to Canadian and foreign air carriers. They addressed the security of passengers, personal belongings, carry-on baggage, checked baggage, cargo, security equipment and security officers.… As of February 1986, security screening equipment used by the air carries had to meet a basic standard prescribed by Transport Canada."

293 Exhibit P-101 CAF0157.

Additionally, although the draft security measures refer to the use of an explosives detection device to examine checked baggage in a high threat situation, the PD4 device used by Air India had failed two tests conducted by the RCMP in January 1985. The failures of the PD4, which are explored in the next chapter, made it an unacceptable device. Dale Mattson, Transport Canada's Manager of Safety and Security at Pearson Airport, testified that he took no further steps to prevent Air India from using the PD4 to inspect checked baggage because such measures exceeded the basic aviation security measures required by Transport Canada at the time:

> Examining, for example, the checked baggage using the X-ray and the PD4 sniffer was a requirement that Air India had determined they needed to undertake. We did not feel that it was our role – to challenge their requirement there or to monitor their requirement there.[294]

Entirely aside from whether entrusting the safety of Air India's passengers to a device which had proven inadequate to the purpose for which it was being used was an appropriate response to such a tremendous security flaw, it remains that no one took any action after January 1985 concerning the PD4 device. However, if it had had the regulatory authority to monitor Air India's security measures and to request changes to its security plan when a gap was identified, this posture would have changed dramatically. Transport Canada could have directed Air India not to use the PD4 explosives detection device when examining checked baggage and directed it to use other methods instead, such as passenger-baggage reconciliation or X-ray.

Moreover, Transport Canada conducted a study in 1983 concerning baggage, mail and cargo security which made extensive reference to the draft regulations in formulating its security recommendations.[295] For a high threat level, the report recommended that:

- All checked baggage should be searched by hand or inspected by X-ray where equipment was available;
- All bags should be sealed at time of acceptance or search;
- Crew baggage, company mail and flight document bags should be inspected;
- Hand searches or X-ray searches should be conducted of all interlined bags; alternatively, the reconciliation of bags to passenger name, flight number and date should be considered; and

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294 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3200.
295 Exhibit P-101 CAF0565.

- Unaccompanied baggage and expedite baggage should be refused unless searched, sealed, banded and held for a minimum of 24 hours before carriage.[296]

It is unknown whether Transport Canada decided to incorporate any of these recommendations into the draft Air Carrier Security Regulations but it is notable that these measures were even more specific in recognizing the weaknesses of baggage and cargo security. It is also unclear whether the other air carriers would have been made aware of the threat to Air India, a circumstance which might have prompted airlines such as CP Air (which interlined the bag left by "M. Singh" to Toronto for loading aboard the *Kanishka*) to take greater care to search the bag or reconcile it to an actual passenger prior to loading it aboard its flight. In any event, had the regulations been pushed through with such amendments, there is no doubt that the aviation security regime in place in June 1985 would have been far more robust in a high threat situation.

Other important factors in the draft regulations include the direction to the air carriers to screen checked baggage to prevent "…unauthorized baggage from being placed aboard aircraft."[297] The additional requirement in high threat situations to consider options such as matching all checked baggage to passengers prior to departure is much stronger than the direction contained in the regulations that were in force. The existing regulations merely required air carriers to develop "…a system of identification that prevents baggage … from being placed on board aircraft if it is not authorized to be placed on board by the owner or operator."[298] Air India complied with the existing regulation via section 4.1.1 of its security plan, which stated that "…unaccompanied baggage must be associated with a *bona fide* passenger and his documents before it is boarded."[299] Air India did so by comparing the number of boarding passes issued against the passengers who boarded, and off-loaded the "unaccompanied baggage" of those who did not board the flight.

T.N. Kumar of Air India testified that the bag checked aboard CP Air Flight 060 by "M. Singh" and interlined directly to Air India Flight 181 in Toronto was an "unauthorized bag" because Air India had no information concerning this passenger and had never confirmed a ticket or issued a boarding pass for him. The bag, which infiltrated the system because it carried an interline tag from CP Air to Air India's final destination in Delhi, was screened by Burns International Security personnel working on behalf of Air India, and loaded aboard the aircraft by the Air Canada ground handling crew, but Air India never knew it was aboard. Actual passenger-baggage reconciliation, in which a bag is matched to a passenger before it is placed aboard the aircraft, was not widely in practice in 1985. This practice was, however, recommended by experts such as Rodney Wallis at the time, and was later emphasized as the "…cornerstone of defence against the baggage bomber" by the president of the ICAO.[300]

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296 Exhibit P-101 CAF0565, p. 22.
297 Exhibit P-101 CAF0565, p. 70.
298 *Civil Aviation Security Measures Regulations*, s. 3(1)(f) and *Foreign Aircraft Security Measures Regulations*, s. 3(1)(f).
299 Exhibit P-284, Tab 68, p. 16.
300 Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4236-4237, 4255-4256.

The above discussion may help to understand the wide gaps in aviation security in 1985, and the extent to which the legislation had become outdated. The more robust security requirements within the draft regulations might well have made a difference had they been in force. The Commission can only speculate that, if the statutory amendments and the draft regulations had been in place in June 1985, the bombing could have been prevented.

Weaknesses Continue after the Bombing

Even after the Air India disaster, the weaknesses in Canada's aviation security laws continued to hinder efforts to enhance civil aviation security. Immediately following the bombing, Transport Canada issued a directive imposing strict emergency security measures upon all flights departing Canadian airports to Europe and Asia.[301] All checked baggage was to be physically inspected or X-rayed, all cargo was to be held for 24 hours except for perishables sent by known shippers, and all passengers and carry-on baggage were to be fully screened.

One airline decided not to comply with these measures. The minutes of a meeting of the Airport Security Committee at Mirabel held in October 1985 revealed that Lufthansa Air was refusing to conduct searches of checked baggage.[302] The airport manager refused to allow the aircraft to take off. Transport Canada examined the question of whether any enforcement actions could be taken against Lufthansa, but concluded that no action was possible because the emergency measures had no legal effect. They were not part of a regulation or an order made under the authority of the Act, although the Act itself had been amended by this point to allow for fines against corporations convicted of such breaches. Had the security regulations been pushed through prior to, or with, the June amendments to the Act, Transport Canada would have been in a position to exert far more authority over errant airlines.

The enforcement investigations following the bombing of Air India Flight 182 resulted in similar conclusions. CP Air had failed to follow its own security plan when it interlined the bag belonging to "M. Singh" past Toronto and directly to Air India's destination at Delhi, despite the fact that he did not have a reservation for that flight.[303] Nevertheless, Transport Canada had no choice but to conclude that:

> Although C.P. Air violated its own security program, as did Air India, neither carrier is subject to enforcement action because the applicable security regulations did not require Ministerial approval of the Air Carrier's Security programs. In effect, since their promulgation in the mid-1970s, the Security Regulations created a security system based on the Air Carrier's voluntary compliance with its own standards.[304]

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301 Exhibit P-101 CAF0594.
302 Exhibit P-101 CAF0608, p. 5.
303 Exhibit P-101 CAF0554, p. 3.
304 Exhibit P-101 CAF0554, p. 3.

It was recommended, as a consequence, that all air carrier security plans should require the express approval of the Minister, and that compliance with the plans be mandatory, but it was noted that this step would require regulatory amendments.[305] The regulations would not be updated until December 1985, owing to delays resulting from the consultation process and the decision to await receipt of the Seaborn Report recommendations.

Conclusion

By neglecting to update the regulations before the bombing, and delaying these amendments for months after it had occurred, Transport Canada failed to take timely steps to ensure that the appropriate aviation security measures were in force. Transport Canada had no meaningful enforcement mechanism to hold air carriers responsible for the security breaches that contributed to the disaster and the breaches that followed.

Even best practices and legislated standards will eventually become inadequate because the nature of the threat will constantly change. The advent of suicide bombers who could not be detected by otherwise highly effective measures such as baggage reconciliation bears out this important point. What is required for the future is a supple system that is informed by intelligence and also prepared to go beyond minimum existing standards, which lag behind current threat assessments and suffice merely to "fight the last war".

2.3.3 Over-Reliance on Technology

> *Good security requires an amalgam of ideas – an amalgam of approaches if you're going to be truly effective. There is no one way to stop the terrorist.*
>
> - Rodney Wallis, May 29, 2007.[306]

Introduction

Due to the threat posed by hijacking and sabotage to its flights, Air India instituted additional security measures, designed to prevent weapons or explosives from being brought aboard its aircraft. In 1985, Air India's security plan required the use of X-ray scanners and PD4 electronic explosives detection devices to inspect checked baggage for concealed explosives.[307] In doing so, however, Air India unduly relied on inadequate technological tools to protect its passengers, rather than using proven methods that had been highly effective in the past, such as passenger-baggage reconciliation.

Air India began operating a scheduled commercial air service between Canada and India in 1982. From October 1982 until the end of 1984, Air India's

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305 Exhibit P-101 CAF0554, p. 3.
306 Testimony of Rodney Wallis, vol. 35, May 29, 2007, p. 4258.
307 Exhibit P-101 CAF0119.

operations in Canada were limited to a weekly flight to Delhi from Mirabel. Prior to commencing operations, Air India filed a security plan with the Minister of Transport.[308] Pending some very minor revisions, Air India's standard security measures complied with Canada's regulatory requirements of the time, and included the requirement that all passengers and their carry-on baggage be security screened prior to boarding an aircraft.[309] The screening was accomplished with the assistance of X-ray scanners, as well as with walk-through and hand-held metal detectors, which were purchased, installed and maintained by Transport Canada. Burns International Security personnel were contracted to search passengers and their baggage using this equipment at the passenger screening checkpoints at major airports such as Mirabel and Pearson.

Airport Security Technology in 1985

The passenger screening process at a major Canadian airport in June 1985 was not dissimilar to what the travelling public experiences today, although the equipment used was comparatively primitive. A passenger at a security checkpoint would be directed to walk through a metal detector archway while his or her baggage was examined by a security officer using an X-ray scanner.[310] If the metal detector sounded an alert, a security officer would scan the passenger with a hand-held metal detector unit to ascertain the location of the metal object and to identify it. The carry-on baggage, meanwhile, proceeded down a conveyer belt through the X-ray scanner, typically a Linescan System One fluoroscope, which displayed a black and white image of the bag's contents on a small monitor.

Such equipment works by using an X-ray source to send a beam of X-rays. Depending on the density of the object, X-rays will either pass through the object or be absorbed to a varying extent. X-ray detectors receive the X-rays that have passed through the item and produce an image on a monitor based on the varying penetration of the X-rays. Metal items such as a gun or knife would appear as opaque, dark shapes, but given the resolution of the image and the overlapping objects within a typical bag, the images often required careful attention and some interpretation.[311] The *CATSA Act* Review Panel noted that:

> …for both systems, detection was dependent upon the mass of the object and the skill of the operator. The X-ray equipment would not have been able to identify most explosives, but a trained and skilled operator may have been

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308 Exhibit P-284, Tab 68. Air India wrote and filed a security plan with the Minister of Transport in December 1982 following a written request from Paul Sheppard, Director of Civil Aviation Security. Air India did so voluntarily, as it was not yet named in the schedule to the *Foreign Aircraft Security Measures Regulations* and was thus not an "owner or operator" of a foreign aircraft within the meaning of the Regulations. See Exhibit P-101 CAF0778.

309 Exhibit P-284, Tab 68, pp. 5-6.

310 Exhibit P-157, p. 24.

311 Examples of X-ray images of carry-on baggage items can be found at p. 7 of Exhibit P-101 CAF0806, produced during an RCMP assessment of the effectiveness of different X-ray fluoroscopes at Ottawa International Airport in 1985.

> able to detect metallic wiring and timing hardware associated with a detonation device. This X-ray equipment was very different from the type in use today, which can detect different materials, is far more sophisticated, and can produce colour and enhanced images, as well as greater image resolution.[312]

The detection equipment used for passenger and baggage screening enabled relatively quick and non-intrusive searches, saving time and money. It also had the value of being a highly visible security measure, deterring those who might attempt to bring weapons and other dangerous articles aboard an aircraft, while reassuring the travelling public. However, this equipment was only as effective as the individuals operating it, and there are many examples in evidence of poorly trained and unmotivated security officers conducting rushed, improper scans and failing to take appropriate action when a suspicious result was obtained. Nevertheless, the travelling public widely accepted the security screening process, even in its early days, and pre-board screening was credited with virtually eliminating hijacking attempts in Canada.[313]

Growing Threats to Air India

Air India's initial flights in Canada proceeded without incident but, as political tensions in India escalated, so too did the threat to Air India. Civil aviation is a singularly tempting target for terror, and, as a state-owned airline, Air India was closely connected to the Government of India in a time of internecine fury. The threats increased in frequency and intensity as extremists fomented violent sentiments in Sikh communities in Canada and around the world. In February 1983, for example, Air India advised the RCMP of a general threat of hijacking or sabotage to its flights, followed by a further threat report, in October 1983, that Sikh extremists were threatening to hijack an Air India aircraft.[314] Air India reported another hijacking threat to the RCMP on April 7, 1984.

On June 5, 1984, the threat erupted. Political turmoil in the province of Punjab had culminated in a tense standoff between Sikh militants and the Government of India. Seeking to eliminate the militants, the Indian army assaulted the Golden Temple in Amritsar, regarded by many Sikhs as their holiest shrine. Hundreds of civilians were killed in the process. Sikhs all over the world were outraged by the violence of Operation Blue Star, as it was known, and the attack incited violent rhetoric and waves of bloody retaliation.

On June 12, 1984, Air India reported another hijacking threat. The RCMP at Mirabel instituted its highest security measures for Air India for that month as a consequence. On June 15, 1984, a caller to Air India's sales office in Toronto reported that the June 16th flight would be bombed. As noted below, Air India

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312 Exhibit P-157, p. 25.

313 Exhibit P-101 CAF0774, p. 9.

314 Exhibit P-101 CAA0234, p. 1. The threat was considered serious enough that the RCMP raised the security level for Air India at Mirabel to level three, based on its threat-response grid.

responded by implementing a number of effective "low-tech" security measures to respond to the threat in this instance. Another plan to bomb an Air India aircraft in flight was reported on June 30, 1984. Air India reported at least seven more threats of bombing and hijacking to the RCMP before the end of 1984.[315]

By the summer of 1984, Air India was concerned enough by the threat of sabotage that it proposed to acquire and install its own X-ray scanner for the purpose of screening checked baggage before loading it onto its flights at Mirabel.[316] Telexes sent by Air India's head office in Bombay earlier in the year had directed that its stations around the world use X-ray scanners and explosives detecting devices to examine checked baggage to respond to sabotage threats.[317] Ashwani Sarwal, Assistant Airport Manager for Air India, contacted Transport Canada to discuss the prospect, and Transport Canada approved the idea. On August 8, 1984, Sarwal wrote to confirm that Air India would be going ahead with its plan to purchase an X-ray scanner as soon as possible, and enclosed a brochure for Transport Canada's review. He asked that Transport Canada advise him if it required any further details regarding Air India's proposal to put the machine into use by September 1st. Air India leased the device and put it into service at Mirabel that fall.

In light of the growing and persistent threat, Air India modified its security plan for operations in Canada to include X-raying checked baggage as a standard measure.[318] Accordingly, when Air India planned to expand its operations to include flights at Toronto's Pearson airport commencing in January 1985, it also decided to acquire an X-ray scanner to examine checked baggage.[319] Technology allowed for faster and more efficient responses to threats. As noted in Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde, Air India was very concerned about the expenses caused by security delays or inefficient operations.[320]

On January 8, 1985, Air India met with Transport Canada and RCMP personnel to discuss the application of Air India's security program at Pearson.[321] As at Mirabel, Air India would be relying on security officers provided by Burns International Security to conduct pre-board screening of passengers and their carry-on baggage, using metal detectors and X-ray equipment, as well as searching checked baggage by X-ray. All checked baggage would be screened by X-ray prior to being loaded into containers and placed aboard the aircraft.

Air India was concerned about the number of threats that would be received at Pearson. Mahendra Saxena, Air India's senior security officer based out of JFK International Airport in New York, indicated that, due to Toronto's larger

315 Exhibit P-101 CAA0234, pp. 2-4.
316 Exhibit P-101 CAF0645.
317 Exhibit P-101 CAF0575, p. 2.
318 Exhibit P-101 CAA0119, p. 1.
319 Exhibit P-101 CAA0118, p. 2.
320 See Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.
321 Exhibit P-101 CAA0118.

Sikh population, he expected more security problems in Toronto than were currently being experienced at JFK International Airport, where Air India managed three threat situations a day. Because of the threat situation, Air India also requested that an RCMP explosives detecting dog be called in to inspect the checked baggage for each flight. Transport Canada refused to provide this service, stating that the dog would only be called where suspicious articles were found.[322] Furthermore, Transport Canada's position was that any additional police assistance would only be provided at a cost to Air India.

Air India leased a Linescan System Two unit for checked baggage inspection, but the device could not be delivered and installed in time for the first flight out of Pearson on January 19, 1985. In its place, Air India's security measures called for the use of the Graseby Dynamics PD4C explosives vapour and trace detector (the "PD4") to inspect checked baggage,[323] and, accordingly, Saxena decided that the device would be used exclusively in the absence of the X-ray unit.[324] The X-ray machine was installed and became operational on February 2, 1985.[325] Once the X-ray machine was installed, Burns employees were instructed to use the PD4 in the event that anything suspicious appeared on the X-ray monitor.

A Flawed Device: The PD4

The PD4 explosives vapour detector was a hand-held device that appeared on the market in 1982. It was designed to detect "…explosive substances containing nitrated organic molecules," a group including nitroglycerine and TNT.[326] When activated, the PD4 drew in and tested air samples for the presence of explosive materials. It made a slow ticking noise while in normal operation. If explosives were detected by the "sniffer" device, it alerted the operator with a light and a high-pitched tone that increased with the relative concentration of explosive vapour.[327]

The PD4 proved to be a singularly flawed device, and unfit for the purpose for which it was used. On January 18, 1985, a group of officials from Air India, Transport Canada, Peel Regional Police and the RCMP met for a further discussion of security and a demonstration of the PD4 sniffer. Ashwani Sarwal and Herb Vaney represented Air India at the demonstration,[328] and Sarwal displayed the PD4 device to those present. One of the RCMP members in attendance was Constable Gary Carlson who, along with his bomb-sniffing dog Thor, provided explosives detection services at Pearson. According to Carlson's statement, [329] he tested the PD4 with an open vial of gunpowder. The vial was first placed inside a garbage container, and an Air India representative activated the PD4 and attempted to locate the gunpowder in the container. The PD4 failed to detect

322 Exhibit P-101 CAA0118, pp. 4-5.
323 Exhibit P-101 CAA0119, p. 1.
324 Exhibit P-284, Tab 17.
325 Exhibit P-101 CAF0010, p. 1.
326 Exhibit P-410, pp. 20-21.
327 Exhibit P-410, p. 4.
328 Exhibit P-101 CAA0369, p. 2.
329 Exhibit P-101 CAC0268.

it. Carlson then took the vial and placed it on top of the garbage container lid. The PD4 was gradually moved closer and closer to the vial, but it was not until the conical "nose" probe of the device was placed into the vial and just one inch from the gunpowder sample that it sounded to indicate the presence of explosive material.[330]

Carlson told the Air India representatives that "…this was not an effective method of checking suitcases for explosives," adding that he and his dog were available at any time to check suspicious items.[331] Staff Sergeant Robin Ward, another RCMP officer present at the demonstration, indicated in his affidavit evidence to the Kirpal Inquiry that "Mr. Sarwal was advised at time that we had no faith whatsoever in this device and we did not see how it would be effective in detecting an explosive inside a suitcase."[332]

In his testimony before the Commission, Carlson confirmed that the RCMP personnel present at this demonstration were shocked by its ineffectiveness. Conversely, the Air India representatives seemed indifferent.[333]

Detective Fred Lemieux of Peel Regional Police was also present at the January 18th demonstration. In a letter to the RCMP Air India Task Force, dated January 2, 1986, he wrote that the machine's performance made it "…quite evident to all present that the detector failed to perform its function in this demonstration." He felt that only three conclusions were possible: first, that the operators were unfamiliar with the equipment; second, that the device was faulty; or third, that the explosives were not capable of being detected by the PD4. He added, "…in any case, it was suggested that pre-board screening should not rely solely on the PD-4 detector."[334]

According to T.N. Kumar, Air India's General Manager for Legal Affairs, no report of this test was made to Air India Headquarters.[335] Instead, Air India relied on data provided by the manufacturer in concluding that the device was effective. In essence, Air India uncritically accepted the manufacturer's claims about the usefulness of the PD4.

The first Air India flight from Pearson was scheduled for January 19, 1985 – just one day after the failure of the PD4 to detect the gunpowder. While on foot patrol at the airport, Carlson and Ward attended the baggage handling area to observe Burns security personnel examining checked baggage for the flight. Despite the troubling results of the previous day's demonstration, the Burns employees were using the PD4 scanner to do so. Carlson was curious about how the PD4 would perform with a different compound, and he provided a sample of "Det sheet" plastic explosive in order to test the PD4.[336]

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330 Exhibit P-101 CAA0369, p. 2, CAC0515, pp. 2-3.
331 Exhibit P-101 CAC0268, p. 2.
332 Exhibit P-101 CAA0369, p. 2.
333 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 2995-2996.
334 Exhibit P-101 CAC0515, p. 3.
335 Testimony of T.N. Kumar, vol. 37, May 31, 2007, pp. 4456-4457.
336 Exhibit P-101 CAC0268, p. 2.

Carlson explained during his testimony that the Det sheet (also known by the trademarked name "Detasheet"[337]) is:

> …a military grade explosive, green in colour. It would be three inches by four inches. It was very safe to carry around, so I would use that for training of my dog. And I used that to determine if the PD4 would alarm to that type of explosive. [338]

The device did not alarm even when it came into direct contact with the "Det sheet".[339]

Transport Canada officials were informed of this second failed test on January 21, 1985, during a debriefing of Air India's security operations for its inaugural flight.[340] No Air India personnel were present at this meeting. Moreover, Air India had not been told about the second failed test on January 19th,[341] and no information regarding this failed test was provided to Air India before the bombing.[342]

There is no evidence that either Transport Canada or the RCMP (or, for that matter, Air India) conducted a thorough examination of the functional reliability and sensitivity of the PD4 in either laboratory or field conditions. Nevertheless, considerable evidence exists to support the conclusion that great caution was warranted in relying on the PD4 to detect explosives concealed in checked baggage. This information was available to Canadian authorities.

Evolution of Explosives Detection Technology

In the late 1970s and early 1980s, explosives detection technology was in its infancy. Assessments of the vapour detectors at this time were uniformly poor. Transport Canada had evaluated two explosives detection devices, in collaboration with the National Research Council, in 1979.[343] Tested were the Pye Dynamics PD3[344] and the Ion Track Instruments Ultratek. Both devices were designed to detect vapours released by different explosives. The review of the devices indicated that they had severe shortcomings. Tests showed that both devices were temperamental and unreliable. The devices were tested by placing

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337 This rubberized explosive, similar to plastic explosives, was originally manufactured by DuPont under the trademarked name "Detasheet," but it is also variously referred to by experts and law enforcement officers as "Det sheet," "Deta sheet" and "detasheet. Unless quoting a written document that indicates otherwise, the Commission uses the form "Detasheet."

338 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2998.

339 Exhibit P-101 CAA0369, p. 3.

340 Exhibit P-101 CAA0121, p. 2.

341 Exhibit P-101 CAC0528, pp. 33-34.

342 Transport Canada's monitoring and enforcement failures are discussed in further detail in Section 4.7 (Pre-bombing), Transport Canada Policy Gaps and Implementation Deficiencies.

343 Exhibit P-101 CAF0549.

344 To avoid confusion, it should be noted that Pye Dynamics, listed as the manufacturer of the PD3, and Graseby Dynamics, the manufacturer of the PD4C, were related UK companies. Following in the footsteps of the PD1 military explosives detector and the PD2 commercial explosives detector, the PD3 was the predecessor of the PD4.

an explosive substance in a suitcase and, after 60 minutes, passing the detectors along the edges of the case. The study author noted that "[f]or unexplained reasons it was difficult to reproduce on a day-to-day basis the results obtained from the detectors using identical flow rates, temperatures and procedures. The PD3 was particularly difficult."[345]

The shortcomings of the devices that were listed in the study included inadequate sensitivity, a limited range of explosives that could be detected, and a high sensitivity to common, non-explosive vapours that would result in false alarms. These flaws made the devices unsuitable for use at airports or with aircraft. The study concluded that the devices would only be suitable for use in areas where the expected vapour concentration was high. This ruled out using the devices to examine closed containers such as checked baggage at an airport.

The RCMP had also been evaluating explosives detection devices. A July 1985 report indicated that the Explosive Disposal and Technology Branch of the P Directorate had, "…during the past several years, been keeping current with the development of a number of explosive-detection 'sniffers.' None were found which were considered effective."[346] The report did not specify which devices had been reviewed. The blunt assessment indicates, however, that the state of the art of explosives detection technology left much to be desired in 1985.

Prior to 1991, Nick Cartwright served a term as Chief Chemist and Manager of the Canadian Police Research Centre and Officer in Charge of the Science and Technology Branch in the Forensic Laboratory Services Directorate of the RCMP. He testified that the RCMP had evaluated the PD4 and found it to be unreliable. He told the Commission that there were other devices available as of 1985, but they were also unreliable. He said that they were more lab prototypes than they were totally functioning units.[347]

The National Research Council spent several years developing a new explosives detector, the EVD-1.[348] This was a much more complicated device than the PD4, and could detect traces of explosives in concentrations of less than five parts per trillion.[349] Cartwright said that a part per trillion was analogous to "one second in 32,000 years," or "one shot of scotch in Lake Superior."[350] The EVD-1 was not yet in mass production at the time of the bombing, but pre-production models were quickly put into service to assist in examining checked baggage at Canadian airports in the days following the bombing.[351]

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345 Exhibit P-101 CAF0549, p. 6.
346 Exhibit P-101 CAF0680, p. 1.
347 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5108-5109.
348 See Exhibit P-101 CAF0675.
349 Exhibit P-101 CAF0808, p. 1. The RCMP had required an operational sensitivity of five parts per trillion, and the production models they obtained actually exceeded this standard.
350 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5153-5154.
351 Exhibit P-101 CAF0675, p. 1. Transport Canada released four pre-production EVD-1 models for use at major airports on June 23, 1985. This release prompted internal warnings against any false sense of security, since the devices had not yet been systematically tested in field conditions and no operator training or maintenance programs were in place. As of June 28, 1985, operators of the EVD-1 at Toronto's Pearson Airport had no training in its use at all.

The EVD-1 rapidly became the world standard[352] because of its advanced capabilities. But it too proved to have some difficulties. The RCMP tested a production unit in July 1985 and concluded that it was actually "somewhat disappointing." It could only detect a limited number of different explosives, and was slower and less sensitive than an explosives detection dog. Air samples had to be obtained with a hand-held device and then brought back to the unit to be analyzed. Once an individual air sample was placed into the EVD-1, it required two minutes of processing before a result could be obtained. Finally, the machine was prone to technical problems and to breaking down. Further tests were planned in field environments, but the device was nevertheless considered to be of only "limited utility" until that time.[353]

The EVD-1 illustrates the difficulties faced in the early stages of explosives detection technology. Nonetheless, the developmental work eventually led to success. Dr. Lorne Elias, who was instrumental in the development of the EVD-1, was called the "father of vapour and trace detection technology" by Nick Cartwright. In fact, Elias played a major role in developing the technology now employed successfully in explosives trace and vapour detection.[354]

In light of the primitive state of explosives detection technology at the time, Air India's proposal to rely on the PD4 should have raised greater alarm. The Commission is unaware of any Transport Canada evaluation for the PD4. Based on the informal tests conducted at Pearson, however, neither Transport Canada nor the RCMP considered it fit for use.

Technology Failures on June 22, 1985

On June 22, 1985, all the bags checked in at Toronto for Air India Flight 181/182, as well as the interline bags from connecting domestic flights, were sent to the international baggage area for examination by X-ray.[355] At approximately 2:30 PM, security screening of this checked baggage commenced at Pearson airport. Three Burns guards were on duty that afternoon in the checked baggage area.[356] Naseem Nanji, one of the guards, loaded suitcases onto a belt that fed bags through the device. Another Burns employee, James Post, examined the black and white images that appeared on the monitor as each bag was scanned, endeavoring to identify any suspicious objects contained within. A third Burns employee, Samynathan Muneeswaran, handled the scanned bags as they emerged from the X-ray scanner.

At approximately 4:45 PM, the Linescan System Two X-ray machine, leased by Air India to examine checked baggage, broke down.[357] At that point, somewhere between 50 and 75 per cent of the bags had been examined by X-ray. The X-ray scanner could not be restarted and, since it was a weekend, there was

352 Testimony of Jean Barrette, vol. 38, June 1, 2007, p. 4564.
353 Exhibit P-101 CAF0680, pp. 2-3.
354 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5115-5116.
355 Exhibit P-157, p. 37.
356 Exhibit P-101 CAF0143, p. 2.
357 Exhibit P-157, p. 37.

no possibility of obtaining repair service. John D'Souza, the Air India security officer, learned of the malfunction while making his rounds. He directed the Burns officers to use the PD4 to screen the remainder of the checked baggage for explosives.[358] D'Souza also provided an extremely brief demonstration of how the PD4 operated, lighting a match and holding it close to the device. Having detected the burning match, the device emitted a shrill noise, which has been described as sounding "…like a kettle going off."[359]

Aside from this cursory demonstration, the Burns employees had not been trained in the use of the PD4 and were unfamiliar with its operation. The sound made by the PD4 when it detected explosives changed in intensity, depending on the perceived concentration of explosive vapours.[360] Clearly, a lit match held up to it caused a strong reaction. The employees were not shown how it would react to a lower vapour concentration, such as might be detected along the edges of a suitcase containing a concealed explosive device. This is important because there is evidence that the device may have reacted to one or more bags during the continuing screening of checked baggage.

In her statement to the RCMP after the bombing, Nanji indicated that while Post was using the PD4 to examine the checked baggage, it emitted a "beep" when it was passed along one bag's zipper. Post used the PD4 again to check this bag, and it "…beeped low in volume when it was passed near the [zipper's] lock. But the beeper wasn't making a long whistling sound like it had when John the Air India man demonstrated the 'sniffer' to us. So we let the bag pass." Nanji stated that no one told Air India about this, due to the fact that "…no one told us to call them if the 'sniffer' gave a short beep."[361] Nanji testified about her observations during the trial of Ripudaman Singh Malik and Ajaib Singh Bagri, and Justice Josephson summarized her testimony in his 2005 reasons for judgment.[362]

Muneeswaran also provided a statement to the RCMP shortly after the bombing, in which he stated that one bag in particular caused the PD4 to react. Although the device "would not stop" alarming, this bag was tagged and put through with the rest of the baggage.[363] Antonio Coutinho was a station attendant loading and unloading baggage for the flight. He was working at the baggage conveyor belt and observed the demonstration of the PD4 and its use with the checked baggage. In a statement given after the bombing, he informed the RCMP that a large burgundy bag set off the PD4 when it was run across the bag's lock.[364] The bag was checked again with the PD4, and the scanner "buzzed" again. Coutinho also testified at the trial of Malik and Bagri, and Justice Josephson summarized his testimony:

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358 Exhibit P-101 CAF0531, p. 3.
359 Exhibit P-101 CAF0142, p. 7.
360 Exhibit P-410, p. 19. See also *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 30. According to an expert, Timothy Sheldon, the PD4 emitted a slow ticking noise when in operation that accelerated to a "high pitched whine," depending on the level of explosive vapour detected.
361 Exhibit P-101 CAF0159, p. 3.
362 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 27.
363 Exhibit P-101 CAF0143, p. 5.
364 Exhibit P-283, Tab 35.

> Mr. Coutinho subsequently observed a large reddish brown suitcase with a "heavy baggage" tag trigger beeps from the PD4C Sniffer each time it was passed over the bag. The bag had been checked in at Toronto and was destined for Bombay. To Mr. Coutinho's surprise, security personnel suggested that the lock on the suitcase was triggering the device and allowed it to pass through security. Because the Bombay baggage containers were already full, this particular bag was placed on an excess baggage cart for loading into the bulk cargo compartment at the rear of the aircraft.[365]

Similarly, a statement given by Barry Higgins, who was also working in the baggage area on June 22nd, indicates that he saw the AI representative, D'Souza, explain to a security guard how to use the hand scanner. Once it was put into use examining checked baggage, the scanner was brought near a bag which caused it to start "…buzzing on and off." A sticker was put on the bag and it was sent on its way.[366]

During his interview with the RCMP, Post was asked about the noises made by the PD4. He stated that it was his understanding that the PD4 would emit a "piercing scream" if it detected explosives, and that the only noises it made during the examination of the checked baggage was a "…beep when turned on and a beep when turned off."[367] He was convinced that the PD4 had not detected any explosives.

The Burns supervisor, Michael Ciuffreda, stated that he did not believe Post had used the PD4 before, and he had never trained Post in its use.[368] Ciuffreda had seen the PD4 demonstrated by an Air India representative on several prior occasions in 1985. He stated that, although it did occasionally emit a clicking noise while in use, he never heard it whistle or beep.

The PD4 device would be in start-up mode for 10 seconds after being turned on, during which time it would "auto zero" to ambient conditions.[369] This meant that the device would use the air around it to establish a baseline against which detected concentrations of explosive vapours could be assessed. The machine's red indicator light would be on and the PD4 would begin emitting a slow ticking sound. Once the start-up was complete, the red indicator light would go out. The ticking noise would continue.

The instruction manual makes no reference to the device sounding a "beep" when turned on or off.[370]

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365 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 29.
366 Exhibit P-283, Tab 36.
367 Exhibit P-101 CAF0156, p. 2.
368 Exhibit P-101 CAF0142, p. 6.
369 Exhibit P-410, p. 9.
370 See Exhibit P-410, pp. 9, 19. At p. 19, its outputs are listed: "1. Audio – An audio tone of constant amplitude from an internal transducer which is varied in frequency from near zero to 1 KHz in relation to the perceived explosive vapour level; 2. Visual – LED lights when the audio output frequency exceeds a preset value; 3. Earphone Jack – When the earphone is plugged into the jack socket the internal transducer is muted; 4. Battery Low Indication – Audible alarm at a fixed frequency of approximately 2 KHz."

There is no way to know whether the checked bag belonging to "M. Singh," interlined from CP Air Flight 060, was examined by X-ray before the machine malfunctioned, or whether it was examined by PD4 afterwards. Even if the bag was X-rayed, factors, such as human error and the difficulty in detecting concealed explosives, suggest that it might not have been found. The PD4 was so unreliable, moreover, that no conclusions can be drawn about its apparent reaction to a particular checked bag. What is certain is that, due to the Burns employees' inexperience with the PD4, and the cursory manner in which its operation was demonstrated, their examination of the remaining checked bags was effectively a useless exercise. They were so unfamiliar with the device that the sounds it made during the screening of checked baggage were interpreted differently by different screeners. Any opportunity to flag a potentially dangerous bag was wasted because the Burns personnel lacked the training and initiative to take action, such as reporting the noises to a superior[371] or to an Air India official, before the bag was loaded and the plane departed. Instead, they only spoke of the noises made by the PD4 in hindsight and with conflicting recollections.

Air India was under high alert in June 1985. Air India's operations worldwide had been directed to ensure the "…meticulous implementation of counter sabotage measures for flights at all airports," in a telex dated June 1, 1985.[372] As the *CATSA Act* Review Advisory Panel noted, the June 1st Telex emphasized random physical searches of checked baggage as a "first priority."[373] This was to be done particularly where other means, such as explosives detection devices or explosives detection dogs, were not available. At Pearson, however, Air India relied solely on the X-ray machine until it broke down. Air India had no backup X-ray machine. D'Souza then directed that the screening personnel use only the PD4. No random physical searches of checked bags were conducted, despite the clear direction in the telex to do so.

Contradictory Evidence on the PD4

T. N. Kumar testified that the PD4 was "the best available" at the time. He also contended that that the PD4 failures during the tests conducted on January 18th and 19th made it look less reliable than it really was,[374] arguing that its poor performance was caused, at least in part, by the fact that neither Transport Canada nor the RCMP were familiar with the device, and because there was no evidence that the PD4 instruction manual was followed properly during the tests.

In a similar vein, Air India argued in its final submissions that there was no suggestion that a one-time informal test should have caused Air India or Transport Canada to conclude that the device was useless or ineffective and

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371 See, for example, Exhibit P-101 CAF0142, p. 7. Burns Supervisor Michael Ciuffreda had no idea even after the bombing that the PD4 used by Post might have reacted to one or more bags.

372 Exhibit P-101 CAA0185.

373 Exhibit P-157, p. 63.

374 Testimony of T.N. Kumar, vol. 37, May 31, 2007, pp. 4411, 4428-4429. Kumar stated: "…yes, there could have been limitations with the PD4 but it was not all that bad as … it appears to be."

that its use should be discontinued. According to Air India, neither Transport Canada nor the RCMP was familiar with the device and its use elsewhere, and neither Transport Canada nor the RCMP suggested Air India should discontinue its use as part of its security program.[375] Kumar testified:

> The PD4 instrument was not available in Canada. I have all my doubts that the RCMP and Transport Canada who used the instrument didn't know the instrument. The instrument comes with a sample pack. It needs to be first tested with the sample pack and activated. Then it needs to be simulated or it needs to be adjusted or calibrated with certain kind of things. It was used for about seven explosives, basically nitroglycerine.[376]

Kumar conceded that he had no evidence that the device was not properly calibrated when it was being used by Air India and the RCMP on January 18, 1985.[377] In fact, the instruction manual for the PD4, which was disclosed by Air India, makes no reference to calibration. Instead, the device requires 10 seconds on start-up to calibrate itself, based on the ambient air conditions. The sample pack was used to confirm that the device was operational, but no further adjustment or calibration was required.[378]

Kumar testified that he was nevertheless satisfied that the device was properly calibrated and operated by John D'Souza on June 22, 1985, before it was used by otherwise untrained Burns International Security personnel to inspect the checked baggage going onto the *Kanishka*. This is despite the fact that D'Souza himself did not follow the set-up procedures set out under section 3 of the instruction manual.[379]

Kumar testified that Burns was contractually responsible for deploying the PD4 and for training its personnel on how to use the device.[380] This seems contrary to evidence that the PD4 was under the control of Air India.[381],[382] There is, in fact, no mention of such a contract anywhere in the evidence. Air India itself made no reference to such a contractual responsibility in its final submissions concerning the PD4. To the contrary, Air India's final submissions stated:

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375 Final Submissions of Air India, para. 26.
376 Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4428.
377 Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4456.
378 Exhibit P-410, p. 9.
379 Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4460.
380 Testimony of T.N. Kumar, vol. 37, May 31, 2007, pp. 4457-4458.
381 See, for example, Exhibit P-284, Tab 60. In a letter dated May 31, 1985, Holger ("Nick") Kordts of Burns International Security wrote to Sarwal to explain a baggage handling error. The letter notes that when the Burns security officer in the checked baggage handling area finished for the day, he returned the PD4 sniffer to the Air India security officer at Pearson.
382 See Exhibit P-101 CAF0139, p. 3. When the X-ray scanner at Pearson malfunctioned on June 22, 1985, the Burns International Security supervisor, Michael Ciuffreda, asked John D'Souza of Air India whether he wanted the checked baggage screeners to use the PD4 "sniffer." D'Souza instructed Burns to do so, and demonstrated its use to the Burns guards present with a lit match, which caused the PD4 to alarm.

> Except for any on the spot training on the use of the PD4 explosive detection device, Burns was to provide all training for the security agents it provided to Air India under its contract to provide security services. For the PD4, which accompanied an Air India security employee from New York to Toronto and on to Montreal, training was provided by the Air India Security Officer on the spot, demonstrating the use of the device after he had calibrated and tested it.[383]

The Commission believes that Mr. Kumar was mistaken on this point. Even assuming he is correct, however, it necessarily follows that on January 19, 1985, when the PD4 was being used by Burns employees to inspect checked baggage for explosives, and was tested again by the RCMP, it must have been properly calibrated.[384] Conversely, if Air India was responsible for deploying and training the Burns screeners on the use of the PD4, then the Air India security officer was responsible for calibrating the device and demonstrating its use. It still failed to detect the explosive material, even when placed in direct contact with the Detasheet.

It appears that Air India itself was unfamiliar with the operating strengths and weaknesses of the PD4. On June 28, 1985, an extraordinary meeting of the International Air Transport Association (IATA) Security Advisory Meeting was convened.[385] Representatives from Transport Canada, Air India, and IATA were among the many industry members present. Mahendra Saxena and R.C. Puri represented Air India.[386] Saxena wrote to Air India's Chief Vigilance and Security Manager in Bombay and provided his accounting of the meeting. In light of the disaster, Saxena sought IATA's opinion on the effectiveness of the PD4 "…in detection of explosives hermetically sealed or wrapped in any air tight containers and the advisability of using the PD4 in general." According to Saxena, the acting chair of the meeting replied that no explosives detection device in the world had been recommended and certified by any government as 100 per cent effective.[387] Rodney Wallis, who was at this meeting as an IATA official, testified that "…indeed, these instruments were not in general use around the world."[388] Saxena remarked that it was "…high time IATA organized a technical committee to get into the testing of various security equipment [*sic*] and to recommend the same for use by airlines."[389]

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383 Final Submissions of Air India, para. 54.

384 Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4459. In cross-examination by Sandy Graham, Counsel for Transport Canada, Kumar said that Burns Security personnel were provided with instructions and that he could "…certainly assert that they did" follow the prescribed start-up protocol every time the device was used.

385 Exhibit P-101 CAF0441.

386 Saxena was the Senior Security Officer for Air India at John F. Kennedy International Airport in New York, and Puri was the Manager of Canadian Operations.

387 Exhibit P-163, pp. 2-3.

388 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4493. It should be noted as well that Wallis and Saxena differed on several points concerning recollection of the events of the meeting, particularly with respect to the appropriateness of Air India's security measures. Wallis testified that no one in the meeting was in a position to approve (or otherwise) of Air India's program, certainly not himself. See Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4488-4493.

389 Exhibit P-163, p. 3.

It cannot be disputed that, when the PD4 was finally tested by an expert, those tests confirmed that it was an ineffective device that should not have been relied upon by Air India. In his reasons for judgment in the trial of Ripudaman Singh Malik and Ajaib Singh Bagri, Justice Josephson observed that Timothy Sheldon, an expert in evaluating explosives detection equipment, had testified that the PD4C Sniffer had not distinguished between explosives and dummy packages during testing he had conducted in 1988, leading him to conclude that it was not effective as anything other than a deterrent.[390]

Similarly, the report of the Kirpal Inquiry also noted that the effectiveness of the PD4 was "highly questionable" and recommended that "…it is not advisable to rely on it."[391] Air India decided to rely on the PD4 sniffer as the sole backup to X-ray scans of checked baggage, even though senior members of the airline had witnessed troubling demonstrations indicating that the device was unreliable. Given Air India's own assessment of the threat it faced, this was an unacceptable decision.

X-Ray Searches: Skilled Operators Required

Only two airlines were routinely using X-rays to search checked baggage at Canadian airports in 1985 – Air India and El Al. As primitive as the technology was, the checked baggage inspections were a positive development in aviation security, and one that was long overdue in Canada. The threat of sabotage, and the corresponding need for checked baggage security measures, was well-recognized by Transport Canada and the airlines by 1985. [392]

As with the PD4, the X-ray equipment used to scan checked baggage in 1985 suffered from technical limitations and was rendered less effective if the operators lacked the necessary skill and good judgment to diligently monitor and correctly interpret the images of scanned baggage.[393] X-raying checked baggage in 1985 was something of an art as well as a science. The X-ray machines of the period were primitive and in "an immature area of development" compared to the devices in service today.[394] The X-ray machines employed only a low energy X-ray source and displayed a black and white image, composed of light and dark areas on a low or medium-resolution monitor. Cartwright explained the challenges of searching for explosive devices with this equipment:

> It wasn't really a detection system in and of itself. What it did is it provided an image of what was present in the object that was being X-rayed and then it was up to the operator to be

390 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 30.
391 Exhibit P-164, p. 173.
392 This is illustrated in Section 2.3.1 (Pre-bombing), Recognition of the Threat of Sabotage and Weaknesses in the Ability to Respond.
393 Professor Kathleen Sweet wrote in a paper prepared for the Commission, "Simple x-ray systems rely on humans to serve as pattern recognition devices; in the absence of advanced computer pattern recognition techniques, they are very dependent on human factors. This boils down to the proper training and competency of the screener.": Kathleen Sweet, "Canadian Airport Security Review" in Volume 2 of Research Studies: Terrorism Financing Charities and Aviation Security, p. 277.
394 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5079.

> able to interpret that image and to identify if there were things which were suspicious, of a suspicious nature or unresolvable. You know, there are various categories that the individual would be trained to say, okay, I'm not comfortable with letting this bag go. Therefore, it needs to be opened up or other things need to be done with the bag.[395]

While a weapon, such as a knife or gun, had a distinctive shape, operators had to learn to identify wires and shapes that might indicate an explosive device. The machines demanded operators who were diligent and well-trained but, in practice, they were operated by individuals who were frequently unmotivated and who lacked essential training. Having tested X-ray machines and their operators in the weeks following the bombing, the RCMP concluded that the major weakness in the X-ray system was "…the capability and vigilance of the operator in detecting suspicious items."[396] The paucity of training and the assessments made of airport security following penetration tests at airports are discussed in detail in Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.

An evaluation conducted by the RCMP of X-ray machines and explosives detection devices in July 1985 was remarkably reserved about their prospects for effective checked baggage security.[397] The machines were not capable of revealing sophisticated or specialized bombs on their own. Their operators required additional training along with the assistance of computer-aided pattern recognition. In tests of carry-on baggage screening conducted at Ottawa International Airport, the Burns X-ray operator was unable to distinguish between a bar of soap and C4 plastic explosives packed in an identical box along with a blasting cap.[398] The operator also failed to notice a subsequent improvised explosive device consisting of the C4, a blasting cap, and a pager. The RCMP concluded it was also unlikely that an RCMP explosives technician would have observed these items. It was felt that only a very experienced explosives technician conducting a hand search would have determined that the bar of soap had been replaced by plastic explosives.

In a subsequent letter to Transport Canada's Inspector General of Transportation Safety, Assistant Commissioner J.A.R. Roy wrote that:

> …in our opinion, these reports suggest that both the X-ray/fluoroscopes and explosive sniffers have severe limitations in detecting sophisticated explosive devices. These limitations are even greater when large numbers of articles are to be checked. In the case of the X-ray/fluoroscope, it may be totally ineffective for such an application.[399]

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395 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5081.
396 Exhibit P-101 CAF0683, p. 2.
397 Exhibit P-101 CAF0682.
398 Exhibit P-101 CAF0806, pp. 4-5.
399 Exhibit P-101 CAF0682, p. 1.

The RCMP intended to conduct more tests, as these results were strictly preliminary. Nevertheless, the RCMP had "…serious reservations about the effectiveness of the X-ray/fluoroscopes to detect explosive devices in baggage,"[400] concluding that there was no perfect system, and that X-rays should not be used as the sole means of screening checked baggage.[401] Instead, the RCMP suggested that a combination of the existing security systems and procedures would be more likely to increase confidence in screening out dangerous articles. This would include the use of X-ray machines and metal detectors, matching bags to passengers prior to takeoff, and the presence of explosives detection dogs to respond to specific threat situations. The Report also recommended the use of the new EVD-1 explosives detectors to check the aircraft cabin prior to departure. The EVD-1 was found to be reliable for detecting explosives like dynamite when an air sample from the aircraft cabin was taken and analyzed over the two-minute period required by the device. [402]

Similarly, the recommendations of the Kirpal Report stressed that X-ray scanners had limitations and might in fact provide a false sense of security if relied upon alone.[403] The Kirpal Report also recommended passenger-baggage matching as an essential component of checked baggage security.

In contrast, today's machines use dual energy systems that can differentiate between the various materials contained within baggage.[404] They display colourized images on high-resolution screens, and have extensive computer enhancements that assist in zooming in on target areas and providing pattern recognition capabilities. Modern X-ray machines can highlight areas of concern that resemble the components of an explosive device,[405] and can even distinguish between metallic and organic materials. This is an important feature because the presence of organic materials may signify the presence of explosives. The machines are also capable of randomly superimposing images of weapons or explosive devices onto the image of a bag being scanned, or replacing the image of the scanned bag with an image of a bag containing dangerous items, in order to keep screeners alert and motivated.[406]

X-Ray Searches: Malfunction of Air India's X-Ray Machine

The Linescan System Two X-ray machine leased by Air India had malfunctioned on at least one other occasion before June 22, 1985. On June 8th, the machine broke down and the Burns personnel inspecting checked baggage were forced to rely on the PD4 exclusively.[407] The device was serviced by Corrigan Instrumentation Services Ltd., the local Scanray dealer, on June 13th. A complex series of events had left the machine only half-functional, providing only a fuzzy image on its monitor.

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400 Exhibit P-101 CAF0682, p. 1.
401 Exhibit P-101 CAF0683, p. 4.
402 Exhibit P-101 CAF0683, pp. 2-3.
403 Exhibit P-164, p. 173.
404 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5082.
405 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5087.
406 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5088-5091. When the threatening item is detected, the machine displays a message to the screener "congratulating" them on their vigilance.
407 Exhibit P-101 CAF0159, p. 1.

What was apparent was that the machine was not being well-treated. Pentti Makela, Corrigan's Manager of Engineering, came to the airport to repair the machine. He discovered that a wire under the machine's footmat had been severed,[408] which activated a series of interlocks in the machine that prevented it from generating X-rays. Meanwhile, someone had opened the locked service panel of the machine and set it into a diagnostic mode.[409] This bypassed the interlocks so that the machine once again generated an X-ray beam, but without producing a clear, refined image since it was not in its normal operation mode. Makela replaced the wire, but noted that it had been cut and repaired on two other occasions by unknown persons. The wire was being cut when the machine was moved into and out of position from its storage area some 40 feet away.[410]

After the malfunction on June 22, 1985, Makela again came to Pearson to examine the X-ray machine and to ascertain the cause of its breakdown. He tested it and found it to be working properly. Joe Corrigan, the company's president, wrote to Herb Vaney of Air India to inform him of their findings. In his letter, Corrigan emphasized that the footmat cord was being pinched when the machine was moved into and out of its storage area each Saturday, causing it to fray and split. Corrigan stated that the movement of the machine was "unwise at best," and was likely causing intermittent problems with the machine.[411]

The treatment of the X-ray scanner at Pearson must be considered a possible cause of the malfunction on June 22, 1985 – misuse or excessive movement of such a large and delicate piece of equipment would likely cause significant problems. The RCMP made a note during their investigation of the bombing that the machine was not being calibrated on a regular basis.[412] In light of the apparent tampering by persons unknown, Corrigan also recommended that careful control be exercised over the keys to the machine's access panel to prevent unauthorized access to the internal electronics of the machine.

"Low-tech" Security

In June 1984, Air India provided the RCMP and Transport Canada with intelligence that Sikh extremists were planning to become martyrs by blowing up an Air India aircraft.[413] The alleged plot involved an individual boarding the flight and checking a piece of luggage containing a concealed explosive device aboard the aircraft. The bomb would detonate while the aircraft was in flight, destroying it in mid-air. In response to the threat, the Air India Station Manager at Mirabel implemented a number of strict security measures. Air India's operations at Mirabel did not make use of X-ray scanners for checked baggage at that time,[414] but, rather, used "low tech" solutions. These included manually opening and

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408 Exhibit P-101 CAF0798, pp. 9-10.
409 Exhibit P-101 CAF0529, p. 2.
410 Exhibit P-101 CAF0798, p. 9.
411 Exhibit P-101 CAF0529, pp. 2-3.
412 Exhibit P-101 CAA0235, p. 2.
413 Exhibit P-101 CAF0161, p. 1.
414 Exhibit P-101 CAF0161, p. 2.

searching all checked baggage, subjecting all passengers and carry-on baggage to secondary security searches prior to boarding, and imposing a 24-hour hold on cargo and a requirement that it come from *bona fide* shippers. The searches were supplemented with the use of an explosives detection dog. Additionally, extra security staff were brought to Mirabel, and Air India coordinated with Mirabel's General Manager, the RCMP, and Air Canada security to finalize the local arrangements.

These measures, although slower to implement, had the advantage of being comprehensive and requiring little additional equipment. Although Air India was understandably concerned with costly delays, speed and efficiency must nevertheless be balanced against the need for thorough, proven security. There was good reason to doubt the effectiveness of the PD4, particularly if it was used as the sole backup whenever the X-ray malfunctioned. Cartwright's opinion was that using the PD4 when the X-ray malfunctioned was "…certainly better than not doing anything,"[415] but he added that because of the high threat level, it would have been wise, at a minimum, to add some other measures.

While manual searches of bags were no guarantee that a concealed explosive device would be found, the assistance of the explosives detection dog in searches made this measure more effective. Even with the absence of the explosives detection dogs on June 22, 1985, Air India had many viable alternatives to supplement or replace the use of the PD4 to screen checked baggage. As will be discussed, another "low-tech" security measure, passenger-baggage reconciliation, would have been the single most effective strategy Air India could have implemented to protect the passengers of Air India Flight 182, far surpassing any machine in use at the time.

Wallis testified that, in his opinion, the technology in use at airports was much too primitive to be reliable in 1985, and that other effective, practicable security measures were available instead. In his opinion, passenger-baggage reconciliation was "…the best defence we had" in 1985.[416] He told the Commission that he had warned of the dangers in using the technical equipment available at the time, such as X-rays and vapour detection systems, and had pushed instead for passenger and baggage reconciliation. With respect to vapour detection systems, Wallis added: "I think most experts in those days would have taken a good dog, a good bomb detecting dog over a piece of equipment any day. They might still today."[417] Wallis stated that the early X-rays were not designed as bomb-detecting pieces of equipment, but rather as a means to provide images, and should not have had a role to play in bomb detection whatsoever:

> If you were successful in hiding an image, then the screener wouldn't pick it up. That's always assuming the screener had been trained to pick up images and was conscientious in his program.
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> ….

415 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5152.
416 Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4255-4256.
417 Testimony of Rodney Wallis, vol. 35, May 29, 2007, p. 4256.

> I mean throw the X-rays away. They're valueless; had no role to play whatsoever. And in those days, of course, the images were poor. I mean there has been massive development in technology since those days, but in the '80s, the X-ray was cosmetic more than effective. The sniffers were new technology and I've already said people would have preferred to have worked with dogs, but passenger and baggage reconciliation could be achieved easily.[418]

Even today, caution must be exercised when utilizing technology to provide security. Cartwright cited the example of the "ALPHA Molecular Locator," a device that, by design, did not actually work. The device consisted of an empty plastic body with an extendable pointer. Surprisingly, the device was sold to a number of customers, doubtless because of an unwarranted reliance on the claims of the manufacturer regarding its effectiveness. The device lives on, and is presently in its eighth generation; Cartwright testified that it now includes a flashing LED light, and some internal electronics that have not been connected. It has periodically changed names and been marketed from different countries. It is a device incapable of performing any function other than a cosmetic one, yet it remains in use today.[419]

This example highlights the important lesson that "…technology has to be looked at and has to be evaluated very carefully to ensure that it does what you think it will do and it is appropriate for the circumstances in which you propose to deploy it."[420] According to Cartwright, "…technology is not always the answer. Technology doesn't always work."[421]

A Proven Solution: Passenger-Baggage Reconciliation

Technology was given priority because it was seen as both cheaper and more efficient than other comparatively time-consuming and costly methods, such as passenger-baggage reconciliation. It is ironic that, if less faith had been placed in technology, and more tried-and-true methods like passenger-baggage reconciliation had been used to ensure checked baggage security, the suitcase containing the bomb would almost certainly have been removed.

Section 4.1.1 of Air India's security plan required that "…unaccompanied baggage must be associated with a bonafide [*sic*] passenger and his documents before it is boarded."[422] The emergency measures of the Air India security plan, intended for a high threat level, also required that:

> c) All unaccompanied baggage shall be held over for 24 hours prior to dispatch [sic] or shall be subjected to 100% examination.

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418 Testimony of Rodney Wallis, vol. 35, May 29, 2007, pp. 4256-4257.
419 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5174-5175.
420 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5175.
421 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5174-5175.
422 Exhibit P-284, Tab 68, p. 17.

> d) Checked-in baggages [*sic*] belonging to "No Shows" shall not be loaded into the aircraft.
>
> e) All unaccompanied baggage shall be inspected physically or held for 24 hours prior to forwarding.[423]

These directives appear to draw a distinction between a bag belonging to a "no-show" passenger and an unaccompanied bag. A "no-show" passenger is a passenger who has a confirmed seat allocation or reservation, or has been issued a boarding pass, but has failed to board the aircraft.[424] According to Wallis, "unaccompanied baggage" referred to checked bags that were flown separately from the owner but which were nevertheless associated with a travelling passenger.[425] This would include mishandled bags that were sent to the passenger's destination on a later flight.

Air India identified "no-show" passengers by comparing the number of passengers who checked in at the airport against the number of passengers who boarded the aircraft. Rajesh Chopra explained that, if the number of flight coupons that had been collected from the boarded passengers did not match with the number of boarding passes issued at the gate, they would ascertain which passenger was not present and would off-load that passenger's bags.[426]

It was the common position among the experts who testified that, with respect to Air India Flight 181/182, "M. Singh" was not a "no-show" passenger.[427] Accordingly, the bag he checked aboard CP Air Flight 060 with an interline tag to Delhi did not come under the "no-show" rules. Nor was the bag apparently considered "unaccompanied." Kumar testified that this was because unaccompanied bags are checked bags that are associated with a travelling passenger. As Air India had no record or reservation for "M. Singh" aboard Flight 181/182, his bag was unauthorized.[428] It had infiltrated Air India's baggage system.

Unfortunately, in June 1985, Air India employed no means of identifying an "unauthorized bag," although there is evidence Air India had used this measure earlier. The bag checked at Vancouver International Airport by "M. Singh" was considered to be such a bag. "M. Singh" did not have a reservation aboard Air India Flight 182 and, as he did not check in at Pearson Airport, Air India had not issued a boarding pass. His checked bag, interlined from CP Air to Air India, was accepted by Air Canada, Air India's ground handling agents at Pearson, when CP Air Flight 060 arrived. As it had a tag indicating that it was to be loaded aboard the Air India flight, the bag was delivered to Air India's baggage handling area and examined by Burns security personnel, either by X-ray or by PD4. It was

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423 Exhibit P-284, Tab 68, p. 21. The emergency measures of Air India's security program were applicable in June 1985. See, for example, Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4406.

424 Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4341.

425 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4408.

426 Testimony of Rajesh Chopra, vol. 43, June 14, 2007, p. 5336.

427 "M. Singh" *was* a "no-show" with respect to CP Air Flight 060.

428 Testimony of T.N. Kumar, vol. 37, May 31, 2007, pp. 4406-4407. See also Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4408.

then loaded aboard the aircraft. Air India had no idea that the bag was aboard the aircraft or that it belonged to a passenger who had failed to board the interlining flight.

Chopra's characterization of the bag as "unauthorized" is understandable, but it also suggests an after-the-fact rationalization. The fact that the bag was not authorized to be in Air India's baggage system does not absolve Air India of responsibility for the bag. It does not answer the question of why there were no procedures in place to identify and isolate such unauthorized bags. The *Foreign Aircraft Security Measures Regulations*[429] required carriers like Air India to develop systems of identification to prevent baggage from being placed aboard aircraft if not authorized by the owner or operator. The bag was accepted at Pearson and sent to Air India's baggage area by Air Canada, Air India's ground handling agent. Air India's contracted security provider, Burns International Security, scanned the bag belonging to "M. Singh". For Air India to say that the bag was placed aboard Air India Flight 181/182 without authorization was no answer, as this was just the sort of act that its security plan was meant to prevent.

A much more effective system, and one that almost certainly would have identified the "unauthorized bag," was passenger-baggage reconciliation, a measure that required that every checked bag be matched to a confirmed passenger before being loaded aboard the aircraft. Although this measure was not practised widely in 1985, it was certainly understood to be an effective measure, and had been practiced in Canada prior to the bombing. It was an ideal tool to meet the threat of sabotage through explosives concealed in checked baggage.

The simplest form of passenger-baggage reconciliation was practiced in airports in developing countries that did not have the money for technology. As Wallis described it:

> [Y]ou line the bags up on the tarmac, you say to the passengers, "Identify your bag". He identifies his bag or her bag; you put it on the airplane. Anything that isn't so identified doesn't go on. Very, very, very effective way of reconciling passengers and bags and we had two instances in the subcontinent where bags didn't go on and blew up. So therefore, we knew what would have happened to the airplane had they been on the aircraft.[430]

Passenger-baggage reconciliation had been used effectively on a number of occasions prior to the bombing. This measure had been used successfully in Spain to prevent a bombing, and Lufthansa employed it periodically at Frankfurt.[431] Wallis gave the example of a bomb that was intended to be interlined to a Pan American flight out of Rome.[432] The bomb was to be placed aboard the

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429 *Foreign Aircraft Security Measures Regulations*.
430 Testimony of Rodney Wallis, vol. 35, May 29, 2007, p. 4257.
431 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4478.
432 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4412.

originating flight in a piece of interlined checked baggage. At the Yesilkoy Airport in Turkey, where the originating aircraft was taking on passengers, the basic, but highly effective, reconciliation technique described above was used: prior to boarding, the checked bags were lined up, and passengers were asked to identify them. One bag was not identified, and so it was not loaded aboard the aircraft. It contained the bomb.

Passenger-baggage reconciliation had also been successfully used in Canada before 1985, and Transport Canada was aware of its potential. A Transport Canada audit of CP Air's security, conducted in 1984, indicated that CP Air was regularly conducting passenger-baggage reconciliation during various threat situations.[433] Transport Canada considered it an effective and worthwhile measure for high threat situations, noting:

> …recently the CP Air and KLM staffs in Toronto (KLM is handled by CP Air) successfully developed and applied a passenger-baggage match system. They found it worked very well and there was definitely no bag put on the aircraft unless the passenger was on the aircraft. It caused some slight delay but it would not be an impossible situation to tolerate in the event that we did run into high threat situations in Canada.[434]

As the threat of sabotage and checked baggage security became of increasing concern in Canada, airports and airlines struggled to balance effective security against good customer service. Confirming that all checked bags were associated with travelling passengers required additional time before a flight could depart. In November 1984, Sheppard wrote a memorandum concerning the feasibility of acquiring and deploying X-ray machines to scan checked baggage at airports during general and specific threat situations. From the content of the memorandum, it is apparent that passenger-baggage reconciliation had been utilized on multiple occasions to respond to various threats, but that it was causing delays to flights and was thus a source of concern. Air India in particular was under such a high threat that it was frequently engaged in passenger-baggage reconciliation at Mirabel, but Sheppard felt that "…[b]aggage matching was so time consuming and leading to loss of confidence on the part of passengers that Air India has leased a large scan ray unit for Mirabel."[435]

Passenger dissatisfaction was likely the result of delays that passenger-baggage reconciliation caused to departing flights, along with what was likely an increase in baggage mishandling. There is no evidence that passenger-baggage reconciliation itself was ever considered ineffective. Owing to efficiency concerns, however, Transport Canada was considering X-ray inspections as an alternative. Sheppard wrote that "[m]any, many bomb threats against aircraft" had caused delays of hours at airports due to "…evacuation, baggage matching

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433 Exhibit P-101 CAF0637, pp. 6, 18.
434 Exhibit P-101 CAF0637, pp. 18-19.
435 Exhibit P-101 CAF0581, p. 1.

and opening."[436] Given the general emphasis on speed, efficiency, and customer satisfaction in an era when baggage mishandling was endemic, even when passenger-baggage reconciliation was not utilized, it is clear that Transport Canada viewed X-ray technology as something of a panacea.

Despite the concern that passenger-baggage reconciliation was time-consuming and thus inefficient, it was, ironically, the single most effective checked baggage security measure available at the time. Professor Reg Whitaker expressed its utility with respect to Air India Flight 181/182:

> Well, I think evidently that passenger baggage reconciliation carried out with any degree of diligence should have identified that bag as unidentified – as unaccompanied and had it removed.
>
> And, however that was dealt with subsequently, it would have been off the flight. I mean, that's clearly the point. Once you reach this stage where the bag had actually gotten onto the CP flight and had landed at Pearson. All the other security measures that were – additional security measures that had been taken around flight 182 all turned out to be superfluous, the additional police and so on because in effect, they were directed towards the wrong – in the wrong direction.[437]

Recommendation 4.1.5 of the IATA Aircraft / Airport Security Procedures stated: "…ensure that all baggage boarded (except expedite baggage) belongs to passengers who are travelling on the flight."[438] This was as much a customer service measure as it was a security measure, given how many bags were put onto the wrong flight at the time. When asked how one could comply with that recommendation without reconciliation of passengers and baggage, however, Wallis replied: "With great difficulty, I would suggest."[439]

Due to the large amounts of baggage moving in a major airport, however, it would not be possible to routinely have passengers identify their lined-up checked bags. Baggage mishandling was "endemic" in 1985.[440] Automation – computer assistance – was required. This is certainly an area where technology can be of immense value. Computers can manage vast amounts of data, facilitating the sorting and tracking of the thousands of bags that cross through a busy airport each day. Technology can be exceedingly useful. What is important, however, is to resist the temptation to rely too much on that technology or to overestimate the effectiveness of any one device or tool. Following the bombing of Air India Flight 182, IATA undertook to develop and promote means of automating the process of passenger-baggage reconciliation.

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436 Exhibit P-101 CAF0581, p. 1.
437 Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4351-4352.
438 Exhibit P-158: Aircraft/Airport Security Regulations, s. 4.1.5.
439 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4413.
440 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4413.

Failure to Learn from the Air India Bombing: Pan Am Flight 103

On December 21, 1988, a bomb aboard Pan American World Airlines (Pan Am) Flight 103 exploded in mid-air over Lockerbie, Scotland.[441] The aircraft came apart in the violence of the blast and the subsequent rapid depressurization. The explosion and crash of the Boeing 747 killed 270 people, including all 259 persons aboard the aircraft and 11 townsfolk on the ground below. The *modus operandi* of this bombing was identical to that used in the bombing of Air India Flight 182: the bomb was concealed in a piece of unaccompanied checked baggage that was loaded aboard the plane after being delivered to the airport as an interline bag from a different connecting flight.

Just as in the Air India tragedy, passenger-baggage reconciliation might well have identified the bag and prevented the bombing. Unlike the Air India tragedy, however, passenger-baggage reconciliation was a required security measure for this flight. Unfortunately, an overriding concern for expediency and cost-effectiveness resulted in the decision to bypass this measure altogether, in favour of cheaper, technological solutions. Wallis summed up the incident in his book on the disaster:

> It was a tragedy that should never have happened. Investigations were to show that the methodology used by the terrorists was a known one. It had been used to bring down an Air India jumbo jet, the *Kanishka*, three years earlier, and counter-measures to prevent such bombings existed. Furthermore, prior warning of an attack on Pan Am had been received directly by US authorities. The warning detailed the route of the aircraft and the intended timescale of the attack. Pan Am 103 was destroyed and 270 people died as a result of avoidable human failures and irresponsible corporate decision-making. A court in New York was to hear later that the airline had abandoned the passengers and crew on board the [747 named] "Maid of the Seas" to the worst ravages of international terrorism.[442]

By 1988, the Federal Aviation Administration (FAA) required that all bags interlined to American carriers must be matched to travelling passengers as well as security screened before they could be loaded aboard the aircraft.[443] Additionally, the FAA had designated the Frankfurt airport as a high risk airport, given its assessment of the threat of terrorism, making passenger-baggage

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441 Exhibit P-166, p. 1.
442 Rodney Wallis, *Lockerbie: The Story and the Lessons* (Santa Barbara Greenwood Publishing Group, 2001), pp. 1-2.
443 Exhibit P-166, p. 3.

reconciliation essential.[444] Officials within Pan Am's Frankfurt office were concerned about cutting costs, however, and decided that passenger-baggage reconciliation was too expensive a security measure. To save money, Pan Am instead set up a subsidiary company called Alert Management and bought new X-ray machines for screening checked baggage. Alert would provide the pared-down security services for Pan Am in Frankfurt. Pan Am incorrectly concluded that this arrangement relieved it of the FAA-mandated duty to match passengers and baggage.[445]

The bag containing the bomb began its journey aboard an Air Malta flight destined for Frankfurt. It had been placed aboard the flight by a Libyan security officer, who had access to the baggage tags used by the airline as well as access to the baggage handling area.[446] He tagged the bag containing the explosive device for interlining so that it would be flown to Frankfurt and transferred to the Pan Am flight to London.

At the Frankfurt airport, the bag was run through an X-ray machine and cleared by security. The X-ray machines were no more advanced than those in operation in June 1985. They still displayed black and white images and lacked high-resolution displays. The security officer operating the X-ray machine for Pan Am's checked baggage at Frankfurt was inexperienced, had poor eyesight, was not wearing his glasses, and had not been trained. As Wallis explained, only two or three months before the bombing "…he'd been a cleaner somewhere and was now an X-ray specialist. So he missed it and the bag went onto the Pan American flight, just as the bag went on to the Air India Flight."[447]

The Pan Am flight proceeded to Heathrow Airport in London. Unlike Air India Flight 181/182 which changed its flight number from 181 to 182 upon leaving Montreal but did not change the actual aircraft, Pan Am Flight 103 changed aircraft at Heathrow. A Boeing 747, *Maid of the Seas,* was waiting at Heathrow, and would be making the transatlantic flight to the United States as Pan Am Flight 103. All connecting passengers would have to disembark from the plane arriving from Frankfurt and board the *Maid of the Seas*. All baggage destined for the United States would also have to be transferred from one aircraft to the other.

Conclusion

There is no one-size-fits-all solution for aviation security. A successful security strategy consists of multiple security measures, and the ability to deliver appropriate responses depending on the threat assessment. One of the critical components of any aviation security program will be technology: X-ray machines, metal detectors, and computer systems which are part of the airport experience of thousands of travellers in Canada each day. With the assistance of technology, some degree of efficiency within a busy international airport

444 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4518.
445 Exhibit P-166, p. 5.
446 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4516.
447 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4517.

can be maintained. Nevertheless, effective security also depends on the ability to anticipate a threat, including sabotage, and to design reliable methods for combating it.

When the *Kanishka* departed Pearson for Mirabel on June 22, 1985, it carried an explosive device that had not been detected by any of the modern equipment in use. This was the culmination of a number of tragic failures. Air India placed undue faith in the X-ray machine, given the lack of training of its operators. It also placed undue faith in the PD4, and its failure at the test on January 18th demanded an alternate response. Transport Canada and the RCMP had serious doubts about the effectiveness of the device, and yet took no action to alert Air India of the second failure of the PD4 following the test on January 19th. The device was put into the hands of inexperienced private security guards after a fleeting demonstration. The safety of all 329 passengers and crew aboard Air India Flight 182 rested on the twin assumptions that the device would work properly and that it would be used properly.

Air India placed undue faith in the abilities of both X-ray machines and the PD4 in protecting the safety of its passengers, crew, and aircraft. It did so despite having good reason to question and re-examine their effectiveness, and despite the existence of viable alternatives such as physical searches of checked bags and true passenger-baggage reconciliation. Technology will always have practical limits, and these limits will be compounded when unskilled, inexperienced, or poorly trained operators are involved. Transport Canada and the RCMP, meanwhile, expressed doubts about the PD4, while failing to take any action to inform Air India of a subsequent failed test or to formally recommend that Air India not rely on the PD4 for checked baggage security.

2.4 Security Culture at Canada's Airports

Burns Security – little training, low pay and no motivation say it all.
- Minutes of Meeting, Department of Justice, January 7, 1986.[448]

Despite the extensive evidence surrounding the threat of sabotage to civil aviation in the early 1980s, the evidence is that, at the same time, the "culture of security" at Canada's major international airports was surprisingly lax. Canada was not alone in having a lax security culture; the *CATSA Act* Review Advisory Panel concluded that there was no "security awareness culture" in North America in 1985, writing that:

> The air carriers paid more attention to competitive pressures, and security did not loom as large. For example, screeners hired by airline companies received only the most rudimentary training. The primary concerns of air carriers were to please customers and reduce costs. The reason for the human error: people and systems are reluctant to pay the price for what is not seen as an urgent need until the gravity of the threat becomes unmistakable.[449]

448 Exhibit P-101 CAC0517, p. 5.
449 Exhibit P-157, p. 72.

Although Europe had become increasingly focused on aviation security since the 1960s, Canada had not experienced a major incident against aviation security in the 1980s and this fostered a general culture of complacency. There were many dedicated and hard-working individuals who strove to ensure the safety of air travel, but there were nevertheless individuals within Air India, Burns International Security, and the RCMP who were "…going through the motions" of providing basic security without necessarily being focused on preventing acts of terrorism. The absence of a purposeful security focus was reinforced by the anemic regulatory structure governing carrier operations, the lack of meaningful inspections and sanctions, and an undue focus on the vanishing hijacking threat posed in the 1970s.

As noted by the *CATSA Act* Review Panel, there existed no specific protocol for government agencies, such as Transport Canada and the RCMP, to provide security assistance to the air carriers. Instead, security was seen as "an individual company issue."[450] Private commercial interests were responsible for protecting the public interest. This protection was provided by poorly-trained private security personnel and unmotivated airport personnel, paid minimum wage.

The air carriers' supervision of the contracted security companies was inadequate. Transport Canada's Civil Aviation Security Branch considered the fact that security companies were generally under the direct supervision of an air carrier's customer service section (as opposed to their security section) to be a significant security issue. This was perceived to be a problem due to the fact that the air carriers' customer service focus would often be in direct conflict with security priorities. For example, there were occasions when contracted screening companies were urged to speed up the passenger screening process and get passengers through as quickly as possible.[451] One such incident involving Air India is found in the written statement of Burns branch manager Holger ("Nick") Kordts, who informed the RCMP after the bombing that Air India would have security "…rush through three or four older persons," if pressed for time.[452]

Designating and Training Security Officers

A 1982 Transport Canada report outlining issues facing the development and implementation of the National Air Transport Security Plan noted that:

> Employees of the private security agencies hired by the air carriers are generally not of a high calibre in terms of educational level, experience or permanence. They are located at a low point in the wage structure … and due to low salaries agencies are frequently unable to attract 'the best

450 Exhibit P-157, p. 72.
451 Exhibit P-101 CAF0774, pp. 18-19.
452 Exhibit P-101 CAF0538, p. 8. See also Exhibit P-283, Tab 27, p. 1: The minutes of an Air India/Air Canada debriefing following the initial Air India flights out of Pearson centred around delays being caused by throngs of well-wishers and lagging passengers. Air India was concerned about being "…an 'off-sked' departure – looks unprofessional; get a bad reputation." It was recommended that Burns deploy a "firm, male security guard" who would take a "tougher approach".

> people'. This presents a difficult situation, as the employees are not hired by Transport Canada but they do represent the first line of defence in T.C.'s security program. It is interesting to note that in the USA standards are being developed to ensure that these employees can both see and read (This may indicate the prior level of performance on the job). While the contracting of private security companies is not a Transport Canada responsibility, it does raise questions which should be addressed in the context of this planned exercise. Is passenger screening being provided in the most effective manner? Should these private guards not be security cleared by the RCMP?[453]

The *Aeronautics Act,* as it stood at the time of the bombing, limited the designation of "security officers" to properly qualified personnel.[454] Prior to 1984, however, there were no criteria specifying what attributes would make a security company employee "properly qualified."[455] In 1984, Transport Canada issued a set of criteria that would be required for qualification as a security officer. Transport Canada also developed new training programs which were issued to the carriers, who bore responsibility for training their security personnel. No private security officer could screen passengers and their baggage and personal belongings at an airport without successfully completing the initial and refresher training mandated under the security measures set by the Minister of Transport.

The program materials were audio-visual presentations utilizing slide show carousels and audio cassettes. Along with courses on the use of X-ray and metal detection units for passenger and carry-on bag screening, the materials included courses such as "Don't Pocket Your Protection," designed to familiarize airport personnel with their restricted area passes and their proper use, and "It Doesn't Happen Here," which utilized actual incidents of hijacking and missile attacks against Canadian targets to solicit the support of airline personnel in maintaining alertness and countering the threat.[456]

Burns International Security Services Limited Personnel (Burns) was the private security company that provided the bulk of passenger and baggage screening services at the major airports in Canada in 1985. Burns was under contract with Air Canada and Air India to provide security officers at Mirabel International Airport [457] and Lester B. Pearson International Airport. At Pearson, Burns provided security services under several different contracts. It was under contract with CP Air, which managed the domestic flight operations for itself and 26 other airlines at Terminal I, and was also under contract with Air Canada,

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453 Exhibit P-101 CAF0774, p. 19.

454 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(9): "The Minister may designate as security officers for the purposes of this section any person or class of persons who, in his opinion, are qualified to be so designated."

455 Exhibit P-263, p. 48.

456 The catalogue of Transport Canada training programs can be found at Exhibit P-101 CAF0647.

457 Exhibit P-101 CAE0249, p. 17. According to the RCMP, "In Canada, Air India contracts its passenger security services to Air Canada, which in turn contracts its passenger security to Burns Security."

which managed the international flight operations for itself and 18 other airlines at Terminal 2.[458] Additionally, when Air India prepared for its new operations at Pearson in January 1985, it also contracted with Burns to provide additional security for its weekly flights on the recommendation of Air Canada's security manager.[459] A letter from Burns to Air India, dated January 23, 1985, confirmed the contract to provide 11 security officers and two security supervisors each week to X-ray checked baggage, guard the aircraft and conduct secondary screening of passengers and carry-on baggage.[460]

As of 1984, Transport Canada required that security officers:

- Be 18 years or older;
- Be in good general health without physical defects or abnormalities which would interfere with the performance of duties;
- Be licensed as a security guard and in possession of the licence while on duty; and
- Meet the training standards of Transport Canada consisting of successfully completing the Transport Canada passenger inspection training program, attaining an average mark of 70 per cent, and undergoing refresher training within 12 months from previous training.[461]

The security companies under contract with air carriers would themselves have to meet Transport Canada requirements providing that a company:

- Was licensed in the province;
- Used a comprehensive training program which had been approved by Transport Canada and was capable of being monitored and evaluated;
- Kept records showing the date each employee received initial training and/or refresher training and the mark attained; and
- Provided supervision to ensure that their employees maintained competency and acted responsibly in the conduct of searching passengers and carry-on baggage being carried aboard aircraft.[462]

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458 Exhibit P-101 CAF0603, p. 5.
459 Exhibit P-283, Tab 5, p. 3.
460 Exhibit P-284, Tab 23, p. 2.
461 Exhibit P-101 CAF0089, p. 18.
462 Exhibit P-101 CAF0089, p. 18.

Weaknesses of Private Security Firms

In practice, however, the security companies responsible for hiring and training these security officers were awarded contracts on the basis of being the lowest bidder.[463] The security officers were paid minimum wage, poorly trained, and subject to low or unspecified performance standards. As a result, there was high employee turnover and low security motivation.

The employees of the carriers working at airports across Canada were not subject to criminal record checks or credit checks. Private security officers were put to work screening the public, and aircraft groomers went aboard aircraft, without any security clearance.[464] Transport Canada required its own employees to undergo background and criminal record checks in order to obtain security clearance. In the 1970s, Transport Canada had considered creating a program to conduct similar security checks for all private sector airport and airline employees with restricted area passes and access control passes. The conclusion reached in 1979, however, was that Transport Canada lacked the authority to require fingerprints and personnel history forms from airline and airport personnel, and that the RCMP (including the Security Service) lacked the authority to provide Transport Canada with information obtained through security checks. As such, it was decided that the aviation industry companies themselves would bear responsibility for any reliability checks.[465]

Mr. Chern Heed, who served as the Airport General Manager at both Vancouver and Pearson Airports, testified about the great ease with which a restricted area pass for an airport could be obtained under this system in 1985. According to Heed, "…basically the security pass, or the airport restricted security pass was issued on the face of the company. So if your employer said you worked for ABC company, and referred the application to the airport manager, he was issued a restricted area pass."[466] That is to say, if the employer, which did not conduct security checks of its employees, requested a pass granting that employee access to the restricted areas of the airport, then it would be issued.

Examples of Security Failures

As a consequence of this system, the very personnel charged with security or screening functions were frequently unmotivated, improperly trained, unprofessional, or incompetent. This is exemplified in a December 1982 letter written to the airport manager at Pearson by a member of the travelling public concerning the conduct of the screening staff. The letter described an experience of going through security at Terminal 2, the international terminal at the airport. The traveller's carry-on baggage was sent through without being examined by the screeners, who were conversing amongst themselves "…in a most joyous mood." Curious to see what might actually get a reaction from the

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463 Exhibit P-157, p. 55.
464 Exhibit P-157, p. 55. See also Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3649.
465 Exhibit P-364, pp. 5-6.
466 Testimony of Chern Heed, vol. 38, June 1, 2007, p. 4640.

distracted security personnel, the traveller walked directly past the checkpoint, bypassing the metal detector entirely, and attracting no attention from the guards. He wryly told an Air Canada attendant that he could have gone through the security checkpoint with a shotgun without notice, concluding that as a person "…who frequently commutes that route for business reasons and being quite aware of what is happening around the world, I must admit that being one of the 250 passengers that night**,** this incident really scared the hell out of me."[467]

Paul Sheppard, the Director of Civil Aviation Security at Transport Canada, was concerned enough to write a response to Air Canada's Director of Security. Air Canada contracted with Burns to provide private security guards. Sheppard stated that the air traveller's observations "…come as no surprise,"[468] pointing out that, in his experience, the security at Pearson's international terminal had been of much lower quality than the domestic terminal at the same airport. He was concerned about the fact that the security screeners were inadequately supervised, as this resulted not only in a very poor image, but also in poor security.[469]

Transport Canada designed the training courses and materials used by the private security companies to train security officers, and had a responsibility to evaluate the training of screening personnel by the air carriers.[470] Sheppard conducted tests of the security personnel at both of Pearson's terminals in 1983, and was very concerned about the results. The tests disclosed that both the Burns security officers and the RCMP had improperly responded to critical threats.[471] The Burns employees, in particular, were poorly trained and unprepared to diligently respond to threats and unexpected situations.

Penetration tests were conducted to assess the Burns employees' responses when a weapon was hidden in carry-on baggage. A briefcase containing a weapon was taken through the security checkpoint where passengers and carry-on baggage entering the departure area of the terminal were screened by X-ray and metal detectors. The weapon was not otherwise concealed or obscured in any of the tests, and it showed up clearly on the X-ray screen used to screen carry-on baggage. According to the screener training which all private security officers were required to complete, the proper response when a weapon is found is to leave the briefcase in the machine, or set it aside, and call the police with a silent alarm.

At Terminal I, the domestic terminal at Pearson, the screeners identified the weapon and then became flustered. Sheppard, posing as the traveller carrying the weapon in his briefcase, claimed to know nothing about it. The screener left to call for a supervisor, giving Sheppard the opportunity to pick up the briefcase

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467 Exhibit P-101 CAF0559.
468 Exhibit P-101 CAF0560.
469 Exhibit P-101 CAF0560.
470 Exhibit P-138, p. 17.
471 Exhibit P-101 CAF0566.

and take the weapon.[472] Ultimately, the RCMP were signaled and responded four minutes later. The RCMP members attended, but they did not approach in a way that would enable the second officer to provide backup to the first.

At Terminal 2, the weapon was again identified and Sheppard again pleaded ignorance. The guards ran the briefcase through the scanner again to show their supervisor, who proceeded to press him as to whether he had authorization to carry the weapon on board and insisted that he open the case. Exasperated "…that they were going to continue to [hassle] me and never call the RCMP," Sheppard broke off the test and identified himself.[473]

Sheppard asked the Burns guards why they did not use the silent alarm to summon the police, and they replied that they had been told to only use the silent alarm when their lives were in danger. As he noted, their lives certainly were in danger, given that he could have seized the weapon when asked to remove it from the briefcase. Sheppard asked the RCMP whether they had indeed instructed the Burns personnel not to summon them, even when they positively identified a weapon. According to Sheppard's report, the response given to him by the RCMP special constables was that the Burns personnel had been using the silent alarm far too often for trivial matters, such as oversized bags and jokes involving weapons, and so they had been instructed not to use the silent alarm "…unless their lives were in danger or they found a weapon or a bomb**."** Unfortunately, as Sheppard observed, "…[t]he latter part of the communication was apparently lost along the way by all concerned."[474]

Sheppard's review included a checklist for security matters found to be satisfactory or unsatisfactory. It included the question, "Have the contract security or air carrier personnel received adequate training regarding the air carrier security program, requirements, their authorities and responsibilities, especially in respect of removal of weapons and dangerous objects from passengers?" The form is checked "No," followed by the handwritten annotation "Nor the RCMP."[475]

Other findings worthy of note from the inspection checklist included the fact that the item "Is baggage checked only on the flight for which the passenger has a ticket?" is checked "No", with the handwritten annotation "Standby bags shipped." Additionally, the item "Is unaccompanied baggage cleared and, if necessary, examined by a responsible employee of the air carrier prior to being loaded aboard the aircraft?" is checked "No." Finally, the item "Date air carrier last tested the passenger screening system with simulated weapons. Results satisfactory?" is checked "No."[476]

Sheppard expressed his concern about the lax security posture in a letter to the Manager of Safety and Security at Pearson Airport, writing, "Obviously a lot

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472 Exhibit P-101 CAF0566, p. 1.
473 Exhibit P-101 CAF0566, p. 1.
474 Exhibit P-101 CAF0566, p. 2.
475 Exhibit P-101 CAF0566, p. 5.
476 Exhibit P-101 CAF0566, pp. 6-7.

of work remains to be done, particularly with the air carriers and the private security guard company holding the contract."[477]

General Complacency about Airport Security

The difficulties in maintaining vigilant and competent security at airports were by no means limited to the private security officers working for the air carriers. Throughout the major Canadian airports, many employees of airlines, and other airport tenants, resisted adopting a focused, purposeful awareness of security issues. They contributed to the security failures through simple acts and omissions such as leaving security doors propped open or unlocked, or failing to display their security passes in restricted areas. In a larger sense, the low motivation and the disregard for security measures meant that the army of airport workers could not truly be expected to act as eyes and ears on the ground to alert authorities to suspicious activity. Along with high staff turnover, low pay, and minimal training, the relatively incident-free years of the early 1980s bred a sense of complacency and engendered faith in the idea that "it couldn't happen here."

A May 1984 Transport Canada memorandum to its Dangerous Goods and Civil Aviation Inspectors addressed areas of security requiring considerable improvement at the larger airports. A number of security lapses caused concern for the Civil Aviation Security branch, including the failure to verify that only *bona fide* passengers entered the screening areas and sterile areas, and the failure of personnel to display their identification cards when inside secure areas. The memorandum stated that "…[w]e have been concerned that an attitude of complacency was developing within some areas of aviation security, indeed it was expected to develop. This is just one example of how it would surface."[478]

The inspectors were directed to monitor the larger airports in their respective regions and alert the carriers to any observed shortcomings in their security systems. Unfortunately, such inspections would not be frequent. There were only 11 inspectors across Canada to conduct such reviews for the roughly 70 carriers operating at the dozens of Canadian airports across the country,[479] 19 of which were major Class I or Class II airports.[480] As the *CATSA Act* Review Advisory Panel noted, they were "…thinly stretched for the tasks and breadth of the industry they were responsible for monitoring."[481]

Security at an airport relies on more than being able to detect weapons in carry-on baggage or a timely response by police. Whenever airport staff are inattentive, or cut corners, or cease to pay regard to security requirements, such as prominently displaying their identification badges when accessing restricted parts of the airport, some of the most effective defences against unauthorized access and criminal activity are disabled.

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477 Exhibit P-101 CAF0567.
478 Exhibit P-101 CAF0570.
479 Exhibit P-157, p. 22.
480 Exhibit P-101 CAF0638, p. 2.
481 Exhibit P-157, p. 22.

1984 Security Inspection at Pearson Airport

In April 1984, a security inspection was conducted at Pearson airport. Transport Canada provided comments with respect to security deficiencies that required action, and the review was discussed at a meeting of Pearson's Airport Security Committee on June 14, 1984. Sitting on the committee were representatives of the airlines operating out of Pearson, along with Transport Canada and the RCMP. All present were given a copy of the airport security review and asked to provide comments.[482] Among the issues highlighted at that meeting was the fact that carrier personnel were leaving the security doors to the departure lounges and aircraft bridges unlocked or propped open, allowing anyone unfettered access to passengers and aircraft. All present were reminded that it was the airlines' responsibility to ensure that doors were closed after a flight.[483]

This issue of security lapses was again the theme at the meeting of the Airport Security Committee held on September 13, 1984, when Dale Mattson, who chaired the meeting, reported that departure area doors continued to be found unlocked. Also of concern was the fact that incomplete and invalid security passes were being issued by the carriers. At the same meeting, Mattson noted that he had not received any comments concerning the report of the Airport Security Review held in the spring, and asked that it be given everyone's immediate attention, adding that responses were expected by the end of October.[484]

The ten Class I airports in Canada in the 1980s (the eight international airports plus Ottawa and Dorval airports) each had Transport Canada safety and security officers who reported to that airport's general manager. They were required to conduct annual security surveys to assess the airport's security measures and make recommendations.[485] Transport Canada felt that the reviews had a great deal of value, but acknowledged that they were not without weaknesses:

> If there is a fault to be found in these surveys, it is that they may not have the "teeth" to correct the problems when holes are identified in the system. An example of this was one airport which had many faults which were identified year after year but efforts at correcting the problems were held up due to other more pressing priorities.[486]

It is not surprising, then, that at the next Pearson Airport Security Committee meeting, held in December 1984, Mattson once again pointed out that no one on the committee had submitted any comments or responses to the Airport

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482 Exhibit P-101 CAF0079.
483 Exhibit P-101 CAF0079, p. 5.
484 Exhibit P-101 CAF0080, pp. 2-3.
485 Exhibit P-101 CAF0654, p. 5.
486 Exhibit P-101 CAF0654, p. 5.

Security Review.[487] He emphasized that, since a number of the recommendations would impact carrier operations, he would like to receive the comments of the committee members as soon as possible.

General Inattention to Security Issues

One of the realities of a busy international airport is that some day-to-day operational matters will take precedence over others. Clearly, however, the inattention to fundamental questions of security was a deep and pervasive failing on the part of many individuals, and changed little with time. It was a theme repeated at airports across the country.

In April 1985, at a meeting of the Vancouver Airport Security Committee, the Chairman expressed his concern over the use of Restricted Area Passes at the airport, and cited the example of an employee who had pasted a picture of the Pope on his pass and attempted to use it to gain access. On another occasion that employee had pasted the picture of a cartoon character on his pass. The pass was confiscated, and all representatives at the meeting were warned to explain to their employees the serious consequences of abusing the pass system. At this meeting, it was also observed that security gates at the airport were being left open and unattended.[488] The security measures intended to prevent unauthorized access to restricted and vulnerable sections of the airport were being ignored.

The security picture was no different at Mirabel International Airport (Mirabel) in 1985. As outlined in the testimony of Daniel Lalonde, the security officers employed by the air carriers at Mirabel were poorly trained and poorly paid. This was despite the fact that the tasks with which they were charged, such as properly operating X-ray scanning equipment, required attention, skill, and diligence. Lalonde testified that most of these people were not particularly focused on security, and he included himself in that assessment. With no prior security experience, no training in screening checked baggage, and only one hour of prior training for screening carry-on baggage using a different X-ray machine, Lalonde was asked to help scan the checked baggage for Air India on June 22, 1985. He did not know what to do, or whom to contact, when suspicious articles of checked baggage were found.[489]

Brian Simpson provided illuminating testimony concerning the continuing problems affecting the security culture at Pearson in June 1985. He testified that, in general, the airport employees on the ground were simply not concerned about security. Neither he nor his colleagues among the Air Canada airport staff had any respect for airport security; they also viewed the private security officers as "a joke." The consensus amongst airport workers was that the private security guards were neither authoritative nor good at their jobs. The RCMP special constables were held in the same low esteem.

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487 Exhibit P-101 CAF0082, p. 2.
488 Exhibit P-101 CAF0086, p. 5.
489 The full details of his story can be found in Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.

Security was simply not part of the daily routine for the airport crews. They were not given any security training or motivational training that would encourage them to make the security and safety of the airport and aircraft a part of their jobs. Simpson testified that he himself was delinquent in displaying the identification pass indicating that he was authorized to work in restricted parts of the airport and aboard aircraft. He would put it in his pocket so that he did not lose it while working. Nevertheless, he had been asked to show his pass only twice in nearly 20 years of employment at Pearson.[490]

In the prevailing security environment, nothing systematically prevented airport workers from entering any part of the airport or going aboard almost any aircraft, whatever their intentions. No records were kept of who went aboard an aircraft or entered a restricted area, or why they did so. Simpson testified that he boarded Air India Flight 182 on a whim on June 22, 1985, and, not only was he not challenged or hindered in any way, but he would not have been concerned had anyone, even his own supervisor, caught him doing so. There was no stigma in breaking the rules, and certainly no fear of consequences for any breaches. Simpson testified "I could have gone on every aircraft on every gate that day and any other day and no one would bat an eye."[491]

Simpson also confirmed that secure airport doors were occasionally left open at Pearson, and that door lock codes were frequently written on the walls. Anyone attempting to enter a secure area, even if they had no business there, might well see the code written on the wall that would enable their entry. In addition, the door codes were changed infrequently and were easy to guess. For example, the bridge doors could be opened by punching in the number 4 followed by the gate number.[492]

April 1985 Inspection of Air Carrier Security at Pearson

Airport management at Pearson were concerned enough by the exceedingly lax security that, in April 1985, they conducted an inspection of air carrier security. The tests focused on the passenger screening points for both the domestic and international terminals, which were staffed by Burns security officers. The inspection, which was also conducted to provide reference material for the pending Papal visit, revealed that the security headaches at the airport continued. It is revealing in itself that among the report's findings and conclusions was the recommendation that testing of security screening personnel be done on a monthly or bi-monthly basis.[493]

The inspection report indicated that a number of problems resulted from inadequate and inconsistent staffing at passenger screening checkpoints. Without an adequate number of screeners at the checkpoints, the screeners were distracted and forced to hurry through their duties, particularly at peak

490 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3650, 3681, 3697.
491 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3649, 3694.
492 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3643, 3677, 3682.
493 Exhibit P-101 CAF0603, p. 8.

periods. For example, body scans of passengers conducted with hand-held metal detectors were hurried and incomplete, averaging less than three seconds per person.[494] At one screening point in Terminal 2, only one security screening guard out of three was actually working when the inspection was conducted. Of the other two, one was reading a newspaper and the other was using a pay phone.

Penetration tests conducted during the inspection revealed that inattentiveness and rushed searches by passenger and carry-on baggage screeners continued to result in significant security deficiencies at both terminals at Pearson. For example, although the inspector conducting the test presented an invalid boarding pass at the passenger screening point at Terminal 2, the security officers allowed him to proceed without even a cursory examination of its details. As the inspector walked through the metal detector, it sounded an alarm indicating that there were metal objects concealed on his person. He offered to empty his pockets, but received no response. Instead, he was quickly examined by the hand-held "wand" type metal detector; this device also beeped, but he was not searched further. During the subsequent briefing about the test, the guards acknowledged not hearing the noises made by the wand.[495]

At the passenger screening point at Terminal I, the inspector's boarding pass was once again not examined, and when the walk-through metal detector reacted with an alarm as he walked through it, he again volunteered to empty his pockets but received no response.[496] He was again scanned by a "wand" type metal detector which beeped in response to the keys in his pocket, but he was not searched further or asked to remove anything from his pockets.

The weapon concealed in the inspector's carry-on briefcase was, fortunately, detected when it passed through the X-ray scanner at the security screening checkpoint. Unfortunately, the silent alarm for that unit had not been installed, meaning that the security officer turned away to activate the alarm on another unit. In the confusion that ensued, the inspector moved into the sterile area, and the screener lost track of both where the briefcase had gone, and whether the "suspect" was the inspector or the passenger behind him.[497] The screener then left with the RCMP in a futile search for the suspect in the sterile area and departure rooms, while the inspector left the sterile area altogether and returned to the main terminal. He then joined a line of passengers at the next passenger screening point and conducted a further penetration test.

The final penetration test at Terminal I was more thorough. This time, the RCMP were successfully summoned and arrived after three minutes, along with the security officer from the first passenger screening point. Unfortunately, the security officer was unable to identify the inspector as the suspicious passenger or even the briefcase as the one with the concealed weapon in it.[498]

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494 Exhibit P-101 CAF0603, p. 6.
495 Exhibit P-101 CAF0603, p. 8.
496 Exhibit P-101 CAF0603, p. 9.
497 Exhibit P-101 CAF0603, p. 9.
498 Exhibit P-101 CAF0603, p. 10.

Professor Peter St. John of the University of Manitoba is an expert on aviation terrorism, and was critical of the security in place at Canadian airports, even before the bombing of Air India Flight 182. He testified that, after witnessing an assassination attempt against the Indian High Commissioner in downtown Winnipeg, he became aware of the threat of violence posed by some radicals within the pro-Khalistani movement.[499] As he learned more about the violent potential of the movement, which was well-funded and whose extreme members were outspoken in their fervent hatred of the government of India, St. John suspected that increasingly ambitious and sensational attacks lay ahead.

With the growing threat of violence from extremist members of the Sikh community coming to the fore, and the history of terrorists targeting civil aviation, the lax aviation security in Canada made airlines operating in Canada a possible target for hijacking or some other threat. When asked to provide an example of his observations of airport security during this period, St. John testified:

> I had a student working in [passenger] screening and the Prime Minister of Canada went by him but he was so drugged [*sic*] after about half an hour working that he didn't recognize the Prime Minister of Canada standing in front of him. And there were little indicators like this that airport security was going through the motions but that it wasn't really good security.
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> [T]he ticket counter people were not really seriously asking you questions about security, not even looking you in the eye. There was just a concern about little things like that, that people were breaking rules.… I don't want to exaggerate because I developed – these perceptions over a long period of time, and I began to look much more sharply at airport security, but at this time I was concerned about this because I thought it was really lax.[500]

St. John testified that Canada's poor security was such a concern to him that, in 1985, he began organizing a conference to be held in January 1986 to discuss the challenges facing Canada's aviation security system. According to St. John, Transport Canada was dismissive of the idea for a number of reasons, including the fact that "Nobody else was having an airport security conference." The conference went ahead in any case and, in an ironic twist, a hijacking took place at Winnipeg airport while the conference was in full swing. The RCMP took over ninety minutes to respond to the incident, which could have "…blow[n] the whole front of the airport away, which was all glass, and it would have injured a lot of people if it had happened."[501]

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499 Testimony of Peter St. John, vol. 35, May 29, 2007, p. 4230.
500 Testimony of Peter St. John, vol. 36, May 30, 2007, p. 4290.
501 Testimony of Peter St. John, vol. 35, May 29, 2007, pp. 4232-4233.

Post-Bombing Security Still Lax

In the aftermath of the bombings, a July 1985 security audit of Mirabel, Vancouver and Pearson International Airports conducted by Transport Canada revealed that the security breaches and lax security posture continued.[502] As was the case before the bombing, these security failures were caused by inattention, complacency, incompetence, and low security awareness.

In Toronto, the security measures designed to prevent unauthorized access to sensitive areas of the airport were in shambles. The conclusion reached was that many areas of the airport were vulnerable to determined or even accidental entry. For instance, thousands of the identification passes that had been issued to personnel, and which allowed access to restricted parts of the airport, had been lost, stolen, or never returned, and could not be accounted for.[503] The access codes for security doors with combination locks had not been changed since the day they were installed, as Simpson also noted in his testimony, and the codes themselves were written on many of the doors. It was found that credit cards could open locked access doors at the airport, that access to security keys was not well controlled, and that the keys could be easily duplicated. The perimeter fencing at the airport was also not up to standards,[504] with barbed wire having been improperly installed, and parts of the ground underneath the fence washed away by a creek, with the result that it was possible to penetrate the fence and get into the airport.

Access control to the warehouse areas of the airport was also found to be weak. Consequently, cargo and mail could be accessed with relative ease, and the RCMP noted that "substantial losses" were incurred each year as a result of theft.[505] Of particular concern was the inadequate control of access to the aircraft parked at the airport. The audit report noted that "…the ability to control restricted access is highly suspect and instances have been noted where unauthorized access to aircraft has occurred," and "…the access of caterers, cleaners, etc. to the aircraft is not closely monitored."[506] The aircraft were also parked adjacent to airport security fencing due to space constraints.

Operationally, the Airport Security Plan had not been updated since 1981, and did not provide for a stepped response to specific threat situations.[507] Of significant concern was the fact that it did not assign specific responsibilities within the Canadian Air Transportation Administration (CATA) for various security tasks and a monitoring function. Additionally, the Airport Disaster Plan also did not define responsibilities of CATA and the air carriers under various alert situations. This caused so much confusion that, during a recent hijacking

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502 Exhibit P-101 CAF0555, CAF0695; Exhibit P-457.
503 Exhibit P-101 CAF0555, p. 4.
504 Exhibit P-101 CAF0555, p. 5.
505 Exhibit P-101 CAF0555, p. 7; Exhibit P-457, p. 18.
506 Exhibit P-457, p. 20. See Section 1.9 (Pre-bombing), Mr. Simpson's Visit to the Air India Aircraft for an example of this lax monitoring.
507 Exhibit P-101 CAF0555, p. 4.

threat, the airport took 36 hours to reach full alert status while both RCMP and CATA headquarters worked to determine the necessary responses. The state of readiness at the airport was also called into question during this situation, as no explosives detection dog was available and airport workers were unable to properly interpret the readings given by the explosives detection device used instead.

Moreover, it was found that follow-up to the regulatory inspections at Pearson was "inadequate."[508] The Security Committee had not followed up on its 1984 security survey, and there was a lack of day-to-day monitoring of carrier and airport security measures. Incident reports compiled by Burns Security and RCMP officers were also not being routinely reviewed, analyzed, and acted upon, and various penetration tests conducted had established that even the screening of passengers and carry-on baggage did not guarantee that airport sterile areas were completely secure.

Other problems highlighted included the fact that contracts with Burns Security did not specify performance standards, meaning that the contract was silent on the objectives and requirements that Burns needed to satisfy in order to fulfill its contractual obligations to provide thorough and competent security services.

There were also prominent lapses at Vancouver International Airport, where gates were left open and unguarded, and the perimeter fencing that surrounded the airport was inadequate to prevent unauthorized persons from entering.[509] In some areas, the fencing was shorter than required, or lacked barbed wire. In other areas, the fencing had been damaged, and unauthorized individuals would have no difficulty in moving underneath it. In another area, a large quantity of soil had been piled up near the perimeter fencing making it easy to climb the hill and get over the fence. Meanwhile, aircraft parked at the airport were left unlocked and unsecured and "…unguarded during all hours of the day and night."[510] RCMP patrols had identified this problem and brought it to the attention of air carriers on numerous occasions, but the security failure persisted.

Other security problems at Vancouver International Airport included the fact that there had been no motivational or security training for personnel, resulting in complacency and a lax security posture at the airport. There had not been a proper test of the airport's security and emergency plan in at least four years. Although an exercise had been conducted in June 1985, it was only a partial exercise as not all participants were available, and the exercise tested emergency responses to a simulated crash, and not a bomb threat or other security threat. Additionally, inspections of air carriers did not survey or address any of their security measures, and, as a consequence, faults in the design or implementation of carrier security programs did not come to the attention of responsible personnel.[511] Finally, as in Toronto, no formalized procedures existed to monitor airport security measures on a daily basis.

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508 Exhibit P-101 CAF0555, pp. 4-6.
509 Exhibit P-101 CAF0555, p. 1.
510 Exhibit P-457, p. 7.
511 Exhibit P-101 CAF0555, pp. 1, 3.

At Mirabel, the security audit revealed that RCMP special constables and commissionaires were not examining airport passes thoroughly. Access to the cargo area was easily obtained. Airport personnel were not regularly wearing their passes, and control over the security passes themselves was ineffective, with the result that passes were not being returned and were not accounted for, with some even being taken out of the country. Meanwhile, annual security surveys and quality reviews were not being conducted, the security plans and emergency procedures were out of date, and there was no integrated day-to-day monitoring of security measures.[512] One air carrier was operating without meeting its regulatory obligation to develop and file a security plan.

Even after the bombing of Air India Flight 182 drove home the reality that terrorism "can happen here," these lapses continued. Ed Warrick, the Airport General Manager at Pearson in 1985, wrote a stern letter concerning the security inspections conducted after the bombing. The August 1985 letter noted that employees at Pearson were not closing bridge doors, were leaving the doors unsecured, were setting off alarms, and were writing the codes to bridge doors on the walls. Not surprisingly, Warrick stated, in no uncertain terms, that these breaches were "…totally unacceptable from a security viewpoint and must cease immediately."[513]

As it turned out, the casual disregard for basic security procedures continued unabated at the airport. A meeting of the Airport/Airline Operators' Committee in September 1985 included the warning from the Committee chairman that "Airport Management is concerned with the increasing number of incidents where aircraft bridge doors and Departure room doors are being left open and door alarm systems turned off." All present were urged to increase employee security awareness and ensure that their employees kept restricted area doors secured at all times. Failure to do so would result in Transport Canada having all doors guarded by commissionaires, with the cost being charged to the carriers.[514]

In November 1985, Warrick published a circular that was sent to all the air carriers at both terminals, and all the ground handling agencies. It expressed his continued frustration at the intolerable security situation.[515] In the bulletin, he noted the persisting security breaches at bridge doors and emergency exits, and placed the blame squarely at the feet of air carrier and ground handling agency personnel. He underscored the importance of continual vigilance, and explained that:

> Transport Canada has increased Airport Policing and Security Detail resources in an effort to improve the level of security at Lester B. Pearson International Airport. However, without the

512 Exhibit P-101 CAF0555, pp. 8, 9.
513 Exhibit P-101 CAF0141, p. 1.
514 Exhibit P-101 CAF0609, pp. 2-3.
515 Exhibit P-101 CAF0610.

> active support and participation of all Airport Agencies and their personnel in the Airport Security Program, there is no doubt, regardless of the number of security personnel who are employed, we will be unable to achieve and maintain an acceptable level of security at this facility.[516]

Such porous security was especially undesirable in light of the fact that the media, which expressed considerable interest in aviation security following the bombing of Air India Flight 182, had just conducted a penetration exercise at Pearson in September 1985. The successful infiltration of the airport by the CBC in September 1985 did nothing to reassure the public that security had improved. According to the minutes of the subsequent meeting of the Pearson Airport Security Committee, the airport administration was so embarrassed by the incident that it increased the number of security guards inside the terminal buildings. The reporter had been able to infiltrate the sterile areas of the airport terminal through an unguarded security door being used by passengers of an arriving flight.[517] According to the minutes, Mattson observed:

> …[o]ur security system was never designed to repel terrorism however media reports such as this, put us all in a bad position. The chairman stated that it is the responsibility of all airport employees to participate in the overall airport security program. He stated that Transport Canada are preparing training/information programs, however, these may not be ready for some time.
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> He requested that all agencies should make an effort to inform all their employees that our increased security posture can only be attained if all participate. He furthered that Transport Canada are open to any comments or recommendations to improve security.[518]

At the meeting of the Airport Security Committee, Mattson was very concerned about the lack of control being maintained over the access points by the air carriers, adding that the screening personnel employed by the air carriers should have been paying attention to the security doors while they were in use.[519] A carrier representative pointed out that at other airports, the exit doors adjacent to the screening points were monitored by commissionaires or other security guards, but Mattson replied that there were insufficient resources or personnel available to cover all the doors being used by passengers from arriving flights.

In April 1986, airport security again proved to be an embarrassment to Transport Canada and the air carriers, when members of the press successfully penetrated the security at Mirabel and Dorval airports with concealed weapons

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516 Exhibit P-101 CAF0610.
517 Exhibit P-101 CAF0704, pp. 3-4.
518 Exhibit P-101 CAF0704, pp. 3-4.
519 Exhibit P-101 CAF0704, p. 4.

and explosives. These very public episodes understandably "heightened the urgency" to improve aviation security measures at Canada's airports,[520] particularly in light of the weaknesses identified in the July 1985 security audits at Vancouver, Pearson, and Mirabel International Airports.

Initial Steps to Enhance Airport Security

In July 1986, funding was approved by the Treasury Board for the implementation of immediate, short-term enhancements to the identified security weaknesses, with long-term measures to be identified later. The approved priorities included acquiring new X-ray equipment, increasing the number of commissionaires at airports, providing expanded security training and awareness programs to airport employees, and retaining the RCMP deployments at the eight domestic airports from which they were previously scheduled to be withdrawn.[521]

While any attempt to increase meaningful security must be commended, the timing of these improvements faced criticism even then. Coinciding with the April 1986 submissions to the Treasury Board for expanded funding for security was a spring 1986 memorandum with an annex that asked a number of critical questions about these security enhancements.

> Many of the gaps in airport security were well known before the Air India crash. What accounts for the delay in plugging these gaps? Why does it take a media test penetration of airport security (April 1986) to move DOT to enhance further its security measures?
>
> …
>
> Why is the Pearson International Airport pass system only now being reviewed when it was known last year that many passes were missing, etc.?[522]

The Continuing Problems of Complacency and "Threat Fatigue"

There were many factors contributing to the frequent security breaches and the lax attitude towards airport and airline security that even the bombing of Air India Flight 182 had failed to eliminate. Arguably, the most significant of these included the failure to create a true culture of security awareness through regular and thorough training and testing at all levels of aviation security, and the inexperience, low pay, and high turnover of airport personnel and security officers.

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520 Exhibit P-101 CAF0553, p. 1.
521 Exhibit P-101 CAF0553, p. 1.
522 Exhibit P-101 CAF0635, p. 2.

One closely related factor was the "threat fatigue" that sets in when one is called upon to be exactingly vigilant at all times. Yves Duguay, Senior Director of Air Canada Security and Chairman of the International Air Transport Association (IATA) Security Committee, testified that, when staff are kept at a very high level, in terms of security measures, for extended periods of time, complacency sets in because this level then becomes the norm.[523] Instead of being vigilant, airport workers resume "going through the motions," due to the perception that the high-level measures are not producing results and are unnecessary. As Duguay explained:

> [I]f you want to have a really good security system, you cannot rely on the security part alone. [W]e have to have the buy-in of our employees, that's very important, and they have to be part the solution. [W]hen they don't believe that a measure actually brings any value to the system, you have to start thinking that they might not be complying [with] the measure ….[524]

For these reasons, Duguay testified he was strongly in favour of security awareness programs and training being delivered to anyone working at an airport.[525] He believed that a broad culture of security awareness was an essential part of any functional security system.

Many of the experts who testified before the Commission were worried about the impact of complacency on aviation security. Aviation security expert Rodney Wallis testified that complacency was an ever-present problem, particularly with front line security.[526] This attitude was a product of the small number of security incidents that actually took place for the average worker, leading to inattention and an expectation that serious security threats were unlikely to emerge. According to Wallis:

> [C]an one really live with that sort of a job where nothing ever happens? So somehow the role of the Security Manager is to keep up the level of attention. A screening team which was originally recommended by ICAO comprises of five or sometimes six people. They work in a shift and they rotate.
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> Sometimes they're operating the walk-through magnetometer. Sometimes they're observing the screen. Sometimes they're controlling the baggage flow through the machine, but you have to keep rotating them in order to maintain their attention. You also have to start introducing artificial means of keeping them on their toes.

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523 Testimony of Yves Duguay, vol. 43, June 14, 2007, p. 5264.
524 Testimony of Yves Duguay, vol. 43, June 14, 2007, p. 5276.
525 Testimony of Yves Duguay, vol. 43, June 14, 2007, p. 5279.
526 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4541.

> For instance, you can screen into the VDUs an image of a weapon or an image of something that really requires further looking to see if they're with you, but you've got to be monitoring all the time.
>
> It's very difficult, you know … the routine nature of that job is soul destroying and the task, the challenge set for governments, set for airlines, set for airports managers, is somehow to keep people motivated and you have to continually devise programs to do that.[527]

Frontline workers benefit from being kept informed with intelligence and threat assessments.[528] This involvement facilitates a sense of purpose, making their jobs more meaningful and contributing to heightened vigilance. The fact that most of those on the front lines did not comprehend the threat prior to the bombing of Air India Flight 182, and acted without purpose or focus in performing their duties, is illustrative of the fundamental connection between providing good information and maintaining effective aviation security.

Minimal Consequences for Security Breaches

As noted, this was a period where there were few consequences for lapses in security. Most responsibility for aviation security had been placed with the air carriers and private security companies, whose interest in executing meaningful security measures was constantly balanced against budget numbers and customer relations.[529] The prevailing attitude was that, so long as there were no major incidents and customers were happy, business could continue as it always had.

The *Aeronautics Act* made it a summary conviction offence for any individual who refused an authorized search of their person, belongings and baggage to board an aircraft. It was also an offence punishable on summary conviction to breach the regulations made pursuant to the Act.[530] The penalties that could be imposed on an air carrier upon conviction were relatively insignificant, however, and there were no civil penalties, such as large fines, that could be imposed upon air carriers as deterrents against breaches of the regulations and orders. There was also no legal requirement for air carriers to comply with their own security programs. As the Director of Civil Aviation noted in a meeting held

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527 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4541-4542.

528 As discussed in further detail in the present-day context in the Volume Four of this Report: Chapter III, Section 3.4, Use of Intelligence in Aviation Security.

529 See, for example, Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4494. He testified that when he joined the International Air Transport Association his role was "…to keep the commercial operation going but to ensure that it operated securely." He sought to ensure that passenger service aspects of the airlines were not being adversely impacted by security measures by balancing the two goals carefully. The happiness of their customers was, understandably, very important. It was only as the threat became more pronounced that security concerns took the predominant role it has today.

530 *Aeronautics Act*, R.S.C. 1970, am. S.C. 1973-74, introducing s. 5.1(11). Punishment upon conviction could result in a fine of up to $5,000, imprisonment for up to one year, or both.

after the bombing of Air India Flight 182, even if an inspection uncovered a security issue, there was "…no authority to take any action (nothing between written reprimand and death penalty)."[531] These issues are discussed in detail in Section 4.7 (Pre-bombing), Transport Canada Policy Gaps and Implementation Deficiencies.

Poorly Trained "Security Officers"

Following the bombing of Air India Flight 182, the Government of India announced it would hold a judicial inquiry into the disaster, headed by Justice B.N. Kirpal (Kirpal Inquiry). The Canadian Aviation Safety Board (CASB) prepared extensive submissions to the Kirpal Inquiry containing its analysis of the evidence. The evidence included information obtained by the RCMP investigation, along with the cockpit voice and flight data recorders and the forensic examinations of the recovered bodies and wreckage. With respect to the level of security provided by Burns, the CASB submissions referred to the RCMP investigation, stating:

> The statements taken from Burns security personnel in Toronto indicated that a significant number of personnel, including those handling passenger screening, had never had the Transport Canada passenger inspection training program or, if they had, had not undergone refresher training within 12 months of the previous training.[532]

As noted earlier, under the statute and associated regulations in place at that time, individuals who had not successfully completed the training program developed by Transport Canada were ineligible for the designation of "security officer," and should not have been screening passengers or baggage at the airport. Although the training program was rudimentary, it was nevertheless part of a consistent national standard for screening personnel. The Burns supervisors at Pearson interpreted the requirement that screeners be trained and qualified to mean that guards who had not received the Transport Canada security officer training would do other jobs instead, such as working "downstairs" examining checked baggage by X-ray.[533] Such duties arguably demanded personnel at least as qualified as a formally designated screening officer. In practice, however, the distinction between a trained and designated security officer and an untrained guard was not well maintained. Burns charged Air India the same rate for "security officers" and "guards," and apparently used the terms interchangeably.[534]

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531 Exhibit P-101 CAC0517, p. 5. The "death penalty" refers to the revocation of an air carrier's operating privileges in Canada, meaning its aircraft could no longer take off or land at Canadian airports.

532 Exhibit P-101 CAF0089, p. 9.

533 Exhibit P-101 CAF0801.

534 See, for example, Exhibit P-284, Tabs 23, 24, 34, 35, 39. Holger ("Nick") Kordts, the Burns Branch Manager for Etobicoke, referred to Burns providing security officers or security guards interchangeably and paid Burns $6.90 (originally $7.00) per hour per employee.

Many employees were merely shown the ropes by more experienced employees and were expected to learn on the job. The statement obtained from Mohnaz Khan indicated that he had received no training whatsoever in his four months with Burns as a security officer, aside from "on the job" training as he worked.[535] Lalonde had testified about similar ad hoc "on the job training" when he started with Burns at Mirabel.[536] Another Burns employee, Gregory Balaze, indicated he had not taken the Transport Canada passenger screening course, and had been instructed "…just to stand there and look for anything suspicious or anyone suspicious who might be carrying something he isn't allowed."[537] He had, however, been shown how to use the X-ray scanner on the job early one weekend and assisted in the examination of checked baggage.

Naseem Nanji, a Burns security officer who actually conducted X-ray screening of the checked baggage due to be loaded aboard Air India Flight 182 at Pearson on June 22, 1985, had received no training in the operation of either the X-ray scanner provided by Transport Canada for screening carry-on baggage or the larger X-ray scanners used to screen checked baggage. She stated, "I didn't receive any instructions on how to look for a bomb. I was told to look for funny wiring or connections." The only training she received from Burns consisted of courses in first aid and CPR.[538]

Abufazal Khan, a security officer conducting passenger and baggage screening at Pearson who had worked on Air India flights on a number of prior occasions, provided a candid statement about his own lack of training and competence:

> When I first started work with Burns Security I didn't receive any instruction or training about the job. After a couple of months they (Burns) gave us an hour of classroom training and showed us slides of what to look for in baggage, our dress code, types of bombs to look for and also guns to look for. I don't believe I could tell what a bomb looked like if I saw one. I have worked about 275 hours in the past 8 months with Burns. I had no previous security experience prior to working for Burns Security.[539]

Refresher training for Burns personnel was particularly sporadic and inconsistent. Ann Marie Jackson, who had worked for Burns since 1983 and carried out passenger screening duties for Air India on June 22, 1985, had not received any refresher training in two years. She recalled taking a written test when she was first employed, but once she started working at the airport she simply learned

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535 Exhibit P-101 CAF0158.

536 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3116, 3131. When asked about how he learned to operate the X-ray scanner used to examine carry-on baggage, he testified "Well, other officers showed me how to activate it. It's pretty simple. It was forward and back and that was it. Specific training, no, I don't recall that."

537 Exhibit P-395, p. 57.

538 Exhibit P-101 CAF0159, pp. 1-2.

539 Exhibit P-101 CAF0157.

on the job. Another Burns guard, Jack Prosser, informed the RCMP that he had taken a security test in 1982 when he worked for a different security company, but only received formal training from Burns after the bombing.[540]

In his September 1985 statement to the RCMP,[541] Holger ("Nick") Kordts, the branch manager for Burns at Pearson, said that employees did not receive the refresher training that was mandated by Transport Canada for security officers after twelve months. Instead, they were given pop quizzes on the job by their supervisors. Kordts was not even aware of the 12-month refresher course requirement, and he informed the RCMP that records had not been kept about any refresher training or pop quizzes until just before he gave his statement.[542]

Employee Security Checks

As discussed earlier, the airport and airline employees at the very front lines of security at airports across Canada were not subjected to criminal record or security screening prior to being hired and being issued a restricted area pass and identification card. It would not be until after the bombing, with the publication of the Seaborn Report, that the matter of security checks would be revisited. The Report made the recommendation that:

> [I]t would be desirable for all Canadian airside employees and others with regular access to particularly sensitive areas of the airport and to aircraft to be subject to security and criminal indices checks as a condition of employment…. Clearly visible and controlled identification should be worn at all times. Airport management and the air carriers must make it a continuing priority to inculcate in all workers the need to maintain a high level of security awareness throughout the airport and on the airfield.[543]

The recommendation that security checks be a condition of employment at an airport was eventually implemented in 1987. Air Canada, for example, now conducts criminal record checks for every new employee, and those requiring restricted access at airports are also subjected to a security check going back five years.[544] In general, a company desiring a pass for its employee is now required to submit his or her fingerprints and a personal history form to Transport Canada. With this information, the RCMP conducts a criminal indices check, and CSIS conducts a security check.[545] Transport Canada initially conducted a credit check during this process, but discontinued that practice in 2007. Members of the *CATSA Act* Review Advisory Panel have expressed considerable concern about the security consequences of this decision.

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540 Exhibit P-395, pp. 39-40, 45-46.
541 Exhibit P-101 CAF0538.
542 Exhibit P-101 CAF0538, p. 11.
543 Exhibit P-101 CAF0039, p. 8.
544 Testimony of Yves Duguay, vol. 43, June 14, 2007, pp. 5287-5288.
545 Testimony of Chern Heed, vol. 38, June 1, 2007, pp. 4640-4641.

The lack of security clearance checks for airport and air carrier employees proved to be more than a theoretical security risk. A similar security problem existed at Vancouver International Airport, where the bags containing the bombs were placed on an aircraft on June 22, 1985. At that airport, Dynamic Maintenance had been contracted to clean the premises. Following the bombing of Air India Flight 182, CSIS checked the names of 159 Dynamic employees at the airport to assess security risks. They found that multiple individuals among the airport janitorial staff, who had wide access to the airport and could move about virtually unnoticed, had connections to extremist Sikh organizations. The search found seven employees with associations with the Babbar Khalsa, and four with the International Sikh Youth Federation.[546] In fact, CSIS determined that Ajaib Singh Bagri's brother was an employee of Dynamic at Vancouver International Airport.[547] CSIS concluded that it would have been easy for these extremist organizations to have "almost unlimited access" to the airport.[548] The staff were not security-screened to work at the airport, and could go nearly anywhere in the airport unchallenged once they received their pass tags and keys.[549] Moreover, the RCMP indicated to CSIS that they felt there was a good chance the Dynamic cleaners were involved in criminal activity.

Regarding the implications of this security failure, CSIS wrote:

> It is clear that this may not be the only non-cleaning activity the staff are involved in. In addition to being able to circumvent security checks, cleaning staff could be used as couriers or go betweens for political or criminal purposes…. Considering the Canadian Governments [*sic*] stated aim to tighten airport security, the present lapse at VIA could prove embarrassing and fatal, particularly if any DYNAMIC staff become implicated in an incident similar to Air India Flight 182…. and it would be interesting to see if similar results would be achieved if checks were carried out at other International airports but it is still only recognition of what could be a serious problem and not a solution.[550]

The "…lax hiring practices of the airport community" also caused consternation at Pearson in the months after the bombings. The screening failures became evident when four employees of an air carrier operating at Pearson were arrested as illegal immigrants. The Immigration Canada representative lectured the carriers on the risk that "…because of the increased security situation, employment of illegal immigrants could prove costly and embarrassing," adding that "…some of these people could have criminal records."[551]

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546 Exhibit P-101 CAB0681, p. 4.
547 Exhibit P-101 CAA0418, p. 2, CAB0601, p. 1.
548 Exhibit P-101 CAB0681, p. 4.
549 Exhibit P-101 CAB0681, p. 4
550 Exhibit P-101 CAB0681, p. 5.
551 Exhibit P-101 CAF0704, p. 5.

Security Culture Slow to Change

In the weeks and months following the Air India bombing, Transport Canada, and the Government of Canada as a whole, worked quickly to improve aviation security. Immediately following the bombings, a tough new Ministerial Directive was issued for all flights to Europe or Asia, requiring that all checked baggage be physically inspected or X-rayed, all cargo be held for 24 hours unless it was a perishable item from a known shipper, and all passengers and carry-on baggage be fully screened.[552] The amended *Aeronautics Act* came into force on June 28, 1985, with updated aviation security regulations following in December 1985.

It would be a mistake, however, to suggest that a new culture of strict and uniform security was widely embraced immediately after the bombings, whether one looks at the conduct of airport workers and security guards being paid minimum wage, or the executives of the air carriers themselves.

The Air Transport Association of Canada made extensive submissions to the Government of Canada concerning the emergency measures imposed on June 23, 1985, calling the measures "excessive," and seeking a resumption of the pre-bombing security regime as the standard set of aviation security requirements under normal conditions.[553] Rodney Wallis, who was the Director of Security for IATA between 1980 and 1991, expressed his opinion to the Director of Civil Aviation Security for Transport Canada in September 1985 that Canada had "overreacted" by issuing the strict Ministerial Directive, particularly with regard to the hold on cargo.[554] He testified that the emergency measures "…didn't go down well" with the carriers because they were causing departure delays of several hours per flight, with each hour of delay costing between $10,000 and $18,000 in 1985 dollars for a large jet aircraft.[555]

The carriers emphasized that they supported the imposition of reasonable security measures, but preferred a stepped response based on intelligence and/or risk assessments, rather than imposing tough screening requirements uniformly. This reluctance was understandable. The delays caused by searches of checked baggage and cargo holds were raising operational costs and inconveniencing passengers, and the industry anticipated "major economic problems" if the average three-hour delay per aircraft continued.[556] This reflects a recurring tension in aviation security between the airlines' interests in minimizing costs and inconvenience to passengers, and interests in robust security measures which will require time and money. Although it can be debated whether the government struck the appropriate balance in the aftermath of the Air India bombing, it is undeniable that the pre-bombing system was deficient and that the government has a legitimate role in requiring airlines to invest in security measures.

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552 Exhibit P-101 CAF0595.
553 Exhibit P-101 CAF0602, pp. 3-4.
554 Exhibit P-101 CAF0606, p. 1.
555 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4481.
556 Exhibit P-101 CAF0441, p. 6.

Conclusion

What remains is that the system, as it stood on June 23, 1985, utterly failed to prevent the bombing. There could be no justification for returning to a system of voluntary security measures dependent upon unmotivated, poorly trained and poorly paid security and airport personnel for its delivery and effectiveness. Human, regulatory, and intelligence failures had all contributed to the tragedy. A more robust aviation security regime was required; one which included greater monitoring, compulsory and uniform standards, and the promotion of security awareness

VOLUME TWO
PART I: PRE-BOMBING

CHAPTER III: WHAT WENT WRONG?

3.0 The *CSIS Act*

This section provides a general overview of the *Canadian Security Intelligence Service Act*[1] (*CSIS Act*) and an in-depth look at some of the key sections of the *CSIS Act*.

The government's decision to create a new civilian intelligence service was rooted in the scandals that had plagued the RCMP Security Service (SS) and the resulting McDonald Commission[2] into those activities. The result was a new organization and a new act, the *CSIS Act*, which propelled a change in culture, dramatically affecting CSIS operations and administration and the overall relationship between intelligence and evidence in Canada.

> [W]e arrived at the *CSIS Act* in 1984, which … gave it a legal mandate and provided for review and accountability mechanisms.[3]

On June 21, 1984, the *CSIS Act* was passed. The legislation created a framework for CSIS, a service without police powers and separate from the RCMP. It granted CSIS an explicit statutory charter, something that was rare among western democracies at the time.[4] The *CSIS Act* granted sole responsibility for security intelligence investigations to CSIS. It also imposed a requirement of obtaining judicially authorized warrants in order to employ the use of intercepts. CSIS was not given any enforcement powers.[5] Finally, the *CSIS Act* created two new review bodies for CSIS. The Security Intelligence Review Committee (SIRC) was established to provide external review and the Inspector General (IG) position was established to provide internal review. The role of these review bodies

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1 R.S.C. 1985, c. C-23.

2 Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, *Freedom and Security under the Law*, Second Report – vol. 2 (Ottawa: Supply and Services Canada, 1981) [McDonald Commission, *Freedom and Security under the Law*].

3 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1434-1435.

4 Since 1975, the RCMP Security Service had drawn its mandate from a broadly worded Cabinet directive. Prior to that, the RCMP Security Service derived its authority from the power given to the Governor-in-Council in the *RCMP Act* to assign functions within the Force.

5 Philip Rosen, "The Canadian Security Intelligence Service", revised January 24, 2000, online: Parliament of Canada http://www.parl.gc.ca/information/library/PRBpubs/8247-e.pdf (accessed October 27, 2009).

was to act as watchdogs to ensure that CSIS activities remained within the law, to avoid a previous problem of the RCMP SS as highlighted by the McDonald Commission.

The *CSIS Act* attempted to address the twin requirements of security and democracy, as recommended by the McDonald Commission. Geoffrey O'Brian described security intelligence agencies as having four parts: "…mandate, powers, controls and review." The mandate and powers allow for what you can investigate and how. The controls and review deal with "the requirements of democracy," ensuring that the Service acts according to what society wants and within "the norms of society."[6]

Key Sections of the Act

The CSIS Act has a number of key sections:

Section 2

Section 2 of the *CSIS Act* contains the relevant definitions for the Act. Of particular note is the definition of threats to the security of Canada which defines CSIS's mandate:

"threats to the security of Canada" means

> (*a*) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (*b*) foreign-influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
>
> (*c*) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

6 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1542.

> (*d*) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (*a*) to (*d*).

The definition in the *CSIS Act* above is relatively short, in comparison, for example, to the three page long definition of "terrorist activity" found in the *Anti-terrorism Act*.[7] While the definition in the *CSIS Act* does overlap with criminal acts such as espionage, or the use of acts of serious violence, the definition also encompasses activities which are not crimes or may not be considered crimes.[8]

CSIS is therefore mandated to investigate a broader spectrum of threats than those covered by criminal legislation, and yet terrorism, as well as other activities considered criminal, also falls within CSIS's threat definition. This therefore results in an overlap in mandates between CSIS and the RCMP.

Section 6

Section 6 of the *CSIS Act* bestows authority of direction of the Service on the Director of the Service "…under the direction of the Minister." Section 6(2) provides that the Minister may issue directives to the Service as a means of providing that direction. According to Reid Morden, who served as a Director of the Service, the independence of CSIS was "…carefully calibrated by the fact that the Act deliberately gives the Minister direct oversight and supervision of the Service."[9]

Section 12

Section 12 of the *CSIS Act* provides the legislative authority for CSIS to retain the information it gathers. It also contains an important and controversial qualifier in the term "strictly necessary":

> The Service shall collect, by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain information and intelligence respecting activities that may on reasonable grounds be suspected of constituting threats to the security of Canada and, in relation thereto, shall report to and advise the Government of Canada.[10]

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7 S.C. 2001, c. 41. See Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1529.
8 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1529.
9 Testimony of Reid Morden, vol. 88, December 4, 2007, p. 11458.
10 *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, s. 12 [*CSIS Act*].

CSIS understood this qualifier to respond to concerns by the McDonald Commission about the RCMP Security Service practices in collecting and retaining information on Canadians indiscriminately.[11]

Section 12 permits CSIS to collect information which it then turns into intelligence. It is from this section that CSIS developed policies, not only with regard to the retention of intelligence, but equally importantly, for dealing with evidence. This led to a *de facto* prohibition on CSIS collecting evidence, and eventually to policies that led to information that might be considered evidence being routinely erased, notably intercepts and intelligence officer notes.[12] It was due to the absence of any mention of evidence in s.12 that Archie Barr wrote the oft-quoted memo stating that it would no longer be CSIS policy to retain evidentiary recordings:

> As the CSIS Act contains no requirement for collection by the Service of information for evidentiary purposes, no such capacity will be provided for within CSIS facilities.[13]

The correct interpretation of this section was debated throughout the Inquiry. CSIS witnesses consistently maintained that the "strictly necessary" qualifier applied to what CSIS can "analyze and retain" as well as "collect":

> One of the outcomes of the McDonald Royal Commission, was a concern that was shared by the government that the new organization, the new Security Intelligence organization would have strict limits on what it could collect – what it collected in terms of private information on Canadians. So there were statutory limitations placed upon what we could collect and what we could retain. And the section of the Act specifically says that we can – we could only collect and retain information that is strictly necessary in our effort to advise government on threats to the security of Canada. So that was a very, very distinct and strong limitation on what we could do with our information.[14]

The Supreme Court of Canada, in *Charkaoui*,[15] has definitively rejected this interpretation, pointing out that both grammatically and logically "strictly necessary" in s.12 refers only to collecting, and not to analysis or retention. Nevertheless, historically, SIRC accepted and supported the CSIS interpretation that limited its ability to retain information. Consequently, 800,000 files inherited from the RCMP Security Service were disposed of by CSIS in due course.[16]

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11 Testimony of Reid Morden, vol. 88, December 4, 2007, p. 11430.
12 Testimony of Reid Morden, vol. 88, December 4, 2007, p. 11430.
13 Exhibit P-101 CAA0040.
14 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6119-6120.
15 *Charkaoui v. Canada (Citizenship and Immigration)*, 2008 SCC 38, [2008] 2 S.C.R. 326.
16 Testimony of Kent Roach, vol. 81, November 22, 2007, p. 10395.

In retrospect, some senior CSIS members, including James ("Jim") Warren, have questioned the extreme focus placed on s.12, the "strictly necessary" qualifier and the overly cautious limitation to collect only intelligence:

> [T]he pendulum perhaps had swung too far and maybe we were being overly sensitive to this issue and overly cautious … generally pervading the service of the day – was this idea that we had to pay a lot more attention to things like the privacy of Canadians … and especially those that weren't suspected of being involved in subversive activities.[17]

Section 18

Section 18(1) reflects the continued emphasis on secrecy that carried over from the RCMP Security Service to CSIS. It states that CSIS is not permitted to disclose information collected and, in particular, prevents the disclosure of the identity of CSIS human sources and CSIS employees involved in covert activities.

Section 18(2) does contemplate that CSIS information may need to be disclosed to law enforcement, though read in conjunction with s. 19(2), CSIS is vested with the discretion to disclose through the use of the word "may."[18]

Section 19

Section 19 of the *CSIS Act* provides the legislative authority for CSIS to lawfully disclose information it has collected.[19] Information collected by CSIS may not be disclosed unless disclosure is required for the fulfillment of its duties, namely threat-related advice to the Government of Canada (section 12), security screening and security advice to the immigration and citizenship program (sections 13 to 15), and foreign intelligence information (section 16). CSIS needs to disclose this type of information to the government in order to fulfill its mandate.

Section 19(2) also outlines circumstances in which information collected, that is not specifically related to the CSIS mandate, may also be disclosed. Of particular note is section 19(2)(a), which provides for the passage of information from CSIS to law enforcement; an issue of great concern throughout the Air India investigation. The section notes that information gathered by CSIS may have value to law enforcement and that it "…can lawfully disclose that information to the relevant police force and prosecutors" despite the secrecy mandated in s. 18:[20]

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17 Testimony of James Warren, vol. 48, September 19, 2007, p. 5941.
18 Testimony of Kent Roach, vol. 80, November 21, 2007, pp. 10230-10231.
19 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1555.
20 Testimony of Kent Roach, vol. 80, November 21, 2007, pp. 10230-10231.

> The Service *may* disclose information … where the information may be used in the investigation or prosecution of an alleged contravention of any law of Canada or province, to a police officer having jurisdiction to investigate the alleged contravention and to the Attorney General of Canada and the Attorney General of the province in which proceedings of the alleged contravention may be taken.[21]

Section 19(2)(b) is similar to s. 19(2)(a) except that it refers to CSIS information relating to international affairs. Similarly, s. 19(2)(c) is in relation to CSIS information of interest to national defence.[22]

Because s. 19(2) is permissive through the use of the word "may", the question of when information should be passed soon became a hotly debated issue. Policy and operational requirements are at the heart of the problem. The actual CSIS response depends on a CSIS-only analysis of "…when is it appropriate to pass information of that nature, in what circumstances are there policy reasons for doing so," and whether there are "…operational reasons for doing so."[23] What is clear is that, despite the Pitfield Committee's description of the stark dichotomy between intelligence and evidence, the *CSIS Act* has always contemplated a relationship between intelligence and evidence and there has never been a "statutory wall" between the two.[24]

Section 21

Section 21 of the *CSIS Act* provides for the Service's warrant powers. The section makes clear that every warrant must first receive approval by the Minister and, once that approval has been received, the warrant application must be brought before a judge of the Federal Court.[25]

Review Bodies

Part III of the *CSIS Act* provides for review bodies, which are designed to make sure that CSIS acts within the law. These review bodies were created by the *CSIS Act* and did not exist in any form within the old RCMP Security Service.

The system created is one of review and not oversight. Oversight implies inspection of current operations and involvement in the critique of current operations. Instead, the *CSIS Act* created the SIRC and the Inspector General (IG)'s office to look retrospectively at CSIS's performance. The idea of the review programs was to allow the Minister to be held more accountable without deeply involving the Minister in all the operational details.[26]

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21 *CSIS Act*, ss. 19(2), 19(2)(a) [Emphasis added].
22 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, pp. 1555-1556.
23 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1557.
24 Testimony of Kent Roach, vol. 80, November 21, 2007, p. 10231. See Volume Two of this Report: Part 1, Pre-Bombing, Chapter III, What Went Wrong?, for a full discussion of these issues.
25 The definition of "judge", for the purpose of the *CSIS Act*, is found in section 2 of the Act.
26 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1438-1439.

The IG's office, an internal mechanism, was specifically created in order to provide the Minister's office with "…better insight into the operations."[27] An important aspect of the *CSIS Act* is the frequent mention of the Deputy Minister. Rarely is the role of a Deputy Minister mentioned in legislation.[28] In the *CSIS Act*, the Deputy Minister is given a leading role in what seems to be an effort to temper any partisan politics in the exercise of political control over CSIS operations. According to the *CSIS Act*, the Deputy Minister is to be consulted on operational policies.[29] As well, the Deputy Minister must be consulted on warrant applications.[30] Under s. 30, the IG reports to the Deputy Minister. The IG provides an annual certificate to the Minister that is meant to certify that CSIS is complying both with the law and with ministerial directives.[31]

On the other hand, SIRC, an external mechanism, is "…an independent, external review body which reports to the Parliament of Canada on the operations of [CSIS]."[32] SIRC's role is to monitor CSIS's compliance with the *CSIS Act*. SIRC is comprised of members of the Queen's Privy Council for Canada who are not members of the Senate or the House of Commons.[33] They are appointed through a process of all-party consultation in the House of Commons. SIRC is intended to strengthen parliamentary accountability by reporting to the Minister. SIRC also plays the important role of informing the public about the actions of CSIS.[34]

Security Offences Act

To understand the roles and responsibilities of CSIS vis-à-vis the RCMP, it is important to understand the *Security Offences Act*.[35]

The *Security Offences Act* was passed at the same time as the *CSIS Act* and also arose out of the changes recommended by the McDonald Commission.[36] Though the *CSIS Act* removed the security intelligence duties from the RCMP and gave them to CSIS, the *Security Offences Act* granted the RCMP significant duties in relation to criminal investigations regarding national security criminal offences.[37]

A comparison and analysis of the *CSIS Act* in conjunction with the *Security Offences Act* show that "overlapping jurisdiction" has always existed between the two agencies in relation to terrorism investigations.[38]

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27 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1439.
28 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1534.
29 *CSIS Act*, s. 7(1).
30 *CSIS Act*, s. 7(2).
31 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1439.
32 Online: Security Intelligence Review Committee <http://www.sirc-csars.gc.ca/index-eng.html> (accessed October 27, 2009).
33 *CSIS Act*, s. 34(1).
34 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1439, 1463.
35 R.S.C. 1985, c. S-7.
36 Testimony of Kent Roach, vol. 80, November 21, 2007, pp. 10233-10234.
37 *Security Offences Act,* R.S.C. 1985, c. S-7, s. 6 [*Security Offences Act*].
38 Testimony of Kent Roach, vol. 80, November 21, 2007, p. 10235.

Section 2(a) contemplates RCMP investigation of actions, mainly *Criminal Code* offences, falling within the definition of threats to the security of Canada as defined by the *CSIS Act*:[39]

> 2. Notwithstanding any other Act of Parliament, the Attorney General of Canada may conduct proceedings in respect of an offence under any law of Canada where
>
> (a) the alleged offence arises out of conduct constituting a threat to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*, or

The *Security Offences Act* also provides the Attorney General of Canada with a fiat that "…establishes the exclusive authority of the Attorney General of Canada."[40]

Finally, the *Security Offences Act* recognizes that the RCMP has "the primary responsibility" in relation to offences that also constitute a threat to the security of Canada.[41]

3.1 Internal CSIS Structure

The primary mandate of CSIS was to collect, analyze and disseminate intelligence to advise the Government of Canada on threats to national security. The RCMP, along with Ministers and other government agencies, relied on CSIS threat assessments to develop appropriate policy and operational responses to any national security threats.

The Commission investigated the adequacy of the CSIS threat assessment process in the period leading up to the Air India and Narita bombings. The questions asked were:

- How was CSIS organized?
- What did CSIS know?
- What went wrong?

This chapter presents the answers to these questions as uncovered by the Commission's investigation into the Government's action in the pre-bombing period.

How Was CSIS Organized? CSIS Threat Assessment Structure

CSIS was a highly centralized organization with a specific mandate to investigate and advise the Government of Canada on threats to the security of Canada.

39 Testimony of Kent Roach, vol. 80, November 21, 2007, pp. 10233-10234.
40 *Security Offences Act*, s. 4.
41 *Security Offences Act*, s. 6.

CSIS Headquarters (HQ) coordinated overall CSIS investigations by developing operational policies and setting annual intelligence requirements. The regional offices undertook the intelligence collection efforts to meet these requirements but had relative autonomy over the assignment of resources for this purpose. HQ was responsible for maintaining a centralized intelligence database to ensure that intelligence collected from various sources on related investigations was properly assembled.

The roles and responsibilities of the various units involved in the CSIS assessment of the threats of Sikh extremism in the pre-bombing period are described below, with a focus on each unit's role in each component of the intelligence cycle: tasking, collection, analysis and dissemination.

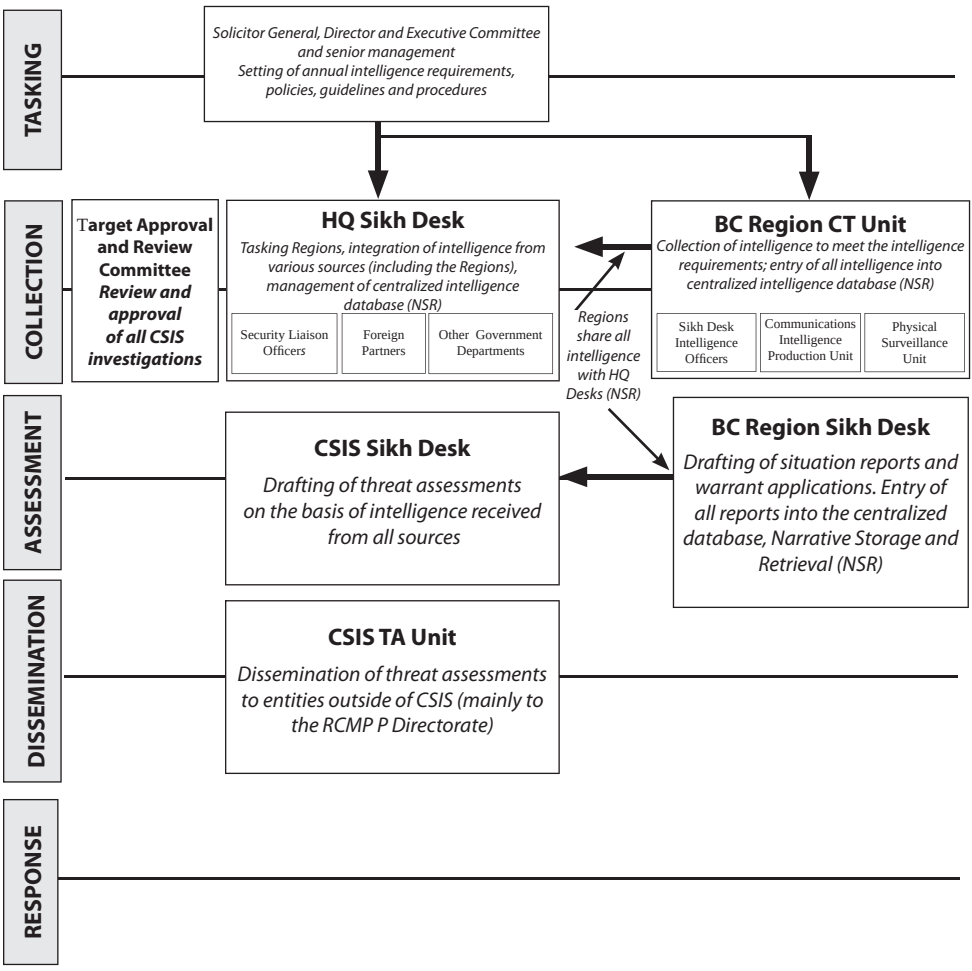

Figure 1: Organization of CSIS Units involved in Sikh Extremism Investigation

Solicitor General

The Solicitor General provided guidance and oversight over "tasking" priorities for CSIS operations. The security intelligence activities of CSIS operated under political control, as recommended by both the McKenzie and McDonald Commissions:

> Two Royal Commissions in the past fifteen years … concluded that security intelligence work was different from law enforcement and that security intelligence activity needs more government direction than is appropriate for police work. Police have in the criminal law, as CSIS has in statute, clear direction from Parliament as to their proper targets; but the job of the police, in every case, is to seek to gather evidence, lay charges and bring matters before the Court. So far as police work is concerned the laying of charges normally can and should take place without government direction.
>
> Security intelligence investigation in relation to a particular target is often long-term and recourse to the criminal courts is only one of a number of possibilities for dealing with a threat. The ultimate choice of the method of dealing with any threat must be the responsibility of the Government. Government direction is also required in relation to the attitude to be taken towards various foreign governments and agencies in a rapidly changing international environment.[42]

The *CSIS Act* enshrined political accountability. Ministerial approval was a requirement for all CSIS warrants, which authorized CSIS's most intrusive investigative techniques.[43] The Solicitor General could issue directions to the CSIS Director regarding the control and management of CSIS.[44] The CSIS Director was directed to consult with the Deputy Solicitor General on CSIS's operational policies and investigations.[45] Ministerial approval was also required for all cooperative agreements between CSIS and other Canadian government and foreign agencies.

The Solicitor General position was filled by the Honourable Robert Kaplan from March 3, 1980 to September 16, 1984 and by the Honourable Elmer MacKay from September 17, 1984 to August 19, 1985. Minister Kaplan issued three key Ministerial Directives:

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42 Exhibit P-101 CAF0030, p. 1.
43 *CSIS Act*, s. 21.
44 *CSIS Act*, s. 6(2).
45 *CSIS Act*, s. 7.

(a) the 1980 Directive on tape retention policy;

(b) the 1984 Directive on the division of CSIS and RCMP responsibilities after CSIS's creation; and

(c) the 1984 Directive advising that all RCMP SS Directives, policies and guidelines not inconsistent with the *CSIS Act* were to remain in effect.[46]

Minister MacKay was involved in several post-separation issues. In general, however, the department of the Solicitor General issued general policies and left the RCMP and CSIS to work out the operational details of implementing these policies on their own.

Target Approval and Review Committee

The Target Approval and Review Committee (TARC) was responsible for assessing and approving all CSIS targets and, in doing so, acted as an approval body for CSIS's collection efforts. The Committee included the CSIS Director, the Deputy Director National Requirements, legal staff and representatives from the Solicitor General's office. The TARC would consider whether the investigative means chosen were proportional to the gravity and imminence of the threat. Care was taken to balance the intrusiveness of the investigation with respect for the rights and freedoms of those being investigated. The TARC would also consider whether resources were available for the processing of the warrant.[47]

This system ensured a measure of political oversight, right from the start, for all CSIS investigations against organizations and individuals. All CSIS targets were thus considered and approved by very senior management, a process that, although time-consuming and bureaucratic, ensured the political oversight that the McKenzie and McDonald Commissions had envisioned.

CSIS Director and Senior Executive Committee at HQ

The CSIS Director and the Senior Executive Committee, consisting of five deputy directors, were responsible for setting the tasking priorities for CSIS, as well as for providing tasking guidance for the collection, analysis and dissemination of CSIS's intelligence product.

At the head of CSIS was the Director, who reported to the Solicitor General and, in the original structure of CSIS created by the Security Intelligence Transition (SIT) Group, was supported by five deputy directors.

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46 Exhibit P-101 CAA0812. These Ministerial Directives are Exhibit P-101 CAA0011, CAA0081 and CAA0091 respectively.

47 Exhibit P-437: Statement of Archie Barr, p. 5; Exhibit P-101 CAD0003, p. 8.

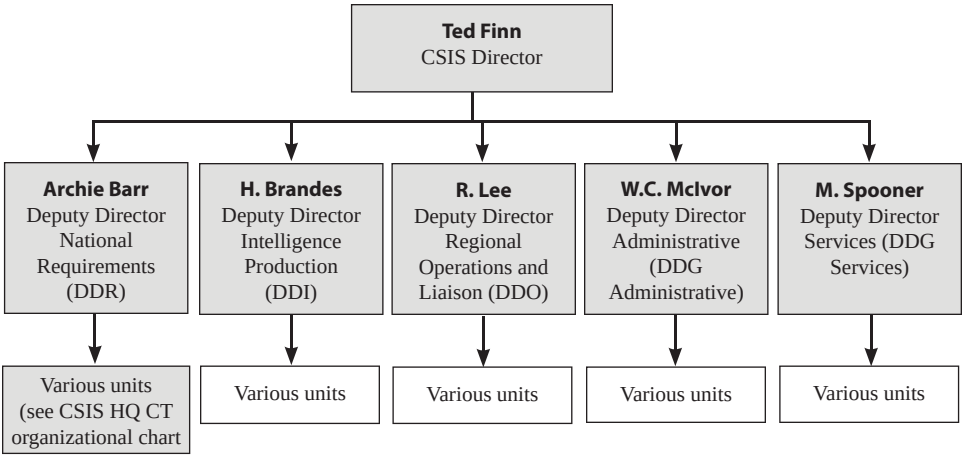

Figure 2: Organization of CSIS HQ Executive Committee
*Highlighted units were involved in the Sikh extremism investigation.

The first CSIS Director, Ted Finn, was a civilian with no operational intelligence experience, unlike his five deputy directors who had risen up through the RCMP SS ranks. The five deputy director structure was considered important to ensure Finn was properly supported, while avoiding concentrating power in the hands of one deputy director who could effectively usurp Finn's role.

> One of the structures of the CSIS hierarchy was that there were five Deputy Directors with purposely overlapping responsibilities. Among other things, this reflected the concern that the ex-RCMP officers being appointed as Deputy Directors might effectively usurp the duties of the civilian Director. No one Deputy Director therefore had complete control of any sphere of operations.[48]

This "overlapping" executive structure did, however, create difficulties, as responsibility for various functions remained unclear. The role of the Deputy Director of National Requirements, Archie Barr, became so important that Barr soon became the *de facto* lead deputy director.[49]

In 1984-85, the CSIS HQ Senior Executive Committee had the following primary responsibilities:

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48 Exhibit P-437: Statement of Archie Barr, p. 5.
49 Today that position is called the Deputy Director Operations (DDO).

- Setting of annual Intelligence Requirements (IRs), as assigned to the CSIS Director,[50] under the direction of the Solicitor General.[51] Archie Barr, the Deputy Director of National Requirements was responsible for determining the intelligence targets that CSIS would focus on. Ray Lees, the Deputy Director, Regional Operations and Liaison was responsible for ensuring that the regional investigations did in fact meet the national IRs.

- Development of policies, procedures and guidelines (including the conversion of those inherited from the RCMP SS) to enable CSIS to carry out its mandate as defined by the *CSIS Act*.

- Ensuring that the Government of Canada received timely and relevant advice on threats to the security of Canada. H. Brandes, the Deputy Director of Intelligence Production, managed the units responsible for producing and disseminating assessed intelligence to various users. The assessed intelligence could take many forms, including briefings to advise Ministers and threat assessments to inform the operational responses by the RCMP and other government departments, both formal and informal.

CSIS HQ Counter Terrorism (CT) Units

CSIS HQ Counter Terrorism (CT) Units had the primary role of integrating and analyzing intelligence collected by CSIS and its partners for the production of threat assessments. The CT Units were also responsible for ensuring the HQ tasking priorities were met by the Regions and for assisting the Regions' collection efforts by developing operational guidelines and supporting the Regions' applications for approval of various investigative powers.

All CSIS CT investigations were managed by Mel Deschenes, the Director General of CT. Deschenes reported directly to Archie Barr and was supported by three Section Heads who managed the work of numerous CT intelligence analysts.

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50 Section 6(1) of The *CSIS Act* grants the CSIS Director, under the direction of the Minister, control and management of CSIS and all matters connected therewith. The CSIS Director in 1985 was Ted Finn.

51 Section 6(2) of The *CSIS Act* grants the responsible Minister the power to issue to the CSIS Director, written directions with respect to CSIS. At the time of the Air India bombing, the responsible Minister was the Solicitor General. In the present day, the responsible Minister is the Minister of Public Safety.

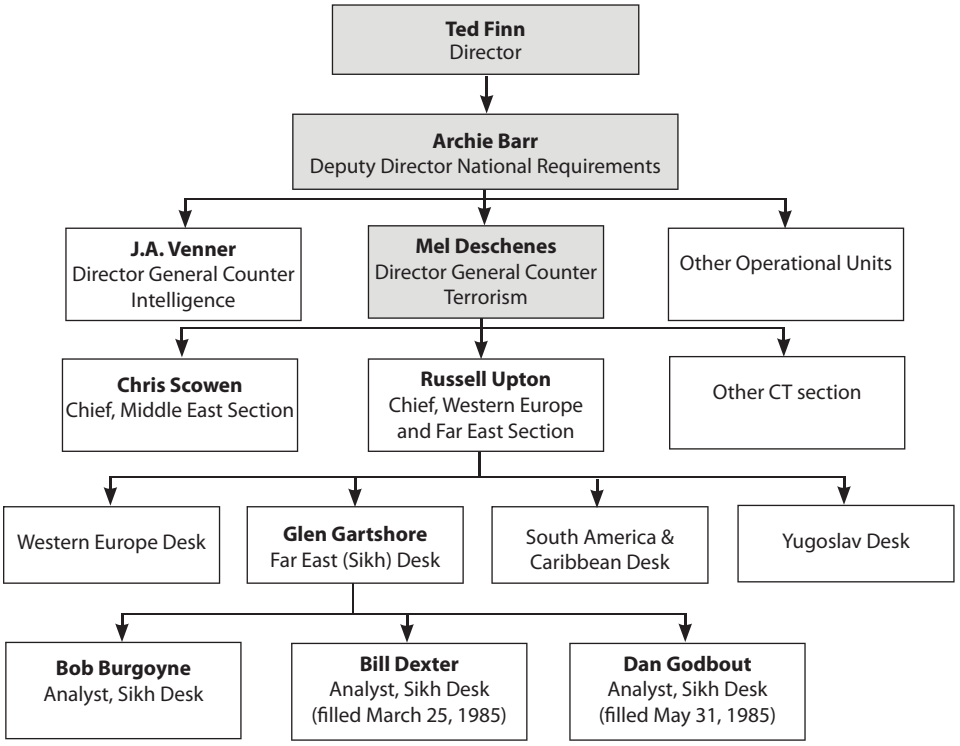

Figure 3: Organization of CSIS HQ CT Units on Sikh Extremism Investigation

Barr was actively involved in the operation of CSIS's CT investigations. Barr was responsible for developing operational policy and managing several operational divisions, including Counter-Intelligence (CI), CT, technical communications and foreign liaison. Barr had been involved with the SIT Group and was committed to ensuring CSIS operated in a manner that respected its new mandate. He was an active manager, involving himself in adjusting CSIS's practices to meet the new, more-intensive warrant requirements, and personally presented warrant applications to the Federal Court.

As Director General (DG) CT, Deschenes's portfolio was extensive, covering all counterterrorism investigations undertaken by CSIS. The CT investigations were divided into three geographic areas, each with its own Chief. Chris Scowen, Chief of the Middle East Section was the *de facto* lead Deputy DG CT, although this would not be formalized until August 1985. Scowen would fill in as the Acting DG CT whenever Deschenes was not available.[52] Deschenes was, in fact, absent during the week prior to the bombing. Accordingly, many, if not most, of the operational policy decisions in relation to the Sikh extremism investigation were made by Scowen (not Deschenes), in conjunction with Barr.

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52 Testimony of Chris Scowen, vol. 50, September 21, 2007, pp. 6127-6128.

Russell Upton was the Chief of the Europe and Far East Section at CSIS HQ, the section with the desk which eventually came to be known as the "Sikh Desk". Upton reported directly to Deschenes up until the time of the bombing. Upton had four sections under his command, one of which was the Western Europe and Pacific Rim Section. In the fall of 1984, the work of this section was increasingly focused on Sikh extremism issues and was referred to as the "Sikh Desk." This was a somewhat inaccurate characterization, as the Desk responsibilities were far broader than simply an assessment of the threat posed by Sikh extremists, and this desk retained several other continuing commitments related to its previous, broader title.

The Sikh Desk was led by Glen Gartshore. At the creation of CSIS, there was nominally provision for three analyst positions at the Sikh Desk. One of those positions was immediately filled by Robert ("Bob") Burgoyne. Burgoyne soon became CSIS HQ's "Sikh expert," despite having started at the desk with no background in this area. The remaining analyst positions remained vacant for most of the pre-bombing period. One of the vacant analyst positions was filled in March 1985 by Bill Dexter (returned from French language training), with the final position filled in late May 1985 by Dan Godbout.[53] The Sikh Desk tasked the Regions and their investigators to collect the information needed to better assess and report on the threat of Sikh extremism in Canada.[54] CSIS HQ would receive information from liaison officers abroad, from domestic partners (such as the RCMP, CSE and Foreign Affairs) and well as from foreign intelligence agencies.[55] The Sikh Desk would integrate and analyze the information received from all sources, extract the tactical information and then task the Regions in response to perceived intelligence deficiencies or, alternatively, switch the focus of an investigation. The information received would be used to prepare threat assessments that would be disseminated within and outside CSIS.[56]

In 1984-85, the managers and analysts in the Counter Terrorism Units at CSIS HQ had the following primary responsibilities:

- The DG CT (Deschenes) and Section Chiefs (Upton and Scowen) were responsible for developing operational policy and allocating resources amongst competing CT investigations;

- The Sections were responsible for transmitting operational policy and the national IRs to all CSIS Regions and ensuring that the IRs were met;

- The Sikh Desk (Gartshore and Burgoyne) was responsible for tasking the Regions to satisfy the IRs and for assisting the Regions in their investigations. The Sikh Desk assisted with the approval process for TARC applications and warrant applications against selected targets. The Desks coordinated with the Warrant Acquisition

53 Exhibit P-101 CAD0153, p. 3.
54 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3462-3463.
55 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3466, 3469-3470.
56 Testimony of John Henry, vol. 25, May 8, 2007, p. 2508.

Control and Requirements (WAC&R) Unit of the Communications Intelligence Production (CIP) Division to process warrant applications submitted by the Regions.

- The Sikh Desk was responsible for integrating intelligence received from various sources, including the Regions, Security Liaison Officers (SLOs), foreign partners and other Canadian government departments and agencies (including the RCMP, DEA, CSE).

The Sikh Desk was responsible for analyzing all intelligence to produce threat assessments to advise Ministers or inform the operational responses by other government agencies, in particular the RCMP. The Desks coordinated with the Threat Assessment Unit (TAU), which was responsible for the dissemination of CSIS threat assessments outside of CSIS.

Threat Assessment Unit

The Threat Assessment Unit (TAU) was a two-person unit at CSIS HQ that was responsible for dissemination of CSIS threat assessments to other government agencies.

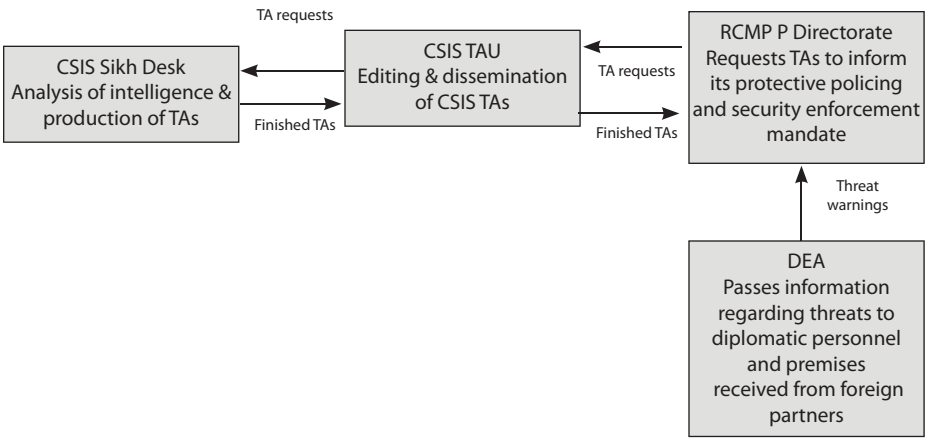

Figure 4: Information Flow through the Threat Assessment Unit

Threat assessments could be triggered through a request from another government agency or on CSIS's own initiative, in fulfillment of the mandate to advise government.[57] The agencies most commonly requesting threat assessments were the RCMP P Directorate and the DEA (through the RCMP). The RCMP P Directorate would request general updates on threats to mission personnel, on an ongoing basis, to ensure that protective policing resources were assigned to the highest priority threats or in response to specific information indicating a threat.[58] The DEA would pass on threat warnings from

57 Testimony of John Henry, vol. 25, May 8, 2007, p. 2528.
58 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3444.

the Government of India.[59] The normal channel for diplomatic information on threats would be from the Indian Mission to External Affairs, to the RCMP P Directorate (VIP Security Branch), to the CSIS TAU.[60]

Upon receipt of a request for a threat assessment, the TAU at CSIS Headquarters would forward the request to the appropriate operational desk, which would then draft the assessment. In relation to a Sikh threat, the Sikh Desk would consider the available intelligence and draft a threat assessment, including as much relevant information and analysis as it felt appropriate. The Sikh Desk, usually Burgoyne, would submit the draft TA to the TAU, which would edit it to remove any information not deemed suitable for dissemination outside of CSIS. The TAU, as needed, might also substitute vocabulary more common to the police. Throughout this process, the TAU would remain in contact with the Sikh desk.

The TA Unit would enter the original TA request information, and resulting threat assessment, into the Narrative Storage and Retrieval (NSR) system for future reference.[61] The members of TAU were not expected to be expert in any one subject or geographical area but, instead, were tasked to respond to TA requests from all government agencies, as well as to disseminate TAs produced by CSIS in a manner deemed appropriate for use outside CSIS.

BC Region CT Units

The BC Region CT Units had the primary responsibility for collecting intelligence to meet the Intelligence Requirements and inform the threat assessments produced by HQ analysts.

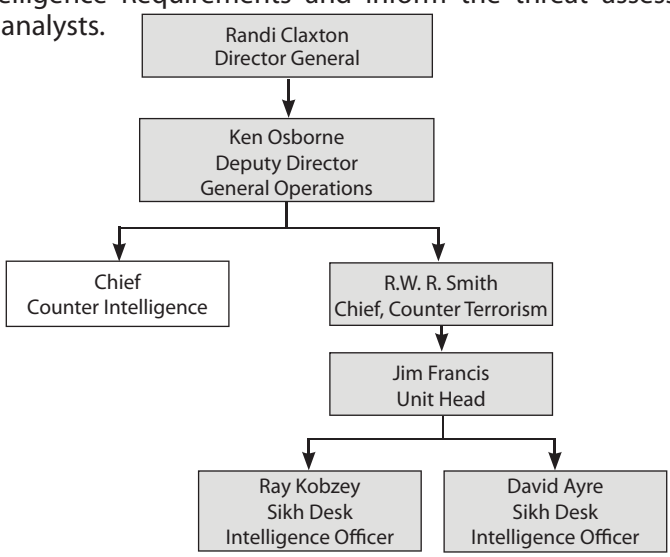

Figure 5: Organization of BC Region Units on Sikh Extremism

59 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3461; Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3549-3550.
60 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2540-2541.
61 Testimony of John Henry, vol. 25, May 8, 2007, p. 2528.

Investigation

Sikh extremist sentiment was prevalent in the BC Region in 1984-85, and that Region was a key focus of the intelligence collection effort. The BC Region was led by Randil Claxton, the Director General (DG BC). Although the Regions were relatively autonomous, Claxton would periodically discuss the investigation with CSIS HQ through Ray Lees, the HQ DDO who was responsible for ensuring regional investigations met the Intelligence Requirements.[62] Claxton oversaw the work of various managers and investigators involved in the Sikh extremism investigation.

While the Regions relied on CSIS HQ for the annual IRs, they maintained a high degree of autonomy over the management of their investigations. All regional personnel, including the translators, transcribers, physical surveillance units and investigators, reported directly to Claxton, who had the authority to place his resources where he felt he would get the best return.[63]

Ken Osborne was the Deputy Director General Operations (DDG Ops) at BC Region. He was responsible for allocating resources amongst competing CI, CT and other investigations carried out in the Region. Robert Smith was the Chief of CT and managed various CT units. Jim Francis was one of the Unit Heads. He managed four or five two-man intelligence officer (IO) Desks[64] one of which was responsible for the investigation into Sikh extremism. The two IOs assigned to the Sikh Desk were Ray Kobzey and David Ayre.

In 1984-85, the managers and investigators in the Counter Terrorism Units at BC Region had the following primary responsibilities:

- The DG BC (Claxton) was responsible for allocating resources to meet the annual Intelligence Requirements set by CSIS HQ.

- The Chief, Counter Terrorism (Smith) was responsible for allocating resources amongst competing CT investigations in the Region. These resources included Physical Surveillance Units (PSU) and Communications Intelligence Production (CIP) personnel (translators, transcribers and intelligence monitors).

- The Unit Head (Francis) was responsible for ensuring that intelligence collected by the regional investigations was properly disseminated within CSIS by transmission to the CSIS HQ Sikh Desk and entry into CSIS's centralized database, the Narrative Storage and Retrieval (NSR) system.

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62 Exhibit P-437: Statement of Archie Barr, p. 5.
63 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6127.
64 Exhibit P-101 CAD0115, pp. 4-5.

- The Intelligence Officers (Kobzey and Ayre) were responsible for collecting, assessing and reporting to Headquarters information relevant to the Intelligence Requirements through a range of investigative techniques. The IOs worked closely with the PSU, translators and transcribers.

Communications Intelligence and Warrants

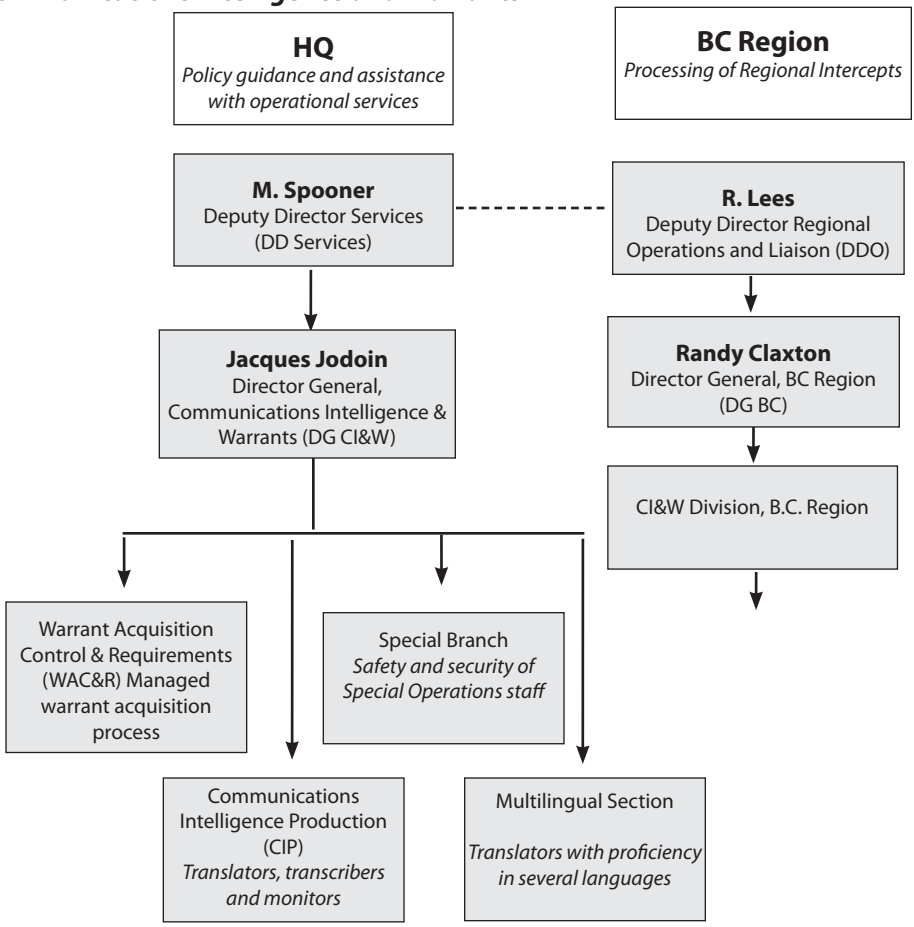

Figure 6: Organization of CSIS CI&W Divisions at HQ and BC Region

At HQ, the Communications Intelligence and Warrants Section (CI&W) was responsible for the management and processing of technical intercepts. The section was part of the operational support services and came under the command of Deputy Director M. Spooner.[65] Jacques Jodoin was the Director General, Communications Intelligence and Warrants (DG CI&W), from 1984 to 1988.[66]

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65 Testimony of Jacques Jodoin, vol. 49, September 20, 2007, pp. 6072-6073.
66 Testimony of Jacques Jodoin, vol. 49, September 20, 2007, p. 6032.

The CI&W Section was composed of four units. The main section, the Warrant Acquisition Control & Requirements Unit (WAC&R), was responsible for warrant acquisition and had a staff of seven people. They created the policy for the process of warrant applications. A second section, Communications Intelligence Production, was composed of transcribers and translators. They were responsible for taking raw product off machines and writing reports. There were 75 employees in that section servicing the Ottawa region. A third section, the Special Branch, or Special Unit, was quite small and dealt with the safety and security of the technicians who surreptitiously installed intercept technology. The fourth section was called the Multilingual Section and contained 20 translators with proficiency in about 28 languages. They translated written material, as opposed to communication intercepts.[67]

Each region also had its own CI&W division, which mirrored the structure which existed at HQ. CI&W was considered a support service and was managed separately from the operational sections (such as CT and CI), although it worked closely with them. Although Jodoin provided indirect overall supervision and policy guidance from HQ, the regional CI&Ws reported to their regional Director General.[68] Jodoin would communicate policies directly with the regional DGs[69], but the responsibility to decide whether and how to implement these policies within the regional CI&W Units remained with the regional DGs, such as Claxton.

3.2 The CSIS Investigations into Sikh Extremism

What Did CSIS Know?

At the time of the Air India bombing, CSIS had collected a wealth of intelligence about the Sikh extremist movement in Canada. RCMP Security Service (SS) officers, later CSIS investigators, had been aware of the threat of Sikh extremism within Canada since 1981 and continued to monitor the growing threat through the following years. Major investigations were underway in the BC, Toronto and Windsor regions, with the national investigation coordinated by the Sikh Desk at CSIS HQ. This section describes the CSIS investigation into Sikh extremism which demonstrates the intelligence known by CSIS at the time of the Air India tragedy. On this basis, it will then be possible to assess whether CSIS handled this information properly in analyzing and responding to the threat of Sikh extremism in Canada.

HQ Investigation

Growing Awareness of Sikh Extremism in Canada

The RCMP Security Service first became aware of Sikh extremism in late 1974 when Dr. Jagjit Singh Chauhan, widely viewed as the founder of the Khalistan

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67 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, pp. 2242-2243.
68 Testimony of Jacques Jodoin, vol. 49, September 20, 2007, p. 6071.
69 Testimony of Jacques Jodoin, vol. 49, September 20, 2007, p. 6073.

movement, created "Khalistan Consulates" in Toronto, Vancouver and Winnipeg. At the time, the Khalistan movement was not considered by the Security Service to constitute a threat to the security of Canada.[70]

The investigation into Sikh extremism by the RCMP SS began in the fall of 1981.[71] Glen Gartshore, head of the Western Europe/Pacific Rim Desk at HQ, testified that he first became aware of the issue of Sikh extremism when the Government of India (GOI) made representations to the Department of External Affairs concerning activities being carried out in Canada. A particular concern for the GOI was a group of Sikhs in Winnipeg promoting an independent state of Khalistan through the creation and distribution of "Khalistan passports" and "Khalistan currency." Though the concerns raised by the GOI were in relation to activities in Winnipeg, the RCMP SS investigation focused mainly on activities in Ontario and British Columbia.[72]

Between 1981 and 1984, a number of Sikh extremism events in Canada were noted in the continuing low-level RCMP SS investigation:

- March 18, 1982: Kuldip Singh Samra became enraged after his bid to overturn an election at a local Sikh temple was denied by a judge. He opened fire in an Osgoode Hall courtroom in Toronto killing two men and putting a third in a wheelchair.

- May 8, 1982: Dr. Gurdian Singh Dhillon, the Government of India High Commissioner to Canada, was met at Vancouver Airport by a group of Sikhs who chanted and pelted him with eggs.

- October 16, 1982: 500 protesters marched to the Indian Consulate in Vancouver.

- November 14, 1982: Metro Toronto Police Constable Christopher Fernandes was shot at a Sikh demonstration outside the Indian Consulate in Toronto.

- June 29, 1983: Talwinder Singh Parmar was arrested in West Germany pending extradition to India where he was accused of murdering two police officers.[73]

- July 6, 1984: Parmar was released from German prison and returned immediately to Canada because the German government would not extradite him to India.

- July 18, 1984: While visiting Winnipeg, the acting Indian High Commissioner was assaulted by five Sikhs.

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70 Exhibit P-101 CAA1086, p. 2.
71 Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3518.
72 Exhibit P-101 CAA1086, p. 2.
73 Exhibit P-101 CAA1046, Annex A.

1984 Application for Level 2 Monitoring Coverage

On April 11, 1984, Gartshore wrote to Staff Sergeant Russell Upton, his superior, to apply for level 2 coverage for Sikh extremism in Canada.[74] Level 2 monitoring allowed for investigators to talk to people in the community to help evaluate what was happening in Canada.[75] The concern was that communal violence in India involving Sikhs, including acts of terrorism, would spill over into Canada.[76] The RCMP SS was particularly concerned for the safety of Indian missions in Canada and the level 2 monitoring application was intended to help keep track of that threat.

Analyst Joins the Western Europe & Pacific Rim Desk

In the spring of 1984, analyst Bob Burgoyne joined Gartshore on the Western Europe & Pacific Rim Desk in the position of analyst, after working in counterterrorism and counter-intelligence (CI) on the Yugoslav Desk. At the time, the concerns of the Western Europe & Pacific Rim Desk were tied to the ongoing Cold War. Burgoyne had CI responsibilities relating to European-based terrorist groups. In connection with the Asian sub-continent, however, he was responsible for Sikh extremism and this soon became his main focus. Nevertheless, until the fall of 1984, Burgoyne retained other important responsibilities including Western terrorist groups and the Tamil Tigers from Sri Lanka.[77]

Burgoyne's Desk head, Gartshore, provided the first briefing on the threats the Desk would be monitoring. At the time, level 2 coverage was in place for the Khalistan Liberation Movement. Talwinder Singh Parmar was a key player in that movement and was already one of the key targets, even though he had been incarcerated in West Germany since 1983.[78]

Burgoyne began to educate himself on Sikh issues. He studied the subject in his spare time and relied on the Liaison Officer (LO) in New Delhi for daily or weekly updates on events in India which could have a bearing on Sikh activities in Canada. Approximately six months after he began working on Sikh extremism, Burgoyne was described as the "Sikh expert". He told the Commission that he put in a lot of extra time to learn the area, but was not at all comfortable with such a description, even though when it came to expertise on Sikh issues at HQ he "…was pretty well it."[79]

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74 Exhibit P-101 CAF0072b.

75 Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3518-3519. According to Bob Burgoyne, level 1 permitted investigation of open sources and bio-data, level 2 permitted physical surveillance and redirection of an existing human source, level 3 permitted development of human sources and level 4 permitted full-scale interception of private communications (with a warrant) and mail opening: Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3410.

76 Exhibit P-101 CAF0118.

77 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3396-3397.

78 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3396.

79 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3403-3404.

Throughout the period leading up to the bombing, Burgoyne continued to be portrayed as the Sikh expert, despite the fact that he was a junior officer who had only been on the desk a relatively short time. At one point he was asked to brief an official from the Department of External Affairs who was about to be transferred to India. The official reacted with surprise when he learned that Burgoyne did not speak Punjabi. Burgoyne told the Commission that, though he had a "pretty good handle" on activities in Canada, he would have been "absolutely" more knowledgeable had he been able to speak the language.[80]

Sikh Extremism File Created

On April 17, 1984, a "Sikh Extremism" file was created,[81] in response to violence in India coupled with intelligence that Sikh terrorists might become active internationally.[82] Burgoyne wrote: "We remain extremely concerned over the possibility of Sikh terrorists travelling to Canada and/or possible eruptions of Sikh community violence in Canada, brought about by related developments in India."[83] Indeed, intelligence received in late April suggested that a group of 36 Sikhs was being sent to North America to kill moderate Sikh leaders, prominent Hindu leaders, and carry out attacks on Indian government diplomatic personnel.[84]

Two events in the next few months would raise the profile of Sikh extremism in Canada. On June 6, 1984, Indian government troops stormed the Golden Temple in Amritsar, the holiest Sikh temple. A few weeks later, in early July, Parmar was released from a German jail and promptly returned to Canada.

Operation Bluestar and the Assault on the Golden Temple

Sant Jarnail Singh Bhindranwale was widely considered to enjoy the tacit support of the ruling Indian government as a counterweight to the Akali Dal, a widely popular Sikh nationalist movement. Bhindranwale rapidly transformed himself into the leader of the Khalistan movement. Months before the raid on the Golden Temple, he and his followers moved into the complex. Amid rumours that the Indian government was planning to invade, he began to amass arms and fortify the Temple. On June 2, 1984, Indian PM Indira Gandhi authorized "Operation Bluestar." All transportation in and out of the Punjab was halted. The border with Pakistan was closed; telephone lines and other means of communication were cut. On June 5th, tanks moved into the complex and opened fire. On June 6th, the attack was over and the Government was in control of the Golden Temple. The Government reported that nearly 500 Sikhs had been killed, however nearly 2000 remained unaccounted for. Sant Bhindranwale was

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80 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3405-3406.
81 Exhibit P-101 CAB0054, p. 1.
82 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3412-3413.
83 Exhibit P-101 CAB0054, p. 1.
84 Exhibit P-101 CAF0102, p. 3.

among those who were killed.[85] Sikhs around the world reacted in horror to the storming of the Golden Temple. Sant Bhindranwale and those who died in the action became martyrs in the eyes of Khalistan idealists.[86]

Level 4 Authorization for Sikh Extremism

In response to the storming of the Golden Temple and the violent and escalating tensions worldwide, the RCMP SS Operational Priorities Review Committee (OPRC) granted the authority for a full level 4 investigation into Sikh extremism on June 27, 1984.[87] This was the highest level of investigative authority. It allowed the most intrusive techniques such as physical surveillance and the ability to obtain a warrant for interception of private communications. At the same time, the name of the file was changed from "Sikh Extremism", which was felt to be too general a term, to "Alleged Sikh Terrorist Groups in Canada."[88]

The RCMP SS was concerned for the safety of Indian diplomats and their missions in Canada. Indeed, a foreign source provided the RCMP SS with its assessment that, following the attack on the Golden Temple, there was a significant threat in the coming weeks of an attempt to either kidnap or murder Indian official personnel, Air India employees or the staff at Indian tourist offices in Canada.[89]

Also of great concern were unconfirmed reports that Canadian Sikhs were providing weapons and funds to Sikh extremists in the Punjab. As well, mass demonstrations were being staged in Canada, mostly in Vancouver and Toronto. Intelligence indicated that clandestine meetings of Sikhs had been held in Toronto to plan protests and attract attention to the Sikh cause. Sikhs in Toronto "…publicly announced the formation of a Canadian arm of [a] Sikh government-in-exile, and disclosed their intention to directly support terrorist action targeted against the Government of India." Intelligence also suggested that there were Canadian-made plans to send assassination squads to attack PM Indira Gandhi and the High Commissioners to Canada, the US, and the UK.[90]

Initial Knowledge of the Babbar Khalsa

On June 6, 1984, RCMP P Directorate, VIP Division, reported that a threatening phone call had been received by the Indian High Commission in London, UK, stating that the Indian Consul General in Vancouver and/or his family would be kidnapped or killed by the "Barbara Khalsa" group. As this report demonstrates, at the time, even knowledge of the group's proper name was lacking.[91]

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85 Exhibit P-101 CAA1087, p. 11.
86 Exhibit P-101 CAA1046, p. 4.
87 Exhibit P-101 CAF0102, p. 1; Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3520-3521.
88 Exhibit P-101 CAF0102, p. 1.
89 Exhibit P-101 CAB0061, pp. 2-3.
90 Exhibit P-101 CAF0102, p. 3.
91 Exhibit P-101 CAB0068, p. 1.

A few days later, Burgoyne wrote a memo to Gartshore regarding the Security Service's knowledge of the, now correctly named, Babbar Khalsa (BK) in Canada. The Security Service had previously received reports from Indian authorities about a BK presence in Vancouver. However, the RCMP SS was unable to confirm the existence of the BK in Vancouver or anywhere else in Canada.[92] At the time, that was the extent of the Security Service's knowledge of the BK.[93]

Parmar's Return to Canada and the Creation of CSIS

Talwinder Singh Parmar was imprisoned in West Germany as of June 29, 1983, pending extradition to India pursuant to a warrant for his alleged involvement in the murder of two police officers.[94] On July 6, 1984, however, he was released from jail.[95] Two reasons for this release were in circulation. One reason was that insufficient evidence had been provided by the Indian government to support his extradition from Germany.[96] The other was that, due to the recent tension and violence in India, West German officials felt that Parmar would not receive a fair trial in India.[97] Whatever the actual cause for his release, the result was that Parmar, who had long been considered a key Khalistan leader, was set free and returned to Vancouver.

Upon his release, Parmar was immediately characterized by the GOI as **"...** the most dangerous Sikh terrorist presently at large." The GOI communicated its concern to Canadian officials that Parmar posed a threat to the security of Indian VIPs in Canada.[98]

The RCMP SS, and in particular Burgoyne, registered concern about what effect Parmar would have on the Sikh community in Canada. Since Parmar was covered by a level 4 investigative authority, Burgoyne tasked the BC Region to attempt an interview with him[99] to cover points such as the formation of Babbar Khalsa in Vancouver, the Khalistan "government-in-exile" and to clarify what he meant by publicly warning the Indian Government that they would pay a price for what they did in Amritsar. At the very least, it was thought that having the interview might neutralize his activities in the Vancouver area.[100]

It was at this point in July 1984 that the RCMP SS was replaced by CSIS.

As soon as Parmar arrived back in Canada, he launched a nationwide campaign in an attempt to establish himself as the Sikh leader in Canada.[101] His actions were an immediate cause for concern and were documented in a memo written by Burgoyne:

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92 Exhibit P-101 CAB0061, pp. 1-2.
93 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3454-3455.
94 Exhibit P-101 CAB0114, p. 1.
95 Exhibit P-101 CAF0100, p. 1.
96 Exhibit P-101 CAA1087, pp. 15-16.
97 Exhibit P-101 CAB0114, p. 1.
98 Exhibit P-101 CAF0100, p. 1.
99 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3414-3415.
100 Exhibit P-101 CAF0100, p. 2.
101 Exhibit P-101 CAB0114, p. 1.

> Parmar wants to be acclaimed the "Holy Man" in North America, thereby gaining control and/or direction of the various organizations and Sikhs in general. While in Calgary, Parmar strongly suggested that local Sikhs unite, fight and kill, in order to revenge the attack on the Golden Temple in Punjab.… Parmar appears willing to support or assist terrorist acts in the name of the Khalistan state.[102]

Burgoyne wrote the memo to highlight his concerns to Mel Deschenes, the DG CT of the newly-constituted CSIS, and so that the information would be circulated to other government departments.[103] However, it is unknown whether the DG CT shared Burgoyne's concerns and what, if any, external government departments were informed about Parmar and his activities.

Tasking Role of the HQ Desk

The Western Europe & Pacific Rim Desk (which later became known as the Sikh Desk) was responsible for tasking the regional offices of CSIS.[104] This was not done without supervision, as most directions required that management sign off first. This sign-off was usually provided by Upton, the head of the Europe and Pacific Rim Section, which housed the Western Europe & Pacific Rim Desk.

Burgoyne testified that, from the fall of 1984 until the spring of 1985, the Sikh extremism investigation occupied most of his time, as the area of investigation was new and there was a need to gather as much information as possible. His role at HQ, and indeed the role of the Desk, was that of the gatekeeper of information as well as the decision-maker about which target approvals would be sought. In cases where an application to the Target Approval Review Committee (TARC) was deemed necessary, the Desk would write the submission. TARC was formerly known as the Operational Priorities Review Committee (OPRC) in the RCMP SS.[105]

Another aspect of the Desk's role was in connection with RCMP requests for threat assessments. In order to respond to these requests, and to produce informed threat assessments, the Desk needed information from the field and directed the regions accordingly.[106] For example, on July 10, 1984, the Desk asked the regions to determine whether or not the BK was an "…identifiable organizational entity in Canada, and the extent to which they individually, or collectively, pose a threat to Indian diplomatic personnel and property".[107] The intelligence officers in the various regions were to investigate the existence of the BK in their area and report back to the Desk in a timely manner.

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102 Exhibit P-101 CAB0114, p. 1-2.
103 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3416.
104 Tasking was the process by which CSIS HQ would direct investigations by asking for more information to complete holes in the overall investigation. This direction was not specific to allow for regional autonomy.
105 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3400, 3408-3409.
106 Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3527.
107 Exhibit P-101 CAF0099, p. 1.

The Desk also needed information from abroad and therefore would also task SLOs (security liaison officers, previously known as liaison officers (LOs) in the RCMP SS).[108] Through SLOs, they would request general information from allied intelligence services and would also share CSIS information. After the storming of the Golden Temple, Burgoyne began making greater demands for information about events transpiring in the Punjab, especially in relation to information needed for threat assessments. The SLO in New Delhi would send information on a regular basis.[109]

Tasking documents show that the range of concerns held by HQ was broader than just Parmar or the BK.[110] There were numerous names of organizations, often first identified by the Government of India, and the Desk would have to determine whether they existed in Canada and, if so, whether they posed a threat.[111]

Renaming of the Desk to Focus on Sikh Extremism

During the fall of 1984, due to the heightened threat of Sikh extremism, the Western Europe & Pacific Rim Desk was renamed the Sikh Desk. This occurred at the same time as the approval of the level 4 authorization on Parmar and at a time when Sikh extremism issues had begun to dominate Burgoyne's responsibilities. On the creation of the Sikh Desk, Burgoyne's other duties were passed to other CSIS employees, allowing him to concentrate almost entirely on the Sikh issue.[112]

Subject Evaluation Report on Parmar

While the Sikh extremism investigation had received a level 2 approval in April 1984 and a level 4 approval just after the raid on the Golden Temple, an individual level 4 approval was preferred for individual targets once they had been identified. To that end, on September 17, 1984, the DG CT submitted a Subject Evaluation Report on Parmar to the TARC to obtain a level 4 authorization on him, a step that was required in order to proceed with a warrant application. The application was recommended by Deschenes, but it was written by Burgoyne with input from the regions, particularly BC Region. The document indicates that the threat to Indian missions in Canada at the time was now considered high, and that Parmar was identified early on as a key individual among those fomenting Sikh unrest in Canada, particularly in British Columbia.[113]

After the level 4 approval on Parmar, the Sikh Desk supported BC Region's urgent application for a warrant to intercept the communications of Parmar. The application was submitted in October 1984, but its approval was unfortunately delayed for five months.[114]

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108 Liaison officers in the RCMP SS were known as Los; in CSIS they were renamed security liaison officers or SLOs.
109 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3408-3409.
110 See, for example, Exhibit P-101 CAF0103 and CAF0120.
111 Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3531.
112 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3399.
113 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3400-3401, 3417-3418.
114 See Section 1.3 (Pre-bombing), Parmar Warrant.

Profiles Developed on Key Sikh Extremists

In early October 1984, David Ayre, a CSIS BC Region intelligence officer, produced profiles of Surjan Singh Gill and Ajaib Singh Bagri in response to a request for further information from HQ.[115] The description of Gill is startling:

> Gill is purportedly the brains behind the Babbar Khalsa Group … and its titular leader, Talvinder Singh Parmar … Gill orchestrates all of Parmar's activities and seems to go with him whenever he departs from Vancouver.… Gill is a highly emotional individual who has been noted acting in a frenetic manner. He was observed by myself hacking away with a ceremonial sword at an effigy of Indira Gandhi outside the Indian Consular offices, just before the invasion of the Golden Temple. Gill's eyes were glazed, he had a look of hate on his face, and he was yelling incoherently whilst he was flailing away.[116]

Perhaps most disturbing is Ayre's analysis of Gill's potential as a terrorist:

> Given the proper set of circumstances and stimuli, I feel that Gill can be considered a dangerous threat to Canadian security.[117]

A similar description of Bagri was also provided, though Ayre qualified the description by revealing that CSIS had so far been unable to obtain much local information on him:

> Bagri is a close consort of Parmar and Gill and seems to be heavily involved in the Babbar Khalsa Group. As a terrorist threat, I feel he rates quite highly, especially when you look at the statements he made in New York during the World Sikh Organization meeting.… I feel that he has a propensity to commit a terrorist act given the right set of circumstances.[118]

The profiles were a result of Upton's direct intervention and his expression of dissatisfaction with the BC Region's original bare-bones assessment of the targets.[119] Upton noted that the more robust profiles produced were exactly what was needed by the Desk for accurate assessments of the situation.[120]

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115 See Exhibit P-101 CAF0104.
116 Exhibit P-101 CAF0104, pp. 1- 2.
117 Exhibit P-101 CAF0104, p. 2.
118 Exhibit P-101 CAF0104, p. 3.
119 See Exhibit P-101 CAB0138 and Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3578-3581.
120 See Exhibit P-101 CAF0106 and Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3583-3584.

Trying to Find Parmar and Bagri

On October 15, 1984, CSIS received information about a potential hijacking involving Canadian and UK Sikhs. Ajaib Singh Bagri was listed as one of the members of the hijacking "committee". At the time it was known that Bagri was a member of the BK, close to Parmar, and had been assessed by BC Region as a person who was capable of terrorist acts.[121]

Of particular concern was the fact that neither Parmar nor Bagri had been seen in BC Region for quite some time, and that CSIS had no idea where they were. The Desk tasked both BC and Toronto regions to "…exhaust all possible avenues in a final attempt to locate the present whereabouts of Talwinder Singh Parmar … and Ajaib Singh Bagri …."[122]

So alarming was the information concerning the hijacking plot that, although BC and Toronto were given the specific tasking, all the other regions were copied as well. It was considered policy to advise all the regions when such information was received, the reasoning being that it increased the possibility that spinoff information from other regions might be brought to the attention of HQ.[123] In contrast to this treatment of "alarming" information, seemingly innocuous information would not be copied to other regions, thereby eliminating the potential for spinoff material. Though the material may have been available through a search of NSR, relevant but not "alarming" material could easily be missed because attention was not drawn to it through copies to the regions. This is one example of HQ playing a gatekeeper role in determining which information was deemed important enough to be brought to the attention of other regions. This subjective procedure, by which material was shared or not shared, created a potential for the loss of valuable information from other regions that might have been able to provide additional context or intelligence.

Parmar Implicated in Indira Gandhi Assassination

On October 31, 1984, Indian PM Indira Gandhi was assassinated in India by two of her Sikh bodyguards. Immediately, there began to be speculation in the Indian press that the assassination was orchestrated from abroad and that Parmar was involved.[124] Upton wrote a memo to Gartshore reflecting on this turn of events and its impact on the importance of the warrant that had just been applied for to intercept Parmar's communications:

> Subject: Talwinder Singh Parmar et al. Glen, attached is a copy of External's message from Delhi dated 84/11/13. Once again Parmar's name comes up. You can bet your bottom dollar that eventually a Canadian connection will be made here. This lends to the need for our warrant on Parmar ….[125]

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121 Exhibit P-101 CAF0127, pp. 1, 3.
122 Exhibit P-101 CAF0127, p. 3.
123 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3589.
124 Exhibit P-101 CAB0168.
125 Exhibit P-101 CAB0167.

The Desk and Upton became very anxious for more information, particularly for source information on Parmar, which would not be forthcoming for a number of months.[126]

Sikh Extremism File Compartmentalized

Also in October 1984, the Desk became concerned that the authority to investigate Sikh extremism was becoming tenuous. The original coverage granted was for one year, with the expectation that as more information was gathered, files would be opened on specific targets, either groups (such as the BK) or individuals. In early 1985, the Sikh extremism file was shut down and replaced by specific files reflecting the move towards more focused investigations.[127]

By January 1985, the Sikh Desk was putting increasing pressure on the regions to identify separate Sikh extremist organizations of interest to CSIS. Specifically singled out were the BK, the Sikh Student Federation (later known as the International Sikh Youth Federation (ISYF)), the Khalistan Liberation Movement, the World Sikh Organization, the Akhand Kirtani Jatha and the North American Sikh Youth Organization International.[128] The tasking was meant to allow for an assessment of resources needed and an evaluation of the appropriate focus to be applied to the investigations.[129] In the case of the BK, however, an application was already before the TARC for a level 4 approval and the submission dealing with the Sikh Student Federation was in progress.

One potential problem with the greater specialization of the file was that it increased compartmentalization. While, previously, all information would come under "Sikh Extremism", information was now to be filed based on a narrow focus, such as BK or ISYF. This compartmentalization meant that linkages between groups or persons could be missed, especially if the "need-to-know" principle excluded an analyst working on one organization from access to another organization's file, despite the possibility of important interconnections. With Burgoyne as the only analyst on the Sikh Desk, it is highly unlikely that this possibility existed in late 1984 and early 1985. However, once more analysts were added to the Desk, just prior to the bombing and in the post-bombing stage, this possibility existed not only at HQ but in the regions as well. Though the Commission does not have evidence to show that particular information was missed due to this organization of files and the use of the "need-to-know" principle, it is known that connections that could have been made were not. For example, the Sikh Desk did not recognize that code words used in the Windsor area (Bob Burgoyne's file) were the same as those used in the days before the bombing by Parmar in BC (Bill Dexter's file). The connection was not made until

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126 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3598. See also Section 1.3 (Pre-bombing), Parmar Warrant.

127 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3420-3421.

128 Exhibit P-101 CAF0107, pp. 1-2.

129 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3422; Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3525-3526.

an analyst who had been working on the Windsor file was transferred to the Sikh Desk at HQ months after the bombing and went back over the Parmar transcripts.[130]

Level 4 on the Babbar Khalsa and its Leaders

On January 30, 1985, the Sikh Desk submitted a subject evaluation report on the BK for the purpose of obtaining a separate level 4 authority on the organization.[131] The document set out CSIS's knowledge of the BK and its leaders at the time:

The Babbar Khalsa in Canada is believed to consist of approximately 20 members, all radical and potentially dangerous Sikhs. The organization is led by three individuals from British Columbia namely Surjan Singh Gill, Talwinder Singh Parmar, and Ajaib Singh Bagri.[132]

On the same day, Ted Finn, the Director of CSIS, authorized level 4 coverage of the BK and its leaders, Gill, Parmar and Bagri, as well as level 3 coverage of the rest of the membership.[133] A corrected copy of the subject evaluation report was circulated to all regions in late February. A description of the three leaders is given, and their profiles, particularly those of Gill and Bagri, are largely unchanged from the description given by Ayre four months before:

> i) Gill is reportedly the brains behind Babbar Khalsa. In 1981 [November] Gill reportedly organized a meeting to examine ways of extending assistance to the hijackers of the IAC aircraft and their families.
>
> ii) Parmar is the subject of an international warrant issued by the Indian government for murder and is considered to possess the greatest threat in Canada to Indian diplomatic missions and personnel. Parmar has freely admitted that while in India in 1981, he founded the Babbar Khalsa in that country.
>
> iii) Bagri is a close consort of Parmar and believe[s] he can be easily manipulated into committing a terrorist act. Bagri has made several heated verbal attacks on the Hindu religion, including remarks made at a Sikh convention in New York that 50,000 Hindus be killed to avenge the deaths of Sikhs killed by Indian troops in the attack on the Golden Temple in Amritsar ….[134]

This absence of change in the profile emphasizes the lack of new information gathered by CSIS in the interim. As of February 21, 1985, it would appear that CSIS had gathered no new information on the BK or its members since September 1984.[135]

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130 Exhibit P-101 CAA0308, CAA0309(i).
131 See Exhibit P-101 CAB0187 and Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3422-3423.
132 Exhibit P-101 CAB0187, p. 2.
133 Exhibit P-101 CAF0111, p. 1.
134 Exhibit P-101 CAF0111, pp. 2-3.
135 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3591-3592.

Lack of Parmar Photograph and Other Information

Not only was there no new CSIS information about Parmar or his associates as of late February, 1985, CSIS memoranda also complained of the lack of a suitable photograph and a good physical description of Parmar.[136] This was creating difficulties for CSIS, as Parmar travelled frequently in Canada and the surveillance units were not able to easily identify him. CSIS memoranda also complained about a lack of fingerprints for the target. However, it is difficult to understand the need for fingerprints and their possible use, considering that CSIS was now a civilian organization.[137]

Upton testified that the difficulty in obtaining biographical data on Parmar was due to a lack of source coverage on Parmar, either directly or indirectly through persons close to him. He also confirmed that a warrant and its resulting intercept product would have helped to obtain the information needed on Parmar.[138]

Attack on Ujjal Dosanjh

In February, 1985, the outspoken moderate lawyer, Ujjal Dosanjh, was beaten with a pipe and nearly killed.[139] No one was ever convicted of the crime. CSIS was aware of the incident, but treated it as a matter for the police to investigate. At the very least, this violent incident should have served notice to both CSIS and the RCMP that Sikh extremism had become a significant threat to the safety of Canadians.

April 13th Hijacking Alert

As the celebration of the Sikh festival of Baisakhi on April 13th was fast approaching, the Government of India communicated information regarding potential upcoming threats to the Department of External Affairs. This information was in turn shared with CSIS.[140] Included in the threat information received was the following:

> Unconfirmed reports of plans to hijack an Air India flight around the time of Baisakhi, with particular threat to AI-181 reaching Toronto on Saturday, April 13, 1985.[141]

This information was shared with the RCMP, and the Airport Security division was advised. At the same time, CSIS also produced a threat assessment for the RCMP in response to a verbal request. In this TA, CSIS stated that it believed the bomb threats were made in order to keep "…Khalistan alive in the minds of all Sikhs."[142] CSIS also stated that it had no information that there actually would be a hijacking. In fact, no hijacking took place.

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136 Exhibit P-101 CAF0123, p. 1.
137 Exhibit P-101 CAF0123, p. 1; Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3594-3595.
138 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3596.
139 Exhibit P-101 CAA1099, p. 1; Testimony of Ujjal Dosanjh, vol. 80, November 21, 2007, p. 10173.
140 Exhibit P-101 CAB0216.
141 Exhibit P-101 CAB0215(i), p. 2.
142 Exhibit P-101 CAA0147, p. 1.

Heightened Alert Due to Impending Golden Temple Anniversary and Gandhi Visit

In May 1985, CSIS went on a heightened alert status. Two important events were fast approaching: the first anniversary of the storming of the Golden Temple and a visit by Prime Minister Rajiv Gandhi to the United States.[143] Upton testified that he was "…in and out of my DG's office frequently impressing upon him the urgency of the Sikh problem."[144] The Sikh Desk itself was very busy trying to gather what intelligence it could.

Due to the heightened alert, Upton requested that the Sikh Desk update its profile of Parmar with new information, since the existing profile only described activities up to August 1984.[145] The stated purpose for updating the profile was so that it could be circulated to government departments for operational development purposes.[146] It is unclear whether the profile was in fact updated or whether an updated profile was circulated within government.

Level 4 on International Sikh Youth Federation and its Leaders

Also in early May, and in response to the heightened threat and need for more and better coverage of Sikh extremism, the Sikh Desk did obtain level 4 coverage of the ISYF and its leaders, and a level 3 coverage of the membership. The ISYF had been previously known as the Sikh Student Federation.[147]

Threat Assessment for Gandhi's Visit

The first threat assessment in relation to the upcoming Gandhi visit was produced by CSIS on May 24, 1985.[148] The TA, written by members of the Sikh Desk, was sent to various agencies outside of CSIS. The TA informed recipients of CSIS's view at that point concerning Sikh extremists and the threat they posed.

One of the pieces of information that was shared dealt with a statement made by Gurmej Singh Gill, a BK member from the UK with very close ties to Canadian BK leaders. He visited Canada in January 1985, and in May 1984 he was reported to have said that, "…the names of Sikhs who refused to boycott Air Indian flights would be put on a 'hit list' which would be passed on to the BK in India for action." This statement, demonstrating that Sikh extremists considered Air India an alter ego for the Government of India and a legitimate target at least for economic action, was passed to the RCMP and Transport Canada, two other agencies with a role in aviation security.[149]

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143 Exhibit P-101 CAB0225.
144 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3599-3600.
145 Exhibit P-101 CAB0212, p. 2; Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3585-3586.
146 Exhibit P-101 CAB0212, p. 2.
147 Exhibit P-101 CAF0117, p. 2; Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3428.
148 Exhibit P-101 CAB0236(i); Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3429-3430.
149 Exhibit P-101 CAB0236(i).

May 28th Deschenes Telex

As the dates of the anniversary of the storming of the Golden Temple and Gandhi's visit to the US drew closer, Sikh extremism was reclassified as the number one threat within CSIS.[150] An important telex was sent to all regions and to the Windsor district on May 28, 1985 by Mel Deschenes, the DG CT, requesting priority attention regarding Sikh extremists:

> CSIS Headquarters recognizes the terrorist potential here, and is obligated to provide the government with timely and accurate intelligence and assessment of the situation as it develops. Top priority attention is now being afforded this area until at least mid 1985 06. We would therefore request that all districts and regions afford this area equal priority attention during the period in question.[151]

The Deschenes telex also requested a change in reporting procedure with regard to intercepts on Sikh extremists:

> [W]e would ask for priority debriefing of all available sources in this area, particularly those special sources covering hard target areas. In order to advance threat assessments for the 1985 06 06 affair, and Gandhi's visit, we would ask that any, and all, special meetings of target … groups be afforded coverage, if and when possible, and priority reporting.[152]

"Debriefing" and "special sources covering hard targets" were code for analyzing technical sources (i.e. wiretaps).[153] Instead of waiting until enough information was gathered for a robust intelligence report, intelligence reports based on intercept product were to be written daily, even if the information was minimal, and entered into the Narrative Storage and Retrieval (NSR) system so that HQ was updated along with the regional investigators.[154]

Impressive as this emphasis on daily reporting may seem, in practice, it was unrealistic when applied to the Parmar intercept. HQ may have attached high importance to receiving daily updates, but the cold hard fact – not addressed in Deschenes's memo – was that there were not enough translators in place to allow for daily translation of the intercept material and, in fact, BC Region completely lacked a translator. While the English language portion of the intercept could be reported on, since almost all of the significant conversations in the Parmar intercept were in Punjabi, the instruction to provide daily updates

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150 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3789-3792.
151 Exhibit P-101 CAF0124(i), p. 1.
152 Exhibit P-101 CAF0124(i), p. 2.
153 Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3541-3543.
154 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3791.

on the intercepted communications of the principal Sikh extremist target was meaningless. Predictably, instead of daily translation, a backlog of untranslated tapes continued to grow. This crucial intelligence failure was to be repeated on June 23rd after the bombing, when regions were once again instructed immediately to "…debrief their special sources", but BC Region still lacked the ability and resources to comply.[155]

June 1985 Events

On June 4, 1985, CSIS surveillants observed the Duncan Blast.[156] Though CSIS HQ was informed, as were the RCMP and the Vancouver Police Department (VPD), there is no documentation showing that HQ requested BC Region to complete any follow-up on the event observed.[157]

On June 5, 1985, Upton sent out an update to all regions and Windsor district regarding the requirement of daily updates on Sikh extremism.[158] In the note he stated:

> In conjunction with the current threat received from Sikh extremists and further to message … of 1985 05 28, the Director General – Counter Terrorism now has a requirement to provide daily briefing to the Deputy Director National Requirements and, ultimately the Director. It is necessary to complete daily situation reports for the DG-CT. In this regard, BC, Alta, Man, Toronto, Ottawa and Quebec regions as well as Windsor district are requested to provide this Headquarters with daily reports detailing and assessing events or developments in their respective areas. These reports must reach this HQ by 1400 hours each working day until further notice. Negative reports are required.[159]

According to Burgoyne's testimony, the directive for daily reports and the briefings for the Deputy Director of National Requirements and the Director were in anticipation that June would be a "…very volatile month" and that "… things were going to become quite active within the community."[160]

Upton testified that HQ got a very favourable response from the regions in response to the request for daily reports, particularly from BC and Toronto, which included the Southwestern Ontario region including Windsor.[161]

June also saw a coordinated disruptive interview program of Canadian Sikhs, organized by CSIS, RCMP, municipal police forces and American authorities.[162]

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155 Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3542-3543.
156 Details can be found in Section 1.4 (Pre-bombing), Duncan Blast.
157 Details can be found in Section 1.4 (Pre-bombing), Duncan Blast.
158 Exhibit P-101 CAB0256.
159 Exhibit P-101 CAB0256.
160 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3432.
161 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3601.
162 Exhibit P-101 CAA1099, p. 2.

CSIS was not directly involved in the interviews, but aided by suggesting interview subjects. In Vancouver, this resulted in a joint RCMP and US Secret Service (USSS) interview of both Parmar and Gill.[163]

Despite the understanding that the month of June would be a volatile one, on June 14, 1985, the RCMP requested yet another updated TA, with the expectation that the threat would be lowered "…now that 'Genocide Week' and Prime Minister Rajiv Gandhi's visit to the USA is terminating."[164] Upton circulated the request for updated information to all the regions and Windsor district. He also stated in his memo that "…[a] great deal of intelligence has been received from various sources which has, as yet, to be completely sorted out and fully analysed."[165] The TA was required for June 17th, two days after Gandhi was due to leave the US.[166]

Though the tension was easing, Burgoyne testified that the attitude at CSIS HQ was that the threat of Sikh extremism remained high and that the threat assessment should be maintained at that level for the near future.[167]

On June 18, 1985, CSIS released its final TA prior to the bombing. The TA, signed by Deschenes but actually written by Dexter, was distributed to numerous government agencies including the RCMP, External Affairs, and Transport Canada.[168] This TA documented the events that occurred in the previous three weeks, including investigations, demonstrations and incoming intelligence. Included in this information was reference to a plot to assassinate Prime Minister Rajiv Gandhi discovered during the arrests in New Orleans,[169] and to the potential for Canadian connections. As well, a concern was raised about Canadian Sikhs arming themselves, with CSIS offering the example that two Sikhs from the Windsor area were known to have purchased an Uzi machine gun in Detroit which they were likely to have brought back to Canada.[170]

Notably absent from this memo, particularly in light of the concern over guns, was any mention of the Duncan Blast narrative. Accordingly, the Duncan Blast events were not shared with the relevant government departments and agencies except with the RCMP at the local level. Though CSIS misinterpreted the events, it is possible that, had they shared their knowledge of the event, another agency might have seen things differently or, at least, might have asked for further information that would have led to CSIS revisiting its assessment of the significance of this crucial event.

HQ did maintain that the threat level should be continued as "high":

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163 Exhibit P-101 CAB0290.
164 Exhibit P-101 CAA0215, p. 1.
165 Exhibit P-101 CAA0215, p. 2.
166 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3434-3435.
167 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3434.
168 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3435. Deschenes was in Los Angeles at the time this TA was written.
169 This is discussed in Section 1.12 (Pre-bombing), A "Crescendo" of Threats.
170 Exhibit P-101 CAB0321, p. 3.

> While the Gandhi visit and the Anniversary of the Golden Temple invasion certainly afforded ample opportunity for strike potential we must recognize that the most dangerous element of the Sikh populace were well aware that security would be optimum and the potential for a serious attack succeeding would be greatly diminished. These same extremists/terrorists are no less determined to realize their ambitions and to think that they have abandoned their cause would be somewhat naïve on our part.… For these reasons we assess the threat as being only slightly less serious than it was at the time of our last assessment.[171]

Nevertheless, on June 19, 1985, and despite the analysis that the most radical Sikhs might be biding their time, the requirement for daily updates from all regions was discontinued.[172] It seems as though CSIS and the Government of Canada were breathing a collective sigh of relief, prematurely, as it turned out.

Having looked at the investigation of Sikh extremism at the HQ level, it is instructive to examine more closely what was taking place in the field, especially in the BC Region and Windsor District.

BC Regional Investigation

Although policy and analysis are housed within CSIS HQ, regional employees, primarily intelligence officers, conduct investigations including source development (technical and human), community interviews, surveillance, and related activities.

In the BC Region, Ray Kobzey and David Ayre were the two main intelligence officers dealing with the Sikh extremism investigation, working under unit head Jim Francis. Kobzey and Ayre also liaised directly with the analysts at HQ and often received direction from them.

Through Kobzey's testimony, and using additional documents, we are able to examine the CSIS BC pre-bombing investigation.[173]

Escalating Sikh Extremism

The issue of Sikh extremism first came to the attention of Kobzey in 1981. At the time, he was a member of the RCMP Security Service based in Vancouver and working primarily on the Latin American Desk with part-time coverage of other issues. In November 1981, local newspapers published articles about the creation of a Khalistan Consulate in Vancouver headed by Surjan Singh Gill. Kobzey stated at the Inquiry:

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171 Exhibit P-101 CAB0321, p. 4.
172 Exhibit P-101 CAB0323.
173 Raymond Kobzey appeared before the Commission on May 23, 2007 (vol. 32, pp. 3715-3777) and on May 24, 2007 (vol. 33, pp. 3779-3864).

> As a consequence of that, I became interested in the issues of Sikh activism, with respect to the establishment of a homeland in Punjab to be called Khalistan by the people who were interested in creating that unique country.[174]

The Khalistan issue did not gain much prominence at the RCMP Security Service. However, Kobzey maintained an interest in what was happening and "…sought to pay more attention to the issues that were surfacing in the newspaper, open sources, et cetera."[175]

In addition to the press attention the Khalistan Consulate had created, another story surfaced in an interview in the local press. A woman expressed concern over the apparent disappearance of her husband, who had returned to India in 1980.[176] His name was Talwinder Singh Parmar. Kobzey kept tabs on all these events, and even interviewed Surjan Singh Gill. Subsequent to that interview, newspaper articles were written about Talwinder Singh Parmar's absence from Vancouver and his wife's concerns about his health and whereabouts.

In late 1981, Parmar was smuggled out of India and returned to Vancouver, but not without controversy. India had implicated him in the murder of two policemen and had a warrant out for his arrest. Though India formally requested his extradition, the Canadian government denied the request, stating that Parmar was a Canadian citizen and that no formal extradition treaty existed between Canada and India.[177]

Eggs Thrown at the Indian High Commissioner

An event that occurred soon after Parmar's return to Canada brought renewed attention to the Sikh extremists.

On May 7, 1982, responding to a tip, Kobzey and another RCMP Security Service officer, Neil Eshleman, were at the Vancouver airport for the arrival of the High Commissioner from India.[178] They were warned of a possible demonstration with eggs to be thrown at the High Commissioner. RCMP VIP Security was advised and was present as well. The demonstration and egg-throwing occurred as predicted.

The officers noted that about 50 to 70 members of the Sikh community were present, including children. About 35 massed in a group on the sidewalk in front of the Domestic Arrivals level, donned black robes and produced black triangular flags. Kobzey identified the group's leader as Surjan Singh Gill, and pointed this out to Cpl. Bob Grey of VIP Security Section and Insp. Rob Fowles of the Vancouver Police Department.

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174 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3721.
175 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3722.
176 Exhibit P-101 CAA1087, p. 33.
177 Exhibit P-101 CAA1087, p. 33.
178 These events are described in Exhibit P-101 CAB0026, pp. 1-2.

When the High Commissioner, Dr. Gurdial Singh Dhillon, was leaving under the escort of VIP Security, the crowd spotted him and surged toward him and the vehicles, throwing several eggs. Two eggs struck Dr. Dhillon on the right side of his neck, and several hit the windshield and roof of the car.

Kobzey told the Inquiry that this incident made him aware of the significance of the protesters, who had announced that they would carry out an act of violence against an internationally protected person and embarrass the Government of Canada. Kobzey went on to say that greater attention ought to be paid to monitoring Sikh activism/extremism. His intelligence report served notice to his superiors and counterparts at HQ that this event raised the spectre of future security problems, and that more attention ought to be paid to such issues along with the allocation of sufficient resources to ensure good coverage. Despite Kobzey's efforts, the RCMP Security Service maintained the Sikh extremism investigation at a low priority.

In 1984, Kobzey began to receive information regarding threats involving shootings and bombings in relation to the Khalistan issue. His assessment was that there was a potential threat to both Indian missions in Canada and to prominent moderate Sikh and Hindu leaders in Canada.[179]

Operation Bluestar and the Invasion of the Golden Temple

A few months later, on June 5, 1984, the invasion of the Golden Temple enraged and united Sikhs around the world. Protests immediately escalated. In Vancouver, 20,000 Sikhs protested outside the Indian Consulate, many calling for the death of Prime Minister Indira Gandhi.[180]

Following Operation Bluestar and the escalation of Sikh extremism, Kobzey observed changes in the Vancouver Sikh community. Through interviews with various individuals, he found that emotions were running high, particularly among community members involved in the Babbar Khalsa and the International Sikh Youth Federation in Vancouver. Many community members expressed their anguish and were vocal about the need for some kind of revenge for the invasion of the Golden Temple by the Government of India's military and for the resulting loss of life. Kobzey became very concerned:

> I felt that we had the makings of a serious problem for the security of Canada, for our citizens, and possibly repercussions outside of Canada, in terms of Canadian citizens going some place and creating a problem.[181]

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179 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3722-3727.
180 Exhibit P-101 CAA1087, pp. 5, 11-13.
181 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3730.

The Parmar Warrant

To add to the tension, in July 1984 Parmar was released from jail in West Germany, where he had been held for over a year. He promptly returned to Vancouver. Kobzey was concerned and brought this information to the attention of his superiors at the newly created CSIS.[182] It was agreed that a *CSIS Act* section 21(2) warrant would be sought against Parmar. Kobzey was tasked with preparing the briefing package to submit to Burgoyne in the HQ CT.[183]

Level 4 Application for Parmar

Due to the urgency created by the storming of the Golden Temple, the return of Parmar and the escalating tensions in the community, Kobzey[184] applied for level 4 coverage of Parmar. Kobzey's application included information about Parmar's activities in India and his arrest in West Germany, which Kobzey and investigators from other CSIS regions had entered into the Narrative Storage and Retrieval (NSR) system – the national CSIS database.

The NSR provided a useful, centralized resource from which CSIS investigators across the country could access information about related investigations. For example, Parmar's infamous statement in Calgary when he "…strongly urged Sikhs to unite, fight and kill in order to revenge the attack on the Golden Temple in the Punjab" was entered into NSR by CSIS agents in Calgary and accessible by Kobzey.

The application for a level 4 investigation was made: to identify the links between Parmar and Sikh terrorist elements in India; to determine Parmar's intention towards the Khalistan liberation movement, and his intent to use violence against Indian interests in Canada and abroad; to identify and assess Parmar's prominence within the Canadian Sikh community and thereby establish the threat he posed to the Government of India and its interests in Canada; and to permit the direction of all aspects of CSIS resources against Parmar.[185]

Kobzey's application package was sent to HQ and the information was incorporated into the HQ application to TARC.[186] The HQ application contained information to which Kobzey did not have access, such as information from External Affairs and other regions. This included information that Parmar was viewed within the Canadian Sikh community as something of a hero whose influence was second only to Bhindrawale. The HQ assessment concluded that the pro-Khalistan movement in Canada could be expected to become much more significant as a result of Parmar's activities.[187] HQ's centralized role meant

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182 The RCMP SS had been disbanded and CSIS created on July 16, 1984.
183 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3731, 3733.
184 The information in this section is drawn from Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3731-3741.
185 Exhibit P-101 CAB0139, p. 4.
186 See Exhibit P-101 CAB0139 for the HQ application to TARC.
187 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3739-3740; Exhibit P-101 CAB0139, p. 3.

that the level 4 application contained all the relevant information. However, the CSIS top-down approach meant that investigators such as Kobzey might not be privy to certain relevant and useful information.

Warrant Application to Intercept Parmar

In August 1984, prior to receiving level 4 approval, Kobzey began to work on a warrant application package for authority to intercept Parmar.[188] It took one month to prepare the material, using local files and the NSR, along with additional information from the VIIU, VIP Security, and Immigration officials, because Kobzey's other duties precluded him from working full-time on the application.

Since any warrant product on Parmar would likely need translation, the warrant application went all the way up the chain in BC Region to the DG, Randil Claxton. This ensured that Kobzey's superiors supported the warrant and that there was a commitment "…to obtain the services of a security-cleared translator to debrief the product; and that we had the space within the technical section available within their bank of equipment for them to bring the line up, should the warrant be approved."[189] The CI&W chief was also required to sign off on the warrant, since it would be his responsibility, if the warrant was approved, to set up the line, maintain it and debrief personnel. The CI&W Section communicated the final warrant application to HQ in late September or early October.[190]

Kobzey saw his role as "…preventing acts of violence against citizens or people under our protection in this country or against property or the same things happening outside of our country by our citizens."[191] He felt that the situation with regard to Parmar was urgent, due to the latter's violent threats, which were documented in the warrant application. These included what Kobzey characterized as sinister aspects of Parmar's preachings, including: killing 50,000 Hindus; harassment of Embassy, High Commission and Consulate personnel; blowing up of embassies; and seeking revenge on the Hindu government.[192] As well, the fact that the threats were tied to religious fervour increased Kobzey's sense of urgency. He told the Inquiry that:

> The possibility of a person being so upset at sacrilege or alleged sacrilege which took place against the holy site or shrine and would cause them to commit acts of violence, was something that I was attuned to and aware of.[193]

Kobzey also commented on the history of the Sikhs and how they not only prided themselves on their involvement in the military, but that they were also "…valorous in the way they conducted themselves in battle."[194]

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188 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3744.
189 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3745.
190 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3741-3760.
191 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3743-3744.
192 Exhibit P-101 CAB0144, pp. 3-4.
193 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3753.
194 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3753.

Parmar's allegedly close association with Bhindranwale suggested that he would have access to weapons and explosives and to persons who were skilled in their use. Kobzey inferred from the association of these two men that Parmar might have connections to members of the Sikh community who had the technical expertise to develop explosive devices, and, potentially, to blow up embassies. Kobzey therefore considered it critical to obtain a warrant quickly to learn as much as possible about Parmar, his associates, his contacts worldwide, any involvement in the movement of money, and whether he was looking for arms, munitions, and so on.[195]

The warrant application also addressed rumours within the community that Parmar was an agent of Indian Intelligence. His 13-month incarceration in a West German jail was seen by some community members as a ploy to give him credibility with the Canadian Sikh community. Kobzey saw some merit in the argument that Parmar had something to hide – perhaps training in the field of intelligence work.[196]

Kobzey stressed the relevance of these concerns to the warrant application. On the one hand, Parmar espoused terrorist actions or acts of violence for a political objective. On the other, if he were an intelligence officer, he would also be a security threat to Canada through the creation of problems and unrest within the émigré community as a result of portraying himself as a terrorist.[197]

Kobzey was further concerned that, if Parmar was an agent of the Indian Intelligence Service, he would inspire others to commit acts of violence. He noted that the warrant was essential to enable the agency to determine whether Parmar was in fact a terrorist threat, and what his motives were. A major concern was that Parmar portrayed himself as a fundamentalist Sikh, although some intelligence suggested that he was not. The goal was to deploy appropriate resources to determine exactly what Canada was facing.[198]

A five-month process ensued until the warrant was granted.[199] Kobzey had continued to investigate Sikh extremism in Vancouver, albeit with great difficulty due to the lack of a warrant and no human source coverage. Meanwhile, tensions in Vancouver continued to escalate in response to actions in India.

The Assassination of Indira Gandhi and Reaction in Canada

On October 31, 1984, the assassination of Prime Minister Indira Gandhi by her Sikh bodyguards added fuel to the escalating tension between Sikhs and India worldwide:

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195 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3754-3755.
196 Exhibit P-101 CAB0144, pp. 5-6.
197 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3756-3757.
198 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3758-3759.
199 See Section 1.3 (Pre-bombing), Parmar Warrant.

> That evening, full-scale anti-Sikh rioting broke out across India, except in the Punjab. In New Delhi, gangs of Hindus roamed the streets beating, killing, and setting fire to Sikhs. The government acknowledged that 2717 Sikhs were killed in riots, with 2150 in Delhi alone. 50,000 Sikhs fled from the capital to the Punjab and another 50,000 escaped to government-run refugee camps.[200]

In Canada, many Sikhs celebrated the death of Indira Gandhi.[201] Kobzey had strong concerns because of the manner in which the assassination was planned and carried out. After killing the Prime Minister in the presence of army staff, the bodyguards laid down their weapons and said that they had done what they needed to do. Kobzey noted that this indicated a religion-based motivation beyond the norm. The inference was that there could be similar conviction within the Babbar Khalsa group, or by Parmar, to carry out such actions in Canada. It was incumbent upon CSIS to get the warrant in place to learn more and advise the Government of Canada on how to proceed. Kobzey wrote to HQ about the delay regarding his urgent application for a warrant for Parmar.[202]

In the meantime, events in Vancouver continued to be of concern. There were conflicts over control of the gurdwaras, which were a huge source of money, as Sikhs would give generously to them. Parmar was visiting gurdwaras and soliciting funds, which deeply disturbed Kobzey and those whom he interviewed in the community.[203]

In conducting his inquiries, Kobzey was in contact with the VPD's Indo-Canadian Liaison Team. They too were concerned by what they saw. Kobzey stated that, in the intelligence community, Sikh extremism was an issue of great concern that needed to be addressed.[204]

Warrant Approval for Parmar Finally Obtained

On March 14, 1985, the Parmar warrant was approved by the Federal Court and deemed valid for a year.[205] BC Region was notified on March 18, 1985.[206] On March 28th, the BC Region Chief of CI&W informed the DG CI&W that the intercept on Parmar had been installed on March 25, 1985, over five months after BC Region submitted its urgent application for a warrant.[207]

Delays in Finding a Translator

BC Region employed a transcriber, Betty Doak, to report on any information spoken in English as well as to record when calls were made, to whom, and

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200 Exhibit P-101 CAA1087, pp. 11-12.
201 Exhibit P-101 CAA1087, p. 13.
202 See Exhibit P-101 CAB0166.
203 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3764.
204 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3765.
205 Exhibit P-101 CAD0024, p. 2.
206 Exhibit P-101 CAA0133, p. 1.
207 Exhibit P-101 CAB0206, p. 1.

at what telephone number. She also was to have a coordinating role with the translator. At the time, however, BC Region did not have a Punjabi-speaking translator.

On May 16, 1985, BC Region sent out an urgent request to all regions for recruitment of Punjabi translators.[208] In the meantime, BC Region arranged for the Parmar warrant product to be shipped to Ottawa for translation. This resulted in two major problems. First, Kobzey and Ayre did not have contact with the translator to discuss the intercept product. Normally, they would have had daily access to the translator to discuss any concerns or questions and to keep the translator updated on the progress of the investigation. The second problem was that the delay in mailing the tapes meant a delay in translation; and this delay ballooned into an extensive backlog of tapes.[209]

Despite instructions from HQ, the urgency of the situation and the priority of the threat, nothing changed in terms of the translation of the Parmar product until June 7, 1985 when a security-cleared translator was found for BC Region after the passage of several months.[210]

The next day, Kobzey took his annual leave and did not return until the evening of June 22nd. The last thing Kobzey did before he took his leave was to "…brief up the translator … [on] what we were looking at with respect to the line …."[211] There was no time to develop a relationship with the translator, to go over the transcript and answer questions, or for the translator to become familiar with the target, Parmar.

Physical Surveillance Coverage

In April 1985, soon after obtaining the Parmar warrant, Kobzey and Ayre submitted a request for physical surveillance (PSU) coverage of Parmar. The purpose was to complement the intercept warrant, especially in anticipation of the upcoming one-year anniversary of the storming of the Golden Temple, and Indian PM Rajiv Gandhi's June visit to the United States.[212]

Kobzey conducted briefings for the PSU surveillants to guide them on what information the investigators needed from surveillance. The surveillants were tasked with locating Parmar, and were provided a priority list of individuals associated with Parmar to cover. Kobzey would update the surveillants' folders if new information came in from other regions.[213]

Kobzey advised them that the target they were following was "…a person who was involved in activities that were extremely … dangerous." He testified that the surveillants "…knew what they had to do. And they knew the importance of it."[214]

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208 Exhibit P-101 CAB0234, p. 1.
209 For an in-depth description of the tape problems, see Section 4.3.1 (Post-bombing), Tape Erasure.
210 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3814.
211 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3811-3814.
212 See Exhibit P-101 CAB0209 and Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3793-3794.
213 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3827-3828.
214 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3828.

However, coverage was neither ongoing nor immediate. Coverage of Parmar was sporadic during April and May, and ongoing daily coverage of Parmar did not begin until June 1, 1985.[215]

Kobzey had to lobby the DDG ops, Kenneth Osborne, to get any PSU coverage at all, due to the lack of resources and the priorities of other targets in BC Region. Kobzey indicated that he was able to obtain surveillance more regularly as the profile of Sikh extremism rose.[216]

Further Evidence of Growing Tension

On May 28, 1985, BC Region received an important telex from the DG CT, Deschenes, warning of the heightened tensions created by the upcoming anniversary of the storming of the Golden Temple and the concurrent visit of PM Rajiv Gandhi to the US. Kobzey testified that, based in part on the Deschenes document, Sikh extremism was now considered a threat that matched the priority level of CI. Kobzey testified that information from this document, the attempted murder of an Indian government minister in New Orleans, and arrests made in the US earlier that year, all highlighted the significance of potential violence against Gandhi, or other Indian ministers, and HQ was advising all the regions and districts to be extra vigilant with respect to the issues of Sikh extremism.[217]

The Deschenes memorandum also called for increased scrutiny of wiretap information. This expedited process meant that information from the intercepts was urgent, and that the investigators involved had immediate access, so they or HQ could do whatever was required with that information quickly.[218]

On June 4, 1985, the Duncan Blast occurred. On that day, two CSIS agents witnessed Parmar, Reyat and an unidentified third person enter a wooded area near Duncan, BC.[219] The surveillants heard a loud bang which was interpreted by the senior agent as a gunshot. These events resulted in uninterrupted mobile surveillance of Parmar until June 17, 1985, an unprecedented amount of coverage for a CT target at the time.

Incomplete Information

When Kobzey took his leave on June 8, 1985, the belief in BC Region appeared to be that the elevated threat situation had passed, though tensions would remain high. However, in his testimony at the Inquiry, Kobzey expressed his view that BC Region was not in possession of all the relevant information that could have aided in a more accurate assessment of the continuing threat, and would have resulted in him delaying taking leave.[220]

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215 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3795-3796, 3828.
216 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3774.
217 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3790.
218 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3791-3792.
219 See Section 1.5 (Pre-bombing), Mr. X.
220 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3805.

First, CSIS had not received the June 1st Telex sent from Air India in Bombay to airports around the world. It stated that vigilance should be maintained for the entire month of June and warned of time-delayed devices being placed in aircraft.[221] Kobzey believes this document would have given him the "… opportunity to ask for extended surveillance for the entire month."[222]

Second, the information gathered regarding the Duncan Blast had been misinterpreted as a gunshot.[223] Kobzey testified that, had the information from the surveillants been described differently – for example, if they had suspected dynamite in the blast – he would have acted much differently.[224]

Third, CSIS BC Region did not benefit from the experience being developed in the Windsor area, where another Sikh extremism wiretap had been set up prior to the bombing. This intercept related to a US operation in May 1985. A young CSIS investigator, Charlie Coghlin, had been reviewing the intercept product and had developed an ear for the code words used by Sikh extremists.[225]

Because of incomplete information, Kobzey believed he could take vacation leave. He was facing burnout due to long hours on the investigation with little institutional support. He went sailing and was not reachable during his leave. This was the pre-cellphone era, and he had no radio communication on board his vessel.[226]

Ayre was left in charge of the Sikh extremism investigation in BC Region, in consultation with other members. During that time, Osborne decided to terminate surveillance on Parmar, after a rather lengthy continuous period. That decision was taken prior to Kobzey's return from vacation.

During Kobzey's absence he had not been made aware that surveillance had been called off against Parmar, nor of the Khurana information and the alleged "wait two weeks" comment.[227] Code words used by the subjects of the Windsor investigation had not been shared with BC Region, and so the use of the same code words in the Parmar intercept material was not caught. Kobzey testified about returning home and learning of the bombing. His first reaction was:

> "That expletive Parmar, he did it, they did it"; and that was my gut instinct ....[228]

The June 17, 1985 Situation Report

Despite Kobzey's absence, the BC Region continued to assess the threat from Sikh extremists as high. BC Region submitted its daily situation report to assist

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221 Exhibit P-101 CAA0174; See also Section 1.2 (Pre-bombing), June 1st Telex.
222 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3811.
223 See Section 1.4 (Pre-bombing), Duncan Blast.
224 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3805.
225 Exhibit P-101 CAA0308, CAA0309(i).
226 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3813, 3838.
227 CSIS BC Region was aware of the Khurana information.
228 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3812.

CSIS HQ in drafting the June 18, 1985 TA requested by the RCMP. The report noted that although no incidents had occurred, the threat potential from the Sikh community continued to be high. BC Region warned about the particular nature of the threat, describing it as political, with religious fanaticism being used as the driving force to achieve its goals.

Ultimately, they warned that "…time is of no consequence to the Sikh extremist element in reaching their objectives" and "…we can expect the overall problem to remain constant for some time to come."[229] BC Region appeared to understand that the Sikh extremist threat was real and serious, but remained unable to provide sufficient insight to prevent the bombing of Air India Flight 182.

Windsor District Investigation

In 1985, the secure CSIS communication system was not employed in all districts. The Toronto office, responsible for the entire Southwestern Ontario Region, had various district offices reporting to it. One of those was the Windsor District, an office with three staff in 1985. Toronto had access to NSR, but the district office did not. This meant that messages for Windsor would be sent through the Toronto office. Similarly, Windsor had to report to HQ through the Toronto office, where the manager would sign off on reports before they were entered into NSR.[230]

Early in 1985, Windsor District observed activity related to Sikh extremism. In fact, HQ sent out a request on February 21, 1985 for further information, specifically in response to material received from Windsor District.[231] An escalation of this activity over the ensuing months led to a cross-border police investigation, with the RCMP taking the lead in Canada. CSIS gathered intelligence from the early stages and throughout the police investigation.

New Orleans Plot

Events in the US in early May 1985 (the "New Orleans Plot") led to greater CSIS attention to the activities of Windsor-area Sikhs. The New Orleans Plot involved an attempted assassination in the US. A group of Sikhs in the New York area initially plotted to assassinate Prime Minister Rajiv Gandhi, but turned their attention to a softer target, an Indian cabinet minister who was convalescing in a New Orleans hospital.[232] The US Federal Bureau of Investigation (FBI) was aware of the plot, and a number of the individuals involved were arrested. The assassination attempt was foiled, but two fugitives from the FBI, Lal and Ammand Singh, were not caught and it was believed they escaped to Canada.[233] Days after the bombing of Air India Flight 182, these two individuals were named in Canadian newspapers as potential suspects.

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229 Exhibit P-101 CAA0219.
230 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3424-3425.
231 Exhibit P-101 CAF0111; Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3424-3425.
232 Exhibit P-101 CAA1086, p. 3, CAA1099, p. 2.
233 Testimony of Jim Cunningham, vol. 52, September 25, 2007, pp. 6391-6392.

The FBI soon found links between the Sikhs from the New Orleans Plot and Canadian Sikhs. An RCMP threat assessment dated June 14, 1985 reports that:

> A current FBI and Secret Service investigation has implicated Vancouver, Toronto and Windsor Sikhs with the conspirators arrested in New Orleans in the foiled Gandhi assassination plot.[234]

On May 13, 1985, Russell Upton wrote a memo addressed to the CSIS representative in Washington and the CSIS Director General of Foreign Liaison, Toronto Region and Windsor District, regarding his concerns following the discovery that the New Orleans Plot had potential Canadian connections. In it he stated:

> It would appear that the … Babbar Khalsa group, in Windsor and area has [established] an important relationship with US activists. This Canada/USA relationship in an area of Sikh terrorism is of special interest and concern to us at this time.[235]

Around the same time, the Sikh Desk at HQ gained another analyst, Bill Dexter. He took over the analysis of reports from the regions to free up Burgoyne to concentrate on the developments in Windsor:

> [B]ack in early June, I was involved with an operation down in Windsor, Ontario, where we had a group of Sikhs that were trying to smuggle Uzi machine guns into Canada, and a lot of my time was devoted to that operation.[236]

Over the next few weeks, Burgoyne, considered the CSIS Sikh expert at HQ, became focused entirely on the Windsor situation, writing warrant applications and overseeing the results of the investigation. It was believed at the time that Sikhs in the Windsor area were attempting to gather weapons to send to India. However, Inspector Lloyd Hickman from RCMP Protective Services proposed an alternate scenario in a May 28, 1985 memo:

> The only area of concern from the Protective Policing area was the fact that these Sikh extremists in the Windsor/Detroit area who are buying weapons may not be targeting the upcoming Gandhi visit, but may in fact be targeting Indian interests in Canada of which we have a protective responsibility.[237]

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234 Exhibit P-101 CAC0438.
235 Exhibit P-101 CAF0826, p. 3.
236 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3432-3434.
237 Exhibit P-101 CAC0356.

Hickman had no further involvement in the Windsor investigation.[238]

On June 11, 1985, the RCMP Windsor Detachment executed search warrants on the homes of Avtar Singh Kooner and Surjit Singh Agimal. The police were looking for weapons allegedly imported from the US. Kooner was known to have travelled to New Orleans in early May, but there was no further evidence to link him to the New Orleans Plot. After the searches, the RCMP launched an interview program involving Windsor NCIS and they were aided by CSIS's Coghlin.[239]

As well, the RCMP reported that they were continuing to work "…shoulder to shoulder with representatives from the Federal Bureau of Investigation and the US Secret Service from Detroit and have had an excellent working relationship in this regard."[240] That "excellent" relationship did not extend to CSIS, perhaps foreshadowing some of the difficulties to be experienced later in the Air India investigation.

On June 17, 1985, CSIS Windsor District sent a damning telex through Toronto Region to HQ. The CSIS investigator commented that CSIS found out about the RCMP searches only by accident, and had not been made aware through the usual liaison channels:

> Not wishing to stir up any hornet's nests, the writer, nonetheless feels obliged to state that I personally felt the searches conducted by the RCMP in Windsor were premature and proved ineffectual.… The searches came up negative because neither Agimal nor Kooner are stupid enough to keep such weapons in their homes. In the final analysis, the RCMP came up with one handgun and some passport falsification equipment …. During questioning, Kooner as much as told their interrogators to either charge him, if there was any evidence, or release him. He was released.[241]

Additional comments in the telex show that similar strains on the RCMP-CSIS relationship were being felt in Toronto.[242]

Effect on Other Investigations

The Windsor investigation did not result in any intelligence that could have prevented the bombing, but it certainly had an effect on the subsequent investigation. A CSIS wiretap was in place during the Windsor investigation.

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238 Testimony of Lloyd Hickman, vol. 34, May 28, 2007, p. 3978.
239 Exhibit P-101 CAB0304, p. 3.
240 Exhibit P-101 CAB0304, p. 4.
241 Exhibit P-101 CAB0311, pp. 2-3.
242 Exhibit P-101 CAB0311, p. 5.

While reviewing the intercept material, Coghlin became aware of certain common code words and phrases. It was not realized until months after the bombing that similar code words were used in the Parmar intercepts.[243] At that time, Coghlin had been transferred to HQ to help with the analysis and was given access to the translators and transcriber logs for the Parmar intercept.

HQ Sikh Desk, however, had access to both reports on Windsor intercepts and those Parmar intercepts that had been translated prior to the bombing. The work was split, with Burgoyne working on the Windsor investigation and Dexter working on the Vancouver investigation. The "need-to-know" principle may have affected the information that flowed between them. Two additional complications may also have played a role in the lack of understanding of the code words before the bombing. First, the Parmar intercept product was subject to a severe backlog. Second, the Windsor reports would also have been delayed to some extent by the routing process that required such reports to go first to Toronto and then to HQ.

Finally, the Windsor investigation may have had one severe consequence: it seems to have provided further evidence that Sikhs were interested in arms acquisition and trading, rather than anything to do with bombs, therefore reinforcing the very narrow view regarding the means of threat (assassination as opposed to sabotage) posed by Sikh extremists that seems to have pervaded CSIS at the time.

The June 17, 1985 Situation Report

Windsor District also submitted a situation report to assist CSIS HQ in drafting the June 18, 1985 threat assessment. It noted that the RCMP's raids on the residences of Kooner and Agimal were ineffectual and served only to bolster the Sikh extremists' status in the Sikh community.

Windsor District warned that the threat against Indian interests remained high. They expressed their view that "…the BK will simply ride out the RCMP campaign, re-group after the force loses interest and attempt to strike at some less high profile target, once the heat is off."[244] As in the BC Region, Windsor investigators appeared to understand the seriousness of the Sikh extremist threat, but could provide little insight into the specific nature of that threat.

3.3 CSIS's Threat Assessment Failures

What Went Wrong?

In the year prior to the bombing, CSIS had increasingly dedicated resources to investigate the growing threat of Sikh extremism in Canada. CSIS issued 70

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243 Exhibit P-101 CAA0308, CAA0309(i).
244 Exhibit P-101 CAB0312, p. 2.

threat assessments concerning Sikh extremism and aviation security, including 13 that related specifically to Air India.[245] It is clear that CSIS was investigating this growing threat and disseminating information to advise other agencies about it. What then, went wrong?

Effective intelligence assessment requires successful efforts at every stage of the intelligence cycle: timely, relevant setting of intelligence priorities; comprehensive intelligence collection; analytical tools to effectively process information; and information channels to disseminate and discuss the intelligence.

The Commission's review of the CSIS investigation into Sikh extremism prior to the bombing uncovered deficiencies in each component of the intelligence cycle. The primary reasons for the deficiencies in the CSIS threat assessment process are:

- CSIS was in its infancy when the Air India bombing occurred. As such, already scarce investigative resources were diverted to dealing with transition issues and to developing operational policies and a clearer understanding of its new mandate.

- CSIS failed to adjust its intelligence priorities in a timely manner. The agency failed to recognize the changing threat paradigm in the early-to-mid 1980s from counter-intelligence to counterterrorism and failed to recognize the threat of Sikh extremism in particular.
- CSIS collection and analysis efforts with respect to the threat of Sikh extremism were clearly hindered by a lack of resources and expertise.

- CSIS intelligence analysis capacity was hampered by "tunnel vision" about the expected nature of threats to Indian interests in Canada.

- Information sharing within and outside the agency was not free-flowing, resulting in threat assessments and responses that were not fully informed.

- There was a lack of coordination in the Government's assessment and response to the threat of Sikh extremism, which impeded communications channels for feedback that could have improved or challenged CSIS TAs. This prevented CSIS from producing meaningful TAs that were relevant to the RCMP response operations.

The effects of each of these intelligence failures are discussed below.

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245 Exhibit P-101 CAB0902: Security Intelligence Review committee, "CSIS Activities in Regard to the Destruction of Air India Flight 182 on June 23, 1985", November 16, 1992 [1992 SIRC report].

3.3.1 The Infancy of CSIS

It would be tempting, but wrong, to conclude that the Air India tragedy simply came at a bad time. CSIS had been created less than one year earlier, and the national security community was still dealing with the difficulties of adjusting to the new structure recommended by the McDonald Commission and implemented by the Security Intelligence Transition (SIT) Group. The fact that CSIS was operating when it was incapable of doing so efficiently is not an acceptable excuse.

Jim Warren, who reviewed the CSIS Air India file in 1986 during his term as DG CT, admitted that CSIS was not "…up and running at full speed" when it was created on July 16, 1984.[246] CSIS itself opened its submission to the Honourable Bob Rae with the statement that, at the time of the Air India bombing, it was an organization in its infancy that had not yet had the opportunity to fully resolve a number of policy and infrastructure issues. It was operating new administration, accommodation, communications and computer systems. CSIS had yet to develop a methodology to deal with a new system of extensive external review.[247]

The Inquiry evidence shows that the *CSIS Act* was passed with virtually no attempt to identify the effect of civilianization on day-to-day operations. The new agency was under-resourced, and no attempt was made to infuse the agency with any coherent identity, all of which made the transition chaotic. The operations of the new civilian service suffered, as all personnel experienced a steep "learning curve" in understanding the effect of their new identity on their pre-existing duties. The evidence leaves the distinct impression that CSIS was created with little thought to the practicalities of running a national civilian intelligence agency.

This lack of preparation affected CSIS operations. Important investigative initiatives were delayed or not initiated. Approval for the "urgent" warrant to intercept the communications of Parmar was delayed for five months due to the "priority" need to convert old RCMP SS warrants to new CSIS warrants.[248] This delay led to an important lost opportunity for CSIS to obtain intelligence and potential evidence that would be subsequently needed by the RCMP.

The Commission has considered the influence of the infancy of CSIS on the agency's ability to assess the threat of Sikh extremism, and asked whether the problems that occurred were inevitable or avoidable.

Gaps in Policies and Procedures

The focus of the drafters of the *CSIS Act* was on passing the legislation, and little priority was placed on developing the policies and practices necessary for the

246 Testimony of James Warren, vol. 48, September 19, 2007, p. 5942.
247 Exhibit P-101 CAA1086, p. 1.
248 The full story can be found in Section 1.3 (Pre-bombing), Parmar Warrant.

new Service's day-to-day operations. CSIS management was left to fill these gaps in policy and procedure, a task that proved to be significant, cumbersome and unsupported by adequate resources.

The Focus on Legislation

It is important to understand the political climate under which the *CSIS Act* was passed. While the Government began transition discussions in 1982, the focus remained on the drafting of the legislation itself. The first legislative attempt, Bill C-157, was studied extensively over the summer of 1983 by a special committee of the Senate (the "Pitfield Committee"). Following the Pitfield report, issued in November 1983, the Bill was allowed to die on the order paper. The second legislative attempt, Bill C-9, which incorporated virtually all the recommendations of the Pitfield Committee, was still in progress at the beginning of 1984. At that time the creation of the new Service was still not a certainty.[249]

Realizing that a general election was forthcoming in September 1984, the Liberal Government became increasingly preoccupied with "…getting the legislation through and getting on with the creation of the new organization" before the Parliamentary session closed for the summer.[250] During this chaotic political period, the *CSIS Act* was the last piece of legislation passed by the Liberal Government, just two days before Parliament recessed and two weeks before the newly-appointed Prime Minister, John Turner, called the election.[251] The Act was proclaimed in force just two weeks later, on July 16, 1984. The rush to pass and proclaim the legislation left little time for the development of the policies and procedures needed to guide the new agency.[252] A further complication was that, as a result of the September election, a new government was formed by the Progressive Conservative Party, which had little familiarity with the intricacies of the transition process and the new CSIS mandate.[253]

Jacques Jodoin, the Director General of Communications Intelligence and Warrants at CSIS HQ, commented on his impression of the work atmosphere in CSIS at the time:

> You had to – like they say – jump off the truck and keep running; so we did. And it caused some problem, it caused some shortcomings and yes, that was the situation.[254]

When the *CSIS Act* passed and the SIT Group dissolved, all CSIS personnel were asked to "jump off the truck" that had been pushing them towards civilianization and to "keep running," with little guidance down the path envisioned by the

249 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6206.
250 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6206.
251 Testimony of Geoffrey O'Brian, vol. 16, March 5, 2007, p. 1532.
252 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, pp. 1559-1560; Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2246; Testimony of Raymond Kobzey, vol. 33, May 24, 2007, p. 3819.
253 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1560.
254 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2246.

transition group. CSIS, in its first incarnation, was under-resourced, and faced with the daunting tasks of establishing its new civilian identity and developing the policies and procedures that conformed to its new mandate, while at the same time furthering its ongoing investigational priorities.

Failure to Adequately Resource the New Service

CSIS was not provided with adequate resources to carry out its operations,[255] and was stretched for personnel for years after its creation. There were many vacant positions, even in the first organization charts.[256] There were no new recruits for some months, while CSIS set up its own training academy at Camp Borden. The Camp Borden training program took six months, after which the recruits had to complete training in the field.[257] In this time of transition, CSIS managers were forced to allocate their scarce resources in the best possible manner to meet CSIS intelligence requirements.[258] Russell Upton, who was in charge of allocating resources within a large CT section that included Sikh extremism, noted that, while he fully recognized the seriousness of the Sikh extremist threat, due to this overall lack of resources, he was unable to spare any to augment the admittedly under-resourced HQ Sikh Desk.[259]

Failure to Establish a Separate Civilian Identity

An independent advisory team, headed by the Hon. Gordon F. Osbaldeston, was given a three-month term by the Solicitor General to produce recommendations regarding the CSIS framework of operational policies, the design of personnel management policies and any possible requirement for further studies.[260] The October 1987 Report, "People and Processes in Transition" (known as the "Osbaldeston Report"), found that CSIS's operations were hampered by its failure to separate from its police background and to make the transition to its new civilian identity.

> …there must be more capital expenditure for accommodation and administrative needs. CSIS still shares many operational and administrative facilities with the RCMP. A large percentage of CSIS employees still go to work in the morning at RCMP headquarters, making it rather difficult to generate and maintain the esprit de corps that is so important.[261]

For months after the separation, most lower-level CSIS personnel continued to work in the same building as the RCMP, while CSIS management were housed in

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255 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6204.
256 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6122.
257 Testimony of Raymond Kobzey, vol. 33, May 24, 2007, p. 3818.
258 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6183.
259 See Section 3.3.3 (Pre-bombing), Failure to Allocate Resources for a detailed description of the effect of the lack of resources on CSIS pre-bombing investigation.
260 Exhibit P-101 CAA0569, Appendix A: "Terms of Reference".
261 Exhibit P-101 CAA0569, p. 29.

a separate building.[262] CSIS personnel still used RCMP stationery and were not issued business cards identifying their status as employees of the new civilian Service.

The separation process created turmoil in the relationships within the ranks of both the RCMP and CSIS. Some viewed the separation positively: there were those within the RCMP who were glad that the "barn-burning troublemakers" in the RCMP SS were gone,[263] and some within the RCMP SS that felt the separation was simply a formal recognition of long-standing conditions.[264] Others noted the negative consequences of the separation. The "brotherhood" that developed during the common training at the RCMP Depot was lost.[265] The ability of members of the Service and the RCMP to chat informally, as had been the case prior to separation, was impeded.[266] The respected RCMP identity was taken away and the new civilian Service had yet to establish any identity of its own.[267]

At the same time, in order to bolster the ranks, CSIS allowed for "direct entry", which meant that police officers could join CSIS directly, bypass the requirement to attend Camp Borden and assume a higher rank than the civilian recruits who were required to attend training.[268] This procedure created tension within CSIS as testified to by Geoffrey O'Brian, a member of the SIT Group, who went on to hold numerous senior positions in CSIS:

> …if you were a young person who joined CSIS, and started off at training, and suddenly here was someone else who'd just become a member of CSIS but had a police background and they jumped two levels on you; … there was I suppose the inevitable tension.[269]

The "direct entry" procedure also did not help CSIS move away from its police roots towards greater civilianization, a complaint that was echoed by both SIRC and the Osbaldeston Report.

Recognized Need for Wide-scale Policy Revisions

The need for a review and rewrite of all CSIS policies became apparent early on. Archie Barr admitted that the SIT Group did not have the time to write many policies for the new Service during the transition process. Even basic policies relating to new staffing, pay and administration were yet to be developed.[270]

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262 Testimony of James Warren, vol. 48, September 19, 2007, p. 5941.
263 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1561; Exhibit P-437: Statement of Archie Barr, p. 4.
264 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1561.
265 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1561.
266 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3573.
267 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1562.
268 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, pp. 1563-1564.
269 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, pp. 1563-1564.
270 Exhibit P-437: Statement of Archie Barr, p. 9.

The few policies that were issued tended to focus more on what CSIS was not to do, rather than what it was to do and how it was to do it. CSIS was no longer in the evidence-collection business.[271] CSIS collected only information that was "strictly necessary" to carry out its mandate. CSIS would protect its methods, the identities of sources and third party information.[272] It would be a more transparent agency, subject to political control and independent reviews. These policies made clear that CSIS was not to make the same mistakes as the RCMP SS. However, they did not make clear just how CSIS was to achieve that result.

On August 28, 1984, the Solicitor General, the Honourable Robert Kaplan, issued a ministerial directive,[273] declaring that all ministerial policy direction provided to the RCMP SS would remain in effect for the new civilian Service to the extent that it was not inconsistent with the *CSIS Act*. Kaplan acknowledged that:

> There is undoubtedly a need to review all existing directions to identify those which require revision or updating and I understand that such a review is already being planned. I welcome this undertaking and look forward to being kept advised of the progress being made.[274]

While Kaplan understood the need to review and revise all policies for compliance with the *CSIS Act*, no policy task force was formed to carry out this daunting undertaking. Instead, CSIS personnel were expected to rewrite policy while dealing with ongoing operational imperatives. Some even felt that the policy-writing process should be postponed until CSIS had operated for some time in order to discover the practical changes that the new mandate would require.[275] It was understood that specific guidelines and policies would be developed as the agency matured. This approach, however, overloaded CSIS management with work and left personnel to operate with little guidance.[276]

New Legalistic Policies and Procedures

The policy-writing task itself was complicated and time-consuming. The Act imposed unprecedented legal oversight on CSIS activities[277] and, as no jurisprudence existed, nobody really knew what to expect.[278] Unlike in the days

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271 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6124. See, for example, Exhibit P-101 CAA0040: Archie Barr issued a memorandum stating that "…as the CSIS Act contains no requirement for collection by CSIS of information for evidentiary purposes, no such capacity will be provided for within CSIS facilities." The effect of this policy direction on CSIS operations is discussed in Section 4.3.1 (Post-bombing), Tape Erasure.

272 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6124.

273 Exhibit P-101 CAA0091.

274 Exhibit P-101 CAA0091.

275 Exhibit P-437: Statement of Archie Barr, pp. 8-9.

276 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3572.

277 For example, section 21 of the *CSIS Act* required Federal Court approval for all CSIS warrants. The *Official Secrets Act* under which the RCMP SS operated had required only the signature of the Solicitor General for warrant applications.

278 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2245; Exhibit P-437: Statement of Archie Barr, pp. 8-9.

of the RCMP SS, legal services became a major part of the CSIS operational decision-making[279] – a legalistic, bureaucratic, cumbersome, but necessary, process.[280]

Chris Scowen, *de facto* Deputy DG CT at the time of the bombing, told the Commission that they were "…walking on eggshells for the first months and the first couple of years" because there was uncertainty about which activities were affected by the Act and how. CSIS management relied heavily on the two lawyers in the Legal Branch for interpretations and explanation as to how the Act would apply.[281]

CSIS management faced the overwhelming tasks of revising administrative and operational policies to conform to the new legalistic requirements, while simultaneously furthering existing investigations and initiating new ones. Each of these tasks could have required management's full attention.

The Director, Ted Finn, and his five Deputy Directors were responsible for the rewriting of policies to conform to the new CSIS mandate. They held weekly meetings to develop the necessary operational and administrative policies and procedures. However, as time passed, CSIS experienced increasing administrative difficulties, and the greater part of the meetings was spent discussing administrative, staffing and financial problems, rather than operations.[282] Ultimately, the need to revise basic administrative policies and practices proved so overwhelming that the development of operational policies and the furtherance of CSIS investigations suffered.

Lack of Clear Procedures for Policy Development

Even when CSIS did attempt to write policy, there appeared to be no established procedure for doing so. The confusion over the proper procedure to establish policy, along with unclear roles within CSIS management, resulted in policies of disputed validity. In addition, early attempts often resulted in bureaucratic, overly-cautious procedures that ultimately unjustifiably impeded CSIS investigations.

In April 1984, just prior to the creation of CSIS, Archie Barr wrote a memorandum to revise the tape retention policy to accord with the new non-evidentiary mandate of CSIS. The memorandum established that CSIS would no longer maintain facilities for the retention of tapes for evidentiary purposes.[283] The Barr memorandum was intended to modify a 1980 Ministerial Directive[284] that set out procedures for retention of evidentiary tapes by the RCMP SS, a practice no longer allowed under the new CSIS mandate. This memorandum

279 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6121.
280 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p. 2245.
281 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6121.
282 Exhibit P-437, Statement of Archie Barr, p. 5.
283 Exhibit P-101 CAA0404.
284 Exhibit P-101 CAA0010.

became a matter of controversy; as it was relied on to justify the subsequent erasures of Parmar intercepts after the bombing. At the time of its issuance, the memorandum was accepted as policy across CSIS. However in 1988, Solicitor General officials questioned the validity of this policy, particularly whether a ministerial direction could be modified or reversed by a decision of the SIT Group.[285] They noted that, although CSIS had indicated that it wanted the Ministerial Directive modified, no new modified policy was ever agreed upon for ministerial approval. This confusion caused concern during the Reyat trial, because the Solicitor General's staff concluded that the Barr memorandum could not be relied upon as established policy, as the proper procedure to change policy had not been followed, and thus, the Barr memorandum could not be used to justify the contentious erasure of the Parmar tapes.

In February 1985, Jacques Jodoin issued a memorandum[286] further revising the tape retention policy, based on his review of the warrant renewal process. He advised all regions and districts to make verbatim transcripts of any vague or incriminating passages, and to retain the underlying tape for one year or until the warrant renewal date. Jodoin's policy was intended to improve the CSIS warrant renewal process. However, Jodoin's memorandum was followed by some regions and ignored by others, including the BC Region. Justifications for why this policy was ignored included the fact that Jodoin, as an HQ manager of technical services, did not have the authority to impose policy on the operational units in the CSIS regions. Within the CSIS regions, the regional directors general had operational autonomy and, therefore, made the ultimate decision on whether to follow technical policy issued from HQ. However, had BC Region implemented the policy, the erasure of the Parmar intercepts could most likely have been avoided.

Ultimately, there was a recognized need to fill the gaps in policies and procedures to meet the new more legalistic requirements of the *CSIS Act*. However, CSIS management was given few resources, and little direction on just how to do this.

Effect of Policy Gaps on Operations

In general, at the operational level, RCMP SS policies carried over to CSIS unchanged. Personnel utilized the same vehicles, stationery, computer systems and methodology[287] with little modification for basic investigative operations like physical surveillance, transcriptions, translations and source recruitment.[288] Until sometime after CSIS was created, the only notable change with operational implications was that the intelligence officers had lost their peace officer status.[289]

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285 Exhibit P-101 CAF0260.
286 Exhibit P-101 CAA0126.
287 Testimony of Raymond Kobzey, vol. 33, May 24, 2007, p. 3818.
288 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6184; Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9440-9441.
289 Testimony of Raymond Kobzey, vol. 33, May 24, 2007, p. 3818.

CSIS personnel were forced to take the time to learn about their new mandate and adjust their practices with respect to their new role. Because available personnel were scarce at the time, this requirement further taxed individuals who already had significant investigative responsibilities to meet. Inevitably, CSIS investigations suffered as personnel learned about the new mandate, followed more cumbersome processes, and re-established relationships, both within and outside of CSIS.

Investigations "On Hold"

Some CSIS operations were effectively put "on hold" as new policies and procedures were developed. The need to convert all necessary warrants to accord with the new Federal Court requirements mandated by the *CSIS Act* was a daunting task which took five months to complete. The day-to-day needs of ongoing investigations were set aside, unless shown to be urgent, in order to complete this conversion process. For the Sikh extremism investigation, this meant that BC investigator, Ray Kobzey, who was well aware of the serious threat presented by individuals such as Parmar, Bagri and Gill, was forced to pursue a warrant on Parmar only[290] – and the approval of the Parmar warrant itself was delayed until after the conversion process was completed.

In effect, because of the primacy of the conversion process, Kobzey was unable to apply for warrants on targets he considered to be serious threats, even if he normally had enough information to obtain the warrant.

The Learning Curve

All CSIS personnel experienced a learning curve, as they became familiar with the new mandate and its effect on operations.[291] Russell Upton spoke about the steepness of that learning curve and the need for everyone to learn about the changes and all the new legal and regulatory requirements.[292]

It was not only CSIS personnel who experienced a learning curve with the new mandate, but also agencies with which CSIS worked closely. One of the first tasks that Randy Claxton, Director General of BC Region, took on after CSIS was created was to conduct briefings for their police partners about the new CSIS mandate.

> As a result of CSIS being a new organization on the block it was imperative that I go to all the RCMP subdivisions and city police organizations and conduct briefings primarily to demystify what happened and explain that we are a legislated organization under the *CSIS Act*.[293]

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290 Testimony of Raymond Kobzey, vol. 33, May 24, 2007, pp. 3821, 3824-3825.
291 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6184.
292 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3573-3574.
293 Exhibit P-101 CAF0816, p. 22.

Educating the Public

The new organization was unknown to the community. Reaching out to the public was a high priority but complicated due to lack of resources and policy. Jack Hooper testified that on the day CSIS was created, he was sworn in, returned to his desk, completed the RCMP SS report he had been drafting and sat down to type out three business cards.[294] Bill Turner told the Commission that there was even confusion caused by the lack of policy on whether their cards should be bilingual, have a crest or even identify CSIS. Turner stated that since there was no policy, employees did various things until Headquarters informed them otherwise.[295] Hooper knew immediately that CSIS investigators would have to be creative in establishing CSIS's identity in order to build trust in the community.[296]

Ultimately the lack of identity hindered CSIS operations, as investigators spent time "educating the community" about the new Service.

Dealing with Cumbersome New Processes

The requirements of the *CSIS Act* created increasingly cumbersome and legalistic processes to replace the previously straightforward processes of the RCMP SS and their affected operations. CSIS management was busy dealing with the many administrative and resource problems, and failed to provide timely operational direction. Personnel in the field were left to make their best guess as to what was required.

Kobzey told the Commission that the process was new and there were no templates in place. In attempting to obtain a warrant to intercept Parmar's activities, he drafted a document labelled "An affidavit pursuant to a judicial warrant" which was signed off by his Director General and submitted. Kobzey's information was repackaged to feed into the actual affidavit, drafted by Bob Burgoyne and signed off by Barr, and went to the Federal Court. Kobzey had no precedent to guide him in the creation of his memo. He tried to include information he felt to be germane to the issue of threats to the security of Canada. The role of the Sikh Desk, also struggling with the lack of guidance for the new warrant requirement, was then to "fine tune" the information and tailor it for presentation in court. Kobzey stated that the transition team, assigned to get CSIS up and running, produced no warrant guidelines and did not have time to address the warrant issue properly.[297]

The procedures that were developed were often overly cautious, as personnel were careful to adhere to the spirit of the McDonald Commission recommendations. In addition to the inexplicably complex warrant process developed for warrant approvals (as described in the Parmar warrant narrative),

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294 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6204-6205.
295 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8279.
296 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6205.
297 Testimony of Raymond Kobzey, vol. 32, May 23, 2007, p. 3748.

the first warrant applications were signed by, and brought to the Federal Court by, Archie Barr, the second-in-command in CSIS. The misallocation of resources implicit in this arrangement was eventually recognized, and this duty eventually moved down to a much lower level.[298] The increased level of political oversight over CSIS was an impediment; for example, the Parmar warrant was held up for months because of concerns from the Solicitor General's office, concerns which eventually proved to be of no relevance.[299]

Tensions in Relationships Within and Outside of CSIS

Tensions persisted within and outside of the new civilian Service. Ex-RCMP SS members were given the option to bridge back to the RCMP within two years of the CSIS creation,[300] raising questions with CSIS employees about the wisdom of becoming part of the new agency.[301] Restructuring was going on all over CSIS, forcing many CSIS members to establish new working relationships.[302]

CSIS personnel also testified about the change in relations with some RCMP officers that occurred after its creation. Kobzey noted that it was very difficult, in some cases, to convince old RCMP colleagues that, although CSIS personnel were now "civilians," they were the same people, doing the same job. He testified that, as an RCMP SS member, he had been able to effectively obtain information from the RCMP "…being that we're a member of the RCMP." After the transition, his access to RCMP material changed.[303]

Loss of Basic Investigative Tools

CSIS investigators lost some of the basic informational tools that they had relied upon to conduct investigations as members of the RCMP SS. After the transition, CSIS lost the ability to perform timely criminal records checks and basic biodata references, as they lost access to the Canadian Police Information Centre (CPIC) database.[304] Kobzey, when asked why he believed these capabilities were withheld from CSIS, replied:

> **MR. KOBZEY**: We were no longer a police agency, sir.
>
> **THE COMMISSIONER**: No, but you were serving an important function. I'm not putting the responsibility on CSIS, but wouldn't it have made sense for the government to enlarge the ability of CSIS to obtain that kind of information?

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298 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8283.
299 See Section 1.3 (Pre-bombing), Parmar Warrant, for full details.
300 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3574.
301 Exhibit P-101 CAA1086, p. 5.
302 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3575.
303 Testimony of Raymond Kobzey, vol. 32, May 23, 2007, p. 3727 and Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3818.
304 Testimony of Jack Hooper, vol. 50, September 21, 2007, p. 6207.

> **MR. KOBZEY**: From an investigator's point of view, yes, sir, and I think that was part of the initial transition and some of those issues had yet to be resolved and arranged.[305]

The sudden loss of these basic investigative tools was part of the post-transition reaction to "de-police" the new Service. It is clear that the basic biodata available on CPIC would have been of use to CSIS during their pre-bombing investigation. The procedure put in place after the transition was cumbersome, requiring CSIS personnel to transmit CPIC requests through the RCMP. This procedure forced CSIS to wait for RCMP responses to their requests and exposed their investigations to the RCMP. This inevitably affected the breadth and timeliness of CSIS intelligence collection, and began a long-standing dispute between the agencies, which was not resolved until 1990, when CSIS gained full access to CPIC.[306] These limits on CSIS investigations lacked rational explanations.

Conclusion

The period after the creation of CSIS was one of confusion, inefficiency and adjustment. Operations were held up by the need to learn about the new mandate and the resulting cumbersome processes that were considered necessary to meet the recommendations of the McDonald Commission.

The responsibility for the failures of CSIS during the period does not rest with the individual members of that organization. It was clear from the evidence that, collectively, they tried to perform their duties as they understood them, under the umbrella of inadequate legislation and resources.

The early difficulty with CSIS rests solely with the government of the day who, in a rush to adopt the McDonald Commission recommendations, produced woefully inadequate implementation legislation. The legislation lacked clarity and direction and did not address resource issues; this resulted in CSIS commencing operations lacking office space, technology and clear legislative direction. The members should be commended for attempting to fulfil their duties in what were, initially, impossible circumstances.

Bill Turner refrained from calling the situation "chaotic," but stated that CSIS personnel were carrying on functions and duties they knew – but without policy.[307] Chris Scowen said: "…we were all very much new boys trying to work out these new regulations in which we operated."[308]

All CSIS personnel had to familiarize themselves with a new, more legalistic mandate and examine how this mandate would affect their daily operations. Resources were known to be inadequate. New people were being brought into CSIS, while existing personnel were considering taking the "bridge back" option

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305 Testimony of Raymond Kobzey, vol. 32, May 23, 2007, pp. 3727-3728.
306 Testimony of Jean-Paul Brodeur, vol. 18, March 7, 2007, p. 1722.
307 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8279.
308 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6138.

that would allow them to return to the ranks of the RCMP. CSIS personnel were dealing with a new mandate, new policies, new methods and a new chain of command, with minimal guidance from the top ranks.[309]

CSIS's investigations and its ability to cooperate with the RCMP suffered due to the strains caused by transition. At times, it seemed that CSIS was holding its collective breath while transition issues settled out, hoping that tragedy would not strike during this period of confusion. Unfortunately, tragedy did strike.

3.3.2 The Changing Threat Paradigm

The diversion of CSIS resources and personnel to deal with transition issues created a situation in which it was especially critical that a resource-starved CSIS properly focus its investigations on the most relevant threats to national security. The intelligence priorities of the RCMP Security Service (SS) in the years prior to the creation of CSIS are outlined in the 1982-1983 Annual Report on the Activities of the RCMP Security Service, issued on May 13, 1983.[310] The report recognized the strain on operations caused by the transition process.

> Efforts to create the civilian Canadian Security Intelligence Service [have] progressed in tandem with normal operations. The substantial administrative, research and consultative tasks required of the RCMP Security Service were met through selective reduction of operational coverage on lower priority targets and postponement of less urgent administrative projects.[311]

This Commission investigated whether CSIS adequately adjusted its intelligence priorities during the period preceding the Air India and Narita bombings. The investigation included analysis of whether CSIS adequately recognized the change in the threat paradigm from counter-intelligence (CI) to counterterrorism (CT) and assigned appropriate tasking priority to the emerging threat of Sikh extremism in particular. Or, expressed another way, did CSIS effectively plan for the upcoming war or were they focused on fighting battles of the past?

The Paradigm Shift from the Cold War to Terrorism

In the years before separation, Canadian intelligence operated almost exclusively in a Cold War atmosphere. The 1982-1983 RCMP SS Annual Report listed the distribution of effort as 55% counter-intelligence (CI), 17% counter-subversion (CS) and 15% counterterrorism (CT).[312] Within the RCMP SS, CT only had the

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309 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3574-3576.
310 Exhibit P-101 CAF0017.
311 Exhibit P-101 CAF0017, p. 4.
312 Exhibit P-101 CAF0017.

status of a unit within the counter-subversion branch. In the meantime, in the early 1980s, terrorism around the world, and in particular Sikh extremism, was on the rise.[313]

In the early 1980s, the RCMP SS began to bolster its counterterrorism investigations, due to two major terrorist incidents that occurred in Canada. In April 1982, a Turkish commercial counsellor was shot and wounded. Four months later, a Turkish military attaché was shot and killed. Armenian terrorist groups claimed responsibility for both attacks. These terrorists issued bomb threats to various Canadian government departments and attempted to bomb Air Canada premises in Los Angeles. It was clear that Canada was no longer immune to lethal terrorist violence, and the RCMP SS adjusted its priorities to address the Armenian terrorist threat.

The 1982-1983 RCMP SS Annual Report indicated the Service's recognition of the growing threat of terrorism. Counterterrorism investigations were allotted the greatest increase in resources, up 7% from the previous year.[314] However, these resources were mainly assigned to the Armenian CT investigation. As if to confirm this ranking of priorities, in March 1985, the Turkish embassy in Ottawa was stormed by Armenian nationalists. The Annual Report described several other CT investigations, but concluded that these concerns were not considered imminent or high priority. The issue of Sikh extremism did not even merit mention.[315]

Other CT investigations, including Sikh extremism, continued to suffer from a lack of resources due to the focus on counter-intelligence targets and on Armenian terrorist targets. Upon the creation of CSIS in July 1984, CT became a major division, equal to both CI and CS. However, the CT staffing complement did not change. At the time of separation, Geoffrey O'Brian estimated that the operational resources of CSIS were approximately 75% for CI and 25% for all other divisions.[316] Daryl Zelmer testified that counter-intelligence remained the main priority for CSIS in the year leading-up to the bombing. While counterterrorism was a "growing industry," it still was allotted fewer personnel and investigative resources than counter-intelligence,[317] and the resources assigned to CT investigations remained within the Armenian terrorism unit. The following is an excerpt from the testimony of Russell Upton, the Chief of the Europe and Far East Section at CSIS HQ:

> **THE COMMISSIONER:** (Off mic) …other sections were deprived of resources to the same extent you were?

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313 International terrorist incidents in the early 1980s included the series of suicide attacks directly against American diplomatic facilities in Beirut, Lebanon and against the US marine barracks at Beirut International Airport in 1983 and, on the same day, against the French paratroops headquarters also in Beirut and against the Israeli Defence Forces command post in Tyre, Lebanon, as well as the 1984 suicide bombings of the US embassy and then the attempt to assassinate the Emir of Kuwait in December, 1984: Testimony of Bruce Hoffman, vol. 19, March 9, 2007, pp. 1786-1787.

314 Exhibit P-101 CAF0017.

315 Exhibit P-101 CAF0017.

316 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, p. 1553.

317 Testimony of Daryl Zelmer, vol. 23, May 4, 2007, p. 2320.

MR. UPTON: Not to my knowledge.

THE COMMISSIONER: One had more than the other? I mean, you don't know whether [others] had more resources than needed, or…

MR. UPTON: I was very well knowledgeable of the Section that was set [up] to handle the Armenian situation after the terrorist act. And it was given a top priority, continued top priority, and it in effect at times hindered me from getting my resources. And it was fully staffed; it had research resource people and everything. And after the bombing, I must say that the CSIS – director transferred some of those resources over to my area and that helped to relieve a lot of pressure. But for me, that was too late. I was already pretty stressed out and I resigned in May of '86.[318]

Lack of Recognition of Sikh Extremism in Early 1980s

Was the lack of recognition of the Sikh extremist threat reasonable? The early 1980s witnessed the rise of Sikh extremist violence.[319] In Canada, demonstrations against the Indian government grew in size and intensity, Indian diplomatic personnel and personnel were faced with threats, and rumours surfaced of military training within a growing Sikh extremist movement.[320]

During this time, the investigation into Sikh extremism was given relatively low priority. RCMP SS investigators appeared concerned that the unrest in the Punjab could spill over into the Sikh population in Canada, but were given few resources to pursue the concern.[321]

The general belief throughout this period was that the problem of Sikh extremism was foreign, and, at the time, Sikhs in Canada were generally peaceful, with any violence limited to interfactional or religious disputes amongst Sikh groups.[322] Information about the Khalistani movement was obtained primarily from the Government of India itself, as well as from sources developed by other police forces,[323] the media, and a few community contacts. In response to concerns expressed by the Indian Government about Parmar in 1982, Security Service investigators undertook physical surveillance to locate Parmar for an interview, but failed to actually interview him. They did, however, undertake an interview with Surjan Singh Gill, who was a known affiliate of Parmar and the self-

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318 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3604.
319 See Section 2.2 (Pre-bombing), Failure to Appreciate the Nature and Seriousness of the Threat.
320 See Section 1.12 (Pre-bombing), A "Crescendo" of Threats.
321 For a full description of CSIS pre-bombing investigation, see Section 3.2 (Pre-bombing), The CSIS Investigations into Sikh Extremism.
322 Exhibit P-101 CAB0049.
323 CSIS relied on the Vancouver Police Department, Indo-Canadian Liaison Team for community intelligence. The VPD dialogued with several members of the Sikh community: See Exhibit P-101 CAB0048.

proclaimed Khalistani "Consular General" in Vancouver.[324] The investigation throughout the pre-bombing period was more reactive than proactive, with CSIS's efforts focused on substantiating threat warnings received from various sources and on obtaining information about anticipated demonstrations.

Focus on Sikh Extremism Increases in 1984

In early 1984, Sikh extremism did not have its own intelligence requirement (IR), a ranking that prioritized the work and resources of the RCMP SS and, later, CSIS.[325] However, events over the following year revealed the obvious growth of Sikh extremism in Canada, compelling CSIS to begin to bolster its investigation into the threat.[326] The Sikh extremism investigation[327] was given increased priority with the opening of the "Sikh extremism" file on April 7, 1984, with Operational Priorities Review Committee (OPRC) level 2 coverage approved.[328] The higher prioritization was triggered by the increasingly tense situation in the Punjab, as violence escalated and the Indian army surrounded the Golden Temple. In March 1984, the Security Service received information suggesting that this "foreign issue" was about to spill over into Canada in a deadly manner. A source advised that a group of 18 Sikhs from India had sworn a pledge to carry out attacks or to kill moderate Sikh leaders, prominent Hindu leaders and Indian diplomatic personnel in Canada. In fact, the source alleged that some of them had already arrived in Vancouver.[329] Once the Service had opened the Sikh extremist file, all regions were required to provide community assessments of the Indian situation in their areas. The instructions from HQ recognized the inherent link between the events in the Punjab and the possible reaction within the Canadian Sikh community. It warned that if the Indian government was unable to restore calm in the Punjab area, tensions could flare within Canada's Sikh community.[330]

This happened when the Indian army stormed the Golden Temple on June 6, 1984. The event triggered mass demonstrations across Canada.[331] While the protests were generally non-violent, Security Service threat assessments noted that they were emotionally charged events, in a Sikh community united in grief like never before.[332] The SS believed that the prospect for confrontations and violence in Canada was a certainty. While noting that their recently initiated investigation into Sikh extremism in Canada had not yet yielded any firm conclusions, they did conclude that the threat to Indian missions and personnel was at its highest.[333]

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324 Exhibit P-101 CAA0018, CAB0031.
325 Testimony of Daryl Zelmer, vol. 23, May 4, 2007, p. 2321.
326 A detailed description of CSIS pre-bombing investigation into Sikh extremism is provided in Section 3.2 (Pre-bombing), The CSIS Investigations into Sikh Extremism.
327 For detailed information about CSIS pre-bombing investigations, see Section 3.2 (Pre-bombing), The CSIS Investigations into Sikh Extremism.
328 Exhibit P-101 CAB0054, CAF0072b.
329 Exhibit P-101 CAB0048.
330 Exhibit P-101 CAB0054.
331 Exhibit P-101 CAB0062.
332 Exhibit P-101 CAB0062, CAB0063.
333 Exhibit P-101 CAB0062.

Investigative Authorization on Sikh Extremism Increased to Highest Level

In light of the reaction of the Sikh community in Canada to the Golden Temple storming, the Sikh extremism file was given the highest OPRC level 4 investigative authorization, officially approved on June 27, 1984, just three months after the file was opened.[334] This authorization signified the Service's recognition, a year before the Air India and Narita bombings, that the Sikh extremism investigation needed to employ the most intrusive investigative methods to address this serious threat. By the fall of 1984, a "Sikh Desk" had been created at HQ.[335] Over the following year, CSIS identified specific targets within the Sikh extremist community and obtained specific OPRC level 4 authorizations against Parmar (on September 17, 1984),[336] the Babbar Khalsa (on January 30, 1985)[337] and the International Sikh Youth Federation (on May 5, 1985).[338] On May 28, 1985, Mel Deschenes, the DG CT, designated the Sikh extremism file as a top priority investigation with its own IR until at least mid-June.[339] This designation was based on CSIS's concern about the potential for serious incidents in the period leading up to the anniversary of the Golden Temple storming (June 6, 1985) and during the US visit of Prime Minister Rajiv Gandhi, from June 11 to 16, 1985. Investigators were ordered to mobilize and process all available sources on a priority basis, and to submit daily situation reports to HQ.[340] CSIS personnel involved in the Sikh extremism investigation during this period expressed their conviction that prospective violence by Sikh extremists was considered to be a certainty. Kobzey, an Intelligence Officer at BC Region, considered the Sikh extremism file to be urgent, based on the violent rhetoric of Parmar and the religious fervor tied to the threats.[341] Russell Upton testified that the issue of Sikh extremism was clearly evident in 1984; that "…we were getting red flags all over,"[342] and that it was only a matter of time before the terrorist element in the Sikh community was going to "hit us good". Upton agreed with the notion that the bombings were "…a terrorist action that was waiting to happen."[343]

From these designations and comments, it would appear that CSIS was aware of, and assigning appropriate priority to, the investigation of Sikh extremism. However, the Commission's review of the evidence shows that from June 1984, when the Sikh extremism investigation was given OPRC level 4 authorization, to June 1985, when the bombings occurred, CSIS failed to adequately generate useful intelligence on the activities of Sikh extremists in British Columbia. Although the Sikh extremism file had been nominally designated top priority throughout the year leading up to the bombing, investigators were not allotted adequate resources or personnel to effectively carry out the investigation. It

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334 Exhibit P-101 CAF0102, p. 1; Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3520-3521.
335 Testimony of Daryl Zelmer, vol. 23, May 4, 2007, p. 2321.
336 Exhibit P-101 CAB0139.
337 Exhibit P-101 CAF0111.
338 Exhibit P-101 CAB0117.
339 Exhibit P-101 CAF0124(i).
340 Exhibit P-101 CAB0256.
341 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3753; Exhibit P-101 CAB0144, pp. 3-4.
342 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3613.
343 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3609, 3613.

appeared to be a situation in which the investigators on the ground understood the threat, but could not obtain support or guidance from an upper management that was too focused on transition issues and traditional counter-intelligence priorities.

Archie Barr noted that the intelligence landscape was changing quickly at the time.

> Although CSIS was newly formed, we brought a well-functioning counterterrorism unit to CSIS from the RCMP, and the need for it grew much larger than we had originally expected, as the threat of terrorism began to spread in the 1980s. Much of the CSIS work in the early days involved counter-intelligence as the Cold War continued, but the intelligence landscape was changing quickly.… The shift from counter-intelligence to counterterrorism could have and should have been faster.[344]

Ronald ("Ron") Atkey, the first chairman of the Security Intelligence Review Committee, which had oversight over CSIS, described the three competing intelligence priorities within CSIS prior to the Air India and Narita bombings: counter-intelligence, counter-subversion and counterterrorism. CSIS had begun to disband the counter-subversion branch, in light of its new mandate, which freed up some resources for counterterrorism priorities.

> **MR. ATKEY:** But I have to say that the events of June 23rd, 1985, did shift the whole mentality of this thing rather quickly.… [a]nd the counterterrorism became the focus and resources were directed towards that.
>
> **MR. BOXALL:** I guess, the art to it is attempting to not wait until the event occurs to shift the resources, but for someone to be in a position to predict that?
>
> **MR. ATKEY:** That's correct.[345]

After the bombing, resources were rapidly shifted to the investigation into Sikh extremism. This adjustment in priorities was long overdue and, tragically, too late to assist CSIS investigators in preventing the Air India and Narita bombings.

Failure to Adjust Priorities to the Investigation of Sikh Extremism

This recognition of the seriousness of the Sikh extremist threat came too late, especially in light of the significant events that were occurring in the year before the bombing. Even the prioritization, long overdue, of the Sikh extremism

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344 Exhibit P-437: Statement of Archie Barr, pp. 5, 7.
345 Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 6007-6010.

investigation that occurred in May 1985 was to be implemented temporarily, "until at least mid 1985 06."[346] The prioritization appeared to be more a cautious reaction to the highly politicized visit of Rajiv Gandhi to the US, rather than a result of a true understanding of the overall seriousness of the Sikh extremist threat.

This belief that the threat was temporary was shared by the RCMP, who exerted pressure on CSIS to reduce the threat level after Gandhi's departure. In a June 11th TA request, the RCMP informed CSIS that the last CSIS TA had resulted in a deployment of considerable RCMP resources to protect Indian interests, and, should the Gandhi visit take place without serious incident, they "…assumed the threat level … would diminish." As such, the RCMP requested an updated TA on June 17th, the day of Gandhi's departure.[347] Despite this pressure, CSIS investigators across the nation cautioned against assuming the problem had passed.[348] The June 17, 1985 TA issued by CSIS assessed the threat as being "… only slightly less serious" and warned that "…extremists/terrorists are no less determined to realize their ambitions and to think that they have abandoned their cause would be somewhat naïve on our part."[349]

Despite CSIS's warning that the threat continued, it allowed efforts made to bolster the Sikh extremism investigation in early June to lapse after the departure of the Indian Prime Minister from North America. CSIS HQ ended the requirement for daily situation reports from the regions, several key personnel in both HQ and BC Region were allowed to take leave, and physical surveillance coverage on Parmar was, regrettably, pulled on the day before the bombing.[350] While it was likely that the CSIS personnel involved with investigation were weary after the intense period during the Gandhi visit, this was no excuse for letting the investigative resources lapse without ensuring that suitable replacements were available to maintain CSIS's ability to assess what was admitted to be a continuing high threat. It is difficult to conceive how CSIS could have warned that the threat continued to be high, while simultaneously reducing its investigative capability.

This lack of appreciation of the breadth and severity of the threat of Sikh extremism on the part of CSIS HQ translated into a failure to prioritize the Sikh

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346 Exhibit P-101 CAF0124, p. 1.

347 Exhibit P-101 CAB0275.

348 Exhibit P-101 CAA0219 p. 2 (BC Region wrote, "…we still consider the threat potential from the Sikh community to be high.... It would appear that time is of no consequence to the Sikh extremist element in reaching their objectives therefore we can expect the overall problem to remain constant for some time to come"), CAB0312 (Windsor Region wrote, "…this office feels the threat posed by Sikh extremists against Indian Missions, personnel and interests in this country will remain high … the BK will simply ride out the RCMP campaign, re-group after the force loses interest and attempt to strike at some less high profile target, once the heat is off"), CAB0316 (Edmonton District wrote, "…it would seem small groups or individuals within Edmonton's Sikh community have the potential to either support or undertake violence against Indian missions, personnel or interests in Canada or on an international scale in the future long term") and CAB0315 (Manitoba Region wrote, "…we must not [be] complacent and assume that the Sikh problem has passed. Writer feels that Indian missions and personnel will continue to be a target of the more militant Sikh extremist factions present in this country").

349 Exhibit P-101 CAA0220.

350 See Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.

extremism investigation, and thus into a failure to devote adequate resources and personnel to carry out the investigation effectively. The evidence at the inquiry clearly shows that the BC investigators, Kobzey and David Ayre, had an understanding that there was a serious threat posed by Sikh extremists.[351] What is equally clear is that this view was underappreciated at HQ. In a centralized organization it is difficult for priorities to be adjusted, unless HQ understands and appreciates the need for the adjustment. In the case of the threat posed by Sikh extremism, HQ did not appreciate the risk in a timely manner and, thus, provided inadequate support to the investigators on the ground.

Conclusion

The Commission's review shows that CSIS was slow to recognize the changing threat paradigm from counter-intelligence to counterterrorism. While CSIS was beginning to bolster its counterterrorism investigations in reaction to two attacks by Armenian terrorists in Ottawa, it failed to adequately recognize other emerging terrorist threats in Canada, such as Sikh extremists. Sikh extremism investigators found themselves in a losing competition for resources with the higher priority counter-intelligence and Armenian terrorist target investigations. In effect, CSIS's targeting priorities were more reactive than proactive: CSIS was busy fighting the threats of the past rather than anticipating emerging threats.

3.3.3 Failure to Allocate Resources

The Struggle for Resources

The failure of CSIS senior management to recognize the threat of Sikh extremism led to an inevitable struggle for resources by the analysts and investigators involved in this investigation. In the year preceding the bombing, CSIS nominally assigned the Sikh extremism investigation increasing levels of priority, but failed to adjust the resources accordingly to allow investigators to actually meet these priorities. Ironically, when Mel Deschenes assigned the Sikh extremism investigation top priority on May 28, 1985, in anticipation of the Golden Temple storming anniversary and the US visit of Rajiv Gandhi, he noted "…any extra resources and attention you can afford this area during the coming weeks shall be appreciated."[352] In fact, this top prioritization did not translate into increased personnel to handle the necessarily increased investigative load. A week later, when Russell Upton tasked the regions to provide daily situation reports, there was similarly no increase in resources to meet the increased requirement.[353] Hard-working investigators were simply asked to work harder.

A number of CSIS intelligence failures with respect to the Sikh extremism investigation in 1984-1985 can be traced, at least in part, to the lack of resources, as noted by Professor Wesley Wark:

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351 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3753-3755, 3764-3765; Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3790.
352 Exhibit P-101 CAF0124(i).
353 Exhibit P-101 CAB0256.

> [I] see two clear kinds of intelligence failure at work in Air India in 1985.... One has to do with intelligence collection, part of the intelligence cycle. Now, it is the case that government agencies were aware of the threat from Sikh terrorism and were targeting that threat, and they were engaged in intelligence collection against it, especially in terms of CSIS efforts. But what we see in the detailed record of the pre-bombing CSIS information collection effort, was an inability to take full advantage, I would say, of that targeting, an inability to sustain physical surveillance on key targets, in particular Mr. Parmar, and the inability to make full use of the wire tap information, the electronic surveillance, again, conducted against Mr. Parmar.... [W]e had the right intelligence instincts at work, but we didn't have a system that could fully deliver on them. Why is that? I think it's very hard for me to reach an assessment about that. There are some things that leap out at one as likely answers, in terms of lack of resources in particular, and lack of capacities to translate intelligence into usable information. But I do see an intelligence failure at work, here.[354]

A review of the Inquiry evidence shows that CSIS's investigation into Sikh extremism was compromised by the failure to move swiftly to engage investigative techniques that might have produced actionable intelligence information, or to devote sufficient personnel to support the investigative techniques that were in fact employed. These deficiencies, along with questionable strategic decisions, affected CSIS's ability at all stages of the intelligence cycle. The units responsible for the collection, analysis and dissemination of relevant and timely intelligence all suffered from a lack of resources and personnel. The lack of intelligence that resulted led to a systemic failure, affecting senior management's ability to appreciate the gravity of the Sikh extremist threat and to adjust tasking priorities to correct the underlying resource and personnel deficiencies.[355]

This section outlines the deficiencies in investigative resources and personnel for the CSIS investigation into Sikh extremism, and the effect of these deficiencies on CSIS's ability to collect, analyze and disseminate intelligence.

Effect on Intelligence Collection

CSIS's collection of intelligence provides the foundation for all other stages of the intelligence cycle. Effective collection efforts provide context which allows analysts to make informed assessments from which the government can develop appropriate responses and adjust its priorities to meet the changing threat climate.

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354 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1495-1496.

355 For a detailed description of the senior management's failure to recognize the changing threat paradigm and sufficiently prioritize the Sikh extremism investigation, see Section 3.3.2 (Pre-bombing), The Changing Threat Paradigm.

With little direction and support from a CSIS senior management that was focused on transition issues and other higher-priority investigations, the furtherance of the Sikh extremism investigation depended on the personal initiative of the on-the-ground investigators. In the aftermath of the Golden Temple storming and the return of Parmar from a German prison in the summer of 1984, CSIS investigators in BC Region and analysts at HQ initiated efforts to gain approval for more investigative resources against Parmar, but were met with constant challenges. Human sources proved difficult to cultivate in a tight-knit, secretive group, and the Sikh community was often unwilling to speak due to threats of intimidation from extremists. The Parmar intercept application was delayed at HQ for five months. There was a lack of security-cleared translators available to process the Parmar tapes, once recorded. The BC Region Physical Surveillance Unit (PSU) coverage was focused on other targets considered to be higher-priority, and covered Parmar or other Sikh extremists only when resources were available. Even staffing levels were inadequate, as few investigators were involved in the Sikh extremist investigation, and those involved were overworked.

Human Sources

The greatest problem in CSIS's investigation into Sikh extremism was its inability to recruit trustworthy and reliable human sources.[356] Chris Scowen testified that the most important intelligence resource any intelligence service can have is a human source:

> You can have all the technical sources you want, they would supply enormous amounts of information but the human source is the only kind of source that can be directed, can use their own intelligence, can use their own imagination in the furtherance of an operation.[357]

Kobzey testified about his efforts to recruit human sources within the Sikh community in British Columbia. He noted that, in 1982, the Sikh extremism investigation was assigned a low level of investigative authority, which was sufficient for him to develop relationships with Sikh community members who could inform CSIS about issues of concerns to them. Kobzey developed these casual relationships with the hope that he would find a person who could become a CSIS source at a later date, when the level of investigative authority was increased. In particular, he was looking for someone who had access to the plans of Sikh extremists like Parmar, Bagri, Gill and their associates.

However, Kobzey testified that this task proved difficult. Members of the Sikh community were very reluctant to be seen to be working with the authorities, for fear of retribution, beatings, and violence, either to themselves or to family members in Canada and overseas. The Sikh extremists themselves were a

356 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3603.
357 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6155.

close-knit, family-like unit that did not trust anyone outside of their immediate circle.[358] Kobzey considered the introduction of a human source into such a group to be virtually impossible.[359] Ultimately, no human sources had been recruited, prior to the bombing, to support the BC investigation of Parmar and his associates.[360]

CSIS, as a newly-formed and highly secretive agency with little public reputation, lacked vital tools to gain trust in face of the distrust of government present in the Sikh community.

A human source could have provided critical context within which to understand the movements and intercepted conversations of Parmar, who often acted and conversed in a security-conscious manner.[361] Instead, CSIS investigators were forced to turn to inferior investigative methods, including technical intercepts and physical surveillance. Without the insight of a human source, investigators could only make their best guess about the actions and conversations of a group of Sikh extremists with which they had little cultural and operational familiarity.

Technical Sources: Parmar Warrant

In light of the difficulty in recruiting human sources, CSIS had to rely on technical sources to obtain insight into the dealings of Parmar and his tight-knit group.[362] Kobzey recognized the importance of gaining comprehensive insight into this group immediately after Operation Bluestar in June 1984, and Parmar's return to Canada in July 1984.

> I felt that the action against Bluestar would be so inflammatory that we had to be in a position to deal with this by means of a warrant soonest, to start getting information which would enable us to gather clear insight into this individual, his associates, his contacts worldwide, people who he was dealing with ….[363]

Kobzey drafted an urgent warrant application during August 1984 to intercept the communications of Parmar, and submitted it to CSIS HQ in September 1984. The application warned that "…in view of our limited source coverage, we are in a very poor position to provide timely intelligence with respect to any planned acts of violence."[364] In spite of this warning, the approval and subsequent processing of the Parmar intercept were handled in a non-urgent manner, rife

358 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3820-3821.
359 Exhibit P-101 CAB0144, p. 7.
360 Exhibit P-101 CAB0902: 1992 SIRC Report, p. 40.
361 Exhibit P-101 CAD0154, p. 10. See also Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3603.
362 The circumstances surrounding the Parmar warrant are described in detail in Section 1.3 (Pre-bombing), Parmar Warrant.
363 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3754-3755.
364 Exhibit P-101 CAB0144, p. 7.

with significant delays, and causing potential losses of critical, contextual and, possibly incriminating, information.

It is important to put this issue in context. There is no certainty that information would have been obtained that would have prevented the terrorist attacks. However, in assessing the steps that were taken during the investigation, it is surprising that the warrant took five months to obtain, considering CSIS's urgent need for insight into the Sikh extremist movement in Canada, and CSIS's view that Parmar was the leader of that movement and had been employing inflammatory rhetoric in public. Kobzey admitted that the unexpected delay hampered his attempts to gain in-depth knowledge about Parmar.[365]

In comparison, shortly after the bombing, with the creation of the CSIS task force in BC Region and a three-person warrant drafting section, CSIS HQ was able to obtain approval by the Federal Court for several additional warrants in a much shorter period of time.[366] This illustrates that CSIS HQ had the ability to process warrants in an expeditious manner once they were considered sufficiently urgent.

The lengthy Parmar warrant process prior to the bombing meant that CSIS investigators lost potentially valuable information not only in relation to Parmar but also to other Sikh extremists.[367] The failure to obtain the Parmar warrant in a timely manner resulted in an inability to apply for additional warrants for other Sikh extremist targets prior to the bombing. This meant that there were no warrants for Ajaib Singh Bagri and Surjan Singh Gill, even though they were known to CSIS and were considered potentially as dangerous as Parmar.

Punjabi Translators

At the time that CSIS officials in BC Region had determined that they needed to intercept Parmar's communications, it was apparent that there was another problem: the lack of qualified and security-cleared Punjabi translators. Despite knowledge of that deficiency, little, if anything, was done to remedy the problem over the five months that it took to process the warrant application. Even after the warrant was granted, and Parmar's communications were being intercepted, the issue of an acute lack of translators remained unresolved. By way of illustration, two days before the Air India bombing, approximately 100 audio surveillance tapes of Parmar remained untranslated.[368]

The responsibility for ensuring that there were adequate resources for the translation and transcription of wiretaps fell to Jacques Jodoin, the Director General, Communications Intelligence and Warrants (CI&W) at CSIS HQ.[369] BC

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365 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3822.
366 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7652.
367 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3775-3777.
368 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1510.
369 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, p 2278.

Region began searching for a Punjabi translator before the Parmar warrant was installed on March 25, 1985, but was unsuccessful. On May 16, 1985, it sent out an urgent request to all regions for recruitment of Punjabi translators.[370] Despite this nationwide search, CSIS continued to have difficulty in hiring a security-cleared Punjabi translator. Jodoin arranged for the Parmar tapes to be translated through a drawn-out and inefficient process. Tapes were sent to Ottawa to be translated and the translation would then be sent back to BC Region.

This process not only resulted in extensive delays, but also restricted the ability of BC Region investigators to interact daily with the translator. This made it difficult to coordinate investigative efforts with what the translators were uncovering.

One reason offered for the extreme difficulty in recruiting translators was the requirement that they be Top Secret cleared. During the hearings, Jodoin testified that for this clearance one had to have been in the country for at least 20 years. In his view, there were few Punjabi-speaking persons who could meet this requirement in 1985. Additionally, members of the community were unwilling to cooperate because they did not want CSIS investigators asking questions within their own community.[371]

Physical Surveillance Units

BC Region investigators faced challenges in obtaining PSU coverage for Sikh extremist targets. PSU resources in BC Region were scarce, with units available to cover one target for up to 16 hours any day of the week.[372] All BC Region investigations competed fiercely for coverage.[373] With little new information collected through other investigative means, BC Region Sikh extremism investigators rarely had fresh justification for the commitment of PSU coverage, and often found their investigations second in priority to those of their counter-intelligence (CI) colleagues.[374] Ultimately, surveillance on Sikh extremist targets was intermittent at best.

Kobzey submitted a request for PSU coverage on Parmar on April 4, 1985,[375] at a time when counterterrorism (CT) targets were given low priority in comparison to ongoing CI targets.[376] When coverage was denied, Kobzey would occasionally undertake surveillance on his own, despite not having training. This diverted his efforts away from other important investigative steps more suitable to the role for which he was trained.

Even the critical Duncan Blast surveillance was obtained by a stroke of luck. At the time, PSU coverage on Parmar was granted intermittently and on an ad hoc basis. With the anniversary of the Golden Temple storming and the US

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370 Exhibit P-101 CAB0234, p. 1.
371 Testimony of Jacques Jodoin, vol. 23, May 4, 2007, pp. 2278-2280.
372 Exhibit P-101 CAD0131, p. 8.
373 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3838.
374 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3773-3774.
375 See surveillance request by Kobzey and Ayre dated April 4, 1985: Exhibit P-101 CAB0209.
376 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3794-3795.

visit of Rajiv Gandhi approaching, Kobzey took the initiative to make a personal request, insisting coverage was necessary in light of these important events. His request was met with resistance at senior levels, but ultimately PSU coverage was provided for a few days in early June including the day of the Duncan Blast incident.[377]

The events of that day resulted in continued uninterrupted mobile surveillance of Parmar until June 17, 1985. This was an unprecedented amount of coverage for a CT target at the time. It is ironic that intelligence obtained by the PSU itself enabled this coverage. One can only imagine what information CSIS would have obtained had it had timely information from human or technical sources that could have justified even further coverage. Unfortunately, PSU coverage on Parmar was pulled days before the attack, leaving the whereabouts of Parmar and his associates on the day the bombs were planted uncertain to this day. Kobzey was away on vacation at the time and unable to advocate for the continuance of PSU coverage.

The Commission's evidence shows that the quality of PSU coverage provided suffered due to the insufficient resourcing of PSU teams. Inexplicably, members of the PSU mobile surveillance team following Parmar, who witnessed the Duncan Blast, were not provided with cameras.[378] The lack of photos taken on that critical day has contributed to the inability to identify the third person who attended with Parmar and Reyat, known only as Mr. X.[379] If they had had a camera, the PSU might have determined his identity long ago.

BC Region Investigators

Even if CSIS had been able to obtain more human and technical sources in support of its investigation into Sikh extremism, it did not have the human resources available to efficiently and effectively process the information that they could have provided. While BC Region was generally well staffed overall, with 165 employees including 40 intelligence officers (IOs), there was little effort to adjust staffing priorities to meet the emerging threat posed by Sikh extremists.[380]

Despite Sikh extremism being the number one CT priority for CSIS and despite the fact that the hotbed of Sikh extremism in Canada was in Vancouver, there was a clear shortfall in personnel dedicated to monitoring this threat. In fact, prior to the bombing, only two investigators were working directly on the Sikh extremism issue – Kobzey and Ayre. They reported to their unit head, Jim Francis, who in turn reported to the Chief of CT, Robert Smith.

Kobzey and Ayre spent much of their limited time confronting serious challenges to obtaining resources to support their investigations. They seemed to be in

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377 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3793-3796.
378 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2208.
379 A detailed description can be found in Section 1.5 (Pre-bombing), Mr. X.
380 Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6208-6209.

a constant fight for basic investigative resources, which detracted from their ability to carry out their own important investigative duties.

Even with their limited capacity, the BC investigators were able to appreciate the seriousness of the Sikh extremist threat in BC, as shown by their "urgent" warrant application to intercept the communications of Parmar, submitted to CSIS HQ in October 1984.[381] Once again, BC Sikh extremism investigators met with opposition at the higher levels of CSIS, where the warrant process was delayed in light of the "higher priority" issue of dealing with warrant conversions which had been necessitated by the creation of CSIS.[382]

With their time taken up in a constant battle for resources, with little support from senior management at CSIS HQ, and no human sources, it is not surprising that the BC investigators were unable to further their understanding of the key Air India conspirators, despite their appreciation of the seriousness of the threat. The lack of resources at the investigative level impaired every stage of the intelligence cycle: the ability to define informed intelligence priorities, to analyze the threat information available and to properly advise other agencies of the "reality" of the Sikh extremism threat.

Immediately following the bombing, 14 BC Region CSIS investigators were assigned to the Sikh extremism investigation. This much-needed shift of resources was too late.

Effect on Intelligence Analysis

The HQ Sikh Desk, the analytical centre for all investigations into Sikh extremism across the country, was severely understaffed in the year leading up to the bombing. Although three analyst positions were allotted to the investigation, only one position was filled for most of the year prior to the bombing.

Russell Upton was the Chief of the CT operations dealing with Europe and the Pacific Rim, including the Sikh Desk. He managed an area of operations far larger than simply the Sikh Desk, including the other CT hot spots in Western Europe, Yugoslavia, South America and the Caribbean.[383] The Sikh Desk, itself, was originally the Western Europe and Far East Desk and dealt with other areas of interest as well. Although Upton had the ability to reassign staff within his section, his entire section was operating with insufficient resources. Staffing was at half its intended complement; only seven of 14 allotted positions were filled.[384] This was at a time when there were constantly-increasing intelligence flows, not only in relation to Sikh extremism but also for other areas within his responsibility.[385] This information had to be interpreted, analyzed and integrated into CSIS's existing understanding of various terrorist groups. As such, Upton had no "extra resources" to divert to the Sikh Desk.

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381 See Section 1.3 (Pre-bombing), Parmar Warrant.
382 See Section 1.3 (Pre-bombing), Parmar Warrant.
383 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3568-3569.
384 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3571-3572.
385 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3601-3602.

The Sikh Desk therefore remained short-staffed. Glen Gartshore was the head of the desk, and Burgoyne filled one of the three allotted Sikh Desk analyst positions at the time of the storming of the Golden Temple, one year prior to the Air India bombing.[386] Burgoyne was a novice analyst with no background or formal training in Sikh extremism issues. A second analyst position was filled by Bill Dexter, who was away on French language training until March 1985. Dan Godbout filled the final position three weeks prior to the Air India and Narita bombings, but his work did not involve Sikh extremism issues.[387] Even if all the analyst positions had been filled with individuals, working full-time and with expertise on Sikh extremist issues, three analysts would have been insufficient to cover what was designated as the number one CT threat by May 1985.

Despite the diligence of Gartshore and Burgoyne on the Sikh Desk, it is clear that they were overworked and under-resourced. The fact that CSIS had nominally allotted three Sikh Desk analyst positions demonstrates a theoretical awareness of the increasing threat of Sikh extremism. Nevertheless, CSIS failed to actually fill all these critical analyst positions and to provide some training or personnel with experience in Sikh extremism issues. Upton testified:

> In so far as Sikh extremism was concerned, the lack of resources starved the investigation at times and resulted in a systemic inability to appreciate the threat so as to affect CSIS's priorities and investigative deployments.[388]

Upton said that the Sikh Desk analysts performed "…admirably under the circumstances," in light of the limited analytical resources at their disposal, especially as they were dealing with an extremely tragic and high-profile terrorist matter.[389] Unfortunately, even admirable performance under the circumstances was inadequate to deal with potentially lethal terrorist threats to the security of Canadians.

Personnel at HQ were rapidly transferred to the Sikh extremism investigation after the bombing, to newly-created analyst positions. Much like the post-bombing shift in resources at BC Region, this after-the-fact prioritization at CSIS HQ was too late to assist the overburdened analysts, who had been working to "connect the dots" to prevent the bombing of Air India Flight 182.

Effect on Intelligence Dissemination

The scarcity of personnel in the HQ Threat Assessment Unit (TAU) limited its ability to add value to CSIS's threat assessments from the regions, or to ensure that the finished product met the requirements of the requesting agency. John Henry was the Head of the TAU, which consisted of two persons who

386 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3569.
387 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3570-3571.
388 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3604-3606.
389 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3604.

produced 952 time-sensitive threat assessments in the year preceding the Air India bombing.[390] The TAU handled the dissemination of threat assessments for all CSIS investigations, not just the Sikh Desk. As such, the TAU only had the capacity to focus on liaison duties, relying almost entirely on the operational desks for the analysis and assessment of threats.[391]

Once a desk responded with a draft threat assessment, the TAU would review the assessment to ensure "…it conformed with all the rules … at the time and that it said nothing to infringe upon the duties of other units …." The TAU could edit the assessment to remove any information not deemed suitable for dissemination outside of CSIS, and was responsible for adding caveats restricting the use of the information contained in the assessment. The TAU might also substitute vocabulary more familiar to the police. The TAU would occasionally challenge the desk on the material "from an outsider's perspective." Any changes or alterations were made in conjunction with the desks. However, most of the time, the TAU would not make any changes to the assessments provided by the desks, basically issuing a verbatim copy to the appropriate agencies.[392]

In effect, the TAU was resourced to act as a threat assessment post office, receiving threat requests and sending back threat assessments, while contributing little analytical input to improve the quality of the product. In the Commission's view, by limiting the TAU to this role, CSIS likely missed an opportunity to take a more client-centred approach to the TA process. The TAU, with no particular expertise in the issues dealt with in CSIS-wide TAs, would not have been expected to contribute to the substantive portions of the TA. However, they had the best opportunity, as the link between the analytical desks and the RCMP, to obtain an understanding of the RCMP's requirements, and to ensure that the format and content of the TAs met these requirements in a meaningful way. Instead, Henry testified that, although he felt he had a good liaison relationship with RCMP VIP Security Branch, he was not familiar with the operations of the RCMP Airport Policing Branch or even the CSIS Sikh Desk.[393] Notably, the liaison between Airport Policing and the Sikh Desk was relevant in relation to threats to Air India.

The Week of the Bombing: Failure to Maintain Minimal Personnel and Resources

The general lack of resources for the Sikh extremism investigation was exacerbated by the fact that, during the week prior to the bombing, a number of important staff members were permitted to be absent, and investigative resources were diverted to other matters.

In the BC Region, Kobzey went on vacation on June 8th and returned the night of June 22nd. He was not on hand to advocate for continued surveillance of Parmar,

390 Testimony of Daryl Zelmer, vol. 23, May 4, 2007, pp. 2313-2314.
391 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2545-2546.
392 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2508, 2511.
393 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2511-2512, 2542-2543.

to guide the transcribers and translators of the Parmar tapes, or to assess the significance of the "two weeks" comment made during the Khurana meeting before the bombing.

Betty Doak, the key transcriber for the Parmar intercepts, who also undertook responsibility for liaising with the translators, was away from just before the bombing until a week after. In her absence, the Punjabi translator alone processed the intercepted communications. This led to crucial gaps in the transcription, as the translator failed to record the subscriber information, a task normally carried out by the transcriber. As a result, although Parmar called Bagri on the day of the bombing, the telephone number where Bagri received the call was never recorded. This would have provided critical information about Bagri's location on the weekend of the bombing. Instead, Bagri's location that weekend was never determined.[394]

At HQ, there were similar absences. Upton took leave for five weeks starting June 21st. Deschenes, his direct superior, was away in Los Angeles for the week preceding the bombing, on another case.

All these people were key links for the Sikh extremism investigation. None had adequate replacements with in-depth knowledge of the investigation.

Valuable investigative resources were also pulled just prior to the bombing. CSIS had requested daily situation reports from all regions during the period leading up to, and including, the US visit of Rajiv Gandhi. This requirement was withdrawn as soon as Prime Minister Gandhi left the US.

One of the most unfortunate decisions made in CSIS's pre-bombing investigation was the decision to withdraw surveillance from the stationary observation post (OP) near Parmar's residence on the day of the bombing. Notably, mobile surveillance coverage had been removed days before, on June 17th. Although unprecedented mobile surveillance coverage for a CT target had been afforded to Parmar in June 1985, the removal of both the mobile and stationary surveillance resulted in CSIS having no record of Parmar's movements on that day. Kobzey testified that surveillance priorities were determined with the chiefs of the various units, in consultation with the Chief of the PSU and the Deputy Director General Operations (DDG Ops).[395] Kenneth Osborne was the DDG Ops at the BC Region at the time. In a June 1992 interview with the Security Intelligence Review Committee (SIRC), Osborne was asked why the stationary observation post was unmanned on the day of the bombings. Osborne indicated that he would not have been consulted on this.[396] CSIS has been unable to locate specific documentation regarding the reasons why the OP was vacated on June 22, 1985.[397] The persistent lack of explanation for this critical decision is troubling, as it is impossible to assess the adequacy of the decision made. Was

394 Exhibit P-101 CAA0557.
395 Testimony of Ray Kobzey, vol. 33, May 24, 2007, p. 3827.
396 Exhibit P-101 CAB0883, p. 2.
397 Exhibit P-101 CAA1086, p. 4.

surveillance pulled because BC Region failed to appreciate the significance of the threat from Parmar and his associates? Or, if it was cognizant of the threat, but allowed surveillance to be pulled due to a belief that some other investigation had a more compelling call on the scarce resources available, why did they not substitute another method to monitor Parmar's location in its place?

The reasons for this cutback in resources and personnel may have been a perceived easing of the threat, with the end of Prime Minister Rajiv Gandhi's state visit to the United States, as well as a need to relieve overworked personnel.[398] Despite the fact that the threat from Sikh extremists was still considered high, many key persons may have taken the "uneventful" end of the Gandhi visit and the passing of the anniversary of the Golden Temple storming as assurance that they could now take leave, and their superiors apparently agreed.

Lack of Training and Development of Expertise

The sufficiency of the training provided to the CSIS investigators and analysts is a matter which was canvassed during the Inquiry. The sudden transition from the RCMP Security Service to CSIS was not accompanied by opportunities to retrain or to provide enhanced training geared towards a civilian intelligence agency. Training in the first few years continued much as it had in the past under the Security Service which, as a practical matter, meant continuing with an emphasis on on-the-job learning.

Within the first year of CSIS, a new training academy was set up at Camp Borden. The purpose, however, was to train new civilian recruits rather than those already part of CSIS. At the same time, in order to bolster the ranks, CSIS allowed for "direct entry", which meant that police officers could join CSIS directly, bypass the requirement to attend Camp Borden, and assume a higher rank than the civilian recruits who were required to attend training. Geoffrey O'Brian testified that this procedure created inevitable tension within CSIS.[399]

The direct entry procedure also did not help CSIS move away from its police roots towards greater civilianization, a complaint that was echoed by both SIRC and the Osbladeston Report.

HQ Analyst Training

The members of the Sikh Desk testified about the training they were provided. Training was primarily on-the-job, and specific Sikh extremism expertise was developed on one's own time.[400]

Some basic training courses were offered. For example, Burgoyne took a basic training course for new employees (when he was a member of the RCMP SS). The

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398 Testimony of Russell Upton, vol. 31, May 22, 2007, pp. 3572, 3620.
399 Testimony of Geoffrey O'Brian, vol. 17, March 6, 2007, pp. 1560, 1563-1564.
400 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3576.

two-week course was for both desk analysts and field investigators. The course only covered the basic structure of the RCMP SS, and provided background on what the different units offered. They also had external speakers and instructors lecture on the global political climate. As well, liaison officers from the British and Australian security services spoke in relation to their operations. The courses did not specialize in any way, but only provided a general overview of the RCMP SS.[401]

Burgoyne testified that he was not given any particular training in relation to Sikh extremism:

> No. I think the attitude at Headquarters was that as long as you understood operational policy, whether you're working the Armenians or the Sikhs or the Palestinians, – the issues, that's up to you to learn … and quickly because one day you may be working one area, the next day another area. So you know, the issues dealing with Sikhism or the problems in the Punjab, you had to do your own reading and usually night-time reading.[402]

No time off was given to read up on relevant topics, such as the history of the Sikhs or the history of conflicts in India, issues which could have provided needed context to the Sikh struggle in 1985. No resource library existed at HQ. The only resource was the general conditions file on the countries. That file was generally made up of open source information provided to HQ by security liaison officers (SLOs) abroad. In fact the information provided by SLOs on a continuing basis was perhaps the greatest source of information available to CSIS.[403]

Gartshore's testimony was relatively similar:

> **MR. FREIMAN:** Did you get any specific training in Western European terrorism?
>
> **MR. GARTSHORE**: No.
>
> **MR. FREIMAN:** Did you get any specific training in Pacific Rim terrorism?
>
> **MR. GARTSHORE**: No.
>
> **MR. FREIMAN:** Did you get any training in Sikh terrorism, or Sikh extremism?
>
> **MR. GARTSHORE**: No.

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401 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3402-3403.
402 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3403.
403 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3403-3404.

> **MR. FREIMAN:** What was the theory – how were you to get yourself up to speed?
>
> **MR. GARTSHORE**: Whatever I could read. Essentially we were conducting investigations. It was just like doing police work. Accept it.[404]

Gartshore testified that he too relied on any information he could gather on his own. Other material included reading material sent to CSIS by the Government of India, reports from discussions with community members in Canada and material from CSIS investigations. He also stated that most of the leads received by CSIS were from the Government of India.[405]

Upton confirmed that analysts were trained on the job. They were expected to learn from others and to learn by doing.[406] One obvious problem in the context of the Sikh Desk was that, at the outset, Burgoyne was the sole analyst and therefore the opportunity to learn from others was correspondingly attenuated.

Finally, the RCMP had offered some members of the Security Service the opportunity to upgrade their education with tuition paid to attend Carleton University and other universities.[407] Burgoyne was turned down when he made his request and was told he could complete his final year part-time.[408]

Burgoyne was transferred to the Sikh Desk (then the Western Europe and the Pacific Rim Desk) when the only analyst, Bill Dexter, was sent away for French Language training. Dexter did not return until May 1985. Though the effort to improve the bilingualism of the employees was commendable, the Commission notes that the timing was poor, given that enhanced French language skills would not have been useful for investigating Sikh extremism.

Regional Intelligence Officer Training

Intelligence Officers (IOs) in the regions received similar training. All of them had been RCMP officers prior to joining the RCMP SS and had therefore gone through regular officer training. On joining the RCMP SS, some received additional training, such as source development and source handling.[409] However, when it came to specific issues, such as Sikh extremism, the BK and the ISYF, the investigators relied on their internal files, which were put together through open source material and from their own investigation.[410]

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404 Testimony of Glen Gartshore, vol. 31, May 22, 2007, p. 3516.
405 Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3549-3550.
406 Testimony of Russell Upton, vol. 31, May 22, 2007, p. 3576.
407 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2544-2545.
408 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, p. 3404.
409 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7394-7395; Testimony of Neil Eshleman, vol. 75, November 14, 2007, pp. 9440-9441.
410 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7394-7395.

Of particular note, the IOs did not receive training on specific policies, such as retaining notes. William Dean ("Willie") Laurie, a CSIS IO who became involved in the investigation after the bombing, testified about this training:

> **MR. BOXALL:** And you had received no training and policies of keeping a separate notebook or maintaining your records – the original records of information obtained from the witness?
>
> **MR. LAURIE:** You know, earlier today such a policy was put before me and we didn't see it and I know of no member actually using it.…
>
> **MR. BOXALL:** Was there any training with respect to officers as to what to do in that situation when they were overlapped? …
>
> **MR. LAURIE:** I was never given any guidance to do that.[411]

As with the Sikh Desk, none of the IOs in BC Region were given specific training on Sikh extremism. They learned about the issues through the documents they received through NSR, through community interviews and by reading in their spare time.

Despite the lack of resources, the IOs managed to develop an expertise in Sikh extremism that outweighed that of the RCMP. Soon after the bombing, CSIS investigators in both Toronto and Vancouver were asked to give talks to the RCMP in order to bring them up to speed on Sikh extremism issues.

Physical Surveillance Training

Physical surveillance personnel received regular officer training when they first joined the RCMP. Once they joined the RCMP SS PSU, they received on-the-job training. There was no formalized training course on physical surveillance, and there was no training in relation to Sikh extremism or any other issue which might relate to the targets they were following. The PSU members gained most of the knowledge they needed from the IOs, who briefed them at the start of the day. In effect, since the IOs themselves had very little opportunity for issue-specific training, such as on Sikh extremism, the PSU was equally disadvantaged.

Most training in surveillance skills was done on the job, with junior members of the team relying heavily on the expertise of senior members, as was the case with Lynne Jarrett and Larry Lowe, the surveillants at the Duncan Blast. Jarrett was very new to surveillance and was the most junior person in the unit. Lowe was not only the team leader, but an agent with 25 years on-the-job experience.[412]

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411 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7536-7538.
412 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, pp. 2194-2196.

The PSU personnel were given limited training with regard to weapons. This type of training would have been useful in connection with the Duncan Blast to help identify the sound that was heard. Jarrett testified that, although she had had some exposure to weapons during her training, it had been in a controlled environment, wearing ear protectors. In fact, Jarrett testified that, prior to the Duncan Blast, she had never heard rifle shots in the open without ear protection.[413]

Training in cultural differences might have aided the PSU in avoiding some of the errors they made. PSU members experienced great difficulty in differentiating Sikh males and relied heavily on the colour of their turbans. There are numerous incidents of misidentification throughout the Air India narrative, most notably in the case of Mr. X.[414] Further, they were seemingly unaware that all Sikh males included "Singh" in their name (either middle or last name), an issue which led to the misidentification of the telephone number Parmar dialed on the ferry on June 4, 1985.[415] While the PSU personnel were not expected to be experts in the field of Sikh extremism, they were lacking certain basic information which would have aided them in identifying persons who came into contact with Parmar. There was no evidence presented to suggest that any of the above issues were addressed in the PSU.

Threat Assessment Training

The Threat Assessment Unit had equally poor training. It is acknowledged that the TAU was not expected to be expert in any one field, in marked contrast to the members of the Sikh Desk. However, training on the basics of threat assessments, their role, to whom they were to be given, and how to best craft them, was lacking. John Henry testified that, when he was placed in charge of the TAU in 1980, he had had no experience in writing TAs. Instead, he had to rely on his second-in-command, who did have experience, to "show him the ropes". Once again, training was done on the job, in this case with the junior officer teaching the officer in charge.[416] Such a situation was hardly acceptable, let alone ideal.

Henry told the Commission that, while part of the RCMP SS, he was sent to the RCMP training division to take a course entitled "Intelligence Analysis". Henry testified that it did deal with TAs to some degree but it was not very helpful. The course dealt more with bootlegging and bookmaking operations and contained no specific training on writing threat assessments.[417]

As is clear from testimony from all sections of CSIS, training, especially focused training on Sikh extremism, was woefully inadequate. While many members of CSIS invested their own time in developing expertise, that necessity was an

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413 Testimony of Lynne Jarrett, vol. 22, May 3, 2007, p. 2186.
414 See Section 1.5 (Pre-bombing), Mr. X.
415 See Section 1.4 (Pre-bombing), Duncan Blast.
416 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2534-2535.
417 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2544-2545.

institutional failure on the part of CSIS. While learning on one's own time should not be discouraged, the fact that no institutional training was offered meant that those who did not invest their own time in expanding their knowledge may have been working with grossly inadequate knowledge and skill. Intelligence employees should have been given the resources to make sure their basic knowledge was developed, at least to a certain satisfactory level.

Lack of Resources Continues after the Bombing

These deficiencies continued to affect CSIS's investigations for years after the bombing, contributing to failures to prevent further terrorist attacks. CSIS's failure to prevent the attempted assassination of an Indian Minister in BC by Sikh extremists in March 1986 was partly attributed to a lack of resources. Due to resource limitations, the region had generally-accepted standards that allowed for time lags between communication interception, transcription and translation. Consequently, although CSIS possessed intercepts that warned of the attack, these tapes were not processed until after the attack.[418]

Warren recalled that, in the post-bombing period, the government granted approximately $3.1 million specifically for augmentation of the counterterrorism program. He noted that the money was spent quickly. In October 1987, the Osbaldeston Report commented on the lack of resources and personnel in CSIS's CT investigations that had persisted since CSIS was created.

> Throughout our review we were continually aware that CSIS has had serious resource problems. On the one hand, CSIS was established without due regard for the real costs of many "housekeeping" matters. On the other hand, we have observed that CSIS applies too many operational resources against some types of targets, and that the allocation of these resources needs further review.
>
> We can state without further study that there must be more capital expenditure for accommodation and administrative needs. [CSIS] still shares many operational and administrative facilities with the RCMP. A large percentage of CSIS employees still go to work in the morning at RCMP headquarters, making it rather difficult to generate and maintain the esprit de corps that is so important.[419]

Not until after the release of the Osbaldeston Report in 1987 did CSIS finally receive adequate funds to deal with the gaps in their counterterrorism program that had persisted since the beginning of CSIS.[420]

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418 Exhibit P-101 CAB0647.
419 Exhibit P-101 CAA0569, p. 29.
420 Testimony of James Warren, vol. 48, September 19, 2007, pp. 5941-5943.

Conclusion

CSIS's failure to allocate sufficient resources and personnel to the Sikh extremism investigation hampered its performance at all stages of the intelligence cycle. This deficiency was perhaps most pronounced in CSIS's intelligence collection efforts.

Each failure to obtain an investigative resource compounded CSIS's inability to build its base of knowledge and to justify the approval of further resources, eventually creating large gaps in the domestic intelligence environment. With little intelligence on Sikh extremism collected by CSIS, analysts were forced to rely on information from other sources, often foreign, of unknown reliability, which the organization was continually unable to corroborate or contradict. The outcome was a failure to understand the changing nature of the terrorist threat. That failure, in turn, materially harmed CSIS's ability to assess the Sikh extremist threat in advance of the June 1985 terrorist attacks.

3.3.4 CSIS Failures in Assessing the Threat

Inability to Imagine a New Threat Paradigm

CSIS threat assessments suffered from a set of uncritical assumptions about the nature and targets of Sikh terrorism. The Government of Canada was unprepared for a tragedy like Air India – a lethal, coordinated attack on Canadian targets. The emergence of Sikh terrorism represented a new threat paradigm, one motivated by political objectives but justified by religious imperatives. CSIS analysts treated information about the new threat paradigm with skepticism, expecting threats to conform to those of the past, rather than looking ahead to the changing threat environment. Admittedly, it is very difficult to successfully predict the next emergent threat, as experienced personnel will differ on the true nature of the "next war". However, there must be institutional flexibility and creativity to recognize emergent threats, and an ability to focus on understanding the goals of those who threaten national security, in order to think through the modalities by which they might seek to achieve these goals.

The lack of imagination on the part of CSIS analysts about the nature and targets of Sikh terrorism was attributable to inexperience in the emerging field of terrorism, compounded by inadequate intelligence collection efforts. Wesley Wark described CSIS's failure to develop sufficiently the capability and expertise to properly assess threats to national security:

> CSIS … [were] doing threat assessments with the same tools and the same people that the RCMP Security Service were doing them with; the same people and tools that were heavily criticized by the McDonald Commission after all, for their failure to be sufficiently sophisticated about the nature of international security threats.[421]

421 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1497.

The Sikh Desk acted as the analysis centre for Sikh extremist threats, but its analysts were not provided the basic tools: experience, information and resources that would have enabled them to recognize the nature of the emerging threat of lethal violence in Canada. Proper analysis would have required training on emerging terrorism trends, comprehensive domestic intelligence collection by CSIS investigators, and adequate resources and personnel to process the mass of available information. Sikh Desk analysts were provided with none of these.

Dependence on Foreign Intelligence

The Sikh Desk's main supplier of intelligence regarding the Khalistani movement in India and Canada was the Government of India (GOI) and the rhetoric of Sikh extremists themselves.[422] Often, CSIS first became aware of many of the key figures and groups in the Sikh extremist movement in Canada through the GOI. As early as April 1982, the GOI identified Parmar as a Khalistani terrorist leader, responsible for several crimes, including the murder of two policemen in India. In July 1982, the GOI further identified Parmar as a specific threat to Prime Minister Indira Gandhi during her upcoming visit to New York City.[423] In November 1983, the GOI first sent information about the emergence of the Babbar Khalsa (BK) in Canada.[424]

CSIS did not have a long-established intelligence-sharing relationship with the Government of India. While CSIS commonly accepted the reliability assessments of its allied intelligence partners, it felt unable to rely upon the assessments by the Indian government. The Sikh Desk was cautious about accepting the *bona fides* of the voluminous threat information provided by the Indian government and the threats issued by Sikh extremists. The Desk sought specific corroboration of all information passed on by the Indian government,[425] which was rarely found, due, in part, to CSIS's own limited intelligence collection capabilities in its Sikh extremist investigation.

CSIS Skepticism about the Sikh Extremist Threat

In the year preceding the bombing, CSIS was generally skeptical about information on the Sikh extremist threat in Canada. CSIS understood the importance of the credibility of its assessments and placed great importance on its ability to separate the wheat from the chaff, and to calibrate the reliability of threat information received. CSIS thus generally adopted a cautious stance, remaining skeptical about threat information until it was able to substantiate the information with reliable intelligence, collected by itself or its established partners.

This approach was fueled by the sentiments held by members of the Canadian Sikh community in relation to the Sikh extremist threat and its causes.[426] CSIS

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422 Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3549-3550.
423 Exhibit P-101 CAB0031.
424 Exhibit P-101 CAB0042.
425 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3476-3477.
426 See, for example, Exhibit P-101 CAB0176: Article by Tara Singh Hayer alleging that any confrontation would be due to GOI provocation.

was aware that members of the Sikh community felt that the Indian government was issuing the multitude of threat warnings in a simple attempt to discredit Sikh nationalism in Canada.[427] Sikh extremist leaders were claiming that the Indian government had sent spies to Canada to portray Sikhs as being violent and extremist.[428] In one instance, the Sikh Desk noted that moderate leaders within the Sikh community had discounted the rumoured existence of a "hit list" of targets in Canada, and that they felt that the "hit list" was simply "…an idea being used by a small militant group to increase the climate of tension in the Sikh community and to induce moderates to adopt a more extreme stance."[429]

CSIS's skepticism about the seriousness of Sikh threats was also partly attributable to fatigue over the seemingly constant threat. The large volume of information provided by the GOI and the suspicion of bias on the part of the GOI combined to create a view at CSIS that much of the information could be discounted as nothing more than "crying wolf."

The seriousness of the threat posed by Sikh extremists continued to be discounted, even after the terrorist bombing of Flight 182. In March 1986, an Indian government official was shot while visiting Vancouver Island for personal reasons. CSIS had intercepted communications prior to the attack, but the investigators in BC Region did not feel the information was credible enough to alert the responding agencies, as unsubstantiated threats were commonly issued by Sikh extremists.

> [T]he fact that the taped communications contained threats of harassing Sidhu was not seen as unusual; threats against others that are rarely carried out were said to be common in communications between CSIS Sikh targets.[430]

Archie Barr noted that the threat information received by the BC Region prior to the attack should have been assessed as significant, and investigators should have passed the information to HQ rather than discounting it as another "cry wolf" remark.

> Clear information about the pending attempt on his life was received the Friday before it happened, but it wasn't passed on until Monday following the attack. This was a case of negligence, if not ineptitude.… Some action could have been taken, and it should have been taken. It was poorly handled and there was no excuse for not contacting Headquarters.[431]

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427 Exhibit P-101 CAB0124, p. 2.
428 Exhibit P-101 CAB0129, p. 2.
429 Exhibit P-101 CAB0105.
430 Exhibit P-101 CAB0647, p. 13.
431 Exhibit P-437: Statement of Archie Barr, pp. 14-15.

While it was important that CSIS attempted to assess the validity of all threat information, a review of the Inquiry evidence indicates that Desk analysts relied too heavily on the notion that the Sikh extremist threat would adhere to conventional conceptions about terrorism.

Conventional Conceptions about Terrorism

Bruce Hoffman testified that the Air India and Narita bombings differed from conventional acts of terrorism at the time.[432] The lethal and simultaneous nature of the attacks was quite exceptional. The common belief was that "…terrorists wanted a lot of people watching and not a lot of people dead." Any violence was expected to be directed at "symbolic" targets such as diplomats and consular properties. Hoffman testified that this led to a fatally false sense of security, based on the belief that terrorist violence would be kept within acceptable boundaries, and that terrorists thought that indiscriminate murder would alienate the very people they wished to recruit and influence. It was believed that terrorists wanted to preserve an image of legitimacy, notwithstanding their threats and occasional resort to violent attacks, and thus would tailor their actions in ways designed to not offend the international community and to avoid triggering harsh repressive measures from their enemy. Experts at the time noted that terrorist actions were often limited to simply issuing a manifesto and threats to gain publicity for their cause.

The Rise of Religious Terrorism

However, by the early-to-mid 1980s, terrorists became convinced that more spectacular, daring and bloody acts were necessary to obtain the degree of attention that more constrained acts might have garnered in the past. Justifications for violence began to emerge in terrorist circles. There was a new inclination to resort to violence as revenge for oppression. Religious-based terrorism emerged, justifying violence on religious precepts. Violence became a divine duty or a sacramental act, and, by implication, refusing to engage in violence would mean disobedience to a religious obligation. Religious-based terrorists arose, who felt that they had no choice but to take up arms to fight perceived victimization and persecution.[433]

Hoffman noted that the actions of the radical Sikh movement in the early 1980s conformed to the patterns and characteristics of religious terrorism.[434] The "martyrdom" of Bhindranwale in the Golden Temple storming created an ideal basis for support of religious terrorism by Sikh extremists. At the time of the bombing, CSIS investigators on the ground appeared to understand the religious motivations behind the movement. The BC Region situation report on June 17, 1985 noted that "…basically what we are dealing with is a problem involving a political issue with religious fanaticism being used as the driving

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432 Testimony of Bruce Hoffman, vol. 19, March 9, 2007, pp. 1779-1785.
433 Testimony of Bruce Hoffman, vol. 19, March 9, 2007, pp. 1787-1789, 1793.
434 Testimony of Bruce Hoffman, vol. 19, March 9, 2007, p. 1796.

force to achieve the goal in question."[435] Meanwhile, Sikh Desk analysts appeared to recognize the new phenomenon of religious terrorism, but did not expect it to emerge as quickly and lethally as it did. While the Sikh Desk worked diligently to understand the Sikh extremist movement, it failed to give credibility to the rapid increase in the potential for large-scale violence after the Golden Temple storming, justified by the religious basis of the movement. Burgoyne testified that:

> My personal feeling is that no one saw the Sikh issue – rising so quickly in prominence and I think that was as a result of the raid on the Sikh Golden Temple and maybe it was our lack of understanding of Sikhs and how very emotional – and how this single issue is what propelled us into what was a very tumultuous year.[436]

The Sikh Desk analysts appeared to adopt the conventional wisdom about terrorism, including the belief that terrorists wanted publicity, not violence. The Air India bombings did not conform to this conventional understanding. They were acts of indiscriminate mass murder, conceived in Canada and targeted against Canadians. CSIS analysts were ill-equipped to conceive of such acts at the time, and CSIS and the agencies it advised remained unprepared for them.

Breaking Conceptions about Terrorism

To have fully appreciated the emerging Sikh extremist threat, CSIS would have had to break out of the conventional conceptions about terrorism. The Commission investigated CSIS's attitude towards the flood of threats prior to the bombings, in an attempt to determine whether CSIS's assessments were justified on an unbiased review of the facts, or instead hampered by tunnel vision.

In CSIS's constant search for corroboration and for "specific" threats, it failed to step back to consider the significance of the growing amount of information indicating the changing nature of the Sikh extremist threat. CSIS analysts remained wed to the ideas that the Sikh extremist threat was mainly a foreign-influenced issue; that the potential for violence in the Sikh extremist community was remote; and that terrorist attacks, if they were to occur, would be focused on obvious symbolic targets such as Indian missions and personnel.

Sikh Extremism: A Foreign Threat

Initially, the Sikh Desk appeared to subscribe to the notion that terrorist violence was a foreign-influenced issue, not a domestic one. The Sikh extremism investigation was opened to investigate the possible eruption in Canada of Sikh

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435 Exhibit P-101 CAA0219, p. 2.
436 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3488.

community violence, brought about by related developments from India.[437] Early CSIS investigations were unable to uncover definite evidence of terrorist conspiracies by Canadian Sikh extremist groups. However, their ability to do so was hampered by their overall lack of investigative capacity in this area.

Early assessments generally described the unrest occurring in the Punjab region, focusing on the events at the Golden Temple rather than the situation in Canada. CSIS took the view that the Sikh community in Canada was generally peaceful, but that foreign Sikh extremists might come to North America to commit terrorist acts.[438] After the Golden Temple storming, CSIS admitted that there was a possibility that extremist elements within the Canadian Sikh community could pose a threat to Indian interests.[439] In mid-June 1984, when Air India warned of suicide attacks, CSIS called for further investigation, but, on the basis of its limited knowledge, expressed skepticism that violence by Sikh extremists would occur in Canada.

> It is unclear whether this attack is planned for Canada or any vulnerable Air India office worldwide.… Air India in Canada has never been the target of attack by extremists. The hijacking of Air India aircraft by Sikh terrorists has been limited to flights in India and Pakistan.[440]

The GOI issued a White Paper on the Punjab Agitation on July 10, 1984,[441] outlining an international Sikh extremist threat. The White Paper clearly described a major Canadian connection to the Sikh extremist movement. It indicated that Parmar had set up the BK in Canada and was the head of the overseas unit of the BK. Parmar had allegedly claimed that the BK was responsible for several murders and acts of sabotage in India. The White Paper also mentioned Surjan Singh Gill and his February 1984 letter to Sikh leaders in the Punjab, which asked them to continue the fight for Khalistan, urging them to consider employing suicide squads. Indian authorities claimed Parmar was "…the most dangerous Sikh terrorist presently at large", but CSIS viewed the Indian assessment as being biased.[442]

Canada had the second largest concentration of Sikhs outside India, after Britain.[443] In addition to the information received from the GOI, CSIS was aware of the violent extremist rhetoric espoused by three Canadian Sikhs, Parmar, Bagri and Gill – rhetoric that included calls for 50,000 Hindus to be killed as revenge for the Sikhs killed in the Golden Temple storming, and threats that all Hindus

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437 Exhibit P-101 CAB0054.
438 Exhibit P-101 CAB0055, CAB0057.
439 Exhibit P-101 CAB0111.
440 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3458-3459; Exhibit P-101 CAB0076, p. 2.
441 Exhibit P-101 CAB0104, p. 6.
442 Exhibit P-101 CAB0114.
443 Exhibit P-101 CAB0100, p. 5.

living in North America after August 1st would be killed.[444] Upon his return to Canada from the West German prison, Parmar stated: "I want to warn the Indian government they'll pay the price for attacking the Temple."[445]

By October 1984, CSIS had focused its investigation on Parmar, Bagri and Gill. CSIS recognized the threat potential posed by Parmar, warning that he was the most radical and potentially dangerous Sikh in the country, with a close circle of like-minded associates who posed a serious threat. However, CSIS noted that his support in Canada appeared to be minimal at the time.[446]

In the following months, CSIS began to realize the threat potential of Sikh extremist groups in Canada, noting in several TAs that the threat to Indian interests from these groups was high. However, CSIS continued to underestimate the potential for a coordinated conspiracy to undertake violent action in Canada, despite the fact that several major Sikh extremist figures were present in the country and espousing violent rhetoric.

Underestimating Potential for Violence of Sikh Extremists

CSIS considered early incidents of violence in the Sikh community to be emotional outbursts in reaction to events in India, or to interfactional temple rivalries (and thus, not related to threats to national security). This rationalization allowed CSIS analysts to maintain the belief that violence would be minimal, sporadic and contained within the Sikh community.

The Sikh Desk understood that the majority of Sikhs were peaceful, desiring communal harmony, and that the threat of violence came from a very small group of radicals. In the year preceding the bombings, the Desk acknowledged the growing threat potential from this radical group but did not adequately assess the potential for coordinated, large-scale conspiracies. Any violence was expected to be due to "uncontrolled outbursts" by persons overtaken by emotion.[447] CSIS cited the shooting at the Toronto Consulate in 1982,[448] and the Winnipeg attack on the Acting Indian High Commissioner Fabian, as examples of "emotional" outbursts by Sikhs.[449] In August 1984, the Sikh Desk began to warn of increasing possibilities of violence. It reported on a protest at which young Sikhs chanted angrily and threw eggs. The TA recognized the volatile nature of the youths involved, and warned that it could lead to more serious incidents, with the eggs being replaced by something more harmful.[450] By September 1984, CSIS noted the growing polarization between the moderates and extremists within the Sikh community and warned that "…the real threat comes from the radical groups who … might take precipitous actions not

444 Exhibit P-101 CAB0143.
445 *The Province* (Vancouver) (July 9, 1984).
446 Exhibit P-101 CAA0104.
447 Exhibit P-101 CAB0120.
448 Exhibit P-101 CAB0035 (November 16, 1982), CAB0112 (July 25, 1984), CAB0124 (August 13, 1984).
449 Exhibit P-101 CAB0148.
450 Exhibit P-101 CAB0130.

sanctioned by … the moderate leadership".[451] This view persisted within CSIS ranks and was noted in the May 24, 1985 TA issued in anticipation of the Gandhi visit to the US. The TA notes that Sikh extremist groups were attempting to "… flame the emotions of younger Sikhs who may be susceptible to irrational and spontaneous acts of violence."[452]

The threat assessments in 1984-1985 regarding Indian interests exhibited CSIS's lack of knowledge about key Sikh extremist groups in Canada.[453] After the Indian government alerted CSIS in 1983 about Parmar's group, the Babbar Khalsa (BK), CSIS had difficulty confirming its existence in Canada. In June 1984, the BC Region offered the opinion that the BK might be a "…group of malcontents and frustrated separatists who utilized threats in order to get attention from a small minority of local Sikhs."[454] In assessing the BK's threat potential, CSIS remained unable to confirm the BK's existence in Canada, but concluded that the threat that the BK would kidnap or kill Indian diplomats in Vancouver could not be entirely discounted.[455] By October 1984, CSIS noted the recent emergence of groups in Canada using names of Sikh extremist groups that were known internationally, including the BK. At the time, CSIS believed that these named groups were being used in Canada by a small number of advocates of Sikh separatism to attract attention to their cause and to broaden their appeal within the Sikh community.[456] Nearly a year later, CSIS appeared to have little new knowledge about the activities of the BK in Canada. In April 1985, CSIS noted that whether the BK was actually planning an action in Canada or abroad was a matter of conjecture, and that it had no information that would support such speculation.[457] CSIS provided the RCMP with an overview of the BK on April 24, 1985, consisting of a brief listing of the threats issued by the BK in 1984 and a mention that Parmar was considered to pose the greatest threat in Canada to Indian interests. CSIS reported that it believed the organization consisted of approximately 20 members.[458] Other than the increased membership, it appears that CSIS had not collected any independent intelligence about the BK to better understand its activities throughout this period.

CSIS TAs often offered the view that the threats made by Sikh extremists were exaggerated, issued more for tactical reasons than as an expression of an actual willingness to carry out violent acts.[459] While this may generally have been true in terms of past Canadian experience, relying on the continued validity of this conventional notion of terrorism prevented CSIS from adequately investigating the possibility of planned violent actions by Sikh extremist groups. CSIS generally dismissed threats to Indian missions and Air India flights made by phone or

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451 Exhibit P-101 CAB0136, CAB0137.
452 Exhibit P-101 CAB0236, p. 3.
453 Exhibit P-101 CAB0105. CSIS reported difficulty in confirming the existence of a known Sikh terrorist group, the Dashmesh Regiment, in Canada.
454 Exhibit P-101 CAB0061, CAB0064, CAB0085.
455 Exhibit P-101 CAB0058, CAB0061.
456 Exhibit P-101 CAA0104.
457 Exhibit P-101 CAB0223.
458 Exhibit P-101 CAB0221.
459 Exhibit P-101 CAB0105.

letters. An October 22, 1984 TA warned against the emotional characteristics of Sikhs, but stated that CSIS was still inclined to believe that Sikhs in Canada would continue to concentrate their efforts here without resorting to tactics such as aircraft hijackings.[460] One CSIS TA noted that telephone bomb threats had been made to Air India offices in Toronto in the summer of 1984 "…as part of the antagonistic campaign against Indian interests."[461] Threatening letters sent to the Toronto Consulate in February 15, 1985, were dismissed as a ploy by Sikh fanatics to keep the Khalistan issue alive.[462] CSIS assessed a threat reported against the incoming Air India flight on April 13, 1985 as unlikely to result in actual violence:

> We believed then as we believe now that threats of this nature are probably generally communicated by mail or telephone to continue to cause problems and perpetuate terrorist threats in hopes of causing unrest/retaliatory measures by the Indian Government so as to keep Khalistan alive in the minds of all Sikhs.[463]

The TAs in the following months regularly cited a general "high" threat potential from Sikh extremists in Canada, but added that CSIS had no specific information about this "high" threat.[464] In the months before the Air India bombing, CSIS appears to have recognized the growing threat potential of Sikh extremists, but remained unable to gather information about the specific plans of these groups. On March 20, 1985, CSIS warned that Sikh extremist activity in Canada had not receded and that the threat of violent actions against Indian interests remained high.[465] On May 24, 1985, CSIS described the BK and ISYF as Sikh extremist groups with "clear violence potential." However, the TA concluded that although both groups were planning demonstrations in relation to the Gandhi visit in early June, CSIS had no information to indicate that violence was being planned. CSIS warned, however, that the situation could change rapidly based on events in the Punjab.[466] It appeared resigned to its inability to predict the actions of Sikh extremist groups and, on June 5, 1985, cautioned that should the radical elements plan any action, there was a good possibility that it would not have any foreknowledge.[467]

The misconception that Sikh extremist groups would not likely resort to violence in Canada resulted in an abdication of responsibility on the part of CSIS to take the threats seriously enough to consider when and how these threats might come to fruition. The underlying logic was that, if an act of violence were to occur, CSIS would not have had advance notice, as the actions of Sikh extremists were assumed to be spontaneous and emotional responses to events in the Punjab.

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460 Exhibit P-101 CAB0148.
461 Exhibit P-101 CAB0218.
462 Exhibit P-101 CAB0192.
463 Exhibit P-101 CAB0218.
464 Exhibit P-101 CAB0173 (December 7, 1984), CAB0182 (January 9, 1985), CAB0192 (February 15, 1985).
465 Exhibit P-101 CAB0203.
466 Exhibit P-101 CAB0236(i).
467 Exhibit P-101 CAB0249.

Attitude towards Threats to Air India

The TAs issued by the Sikh Desk tended to focus on threats to Indian missions and personnel, with much less attention and credibility given to possible threats to other Indian interests such as Air India or to the general public. This may have been due to the fact that the RCMP VIP Protection Unit, whose specific mandate was to protect GOI missions and personnel, was the main client for CSIS TAs.

CSIS TAs were generally classified as dealing with threats to "Indian Missions and Personnel." John Henry, the Head of the Threat Assessment Unit (TAU), testified that the term "Indian interests" was intended to include Air India. However, it is not clear that the agencies receiving the CSIS TA product were fully aware of this fact. The June 7, 1984 TA, in response to the Golden Temple storming, warned of demonstrations at Indian missions "…and possibly other Indian interests."[468] No effort was made to explicitly list these Indian interests.

Even when threats to Air India were received and noted in CSIS TAs, CSIS often expressed skepticism that the threat would apply to Air India flights in Canada[469] despite the fact that, throughout the year preceding the bombings, it had received a flood of information from a range of sources linking threats to Air India to Canada. In June 1984, the Air India General Manager at Mirabel passed on a warning that 20 Sikhs were preparing to launch a suicide attack against Air India.[470] Later that month, an Air India sales agent in Toronto received a call from a person using the name "Grewal," stating that "…one of the Air Indian aircraft one of these days is likely to be sabotaged."[471] A few days later, the Air India Toronto office received a call warning of a bomb threat on an Air India flight.[472] On August 7, 1984, the Vancouver Police Department (VPD) Indo-Canadian Liaison Team informed CSIS that two audio cassette tapes warning that a plane would be hijacked had been dropped into an Air Canada mail slot. The voice on the tape was suspected to be that of a Sikh.[473] In September 1984, the Desk was notified of a threat of three terrorists hijacking an Air India flight "…originating from Canada and North America".[474] In October 1984, the GOI warned that Bagri was known to be part of a plot to hijack Air India aircraft from any port of origin and destination in North America.[475] A separate police source warned that a plot was underway to sabotage an Air India flight from Montreal. The GOI continued to send threat warnings predicting the hijacking of Air India flights to and from Canada. In January 1985, the GOI warned of Sikh extremist plans to stage some spectacular actions threatening civil aviation, including hijacking an Air India flight from Montreal or Toronto.[476] The GOI passed on an unconfirmed report that

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468 Exhibit P-101 CAB0101.
469 Exhibit P-101 CAB0076; Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3458-3459.
470 Exhibit P-101 CAB0076.
471 Exhibit P-101 CAB0079.
472 Exhibit P-101 CAB0088.
473 Exhibit P-101 CAF0818.
474 Exhibit P-101 CAB0140, p. 4.
475 Exhibit P-101 CAA0103.
476 Exhibit P-101 CAB0185.

an Air India flight to Toronto would be hijacked, specifically on April 13, 1985.[477] On May 16, 1985, the RCMP informed CSIS that the London Metropolitan Police had arrested five Sikhs in the UK who were buying remote-controlled devices. An Air Canada flight schedule was found amongst the documents of the five Sikhs.[478] All these threats were directed at Canadian flights and almost all were specifically directed to Air India flights in Canada. With only one flight arriving and departing Canada weekly, it is difficult to imagine not considering that any threat to Air India would apply to Flight 182 from Canada.

Even when CSIS considered threats to Air India in Canada, it generally concluded that the possibility of an actual attack was remote. In October 1984, CSIS responded to a threat to Air India passed by the GOI, and advised that Sikhs in Canada were not expected to resort to tactics such as aircraft hijackings. CSIS did not however rule out the possibility entirely, due to the "emotional characteristics" of the Sikhs.[479] Days later, CSIS received some corroboration from the Vancouver Police Department of a threat to Air India, and appropriately concluded that the "…potential for Sikh Extremists damaging an Air India aeroplane is real."[480] While CSIS changed its assessment on the basis of the new information from the VPD, its ongoing assessment efforts were hampered by its general inability to find corroboration through its own investigations. Even after this, CSIS continued to generally discount subsequent threats to Air India in Canada. One reason for discounting these threats might have been the "cry wolf" syndrome. The fact that repeated threats to Air India failed to come to fruition appears to have created a threat fatigue within CSIS. John Henry expressed his doubts about the seemingly constant threat to Air India in the year prior to the bombing. Regarding the threat to the incoming Air India flight to Toronto on April 13, 1985, he stated:

> We didn't really think there was any substance to it. An example here is your Air India flight 181. It was going to be hijacked coming in to Toronto. It seems to me none of them were ever hijacked.[481]

When the RCMP received the June 1st Telex, it failed to pass the threat on to CSIS,[482] but did ask for an updated assessment of threats to Air India. CSIS's response was brief and vague, providing no specifics. It did, however, contain one of the only clarifications on record that assessments relating to threats to Indian missions were intended to include Air India.

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477 Exhibit P-101 CAB0215.
478 Exhibit P-101 CAB0233.
479 Exhibit P-101 CAB0148.
480 Exhibit P-101 CAB0154.
481 Testimony of John Henry, vol. 25, May 8, 2007, p. 2552.
482 See Section 1.2 (Pre-bombing), June 1st Telex.

> Currently CSIS assess [*sic*] the threat potential to all India missions in Canada as high. This is also intended to include Air India. CSIS, however, is not aware of any specific threat to the airline. Should we learn of any specific threat relating to Air India, you will be advised immediately.[483]

It is unknown how CSIS's assessment would have changed had it seen the June 1st Telex. However, it is clear that, up to this point, CSIS was aware of a flood of threats to Air India, and, less than three weeks before the bombing, offered no more detail about the potential target, perpetrators or timing of the threat than to conclude that the threat potential to Air India was "high."

Conclusion

CSIS underestimated the ability and will of Sikh extremists to channel their emotions into coordinated, lethal attacks in Canada – attacks that might have been predicted and prevented by more thorough intelligence investigations into these small extremist groups.

Admittedly, CSIS's ability to further the Sikh extremism investigation was limited by the fact that the extremists operated in close-knit groups and were often secretive about their activities. However, as noted in the previous sections, CSIS failed to properly prioritize and resource the investigation into Sikh extremism, and this resulted in a situation where analysts had little information that might motivate them to look beyond the then-current notions about terrorism. Accordingly, they continued to assume that terrorist violence would likely be confined to the Punjab, and that these acts would, in any event, be unplanned and spontaneous, embodying emotional responses to events in the Punjab, and would not likely be directed against large-scale civilian targets such as Air India. The inability of CSIS analysts to comprehend the possibility of a different orientation for potential Sikh extremist acts of terrorism left CSIS, and the agencies it advised, unprepared for the events of June 22-23, 1985.

3.3.5 Failures in Internal Information Sharing

Because of the lack of resources assigned to the intelligence collection effort in the Sikh extremism investigation, good communication and coordination were critical between the few investigators and analysts who were involved. This would allow CSIS to make the most of the limited information collected.

CSIS was a centralized organization, with Headquarters (HQ) assigned the responsibility for coordinating the investigations undertaken by regional offices across the country. HQ was the information gatekeeper, acting as a depository for all related information received from the various regions, as well as from other government departments and foreign partners. HQ was responsible for ensuring that regional investigators gained access to information obtained from other sources that was relevant to the regional investigation.

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483 Exhibit P-101 CAC0416.

A free flow of information within CSIS was critical, not only because of the lack of resources, but also in recognition of the fact that terrorism was rarely a localized phenomenon, but rather one with national and international dimensions. The Commission analyzed the adequacy of CSIS policies and practices regarding information sharing within the agency, and asked whether there were any deficiencies that affected the CSIS investigation into the Sikh extremist threat before the bombings. A number of deficiencies were found.

Practices and Policies

Information collected by CSIS was stored in a centralized computerized database, the Narrative Storage and Retrieval (NSR) system. All HQ analysts and regional Intelligence Officers (IOs) across the country had access to the NSR system. Information was searchable by keyword. Regional IOs entered information collected from their investigations into NSR, where it could be accessed by CSIS personnel at HQ and other regions. HQ analysts entered information received from external sources, including other government departments and foreign agencies. Kobzey testified that all CSIS investigators had daily access to the NSR system, allowing them to obtain information provided by other investigations across the country and to receive orders from HQ.

Kobzey testified that he would normally check the system daily, upon his arrival at the office, to see if any new data had been uploaded in the form of intelligence, surveillance or search reports, etc., by investigators from headquarters and the regions. He was interested in threat assessments or assignments from HQ for investigation. Anything urgent would be downloaded, printed and placed on his desk for him to take the necessary action. This could involve conducting field inquiries, requesting PSU coverage, conducting his own surveillance, or whatever was necessary.[484]

The IOs were responsible for diligently inputting information obtained from their investigations in a form that allowed others to benefit from their insight. Each NSR report would contain an "Investigator's Comments" section, where the IOs would provide context to the information reported. They would also outline the significance of the information to HQ orders or investigations by other regions.

> [T]here would be a block with the title "The Investigator's Comments." That would be where I would try to put into context, for the benefit of the other regions and my Headquarters counterpart, the significance of the information in relation to the investigation we were conducting in BC or, if it was a follow-up inquiry for HQ tasking or if it pertained to messages that were coming to us from the other regions regarding activities taking place in their locations and

484 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3734-3735.

> any information that we had that was pertinent to those investigations, we would cross-reference their message and make notes in the comments about the significance of what we had done.[485]

A good example of the utility of the NSR system was the Subject Evaluation Report prepared on Parmar for the OPRC (Operational Priorities Review Committee) level 4 investigative authority application.[486] Kobzey prepared an initial report on Parmar, based on the information available on the NSR system and his personal knowledge of the subject. The initial report was passed to HQ analysts, who added relevant information from other government departments and foreign partners that Kobzey could not access.[487] Ultimately, the report included information gathered by CSIS investigators in BC Region and by other CSIS regions, as well as information about Parmar's activities in India and his arrest in West Germany.[488] As an example, Parmar was in Calgary when he made one of his most infamous statements, in which he "…strongly urged Sikhs to unite, fight and kill in order to revenge the attack on the Golden Temple in the Punjab."[489] That information was entered into NSR by CSIS personnel in Calgary, and was therefore available for Kobzey when he prepared his initial report on Parmar. The information was included in both Kobzey's report and in the subsequent HQ application.[490]

The NSR database provided a system that theoretically allowed CSIS personnel to obtain a comprehensive understanding of any CSIS investigation. The success of the NSR system depended on the thoroughness of the information in the database and the ease with which information could be accessed.

The Commission assessed the adequacy of the system for sharing of information within CSIS. The NSR system was ahead of its time in its ability to offer a centralized database of information, linking investigations across the country. With some hindsight, and allowing for the state of technology then and now, the Commission undertook a critical review of the NSR limitations. The Commission found failures in internal sharing that hindered CSIS's ability to "connect the dots" in their assessment of the threat of Sikh extremism in the period leading up to the bombing. These failures were the result of weaknesses in both operations and policies within CSIS. First, the utility of the NSR system suffered from technical limitations. Second, compartmentalization was apparent among all CSIS units, as information sharing was restricted on a "need-to-know" basis.

Deficiencies in the NSR System

The NSR was designed to provide a useful system for archiving and accessing the large quantity of intelligence collected by CSIS. While it often achieved this

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485 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3736.
486 Exhibit P-101 CAB0139.
487 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3739-3743.
488 Testimony of Ray Kobzey, vol. 32, May 23, 2007, pp. 3739-3740.
489 Exhibit P-101 CAB0139, p. 3.
490 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3741.

objective, its utility was limited by the fact that the database was not necessarily easily searched, nor was it accessible to all CSIS offices.

Kobzey called the NSR system cumbersome, and admitted that proper use of the system required taking a course to understand how to retrieve information using basic Boolean searches.

> It was a program, bearing in mind we are talking 1981 onwards. It was an older style of computer database, and it was a cumbersome database. It required basically Boolean search … equations, to retrieve the information that you were looking for. And you had to take a course in it, a storage and retrieval course … and be certified before you could go on the system.[491]

John Henry admitted that CSIS was "…in [its] infancy when it came to computerization at the time." He noted that, although all the documents were placed in the database system, there did not exist a foolproof way to ensure that the information was properly correlated and easily accessible.[492]

In 1985, the NSR system was not employed in every district. The Toronto office was responsible for the entire South West Ontario Region, and as such, district offices in certain areas reported to the Toronto office. This included Windsor District, which was staffed by three agents at the time. While Toronto had access to NSR, the districts did not. This meant that messages for Windsor would be sent to Toronto first, and Toronto would disseminate them to Windsor. Likewise, when Windsor needed to report to HQ, it would send its report to Toronto, where the manager would sign off on the report before it would be entered into the NSR system.[493]

The concept behind the NSR system was sound: to provide a centralized database of information collected by CSIS from related investigations across Canada. While this system provided a potentially useful means for assessing all security intelligence gathered by CSIS's own investigations, its ultimate utility was limited, perhaps by the cumbersome technology of the day.

Compartmentalization

Internal communications within CSIS were stifled by compartmentalization and secrecy. While CSIS collected a large quantity of information, communication was not free-flowing among investigators, analysts and senior management. This prevented CSIS from taking full advantage of the wealth of intelligence collected.

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491 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3738.
492 Testimony of John Henry, vol. 25, May 8, 2007, p. 2529.
493 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3424-3425.

Compartmentalization existed between senior management and on-the-ground investigators, as well as among investigations across the country and even within a single investigation. This compartmentalization meant that one CSIS investigator might not necessarily know what another was working on. John Stevenson noted this point when comparing the differences between CSIS and the RCMP:

> I'm coming from CSIS; I'm coming from a security intelligence background where the "need-to-know" principle is rigidly applied; where documents are stored properly; where investigators, work in fairly – close proximity to each other, [and] may not know what the other investigator is working on ….[494]

This meant that access to intelligence was restricted, both within CT (Counterterrorism) and between CI (Counter-Intelligence) and CT investigations. This segregation within CSIS led to the possibility that CSIS would miss the opportunity to make relevant connections. The importance of open information sharing within CSIS is illustrated by the fact that key breakthroughs after the bombing were made by investigators outside of the BC Region. For example, the Windsor investigation did not result in any intelligence that could have prevented the bombing, but it had an effect on the subsequent investigation. There was a CSIS wiretap in place during the Windsor investigation. While reviewing the intercept material, Charlie Coghlin became aware of certain words and phrases that were commonly used as code. The realization that the same code words were being used in the Parmar intercepts was not made until months after the bombing, when Coghlin had been transferred to HQ to help with the analysis and was given access to the translators and transcriber logs for the Parmar intercept.[495]

The failure of CSIS HQ to appreciate the importance of Coghlin's finding, and to pass it on to investigations of Sikh extremist targets in other regions, resulted in a missed opportunity to share critical insight that might have enabled Kobzey to advance his investigation on Parmar.

This compartmentalization was the result of CSIS's adherence to the ill-considered and strict "need-to-know" principle and the fact that CSIS personnel operated within their own silos of responsibility.

"Need-to-know" Principle

Compartmentalization, based on the "need-to-know" principle, appears to have been widely and uncritically accepted within CSIS. In an interview with the BC Crown prior to the Reyat trial, Ayre stated:

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494 Testimony of John Stevenson, vol. 62, October 16, 2007, p. 7674.
495 Exhibit P-101 CAA0308, CAA0309.

> I think that it comes down to the fact that we are all very compartmentalized. We operate on a need to know basis [sic] and there are a lot of areas that are being talked about that were need to know and I didn't need to know about them.[496]

The "need-to-know" principle was cited as a key principle upon which the intelligence community operated.[497] It was a prevailing principle for the RCMP Security Service (SS), and subsequently CSIS, not only in dealing with outside agencies, but also within its own establishment.

In relation to sharing between HQ and the regions, HQ always claimed that it had the requisite need to know, in terms of what the regions were seeing and collecting (with the possible exception of the names of human sources), but the reverse was not always true. HQ did not always share information with the regions. Its decision on what to share, and what not to share, was based on its assessment of whether the investigator in the region had a need to know. A clear difficulty, not only with this asymmetrical relationship, but with the very concept of "need-to-know", is the fact that it will almost always certainly lead to an inadequate information flow: because it is impossible to know completely what you need to know, if you are not deemed to have the "need-to-know" status that would allow you to evaluate the information in the first place.

Information within the NSR system was available to investigators, but if the information was considered sensitive it would trigger an alert to a user conducting a search that the information existed, but was accessible on a "need-to-know" basis only. To gain access, the IO could contact whoever had responsibility for the file to explain the need to access the information.[498]

This compartmentalization was one of the major deficiencies of the centralized, top-down organization at CSIS: investigators on the ground were denied access to CSIS information that was relevant to their investigations. Restrictions due to the "need-to-know" principle were often placed on information from foreign sources, including information collected by the Communications Security Establishment (CSE). HQ acted as the gatekeeper for foreign intelligence, reviewing all material, but not necessarily entering it into NSR, due to third party or secrecy concerns.[499] In its attempt to respect such concerns, HQ could withhold information from the regions.

Investigators, including Kobzey, appeared to accept the notion that HQ should be able to withhold information that could be relevant to their local investigations. Kobzey stated in testimony that he may not have had the necessary clearance level for information of a highly sensitive nature (such as that from CSE). He accepted that having "Top Secret" clearance would not automatically give him

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496 Exhibit P-101 CAD0183, p. 12.
497 Testimony of Robert Chesney, vol. 83, November 26, 2007, p. 10729.
498 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3854-3855.
499 Testimony of Chris Scowen, vol. 50, September 21, 2007, p. 6127.

access to everything; HQ would make a determination regarding whether he had the requisite need to know and, if not, HQ officials would assess the veracity of the information themselves, without the benefit of Kobzey's insight into the investigation.[500]

It is not clear, however, that HQ was best qualified to determine what information would be relevant to a given regional investigation, particularly in comparison to the judgment of the investigators themselves. HQ received summary reports from the regions that contained the intelligence that investigators found to be of obvious significance. Intelligence withheld by HQ might have provided a new context to trigger a different interpretation of an event originally perceived to be insignificant. This restriction on the sharing of information eliminated opportunities to make important connections, since information stayed within silos.

Secrecy and third party concerns could conceivably be relevant in terms of sharing information with other agencies, where these agencies might be subject to different requirements and mandates. However, it is difficult to understand why these concerns would exist within CSIS itself. Why did HQ feel that it could not share certain types of sensitive information with regional investigators working on the same file? All investigators were Top Secret cleared and the restriction of access to relevant information appears difficult to justify. The process was unduly restrictive and, as a result, generally ineffective in a service dedicated to acquiring and, in theory, sharing it. The "need-to-know" principle, as developed by CSIS, was a demonstrable mistake.

Silos of Responsibility and Filtering of Information

In 1984-1985, CSIS appeared to be an agency that was aware of the recommendations of the McDonald Commission to respect individual privacy rights. It was not accustomed to either the public spotlight or close political scrutiny. CSIS personnel attempted to perform their duties, but often without knowledge of all the information in CSIS's possession that was relevant to their investigations. The Osbaldeston report noted:

> Within CSIS, we have observed a formal, hierarchical decision-making process that has tended to isolate the Director …. The compartmentalized CSIS management committee structure inhibits the accommodation of new or different points of view, does little to encourage effective communication within the Service, and does not provide a corporate level perspective to program priorities and resources. The Director must chair important internal management committees for his leadership to be manifest.[501]

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500 Testimony of Ray Kobzey, vol. 33, May 24, 2007, pp. 3854-3855.
501 Exhibit P-101 CAA0569, p. 17.

This isolation of roles and the filtering of information began at the lower levels of the organization. Investigators briefed Physical Surveillance Units (PSU), translators and transcribers only on the key points of an investigation. However, the PSU, the translators and the transcribers were ultimately responsible for making relevant observations, while investigators reviewed reports and summaries of the information collected.

An example of problems with this approach can be seen around the Duncan Blast incident.[502] The PSU surveillant noted the phone number dialed by Parmar during the ferry ride to Nanaimo, and understood he was calling a "Singh." The Unit looked in the Duncan phone book and noted the one "Singh" listed there, despite the fact that his number did not match what the surveillant believed she saw Parmar dial while on the ferry. The PSU personnel seemingly were unaware that all Sikh males had the middle or last name Singh. The BC investigator received the PSU report, and drafted a report to be distributed to CSIS HQ and the RCMP. This summary report contained only the phone book number of "Singh," but not the number observed by the PSU surveillant on the ferry. After the bombing, the RCMP asked to see the underlying PSU report, but CSIS initially denied access on the basis that the summary report would be sufficient. CSIS eventually released the underlying PSU report to the RCMP, at which point it was realized that the number first observed by the PSU surveillant was that of Inderjit Singh Reyat. The lost detail in the investigator's summary report delayed this important finding for months. In fact, this may have never been discovered had the RCMP not gone back to review the original PSU report.

Another example of harmful filtering of information was the process set up for translating and transcribing intercepts, such as those recorded on Parmar. Investigators received intercept reports that consisted mainly of paraphrased, rather than verbatim, translations, a practice that CSIS senior management noted made these reports of little use as key intelligence information.[503]

Note-Taking Policies and Practices

The failure to appreciate the importance of reviewing raw information extended to the note-taking practices of the IOs. Kobzey testified that he would often take notes during an interview, if the interviewee permitted him to do so. However, after completing the summary report for submission into the NSR system, he would shred the notes, according to policy.[504] Evaluation of the handwritten notes in comparison with the intelligence report was, of course, made impossible by the destruction of the notes. It is difficult to determine which details might have been omitted or altered, or written with different emphasis.

While, generally, the regional investigators provided briefings to the PSU and intelligence monitors, they failed to appreciate the importance of maintaining

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502 See Section 1.4 (Pre-bombing), Duncan Blast.
503 Exhibit P-101 CAF0818, p. 2.
504 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3738.

the raw, initial reports. The importance of these reports became most apparent after the bombing, when the opportunity to review the raw information, especially the intercept tapes, from a new perspective would have been valuable. The destruction of raw information and the lack of communication between CSIS personnel resulted in lost opportunities to connect the dots and to gain maximum benefit from the collected intelligence.

3.3.6 Lack of Meaningful Threat Assessments

Lack of Coordination: Intelligence for Intelligence's Sake

A major deficiency in CSIS's analysis efforts was the fact that the Sikh Desk, effectively the "analysis centre" for threats to Indian interests, performed its analysis functions in isolation. Analysts never "brainstormed" with other involved agencies to pool their knowledge on the Sikh extremist threat and to understand the range of available responsive actions. Instead, Sikh Desk TAs (Threat Assessments) were based on the skill of individual analysts with little expertise in Sikh extremist issues and no personal, on-the-ground insight. No mechanism was in place to take advantage of the depth of knowledge and analytical skills across government agencies to enable them to collaborate with the Sikh Desk or challenge its TAs.

The purpose of CSIS TAs was to provide relevant intelligence to allow other government agencies and ministers to determine appropriate operational policies and responses. CSIS was deliberately not given enforcement powers. Thus, CSIS's main role in the government's counterterrorism efforts was to provide timely and relevant advice to the government through its threat assessment product.

After reviewing CSIS's TA process as it stood in 1985, the Commission is left with the impression that intelligence was being produced for intelligence's sake. CSIS's intelligence product was insufficiently tailored to the needs of its client agencies, and it was produced with little input from those clients. Instead CSIS unilaterally determined the scope of tasking, collection, analysis and dissemination of its product. CSIS could determine if information, although relevant, should be left out of the assessment product because of secrecy concerns or for other reasons. This resulted in the production of general assessments that, at times, lacked the precision and detail necessary to allow other agencies to develop an appropriate response.

The 1987 Osbaldeston Report surveyed consumers of CSIS TAs and noted:

> The consensus of this group was that CSIS operational intelligence is of high quality, but that there is not enough of it. Some of our interlocutors stated that CSIS did not seem aware of what sorts of operational intelligence might be of interest to its consumers. This was attributed to a lack of understanding

> of the needs of the rest of Government on the part of CSIS and many of its analysts. On the other hand, intelligence consumers must tell CSIS what they want.[505]

As noted by the Osbaldeston Report, the failure to ensure meaningful TAs was not attributable solely to CSIS. It appears that the intelligence consumers did not provide direct feedback about the utility of the intelligence product. Admittedly, these consumers were hampered in their ability to assess the intelligence product, as they were often not aware of any underlying information available to CSIS that had not been disclosed in the TA. Rather than addressing deficiencies in the TA product, consumers like the RCMP simply came to expect little utility from the TAs and began to advocate developing intelligence capabilities of their own.[506] Major criticisms of the TAs generally occurred at high levels after the fact. Personnel across government agencies dealing with the Sikh extremism investigation failed to work together to improve the TA product on an informal and daily basis.

CSIS assessments tended to be general, consisting of a description of the general threat environment and a simple designation of the threat level as "high", "medium" or "low". Rarely included were details about the nature of the threats, speculative information regarding the range of possible threats, an estimate of the likelihood of harm or any possible consequences.[507] CSIS TAs purposely would not contain suggestions regarding the appropriate response, as this was felt to be a decision within the sole jurisdiction of the RCMP and other protective agencies.[508]

Lack of Meaningful Threat Levels

As indicated, CSIS TAs classified the threat level according to three broad categories: high, medium and low. Agencies responsible for protective response to threats were expected to set operational responses on the basis of these general threat assessment levels.

The threat level to Indian interests consistently remained "high" for the year prior to the Air India and Narita bombings, beginning with the June 1984 storming of the Golden Temple. Effectively, the RCMP P Directorate was responsible for adjusting its response in the face of a consistently high general threat.[509]

It is unclear whether there was any agreed view of how CSIS threat levels related to a recommended operational response by the RCMP. John Henry, Head of the Threat Assessment Unit (TAU) at CSIS HQ, testified to his understanding of the

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505 Exhibit P-101 CAA0569, p. 19.
506 Exhibit P-391, document 210 (Public Production # 3343): RCMP response on July 31, 1985 to an early draft of the Seaborn Report, "ICSI Review of Counter-Terrorism Measures Repecting Airport/Airline Security" [RCMP Response to Draft Seaborn Report].
507 Testimony of John Henry, vol. 25, May 8, 2007, p. 2543.
508 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2543-2544.
509 Testimony of John Henry, vol. 25, May 8, 2007, p. 2555.

threat levels: when the threat was rated as high, it meant that one should be extra vigilant and prepared for anything.[510] It is difficult to understand how this "be prepared for anything" guidance was helpful to the RCMP in formulating an effective and targeted threat response.

Henry sympathized with the RCMP P Directorate's frustration about the lack of specificity in the CSIS TAs. He admitted that, in general, all CSIS could provide was an assessment that stated, "…[t]he general threat is high, but we have nothing specific."[511]

CSIS did not undertake to better understand the RCMP's methodology concerning threat responses or to design its TAs to correspond to the RCMP's operations. There was a lack of recognition on the part of both the RCMP and CSIS of the need to translate threat levels into something corresponding to a more specific range of operational responses by the RCMP.

This deficiency was noted in a review of the failures in the TA process that allowed Armenian terrorists successfully to seize the Turkish Embassy in March 1985. The Canadian government undertook an interdepartmental review of the incident and concluded that CSIS, in cooperation with other relevant government agencies, should develop standard threat levels for its TA products.[512]

The review has also identified a need, in the preparation of threat assessments, to define in standard and precise terminology various terrorist threat levels or "thresholds" in terms of their seriousness. This would allow a more responsive implementation of precautionary measures by responsible agencies.[513]

This deficiency was not dealt with prior to the attack on Air India Flight 182, nor did the agencies do anything, in light of that conclusion, to try to ameliorate the problem on an informal basis until a broader review could take place.

Lack of Threat Details

TAs issued by CSIS in the period leading up to the Air India and Narita bombings lacked specifics and failed to probe alternative threat scenarios, especially when it came to the possibility of terrorist bomb attacks against Air India flights.

This deficiency was noted in the 1992 Security Intelligence Review Committee (SIRC) Report:

> Many of the assessments contained little more than a statement that the threat level against Indian Government

510 Testimony of John Henry, vol. 25, May 8, 2007, p. 2543.
511 Testimony of John Henry, vol. 25, May 8, 2007, p. 2512.
512 Exhibit P-101 CAF0063. The report entitled "Review of Federal Counter-Terrorism Arrangements" was prepared with the participation of the Solicitor General's office, External Affairs, National Defence, the Privy Council Office and the Department of Justice.
513 Exhibit P-101 CAF0063, p. 4.

> interests remained high. We noticed that the assessments which mentioned Air India showed little sign of analysis leading to more detailed assessment of the form any attack might take.[514]

Details regarding the nature of the expected threat could be critical for the RCMP to tailor the appropriate response. It is clear that the appropriate response for a hijacking threat would differ from that for a bombing threat. It is also clear that details about the expected target and potential suspects would allow the RCMP to focus their response to address the areas of highest threat. In spite of this, CSIS often left out details regarding the expected targets, type of threat and possible suspects.

Targets: Threats Related to Air India

Sikh Desk TAs generally related to "threats to Indian missions and personnel", a term that was intended to include Air India.[515] However, this inclusion was explicitly clarified for the first time in an early June 1985 TA[516] in response to an RCMP request for a specific TA on Air India. The fact that the RCMP requested a specific TA on Air India indicates that the RCMP did not necessarily consider that any threats to Indian missions might pertain to Air India as well.

This clarification was particularly relevant in light of the fact that the P Directorate consisted of two separate branches: VIP Security and Airport Policing. CSIS sent the TAs to the P Directorate, which was responsible for disseminating the TAs within the RCMP. Threat details were critical to ensure that the P Directorate brought the TAs to the attention of the appropriate RCMP departments.

However, CSIS did not appear to appreciate fully the division of responsibility within the RCMP and the need for threat details to facilitate the P Directorate's dissemination efforts. Since all threats to Indian missions were meant to include Air India, all TAs related to threats to Indian missions should have clearly indicated the need for them to be passed to the Airport Policing Branch. The TAU within CSIS failed to ensure that this occurred. Henry would generally copy both Airport Policing and VIP Security on TAs dealing with threats to aviation security. However, the TAU often failed to copy Airport Policing on general TAs[517] regarding threats to Indian interests, including those issued in the critical month before the bombing, even though these threats were clearly applicable to Air India.

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514 Exhibit P-101 CAB0902: 1992 SIRC Report, p. 27.
515 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2513-2514.
516 Exhibit P-101 CAA0194.
517 See, for example, Exhibit P-101 CAB0218, which is a threat assessment regarding the April 13, 1985 threat to an incoming Air India flight. See also Exhibit P-101 CAB0071, which was copied to both VIP Security and Airport Policing.

Nature of Threat: Hijacking or Bombing

CSIS failed to provide details about the expected nature of threats in its TAs. It is clear that the RCMP would need to respond differently to counter hijackings versus bombing threats.

Burgoyne, the key CSIS analyst on the Sikh Desk, testified that the Desk did not differentiate between hijacking and bombing threats in its assessments.[518] Henry's testimony indicated that terminology used in the threat assessment could be ambiguous. He testified that "sabotage" could mean a wide range of things:

> I refer to sabotage as damage. Damage could be puncturing the skin of the airplane, like with a truck. I've seen it happen. Slashing the tires so that it'll have difficulty as you crash on landing, a bomb, yes, there's sabotage. Even as the air crew go through the lobby, slipping tranquilizer pills into their say, coffee. The range is as far as your imagination can go.[519]

Henry's comment reflects the attitude that responding agencies should be prepared for anything. The lack of precision in the language of the assessments did not appear to be a major concern for CSIS, as it seemed content to issue general assessments of the expected threat. This overly cautious approach inevitably hampered the RCMP's ability to tailor the most effective response to the threat.

Suspects: Names of Suspected Sikh Extremists

TAs would rarely include names of Sikh extremists under investigation by CSIS, even in the face of direct requests from the RCMP for information on certain persons. Burgoyne testified to his understanding of the importance of details regarding suspects during the Inquiry hearings.

> I think it's important that we find who's behind the threat, what is that person capable of doing … what method may that person employ. So whether you are a martyr, a marksman or explosives expert, I think this is the information that we have to try and gather on the person who is behind the threat.[520]

Despite this recognition of the importance of identifying suspected perpetrators, CSIS commonly issued TAs lacking any such detail.

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518 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3454.
519 Testimony of John Henry, vol. 25, May 8, 2007, p. 2552.
520 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, pp. 3453-3454.

On June 21, 1984, the RCMP requested a TA and enclosed a list of names of alleged members of the Babbar Khalsa (BK), including Parmar and Gill.[521] At the time, the RCMP Security Service (SS) knew that Indian officials had claimed that Parmar was the leader of a terrorist section of the Khalistan movement and had been the subject of an extradition request by the Indian government for the alleged murder of two policemen in India.[522] The GOI had also specifically identified Parmar as a threat to the safety of Prime Minister Indira Gandhi during her 1982 visit to the US. The RCMP SS knew that Gill had identified himself as the Vancouver Khalistan "Consul General," was a personal acquaintance of leaders of other international Sikh extremist groups, and was present at a 1982 egg-throwing incident staged against the Indian High Commissioner.[523] While the RCMP SS had passed on this information to VIP Security in 1982, it did not include the information in its noticeably vague responding TA on June 21, 1984, which simply stated that:

> All of these persons are supporters to varying degrees of greater political autonomy and religious freedom for Sikhs in India. Some are Sikh community and Spiritual leaders in Canada. Others are advocates of an independent Punjab and provide financial and moral support to those professing to represent the Government of Khalistan in exile.[524]

On September 6, 1984, the Sikh Desk issued a TA to provide an updated synopsis of the Sikh situation in Canada.[525] It stated that:

> It is the radical groups, often advocates of Khalistan, that constitute the greatest danger and create the largest risk factor for Indian diplomatic premises and personnel. Elements within this group have expressed support for acts of terrorism in India and some may have ties to terrorist groups there.

However, the TA failed to provide any descriptions of the "radical groups," descriptions which would have assisted the RCMP in better focusing its response to the "high" threat.

Meanwhile, about five weeks earlier, on July 31, 1984, the Sikh Desk had reported detailed information about Parmar internally within CSIS.[526] This detailed information on Parmar was finally released to the RCMP on October 26, 1984, along with information about Bagri and Gill. CSIS noted that it "…continues to assess the threat as high as [*sic*] result of the actions of the individuals mentioned."[527]

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521 Exhibit P-101 CAB0079, pp. 2-3.
522 Exhibit P-101 CAB0042 (May 7, 1982), CAB0031 (July 28, 1982).
523 Exhibit P-101 CAB0031 (July 28, 1982).
524 Exhibit P-101 CAB0085.
525 Exhibit P-101 CAA0093, p. 2.
526 Exhibit P-101 CAB0114.
527 Exhibit P-101 CAA0105.

The hesitancy to pass on specific names was likely due to a perceived need to protect individual privacy and the secrecy of CSIS's own investigations. TAs that contained information about individuals would include a comment to the effect that information which might affect Canadian citizens or permanent residents should be referred to senior level management, who would then manage potential dissemination to Indian authorities.[528] CSIS was acutely aware of the need to protect privacy rights, to the detriment of its information-sharing practices with the RCMP.

The RCMP Perspective on CSIS Threat Assessments

The RCMP expressed dissatisfaction with the general nature of CSIS TAs in the immediate aftermath of the Air India and Narita bombings. In July 1985, the RCMP characterized the information received from CSIS in the year prior to the bombing as mainly providing a general historical and political overview, rather than any "concrete intelligence."

> The CSIS did not forewarn us and to this point in time they have not been able to provide any concrete intelligence or information that has assisted our investigation since the mishaps. They have provided a historical and political perspective which the RCMP was cognizant of due to the many protective operations it had to engage in involving Indian diplomats and associated criminal investigations following attacks on them or Indian missions over the course of the past year in Vancouver, Winnipeg and Toronto.[529]

Because of its constant concern about proper resource allocation, the RCMP often requested updated TAs from CSIS to ensure that the level of protection was still required. Even in the critical month of June 1985, the RCMP was eager to reduce the resources assigned to the protection of Indian interests. On June 11, 1985, the RCMP noted that the "high threat levels" in the CSIS TAs had resulted in the deployment of a considerable number of RCMP resources. The RCMP TA request sent on that date stated that if the Gandhi visit occurred without serious incident, it was assumed that the threat level would diminish.[530] The RCMP appears to have been implicitly pressuring CSIS either to provide some evidence of the continuously high threat or to reduce the threat level in its analysis.

The RCMP was not content to rely on CSIS TAs as the main source of security intelligence upon which to design its responses, in part because of its dissatisfaction with the CSIS information and assessments. In July 1985, the RCMP reported that, although it had relied on CSIS to provide valuable details on threats, it felt that the information provided was not adequate to inform its threat responses effectively.

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528 Exhibit P-101 CAB0085, p. 2.
529 Exhibit P-391, document 210 (Public Production # 3343): RCMP Response to Draft Seaborn Report.
530 Exhibit P-101 CAB0275.

> A vacuum has been created following the separation of the Security Service from the RCMP with respect to valuable street-level criminal/dissident/terrorist and law enforcement intelligence because of a lack of essential contacts, sources and informants within the various ethnic communities. The Force has had to rely on CSIS for this kind of information which has not been effective to date in countering terrorist acts.[531]

After the creation of CSIS, the RCMP developed its own parallel TA process.[532]

Interdepartmental Threat Assessments

The usefulness of CSIS TAs could likely have been improved by an interdepartmental review of the TA product. However, in 1985, CSIS TAs were developed on the basis of CSIS insight alone, despite the fact that various other agencies relied upon the product to make critical operational and policy decisions. CSIS's ability to provide meaningful TAs was impaired by a lack of consultation with its client agencies, particularly the RCMP.

The Sikh Desk, the analysis centre for TAs on Sikh extremist threats, had no direct contact with its major client, the RCMP P Directorate.[533] All TA requests and responding assessments were sent through the CSIS TAU.[534] No mechanism existed for Sikh Desk analysts to engage with the P Directorate for an evaluation of its TAs. Burgoyne testified that he was unaware of how the P Directorate would respond to the TAs, but assumed that it would contact the Sikh Desk for clarifications if necessary.

> Well, not having had contact with "P" Directorate if there was a problem with the interpretation – of our assessment, perhaps, they would have asked – can we be a little bit more clearer, or is there anything else that we can provide them with, to better assess. Although, I do think our assessments were quite accurate based on the information we had at the time. So how they would react to this, I really can't say.[535]

At the Inquiry hearings, Burgoyne did not recall any instance where the P Directorate asked for clarification about a threat assessment from the Sikh Desk.[536]

The P Directorate did maintain direct contact with the TAU at CSIS. Henry admitted that the TAU did not follow up to determine whether the consumer

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531 Exhibit P-391, document 210 (Public Production # 3343): RCMP Response to Draft Seaborn Report.
532 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.
533 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3444; Testimony of Glen Gartshore, vol. 31, May 22, 2007, pp. 3549-3550.
534 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3444.
535 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3453.
536 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3453.

agencies found CSIS product to be of any use. The TAU acted purely as a liaison centre and did not develop any capability to provide added value to the TAs. Henry had limited knowledge of the operations of the RCMP units that relied upon the CSIS TAs. He felt he had a good liaison relationship with VIP Security, in that there was often dialogue about the TAs. However, he was not familiar with the operations of the Airport Policing Branch, which was notably the branch responsible for responding to threats to Air India.[537]

Henry was also unaware of the process by which the Sikh Desk drafted the TAs.[538] He testified that he "hoped" that the receiving agencies would take the CSIS TA and draw on its own sources of information to develop an operational plan.

What is striking about the relationship between CSIS and the RCMP is that there was virtually no dialogue between them. Given the general nature of some of the TAs, one would have thought that the RCMP would have followed up with CSIS to get more information. It is as if each agency assumed the other understood the situation at hand when in fact, at times, neither did. Instead, each appeared to have chosen to duplicate efforts, rather than trust the other to carry out its separate role.

Early Efforts to Create an Interdepartmental Threat Assessment

The clear need for an interdepartmental system of intelligence assessment was recognized in the review of the March 1985 Turkish Embassy incident. The review report recommended that:

> [A]n interdepartmental system be established, with CSIS as the focal point, for the preparation of comprehensive terrorist threat assessments, and for regular consultation between appropriate intelligence and security components – CSIS, DEA, RCMP, CSE and as necessary, CEIC, DOT and DND.[539]

In late May 1985, James Bartleman of External Affairs formed the *ad hoc* Interdepartmental Working Group on Sikh Extremism, in recognition of the need for increased coordination to assess and respond to the "crescendo" of threats to Indian interests at the time. Efforts at international coordination were also initiated, as government officials from DEA, CSIS, RCMP and the Solicitor General's office attended a tripartite meeting on Sikh extremism in Washington in the week prior to the bombing.[540]

In the month before the bombing, CSIS began distributing TAs related to threats to Indian interests more widely. Rather than forwarding TAs to the P Directorate for further dissemination, CSIS sent its TAs directly to VIP Security, NCIB, Solicitor

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537 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2511-2512, 2543, 2555.
538 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2542.
539 Exhibit P-101 CAF0623, p. 2.
540 Exhibit P-101 CAB0289, p. 3.

General, PCO, DND, DEA, CSE, Transport Canada, Immigration Canada, Customs, and all CSIS regions, districts and liaison officers stationed abroad.[541]

These efforts toward increased interdepartmental coordination of the threat assessment might have helped to produce more meaningful TAs and enhanced interdepartmental cooperation. Unfortunately these efforts were far too late to prevent the Air India and Narita bombings.

3.4 Deficiencies in RCMP Threat Assessment Structure and Process

Introduction

Prior to the creation of CSIS, the RCMP Security Service collected security intelligence and provided threat assessments to the RCMP units in charge of implementing protective measures. The assessments issued by the Security Service contained relevant information about potential threats as well as an analysis of the level of the threat to assist in determining the appropriate security response. The RCMP did not otherwise carry out threat assessment functions as part of its policing operations, though it did have some units gathering criminal intelligence. When CSIS was created, the new agency took over the duties previously carried out by the Security Service, including the dissemination of threat assessments to Protective Policing. However, the RCMP decided to produce its own threat assessments also, while continuing to receive those from CSIS.[542] Hence, a new threat assessment process was put in place by the RCMP.

Unfortunately, the RCMP threat assessment process was not efficient in gathering and/or analyzing threat information centrally and, at times, interfered with the process in place at CSIS. The RCMP devoted significant resources to gathering and transmitting information that CSIS was already providing to Protective Policing. However, the RCMP was unable to address existing gaps in the threat assessment process by bringing into it the information to which it had unique access or even the information already in its possession. Relevant information was not always recognized or was not reported in a timely manner, and the RCMP often had difficulty appreciating the significance of the information or the seriousness of the threat.

Threat Assessment and the RCMP Mandate

Government Policy

The official Government position in 1984 was that the responsibility for the collection and assessment of intelligence about threats to the security of Canada was assigned to CSIS, while the RCMP would remain responsible for protective policing and enforcement duties in connection with criminal

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541 Exhibit P-101 CAA0187 (June 6, 1985 TA), CAA0220 (June, 17 1985 TA).
542 Exhibit P-101 CAA0039(i), p. 51, CAC0275, p. 2, CAC0495, p. 4.

offences related to security threats.[543] The same legislation that created CSIS specified a mandate for the RCMP in the area of "security offences", giving the RCMP primary responsibility to perform peace officer duties in connection with criminal offences arising "…out of conduct constituting a threat to the security of Canada" or targeting "internationally protected person[s]."[544]

In the Government's attempt to effect a surgical division of mandates between CSIS and the RCMP,[545] it was envisioned that the "security intelligence" mandate and resources would be transferred from the RCMP SS to CSIS, which would then have "…the responsibility and the capability to supply the RCMP with security intelligence it requires to meet its security enforcement and security protection responsibilities."[546] The RCMP was expected to rely on CSIS for intelligence relevant to protective policing operations and security offences investigations. In terms of threat assessment, this would mean that CSIS would investigate and provide the threat information to the RCMP, which would then be responsible for taking appropriate protective action and which could also use the information to conduct its criminal investigation should a security offence be committed.

A Guideline was approved by the Minister about the appropriate role, policies, administrative arrangements and resource allocation which should guide the RCMP in the discharge of its security-related responsibilities. The Guideline recognized some potential overlap and duplication between "security intelligence" and "security enforcement" investigations, but took a narrow view of the RCMP's role in collecting information about security offences. The RCMP was expected to take action only in investigating and gathering evidence where it was apparent or likely that a security offence had been or was about to be committed. In cases where there was only a possibility that threats could give rise to security offences, the RCMP was expected to rely on CSIS to provide relevant intelligence information.[547]

Recognizing that the RCMP would likely produce or acquire information related to security threats in the course of carrying out its policing duties, the Guideline instructed the Force to pass this information on to CSIS so that CSIS would be in receipt of all security intelligence relevant to its mandate.[548] The RCMP Commissioner was authorized to establish dedicated units with no investigative or operational mandate for the purpose of liaison with CSIS.[549] The role of these units was to be limited to sharing information with CSIS and consulting on cases requiring enforcement or protective action,[550] while the actual protective

543 The information in this section comes from Exhibit P-101 CAA0081, pp. 2-15.
544 Exhibit P-107: *Security Offences Act*, S.C. 1984, c. 21, ss. 57, 61. See also Section 3.0 (Pre-bombing), The *CSIS Act*.
545 See discussion on the McDonald Commission in Section 2.1 (Pre-bombing), The Civilianization of Security Services.
546 Exhibit P-101 CAA0081, p. 8.
547 Exhibit P-101 CAA0081, p. 13.
548 Exhibit P-101 CAA0081, pp. 9-10. See also the recommendation at p. 15, that the RCMP pass to CSIS information relevant to the CSIS mandate.
549 Exhibit P-101 CAA0081, pp. 3, 16.
550 Exhibit P-101 CAA0081, p. 16.

and security offences investigations work would continue to be carried out by existing RCMP units.[551] The creation of the new units was said to require only a "small level of resources" immediately.[552]

While not directly addressed in the Guideline, it is clear that the Government contemplated that CSIS would be in charge not only of collecting but also of analyzing all information relevant to national security threats in order to advise other agencies, including the RCMP, of the nature and seriousness of the threats. Hence, the RCMP had to provide the threat information it acquired to CSIS so that it could be centrally analyzed and so that the overall threat could be assessed by CSIS. The role contemplated for the RCMP in the threat assessment process was minimal, at most.

Creation of RCMP Threat Assessment Process

As mentioned, when CSIS was created, the RCMP decided that, since the threat assessment functions previously carried out by its Security Service would now be transferred to CSIS, the Force needed to create its own threat assessment process.[553]

The RCMP never viewed intelligence-gathering activities relating to terrorism or other security-related crimes as being excluded from its mandate, and consequently believed that it needed to maintain an intelligence function, in particular for the gathering of "criminal intelligence."[554] To the RCMP, intelligence-gathering activities and involvement in threat assessment were part of the Force's mandate to detect and prevent crime, and were made necessary by the Force's protective policing duties, as well as by the "expanded" law enforcement responsibilities it was assigned in the *Security Offences Act*.[555]

According to former RCMP Commissioner Robert Simmonds, in order for the RCMP to carry out its crime prevention duties with respect to terrorism, it was necessary for the Force to gather non-offence-specific criminal intelligence. The mandate to intervene where the commission of an offence was anticipated, as opposed to completed, was said to require police, at times, to initiate investigations in advance of criminal conduct.[556] By getting actively involved early on, through "intelligence-led policing," the RCMP could take steps to prevent breaches of peace, to maintain public order or to stop criminal acts before the fact.[557]

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551 Exhibit P-101 CAA0081, pp. 11, 14.
552 Exhibit P-101 CAA0081, p. 14.
553 Exhibit P-101 CAC0275, p. 2, CAC0495, p. 4; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5439-5440.
554 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1665; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5423-5424, 5428-5429.
555 Exhibit P-101 CAC0283, pp. 4-5, CAC0406, p. 3, CAC0495, p. 5.
556 Exhibit P-101 CAA0474.
557 Exhibit P-101 CAA0474, p. 10; Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1659-1660; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5359-5360.

The RCMP believed it could not rely solely on CSIS for relevant threat information and intelligence as it had done previously with the Security Service.[558] CSIS information was described as relevant to threat assessments mostly "…in areas that fall within the CSIS mandate."[559] The RCMP did not believe that the intelligence gathered by CSIS would encompass all the issues that were potentially relevant to its responsibilities.[560] This belief was related to actual or perceived limits on the CSIS mandate and to the RCMP's perception of the choices made by CSIS about the type of intelligence probes it would be conducting. For example, the activities formerly carried out by the Security Service to gather intelligence on domestic groups who could present a security threat[561] were viewed by the RCMP as particularly relevant to its mandate.[562] Deputy Commissioner Henry Jensen testified that the RCMP needed intelligence about dissident groups and organizations ("public order intelligence") in order to conduct its protective policing operations.[563] This was the type of information that CSIS could collect "…if they committed the resources to it and went out to the field" but, according to Jensen, "…they were not doing it", so the RCMP had to "…complet[e] the loop."[564]

Simmonds, for his part, spoke of the "high degree of frustration" experienced by the RCMP in its day-to-day operations because of the "…difficulty we were having in getting meaningful daily information from CSIS."[565] He also expressed concern about the use the RCMP could make of the information CSIS collected.[566] It was felt that by engaging in intelligence-gathering related to terrorism, the Force would be better able to carry out its mandate to acquire the evidence necessary to prove any terrorism offences that did take place.[567]

Though Simmonds noted in testimony before the Inquiry that he personally never doubted CSIS's competence,[568] there may have existed within the RCMP a certain lack of confidence in CSIS's abilities. In April 1985, the Commanding Officer of the RCMP H Division noted that "…in some quarters, the RCMP felt they could not rely on CSIS."[569] In his view, the RCMP would not be able to "…know that CSIS had done their work right" if it did not control the operations.[570] As late as 1987, following a National Security Enforcement conference, an RCMP officer asked the CSIS Nova Scotia Chief how "certain" CSIS could be of its threat assessments.[571]

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558 Exhibit P-101 CAC0406, p. 3
559 Exhibit P-101 CAC0283, p. 5.
560 See Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5457, indicating that the RCMP concerns mostly related to the "completeness" of the information provided by CSIS.
561 See, generally, Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1630-1633.
562 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1632-1633.
563 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5396, 5439-5440; Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1632-1633, 1661.
564 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5440.
565 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9341.
566 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9347.
567 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5372. See also Exhibit P-101 CAC0030, p. 4, where Simmonds describes counterterrorism as the area of common interest between CSIS and the RCMP and the one area where information sharing was necessary.
568 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9347.
569 Exhibit P-101 CAA0144, p. 1.
570 Exhibit P-101 CAA0144, p. 1.
571 Exhibit P-101 CAA0531.

For these reasons, a process was put in place at the RCMP for the central collection of threat information in order to advise Protective Policing about the threats. The RCMP undertook not only to collect and transmit to Protective Policing the threat information already in the Force's possession, but also to actively seek out information relevant to its new threat assessment process.[572] The RCMP planned to use every possible avenue to obtain "suspected and known criminal intelligence" about terrorism and extremism in Canada.[573] For this purpose, units were tasked with reviewing open sources of information, like magazines, newspapers and local publications, to look for information about possible law enforcement matters and to identify individuals or organizations with a potential for violence directed at public figures.[574] RCMP Foreign Liaison Officers were asked to obtain national security "criminal information" that might impact on Canada from foreign police forces.[575] The RCMP also decided to conduct follow-up investigations about threat information.[576] A 1985 draft Guideline on National Security Enforcement and Liaison provided that investigations or "preventative action," targeting individuals or groups who advocated violence, supported criminal activity, or indicated an apparent intent to engage in unlawful activity, could be engaged in where a statement, activity, or action would constitute a threat or cause harm to the security of Canada.[577]

RCMP Threat Assessment Structure

The National Criminal Intelligence Branch (NCIB) was an RCMP Headquarters (HQ) branch which existed within the structure of the RCMP criminal operations side prior to the creation of CSIS, reporting directly to the Director of Criminal Investigations.[578] NCIB was a unit with no operational or investigative capacity, which was responsible for coordinating intelligence-gathering on criminal activities and criminal organizations.[579] Within each Division, a National Criminal Intelligence Section (NCIS) was in charge of gathering intelligence on major criminal activities. The NCIS had investigative capacity and acted as the operational arms of NCIB, though they did not report directly to NCIB. NCIB and the divisional NCISs were created in the 1960s.[580] Their focus at the time was specifically on organized crime[581] but, by the 1980s, NCIS also had responsibilities for gathering intelligence about planned or suspected "criminal extremist/terrorist activities."[582]

After the creation of CSIS, a National Security Enforcement (NSE) Section responsible for intelligence coordination and sharing with CSIS, particularly for information about political terrorism, was added within NCIB.[583] NCIB NSE

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572 Exhibit P-101 CAC0283, p. 5.
573 Exhibit P-101 CAC0286, p. 2.
574 Exhibit P-101 CAA0039(i), p. 19, CAC0283, pp. 6-7, CAC0495, pp. 4-5.
575 Exhibit P-101 CAC0286, p. 2.
576 Exhibit P-101 CAC0283, p. 6.
577 Exhibit P-101 CAA0039(i), p. 18.
578 Exhibit P-110; Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1642-1644.
579 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2565-2566.
580 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5358.
581 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5358.
582 Exhibit P-101 CAC0495, p. 3.
583 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1644; Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2560.

members were instructed to review and disseminate RCMP information about extremism and threats to the security of Canada.[584] Their role was essentially to "…monitor the situation across Canada."[585] They were tasked with liaison functions with CSIS and were also responsible for conducting records checks for individuals appointed to various government positions, which consumed a significant amount of their time.[586] NSE units were also added within most divisional NCIS sections.[587] Their main function was to serve as a liaison facility "…for collecting criminal intelligence information relating to national security between the RCMP and CSIS, as well as other Agencies."[588]

In addition to its liaison functions, the NSE Section at NCIB was put in charge of the new RCMP threat assessment functions.[589] According to the process put in place, the RCMP Protective Policing Directorate (P Directorate), which was responsible for VIP Security and Airport Policing, was to request threat assessments from both CSIS and NCIB NSE.[590] NCIB NSE was to pass on requests to divisional NCIS NSE units which would then contact other RCMP units in their division, as well as other agencies such as local police forces, to gather intelligence.[591] The divisional units were also expected to review open sources materials and identify relevant information.[592] The information gathered would then be reported back to NCIB, where a member of the NSE Section would review it, conduct file research and records checks, and then prepare a threat assessment for P Directorate.[593]

The ministerial Guideline continued to govern the scope of the RCMP's "… appropriate role, policies, administrative arrangements and resource allocation" for its security-related responsibilities. The NSE Section at NCIB and the NSE units at NCIS were created pursuant to the Guideline as the dedicated liaison units.[594] The Treasury Board submission applying for funding for the NSE replicated the language of the Guideline, specifically stipulating that the new liaison units would have no investigative or operational mandate.[595] Hence, NSE units at HQ and in the Divisions had no investigative capacity and were not expected to conduct investigations.[596] However, the RCMP provided for a mechanism

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584 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2566.
585 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2723.
586 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2560; Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2723.
587 Exhibit P-101 CAC0286, p. 2. In four Divisions, NSE representation was on a part-time basis. In those cases, threat assessment requests were transmitted to the Criminal Investigations Bureau (CIB) Officer in the Division: Exhibit P-101 CAC0283, p. 7.
588 Exhibit P-101 CAC0286, pp. 2-3. See also Exhibit P-101 CAA0039(i), pp. 17, 50.
589 Exhibit P-101 CAC0275, p. 2, CAC0495, p. 4; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5439-5440.
590 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2568; Exhibit P-101 CAC0283, pp. 5-6, CAC0495, p. 4.
591 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2569-2570; Exhibit P-101 CAC0278, p. 3, CAC0495, pp. 2-3.
592 Exhibit P-101 CAA0039(i), p. 19, CAC0283, pp. 6-7, CAC0495, pp. 4-5.
593 Exhibit P-101 CAC0283, pp. 5-6; Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2568-2569.
594 Exhibit P-101 CAA0081, pp. 2-16.
595 Exhibit P-101 CAC0017, CAC0021.
596 Exhibit P-101 CAC278, p. 3, CAC0286, p. 2; Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2578.

enabling it to investigate threat information, where it was deemed necessary, by instructing the divisional NSE units to bring matters requiring investigative follow-up to the attention of District Intelligence Officers (DIOs) so that other RCMP units could be tasked with conducting these investigations (whether after-the-fact or preventive).[597]

Impact of the Decision to Create a Parallel RCMP Threat Assessment Process

The Government's aim in approving the creation of dedicated RCMP liaison units (the NSE units) was to improve coordination of activities between CSIS and the RCMP and, in part, to ensure that CSIS received all threat-related information in the RCMP's possession so that it could be centrally analyzed as part of the global CSIS threat assessment process. In practice, however, CSIS was largely cut out of the picture in the new RCMP threat assessment process. The new NSE units mainly gathered information for the RCMP's own internal use in its new threat assessment process.

Rather than encouraging "…a high degree of coordination between 'intelligence' and 'action'",[598] NSE units were incorporated in a parallel RCMP threat assessment structure operating largely independently from the CSIS threat assessment process. The two agencies often ended up collecting and analyzing their threat information separately, with neither agency being in a position to conduct an overall analysis of all of the information available. P Directorate received advice about threats from both CSIS and NCIB NSE, but had no central threat assessment mandate or capacity of its own.[599]

Deficiencies in the RCMP Threat Assessment Process

Failures to Identify, Report and Share Relevant Information

The new RCMP threat assessment process was meant to ensure that threat information uncovered by the various RCMP units in the course of their policing activities was transmitted to NCIB NSE, where it could be globally assessed so that Protective Policing could be advised of the threat situation. In practice, however, a great deal of potentially relevant threat information that was obtained by the Divisions, or that was accessible to them, was never reported to NCIB. E Division NCIS received information in April 1985 about possible attacks on the Vancouver Consul General and about various Sikh extremist groups. Included in this information was a mention that Parmar's group was the most dangerous, was keeping a low profile, and was working on a highly secret project.[600] None of this information was reported.[601] Kamloops NCIS learned that a group of Sikh

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597 Exhibit P-101 CAC0283, p. 6; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5446.
598 Exhibit P-101 CAA0081, p. 8.
599 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2772; Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2928.
600 Exhibit P-101 CAC0290.
601 The information was transmitted by E Division VIP to P Directorate in HQ and NCIS in Vancouver, but not to NCIB: Exhibit P-101 CAC0290, p. 2.

extremists were planning to kidnap an Indian Consul General. NCIB received this information from CSIS, rather than from the divisional NSE unit that should have been collecting and reporting it.[602] In the same time frame, E Division NCIS was informed that an unknown number of Sikhs from Vancouver and Toronto were planning to travel to New York to attend a meeting on June 9, 1985, to establish policy for the violent resolution of problems.[603] This information also apparently went unreported to NCIB, in spite of the obvious national and international issues it raised.

The Khurana Information

On June 12, 1985, a Vancouver Police Department (VPD) source, Sarbjit Khurana, allowed the VPD to record a meeting with Sikh extremists who were attempting to intimidate him. During the debriefing immediately after the meeting, he advised that Pushpinder Singh, a suspected terrorist believed to be directing International Sikh Youth Federation (ISYF) operations, had responded to a statement by ISYF spokesperson Manmohan Singh complaining about the lack of attacks against Indian officials, that they should "…wait two weeks to see something being done."[604] This information was available to RCMP E Division NCIS members who worked at the Vancouver Integrated Intelligence Unit (VIIU).[605] It was clearly relevant to the threat assessment process, but it was not passed on to NCIB by the NCIS prior to the Air India bombing.[606]

The Duncan Blast Surveillance Information

On June 4, 1985, CSIS followed Parmar, Reyat and an unknown third person to a wooded area near Duncan. A loud explosion, which the surveillance team initially thought was the discharge of a large calibre handgun, was heard before the men returned to their car and departed.[607] The information provided by CSIS about the Duncan Blast surveillance was not reported to the E Division NSE member or to NCIB. The RCMP has long complained that CSIS had not provided it with sufficient detail to allow an understanding of the potential significance of this event prior to the bombing.[608] In fact, CSIS advised different RCMP members and units of the information in various forms several times prior to the bombing, but the RCMP members who received the information apparently did not understand its significance to the threat assessment process and did not report it through the RCMP system in place.[609]

Even if the RCMP members who received the Duncan Blast information did not know that the noise heard in the woods may not have been a gunshot, the

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602 Exhibit P-101 CAB0169.
603 Exhibit P-101 CAB0269(i); Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3893-3894.
604 Exhibit P-101 CAB0321, p. 3, CAC0487, p. 4; Section 1.6 (Pre-bombing), Khurana Information.
605 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.
606 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces and Section 1.6 (Pre-bombing), Khurana Information.
607 Exhibit P-101 CAA0188.
608 Testimony of Gary Bass, vol. 87, December 3, 2007, pp. 11241-11243; Exhibit P-101 CAA0335, p. 19, CAF0814, pp. 1-2.
609 See Section 1.4 (Pre-bombing), Duncan Blast.

information they received was precisely the type of information that divisional units were expected to report for the purposes of the RCMP threat assessment process. The divisional NSE member, Sgt. Michael ("Mike") Roth, who should have received and transmitted this information within the RCMP threat assessment process, had the proper security clearance to receive this secret CSIS information and was specifically responsible for sanitizing, rewriting, and reproducing classified CSIS information in a form that allowed its dissemination within the RCMP.[610] He testified before the Inquiry that he did not learn about the Duncan Blast until after the bombing of Air India Flight 182 and that this was precisely the type of information he should have received.

Other new and potentially related information was apparently not reported to the divisional NSE unit or to NCIB for threat assessment purposes. According to intelligence received by the Duncan Detachment on June 10, 1985, following a split in the local Sikh temple, extremists started a new temple whose leader, an associate of Reyat, was advocating "…selling homes and property to buy guns and 'get strong', *cut off all travel with Air India*, cut off all business with Vancouver, take revenge for any allegations."[611] Back in September 1984, an RCMP source who provided information about a plot to bomb an Air India plane (Person 1) had also referred to a man in Duncan who could manufacture "nitro" for blowing up an Air India plane.[612] As the information was not reported to NCIB, it was not taken into the RCMP threat assessment process. Had it been, the RCMP would have been in a position to analyze the Duncan Blast surveillance information in light of this information and in light of the information about threats against Air India which was otherwise known to the Force, including the possibility of bombing raised by the June 1st Telex.[613]

The Duncan Blast information clearly suggested possible criminal activity at least, and contained many potential national security implications. It certainly was "information of threat assessment value." It should have been reported through the channels that had been set up within the RCMP precisely for the purpose of gathering "criminal intelligence" and "intelligence related to security offences." That it was not is an obvious intelligence failure. This conclusion does not excuse CSIS's own intelligence failures in collecting, following up, or analyzing the Duncan Blast information.[614]

The November 1984 Plot Information

In September 1984, E Division obtained information from "Person 1" about a plot to bomb an Air India plane.[615] The information was not reported to the divisional NSE unit or to NCIB. Instead, it was communicated by telephone to the

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610 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5604.
611 Exhibit P-101 CAA0276, p. 2 [Emphasis added], CAA0307, p. 3.
612 Exhibit P-120(c), p. 6 (entry for March 10, 1986: doc 521-3).
613 See Section 1.2 (Pre-bombing), June 1st Telex.
614 See Section 1.4 (Pre-bombing), Duncan Blast.
615 See Section 1.1 (Pre-bombing), November 1984 Plot and Exhibit P-120(c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p.26).

Montreal Drug Coordinator Office.[616] There is no indication that the information was passed on to the local airport policing detachment. Jensen testified that this was precisely the type of information that would have to be reported to HQ "in a very rapid way",[617] but the Division only transmitted information about this plot to NCIB over a month later,[618] in October 1984, after the VPD transmitted it to CSIS and to the RCMP on the basis of information received from "Person 2."[619]

On learning of the delay in the transmission of the November Plot information to NCIB by E Division, Jensen directed that the field be instructed to "…use rapid communication which is timely" and that investigators report this type of information as soon as received.[620] Jensen agreed during his testimony before this Inquiry that the divisional investigator's view – that the Person 1 information was not reliable[621] – should not have excused him from reporting on it.[622] There is no evidence of any additional steps taken to implement Jensen's instructions about the reporting of threat information.

Failures to Identify and Report Background Intelligence

Without basic intelligence about extremist groups, it is difficult to grasp the significance of the information reported through the threat assessment process. When Sgt. Warren Sweeney, who was in charge of the terrorist desk at NCIB NSE,[623] learned about the Khurana information from VPD Cst. Don McLean on the day of the bombing, he had not previously been made aware of the role of Manmohan Singh (the ISYF spokesperson who complained about the lack of attacks on Indian officials) or Pushpinder Singh (the suspected terrorist believed to be directing ISYF operations who replied with the "wait two weeks" comment).[624] Having such background information available in the threat assessment system would have been necessary for NCIB to be able to appreciate the full significance of the Khurana information itself.

Without information on the identity of the main participants in the Sikh extremist movement and on the organizations to which they belonged, it was difficult for NCIB to put the information it received in its proper context to assess the seriousness of the threat. The VPD did have extensive knowledge of many of the most important Sikh extremist players and organizations in British Columbia

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616 Exhibit P-120(c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p. 25) and (entry for Nov. 7, 1984: doc 526-3, p. 38).

617 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5449. See also Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2595, indicating that it was important that this kind of information come to NCIB as it affected the RCMP security offences mandate.

618 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3).

619 Exhibit P-120(c), pp. 1-2 (entry for Oct. 1984: doc 231-3, pp. 2-4) and p. 2 (entry for Oct. 23,1984: doc 7).

620 These instructions were issued on November 8, 1984: Exhibit P-120(c), p. 3 (entry for Nov. 8, 1984: doc CivLit1).

621 See Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4107: Douglas, the divisional investigator, continued to defend his view that he "…very much doubted the information as being provided by P1 and P2, and did not believe it to be "credible."

622 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5449.

623 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2572.

624 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2641; Exhibit P-101 CAF0035, p. 28.

as well as of the connections among the individuals and groups involved.[625] Although available to E Division NCIS members, this significant intelligence was not reported to NCIB.[626]

NCIB Failure to Share Threat Information

The divisional units that were expected to investigate threat information and to identify and report relevant information were not kept sufficiently informed of the overall threat situation. RCMP documents convey an expectation that the most useful threat information would be obtained from regular RCMP units and other agencies "…who are well informed on the threat assessment process" and in a position to obtain threat information.[627] There is no evidence that the members of divisional investigative units were provided on a routine basis with threat information gathered by other RCMP units and analyzed at HQ, even where such information was directly relevant to areas specifically being investigated.

As Sweeney confirmed in his testimony, in order to identify the information relevant to the threat assessment process, the Divisions needed to take into account other information about their targets, about the general threat level, about the possible ramifications of any planned action, as well as about the national and international context.[628] There does not, however, appear to have been a meaningful passage of such information to the Divisions. NCIB had access through RCMP central records to the CSIS threat assessments sent to P Directorate,[629] but only began to transmit the assessments routinely to the divisional NSE units in April 1985, when it started to receive its own copies.[630]

There is no record of E Division NCIS having received the information contained in an April 1985 CSIS threat assessment that a member of the Sikh Student Federation had been arrested at Vancouver International Airport with the barrel of an Uzi machine gun along with 100 rounds of ammunition in his luggage.[631] Had NCIS been advised, Sgt. Wayne Douglas, who was investigating Sikh extremism in British Columbia, would have likely gone to the airport and

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625 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.
626 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.
627 Exhibit P-101 CAC0495, p. 2.
628 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2606, 2613.
629 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2653-2655; Testimony of Warren Sweeney, vol. 26, May 9, 2007, 2692-2693.
630 See Exhibit P-101 CAA0147, CAB0207, CAB0851, pp. 3-8 and CAC0291, indicating the time when NCIB began receiving copies of the CSIS TAs. About the usefulness of transmitting this information to the Divisions, see Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2703. For an example of a CSIS TA being sent to the Division by NCIB, see Exhibit P-101 CAA0160. The Commission find no such examples before NCIB began to receive its own copies.
631 Exhibit P-101 CAB0207.

attempted to interview the individual for intelligence purposes.[632] NCIB's failure to keep the Divisions informed made it difficult for the units to do any follow-up investigations.

In April 1985, the E Division NCIS extremist/terrorist unit reported that very little action had been taken in the November Plot investigation and that "…[t]here has been no further information received from any sources that would indicate this or any bombing of an Air India Plane will occur."[633] NCIB did not take any steps to inform the divisional unit that there was, indeed, information about threats to Air India suggesting the possibilities of hijacking or sabotage and that the threat to Air India was considered high.[634] It was suggested at the Inquiry that this information was not communicated to E Division because the threats related to Air India flights out of Toronto and Montreal and did not originate from Vancouver.[635] This approach to information sharing is inconsistent with the basic premise that those who are to gather threat information need context and background in order to be able to recognize relevant information and to appreciate its significance.

Lack of Training and Clear Instructions

When the RCMP decided to create its own threat assessment process, it provided no specific training to its members to help them with their new responsibilities.

Sweeney testified that he received no training either before or after he left the Security Service to join the NCIB NSE terrorist desk.[636] Like other NCIB NSE members, he was involved in receiving and transmitting threat information and in following up on divisional investigations, but he never received any training about the new RCMP threat assessment process.[637] He received no training about the role of CSIS before or after its creation, nor was there any briefing about the *CSIS Act* and its effect on RCMP responsibilities. NCIB NSE personnel were given no training about Sikh extremism, even if it was stated to be a counterterrorism priority at the time.[638]

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632 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4057. He would have done similar follow-up in relation to information contained in another CSIS threat assessment (Exhibit P-101 CAB0207), which indicated that a "…self-admitted Sikh terrorist was arrested at the Vancouver International Airport" who "…claimed to be a member of a cell within the Khalistan movement in India, which has received terrorist and commando training sponsored by this movement.": Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4056-4057.

633 Exhibit P-120(c), p. 3 (entry for April 10, 1985: doc 526-3, p. 45).

634 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2612-2613. At the time, the amount of threat information transmitted by Air India, though viewed by some as Air India's way to obtain additional security for free, was perceived as very important by Government officials, who went as far as to state that every flight was preceded by a letter reporting a threat: Exhibit P-101 CAC0517, p. 2. While this appears somewhat exaggerated in light of the documentary record before the Commission, it is clear that NCIB perceived that much threat information was being transmitted by Air India and nevertheless did not see fit to inform E Division, which indicated that it had "no information from any sources".

635 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2613.

636 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2722-2723.

637 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2566. See, generally, the November 1984 Plot Chronology in Exhibit P-120(c), which Sgt. Sweeney followed up on: Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2593-2594.

638 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2723-2725.

Sweeney also received no training about protective measures, including airport security that might be applied to respond to the threat information NCIB NSE members were to analyze. He explained in testimony that he was not expected to know what the various airport security levels entailed, or to be aware of the security measures applied by Airport Policing, since he did not work in Airport Policing.[639] An understanding of Protective Policing roles and responsibilities would have been helpful in assessing the relevance of the threat information and for identifying information in need of further investigation. Without such understanding, NCIB NSE threat assessments would be of questionable utility to those members who had to implement security measures in response to the threats.

Members of the divisional NCIS units did not seem to have been provided with any training as to the type of information they were expected to report for the threat assessment process.[640] They received little guidance about the type of information which had to be shared with CSIS.[641] It was suggested in July 1985 that divisional NSE units be "…tasked to undertake a liaison and training program" to explain to members of other units in their Division the need to look for and report threat-related information and to educate them about the RCMP's security offences mandate.[642] This was not undertaken prior to the Air India bombing. In fact, an Extremism/Terrorism course was only developed by the RCMP Training Division years after the tragedy.[643]

HQ provided instructions to the Divisions in an attempt to explain the purpose of the RCMP threat assessment process. These instructions stressed the fact that RCMP members were to focus on "criminal intelligence." The official documentation referred to the need to provide threat assessments regarding "violent and criminal activities" that may be directed against an assortment of targets.[644] The messages instructed members to identify and report all "… suspected and known criminal intelligence information" about terrorism or extremism,[645] all information "…of a criminal threat assessment value,"[646] and all "…criminal extremist/terrorist information that would warrant consideration in the threat assessment process."[647] The documents failed, however, to provide any definition of what "criminal intelligence" was, or any further explanation about what such information might look like.

Further, guidance provided through HQ instructions was often no clearer as to the types of investigations RCMP members were expected to conduct in support

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639 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2735-2736, 2742.

640 See Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2581, 2605. Sweeney was not aware of any training being available at the time. No evidence was presented to the Commission and no documents were located, about any training.

641 See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS.

642 Exhibit P-101 CAC0495, p. 3.

643 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2605.

644 Exhibit P-101 CAC0275, p. 2.

645 Exhibit P-101 CAC0286, p. 2.

646 Exhibit P-101 CAC0495, p. 5. See also Exhibit P-101 CAC0406, p. 3, referring to the Divisions being familiar with the NSE role to provide criminal intelligence, and Exhibit P-101 CAC00278, pp. 3-4, discussing the NSE interest for "…areas when violent and/or criminal activity surfaces."

647 Exhibit P-101 CAC0495, p. 2.

of the threat assessment process. When CSIS was created, the E Division NCIS terrorist/extremist unit in BC received no instructions to adjust its mandate, and "…just plodded along as [they] always had." The unit was originally called the "Dissident Group Squad", but the name was changed because "…headquarters in Ottawa did not like the reference of Dissident Groups." Douglas, the unit's head, testified that he was never comfortable with the new "Terrorist/Extremist" moniker. He explained that the distinction between investigating individuals and groups who could pose threats from a political versus a criminal perspective was "a very fine line."[648]

Because of this confusion, the NCIS unit at times appeared to be engaging in activities consistent with a purely CSIS-type "security intelligence" investigation and at other times failed to investigate what would appear to be clear and important threats of criminal activity. In the course of his duties, Douglas would sometimes go with his camera and "…shoot a couple of rolls of film" of individuals who attended demonstrations, even without any indication of criminal activities being planned or perpetrated.[649] Nevertheless, despite the fact that the RCMP had information that "Talwinder Singh Parmar is the subject of an international warrant issued by the Indian Government for murder and is considered to possess [*sic*] the greatest threat in Canada to Indian diplomatic missions and personnel,"[650] NCIS was not actively investigating Parmar's activities. Douglas told the Commission that the NCIS mandate related strictly to criminal activities, and that there was a "…fine line [that] flows back and forth" between Parmar's political aspirations and possible criminal activities. He noted that CSIS had been monitoring Parmar's activities, and that the view within the RCMP was that there was no point to duplicating effort.[651]

HQ provided the Divisions with explicit and implied warnings that some information should not be pursued. The 1985 draft RCMP Guideline on National Security Enforcement and Liaison instructed members to exercise discretion in the application of the security offences mandate, keeping in mind unspecified "underlying principles of the legislation." The Guideline provided for the conduct of intelligence operations and preventive action to be undertaken where there was "a legitimate law enforcement requirement" based on information indicating that prevention or detection of a criminal act was required. The operations were to be terminated when the investigation was complete or when "…legitimate law enforcement interest justifies their discontinuance." Without specifics, however, the RCMP members were left on their own to exercise "discretion" as to which investigations were consistent with the "…general law enforcement powers, authorities, principles and policies which have evolved with respect to the prevention and detection of criminal conduct."[652]

In response to CSIS's expressed concerns, NCIB NSE sent a telex to the Divisions indicating that assurances had been given that "…random interviews of ethnic

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648 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4027-4028.
649 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4039.
650 Exhibit P-101 CAB0221, p. 2.
651 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4115-4116.
652 Exhibit P-101 CAA0039(i), pp. 8, 16-17.

communities for purposes of looking for information of a possible national security interest," are not within the RCMP's mandate, and that interviews are "…only conducted in furtherance of the criminal investigation of a criminal situation or the investigation of a person suspected of a criminal offence." It was requested that the Divisions ensure that their personnel understand and conform accordingly. K Division requested clarification, stating that "…surely we can continue to contact our established sources for the purpose of providing accurate/up-to-date threat assessments."[653]

Without clear instructions from the center, there was significant inconsistency in the types of activities and level of investigative initiative undertaken among the NCIS groups, even within the same Division. Whereas the E Division Terrorist/Extremist Unit did not undertake to develop sources,[654] Surrey NCIS worked proactively to develop intelligence by meeting with temple leaders and individuals to find people who would provide information about the "potential players", and to develop a network of people in the community as a resource for RCMP intelligence.[655]

Limited Investigative Capability

The information flow for the RCMP threat assessment process envisaged regular investigative units of the Force collecting and investigating national security or threat information which they would report to divisional NSE units. No additional funding was provided for the regular investigative units to perform these new functions.[656] NCIS, which was responsible for collecting intelligence on major criminal activities in the Divisions, including extremist/terrorist activities, was expected to be particularly helpful to NSE in collecting threat information.[657] The reality, however, as it related to Sikh extremism in British Columbia, was quite different. The E Division NCIS and its intelligence unit investigating Sikh extremism were not truly functional and were unable to fulfil the role envisaged for them.

NCIS had limited human resources.[658] Its collection of criminal intelligence on extremism/terrorism was only undertaken on a "spasmodic basis", as the focus was mainly on traditional organized crime.[659] There was very little continuity of terrorist/extremist investigations, which usually lasted only for the time when a problem situation was a high priority – for example, during the visit of a dignitary.[660] This meant that investigators did not have the opportunity to build up significant and necessary expertise in a specific area. When an offence or incident did occur, or there was otherwise a need for relevant information, "…there [was] no reasonably comprehensive up-to-date police data base that [could] readily be referred to."[661]

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653 Exhibit P-101 CAF0820, pp. 35, 56, 59.
654 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4040.
655 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, pp. 9611-9613.
656 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5446.
657 Exhibit P-101 CAC0495, p. 3.
658 Exhibit P-101 CAF0821, p. 11.
659 Exhibit P-101 CAF0821, p. 11.
660 Exhibit P-101 CAF0821, p. 11.
661 Exhibit P-101 CAF0821, p. 12.

The exception to the pattern of disjointed and intermittent focus was the Vancouver Integrated Intelligence Unit (VIIU) in E Division, where one or two NCIS criminal intelligence members had been tasked for a number of years with criminal extremist/terrorist responsibilities.[662] However, NCIS members working at VIIU often did not access or report the valuable intelligence gathered by their colleagues from the VPD who also worked at VIIU, though it was generally available to them.[663]

During the pre-bombing period, the Criminal Terrorist/Extremist Group headed by Douglas at NCIS E Division was responsible for the entire province of British Columbia. The group's mandate was "…collecting intelligence on groups or individuals that could pose a threat to the community and to Canada at large."[664] The unit received and responded to requests for threat assessments and information from Headquarters as well as from various detachments in the BC region.

A number of factors led to serious deficiencies in the effectiveness of the E Division NCIS Terrorist/Extremist group. First, the unit did not view itself as fundamentally "investigative," or "operational" which, in practical terms, meant that it did not regularly take initiative to actively follow up on threats. Though issues of Sikh extremism formed "…the predominance of the workload" from the time of the Golden Temple, in the pre-bombing era members of the unit never met with Talwinder Singh Parmar, Ajaib Singh Bagri or Surjan Singh Gill[665] despite many indications of the real threat posed by these individuals.[666] In June 1985, NCIS members finally interviewed Parmar and Gill, in cooperation with US authorities, but this was only done as part of a "diffusion interviews" program meant to dissuade Sikh extremists from taking action against Indian PM Rajiv Gandhi during his upcoming visit to the US.[667]

When NCIS received information in April 1985 that Parmar's group was the most dangerous and was currently working on a "highly secret project,"[668] the unit took no steps to investigate further and find out what the project was.[669] Similarly, NCIS did not investigate the Khurana information and the "wait two weeks" comment prior to the bombing.[670] Although it was informed of the Duncan Blast incident, NCIS did nothing to investigate it further. To be sure, CSIS did request NCIS not to "…jeopardize the ongoing CSIS investigation by revealing specifics of the Duncan incident or other details of the [VIIU] report" during diffusion

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662 Exhibit P-101 CAF0821, p. 11. VPD members also worked at VIIU. For a review of the structure and effectiveness of the integrated unit, see Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

663 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

664 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4027-4029.

665 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4029-4030, 4042, 4074.

666 See, for example, CSIS TAs in Exhibit P-101 CAA0110 and CAB0221.

667 See Section 1.4 (Pre-bombing), Duncan Blast.

668 Exhibit P-101 CAC0290.

669 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4153-4154. Douglas had no recollection of this information and was not able to recall doing anything with respect to his investigations of Parmar in response to this information: Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4058.

670 See Section 1.6 (Pre-bombing), Khurana Information.

interviews.[671] This request does not, however, seem tantamount to barring any NCIS investigation of the incident itself.[672] CSIS's request to be careful about tipping off Parmar and Gill about what CSIS knew certainly would not have stood in the way of a search of the area, as was done after the bombing.[673]

As late as June 14, 1985, E Division NCIS had to admit to NCIB that it was "… unable to determine the potential for violence against the Indian Consulate or its personnel in Vancouver" because it did not have "…access to intelligence directly from the hard core Sikh extremists."[674] NCIS did not have sources in the Sikh community. It did not have a source recruitment program and it was not otherwise actively trying to develop sources during the pre-bombing period.[675] Douglas indicated that cultural issues, including his impression that people in the Indo-Canadian community were openly mistrustful of the police and were fearful to cooperate with them,[676] were impediments to source development.[677] Meanwhile, the VPD, through its community policing approach, was able to gain trust, develop sources and thereby receive a good deal of intelligence about Sikh extremism.[678] The RCMP apparently devoted little resources to such activities, even if the lack of coded sources could be a "…significant handicap in these types of investigations."[679] Some HQ NCIB members even felt that recruiting sources for purposes of gathering information relevant to the threat assessment process would have been outside the RCMP mandate.[680] Jensen, on the other hand, believed that gathering intelligence from sources in the community was an integral part of intelligence-led policing and that divisional NCIS sections needed to have sources in the community.[681]

In fact, only one RCMP member in British Columbia, at the Surrey Detachment, attempted to use the community policing approach with the Sikh community to recruit more sources.[682] Sgt. Laurie MacDonell, who was working in the Surrey NCIS unit in the pre-bombing period, testified that his unit worked proactively to develop such sources, with the result that the Surrey NCIS unit was able to develop important contacts within the Sikh community who provided insight in terms of who the important extremists were. However, because of the reporting structure of the NCIS units in British Columbia, the E Division NCIS Terrorist/Extremist group at the divisional HQ would not necessarily have had access to this information.

There were a number of NCIS units located within the BC region, including Kamloops, Surrey, and Victoria. The focus of these units was on local community

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671 Exhibit P-101 CAA0876, p. 1.
672 Testimony of Gary Bass, vol. 87, December 3, 2007, p. 11310.
673 Exhibit P-101 CAA0276, pp. 2-3. See, generally, Section 1.4 (Pre-bombing), Duncan Blast.
674 Exhibit P-101 CAC0438, p. 2; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2704-2705.
675 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4040; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2704-2706.
676 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4040, 4109.
677 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4109.
678 See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.
679 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4108-4110.
680 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2705-2706.
681 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1660-1661.
682 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4149, 4174.

issues and not on the broader national and international implications of terrorism. Investigators in these units nevertheless did come across information in the course of their duties that touched on Sikh extremist issues. Surrey NCIS was dealing with a large number of temple skirmishes and other criminal activity that, while investigated as traditional crime, had significant national security implications by virtue of their connection to Sikh extremism.[683] When information was generated in the E Division HQ NCIS unit and farmed out to another NCIS unit in the Division for investigation, the information obtained would generally be reported back to E Division NCIS. In other cases, NCIS units in BC were not obliged to report their information touching on Sikh extremist issues to E Division NCIS. Even information generated outside of Vancouver relating to the Vancouver area[684] was "not necessarily" funnelled through NCIS.[685] The ability of E Division NCIS to identify potential terrorist/extremist trends in the province was therefore limited, and the unit was unaware of significant information about Sikh extremism in the BC area.

Because of the deficiencies in the flow of information and the lack of active engagement in the Sikh community, the E Division NCIS Terrorist/Extremist group had a limited understanding of the major Sikh extremist players in BC. Douglas did not know about the threats Parmar made that "Sikhs will kill 50,000 Hindus."[686] While he "recognized the name" Bagri,[687] he was unaware that Bagri "…could be easily manipulated into committing a terrorist act," or that Bagri had "…toured a number of European countries with a view to galvanizing Sikh extremist elements in order to launch a major attack against Indian and Hindu interests." He was similarly unfamiliar with the information that "Bagri was planning to hijack an Air India jetliner during 1984 10 in order to demand the release of seven hijackers."[688] Douglas indicated that he "…wasn't too familiar with Mr. [Surjan Singh] Gill,"[689] who was identified by CSIS as being "…the brains behind the Babbar Khalsa."[690]

Lack of Centralization

In the years preceding and immediately following the Air India bombing, the RCMP threat assessment structure was not organized in a manner to allow for

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683 Testimony of Laurie MacDonell, vol. 76, November 15, 2007, p. 9609.

684 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4043, 4054-4055, 4065.

685 For example, a telex (Exhibit P-101 CAC0312) that was sent from Headquarters NCIB to C, O and E Divisions on April 3, 1985 cites information as coming from "E" Division that "Several people in the Indo-Canadian community believe that Consul General Sharma was sent to Ottawa by the Indian government to incite the militants" and that "The Sikh Student Federation is planning an unknown type of overt action in Vancouver against the Indian Consulate" and "The society known as Babbar Khalsa is planning some overt action." While this information would clearly relate to both the mandate of Douglas' unit and to the Vancouver area, Douglas had no recollection of this information and indicated that it was possible that information like this would not have reached his unit: Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4060-4061.

686 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4051. The information was included in a CSIS threat assessment dated October 26, 1984, which was provided to the RCMP P Directorate: Exhibit P-101 CAA0110, p. 2.

687 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4048.

688 Exhibit P-101 CAA0110, p. 3; Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4052-4053.

689 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4053.

690 Exhibit P-101 CAA0110, p. 3.

sufficient central control over investigations of threats to national security or for the timely receipt of relevant information.

Reporting Structure

The regular RCMP reporting structure was not modified when NSE units were added to NCIS in the Divisions and to NCIB at HQ. Divisional NCIS sections did not report directly to NCIB, but rather through the Criminal Investigations Branch (CIB). This involved reporting up through the regular chain of command within each Division, with the higher levels reporting to their counterparts at HQ. The NSE unit essentially added a new layer in this reporting structure. RCMP units coming across threat information were now to report the information to this new unit rather than through the regular divisional chain of command. The Divisional NCIS NSE unit was then to report the information to HQ NCIB NSE through the DIO to the Criminal Operations Officer in charge of each Division.

This structure was ill-adapted to the threat assessment process because, unlike the structure in place at CSIS (and previously at the RCMP Security Service), it was not centralized or comprehensive. It did not allow NCIB NSE to obtain information directly, which inevitably created delays in gathering threat information and producing threat assessments.[691]

Delays

Both CSIS and the RCMP received information in October 1984 about a plot to bomb an Air India aircraft (the November Plot information).[692] On October 23, 1984, the Vancouver Police Department (VPD) met with CSIS and with an RCMP member working at CISBC[693] to advise them that Person 2 had provided information about the plot. The following day, CSIS advised Airport Policing by telephone, and then sent a telex to Airport Policing and VIP Security on October 26, 1984.[694] On the RCMP side, E Division NCIS was advised of the Person 2 interview directly by the VPD.[695] The information was not sent to NCIB until October 26th.[696] NCIB transmitted the information to P Directorate VIP Security on October 30th,[697] almost a week after the CSIS call to Airport Policing. NCIB never did relay the information to Airport Policing. Sweeney explained that structural differences between CSIS and the RCMP were partly responsible for the different turnaround times. CSIS HQ would receive the information immediately, whereas RCMP investigators had to "go through channels" to send the information to Ottawa.[698]

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691 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2569-2571; Exhibit P-101 CAC0278, p. 4; Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2726.

692 See, generally, Exhibit P-120(c) and Section 1.1 (Pre-bombing), November 1984 Plot.

693 For a description of the CISBC structure and mandate, see Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

694 Exhibit P-120(c), p. 2 (entry for Oct. 23, 1984: doc 7 and entry for Oct. 26, 1984: doc 229-3, p. 5).

695 Exhibit P-120(c), pp. 1-2 (entry for Oct. 1984: doc 231-3, pp. 2-4). Note that the information was discussed with Sgt. Douglas, who would pursue it.

696 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3).

697 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).

698 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2572, 2637-2638.

Threat information is usually time-sensitive. Delays can have serious, potentially deadly consequences. In the November Plot case, the potential impact of the delay caused by the RCMP reporting structure was eliminated because the same information had been transmitted by CSIS much earlier. An effective threat assessment system cannot rely on such fortuitous circumstances.

Senior echelons at NCIB understood that RCMP reporting procedures meant that the HQ NSE Section would simply not be able to provide a true evaluation of the threat without considerable advance notice that a threat assessment was required.[699] When DIOs complained in the spring of 1985 about short notice to Divisions for threat information requests, NCIB asked that P Directorate provide its requests further in advance[700] and undertook to pass them on to the Divisions as soon as received.[701] The RCMP's inability to provide threat assessments on short notice seems simply to have been accepted as inevitable. Nothing was done to adjust RCMP reporting procedures to allow the threat assessment system to deal with circumstances where advance notice was not possible.

Lack of Direction of Investigative Effort

Because of the RCMP reporting structure, NCIB NSE was unable to direct the investigative efforts of the Divisions in gathering threat information. The investigative units reported through the Divisional chain of command, and the role of NCIB was limited to trying to "…lead [the Divisions] in areas that [HQ] felt were important." Without formal authority to command divisional investigators, who made their own decisions about the conduct of their investigations,[702] NCIB could not coordinate investigations of national or international import, or even make its own decisions about follow-up or further investigation. NCIB could make suggestions to the investigators[703] but, in general, it did not see its role as proactive, and simply passed on information without asking questions. Thus, in mid-June 1985, NCIB received a report stating that E Division was "… unable to determine the potential for violence against the Indian Consulate or its personnel in Vancouver."[704] NCIB simply transferred the "information" to P Directorate and did not suggest any additional investigation.[705]

The regular RCMP reporting structure did not require ongoing, detailed updates. As a result, NCIB did not receive complete information about the progress of the Divisions' investigations and, lacking the authority, could not formally order the Divisions to provide more information. This minimized the guidance NCIB could give to the Divisions in the conduct of their investigations. When NCIB did attempt to provide guidance or requested updates, its requests were

699 Exhibit P-101 CAC0278, p. 4, CAC0406, p. 4.
700 Exhibit P-101 CAC0406, pp. 3-4.
701 Exhibit P-101 CAC0495, p. 2.
702 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2578, 2609-2610.
703 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2610-2611.
704 Exhibit P-101 CAC0438.
705 Exhibit P-101 CAC0442. See also Exhibit P-101 CAC0459, sent to VIP Security, which simply paraphrases the information found in Exhibit P-101 CAC0444, received by NCIB from O Division.

often simply ignored by divisional investigators who continued to pursue their inquiries in accordance with their own theory of the case and provided little more than unexplained conclusions to NCIB.

The November 1984 Bomb Plot and the RCMP Reporting Structure

In many ways, the November 1984 bomb plot provided a perfect illustration of the impact of the RCMP reporting structure on threat assessment.

When E Division NCIS reported the November Plot information to NCIB for the first time on October 26, 1984, it did not inform NCIB that the same information had previously been obtained independently from another source in September. The Division's message simply stated that the information had previously been "reported" to Montreal authorities and had now "resurfaced."[706] The divisional investigator, Douglas, advised NCIB of his view that the information was of "totally unknown reliability".[707] He did not provide an explanation for this conclusion. NCIB forwarded the information to VIP Security with the caveat that its reliability was doubtful,[708] without having had an opportunity to make its own assessment and without knowing that the information originated from two different sources: Person 1, who reported it to the RCMP in September, and Person 2, who reported it to the VPD in October.[709] E Division NCIS also did not provide NCIB with complete information about the assessment made by the VPD members who had interviewed Person 2 in October 1984.[710] These officers had expressed concern "…that this [November Plot] [was] a reality and [could] be accomplished at some time."[711] The divisional investigator, who at the time had not yet personally interviewed Person 2, only advised NCIB that the information was of "totally unknown reliability"[712] and that the VPD members who interviewed Person 2 believed that it was suspect because Person 2 was desperate to receive bail.[713]

When NCIB was finally informed of the existence of the earlier source for the November Plot information on November 1, 1984,[714] Sweeney, the NSE member in charge of the terrorist desk, was of the view that the matter had to be

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706 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3). E Division NCIS Sgt. Douglas confirmed that when he reported to Headquarters that the information had "resurfaced," he was aware that there were two sources of this information: Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4087.

707 Exhibit P-120©, p. 2 (entry for Oct. 26, 1984: doc 239-3).

708 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).

709 Exhibit P-120(c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p. 26) and pp. 1-2 (entry for Oct. 1984: doc 231-3, pp. 2-4).

710 The VPD report containing this assessment was provided to E Division on October 23, 1984: see Exhibit P-120(c), p. 2 (entry for Oct. 23, 1984: doc 7), stating that "a copy of interview" was provided and the "report" passed with the understanding that only the intelligence about the airplane bombing would be addressed. The information sent to NCIB by the Division on November 1, 1984 was clearly based on the VPD report: See Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27).

711 See VPD report summarized at Exhibit P-120(c), pp. 1-2 (entry for Oct. 1984: doc 231-3, pp. 2-4). The officers had also expressed the view that Person 2's information was suspect and that Person 2 had other motives for providing it, but had not seen this as excluding the possibility that it was factual.

712 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3).

713 Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27).

714 Exhibit P-120(c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p. 26).

investigated further.[715] Because NCIB could not conduct its own investigations,[716] it had to rely on the divisional investigator to conduct these additional inquiries. The investigator (Douglas) had already concluded that the information was not reliable in spite of the fact that it was provided by two sources[717] and had not thought it necessary to report the information when he first received it.

On November 6, 1984, NCIB requested "on an urgent basis" that the divisional unit provide regular updates on the investigation.[718] On November 16th, NCIS reported that checks had been conducted on certain associates of Person 2 and that no connections to extremist groups had so far been established.[719] The Division did not provide the names of the associates who were the subject of checks. As a result, NCIB could not research the central RCMP databases to find out if any information unavailable at the Division could be found at HQ.[720]

On November 26th, NCIS provided further details of an interview with Person 2. For the first time, NCIB learned that during the interview, Person 2's lawyer had alleged that Person 2 knew more about the plot than what he was telling the police.[721] Because of the decentralized RCMP structure and the limited authority granted to NCIB, the HQ members did not see it as their role to decide whether or how to investigate further Person 2's possible knowledge.[722]

NCIS also advised in its November 26th message that it had learned from Person 2 that the East Indian males involved in the November Plot resided in what for purposes of this report must be referred to as "x town", located in what must as well be referred to as "y province." Divisional checks on Person 2's associates revealed that three of them had phone numbers from y province. NCIS promised to provide NCIB with the subscriber information for those numbers, which it was in the process of obtaining. NCIB subsequently requested that the NCIS of x town be brought into the investigation once the identity of the subscribers was ascertained.[723] E Division NCIS did not provide this or any other information about the investigation to NCIB for a number of months. On March 20, 1985, four months after the last NCIS report, NCIB wrote to NCIS and to the E Division DIO to request a full update as soon as possible.[724] In response, NCIS did not provide an update on the investigation and did not inform NCIB of the identity of the x town subscribers, but simply stated on April 10th that "very little action" had occurred in this matter and that there had "…been no further information received from any sources that would indicate this or any bombing of an Air India Plane will occur."[725]

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715 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2600-2601.
716 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2578.
717 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3 and entry for Oct. 30, 1984: doc 526-3, p. 29); Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4107.
718 Exhibit P-120©, p. 3 (entry for Nov. 6, 1984: doc 526-3, p. 35).
719 Exhibit P-120(c), p. 3 (entry for Nov. 16, 1984: doc 253-3).
720 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2605-2609, 2629.
721 Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40).
722 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2609-2610.
723 Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40 and entry for Dec. 4, 1984: doc 526-3, p. 42).
724 Exhibit P-120(c), p. 3 (entry for March 20, 1985: doc 526-3, p. 44). It was noted in the telex that the last correspondence received from NCIS was dated November 26, 1984.
725 Exhibit P-120(c), p. 3 (entry for April 10, 1985: doc 526-3, p. 45).

No further information about the November Plot investigation was provided by E Division NCIS until the day of the Air India bombing, when NCIB requested that NCIS interview Person 2 about the crash. NCIS conducted an interview and advised NCIB on June 23rd that Person 2 "knew nothing" about the bombing. A report about the interview was requested and promised, but the Division did not provide any report or additional details until many months later.[726] Though NCIB was only informed that Person 2 knew nothing about the bombing, in fact, during the interview, Person 2 had said that he would speak to the police only if they were willing to deal with his pending charges.[727] It was his lawyer who had subsequently told the NCIS investigator during a telephone conversation on the same day that Person 2 did not know anything about the crash.[728]

E Division NCIS provided no further substantive information about the November Plot investigation to NCIB (which was now acting as the Coordination Center for the national Air India Task Force)[729] until December 17, 1985.[730] NCIB made numerous requests for information and updates about the investigation.[731] It also inquired about the identity of the x town subscribers that the Division was to have obtained in November 1984 and provided to NCIB.[732] These requests remained unanswered, except for a telex in October 1985 stating that the Division was compiling material about Person 2 and would reply to the HQ requests for information once the material was obtained.[733]

Meanwhile, in July 1985, E Division had obtained a copy of a VPD report about an interview with Person 2, where alleged November Plot conspirators were named.[734] The Division even noted at the time that the information provided

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726 Exhibit P-120(c), pp. 3-4 (entry for June 23, 1985: doc 526-3, p. 13) and p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65). A telex was said to have been dispatched about this conversation, but no record of the telex could later be found.

727 Exhibit P-120(c), p. 4 (entry for June 1985: doc 526-3, p. 59) and p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65). Sweeney testified that he was aware at the time that Person 2 "want[ed] to deal": Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2616.

728 Exhibit P-120(c), p. 4 (entry for June 1985: doc 526-3, p. 59) and p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65).

729 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2560. See also, generally, Exhibit P-101 CAF0055.

730 Exhibit P-120(c), p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65). See also, generally, Exhibit P-120(c), pp. 3-5.

731 Exhibit P-120(c), p. 4 (entry for Sept. 13, 1985: doc 526-3, p. 47, entry for Sept. 24, 1985: doc 526-3, p. 48 and entry for Oct. 2, 1985: doc 526-3, p. 49), pp. 4-5 (entry for Nov. 25, 1985: doc 526-3, p. 55) and p. 5 (entry for Dec. 11, 1985: doc 526-3, p. 58). See also Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2618-2620, confirming that requests for updates continued to be sent as no response was obtained from the Division.

732 This information was specifically requested on September 9, 1985: Exhibit P-120(c), p. 4 (entry for Sept. 9, 1985: doc 526-3, p. 46) and the follow-up telexes listed in the above footnote referred to this request as well. The information was specifically requested one more time on December 11, 1985: Exhibit P-120(c), p. 5 (entry for Dec. 11, 1985: doc 526-3, p. 58). Sweeney confirmed during his testimony that the associates referred to in these requests as "…the three individuals who visited Person 2" and as "Person 2's associates" were in fact the same three individuals from y province whose subscriber information was being obtained by E Division on November 26, 1984 and was to be forwarded to NCIB as per Exhibit P-120(c), p. 3 (entry for Nov. 26, 1984: doc 526-3, p. 40): Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2629-2630.

733 See Exhibit P-120(c), p. 4 (entry for Oct. 2, 1985: doc 526-3, p. 50).

734 Exhibit P-120(c), p. 4 (entry for July 10, 1985: doc 493-3 and entry for July 12, 1985: doc 494-3) and pp. 8-9 (entry for May 1986: doc 23), where Randhawa states that all the information he obtained was forwarded to Douglas.

by Person 2 was similar to information received from Person 1 in November 1984.[735] This assessment and the new information about the identity of possible November Plot conspirators was not transmitted to NCIB. The substance of the information provided in July 1985 by Person 2 about the conspirators was discussed for the first time in correspondence transmitted to HQ in April 1986, but neither the details of the interview nor the actual VPD report were provided.[736]

In early December 1985, NCIB was still waiting for a response to its numerous requests for updates and information. On December 6th, Sweeney met with CSIS investigator David Ayre who used to work at the BC Region and had been transferred to Ottawa.[737] Because Ayre had been involved in the investigation of the November Plot information with E Division investigator Douglas, Sweeney asked him whether he knew the identity of the x town subscribers who were Person 2's associates.[738] Three days later, Ayre provided NCIB with the names of the associates and advised Sweeney that the E Division investigator was in possession of the long distance tolls for Person 2's phone number for the months preceding his arrest and incarceration in 1984.[739] This was the first time NCIB learned about the telephone tolls.

Having now received from CSIS the information about the identity of the x town subscribers which had been promised by E Division in November of the previous year, Sweeney researched the RCMP HQ database and found that one of the individuals was "…affiliated with what can be termed extremist/terrorist groups within the Sikh community."[740] NCIB sent another request to E Division on December 11, 1985, this time addressing it to the personal attention of Superintendent Les Holmes, the officer in charge of the E Division Air India/Narita Task Force. NCIB explained that as a result of information received from CSIS, one of Person 2's associates was identified as a conspirator to the plot to bomb an Air India plane. NCIB stated that, to date, HQ had received no satisfactory answers to any of its requests from NCIS and asked that a response be provided as soon as possible.[741]

NCIS finally provided a response on December 17, 1985.[742] For the first time, the divisional investigator provided a written account of his June 1985 interview with Person 2. Douglas also finally provided the names of Person 2's x town associates. He explained that when the associates' identities were discovered, the local police of x town had been contacted and had provided background information on the individuals indicating that there was "…no known connection or association to extremist groups."[743]

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735 Exhibit P-120(c), p. 4 (entry for July 12, 1985: doc 494-3) and generally p. 4 and following.
736 In Exhibit P-120(c), p. 7 (entry for April 2, 1986: doc 526-9, p. 95), the information is referred to as from "confidential sources". When an HQ analyst compiled all relevant correspondence on April 15, 1986, the VPD report was not mentioned. See Exhibit P-120(c), p. 8 (entry for April 15, 1986: doc 526-3, pp. 1-22).
737 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2621.
738 Exhibit P-120(c), p. 5 (entry for Dec. 6, 1985: doc 526-3, p. 56); Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2621-2622. See also Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2629-2630.
739 Exhibit P-120(c), p. 5 (entry for Dec. 6, 1985: doc 526-3, p. 56).
740 Exhibit P-120(c), p. 5 (entry for Dec. 6, 1985: doc 526-3, p. 56).
741 Exhibit P-120(c), p. 5 (entry for Dec. 11, 1985: doc 526-3, p. 58).
742 Exhibit P-120(c), p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65).
743 Exhibit P-120(c), p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65).

Douglas was asked to explain to the Commission why it took so long for him to respond to Headquarters' requests. He testified that it was "certainly most unusual," but that he was "at a loss" as to why it took so long. It appears that even the decision about how long a divisional investigator should take to respond to a request by HQ was made at the divisional level. Douglas explained that when requests came into the Task Force, they were received by the administrative people who assigned diary dates for response and then disseminated the information. He stated: "I would think if this was me requesting information, I hadn't got after a couple [of days] I'd just pick up the phone and say, 'hey what's the problem, what's going on out here' if it's that important"[744]

In the context of the traditionally decentralized RCMP structure, it appears that the HQ requests for updates, information and specific investigative steps were seen in the Divisions as hindering the investigators' work. As Sweeney explained, RCMP members in the Divisions felt that HQ should let the investigators do their job and that they would provide the information they felt was relevant when it was obtained. This was especially true during the post-bombing period when the E Division Air India Task Force was constantly receiving requests for updates and information.[745]

Though frustrated by the lack of response from E Division,[746] NCIB members had little ability to take action to address the situation. According to Douglas, who was the head of the NCIS Terrorist/Extremist Unit, NCIS "had a free rein" in terms of its relationship with NCIB, so long as it operated within certain guidelines.[747] Because E Division NCIS did not report to NCIB, all that NCIB could do to get information was to contact the investigators' commanding officer within the Division or, after the establishment of HQ Air India Task Force Coordination Center, to have the Officer in Charge (OIC), Chief Superintendent Belanger, sign the request.[748] Sweeney did, in fact, have to contact the OIC of the E Division Task Force in December 1985 in order to obtain a response to NCIB requests that had been left unanswered for months.[749]

Throughout the pre-bombing and early post-bombing investigation of the November Plot information, NCIB was provided with incomplete information, after significant delays. This lack of complete and timely information made it impossible for NCIB to provide any useful contribution.

Without formal authority over divisional investigators, there was little NCIB could do to press forward investigations in which divisional investigators were not especially interested. Even when an analyst at the NCIB Coordination Center for the Air India investigation became interested in the November Plot

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744 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4098-4100.
745 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2627.
746 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2624.
747 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4031.
748 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2627-2628.
749 Exhibit P-120(c), p. 5 (entry for Dec. 11, 1985: doc 526-3, p. 58). Shortly after this message, a response was finally received from the divisional investigator: See Exhibit P-120(c), p. 5 (entry for Dec. 17, 1985: doc 526-3, pp. 63-65).

information and concluded that the matter needed to be re-examined in order to ascertain possible connections with the Air India bombing,[750] NCIB was unable to obtain details for months about information in the Division's possession. The divisional investigator had all but discounted the matter from the start,[751] and it took the involvement of senior officers in the Division many months after the Air India bombing, and long after the HQ analyst began to inquire about the information, to get the file reviewed and to have potential conspirators to the Plot interviewed.[752] NCIB appears to have been essentially powerless to remedy inaction at the Divisional level while, at the same time, it had no authority or capability to conduct the type of investigation it thought to be necessary on its own.

Inability to Assess Threat Information Centrally

The RCMP threat assessment structure made ongoing centralized comprehensive assessment of intelligence and information in the Force's possession impossible.

The RCMP threat assessment system was not set up to collect and process general threat information on an ongoing basis, but rather was designed primarily to respond to specific requests for assessments. NCIB sent information requests to the Divisions in anticipation of specific known events or in reaction to information, but did not generally receive reports about any threat information that divisional NSE units collected on an ongoing basis from other units conducting relevant investigations.[753] Jensen explained that it would neither have been possible nor desirable for all 22,000 RCMP members to report threat information to HQ on an ongoing basis since that would have "…chok[ed] the whole system."[754] What this meant, though, was that all information that was relevant to understand the threat at a particular point in time was never available for immediate analysis in one central location. NCIB had to request information from the Divisions every time a threat assessment requirement arose. It is an inadequate explanation that the amount of potentially relevant information would choke operations. Surely the response should be to devise a better and more efficient system.

The reporting delays associated with the decentralized structure of the Force slowed down the transmission and receipt of information for every request. Without access to relevant threat information in real time, NCIB members could not respond to the seriousness of the threat as it evolved and could not redirect intelligence-gathering activities accordingly.[755] The RCMP system was purely reactive and generally unsuited to prevention on a broader, long-term scale.

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750 See Exhibit P-120(c), p. 4 (entry for Sept. 13, 1985: doc 526-3, p. 47); Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2617.

751 Douglas maintained the view that the November Plot information was unreliable throughout: See Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3, entry for Oct. 30, 1984: doc 526-3, p. 29 and entry for Nov. 1, 1984: doc 526-3, pp. 26-27) and p. 6 (entry for Feb. 18, 1986: doc 526-3, pp. 74-75 and entry for March 5, 1986: doc 526-3, p. 86). See also Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4107.

752 See Section 2.3.1 (Post-bombing), November 1984 Plot.

753 Efforts were at times made to encourage the divisional units to engage in this ongoing collection of information: Exhibit P-101 CAC0283, pp. 2-3, CAC0495, p. 2.

754 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5448.

755 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2726.

CSIS threat assessments did generally attempt to discuss the broader current threat context, but they were not routinely transmitted to NCIB until April 1985.[756] Before that time, P Directorate received both the CSIS and the NCIB threat assessments, but did not automatically pass on the CSIS assessments to NCIB. NCIB could have accessed these assessments through the RCMP central records,[757] but it was not in the practice of regularly searching those records to ensure that its assessment of the threat situation took into account all available information.[758]

The RCMP also received other threat information that was not provided to NCIB. The HQ P Directorate received information about threats to Indian interests and to Air India directly from the Department of External Affairs and from the airline, but this information was often not transmitted to NCIB.[759] The most important example of such information that was never reported or transmitted to NCIB was the June 1st Telex about threats to bomb Air India planes using time-delayed devices.[760] In some cases, this sort of information was not even accessible to NCIB through central records as it was not reported to HQ by local airport detachments.[761] Divisional NSE units were instructed to liaise directly with the VIP Security units in their Division, as these units would at times have information not available to HQ.[762] There is documentation that such liaison occurred within the Divisions,[763] but no indication that P Directorate information was obtained and researched at the HQ level to prepare threat assessments.

The VIP Security Branch of P Directorate would at times receive reports from divisional sections outlining demonstrations, threats and disruptions experienced while protecting Indian officials.[764] VIP Security could take special measures in light of the nature of the threat, such as contacting the "bomb squad" and requesting an explosives vapour detector sweep on diplomatic premises, as was done on June 19, 1985 at the Indian High Commission in Ottawa.[765] Information on such measures and about the unfolding of events involving Indian diplomats was relevant to the threat assessment process. It too, however, was not routinely transmitted, or in some instances not transmitted at all, to NCIB or incorporated in the threat assessment process.[766]

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756 Exhibit P-101 CAA0147, CAB0207, CAB0851, pp. 3-8, CAC0291.
757 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2653.
758 See, for example, Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2597-2598.
759 See the following documents, for which there is no record that the information was transmitted to NCIB: Exhibit P-101 CAA0185, Exhibit P-101 CAC0293, Exhibit P-129; Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732, explaining that NCIB did not receive the June 1st Telex.
760 Exhibit P-101 CAA0185.
761 For example, a July 1984 telex (see Exhibit P-101 CAA0083, CAA0084) noting that an individual had "… volunteered to carry a bomb in his accompanied baggage with a view to blowing up an Air India plane in order to draw attention to the demands of the Sikhs." See also Exhibit P-101 CAC0419, a June 7, 1985 telex indicating that "…enforcement of special measures to deal with increased threat of hijacking and sabotage at airports by extremists should be continued till the end of June 85." See, generally, Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS.
762 Exhibit P-101 CAC0495, p. 4.
763 See, for example, Exhibit P-101 CAC0285, referring to a D Division NSE report which refers to information found in Exhibit P-101 CAC0271, pp. 2-4, a report from D Division VIP Security to HQ VIP Security.
764 See, for example, Exhibit P-101 CAC0233, CAC0271.
765 Exhibit P-101 CAC0441, p. 2; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2717, 2719.
766 Sweeney specified NCIB would not be informed, for example, of the VIP decision to contact the "bomb squad": Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2717-2718.

Assessing and investigating threats to national security requires coordination of potentially disparate pieces of information from a variety of sources which must be pieced together and analyzed. Newly-gathered information can shed light on information already collected, opening new avenues of investigation. A high degree of centralization is necessary for such a process. The reporting gaps in the RCMP structure, as well as NCIB's failure to conduct regular searches of central records,[767] meant that the RCMP threat assessment process was seldom, if ever, in possession of all the necessary information to make the necessary linkages and connections to carry out its role.

Limited Analytical Capability

The NSE members tasked with collecting and assessing threat information often had difficulty appreciating the significance of the information gathered. They did not always see how it related to other information already in the RCMP's possession or understand what information required further investigation and how such inquiries should be conducted.

In E Division, the NSE unit relied on the extremist/terrorist unit of the NCIS for the collection and analysis of threat information.[768] NCIS generally just gathered information and forwarded it with comments to NCIB, relying on the HQ section for analysis of the information. CIS BC could provide an analysis of some of the threat information gathered.[769] However, its primary focus was on organized crime and the nature of the analysis it conducted was very basic and generally only done upon request.[770]

E Division NCIS was often unable to analyze the information in its possession or to use it to calibrate the potential for violence against Indian missions. In May 1985, when the threat to Indian interests in Canada was at a then all-time high,[771] the E Division OIC Operations inexplicably wrote to HQ that "…the assessment [of the threat to Indian interests] in this division at the present moment is at the nil or low threat level"[772] – this, in spite of the fact that Vancouver was considered by CSIS to be a "…hotbed of [Sikh extremism] activity,"[773] where many of the most dangerous Sikh extremist organizations and individuals, such as Parmar and the BK, as well as the ISYF, were operating.[774] On June 14, 1985, shortly after a prominent Sikh extremist commented at the Khurana meeting that something

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767 The Commission saw no indication that the information received by P Directorate from DEA or Air India was taken into account by NCIB. In some cases, NCIB members confirmed that they did not review relevant threat information: See, for example, Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732, confirming that he did not review the June 1st Telex.

768 Exhibit P-101 CAC0495, p. 3.

769 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4032.

770 Final Submissions of the Attorney General of Canada, Vol. I, para. 87; Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3933. About the structure and mandate of CISBC, see Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

771 See Section 1.12 (Pre-bombing), A "Crescendo" of Threats. CSIS, NCIB NSE and other sources indicated that the threat was high: See Exhibit P-101 CAC0338.

772 Exhibit P-101 CAC0347.

773 Exhibit P-101 CAB0207, p. 2.

774 See, generally, Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces. See also April 1985 CSIS threat assessment: Exhibit P-101 CAB0221.

would be done in two weeks about the lack of attacks against Indian officials,[775] E Division NCIS wrote to HQ that it had no intelligence indicating "…that violent or criminal acts are planned for the Consulate or its personnel" and that it was "…unable to determine the potential for violence against the Indian Consulate or its personnel in Vancouver."[776]

The weaknesses in the Divisions' analysis were generally not remedied at the HQ level. Despite documentary references to NCIB's intended analytical role in the new RCMP threat assessment process,[777] NCIB NSE members did not see their role as involving a critical assessment of the overall threat situation or of the specific information received. Rather, they saw it as basically transmitting information to P Directorate and to RCMP Liaison Officers in other jurisdictions.[778] In general, NCIB forwarded correspondence received from the Divisions without providing any value added to the raw information.

Analysis of the November Plot Information

A graphic illustration of the limited analytic capacity of the RCMP threat assessment system is found in the response to the November Plot information.

When the information was initially received by NCIB, the divisional investigator's assessment that it was doubtful was passed to VIP Security. NCIB stated in its message to VIP Security that the information was forwarded "…in the event you may have an interest or other information", adding that other information had surfaced "…casting serious doubts on the validity/reliability of the information", which appeared to be "fabricated."[779] These comments were not the result of an independent analysis of the information, but were a repetition of the messages and information received from E Division.[780] At the time, NCIB only knew of one source for the information: Person 2. It was not aware of a second source, Person 1, who had earlier provided the same information. When NCIB did learn that there were two sources,[781] which was later said to make it "extremely unlikely" that the information was fabricated,[782] it did not question the Division's initial assessment of the information or contact P Directorate to update the assessment. NCIB did not request any further investigation of the information by the Division and seemed content to ask the Division only to provide updates about its investigation.[783]

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775 See Section 1.6 (Pre-bombing), Khurana Information. It is likely that NCIS was directly advised of this information, which was also available in to NCIS in the VIIU files: See Section 3.5.4 (Pre-bombing), RCMP Failures in Sharing with Local Forces.

776 Exhibit P-101 CAC0438. See, generally, Section 1.6 (Pre-bombing), Khurana Information.

777 See Exhibit P-101 CAC0283, p. 2. See also Exhibit P-120(c), p. 3 (entry for Nov. 8, 1984: doc CivLit1).

778 This is how Sweeney, who was in charge of the terrorist desk at NCIB NSE, described his role in connection with the November Plot: Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2595.

779 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).

780 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2596-2597.

781 Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27 and entry for Oct. 30, 1984: doc 526-3, p. 29).

782 Exhibit P-120(c), p. 8 (entry for April 15, 1986: doc 526-3, pp. 1-22); Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2630-2632.

783 Exhibit P-120(c), p. 3 (entry for Nov. 6, 1984: doc 526-3, p. 35).

CSIS had access to less information, but took the threat more seriously from the beginning. Even without being informed of the existence of another source, CSIS concluded from the Person 2 information that there was "…a real possibility that Sikhs will damage an Air India plane" and so advised Airport Policing.[784] Sweeney, who was following up the November Plot information, did not have the benefit of the CSIS threat evaluation before sending the E Division assessment to VIP Security.[785]

Aside from the poor information flow, the RCMP's ability to assess the November Plot threat was further impaired by tunnel vision that plagued both the divisional NCIS and HQ NCIB. NCIB members believed that the threat "was over" once Person 2 had been arrested.[786] In fact, the information received from Person 1 indicated that the plot was only put "on hold" after Person 2's arrest, and that Person 2 was actually making efforts to pursue the plot while in jail.[787] Yet, NCIB waited four months, until March 1985, to request an update when the Division stopped providing information about the investigation after November 1984, and even this update request was viewed as a simple routine follow-up matter.[788] NCIB did not appear to take this threat seriously, in spite of the obvious possibility that the plot could still be executed, and in the face of information tending to indicate that it might be.[789]

Even after the actual bombing of Air India Flight 182, the significance of the November Plot information continued to be overlooked. On the day of the bombing, neither the Division nor NCIB thought to pursue Person 2's offer to provide further information in exchange for an agreement or discussions about the unrelated charges he was facing.[790] Instead, they chose to take at face value his lawyer's assertion that Person 2 did not know anything about the Air India crash, and viewed Person 2's information with skepticism throughout the investigation because he was seeking to bargain away his charges.[791] It is ironic in the extreme that Person 2's offer was simply ignored in light of the fact that the unique access to individuals facing criminal charges, who might wish to trade valuable information in exchange for various benefits, was precisely cited as one of the important advantages of the RCMP's involvement in the threat assessment process.[792]

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784 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p. 5).
785 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2565, 2593-2594, 2597-2598.
786 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2611, 2613-2614.
787 Exhibit P-120(c), p. 2 (entry for Nov. 1, 1984: doc 526-3, pp. 26-27). See Section 1.1 (Pre-bombing), November 1984 Plot.
788 Exhibit P-120(c), p. 3 (entry for March 20, 1985: doc 526-3, p. 44); Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2611.
789 See Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2614, where Sweeney agrees that according to the information available, it was possible that the November Plot could still be executed.
790 Though Person 2's offer was not reported by NCIS immediately after the interview, Sweeney testified that he was aware in that general time frame that Person 2 "…want[ed] to deal": Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2616.
791 Exhibit P-120(c), pp. 3-4 (entry for June 23, 1985: doc 526-3, p. 13) and p. 4 (entry for June 1985: doc 526-3, p. 59). See Section 2.3.1 (Post-bombing), November 1984 Plot and Section 1.1 (Pre-bombing), November 1984 Plot.
792 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5450-5451.

The potential significance of the November Plot information to the Air India investigation was apparently not recognized until September 1985, over two months after the bombing, when an analyst at the HQ Air India Task Force raised the issue and asked that further information be obtained from the Division.[793] This motivated NCIB to begin to request updates from E Division.[794] The analyst had joined NCIB after the bombing for purposes of the Air India investigation, and had to review a significant volume of material before being able to recognize the importance of the November Plot information.[795] Had NCIB NSE had a robust analytical capability from the beginning, the obvious potential relevance of the November Plot information likely would have been recognized earlier.

In any event, in spite of the Air India Task Force analyst's interest, it appears that the November Plot information continued to be viewed as not significant by NCIB members and divisional investigators.[796] Sweeney believed that the information was being pursued only to "tie up loose ends" and that it could not have anything to do with the Air India bombing.[797] E Division simply ignored NCIB's requests for information. In 1986, when the RCMP finally did pursue the November Plot "loose ends", information was uncovered which showed connections between the November Plot and the Air India bombing, including connections between conspirators and sources for the November Plot and Inderjit Singh Reyat.[798] Person 1 also successfully passed a polygraph test substantiating the information provided by Persons 1 and 2.[799] Sweeney testified that the new information obtained would have caused him to view the November Plot issue as more significant in the early stages of the Air India investigation,[800] as would the fact that Person 2 had mentioned the possibility of two planes being bombed before the Air India bombing took place,[801] information which was available to the RCMP but which it never obtained.[802]

The information which would have established the significance of the November Plot and its potential connection with the Air India bombing could only have been obtained through further investigation and follow-up. Because of analytical failures at the divisional and HQ levels, the issue was initially not considered to be worth investigating, and the information did not surface until much later, long after the Air India bombing had occurred and when the investigation was already well under way.[803]

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793 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2617.
794 Exhibit P-120(c), p. 4 (entry for Sept. 13, 1985: doc 526-3, p. 47 and subsequent telexes to the Division); Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2617.
795 Exhibit P-120(c), p. 8 (entry for April 15, 1986: doc 526-3, pp. 1-22).
796 See Section 2.3.1 (Post-bombing), November 1984 Plot.
797 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2617-2618.
798 See Section 2.3.1 (Post-bombing), November 1984 Plot.
799 Exhibit P-120(c), pp. 8-9 (entry for May 1986: doc 23).
800 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2633-2636.
801 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2639.
802 See Section 1.1 (Pre-bombing), November 1984 Plot.
803 See Section 2.3.1 (Post-bombing), November 1984 Plot.

Duplication of Effort

The new RCMP threat assessment process created significant duplication of effort with CSIS, often replicating the same functions for the same information, often with no apparent value added.[804]

No effort was made to coordinate the new RCMP functions with CSIS's work in order to focus on information that the intelligence agency was not already pursuing.[805] RCMP Divisions were advised that their NSE units did not specifically need to request information from CSIS when responding to requests for threat information.[806] While NSE was instructed to maintain close liaison with CSIS, it was asked to "…check out threat assessments with CSIS" only where CSIS could provide criminal investigative leads.[807] In the meantime, the CSIS Threat Assessment Unit (TAU) continued its own separate liaison with RCMP Protective Policing.[808] As a result, CSIS Regions and RCMP Divisions would often be sending the same information for inclusion in threat assessments to the same RCMP P Directorate.

In practice, many, if not most, RCMP threat assessments were identical to the CSIS assessments, with both agencies relying on the same sources.[809] Further, because of the RCMP decentralized structure, CSIS HQ often received information from its Regions faster than NCIB did from its Divisions. As a result, more information would generally be available at CSIS HQ than at NCIB.[810] It seems not only duplicative but pointless to have had the RCMP reviewing and forwarding to P Directorate, through various divisional levels, information which CSIS would have sent earlier in any event.[811] Not surprisingly, RCMP divisional officers complained about this inefficient use of their resources.[812]

Further, divisional NSE units were instructed to review various newspapers and other publicly available materials to identify information "…of a criminal threat assessment value."[813] Such open source materials were said to contain "pre-incident" indicators to reflect the level of tension in various communities and to signal the possibility of law enforcement problems.[814] This was precisely the type of research that CSIS routinely performed in furtherance of its mandate to advise of threats to Canada's security. Information about potential "law enforcement problems" relating to security offences would also necessarily implicate the security of Canada and thus also fall within the CSIS mandate.

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804 Exhibit P-101 CAC0406, p. 3.
805 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2574-2576.
806 Exhibit P-101 CAC0495, p. 4.
807 Exhibit P-101 CAC0495, p. 4.
808 Exhibit P-101 CAA0039(i), p. 51.
809 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2574.
810 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2726-2727.
811 Once received by P Directorate, the information would become available to NCIB through RCMP central records: Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2653-2655.
812 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2574; Exhibit P-101 CAC0406, p. 3.
813 Exhibit P-101 CAC0495, p. 5.
814 Exhibit P-101 CAC0495, pp. 4-5.

Hence, duplication was inevitable. It made no sense to have both agencies review the same materials for the same purpose. With no explanation about the nature of the information with "criminal threat assessment value", as opposed to the general threat assessment value CSIS was looking for, there was little hope the work could be effectively coordinated at the regional level.

Definition of RCMP Role in the Threat Assessment Process

In 1986, Ron Atkey, Chairman of the Security Intelligence Review Committee (SIRC), wrote the following margin notes about directives of the Solicitor General on measures to improve CSIS/RCMP cooperation:

> Until someone defines the difference between security intelligence and criminal intelligence in this area of common concern; … all this will represent is a papering over of the cracks.[815]

The lack of a clear and universally accepted definition of the concept of "criminal intelligence" and how it was to be distinguished from "security intelligence" plagued the RCMP in its early attempts to adjust to the creation of CSIS. It was largely because the concept was never properly understood or defined that the RCMP was unable to find its proper place in assessing and responding to the threat of Sikh extremism.

The threat assessment process set up by the RCMP was, in some respects, based on undefined, and in some cases questionable, assumptions about the respective RCMP and CSIS mandates. As a result, it was difficult for the RCMP to develop a unified or coherent vision of the nature, scope and purpose of its involvement in the threat assessment process and to adequately explain the objectives of its threat assessment process to its members. This lack of clarity had an impact on the RCMP's ability to identify, report and investigate threat information.

When the Government decided to create CSIS, there was a perception in the RCMP that a gap was created which would prevent it from carrying out its policing activities, in particular with respect to national security offences and terrorism.[816] Many in the RCMP felt that relying exclusively on CSIS for the Force's intelligence needs was neither realistic nor workable.[817] Given its own mandate, the Force saw that overlap was inevitable in the field of security offences.[818] It was believed that the RCMP needed to retain a complementary role in intelligence-

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815 Exhibit P-101 CAA0484, p. 6. See also Testimony of Ronald Atkey, vol. 49, September 20, 2007, pp. 5981-5982.

816 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5358-5359, 5396.

817 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5360, 5373-5374; Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9331-9332, 9338.

818 Exhibit P-101 CAC0030, pp. 2, 4.

gathering for information connected to law enforcement activities.[819] In particular, Commissioner Simmonds indicated that no clear dividing line could be drawn between the role and responsibilities of CSIS and the RCMP in the realm of counterterrorism.[820] Because terrorist acts are criminal,[821] the RCMP viewed terrorism-related intelligence-gathering work as part of its core law enforcement mandate.[822] Simmonds explained that in his view, the *CSIS Act* did not give CSIS primacy in the area of intelligence-gathering relating to terrorism and did not exclude the RCMP, since no legislative amendments limited the "… traditional and needed role of the police force."[823]

The RCMP adopted the concept of "criminal intelligence" to describe the new role it intended to assume in intelligence-gathering and threat assessment. As Atkey correctly perceived, the distinction between criminal and security intelligence was untenable and incapable of definition. The new RCMP threat assessment process appears simply to have assumed that members would know the difference between "security intelligence" and "criminal intelligence" when they saw it, even though the upper echelons of the Force understood that there was no clear demarcation.[824] The repeated use of equally undefined concepts, such as "legitimate law enforcement interest",[825] to describe the scope of RCMP intelligence-gathering activities did nothing to ease the confusion about the role of the RCMP and its relationship to CSIS in the area of intelligence collection.

Not surprisingly, members in the Divisions remained unsure of the RCMP's threat assessment mandate and its relationship to CSIS threat assessment.[826] At NCIB itself, there was initially no clear understanding of the role of NSE vis-à-vis the CSIS TAU which continued to have a direct relationship with P Directorate, the main consumer of threat assessments.[827] P Directorate itself was uncertain about the role that NCIB NSE was supposed to carry out and, as a result, did not generally view NCIB as a resource for information or assessments.[828]

At times, the RCMP threat assessment process was misunderstood by those very members in charge of implementing it. The NSE responsibility to collect and report threat assessment information was not understood clearly within the RCMP in light of NSE's lack of an investigative role.[829] At H Division, the DIO, whose duties included assigning follow-up investigations of threat information

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819 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5372.
820 Exhibit P-101 CAA0474, pp. 8-10; Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9345.
821 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2576. See also Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1666 and Exhibit P-101 CAA0474, p. 8, where Simmonds wrote "…we view terrorists as criminals and we view their activities as crime."
822 Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2575-2576.
823 Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9328, 9351-9353.
824 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1662. See also the Ministerial Directive recognizing this: Exhibit P-101 CAA0081, p. 12.
825 Exhibit P-101 CAA0039(i), p. 16.
826 Exhibit P-101 CAC0406, p. 3.
827 Exhibit P-101 CAA0039(i), p. 51.
828 Exhibit P-101 CAC0278; Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2578; Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2934; Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2809-2810, 2888.
829 Exhibit P-101 CAC0495, p. 2.

to appropriate investigative units at NSE's request,[830] was of the view that, because of the lack of investigative mandate or capacity at NSE, the RCMP was "totally dependent" on CSIS for intelligence collection and analysis.[831] The Commanding Officer of the same Division, for his part, was under the impression that the purpose for establishing RCMP units to collect intelligence and investigate dissident individuals and groups[832] was "…to replace the RCMP Security Service that was lost when CSIS was established."[833]

Some of the rationales invoked to explain the necessity of the new RCMP threat assessment process also added to the confusion.

The security offences mandate conferred on the RCMP in the *CSIS Act*[834] was sometimes described as a "new" mandate involving additional responsibilities and justifying new activities for the criminal operations side of the Force.[835] In fact, the security offences mandate was not truly new. The RCMP was always responsible for investigating offences relating to national security as part of its federal "security enforcement" duties and was always responsible for a wide range of protective policing activities.[836] The only practical difference which resulted from the legislative statement in the *CSIS Act* was that the RCMP was now granted primary jurisdiction nationwide, whereas traditionally provincial or local forces had been responsible for law enforcement activities in their respective jurisdictions for all offences.[837] Further, the RCMP protective policing responsibilities – sometimes portrayed as expanding and viewed as requiring the Force to acquire its own threat assessment capacity because of an increase in violent or potentially violent activities targeting protected persons and missions[838] – had also formed part of the RCMP's responsibilities for a long time and had not previously been seen as necessitating the creation of an independent threat assessment process on the criminal operations side of the Force.

CSIS's mandate did not prevent it from continuing to provide the necessary threat information and assessments which the Security Service used to provide,[839] and the RCMP's mandate, whether in relation to protective policing or "security offences", did not require it to perform this intelligence-gathering itself. The fact

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830 Exhibit P-101 CAC0283, p. 6.
831 Exhibit P-101 CAA0531, p. 2.
832 This was said to have been proposed in a Commissioner's Strategic Issues Paper: Exhibit P-101 CAA0144, p. 1. Note that the Strategic Issues Paper appears to be the document described in Exhibit P-101 CAA0162 as a March 1985 draft Strategic Plan prepared by the Planning and Evaluation Branch.
833 Exhibit P-101 CAA0144, p. 1.
834 S.C. 1984, c. 21, s. 61(1).
835 See, for example, Exhibit P-101 CAC0286, p. 2 and Exhibit P-101 CAC0495, p. 5. The security offences mandate was also perceived as conferring on the RCMP "…new and added responsibilities regarding the protection of Canada's Diplomatic Community," in addition to the traditional RCMP protective policing responsibilities with respect to foreign missions and personnel: Exhibit P-101 CAC0214, p. 2, CAC0216(i), p. 2.
836 Exhibit P-101 CAA0081, pp. 3-4.
837 Exhibit P-101 CAA0081, p. 6; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5398.
838 Exhibit P-101 CAC0283, pp. 4-5, CAC0495, p. 5.
839 According to the Minister, that mandate was, on the contrary, "…sufficiently broad to permit the Service to satisfy RCMP security intelligence needs": Exhibit P-101 CAA0081, pp. 8-9.

that the Security Service had been taken away from the RCMP did not necessarily have to create a gap in the threat assessment process. However, some gaps did already exist in the pre-existing threat assessment process or could have resulted from the creation of a separate intelligence agency. Unfortunately, the new RCMP process did not address these issues.

Failure to Address Gaps

Long before the creation of CSIS, gaps were evident in the Security Service threat assessment process. The Security Service in many respects operated separately from the rest of the RCMP.[840] It often did not have access to the information gathered by the criminal operations side of the Force. As a result, for the four years preceding the creation of CSIS, members of the Security Service Threat Assessment Unit (TAU) had repeatedly requested a role for C Directorate (the criminal operations side of the RCMP) in the threat assessment process. The TAU members attempted to provide threat assessments "more or less" from a Force "perspective", but could not fully explore and report criminal aspects.[841]

Because the Security Service did not have access to threat information obtained by the RCMP in the conduct of its regular policing activities, relevant information was excluded from its threat assessment process. As a law enforcement agency, the RCMP had unique access to information from a wide range of individuals facing criminal charges and willing to trade information for various benefits or advantages.[842] Proven law enforcement approaches, such as the use of undercover agents, informants, *Criminal Code* wiretaps and search warrants, would inevitably gather intelligence which could serve to prevent terrorist acts.[843] None of this information would normally find its way into the Security Service threat assessment process. The creation of an RCMP threat assessment process after the Service's separation from the Force would have been a perfect opportunity to address this issue. Instead, the RCMP created a parallel structure and, as it focused on its own requirements and had difficulty ensuring that information was reported centrally in its own system, it did not always provide CSIS with access to the security-related information its investigative units obtained.

Without access to all relevant information, CSIS's ability to assess the threat was impaired. CSIS complained about what it viewed as the RCMP's intention to develop "…a completely parallel investigative capability."[844] SIRC also expressed concerns about the potential RCMP parallel intelligence-gathering capability, which could conflict with CSIS responsibilities and even represent a step backward from the McDonald Commission.[845] Wanting to ensure that it obtained all the intelligence necessary to conduct its protective and preventative policing

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840 Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9317-9318.
841 Exhibit P-101 CAC0275, p. 2.
842 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5450.
843 Exhibit P-101 CAA0474, pp. 8-10.
844 Exhibit P-101 CAA0162, p. 3, CAA0293, p. 1, CAA0444, CAA0531, p. 1, CAC0029, CAC0030.
845 Exhibit P-101 CAA0474, CAA0507; Exhibit P-144: *Security Intelligence Review Committee Annual Report 1985-86*, p. 7 [SIRC 1985-86 Annual Report].

operations, the RCMP actually missed the opportunity to resolve an operational problem which could weaken the assessments of the intelligence agency on which it was to rely.

Possibility of Delay

There were issues related to the creation of a separate intelligence agency which, if left unaddressed, would compromise the utility of CSIS threat assessments to the RCMP. One such issue was the possibility of delay.[846] Security enforcement could be carried out by the RCMP on the basis of CSIS intelligence, but the information would have to be received in a timely manner.[847] For protective policing, delay could lead to the failure to take action in time. For "security offences" investigations, delays could compromise the criminal investigative tools needed for a subsequent prosecution.[848] This real and important concern was not resolved when the RCMP created its own threat assessment process. On the contrary, the RCMP system often involved more delays in the reporting of information than the CSIS system already in place.

Judicial Process Issues

Other potential issues with the reliance of the RCMP on CSIS threat assessments were related to the judicial process.[849] In cases where threats materialized or conspiracies were hatched, the RCMP would be conducting criminal investigations. If RCMP members sought search warrants or wiretap authorizations under the *Criminal Code*, they could be legally required to disclose any CSIS information in their possession.[850] If CSIS then successfully objected to having its information made public, it could jeopardize subsequent criminal prosecutions.[851] To the extent that the RCMP had to rely on CSIS information in prosecutions, concerns could arise where the information was not collected in accordance with applicable evidentiary standards.[852] Such downstream issues, involving subsequent use of CSIS threat assessment materials were not, strictly speaking, relevant to the actual purpose of threat assessments for protective policing or for preventive purposes, but were understandably of concern to the RCMP.

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846 The RCMP needed to receive information in a timely manner in order to be able to take any action necessary: Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5361, 5372-5373; Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1665. See also Exhibit P-101 CAA0474, p. 11, CAC0030, where Simmonds expressed these concerns in August 1986, and Exhibit CAD0027, pp. 3-4, where the Solicitor General expressed the same concerns in May 1985.

847 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1674.

848 Exhibit P-101 CAD0027, p. 3.

849 Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9328, 9331.

850 See Section 4.4 (Post-bombing), CSIS Information in the Courtroom and Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

851 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1657-1658; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5366, 5369; Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9326-9327, 9329.

852 See Section 4.3.1 (Post-bombing), Tape Erasure and Section 4.3.2 (Post-bombing), Destruction of Operational Notes.

The issue of subsequent use of intelligence in the judicial process, which already existed in the Security Service days,[853] was not resolved through the creation of the parallel RCMP threat assessment process. On the contrary, the issue became extremely important in the RCMP post-bombing investigation.[854] The model envisaged in the *CSIS Act* and the Ministerial Directive attempted not only to separate intelligence-gathering from criminal investigations and prosecution, but also to avoid duplication. While this strict separation of mandates could create problems in subsequent prosecutions, especially in light of legal disclosure requirements, the creation of a separate RCMP system for assessing "criminal intelligence", as opposed to the "national security intelligence", could not achieve the twin goal of before-the-fact prevention through adequate threat assessment and after-the-fact prosecution through access to evidence which could be admissible in a court of law. As shown in the Air India investigation itself, it was inevitable that CSIS would gather some information which could be relevant to subsequent prosecutions, regardless of the existence of an RCMP threat assessment process. Meanwhile, the parallel process deprived CSIS of the opportunity to perform a global assessment of all relevant threat information.

Conclusion

The threat assessment process set up by the RCMP was not well-adapted to gathering, centrally assessing and investigating threat information. It relied on units that were not sufficiently trained or resourced to perform their intended assessment role. The process was overly decentralized, which prevented the adequate control of investigations. The RCMP reporting structure prevented the Force from being able to respond to threat information in a timely manner. The RCMP proved incapable of drawing on information already in its possession, or of aggregating information from sources to which it had unique access, and it brought no special analytical skills to bear in order to identify the national security significance of information. RCMP threat assessments largely duplicated CSIS's work, to little positive effect and, in some cases, with negative results.

3.5 Information-Sharing Failures

3.5.1 CSIS/RCMP Relations and Information-Sharing Policies

Introduction

During the period immediately preceding the Air India bombing, information did not always flow smoothly between CSIS and the RCMP. The agencies struggled to make sense of the new legislation and policies focussed on separating their mandates. They tried to implement information-sharing mechanisms within the siloed intelligence system created by government. At times, the efforts of individuals within each agency to maintain and improve information sharing, despite legislative shackles and practical difficulties, were commendable. In

853 Testimony of Robert Simmonds, vol. 74, November 8, 2007, pp. 9326-9327.
854 See Section 4.1 (Post-bombing), Information Sharing and Cooperation in the Air India Investigation.

many other instances, however, members of both agencies seemed to lose track of the higher purposes they were pursuing. Growing tensions, high-level debates, mistrust and legalistic arguments often characterized the early relationship between CSIS and the RCMP. Those tensions had an impact on the amount of information exchanged and on the sources of information available to CSIS.

CSIS/RCMP Information-Sharing Policies

Information sharing between the RCMP and CSIS was recognized as a major area of concern during the CSIS transition. The development of the MOU for the Transfer and Sharing of Information[855] was one of the most important and most contentious issues for the Security Intelligence Transition (SIT) Group.

In the Memorandum of Understanding (MOU), signed immediately after the creation of CSIS on July 17, 1984, the two agencies agreed to share any information relevant to each other's roles and responsibilities as the information became known or available, or upon request. The MOU clearly stated that neither agency would have an unrestricted right of access to the records of the other agency. The MOU assigned to the Solicitor General the role of adjudicator in the case of information-sharing disagreements. While the MOU provided general information-sharing principles, it left the responsibility for establishing specific procedures to implement these principles to the CSIS Director and the RCMP Commissioner.

Professor Wesley Wark described the situation set out by the 1984 MOU as a "… silo arrangement …connected by an informational ramp", in which information flowed only one way: from CSIS to the RCMP.

> CSIS was, in many respects, the tall silo, with its lofty strategic intelligence gaze. The RCMP was the stumpy silo, engaged on in-the-trenches tactical intelligence and case work. The informational ramp flowed one-way.[856]

The Solicitor General, the Honourable Robert Kaplan, recognized the potential for overlap and duplication between CSIS's security intelligence function, as set out by the *CSIS Act*, and the RCMP's security enforcement function, as set out in the *Security Offences Act* component of the same Act. While the main body of the *CSIS Act* established CSIS as the agency charged with collecting intelligence, the *Security Offences Act* (which began life as a part of the *CSIS Act*) assigned the RCMP primary responsibility to perform peace officer duties in relation to offences deemed to be threats to the security of Canada (security enforcement)

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855 Exhibit P-101 CAA0076.

856 Wesley Wark, "The Intelligence-Law Enforcement Nexus: A study of co-operation between the Canadian Security Intelligence Service and the Royal Canadian Mounted Police, 1984-2006, in the Context of the Air India terrorist attack" in Vol. 1 of Research Studies: Threat Assessment RCMP/CSIS Co-operation, p. 172.

or offences against internationally protected persons (protective policing). Minister Kaplan issued a Ministerial Directive on July 29, 1984 laying down six principles to guide the discharge of the security responsibilities of CSIS and the RCMP.[857]

- The RCMP will rely on CSIS for intelligence relevant to national security offences;
- CSIS will pass to the RCMP intelligence relevant to RCMP security enforcement and protective security responsibilities;
- The RCMP will pass to CSIS information relevant to the CSIS mandate;
- The RCMP will be the primary recipient of security intelligence on national security offences and responsible, where they consider it necessary, for the passage of such intelligence to local enforcement authorities;
- The RCMP and CSIS will consult and cooperate with each other with respect to the conduct of security investigations;
- The RCMP and CSIS will conduct security investigations in accordance with guidelines, standards and direction provided by the Solicitor General.

The first principle clearly affirmed CSIS primacy in the field of security intelligence: the RCMP would *rely* on CSIS for intelligence relevant to national security offences. Another principle directed the RCMP to pass to CSIS information relevant to its mandate.[858] In effect, CSIS was intended to be a repository of intelligence information, with the RCMP stripped of any mandate to undertake security intelligence analysis. However, Minister Kaplan anticipated the need for close liaison between CSIS and the RCMP to ensure that national security measures were dealt with effectively and efficiently. The Ministerial Directive authorized the RCMP Commissioner to establish a dedicated liaison unit to facilitate information sharing.

In some ways, the Ministerial Directive[859] illustrates the intention for a two-way information flow between CSIS and other agencies, including the RCMP, envisioned by the *CSIS Act*. Yet, the *CSIS Act*, the MOU and the Kaplan directive all also emphasize maintaining separation between the law enforcement and security intelligence functions of the RCMP and CSIS. According to Wark,

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857 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1468-1469.
858 Exhibit P-101 CAF0030, pp. 9-10. See the related document focusing on the RCMP role in security investigations at Exhibit P-101 CAA0081.
859 Exhibit P-101 CAF0030.

intelligence failures have been identified as inevitable consequences of maintaining such separation.

> The major weakness, in retrospect, of the 1984 MOU and the Kaplan directive was in its emphasis on a linear, one-way flow of intelligence from CSIS to the RCMP. Not only was CSIS distinguished by way of its monopoly on threat assessments and security intelligence, it was also assumed that the RCMP would have relatively little to contribute of a security intelligence nature from its own sources and knowledge …. [I] n [the government's] desire to separate out intelligence from law enforcement, it created a system that was overly rigid, that made sense in theory, but wasn't going to make sense at the end of the day, in practice. It took us a long time, I think, to recognize the practical deficiencies of this theory, because we were wedded to the theory – the theory itself.[860]

The Government of Canada had established a siloed intelligence system.[861] The focus was on ensuring that the mandates and roles of CSIS and the RCMP remained distinct and separate, in response to the recommendations of the McDonald Commission. The policies called for cooperation, but failed to provide the operational bridges to ensure efficient and effective cooperation between these "siloed" agencies.[862]

Interagency Relations

Tensions often arose between the RCMP and the new intelligence agency during the years following the creation of CSIS. The agencies became involved in a number of long-running disputes over their mandates in the national security field, which led to reluctance to share intelligence, both prior to the Air India bombing and in its aftermath. The results were detrimental to the security interests of Canada.

At the senior level, there were debates on matters of principle. The RCMP perceived the "national enforcement" duties granted in the *Security Offences Act* as powers that would require it to develop new intelligence collection capabilities to support its investigations into national security offences. CSIS expressed concern that RCMP intelligence-gathering activities infringed on its mandate. The RCMP vigorously disagreed.[863] The RCMP Deputy Commissioner of Operations and the CSIS Director General of Foreign Liaison are recorded as having a "…rather stark divergence of opinion" about the appropriate roles for the two agencies in national security investigations, and about the RCMP's

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860 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1469-1470, 1475.
861 Testimony of Wesley Wark, vol. 16, March 5, 2007, p. 1486.
862 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1486-1487.
863 See, for example, Exhibit P-101 CAA0444, CAA0531, p. 1, CAC0029, pp. 1-2. See also Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5424.

intention to develop what CSIS saw as a parallel investigative capability.[864] Deputy Commissioner Henry Jensen thought the CSIS concerns were slightly paranoid, and ultimately motivated by a fear that the RCMP might target CSIS sources, reveal their identity or expose them to prosecution.[865] High-level correspondence passed between the agencies on this issue, with the Security Intelligence Review Committee (SIRC) and the Solicitor General being informed and participating.[866]

The RCMP concern was that it was not receiving the information it needed from CSIS. Section 19 of the *CSIS Act* provided that "…the Service *may* disclose information" to police, where the information could be used for "investigation or prosecution" of offences.[867] The MOU about the transfer and sharing of information between CSIS and the RCMP provided that "CSIS *shall* provide …to the RCMP as it becomes known/available" information relevant to a number of RCMP responsibilities, including the investigation of criminal offences relating to national security.[868] The RCMP interpreted the MOU as making CSIS disclosure mandatory, despite the discretion conferred by the *CSIS Act*.[869] CSIS disagreed and interpreted section 19 as permitting CSIS to disclose, but leaving the final discretion in the hands of the CSIS Director.[870] The discrepancy between the MOU and the *CSIS Act* "…prompted operational confusion between the two agencies on the obligation or discretion to share information,"[871] and left a dysfunctional system, one more susceptible to fail in the war on terror.

Debate arose because of the RCMP view, supported by a Cabinet decision, that it was to play the role of an intermediary between CSIS and local police forces for the purposes of passing on national security intelligence.[872] CSIS rejected this view because the Service feared that unless information could be exchanged directly with local and provincial forces, the police agencies might hold back important intelligence in the belief that CSIS was not being cooperative.[873] CSIS wanted to continue its direct and sustained exchanges of information with local and provincial police forces,[874] while the RCMP feared that such exchanges would cut them out of the information loop and perhaps lead to local forces acting unilaterally on the basis of CSIS information.[875] The result was yet more debate[876] and high-level exchanges of correspondence,[877] including RCMP complaints that CSIS information transfers to local forces violated RCMP/CSIS

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864 Exhibit P-101 CAA0293.
865 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5434-5435, 5453.
866 Exhibit P-101 CAA0474, CAC0029, CAC0030.
867 *CSIS Act*, S.C. 1984, c. 21, s. 19 (R.S.C. 1985, c-23, s. 19) [Emphasis added].
868 Exhibit P-101 CAA0076; Exhibit P-105, Tab 2 [Emphasis added].
869 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1651, 1654-1656, 1676-1677.
870 See Section 4.0 (Post-bombing), The Evolution of the CSIS/RCMP Memoranda of Understanding.
871 Final Submissions of the Attorney General of Canada, Vol. I, para. 61.
872 Exhibit P-101 CAA0081, p. 3. See also Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5400-5401 and Exhibit P-101 CAA0039(i), p. 14, CAA0162, p. 1, CAB0189.
873 Exhibit P-101 CAA0154(i), p. 3; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5398-5399.
874 Exhibit P-101 CAA0154(i), p. 3, CAA0162.
875 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5399, 5403.
876 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5400-5401. See Exhibit P-101 CAA0237 and CAB0442, mentioning "interminable discussions leading merely nowhere."
877 Exhibit P-101 CAA0131, CAA0277, CAB0169.

agreements.[878] At times, the RCMP even opposed CSIS participation in Joint Forces Operations, proposing instead that the RCMP act as an intermediary.[879]

There were tensions in the field as well. Sgt. Wayne Douglas, the Head of the NCIS Terrorist/Extremist group at E Division, testified that while there may have been some restrictions on the movement of information between criminal operations and the Security Service section of the Force prior to the creation of CSIS, the relationship was a very good one and there was a "…free flow of information." Members could go to the Security Service building anytime, sit down to have an "informal chat" and move freely around the building – they were "…part of the family". After the creation of CSIS, however, requests for information had to be made formally through the CSIS liaison. It took an unacceptable amount of time to obtain the information, and then some of it would usually be "blacked out". Douglas explained that some RCMP members experienced "frustration", or felt "affronted", when CSIS said it was unable to provide certain information to the RCMP.[880]

Vancouver Police Department (VPD) members of the Vancouver Integrated Intelligence Unit (VIIU), to which E Division NCIS was attached, noticed that relations between CSIS and the RCMP appeared strained. Former VIIU member Supt. Axel Hovbrender testified that there was a "…fundamental shift in attitude" after the Security Service went over to CSIS. This new tension in RCMP/CSIS relations impacted on the interagency sharing of intelligence and information in the course of everyday operations in the Division.[881] VPD members of the VIIU felt that CSIS investigators often used them as a conduit to pass information to the RCMP, because strained relations between CSIS and the RCMP made it more difficult to transmit the information directly.[882]

Access to CPIC

CSIS access to the Canadian Police Information Computer (CPIC) became the subject of acrimonious debate in the years following the creation of the new agency,[883] and led to comment in at least three annual reports from the Security Intelligence Review Committee (SIRC).[884]

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878 Exhibit P-101 CAB0189. Ultimately, CSIS took the position that where the RCMP claimed jurisdiction or the Minister established that an investigation was covered by the *Security Offences Act*, CSIS information would be forwarded exclusively to the RCMP, except where a Joint Forces Operation (JFO) was in place, in which case it would be forwarded to all participants simultaneously. In all other cases, all information would continue to be passed to the RCMP pursuant to the MOU, but CSIS could also, at its discretion, pass information directly to local forces without using the RCMP as an intermediary: See Exhibit P-101 CAA0054(i), CAA0162, pp. 6-7, CAA0237, pp. 1-2 and CAA0277, p. 1.

879 Exhibit P-101 CAA0162, p. 5.

880 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4036-4037, 4111-4112.

881 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3875, 3917-3918.

882 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3875, 3917.

883 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1645.

884 Exhibit P-143: *Security Intelligence Review Committee Annual Report 1984-85* [SIRC 1984-85 Anuual Report], p. 13; Exhibit P-144: SIRC 1985-86 Annual Report, pp. 22-23; Exhibit P-145: *Security Intelligence Review Committee Annual Report 1986-1987*, pp. 14-15 [SIRC 1986-87 Annual Report].

CPIC, a computerized, radio-linked network available to police officers across Canada, provided instant access to a wide range of information about individuals, including criminal records, police records, missing persons, stolen property, outstanding warrants, vehicle registration and driver's licence information.[885] CPIC made it possible for investigators interested in a particular target, or "person of interest", to be notified any time a police officer, who encountered that person anywhere in the country, queried the name.[886] As peace officers, RCMP Security Service members had full access to CPIC and its data banks in furtherance of their security intelligence probes.[887]

When CSIS was created, the CPIC access, formerly available to Security Service members directly through their own terminals, ceased.[888] The reason given was that once Security Service personnel went over to CSIS, they became civilians, not peace officers, and no longer qualified for access.[889]

SIRC believed that direct access to CPIC was essential for CSIS personnel to carry out their functions,[890] stating that immediate access to vehicle registration information was invaluable in identifying surveillance targets.[891] Without CPIC access, CSIS personnel "…in hot pursuit of a suspected terrorist" could not obtain needed information; at the same time, police officers throughout Canada could use the CPIC terminals in their vehicles for the most trivial purposes, such as enforcing anti-loitering bylaws.[892] Bill Turner of CSIS also explained that it was important to obtain criminal records information about persons CSIS intended to approach to ensure that they had no history of violence so CSIS investigators did not get into a violent situation.[893]

SIRC rejected the "peace officer" rationale for denying CSIS access to CPIC as "nit-picking"– if there was no problem in CPIC access for Security Service members, there should be no problem in access for CSIS investigators doing exactly the same job.[894]

Though access to CPIC was governed by the CPIC Advisory Committee, a board of representatives from provincial, municipal and regional police forces,[895] SIRC

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885 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1645-1647; Exhibit P-144: SIRC 1985-86 Annual Report, p. 22; Exhibit P-145: SIRC 1986-87 Annual Report, p. 14.

886 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1646. This could be done as a "silent hit", without notification to the officer making the encounter, who could be contacted at a later date to gather additional information or intelligence.

887 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1646-1647; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5381.

888 Exhibit P-143: SIRC 1984-85 Annual Report, p. 13.

889 Exhibit P-145: SIRC 1986-87 Annual Report, p. 14; Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1645, 1648; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5381.

890 Exhibit P-143: SIRC 1984-85 Annual Report, p. 13; Exhibit P-144: SIRC 1985-86 Annual Report, p. 22; Exhibit P-145: SIRC 1986-87 Annual Report, p. 14.

891 Exhibit P-145: SIRC 1986-87 Annual Report, p. 14.

892 Exhibit P-145: SIRC 1986-87 Annual Report, p. 15.

893 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8280-8282.

894 Exhibit P-145: SIRC 1986-87 Annual Report, pp. 14-15.

895 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1645-1646; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5381.

was of the view that it was the RCMP that was responsible for the reluctance to grant direct access to CPIC.[896] In its 1986-87 Annual Report, SIRC cited the difficulty in gaining access to CPIC as an example of agencies "…giving priority … to parochial turf concerns", again pointing the finger at the RCMP.[897] Accurate or not, such allegations illustrate the level of interagency tension in the relationship at the time.

As head of Law Enforcement Services, Jensen was mandated at the time with addressing the CPIC issue on behalf of the RCMP. He testified that the RCMP was not motivated by any "turf war" concerns[898] and denied that the Force had ever objected to direct CPIC access for CSIS.[899] He pointed to objections from municipal and provincial police forces as the cause for denying CPIC access to CSIS.[900] Jensen explained that the RCMP did not have a majority of votes at the CPIC Committee, and was unable to win the support of local forces for RCMP proposals to grant CSIS access. He stated that these proposals were presented and rejected many times at annual CPIC Committee meetings.[901] He explained that, despite extraordinary steps by RCMP in support of CSIS access (including obtaining a director position with the Canadian Association of Chiefs of Police (CACP) for purposes of lobbying in favour of the proposal), it was not until approximately four or five years after the creation of CSIS that the RCMP proposal finally carried the majority on the issue.[902]

The full record about this matter is somewhat less straightforward. The RCMP's initial position was to support limited CSIS access to CPIC, confined to motor vehicle information.[903] The Force approached the CPIC Committee with this proposal in September 1985[904] and began to make arrangements for the installation of terminals, anticipated for August 1986, once consent from the provinces had been obtained. In 1986, the RCMP also agreed, after considering the matter for some time, to raise the broader issue of CSIS access to criminal records data at the next CPIC Advisory Committee meeting.[905] Meanwhile, however, SIRC entered the debate with strongly worded comments in its 1985-

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896 SIRC wrote that the RCMP was a "major participant" in the CPIC Committee which continued to deny direct CPIC access to CSIS: Exhibit P-144: SIRC 1985-86 Annual Report, p. 22.

897 Exhibit P-145: SIRC 1986-87 Annual Report, p. 15.

898 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5380-5381, 5452-5453.

899 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1650. The RCMP was, on the contrary, "…anxious for CSIS to have direct access" to CPIC: Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5393.

900 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1648-1659. The issues included provincial concerns about making driver's licence and vehicle registration information available without the assurance that it would only be used for legitimate law enforcement purposes.

901 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1645-1646; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5392-5393. See also Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5469, indicating that the RCMP had made attempts to convince the CPIC Committee to grant access to CSIS since 1984.

902 Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1671-1672; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5393-5394, 5469.

903 This was after RCMP Identification Services and the CPIC Advisory Secretariat had recommended in July 1985 that the RCMP Commissioner support CSIS's approach for access to RCMP criminal history and motor vehicle databases: Exhibit P-101 CAD0035, p. 3.

904 Exhibit P-101 CAA0398, CAD0035, p. 3.

905 Exhibit P-101 CAA0398, CAA0474, pp. 11-12.

86 Report.[906] In response, the RCMP Commissioner wrote to the Solicitor General with a list of factors militating against more general direct access for CSIS. The letter pointed out that, because they were not peace officers, CSIS personnel would not have the necessary powers to fulfill the requirement that CPIC information be verified prior to its use. Unlike peace officers, CSIS personnel had no authority to fingerprint suspects, to stop vehicles to check their occupants or to conduct interviews in the course of criminal investigations as means of verification. Also mentioned was the fact that other police agencies provided access to criminal records information for law enforcement and administration of justice purposes only.[907] Since they were not peace officers, CSIS personnel had no mandate in either area.

When SIRC learned during its 1985-86 review that CSIS still did not have direct access to CPIC, it recommended that the Solicitor General intervene personally.[908] As a result, the Solicitor General wrote to the RCMP Commissioner in August 1986.[909] He directed the RCMP to present and support a request to the CPIC Advisory Committee for CSIS to have access to all CPIC databases for the purposes of counterterrorism investigations, an initiative he described as having been agreed upon between CSIS and the RCMP.[910] As a result of this Solicitor General directive, Jensen was instructed to gain the support of the CPIC Committee, and he ultimately took steps to get involved with the CACP and shepherd through the CSIS request for CPIC access.[911]

Nevertheless, the following year, SIRC was still describing CSIS access to CPIC as "woefully inadequate", since general access was limited to vehicle registration databanks with only counterterrorism-related access being provided to other databanks.[912] The Review Committee also noted that, as of the end of the 1986-87 review period, the RCMP had only provided four of the long-awaited CPIC terminals[913] to CSIS and had still not made a terminal available at CSIS Headquarters. According to SIRC, there was "no doubt" that the delay reflected a "…continued reluctance to treat CSIS as an equal partner" on the part of the RCMP.[914] Whether accurate or not, the very fact of those allegations is indicative of the difficulties in interagency relations at the time.

Conditions for RCMP Assistance to CSIS

Due to the lack of resources and the lack of proper advance planning when CSIS was created, the new agency needed access, during its early years, to an array of

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906 SIRC implied that the RCMP was responsible for the refusal to provide access to CSIS and was purposefully delaying the installation of computer terminals for CSIS: Exhibit P-144: SIRC 1985-86 Annual Report, pp. 22-23.
907 Exhibit P-101 CAA0474, pp. 11-12.
908 Exhibit P-144: SIRC 1985-86 Annual Report, p. 22.
909 Exhibit P-101 CAC0031. The Solicitor General indicated that the SIRC 1985-86 Annual Report would require a response from him in Parliament.
910 Exhibit P-101 CAC0031.
911 Exhibit P-101 CAC0032, p. 2; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5395.
912 Exhibit P-145: SIRC 1986-87 Annual Report, pp. 14-15.
913 Exhibit P-144: SIRC 1985-86 Annual Report, p. 22.
914 Exhibit P-145: SIRC 1986-87 Annual Report, p. 15.

services and facilities available only through the RCMP.[915] These CSIS needs, and the way the RCMP sometimes responded to them, became an additional source of tension between the agencies.

Before CSIS was granted direct access to CPIC, the RCMP provided indirect access, as well as access to criminal records information from its operational files.[916] Pursuant to an agreement between the agencies, the RCMP would provide CSIS with CPIC and RCMP records information upon request.[917] Initially, neither CPIC printouts nor copies of criminal records, including the photographs they contained, were to be provided.[918] This decision was modified within a short time, with the RCMP concluding, on further review, that copies could be provided.[919]

As a condition for providing access to the CPIC and RCMP records information, the RCMP sometimes imposed reporting and record-keeping requirements that were too onerous under the circumstances. The Force asked that its members verify the purpose of the CSIS requests. The information was to be provided only "…for investigation purposes consistent with that Service's mandated responsibilities pursuant to the *CSIS Act*".[920] Access was to be granted only to CPIC information "…that [CSIS] legitimately required to perform their [*sic*] responsibilities".[921] Access was to be determined on a case-by-case and "need-to-know" basis.[922] RCMP detachments were instructed to provide CPIC assistance to CSIS "…when they were satisfied it was a legitimate request". Because of this requirement, CSIS was asked to provide information showing that its requests were made for "business purposes" and were "within their mandate".[923] The RCMP then kept central records of the assistance provided to CSIS and logs of the CSIS CPIC requests.[924] Initially, CSIS was asked to provide an indication of the purpose of its CPIC requests,[925] but this requirement was soon abandoned.[926] Instead, it was decided that the RCMP would log each CSIS request, noting the name of the CSIS member making the request, the CSIS file number, if available,

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915 See Section 3.3.1 (Pre-bombing), The Infancy of CSIS.

916 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1648; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5381-5382. See also Exhibit P-143: SIRC 1984-85 Annual Report, p. 13; Exhibit P-144: SIRC 1985-86 Annual Report, p. 22; Exhibit P-145: SIRC 1986-87 Annual Report, p. 15.

917 Exhibit P-101 CAA0039(i), p. 26, CAC0018, p. 1; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5382. The interagency agreement did not involve the CPIC Advisory Committee: Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5383.

918 Exhibit P-101 CAC0018, pp. 1-2; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5383-5384. Criminal records were not contained on CPIC per se, but a reference to their existence and nature was included and other avenues then had to be pursued to obtain the actual records.

919 Exhibit P-101 CAC0022, CAC0026(i), p. 1. According to Jensen, this review resulted from the RCMP's attempt to be helpful to CSIS and to find a justification to make the access possible, following consultation with legal services: Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5384-5387.

920 Exhibit P-101 CAA0039(i), pp. 24-25.

921 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1648.

922 Exhibit P-101 CAA0039(i), p. 26, CAC0018, p. 1.

923 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5382.

924 Exhibit P-101 CAA0039(i), pp. 24, 28.

925 Exhibit P-101 CAC0027.

926 CSIS regions stopped including this information as of October 1984, though some RCMP members objected: Exhibit P-101 CAC0027. The requirement was not included in the CSIS telex detailing the procedure to follow for CPIC requests: Exhibit P-101 CAC0026(i), p. 1.

and whether the result of the query was negative or positive.[927] The log was then provided to the CSIS regional director on a monthly basis for him to audit the requests in order to ensure that they were made for legitimate CSIS responsibilities.[928] The RCMP retained copies of the forms it had CSIS fill out to request CPIC and RCMP criminal records information as well as a record of the information it released to CSIS.[929]

These RCMP requirements were problematic for CSIS in light of the highly classified nature of its operations.[930] The RCMP D Division Commanding Officer expressed doubt that "CSIS will be particularly willing to give us much information to identify their case files" and noted that, in any event, he was "… not sure how we will know when the requested information relates to their mandated responsibilities".[931] CSIS directed its employees, early on, to refrain from including any operational file numbers on the RCMP request forms, since the forms would be retained by the Force.[932] According to Jensen, recording information about the CSIS queries was necessary for audit purposes, to ensure that the integrity of the CPIC system was protected and that no *Privacy Act* violations were committed.[933] The RCMP policed the requests of its own members through a tracking system that could identify requestors, who could then be held accountable if subsequent audit revealed that improper queries were made.[934] Requesting the information from CSIS was to serve the same purpose.[935]

SIRC weighed in on this issue as well. Its 1986-87 Report states that the RCMP system for providing indirect CPIC access to CSIS fostered "…an unwarranted notion that CSIS is a junior partner to the RCMP," and that it created unnecessary delay for CSIS to obtain the information.[936] As Turner testified, the requirement to fill out a form and wait for the RCMP to provide CPIC information prevented CSIS from "…seiz[ing] the opportunity" to approach individuals of interest immediately, as the Service had to wait to obtain a response to its queries.[937]

In subsequent years, CSIS learned that the RCMP had used its records of CSIS requests for access to CPIC for purposes other than auditing. Turner, who learned about this when he was given access to a Crown database during the preparation for the trial of Malik and Bagri,[938] explained in testimony:

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927 Exhibit P-101 CAA0039(i), pp. 28-29, CAC0018, p. 1.
928 Exhibit P-101 CAA0039(i), pp. 28-29, CAC0018, p. 1.
929 Exhibit P-101 CAA0039(i), p. 27, CAC0026(i), p. 2.
930 Exhibit P-101 CAC0018, p. 1.
931 Exhibit P-101 CAC0016, p. 1.
932 Exhibit P-101 CAC0026(i), p. 2.
933 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5383, 5470.
934 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5382-5383, 5470.
935 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5470.
936 Exhibit P-145: SIRC 1986-87 Annual Report, p. 15. Jensen also recognized that the system probably required more time for CSIS to complete its work: Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5387.
937 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8280-8281.
938 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8282-8283.

> …we found out later they had an operation called Operation Backtrack, I think it was called.
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> …
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> Well, what it entailed is, they would take our CPIC checks and go out and use them as investigative leads. And in the 1980s there was a number of incidents which were somewhat suspicious in that, we would be doing surveillance on a vehicle and then decide to go and approach that person and find out the RCMP had been there a day or two before us.[939]

In connection with its Air India investigation, the RCMP used the records of CSIS CPIC requests to conduct a search of the CSIS queries from early 1985. The names of the individuals queried were then carded by the RCMP, although no further action appears to have been taken.[940] The very possibility that the RCMP could use its records to obtain information about CSIS operations would understandably have given CSIS pause before it requested the CPIC information it needed from the RCMP. As Turner explained, it "…created an atmosphere of suspicion."[941] Former CSIS investigator Laurie testified that he often refrained from including the names of potential sources on the lists sent to the RCMP for CPIC and operational records checks, since he had in the past encountered circumstances where the RCMP used the information on the CSIS lists to approach potential CSIS sources, and this then made the CSIS approach more difficult.[942]

The RCMP also requested and recorded information about CSIS warrants for the interception of private communications (section 21 warrants) in order for the Force to provide operational assistance in executing the warrants. The RCMP had agreed to provide operational assistance when CSIS was created, but on the condition that RCMP members would be able to view the CSIS warrant in advance and maintain a record of all cases where assistance was rendered.[943] This record contained information about the CSIS warrant, the CSIS operative involved, the type of assistance rendered and even the type of investigation being conducted by CSIS in connection with the warrant.[944] The information was used to enable the RCMP to understand the degree and level of support provided to CSIS and to evaluate the need for resources accordingly.[945]

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939 Testimony of Bill Turner, vol. 66, October 25, 2007, p. 8281.
940 Exhibit P-101 CAF0343(i), p. 79.
941 Testimony of Bill Turner, vol. 66, October 25, 2007, pp. 8281-8282.
942 Testimony of William Laurie, vol. 61, October 15, 2007, pp. 7400-7402. Laurie explained that in cases where the RCMP approached a potential source before CSIS, the source might be more reluctant to speak with CSIS if the source was afraid of police. In cases where the RCMP approached a potential source shortly after CSIS, the source might cease to cooperate out of fear that CSIS might provide information about the source to the police.
943 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5374-5376; Exhibit P-192, paras. 1-3.
944 Exhibit P-192, paras. 3-4.
945 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5376-5377.

Jensen explained that it was necessary for the RCMP to view the CSIS warrant, prior to providing assistance, to ensure that RCMP members operated legally and could be held accountable. He did, however, add that recording information about CSIS investigations was also seen by the RCMP as a means to gain a better understanding of CSIS operations and to avoid conflicts if possible.[946] However laudable the motive, requiring the new agency to provide sensitive information in exchange for needed assistance would almost certainly create an atmosphere of suspicion and hostility – one hardly conducive to efficient cooperation.

Conclusion

Interagency tensions affected the free flow of information between CSIS and the RCMP during the pre-bombing period. Some of the formal information-sharing mechanisms put in place only created more debate because of their rigidity and their intrusiveness into CSIS investigations. The system put in place by government, overly focused on the separation of mandates, was less than ideal to encourage close cooperation between the agencies. At times, rather than make the best out of a bad situation, the agencies appear to have made the situation even worse by adhering to inflexible positions in increasingly frequent debates and conflicts.

3.5.2 CSIS Failures in Sharing with RCMP

Introduction

While CSIS often passed information to the RCMP, particularly in the threat assessments it provided the Protective Policing Directorate (P Directorate), not all information was shared. At times, CSIS limited information-sharing for reasons of secrecy and to avoid "redundancy" in its TA product. In other cases, CSIS failed to include in its TAs background information it had in its possession that would have better allowed the RCMP to interpret the information being provided. In the month preceding the Air India bombing, CSIS failed to include crucial information in the threat assessments it provided to the RCMP.

Vague, Secretive or Incomplete Assessments

CSIS TAs tended to be concise and general. They would directly address the particular threat that triggered the TA request, but often failed to include background information that could assist in "connecting the dots". The conclusions CSIS reached about the level of the threat were not expressed in terms that were meaningful to recipient agencies. Advice that the threat level was high, medium or low provided little assistance to the RCMP in tailoring an appropriate response to the threat.[947]

At times, information about the potential target of the threat (for example Air India or an Indian mission, as opposed to "Indian interests in Canada"), its

946 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5377-5378, 5380.
947 See Section 3.3.6 (Pre-bombing), Lack of Meaningful Threat Assessments.

potential nature (for example hijacking or bombing) or its potential authors (for example the names of Sikh extremists under investigation such as Parmar) was simply missing from CSIS threat assessments.[948] At other times, information was deliberately omitted because of secrecy or "efficiency" concerns.

Similar to the practice with internal CSIS communications, sensitive information received from foreign sources might not be included in CSIS's threat assessments. Often, allied agencies placed caveats on the use of their information, requiring consent before CSIS could distribute the information to other agencies. The CSIS threat assessment product was intended for general distribution among partner agencies, and thus CSIS would not include this sensitive information. From CSIS's perspective, omitting the information was certainly less cumbersome than attempting to request consent for its distribution. However, from the perspective of the requesting agencies that were deprived of information, this was far from ideal. The RCMP, in particular, was in charge of implementing security measures in response to potential threats, and therefore needed as much precise and detailed information as possible.[949]

Further, in disseminating its threat assessments, CSIS did not necessarily include the information received from the requesting agency. John Henry, Head of the CSIS Threat Assessment Unit (TAU), who was responsible for the transmission of threat assessments between the RCMP and CSIS, explained that it would be redundant or lead to circular reporting to repeat the underlying information in the assessment.[950] That being said, the fact remains that the source of the underlying information could have been identified to avoid circular reporting. Instead, the practice adopted resulted in assessments that provided only a partial picture of the threat situation, and assumed that the TA consumer would be aware from other sources of the underlying information which had been omitted.

Crucial Information Missing in CSIS Threat Assessments

During the critical month of June 1985, CSIS issued more comprehensive TAs on the Sikh extremist threat in Canada. However, even these TAs failed to include mention of critical information that was in CSIS's possession.

The Duncan Blast surveillance information, which indicated that Parmar and Reyat were conducting suspicious experiments in the woods (at the time mistakenly believed to involve the firing of a weapon), while provided to the RCMP at the local level, was never included in a CSIS threat assessment.[951] As a result, RCMP Protective Policing was deprived of the benefit of CSIS's analysis of the reliability of this information and of its impact on the overall threat level. Because the RCMP also failed to report the information internally, P Directorate was, in fact, not even advised of its existence.

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948 See Section 3.3.6 (Pre-bombing), Lack of Meaningful Threat Assessments.
949 See Section 3.3.6 (Pre-bombing), Lack of Meaningful Threat Assessments.
950 Testimony of John Henry, vol. 25, May 8, 2007, p. 2522.
951 See Section 1.4 (Pre-bombing), Duncan Blast.

Information about a highly dangerous Sikh extremist possibly conducting experiments with weapons, shortly before the Golden Temple attack anniversary and the Gandhi visit to the US, undoubtedly would have been relevant to the assessment of the security measures necessary to protect Indian diplomats. RCMP P Directorate was entitled to expect that the CSIS TAU would provide this type of highly relevant information, along with its assessment of the threat, at the earliest opportunity. Whether CSIS's failure to do so resulted from an exaggerated focus on protecting the secrecy of its physical surveillance operations,[952] or whether it was the result of an analytical failure to recognize the relevance of the information to the threat assessment process, it was a clear failure on the Service's part in its duty to keep the RCMP and other agencies advised of important threat information.

Another failure occurred shortly before the bombing. On June 13, 1985, CSIS received information from the Vancouver Police Department about the comment made by Pushpinder Singh during the Khurana meeting, in response to complaints about the lack of killings of Indian diplomats, that "…something would be done in weeks."[953] CSIS waited four days before including this information in a general threat assessment sent to the RCMP on June 18th. At that time, CSIS reported the comment, but provided no information about the identity of the Sikh extremist who authored it, nor about his leadership role in the ISYF, a dangerous Sikh extremist organization, nor about his connections with Parmar and the BK.[954] CSIS also did not advise the RCMP of the date of the Khurana meeting (June 12th), simply stating that it occurred "early in June."[955] This lack of detail made it impossible for the RCMP to determine the precise time frame when this threat needed to be addressed, or to understand the seriousness of the threat. The fact that the RCMP had access to the Khurana information through other means cannot excuse CSIS's failure to provide Protective Policing with the information necessary to implement security measures in response to this threat.

Conclusion

CSIS missed the opportunity to produce threat assessments that provided a comprehensive description of the threat situation. In the interests of secrecy and efficiency, CSIS failed to fulfill its role as a repository of threat information, gathered across the government, on the basis of which one could draw critical connections and conclusions.

3.5.3 RCMP Failures in Sharing with CSIS

Introduction

The RCMP often failed to share relevant information in its possession with CSIS. Because of the prevailing tensions, information was sometimes passed

952 See Section 1.4 (Pre-bombing), Duncan Blast.
953 See Section 1.6 (Pre-bombing), Khurana Information.
954 See Section 1.6 (Pre-bombing), Khurana Information.
955 Exhibit P-101 CAB0321, p. 3.

indirectly between the agencies. This complicated internal dissemination and analysis of the information received, and rendered the information exchanges more inconsistent. RCMP sharing with the new intelligence agency was made more difficult because the Force was unable to establish a workable liaison process or to ensure that its members used the formal sharing mechanism it attempted to implement.

The exchange of information with CSIS was often informal or ad hoc, and a great deal of relevant information was never passed on because the RCMP was unable to report it internally, or because its members were unable to understand the importance of transmitting it to CSIS. As a result, the intelligence agency was not provided with important threat information about Sikh extremism and, specifically, about the threat of attacks against Air India.

Liaison Program and Informal Exchanges

After the creation of CSIS, the RCMP established a formal liaison program. The newly-created divisional National Security Enforcement (NSE) units and HQ NSE Section were designated to act as the points of contact with CSIS.[956] The NSE units were established for the purpose of collecting, coordinating and disseminating national security criminal intelligence between the RCMP and CSIS.[957] They were to act as the conduit between CSIS and the RCMP to ensure that the transfer of information, whether criminal or biographical data, flowed smoothly between the two agencies. The NSE units also kept records of the information shared and were thus the official channel for the transfer of information.[958]

It was expected that RCMP members would report security-related information to NSE units for inclusion in the RCMP threat assessment process and for communication to CSIS.[959] However, the members received little guidance about what information was to be shared with CSIS. They were instructed to report any "security intelligence information" they came across to NSE for eventual communication to CSIS,[960] but were never told what was meant by the term. The closest explanation of the CSIS mandate may have been in a draft guideline which stated that the information sought by CSIS normally related to a list of foreign countries,[961] and that this type of information would most likely be acquired by RCMP members having contact with or "knowledge of" persons from the listed countries.[962] The guideline stated that such contact could occur through membership in an organization, or attendance at social functions or academic classes by a national of a listed country, or by residing in close proximity to such a national.[963]

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956 Exhibit P-101 CAA0039(i), pp. 14, 50, CAC0286, pp. 2-3, CAF0824, p. 6.
957 Exhibit P-101 CAA0335, p. 7, CAC0286, pp. 2-3.
958 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5600.
959 See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.
960 Exhibit P-101 CAA0039(i), pp. 31-32.
961 Exhibit P-101 CAA0039(i), pp. 30-31.
962 Exhibit P-101 CAA0039(i), pp. 30-31.
963 Exhibit P-101 CAA0039(i), pp. 30-31.

Further, despite the establishment of the official liaison program, significant information continued to be shared through informal channels, without flowing through the NSE units. Sgt. Mike Roth, who was the head of the NSE Unit in E Division, testified that this was a "sore point" for him. He explained that while he was "…tasked to head up a liaison unit and to keep track of the information that would go back and forth," this system did not work in practice.[964] Although E Division NCIS member Sgt. Wayne Douglas felt that informal contacts and the free flow of information were cut back because requests for information had to be made through the CSIS liaison,[965] individuals within CSIS and the RCMP continued to rely on their informal contacts, and information continued to be transferred without being routed through the liaison unit.[966] The Duncan Blast surveillance information was never provided by CSIS directly to the divisional NSE member.[967] Instead, it was transmitted to the Duncan Detachment[968] and to the VPD members of the VIIU.[969]

The limited success of the NSE Unit at E Division as a conduit for sharing information between the two agencies was not unique. During an August 1985 Canada-wide special CSIS operational meeting, the participants found that there were "…varying degrees of cooperation depending upon the region and the RCMP section involved", but unanimously agreed "…that the NSE liaison group created by the RCMP to deal with CSIS was not a viable or effective means of channelling intelligence/information to either the RCMP or CSIS".[970]

Roth testified that he did not attempt to force CSIS or RCMP members to use his unit as the route to exchange information, because he was "…more interested in ensuring that the information would flow freely throughout the province, between the RCMP and CSIS".[971] Having said that, Roth did recognize that a particular piece of information could be valuable to the operations of multiple RCMP units, and for that reason a central unit receiving and disseminating the information was necessary.[972] When the information was not transferred through the formal liaison process, there was no mechanism to ensure that all those who needed it received it.

When information was shared informally, the creation of written records and the reporting of the information became entirely dependent on the individual officer receiving the information. Information exchanged through informal channels was often passed verbally with no records being prepared, with the result that the information was often useful only to the individual member receiving it. This had a negative impact on the RCMP's ability to analyze its information

964 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5604.
965 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4036-4037.
966 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5604.
967 Testimony of Michael Roth, vol. 46, September 17, 2007, pp. 5605-5606.
968 Exhibit P-101 CAA0193.
969 Exhibit P-101 CAA0196. See, generally, Section 1.4 (Pre-bombing), Duncan Blast.
970 Exhibit P-101 CAB0495.
971 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5604.
972 Testimony of Michael Roth, vol. 46, September 17, 2007, p. 5641.

centrally, and it prevented the Force from taking advantage of information provided by CSIS to enrich its global knowledge base. In the context of the Air India investigation, the RCMP undertook regular file reviews to assess prior information in light of new developments and to find new leads. The absence of records about the information that had been passed informally meant that, later, analysts did not have access to a significant volume of potentially important information. Further, because informal exchanges depend on personal working relationships, the flow of information could vary when the individuals involved changed.[973]

Failures to Share Information Relevant to the Threat of Sikh Extremism

Because of gaps in training about the threat assessment process, about the role of CSIS and about the nature of the "security intelligence information" members were expected to report,[974] the RCMP was unable to provide CSIS with all the information it needed, even when it was in RCMP possession. Having created its own parallel threat assessment process, the RCMP considered its TA requests to CSIS as requests for the Service's information about a situation, to add to the RCMP base of knowledge but not for the purpose of allowing CSIS to perform the central analysis of all information. The RCMP (rather than CSIS) took it upon itself to combine the information received from CSIS with the RCMP information for a final threat assessment.[975]

Further, much of the information relevant to the threat of Sikh extremism was never reported and never centrally processed at the RCMP.[976] As a result, it could not be provided to the liaison units and was not shared with CSIS. As an example, the information received from Person 1 in September 1984 about the November Plot to bomb an Air India aircraft was not reported to the NSE unit and, hence, was not shared with CSIS.[977]

The RCMP had access to a great deal of information about threats to Air India and received numerous threat warnings against the airline, in some cases specifically referring to the threat of bombing.[978] Often, this information was not shared with CSIS. The information about threats to Air India received by the

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973 VPD Detective McLean, for example, explained that he observed a decrease in VPD information sharing with CSIS and the RCMP when the individuals involved in the investigation of Sikh extremism at CSIS and VIIU during the pre-bombing period changed: Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2029-2031.

974 Exhibit P-101 CAA0039(i), pp. 31-32; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2724-2725. About the lack of general training respecting the role of CSIS and the threat assessment process, see Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

975 See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

976 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

977 Information about the November Plot was first learned by E Division in September 1984: Exhibit P-120 (c), p. 1 (entry for Sept. 20, 1984: doc 526-3, p. 26), but was only reported to NCIB NSE on October 26th, when it was received by the VPD from another source: Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 239-3). See Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2595.

978 See, for example, Exhibit P-101 CAC0517, p. 2, indicating that threat warnings were received prior to each flight, and Exhibit P-101 CAA0185: the June 1st Telex.

RCMP Protective Policing Directorate (P Directorate), which was responsible for VIP Security and Airport Policing,[979] was often not transmitted to NSE and hence could not be shared through the formal liaison process.[980]

P Directorate did have its own, direct liaison with the CSIS Threat Assessment Unit. However, the Protective Policing officers did not consistently share the threat information they received with CSIS, even if they were the very individuals who relied on CSIS threat assessments to carry out their own functions. The Acting Officer in Charge at HQ Airport Policing indicated that he would generally pass some threat information on to CSIS,[981] but would not transmit other information,[982] either because he believed that CSIS already had the information or because he otherwise saw "no need" to share it.[983] In addition, any information about threats to Air India received by RCMP Airport detachments, but not reported to P Directorate at HQ, would obviously be unavailable to be shared with CSIS.

In May 1985, RCMP Airport Policing, at least at the detachment level, received an Air India telex warning about plans for violent activities by terrorists during the first week of June 1985 and about the possibility that civil aviation "…in Punjab and elsewhere" could be a target. It recommended particular vigilance with respect to registered baggage and items such as transistors and cameras. This extremely important telex does not appear to have been shared with CSIS.[984] Information received in July 1984 that an individual had "…volunteered to carry a bomb in his accompanied baggage with a view to blowing up an Air India plane in order to draw attention to the demands of the Sikhs" was apparently never reported to the HQ P Directorate, and hence was not shared with CSIS.[985] October 1984 information that a statement was made during an All India Sikh

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979 Air India generally liaised with RCMP Airport Policing officials at the airport level. Air India threats were sometimes sent by local officials to the Airport Policing Branch at Headquarters, which would seek a threat assessment from CSIS in response to this information. Information from the Department of External Affairs was often shared at the Headquarters level, being passed by DEA's Office of Protocol to P Directorate personnel: See Section 4.4 (Pre-bombing), Failures in Sharing of Information.

980 See the following documents, for which there is no record that the information was transmitted to NSE: Exhibit P-101 CAA0185, CAC0293; Exhibit P-129; Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732, explaining that NCIB did not receive the June 1st Telex. See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

981 See, for example, the information in Exhibit P-101 CAA0084, CAC0129.

982 See, for example,the information in Exhibit P-101 CAA0045.

983 See Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2831-2832, explaining that some information was shared and some was not, and p. 2865, explaining that he saw no need to share the June 1st Telex. He also testified, however, that if he had received all the Air India threats that were "…coming in at fast numbers and after about the third or fourth, I might be – 'Well, let's make sure that they are getting it,' and I would write them": Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2839. He did not recall this ever having occurred: Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2839-2840.

984 Exhibit P-101 CAA0161, CAA0164. A handwritten note on the cover letter to the telex, which was sent from Air India to the OIC at Toronto's Pearson Detachment, instructs the recipient to share the telex with RCMP's P Directorate, Airport Policing Branch, though there is no other record that it was, in fact, sent or received by Headquarters. There is no indication that the information was provided to CSIS.

985 Exhibit P-101 CAA0083, CAA0084.

Student Federation meeting that there would be "…one hijacking of an Indian aircraft every month," and that a committee involving Ajaib Singh Bagri had been constituted to plan the hijackings, was also not reported.[986] Fortunately, CSIS was able to obtain this information from other sources,[987] but this was in spite of the system.

The most important failure to transmit threat information was the June 1st Telex received by the RCMP from Air India. It will be recalled that this telex warned of "…the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devised [*sic*] etc in the aircraft of registered baggage," and also mentioned plans to set up "…suicide squads who may attempt to blow up an aircraft."[988] This information was received by the HQ Airport Policing Branch on June 5th,[989] but it was not shared with NSE and hence could not be passed to CSIS through this channel.[990] As a result of the information in the June 1st Telex, Airport Policing did seek a threat assessment from CSIS,[991] but saw "no need" to provide the telex, or the threat information it contained, to CSIS along with that request.[992] In its responding threat assessment, CSIS could only state that, while the threat against all Indian interests was generally high, it was not aware of any specific threat to Air India.[993]

The June 1st Telex was described by the former CSIS employees who testified at this Inquiry as information that would have been important in their threat assessment process.[994] Like most retrospective analysis, threat assessments are largely speculative, and the true impact of CSIS's not having been informed of the June 1st Telex and of other threat information can never be known.[995] What is clear, however, is that the failure of the RCMP to transmit such seemingly crucial information to CSIS illustrates the gaps in the RCMP understanding of the nature and value of the CSIS threat assessment process, and demonstrates the depth of the RCMP failure to share information with CSIS.

Conclusion

The RCMP's information sharing with CSIS during the pre-bombing period, especially in connection with the threat assessment process, was not optimal. Internal weaknesses in the RCMP's ability to identify, report and disseminate information, coupled with gaps in training about the threat assessment process and about CSIS's role, severely hampered the Force's ability to share relevant threat information, including important information about threats to Air India, with CSIS.

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986 Exhibit P-101 CAA0096, CAA0097.
987 Exhibit P-101 CAA0110, p. 3.
988 Exhibit P-101 CAA0185.
989 Exhibit P-101 CAA0208.
990 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732.
991 Exhibit P-101 CAA0198.
992 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2813, 2865.
993 Exhibit P-101 CAA0199.
994 See Section 1.2 (Pre-bombing), June 1st Telex.
995 Final Submissions of the Attorney General of Canada, Vol. II, para. 191.

Despite the formalized liaison process for information sharing with CSIS, inconsistencies remained in the amount of information shared, the timing of the exchanges, and the reporting of the information received. Informal channels which could circumvent the inefficient liaison process carried with them the price of information remaining inaccessible to the system as a whole.

3.5.4 RCMP Failures in Sharing with Local Forces

The Importance of Local Police Forces to the Threat Assessment Process

Police officers working with provincial or municipal police forces had the capacity to contribute significantly to the RCMP's pre-bombing assessment and investigation of the threat of Sikh extremism. As readily acknowledged by RCMP Deputy Commissioner Henry Jensen, the officers "closest to the ground" were likely to have the most access to relevant information, and their notebooks would generally contain "a wealth of intelligence."[996] As such, local police forces were "very crucial elements" for the overall effectiveness of the new RCMP threat assessment process as "…important sources of threat assessment related information."[997] This was particularly true about Sikh extremism in Vancouver, where local police had successfully used a community policing approach to gain access to numerous sources in the Sikh community, from whom they had been able to obtain a wealth of intelligence about Sikh extremist organizations and individuals – information that was not accessible to the RCMP.

Unfortunately, the RCMP was unable to achieve sufficient integration with local forces and to share information efficiently with them. As a result, the RCMP was deprived of their valuable intelligence, especially in connection with Sikh extremism. Acrimonious jurisdictional debates with local forces across the country about the nature and extent of the new RCMP security offences mandate, and the manner in which security intelligence could be shared, caused tensions in the relationships that were likely to affect information flow. In Vancouver, where relations were less strained, the RCMP was nevertheless unable to take full advantage of the extensive knowledge of the Vancouver Police Department (VPD), in spite of an attempt to create integrated structures to facilitate sharing.

RCMP members often failed to appreciate the importance of keeping members of local forces sufficiently informed and, at times, applied an overly rigid approach to the handling of classified information. Provincial and municipal police officers were not kept informed on a routine basis of the overall threat information in the possession of the RCMP, even when that information was directly relevant to the specific areas these forces were investigating. The result was that their ability to recognize the significance of the information to which they had access was impaired, as was their capacity to gather the intelligence, and some information that could have been made readily available by local forces was lost to the threat assessment process.

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996 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5422.
997 Exhibit P-101 CAC0495, p. 3.

RCMP Security Offences Mandate and Relations with Local Forces

When CSIS was created, the *Security Offences Act*, which gave primacy to the RCMP for criminal offences "…arising out of conduct constituting a threat to the security of Canada" or targeting … "internationally protected person[s]," was enacted as Part IV of the *CSIS Act*.[998] As a result, the RCMP acquired jurisdiction in an area traditionally reserved to provincial and municipal forces in locations where they were the police of jurisdiction.[999] Local forces had previously expressed their opposition to the proposed expansion of RCMP jurisdiction,[1000] and the *Security Offences Act* was initially not well accepted, creating tensions in the relations between the RCMP and local forces.[1001]

Tensions increased in light of a Cabinet decision designating the RCMP as the primary recipient of CSIS intelligence about security offences and as the intermediary between CSIS and local forces.[1002] The RCMP took the position that this meant CSIS intelligence had to be sent first, and exclusively, to the RCMP. The RCMP would then disseminate the information on an "…as deemed necessary basis,"[1003] and involve other police forces "…to the extent it should."[1004] To CSIS, the RCMP position was akin to a claim of "exclusive" jurisdiction, since the RCMP reserved the sole discretion to decide what CSIS intelligence to pass on to which law enforcement agencies, and when. Not surprisingly, local forces representatives also took issue with the RCMP position, and generally wanted to maintain direct and sustained contact with CSIS.[1005] The local forces were also concerned about the type of matters over which the RCMP intended to exercise its new security offences primary jurisdiction, fearing that the RCMP would attempt to get involved in purely local matters.[1006] Initial meetings about the topic were difficult.[1007] The Ontario police forces favoured use of joint forces operations (JFOs) to resolve issues of jurisdiction.[1008] While the RCMP also generally favoured the JFO approach,[1009] it did have some reservations and concerns about local police taking control of investigations and acting without consulting the RCMP.[1010] Similarly, while not opposed in principle, the RCMP

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998 Exhibit P-107: *Security Offences Act*,ss. 57, 61. See also Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5398.

999 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5398.

1000 Exhibit P-101 CAA0162, p. 4.

1001 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5398, 5401.

1002 Exhibit P-101 CAA0081, p. 3. See also Exhibit P-101 CAA0162, p. 1, CAA0237, p. 1, CAB0189, CAA0039(i), p. 14; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5400-5401.

1003 Exhibit P-101 CAA0154(i), p. 3.

1004 Exhibit P-101 CAB0189, p. 1.

1005 Exhibit P-101 CAA0162, pp. 2, 4.

1006 See, for example, Exhibit P-101 CAB0422, p. 3, where a perception among members of the Canadian Association of Chiefs of Police that the RCMP would be investigating threats to provincial legislators or municipal representatives was discussed.

1007 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5400-5401; Exhibit P-101 CAA0237, p. 1, mentioning … "interminable discussions leading merely nowhere."

1008 Exhibit P-101 CAB0422, p. 1.

1009 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5399, 5402.

1010 Exhibit P-101 CAA0154(i), p. 2; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5403. The draft RCMP Guideline only provided that the Force would "normally" conduct security investigations in cooperation with local police and that this would be done as part of a formal JFO "under certain circumstances": Exhibit P-101 CAA0039(i), p. 12.

was less enthusiastic than local forces were about direct CSIS participation in JFOs,[1011] sometimes preferring to act as an intermediary between the JFO and CSIS.[1012] In all cases, whether a JFO was formed or not, the RCMP intended to exercise "…its primary responsibility for the investigation" where security offences were involved.[1013]

Relations were particularly tense with the Ontario and Quebec provincial and municipal police forces.[1014] Conflict arose with respect to some of the joint investigations being conducted. The Ottawa City Police (OCP) specifically requested that CSIS intelligence relating to an investigation conducted by a joint RCMP-OCP task force be passed on directly, at the same time as it was transferred to the RCMP.[1015] This proposal was met with strong opposition from the RCMP, who argued that this made it impossible to coordinate the investigation.[1016] The Ontario Provincial Police (OPP) also expressed concerns about joint forces investigations relating to terrorism conducted with the RCMP O Division. According to the OPP, the RCMP had demonstrated an "…unwillingness to share intelligence with other police forces" and an "attitude" of "…taking over areas of investigation," and such issues had ultimately been resolved only through direct contact with CSIS. In general, the OPP was "…unhappy with the RCMP approach" in areas of mutual responsibility like security offences and terrorism.[1017]

RCMP Commissioner Robert Simmonds recognized that local forces would have a "…very important and active role" to play if a terrorist incident occurred in their jurisdiction, and that they would need CSIS information in order to perform their functions.[1018] Yet, the application of the rules surrounding the classification of information, and the adherence to caveats, often prevented local forces from receiving relevant information.[1019] Because provincial and municipal police officers "…for the most part [were] not security-cleared," sometimes the RCMP simply did not pass certain intelligence on to them.[1020] The delays, and refusals to provide that information, which arose as a result of information protection concerns, made relations with provincial and municipal forces more difficult for the RCMP, as they created the impression that the RCMP was purposefully withholding information.[1021] The constant jurisdictional debates as well as

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1011 Exhibit P-101 CAB0422, p. 3; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5399, 5401-5402.
1012 Exhibit P-101 CAA0162, p. 5.
1013 Exhibit P-101 CAA0039(i), p. 12.
1014 Exhibit P-101 CAA0162, p. 4; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5405-5406.
1015 Exhibit P-101 CAA0131.
1016 Exhibit P-101 CAB0189; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5403.
1017 Exhibit P-101 CAB0422, pp. 1-3.
1018 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9333.
1019 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5399.
1020 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5399. As the security clearance process was lengthy and difficult, local forces constables could not easily be security-cleared to a level sufficient to allow them to receive information relevant to the investigations they could be involved in: See Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5404-5405. Further, when CSIS placed caveats on the information it provided to the RCMP, CSIS consent had to be obtained by the RCMP prior to passing on the information to local forces: Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5399-5400.
1021 Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5400.

the local forces' perception that the RCMP was reluctant to share and prone to take an overly controlling approach, were unlikely to lead to the free flow of information necessary to enable the RCMP to receive, assess and respond to all the relevant threat information collected by local police officers.

Relations with the Vancouver Police Department

In British Columbia, where the Sikh extremism threat was prominent, RCMP relations with local police were less tense. Since a spirit of cooperation generally prevailed, CSIS information could be passed on to local forces directly without attracting jurisdictional concerns or debates about RCMP primacy.[1022] However, even in Vancouver, the RCMP still had difficulty achieving complete and open sharing of information and inclusive decision-making. While an attempt was made to implement an integrated policing model, the actual sharing of information was often insufficient.

Formal Liaison and Integrated Units

The RCMP and the Vancouver Police Department (VPD) were both involved in the provincial Coordinated Law Enforcement Unit (CLEU), in charge of setting priorities and coordinating law enforcement activities.[1023] Direct liaison was also maintained between the local force and the RCMP about protective policing operations. The VPD Operational Auxiliary Section (OAS) and the RCMP E Division VIP section were in regular contact to coordinate protective deployment issues.[1024]

In terms of intelligence gathering, the VPD and the RCMP E Division NCIS both participated in the Vancouver Integrated Intelligence Unit (VIIU).[1025] In 1984-85, VIIU's work was focussed mostly on organized crime and organized criminal groups. A sub-component of VIIU, the terrorist/extremist unit, focussed on street disorder and demonstrations and prepared threat assessments for VIP visits in Vancouver.[1026] That unit was also responsible for monitoring groups prone to violence based on political motivations and "…groups or individuals that could pose a threat to the community and to Canada at large." The two members of the Criminal Terrorist/Extremist Group of the RCMP E Division NCIS, who had jurisdiction over the entire province of British Columbia, worked at the VIIU terrorist/extremist unit alongside two members of the VPD.[1027]

1022 Exhibit P-101 CAA0162, p. 5.

1023 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3876-3877. In light of the province-wide mandate of CLEU, the RCMP played a more significant role in operational decisions: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3877. The RCMP is the police of jurisdiction in the province of British Columbia, except in municipalities such as Vancouver which have their own police force.

1024 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3901-3902.

1025 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3870, 3871; Testimony of Henry Jensen, vol. 44, June 18, 2007, p. 5423.

1026 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3870. For this purpose, VPD members of VIIU maintained direct contact with the VPD protective unit (OAS): Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3901-3902, 3925-3926.

1027 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4029, 4034; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3870, 3872.

The terrorist/extremist unit of VIIU was not as integrated as it could have been.[1028] The RCMP and VPD members worked in parallel, with each agency keeping its own separate filing system, reporting through its own separate chain of command, and pursuing its own separate mandate. The RCMP and VPD members did not conduct common operations or work together on integrated files, but rather each organization usually conducted its own independent investigations.[1029] They generally did not share sources, task each other with providing assistance, or coordinate their activities.[1030] This lack of integration resulted in lost opportunities in terms of intelligence gathering for both agencies.[1031] The consequences were particularly serious for the RCMP, in terms of its ability to assess and respond to the threat of Sikh extremism prior to the Air India bombing. The RCMP lost opportunities to benefit from the VPD information and to share its own information to assist the VPD in gathering more information. Since the VPD had developed a more extensive understanding of Sikh extremism in British Columbia, and had access to more sources in the community, the RCMP might have been in a better position to gather sufficient information to prevent the bombing if it had taken advantage of the VPD's potential contribution to the fullest extent possible.

Investigation of Sikh Extremism in Vancouver

The VPD members of VIIU personally investigated Sikh extremism and also received information gathered by other VPD units. The VPD had a special unit called the Indo-Canadian Liaison Team (ICLT) which assisted the Vancouver Indo-Canadian community with a wide range of issues. The ICLT's functions included: redirecting domestic violence matters to appropriate agencies; providing security for elections at temples; dealing with disputes or issues which arose in ashrams (Hindu temples) or gurdwaras (Sikh temples); and assisting VPD detectives conducting investigations in the Indo-Canadian community. The ICLT was also involved in addressing some of the community issues associated with Sikh extremism, such as threats and intimidation. As a result of its community policing approach, it was able to collect intelligence information about Sikh extremists operating in the Lower Mainland of British Columbia.[1032]

During the period preceding the Air India bombing, ICLT members liaised with temple and business leaders from the community, analyzed local media content and essentially integrated themselves into the community. The ICLT spent a great deal of time in the community, discussing current issues with community members and familiarizing themselves with the language and traditions of

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1028 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3920.

1029 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3871-3873; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4030.

1030 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4033; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3872-3873, 3877-3878. On occasion, the VPD members made specific requests for information about Sikh communities located in areas outside of VPD jurisdiction, such as Surrey, but they eventually established their own relations with the RCMP Detachments involved and communicated with them directly: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3877-3878.

1031 Axel Hovbrender, who was a VPD member of VIIU between 1982 and 1986, indicated that in light of the limited resources available, "…working together in a cooperative and collaborative way is always a benefit": Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3920.

1032 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1988-1989, 2021.

the community. They were able to gain the community's trust and to become accepted. VPD Cst. Don McLean explained in testimony that, eventually, ICLT members could walk into any temple, at any time, in uniform, and speak to anyone present without any problem. As a result of this relationship of trust, the ICLT gained access to sources and informants in the community who provided information about Sikh extremism.[1033]

The ICLT had access to sources among both moderates and extremists. McLean explained that the view supporting the violent overthrow of the Government of India was only held by a few individuals in the community, and that they used threats and force to attempt to gain support for their position.[1034] By investigating numerous cases of threats, intimidation and assaults against moderates in the Sikh community, and even bringing some cases to successful prosecution, the ICLT continued to gain trust and received more information.[1035] ICLT members could even task members of the Vancouver Sikh community with developing sources in other communities in order to receive information about prominent BC extremists when they travelled to other jurisdictions.[1036] In this manner, ICLT member McLean was able to learn on June 27, 1985 that, approximately two weeks before the Air India bombing, members of a Toronto Sikh temple associated with the Babbar Khalsa were told not to fly Air India, as it would be unsafe to do so.[1037]

The ICLT reported all of the intelligence information it received about Sikh extremism to the VPD members of VIIU.[1038] As a result of the information they received, VPD members of VIIU became interested in the issue as early as 1983.[1039] For the most part, they processed the information gathered by the ICLT, but they also developed a few community sources of their own.[1040] In the aftermath of the Golden Temple attack in June 1984, the VPD was able to accumulate a significant amount of information and to develop an in-depth knowledge of the main Sikh extremist organizations and individuals active in British Columbia. The local force was aware early on of the activities of prominent Sikh extremists who were advocating violence, such as Talwinder Singh Parmar, Ajaib Singh Bagri and Surjan Singh Gill, and of their leadership role in the Babbar Khalsa (BK).[1041] The VPD was also aware of the activities of

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1033 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2023; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4123-4126, 4149, 4171.

1034 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4131, 4137.

1035 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4130-4131; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3883-3884.

1036 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4133; Testimony of Don McLean, vol. 21, May 1, 2007, p. 2016.

1037 Exhibit P-404, p. 3; Exhibit P-101 CAA0281, p. 1.

1038 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1994-1995; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4126-4127.

1039 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3871. See also, Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2021-2022.

1040 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3878, 3895-3896. Hovbrender did indicate, though, that his sources provided mostly information that was generally known in the community and not specific or actionable in a criminal investigation: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3896-3897.

1041 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1996-1997; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4126-4127, 4141-4143. See also, Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3884-3888, 3890, 3898.

the International Sikh Youth Federation (ISYF),[1042] a Sikh extremist organization with a significant membership and heavy involvement in acts of violence and intimidation in the community.[1043] It knew specifically of the leadership role played in that organization by Pushpinder Singh, an extremist recently arrived from India in 1985.[1044] VPD members had information about connections among Sikh extremist individuals and organizations. They were aware of a connection between ISYF spokesperson Manmohan Singh and BK member Surjan Singh Gill,[1045] and also obtained information indicating that Ripudaman Singh Malik was a close associate of Parmar's and was financially supporting him.[1046]

In January 1985, VPD members of VIIU and ICLT members prepared a comprehensive analysis of the VPD's information about Sikh extremism, in collaboration with a CLEU analyst.[1047] This intelligence document contained a flow chart of significant events, including demonstrations, threats and violent offences, as well as lists and charts identifying and describing linkages among Sikh extremist individuals and organizations known to the VPD.[1048] The document also included approximately one hundred profile sheets for prominent Sikh extremists and individuals associated with extremist organizations who had "…a high threat potential to use criminal acts and violence as a means of achieving their (potential) goals."[1049]

Meanwhile, the RCMP E Division NCIS, whose Terrorist/Extremist Group was investigating Sikh extremism and working with the VPD at VIIU, did not use a community policing approach. Generally, E Division NCIS found the community mistrustful of police and unwilling to cooperate.[1050] In fact, NCIS did not have sources in the Sikh community and was not actively trying to develop such sources. As a result, the RCMP did not have access to the same type of valuable intelligence about Sikh extremism that the ICLT was collecting and often had

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1042 Formerly known as the Sikh Student Federation (SSF): See Exhibit P-101 CAB0360, p. 5.

1043 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4129; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3887.

1044 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1997, 2001; Exhibit P-101 CAB0306, p. 2. McLean described Pushpinder Singh as a "terrorist": Exhibit P-101 CAC0487, p. 5.

1045 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4143.

1046 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3886.

1047 Exhibit P-391, document 124 (Public Production # 3254); Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4132-4133; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3879-3881, 3882-3884: The purpose of the document was to assist VPD, RCMP and CLEU management in operational decisions and future investigations. It was used by the VPD to provide context for analysis of incoming intelligence and to orient ongoing intelligence-gathering activities and criminal investigations relating to threats and intimidation in the community.

1048 Exhibit P-391, document 124 (Public Production # 3254); Testimony of Don McLean, vol. 35, May 29, 2007, p. 4132; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3881.

1049 Exhibit P-391, document 124 (Public Production # 3254), p. 5. Ten such profile sheets are included at pp. 89-98 of the document. The others were not produced in the version of the document provided to the Commission.

1050 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4040, 4109. McLean has testified that no other police force in British Columbia was using the community policing approach at the time, except for one RCMP officer who was working at the Surrey Detachment: Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4149, 4174.

to rely on the ICLT for information.[1051] The RCMP found itself having to resort to the ICLT's assistance outside of the VPD's territorial jurisdiction. In one case, an assault in Duncan, the RCMP had no leads and turned the investigation over to the ICLT, which had previously obtained information about the assault and was able to bring the case to court and obtain a conviction.[1052]

Despite the high level of intimidation in the Vancouver Sikh community, and the generalized fear of reprisals against those who cooperated with police,[1053] the ICLT always continued to receive information.[1054] In general, the VPD members of VIIU, with the support of the ICLT, gathered much more information about Sikh extremism than the RCMP members of VIIU, who were less able to devote priority attention to the issue.[1055]

Information Sharing and Cooperation Failures

Information Exchange and Access to Files

Information was mostly shared between the VPD and RCMP members of VIIU in an informal manner, in the context of the everyday discussions that took place between the individual members who were working in the same office space. All information received by the VPD members was documented and preserved in the VPD files kept at VIIU. The VPD VIIU files were searchable through a manual index card system and were fully accessible to the RCMP members of VIIU.[1056]

The RCMP, on the other hand, did not provide free and complete access to its VIIU files.[1057] RCMP VIIU member Sgt. Wayne Douglas testified that access to the RCMP files was "readily available," without providing more detail.[1058] However, VPD member of VIIU, Supt. Axel Hovbrender, explained that the RCMP files were kept separately in an office that the VPD members could not access. He added that the separate filing systems were a concern among VPD managers at VIIU, and that the lack of access to RCMP files was viewed by some as a symptom of a more general lack of RCMP sharing with municipal forces.[1059] Douglas did admit that the RCMP kept their filing cabinets locked more than the VPD did "for security reasons."[1060] This is consistent with the general RCMP approach towards

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1051 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4040.
1052 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4129-4130, 4168-4169.
1053 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4131-4132. McLean compared the level of intimidation to that found in communities suffering intimidation from organized criminal groups.
1054 In general, however, the sources who spoke with the ICLT provided their information confidentially, on the understanding that their identity would remain protected: Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4171-4172.
1055 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3878. The RCMP NCIS Terrorist/Extremist unit had "…lots of other files to look after," which made it difficult, resource-wise and time-wise, to engage in active source development in the Sikh community: Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4109.
1056 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3872-3874; Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4030, 4040.
1057 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3874.
1058 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4030.
1059 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3874, 3878-3879, 3923.
1060 Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4030.

caveats and classification,[1061] and, in particular, with the RCMP's concern about the lack of security clearance of municipal officers.[1062] In the case of the VIIU, the impact of the lack of access is evident because much of the relevant information in the possession of the RCMP was not known to the VPD.

RCMP Failures to Share Information with the VPD

At the operational level, relations were very collegial between the VPD and the RCMP members of the VIIU Terrorist/Extremist unit. As a result of the good working relationship, the VPD members believed that they were receiving all the information they needed from their RCMP colleagues through their regular informal exchanges. Hence, they did not specifically request access to the RCMP files that were kept in a separate area.[1063] Even the RCMP members of VIIU were apparently under the impression that they discussed all of the information they were aware of with their VPD colleagues.[1064] In fact, however, relevant RCMP information was not always shared with the VPD members of VIIU.

VPD members were not advised of the October 1984 information received by the RCMP from External Affairs indicating that the ISYF was planning to hijack an Air India aircraft and that Bagri was nominated on a committee to plan the attack.[1065] Information about the 1984 BK threat to kidnap or kill the Indian Consul General in Vancouver, and about the BK's threatening letters, postmarked in Vancouver and sent to high officials in India, was also not shared with the VPD members of VIIU.[1066] The RCMP members did not advise their VPD colleagues of the arrest of an ISYF member with parts of an Uzi machine gun at Vancouver airport in March 1985, or of the fact that the remaining parts of the weapon were discovered on the suspect's travelling companion in London.[1067] The RCMP also did not advise the VPD members of the April 1985 information indicating that Parmar's group was "…working on a highly secret project,"[1068] or of the information received in late June 1985 about a plot by four Sikhs from Vancouver Island to purchase automatic weapons and hand grenades and to commit criminal acts with possible political overtones.[1069] Similarly, when the RCMP received information in May 1985 about a plot by extremists to bomb the Indian Consulate in Vancouver on June 6, 1985,[1070] it was not provided to VPD members of VIIU or to the ICLT.[1071]

1061 See, generally, Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3916, 3924. See also Volume One, The Inquiry Process, for a discussion of the national security "over-claiming" by Government agencies.
1062 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5399, 5404-5405.
1063 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3872, 3874-3875, 3923-3924.
1064 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4118-4119.
1065 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3887; Exhibit P-101 CAA0103, CAA0099.
1066 Exhibit P-101 CAC0317; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3904.
1067 Exhibit P-101 CAB0207, p. 2, CAC0291; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3890-3892.
1068 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3902-3903; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4134-4135; Exhibit P-101 CAC0290, p. 3.
1069 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3900-3901; Exhibit P-101 CAB0329.
1070 Exhibit P-101 CAC0364, p. 2.
1071 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3900; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4135-4137.

Douglas did not advise his VPD colleagues of the information received by the RCMP from Person 1 in September 1984 about a plot to bomb an Air India aircraft (the November Plot information). The VPD members of VIIU only found out about this plot when the same information was subsequently provided to another VPD unit by Person 2.[1072] Douglas was aware of the Person 2 information,[1073] and would most likely have had discussions about it with his VPD colleagues at VIIU, but nevertheless did not advise them that similar information had been received from a different source in the past.[1074]

VIIU also did not have access to relevant information because of gaps in internal RCMP information sharing. In instances where RCMP members of VIIU were not themselves provided with all relevant information in the RCMP's possession, they could not share it with their VPD colleagues. This was the case for the CSIS threat assessments prior to April 1985, and for threat information received by the RCMP Protective Policing Directorate from DEA or Air India.[1075] As a result, the VPD members of VIIU were not provided with the information contained in the October 1984 CSIS threat assessment which detailed threats made by Parmar to kill Hindus.[1076] This information pointed to threats of a different nature from the threats against the Indian Government and its representatives, which were generally known to the VPD. It would have assisted the VPD in its intelligence-gathering activities.[1077] Further, the November 1984 information about a plot to kidnap the Indian Consul General in Vancouver or Toronto, which was known to E Division VIP security, was not passed to the VPD.[1078] The VIP Security information indicating that the Vancouver ISYF was planning to physically assault the Indian Consul General and other members of the Vancouver Consulate on April 13, 1985, naming ISYF spokesperson Manmohan Singh as one of the individuals "… entrusted with the task," was also never provided to the VPD members of VIIU.[1079] Similarly, the June 1st Telex about threats to bomb Air India planes using time-delayed devices, like most of the threat information received from the airline, was not shared with the VPD.[1080]

ICLT member McLean testified that he was, in fact, never provided with any information about threats to Air India.[1081] As a result, he was prevented from exploring all possible avenues of investigation with respect to the Khurana

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1072 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3904-3905; Exhibit P-391, document 124 (Public Production # 3254), p. 64.

1073 Exhibit P-120(c), p. 1 (entry for Oct., 1984: doc 231-3, pp. 2-4).

1074 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3905.

1075 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

1076 Exhibit P-101 CAA0110, pp. 2-3; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3889-3890.

1077 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3889.

1078 Exhibit P-101 CAB0169; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3901-3902. The information may have been passed on to the VPD OAS and then not relayed to VIIU: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3902, 3926.

1079 Exhibit P-101 CAC0293; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3892-3893. Hovbrender indicated that the VPD members of VIIU were never made aware of information this specific with respect to threats against the Consul General on a specific date.

1080 Exhibit P-101 CAA0185. The telex was not transmitted to NCIB at HQ: Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2732, and hence could not be disseminated to the divisional NCIS section.

1081 Testimony of Don McLean, vol. 21, May 1, 2007, p. 2012. Even the November Plot information from Person 2, which was included in the VPD analytical document (Exhibit P-391, document 124 (Public Production # 3254), p. 64) was not transmitted to McLean by either the RCMP or the VPD.

information about ISYF leader Pushpinder Singh's comment that something would happen in two weeks.[1082] While the VPD members of VIIU or of the ICLT were not responsible for airport policing or for the protection of Indian missions,[1083] the VPD needed access to the RCMP threat information in order to better identify, report, assess and further investigate the information that could come from its sources. As Hovbrender explained, information is the "life-blood of intelligence." Having as much information as possible is essential, from an intelligence perspective, to discern patterns and make the appropriate analysis. The RCMP tended to protect or classify its information more strictly, and did not share it freely. While there could be valid reasons to protect information, the RCMP failure to share more openly with the VPD prevented the ground-level officers, who had the most access to sources of information, from using that access to obtain additional threat information, and from analyzing and understanding relevant threat patterns.[1084]

If the RCMP had sought to act as the exclusive intermediary for the passage of CSIS information about Sikh extremism to local forces, as it was contemplating doing in May 1985,[1085] the situation would have been even more difficult. As it was, the VPD was able to obtain at least some information from CSIS, such as the Duncan Blast surveillance information,[1086] and did maintain its close liaison with the intelligence agency.[1087] Whatever the merits of making the RCMP the primary recipient of CSIS intelligence in cases with a potential national scope,[1088] this approach would only be beneficial if there was a sufficient flow of information to the officers with the most ability to gather additional information, regardless of the police force to which they belonged.

RCMP Failures to Access and Report VPD Information

The VPD members of VIIU attempted to provide their RCMP colleagues with all the relevant information in their possession during the course of their informal discussions, directing them to relevant VPD files where necessary.[1089] However, the RCMP members of VIIU often did not report to RCMP Headquarters the VPD information which was conveyed to them or available in the VPD files.

The internal procedures in place at the RCMP did not provide for exchanges of reports at the desk level. The RCMP members of VIIU working at the operational level were not expected to take the initiative of researching VPD files to find relevant information.[1090] Instead, the VPD VIIU reports were reviewed at a more senior RCMP level, where the decision was taken about whether to disseminate

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1082 See Section 1.6 (Pre-bombing), Khurana Information.
1083 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4170.
1084 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3916.
1085 See Exhibit P-101 CAA0154(i), p. 3, where the RCMP suggests that the Sikh extremist problem should be recognized as involving its security offences mandate.
1086 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4139; Exhibit P-403; Exhibit P-101 CAA0196.
1087 Testimony of Don McLean, vol. 35, May 29, 2007, p. 4128; Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3876. See, for example, Exhibit P-101 CAB0048.
1088 Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9333.
1089 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3872, 3874.
1090 See, generally, Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4033-4035.

them to operational personnel as deemed necessary. Because of this structure, the sharing of information was not always timely[1091] and, as observed in the case of information relevant to the threat of Sikh extremism, because the relevance of the information was not always recognized, it was not always disseminated within the RCMP.

It appears that RCMP E Division members only began to recognize the value of VPD information after the Air India bombing, when this information was finally reported in detail and used in the course of the investigation. Shortly after the bombing, the RCMP took copies of all Sikh extremism-related VPD reports found at VIIU and at the ICLT, and asked ICLT member McLean to provide briefings about Sikh militants in the community and Sikh extremists who were most likely involved in the bombing.[1092] At the time, McLean spoke about the Khurana information, which, in light of the Pushpinder Singh comment two weeks before the bombing that something would happen in two weeks, tended to indicate ISYF members could be involved.[1093] Details of the Khurana information were then provided to RCMP HQ by E Division on June 25th and RCMP members of VIIU began to investigate local factions of the ISYF.[1094]

The Khurana information had not been reported to HQ before the bombing,[1095] even though it was available to RCMP VIIU members as of June 13th in a report sent to the VPD VIIU members, and would most likely have been discussed with the RCMP members as well.[1096] Instead, on June 14th, E Division NCIS advised HQ that it had no intelligence indicating violent or criminal acts were planned for the Consulate and was "…unable to determine the potential for violence" against Indian officials in Vancouver.[1097] Similarly, information obtained by Hovbrender, that the leader of the BK International in London had stated in 1984 that anyone who flew Air India would be killed in Britain or in India by the BK, was included in an RCMP affidavit in support of a wiretap application in connection with the Air India investigation in 1996. The information had been available at VIIU since early June 1985.[1098] There is no indication that it was accessed or reported by the RCMP members of VIIU prior to the bombing.

The RCMP members of VIIU also did not access or report the general intelligence gathered by their VPD colleagues which identified the main players in the BC

1091 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4034, 4113.

1092 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 1986, 2037; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4143-4144, 4157-4159.

1093 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4143-4144. See, generally, Exhibit P-101 CAC0487, CAA0249.

1094 Exhibit P-101 CAA0249.

1095 RCMP HQ NCIB member Sgt. Sweeney testified that he only learned about this information on the day of the bombing from VPD Cst. McLean: Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2641; Exhibit P-101 CAF0035, p. 28.

1096 See report submitted to VIIU on June 13: Exhibit P-101 CAC0487; Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2000-2001. About the likelihood of the information having been discussed, see Testimony of Don McLean, vol. 21, May 1, 2007, p. 2026; Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2641-2642; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4070.

1097 Exhibit P-101 CAC0438, p. 2.

1098 Exhibit P-101 CAD0180, pp. 20-21.

Sikh extremist movement and the possible connections among extremist individuals.[1099] Douglas was unaware of the importance of many of the players in the movement and did not know about many of the threats they issued.[1100] RCMP HQ was not provided with this background intelligence and was not aware, for example, of the identity and role of ISYF leader Pushpinder Singh and ISYF spokesperson Manmohan Singh.[1101] The RCMP members of VIIU also did not report to RCMP HQ the information about possible connections between the ISYF and the BK, two of the most militant and dangerous Sikh extremist organizations. These linkages were suggested by the Khurana meeting, where a connection between Parmar and Pushpinder Singh was identified,[1102] and found in the VIIU report about the Duncan Blast surveillance, where an early June 1985 meeting at the residence of Surjan Singh Gill involving BK and ISYF members was discussed.[1103] Similarly, the October 1984 VPD information indicating that Ripudaman Singh Malik was financially supporting Parmar was not reported to RCMP HQ prior to the bombing.[1104] The RCMP VIIU members had access to the VPD general intelligence and could consult the analytical VPD document containing profile sheets and link charts,[1105] but they apparently did not appreciate the importance of developing their own understanding of the Sikh extremist movement and of reporting this knowledge to RCMP HQ.

Since CSIS sometimes used the VPD members of VIIU as an indirect conduit to pass on information to the RCMP,[1106] the failure of RCMP VIIU members to access VPD information and files might have deprived the RCMP of information which CSIS intended it to have. CSIS provided complete details of its Duncan

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1099 In fact, members of the NCIS E Division Terrorist/Extremist unit had a very poor understanding of the main Sikh extremist players in the pre-bombing period. For example, Douglas, who was the head of the unit, testified that he "recognized the name" Ajaib Singh Bagri, but was unaware of significant threat information indicating the dangers he posed. Moreover, Douglas was "not too familiar" with Surjan Singh Gill: See Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4048, 4051-4053.

1100 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

1101 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2641. See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process (under the heading Failures to Identify and Report Background Intelligence).

1102 Exhibit P-101 CAC0487, p. 4. The report was available in the VPD VIIU files and the information was most likely discussed with the RCMP members: Testimony of Don McLean, vol. 21, May 1, 2007, p. 2026; Testimony of Warren Sweeney, vol. 25, May 8, 2007, pp. 2641-2642; Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4070.

1103 Exhibit P-101 CAA0196, p. 2. The report was available in the VPD VIIU files and the information was most likely discussed with the RCMP members: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3907; Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4033-4034. See also Exhibit P-101 CAA0876, indicating that a briefing was provided to NCIS members about the report.

1104 The information was shared with the RCMP during informal discussions at VIIU: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3886. We find no indication in the record that it was reported and Malik did not become a key suspect in the Air India investigation until many years after the bombing.

1105 Former RCMP member of VIIU Sgt. Douglas could not recall whether he saw the document before or after the Air India bombing: Testimony of Wayne Douglas, vol. 34, May 28, 2007, p. 4035. The document was not only available in the VPD files, but was formally passed on to RCMP E Division NCIS and to CISBC: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3882, 3918. Because CLEU approval was required to prepare the analysis, the RCMP would also have been aware of the existence and purpose of the document: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3880.

1106 See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS.

Blast surveillance information to the VPD.[1107] The information was included in a VIIU report prepared on June 6, 1985, only two days after the Duncan Blast.[1108] This report was fully accessible to the RCMP members of VIIU, the information it contained was most likely discussed informally with them during the following days, and a briefing about the report was provided by the VPD to RCMP members who were to conduct diffusion interviews with Parmar and Gill.[1109] The information was not reported to RCMP HQ, and any benefit of the CSIS information was lost to the RCMP because of the failure of the members of the integrated unit to access, research, recognize and report relevant VPD information.

Deficiencies in Information Exchange Mechanisms

At VIIU, there was no written policy or formal mechanism for sharing of information. Where information was passed verbally, as was often the case, [1110] written records of the information exchanged were generally not kept. This made it difficult, if not impossible, for officers to later track what information had been passed.[1111] This lack of formalized process impacted on the agencies' ability to report internally the information received for central analysis. The benefit from the VPD information to the RCMP as a whole depended on the individual officer receiving the information deciding to include it in a report or other record. This reliance on individual discretion and ad hoc decisions had a negative impact on the RCMP's overall ability to assess and respond to the threat of Sikh extremism.

As was the case with RCMP/CSIS information sharing, information exchanges depended on personal working relationships. The amount of information shared could vary when the individuals involved changed. McLean explained that he observed a decrease in VPD information sharing with CSIS and the RCMP when the individuals involved in the investigation of Sikh extremism at CSIS and at VIIU during the pre-bombing period changed.[1112] Without a more formalized process, such inconsistencies were inevitable.

Failure to Coordinate Investigations

Because the VPD and RCMP members of VIIU did not conduct common operations or work together on integrated files,[1113] opportunities were lost to coordinate the investigation of information about the threat of Sikh extremism. No attempt

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1107 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3906. See, generally, Section 1.4 (Pre-bombing), Duncan Blast.

1108 Exhibit P-101 CAA0196.

1109 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3907; Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4033-4034; Exhibit P-101 CAA0876. See Section 1.4 (Pre-bombing), Duncan Blast.

1110 This was the case at VIIU: Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3872. ICLT members also occasionally had informal discussions with RCMP members, though they generally expected their information to be shared with the RCMP through the discussions held at VIIU: Testimony of Don McLean, vol. 21, May 1, 2007, p. 2029; Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4127, 4129, 4167-4168.

1111 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4112-4113.

1112 Testimony of Don McLean, vol. 21, May 1, 2007, pp. 2029-2031.

1113 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, pp. 3872-3873, 3877-3878.

was made to coordinate the investigation of the Khurana information, as the RCMP expressed no interest in investigating it prior to the bombing and left the VPD to conduct its own inquiries without requesting follow-up reports.[1114] ICLT members were not consulted, in any way, prior to the diffusion interviews of Parmar and Surjan Singh Gill in preparation for the Gandhi visit to the US, and were not even aware of the interviews.[1115] Given their knowledge and their reputation in the community, the participation of ICLT members in these and other RCMP investigative initiatives, at a time when the Air India bombing plot was most likely in the final planning stages, would clearly have been helpful.

Failures to Manage and Access Information from the Criminal Intelligence Service of British Columbia

During the period preceding the Air India bombing, significant information about the threat of Sikh extremism was shared by members of the VPD with an organization called the Criminal Intelligence Service of British Columbia (CIS BC). A number of important CIS BC documents – including the report by the VPD about its October 1984 interview of Person 2 in connection with the November Plot information[1116] and the VIIU report on the Duncan Blast[1117] – were not accessed by RCMP investigators until significantly after the bombing, if at all. Given the nature and status of the CIS BC organization in 1985, the information should have been obtained by the RCMP.

In 1985, CIS BC operated under the umbrella of the Criminal Intelligence Service of Canada.[1118] The Criminal Intelligence Service of Canada was a program that "…encompassed all the criminal intelligence units of the various provincial and municipal forces in Canada, devoted to organized crime."[1119] Each province had a provincial CIS bureau, which collected information and reports provided to it by feeder law enforcement organizations, including municipal forces and RCMP detachments. The organization served as a repository of criminal intelligence information on individuals and businesses of interest,[1120] which could be searched and accessed by law enforcement personnel.[1121] The contribution of information by municipal forces was voluntary, and not all municipal forces sent their information to the bureau. Within the RCMP, NCIS units were regular

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1114 See Section 1.6 (Pre-bombing), Khurana Information.
1115 Testimony of Don McLean, vol. 35, May 29, 2007, pp. 4139, 4156-4157. Exhibit P-101 CAA0871, p. 1, CAA0876.
1116 Exhibit P-120(c), p. 1, (entry for Oct., 1984: doc 231-3, pp. 2-4).
1117 Exhibit P-101 CAA0196.
1118 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3929.
1119 Testimony of Henry Jensen, vol. 18, March 7, 2007, p. 1644.
1120 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3929.
1121 When officers wanted to obtain information about particular individuals or groups, they could contact CIS BC through their intelligence unit and obtain access to the material in CIS BC's holdings: Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3932.

contributors of information to the organization.[1122] While CIS was mainly focused on organized crime, it would occasionally receive information about terrorist/extremist issues.[1123]

CIS BC was located at RCMP E Division Headquarters in Vancouver,[1124] and, at the time, it was part of the RCMP structure and staffed and administered entirely by RCMP employees. According to the RCMP Organizational Chart for the period following the creation of CSIS, the Director of CIS reported to the RCMP Deputy Commissioner Operations.[1125] It also appears that at least some members of the VPD at the time viewed CIS BC as a branch of the RCMP.[1126] However, the members who administered CIS BC strove, as much as possible, to operate it as an independent provincial bureau.[1127] Over time, apparently, there evolved a functional independence for CIS BC, with different police forces assigning their personnel to staff the bureau, and the organization came to be recognized as a type of "mini-Interpol."[1128]

CIS BC organized its information using an index card system. When reports were received, CIS BC officials would read through the reports and create cards for individuals and groups not yet in the CIS BC database, and add additional references for individuals already in the system.[1129] Certain information would also be loaded, by CIS BC and other CIS provincial units, into a searchable national database called the Automated Criminal Intelligence Information System (ACIIS). If a search was done on ACIIS, biographical information that was inputted by other provinces would also show up, and there would be a mechanism to allow investigators to contact the other CIS units to obtain the information in their holdings. However, not all the names and information for individuals identified by CIS BC (or other provincial bureaus) and indexed locally were entered onto ACIIS. Former RCMP Corporal Bob Stubbings, who worked at CIS BC from December 1980 until June 1985, explained that, while individuals like Surjan Singh Gill and Talwinder Singh Parmar were carded, as indicated in the Duncan Blast VIIU report, there was no indication that those names had been inputted onto ACIIS.[1130]

Douglas, who headed the RCMP E Division NCIS Terrorist/Extremist Group, testified that he remembered making "…frequent trips to CIS BC on numerous

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1122 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3930.

1123 At the same time, according to an October 1984 report, CIS BC had no separate file relating to the Indo-Canadian community, which meant that it was not necessarily a resource to which one could refer to easily to obtain a general overview of criminal extremist activity or prominent extremist members in that community: Exhibit P-391, document 124 (Public Production # 3254), p. 14. CIS BC also conducted some analytical work, mainly limited to basic linkage analysis, upon request by various units: Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3933.

1124 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3931.

1125 Exhibit P-110; Testimony of Henry Jensen, vol. 18, March 7, 2007, pp. 1642-1643.

1126 For example, there is a reference in a VPD Investigation Report respecting a meeting that was held to discuss the VPD's recent investigation of Person 2, where the officer noted that he met with "RCMP CIS BC": P-120(c), p. 2, (entry for Oct., 23, 1984: doc 7).

1127 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3930.

1128 Testimony of Rick Crook, vol. 20, April 30, 2007, pp. 1923-1924.

1129 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3936.

1130 Testimony of Bob Stubbings, vol. 33, May 24, 2007, pp. 3929, 3931, 3933-3934, 3939.

things."[1131] Nevertheless, it appears that important information was not consulted in the pre-bombing period, despite the fact that CIS BC files were readily accessible, that CIS BC was housed in the same building as NCIS, and that it was staffed entirely by RCMP members.[1132]

On October 23, 1984, the VPD provided CIS BC with a copy of the report about the interview of Person 2 that had been conducted by Detectives Crook and Warwick,[1133] during which Person 2 disclosed detailed information about an alleged plot to bomb two Air India aircraft.[1134] The report indicated that the interview had been taped and that there could be "two bombs" involved. It also implied that the plot might still go ahead, whether or not Person 2 was in custody, a fact of which Douglas, who was responsible for the investigation of the November Plot, was unaware.[1135] There is no indication that this report was accessed by RCMP NCIS investigators in the pre-bombing period. In fact, there is no evidence that RCMP investigators at any point, either before the bombing or in the years immediately following, requested the transcript of the taped interview from the VPD.[1136] Had this information been reviewed at the time, including the alleged possibility of two planes being involved (which was unknown to Douglas until very recently,)[1137] the RCMP might have taken the post-bombing investigation of the November Plot more seriously.[1138]

The VPD VIIU Duncan Blast report, which contained details of the CSIS surveillance of Parmar on June 4, 1985, as well as other contextual threat information,[1139] was received by CIS BC on June 10th.[1140] From that date it was fully accessible to the RCMP.[1141] There is no indication that this report was, in fact, accessed by RCMP members in the pre-bombing period. At the time the VIIU report was received by CIS BC, information about Talwinder Singh Parmar, Surjan Singh Gill, and the Babbar Khalsa was already within the CIS BC database.[1142] This was all important intelligence information that the RCMP could, and should, have reviewed.

Conclusion

In jurisdictions where there were tensions in the RCMP relations with local police forces, there would inevitably have been a negative impact on the receipt by the RCMP of information from those officers, who were often closest to the ground, with the most access to relevant information. Even where relations were less strained, as in Vancouver, the RCMP did not freely share its information nor did

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1131 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4032-4033.
1132 Testimony of Bob Stubbings, vol. 33, May 24, 2007, p. 3929.
1133 Exhibit P-120(c), p. 1 (entry for Oct., 1984: doc 231-3, pp. 2-4).
1134 Exhibit P-121, pp. 3-4.
1135 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4085, 4094.
1136 See Exhibit P-121.
1137 Testimony of Wayne Douglas, vol. 34, May 28, 2007, pp. 4085, 4094.
1138 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2639.
1139 Exhibit P-101 CAA0196.
1140 Exhibit P-101 CAA0862.
1141 Testimony of Axel Hovbrender, vol. 33, May 24, 2007, p. 3907.
1142 Testimony of Bob Stubbings, vol. 33, May 24, 2007, pp. 3936-3937.

it access the local police information available. Where information was actually shared, the RCMP often did not effectively coordinate follow-up or keep proper records.

3.6 Lack of Government-Wide Coordination in the Threat Assessment Process

The "Mosaic Effect" as a Danger and as a Positive Resource

The "mosaic effect" is a well-known concept in intelligence and security communities. It is commonly invoked as a reason to exempt information from disclosure. The effect refers to the possibility that a seemingly innocuous piece of information can be pieced together with others to reveal a sensitive matter not apparent from any of the individual pieces. The Attorney General of Canada (AGC), in its opening statement, highlighted the *threat* of the mosaic effect in relation to national security.

> Sensitivity of information [is] often only apparent to those who are aware of the underlying context … in the hands of an informed reader apparently trivial or unrelated pieces of information … can be used to construct a more comprehensive picture when compared with information already known by the recipient or available from another source.[1143]

The AGC warned that the mosaic effect could be used by those hoping to do harm to the national security interests of Canada. However, the mosaic effect can also be deployed positively by the Canadian intelligence community to protect those very same interests. Careful analysis of information reviewed by the Commission reveals that, in the period leading up to the Air India and Narita bombings, a lack of effective communication deprived CSIS – whose role it was to piece such information together – of the opportunity to do so. This meant that the threat assessments produced by CSIS analysts from the information that was actually passed to them were not as fully-informed as they might have been. In turn, reasonable precautions that might have been implemented by protective agencies had they received fully-informed threat assessments were not put into place.

Various government agencies and police forces had information that, if pieced together, could have provided a comprehensive picture of the intentions of Sikh extremists in 1985. However, these agencies failed to share their information openly with CSIS, the agency assigned the exclusive authority to collect security intelligence and produce threat assessments to advise all of government.[1144] At

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1143 Statement by Barney Brucker, Transcripts, vol. 12, November 6, 2006, p. 1064.

1144 This principle was set out in the 1984 MOU (Exhibit P-101 CAA0076) and 1984 Ministerial Directive issued by Solicitor General Robert Kaplan (Exhibit P-101 CAF0030, pp. 9-10).

the creation of CSIS, the Government of Canada appears to have assumed that other agencies would have relatively little to contribute of security intelligence value from their own sources and knowledge, and thus, little operational guidance was provided to ensure the proper transfer of the information to CSIS.[1145]

Gordon Osbaldeston[1146] made note of this deficiency in his 1987 report:

> …despite some improvements that have been made since separation, strategic intelligence is still inadequate. A complaint often heard was that CSIS tended to produce threat assessments in a vacuum, assessments could have benefited from assistance available elsewhere in the intelligence community.[1147]

Professor Martin Rudner, one of Canada's leading experts in the field of intelligence and international terrorism,[1148] characterized the intelligence system in Canada as essentially "routine collection-led."

> In Canada, [our intelligence system] is essentially collection-led. This is the notion that the various components of the Intelligence community, the Security Intelligence Service, that's CSIS, the community – the Communications Security Establishment, that's our signals agency; the RCMP, FINTRAC, each of them goes about their business with diligence, no question; competence, no question. But it's routine business. Each of them does the job as they understand it and each of them collects the Intelligence that they routinely decide to collect, and that's what constitutes in fact the collection of Intelligence in Canada.[1149]

Rudner testified that the problem with this system is that the agencies routinely collect information but share it only when its perceived relevance meets special criteria upon which one can justify conducting an investigation.[1150] Each agency collects information in a silo without a sufficiently detailed awareness of the priorities of the other agencies. No one agency has the capacity to "connect

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1145 Testimony of Wesley Wark, vol. 16, March 5, 2007, pp. 1468-1469, 1486-1487.
1146 Gordon Osbaldeston headed the Independent Advisory Team which produced an October 1987 report, "People and Process in Transition", for the Solicitor General on CSIS recruitment and operational policies (Exhibit P-101 CAA0569).
1147 Exhibit P-101 CAA0569, p. 19.
1148 Testimony of Martin Rudner, vol. 92, December 10, 2007, p. 12209.
1149 Testimony of Martin Rudner, vol. 92, December 10, 2007, p. 12243.
1150 Testimony of Martin Rudner, vol. 92, December 10, 2007, p. 12244.

the dots" to see the complete picture created by the intelligence collected by the various agencies and to link together all the activities required for an all-of-government approach to intervening in the terrorism cycle.[1151]

It should have been clear that other agencies would collect information relevant to national security. Despite this, the Government of Canada failed to provide meaningful guidance on how and when to share information with CSIS, resulting in a situation where agencies were expending tremendous efforts to collect bits of information that ultimately never went anywhere. This lack of government-wide coordination in the threat assessment process deprived CSIS of the ability to put together the pieces of the mosaic in order to produce threat assessments which were fully informed by the information gathered across the government.

Collecting the Pieces of the Puzzle

The *CSIS Act* assigned CSIS the primary responsibility for advising the Government of threats to the security of Canada.[1152] To ensure that CSIS produced comprehensive threat assessments, the Act allowed CSIS to enter into cooperative information-sharing agreements with police forces across Canada and with other federal and provincial government departments.[1153]

The Office of the Solicitor General produced a document in 1984[1154] to illustrate the responsibilities and cooperative arrangements envisioned by the *CSIS Act*. The chart, shown in Figure 1, illustrates the intended two-way information flow between CSIS and other agencies, including the RCMP, other government departments, local police forces and foreign agencies.[1155] In effect, CSIS was intended to be the repository for all sourced intelligence information from which it could draw to produce the most comprehensive and informed assessments to advise the Government on threats to national security.

1151 Testimony of Martin Rudner, vol. 92, December 10, 2007, p. 12245; Exhibit P-101 CAF0063, p. 4.
1152 *CSIS Act*, s. 12.
1153 *CSIS Act*, s. 17.
1154 Exhibit P-101 CAF0030.
1155 Exhibit P-101 CAF0030, p. 14.

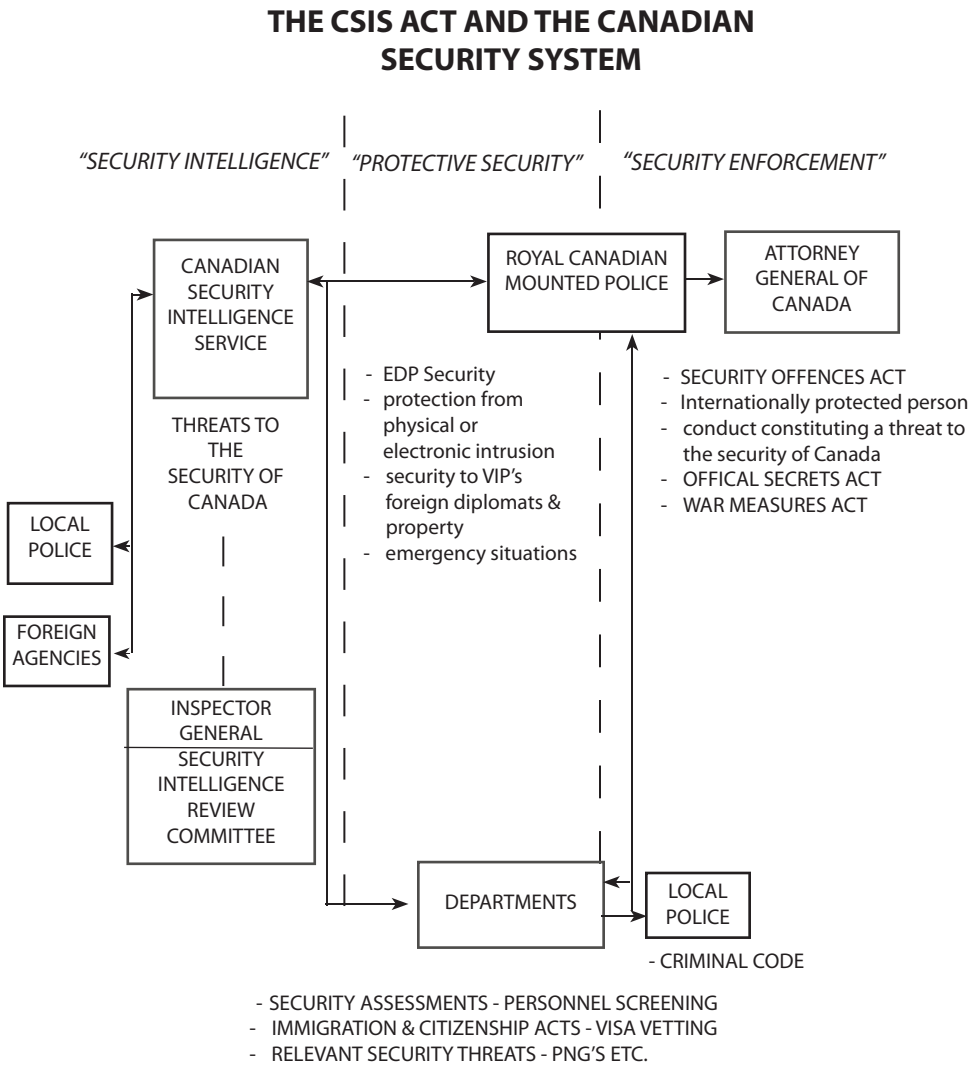

Figure 1: Division of National Security Responsibilities outlined by the *CSIS Act*

CSIS threat assessments would have been strengthened by an ability to draw on the knowledge of the Government of Canada as a whole. In the pre-bombing eriod, CSIS was able to draw on only limited resources for the investigation of the serious emerging threat of Sikh extremism.[1156] It had few, if any, sources within the Canadian Sikh community, particularly in the BC Region. Any additional information would have enhanced CSIS's understanding of the Sikh extremist phenomenon.

1156 See Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.

Several government agencies and police forces were collecting information, which was potentially relevant to CSIS's threat assessments, from sources that were often otherwise unavailable to the Service.[1157] The Department of External Affairs provided the RCMP and CSIS with the mass of threat information received from the Government of India (GOI) in the year prior to the bombings.[1158] This foreign intelligence was critical and, at times, the sole source of information on the Sikh extremist threat – both within and outside Canada. CSIS often initially learned about important threat information through foreign intelligence, including the identity and possible role of Talwinder Singh Parmar and the fact of the very existence of the Babbar Khalsa in Canada. Local police forces, such as the Vancouver Police Department (VPD), could provide an essential "on-the-ground" perspective gained through their community policing role. The VPD had an outreach unit, the Indo-Canadian Liaison Team (ICLT), which was responsible for attending to the policing needs of the Sikh community.[1159] The VPD's access to the community helped compensate for CSIS's lack of human sources in the pre-bombing period. Through its sources, the VPD gathered and passed critical information to CSIS, including the November 1984 bomb plot information and the 'wait two weeks' comment at the Khurana meeting.[1160] Transport Canada received information from foreign aviation security organizations,[1161] airports and airlines,[1162] including Air India. The RCMP would often obtain information relevant to national security threats while carrying out its security enforcement and protective policing mandates. The Communications Security Establishment (CSE) collected Signals Intelligence (SIGINT), an important source of timely information on the diplomatic, military, economic, security and commercial activities, intentions and capabilities of foreign governments, individuals and corporations. Other agencies, including the Department of National Defence (DND), Canada Employment and Immigration Commission (CEIC) and Revenue Canada, provided specialized intelligence in their respective fields.

The Failure to Put the Pieces Together

While it was clear that other agencies were collecting relevant threat information, there was a lack of consistent criteria to guide when information should be passed to CSIS. Worse, information was generally passed to CSIS through informal channels. Each agency perceived its information-sharing responsibilities differently, resulting in inconsistent and ad hoc practices for sharing information with CSIS.

Some agencies took an entirely open approach to information sharing. The VPD relationship with CSIS fostered the most effective information-sharing practices. The Indo-Canadian Liaison Team dealt directly with CSIS BC Region investigators to ensure that relevant information was identified and passed

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1157 See Section 2.0 (Pre-bombing), The Intelligence Cycle and Intelligence Community.
1158 See Section 2.2 (Pre-bombing), Failure to Appreciate the Nature and Seriousness of the Threat.
1159 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3764.
1160 See Section 1.1 (Pre-bombing), November 1984 Plot and Section 1.6 (Pre-bombing), Khurana Information.
1161 These organizations include the ICAO and US Federal Aviation Administration.
1162 Exhibit P-101 CAF0551, p. 4.

in a timely manner.[1163] External Affairs diligently passed the abundance of threat information transmitted to it by the GOI to the RCMP VIP Security Branch. Transport Canada placed considerable importance on the analysis and assessment of threats as provided by CSIS,[1164] and often forwarded threat information it received to the RCMP Airport Policing Branch. The RCMP Protective Policing Directorate (VIP Security and Airport Policing) liaised directly with CSIS to request threat assessments relevant to RCMP protective duties. Both External Affairs and Transport Canada appear to have operated with the understanding that the information they passed to the RCMP would be passed to CSIS through the threat assessment process. It is logical that the RCMP should have passed on all the threat information to CSIS regardless of whether the originating agency specifically requested this transfer. However, failures in the RCMP's information-sharing practices opened up the possibility that full and complete sharing with CSIS of third agency information did not occur.

The RCMP often failed to share relevant information with CSIS.[1165] At times this failure was inadvertent, as RCMP officers lacked training about the nature of intelligence that needed to be passed to CSIS. Also, the RCMP often failed to process information centrally, with the result that the RCMP liaison units responsible for sharing information with CSIS were themselves not even cognizant of relevant information in the RCMP's possession. At other times, the failure to share relevant information with CSIS resulted from the RCMP perception that it, not CSIS, would combine the information for a final assessment.[1166] When the RCMP requested threat assessments from CSIS, the Force did not always share the underlying information that had triggered the requests because RCMP Protective Policing members failed to understand CSIS's need for such information.

The most deficient system of dissemination was that employed by CSE. While other agencies failed to share information due to a lack of formal procedures or a lack of adherence to these procedures (when they existed), the CSE's formal system of dissemination itself was seriously flawed. SIGINT is considered highly sensitive and CSE maintained exclusive control over its dissemination within the Government of Canada. In the pre-bombing period, the CSIS Sikh Desk received its SIGINT reporting through a CSE liaison officer, Pierre LaCompte. Each morning LaCompte searched the CSE database, which contained, on average, approximately 1,000 new reports each weekday,[1167] and brought reports that he considered relevant to CSIS premises for review by the Sikh Desk analysts. The Desk analysts had to return the reports to LaCompte immediately after reading them, and were warned to treat the information with extreme caution.[1168] The major flaw in this system was that the determination of what was relevant

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1163 Testimony of Ray Kobzey, vol. 32, May 23, 2007, p. 3764.
1164 Exhibit P-364, p. 2.
1165 See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS.
1166 See, generally, Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.
1167 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11914.
1168 Testimony of Bob Burgoyne, vol. 30, May 17, 2007, pp. 3406-3408.

for CSIS purposes was left to an official of the CSE, an organization that was deliberately geared to collect, but not to analyze, intelligence information.[1169] LaCompte was a junior CSE officer who made the important decision on what information should and should not be disseminated to CSIS, informed only by brief meetings with Sikh Desk analysts to identify general search parameters. LaCompte performed this task not only for CSIS, but also the Solicitor General's office and, at times, the RCMP.[1170] With this wide range of clients, LaCompte could not have been aware of the details nor the latest developments in the Sikh extremism file, and easily could have missed the nuances in the information available in the CSE database.

A general lack of interdepartmental dialogue hampered the ability of all agencies to provide context for the information that was to be passed or to gain an awareness of CSIS's investigations, which might better have enabled them to identify relevant information in their holdings. External Affairs and Transport Canada did not generally pass their information directly to CSIS and, thus, there was little opportunity for any dialogue that could have allowed CSIS to benefit from these agencies' perspectives on the context behind the information passed. There was no forum for CSIS HQ Sikh Desk analysts to "brainstorm" with government agencies and police forces about the Sikh extremist threat.[1171] This situation is somewhat ironic in light of the commonly pronounced concern by the RCMP that CSIS lacked the ability to identify "criminality" and, hence, information that needed to be passed to the RCMP. Brief reflection would have indicated that a lack of information about the RCMP's interests and investigations, combined with limited access to RCMP information, would have made the identification of "criminality" even more difficult for CSIS. It should also have been clear that the reciprocal situation would be equally problematic: i.e. that other agencies would lack the expertise and knowledge to identify information in their holdings relevant to CSIS's sensitive and secretive investigations. Agencies were collecting information "for collection's sake"; significant collection efforts undertaken by these agencies, particularly the CSE, were effectively wasted as relevant information languished unshared in their holdings due to an inability to identify its importance to CSIS investigations.

CSIS itself appeared not to recognize the importance of other agencies' information to its own threat assessment product. In making its assessments, CSIS would draw on the information from its own resources, but did not explicitly ask other agencies for any relevant information they might have had.[1172] John Henry, Head of the CSIS Threat Assessment Unit (TAU), was responsible for the transmission of threat assessments between the RCMP and CSIS. He testified that he "hoped" that the agencies requesting threat assessments would send information relevant to the threat assessment on their own initiative, or that the

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1169 Testimony of William Sheahan, vol. 90, December 6, 2007, p. 11902; Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11926.

1170 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11914.

1171 Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3491. Burgoyne noted that CSIS BC Region investigators had excellent contacts within the police services and reported back to CSIS HQ. However, the Sikh Desk analysts at HQ who drafted the TAs had no direct contact.

1172 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2540-2541.

CSIS operational desk preparing the threat assessment would inquire to see if other government agencies held relevant information.[1173] In the pre-bombing period, there was no sign that CSIS vigorously addressed the lack of information sharing by other agencies.

The end result was a situation in which CSIS was the central intelligence agency, with an abundance of threat information of unknown reliability from the Indian government, few resources to corroborate this information through its own investigations and little assistance from other agencies. This situation made the sheer volume of threat information from the Indian government appear as if it was "crying wolf," particularly in light of the lack of corroborating information from other sources. The deficiencies in CSIS's own investigation[1174] could have been mitigated by the full and open sharing of information by other government agencies and police forces. Had information been properly shared, CSIS might have been in a better position to evaluate the significance of information that was already in its possession, instead of being forced to interpret a mosaic with several pieces missing and some areas overly represented. More significantly, however, with regard to the most important information in relation to threats to Air India in the year leading up to the bombings, CSIS appears to have been in possession of none of the pieces of the mosaic.

The Missing Pieces

The first incident in which the mosaic effect might have been applied relates to the November 1984 Bomb Plot.[1175] Information that Sikh extremists were organizing to put a bomb on an Air India plane was first obtained through Person 1 by the RCMP's Vancouver Drug Squad (VDS) in September 1984. The RCMP VDS did not share this information with its own HQ, nor did it share it with outside agencies, despite its clear relevance to the mandates of both Transport Canada and CSIS. Over a month later, the VPD obtained similar information from an independent source, Person 2, and informed an RCMP member of CIS BC and a CSIS BC Region member on October 23rd. Effectively, the bomb plot, known to the RCMP since mid-September 1984, reached CSIS only in late October 1984 through another source. Even then, the RCMP E Division NCIS Extremist/ Terrorist Section was aware that the Person 2 information had also previously been provided by another, independent source (Person 1), and did not advise CSIS of the corroboration.

Several threats were made that action would be taken against Air India during the month of October. Knowledge of the November 1984 plot information obtained by the RCMP in September would have been clearly relevant in this tense climate. In early October, the GOI warned of the threat that Sikh extremists in foreign countries would stage a spectacular event to coincide with the Hindu

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1173 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2541-2542.
1174 See Section 3.3.3 (Pre-bombing), Failure to Allocate Resources.
1175 See Section 1.1 (Pre-bombing), November 1984 Plot and Exhibit P-120(c): November 1984 Plot – Chronology.

festivals that month.[1176] The blowing up of an Air India plane was listed as a possible means of attack.[1177] The GOI warned that Bagri was planning to attack an Air India plane in October.[1178] The GOI further warned that Sikh extremists in London had decided to hijack an Air India flight specifically in North America. On October 17th, the RCMP requested a TA from CSIS on the basis of this information, but failed to pass on the November 1984 plot information as it had not been transmitted internally within the RCMP to the Protective Policing Branch that made the TA request.[1179] On October 22nd, CSIS provided a TA concluding that the possibility of a hijacking in Canada was remote, but could not be ruled out.[1180] The TA noted that CSIS had no independent information to corroborate the threats. Days later, after CSIS received the November 1984 plot information from the VPD, it issued an updated TA concluding that "…there is a real possibility that Sikhs will damage an Air India plane."[1181]

This radical change in the CSIS assessment of the risk from "remote" to "a real possibility" demonstrates the dramatic influence of new information in CSIS threat assessments. Had the RCMP passed information about the November 1984 bomb plot to CSIS in September, CSIS would have undoubtedly viewed the threats of actions to be taken in October with more urgency, and pursued more vigorously its investigation into these threats. Conversely, the change in the CSIS position also demonstrates the potential for a real threat to be discounted because of an important piece of information not being passed on for CSIS to consider.

In any event, no hijacking or sabotage of an Air India airplane occurred in October or November of 1984, so that in the short term, there were no disastrous consequences from the failure to pass on relevant information. However, the RCMP continued to discount the information it received, which indicated that the bomb plot had been postponed rather than abandoned, when Person 2 was incarcerated in October 1984.[1182] This lax attitude led to growing internal RCMP indifference to any kind of follow-up. It may also account for the RCMP's failure to pass along to CSIS this information and previous information – only discovered in 1986 in RCMP files – indicating that Person 1 had made statements to police in September 1984 about a man in Duncan who could manufacture "nitro" for blowing up an Air India flight. These latter two pieces of the possible mosaic were particularly relevant to CSIS's ability to understand the threat, as they were to the subsequent police investigations.

The most striking instance of the failure to benefit from the mosaic effect is the oft-discussed June 1st Telex.[1183] The RCMP obtained this critical information

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1176 Exhibit P-101 CAA0101, p. 1.
1177 Exhibit P-101 CAA0101, p. 1.
1178 Exhibit P-101 CAA0097, CAA0101, p. 2.
1179 Exhibit P-101 CAA0103.
1180 Exhibit P-101 CAB0149.
1181 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p. 5).
1182 See Section 1.1 (Pre-bombing), November 1984 Plot and Exhibit P-120(c): November 1984 Plot – Chronology.
1183 See Section 1.2 (Pre-bombing), June 1st Telex.

warning all Air India stations of the threat by Sikh extremists of sabotage attempts by time/delay devices or explosives in registered baggage and calling for the implementation of five counter-sabotage measures.[1184] The RCMP detachment at Toronto's Pearson Airport received the June 1st Telex from Air India officials and passed the information to the RCMP HQ Airport Policing Branch. The Airport Policing Branch responded by requesting an updated threat assessment from CSIS, but failed to pass the actual June 1st Telex to CSIS. At the Inquiry, CSIS HQ Sikh Desk analysts confirmed that they had never seen the information in the June 1st Telex. CSIS issued a TA in response to the RCMP request based on the information in its possession. Without the benefit of this new information, CSIS concluded that the "threat potential" to Air India was "high," but that it was not aware of any "specific threats" at the time.[1185]

CSE received information independently that corroborated the underlying information in the June 1st Telex, indicating that specific security measures were to be undertaken by all Air India stations both within and outside of India during June 1985. Shortly after the RCMP received a copy of the June 1st Telex through Air India, separate CSE information indicated an increase in specific security measures, substantially similar to those listed in the June 1st Telex, which were being undertaken at Indian airports in light of threats of hijackings and bombings by Sikh extremists. Security audits were being undertaken at several Indian airports in response to this threat. Other CSE information at the time noted that the GOI had recently shown an increased interest in the security of airports against the Sikh terrorist threat in the month of June 1985.

There is no record that any of this information was passed on by CSE to CSIS or to any Canadian government personnel. William ("Bill") Sheahan, who serviced high-level DEA clients with specific interests in Sikh extremist issues, maintained weekly distribution notes, none of which mentioned any of these documents. LaCompte, who delivered CSE reports to the CSIS Sikh Desk, recalled the November 1984 plot when asked about relevant reporting immediately after the bombings, but did not recall these more recent relevant documents.

The failure by the RCMP to pass on the June 1st Telex is difficult to understand. It deprived CSIS of a clear and direct warning, attributed to the intelligence section of India's state-owned airline, that Sikh extremists were targeting Air India flights for sabotage. The only reason cited by Sgt. J.B. ("Joe") MacDonald of RCMP HQ Airport Policing for not passing the June 1st Telex was that he saw "no need" to share the information with CSIS.[1186]

Evidence before the Commission indicates that at times there was a perception among RCMP and Transport officials that threat warnings sent by Air India, such as the June 1st Telex, were provided simply for the purpose of obtaining additional security for Air India flights at no extra cost.[1187] This sort of reasoning would have been put into question, if not refuted altogether, by the CSE information that the GOI was assiduously pursuing these very same security upgrades for

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1184 Exhibit P-101 CAA0185.
1185 Exhibit P-101 CAA0199.
1186 See Section 1.2 (Pre-bombing), June 1st Telex.
1187 See Section 1.2 (Pre-bombing), June 1st Telex.

Air India flights, both inside and outside India, because of fears of violence from extremists and undertaking real measures in response to the threat. At the time, all Indian airports and major airlines were nationalized. The cost of any requirement to implement increased security at Indian airports would have been borne by the Indian government. Thus, a call for increased security at Indian airports could not have been an attempt to obtain security for free. Had CSIS been able to analyze the June 1st Telex in light of the CSE information, it might have been able to warn the RCMP that both pieces of information likely related to a *bona fide* threat.

In the end, of course, CSIS had none of the information in question: neither the June 1st Telex, nor any of the CSE information about the increased security measures in Indian airports. Each of these items of information might have seemed relatively inconclusive or ambiguous on its own. However, when pieced together by a trained analyst, a much clearer, and undoubtedly alarming, picture probably would have been discerned.

Had CSIS been given the additional information, namely, that the November Bomb Plot had only been postponed, as well as the information about the man in Duncan who could manufacture "nitro" for blowing up an aircraft in flight, an even clearer mosaic pattern should have emerged. The pattern would have pointed to the seriousness of the threat to Air India as well as to the potential that it could involve sabotage and not only hijacking, the concealment of a bomb in checked baggage as the possible mode of sabotage, and the real possibility that the focus of an attack against an Air India plane might be in Canada, carried out by Canadian residents.

It is, of course, also possible that, even if the June 1st Telex and the CSE information had been passed to CSIS, the Sikh desk would still have been unable to "connect the dots", or that the pattern would have been lost amid other information given to CSIS. The critical point is that CSIS never had the opportunity to assemble the mosaic because those key pieces were never given to it.

As a result, when CSIS issued its final TA[1188] before the bombings on June 18, 1985, it made no reference to the threat to Air India or to any aviation security threats, and had little more to report other than that the general threat was only "slightly less serious", a conclusion apparently reached on the basis of what they thought to be common sense.

The failure to coordinate government-wide information led to a situation where the lack of information-sharing with CSIS by various agencies resulted in CSIS returning a virtually meaningless threat assessment in the critical week before the bombings. Critical information remained siloed within each agency's holdings, robbing CSIS of the opportunity to effectively carry out its mandate to assemble the puzzle for the benefit of national security.

1188 Exhibit P-101 CAB0321.

Why Was the Information Not Passed to CSIS?

There has never been an official explanation for the failure of the RCMP to send the June 1st Telex to CSIS at the time that it asked CSIS for an updated assessment of the threat against Air India, aside from MacDonald's testimony that he saw "no need" to share the information. The threat assessment update request was made in direct response to the RCMP's having been given the telex by Air India, and the (inaccurate) representation by the RCMP to the Honourable Bob Rae that it had passed the telex on to CSIS along with the update request demonstrates, if nothing else, the obvious conclusion that it should have been passed on, as the Attorney General of Canada conceded in its Final Submissions.[1189] Against the backdrop of erratic RCMP internal communications and poor training about the threat assessment process and the nature of intelligence that needed to be passed to CSIS,[1190] the failure to communicate externally is not surprising.

As for the failure of CSE to communicate potentially relevant information, the explanation seems clearer and seems to be rooted in a faulty structural design. CSE was deliberately given a mandate to collect signals intelligence (defined earlier) but not to analyze it. As such, it was structurally incapable of determining for itself the relevance of all but the most obvious intelligence it might collect, having instead to rely on general relevance criteria and markers provided by CSIS, the RCMP, DEA, or other clients. This would seem like a recipe for almost certainly missing at least some of the relevant information that might not fit exactly within the predetermined criteria. LaCompte testified that, in his daily search, he would look for reports "…impacting on Canadian security."[1191] Using the limiter "Canadian security" had the potential to miss capturing threat information warning of similar threat situations in other countries that could have provided context to threats in Canada. In June 1985, several CSE reports indicated several threats to major Indian targets were being made by Sikh extremists and the GOI was taking steps to verify and respond to these threats. In fact, as warned, bombings did occur at major public locations in India. After the Air India Flight 182 and Narita bombings, reporting continued to emphasize the importance of implementing specific security measures in light of the ongoing terrorist threat, specifically referencing the instructions to increase airport security measures sent to all Air India stations worldwide nearly one month prior. None of this reporting appears to have been disseminated outside of CSE. All this information represents more missing pieces of the puzzle.

Recognition of the Lack of Coordination

The Canadian government recognized the deficiency in the lack of government-wide coordination in the threat assessment process in the pre-bombing period. A May 31, 1985 report of the PCO Intelligence and Security Coordinator[1192]

1189 See Section 1.2 (Pre-bombing), June 1st Telex.

1190 See Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

1191 Testimony of Pierre LaCompte, vol. 90, December 6, 2007, p. 11914.

1192 The Intelligence and Security Coordinator position was created in February 1985 and filled by Blair Seaborn. Seaborn also acted as Chair for the Interdepartmental Committee on Security and Intelligence (ICSI), a high level interdepartmental committee mandated to produce policy-neutral threat assessments. See Section 2.0 (Pre-bombing), The Intelligence Cycle and Intelligence Community, for more detailed information.

recognized the "…obvious need for greater interdepartmental coordination." It recommended the establishment of frequent interdepartmental reviews of threat assessments by a group composed of External Affairs, CSIS, RCMP, CSE, PCO and DND (and CEIC and Transport Canada as required).[1193]

In May 1985, an ad hoc working group on Sikh terrorism was formed by External Affairs under the direction of James Bartleman, with participation from several agencies including the RCMP, CSIS, CSE and the Solicitor General. Its mandate was to ensure that all relevant material was looked at, and that nothing "… fell between the cracks."[1194] William Warden, who was the Canadian High Commissioner in New Delhi from 1983 to 1986, was in Canada in May 1985 and attended the early meetings of the ad hoc working group. He felt that the meetings showed the first attempt by the government machinery to coordinate the knowledge of various agencies:

> [I]n May '85, when I attended that meeting … I was underwhelmed in the sense that the issue had been around – for months at that point, and my feeling at that time was, why didn't we do this months ago instead of waiting until May of '85? But nonetheless, I have to say that by May of '85, I did feel that finally the machinery was starting to get its act together, and in fact information was coming in, … there was a lot of close interaction on the part of the agencies; the Indian Government had its excellent sources in Canada, the CSIS, the RCMP, and people were starting to pull together.[1195]

These efforts show that the Government of Canada was acting to correct the known deficiency in the threat assessment process. The failure to pass on the relevant information described in this section demonstrates that these actions came too late to affect the Government's assessment of the Sikh extremist threat before the Air India and Narita bombings.

Conclusion

The lack of coordination in the threat assessment process between CSIS and other intelligence collection agencies within the Government of Canada deprived CSIS of information that might have allowed CSIS to apply the mosaic effect. CSIS was (and continues to be) aware of the dangers of the mosaic effect, using it as a basis for protecting certain sensitive information from dissemination. However, this very technique could have led to a dramatic benefit for the threat assessment process, if CSIS had been provided with relevant information held by other government agencies.

1193 Exhibit P-101 CAF0060.

1194 Testimony of James Bartleman, vol. 22, May 3, 2007, p. 2105; Testimony of William Warden, vol. 24, May 7, 2007, p. 2427; Exhibit P-101 CAA0017.

1195 Testimony of William Warden, vol. 24, May 7, 2007, pp. 2388, 2413, 2427.

Several government agencies were collecting and disseminating intelligence relevant to CSIS's investigation of Sikh extremism. Because of a lack of clear guidance from the Government of Canada about when and how this information should be passed on to strengthen CSIS's threat assessment product, information-sharing practices were inconsistent across government agencies and police forces. The VPD had the best information-sharing practices, consulting directly with CSIS and sharing important information. External Affairs and Transport Canada's information-sharing systems were hampered by the fact that they relied on the RCMP to pass information to CSIS. The RCMP and CSE clearly limited the information they shared with CSIS. The RCMP failed to share largely because of internal communication breakdowns and a lack of training and, at times, because of its perception that it, not CSIS, would produce the final threat assessment. CSE often failed to share information because its system to identify and disseminate relevant information was fundamentally flawed. CSE personnel were tasked to identify relevant information but did not have the analytical capacity or the requisite knowledge of CSIS's intelligence investigations. The result was that relevant information could, and did, remain unnoticed within CSE holdings.

The major deficiency was that these front-line collection agencies made determinations about the relevance of information without in-depth knowledge of CSIS's investigations. The collectors would only pass intelligence that had reached a threshold of being obviously relevant. This system would inevitably result in missed opportunities to apply the mosaic effect, opportunities which might have allowed CSIS to put together a more complete picture of the facts. A better method of dissemination would have been to have personnel with knowledge of CSIS investigations and programs review the collected intelligence and select the relevant material. Such personnel would have been far more qualified to assess the relevancy of intelligence information. Unfortunately, such a system was not in place in 1985, and critical information like the June 1st Telex and related CSE information was not made available to inform the CSIS assessment of the threat to Air India.

The evidence shows that the Government of Canada was aware of the need to improve communications and coordination among agencies with regard to threat assessment and threat response in the pre-bombing period. However, the Government was slow to improve this recognized deficiency. Ultimately, the silos within the various agencies created a system where each agency could claim to be adequately carrying out its mandate, while still allowing intelligence failures to occur as a result of the lack of coordination of the respective mandates. In effect, while each agency was doing its job, it was the structure of this overarching system that allowed information-sharing failures to occur. These failures impaired the Government's ability properly to assess the threat of Sikh extremism.

The undeniable conclusion from the foregoing is that had information been efficiently shared among agencies rather than being retained in various silos, CSIS would have been able to assemble enough of the "mosaic" to provide a well-informed threat assessment to the RCMP. This might have been useful in a criminal investigation context, and might have prevented the destruction of Air India Flight 182 and the murder of 329 people.

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CHAPTER IV: RESPONDING TO THE THREAT

4.0 Threat-Response Regime in 1985

An effective threat-response regime is one that accurately assesses and appropriately responds to the relevant risk. The likelihood of a given threat being carried out and the damage that could be caused as a result are the essential elements of risk.

The ability to assess the likelihood of a threat occurring depends on an understanding of all relevant threat information, including a calibration of the intent and capability of the source of the threat, as well as an understanding of the relevant operational factors. For example, an assassin with a rifle and a strong desire to shoot a particular politician might generally pose a "high" threat to that politician. However, factors such as the event that the politician will attend, including the size and accessibility of the venue, whether it is public or by invitation only, and the nature of access others will have to the politician, all factor into the probability of the threat being successfully carried out. This assessment requires the ability to gather information quickly, share it with those responsible for analyzing it, and provide the assessment and salient facts to those charged with implementing the necessary response.

In a context of limited resources, an efficient system will also target its resources strategically to minimize the harm that may occur in the eventuality that various threats are carried out. For example, it may be justified for officials to allocate resources to a moderate threat of bombing in priority to a high threat of vandalism. The ability to address the relevant risk will depend on the tools on hand that can be accessed to respond in an appropriate manner. For example, the ability to prevent a would-be terrorist from releasing toxic gas on a city subway will depend on a number of factors, including the technologies available to detect such gas, the sophistication of protocols in place to conduct effective searches for toxins, and the level of training of the individuals carrying out those searches.

Relative to intelligence, protective policing issues will necessarily intersect with issues of national security. The same factors, both symbolic and strategic, that make certain individuals, locations, and modes of transport important objects of protection, also make them attractive targets for terrorist attack. It is important that this is understood within the protective policing regime so that structures

are in place to support the sharing and collection of information, to enable all actors within the regime to contribute to and benefit from the collective understanding of the relevant threats. Further, as the nature and level of the threat in relation to any protective policing mandate are not static, the system in place must have built-in flexibility so that implementers can tailor the level and type of protective deployment to address the relevant risk.

The threat-response regime in 1985 did not adequately incorporate the concept of risk assessment into its operations. There were serious deficiencies within the protective security regime in the appreciation of the threat of Sikh extremism and its connection to the threat to Air India. This lack of appreciation was, in large part, due to a lack of understanding by personnel in the regime about the nature and value of intelligence and its relevance to their individual tasks and, more generally, its relevance to the efficacy of the system. Further impacting on this situation were inconsistent, insecure, and uncoordinated communications, excessive secrecy, and disagreements over expenses and over the question of which entity or organization had the ultimate decision-making authority in times of crisis. Moreover, the systems in place did not allow for a tailoring of the protective responses to the nature of the threats at issue. Measures were applied in an unthinking manner and with no purpose. There was no consideration of whether they were necessary or sufficient. The lack of awareness of risk allowed for a system to remain in place that was unresponsive to a serious and known threat – the threat of bombing.

The ability of the parties within the threat-response regime to share relevant information, coordinate their efforts, and implement a targeted response are integral functions for any such system, and these functions will be explored in detail in this chapter.

4.1 General Obligations and Relationship to the Threat Level

The government has a duty to keep its citizens safe and to protect them from those who would try to further their own political goals by causing harm to the innocent. While the government can create arrangements that allow for certain protective duties to be performed by private entities, circumstances of a greater known risk will logically require a greater involvement by the government, either directly, or by way of training, monitoring, and supervision of those involved, to ensure that appropriate measures to protect are being taken.

In 1985, the RCMP had protective security duties for domestic dignitaries, including the Prime Minister and Members of Parliament, as well as for foreign dignitaries who were internationally protected persons under the Vienna Convention and, later, under the *Criminal Code of Canada*.[1] In terms of aviation security, Transport Canada, and the RCMP by contract, had the responsibility for the security of the airport as well as a role, in conjunction with airlines more generally, for the protection of civil aviation security, including the protection

1 Testimony of Lloyd Hickman, vol. 18, March 7, 2007, pp. 1680-1681.

of the aircraft, luggage and cargo. The duties varied with the level and nature of the threat posed to the airline.

The *Aeronautics Act* was, and still is, the primary authority for the regulation of civil aviation in Canada. The *Aeronautics Act* gives the Minister of Transport the overall responsibility and authority for the "…supervision of all matters connected with aeronautics."[2] Transport Canada, as owner and operator of Canada's major airports, with the responsibility for providing security services for air carriers, entered into agreements for service with the RCMP.[3] The services of the RCMP in connection with airport policing were to be funded by the Ministry of Transport.

In 1985, the RCMP was mandated to perform specific police and security duties at designated airports, pursuant to the National Airport Policing and Security Program (NAPSP), which came into effect in 1972 with the signing of the Transport Canada/RCMP "Memorandum of Agreement."[4] The main purpose of this agreement was the "…protection of civil aviation", and airport policing detachments were established at ten designated international and eight domestic airports, including Toronto's Pearson International Airport and Montreal's Mirabel Airport.[5] Some of the main airport policing duties performed by the RCMP, pursuant to the Memorandum of Agreement, included:

- guarding against unauthorized entry, sabotage, theft, fire or damage[6] – including the protection of, and security for, airlines landing at the airport, and also the physical facilities of the airport itself;[7]

- collection, evaluation and dissemination of intelligence information concerning national and international threats to civil aviation;[8]

- responding to requests for assistance respecting passenger and luggage check-in;[9]

- acting as first responders to criminal incidents;[10] and

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2 *Aeronautics Act*, R.S.C. 1985, c. A-2, s. 4.2.
3 Exhibit P-101 CAA0335, p. 8.
4 A 1972 Memorandum of Agreement between the RCMP and Transport Canada set out the RCMP's roles and responsibilities for airport policing: See Exhibit P-101 CAA0001. This Memorandum of Agreement was amended in 1975 (Exhibit P-101 CAA0003) and again in 1979 (Exhibit P-101 CAA0005).
5 Exhibit P-101 CAC0528, pp. 6-8.
6 Exhibit P-101 CAF0014.
7 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3176. See also Exhibit P-101 CAA0182, which indicates that with respect to aircraft access, the RCMP had the responsibility to provide continuous 24 hour/7 days a week patrols, including continuous 24 hour/7 days a week vehicle and/or foot patrols of the airside area at Mirabel, Dorval, Toronto and Vancouver International Airports.
8 Exhibit P-101 CAA0335, p. 8.
9 Exhibit P-101 CAA0182.
10 Exhibit P-101 CAC0281.

- formulating, disseminating and auditing standard RCMP policy in such areas as the development and maintenance of airport emergency procedures, including those for bomb threats, and the use of police service dog teams at airports.[11]

At RCMP Headquarters, the Airport Policing Branch, which was housed within the Protective Policing Directorate (P Directorate), served as the policy centre for airport policing. The Director of Protective Policing oversaw the VIP Security Branch and the Airport Policing Branch and other branches within the Protective Policing Directorate. The policy centre was responsible for resolving disputes with Transport Canada when such disputes could not be solved locally or regionally,[12] and for dealing with any policy that had to be written or changed.[13]

The HQ Airport Policing Branch was intended to be a central hub for CSIS threat assessments.[14] Upon receipt of threat information, which could come from multiple sources, the Airport Policing Branch would request and receive threat assessments from CSIS in order to set security levels at affected airports.[15] The Airport Policing Branch also had the role of liaising with both the RCMP airport detachments and with Transport Canada to ensure that all who had a stake in the security regime were apprised of pertinent threat information. Operationally, the airport detachments reported to the divisions.[16]

The security regime for the safety and security of passengers, baggage and cargo was premised on complementary roles for air carriers, the RCMP and Transport Canada. The regulations in place at the time imposed obligations on airlines to establish systems to carry out routine searching and surveillance of persons, baggage and cargo by mechanical or electronic devices.[17] Air

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11 Exhibit P-101 CAA0182.

12 Testimony of J.B. MacDonald , vol. 27, May 14, 2007, p. 2764.

13 Testimony of J.B. MacDonald , vol. 27, May 14, 2007, pp. 2870-2871.

14 Final Submissions of the Attorney General of Canada, Vol. II, para. 28. See also Exhibit P-101 CAF0561: An example of Transport Canada requesting that RCMP Airport Policing Branch request from the Security Service an updated threat assessment respecting the political threat to Canadian civil aviation targets.

15 Final Submissions of the Attorney General of Canada, Vol. II, para. 95.

16 Testimony of J.B. MacDonald , vol. 27, May 14, 2007, p. 2892.

17 *Foreign Aircraft Security Measures Regulations*, S.O.R./76-593, as am., s. 3(1) [*Foreign Aircraft Security Measures Regulations*]. Air carriers were also required to submit to the Minister a written description of the security measures they had established (*Foreign Aircraft Security Measures Order,* S.O.R./76-631*; Civil Aviation Security Measures Order,* S.O.R./74-227*)*. But the AGC also argued that "…the *Aeronautics Act* contemplated that the onus for aircraft security would rest on the owners and operators of those aircraft", citing the provisions that authorized regulations requiring the owner or operator to establish security measures for, *inter alia*, the search of persons, baggage, and cargo: Final Submissions of the Attorney General of Canada, Vol. II, paras. 47, 49. However, the *Aeronautics Act* was at that time, in fact, neutral with respect to the onus for aircraft security. While sections 5.1(1) and 5.1(1.2) provided authority for regulations placing obligations on air carriers to carry out searches or other security measures, section 5.1(2) provided for regulations requiring that the Minister of Transport carry out such measures "...in lieu of or in addition to the security measures required pursuant to subsection (1) or (1.2)": *Aeronautics Act,* R.S.C. 1970, c. A-3, as am. by S.C. 1973-74, c. 20, s.1. Therefore, while there were regulations enacted pursuant to sections 5.1(1) and (1.2) placing some obligations on air carriers to provide for systems of searches for baggage, it is incorrect to state that the Act somehow contemplated that the onus for aircraft security would rest on owners or operators or to interpret the fact of the limited regulations that were enacted as somehow derogating from the overall obligation on the Minister for the "…supervision of all matters connected with aeronautics."

carriers were also required to control access to the airside of the airports, and to establish procedures to protect against unauthorized access to aircraft,[18] as well as systems to ensure that no unauthorized baggage or cargo were loaded aboard aircraft.[19]

At the airport, Transport Canada's Airport Manager had the generalized responsibility to protect civil aviation operations from acts of terrorism,[20] and maintained overall jurisdiction at the airport.[21] As the "…on-site minister's representative and 'landlord' [the airport Manager had] a responsibility to protect government property and users of the airport to the extent possible."[22] Transport Canada was responsible for ensuring that there were resources available to respond to the needs of civil aviation, or to the requirements of air carriers.[23] It was to provide the security screening equipment used by air carriers to search persons, personal belongings and carry-on baggage, and to set out technical requirements and standards for screening equipment in internal departmental publications.[24] Transport Canada also provided guidelines to carriers to help identify items in a passenger's possession that could be dangerous.[25]

While air carriers undertook routine passenger and baggage check-in duties, as well as cargo and aircraft loading, the RCMP would provide assistance with security where the need was identified,[26] with the response of the RCMP varying with the nature of the incident.[27] Thus, at Pearson and Mirabel airports, the RCMP provided the services of a police services dog, trained to identify traces of many different explosives with its keen sense of smell, to aid in the detection of explosive devices that might be concealed in suspicious luggage. Similarly, the RCMP had provided a police presence in the baggage room for the inaugural Air India flight at Pearson, which was operating under an increased security level,[28] and there would usually be an RCMP dogmaster in the baggage area at Mirabel for Air India flights.[29] The dogmaster would also be used to search the

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18 Exhibit P-157, p. 23.

19 *Civil Aviation Security Measures Regulations*, S.O.R./74-226. Foreign carriers like Air India were required to "…establish, maintain and carry out" these security regulations under a parallel set of regulations: *Foreign Aircraft Security Measures Regulations*, s. 3(1).

20 Final Submissions of the Attorney General of Canada, Vol. II, para. 120.

21 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3087-3088.

22 Exhibit P-101 CAF0084, p. 3.

23 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3178.

24 Exhibit P-101 CAF0813, pp. 4-5.

25 Exhibit P-101 CAF0160, p. 23.

26 Exhibit P-101 CAA0335.

27 Exhibit P-101 CAA0182.

28 Exhibit P-101 CAA0148: At an April 18, 1985 meeting between representatives of the RCMP, Transport Canada, Air India and Peel Regional Police, an Air India representative "…advised that he would like RCMP presence the same as for inaugural flight, e.g. at check-in desks, at Bridge Head, on apron and in Baggage Room." [Emphasis added] See also Exhibit P-101 CAF0586, p. 2. The same presence was requested with respect to a threat received from the Assistant Indian High Commissioner indicating an unconfirmed report that Air India Flight 181 would be hijacked on April 13, 1985: Exhibit P-101 CAC0309, CAC0528, p. 36. However, the RCMP denied this request to maintain a presence in the baggage room but indicated to Air India that members would be ready to respond should they be summoned by Burns: Exhibit P-101 CAA0148.

29 Exhibit P-101 CAF0811, p. 6.

airplane and luggage when a "specific threat" was received by the airline.[30] While there were obligations on air carriers to establish systems to protect against unauthorized access to their aircraft, the RCMP, under a normal operating level of security, provided intermittent inspections of aircraft and activities on the surrounding apron. In circumstances of increased threat, the RCMP increased its involvement in aircraft protection and surveillance, providing services such as escorting the plane from the runway to the gate.[31]

While under normal conditions there were certain requirements placed on the air carrier for aircraft and baggage security, such requirements did not preclude or hinder a more active role for government in circumstances of heightened threat to an air carrier.

The regulations in place at the time confirmed that government airport officials retained an important overall discretion respecting the safety and security of a flight. In fact, section 813 of the *Air Regulations*[32] specifically contemplated an override, whereby Transport Canada[33] had wide discretion to take any action necessary to ensure that an aircraft would not depart in circumstances considered by the government to be dangerous. Section 813 provides:

> Where the Minister has reason to believe, upon complaint or otherwise, that an aircraft within Canada is intended or is about to proceed upon a flight in contravention of these Regulations or while in a condition unfit for flight, he may make such directions and take such action by way of the provisional detention of the aircraft or otherwise as he deems necessary, for the purpose of causing the circumstances relating to the flight to be investigated, or the aircraft to be detained until such time as he is satisfied that the Regulations are being complied with or until such alterations or repairs as he deems necessary to render the aircraft fit for flying have been made.[34]

The ability to detain an airplane in circumstances in which there was concern for the safety of the flight meant that the government had the ability to override the will of the airline if circumstances warranted. A Memorandum of Understanding signed in November 1982 between Transport Canada and the RCMP confirms that the RCMP had delegated authority to enforce section 813.[35] Furthermore, it appears that the phrase "unfit for flight" was given a wide interpretation in terms

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30 See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.
31 Exhibit P-101 CAA0025.
32 C.R.C. 1978, c. 2.
33 Or the Minister's designate: s. 838 specifies that "A reference in these Regulations to the Minister includes, in relation to any particular power, duty or function of the Minister under these Regulations, a reference to any person authorized by the Minister to exercise or perform such power, duty or function.": *Air Regulations*, C.R.C. 1978, c. 2 [*Air Regulations*].
34 *Air Regulations,* s. 813 [Emphasis added].
35 Exhibit P-101 CAC0090, p. 6.

of the circumstances in which detention could be ordered. For example, Chern Heed, a member of the *CATSA Act* Review Advisory Panel, who had served as the General Airport Manager both at Vancouver International Airport and Pearson, testified that he had ordered that a plane be detained where he felt conditions were too icy for safe departure. He also confirmed that there were a number of persons in authority, including the pilot and RCMP and Transport officials, who could exercise their discretion to prevent the departure of a flight.[36]

Air India, as part of its security plan, applied more security measures than did other foreign air carriers. Such measures, including the use of an X-ray machine and a PD4 sniffer device, were not required by the government[37] and compliance was not monitored.[38] The fact that Air India voluntarily took on additional measures cannot be taken to have lessened any obligations that would otherwise be placed on the government in response to a heightened threat situation.

4.2 Structural Issues in Protective Policing and Airport Security

4.2.1 RCMP-Transport Canada Relationship

Joint Responsibility for Airport Security

Airport security in 1985 was the joint responsibility of Transport Canada and the RCMP. Each depended upon the specialized functions of the other to establish a comprehensive security, intelligence, and operational structure capable of protecting major airports across the country, along with the airlines and millions of travellers. Unfortunately, the relationship between the organizations was imperfect at best, fraught with overlap and confusion over their respective duties, disagreements over questions of authority, budgetary disputes, and failures to effectively cooperate, coordinate, and share information. This flawed relationship would have significant repercussions for aviation security in general and Air India in particular.

Under Canada's National Airport Policing and Security Program (NAPSP),[39] the requirements and standards for the NAPSP were established by Transport Canada. Transport Canada negotiated with the RCMP to obtain the human resources needed to fulfill the policing and security requirements for Canada's major airports.[40] A Memorandum of Agreement (MOA) was signed between the agencies that set out their basic responsibilities.[41] Transport Canada was responsible for ensuring that there were sufficient resources available to respond

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36 Testimony of the *CATSA Act* Review Advisory Panel, vol. 36, May 30, 2007, pp. 4383-4385.
37 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3200-3201.
38 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3198-3200. See Section 4.7 (Pre-bombing), Transport Canada Policy Gaps and Implementation Deficiencies.
39 Exhibit P-101 CAF0638.
40 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3242-3243.
41 Exhibit P-101 CAA0005.

to the needs of civil aviation and the air carrier requirements.[42] The RCMP, in turn, provided Transport Canada with information regarding the threats facing aviation. Threats to aviation security were reviewed annually by the RCMP (later by CSIS), and submitted to Transport Canada as part of an annual RCMP report on policing and security at airports. RCMP members provided briefings on relevant threats at meetings of the National Civil Aviation Security Committee.[43] The RCMP Airport Policing Branch also liaised with Transport Canada on a regular basis and acted as a central locus for threat assessments.[44]

MOA: Local Budgets and Local Realities

Airport Policing budgets, which set out the person-year requirements for the RCMP detachment at an airport, were negotiated annually at the airport level between Transport Canada and RCMP officials.[45] Dale Mattson, who was the Transport Canada Safety and Security Manager for Toronto's Pearson airport, said he negotiated the budget based on his understanding of the threat level and the security requirements of the day, which were relayed to him by the Civil Aviation Security Branch, as well as the Airports Branch at Transport Canada's Headquarters.[46] Through consultation with the RCMP, a level of security coverage was decided upon that was felt to be appropriate to address the security issues of the day and to meet all the elements of the MOA between the agencies.[47]

In the pre-bombing period, there was significant pressure on local airport managers to control their spending, which resulted in local restraints being applied to their budgets.[48] Mattson testified that there were always requirements to "ensure efficiencies" in Transport Canada's programs and that "…we were always looking for opportunities to reduce costs."[49] The MOA between the RCMP and Transport Canada specifically addressed this issue and gave the RCMP a "trump card,"[50] namely section 12(b)(i), that could be used to override Transport Canada's discretion to increase or decrease RCMP personnel at the airport:

> 12. Numbers and locations of Airport Police and Security Details and established manpower requirements shall be as mutually agreed to by the RCMP and the Department:
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> > a) for the purpose of this Agreement and subject to the terms herein, the RCMP shall provide and maintain police and security services at designated airports during the term of this Agreement;

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42 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3178.
43 Final Submissions of the Attorney General of Canada, Vol. II, para. 94.
44 Final Submissions of the Attorney General of Canada, Vol. II, para. 28.
45 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3215-3216.
46 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3178-3179, 3254.
47 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3215-3216.
48 Exhibit P-101 CAA0034.
49 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3253.
50 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3243.

> b) police and security services at designated airports may be increased or decreased at the request of the Department, but:
>
> > i) a decrease shall not reduce the police and security service to a level less than necessary, in the opinion of the Commissioner, to carry out the duties required under this Agreement.[51] [Emphasis added]

However, it is not clear whether the RCMP actively invoked this "trump card," despite the fact that there was significant concern within the RCMP that airport policing personnel would be cut to a level where it would "…not have the resources to supply the extra security required/requested by the various foreign airlines."[52] In fact, in some areas, this level had already been reached.[53]

Whereas budgets were negotiated locally, these negotiations were done within the framework of a single, generally worded MOA that governed the relationship between Transport Canada and the RCMP at all detachments in Canada.[54] As pointed out by Supt. Gary Clarke, who was the OIC at Pearson airport at the time, in his November 1984 memorandum to the OIC Protective Policing, the problem was that "…all Airports in Canada are not the same and requirements for each Airport are different."[55] Of particular concern to Clarke was that local demands at Pearson airport, the "…largest and busiest in Canada," were such that the actual duties performed by the RCMP detachment there were not reflected in the MOA at the time and, further, that officers were increasingly taking on police-like duties (as opposed to purely security duties) that were technically outside the scope of the MOA.[56] These duties included drug seizures, accident investigations, and Federal Statute cases that the forces with "…prime jurisdiction cannot or will not investigate."[57] As a result, there was a need for ongoing training to "better equip" airport policing members at Pearson and to "increase their professionalism."[58] It was felt that current agreements were open to "…wide interpretation and are too broad for today's needs" and that they hindered "…the development of a good day to day working relationship" with Transport Canada.[59]

Thus, the suggestion was made that the national program either be "…brought into line with the original intent or allowed to expand to meet todays [*sic*] needs."[60] Or, if such a change could not occur, Clarke suggested that there be a "local 'Memorandum of Understanding' or 'Plan of Operation for Policing and

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51 Exhibit P-101 CAA0005, p. 11.
52 Exhibit P-101 CAA0034.
53 Exhibit P-101 CAA0034.
54 Exhibit P-101 CAC0107, p. 2.
55 Exhibit P-101 CAC0107, p. 2.
56 Exhibit P-101 CAC0107.
57 Exhibit P-101 CAC0107, p. 5.
58 Exhibit P-101 CAC0107, p. 4.
59 Exhibit P-101 CAC0107, p. 6.
60 Exhibit P-101 CAC0107, p. 4.

Security' between the RCMP and Transport Canada at Pearson which would reflect the actual conditions and needs of that airport."[61]

In response to the suggestion that the MOA be adjusted to reflect the trends of the day, RCMP Headquarters responded that Legal Services had indicated that a more specifically worded MOA would be "too restrictive," and that the airport detachments were never meant to be investigative units and, therefore, any move to extend their roles should not be permitted.[62] It is clear that in the pre-bombing period, the RCMP was concerned about the possibility of Transport Canada demanding a more restrictive MOA, and was concerned that the already limited role of airport policing could be further curtailed should the RCMP make any waves in terms of renegotiating the MOA:[63]

> The duties of the Airport Special Constables are anything but exciting and our Airport Detachment Commanders, 2 i/c's, etc. feel that by cooperating with local police forces and permitting the Special Constables to investigate certain occurrences that it improves their morale and gives them a feeling of worth. I will not argue with this from that point of view, however, it could end up in a situation where person years would be cut and Transport Canada demanding a more restrictive type MOA. We must prevent this from happening at all costs….[64]

And further:

> The Force's involvement in the NAPSP is indeed quite unique. We are bound by the terms of the MOT/RCMP Memorandum of Agreement and we must learn to live with this and the reviews of the program as long as Transport Canada is responsible for 100% of our costs. If it were possible to expand the role of the Airport Special Constables, it could have detrimental effects to the Force. A case in point being the requests of "H" and "J" Divisions to have Special Constables perform Highway Patrol Duties. The requests were turned down, however, the Province of New Brunswick now has their own Highway Patrol in place and our role is diminishing there.[65]

The ability of the RCMP to respond to local needs was therefore somewhat hindered by a lack of flexibility in its formal arrangements with Transport Canada. However, the failure of the RCMP to address this issue head-on was also apparently caused, to some extent, by its own concern that by asking for more, it could end up with less.

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61 Exhibit P-101 CAC0107, p. 5.
62 Exhibit P-101 CAC0281, p. 3.
63 Exhibit P-101 CAC0281.
64 Exhibit P-101 CAC0281, p. 3.
65 Exhibit P-101 CAC0281, p. 5.

Operational Decisions at Airports

Once the local budget had been agreed on by Transport Canada and RCMP officials, the RCMP was generally able to manage its own day-to-day deployment locally, without the input of Transport Canada.[66] That the operations of the RCMP detachment at the airport were to come under the exclusive direction of the member in charge of the airport detachment was specifically contemplated in s. 10 of the MOA at the time:

> The Police and Security Detail at the airport will come under the exclusive direction of the member in charge of the Police and Security Detail, or the person acting in his place, who will instruct them as to their duties and responsibilities.[67]

At the same time, s. 5 of the MOA provided that the RCMP was to keep local Transport Canada officials apprised of relevant information concerning the provision of police and security services:

> On matters of policy pertaining to the provision of police and security services by the Police and Security Detail the following will apply:
>
> (a) the member in charge of the Police and Security Detail will consult regularly with the Manager[68] or his designate to ensure harmonious interfacing between the Police and Security Detail and airport operations….[69]

The RCMP detachment had flexibility to redeploy human resources from tasks of a lower to a higher priority. Responses to "specific" or heightened threats were usually handled within the resources that were at the airport,[70] and, as such, Transport Canada would not generally need to pay for the additional deployment with respect to, for instance, a "specific threat." At times, however, the threat level necessitated additional local expenditure, beyond what was budgeted for overtime payment for RCMP airport personnel required to meet the local security needs, for example. In such cases, the agreement of Transport Canada was required to release the requisite additional funds to the RCMP.[71] Thus, budgetary decisions, dependent on Transport Canada, could impact the operational ability of the RCMP to deploy resources as it saw fit. Later, in June 1985, when a dispute erupted at Pearson over the payment by Transport Canada for additional security in response to a heightened threat, RCMP officials

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66 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.
67 Exhibit P-101 CAA0005, p. 10.
68 "Manager" is defined in the MOA as "Airport Manager."
69 Exhibit P-101 CAA0005, p. 8.
70 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3215-3216, 3253.
71 Exhibit P-101 CAA0240, p. 3.

would view the refusal by Transport Canada to release funds upon request to be a default from the MOA, s. 10, which provided the RCMP with the ability to exclusively direct the Police and Security Detail.[72]

When a request for additional security was presented, local Transport Canada officials would pass their concerns up to the Civil Aviation Security Branch and ask whether these requirements were valid, and whether additional resources should be provided.[73] Mattson testified that he understood that this was a decision made through consultation between the RCMP and Transport Canada at the Headquarters level.[74] In the case of security decisions respecting Air India, Mattson said he relied on the advice that he received from his Headquarters, which is where the experts were who were charged with assessing the threat. In 1985, there were only two airlines, including Air India, that were the subject of ongoing security threats.[75]

Mattson testified that the Civil Aviation Security Branch at Headquarters would inform officials on the ground about whether, from Transport Canada's perspective, the additional resources could be funded, and would indicate what was expected of officials at the site with respect to the introduction of security measures. It is important to note that Transport Canada Headquarters had the ability to impose additional procedures that were deemed necessary to address the relevant threat.[76] This fact underscores the importance of having structures in place to ensure the appropriate sharing of information within and among agencies. Unfortunately, deficiencies in that sharing of information resulted in significant impediments to implementing adequate, responsive measures that would meet the threat.

Transport Canada/RCMP Disputes Affect Aviation and Airport Security

The relationship between Transport Canada and the RCMP, although formalized in a written MOA, was nevertheless the subject of multiple disputes and misunderstandings in the period leading up to the bombing of Air India Flight 182. As this discussion and the following sections make clear, these disagreements would have profound implications for aviation security in general and airport security in particular.

4.2.2 RCMP Protective Policing

Mandate and Operations: Need for Centralization

In 1985, the RCMP's Protective Policing mandate involved, among other things, the protection of international VIPs, foreign missions, designated airports

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72 Exhibit P-101 CAC0445, p. 7. See Section 4.5 (Pre-bombing), Failures in Coordination between Transport Canada and the RCMP.
73 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3231-3232.
74 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.
75 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3248-3249.
76 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3215.

and Canadian dignitaries. It was a mandate that necessarily intersected with national security issues, such as the threat of Sikh extremism or the Armenian-Turkish conflict. Threat information relevant to protective operations came from many sources. Protectees, including Indian diplomats and Air India, were often objects of threats, and were thereby a source of threat information for the RCMP. It is crucial that on-the-ground threat information be channelled into a central threat assessment regime, so that each threat can be assessed individually in the context of the broader threat and intelligence landscape, while at the same time adding to that knowledge base. The need for centralization also arises from the need for appropriate dissemination of threat and intelligence information. Threats or intelligence received in one locale may have important protective policing implications for another. It is therefore important that a central unit within Protective Policing, with an understanding of the operational need and of the larger threat context, have the ability to direct relevant information in order to properly sensitize those on the ground locally.

In order to be effective in collecting and disseminating threat information, it is necessary to have at least a basic appreciation of operational on-the-ground situations across the country. This, in turn, means that there must be some duty to report centrally on local protective policing conditions. At the same time, given that the central unit will necessarily have access to a significantly larger pool of information than the individual divisional units, and given the often highly sensitive political implications associated with protective policing operations, it is essential that the central unit have the authority to direct and redeploy resources, and to coordinate protective operations of individual units, should the need arise.

Failure to Centralize Protective Policing Adequately in the Pre-Bombing Era

In the pre-bombing era, RCMP Protective Policing had, notionally, a centralized structure for threat and intelligence reporting. In the case of Airport Policing, the airport detachments had direct interaction with the Headquarters Airport Policing Branch, to which they sent threat information, and through which they received intelligence assessments from CSIS and direction for the level of security to be applied in relation to these threats.

However, despite this notional structure, the structure actually in place was decentralized. The Airport Policing Branch, and the P Directorate more generally, were set up as non-operational policy centres, and fundamentally administrative.[77] The actual airport detachments were under the operational line command of the Criminal Operations Officer (CROPS) in charge of each Division.[78]

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77 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2893. As stated by Commissioner Robert Simmonds, at the time, RCMP Headquarters was normally "…fundamentally an administrative headquarters": Testimony of Robert Simmonds, vol. 74, November 8, 2007, p. 9365.

78 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2892.

Similarly, the VIP security sections, responsible for protective operations in each division, were administered out of the division headquarters.[79] Each VIP security section had an officer in charge, who reported up through the Criminal Operations Officer.[80] The separation of operational matters from policy matters, combined with the *de facto* decentralized Airport Policing reporting structure, was ill-conceived and led to deficiencies in the implementation of protective security measures.

First, categorizing Headquarters' functions, including dissemination of threat information and setting of security levels, as "policy", as opposed to "operational functions", was simply a misunderstanding of their purpose and effect. What Headquarters did was translate threat information into operational directives, based on an application of the VIP or Airport Policing security grid, for implementation by those on the ground. This meant that Headquarters played an (unacknowledged) operational function, but did not actually have operational line authority. The result was that the detachments had no direct obligation to report back about how Headquarters' directives had been implemented, and Headquarters had no real authority to ensure that its directives were appropriately carried out. As a consequence, the Airport Policing Branch was not notified of breaches of its own directives. For example, Sgt. J.B. ("Joe") MacDonald, Acting OIC of Headquarters Airport Policing Branch, who ordered that level 4 security be put in place for Pearson airport, was unaware that the dogmaster had not been available at Pearson on the night of the bombing, despite the fact that the presence of the dogmaster was required to properly implement level 4 security.[81] The absence of reporting obligations on the part of the detachments, and the disconnect between so-called policy and operational matters, meant that Headquarters could not tailor its directives, or modify its "policies," in line with operational realities.

The problem of the disconnect between policy and operational matters is illustrated by the episode of the PD4 sniffer test. On January 18, 1985, a meeting took place at Pearson airport involving RCMP S/Sgt Robin Ward and Sgt. Gary Carlson, the RCMP dogmaster for Pearson, along with a representative of Transport Canada, and officials from Air India and Peel Regional Police. The PD4 sniffer device was presented by a representative of Air India and Carlson tested its effectiveness using a vial of gunpowder. He found that the device was totally ineffective. He performed a second test of the device on the following day in the presence of Ward. Again, the device proved to be unresponsive.[82] After the first test, Carlson informed Air India that the PD4 was not an effective method of checking suitcases for explosives.[83] Carlson had training and expertise in the detection of explosives.[84] His opinion that Air India was using a device that

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79 Testimony of Lloyd Hickman, vol. 18, March 7, 2007, p. 1690.
80 Testimony of Lloyd Hickman, vol. 18, March 7, 2007, p. 1685.
81 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2863. See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.
82 Exhibit P-101 CAC0268.
83 Exhibit P-101 CAC0268.
84 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2992.

effectively provided no protection in terms of the detection of explosives was clearly a significant piece of operational information directly relevant to the effectiveness of the protection in place for Air India. Not surprisingly, however, given the structures in place at the time, it does not appear that this information was ever communicated to RCMP Headquarters in the pre-bombing period. Given the role of Headquarters in translating CSIS intelligence about threats into operational directives, the information regarding the effectiveness of the tools on hand at Pearson, especially regarding their ability to respond to hidden explosives, should have been available to be taken into consideration by Headquarters in its security deployment directives, especially in light of the threat information about possible bombings at that time.

Another problem posed by the lack of centralization within Protective Policing was that threat and intelligence information was being directly communicated between the airport detachments (or the VIP security units at the divisions)[85] and Headquarters. This meant that the Divisional COs were not necessarily sensitized to the threat environment or to the needs of protective operations.

By June 1984, concern about the political implications of the threat level and the need for greater protection for Indian diplomats and missions had reached the highest levels of government. On June 12, 1984, Marcel Masse, Under Secretary of State for External Affairs, wrote to Henry Jensen, Deputy Commissioner Criminal Operations of the RCMP, to raise concerns about the need to protect, and to be seen to protect, Indian personnel and premises.[86] In response to this concern, the Director of Protective Policing instructed Supt. R.E. Muir, the OIC VIP Security Branch at the time, to take immediate action to increase the level of security for Indian diplomats and missions in Ottawa, Toronto and Vancouver, using armed RCMP personnel and marked vehicles.[87] On June 13, 1984, VIP Security Branch ordered that the divisions implement security in line with these instructions.[88] On August 20, 1984, Muir wrote to the divisions indicating that it was imperative that Headquarters be advised immediately of any incident relating to Indian property and personnel and, further, that "…this situation is now receiving attention at the highest levels of government and, therefore, we must be prepared to account for, at a moment's notice, any action we have undertaken."[89]

Despite the extreme concern displayed at higher levels about the threat, it does not appear that a similar awareness or level of concern percolated down to the divisional level. On August 27, 1984, the Deputy Commissioner of Criminal Operations wrote to the Director of Protective Policing (with a copy to Muir) indicating:

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85 Final Submissions of the Attorney General of Canada, Vol. I, para. 84; Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3032.
86 Exhibit P-101 CAC0131.
87 Exhibit P-101 CAC0138.
88 Exhibit P-101 CAC0135.
89 Exhibit P-101 CAC0207.

> It seems to me that we are under resourcing in our planning for the various public events at which Indian Diplomats are present. I wonder if our Divisions are sufficiently sensitized in this regard bearing in mind our new responsibilities under Part 4 of the *CSIS Act*.

He went on to specify:

> I would like you to draft a letter to all divisions pointing out the implications for Canada if Indian diplomats, or for that matter, any diplomat is not adequately protected. The flag ceremony in Vancouver is a good example of where we should have had the Counsel General's home well protected…. I have the impression your VIP Branch communicates with VIP sections and divisions and in the process the CIBO and CO are not taking the interest and initiative that they should.

Written below this text is a direction, presumably to Muir, from the Director of Protective Policing, stating, "The message is clear – Protect. Please draft suitable letter."[90] [Emphasis in original]

On September 4, 1984, Jensen signed a letter that was sent to all divisions about the protection of foreign mission personnel and property in Canada, indicating concern with recent events in which a senior Indian diplomat was attacked and damage to Indian mission property was sustained. Jensen emphasized the importance of adequate security being put in place to protect, pursuant to the RCMP's Part IV duties under the *CSIS Act*, and also for diplomatic relations with India.[91]

The problem of the lack of sensitization of the divisions about the level of threat was further compounded by the fact that additional RCMP security requirements could be a drain on other federal units at the divisional level. The nature and seriousness of any local threat, and therefore the level of demand for Protective Policing services, would inevitably vary over time. As a result, in 1985, during high levels of threat, the need for Protective Policing personnel at times exceeded the permanent local complement at a given VIP section. When this occurred, additional personnel had to be drawn from other federal duties performed by the RCMP at the divisional level. In addition to being a drain on the resources available for other duties, the requirement to draw on other sections also had cost implications for the RCMP. The RCMP facilitated the placement of guards at missions and as escorts for foreign diplomats, but the cost of these private security guards was assumed by the Department of External Affairs. However, in situations of high threat, private guards were at times replaced by RCMP officers from other federal units. The cost of providing RCMP security

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90 Exhibit P-101 CAC0214; Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5417-5419.
91 Exhibit P-101 CAC0216(i).

guards was borne by the RCMP.[92] When additional personnel were needed for protective duties, since Headquarters did not have line authority, it was necessary for Headquarters to go through the divisional Commanding Officers to effect any additional mobilization. Drawing personnel from other areas of federal policing, and the long-term use of RCMP officers for security, could be disruptive and costly for divisions,[93] and at times "…caused friction between … Headquarters branch setting that level and the field divisions who had to carry it out…."[94]

This type of pressure, emanating from the divisions, may help explain why, less than a month after Muir was instructed to write a letter to the divisions about the level of concern for Indian diplomats and property and the need for adequate security, he wrote on October 1, 1984, to Michael F. Doyle, Deputy Chief of Protocol at DEA, recommending that security for Indian missions and personnel in Canada be decreased.[95] The memo stated that, for three months, since June 6, 1984, approximately 75 RCMP members had been providing accommodation/site security and escorts to Indian diplomatic personnel. He described the provision of additional security as being "…at considerable financial cost" and serving to "…severely [reduce] our human resources required for our other responsibilities." It appears that the request to decrease security was denied, but on October 30, 1984, VIP Security Branch again wrote to DEA to request permission to replace RCMP officers with private security guards in Ottawa, Toronto, and Vancouver.[96] Due to the assassination of Indira Gandhi on October 31, 1984, it was again decided that no lessening of security should occur.[97] Nevertheless, the request to decrease security was again repeated, just over one month later, on December 3, 1984.[98]

Approximately five months later, on May 16, 1985, as the threats to Indian personnel and interests were rising, crescendo-like, to a peak,[99] the OIC for E Division (in British Columbia, the base of Talwinder Singh Parmar and other members of the BK) wrote a message to Headquarters:

> Please be advised that efforts are being made in this division to comply with the instructions embodied in your telex. With a view to dealing with other operational requirements in this division, E Division is requesting knowledge as to the specifics regarding the threat, which has produced the need for this security upgrading. The reason for this request is that the assessment in this division at the present moment is at the nil or low threat level. Further, this Division requests specific

92 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2981.
93 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2982.
94 Testimony of Lloyd Hickman, vol. 18, March 7, 2007, p. 1696.
95 Exhibit P-101 CAC0222.
96 This request is referenced in Exhibit P-101 CAC0255.
97 Exhibit P-101 CAC0241, CAC0243.
98 Exhibit P-101 CAC0255.
99 See Section 1.12 (Pre-bombing), A "Crescendo" of Threats.

> instructions as to the implementation of special "O" counter surveillance. That is, is there a specific threat against the Indian consulate in Vancouver that demands that other Division, Special "O", priorities be abandoned or deferred for these purposes. Your reply is awaited prior to implementation of special "O" counter surveillance.[100]

The reply from Headquarters came the next day:

> Regret we cannot agree threat re Indian Mission & Personnel in ur [*sic*] Division is presently at "nil or low threat level." CSIS – NCIB/NSE plus several other reliable sources state otherwise and as a consequence you were asked to strengthen security by utilizing RCMP personnel until further notice. Re: Request for Special "O" counter-surveillance, although we appreciate you have other important priorities, we ask as a minimum selective counter-surveillance measure be instituted on the movements of consul general…. Your cooperation in this and like matters is appreciated.[101]

Clearly, there was a significant disconnect in the perception of the threat between Headquarters and the division. Equally clear is the fact that the divisions did not simply carry out directives of Headquarters. Instead, the local implementation of Headquarters directives was a matter of negotiation with the divisions, given Headquarters' lack of formal authority over the divisions. Those in charge of deciding at the divisional level were obviously not informed of the relevant circumstances, and Headquarters made little effort to correct the situation, as shown by the lack of explanation of the nature and seriousness of the threat requiring counter-surveillance.

Within airport policing, there is evidence of similar resistance to the deployment of additional resources at the divisional level. In June 1985, the O Division OIC Criminal Operations, C/Supt. D.H. Heaton, became involved in arranging for resources to meet the additional airport policing requirements for RCMP personnel due to the level 4 security ordered for Air India's protection at Pearson. On June 7, 1985, he wrote to the Director of Protective Policing at Headquarters:

> Request clarification. To avoid any confusion, drug personnel were not/not used to provide security on 85-06-01. At my direction, Airport Policing personnel utilized on the understanding we would address overtime issue later. We cannot keep redeploying other personnel for such duties.

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100 Exhibit P-101 CAC0347.
101 Exhibit P-101 CAC0338.

> In my view, Airport Security [is the] responsibility of Airport Policing and if we do not feel security necessary, then no personnel should be provided.… I possess no information on which to base decision on tomorrow's flight other than fact added security requested [by] external affairs.[102]

It would appear that there were at least three structural disincentives to adequate divisional deployment of additional required personnel. First, the ultimate authority to decide on deployment decisions did not reside with those in charge of receiving threat information, and, therefore, deployment decisions would not necessarily reflect sensitivity to the seriousness of the threat. Second, deployment of additional RCMP personnel for protective policing, at least in the case of VIP security, was a resource drain on other federal units. To the extent that there were limited human resources within the RCMP at the time, divisional COs would have to draw on personnel already actively engaged in other duties. Finally, to the extent that additional RCMP personnel had to be drawn from other federal units, the Force would also suffer a financial drain.

Impact of Resource Constraints on the Effectiveness of Airport Policing

Without sufficient resources, any commitment to effective aviation security will be severely curtailed. In 1985, the Airport Policing program was under considerable financial strain. There had been cutbacks to airport policing at Headquarters,[103] and the Airport Policing program was "…constantly being bombarded with reductions in staff."[104] Jensen testified about his perception of the state of airport policing at the time:

> **MR. JENSEN**: …you must know what the limited mandate of airport policing was in those days. It involved a ramp patrol to keep traffic moving, taxis in order and so on; a special and constant uniform presence within the terminal itself; and then, there would be a patrol car unit outside on the apron to make sure that nobody is tampering externally with aircraft that are going to depart. And then the occasional stroll around the perimeter.

Now that was the extent of airport policing within the RCMP that had been downsized by government over three successive years – I don't know '76, '78 and beyond.

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102 Exhibit P-101 CAA0202. In this vein, it is significant that deployment decisions respecting the RCMP police service dogs also fell to the divisional OIC Operations: Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3245. One situation in which this structure could have had important consequences is in the context of an emergency bomb threat. The RCMP Emergency Manual in force at the time for Pearson Airport provided that when the Toronto explosives detection dog was unavailable, the RCMP should consider the use of the Montreal Airport's police dog team, upon approval of the OIC Ops. NCO: Exhibit P-101 CAC0310, p. 16.

103 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2869.

104 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3078.

> **MR. SHORE**: '84 (eighty-four.)
>
> **MR. JENSEN**: Yes. So, you know, it wasn't a very effective means of dealing with very much; it was designed as an anti-hijacking measure.[105]

According to an internal Transport Canada document dated April 23, 1985, the resources allocated to RCMP Airport Policing had been decreased by 57 per cent over a 12-year period.[106] In 1973, there were approximately 118 passengers travelling per day per RCMP member deployed; by 1983 that number had risen to 262 passengers per day per RCMP member.

Yet further cutbacks were being contemplated at this time. Paul Sheppard, the Director of Civil Aviation Security for Transport Canada, forcefully argued against a proposal from the Office of the Auditor General to save costs by further reducing the police "visibility" at federal airports. He emphasized that Canada was already viewed as a "weak link" in aviation security by the international community. In his view, other alternatives should have been examined, including questioning why the RCMP was not mandated to police federal facilities directly rather than under contract, which is paid for out of the budget of each airport manager. In his view, these accounting practices had led to "difficulties over the years."[107]

The type of "difficulties" that arose from the nature of the relationship between RCMP and Transport Canada is alluded to in a May 1983 memorandum, written by the OIC of the Airport Security Branch, in which he expressed concerns that the reductions in staff would affect security and safety levels:[108]

> One of the biggest problems facing Airport Policing is our diminishing human resource levels. The problem is more enhanced by the present budgetary restraints which effects [*sic*] all levels of government. Continuous pressure on local Airport Managers to control their spending, results in local restraints being applied to adjust their budgets. One of the unfortunate results of such measures is that our Airport Detachment resources levels are continuously being scrutinized. The end result of cutting our personnel is that a level will eventually be reached where we will not have the resources to supply the extra security required/requested by the various foreign airlines. When this happens, any airlines requesting "extra" security measures will be required to hire private security guards to perform that function and our personnel will "respond" to requests for assistance. In some areas, these levels have already been reached.[109]

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105 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5460-5461.
106 Exhibit P-101 CAF0660.
107 Exhibit P-101 CAF0660.
108 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3078.
109 Exhibit P-101 CAA0034.

The dynamic created in this climate was such that Transport Canada, which was responsible for payment for the RCMP's protective security services, was under continuing pressure to cut spending. At the same time, the RCMP, which had the information necessary to understand the threat and the necessary response, could not independently determine its own resource allocation for this function.

The under-resourcing of airport policing was likely a symptom of government's failure to appreciate the real threat posed by terrorism to aviation security at the time. This was also a possible cause of the scant attention paid to airport policing by other branches within the RCMP, and by other agencies, in 1985.

A comparison between the staffing of Headquarters Airport Policing Branch and the resources allocated to the VIP Security Branch is telling.[110] Whereas the OIC of the VIP Security Branch held the rank of Superintendent, and the Branch was staffed by seven to nine members, the OIC of the Airport Policing Branch held the lower rank of Inspector, and presided over a two-man operation. Indeed, when the OIC was away, the position of Acting OIC was held by a Sergeant – a rank several grades lower than that of Inspector. Decisions on the rank attached to the OIC of a particular branch were, in fact, significant for resource allocation because a lower-rank position was less expensive, and because lower-ranked officers were able to command fewer subordinates.

The decisions about the staffing and rank for the Branch would also have an effect on the ability to ensure its directives were carried out. The effect of the RCMP's paramilitary rank structure on internal RCMP behaviour was very significant in 1985. As S/Sgt. Robert Wall explained:

> In a paramilitary organization you do as you're told by your superiors, and that's sort of where it lay and that's the way we operated.[111]

It is interesting to note that, in fact, Sgt. MacDonald was outranked by individuals working at the airport detachment.[112] This, combined with the lack of official line authority over the detachments, may have had further implications for the ability of Headquarters to have its directives enforced.

The low profile of Airport Policing in 1985, combined with the RCMP's failure to appreciate its potential role in national security issues, may help to explain some of the deficiencies of information and intelligence flow into Airport Policing Branch, including failures of flow within P Directorate itself.[113] They may also have contributed to the failure to consult or involve Airport Policing in pressing national security issues, including the failure to involve Airport Policing in the work of the Ad Hoc Committee on Sikh Extremism.[114]

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110 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2978.
111 Testimony of Robert Wall, vol. 76, November 15, 2007, p. 9671.
112 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2877.
113 See Section 4.4 (Pre-bombing), Failures in Sharing of Information.
114 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2973.

The view within the RCMP of the limited effectiveness or utility of the airport detachment, combined with the perception of the duties of airport special constables, described by MacDonald as, "…anything but exciting,"[115] could only have added to the morale problems alluded to in RCMP correspondence.[116] Indeed, the RCMP special constables, who performed airport policing functions, were not generally held in high esteem, and were often referred to as "security guards" by airport workers.[117] While they were peace officers, took the same written exam as regular constables and had the same qualifications regarding firearms, special constables were differentiated from regular members in a number of ways that seemed to lower their prestige. They underwent less demanding physical training than regular constables, did not get to wear the red serge, and were generally older.[118] Low morale caused by such factors may, in turn, help explain some of the performance deficits observed in 1985, including a lack of initiative and lax approach to security duties.[119]

Failure to Coordinate Effectively

Headquarters Airport Policing Branch did not ensure that all affected detachments had access to all relevant threat/intelligence information, nor did it attempt to harmonize the security provided across the country in relation to a particular threat. Thus, even though Air India was being afforded level 4 security at Mirabel Airport for most of the first half of 1985, at the Pearson detachment only routine security patrols were in place, except when additional security was provided on April 6, 1985 and in June. The same weekly Air India flight stopped at Pearson and Mirabel. There was simply no intelligence-based justification for such different levels of protection at the two airports.[120]

The failure to coordinate is also illustrated by Headquarters' failure to disseminate important intelligence to those who needed it. The June 1st Telex, which had been forwarded to HQ Airport Policing Branch by the Pearson detachment, does not appear to have been shared with detachments at other airports, including Mirabel. This is difficult to understand or justify, because Mirabel was the first destination of Flight 182 after it left Pearson. Nor was the June 1st Telex sent to other RCMP detachments at airports that may have had flights connecting with Air India in Toronto, including, of course, the detachment at Vancouver airport, the originating point for CP Air Flight 060, onto which the bomb was first placed, and which was the connecting flight to Air India Flight 182, onto which the bomb was ultimately loaded.

Failure to Monitor

The Airport Policing Branch appears to have made no effort to monitor the implementation of its directives. MacDonald testified that he did not think such

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115 Exhibit P-101 CAC0281.
116 See, for example, Exhibit P-101 CAC0281, p. 3.
117 Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3692.
118 Testimony of Bob Stubbings, vol. 33, May 24, 2007, pp. 3940-3941.
119 See Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.
120 See further discussion of this incident in Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.

monitoring was necessary, stating "…we have an inspector at both places and staff sergeants and men who are doing the job and I don't think that I have to go down and make sure they do what I tell them. We at least hope they do it."[121] Headquarters, as the "policy centre," was simply not concerned with on-the-ground operations, even though it was expected to make operational decisions about the security level. Because this role was not understood and the structure gave no actual authority to Headquarters, such decisions were neither enforced nor enforceable by Headquarters Airport Policing. While there is no evidence to suggest that the detachments generally ignored the directives of Headquarters, it is clear that there were significant instances where detachments did derogate without notice to Headquarters.[122]

4.2.3 Transport Canada Structural Issues

Clearance Issues

An integral component of a successful aviation security partnership between Transport Canada, the RCMP, CSIS, and the air carriers would naturally be the ability to share information and coordinate a response quickly. Impeding this relationship, unfortunately, was the lack of secure means of communication, along with security clearance issues, that served to block effective communication and cooperation between Transport Canada and the RCMP.

As discussed in Section 4.4 (Pre-bombing), Failures in Sharing of Information, Transport Canada did not have a secure means of disseminating classified information to the regions and airports. Transport Canada was aware of the need for a centralized analysis and communications hub, along with national alert standards and measures to rectify these problems. Transport Canada's alert levels system had been developed for terrorist threats for the 1976 Olympic Games in Montreal, and there were "…no standard terms or definitions for a government alert system."[123] Creating a national standard would have eliminated much of the confusion that existed when a threat was received,[124] and would have greatly reduced the need to transmit classified documents. An airport that received notice that a maximum or high alert threat existed could take the action or actions prescribed by uniform airport and airline security programs.[125]

In addition to the lack of a secure structure for distributing security information, it was also noted in the report of the *CATSA Act* Review Advisory Panel that "… no formal arrangements for the exchange of intelligence on aviation security between Transport Canada headquarters and its airports, air carriers, and law enforcement agencies, existed in 1985."[126] Even with proper channels of

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121 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2877.
122 See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.
123 Exhibit P-101 CAF0084, p. 1.
124 Exhibit P-364, pp. 2-3.
125 Exhibit P-364, p. 3.
126 Exhibit P-101 CAF0160, p. 45.

communication, the Panel concluded that intelligence failures, such as the failure to properly disseminate the June 1st Telex,[127] might still have persisted, due to excessive secrecy and the "need-to-know" principle, which prevented information from reaching those on the front lines who would be making critical decisions.[128]

In that vein, a Transport Canada briefing document from August 1985 stated that "…the dissemination of classified intelligence to non-security cleared personnel like airline officials and contracted security screening guards presents a major problem and requires 'sanitation' of the material."[129]

Transport Canada required its own employees to undergo background and criminal record checks in order to obtain security clearance. At Pearson International Airport in Toronto, the airport manager, Ed Warrick, held Top Secret clearance in 1985. Dale Mattson, the airport's Safety and Security Manager, held the lower Secret clearance.[130] Transport Canada had also considered it important to ensure that the air carriers' representatives had security clearance, so that they would be entitled to see classified materials pertaining to airport security. In 1984, Transport Canada contacted the air carriers through the industry's agency, the Air Transport Association of Canada (ATAC), to inquire whether they would be interested in obtaining new security clearances in order to receive classified threat assessments directly.[131] Unfortunately, this offer was declined.

On the other hand, the front-line employees and contractors of the air carriers, working at airports across Canada, were not subject to criminal record checks or credit checks, and were not granted any form of security clearance. This included the private security officers responsible for screening the travelling public and their baggage,[132] as well as the aircraft groomers, catering staff, and others with access to aircraft and sensitive airport areas.[133] Without official security checks for these airport workers, it was almost impossible to screen out potential employees with a history of theft or other fraudulent criminal behaviour, with severe financial difficulties which could leave them susceptible to bribery, or who had links to extremist organizations. As noted in Section 2.4 (Pre-bombing), Security Culture at Canada's Airports, for example, an investigation of the janitorial staff at Vancouver International Airport, which was conducted after the bombing of Air India Flight 182, revealed that a number of individuals with almost unlimited access to the airport had links to extremist Sikh organizations, such as the Babbar Khalsa and the International Sikh Youth Federation.

In the 1970s, Transport Canada gave consideration to creating a program to conduct security checks for all private airport and airline employees with

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127 See Section 1.2 (Pre-bombing), June 1st Telex.
128 Exhibit P-157, p. 50.
129 Exhibit P-364, p. 2.
130 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3236.
131 Exhibit P-101 CAF0083, p. 1.
132 Exhibit P-157, p. 55.
133 See, for example, Testimony of Brian Simpson, vol. 32, May 23, 2007, p. 3649.

restricted area passes and access control passes.[134] In 1979, however, Transport Canada concluded that it lacked the authority to require fingerprints and personal history forms from airline and airport personnel, and that the RCMP (including the Security Service) lacked the authority to provide Transport Canada with information obtained through security checks. As such, it was decided that the aviation industry companies themselves would bear responsibility for any reliability checks.[135] Paradoxically, access to the airport's restricted areas was frequently denied to government officials with Top Secret clearance, but access to these same areas was regularly granted to "…sometimes quite transient [airport] workers who could have any type of questionable background."[136]

Despite the fact that airports were high-security environments under an increasing threat of sabotage in the 1980s, it was not easy to obtain security clearances for even those few airport personnel required to have them. According to the testimony of Henry Jensen, even the process for basic clearances was difficult and time-consuming and "a major problem" due to the volume of requests and the turnover of personnel.[137] Professor Reg Whitaker testified about the obstacles caused by these clearance issues, noting that the "overtime dispute" between Transport Canada and the RCMP that was precipitated by a request from Air India for increased security coverage in June 1985, was exacerbated by the fact that the RCMP possessed intelligence that, due to its classified nature, could not be shared with Transport Canada officials at Pearson.

Whitaker told the Commission that, because officials at certain airports lacked the appropriate security clearance in 1985, the situation was essentially "… trust us, but we can't tell you the specifics."[138] He went on to say that there are means today to convey intelligence in an unclassified but usable form to front-line workers even if they lack clearance to see the original documents.[139] The difficulty in obtaining security clearance for officials at airports was endemic in this period, and generally precluded the transmission of information. This created a substantial barrier to the effective and timely dissemination of threat intelligence to personnel concerned.

At a meeting of the National Aviation Security Committee that was convened a few months after the bombing, the problem of access to security information was revisited. The ATAC representative recommended that ATAC and the air carriers be provided with regular threat assessments every three months.[140] He was concerned by the delays in receiving intelligence encountered by those with a need to know that resulted from constraints on disseminating classified information. He also stressed that it was important that security managers for the air carriers be advised immediately of threats, and that assessments try to pinpoint where the threat was likely to materialize.[141]

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134 Exhibit P-364, p. 5.
135 Exhibit P-364, p. 6.
136 Exhibit P-364, p. 5. See also Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.
137 Testimony of Henry Jensen, vol. 44, June 18, 2007, pp. 5404-5405.
138 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4365.
139 Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4364-4365. See also Volume Four of this Report: Chapter III, Section 3.4, Use of Intelligence in Aviation Security.
140 Exhibit P-101 CAF0162, p. 3.
141 Exhibit P-101 CAF0162, p. 3.

The August 1985 Transport Canada briefing note also had new-found emphasis on the need to screen and clear airport staff. Recognizing that previous Transport Canada studies had resulted in the decision not to run subversive indices and fingerprint checks on staff with airside access, because of high turnover and lack of perceived legal authority, it stated "…this might have been a good decision during periods of low threat but now it must be challenged."[142]

Of course, this was never a "good decision." As established in Section 2.3.1 (Pre-bombing), Recognition of the Threat of Sabotage and Weaknesses in the Ability to Respond, the emerging threat of sabotage was well-understood by authorities in the early 1980s. The incidence of hijacking, which had been the predominant threat in the 1960s and early 1970s, had dramatically declined because the security measures that were put into place to address that threat were so effective. The changing threat environment did little to focus attention on the next looming threat (sabotage, including bombing of aircraft), however, and the lack of hijacking incidents in Canada contributed to growing complacency on the ground and increased difficulty in justifying the expenditure of additional resources. The lack of a purposive approach to security and the underutilization of intelligence-based threat assessments resulted in a general misunderstanding of risk at this time. As a result, there was an enduring perception that the level of risk did not warrant the time and expense required to implement security measures like background, credit and criminal record checks for airport staff as a condition of employment. The Air India disaster and the subsequent investigation proved that, in fact, the threat was so high and security so porous at airports that this and many other measures were badly overdue.

What is also apparent is that the communication, threat assessment, and airport security structures in place in 1985 were not designed with the need for rapid, national responses to intelligence-based threats to civil aviation in mind, and were therefore inadequate for the task.

Resource Issues

Like other government agencies, Transport Canada did not have limitless resources in the years leading up to the bombing of Air India Flight 182, and faced constraints with respect to budgets and person-years. Transport Canada obtained its annual budget from the Treasury Board, and a significant concern was that, as acts of unlawful interference with civil aviation continued to decrease in Canada, it would become increasingly difficult to justify increases in its security expenditures.[143] Even existing funding levels for Transport Canada's security expenditures were expected to come under growing scrutiny in a fiscal climate of cost-cutting; they would be seen as a prime candidate for savings in the "…continuing absence of a clearly perceived threat."[144] Mattson testified that managing the National Airport Policing and Security Program was a major expenditure for Transport Canada, and there was always an expectation that

142 Exhibit P-364, p. 6.
143 Exhibit P-101 CAF0774, p. 41.
144 Exhibit P-101 CAF0774, p. 22.

officials and other personnel would work to ensure efficiency and reduce costs in implementing this and other programs.[145]

The cost-cutting pressure included a spring 1985 recommendation, in an audit report from the Office of the Auditor General, to save money by reducing the RCMP contingent at Canada's major airports by 50 per cent and replacing them with commissionaires and private security guards.[146] The Auditor General's Office urged this measure, arguing that "…these challenges have to be met to reduce security costs to a level closer to aviation industry's standards and maintain them in balance with security risks to civil aviation." Transport Canada was put in the position of having to forcefully argue against such cuts from an aviation security perspective, noting that, at the time, Canada was seen as a "weak link" internationally,[147] and that the RCMP members projected professionalism in a way that private security guards did not.[148]

The department was aware, of course, that with the decreasing threat of hijacking, there was a "…tendency to relax and say 'it's all over'," and look for cost-cutting opportunities.[149] Transport Canada asserted, in its defence, that it had already been able to effect a "significant reduction" in the RCMP staff at Canadian airports,[150] saving some $7 million and considerable person-year expenditures over the previous 10 years, including the elimination of all 40 RCMP members from Canada's eight major domestic airports.[151] Despite these cuts, Canada had an obligation to maintain certain basic security levels, as part of its international commitments to the International Civil Aviation Organization (ICAO). Transport Canada's Director of the Civil Aviation Security branch suggested to the Audit Director in his reply that, if cutting costs was a concern, he should instead examine the feasibility of having the RCMP police airports directly out of its own operating budget.[152]

At that time, the RCMP provided its services at the airports under contracts which were funded by the operating budgets of each airport manager, a practice which the official pointed out "…led to difficulties over the years."[153] In June 1985, it was discovered that Transport Canada had actually neglected to include any funding for RCMP overtime security costs in that year's budget for Pearson Airport.[154]

Another specific resource issue facing Transport Canada in the pre-bombing period was that it lacked the capital funds to build hold-room facilities, and to enable air carriers to screen passengers with electronic equipment at all

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145 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3253.
146 Exhibit P-101 CAF0655, pp. 5, 23.
147 Exhibit P-101 CAF0660, p. 1.
148 Exhibit P-101 CAF0659, p. 1.
149 Exhibit P-101 CAF0659, p. 1.
150 Exhibit P-101 CAF0660, p. 2.
151 Exhibit P-101 CAF0661, p. 1.
152 Exhibit P-101 CAF0660, p. 2.
153 Exhibit P-101 CAF0660, p. 2.
154 This oversight, and the ensuing dispute between the agencies over a request from Air India for increased RCMP protection, is discussed in Section 4.5 (Pre-bombing), Failures in Coordination between Transport Canada and the RCMP.

airports.[155] Adequate facilities were also not always available for small carriers and general aviation, meaning that the unscreened passengers from these aircraft would arrive and then mix with screened "sterile" passengers at airports.

Additionally, Transport Canada lacked the resources to staff a sufficient number of Dangerous Goods and Civil Aviation Inspectors. As a result, it had almost no ability to inspect air carriers to ensure their compliance with Canadian security regulations and the carriers' own security programs. As discussed in Section 4.7 (Pre-bombing), Transport Canada Policy Gaps and Implementation Deficiencies, there were so few inspectors that a 1984 report revealed that there were no security inspections conducted at all in three out of Canada's six regions, and, in the remaining three regions, inspectors had only managed to complete between zero and ten per cent of the expected workload.[156]

No company or agency will likely ever have limitless resources. The financial constraints faced by Transport Canada, including the pressure to cut costs and expenses wherever possible, necessitated budgetary choices that had an adverse impact on security. However, an effective threat-response regime utilizes finite resources in a manner that prioritizes its targets based on the greatest need. This requires comprehensive intelligence-gathering, appropriate sharing and sound threat analysis – functions which, as discussed throughout this chapter, were hindered by resource allocation, infrastructure, policy, and personality issues. As a consequence, fundamental security functions, such as the inspections conducted by the Dangerous Goods and Civil Aviation Inspectors, were severely under-resourced. It was not until this work ground to a halt, as a direct consequence of the inspection workload, that additional funds were made available to hire more personnel.

4.3 The Role of the "Specific Threat" in the 1985 Threat-Response Regime

Specificity and Threat Response

Given the significant volume of threats received by the Government of Canada in the pre-bombing period, many of which related to threats against Air India,[157] and some of which even specified the mode of sabotage that ultimately brought down Air India Flight 182,[158] the obvious question that has been raised time and again is: why was more not done to prevent the bombing? The answer consistently provided by the Government of Canada, in the immediate aftermath of the bombing, and stretching through to this Inquiry, was that there was no "specific threat" to Air India. But is the existence of a "specific threat" really a relevant factor in assessing the pre-bombing security response?

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155 Exhibit P-101 CAF0774, p. 21.
156 Exhibit P-101 CAF0654.
157 See, for example, Exhibit P-101 CAA0084, CAA0149, CAC0339 and Exhibit P-120(c): November 1984 Plot – Chronology.
158 See, for example, Exhibit P-101 CAA0161 and CAA0185.

The concept of the "specificity" of threats is an important one for intelligence and protective security. There exist innumerable possible situations in which terrorists could attempt to exploit vulnerabilities in our society in order to carry out their designs. Against this backdrop is the reality of the finite resources available to intelligence and law enforcement agencies to detect and prevent these plans from actually being carried out. The greater the ability to pinpoint the intended time, place and means by which a threat may be carried out, the easier it is for appropriate resources to be deployed for a sensitive and rapid protective response. At the same time, while specificity can indicate to officials how to tailor their protective response to meet the threat, the effectiveness or sensitivity of that response will depend on the tools available to protective officers.[159]

As well, the specificity of a given threat is not necessarily tied to the probability that a threat will, in fact, be carried out and is unrelated to the extent of harm that could result. While the specificity of a threat is a useful and necessary tool for protective decisions, these decisions cannot be made rationally without a consideration of the underlying risk, which will dictate the justification for the extent and nature of deployment in relation to the specificity of the threat. For example, if intelligence and circumstances dictate that there is a very high risk that a nuclear power station, somewhere in Canada, will be sabotaged at some time in the next month, given the extent of harm that could result, the fact that the precise reactor and date is unknown would hardly be a justification for anything less than an extremely robust level of protective security deployment at all stations in Canada. On the other hand, a threat that a named individual in a particular location was going to point a laser at the moon at 8 PM next Tuesday for the purpose of blowing it up, while very specific, would not likely cause officials much concern.

At the same time, even in circumstances of high risk, in the face of a very diffuse and undefined threat it may be impossible for a meaningful protective deployment response to be implemented. For example, if information was received that indicated a high risk that terrorists would undertake to injure a significant number of innocent people in Canada in the next month, the lack of specificity would make it very difficult to implement any manner of useful response. Should authorities deploy resources to guard schools? Malls? Trains? Water supplies? In this context, the most sensitive response is to investigate to find out more about the threat.

"Specificity" was a prominent concept within the protective intelligence and security regime in Canada in 1985. In the VIP Security context, threats identifying a target and a time frame would allow officers to target resources to a particular embassy or VIP, in order to provide responsive protection.[160] In the aviation security context, the concept of specificity, or "specific threat," also played a very significant role. The term "specific threat" in the aviation security context is

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159 For further explanation of this concept, see Section 4.0 (Pre-bombing), Threat-Response Regime in 1985.

160 See Testimony of Lloyd Hickman, vol. 18, March 7, 2007, pp. 1699-1700.

rooted in the European experience and the significant terrorist activity that had been taking place there. The European airlines were receiving phone-in bomb threats with a high frequency and, at the time, needed a rational way to sort out hoaxes and pranks from threats that required further consideration. Recipients of these phoned-in threats were trained to try to get as much information as possible from the caller so that the veracity of the threats could be assessed. Management would then assess the information and make a decision about what action to take. They were looking for specificity.[161] However, the concept of "specific threat" was never intended to be, and should never be, applied pursuant to a strict definition, and by its nature, the concept is not easily reduced to a single coherent set of criteria. The appropriate response, with regard to the specificity of the threat, will naturally depend to a certain extent on numerous context-specific factors not easily reducible to a succinct definition.

In the pre-bombing era, the concept of "specific threat" was used pervasively, but inconsistently, with the result that there was no shared understanding of the concept across government. Moreover, it was often used in practice as an all-or-nothing trigger, whereby if a particular threat was not found to be "specific" enough, no protective action was taken – regardless of the risk involved. The concept was also applied mechanically, as a trigger for non-responsive measures. Ultimately, the use of the concept of specificity was not appropriately used as a device for sensitive protective deployment. Actors in the system became slaves to the tool – where the quest for a "specific threat" impeded the proper analysis and response to the threat.

From the date of the bombing, the concept of "specific threat" has been taken out of context and has served as an alibi for the lack of appropriate response in relation to Air India Flight 182. Under the actual regime in place, the "specific threat" concept had very limited formal importance and was often used because of a misunderstanding of the concept and of the regime. The continued use of the "specific threat" concept as an alibi perpetuates this misunderstanding and must be abandoned to allow for a true critical assessment of the threat-response regime that was actually in place.

The lack of sensitive protective response for Air India Flight 182 was not due to a lack of detail, or specificity, in the threats that were received by the Government of Canada. The problem was an ill-conceived threat-response regime that wrongly substituted a rigid notion of specificity for a true analysis of the risk and a tailored response.

Use of the Term "Specific Threat" Across Government

The claim that there had been no "specific threat" to Air India Flight 182 was repeatedly emphasized in various forums by government officials, past and present. At this Inquiry, RCMP members involved in threat assessment and in airport security stated categorically that the RCMP never received any information about a "specific threat" to Air India.[162] Witnesses from other

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161 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4425-4426.

162 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2719, 2737, 2741; Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3083.

government agencies repeated this assertion. Robert ("Bob") Burgoyne, Glen Gartshore and Russ Upton, formerly with CSIS, and Gordon Smith, formerly with the Department of External Affairs, were all asked by Attorney General of Canada counsel whether they knew of a specific threat to Air India Flight 182. All witnesses replied that they had no knowledge of such a threat. This position of there having been no "specific threat" to Air India was reiterated numerous times in the Attorney General of Canada (AGC) Final Submissions. For example:

- "At no time prior to the bombing did CSIS obtain information about a specific threat to an Air India flight."[163]

- "As expressed elsewhere in these submissions, contrary to the testimony of Mr. Bartleman no information was received by DEA indicating a specific threat to the June 22, 1985 Air India flight."[164]

- "The CATSA Panel correctly determined that at the time of the bombing of Flight 182, neither Transport Canada nor the RCMP were aware of any specific threat against Air India."[165]

Despite their forceful insistence that there had been no "specific threat," Government witnesses were unable to provide any consistent definition of that term.

According to Sgt. Warren Sweeney, who had been a member of the RCMP Security Service before joining the RCMP National Criminal Intelligence Branch (NCIB) at the creation of CSIS, a "specific threat" meant a threat specifying a date, a time and an event that would happen. He distinguished such a "specific threat" from a "general high threat," which he said meant information from sources within the community that something *may* happen and the protected person or interest *may* be targeted. According to Sweeney, in order to qualify as "specific," a threat would have to specify not only the date and time, but the specific plane targeted (or other specific target), as well as some indication of the identity of the authors of the planned attack, though this indication could be as vague as "Sikh extremists." The threat would also have to be "…backed with other information and other intelligence." The information had to be independently confirmed and not originate from a "single source," no matter how specific it appeared on its face.[166]

In contrast, Supt. Gary Clarke, who in 1985 was the OIC RCMP Protective Policing at O Division and, prior to that, the OIC at Pearson Airport detachment, considered the information that "…an unknown male with an Iranian voice warned that the

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163 Final Submissions of the Attorney General of Canada, Vol. I, para. 105.
164 Final Submissions of the Attorney General of Canada, Vol. I, para. 147.
165 Final Submissions of the Attorney General of Canada, Vol. II, para. 124.
166 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2564 and Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2716-2717, 2742-2743. See Exhibit P-101 CAA0149 and Sgt. Sweeney's explanation that the threat level and protection level would have been raised if the RCMP had other sources confirming the information: Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2716.

Air India Flight 181, 1984 September 01, would be hijacked,"[167] to be "…specific because it gives a time, a location, an aircraft number and a plane."[168] From his perspective, a threat could be "specific" on its face, without the requirement for any corroboration.

CSIS also made use of the concept of "specific threat." For CSIS, a "specific threat" required "specific intelligence," indicating the existence of a "very definite plot." "Specific threats" were to be distinguished from "General Ongoing Threats," which related to threats existing, and likely to continue, over time. CSIS documentation explains that "specific threats" could arise in an area of General Ongoing Threat, but would be distinguished because "…something definite [was] planned." Using this system to characterize threats was said to be advantageous because, in time, "…certain elements [would] automatically fall into the 1st category [i.e. that of General Ongoing Threats]."[169] Also, according to John Henry, who was with the CSIS Threat Assessment Unit (TAU) in 1985, for a threat to become a "specific threat," both specificity[170] and corroboration[171] were required. He admitted that the specificity threshold was extremely high; it would have to be "no ifs, ands, or buts," rather information outlining when, where, to whom and how. It had to be something that CSIS could pass on and the RCMP could act upon.[172]

"Specific threat" is a concept also used by Transport Canada. According to its 1984 Manual entitled "Policy, Standards, and Guidelines for the Development of an Airport Disaster/Emergency Plan and the Conduct of Exercises at Transport Canada Airports," a "specific threat" is "…a statement giving time of activation, location, type of bomb, or even complete details."[173] Dale Mattson, Transport Canada's Manager of Safety and Security at Pearson Airport in 1985, confirmed that this definition was used, but added that it does not cover all the elements because "…there [was] other criteria that was also used, and because you are not always going to get these items, but there may be other components that you evaluated and said yes, that meets our understanding of [what] the specific threat is."[174]

A somewhat more relaxed definition, found in the RCMP's Emergency Procedures Manual for Pearson, states that a "specific threat" means "…detailed information will be supplied by the perpetrator regarding the target and possible detonation."[175] These Transport Canada and RCMP definitions depend on the level of detail provided on the face of that particular threat and mean that a threat can be deemed to be "specific" based on a single source. For that reason, they are incompatible with the definitions supplied by Sweeney and Henry with their added requirement of corroboration.

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167 Exhibit P-101 CAA0234, p. 3.
168 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3060.
169 Exhibit P-101 CAC0275, p. 4.
170 Testimony of John Henry, vol. 25, May 8, 2007, p. 2538.
171 Testimony of John Henry, vol. 25, May 8, 2007, p. 2516. See also Testimony of Bob Burgoyne, vol. 31, May 22, 2007, p. 3460.
172 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2512, 2538.
173 Exhibit P-101 CAF0077, pp. 7-8.
174 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3220-3221.
175 Exhibit P-101 CAC0310.

Because of the lack of a uniform definition of "specific threat" within the Government of Canada, information about threats to Air India was sometimes characterized differently by the different individuals involved in the threat assessment process and the implementation of security measures. For example, the Department of External Affairs transmitted information to the RCMP about a plan to hijack Air India Flight 181 to Toronto on Saturday, April 13, 1985.[176] This threat information was deemed not to be "specific" in internal RCMP documents,[177] though some limited additional security measures were implemented in response.[178] Sweeney also indicated this was not a "specific threat," because the information came from only one source.[179] However, Clarke indicated, "I would consider that a specific threat; absolutely."[180]

Henry stated that the April 13, 1985 threat was "…leading in the direction" of being a specific threat. However, corroboration would be required before it would be classified as specific.[181] Meanwhile, Gordon Smith, who was the Deputy Minister, Political Affairs at the Department of External Affairs, considered the April 13th threat to be specific, but discounted its importance to the Government of Canada, as it was an inbound flight for which there was little they could do.[182]

Though witnesses before the Inquiry have indicated that the RCMP "…took every threat seriously" and "…took the appropriate action on each and every flight," the existence of intelligence that an airline *may* be targeted and that something *may* happen was excluded from the "specific threat" category and included in the "general high threat" category,[183] which was believed to require less extensive security measures. Also, throughout the Government documents relating to threats against Indian interests prior to the bombing, there is language such as "…intelligence has not surfaced a specific threat" but "…there is a very distinct possibility of violence" and a "definite threat."[184] These types of "definite" threats, involving a "distinct possibility of violence," were treated like all other general high threats, requiring no special, additional security measures because they were said to constitute "non-specific threats."

Essentially, it appears that, regardless of how much intelligence there was from "sources within the community" that Air India *may* be a target and that something *may* happen, if the information was not seen to meet the rigid criteria of "specific threat," the additional security measures which were believed to be available in such cases would not be applied. In effect, the "specific threat" concept was used as a trigger, or an assumed trigger, for deployment decisions, without any consideration or analysis of the underlying risk.

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176 Exhibit P-101 CAA0149.
177 Exhibit P-101 CAA0169.
178 Exhibit P-101 CAC0517, p. 3.
179 Testimony of Warren Sweeney, vol. 26, May 9, 2007, p. 2716.
180 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3058-3059.
181 Testimony of John Henry, vol. 25, May 8, 2007, pp. 2515-2516.
182 Testimony of Gordon Smith, vol. 24, May 7, 2007, p. 2456.
183 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2740, 2742-2743.
184 Exhibit P-101 CAC0285.

"Specific Threat" and the June 1st Telex

The narrowness of the Government position is aptly illustrated by its application to the June 1st Telex.[185] That document from Air India warned of time-delayed devices being used to bomb an Air India flight in June 1985. Both Sweeney[186] and Clarke[187] denied that this information constituted a "specific threat," even though it provides information on the target, the means, the time frame and the perpetrators. Mahendra Saxena, Air India's Senior Security Officer, on the other hand, thought that the telex was a "specific threat," and the fact that no specific flight was identified was not relevant, since Air India only had one flight in and out of Canada each week.[188] This would seem to be a much more common sense view, especially in light of the harm that could be caused by the sabotage of a flight, and the fact that, in June 1985, participants in the protective regime had no doubt that "…something was going to happen."[189] Along these lines, the need for a response was also supported by Rodney Wallis who argued:

> In the case of Air India, which was operating under a high threat situation, operating with a once-a-week service out of Canada where there was a known element at war with the Indian government and anything that represented the Indian government and I have mentioned before the symbol on the tail of the airplane. We will say that's an Indian government.
>
> So they were operating under this high risk situation with a once-a-week flight and the difference between that operation and specific threat becomes blurred. It becomes merged. You could argue it becomes one and the same thing.
>
> …
>
> Specific threat or high risk, I would expect it to be the same response under those circumstances.[190]

Dr. William Leiss, an expert in the area of risk communication and risk management, testified before the Inquiry. During his testimony, he was provided with certain facts in relation to the June 1st Telex and was asked for his opinion on how he would classify the June 1st Telex with reference to a risk matrix, a tool that is used to classify the level of risk on the basis of probability and consequence of a threat.[191]

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185 Exhibit P-101 CAA0185.

186 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2732, 2752-2753. Sweeney stated on numerous occasions that the RCMP had no information indicating a "specific threat" to Air India: See, for example, Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2719, 2737, 2741.

187 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3054-3056.

188 Exhibit P-365, p. 3.

189 See Exhibit P-101 CAA0240, p. 2, CAC0445, p. 5 and Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040-3046, 3085-3086.

190 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4426-4427.

191 Exhibit P-361, Tab 1, Appendix D.

Leiss expressed the view that the information contained in the June 1st Telex "… should have leapt off the page." Leiss put particular emphasis on the fact that the June 1st Telex was received in circumstances of a "risk situation," such that it would "…put you actually off the end of the scale in terms of the use of the risk matrix," given the fact that the threat "…of an attack on Air India specifically of this kind would have been certainly elevated by that point given everything you knew." Leiss testified that in the business of airline security, it is "…extremely rare to get such a specific piece of information," and would "…raise your level of concern to the highest possible level," so that in terms of response "…you would be at that point basically pulling out the stops." The June 1st Telex "…would have justified almost any risk control measure you can imagine including grounding those flights" until investigators had the chance to consult with authorities in India about their source of information.[192]

Leiss said he would be "amazed" if this had been viewed as "…just another piece of information." In light of the specificity and high-risk situation, Leiss wanted to know, "Why didn't the alarm bells go off everywhere and what did the RCMP do with the information? Do we know? Did they share it?"[193] As the Commission heard during the course of the hearings, the RCMP did not share the June 1st Telex with either Transport Canada or with CSIS.[194] Furthermore, in light of this information, there were no adjustments to the security measures already in place at the time this telex was received.

Leiss clarified that he viewed the deficiencies in relation to the sharing and response to the June 1st Telex to be failures in "shared responsibility," which included failures in terms of Air India's "corporate responsibility." For Air India to simply pass on the June 1st Telex without making efforts to find out what would be done with the information seemed "bizarre."[195] A reasonable course of action, in his view, would be to:

> …insist on having an immediate meeting, a further dialogue of trying to see whether you could actually work out a common plan and … say "what can Air India and the Canadian Government and police forces do together to lower the risk that's involved. Or, what other options do we have to control the risk involved?"[196]

In cross-examination, counsel for the Attorney General of Canada pursued a line of questioning that involved highlighting additional documents Dr. Leiss was unaware of prior to his testimony, as the documents had not previously been shown to him. Leiss fairly conceded that he had not seen other documents pertaining to the June 1st Telex and had not seen the document itself. He would therefore need to understand the pattern of information flow in order to properly

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192 Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11981-11983.
193 Testimony of William Leiss, vol. 91, December 7, 2007, pp. 11981-11983.
194 See Section 1.2 (Pre-bombing), June 1st Telex.
195 Testimony of William Leiss, vol. 91, December 7, 2007, p. 12024.
196 Testimony of William Leiss, vol. 91, December 7, 2007, p. 12025.

assess the impact of the June 1st Telex.[197] In the exigencies of the moment, re-examination on these issues was not practicable. In its Final Submissions, the Attorney General of Canada submitted that, given the fact that Leiss had testified without the benefit of these additional materials, his opinions in relation to the June 1st Telex should therefore be accorded little weight.[198]

Subsequent to his testimony, Leiss was provided with significant background material in relation to the June 1st Telex and the threat environment at the time. Such materials included, among other documents, the Air India disclosure documents pursuant to subpoena,[199] the June 1st Telex and associated documents, and Air India telexes received by Canadian authorities relating to the period of June 1984 to June 1985.[200] Allowing Dr. Leiss the opportunity to acquaint himself with the body of relevant historical information and asking him whether and how it changed his view was, in the view of this Commission, a practicable and fair way to address the concerns expressed by the AGC in cross-examination and in its Final Submissions. After a thorough review of these documents, Leiss provided the Commission with an Affidavit, sworn on August 20, 2008, reaffirming all of his opinions expressed in his original testimony, without modification. Particularly, he reconfirmed his statements in relation to the June 1st Telex.[201]

The AGC strongly opposed the entering of the Leiss Affidavit into evidence and was provided with the opportunity to provide further submissions or documentation in response. However, no further response or documentation in relation to the Leiss Affidavit was received by this Commission until the AGC responded to the Supplementary Submissions of Families Groups, AIVFA, Family Interests Party and Air India Cabin Crew Association et al, on December 23, 2008.

Use of "Specific Threat" by Participants in Airport Policing

The extent to which the distorted use of the concept of specificity interfered with rational decision-making in the protective security regime is aptly illustrated by the way participants within Airport Policing used the concept in 1985. In 1985, the RCMP aviation security threat-response system contemplated five levels of security, with each level corresponding to specified RCMP deployment at the airport level.[202]

Only Mirabel Airport was operating at level 4 security throughout 1985, contrary to the RCMP Submission to the Honourable Bob Rae, which implied that level 4 security was being applied for all of Air India's Canadian operations.[203] In fact, until June 1985, Air India in Toronto was only being provided with level 1 security measures, the minimum possible level of security that the RCMP could provide.

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197 Testimony of William Leiss, vol. 91, December 7, 2007, pp. 12035-12037.
198 Final Submissions of the Attorney General of Canada, Vol. II, paras. 469-470.
199 Exhibit P-284.
200 See Exhibit P-433: Affidavit of William Leiss and Two supporting Tabs (Tab 3 and 7).
201 Exhibit P-433: Affidavit of William Leiss and Two supporting Tabs (Tab 3 and 7).
202 Exhibit P-101 CAA0025.
203 Exhibit P-101 CAA0335, p. 8.

The only exceptions, prior to June, were for the inaugural flight on January 19, 1985, and the April 6, 1985 flight.[204] During this period, as noted in Government documentation, almost every Air India flight was preceded by a threat.[205] It was only when External Affairs intervened on May 31, 1985, to request that the level of security for Air India in Toronto be made consistent with that provided in Montreal,[206] that the RCMP finally increased Air India security at Pearson to the same level as at Mirabel.[207] In his evidence, Supt. R.E. Muir, who was the Officer in Charge, VIP Security Branch, admitted that he would have expected, given the fact that the same Air India flight stopped at both Pearson and Mirabel, that the airline would have been afforded the same level of security at both locations, and that it was likely that at the end of May, Air India in Toronto was operating at an inadequate level of security.[208]

A partial explanation for this inadequate security at Pearson may lie in the inappropriate use of the "specific threat" concept by local officials. For example, on May 29, 1985, Air India provided the RCMP Pearson detachment with a telex, dated May 25, 1985, indicating that "…terrorist in Punjab reportedly planning violent activities for a week from June one 1985. Possibility of their making civil aviation as target in Punjab and elsewhere cannot be ruled out."[209] The memorandum contended that "…items like [transistors] two-in-one cameras cakes tinned [items] of food should not repeat not be allowed until and unless checking staff fully satisfied about their contents," and that "…airlines must keep utmost vigilance on registered baggage."[210] A handwritten note on the cover letter, likely written by the OIC of the Pearson detachment, states:

> "This seems a non-specific threat.… It does not <u>seem</u> to warrant extra security." [Emphasis in original][211]

The author of this handwritten note was applying an all-or-nothing threshold, and using a rigid concept of specificity to deny the provision of *any* additional security – this, despite the fact that this threat indicated a narrow time period, that measures were suggested that would be responsive to the nature of the threat, that Air India was only operating one flight out of Canada a week, that local personnel had access to information that the Montreal flight was operating at level 4 security,[212] and that this threat was received at a time when the threat to Indian missions and personnel was considered by CSIS and the RCMP to be high.[213]

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204 Exhibit P-101 CAA0169, CAF0010, p. 1.
205 Exhibit P-101 CAC0517.
206 Exhibit P-101 CAA0166.
207 Exhibit P-101 CAA0169.
208 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2946.
209 Exhibit P-101 CAA0161, CAA0164.
210 Exhibit P-101 CAA0161.
211 Exhibit P-101 CAA0164. While the same handwritten instructions indicated that S/Sgt Ward was to send the telex to RCMP Headquarters, there is no indication that CSIS was provided with it.
212 Exhibit P-101 CAA0335, p. 8.
213 See Exhibit P-101 CAB0851, CAC0331, CAC0338.

The narrow and strict understanding of the "specific threat" concept by airport officials interfered with their ability to properly assess threat information. Believing that the sole criterion of importance for deployment decisions was the specificity of the information in an individual threat, local personnel, at least at Pearson, often assessed each individual threat as discrete and without connection to the larger phenomenon of Sikh extremism. They were under the impression that it was appropriate for them to make protective security decisions based solely on individual threats. For example, dealing with the June 1st Telex, Inspector William Dawson wrote to Headquarters that he did not think that extra security was warranted on the strength of the information in the telex.[214] However, when threats were received by the RCMP from Air India, DEA, or other sources, officials were supposed to channel the information to CSIS, so that the information could be analyzed and assessed against CSIS's entire database, and attempts could be made to corroborate any threat information.[215] When threat information is corroborated, this logically increases the likelihood, and therefore the risk, that the actual threat will be carried out. This type of information would be of obvious relevance to those people attempting to make deployment decisions in relation to any given threat.

While the exercise of analyzing a threat to determine whether or not it was "specific" was always meant to be a purposive and contextual one, in practice, the concept fell victim to rigid and unthinking application. The misunderstanding is well illustrated by the dispute that occurred between the RCMP and Transport Canada in June of 1985 over payment of overtime for additional RCMP security. The security level for Pearson airport had been raised by the RCMP to level 4 for the June 1st flight, and this level had been maintained throughout June. However, due to an oversight, Transport Canada had not budgeted for overtime costs for additional security. A resolution could not be arrived at between officials at the airport level. In an attempt to convince Transport Canada to authorize payment for overtime, Supt. Clarke, who was working at the Divisional Protective Policing policy centre at the time, met with Transport Canada officials at Pearson airport. While Clarke had received significant intelligence that, in the RCMP's view, warranted the additional security, he could not share this information because of its classification[216] Transport Canada declined payment for the use of extra RCMP personnel, citing the fact that they considered the threat to be "non-specific." In noting the explanation he received with respect to Transport Canada's classification of threats, Clarke wrote:

> At the present time, Transport Canada has categorized threats as being "specific" or "non-specific." Their interpretation of "specific" is when a threat is received indicating that Air India Flight 123, scheduled to arrive on 85-06-01 has a bomb

214 Exhibit P-101 CAA0208.

215 See Testimony of John Henry, vol. 25, May 8, 2007, p. 2516 and Final Submissions of the Attorney General of Canada, Vol. II, para. 189. In fact, CSIS incorporated the criterion of corroboration into its own definition of "specific threat."

216 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3046.

> planted on board and will go off when the aircraft reached 15,000 feet or so. The "non-specific" nature of this threat, bearing in mind that Transport Canada was not privy to the intelligence on file, was such that Transport Canada did not see the need to employ extra security staff.[217]

Clarke disagreed with the Transport Canada decision, but not with the appropriateness of the "specific threat" criterion (though perhaps defined differently) used to arrive at it. He tried to convince Transport Canada to pay for the overtime needed to implement level 4 security for Air India flights by pointing out that in the case of the June 1st flight, "…the threat [had been] considered specific enough to employ three (3) off duty airport special constables."[218]

Eventually, the issue of overtime payment was settled, and Transport Canada Headquarters apparently agreed to pay for the additional security. However, while this dispute was elevated to the highest levels of the RCMP and Transport Canada, it does not appear that at any point officials gave real consideration to what exactly they were fighting about. This led to the absurd situation where the "specificity" of the undisclosed threat was the subject of arguments in the abstract – which is in complete contradiction to the actual purpose of the concept. The lamentable result was that the additional security the RCMP expended so much energy arguing for turned out to be increased protection against hijacking. This, despite the fact that the late May/early June intelligence, on which security staffing decisions should have been made, indicated that there was a significant threat of bombs being placed in registered luggage.[219] Similarly, when the RCMP received additional intelligence, after the increased security was already in place, that "…something was going to happen,"[220] this intelligence was used to resolve the pre-existing conflict about payment, but does not appear to have led to any substantive analysis of whether the extra security already in place was sufficient to meet the new, or enhanced, threat.

As though there was not already enough confusion about the meaning and implications of the "specific threat" concept, matters were further muddied by the fact that CSIS had its own, independent use of this term in the intelligence context. In CSIS's view, for a threat to be categorized as "specific," a certain degree of corroboration was required as an element of its specificity.[221] Therefore, in order to achieve the designation of "specific threat," the analysis had to go outside the context of an individual threat, and examine the wider context for verification. Sgt. J.B. ("Joe") MacDonald, who was responsible for setting the security level on the basis of CSIS intelligence assessments, was under the impression that the CSIS concept of "specific threat" had relevance to his enterprise. In explaining his decision to implement level 4 security for Pearson in June, MacDonald stated

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217 Exhibit P-101 CAC0445.
218 Exhibit P-101 CAC0445, p. 4 [Emphasis added].
219 See, for example, Exhibit P-101 CAA0161, CAA0185.
220 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040, 3044-3047, 3085-3086.
221 See Final Submissions of the Attorney General of Canada, Vol. I, p. 49, note 97.

that in his view, this level, as opposed to level 5, the highest RCMP level, was appropriate, as he had received information from CSIS that the threat was "high," or "serious," but that there was "nothing specific." MacDonald then implied that, in his view, level 5 security would be reserved for instances in which CSIS gave an indication that there was a specific threat, where CSIS gave some indication "…that a hijacking, a bombing or whatever would happen here, then, and they gave us that."[222]

The difference in deployment between levels 4 and 5 was nearly insignificant, amounting to the use of an additional airline vehicle stationed airside, and another that would follow an RCMP patrol car when the escort of the aircraft was underway.[223] MacDonald agreed that this was not a "big difference."[224] What this points to, however, is not that an appropriate test was applied, because it was not, but rather that no level of specificity would have helped, given the inadequate regime and the failure of the regime to adjust to the real threat – the threat of bombing. In adopting a mechanical translation of the category of threat into security levels, using the degree of specificity as the criterion without regard to the protective purpose of the exercise or to whether the measures related to operational need, the RCMP demonstrated a failure to appreciate the inherent risk analysis necessary to translate threat information into operational deployment.

What the foregoing shows is that the use of the "specific threat" concept in the pre-bombing period was "…ill-adapted for a terrorist situation."[225] As explained by Dr. Jacques Bourgault, "…not many terrorist groups tell that they will blow a plane on a given date, with a given flight number."[226] While an analysis of specificity is useful in that it allows for a better prioritization and tailoring of the protective response to the threat, the concept was often used as an unreasonably high threshold for totally non-responsive measures.

The Limited Relevance of "Specific Threat" in the 1985 Threat-Response Regime

The Government's insistent focus on the concept of "specific threat" has served as a significant distraction, and has further perpetuated the confusion surrounding the actual regimes in place in 1985. It has also made the critical assessment of their adequacies more difficult. The reality is that under the regime in place in 1985, "specific threat" was not a relevant criterion for the appropriate protective security response to the types of threats that were being received in relation to Air India. In some cases, decisions about increases in security (or not) were made on the basis of this inapplicable criterion. Worse, even where the threat intelligence was properly interpreted as requiring a heightened protective response, the security measures dictated by the existing "threat level" protocol

222 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2774-2776.
223 Exhibit P-101 CAA0025.
224 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2791-2792.
225 Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4355.
226 Testimony of Jacques Bourgault, vol. 36, May 30, 2007, p. 4355.

simply did not provide for any level of deployment that would have been sensitive to the threat of a bomb in registered luggage.

"Specific Threat" Applied Only in an Emergency Bomb Threat Context

A "specific threat," as the concept was formally defined in the regime, was generally received on the day of the flight, and often by phone.[227] If it was determined that the threat was "specific," an emergency protocol was put into action, which involved moving the aircraft to a secure zone, and then offloading the passengers and taking them to a secure terminal. The dogmaster would then enter the aircraft with his dog to search the interior, and during that period the airline crew would offload the luggage and the RCMP Hand Search team would assist in setting the bags out on the tarmac to facilitate the search of the luggage by the RCMP explosives sniffer dog. The RCMP Hand Search team would also search the aircraft in areas where the dogmaster was unable to reach, and would oversee a process of passenger-baggage matching.[228] At the end of the passenger-baggage matching process, any leftover bags were then considered suspect bags, to be removed to an isolation area.[229] Eventually, claimed luggage would be reloaded onto the plane and passengers would reboard for resumption of their departure. This emergency protocol was highly effective in its ability to detect luggage containing bombs.[230]

In the emergency protocol, the assessment of whether or not a call-in threat was "specific" depended on the degree of detail in relation to the intended target and detonation time that was provided by the caller. Generally this assessment had to be done on the spot, so that an immediate decision could be made about whether or not to implement the emergency measures.[231] Transport Canada's 1984 Manual provides a definition of the term "specific threat" in relation to a bomb threat:[232]

Bomb Threat – normally divided into two categories:

> a) a specific threat – a statement giving time of activation, location, type of bomb, or even complete details;

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227 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3195; Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3052. See also the Transport Canada guidelines setting out standards for the development of emergency procedures: Exhibit P-101 CAF0077, p. 32. In relation to call-in bomb threats, the manual states, "It is crucial that there be an immediate assessment of a bomb threat."

228 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3020-3021.

229 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3222-3223.

230 This procedure was consistent with the RCMP's assessment of the most effective means at the time to secure baggage against explosives. CATSA concluded that had this protocol been employed at Pearson Airport in June 1985, the bomb would likely have been detected: Exhibit P-101 CAF0160, p. 41.

231 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3221.

232 Exhibit P-101 CAF0077. The Attorney General of Canada submitted that the meaning of "specific threat" in the aviation security regime is "further delineated" by this definition: Final Submissions of the Attorney General of Canada, Vol. II, para. 118.

> b) a non-specific threat – in which the caller makes a single statement that there is a bomb on an aircraft, in the terminal building, or on airport property.[233]

The emergency context[234] in which this definition is relevant explains the lack of a requirement for corroboration in the "specific threat" definitions set out in the Transport Canada and RCMP emergency procedures manuals. This protocol and the application of the "specific threat" criterion were only relevant in such a time-sensitive situation, where circumstances did not allow for the engagement of the intelligence assessment process.[235]

When a threat was found to be "specific," RCMP and Transport Canada officials would take over.[236] While the air carrier played an important role in assessing the threat in such situations, the assessment of the threat was done with the involvement of RCMP and Transport Canada officials. When the airline received a call-in bomb threat, RCMP and Transport Canada representatives would assess the information based on threat assessment criteria in use at the airport. The definition of "specific" and "non-specific" as set out above was not meant to be exhaustive of the actual criteria used to gauge the veracity of the threat – for example, overheard laughter on the phone might be an indicator of a prank.[237] Measures were taken either to initiate a complete bomb threat search procedure or, if the information was deemed to be "non-specific," for government officials to "…stand back and let the air carrier make the final decision as to the action that they were going to take."[238]

To ensure that air carriers, who often were the recipients of the call-in threats, reported relevant threat information to Government officials, section 812 of the *Air Regulations* imposed certain obligations on air carriers:

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233 Exhibit P-101 CAF0077, pp. 7-8 [Emphasis added]. A similar, though not identical, definition is also provided in the RCMP Emergency Procedures Protocol for Pearson Airport: "a) Non-Specific: A general type of threat to which no specific information is given in relation to the target or detonation time. b) Specific: 1. Detailed information will be supplied by the perpetrator regarding the target and possible detonation; 2. Bomb threats are usually projected at commercial aircraft and property; and 3. The best method of search is an organized, combined effort utilizing the PSD Unit and the trained Hand Search Team.": See Exhibit P-101 CAC0310, p. 13 [RCMP Emergency Protocol for Pearson].

234 The RCMP Emergency Protocol for Pearson, which outlines the protocols to be implemented when a "specific threat" is received, sets out the following possible scenarios in which this protocol could be triggered: when the aircraft is in the air or taxiing away from the terminal, when the aircraft is at the finger with passengers and cargo onboard, and when the aircraft is already in flight. All of these situations are clearly time-sensitive emergencies, where passengers and luggage are already onboard the aircraft. See Exhibit P-101 CAC0310: RCMP Emergency Protocol for Pearson.

235 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3221.

236 Exhibit P-101 CAA0118; Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3221.

237 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3194-3195, 3220.

238 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3194-3195. The assessment would also be done in consultation with the airline. The Transport Canada standards manual states that "…the air carrier has the responsibility to determine whether the bomb threat is or is not against a specific aircraft or flight.": Exhibit P-101 CAF0077, p. 31. Dale Mattson's testimony clarifies that the threat assessment responsibility did not derogate from Government officials' overriding responsibility in this respect.

> 812 (1) Where the owner or operator of an aircraft receives or is informed of a threat considered to be against the safety of a specific aircraft or flight, he shall immediately take all such measures as are reasonably necessary to ensure the safety of the aircraft and the protection of the passengers and crew members, including:
>
> a) in every case, advising the appropriate police and aerodrome authorities and the pilot-in-command of the aircraft of the circumstances of the threat; and
>
> b) in the case where the aircraft is on the ground, ensuring that
>
> > i) the aircraft is moved to a place of safety on the aerodrome, as directed by the aerodrome authorities, and
> >
> > ii) the aircraft, the passengers and their personal belongings and the baggage, goods and cargo on board the aircraft are examined.

Section 812 was a safeguard. It was not intended to derogate from the overall supervisory and decision-making authority of Transport Canada and its delegates. For example, wide discretion was given to Transport Canada to take any action necessary, including detention of the aircraft, where an aircraft intended to depart while in contravention of the Regulations or while it was "unfit for flight."[239] This discretion could be exercised by the Government to ensure that section 812 was properly implemented, including to ensure that an air carrier had appropriately assessed or responded to a threat. The Government was often in the best position to understand and assess a given threat: it was responsible to collect, assess, and disseminate threat information,[240] and had more access to intelligence channels. Because of classification issues, there was significant relevant information that the airline could not know. In 1985, threat information flowed in through many sources, including CSE, CSIS or the Department of External Affairs. Such information would often be "caveated" (meaning that it could not be utilized for certain purposes or disseminated without the consent of the originating party) or highly classified.[241] This led to situations like the dispute over payment for overtime for additional security at Pearson airport, where the RCMP was unable to share the highly classified intelligence it received with Transport Canada (and therefore presumably with airline) officials.[242] It would make little sense if government officials did not have a responsibility to intervene where they had important information that the air carrier could not possess.

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239 See *Air Regulations*, s. 813.
240 Exhibit P-101 CAA0335, p. 8.
241 See Exhibit P-101 CAF0083.
242 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3044.

In any event, section 812 only had application in the limited emergency circumstance of a call-in or time-sensitive bomb threat. It had no relevance to the threats that Air India and the Government of Canada received in relation to Air India in the immediate pre-bombing period. The RCMP used a separate protocol for threats received outside these emergency circumstances.

The "non-emergency" protocol was intended for circumstances when threat information was received, for example, from DEA, Air India, or other sources, where there was sufficient time to engage the threat assessment process. In these circumstances, RCMP headquarters Airport Policing Branch would transfer the information to CSIS for assessment. Based on CSIS's assessment of the level of threat, the OIC, Airport Policing Branch would apply a security grid, originally developed at Mirabel and applied at Pearson and Mirabel in 1985,[243],[244] to set a level of security, from level 1 to 5, to be applied by the local RCMP airport detachments for a particular flight.[245] Security level 1 was always in effect.[246] At increasing levels of security, additional measures came into play. For example, at security level 1, the RCMP provided, among other things, continuous patrol of the apron, intermittent inspections of the aircraft and patrolled sterile zones in the departure and arrival areas and the mezzanine. At level 3, the grid called for the RCMP to "…use the services of the dogmaster" and to provide a "…constant watch of passenger screening check point used by the airline during the time the counter is open."[247] Importantly, the protocol itself[248] did not mention "specific threat" criteria. To the extent that the "specific threat" concept was used by those involved in implementation, this was due to a misunderstanding of the regime.

Threat-Response Protocols Non-Responsive to the Nature of the Threat

Deficiencies in the Emergency Protocol

While the RCMP manual in use at Pearson indicates that the optimal method of search for an emergency bomb threat was a combination of the RCMP police

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243 Exhibit P-101 CAA0025. In 1985, this grid was applied at both Mirabel and Pearson airports: Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3112. While there is correspondence indicating that it was decided in May 1983 not to use this grid as a national policy at that time (Exhibit P-101 CAA0034), Sgt. MacDonald, who was the acting OIC of the Airport Policing Branch responsible for setting security levels in 1985, confirmed that in fact, the grid was adopted and used nationally: Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2765-2766. This is also consistent with the RCMP Submission to the Honourable Bob Rae, which suggested that the five-level security protocol was an RCMP-wide policy: Exhibit P-101 CAA0335, p. 8.

244 During cross-examination, Supt. Clarke appeared to accept Government counsel's suggestion, based on the 1983 correspondence, that there was no national policy, even in 1985, and he therefore concluded that the grid must have been only a guideline: Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3098-3099. He also stated that this particular document was not a national policy since it was labelled "Mirabel," and "…[i]f it was a national policy, it would show Headquarters Ottawa on it." Nevertheless, and regardless of the characterization of the particular document, Supt. Clarke did confirm that this very security grid was applied for "…all other airports, right across Canada" (Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3099) and reiterated that the grid was, in fact, applied at Pearson (Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3112).

245 Once Headquarters set the level of security, the corresponding measures, as set out in the grid, were considered by Headquarters to be the mandatory minimum deployment to be effected by the airport detachments: See Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2770-2771.

246 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2767.

247 Exhibit P-101 CAA0025.

248 Exhibit P-101 CAA0025.

dog and the trained Hand Search Team,[249] the manual does contemplate the situation in which the Toronto Police Service Dog (PSD) is not available. The Pearson Emergency Manual provides:

> - When PSD not reasonable [*sic*] available and conditions warrant an immediate search, commence searching without PSD Team.
>
> - When PSD not available, commence search with Hand Search Team only.
>
> - When Toronto PSD (Explosives) not available and PSD required, consider use of Montreal Airport PSD Team upon approval of O. i/c/ Ops. NCO.[250]

Where there was no available explosives sniffer dog, as was the case on June 22, 1985, this meant that the RCMP Hand Search Team would be used alone and, if the emergency protocol was triggered, the Team would oversee the process of baggage-passenger matching, and conduct a search of the aircraft as described above.

The Final Submissions of the Attorney General of Canada argue that use of the RCMP Hand Search Team alone was a "sufficient back-up."[251] As discussed in Section 2.3.3 (Pre-bombing), Over-Reliance on Technology, we now know that the use of passenger-baggage reconciliation would have almost certainly identified the luggage containing explosives on June 22, 1985. This does not mean that the use of the Hand Search Team was sufficient backup for a trained explosives detection dog, however, because as Mattson noted, the technique of passenger-baggage matching was premised on the assumption that "…anyone who was getting on board that flight was not going to jeopardize their own life."[252] This is the reason that the optimal method was to use the RCMP dogmaster, in addition to the Hand Search Team, since that would provide a safeguard against would-be suicide bombers. Both Mattson and Carlson confirmed that it was not the role of the Hand Search Team to actually open and hand search luggage; nor was the Team trained to do so.[253],[254] This fact is significant in light of the existence of important threat information in June 1985, suggesting that saboteurs could effect their plan by means of suicide bombing. The June 1st Telex, provided to the RCMP by Air India in early June 1985, states:

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249 Exhibit P-101 CAC0310, p. 13.
250 Exhibit P-101 CAC0310, p. 16.
251 Final Submissions of the Attorney General of Canada, Vol. II, para. 242.
252 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3223.
253 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3222, 3224, 3261-3263; Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3000-3001. Carlson stated that in 1985 he estimated that he would be called into the airport in relation to bomb threats an average of 100 times per year, and in his two years at Pearson, his team never hand searched luggage.
254 Exhibit P-101 CAF0160, p. 52. There was some confusion arising out of the testimony of Gary Clarke, who testified that he thought the role of the Hand Search Team was to open and search the luggage. However, this testimony is contradicted by persuasive evidence from both RCMP and Transport officials, as well as common sense (in light of the training and equipment provided to RCMP airport personnel).

> It is also learnt that Sikh extremists are planning to setup suicide squads who may attempt to blow up an aircraft by smuggling in of explosives in the registered or carry-on baggage.[255]

Accordingly, passenger-baggage reconciliation by the Hand Search Team would not have been enough to respond to the threat of suicide bombing. It was a clear deficiency, given the threat information in circulation at the time, for the RCMP protocol not to provide for effective back-up protection against suicide bombing in the event that explosives sniffer dogs were unavailable. A protocol calling for members to open luggage and to perform hand searches[256] of the contents would have gone some way in helping to identify explosives or suspicious items that were known to be used to conceal explosives – including radios, cameras and other electronic equipment.[257]

In any event, none of these measures – including passenger-baggage reconciliation, dog search, or hand search – were even attempted, since the relevant intelligence at the time, including the June 1st Telex, was not viewed as relating to "emergency threats" or "specific threats".

Deficiencies in the Non-Emergency Protocol

The security levels grid itself was rigid and provided no scope to tailor the deployment to the nature of the threat. The measures contemplated by the grid were essentially oriented towards the prevention of hijacking – for example, providing escort and surveillance of the plane, patrol of passenger departure and arrival areas, and identification of all armed guards. In 1985, this orientation, combined with the rigidity of the grid, was particularly problematic, given the fact that particular threats of sabotage by checking luggage containing bombs aboard aircraft had been received, and that the threat of sabotage in general was by that time understood to have surpassed the threat of hijacking as the most pressing threat to aviation security.[258] Regardless of the content of the threats and of CSIS intelligence assessments, RCMP Headquarters mechanically applied the grid, based on the CSIS categorization of the threat, to effect security deployment directives, without in any way tailoring the response to the actual nature of the threat.

The inadequacy of the regime is highlighted by the fact that a prank caller, who happened to call into an airline office with very specific details, could trigger

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255 Exhibit P-101 CAA0185 [Emphasis added].

256 The technique and limitations of the method of hand searching are discussed in Chapter V (Pre-bombing), The Day of the Bombing.

257 See, for example, Exhibit P-101 CAA0161, which contains a telex from Air India Headquarters dated May 21, 1985, warning that "…items like [transistors] two-in-one cameras cakes tinned [items] of food etc. should not repeat not be allowed until and unless checking staff fully satisfied about their contents." See also Air India telex dated April 22, 1985 indicating that "…weapons, explosives and other dangerous devices … may be cleverly hidden, particular attention should be paid to cameras, electronic equipment and parcels": Exhibit P-284, Tab 50.

258 See Section 2.3.1 (Pre-bombing), Recognition of the Threat of Sabotage and Weaknesses in the Ability to Respond.

extensive mobilization of resources, including highly sensitive anti-sabotage measures. But a threat passed through the intelligence stream and assessed as "high" by CSIS – as the result of a more rigorous analysis based on a large body of contextual threat information and open to checks such as corroboration[259] – would essentially result in no effective anti-sabotage deployment or protection by the RCMP. The effect of this scheme was that RCMP protective measures implemented at the airport increased in relation to the level of threat, but what was offered was increasing protection against hijacking, regardless of the nature of the relevant threat. Moreover, the use of the level of "threat" as the determining factor in protective deployment decisions obscured the relevance of "risk." Risk did not form a part of the analysis in responding to non-emergency threats – a clear deficiency in the regime.

Post-Bombing – "Specific Threat" Becomes the Alibi

Immediately after the bombing, the Government of Canada took a defensive stance, arguing publicly that there had been no "specific threat" to Air India. On the very day of the bombing, June 23, 1985, the Department of External Affairs sent a telex to Delhi which set out Transport Canada's already-formed position on security measures connected with Air India's baggage handling, with the notation "…you may wish to draw on following points to answer GOI [Government of India] or Indian Press enquiries."[260] The telex went on to state:

> Had the air carrier deemed there was a specific threat to that flight, Air Regulation 812 calls for them to notify Transport Canada and the police. Had there been a specific threat, the aircraft would have been moved 150M from the terminal bldg and all bags would have been opened i.e. the emergency procedures would have been followed.

Leaving aside the issue of the correctness of this statement in terms of its description of responsibilities and procedures,[261] the statement does fairly situate the concept of "specific threat," making it clear that the context is that of an emergency – that is, the aircraft is already on the tarmac with boarded luggage and passengers. With time, any such nuances became blurred and the Government's constant reiteration of this concept became the defensive response of the Attorney General of Canada to the lack of protection afforded to Air India. For example, a Transport Canada briefing note, dated June 27, 1985,[262] reads:

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259 See Final Submissions of the Attorney General of Canada, Vol. I, p. 49, note 97.

260 Exhibit P-101 CAE0209. See also Exhibit P-101 CAF0057, p. 43: On June 23, 1985, C Division responded to a request from Headquarters for an explanation of the "three bags" incident at Mirabel Airport and indicated that there had been "no special information" about a "specific threat."

261 As noted earlier, the RCMP protocol at Pearson did not call for the opening of luggage as part of the emergency procedures.

262 Exhibit P-101 CAF0809.

> Transport Canada Security Manual calls for full hand baggage inspections when a specific threat to a flight is received. Air India did not indicate a specific threat to Flight 182. RCMP confirm that they received no special request for special security because of specific threat to Flight 182. Additional assistance was requested for the month of June for all Air India flights. Additional assistance was provided by Transport Canada and the RCMP.[263]

This statement begins to blur the distinction between the two regimes in place, using the concept of "specific threat" as though it were the trigger for "special security," a term used to describe measures put in place in the context of the non-emergency regime.[264] Special security for Air India was, in fact, requested for the month of June in response to non-emergency threats received through the Indian High Commission and through Air India Headquarters in Bombay.

The exact text quoted above was copied verbatim in daily briefing notes throughout June and July,[265] and this repetition and reinforcement may help explain how the notion of "specific threat" became so quickly and firmly embedded in the Government of Canada position.

The overall defensive stance taken by the Government in the immediate aftermath of the bombing is reflected in internal documents that increasingly point to the lack of "specific threat" to explain away security failures. At a meeting that was held on January 7, 1986, attended by Ivan Whitehall, Counsel for the Government of Canada in the civil litigation action launched by the families, Bruce Stockfish, Counsel for the Ministry of Transport, and government officials from the RCMP and the Ministry of Transport, a number of issues pertaining to the security regime in place on June 22, 1985, were discussed. The memorandum describing the discussion notes:

> Whitehall asked what powers the government i.e. MOT/RCMP had to prevent an aircraft from departing if it was judged that conditions on board were unsafe. Bruce Stockfish stated that Section 812 of Air Regulations empowers the government to detain an unsafe plane, however, there must be a specific threat to that plane. There was no/no specific threat to Air India 181/182 on 85-06-22.[266]

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263 Exhibit P-101 CAF0809, p. 4 [Emphasis in original].

264 See, for example, Exhibit P-101 CAA0240, p. 2, where Supt. Clarke wrote "…specific intelligence was received by the RCMP which indicated that special security precautions should be taken on all Air India Flights to and from Canada" [Emphasis added] and Exhibit P-101 CAA0229, pp. 2-3, where in an internal DEA telex written just after the bombing it is written: "In discussions with Indians CDA fully acknowledged that a series of requests for special security measures for Air India flights had been received over recent weeks." [Emphasis added].

265 See, for example, Exhibit P-101 CAF0810, CAF0811 and CAF0812.

266 Exhibit P-101 CAC0517, p. 3.

In reality, the Government of Canada was not powerless to intervene in the aircraft's departure absent a "specific threat." There was nothing in section 812 of the *Air Regulations* that required a "specific threat" before an unsafe plane could be detained.[267]

The same lines that were used within Government and with the media were also used with the families of the victims. On July 22, 1985, just one month after the bombing, at a meeting of government officials with representatives of the families, Paul Sheppard, Director of Civil Aviation Security in the Ministry of Transport, told the families:

> With respect to Air India flight 182, there was no threat to that specific flight on June 22nd in relation to sabotage. Had there been a specific threat to that flight, additional security measures would have been imposed on Air India by Transport Canada and law enforcement authorities.[268]

In its Final Submissions, the Attorney General of Canada continues the confusion. Dealing with the June Ist Telex,[269] which stated[270] that "…assessment of threat received from intelligence agencies reveal the likelihood of sabotage attempts being undertaken by Sikh extremists by placing time/delay devices etc. in the aircraft or registered baggage," the Attorney General of Canada Submissions argue:

> The June 1st telex was tragically accurate, but warning as it did all Air India operations for an entire month, it was not a specific threat to Flight 182.[271]
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> …
>
> The June 1st telex did not contain a specific threat against Flight 182. As these submissions have already canvassed, a "specific threat" is information that points to a certain flight as an identifiable target. The June 1st telex was not directed solely against the weekly Air India flight from Canada – rather it was sent from Bombay to all Air India offices worldwide. It was directed to all Air India flights operating in June 1985.[272]

The discussion of whether the June 1st Telex was "specific" is entirely beside the point. Under the 1985 aviation security regime, in response to a "specific threat," the airplane was to be moved to a place of safety, the luggage and passengers

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267 See above in this chapter: s. 813 of the *Air Regulations* provided that the Government had wide discretion to take any action necessary to ensure that an aircraft would not depart in circumstances considered by the Government to be dangerous.
268 Exhibit P-101 CAF0819, p. 11.
269 Exhibit P-101 CAA0185.
270 Exhibit P-101 CAA0184.
271 Final Submissions of the Attorney General of Canada, Vol. II, para. 198.
272 Final Submissions of the Attorney General of Canada, Vol. II, para. 192.

offloaded, the explosives sniffer dog was to search the luggage and a process of passenger-baggage matching was to be conducted. Consider now, taking the Attorney General of Canada approach, how this would play out if the telex were "specific" as to the June 22nd date. Given that the threat was received well in advance of the flight, and knowing this information, would the proper RCMP response have been to have the passengers and luggage loaded, then to have the plane moved to a place of safety, and then to have implemented the emergency protocol? The characterization of the telex as not "specific" does not answer the question of whether the security measures implemented were adequate to respond to this threat.

Over time, it appears that "specific threat" has become a malleable concept, whose contours have been adjusted to fit the need to justify the deficiencies in the response to individual threats, as well as to the cumulative body of pre-bombing threats. At its furthest reach, the focus on "specific threat" has allowed a conclusion that the lack of a "specific threat" – however defined – meant that there was no intelligence at all about threats to Air India. In a "lessons learned" document written in 1986 by a member of the HQ Air India Task Force,[273] the RCMP maintained that prior to the bombing, it had "…no intelligence of a direct threat to Air India or Indian missions/personnel" and "…no indications that Air India would be the target" in the context of the general high threat in June 1985.[274] This statement flies in the face of the wealth of pre-bombing information about threats to Air India and Indian interests in Canada in evidence before the Inquiry. In his testimony at the Inquiry, the author of the document, Sgt. Sweeney, explained that he made the statement because there were no "specific threats" against Air India.[275]

Conclusion

In spite of the Government's insistence throughout this Inquiry that there was no "specific threat" to Air India, it appears that no coherent definition of the concept, at least as used within government, could be provided. Further, the concept was irrelevant to the actual protection of Air India Flight 182 in the aviation security regime in place. Where the concept was used, it was because of a misunderstanding of the regime, and it was turned into an all-or-nothing trigger that was inappropriate in a non-emergency context. Post-bombing, the Government continued to rely on the concept as an alibi for the deficiencies in security at Pearson and Mirabel and, over time, it became the basis for an even broader allegation that the security community had no threat information about Air India. The failure of the Government to adequately respond to the threats it received had nothing to do with their specificity. The problem was a threat-response regime that failed to incorporate any manner of risk analysis to assess adequately or respond to the actual threat at issue – the threat of bombing.

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273 Exhibit P-101 CAF0055; Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2706-2707.
274 Exhibit P-101 CAF0055, p. 3.
275 Testimony of Warren Sweeney, vol. 26, May 9, 2007, pp. 2708, 2719.

4.4 Failures in Sharing of Information

A Failure to Communicate Critical Information

A recurrent theme in the evidence presented at the Commission hearings, and in this Report, is the failure to pass on critical information when it was needed. Among the most striking examples was the fact that, prior to the bombing, both the RCMP and Transport Canada received information about threats but often did not see the need to advise each other, or other agencies or carriers, of the pertinent information. Transport Canada recognized this potential deficiency, but did not advocate for the creation of a centralized and consistent system for sharing information. Air India, similarly, had committed to sharing all threat information with all of the relevant agencies but failed to distribute some of the most important information about the risk to its flights with key partners in security. The *CATSA Act* Review Advisory Panel found that the poor communication among officials of the RCMP, Transport Canada personnel at Pearson and Air India was one of many human failures leading up to the bombing of Air India Flight 182.[276]

The failures to share information appropriately between agencies and to coordinate effectively were exacerbated by the fact that there were significant deficiencies in the agencies' internal handling of information, as well as in their systems for directing and processing such information. These interagency and intra-agency information-sharing failures greatly impeded their capacity to make quick decisions and implement sensitive operational responses to the threat.

Transport Canada's Internal Communications Structure

Deficiencies in Formal Structures for Sharing of Information

Prior to the bombing, there were no formal agreements "…for the exchange of security information and intelligence between Transport Canada headquarters, airports and airlines with intelligence and law enforcement agencies." Security information was passed along informally, with Transport Canada and RCMP officials relying on an "old boys' network," built on personalities and past relationships.[277]

With regard to intelligence and threat assessments in civil aviation security, the RCMP Security Service was originally responsible for analyzing intelligence and providing threat assessments. These were then cleared at Transport Canada HQ and disseminated to other Transport Canada officials, air carrier employees and RCMP airport detachments. After July 1984, the threat assessment responsibility moved to CSIS, but the RCMP Airport Policing Branch retained a role in requesting and disseminating threat assessments.

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276 Exhibit P-157, p. 45.
277 Exhibit P-364, p. 1.

In the early 1980s, Transport Canada recognized that it required a central point for the analysis and dissemination of security intelligence. A report describing the office of a new National Civil Aviation Security Coordinator emphasized that "…the prompt and orderly transmission of threat information to all concerned is vital to the success of any programme for the prevention of Acts against Civil Aviation." The hub of the inward and outward flow of information would be the Director General of Civil Aeronautics. The Deputy Coordinator would be the Director of the Civil Aviation Security Branch of Transport Canada. The scope of interest was to be the collection, evaluation, and dissemination of information concerning any planned activity or indicated threat against civil aviation, and the identification of activities and groups who might be suspected of planning to hijack or place a bomb or incendiary device on an aircraft, or commit an act of sabotage.[278]

According to this Transport Canada report, "…persons who become knowledgeable of information of the type described above should report it by the fastest means available to the National Civil Aviation Security Coordinator" or, alternatively, to the nearest Transport Canada facility. Transport Canada HQ would then analyze the information and, "…if appropriate, the information will then be forwarded to the local airport, airline and law enforcement authorities who have an active interest."[279]

Transport Canada received intelligence and intelligence assessments from many different sources.[280] While the RCMP Security Service had been the sole agency analyzing threat intelligence between 1973 and 1984, the advent of CSIS added another layer of complexity.[281] The dissemination of information by the Director of Civil Aviation Security would be determined "…by judgment and experience as to those people who have a 'need-to-know'."[282] Urgent matters were to be handled by telephone calls.

Unfortunately, in practice, these links did not provide the smoothly-functioning central point of contact originally envisioned by Transport Canada. In the absence of clearly defined channels and procedures, networks remained informal, vague, and haphazard. Communications were susceptible to misunderstandings and personality conflicts – an acknowledged weakness of the often informal and personality-driven relationships between the law enforcement and security intelligence communities that continues to this day.[283] With respect to the sharing of intelligence between the RCMP and Transport Canada, the problems

278 Exhibit P-101 CAF0551, pp. 1-2.
279 Exhibit P-101 CAF0551, p. 3.
280 Exhibit P-364, p. 1. These sources included CSIS, the RCMP, the Communications Security Establishment (CSE), the Intelligence Advisory Committee, External Affairs, the Solicitor General, the United States Federal Aviation Administration (FAA), and "…other foreign government civil aviation security officials, Canadian and Foreign air carrier security officials and Transport Canada Regional and Airport officials." They communicated with the Director of Departmental Security and the Director of Civil Aviation Security at Transport Canada.
281 Exhibit P-157, pp. 45-46.
282 Exhibit P-364, p. 1.
283 See, for example, Testimony of Jack Hooper, vol. 50, September 21, 2007, pp. 6251-6252.

multiplied because, as was emphasized by the *CATSA Act* Review Advisory Panel in its Report, "…in the absence of clear lines of authority and responsibility, mistrust and misunderstanding caused breakdowns."[284] This meant that two-way sharing of pertinent security information between the agencies was inconsistent.

Lack of Secure National Communications System

As a further complicating factor, Transport Canada lacked a secure national communications system, requiring it to rely on the assistance of the RCMP in disseminating classified intelligence to personnel at airports.[285] In a memorandum dated March 19, 1985, Paul Sheppard, the Director of Civil Aviation Security, commented that this weakness posed a significant problem.[286] If it was necessary to disseminate classified intelligence in hard copy, the message would need to be sent through the RCMP telex system to an airport such as Mirabel or Pearson, where the Transport Canada security officers would be contacted by telephone and told the information was on its way.[287] Sheppard wrote that a secure network was needed to link Transport Canada HQ to each region and major airport, but no steps had been taken to implement such a system before the bombing.

As a consequence, major airports sometimes lacked timely access to security intelligence, and Transport Canada's unstructured relationship with the RCMP did little to remedy the matter. An April 1985 security exercise review at Pearson airport highlighted the fact that Transport Canada could not send classified information to Pearson because there was no secure telephone or telex system in place. According to the Transport Canada officials at Pearson, "…the RCMP Airport Detachment have a secure communications system and are often in receipt of such information well in advance; however, RCMP are often reluctant to pass this type of information on to us."[288]

In the assessments conducted after the bombing, Transport Canada recognized that a national standard for aviation alerts, which defined the measures to be implemented for a given threat level, would eliminate much of the confusion that was encountered whenever a threat to civil aviation was received.[289] A national system would also have the advantage of eliminating the need to transmit classified documents. When a high or maximum alert threat was declared, airport managers and air carriers would know what action to take.

Deficiencies in Sharing of Information with Airports

The problem created by the absence of consistent national alert levels and security measures was exacerbated by the absence of policies, prior to the

284 Exhibit P-157, p. 70.
285 Exhibit P-364, p. 1.
286 Exhibit P-101 CAF0083.
287 Exhibit P-364, p. 1.
288 Exhibit P-101 CAF0585, p. 5.
289 Exhibit P-364, pp. 2-3.

bombing of Air India Flight 182, about sharing threat information with airports. Information was compartmentalized and segregated, without consideration for the fact that passengers, baggage and cargo across the country would be connecting to high-risk flights and airports from low-risk ones. The danger presented by interlined bags simply went unseen. The *CATSA Act* Review Advisory Panel referred to this lack of vision as "the myopia syndrome."[290] For example, neither CP Air nor any officials at Vancouver International Airport were advised of the high threat situation facing Air India in June 1985, and no thought had been given to doing so. CP Air's security measures for high threat situations were therefore not in force at Vancouver International Airport on June 22, 1985.

Examining a case study of the threat assessment communication system from this period, the *CATSA Act* Review Advisory Panel concluded that "…a number of observations can be drawn from this case study, none of them particularly flattering to the principals." In particular, the lack of secure communications channels led to potential delays in response during threat situations, and the interface between Transport Canada HQ and the air carriers, the airports, and the intelligence and policing agencies "…seemed uncertain, ad hoc."[291] That uncertain system was made even more problematic because the "need-to-know" principle governed dissemination, resulting in officials having inconsistent access to important threat information that could significantly impact the state of security and the ultimate response to a threat.

Even after the bombing, communications remained as chaotic and uncoordinated. In July 1985, CSIS informed senior Transport Canada officials at headquarters that it would be distributing important threat intelligence information.[292] This information was picked up by the officials from the CSIS office and forwarded to the RCMP Director of Protective Policing. The threat related to four airports, but the intelligence was to be passed on further to the RCMP Airport Policing detachments at all 10 Class 1 airports. Unfortunately, only two of these airports had secure telex terminals. The four affected airports were therefore contacted by telephone and told that the RCMP had details of a threat warranting elevated security, and it was recommended that the airports call emergency meetings of their respective airport security committees. Representatives of two airlines were also contacted and told to contact the RCMP regarding the threat.

When CSIS obtained additional information concerning the threat, Transport Canada officials at the four affected airports were contacted by telephone and told that their respective RCMP Airport Policing detachments had further details.[293] Although the local Transport Canada officials were told that the messages would be available for pickup at specific locations, the messages were not received, and in the ensuing confusion a flurry of telephone calls were made back and forth among the airports, Transport Canada HQ and the RCMP.

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290 Exhibit P-157, p. 69.
291 Exhibit P-157, p. 47.
292 Exhibit P-364, p. 3.
293 Exhibit P-364, p. 3.

The following day, some of Transport Canada's regional headquarters and some airports were still in the dark about the threat, and local RCMP detachments were reluctant to divulge the details.[294] Meanwhile, at one of the four affected airports, an emergency meeting of the airport security committee was convened, and air carrier representatives, with no security experience, attended the meeting. Although the RCMP Inspector in attendance warned those present about the need for security to safeguard the intelligence, one of the air carrier representatives forwarded messages containing extremely sensitive details onwards.

Similarly, in a September 1985 meeting of the National Civil Aviation Security Committee in Ottawa, John Cook, Transport Canada's Manager of Policy and Intelligence for the Civil Aviation Security branch, highlighted communications problems that had resulted in poor coordination and cooperation among members of law enforcement agencies, the air carriers, and Transport Canada. The major problem areas causing the breakdowns were the lack of a secure communications system, and new and inexperienced personnel who were unfamiliar with their duties.[295]

Deficiencies in Coordination and Sharing of Information between the RCMP and Transport Canada

Transport Canada was very concerned about unilateral decisions made by the RCMP to relay intelligence to airports and airport personnel. In an April 1985 memorandum, Sheppard noted that due to the RCMP's distinguished reputation, foreign government and air carrier officials often approached it directly with threat information. The RCMP would then frequently act without any discussion of the situation with Transport Canada, as it considered such information to be a purely police matter.[296] Airport managers, on the other hand, felt that they should be informed of potential threats by Transport Canada HQ, and not by the RCMP.[297]

Sheppard's memorandum raises issues both in terms of the appropriate sharing of information, as well as the coordination of security measures. The RCMP, as part of its obligations to collect, evaluate and disseminate intelligence information concerning national and international threats to civil aviation,[298] was to ensure that Transport Canada was made aware of all relevant threat information. As well, pursuant to the Memorandum of Agreement (MOA) between the agencies, the RCMP was required to consult regularly with the Transport Canada Airport General Managers.[299] It was important for Transport Canada to be aware of relevant threat information so that additional measures or procedures could be imposed, if necessitated by the nature of the threat.

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294 Exhibit P-364, p. 3.
295 Exhibit P-101 CAF0162, p. 10.
296 Exhibit P-101 CAF0084, p. 2.
297 Exhibit P-364, p. 2.
298 Exhibit P-101 CAA0335, p. 8.
299 "Manager" is defined in the MOA as "Airport Manager."

At Pearson airport, in particular, these local breakdowns in communication and sentiments of mistrust between the two agencies appeared to occur frequently. Supt. Clarke testified that when an engine failed on Air India's June 8, 1985, flight from Pearson,[300] the Airport General Manager did not notify the RCMP of this breakdown.[301] As he explained:

> …there was a little bit of a breakdown in communication as well because – when the engine on the aircraft went out of service, the airline had to come back to Lester B. Pearson International Airport. Unfortunately, the General Manager didn't convey that to the RCMP. We didn't know the aircraft was coming back because of the engine. The engine [*sic*] had to be taken to a hangar and the engine removed. We weren't told that.
>
> …
>
> Maybe he didn't consider it important.[302]

In actual fact, an RCMP internal document indicates that neither Transport Canada nor the RCMP were notified by Air India about this incident.[303] Nevertheless, the misperception and ill will regarding this incident (which still persists within RCMP folklore today) is a reflection of the level of tension and the perception of a lack of cooperation in 1985.

In its Final Submissions, the Attorney General of Canada argued that the evidence before the Commission demonstrates that the various players in aviation security "…cooperated and communicated with each other continuously about the threats to civil aviation in general, and against Air India specifically."[304] It is not disputed that there was ongoing communication and cooperation between the RCMP and Transport Canada. The problem that emerges is the failure to have a formal and consistent method of communication and dissemination of information to all relevant parties as needed. Structures were simply not in place to enable this to occur. Transport Canada and the RCMP had access to different pools of intelligence and did not always effectively share information. Their ability to provide a coordinated operational response to aviation security threats was correspondingly compromised.

RCMP Internal Information Sharing Failures

The complex communications arrangement between Transport Canada and the RCMP suffered from a lack of clear policy and procedure, and resulted

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300 Exhibit P-101 CAF0010, p. 3.
301 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3065-3066.
302 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3065-3066.
303 Exhibit P-101 CAF0586, pp. 6-7.
304 Final Submissions of the Attorney General of Canada, Vol. II, para. 90. Dale Mattson's testimony regarding the threat assessment process was cited as an example of this continuous communication.

in confusion. These communications failures were exacerbated by the fact that, even within the RCMP, there appeared to be little in the way of a formal structure for reporting and disseminating threats to aviation security. This was exemplified by the fact that threat information concerning aviation security was not consistently reported to the Airport Policing Branch when relevant threats were received by other branches of the RCMP.

Information Sharing Failures within Airport Policing

Air India shared significant threat information with RCMP airport detachments. These threats were often transmitted from Air India headquarters in Bombay to local Air India representatives in Toronto and Montreal, who would in turn forward the threats to RCMP airport detachment officials. On receipt of such information, the airport detachments often failed to transmit it to the RCMP Headquarters Airport Policing Branch. From the perspective of Headquarters, if a request for extra security in response to a threat could be resolved locally, it was not necessary for Headquarters to be informed of the threat.[305] For example, the fact that the airport detachments did not send Headquarters information from Air India about the need for attention to be paid to "…cameras, electronic equipments and parcels carried as hand baggage,"[306] or about a terrorist group in Europe intent on exploding a device on an international airline in flight by placing an explosive inside a suitcase,[307] was not of concern to the acting OIC of the Airport Policing Branch as, in his view, the issues could be dealt with locally.[308]

Similarly, a July 1984 telex noting that an individual had "…volunteered to carry a bomb in his accompanied baggage with a view to blowing up an Air India plane in order to draw attention to the demands of the Sikhs,"[309] was apparently never forwarded to RCMP Headquarters; nor was an October 1984 telex indicating that a statement had been made, at a meeting organized by the All India Sikh Student Federation, that there would be "…one hijacking of an Indian aircraft every month," and that a committee, including Ajaib Singh Bagri, had been formed to draw up the plans for the hijacking;[310] nor was a June 7, 1985 telex, indicating that "…enforcement of special measures to deal with increased threat of hijacking and sabotage at airports by extremists should be continued till the end of June 85."[311]

The Airport Policing Branch acted as the trigger for the production of CSIS threat assessments, which the Branch requested upon receipt of threat information.[312]

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305 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2839.
306 Exhibit P-101 CAA0024 (February 1983).
307 Exhibit P-101 CAA0045 (May 1984).
308 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2826-2828.
309 Exhibit P-101 CAA0083, CAA0084.
310 Exhibit P-101 CAA0096, CAA0097. Note that both of these telexes were, in fact, passed from Air India to Transport Canada Headquarters. Again, there is no evidence of this threat being forwarded to CSIS, so it is not possible to determine whether CSIS would have received this information through channels other than the RCMP.
311 Exhibit P-101 CAC0419.
312 Final Submissions of the Attorney General of Canada, Vol. II, para. 28.

If the Airport Policing Branch was not receiving relevant threat information, and was therefore not passing it on to CSIS, the entire process was weakened and its potential usefulness was compromised.[313] The Airport Policing Branch also performed a number of other functions that required a free flow of relevant threat information, including its specific mandate to set security levels for implementation at Canadian airports in relation to threats.[314]

Just as important was the fact that, because RCMP Headquarters was not receiving all threats, it could not properly disseminate relevant threat information to other airport detachments that might be affected, such as those with flights connecting to Air India. The general threat information provided by Air India, such as information that a terrorist group in Europe intended to place an explosive inside a suitcase on an international flight, would have been relevant to all detachments at airports with international flights.

The more long-term response role of the Airport Policing Branch was affected by the fact that it was not receiving all relevant threats. This would have been significant in terms of its ability to expand knowledge of the threat environment respecting aviation security, which would in turn affect its ability to create responsive policies and protocols in line with the airport policing mandate. RCMP protocols at the time were targeted towards the prevention of hijacking, even though the RCMP recognized that there were strong indications that the most significant threat to aviation security was moving towards sabotage.[315] There was nothing to prevent the RCMP from modifying the existing protocols in light of this new reality.

Failures in Sharing between VIP Security Branch and Airport Policing Branch

In 1984/85, CSIS produced a number of types of threat assessments. Many threat assessments were created in response to a particular threat, but CSIS also produced threat assessments of a more long-term, or strategic, nature, such as those that gave an overview of the climate of Sikh extremism in Canada. CSIS would produce this type of threat assessment periodically and send it to a number of clients, including the RCMP VIP Security Branch. A significant number of each type of threat assessment did not get passed by VIP Security Branch to the Airport Policing Branch, despite the potential relevance to its mandate.

On October 26, 1984, a CSIS threat assessment, sent to VIP Security Branch but not forwarded to Airport Policing, cited press reports alleging that: a Sikh extremist leader was planning to organize "suicide squads" in Canada and the United Kingdom in order to "get even" with Indian Prime Minister Gandhi;[316] that Ajaib Singh Bagri had been assessed as someone who could be easily manipulated into committing a terrorist act; and that there were reports that

313 See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS.
314 Final Submissions of the Attorney General of Canada, Vol. II, para. 102.
315 Exhibit P-101 CAF0163, p. 5.
316 Exhibit P-101 CAA0110, para. 7.

he was planning to hijack an Air India jetliner during October 1984.[317] Sgt. J.B. ("Joe") MacDonald testified that, if he had been in the process of setting a security level, this information would have been helpful to him.[318]

An April 1, 1985, threat assessment[319] that was sent from CSIS to VIP Security Branch, but not forwarded to Airport Policing, indicated that the threat against Indian missions in Canada was "high," and detailed an incident at Vancouver International Airport where a member of the Sikh Student Federation was found to have hidden the barrel of an Uzi machine gun, along with ammunition, in his suitcase.

An important June 18, 1985 threat assessment, also apparently not forwarded to Airport Policing, indicated that: "…militant Sikh factions are quietly arming themselves," and that "…two Windsor Sikhs are known to have purchased an Uzi machine-gun in Detroit which it is believed was brought back to Canada," that at a meeting in early June, a Sikh activist indicated that in two weeks they would "…show the community they are serious," and that the threat was only slightly less serious than at the time of the last assessment.[320] Along the same lines, Airport Policing did not receive significant information about the BK or the ISYF.[321]

Significant threat information from other sources was similarly not shared with Airport Policing. Information originating with Air India that "…20 Sikhs planning suicide attack on Air India at Mirabel on Saturday 84.06.16," was received by officials at DEA, Transport Canada, and the RCMP VIP Security Branch, but not sent to Airport Policing Branch.[322] On August 7, 1984, a letter was sent from A Division to VIP Security Branch, quoting a letter to the Prime Minister of Canada, stating that Boeing planes leaving Montreal, London and the USA could be bombed.[323] MacDonald confirmed that he had not seen this information before. When Supt. Muir was asked at the Inquiry whether he would have expected the August 1984 threat to blow up Air India aircraft departing from Montreal, London and the United States to have been delivered down the hall to Airport Policing, he could only reply "…it seems to me it should have."[324]

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317 Exhibit P-101 CAA0110, para. 11.
318 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2842-2843.
319 Exhibit P-101 CAB0207.
320 Exhibit P-101 CAA0180.
321 For example, a December 12, 1984 TA (Exhibit P-101 CAB0173) sent to VIP indicates that the October 26, 1984 TA (Exhibit P-101 CAA0110) is still valid and that CSIS is zeroing in on the main individuals. (The October TA was the telex indicating Bagri, Parmar and Gill are the most dangerous Sikh extremists in Canada). In addition, Exhibit P-101 CAB0221, dated April 25, 1985, indicates that Parmar is the most important threat to Indian missions and personnel. This TA was received by VIP Security Branch and was also quoted in full and sent out in an NCIB/NSE TA: Exhibit P-101 CAC0317 (which was also not sent to Airport Policing Branch).
322 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2831. It is notable that in response to this threat, though the Security Service and DEA were unable to corroborate this information, the Air India Station Manager at Mirabel implemented additional safety measures, including the hand search of all checked luggage. Transport Canada officials also ensured that RCMP at the Mirabel detachment were aware of this information and would implement additional security measures, including ensuring the availability and use of the explosives sniffer dog: Exhibit P-101 CAF0161.
323 Exhibit P-101 CAC0193.
324 Testimony of R.E. Muir, vol. 27, May 14, 2007, p. 2914. See also Testimony of R.E. Muir, vol. 28, May 15, 2007, pp. 2958-2960.

Information from the Indian High Commission regarding "…recent incidents involving explosions in the public transport system in Delhi and a few other places in India,"[325] appears to have been seen by VIP Security Branch, but not Airport Policing.[326] Such information, which pointed to the fact that Sikh extremists were increasingly targeting modes of transportation and using sabotage by bombing, would have clearly been important for Airport Policing's understanding of possible targets and modes of attack.

Finally, while VIP Security Branch and Airport Policing were located on the same floor at Headquarters and misdirected correspondence and other "glitches" could ostensibly have been avoided if officers "…walked down the hall,"[327] nevertheless, significant information was frequently not shared. In the absence of formal protocols for sharing,[328] decisions about whether information should be shared and with whom, were left to personal discretion [329] or "judgment calls."[330] Even in the absence of any bad intent, the appropriate exercise of such discretion would necessarily depend on an ability to identify the relevance of information to the mandate of other branches or participants. The evidence is overwhelming that a pervasive lack of understanding of the nature of the threat severely compromised the ability of recipients to make this analysis.

Passing on information in this discretionary and casual manner requires extensive knowledge of the subject matter in order to decide what will be important to share. Despite Muir's past experience with Airport Policing, however, there were gaps in his knowledge. He did not know that Air India was owned by the Government of India and that, accordingly, it could be a surrogate target for terrorism. Moreover, the VIP Security Branch did not have an ongoing dialogue or relationship with Transport Canada.[331]

The security levels for airports such as Pearson were set by the OIC of the Airport Policing Branch at RCMP headquarters – in June 1985, this was MacDonald's responsibility.[332] This meant it was vital for MacDonald to have access to all relevant information concerning aviation security.

In its Final Submissions, the Attorney General of Canada contended that the informality demonstrated by the evidence regarding the communication of threat information "…may seem lax by today's standards, but it is important to bear in mind that the state of communications and office functionality was very different in 1985 than it is today. There were no facsimile machines, limited

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325 Exhibit P-101 CAC0325.
326 Exhibit P-101 CAC0327.
327 Testimony of R.E. Muir, vol. 27, May 14, 2007, pp. 2910-2913. Muir testified that "[I]nformation coming to the VIP Security Branch would be shared with the Airport Policing Branch if there was a perceived need" and "…[t]he desk officer, the desk NCO would just walk down the hall and if he didn't, I would be very concerned and surprised."
328 Testimony of R.E. Muir, vol. 27, May 14, 2007, p. 2914.
329 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2867.
330 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2933.
331 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2979.
332 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2767.

computer use, and paper files."[333] However, at the time, before the proliferation of the email and facsimile transmissions that dominate today's means of telecommunications, telexes were in wide use, and these provided quick connections, while allowing for direction on the classification and intended distribution of the information within.

What is clear is that this "informal" method was an imperfect process, frequently resulting in misdirected and missing information. It lacked clarity, consistency, and accountability. It was reliant on relationships rather than sound procedure and practice. The consequence for all the agencies involved was that the picture of the threat to aviation security was frequently incomplete.

Failures in Sharing between National Criminal Intelligence Branch and Airport Policing

In the same way that failures in information sharing within P Directorate appear to have been rooted in a lack of understanding of the relevance of Sikh extremism, or of the national security dimension to the work of airport policing, a similar dynamic may account for the failures of National Criminal Intelligence Branch (NCIB) to direct relevant threat assessments to Airport Policing.

When NCIB received information about the November Plot, it was sent to VIP Security,[334] but not to the Airport Policing Branch, even though the information explicitly referred to a plot to bomb an Air India plane. Sgt. Warren Sweeney, from NCIB, indicated that, from his perspective, getting information into the hands of Airport Policing was a "…P Directorate issue to deal with."[335] By contrast, even though it generally did not send its general threat assessments about Indian interests in Canada to Airport Policing, CSIS did nevertheless send the November Plot information to both Airport Policing and VIP Security.[336] On May 27, 1985, CSIS sent a threat assessment to VIP Security Branch as well as to NCIB (NSE).[337] That same day, NCIB forwarded this CSIS threat assessment, in full, to the COs of all the divisions, but notably, did not send a copy to the Airport Policing Branch – and there is no indication that Airport Policing ever received a copy of this telex. The assessment contained information of potentially crucial relevance to Airport Policing, including: that a prominent Sikh activist had made statements that the names of Sikhs who refused to boycott Air India flights would be put on a "hit list"; that a member of the ISYF was recently arrested at the Vancouver International Airport and that a search of his luggage had revealed the barrel of a sub-machine gun and 100 rounds of ammunition; and that there was an unsubstantiated report that a leading member of the ISYF was involved in a conspiracy to hijack an aircraft.[338]

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333 Final Submissions of the Attorney General of Canada, Vol. II, para. 99.
334 Exhibit P-120(c), p. 2 (entry for Oct. 30, 1984: doc 526-3, p. 29).
335 Testimony of Warren Sweeney, vol. 25, May 8, 2007, p. 2596.
336 Exhibit P-120(c), p. 2 (entry for Oct. 26, 1984: doc 229-3, p. 5).
337 Exhibit P-101 CAB0236.
338 Exhibit P-101 CAA0160, pp. 4-5.

The protective focus within the RCMP was heavily, and almost exclusively, directed to Indian diplomatic missions, largely precluding any real appreciation of the potential threat of sabotage to Air India planes. On May 31, 1985, NCIB sent a telex to VIP Security Branch and the divisions indicating that information had been received from the Winnipeg Police Department on that day, from a source who had allegedly spoken with the persons involved, that Sikh terrorists were going to plant bombs at the office of the High Commissioner in Ottawa and the Indian consulate in Vancouver on June 6, 1985.[339] On June 3, 1985, the RCMP met with the source in Winnipeg, who alleged that a conversation was overheard indicating that "…there could be a bombing or other retaliatory action on 6 June 1985." The RCMP officer, in his report on the interview, wrote:

> It is our belief that info supplied by this subject could very possibly be correct however what actions/if any are not known or persons involved are not known. Necessary precautions should be taken around Indian Embassy and High Commission's office.[340]

When NCIB reported on the results of the Winnipeg interview, the information was reported to VIP Security Branch, and not to Airport Policing.[341] This omission makes no sense in light of the intelligence then circulating about bomb threats to Air India, the information that Sikhs could increasingly direct attention to "softer targets," including Air India, due to the high security around mission property and personnel,[342] and the incidents of weapons transported by Sikh terrorists through airports. It does, however, confirm the widespread myopia of the law enforcement community as discussed throughout this chapter.

Information Sharing between Air India and Government Agencies

Air India did not apprise the companies providing its security and ground handling services of the severe risk to its flights in June 1985. Transport Canada and the RCMP did not alert other airports or carriers that would be feeding passengers and baggage to Air India at Pearson and Mirabel from other parts of the country. This problem was undoubtedly exacerbated by the fact that Transport Canada lacked a secure national communications system and that the air carriers and members of the Air Transport Association of Canada (ATAC) did not have the necessary clearance to receive classified information. Transport Canada asked ATAC and selected Canadian air carrier officials whether they wanted security clearances, but the offer was declined.[343]

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339 Exhibit P-101 CAC0364.
340 Exhibit P-101 CAC0383.
341 Exhibit P-101 CAC0397. Prior to the involvement of NCIB, the officer in Winnipeg who received an initial call from the source reported that the bomb threat was in relation to the Indian Embassy in Ottawa and Vancouver: Exhibit P-101 CAC0364. This may also help account for the RCMP's later seemingly exclusive focus on mission properties.
342 Exhibit P-101 CAC0133.
343 Exhibit P-367, p. 2.

At the local airport detachment level, Air India representatives were inconsistent in transmitting threat information to RCMP and Transport Canada officials. At a meeting in January 1985, Air India's Senior Security and Safety Officer had promised that both Transport Canada and the RCMP would be provided with notices of all threats received by Air India,[344] but there were a number of instances in which threat information was not properly relayed.

When Air India received threat information from sources such as the Indian High Commission or its head offices abroad, it was normally forwarded to the RCMP airport detachment and Transport Canada officials at Mirabel by Ashwani Sarwal, Air India's Assistant Airport Manager.[345] Once Air India commenced operations at Pearson Airport in January 1985, however, that opened a secondary line of communications, which also received intelligence and threat information that needed to be passed on to a second RCMP detachment and Airport General Manager. The threat itself expanded as well. At the January 1985 meeting with Transport Canada and the RCMP, Mahendra Saxena noted that Air India responded to roughly three threats a day in New York, and expected even more security problems in Toronto due to its larger Sikh population.[346] These factors meant that communications became increasingly decentralized and, as will be demonstrated, as information passed back and forth, Air India did not always keep all parties properly apprised of each new threat.

Up until 1985, Sarwal had been Air India's primary contact with Transport Canada and RCMP officials. In the spring of 1985, as the Assistant Airport Manager for both Mirabel and Pearson airports, he continued to correspond with officials in Ottawa, Toronto and Montreal. But, starting in May and June 1985, threat information was also being relayed by Herbert Vaney, the Area Sales Manager for Toronto. Vaney disseminated a number of remarkable threat intelligence reports from his office in this short period. It is unclear why Vaney was required to do so. His official duties involved dealing with travel agents, promoting tourism in India, providing public relations to the East Indian community, and administering the Toronto office. Although he was not involved in airport management or security, Vaney testified that he would act as a conduit for threat information. He forwarded messages and attended security meetings when this was requested of him, but according to Vaney, his role was a very passive one.[347]

Vaney testified that, to the best of his recollection, he would have passed on any intelligence relating to threats to Air India in June 1985:

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344 Exhibit P-101 CAA0118, p. 5.

345 A standard example is Exhibit P-101 CAF0587, where RCMP and Transport Canada officials are sent copies of a letter from the Indian High Commission by Sarwal. See also Exhibit P-101 CAF0564, CAF0568, CAF0573, CAF0574, CAF0575, CAF0577, CAF0578, CAF0579 and CAF0580, in which telexes are seemingly routinely forwarded to these authorities by Sarwal.

346 Exhibit P-101 CAA0118, p. 5.

347 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11624, 11630.

> This is based on standing instructions to me, acting as a conduit. Whenever the information came in on threats, it would be passed on to various people. For example, there is a list of addressees, and there must have been standing instructions on file to pass on the information.[348]

On May 27, 1985, Vaney sent a letter to the Metropolitan Toronto Police to advise that Air India had received information that "…extremist elements might try to indulge in sensational acts such as hijacking of Air India aircrafts etc."[349] Vaney enclosed an earlier letter that had been sent by Sarwal to authorities at Mirabel and Pearson airports as well as to local police and Transport Canada headquarters.[350] He requested that the security coverage of Air India's offices around Toronto, including at Pearson, be increased. He sent copies of the message to a number of other agencies, including Peel Regional Police, the RCMP Airport Policing Detachment at Pearson, the Transport Canada Airport General Manager at Pearson, and the Transport Canada Security Manager at Pearson. Vaney testified that he had sent this message based on his standing instructions, and the addressees were from a list on file.[351]

There is some indication that Vaney would wait for instructions from Saxena before forwarding a given piece of intelligence or at least before he forwarded the intelligence to additional recipients beyond the RCMP. This meant that other critical parties to Air India's security efforts, such as Burns International Security or Transport Canada, would not necessarily be advised of threats to the airline. On May 29, 1985, Vaney forwarded a telex to the RCMP Airport Policing Detachment at Pearson, as well as to Burns International Security and Sarwal.[352] The telex warned of potential acts of hijacking or sabotage against aircraft in the week following June 1st, and directed strict security measures for all Air India flights. When asked why he forwarded that particular message to Burns, Vaney replied, "I can assume only that Mr. Saxena asked me to copy it to them."[353] When asked why the June 1st Telex, which also directed very strict and specific security measures, was not copied to Burns when Vaney had sent a copy to the RCMP Airport Policing Detachment on June 3rd,[354] he replied that, in general, Burns was not copied on such communications, and that he did so only on Saxena's instructions.[355] Doing so would actually be an exceptional case. This is a troubling omission, as Burns International Security provided the guards who screened passengers, examined baggage, and guarded Air India's aircraft.

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348 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11632.
349 Exhibit P-101 CAA0159.
350 See Exhibit P-129.
351 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11632.
352 Exhibit P-101 CAA0164. The telex itself is at Exhibit P-101 CAA0161. According to handwritten notes on the forwarding letter, a request was made to share it with Mattson.
353 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11641.
354 See Exhibit P-101 CAA0184. This letter, dated June 3, 1985, was written by Vaney and forwarded the June 1st Telex to the RCMP.
355 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11641.

On June 7, 1985, Vaney sent another letter to the OIC of the RCMP Airport Policing detachment at Pearson.[356] This message forwarded a letter from May 15th from Air India's Chief Vigilance and Security Manager in Bombay, as well as a June 6th telex received from their Bombay headquarters, indicating that the stringent security measures directed in the June 1st Telex should continue being implemented until the end of June.[357] No other addressees were included on this correspondence.

At a January 1985 meeting, Saxena made a commitment to ensure that all threat information would be relayed to both Transport Canada and the RCMP.[358] In a letter to Air India's Regional Director for the USA and Canada shortly afterwards, he repeated that "Transport Canada expects that threats of any type received by airlines should [be sent] to Transport Canada to help proper evaluation and suitable action."[359] In light of this responsibility, the fact that the documents forwarded by Vaney were not consistently shared with both entities is clearly a breakdown in communications. Intelligence was no longer being appropriately disseminated. Thus it was nearly impossible for the key parties to accurately and consistently assess the severity of the threat to Air India.

A Singular Miscommunication: The June 1st Telex

The saga of the document that came to be known as the June 1st Telex is a key example of a critical intelligence failure.[360] Despite Air India's high threat status and the strict imposition of tight security measures by its headquarters, the airline neglected to provide this information to either Transport Canada or Burns International Security. The document was provided only to the RCMP, who did not disseminate it further. Consequently, the most vital threat information regarding Air India in 1985 did not reach many of those most concerned with it.

The document, sent to all Air India stations on June 1, 1985, contained a threat advisory from Air India's Chief of Vigilance and Security Manager in Bombay. It was based on intelligence obtained by the Government of India, and reported that Sikh extremists were likely to sabotage Air India aircraft by means of time-delayed explosives being placed in the cabin or in checked baggage. It directed all Air India stations to ensure the "…meticulous implementation of counter-sabotage measures for flights at all airports."[361] These measures included the random physical inspections of checked baggage, and the inspection of checked baggage using explosives detection dogs or explosives detection devices.

On June 3, Vaney forwarded a copy of the same document to the RCMP Pearson detachment.[362] Despite Saxena's assurance that both the RCMP and Transport

356 Exhibit P-101 CAA0204.
357 Exhibit P-101 CAA0205.
358 Exhibit P-101 CAA0118, p. 5.
359 Exhibit P-284, Tab 13, p. 2.
360 See Section 1.2 (Pre-bombing), June 1st Telex.
361 Exhibit P-101 CAA0185.
362 Exhibit P-101 CAA0184.

Canada would be advised of all threats, Vaney did not send a copy to any Transport Canada officials. No one at Air India appears to have forwarded the telex to Air Canada or Burns International Security, despite the fact that Air India had contracted with these companies to handle its baggage and to provide security.

Vaney testified that since the June 1st Telex had been sent to all of Air India's stations, he assumed that Air India's officials at Montreal or New York would follow up on the security matters themselves. For his part, he was not involved in any of the discussions about obtaining additional security from the RCMP or imposing security measures. He had no knowledge of Air India's security plan, and strenuously denied he acted in any security capacity other than as a conduit of information.[363]

According to Vaney, security matters were discussed on a strict need to know basis within Air India in 1985, and this approach obviously limited who was kept informed about the threats to the airline.[364] It is profoundly unfortunate that the information contained in the June 1st Telex was not more widely shared. It is difficult to conceive of a decision-making process that would conclude that Air Canada, Burns International Security, and Transport Canada would not have a need to know, although it is highly likely that Vaney was not alone in assuming that someone within Air India would follow up on the threat information received that month. In any event, neither Air India nor the RCMP shared a copy of the June 1st Telex with Transport Canada officials.[365] The result of these failures was that throughout June 1985, Transport Canada was completely unaware of this threat and of the extreme security measures called for in response. As discussed in Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS, neither agency shared the June 1st Telex with CSIS either.

On June 5, 1985, Inspector Bill Dawson, OIC of the Pearson detachment, sent a message by telex to the RCMP Headquarters Airport Policing Branch.[366] He did not provide it to any Transport Canada officials at the airport or at their headquarters. Sgt. MacDonald, the senior non-commissioned officer (NCO) and acting OIC of the Airport Policing Branch of P Directorate at RCMP Headquarters, responded by requesting a threat assessment from CSIS on June 6.[367] He noted that the last threat assessment, received in October 1984 following a request from the RCMP VIP Security Branch of P Directorate,[368] had indicated that the threat was high, but non-specific.[369] He did not provide a copy of the June 1st Telex to CSIS,[370] nor did he provide a copy to any of the other RCMP airport detachments, or to Transport Canada.

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363 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11644-11649.
364 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11649.
365 See Section 1.2 (Pre-bombing), June 1st Telex.
366 Exhibit P-101 CAF0589.
367 Exhibit P-101 CAA0198.
368 See handwritten notes at the bottom of Exhibit P-101 CAA0099.
369 Exhibit P-101 CAA0198.
370 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2817-2818.

Although it was provided to the RCMP on two occasions, the June 1st Telex simply did not go where it was needed, because of a lack of formal information-sharing policies and protocols. As a result, it was not part of any assessment of the threat in June 1985. The Attorney General of Canada also admitted that "… the dissemination of information was imperfect."[371] This is an understatement. There were no policies or procedures in place for sharing such information. Because CSIS did not obtain a copy of the June 1st Telex at this time, the subsequent threat assessment was both incomplete and misleading.[372] The result of these decisions was that, throughout June 1985, Transport Canada was completely unaware of this threat and the extreme security measures called for in response.

The *CATSA Act* Review Advisory Panel noted that, among the failures in the sharing of information in the pre-bombing period, the failure to keep relevant air carriers apprised of relevant threat information was key, and noted:

> This somewhat tangled tale highlights a crucial chain of intelligence communication. Even where intelligence was available in advance that gave warning of the kind of threat that tragically materialized on June 23, 1985, the linkage to those bodies with capacity to take appropriate security measures remained problematic.… If all carriers in Canada with flights connecting to Air India had been warned that Air India was under special security alert, the CP Air Agent [who permitted the fatal bag to be interlined to Air India Flight 182] might have exercised more caution.[373]

The latter point – failure to warn other carriers that were interlining passengers and baggage to Air India Flight 182 – is an important one. Clearly, Air India itself bears some of the responsibility for this striking failure to share information.

The problems illustrated by the manner in which Air India shared the information contained in the June 1st Telex with interested government officials was also a function of Air India's own internal structural problems. As discussed in "Air India Personnel – Confusion about Duties", in Chapter V (Pre-bombing), The Day of the Bombing, many of Air India's local communications and security decisions were made in the context of an organization that lacked clear lines of authority amongst its officials. The events that took place at Pearson and Mirabel airports on June 22, 1985, and the conflicting claims made by Air India officials as to who had final authority for the decisions made that day, are a good illustration of these difficulties.

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371 Final Submissions of the Attorney General of Canada, Vol. II, para. 92.

372 The CSIS threat assessment can be found at Exhibit P-101 CAA0199. It reads: "Currently, CSIS assess the threat potential to all Indian Missions in Canada as high. This is also intended to include Air India. CSIS, however, is not/not aware of any specific threat to the airline."

373 Exhibit P-157, p. 50.

Conclusion

Discussing the intelligence failures that led up to the bombing of Air India Flight 182, Professor Reg Whitaker testified that:

> When you get down to the front line, that is to the airport and the air carriers and the question of whether there were specific or non-specific threat[s] against a particular airline such as Air India, it did become clear in our analysis of how the decision was made not to declare Air India 182 as a specific threat that, **t**here really was a serious lack of clear authority and clear lines of communication to bring the various threat assessments that were out there and to bring them to bear right there at the airport where the decision had to be made. That there was far too much ad hoc and a sense that – and in the aftermath, of course, that there could be a great deal of passing of responsibility and blame off on others because there had not been a clear delineation of authority.[374]

In its Final Submissions, the Attorney General of Canada submitted that "… the developing state of technology led to a greater reliance on relationships, the telephone and verbal briefings."[375] What the evidence demonstrates, however, is that reliance on informal methods of communication introduces frailty and volatility into a system that requires consistent, efficient and reliable communication. The evident communications failures leading up to and following the bombing of Air India Flight 182 were often directly caused by this entrenched informality.

Without well-defined communications and reporting structures for relaying critical threat information, the ability to analyze, assess, and respond to intelligence regarding danger to civil aviation is severely weakened. In 1985, this weakness abounded, due to the informal, relationship-driven, and ad hoc channels linking Air India, the RCMP, Transport Canada, and CSIS to one another and to their other vital partners in aviation security, such as airports, airlines, and Burns International Security. These structural and organizational deficiencies were unacceptable in light of the magnitude of the threat at the time. Combined with excessive secrecy, personality conflicts, organizational chaos, and a climate of security myopia, the communications failures could only continue to increase.

4.5 Failures in Coordination between Transport Canada and the RCMP

Introduction

Operating and protecting Canada's major airports requires the joint efforts of all the involved parties, including government, police, the airlines, and the

374 Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4311-4312.
375 Final Submissions of the Attorney General of Canada, Vol. II, para. 99.

travelling public. As it functioned in June 1985, aviation security depended on the collaboration of Transport Canada and the RCMP. Transport Canada owned and operated Canada's major airports and was Canada's aviation authority, regulating airlines and air travel; the RCMP provided law enforcement services with respect to aviation security matters, as well as intelligence and information distribution services. It was essential, therefore, that each agency clearly understood these roles and responsibilities, and had the ability to work with the other in an effective and efficient manner in order to maintain effective aviation security and the capacity to respond quickly to emerging threats. There were, unfortunately, numerous problems in the relationship between Transport Canada and the RCMP that hindered this collaboration, including excessive secrecy, personality conflicts, confusion over duties, and miscommunication. These difficulties, illustrated by the sad example of the June 1985 "overtime dispute," compromised the ability of these agencies to effectively coordinate and respond to threats to the safety of airlines like Air India.

Airport Officials' Understanding of Duties and Authority

A high degree of cooperation between RCMP and Transport Canada officials was required to ensure that the aviation security threat-response regime functioned effectively. However the effective coordination between these two large bureaucratic agencies posed significant challenges to airport policing in the pre-bombing period. Supt. Gary Clarke, as the OIC at Pearson airport, wrote:

> This Detachment serves two masters, that is the RCMP and Transport Canada, as do all Airport Policing Detachments, and this creates more than the usual management problems. The regular changing policy, procedures and guidelines of the Force can differ from the needs and expectations of Transport Canada and this sometimes defaults us from the provisions of the MOA.[376]

At times, there was also confusion about the responsibilities for decision-making, as well as formal impediments to the ability of RCMP and Transport Canada officials to share all relevant threat information. These issues led to deficiencies in the harmonious implementation of security measures prior to the Air India bombings. Not all RCMP officials understood the important role of Transport Canada in assessing and responding to a threat. For example, Sgt. J.B. ("Joe") MacDonald testified that he understood that the determination of the appropriate level of security was entirely an RCMP responsibility. From his perspective, the Airport Policing Branch set the level of security to be implemented on the ground, and Transport Canada paid for that deployment.[377] Similarly, Clarke testified that it was an RCMP responsibility to determine the threat levels, though RCMP officers could speak to Transport Canada officials, in

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376 Exhibit P-101 CAC0107, p. 6. The "MOA" was the memorandum of agreement between the RCMP and Transport Canada in relation to airport security.

377 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2857.

general terms, as to why additional security was required.[378] Clarke testified that he was not aware of whether Transport Canada itself did threat assessments or provided threat assessments to his Transport Canada counterpart at the airport.[379]

Transport Canada did not share the opinion that security levels and responses were entirely an RCMP responsibility. Indeed, Transport Canada officials seemed to bristle at the RCMP's efforts to take such unilateral steps. In the minutes of an April 1985 meeting at Pearson airport, it was noted that Dale Mattson, Manager for Safety and Security at Pearson:

> …reiterated the fact that the RCMP and [Peel Police] jointly prepared a security plan for PIA without consulting Transport Canada. This situation was not acceptable as Transport Canada is responsible for the escalation of security procedures on the Airport Site. [Mr. Mattson] will write directly to Inspector Dawson of [*sic*] RCMP, clearly indicating Transport Canada's position with respect to the security or policing of the Airport Facility.[380]

At the meeting, Mattson also remarked that during a recent emergency situation, the RCMP had "…attempted to take control of the situation entirely and on several occasions escalated security measures without prior consultation with Transport Canada."[381] He insisted that since Pearson was a Transport Canada facility, it was, in fact, Transport Canada's sole responsibility to implement emergency measures, and that Transport Canada did not need to take any direction from police or any other outside agencies. The Transport Canada officials present agreed that they would investigate the question as to who had authority in emergency situations, and determine to what extent Transport Canada was required to take orders from the police during terrorist incidents.

The fact that neither Transport Canada nor RCMP officials understood the complementary role played by the other in terms of responding to the threat, may explain some of the deficiencies in terms of the sharing of information that occurred between the RCMP and Transport Canada. This lack of understanding, combined with the fact that caveats and security clearance issues prevented RCMP officials from freely sharing relevant threat information with Transport Canada officials, led to local conflict at the airport and created the potential for gaps in security.

June 1985 Dispute between the Agencies

In the late May/early June 1985 period leading up to the bombing, there were a number of significant failures in terms of the sharing of relevant intelligence and

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378 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3040-3041.
379 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3041.
380 Exhibit P-101 CAF0585, p. 6.
381 Exhibit P-101 CAF0585, p. 2.

the coordination of security measures with respect to airport policing between Transport Canada and the RCMP. Communications difficulties also arose between Transport Canada and the RCMP as a consequence of jurisdictional disputes. These disputes were fueled by the absence of a formal communications structure, by personality conflicts and by difficulties encountered in sharing and accessing intelligence and classified information.

Viewed against the backdrop of the already-brewing issues relating to the sharing of information and to the coordination of security measures between RCMP and Transport Canada officials, the events that unfolded in the immediate pre-bombing period were not entirely unpredictable. Most of these failures are simply illustrations of problems that had been identified earlier by the agencies themselves.

In June 1985, Air India requested increased protection from the RCMP at Pearson during the month of June. A dispute arose between Transport Canada and RCMP over the payment of the necessary overtime to the RCMP members required. Transport Canada felt that insufficient intelligence existed to justify the concern and the expense. On the other hand, the RCMP felt that the security classification of the intelligence it possessed prevented it from sharing that information with Transport Canada officials.

Meanwhile, the Department of External Affairs requested an increase in Air India's security coverage.[382] In response, RCMP headquarters had ordered that level 4 security[383] be implemented for Air India's flights out of Pearson during the month of June.[384] As noted below, it does not appear that Transport Canada Headquarters was involved in, or was even aware of, this decision. A subsequent CSIS threat assessment confirmed a high threat to Air India.[385] The implementation of level 4 security at the time meant that the operational resources for the RCMP airport detachment would not be sufficient to maintain regular security for the airport as well as the enhanced security coverage for Air India flights. Additional off-duty officers would be required on an overtime basis. Overtime funding for RCMP members deployed at airports was the responsibility of Transport Canada, and the RCMP relied entirely on these funds for such deployments.[386] The matter quickly reached an impasse.

Chief Superintendent D.H. Heaton, OIC of Criminal Operations for the RCMP O Division, had growing concerns that Transport Canada officials were too closely involved in the daily operational direction of the RCMP at the airport.[387] He believed that Transport Canada's Manager for Safety and Security at Pearson

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382 Exhibit P-101 CAA0166.

383 Exhibit P-101 CAA0025. This document is an RCMP checklist setting out the applicable security measures for given levels for major airports like Pearson and Mirabel. Level 4 was the second-highest airport security level, demanding measures such as the use of the RCMP explosives detection dog team, a constant watch at the affected airline's passenger screening checkpoint whenever it was open, and surveillance of the aircraft during boarding and departure.

384 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2787-2789.

385 Exhibit P-101 CAA0199.

386 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3037.

387 Exhibit P-101 CAC0407.

was unduly interfering with security operations. Gary Clarke, who in June 1985 was the OIC of Protective Policing at the O Division in Toronto, was charged with resolving the dispute. Clarke had previously been the OIC of the Security and Policing detail at Pearson airport, and continued to be responsible for VIP travel and federal security at Pearson, as well as policies and procedures for the Airport Policing Program.[388] On cross-examination, Clarke agreed with the characterization of level 4 security measures as a high level of security that would not be in effect on many flights; it was in response to a rare and dangerous situation.[389] It was not something that would be imposed simply because an airline requested it.[390]

On June 14, 1985, Clarke met with Inspector Dawson to discuss the difficulties encountered with Transport Canada's representatives at Pearson. Given this high and unusual security level, it was seen as essential to resolve the overtime dispute at Pearson.[391] In his notes, Clarke described the essence of the matter:

> Transport Canada is adamant that with the knowledge they are privy to, they do not consider it necessary to place extra RCMP security personnel on Air India flights. Unfortunately, the Airport General Manager is not aware of the serious threat against Indian people and property at this particular time.[392]

According to Clarke, one reason for the impasse was that it was unlikely that Transport Canada was aware that the RCMP was operating at an elevated security level for Air India's flights in June 1985.[393] Moreover, based on his conversations with Dale Mattson and Ed Warrick, the Airport General Manager, Clarke concluded that Transport Canada did not even consider the threat against Air India to be very high. The RCMP on the other hand had received a communiqué from External Affairs requesting additional security for Air India flights, and possessed intelligence that pointed to a heightened threat against Air India.[394] The classified nature of the security intelligence in the RCMP's possession meant that Clarke was unable to share it with the Transport Canada officials at Pearson.[395] All that Clarke would do was inform Warrick that in relation to the June 1st flight "…the threat was considered specific enough to employ three (3) off-duty airport special constables."[396]

Further compounding the difficulties between Transport Canada and the RCMP was the fact that the RCMP felt that Transport Canada was reneging on the terms of the memorandum of agreement between the two agencies in refusing

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388 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3030.
389 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3064.
390 Exhibit P-101 CAC0445, p. 4.
391 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3036.
392 Exhibit P-101 CAC0439, p. 2.
393 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3039.
394 Exhibit P-101 CAC0445, p. 4.
395 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3040.
396 Exhibit P-101 CAC0445, p. 4.

to authorize overtime funding.[397] From the perspective of the RCMP, the deployment of its own personnel to provide airport security was fully justified, based on the intelligence in its possession, and any decision on how to deploy those members was for the RCMP alone to make.

Clarke met with Warrick on June 19, 1985. He felt that it was essential that Warrick agree to pay out the overtime needed for the additional officers providing security for Air India. According to Clarke:

> It was essential that he know where we were coming from and why we were doing the things that we were doing. I didn't want to be specific and tell him about the threat assessments that we were receiving and it seemed to be, at that time, they were almost on a daily basis, these threat assessments that were coming in. The one just prior to this, and I am talking about the threat assessment prior to the 19th, it left no doubt in our mind that something was going to happen. Where or when or what, it was not that definite. But I wanted to let him know that if we are going to do our job at the Airport, then you have to listen to us on matters of this type of security.
>
> We had to have the personnel. I told him about the differences of opinion with the Safety & Security Officer [Mr. Mattson] in our daily operations. And I know it was a – it was almost a one-on-one situation with our Detachment and the Safety & Security Officer.[398]

The Attorney General of Canada submitted that this problem was resolved once Clarke met with Warrick,[399] but this is a simplistic view of the situation. While Warrick agreed with Clarke's rationale in principle, he personally was unable to authorize any overtime pay at that time. Warrick informed Clarke that, through an oversight, Transport Canada had failed to provide for emergency overtime costs in that year's annual policing budget.[400] Warrick would require approval from Transport Canada headquarters in Ottawa, and directed Mattson to contact headquarters with the request. He agreed that, for the time being, the added detail of RCMP members should continue to provide enhanced security to Air India flights; but what remained unresolved were the organizational failures that had given rise to the dispute in the first place.

Security Clearance Issues

It is apparent from this episode that a number of obstacles hindered good relationships and effective communication between Transport Canada and the

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397 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3042-3043.
398 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3044-3045.
399 Final Submissions of the Attorney General of Canada, Vol. II, para. 172 (citing the testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3045).
400 Exhibit P-101 CAC0445, p. 5. See also Exhibit P-101 CAA0239, p. 3.

RCMP. Clarke noted that the chain of command for the matter of deployment rested with a subordinate of Warrick, namely Mattson, who, in his opinion, failed to recognize the seriousness of the threat.[401] According to the Attorney General of Canada, this dispute may have been exacerbated by the fact that Mattson did not have the security clearance to view the assessments that were used by the RCMP in setting the security level. The Attorney General of Canada maintains, however, that "Transport Canada officials at headquarters could view the document, and they would assess Transport Canada's response."[402]

The assertion by the Attorney General of Canada that Transport Canada officials at headquarters could view such classified documents is not completely consistent with the facts. Mattson was testifying specifically about why he did not see the June 1st Telex. He was not referring to the highly classified intelligence possessed by the RCMP during the overtime dispute. In point of fact, there is no indication in the evidence that officials at Transport Canada had access to, or were provided information concerning, that classified intelligence. As a matter of fact, Transport Canada headquarters itself was also not provided with a copy of the June 1st Telex.[403]

The above contention only raises further questions. The RCMP was unwilling or unable to share the "highly classified" intelligence it possessed with Mattson; but his superior, Warrick, had Top Secret security clearance.[404] It is therefore puzzling why Transport Canada officials "at headquarters" would be in a position to view this intelligence, but Warrick would not. The contradiction is resolved by Clarke's testimony that the information was subject to a restriction that prevented it from being shared outside the RCMP.[405] In actual fact then, no one at Transport Canada could be given this information, even those who possessed the highest security clearances, because the intelligence caveats prevented dissemination. These communications barriers do not support the conclusion that officials at Transport Canada headquarters were necessarily better informed about security intelligence than those who worked at the airports.

Could the Dispute Have Been Avoided by Sharing the Information?

In its Final Submissions, the Attorney General of Canada noted that the *CATSA Act* Review Advisory Panel "…stated that sharing this information likely would not have avoided the dispute."[406] That may be, but the Panel's conclusion is based on faulty information. The *CATSA Act* Review Advisory Panel assumed that the intelligence in question was a CSIS threat assessment included in a telex dated June 18, 1985, marked as "Secret."[407] That telex discussed a general threat to

401 Exhibit P-101 CAA0239, p. 2.
402 Final Submissions of the Attorney General of Canada, Vol. II, para. 173 (citing the testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3243).
403 See Section 1.2 (Pre-bombing), June 1st Telex.
404 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3236. Mattson had a Secret security clearance level in 1985.
405 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3039-3040.
406 Final Submissions of the Attorney General of Canada, Vol. II, para. 173 (citing Exhibit P-157, p. 43).
407 Exhibit P-157, p. 43. The telex in question can be found in evidence at Exhibit P-101 CAA0220.

Indian interests relating to the anniversary of the attack on the Golden Temple, and Indian Prime Minister Rajiv Gandhi's visit to the United States. Both events had passed without incident, but the signs that this threat had not significantly abated included the observation that "…militant Sikh factions" were "…quietly arming themselves for reasons we can only speculate at this time."[408]

The telex also noted that, at a meeting of Sikh extremists in Vancouver in early June, an attendee had complained about the lack of aggressive action being taken against India, and that another attendee had reportedly replied "…that they should wait two weeks to see something."[409] There was no mention of Air India in the threat assessment. Overall, the assessment suggested that the heightened security imposed for these events would mean that terrorist acts might have been deferred until security returned to normal, and that the threat was "…only slightly less serious than at the time of our last assessment."[410]

If this was the highly classified intelligence Clarke referred to, then it is doubtful that Transport Canada's position would have been changed by seeing it. For a number of reasons, however, it is highly unlikely that the intelligence possessed by the RCMP in question consisted of this simple threat assessment. For one thing, Clarke's notes of the dispute begin with his briefing with Dawson on June 14, 1985, four days before the CSIS threat assessment was distributed, and even then he refers to knowledge of "…a serious threat against Indian people and property".[411] Moreover, the CSIS document was only classified as Secret, a security clearance level that Mattson possessed in 1985. Accordingly, both he and Warrick would have been cleared to see the document. Finally, the June 18th telex had been distributed to Transport Canada headquarters along with a number of other agencies, whereas Clarke wrote in his notes and provided testimony that only the RCMP was privy to the intelligence concerning the threat to Air India.

Since the Panel's assumption about the intelligence that the RCMP possessed and could not divulge to Transport Canada is erroneous, its conclusion about the potential importance of that information is similarly flawed.

The *CATSA Act* Review Advisory Panel also concluded that the overtime dispute was irrelevant with respect to the Air India disaster. This conclusion is also open to question. The overtime dispute was undeniably a symptom of the larger difficulties in RCMP-Transport Canada relations, which were caused by confusion and conflict over their respective responsibilities and an unclear strategy for effectively and consistently sharing intelligence information. The Attorney General of Canada, in fact, quite fairly conceded that the overtime issue exposed difficulties in the way Transport Canada and the RCMP communicated about

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408 Exhibit P-101 CAA0220, p. 2.
409 Exhibit P-101 CAA0220, p. 3.
410 Exhibit P-101 CAA0220, p. 4.
411 Exhibit P-101 CAC0439, p. 2.

threat levels in 1985.[412] With respect to the larger issue of the dynamic between Transport Canada and the RCMP, the *CATSA Act* Review Advisory Panel was generally very critical of this problematic relationship and commented that:

> There was something quite wrong with a system that failed to make clear the final authority on interpreting threats and setting appropriate security measures, while at the same time denying two key participants in the process – Transport Canada and the air carriers – full access to the available intelligence.[413]

The *CATSA Act* Review Advisory Panel did correctly suggest that the overtime dispute seemed to be "…more of a pretext for a deeper difference of opinion over who was in charge of security at the airport."[414] These disputes may have played a large role in the RCMP's failure to share the June 1st Telex with Transport Canada, and there can be no question that this failure in particular was extremely relevant to the Air India disaster.

The Impact of Interpersonal Conflicts

Acrimonious personal relationships significantly impeded the relationship between Transport Canada and the RCMP Airport Policing Detachment at Pearson. Days after the bombing, Clarke noted that, immediately following his meeting with Warrick, Mattson continued to reject the notion that Air India required any additional security in June 1985, and "…became quite agitated when confronted with the breakdown in communication between himself and Insp. Dawson."[415] Clarke's memorandum added that he got the distinct impression that Mattson "…had more important matters to worry about then [*sic*] placing extra policemen on a non-specific threat detail. This meeting was curt and totally non-productive."[416]

Although Warrick believed relations between Transport Canada staff and the RCMP were very good, Clarke obtained the opposite point of view from Dawson. He learned that "…the relationship between the Airport Safety and Security Manager and the [OIC of] T.L.B.P.I.A. Detachment is rather tense at this particular moment,"[417] and that the situation had interfered with the development of a good working relationship. The level of communication was not seen as compatible with the level of safety and security required at Pearson. In particular, it was important that top security officials meet regularly, but such meetings had not been occurring due to the "…impasse which has prevented the development of good interpersonal relations…."[418]

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412 Final Submissions of the Attorney General of Canada, Vol. II, para. 175.
413 Exhibit P-157, pp. 43-44. See also Testimony of Reg Whitaker, vol. 36, May 30, 2007, pp. 4310-4311.
414 Exhibit P-157, p. 52.
415 Exhibit P-101 CAA0239, p. 3.
416 Exhibit P-101 CAA0239, p. 3.
417 Exhibit P-101 CAA0239, p. 4.
418 Exhibit P-101 CAA0239, p. 5.

Conclusion

Transport Canada and the RCMP had a flawed and, at times, tumultuous relationship, marked by disputes, which were fueled by questions of authority over decision-making, as well as budgeting, intelligence sharing, and personality conflicts. The agencies frequently failed to coordinate, communicate, and work together at the operational level on matters of airport security. They could not even reach a consensus on the question of whether to escalate the security coverage for Air India in June 1985 without repeated discussions – an impasse which was the fruit of these overarching failures, and which was exacerbated by disagreements over the severity of the threat and by the agencies' differing access to pertinent intelligence. Transport Canada officials also tended to inflexibly discount threats that they did not regard as sufficiently specific. These difficulties, caused by structural, bureaucratic, and personality-driven conflicts, compromised the ability of the RCMP and Transport Canada to provide thorough and effective security at Canada's airports, and diminished their capacity to quickly and decisively respond to changing intelligence and heightened threats to the air carriers.

4.6 RCMP Implementation Deficiencies in the Threat-Response Regime

Lack of Knowledge of Applicable Measures by Those Involved

Even today, confusion remains about the actual security regime in place in 1985 and how it was meant to function. In its Final Submissions, the Attorney General of Canada was unable to state whether or not the security grid, the document that outlined the nature of the RCMP response in relation to a given level of threat, was policy, and claims that there is ongoing uncertainty as to the meaning of certain measures dictated by the grid.[419] There can be no doubt that, at the time, there was a general vagueness surrounding the aviation security regime in place. This lack of clarity and the corresponding lack of training provided for individuals in the interpretation and implementation of the protocols mark important deficiencies in the aviation security regime in the pre-bombing era.

The security grid had important implications for RCMP security deployment at Mirabel and Pearson airports. However, the purpose and effect of this protocol were not well understood by participants in the aviation security regime.[420] Sgt. J.B. ("Joe") MacDonald, the officer responsible in the spring of 1985 for actually setting the security levels at Headquarters, was unable to explain the meaning of the very directives he issued. He was, for example, unable to explain what was meant by the security level requirement to "…use the services of the dogmaster,"[421] though he speculated that it might be so that "…they'd make sure he wasn't off training somewhere else or that he would be close by if they needed him."[422]

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419 Final Submissions of the Attorney General of Canada, Vol. II, paras. 107-114, 248.
420 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.
421 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2861. See measures in Exhibit P-101 CAA0025, level 3 and above.
422 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2863.

Headquarters considered the implementation, by the detachments, of security levels set by Headquarters to be mandatory. MacDonald explained that the measures associated with a particular level, which he would set, would be the minimum deployment that the detachment would do.[423] However, it is not clear whether the detachments understood the directives as having the same effect. For example, Supt. Gary Clarke, who had worked as the OIC at the Pearson detachment, was under the impression that the measures outlined in the grid might only have the effect of being "guidelines."[424]

In addition to those who knew about the RCMP security levels system but had misunderstandings about its status and effect, there were many key participants in the system who were not even aware of the existence of this protocol. S/Sgt. Gary Carlson, who was the dogmaster responsible for Pearson airport, testified that he was not familiar with the security levels set by Airport Policing Branch.[425] He was away on training with his dog, Thor, on June 22, 1985, despite the fact that level 4 security required the presence of the dogmaster at the airport. The direction for Carlson to attend the training in Vancouver would have come from his supervisor at the divisional Headquarters.[426] It seems probable that, like Carlson, his supervisor would have been unaware of the security level system, or of the fact that the dogmaster was required to be available because of the level 4 security in effect at the time, and that no one saw fit to notify the division of this requirement.

Equally troubling was the fact that Transport Canada was not routinely informed of the security level at which the RCMP was operating,[427] and did not itself use the five-level RCMP security system. In his testimony, Dale Mattson stated that he was not familiar with the RCMP security grid and that he saw it as an operational document confined to the RCMP.[428] This disconnect had obvious consequences for the ability of the RCMP and Transport Canada to take a harmonized approach to their complementary roles, and could only have increased the risk of security gaps. In fact, Clarke, who was the OIC Protective Policing, O Division, testified that his impression was that, in June 1985, Transport Canada may have been operating at a lower level of security than was the RCMP.[429]

Clarke also testified that the RCMP supervisor at the airport would speak with the airline supervisor prior to the flight to inform him or her of the level of security that had been put into effect for that particular flight. But it would not be the RCMP's responsibility to explain to the airline what the levels meant or the services that the RCMP could provide, since they "…should have known what

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423 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2770-2771.
424 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3098-3099.
425 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2999.
426 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3057. Carlson testified that he had been advised probably a month to six weeks in advance that he had to go for this training. He booked his flights and made arrangements for travel himself. His arrangements were made at a time, therefore, prior to level 4 security being in effect.
427 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3213.
428 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3214.
429 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3039.

the levels were." Given the extreme confusion about security levels even within the RCMP itself, the assumption that the airline would understand this internal RCMP policy seems, at best, questionable. Clarke also indicated that the RCMP would not generally speak to the individuals inspecting the bags for a particular at-risk flight to let them know that they should be extra vigilant. Nor, according to Clarke, would the RCMP inform the airline ticket counter about the level of the threat, as the airline would be presumed to know that information – information that in his view was of the sort that should have been communicated through Air India staff. As Clarke stated, "…that was not our mandate to tell them what their job was."[430]

Failure to Adopt an Analytical or Strategic Approach

The setting of security levels at Headquarters was conducted as a mechanical, largely unreflective, exercise. The Airport Policing Branch did not attempt to understand the phenomenon of Sikh extremism, nor did it make attempts to situate the threats received in this broader context:

> **MR. KAPOOR**: Okay. Now as a general proposition in this time frame as I say, marking it in '84 to '85 until the flight is bombed, what was your understanding or appreciation of Sikh extremism relative to other extremist movements? How much of your time was spent dealing with this problem?
>
> **MR. MacDONALD**: Well, as I stated before, we – and you did as well, we're not analytical there. It would just be what we received or received from CSIS or whatever. Then there would be probably an immediate requirement as in the case of – it wasn't CSIS, but the information External Affairs was asking for it and we put it on the 1st and then the threat assessment to cover the last four weeks.[431]

At the same time, the Airport Policing Branch made no effort to analyze the intelligence assessments provided by CSIS in order to tailor its directives to the nature of the particular threats:

> **MR. KAPOOR**: …would you analyze and do any work-up from a threat assessment, as an officer in charge?
>
> **MR. MacDONALD**: It was pretty well done when you got it. It outlined the threat and then you just had to take the action from that. In this case, do you have to bring in a particular level here to give complete coverage concerning the level of the threat?[432]

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430 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3079-3080, 3089.
431 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2832.
432 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2772.

The non-analytical approach taken by the RCMP in turn relates to the broader lack of appreciation for the value or use of intelligence. An April 1, 1985, threat assessment,[433] sent by CSIS to VIP Security Branch, classified the threat against Indian missions in Canada as "high," and specifically detailed an incident at Vancouver International Airport where a member of the Sikh Student Federation was found to have hidden the barrel of a Uzi machine gun, along with ammunition, in his suitcase. This information was not sent to Headquarters Airport Policing, and consequently was also not transmitted to airport detachments. MacDonald indicated that this information would not have been of particular use for him, and further, that he did not see how it could be of value to those on the ground at the airport detachments:

> **MR. KAPOOR**: Now sir, I appreciate this doesn't go directly to an airport or an airline, but given what we've learned about Sikh extremism and the connection to transporting a weapon in luggage, would this be the kind of thing you would expect to receive or not?
>
> **MR. MacDONALD**: If received, it would be basically as an information.
>
> **MR. KAPOOR**: Okay. And again, to be clear, that's because it doesn't refer to a present threat or a future threat. It refers to a past event.
>
> **MR. MacDONALD**: Yes, – it's just giving some information on this individual being picked up with a part weapon and the other guy having the other half.
>
> **MR. KAPOOR**: Okay. Would it be the kind of piece of information though, that would be useful to get to the ground level for the detachment, so that they can notify the carrier, that is Air India, of this situation so that they can be more vigilant in assessing and checking baggage?
>
> **MR. MacDONALD**: I don't know if it would help them. No, I don't know exactly if that would help them or not.[434]

On the ground, the airport detachments did not seem to understand the value of a coordinated or centralized structure, and often failed to send up relevant threat information that was received locally, thereby depriving CSIS and all others who depended on CSIS intelligence.[435] As MacDonald's comments indicate, the RCMP Airport Policing Branch did not see that it had a role in monitoring threat

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433 Exhibit P-101 CAB0207.
434 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2844.
435 See Section 3.5.3 (Pre-bombing), RCMP Failures in Sharing with CSIS and Section 3.4 (Pre-bombing), Deficiencies in RCMP Threat Assessment Structure and Process.

trends. Headquarters did not see that an analysis of past events, or threats, would have value in terms of predicting future events. The fact that the RCMP non-emergency protocol was oriented towards anti-hijacking was a product of the threat trends at the time it was initially created. The failure of Airport Policing to see itself as having any analytical role meant that the RCMP was limited in its capacity to use information strategically to understand changing threat trends and to adopt more responsive policies.

Headquarters did not have a clear understanding of the actual tools or local protocols at the airport detachments in place to respond to threats, and this further limited its ability to issue directives calibrated to the particular threat. MacDonald testified that he had no personal knowledge of what the backup provisions would have been, for either Mirabel or for Pearson, in the absence of a dogmaster.[436] This only makes sense if, as was the case in 1985, the role of Headquarters as a "policy" unit, was seen as divorced from operational functions.

Failure to Recognize that Air India was a Government-Owned Airline

In 1985, the implications of Sikh extremism for aviation security were not well understood within the Government of Canada. This lack of understanding may explain some of the key failures in the flow of information within the RCMP, as well as the misperception at the time of the seriousness of the threat to Air India. Officers within the Protective Policing Branch were unaware that Air India was owned by the Indian government and was, therefore, an important potential target for Sikh extremists. From the CSIS perspective, this connection was clear and important. As early as March 1984, the RCMP Security Service provided Airport Policing with an overview of threats to civil aviation, stating in part:

> The threat to Air India and its facilities in Canada is dependent upon the Sikh communities' perception of political events in India. A number of demonstrations against the Indian government in Canada have taken place and a spillover of the violence in India against the Sikhs may impact on Air India and/or its facilities in Canada.[437]

The Security Service was quite clear that the threats to "Indian interests," discussed in its assessments, were also meant to apply to Air India. Thus, a June 1984 threat assessment from the Security Service, sent to VIP Security Branch and to Airport Policing Branch, states that "…Indian interests in Canada including Air India offices and flights remains high." The assessment continues that "… there is possibility that Sikh extremists might now direct their attentions to Air India offices and flights," due to the perception that these are "softer target[s]," as compared to the visible security afforded to mission property and personnel.[438]

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436 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2895.
437 Exhibit P-101 CAC0105.
438 Exhibit P-101 CAC0133 (June 12, 1984).

Despite this intelligence, MacDonald testified that he would not have drawn a connection between Indian interests and the security of Air India flights:

> **MR. KAPOOR**: We have heard evidence from in particular, a fellow named Henry, that Indian interests or Indian missions, when used in a CSIS or Security Service threat assessment, were meant to include Air India, the airline. Does that accord with your recollection of how you read those documents back in '84 and '85?
>
> **MR. MacDONALD**: That's not my understanding … they would have to specify.
>
> **MR. KAPOOR**: …and when you say that, you mean if a threat assessment would use the language of Indian missions or Indian interests, from your perspective sir, would that include Air India?
>
> **MR. MacDONALD**: I wouldn't expect I'd see it. I wouldn't think it would include Air India.[439]

When MacDonald requested a CSIS threat assessment about threats to Air India on June 6, 1985, he wrote:

> Last threat assessment Oct 84 indicating threat level high but no specific threat to Air India in Canada. Plse advise by telex ASAP if there is any change. We have had a number of requests from the airline for extra security.[440]

CSIS replied to MacDonald's request, indicating that:

> CSIS assess the threat potential to all Indian missions in Canada as high. This is also intended to include Air India.[441]

MacDonald's reference to "…last threat assessment October 84" appears to refer to an October 26, 1984, threat assessment, where CSIS indicated the potential for Sikh extremists "…damaging an Air India aeroplane is real."[442] There were, however, a significant number of CSIS threat assessments after October 1984 that continued to indicate that the threat to Indian interests remained high,[443]

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439 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2809.
440 Exhibit P-101 CAA0198.
441 Exhibit P-101 CAA0199.
442 Exhibit P-101 CAB0154.
443 See, for example, Exhibit P-101 CAA0142, CAB0156, CAB0218.

including a CSIS assessment dated April 12, 1985, that the possibility of action being taken against an Air India airplane could not be ruled out, though CSIS had no information to suggest there would actually be an incident.[444] At the very least, this would suggest that relevant threat assessments were not reaching airport policing on a regular basis, or that the relevance to the security of Air India of whatever intelligence did make it through was not clearly appreciated. Indeed, MacDonald testified that he would not have expected to receive CSIS threat assessments that did not specifically mention airports.[445]

Superintendent R.E. Muir, the OIC VIP Security Branch, testified that he too was unaware of the fact that Air India was government-owned:

> **MR. KAPOOR**: Did you appreciate in those days that Air India was a government-owned airline?
>
> **MR. MUIR**: No, I did not.
>
> **MR. KAPOOR**: Did you have any sense that from the perspective of the material that you saw, the perspective that Air India at least was closely aligned to the Government of India as far as the extremists were concerned?
>
> **MR. MUIR**: I can't say that that was my perception.[446]

There were a number of other instances where the connection was explicitly made in CSIS correspondence.[447] It seems clear that the significance of CSIS threat assessments to the security of Air India was not clearly appreciated. Hence, important information/intelligence did not get passed from VIP Security to Airport Policing and/or its relevance on the ground was not understood.

Failure to Adjust to Individuals as Source of Threat

The RCMP also does not appear to have appreciated the significance of information from CSIS about individual Sikh extremists whom CSIS believed to pose significant protective security threats within Canada. In the pre-bombing period, CSIS provided RCMP Protective Policing with information about

444 Exhibit P-101 CAB0218.
445 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2840.
446 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2921.
447 A June 7, 1984 CSIS threat assessment that was copied to VIP Security Branch indicated that the Secretary of State for External Affairs indicated that there was serious concern "…over the need to safeguard the security and functioning of the Indian diplomatic apparatus in Canada. The Indian government has also, at the highest level, expressed its concern to our High Commissioner in New Delhi. We will thus press the police forces for very extensive security protection for Indian facilities, including not/not only the High Commission and consulates but also the homes of vulnerable Indian diplomats and certain other obvious targets, e.g. Air India offices.": See Exhibit P-101 CAC0118. In addition, a report that was provided to the Canadian government on June 19, 1985 indicated that "…the pattern of threats and attacks by Sikh extremist[s] in the past include *inter alia* Air India aircraft and facilities.": See Exhibit P-101 CAE0223, p. 3.

individuals it considered to be the main protagonists in the Sikh extremist threat. However, Protective Policing appears to have made no attempt to track these individuals, nor did Protective Policing appear to understand how information about these individuals could be of value to its operations. Ajaib Singh Bagri and Talwinder Singh Parmar travelled extensively in the months leading up to the bombing. Bagri, in particular, had also been identified as a potential hijacking threat.[448] In an October 22, 1984 threat assessment sent to Airport Policing and VIP Security, CSIS expressed concern that:

> …two of the principals one of which was mentioned in your message, (Bagra) [*sic*] cannot be presently located. Latest information indicated that they were in Eastern Canada (Toronto) as late as 1984 10 14, but to date have not been located. In summary, we believe that the possibility of a hijacking in Canada is remote but knowing the character make-up of Sikhs, we can not rule out this possibility.[449]

Nothing, however, was done by Protective Policing or Airport Policing in relation to the travel of these individuals. There were no efforts to connect with CSIS or RCMP surveillance so as to alert Airport Policing when individuals, identified as posing a protective security threat, were passing through the airports. Similarly, the Airport Policing Branch did not take steps to inform or educate the airport detachments about the identity of individuals identified by CSIS as posing such threats.

These failures are particularly significant when viewed in the light of CSIS's understanding of the importance of information about these individuals. In internal CSIS correspondence, dated October 26, 1984, just prior to their providing RCMP VIP Security Branch with a comprehensive threat assessment, it is stated:

> We are specific in our information to "P" Directorate to give them some sense of the point we have reached in this matter – that is that we are now looking to specific individuals as the source of the threat to Indian diplomatic interests.
>
> …
>
> Basically, we continue to assess the threat as high as a result of the actions of the individuals mentioned.[450]

And similarly, in an April 25, 1985, threat assessment[451] sent to the VIP Security Branch, CSIS indicated:

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448 Exhibit P-101 CAA0097, CAA0110.
449 Exhibit P-101 CAB0148.
450 Exhibit P-101 CAA0105.
451 Exhibit P-101 CAB0221.

> One of the leaders of the Babbar Khalsa, Talwinder Singh Parmar is the subject of an international warrant issued by the Indian Government for murder and is considered to possess the greatest threat in Canada to Indian diplomatic missions and personnel.[452]

In CSIS's view, the greatest threat was posed by Ajaib Singh Bagri, Talwinder Singh Parmar, and Surjan Singh Gill. The disconnect between CSIS's understanding of the importance of particular individuals as the source of the threat, and the utility of this information as perceived by the RCMP, is evident from Muir's testimony. He was asked about the October 26, 1984, CSIS threat assessment[453] sent to his Branch, which provides an overview of the major Sikh extremist groups in Canada and identifies Parmar, Bagri, and Gill as advocates of violence. While agreeing that it was important to have a general understanding of who the players were, Muir stated:

> I did not sort those out to be very honest with you. There may have been mention of certain individuals, but those individuals really were not the people that – I was particularly concerned with.[454]

Similarly, when asked about threat information relating to Ajaib Singh Bagri's purported involvement in drawing up plans to hijack an Air India flight, MacDonald, A/OIC of Airport Policing Branch, did not see any need to be personally alerted to this type of information. He was also unable to recall whether, in 1984/85, he had a working understanding of what the Babbar Khalsa was, and could not recall whether the Babbar Khalsa and/or the ISYF had prominence in the work that he was doing, apart from other groups.[455] The lack of importance that Protective Policing placed on the identity of individuals who posed threats was at odds with CSIS's approach to the threat, and meant that there would inevitably be important gaps or missed opportunities in the RCMP's protective policing response to the threat identified by CSIS.

In the VIP Security context, the VIP Security Branch had developed a mechanism by which it could track certain individuals who posed threats to VIPs. This system was called the VIP Surveillance Subject Program. The program was described in a document referred to in the hearings as the "Purdy Report":[456]

> VIP Security branch maintains a monitoring system of persons considered potential threats to foreign representatives posted in Canada.
>
> …

452 Exhibit P-101 CAB0221, p. 2.
453 Exhibit P-101 CAA0110.
454 Testimony of R.E. Muir, vol. 28, May 15, 2007, p. 2922.
455 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, p. 2845.
456 Exhibit P-130.

> Upon identifying an individual as a potential VIP Security threat, the reporting member forwards an assessment report, Form 975, and photograph to Division headquarters. The CIB officer reviews the report and if in agreement, forwards report to VIP Security branch. If the branch concurs with the Division's recommendation the subject is entered in the CPIC observation category.

According to Inspector Lloyd Hickman, this system was designed in such a way that, if a police officer anywhere in Canada happened to check this person for a driver's license, or otherwise review him or her on the system, a notation would show up that the VIP Security Branch had an interest in him or her. However, the system was designed so that nothing of a confidential nature could be placed on the system and, generally, intelligence about serious "terrorist-type threats" always came in a classified form. The system was not designed to track individuals under investigation, but rather it was an open system, meant mainly to track letter writers or "unbalanced" individuals. The rationale for not entering individuals like Parmar into the system was that, since all police officers in Canada would have had access to that information, "…there was a lot more chance of that getting out."[457]

In effect, the insistence on secrecy, and a lack of imagination as to an alternative tracking system for security threats, meant that information about individuals who were known security threats was unavailable to those whose role it was to protect individuals and property from precisely those sorts of threats. The system in place was very limited, using only CPIC checks, and no other databases, and had no links of any sort to, for example, CSIS threat assessments, let alone CSIS or RCMP surveillance, even of a declassified nature. Therefore, despite the significant body of threat information that was passed through Protective Policing about individuals who posed security threats, including Talwinder Singh Parmar, Ajaib Singh Bagri, and Surjan Singh Gill, there were no adequate mechanisms in place to make any practical use of this information to enhance protective policing measures.

Failures in Implementation of RCMP Security Measures

RCMP Breached Policy by Authorizing Travel of Dogmaster

The fact that Carlson, the RCMP dogmaster for Pearson airport, was authorized to go on training without providing for a backup dog and dogmaster team is illustrative of multiple policy failures. What little policy existed was not only inadequate, but was frequently not properly understood or properly applied by the RCMP. At the time of the bombing (and for the entire month of June 1985), the Air India flights were subject to RCMP level 4 security.[458] The RCMP security level grid that was provided to the Commission by the Attorney General of Canada indicates that, at level 3 security and above, the RCMP was to "…use the

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457 Testimony of Lloyd Hickman, vol. 34, May 28, 2007, pp. 3983, 3986.
458 Final Submissions of the Attorney General of Canada, Vol. II, para. 115.

services of the dogmaster."[459] Carlson, however, testified that on June 22, 1985, and contrary to what is implied in the RCMP Submission to the Honourable Bob Rae,[460] there was no dogmaster available for duty at Pearson airport, as he had been sent to Vancouver with his dog, Thor, for training.

In its Final Submissions, the Attorney General of Canada argued that it is "… unclear to this day" what the grid signifies by "…use the services of the dogmaster."[461] RCMP documentation entered into evidence at this Inquiry contradicts this claim and clearly explains the meaning of this requirement. An internal Montreal RCMP document, dated July 12, 1984, describes the measures mandated for level 4 security, pursuant to the security grid.[462] The measures employed at Mirabel in relation to level 4 security are described as follows:[463]

> As described in Appendix "A", level 4 security calls for increased surveillance of the plane parked on the apron and of activities in the arrival, departure and airline ticket counter areas. Moreover, the supervisor of the team on duty must meet the airline representative before the arrival or departure of the aircraft for information regarding ongoing security operations. This security level also means that a police dog and his master will usually check any suspect luggage or package and will search the passenger section of the aircraft before takeoff.

In fact, the safety measures mandated by level 4 security were reiterated in the RCMP Submission to the Honourable Bob Rae as follows:

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 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 Air India representative regarding security operations prior to the arrival or departure of the aircraft; and

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459 Exhibit P-101 CAA0025.
460 Exhibit P-101 CAA0335, pp. 8-9.
461 Final Submissions of the Attorney General of Canada, Vol. II, para. 248.
462 Exhibit P-101 CAA0061.
463 This memorandum is a typed document with handwritten corrections. The document is cited with the corrections. The corrections made to the original are stylistic and do not alter the meaning or scope of the described duties in relation to level 4 security.

- RCMP dog master checking any reported suspect luggage or package and searching the passenger section of the Air India aircraft before departure.[464]

It seems quite clear that level 4 security required at a minimum that the dogmaster be present at the airport in order to search the passenger section of the Air India aircraft prior to departure, as well as to check any suspect luggage. The authorization by the RCMP of Carlson's absence from Pearson airport during a period in which level 4 security was in place without provision of a backup dog, was inconsistent with the RCMP security grid protocol.

The Attorney General of Canada submitted that the authorization of Carlson's absence from Pearson was not a breach of RCMP policy, as training was necessary to keep the dog effective.[465] While training was clearly an important duty, the RCMP manual guiding security operations addresses the issue directly and states: "These security duties must be considered on a priority basis among our operations. In case where other similar duties must be carried out simultaneously, distribute your personnel according to the most vulnerable and priority basis posts and duties."[466] Clarke confirmed that when operating at level 4 security, personnel should be placed on security duties mandated by level 4 in priority to other duties, including training.[467]

The Attorney General of Canada also submitted that the meaning of the security grid obligation to "…use the services of a dog master" is unclear, since dogs were used (and the presence of the dogmaster was required) whenever there was a specific threat and not in other circumstances. This assertion is not accurate. There were a number of distinct circumstances in which use was made of the services of the dogmaster.[468] Of particular significance in the context of this Inquiry are the following three circumstances: in the context of a call-in "specific" bomb threat;[469] when suspicious luggage was identified;[470] and in response to level 3 security (or above).[471] The Attorney General of Canada

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464 Exhibit P-101 CAA0335, pp. 8-9.
465 Final Submissions of the Attorney General of Canada, Vol. II, para. 242.
466 Exhibit P-101 CAA0026.
467 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3073-3074.
468 The report of the *CATSA Act* Review Advisory Panel states "[Canine units] were primarily employed to search for explosives in the terminal building following a bomb threat, search aircraft for bombs, and check unattended bags left in the terminal building. Their use for screening regular checked baggage was limited to screening suspect bags. On the rare occasions when a specific threat was made against an aircraft with passengers already on board, the aircraft would have been directed to an isolated area of the airport, emptied of both passengers and luggage, and a dog would be brought in to sniff all the bags lined up on the tarmac.": Exhibit P-101 CAF0160, p. 15. In addition, Gary Carlson specified that his "…responsibilities were to assist the members of the detachment with my expertise being a bomb-dog handler. I would respond to any bomb threats, suspicious packages, anything to do with explosives and very seldom did I ever get the opportunity to use my dog as a general duty dog, but I was available if that so came about as well. Some of my duties also, I assisted other agencies with my dog as he was a bomb dog.": Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 2988-2989. See also Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3190-3191.
469 See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.
470 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2996.
471 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2672-2673.

blurs the distinction among these three situations. Further, Mattson confirmed that the RCMP had discretion to use the dog in whatever capacity they felt was appropriate.[472]

There should have been a dogmaster available at both Pearson and Mirabel. The dogmaster and his dog should have searched the passenger section of the aircraft, the suspicious luggage identified at Mirabel and/or any bags that triggered a response from the PD4 sniffer at Pearson and, arguably, all bags at Pearson that could not be X-rayed. None of this happened.

Sûreté du Québec (SQ) Dogmaster at Mirabel did not Search Passenger Area of Aircraft

Level 4 security was in effect for Air India at Montreal's Mirabel airport. While the RCMP dogmaster usually on duty at Mirabel was away on training, Mirabel employed Serge Carignan of the SQ to cover the regular dogmaster's duties. Despite level 4 being in effect, and contrary to the RCMP Submission to the Honourable Bob Rae,[473] it is clear that Carignan "…never did search the passenger section of the Air India aircraft before departure,"[474] as Flight 182 had departed before the arrival of Carignan and his dog. The failure of the RCMP to ensure the presence of Carignan at the airport to perform this function was another implementation failure with respect to the RCMP security levels.

RCMP Failed to Check Up on Airline Security Measures and Operations Continuously

The RCMP security grid provides that at levels 2 and above, "An RCMP supervisor meets with the airline representative for each operation in order to obtain any additional information pertinent to each security operation."[475] In terms of the nature of the obligation imposed by this measure, Clarke confirmed that at level 4, it would be the duty of the RCMP supervisor to meet with the Air India representative on a continual basis to see if operations were running smoothly.[476]

Clarke confirmed that the RCMP supervisor should be aware of breakdowns in equipment and had an obligation to check from time to time before the plane left to find out what was going on.[477] This obligation makes sense in light of

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472 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3191.
473 Exhibit P-101 CAA0335, p. 9.
474 Testimony of Serge Carignan, vol. 26, May 9, 2007, p. 2672.
475 Exhibit P-101 CAA0025.
476 Testimony of Gary Clarke, vol. 28, May 15, 2007, pp. 3062-3064.
477 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3067. When Sgt. MacDonald was asked about this obligation, he stated that on the one hand, he thought that the supervisor would likely have had contact with Air India "quite often," but he also stated that he thought that the RCMP likely had to meet with Air India only before the operation and that it was Air India's responsibility to let the RCMP know if anything went wrong. However, MacDonald also stated that he didn't know what the process was and he thought that someone who had worked at the airport could explain it. Given that Clarke had been the OIC at Pearson Airport, he was in a better position to understand how the obligations were interpreted on the ground: Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2901-2902.

the overall discretion that RCMP and Transport Canada officials had at the airport, even to detain a plane if there were concerns about it embarking in unsafe circumstances, or where the air carrier may have failed to comply with air regulations then in place. In order to exercise this discretion appropriately, officials would need to be able to assess on an ongoing basis what an air carrier was doing to ensure safety and security.

Seen from this perspective, the insistence in the Attorney General of Canada's Final Submissions that the RCMP was unaware of various June 22nd security failures attributed to Air India or Burns International Security, does not absolve the RCMP of its responsibility. Rather, it provides confirmation that it failed in its monitoring obligations. For example, baggage screening for Air India Flight 181 in Toronto started at approximately 2:30 PM local time. The X-ray machine reportedly operated intermittently for some period before it became unserviceable, at approximately 4:45 PM,[478] at a point where only about 50 to 75 per cent of the baggage had been screened.[479] The screening was completed using the PD4 sniffer device about an hour later, but the flight did not depart Pearson airport until 8:15 PM.[480] Clearly therefore, during the two-hour period before the X-ray machine broke down entirely, there were already indications of issues with its efficacy. After the shutdown, there was one hour during which Burns security was using (or misusing) the PD4 sniffer, and approximately two and a half hours more prior to the plane's departure. Had the RCMP been monitoring Air India's security operations, it would have had several hours during which to become aware of the failure of the X-ray machine and the use of the ineffective PD4 sniffer. Nevertheless, with respect to the breakdown of the X-ray machine at Pearson, the Attorney General of Canada argued:

> When the x-ray machine broke down, Mr. Desouza of Air India instructed Burns staff to continue screening using only the PD-4 sniffer. He did this notwithstanding the RCMP's warnings that the PD-4 was ineffective. No one from Burns or Air India informed the RCMP that there were problems screening luggage. Mr. Vaney, Mr. Yodh and Mr. Desouza were all present, but it is unclear who was ultimately in charge. There does not seem to have been any discussion about what back-up procedures to adopt.[481]

and

> The Air India and Burns employees who were screening the luggage for Flight 182 never requested the dogmaster's assistance or informed the RCMP that the x-ray had broken down. It was their responsibility to do this since their role was "…to design and implement security systems for passenger and baggage screening."[482]

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478 Exhibit P-101 CAF0160, p. 37.
479 Exhibit P-436: Civil Aviation Security Dossier.
480 Exhibit P-101 CAF0160, p. 37.
481 Final Submissions of the Attorney General of Canada, Vol. II, para. 230.
482 Final Submissions of the Attorney General of Canada, Vol. II, para. 256.

In the circumstances, it is not a proper conclusion to vindicate the RCMP on the basis of its ignorance. Similarly, with respect to the three suspect bags that were identified at Mirabel airport, the Attorney General of Canada argues:

> Air India did not notify the RCMP (or Transport Canada) about the suspect luggage, despite the fact that Air Canada advised them to do so. Finally, at 10:00 pm, Air Canada informed the RCMP that there were 3 suspect bags. A few minutes later, an RCMP officer came to the baggage area and requested to speak with an Air India official, who asked him to wait l0-15 minutes. When the Air India officer arrived, he informed the RCMP officer that Flight 182 had departed already.[483]

Here again, the timeline does not exonerate the RCMP. The first suspect suitcase was identified at some time between 7:00 to 7:50 PM, and Air India was notified approximately 15 to 20 minutes afterwards. This suitcase, and the two others that were subsequently identified, were left in the baggage area next to the X-ray machine without supervision. This means that, prior to Air Canada informing the RCMP of the suspect bags, there was a space of over two hours during which the RCMP could have learned of the existence of the suspect luggage had it conducted any sort of patrol of the baggage area, or liaised with Air India officials.[484]

4.7 Transport Canada Policy Gaps and Implementation Deficiencies

Weak monitoring and enforcement of airport and air carrier security compromised Canada's civil aviation security in the 1980s. The evidence indicates that, despite there being no legislative requirements to do so, Transport Canada had committed to policies mandating that it approve and thoroughly monitor air carrier security plans. Unfortunately, the inspection and enforcement regime itself was so under-resourced and toothless that carriers such as Air India were given little guidance regarding serious flaws in their security programs.

Obligations Respecting Air Carrier Security Measures

As a member state of the International Civil Aviation Organization (ICAO) and a signatory to Annex 17 to the *Chicago Convention on International Civil Aviation*,[485] Canada was required to appoint an authority responsible for the development, implementation and maintenance of its national civil aviation security program.[486] As the responsible aviation authority for Canada, Transport Canada was obliged to ensure that airports and air carriers developed and implemented security programs.

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483 Final Submissions of the Attorney General of Canada, Vol. II, para. 238.
484 Exhibit P-101 CAF0087.
485 Exhibit P-152: *International Standards and Recommended Practices – Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference – Annex 17 to the Convention on International Civil Aviation* – Second Edition – October 1981 [Exhibit P-152: Annex 17, 2nd ed.].
486 Exhibit P-152: Annex 17, 2nd ed., p. 8.

At the time of the bombing, the regulations made pursuant to the *Aeronautics Act* required both foreign and domestic air carriers to establish, maintain and carry out certain security measures at airports. The onus was on the air carrier to implement systems for passenger and baggage screening.[487] As discussed in detail in Section 2.3.2 (Pre-bombing), Failure to Push Through Responsive Regulations, the air carriers were required to file written descriptions of their security measures under the *Civil Aviation Security Measures Regulations* and the *Foreign Aircraft Security Measures Regulations* in place in 1985.

This regulatory scheme was significantly flawed, due to oversight and enforcement failures. The regulations did not include a process for approval of these air carrier security plans by the Minister of Transport. While Transport Canada was ultimately responsible for the safety of airline operations in Canada and enforcing the security provisions of Annex 17, it seemed that, from Transport Canada's perspective, as long as the security plan met the basic and vague requirements outlined in the regulations, it was a valid security program.

Neither the *Aeronautics Act* nor its regulations made it an offence for an air carrier to fail to comply with its own filed security program. Instead, as the owner and operator of Canada's major airports, Transport Canada could set policies regarding screening and provide facilities and equipment in the expectation that they would be used by the air carriers. In keeping with ICAO recommendations that passenger and baggage screening be aided by inspection equipment wherever possible,[488] Transport Canada purchased and maintained metal detectors and X-ray machines that were used to screen passengers and carry-on baggage prior to boarding. Nevertheless, the *Aeronautics Act* and its regulations afforded Transport Canada no more ability to force an air carrier to screen its carry-on baggage by X-ray than to screen its checked baggage – which, as is discussed later, Transport Canada considered to be a completely voluntary measure. These measures were not prescribed by law. An air carrier that did not comply with its security program could be warned in writing, or its right to fly into and out of Canadian airports could be suspended, but there was no formal sanction in-between. This meant that a carrier's compliance with any of the terms of its security programs was, effectively, voluntary.[489] These weaknesses were identified when the aviation security regulations were drafted in the 1970s,[490] but it would not be until after the bombing that expanded regulations would be enacted to remedy these deficiencies.

The *CATSA Act* Review Advisory Panel found that the Minister of Transport had no formal legal authority to approve or reject an air carrier's security plan, and the Attorney General of Canada also emphasized the absence of an explicit mandate within the legislative scheme to "…approve, monitor, or enforce security programmes."[491] There is, however, ample evidence that Transport

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487 Exhibit P-157, p. 19.
488 Exhibit P-152: Attachment to Annex 17, 2nd ed.: Extracts from Annex 9, p. 15.
489 Exhibit P-101 CAF0593, p. 6.
490 Exhibit P-101 CAF0774, p. 18.
491 Final Submissions of the Attorney General of Canada, Vol. II, para. 55.

Canada took an active role with respect to the air carrier security plans, and that it was obliged to do so because of its international commitments to aviation security.

Pursuant to the standards established by Annex 17 (2nd ed.), Transport Canada was required to ensure that air carriers applied their security plans "…in proportion to the threat to international civil aviation and its facilities as known to the State," and also to "…ensure that such a programme is compatible with the prescribed aerodrome security programme."[492] Canada's security program requirements for foreign and domestic air carriers were imposed as a result. It should be noted that the ICAO standards were imposed upon the member states by virtue of their status as signatories, and not upon the individual air carriers within those states. Among other standards and obligations, Canada was required to designate an authority to develop, implement and maintain a national civil aviation security program. Transport Canada was, and is, Canada's aviation authority, with oversight over the national civil aviation security program and obligations to ensure safe air travel through regulation. Accordingly, even though Canada's legislation did not provide for an explicit mandate to approve the air carrier security measures, Transport Canada was nevertheless obliged under Annex 17 to review and comment upon the security programs in a meaningful way once they were received, and to monitor the carriers' implementation of those programs to ensure that the measures were properly applied in proportion to the threats of the time.

Approval of the Air India Security Program

Following a request from the National Civil Aviation Security Coordinator, Air India first submitted its security plan to Transport Canada in December 1982, as it prepared to commence weekly flights in Canada based out of Mirabel International Airport.[493] The *Foreign Aircraft Security Measures Regulations* were subsequently updated to include Air India in the schedule of affected air carriers required to submit written descriptions of their security measures to Transport Canada. In the spring of 1983, following a thorough review, Paul Sheppard, the Director of Transport Canada's Civil Aviation Security branch, wrote to Ashwani Sarwal, Air India's Assistant Manager, regarding the security program. Although in most respects the plan more than satisfied the minimal requirements set out in the regulations, Sheppard pointed out a number of small problem areas that needed to be addressed in a revised version of the plan. For example, Sheppard directed Air India to remove a reference to searches of visitors entering the sterile area of an airport, as Canadian regulations only provided for searching passengers.[494] There were also problems with a section discussing the transportation of firearms, weapons and other dangerous articles in an aircraft cargo hold, which Sheppard sought to correct. Finally, Sheppard pointed out that the security plan suggested that Transport Canada officials had the power to authorize diplomatic bodyguards to carry firearms aboard an aircraft, which was incorrect.

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492 Exhibit P-152: Annex 17, 2nd ed., s. 5.1.1.
493 Exhibit P-101 CAF0778.
494 Exhibit P-101 CAF0779, p. 1.

Sheppard concluded:

> Upon receiving the amendments concerning these paragraphs, I am sure that the remainder of the security program will be considered satisfactory and meet the requirements of Canadian law.[495]

In February 1984, Air India amended its security program and advised Transport Canada of the changes that had been made.[496] Sheppard sent a letter to Sarwal stating that following a detailed review of the plan, "…we have concluded that it is a commendable program that meets the requirements of Canadian legislation."[497] In its Final Submissions, the Attorney General of Canada conceded that this represented an "informal approval" of Air India's security program by Transport Canada.[498]

As Air India prepared to expand its operations to Toronto's Pearson International Airport, its security plan was again the subject of discussion at Transport Canada. Dale Mattson, then the Transport Canada Safety and Security Manager at Pearson, chaired a meeting of the Airport Security Committee at Pearson airport, where it was noted that Air India would be implementing secondary security measures for its checked baggage in light of the threat.[499] Mattson testified that this referred to X-ray screening of checked baggage prior to it being loaded aboard aircraft.[500] This was not a widely practiced aviation security measure at the time, but airlines, such as El Al, that faced high-risk threats had successfully implemented it at other Canadian airports[501] in the past.[502] Air India was also required to submit another copy of its security plan to Mattson and, through him, to Transport Canada headquarters before its flights to and from Toronto commenced in January 1985.[503] On January 11, 1985, a copy of Air India's 1982 security plan was sent to Mattson, along with a list of additional security measures that Air India proposed to implement as part of its Toronto operation.[504] The updated security plan confirmed that Air India would be examining its checked baggage by X-ray or by means of the PD4 explosives detection device, or by both.

Several Transport Canada policy documents refer to the approval of air carrier security plans. For instance, following the 1973 amendments to the *Aeronautics Act* which instituted a wave of new aviation security requirements, Transport Canada's Director General of Civil Aeronautics circulated an aviation notice that

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495 Exhibit P-101 CAF0779, p. 2.
496 Exhibit P-134.
497 Exhibit P-134.
498 Final Submissions of the Attorney General of Canada, Vol. II, para. 154.
499 Exhibit P-101 CAF0082, p. 5.
500 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3184.
501 Exhibit P-101 CAF0552, p. 5.
502 Exhibit P-101 CAF0082, p. 5.
503 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3181.
504 Exhibit P-101 CAA0119.

provided some guidance to the carriers, who were "…asked to produce a detailed Security Program in writing for the approval of the Minister."[505] The guidance material was relatively general in nature, as it was nothing more than a list of topics that should be addressed in the security programs, but the emphasis on Ministerial approval is significant.

Another Transport Canada policy document, describing the Aircraft and Transport Protection System, set out the minimum acceptable security requirements for airports.[506] The first version of this document was released in October 1981, and an amended and updated version was released in December 1984. The document discussed the classification of Canadian airports, and the airport and air carrier security requirements for each. A Class I airport, for example, included international and major national airports. What is especially remarkable about this document is its discussion of air carrier requirements in the context of their security programs for each airport classification.

With respect to Class I airports, the minimum air carrier security requirements were:

> a) Each enplaning passenger except transfer passengers to other Canadian destinations that have been satisfactorily screened in accordance with Canadian standards and deplaned into a sterile area must undergo search by persons or electronic devices in accordance with procedures described in the air carrier's approved security program.
>
> …
>
> d) Prevent checked baggage and cargo from being loaded aboard its aircraft unless handled in accordance with procedures described in the air carrier's approved security program.[507]

For each subsequent airport class, this document also makes explicit reference to the requirement that these searches be handled in accordance with "…the air carrier's approved security program."[508]

The implication of these documents is clear. Given Canada's legal obligations to the ICAO, Sheppard advising Air India of problems with its security plan, and the documents that expressly speak of Ministerial approval for air carrier security plans, it is safe to say that Transport Canada was not merely a passive recipient of these plans, or, at least, that it was not meant to be. Just as Transport Canada made it a policy to actively monitor the carriers' compliance with their written

505 Exhibit P-165, Tab 8.
506 Exhibit P-101 CAF0650.
507 Exhibit P-101 CAF0650, p. 4.
508 Exhibit P-101 CAF0650, pp. 4, 6-8, 10.

security plans, despite the fact that the legislative scheme did not contain a mandate for enforcement (as discussed later), it also evidently had a policy of actively reviewing and approving the carriers' security plans when they were filed. This suggests that the written security plans, like the one filed by Air India in 1982 and amended in 1985, were in fact endorsed by Transport Canada.

This prospect raises important questions in light of some of the most problematic aspects of Air India's security plan, such as its decision to rely on the ineffective PD4 explosives detection device as the sole backup for its checked baggage X-ray machines. If Transport Canada approved Air India's security plan, but subsequently concluded that the PD4 was unreliable, why did it not take any steps to recommend Air India amend its security plan and ensure that the device was not used at all? This was a matter that required both oversight and enforcement.

Monitoring Air Carrier Security

Transport Canada's Civil Aviation Security Branch was responsible, on behalf of the National Civil Aviation Security Coordinator, for overseeing the airport and air carrier security systems in place in Canada. It had also committed to a program of comprehensive audits of air carrier security plans on a system-wide basis.[509] Among the audits was a spring 1984 review of CP Air's security program.[510] The audit examined matters such as the carrier's contracts for security services, the training of CP Air's security personnel and flight crews, and its procedures and responses for bomb threats, and made a number of recommendations for both the airline and Transport Canada to consider and act on.

The audit report included considerable discussion of CP Air's checked baggage security measures during high threat situations. Bomb threats had increased in number in 1984 and were of growing concern.[511] CP Air was aware of the threat of sabotage to aircraft, and had implemented passenger-baggage reconciliation systems for use at large airports such as Toronto's Pearson airport.[512] The audit report noted that the CP Air system worked very well and that it ensured that no bag was put aboard the aircraft unless the passenger was aboard. The report went further, concluding that "…it caused some slight delay but it would not be an impossible situation in the event that we did run into high threat situations in Canada."[513] Among its recommendations was a suggestion that Transport Canada develop means to improve threat management procedures, including faster but more thorough searches and the development of electronic devices at airports for use by air carriers in searching.[514]

The fact that Transport Canada concerned itself so thoroughly with the various aspects of CP Air's security operations, including passenger-baggage

509 Exhibit P-101 CAF0654, p. 9.
510 Exhibit P-101 CAF0637.
511 Exhibit P-101 CAF0637, p. 1.
512 Exhibit P-101 CAF0637, p. 18.
513 Exhibit P-101 CAF0637, pp. 18-19.
514 Exhibit P-101 CAF0637, pp. 2-3.

reconciliation, is a good indication of its broad aviation security responsibilities and priorities, legislated or not. Although Transport Canada and the carriers placed great emphasis on the threat of hijacking in the 1970s and 1980s, the recognition that sabotage was a growing threat was reflected in the audit, which was not limited to anti-hijacking measures such as pre-board screening of passengers and carry-on baggage. Unfortunately, when it came to Air India, there was little such monitoring, auditing or oversight, despite Transport Canada's clearly stated intentions to do so.

Air India's first flight out of Pearson airport departed on January 19, 1985. On January 21, 1985, Mattson met with RCMP S/Sgt. Ward for a debriefing on Air India's security operations for the flight.[515] No Air India or Burns International Security representatives were present at this meeting. The minutes of the debriefing indicated that Air India's secondary security screening of passengers and carry-on baggage had been carried out as outlined in the security plan, but secondary screening of checked baggage by X-ray was not done because the X-ray machine had not yet been delivered. Instead, the PD4 was deployed, and the minutes included a note that, when tested, the device proved to be "totally ineffective" in the opinion of the RCMP explosives detection dogmaster and members of the Peel Regional Explosives Detection Unit. With respect to X-ray searches of checked baggage, it was decided that "…a further analysis of this procedure will be carried out once the X-ray is installed and in operation." The minutes of the debriefing ended with the note that, "We will continue to monitor Air India's operations over the next month, after which we will carry out another analysis of their operation to ensure that the measures and procedures which they have established remain appropriate."[516]

On February 14th, John Cook, the Acting Director of Civil Aviation Security for Transport Canada, wrote to Sarwal regarding Air India's security requirements at Pearson.[517] Cook noted that Air India, RCMP and Transport Canada officials met at Pearson and agreed on the security plan for Air India's Toronto operations. Cook also stated that, with respect to Air India's security plan:

> Mr. Dale Mattson, Transport Canada's Manager of Safety and Security at the airport has confirmed that Air India's operations are being monitored to ensure the measures and procedures established are appropriate to meet the perceived threat. You will be advised at once should any changes be deemed necessary.[518]

These documents can only be taken to mean that Transport Canada officials were to be actively observing and analyzing Air India's security measures. The continuing high threat to the airline was well understood, as was the ineffectiveness of the legislated civil aviation security regime in reducing the

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515 Exhibit P-101 CAA0121.
516 Exhibit P-101 CAA0121, pp. 2-3.
517 Exhibit P-101 CAF0032.
518 Exhibit P-101 CAF0032.

risk posed by terrorist acts of sabotage. Mattson testified, however, that he monitored Air India's security measures for the first flight on January 19th, but no others.[519] According to Mattson, the Transport Canada staff at Pearson airport had no capacity or instructions to inspect or monitor Air India's security:

> The airport managers did not have security officers to perform that function. We were very limited in resources. I had myself and one security officer, one policing officer. We were totally committed at the time to administrating the overall program as we have discussed over the last day.
>
> …
>
> And the only time that we were able to assist in the monitoring process was if there had been an event or if we'd be especially requested to do so by the Civil Aviation Security Branch at Headquarters.[520]

There was, in fact, considerable inconsistency and uncertainty in the day-to-day interaction of the Transport Canada security officials and the air carrier security programs at Canada's major airports. Some security staff would monitor passenger screening systems and other major activities such as air carriers' handling of checked baggage and cargo on a daily basis, but no formal roles or responsibilities had been set in this regard, and thus actual monitoring of air carrier security by airport officials varied widely.[521]

Mattson testified that he believed any monitoring that did occur did not include any examination of whether Air India was complying with its security plan. He believed that Transport Canada's monitoring of an air carrier's security operations extended only to those requirements set out in the aeronautics legislation. According to Mattson, any measures other than those prescribed by the regulations were not challenged or monitored, as they were merely optional measures.[522] Indeed, if Air India had not updated its security plan in 1985 to include screening checked baggage, or had subsequently decided to stop X-raying checked bags altogether, Mattson testified that he would have nevertheless viewed the program as sufficient.[523]

On January 21, 1985, Mattson was informed that the PD4 had failed a second test conducted by the RCMP, while it was being used to inspect checked baggage for Air India's inaugural flight.[524] The RCMP officers also informed Transport Canada HQ of the failure, although no one at Air India was advised of the results of the second test. Mattson testified that he was aware that after two failed tests the

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519 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3199-3200.
520 Testimony of Dale Mattson, vol. 30, May 17, 2007, p. 3387.
521 Exhibit P-101 CAF0654, p. 4.
522 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3199-3201.
523 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3201.
524 Exhibit P-101 CAC0528, pp. 33-34.

RCMP lacked faith in the ability of the PD4 to successfully detect explosives, but he did not see it as his role to warn Air India against using it.[525] There is also no evidence that Transport Canada informed Air India that the PD4 had failed a second test, or that Transport Canada recommended Air India amend its approved security plan in light of the device's severe flaws:

> **MR. SHORE**: Do you recall at anytime between January 19th, 1985 and the bombing of Air India Flight 182, that at anytime there was a notice with respect to a deficiency that may had been addressed at the regional level of the problems that we obviously have now heard more about?
>
> **MR. MATTSON**: And you're saying directly towards Air India?
>
> **MR. SHORE**: Yes.
>
> **MR. MATTSON**: I am not aware of any.[526]

Mattson was asked the question why, if Transport Canada was wholly unconcerned with Air India's "optional" security measures such as X-ray examination of checked baggage, did the January 21st debriefing make extensive reference to Air India's checked baggage security? Mattson's response to this question was that:

> We had an interest in that we felt it necessary to advise our Headquarters of the fact, again, that the equipment that Air India had said they were going to use to carry out checked baggage inspection, did not seem to be performing as per the RCMP view of what was needed to check bags.
>
> But as far as being in a position to say that they couldn't use it, we were not, because it was not part of the CIV AV Security Plan that had been approved by Civil Aviation at Headquarters. They were aware. We brought it to their attention again and we received no direction with respect to increasing or directing Air India to carry out any other type of screening procedure.[527]

Mattson reiterated his opinion that, as the use of devices like the PD4 to search checked baggage was a measure above and beyond what was called for by the minimum standards set by the security regulations, the matter was entirely within Air India's purview.[528] He conceded, however, that where an airline like Air India relied on a device that Transport Canada believed to be manifestly unfit for its intended security function, "…it would matter in that we would want to bring

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525 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3205.
526 Testimony of Dale Mattson, vol. 30, May 17, 2007, p. 3389.
527 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3211.
528 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3212-3213.

it to their attention that what they felt was meeting their requirements, from our evaluation, was falling below their expectations."[529] Nevertheless, Mattson did not recall ever relaying this concern to Air India.[530]

The contention that air carriers had to meet certain minimum standards, and that Transport Canada was powerless to enforce (and thus monitor and comment upon) any "optional" measures that exceeded these standards, is something of a red herring. In reality, there was very little that Transport Canada could do to ensure that an air carrier complied with any part of its security plan, due to the absence of civil enforcement mechanisms. Most of Transport Canada's security requirements and standards for aviation security measures at airports, such as passenger screening, were set out in internal policy and administrative publications rather than in regulations.[531]

There were no detailed "minimum standards" for matters such as baggage searches contained within the legislation beyond the requirement that carriers have in place "…systems of surveillance of persons, personal belongings, baggage, goods and cargo by persons or by mechanical or electronic devices."[532] This requirement applied equally to Air India's decision to screen carry-on baggage by X-ray and to its decision to screen checked baggage by X-ray or PD4. Transport Canada had as much ability and obligation to approve, comment upon, or monitor checked baggage screening as carry-on baggage screening. As such, any suggestion that Transport Canada had no role in "…monitoring those extra measures"[533] requires an acknowledgment that Transport Canada also had no legislated role in monitoring any other aspect of a carrier's security plan. Because this gap in Canada's aviation security regime was well-recognized at the time, hindsight is not necessary to conclude that this reveals a strikingly poor policy framework.

In January 1986, a meeting was convened at the Department of Justice to discuss Air India's security at the time of the bombing. The minutes indicate that Sheppard was asked about Transport Canada's enforcement abilities. His responses should be noted:

> 1) Was there a systematic check of airlines adhering to MOT security plans?
>
> - No.
>
> 2) Was there any monitoring of Air India's security plan?
>
> - No.

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529 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3212.
530 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3213.
531 Exhibit P-138, p. 11.
532 *Foreign Aircraft Security Measures Regulations*, s. 3(1).
533 Final Submissions of the Attorney General of Canada, Vol. II, para. 161.

> 3) What happens if something is found wrong?
>
> - Notify airline of deficiency, but there is no authority to take any action (nothing between written reprimand and death penalty).[534]

The "death penalty" refers to the revocation of an air carrier's operating privileges in Canada, meaning its aircraft could no longer take off or land at Canadian airports.

Notwithstanding the notable security requirements that could not be enforced at all, failing to obey a regulation made under the authority of the *Aeronautics Act* in June 1985 was an offence punishable by a fine of up to $5000, or one year of imprisonment, or both. For the airlines, however, such penalties were unrealistic. The fines were not substantial enough to have a punitive impact on such large businesses, and the airlines as corporate "persons" were obviously not liable to imprisonment. In contrast, the modern *Aeronautics Act* can impose significant fines against corporations as well as individuals, and also provides for the possibility of punishments, such as forfeiture of aircraft, on conviction for certain indictable offences.

This simplistic and anemic regulatory scheme, within a civil aviation security regime premised upon voluntary compliance, made enforcement all but impossible. It underscored the vital importance of good relationships and communications between government, industry, and law enforcement, as well as frequent and thorough inspections. Nothing less would ensure that air carriers were living up to their commitments to the public, and that Canada was living up to its own commitments to the international civil aviation community.

Civil Aviation Inspection

In February 1984, Sheppard sent a letter to Sarwal regarding Air India's security program, which had recently been amended by Air India and approved by Transport Canada.[535] Sheppard reminded Sarwal that Air India should be continually reviewing its own security program in order to ensure that it appropriately reflected the security of the airports it operated out of, and asked that Air India report any proposed changes to Transport Canada. Sheppard also highlighted Transport Canada's intended oversight mechanism, adding:

> In an effort to attain standardization of security procedures in Canada, as well as to confirm that requirements are being met, Transport Canada officials will be monitoring, from time to time, and evaluating the air carrier security programs. Any matter requiring corrective action by your company will be brought to your attention.[536]

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534 Exhibit P-101 CAC0517.
535 Exhibit P-134.
536 Exhibit P-134.

Transport Canada made it a policy under the National Civil Aviation Security Program to conduct semi-annual security reviews of all the air carriers that were required to file a security plan under the regulations.[537] The policy called for Transport Canada's regional Dangerous Goods and Civil Aviation Inspectors to conduct reviews at each airport, focusing on the air carrier security programs and assessing the adequacy of the measures that had been established by the programs. In doing so, the inspectors were to conduct operational evaluations of the measures established by the programs, as well as an evaluation of the techniques employed and the skill of the personnel carrying out the security functions of the program.[538] The inspections also extended to an evaluation of the training programs for screening personnel employed by the carriers.

The inspectors used the two-part Civil Aviation Security Inspection Checklist to evaluate airport security plans and air carrier security plans. The checklist included security aspects that were to be examined, and required the inspector to indicate whether the measure was or was not being performed. In the course of their duties, the inspectors would direct the airport or air carrier's attention to any security deficiencies or recommendations. If a concern could not be resolved at the regional level, Transport Canada required that a copy of the security checklist be forwarded to the National Civil Aviation Security Coordinator at headquarters in Ottawa.[539]

Unfortunately, these security inspections did not proceed as intended. The resources that were allocated for aviation security from the inception of the National Civil Aviation Security Program were fundamentally inadequate to meet the program requirements.[540] According to a Transport Canada report, "…the major impact from the lack of resources was felt in areas of monitoring/inspections of airports and air carriers to ensure compliance with security regulations and policies, the investigation of security incidents/infraction [*sic*] and the related training support."[541] The *CATSA Act* Review Advisory Panel noted that, during the period of 1972 to 1985, Transport Canada employed only 11 security inspectors across its six regions to enforce both aviation security regulations as well as regulations governing the transportation of dangerous goods. The inspectors were, not surprisingly, "thinly stretched" during this period, as their duties required monitoring of roughly ten Canadian air carriers and 60 foreign air carriers at the approximately 100 airports[542] spread across the country.[543]

A study conducted in the early 1980s found that "…there was too much workload in any region for one person to cover the Dangerous Goods areas let alone the civil aviation security responsibilities."[544]

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537 Exhibit P-101 CAF0151, p. 26.
538 Exhibit P-101 CAF0151, p. 26.
539 Exhibit P-101 CAF0151, pp. 26, 39-42, 43-45.
540 Exhibit P-101 CAF0593, pp. 5-6.
541 Exhibit P-101 CAF0593, p. 6.
542 Exhibit P-101 CAF0593, p. 1.
543 Exhibit P-157, pp. 21-22.
544 Exhibit P-101 CAF0593, p. 7.

In the fall of 1984, Transport Canada's Evaluation Branch conducted an assessment of Canada's civil aviation security program which indicated that, in three regions, the regulatory inspectors had conducted no security inspections. In three other regions, there was only limited testing using the headquarters checklist, and the inspectors spent little time testing the system in order to see where faults lay.[545] Moreover, in June 1985, A.B. McIntosh, Transport Canada's Manager of Air Carrier Security, reported that the lack of inspection resources was such that, for each region, the inspectors were only able to complete "…0% to 10% of the estimated workload."[546] Transport Canada had obtained resources to provide an additional inspector for each region before the end of 1985, but its inspection targets remained modest in light of the magnitude of the task. McIntosh stated that the goal was to achieve 100% inspection of all air carriers in each region by 1990.[547]

According to Mattson, what security monitoring of the air carriers there was at Pearson tended to be reactive rather than regular or preventive:

> The regional security officer would come out and carry out an inspection or he would receive information either from the airport management group or we would get information from operations or observe something ourselves or a complaint from another source may be issued that the carrier was not complying. We would raise this with the regional civil aviation security officer and his first initiative would be to come out and meet with the air carrier, identify the problem, verify that it was valid and at that point get a commitment from them that they would correct their procedure and resolve it locally.
>
> If, in fact there was objection to doing that, then he would escalate it to the Civil Aviation Branch at Headquarters level where it may go to a level where they decided that they were either going to take some sanctions to get some financially or otherwise, and I'm not sure just what criteria they use to make that determination.[548]

In light of these facts, it is not at all surprising that Professor Reg Whitaker, of the *CATSA Act* Review Advisory Panel, testified that Transport Canada's oversight of the carriers was "essentially nonexistent"[549] prior to the bombing of Air India Flight 182, and that "…despite the fact that [Transport Canada] had made certain undertakings, … to monitor from time to time, they simply did not."[550]

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545 Exhibit P-101 CAF0654.
546 Exhibit P-101 CAF0593, p. 1.
547 Exhibit P-101 CAF0593, p. 1.
548 Testimony of Dale Mattson, vol. 30, May 17, 2007, p. 3389.
549 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4366.
550 Testimony of Reg Whitaker, vol. 36, May 30, 2007, p. 4366.

The lack of resources for inspections meant that it was difficult to achieve uniform monitoring and inspections from region to region, to conduct investigations of security incidents, and to provide security training, assistance, and advice. Given that many air carriers operated in more than one region in Canada, Transport Canada was concerned about these deficiencies resulting in air carriers adopting inconsistent and inappropriate security measures and, worse, compounding enforcement difficulties. Transport Canada also lacked any resources to conduct security inspections at foreign airports from which air carriers departed for Canada,[551] meaning that there was no way to confirm that the carriers were complying with Canadian security regulations when outside Canada or that information provided by the carriers in their security programs was accurate.

Today, civil aviation safety inspectors and security inspectors conduct reviews at foreign airports before Transport Canada will issue a Foreign Air Operator Certificate to a foreign carrier seeking to operate in Canada; and the Offshore Inspection Security Program periodically follows up by sending teams of security specialists to verify that the measures remain in practice.[552] Canada also sends inspection teams to airports in other states prior to allowing air carriers to conduct new flights between Canada and that state.[553] These audits are essential components of Canada's bilateral operating agreements with other states. In 1985, however, Transport Canada was forced to rely on third parties to provide this information due to its limited resources – a circumstance that it considered to be inappropriate.

With the air carriers continually balancing security against the competing interests of customer satisfaction and cost-effectiveness, Transport Canada's inability to regularly inspect air carrier security, or to enforce penalties for violations of either the legislation or the carrier's own security programs, could hardly encourage either vigilance or competence at Canada's airports. For example, in 1984, McIntosh distributed a memorandum to the regional inspectors advising that recent observations of security checkpoints at major airports revealed a number of security breaches caused by carelessness or inattentiveness. Individuals were entering air screening checkpoints and proceeding into sterile areas without being checked to verify that they were actually *bona fide* passengers, and airline and flight crew personnel were passing through security checkpoints without displaying their identification cards.[554] McIntosh stated that an attitude of complacency was extending into areas of aviation security, and that these were but a few examples of how it would emerge. Reflecting the necessary compromises inherent in a voluntary security regime that lacked any enforcement mechanisms, McIntosh requested that the inspectors target the larger airports in their regions "…and draw the responsible air carriers [*sic*] attention to any shortcomings in the agreed upon

551 Exhibit P-101 CAF0593, pp. 9-10.
552 Testimony of Jean Barrette, vol. 37, May 31, 2007, pp. 4540-4541.
553 Testimony of Jim Marriott, vol. 39, June 4, 2007, pp. 4737-4738.
554 Exhibit P-101 CAF0570, p. 1.

security system that are observed."[555] Section 2.4 (Pre-bombing), Security Culture at Canada's Airports, addresses in detail the woeful security culture of this period.

Enforcement Failures Following the Bombing

The bombing of Air India Flight 182 was a tragedy that placed a renewed scrutiny on aviation security in Canada and around the world, and raised many questions about checked baggage security, the threat of sabotage, and Canada's readiness to meet the threat of terrorism. As officials, experts and investigators examined the incident, in an effort to uncover the causes of the disaster and identify solutions to prevent such acts from occurring again, the weaknesses in Canada's aviation security regulation and monitoring systems were quickly laid bare.

A prominent flaw was Transport Canada's lack of meaningful oversight over air carrier security programs, and Air India's security program in particular. An RCMP report concerning the preliminary investigation of the security measures in place at Pearson airport on June 22, 1985 remarked that "…it appears that Air India did meet the requirements of the Foreign Aircraft Security Measures Regulations at [Lester B. Pearson International Airport] on the 22 June 1985. There are obvious weaknesses in the system i.e., lack of training evident in regards to Burns Security Personnel however, it is still a system, good, bad or indifferent. Our Regulations simply require a 'system' with no measure of quality."[556]

In the same vein, Transport Canada investigated the possibility that the airlines had failed to comply fully with their security plans, and that this had contributed to the failure to prevent the bombing. It was concluded that CP Air had violated its own security plan by interlining the checked bag belonging to "M. Singh" to Delhi.[557] Despite this finding, any breaches by Air India or CP Air of their own security plans were under the voluntary compliance regime.[558] Therefore, no enforcement action was possible.[559] The only action that could be taken against CP Air following the bombing was the writing of a letter "…pointing out their responsibility in complying with established security measures."[560]

Although in many respects the bombing represented a sea change in terms of aviation security, and shook government and industry alike into taking a comprehensive and purposive approach to preventing acts of sabotage, there was nevertheless some resistance to the security measures called for immediately after the bombing. Transport Canada issued ministerial directives on June 23, 1985 that called upon international carriers to implement thorough baggage searches and holds on cargo for each flight. The measures caused delays, and the delays were expensive.

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555 Exhibit P-101 CAF0570, p. 2.
556 Exhibit P-101 CAF0143, p. 17.
557 Exhibit P-101 CAF0611.
558 Exhibit P-101 CAF0612.
559 Exhibit P-101 CAF0554, p. 3.
560 Exhibit P-101 CAF0612.

In a meeting of the National Civil Aviation Security Committee in September 1985, the representative of the Air Transport Association of Canada expressed his great concern about the "costly measures" that were being implemented "…in spite of the record in Canada in the last 10 years,"[561] arguing that Canada should focus on correcting what went wrong on June 22, 1985 rather than trying to close "…all the holes." One airline put its cost concerns into direct action. In October 1985, Lufthansa refused to comply with the requirement to search checked baggage for its flights at Mirabel.[562] Although the *Aeronautics Act* was amended days after the bombing, Transport Canada remained utterly unable to sanction this flagrant breach of security as the measures were not part of any regulation or order. Until the new aviation security regulations were imposed, Transport Canada remained powerless in fundamental security matters as a direct consequence of short-sighted policy choices.

Conclusion

Vigilance is the cornerstone of any successful security regime, and it is required of both those providing the security within that regime, and those overseeing it. Without continual and thorough monitoring of the air carriers, airport personnel, and security staff within that system, carelessness and complacency can flourish. Errors that occur will propagate unchecked without review, testing, and corrective feedback and, worse, any deliberate decisions to cut corners or ignore specific components of the security system may go unnoticed. The evidence indicates that prior to the bombing of Air India Flight 182, Transport Canada had a duty to approve and oversee air carrier security programs as part of its obligations as Canada's representative at the ICAO, and that it had developed policies obliging it to do so. Unfortunately, no legislation empowered it or required it to meet that duty. Transport Canada also made it a policy to conduct inspections of airport and air carrier security, but failed to provide sufficient resources to follow through with that commitment. As a result, air carriers such as Air India were not subject to critical oversight, and worrisome components of Air India's security program, such as its unwarranted reliance on the useless PD4 to inspect checked baggage for explosives, were allowed to pass without comment.

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561 Exhibit P-101 CAF0162, p. 4.
562 Exhibit P-101 CAF0608, p. 5.

VOLUME TWO
PART 1: PRE-BOMBING

CHAPTER V: THE DAY OF THE BOMBING

5.0 CP Air Checked In Unaccompanied Luggage

The suitcases containing the bombs that exploded aboard Air India Flight 182 and at Narita Airport were first checked aboard two CP Air flights at Vancouver International Airport on June 22, 1985.[1] Early that Saturday morning, an unknown man of Indian descent entered the line for the CP Air check-in counter. It was a busy morning, and the line of passengers waiting to check in and board was a long one.[2] When the unknown man reached the front of the line, he was served by CP Air passenger service agent Jeanne Adams (now Jeanne Bakermans). He presented a ticket bearing the name "M. Singh," and sought to check in himself and one suitcase.

Adams checked the ticket and the CP Air reservation system and noted that "M. Singh" had a reservation for CP Air Flight 060 to Toronto, with a waitlisted connection from Toronto to Mirabel aboard Air India Flight 181, and from Mirabel to Delhi aboard Flight 182.[3] Adams then affixed an orange checked baggage tag indicating that the bag was to be offloaded at Toronto's Lester B. Pearson International Airport (Pearson).[4] The individual holding the ticket for "M. Singh" was not satisfied with this, however, and insisted that Adams check his bag directly to Delhi.

A long discussion ensued, in which "M. Singh" became increasingly agitated. Another traveller, waiting in line behind the unknown man, was able to overhear Adams repeatedly explain that she was unable to check his bag directly to his destination in Delhi because he did not have a reservation for the flight.[5] In reply, the man claimed that he did have a reservation for the flight and that he had paid the full cost of a business fare in order to obtain it.

Adams could find no indication of a reservation to Delhi. As time dragged on, however, and the line for her counter grew longer on that busy morning, she made a fateful decision. The unknown man stated that he would go and find his brother who apparently knew more about the reservation. The prospect of holding up the line any further for this adamant man was too much. She relented,

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1 Exhibit P-157, p. 30.
2 Exhibit P-101 CAF0667, p. 1.
3 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 19.
4 Exhibit P-101 CAF0667, p. 1.
5 Exhibit P-101 CAF0786.

and tagged his bag for direct interline delivery to Delhi, telling him several times that he would have to confirm with Air India that he had a reservation for Flight 181/182 when he arrived at Pearson.[6]

Tagging the suitcase for interline delivery to Delhi meant that when CP Air Flight 060 reached Pearson, the bag would be offloaded from that flight and sent to Air India's baggage handlers for loading directly aboard Air India Flight 181/182. This eliminated the need for the passenger to collect it in person off the baggage carousel at Pearson and check it again at the Air India counter. Tagging the bag in this way, without a reservation for the Air India flights, was contrary to both CP Air's own security program and industry practice.

The traveller, known only as "M. Singh," was issued a boarding pass for seat 10B aboard CP Air Flight 060. The flight was airborne by 9:18 AM, en route to Toronto with a bomb aboard. "M. Singh" 's luggage left Vancouver on that flight, but he did not. His flight coupon was never collected at the gate, and his seat was empty when the plane departed.[7] Finally, "M. Singh" did not attempt to check in at Pearson at any time that day.[8]

At some point that morning, Adams also checked a bag belonging to a traveller holding a ticket in the name of "L. Singh." He was assigned seat 38H aboard CP Air Flight 003 to Tokyo's Narita Airport.[9] His bag was interline tagged to a connecting Air India flight departing from that airport, as he had a reservation for that flight. When CP Air Flight 003 departed, the traveller known as "L. Singh" was not aboard. His flight coupon was also not collected at the gate, and the seat assigned to him was empty.[10]

Failure to Flag Suspicious Behaviour

In August 1985, CP Air's Passenger Service Manager wrote a letter to the RCMP to defend CP Air's security arrangements prior to the bombings of Air India Flight 182 and at Narita airport, as well as to confirm the security measures in effect afterwards. Among his assertions was the claim that, prior to the bombing, CP Air was following measures for identifying potential problem passengers, such as "…agitated behaviour, one-way tickets, cash payment, late bookings, etc."[11] Strikingly, however, no red flags were raised when the tickets were booked on June 19, 1985 for a June 22nd flight. Nor was any notice paid to the fact that the reservations for the tickets were changed to different names the next day. The initial reservations had been under the names Jaswand Singh and Mohinderbel Singh, but were changed to "M. Singh" and "L. Singh" when the tickets were paid for on June 20th.[12] Additionally, the flight reservation for "L. Singh" was changed

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6 Exhibit P-101 CAF0667, p. 2.
7 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 20.
8 Exhibit P-164, p. 35.
9 Exhibit P-167, pp. 4-5.
10 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 21-22.
11 Exhibit P-101 CAF0691.
12 Exhibit P-167, p. 3.

to a one-way ticket on June 20th. The "M. Singh" ticket from Vancouver to Toronto to Delhi had previously been reserved as a one-way ticket.[13] Finally, the tickets for "L. Singh" and "M. Singh" were both paid for in cash on June 20th.[14]

According to the testimony of Rodney Wallis, an aviation expert who was IATA's Director of Security between 1980 and 1991, European airlines were much more alert to the risks posed by passengers purchasing one-way tickets, particularly with cash, due to strict immigration rules set down by the United States. Due to that nation's concerns about illegal immigration, the European air carriers would be fined $1000 each time they delivered a passenger to the US who was subsequently refused entry. As a result, the airlines were extremely vigilant, and were continually devising strategies to reduce this problem. One strategy focused on training front-line staff, who came face to face with passengers, regarding common warning signs. One particular flag emphasized in their training was the passenger who attempted to purchase a one-way ticket with cash – these were viewed as being very high-risk by the European airlines.

Wallis noted that although the European air carriers' focus was on illegal immigration, it was still the case that the conduct of a passenger such as "M. Singh," who was intent on doing harm and was behaving very suspiciously, would immediately stand out to the ticket agents and passenger agents at a European airport in 1985. Wallis said that the staff at check-in counters developed a "sixth sense" for signs of trouble from passengers:

> But they were being exposed to it a great deal. So had this happened in Europe, the potential was that red flags would have been raised. Certainly when you got to the airport, if someone had behaved like Singh had behaved, I would have expected the agent to have called the supervisor if they felt they couldn't deal with the subject themselves. Many of them were quite tough. You know, they had been used to handling difficult passengers. This was just another difficult passenger, but if they needed support, they would go to a supervisor. That would have rung at the airport not so much alarm bells, but it would tell you something is not right. What is this man going on about? Or you might just call the supervisor because you wanted to get rid of him anyways because he's difficult.[15]

CP Air Security Requirements

Unlike Air India, CP Air was operating at a normal threat level in June 1985,[16] and took no additional security measures at the airport, such as X-raying checked

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13 Exhibit P-283, Tab 12.
14 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 7-16.
15 Testimony of Rodney Wallis, vol. 41, June 6, 2007, pp. 5022-5023.
16 Exhibit P-157, p. 30.

baggage.[17] The airline had been given no information regarding the fact that Air India was operating under a high threat, and took no special precautions concerning interlined passengers and baggage. CP Air had, however, responded to a number of bomb threats in Canada in the past and was handling an increasing number of threats in the 1980s.[18] The failure to warn the other air carriers in Canada about the threat to Air India in June 1985 was an unfortunate omission on the part of Air India and the government agencies responsible for aviation security. As the *CATSA Act* Review Advisory Panel noted in its report, the CP Air passenger agent might have exercised more caution when "M. Singh" insisted his bag be directly interlined to Delhi through Air India if she had known of the danger.[19]

The CP Air Security Program in place in 1985[20] had been given *de facto* approval by Transport Canada in 1978, according to the *CATSA Act* Review Advisory Panel.[21] According to a Transport Canada audit, the program instituted a "… very acceptable system and procedures in place for combating possible acts of unlawful interference with aviation."[22]

CP Air's Security Program did not authorize passenger agents to directly tag an article of checked baggage to a final destination in situations such as that of "M. Singh." The requirements for checked baggage were set out as follows:

> A. Procedures for Identification and Handling of Baggage
>
> Passengers checking baggage must present to an airline agent a valid ticket to the destination to which the bag is being checked. On acceptance, the checked bag is identified with a baggage tag which shows the destination of the bag and a serialized number which matches the number on a stub portion which is then attached to the passenger portion of the airline ticket.
>
> …
>
> C. Procedures for Unaccompanied Baggage
>
> Unaccompanied baggage normally shall not be carried, but when carried for specific reasons such as missed connections, etc., will be handled in the same manner as a cargo shipment.[23]

17 Exhibit P-101 CAF0691.
18 Exhibit P-101 CAF0637, p. 1.
19 Exhibit P-157, p. 50.
20 Exhibit P-101 CAF0761.
21 Exhibit P-157, p. 31.
22 Exhibit P-101 CAF0637, p. 1.
23 Exhibit P-101 CAF0761, p. 5.

Under the heading *Predeparture Screening Procedures for Passengers and Carry-on Baggage*, CP Air's Security Program also established requirements for offloading checked baggage in certain situations. If a passenger refused to be screened, he or she would be denied boarding and his or her checked baggage would be removed. Additionally, it stated that "…if a passenger who has checked in for a flight decides not to travel, or is refused passage for any reason, his/her checked baggage shall be removed from that flight under the direction of the Airport Service Supervisor on duty."[24] An earlier draft of CP Air's Security Program, produced in 1974, also included the requirement to offload checked baggage when a passenger who had checked in decided not to travel. In that draft, however, this provision was included under the plan's checked baggage security measures.[25]

It is unclear whether this measure was meant to impose a requirement for general passenger-baggage reconciliation, but it does seem to apply perfectly to the circumstances of "M. Singh" and "L. Singh," who checked in and checked bags aboard their flights, but did not go to the departure gate to board (such passengers are referred to in the aviation industry as "no show" passengers).[26] CP Air was certainly aware of the immense value of this security measure in preventing acts of sabotage. Moreover, during the 1980s, CP Air implemented passenger-baggage reconciliation at major airports during threat situations. Transport Canada noted that the reconciliation system worked well, and that it ensured that no checked baggage would be loaded aboard the aircraft until it was confirmed that the passenger it belonged to was also aboard.[27]

In an August 1985 letter to the Vancouver Airport detachment of the RCMP, CP Air's Passenger Service Manager insisted that, prior to the bombing, all CP Air flights were "…reconciled to ensure that all passengers had boarded."[28] With respect to the two June 22nd flights, however, this statement is incorrect. Two passengers had not boarded their respective flights, and yet their failure to board apparently prompted no action on CP Air's part. Their bags were not offloaded prior to departure, and no attempt was made to notify Air India.

Industry Practice

Wallis testified that the airlines relied on one another for a large variety of complex transactions, including booking passengers from one airline to another and ground handling at different locations. For this reason, the industry had agreed upon a set of recommended practices and procedures that all the carriers could rely on.[29] Many of these practices and procedures were contained within the IATA *Airport Handling Manual*,[30] along with documents such as the IATA Interline Traffic Agreement.[31]

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24 Exhibit P-101 CAF0761, p. 3.
25 Exhibit P-101 CAF0557, p. 6.
26 Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4341.
27 Exhibit P-101 CAF0637, pp. 6, 18.
28 Exhibit P-101 CAF0691.
29 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4393-4395.
30 Exhibit P-158.
31 Exhibit P-159.

T.N. Kumar of Air India testified that he believed Air India was entitled to expect that CP Air would comply with section 4.1.5 of the IATA *Airport Handling Manual*'s recommended practices, which provided that, under normal conditions, air carriers should ensure that all baggage loaded onto a flight, aside from expedited baggage, belonged to passengers who were travelling on the flight itself.[32] Moreover, according to Wallis, "…if one was receiving passengers and baggage from one airline, you would assume that the recommended practices were in fact being followed by that carrier. It was more than an act of faith ... it was a commercial agreement."[33]

Rajesh Chopra, Air India's Manager for Canadian Operations, also testified that, when "M. Singh" was issued a boarding pass by CP Air and checked his bag aboard Flight 060, in keeping with the IATA agreements and industry practice, CP Air should have provided a passenger transfer manifest to Air India advising of a connecting passenger and baggage. Instead, Air India received "no intimation" of either a connecting passenger or of baggage coming to Pearson airport.[34] On that same point, Kumar testified that he could not find any record of such a manifest/memorandum in his records.[35] Wallis testified that the use of passenger transfer manifests between airlines was "spasmodic" in 1985, but was certainly good practice and good customer service.[36] Had Air India received a passenger transfer manifest indicating that "M. Singh" had not boarded CP Air Flight 060, but that his checked bag was aboard, Air India would have offloaded the bag.[37]

Additionally, CP Air was remiss in failing to notify Air India of the fact that neither "L. Singh" nor "M. Singh" had boarded their flights. Chern Heed of the *CATSA Act* Review Advisory Panel testified that it should have been obvious to CP Air that when Flight 060 departed, the passenger known as "M. Singh" was not aboard. According to Heed, the practice at the time meant that Air India should have been alerted to the fact that "M. Singh" was a "no show."[38] Neither the *CATSA Act* Review Advisory Panel nor Commission counsel could find any indication that this had been done.

Similarly, the IATA *Interline Passenger Reservations Procedure* provided that:

> [W]henever a passenger is known to be a no-show on a flight of a Member, such Member shall promptly recommend cancellation of all space of which it has knowledge, and shall indicate the reason for recommendation of cancellation … provided that any onward carrier so notified may cancel or not as it elects.[39]

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32 Exhibit P-158, p. 3.
33 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4394-4395.
34 Testimony of Rajesh Chopra, vol. 37, May 31, 2007, pp. 4390-4391.
35 Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4392.
36 Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4392.
37 Testimony of Rajesh Chopra, vol. 37, May 31, 2007, pp. 4403-4404.
38 Testimony of Chern Heed, vol. 36, May 30, 2007, pp. 4327, 4352.
39 Exhibit P-159, p 26.

At best, Air India's systems indicated that there was one waitlisted passenger from CP Air Flight 060 at Pearson. Wallis testified that, in 1985, airline reservation systems were linked by a well-established, industry-owned system, and that this allowed the reservation systems to communicate with each other instantly. This is how Adams was able to repeatedly verify that "M. Singh" did not have a reservation for Air India Flight 181/182. Wallis confirmed that what was lacking at that time, unfortunately, were the linkages between the airlines' reservation systems and their departure control systems.[40] Additionally, according to Chopra, Air India did not make a practice of keeping a waitlist manifest at the airport. Air India relied instead on a passenger name list, composed of the names of confirmed passengers. Consequently, "M. Singh" was simply a "ghost passenger,"[41] whose existence was unknown to Air India personnel at the airport. Further, as discussed in the following section, Air India had no systems in place to detect the ownerless, interlined bag. This meant that the bag entered Air India's baggage system without notice.

Conclusion

In its report, the *CATSA Act* Review Advisory Panel wrote about a number of "human failures" that contributed to the bombing of Air India Flight 182.[42] As the Panel noted, even complex systems, such as an aviation security program, cannot account for every situation. At some point, individuals must make decisions based on their own judgment and experience. These decisions, however, will be affected by the human failings that impact upon better judgment, such as stress, fatigue, anger, inattention, and prejudice. Thus, the CP Air passenger agent relented in the face of an adamant, loud passenger and a long and growing lineup, and checked the "M. Singh" bag for interlining to Delhi.

Other failures also contributed to the flawed handling of this interlined bag. The regulatory regime and security awareness culture were both starkly deficient in this period, and actions took place in the context of strong pressure to please customers and a subdued attention to security. CP Air failed to comply with its own security plan and took no steps to remove the bag checked by "M. Singh" when he did not board the aircraft. It also failed to comply with industry practice and did not inform Air India of the "no show" passenger. Additionally, neither Air India nor the government agencies had informed the other airlines of the threat to the airline in June 1985, resulting in few people having any reason to believe that the situation was other than "business as usual".

One individual making a very human mistake resulted in a bomb being loaded aboard Air India Flight 182. As discussed throughout this Report, however, a myriad of regulatory, policy, and organizational failures contributed to this mistake and also prevented the bomb from being detected and removed.

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40 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4399-4400.
41 Testimony of Rajesh Chopra, vol. 37, May 31, 2007, pp. 4397-4398.
42 Exhibit P-157, p. 68.

5.1 Unaccompanied Bag "Infiltrated" Air India's System

When CP Air Flight 060 arrived at 4:20 PM at Pearson, the bag of "M. Singh" was offloaded by a CP Air ground handling crew with the other articles of checked baggage aboard. It was the only bag to be interlined from this flight to Air India.[43] A driver from Consolidated Aviation Fuelling and Services (CAFAS) picked up the bag at Terminal 1, and delivered it to Air Canada personnel at Terminal 2.[44] From there it was sent on to Air India's baggage handling area for security screening by X-ray.[45] From the perspective of the CAFAS driver and the ground handling personnel, the interlined bag would have appeared perfectly normal and commonplace.[46] It had a valid tag, and Air Canada had been given no information about the threat to Air India or special instructions on how to handle interlined bags.

Interlined baggage was a common and foreseeable fact of life for any airline, and the bag checked by "M. Singh" was not the only interlined bag that was loaded aboard the Air India aircraft *Kanishka* at Pearson. According to a manifest for Flight 181 that was compiled by investigators after the bombing and included in the Canadian Aviation Safety Board's submissions to the Kirpal Inquiry, twenty-one other passengers from connecting flights out of Saskatoon, Winnipeg, Edmonton and Vancouver boarded the aircraft at Pearson, along with their checked bags.[47] "M. Singh" was the only standby passenger out of this list of connecting passengers. Accordingly, it is almost certain that all of their checked bags would have been tagged for interlining to Air India as per industry practice, and then sent to Air India's baggage handling area from the connecting Air Canada flights.

The Air India security program prescribed actions regarding baggage handling according to either "normal" or "emergency" conditions. Under normal conditions, item 4.1.1 of the Air India security program stated that "…unaccompanied baggage must be associated with bona fide passengers and documents before it is boarded." Under the program, emergency conditions applied in situations involving danger or threat to a specified flight or series of flights over a specific period, and the emergency measures were to be taken "…when increased or heightened security is warranted."[48] The emergency measures of Air India's security program were applicable in June 1985.[49]

The emergency measures of the Air India security plan, intended for a high threat level, imposed the following additional requirements:

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43 *R. v. Malik and Bagri*, 2005 BCSC 350 at paras. 23-25.
44 Exhibit P-167, p. 7.
45 Exhibit P-283, Tab 32, p. 3.
46 Testimony of Rodney Wallis, vol. 41, June 6, 2007, pp. 5024-5025.
47 Exhibit P-167, p. 5.
48 Exhibit P-284, Tab 68, pp. 17, 21.
49 See Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4406.

> a) …ensure that only the bona fide baggage carrying a valid baggage tag with a pre-determined code number is loaded into the container or in the aircraft.
>
> b) The baggage trolleys carrying baggage to the aircraft shall be escorted.
>
> c) All unaccompanied baggage shall be held over for 24 hours prior to dispatch or shall be subjected to 100% examination.
>
> d) Checked-in baggages [*sic*] belonging to "No Shows" shall not be loaded into the aircraft.
>
> e) All unaccompanied baggage shall be inspected physically or held for 24 hours prior to forwarding.[50]

T.N. Kumar of Air India testified that the interlined baggage for "M. Singh" was not "unaccompanied," from the perspective of Air India, but "unauthorized."[51] An "unaccompanied" bag was a bag that the airline was aware of and that was associated with a travelling passenger, such as a bag that had been misdirected at the airport and flown to its owner's destination on a later flight.[52] Because Air India had not received a passenger transfer manifest indicating that a waitlisted passenger was arriving from a connecting flight with checked baggage, it only passively received the interlined bag via Air Canada's ground handlers. In this instance, Air India had no information in its own system to indicate that the "M. Singh" bag was present and being loaded aboard Flight 182.

The "unauthorized" entry of the "M. Singh" bag into Air India's baggage system does not absolve Air India of its responsibility for failing to detect and remove the bag. Under the *Foreign Aircraft Security Measures Regulations*, Air India was required to design a security program that would prevent bags, goods and cargo from being placed aboard one of its aircraft unless authorized by the owner or operator.[53] Its program did not address the threat posed by interlined bags. The very fact that an "unauthorized" bag could be placed aboard the aircraft without Air India's knowledge is evidence of that system's failure.

Air India identified "no show" passengers by matching the number of coupons collected against the number of boarding cards issued. If a passenger failed

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50 Exhibit P-183, Tab 68, p. 21.

51 Testimony of T.N. Kumar, vol. 37, May 31, 2007, pp. 4406-4407. See also Testimony of Rodney Wallis, vol. 37, May 31, 2007, p. 4408. This is discussed in detail in Section 2.3.3 (Pre-bombing), Over-Reliance on Technology.

52 Exhibit P-168.

53 *Foreign Aircraft Security Measures Regulations*, S.O.R./76-593, s. 3(1)(f).

to board, they would be paged at the gate and, if they did not report, their luggage would be offloaded.[54] Aside from this step, however, Air India made no other attempts to ensure that only checked baggage belonging to travelling passengers came aboard the flight. Had Air India implemented passenger-baggage reconciliation for its flights in June 1985, the "M. Singh" bag would almost certainly have been removed.

5.2 No Dogmaster on Duty at Pearson and Mirabel International Airports

Air India's operations at Pearson and Mirabel were under a state of high alert in June 1985. Due to the mounting threat of violence from Sikh extremists seeking to target Indian interests and symbols in Canada, Air India had requested and received additional security coverage from Transport Canada and the RCMP for the month of June. The RCMP had, in fact, decided that the threat to Air India was so great that it had imposed level 4 security measures, its second highest airport security level, for Air India's operations at Pearson during the entire month.[55] This security level had already been imposed for Air India's operations at Mirabel, and had been at that level for over a year by the time of the bombing.[56]

The RCMP airport security levels were set out in an RCMP checklist that had been developed at Mirabel in 1983, and specified the applicable security measures for given levels.[57] According to J.B. ("Joe") MacDonald, the RCMP officer at the Airport Policing Branch at RCMP Headquarters who set airport security levels in 1985, the checklist was used as a national standard.[58] Levels 3 and 4 mandated the use of the RCMP explosives detection dog team.[59] This level entailed the presence of the explosives dog detection team to search the passenger section of the aircraft, as well as any suspect luggage, prior to departure. The explosives detection dog unit would also be used in circumstances of a so-called "specific threat," during which the dog would also sniff all of the luggage, spread out on the tarmac, and all bags would be matched to the passengers on the aircraft.[60] The RCMP dog handler generally had the final say on how the dog would be deployed.[61]

On June 1, 1985, Air India's head office in Bombay sent a telex to Air India stations around the world, specifically warning of the possibility of time-delayed explosive devices being placed aboard Air India aircraft or in checked baggage.[62] The telex called for the meticulous implementation of anti-sabotage measures for all Air India flights, recommending that explosives detection dogs and

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54 Exhibit P-283, Tab 26, p. 2.
55 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2787-2789.
56 Exhibit P-101 CAC0528, p. 10.
57 Exhibit P-101 CAA0025.
58 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2765-2766.
59 Exhibit P-101 CAA0025.
60 See Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime, for further discussion of these threat-response protocols.
61 Exhibit P-101 CAC0310, p. 16.
62 Exhibit P-101 CAA0185.

electronic explosives detection devices be used to screen checked baggage in light of the threat. The message also recommended random physical searches of checked bags, especially where explosives detection devices were not available. A few days later, Air India sent a follow-up telex advising that these measures should be applied for the entire month of June.[63]

As the *CATSA Act* Review Advisory Panel noted in its report, the use of explosives detection dogs was a particularly effective means of finding explosives concealed in the airport terminal building, on aircraft, in baggage and cargo, and outdoors.[64] A study conducted after the 1976 Olympic Games concluded that a combination of an explosives detection dog and a search team was 92 per cent accurate in finding hidden explosives.[65] The dogs did have limitations, however, such as the requirement for rest breaks after 20 to 30 minutes of searching, and the need for continual training and testing.[66] Nevertheless, the explosives detection dogs were a proven and well-used resource, with no match to be found among the technological tools available at the time. Explosives detection dogs were readily capable of locating such explosives as dynamite, nitroglycerine, TNT, RDX, Semtex, DNT, and plastic explosives.[67] Even today, explosives detection dogs are an effective tool and are more affordable than many of the sophisticated detection systems available.[68]

There were a small number of canine units available that were trained to identify explosives at airports in Canada in 1985. Most of the teams were from the RCMP, although some police forces also employed explosives detection dog teams. The teams were principally used to search the terminal building and aircraft for explosive devices during bomb threats, and to check unattended bags and other suspicious packages left in the terminal building.[69] An airline could also call on the dog team if it found a suspicious piece of checked baggage.[70] Finally, the Panel noted that in the event a specific threat against a flight was received, the entire plane would be emptied of both passengers and baggage, and the dog would be brought in to sniff the baggage spread out on the tarmac.[71]

The threat of explosives concealed aboard aircraft or in the airport buildings was becoming of increasing concern in 1985. Gary Carlson, who was an RCMP Constable and dogmaster at Pearson airport between November 1983 and November 1985, testified that, at the time of the bombing of Air India Flight 182, he and his dog, Thor, would answer approximately 100 calls a year to search for explosives at the airport.[72]

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63 Exhibit P-101 CAA0205.
64 Exhibit P-157, p. 25.
65 Exhibit P-101 CAC0517, p. 3.
66 Exhibit P-157, p. 25.
67 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3016-3017.
68 Testimony of Rodney Wallis, vol. 41, June 6, 2007, p. 5006. In comparison, the extensive flaws of the PD4, the explosives detection device used by Air India on June 22, 1985, are explored in detail in Section 2.3.3 (Pre-bombing), Over-Reliance on Technology.
69 Exhibit P-157, p. 25.
70 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2996.
71 Exhibit P-157, p. 25.
72 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 2988-2989, 3005.

On June 22, 1985, however, the RCMP explosives detection dog teams for the detachments at Pearson[73] and Mirabel[74] airports were away at a training course in Vancouver. In fact, all of the RCMP bomb dogs from across the country were there. The RCMP and the Sûreté du Québec (SQ) had an arrangement to supplement each other's explosives sniffer dogs at Mirabel in case one was not available. Pearson, on the other hand, had only one dog available in June 1985.[75] The RCMP's operational manual for major incidents, disasters and emergencies at Pearson recommended that when the Pearson dog team was unavailable and the use of an explosives detection dog was required, the Mirabel RCMP team should be considered as a replacement.[76] As the Mirabel team was also unavailable, Pearson had no coverage on June 22, 1985.

Carlson also testified that there were no other dogs available to replace him when he and his dog, Thor, left for the training course:

> There was no other bomb dog in the area from Peel Regional to Toronto Metro. Back in those days, Toronto Metro didn't even have dogs. So that was not a possibility and Peel Regional did not have bomb dogs. They had four dogs and they didn't have bomb dog capability. So the only provision was then set out through our policy that we would utilize hand search teams and the use of Peel Regional Bomb Squad to assist in any suspicious – or packages that might come up or any package we deemed might be an explosive device.[77]

Carlson and Thor flew to Vancouver on the morning of June 21, 1985, just a day before the bombing. Carlson agreed with the proposition put to him on cross-examination that Pearson was not as safe when he and Thor were absent.[78]

Searches for Explosives

Normally, Carlson was on call for the RCMP whenever suspicious packages or bags were found, or an airline required additional assistance. Carlson testified that he had been called to search the interior and contents of large planes like the Boeing 747 before, giving the example of bomb threats that had been made against Wardair flights in the 1980s. Carlson and Thor would be called in to check the plane for explosives once it returned to the airport and taxied to a secure zone.[79] The emergency protocol required the passengers to be taken off the aircraft and bused to a secure terminal.[80] In following these protocols, Carlson

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73 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 2999.
74 Testimony of Serge Carignan, vol. 26, May 9, 2007, p. 2665.
75 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 2989-2990, 3018.
76 Exhibit P-101 CAC0310, p. 16.
77 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 3000.
78 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3007, 3013.
79 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3005, 3020.
80 This is discussed in detail in Section 4.3 (Pre-bombing), The Role of the "Specific Threat" in the 1985 Threat-Response Regime.

would enter the aircraft and have Thor search the interior, while the ground crews unloaded the luggage and the hand search team arranged the luggage on the tarmac in a series of rows to facilitate the dog's subsequent search of the bags.[81]

Once he and Thor had finished searching the most likely locations in the interior of the aircraft, which took approximately half an hour, they would proceed to the luggage. Carlson would encourage and motivate Thor during the searches by hiding "dummy" samples of explosives for the dog to find. While he and Thor examined the baggage, the RCMP hand search teams would go aboard the aircraft and finish searching the areas of the cabin that were less accessible to the dog, such as the overhead cabins.[82] Finally, the passengers would return and claim their bags. Claimed baggage would be loaded back aboard the aircraft, while unclaimed bags would be considered suspect and removed.

Carlson was asked how he and Thor would have conducted a search for explosives if they had been at Pearson on June 22, 1985, and had been asked to search the checked baggage for Air India Flight 181/182 in light of the failure of the X-ray machine.[83] He testified that, as outlined earlier, he would have required that the flight's luggage be unloaded from its containers for Thor to inspect. He said:

> A flight of this magnitude, and I would assume a 747 would have roughly 400 passengers on it, everybody carrying roughly two pieces of luggage, with 800 pieces of luggage, that would require a space of approximately three feet between each piece of luggage for Thor to wind his way through. Utilizing any air currents, all the detection, he'd be detecting any odours coming out of these suitcases. So it wasn't a matter that we could go to the luggage cart and go through it, nor could we utilize any air currents from a dog walking on the suitcase.
>
> Often you see drug dogs being able to utilize that; the scent comes out much better. So that wasn't an option due to safety reasons. He requires a lot more time. So we would have to find an area that's long enough for him to wind his way through, working upwards of 100 to 125 bags at a time, and then he'd be required to rest, which would take him say 20-25 minutes to work that luggage, to do it thoroughly, and then he'd require time to rest, and then he'd be able to do another say 125 bags again.[84]

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81 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 3020.
82 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3020-3021.
83 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 3001.
84 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3001-3002.

When asked what would have happened had he been called knowing that a large part of the baggage had been X-rayed, Carlson said he would not have felt it necessary to search those bags and would have concentrated on the bags that had not been scanned. Assuming 50 per cent of the bags had been screened by security employees using the X-ray machine, with 50 per cent of the bags remaining, he testified, "I'm guessing an hour-and-a-half to two hours quite possibly, yes." Carlson noted that the search would have taken even less time if one assumed the plane was not completely full at Pearson, since it was picking up more passengers at Mirabel.[85] Carlson also said that he would have had more time to search as a result of the delay caused while a fifth engine pod[86] was being mounted onto the wing of the aircraft.[87]

On cross-examination, Carlson further clarified that it would have taken him "…less than 20 minutes" to examine the 60 to 70 pieces of baggage that were estimated to have not been checked by X-ray.[88]

Hand Search Teams as a Replacement

Carlson agreed that, given that level 4 security measures were in effect at Pearson, and that this called for the use of the dogmaster, additional steps would have been necessary to minimize the security consequences of his absence.[89] In the absence of the Pearson explosives detection dog team, the options were to call in the Mirabel team or, as prescribed in the RCMP operational manual, to use "hand search teams".[90]

Carlson testified that he and Detective Fred Lemieux of the Peel Regional Police Force had trained a number of RCMP personnel to locate explosives devices, but not to handle them or defuse them.[91] The hand search teams would be available to assist in searches during every shift if the need arose. They participated in searches of the aircraft interior, and of suspicious packages. Carlson testified that, in his two years at the airport, the hand search teams had never searched the checked baggage for a flight.[92]

There was some confusion as to the precise role of the hand search team on the part of one witness, but the evidence is that hand search teams did not open checked baggage.[93] Dale Mattson, Pearson's Manager of Safety and Security in

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85 In fact, 202 passengers boarded at Pearson for the flight to India, with the remaining 105 joining at Mirabel. See Exhibit P-164, pp. 36, 43.

86 The aircraft had a lengthy delay at Pearson because of difficulties encountered in mounting a fifth engine pod to its wing. The engine had failed on a prior flight and was being returned to India for servicing. Several crates of engine parts were also loaded aboard. It took longer than expected to complete the loading and installation.

87 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 3002.

88 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 3018.

89 Testimony of Gary Carlson, vol. 28, May 15, 2007, p. 3007.

90 Exhibit P-101 CAC0310, p. 16.

91 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3023-3024. See also Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.

92 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3000-3001.

93 This is discussed in Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.

1985, testified that the hand search teams were, instead, special constables who were trained to work in conjunction with the dog. Their job would be to arrange the luggage for the sniffer dog to meander through in searching for explosives, and to search the cabin of the aircraft. They would also be used in passenger-baggage reconciliation efforts, during which they arranged the luggage along the tarmac to be identified by the passengers. As noted earlier, once the dog had cleared the bags and passengers had claimed all their baggage, any unclaimed baggage would then be removed. When asked whether the hand search teams actually opened and searched luggage, Mattson replied, "No, they do not."[94]

In the absence of the explosives detection dog, then, the hand search team would be called upon only to search the interior of the aircraft and to line up the checked baggage to be identified by the passengers,[95] in a form of passenger-baggage reconciliation.[96] As with other passenger-baggage reconciliation systems, any unclaimed baggage would be treated as suspect.

Air India, conversely, had conducted manual searches of checked baggage in the past. In June 1984, Air India was under threat of attack from Sikh extremists[97] that was very similar to the threat in June 1985. In response, the Station Manager at Mirabel implemented physical searches of checked baggage for the next three weekly flights. A sniffer dog was also called in for use and made available to search for explosives hidden within the lockers, baggage, cargo, and aboard the aircraft.[98] Air India did not use X-ray machines for screening checked baggage at that point, and it is sadly ironic that the allure of expedient searches, made possible with technological tools, ruled out any apparent interest in conducting the manual searches again. Chern Heed of the *CATSA Act* Review Advisory Panel testified that searches of checked baggage conducted by carriers were time-consuming undertakings,[99] making the prospect highly unattractive, if quick and easy methods (even if unproven or unreliable), such as X-ray machines and PD4 explosives detection devices, were available.

Had Air India contacted the RCMP on June 22, 1985, seeking the assistance of the explosives detection dog or the hand search team, and the RCMP had agreed to provide the assistance of the hand search team in the absence of a specific threat, good use could still have been made of their services. The act of matching passengers to baggage alone would have singled out the bag checked in at Vancouver International Airport by "M. Singh". As an unclaimed bag, it would have been treated as suspicious and handled accordingly.

Air India headquarters had recommended random physical searches of checked baggage for the month of June 1985, and the airline was remiss in failing to implement these searches at Pearson and Mirabel. The Commission

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94 Testimony of Dale Mattson, vol. 29, May 16, 2007, pp. 3222-3223.
95 Testimony of Dale Mattson, vol. 29, May 16, 2007, p. 3250.
96 See Section 4.6 (Pre-bombing), RCMP Implementation Deficiencies in the Threat-Response Regime.
97 Exhibit P-101 CAF0161.
98 Exhibit P-101 CAF0161, p. 2.
99 Testimony of Chern Heed, vol. 36, May 30, 2007, p. 4340.

heard evidence that manual searches of luggage would have been much more effective if the inspection included the disassembly of electronic devices, given that a search of bags might only reveal an apparently innocuous device such as a stereo tuner that would not necessarily hint at the bomb hidden within. Air India was, in fact, aware that explosives could be concealed in this manner. It was already common in 1985 for terrorists to conceal bombs in seemingly innocent electronic devices such as radios.[100] An Air India telex dated April 22, 1985, warned about a threat from Sikh extremists and recommended that special attention be given to cameras, electronic equipment and parcels during searches of carry-on baggage, as explosives could be "cleverly hidden" within them.[101]

Additionally, the statement of Dorothy Gilbert, the Burns International Security terminal manager at Pearson, indicated that, in the spring of 1985, Ashwani Sarwal had instructed her to ensure that the Burns employees were on the lookout for unusual boxes and bags.[102] She recommended that the Burns personnel actually click the shutter release buttons of cameras as well as turn on all radios to ensure that these worked and were not being used to conceal explosives. Sarwal liked the idea, and the searches had been conducted accordingly for each flight in the three weeks prior to the disaster. Had Air India instructed Burns Security to open and search 25 to 30 per cent of its checked baggage as directed, it would have been possible that even a well-hidden explosive device would not have been overlooked. Although it would actually have been unwise to physically test objects that potentially contained explosives, a search of checked baggage by Burns personnel could have flagged suspicious items to be drawn to the attention of the authorities.

Decision to Send All Explosives Detection Dogs Away at Once

On June 23, 1985, as news of the bombing of Air India Flight 182 reached a stunned nation, Carlson and Thor were recalled back to Pearson.[103] It is regrettable that they were taken away from their duties at Pearson in the first place.

Air India was under a heightened alert for the entire month of June, 1985. In fact, it was under the RCMP's second-highest alert level. MacDonald testified that in light of the threat level in place, he would be "…very surprised if they then let the dog go on training." He did not feel that the team should have been sent away under those circumstances, unless there was a backup dog available from the local police force of jurisdiction, as was done with the SQ dog at Mirabel.[104]

Additionally, Air India only had flights out of Pearson and Mirabel once a week, on Saturdays. Carlson and Thor departed for British Columbia on the morning

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100 Testimony of Rodney Wallis, vol. 37, May 31, 2007, pp. 4416-4419.
101 Exhibit P-284, Tab 50.
102 Exhibit P-101 CAF0801.
103 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3011-3012.
104 Testimony of J.B. MacDonald, vol. 27, May 14, 2007, pp. 2875-2876.

of Friday, June 21st, leaving the next day's flight without any coverage. Carlson testified that he would likely have informed his superior of the fact that he would be attending the upcoming training conference sometime in the period of one month to six weeks in advance, at a time when Air India was not under such a heightened alert at Pearson.[105] By the time the conference approached, however, the security situation had changed considerably.

With the RCMP's level 4 security measures in place at Pearson, it was necessary to have an explosives detection dog available. It was unreasonable to send the only available explosives detection dog away one day before the next Air India flight. Although the dogs required continual training, the high alert set for Air India's operations at Pearson and Mirabel ought to have weighed heavily against sending the dog teams away when there was no possibility of a backup unit for Pearson.

Pearson's RCMP detachment sent a telex to RCMP headquarters on June 23, 1985, advising that, in light of the bombing, the explosives detection team had been recalled. The RCMP was also providing additional uniformed personnel at the airport to deal with any suspicious persons at the check-in counters, as well as to provide support to air carrier security personnel.[106] The telex added that the detachment was considering requesting the provision of a second explosives dog team, and subsequent documents indicate that, by June 26, 1985, that request had in fact been made, and the second explosives detection dog was already being used at the airport.[107] This raises the natural question: if the training of one or more of the dog units could be suspended to meet emergency needs after the bombing, why was it not done before the bombing?

In July 1985, the continuing tense security situation meant that the RCMP explosives detection dogs were now frequently used; a report from Mirabel stated that the volume of bomb threats and suspicious bags had reached the point where the dog was fast approaching the limits of its ability to work.[108] In fact, the Airport General Manager wrote to Transport Canada headquarters and stated that another dog would be required. He added that just one of eight X-ray machines required for examining checked baggage had been delivered, and that, in light of the circumstances, he required the additional units as soon as possible. This is a good indication that the small number of explosives detection dogs available in 1985 was not sufficient to meet the needs of civil aviation security during periods of threat, and warranted the training and deployment of additional dog teams to meet such needs and serve as backups in the event that the threat level increased and existing teams were overtaxed.

Air India Did Not Request Searches

At a January 1985 meeting convened by Air India, Transport Canada and RCMP officials met with Mahendra Saxena, Air India's Senior Security Officer, to discuss

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105 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3013-3014.
106 Exhibit P-101 CAF0557, p. 44.
107 Exhibit P-101 CAF0676, p. 3.
108 Exhibit P-101 CAF0687, p. 2.

the airline's pending operations out of Pearson. Saxena expressed great interest in the use of an explosives detection dog for inspecting checked baggage, and stated that Air India would like to have the RCMP explosives detection dog examine Air India's checked baggage prior to each flight. Mattson replied that Transport Canada was not prepared to grant this request. He indicated that the explosives detection dog could be used if Air India found a suspicious bag. He added that if the dog did not detect any explosives, the police would still open the bag. If the dog did detect explosives, it would likely be necessary to evacuate the area.[109]

Air India's security program called for the use of an X-ray machine at Pearson and at Mirabel to examine checked baggage for explosives before any bags would be loaded aboard their aircraft. Air India also employed an electronic explosives detection device, the PD4, and used it as a backup if the X-ray machine was broken or not available.[110] Carlson was present at the January 18, 1985 demonstration of the PD4 and witnessed the device's remarkably poor performance.[111] Carlson and the other police officers present expressed their lack of confidence in the effectiveness of the device to the Air India representatives present. Carlson emphasized that he and his explosives detection dog Thor would be available at any time to check all suspicious bags.

The next day, Carlson conducted an impromptu test while the PD4 was being used by Burns International Security employees to screen checked baggage for Air India's first flight out of Pearson airport. It totally failed to detect a sample of plastic explosives. Carlson offered his services and those of Thor to the Burns personnel. In a statement made to investigators after the bombing, he indicated that his orders were to comply with any Air India requests for the use of the dog.[112] Carlson was always eager to obtain work for Thor and gain as much experience as possible. Despite his offers to help, Carlson was never asked to assist with any Air India flights between its inaugural flight from Toronto on January 19, 1985 and the day of the bombing.[113]

On June 22, 1985, at approximately 4:45 PM, the X-ray machine being used by Burns personnel to search Air India's checked baggage for explosives malfunctioned.[114] By the time of the malfunction, approximately 50 to 75 per cent of the checked baggage had been examined by X-ray. John D'Souza, the Air India Security Officer, learned of the malfunction while making his rounds. He directed the Burns officers to use the PD4 to screen the remainder of the checked baggage for explosives, providing only a cursory demonstration of its use.[115] No bags were opened and searched manually, despite Air India headquarters having specifically called for this measure to be taken for all flights in June,[116]

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109 Exhibit P-101 CAA0118, p. 4.
110 Exhibit P-101 CAA0119, p. 1.
111 Exhibit P-101 CAC0268, p. 2.
112 Exhibit P-101 CAC0268, p. 2.
113 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3006, 3019.
114 Exhibit P-157, p. 37.
115 Exhibit P-101 CAF0143, p. 3.
116 Exhibit P-101 CAA0185.

and despite a spring 1985 warning from the Government of India to all Indian airlines to be vigilant in applying anti-sabotage measures. In fact, the spring 1985 message specifically urged that 25 to 30 per cent of all checked bags be opened and searched, even when X-ray machines were used for screening.[117] There is no evidence that D'Souza requested the use of an explosives detection dog or that he notified the RCMP of any difficulties with the X-ray machine. He does not mention taking either action in his written statements for the RCMP investigation after the bombing.[118] D'Souza is now deceased.

There is some evidence that the PD4 may have reacted loudly to one bag in particular.[119] The Burns employees had never used the device before, however, and their unfamiliarity with it meant that they were not in a position to understand what the noises it made may have indicated. Although some of the Burns employees stated that the device "beeped" at certain points, it always made some noise, and such sounds required interpretation. Their lack of experience rendered them incapable of appreciating that any noises from the device could be significant warning signs. In any case, the bag in question was cleared for loading aboard the *Kanishka* because it did not cause the PD4 to make the same loud, piercing noise that it had when D'Souza lit a match to demonstrate how it worked.[120] The Burns personnel did not mention this bag until after the bombing, when RCMP investigators asked about Air India's checked baggage screening at Pearson.

Delays at Mirabel

When Air India Flight 181/182 arrived at Mirabel at 9:10 PM on June 22, 1985, it was one hour and 25 minutes behind schedule.[121] The delay was due primarily to the mounting of the fifth engine pod to be returned to India for repairs. Despite these delays, there was no thought given to using this additional time in the high threat environment to conduct more rigorous searches of the bags or to reconcile each bag to a travelling passenger. To the contrary, the focus was to reduce the delay and minimize the expense of the additional fees that were accruing to Air India.

D'Souza and another Air India official left Pearson and travelled to Mirabel aboard Flight 181.[122] On arrival, they were informed that three suspicious bags had been found by Burns employees screening checked baggage by X-ray.[123] None of the passengers were called to come and identify the bags, even though this response was called for by Air India's security program.[124] Additionally, no one

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117 Exhibit P-101 CAC0419, p. 5.
118 See Exhibit P-101 CAF0093 and CAF0531.
119 See, for example, Exhibit P-101 CAF0159, p. 3. See also Section 2.3.3 (Pre-bombing), Over-Reliance on Technology.
120 Exhibit P-101 CAF0159, p. 3.
121 Exhibit P-101 CAB0434, p. 4.
122 Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde, discusses the events at Mirabel Airport on June 22, 1985.
123 Exhibit P-101 CAF0093, p. 4.
124 Exhibit P-101 CAA0118, p. 2.

at Air India notified the RCMP about this discovery although Mirabel had an SQ explosives detection dog unit available. By the time the RCMP were aware of the suspicious bags, Air India Flight 182 had departed. There is evidence suggesting that Air India's concerns over the high costs and passenger inconvenience incurred by delays were a factor in the decision to clear Air India Flight 182 for departure without taking further security precautions.[125]

The SQ dog team arrived after the flight's departure and examined the three suspicious bags left off the plane. The explosives detection dog, Arko, did not detect any explosives in the bags. Arko's handler, Serge Carignan, has been haunted by the tragedy. He testified that he believed that if he had been called in earlier and given an opportunity to inspect the unaccompanied checked baggage aboard Flight 182, that the bomb would have been found.[126]

Although Carlson should have been called in prior to each Air India flight from Pearson during the month of June, 1985 to search the cabin of the Air India aircraft prior to the flight's departure, when asked whether he had been called in for any of those flights during that month (when the level 4 security measures that stipulated the dogmaster should be utilized were in effect), Carlson testified: "I specifically remember not being required to be there for those flights."[127] Similarly, Carignan, who was the SQ dogmaster filling in at Mirabel on June 22, 1985, testified he had not been called in to search any Air India aircraft.[128]

Conclusion

It is not clear whether Air India personnel had been made aware of the absence of the explosives detection dog from Pearson airport on June 22, 1985, or whether this fact had any impact on the decision not to seek assistance from the RCMP when the X-ray machine at Pearson failed. There can be no doubt, however, that Air India should have given serious consideration to doing so. Air India wasted a genuine opportunity to prevent the bombing by failing to take the prudent actions that were called for in light of the severe threat the airline faced, such as conducting manual searches of checked baggage and passenger-baggage reconciliation. For its part, the RCMP did Air India a grave disservice by sending its only available explosives detection dog away during a period of severe threat to the airline.

5.3 Lack of Surveillance of Air India Aircraft

The heightened threat faced by Air India in June 1985 demanded constant vigilance from Air India, Burns International Security, and the RCMP. The airline had been directed by its head office to implement meticulously a stringent list of anti-sabotage measures,[129] and had requested, and received, additional

125 See, for example, Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3122, 3129.
126 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2669, 2671, 2678.
127 Testimony of Gary Carlson, vol. 28, May 15, 2007, pp. 3026-3027.
128 Testimony of Serge Carignan, vol. 26, May 9, 2007, pp. 2671-2672.
129 See Exhibit P-101 CAA0185.

assistance from the RCMP in protecting its aircraft and airport operations. Gary Clarke, who in 1985 was in charge of Protective Policing at O Division in Toronto, testified that the threat to the airline could not have been much higher that June.[130]

Due to the threat of sabotage and hijacking, the physical protection and surveillance of Air India's aircraft were as important to the safety of each flight as checked baggage security and pre-board screening. In fact, the emergency procedures for Air India's security program dictated that the aircraft should be guarded around the clock.[131] There is no doubt these emergency procedures were applicable in June 1985,[132] but they were not always observed. One example of this faltering attention occurred on the evening of June 8, 1985, when the Air India flight arriving at Pearson encountered engine trouble. The aircraft could not continue its flight to Mirabel, so it was towed to an Air Canada hangar area and left for 24 hours. For the entire period, the aircraft was left unguarded in an area accessible to the public.[133]

Prior to the bombing of Air India Flight 182, the security awareness culture in North America was marked by complacency.[134] The incidence of hijacking had greatly decreased since the 1970s and, although a new threat of sabotage had clearly emerged, airport personnel were complacent about it. A pervasive feeling that "it cannot happen here" flourished. The threat was at a peak in June 1985, but, on the day of the bombing, the lack of focus and direction among those charged with keeping Air India's aircraft and passengers safe was still evident. Security at Pearson airport was lax in many significant respects.[135] One of the lapses centred on the fact that many of those providing security at Pearson, as well as at airports around the country, were inexperienced, inattentive, incompetent or unfocused. What was missing was a purposive approach to providing security. Many security guards and RCMP officers went through the routine of providing security, without being focused on what they were guarding against or for what they should be alert.

Brian Simpson was a student working full-time for Air Canada that summer and, when reporting for work, on June 22, 1985, he saw the recently arrived *Kanishka*. He testified that, as a cabin cleaner, he was driven by curiosity to go aboard Flight 181/182 to see the condition of such a large plane after a long international flight. He admitted that he was not supposed to be inside the aircraft, and that he would not have approached the aircraft if he had seen any RCMP officers or security guards nearby. He saw no one, however, and emphasized that the relaxed security environment was such that there would have been no repercussions or stigma had he been caught aboard the plane, even by his own supervisor. Simpson testified that he approached the *Kanishka*

130 Testimony of Gary Clarke, vol. 28, May 15, 2007, p. 3085.
131 Exhibit P-284, Tab 48, p. 20.
132 Testimony of T.N. Kumar, vol. 37, May 31, 2007, p. 4406.
133 Exhibit P-101 CAC0439, pp. 3-4.
134 See Section 2.4 (Pre-bombing), Security Culture at Canada's Airports.
135 This is discussed in detail in Section 1.9 (Pre-bombing), Mr. Simpson's Visit to the Air India Aircraft.

through the airside corridor, and that when he boarded the plane he saw no one guarding the bridge door, or the main entry door of the aircraft, and he saw no guards or other personnel inside the aircraft. He wandered about and eventually visited the cockpit, where he took a seat in the captain's chair. He was aboard for approximately 10 minutes.[136]

Simpson saw nothing suspicious or out of the ordinary; he voluntarily reported to the Commission about the events of that day, as he was critical of the very lax attitude towards security at the time. He testified that the secure door combinations were widely known, had not been changed in many years, and were easy to figure out.[137] He had even seen door codes for various bridge doors written on the wall near the lock.

Simpson's testimony was corroborated by a written statement from one of the CP Air Flight Kitchens employees, Vincent Ezoua.[138] Ezoua noted that, as he was going upstairs to the first class area of the plane on the day of the bombing, he saw a young man coming down the stairs whom he had never seen before. Aside from Ezoua, however, no one present and providing security that day noted any unauthorized persons. There were no systems in place for Air India flights to record who boarded an aircraft or for what reason. If we accept the argument that the Burns guards or RCMP members were present at the aircraft door or the bridgehead, it is difficult to understand why he was not challenged. Simpson stated that he often kept his pass in his pocket instead of displaying it as required, yet was not asked for it. He had been questioned about his ID only twice in the twelve years he worked at the airport, starting in 1973. He was not assigned to work aboard the flight, and should not have been allowed aboard, but he blended into the background and escaped notice.

5.4 Air India Personnel – Confusion about Duties

The action and inaction of Air India officials with respect to the high threat level against the airline in June 1985, the malfunction of the X-ray machine at Pearson airport on June 22, 1985, and the discovery of three suspicious bags at Mirabel later that day, were events that were exacerbated by "organizational chaos"[139] within the airline's reporting structure. The confusion is highlighted in an RCMP investigative status report, dated January 6, 1986, which states, "A number of discrepancies exist in the statements of Vaney and other senior Air India personnel, and it appears that no airline employee was prepared to accept the position and responsibilities of airport manager on the date in question."[140]

Air India's station manager for Pearson and Mirabel airports in 1985 was Ashwani Sarwal. From the time Air India had begun operations in Canada in 1982, Sarwal was the representative most frequently in contact with Transport Canada and

136 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3641-3643, 3645, 3649.
137 Testimony of Brian Simpson, vol. 32, May 23, 2007, pp. 3643, 3651-3652, 3677, 3691.
138 Exhibit P-395, p. 74.
139 Final Submissions of Raj Anand on behalf of Lata Pada's group, paras. 38-45.
140 Exhibit P-101 CAF0537, p. 7.

RCMP officials. He frequently forwarded security intelligence reports to both agencies. On June 22, 1985, he was away on vacation.[141] In his absence, a number of Air India officials were present at both airports that day. Even today, there is great confusion about who was ultimately in authority. It is clear from the statements and testimony of those involved that few of the key Air India employees were certain of their responsibilities or those of their colleagues, and each made assumptions about what the others were doing. Once the bombing occurred, blame was rapidly passed back and forth for decisions made that day, and those involved denied that they were the ones responsible for, or capable of, making the security decisions required.

Air India Organization

Rajesh Chopra, Air India's Duty Officer at Delhi airport in 1985, testified that Air India's organizational structure in 1985 was roughly as follows.[142] Ramesh Puri was Air India's Canadian Manager, supervising Canadian operations. He reported to Air India's Regional Manager in New York. Mahendra Saxena was Air India's Security Manager, based out of John F. Kennedy (JFK) Airport in New York. There was no security manager in Canada. John D'Souza was an Air India Security Officer who reported to Saxena. He was responsible for Air India's flights out of New York and the once-weekly flights from Canada. Aswhani Sarwal was the Air India station manager for Mirabel; he was also responsible for Pearson airport. Herb Vaney was Air India's Area Sales Manager in Toronto. Divyang Yodh was Air India's Passenger Service Supervisor at JFK airport. He was on duty at Pearson and Mirabel airports on June 22, 1985, replacing Sarwal.[143] Derek Menezes was the Air India Area Sales Manager in Montreal.[144] Finally, Jainul Abid was the Air India Traffic Manager and Sales Representative on duty at Mirabel airport on June 22, 1985.[145]

John D'Souza

John D'Souza was on duty at Pearson and Mirabel on June 22, 1985.[146] He provided a written statement to the RCMP after the bombing in which he admitted he had been assigned to supervise the security measures taken at Toronto for Flight 181/182. In his capacity as Security Officer, he made the decision to have Burns personnel use the PD4 to examine Air India's checked baggage when the X-ray machine at Pearson failed. He stated that he had asked Vaney whether it was possible to have the machine repaired, and was told that, because it was a weekend, no service would be available until the coming Monday.[147] After giving a cursory demonstration on the use of the PD4 to the Burns personnel

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141 Exhibit P-167, pp. 6, 19.
142 Testimony of Rajesh Chopra, vol. 37, May 31, 2007, p. 4390; Testimony of Rajesh Chopra, vol. 43, June 14, 2007, pp. 5330-5332, 5335 and Testimony of Rajesh Chopra, vol. 89, December 5, 2007, p. 11730.
143 Exhibit P-101 CAF0442, p. 2.
144 Exhibit P-101 CAF0793.
145 Exhibit P-101 CAF0092, p. 3.
146 Exhibit P-101 CAF0531.
147 Exhibit P-101 CAF0531, pp. 2-3.

at Pearson, D'Souza then travelled to Mirabel aboard Flight 181. There, he was met by Abid, who informed him of three suspicious bags that had been found by Burns personnel.[148] It was D'Souza who decided that the bags would not be loaded aboard the flight and, according to the testimony of Daniel Lalonde, made the decision to clear the flight for departure because of his concern over the high costs incurred by the growing delay.[149]

In his written statement to the RCMP, however, D'Souza indicated that it was Vaney who was ultimately in charge of Air India's operations as the station head on June 22, 1985.[150] Moreover, with respect to the three suspicious bags incident at Mirabel, D'Souza minimized his role in the decision to clear Air India Flight 182 for departure without notifying the RCMP or having the passengers deplane to identify the suspicious bags. He stated that the decision to allow the plane to take off was made jointly by Abid, Yodh, Thimiri Rajendra (the Air India engineer who supervised the installation of the fifth engine pod), and the Air Canada duty officer and his staff. D'Souza emphatically disavowed any personal responsibility for the decision, insisting that he felt that, even before he had arrived at Mirabel and assessed the situation, the decision to clear the flight had already been made. D'Souza stated that he believed Abid had made up his mind not to conduct any searches for explosives or hold up the flight any further since the flight was so delayed.[151] This should be contrasted with Lalonde's testimony that D'Souza was very concerned about the expenses incurred by the delayed flight, and his decision to clear it for departure in light of those concerns.[152]

D'Souza also made no attempt to contact the owners of the bags and have the bags identified because they were already on their way to the aircraft, "…and could not have been brought back easily."[153] This statement is problematic in light of the following facts. D'Souza's statement would only be accurate if he and Yodh had not heard about the suspicious bags until after the passengers had already departed for boarding. In fact, Abid indicated in his statement that, after the aircraft had arrived at Mirabel (or was "on block"), he and Yodh accompanied the passengers to Air India Flight 182 aboard a passenger transfer vehicle (PTV). This is important because Yodh, who had come up from New York and arrived on the Air India flight from Pearson with D'Souza, was present when Abid advised D'Souza of the suspicious bags at the Air Canada counter.[154] As such, it can only be the case that the passengers boarded the aircraft *after* Yodh and D'Souza had arrived and spoken with Abid at the Air Canada counter. D'Souza therefore knew of the suspect bags *before* the passengers were sent to the aircraft aboard the PTV.

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148 Exhibit P-101 CAF0093.
149 See, for example, Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3122, 3129.
150 Exhibit P-101 CAF0531, p. 5.
151 Exhibit P-101 CAF0093, pp. 13-14.
152 See Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.
153 Exhibit P-101 CAF0093, pp. 4-5.
154 Exhibit P-101 CAF0092, pp. 4-5.

Chopra testified that between D'Souza and Yodh, D'Souza was responsible for the security side of Air India's operations. Yodh, as the acting airport manager, was ultimately responsible for the decision to release the aircraft for departure, but this decision required the approval of D'Souza as the security officer.[155]

D'Souza acknowledged in his written statement that he had the authority to recall the aircraft and could have done so if he believed there was anything harmful aboard. In spite of the suspect suitcases and the strict security measures that he had been asked to implement for the month of June, D'Souza did not recall the aircraft because he had no suspicion that there was anything harmful on the flight.[156] Given the events at the airports that day and the prevailing security conditions, it is difficult to comprehend how he could have had no suspicion of potential danger to the aircraft or its passengers.

D'Souza is no longer alive to provide clarification. The fact remains that he did not take any steps to have the passengers identify their bags, and his explanation for his failure to do so is inconsistent with the evidentiary record.

Herbert Vaney

Herbert Vaney was Air India's Area Sales Manager for Toronto in 1985. He reported to Puri.[157] The statement Vaney provided to the RCMP gave an entirely different account of Air India's hierarchy on the day of the bombing. According to Vaney's statement, no one employed by Air India reported to him that day. He stated that they would instead report to the acting airport manager, namely Yodh. Vaney was clear in asserting that Yodh was in charge at Pearson airport that day.[158] In his testimony, Vaney again disputed the statements made by the other Air India representatives that he was in authority on the day of the bombing. Vaney testified that he was normally preoccupied with his duties in sales, which he described as promoting tourism to India, as well as "…trying to obtain business in the Indian community and the general administration of the Toronto office."[159]

Vaney contradicted Yodh's 1985 written statement that he (Vaney) was in charge on June 22nd and had the final say on security decisions.[160] Vaney also disputed the assertion, made by Air India Traffic Sales Representative Rui Filipe de Jesus in his 1985 written statement, that Vaney was the individual "overall in charge" that day.[161] Vaney reiterated that he had nothing to do with security decisions.

According to Vaney, he did not deal with security information as part of his duties, although in the spring of 1985 he forwarded a number of reports regarding

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155 Testimony of Rajesh Chopra, vol. 89, December 5, 2007, pp. 11730-11731, 11733-11734.
156 Exhibit P-101 CAF0093, p. 14.
157 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11625.
158 Exhibit P-101 CAF0533, p. 5.
159 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11624.
160 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11666.
161 Exhibit P-101 CAF0530.

Air India's security to different Canadian agencies. His testimony was that he had a very passive role in security matters when they arose, describing himself as merely a "conduit" of threat information.[162] He indicated he had standing instructions from Saxena to forward threat information to the concerned agencies. Although Vaney indicated he had been provided with a standard list of addressees,[163] his correspondence was not routed consistently, and it seems more likely that he would forward the threat reports on a case-by-case basis.[164]

Vaney represented Air India at a number of meetings discussing security for the airline. Vaney testified that he attended these meetings whenever he was told to, but did not believe it was a part of his duties to attend security-related meetings that were held in Toronto.[165] He attended the meeting held on January 18, 1985 with members of Transport Canada, the RCMP and the Peel Regional Police Force to discuss Air India's security requirements for its flights out of Pearson, and to demonstrate the PD4 explosives detection device. [166] The PD4 performed poorly during the demonstration, and the police officers present indicated to Sarwal and Vaney that they did not feel Air India should rely on it to search checked baggage. Although he did not dispute that he was there, Vaney did not recall being at the January 18, 1985 demonstration of the PD4 sniffer, and did not recall any discussion about the efficacy of the device.[167]

Vaney oversaw some matters at the airport as well. When the X-ray machine used by Air India to screen checked baggage malfunctioned on June 8, 1985, Vaney obtained service from Corrigan Instrumentation Services, and sent a telex to Puri to follow up on their telephone conversations and advise him of the technician's findings.[168] He stated that the foot mat on the X-ray machine had four breaks in its electrical wiring and the wiring would need to be replaced. He advised Puri that he had authorized the repairs to ensure that the X-ray would be ready for the next flight on the coming Saturday.

Vaney was at Pearson airport on June 22, 1985, when the checked baggage X-ray machine again malfunctioned during the examination of baggage destined for Flight 181/182. Vaney recalled in his testimony that D'Souza approached him and Yodh at the airport to inform them of what had happened. D'Souza confirmed that there was no one available to service the machine on the weekend. Vaney testified that he would not have taken part in any discussion about security or what to do next. He only recalled that D'Souza informed Yodh and himself of the malfunction, and that D'Souza indicated he would have the remainder of the checked baggage screened with the PD4.[169] There was no discussion at that time of the PD4's considerable limitations, and both D'Souza and Yodh were very matter-of-fact about the situation.

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162 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11632.
163 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11632.
164 The erratic distribution of such information from Vaney's office is discussed in detail in Section 4.4 (Pre-bombing), Failures in Sharing of Information.
165 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11628-11630.
166 This is highlighted in Section 2.3.3 (Pre-bombing), Over-Reliance on Technology.
167 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11651, 11687-11688.
168 Exhibit P-284, Tab 61.
169 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11651-11656.

Vaney also attended a meeting convened by the RCMP on May 30, 1985. The meeting was called to discuss the security measures that would be required in light of the string of telexes forwarded by Air India. But Vaney did not recall being there and indicated that this was not his usual function.[170]

It is unclear why Vaney, if his evidence is accurate, was involved in security matters for Air India at all. He testified that he was not regularly briefed on security, and was not familiar with Air India's security program or its current security measures.[171] He also did not follow up with the agencies to ensure that appropriate action was being taken. When asked why he was being directed to forward threat information to the authorities, given that it seemed to be more properly Sarwal's role, Vaney replied:

> Oh, he would probably do it also. You have the [Toronto] station over here, an administrative function and in this case, during that period, I guess more was better than less.… Why one would pass it on? I see nothing wrong with it. This is part of the task, the administrative task one has to do.[172]

Some Air India officials may have assumed that Vaney had a more active role in airport matters, however, and may even have expected him to take on a leadership or managing role. For example, Vaney sent a telex to Air India's New York office on June 18, 1985, indicating that he had learned that Sarwal, who managed the flights at Pearson and Mirabel each week, would be away.[173] Sarwal would thus be unavailable for the June 22nd flight, and Vaney requested that someone be assigned to fill in as the airport manager for that flight. Although he received a reply on June 20th from a Mr. Misra indicating that Yodh would be arriving to handle the June 22nd flight, he also received a reply on June 21st from N. L. Mital, the New York-based Regional Director for the US and Canada, which conveyed apparent frustration with Vaney's request:

> Vaney as advised earlier please confirm that you are attending our flight every Saturday at airport. Furthermore I personally feel that it is not necessary for us to send a supervisor from JFK every Saturday. We commenced operations to Pearson on January 19, 1985 and you now should be fully conversant with airport handling/procedures, etc. If you still feel unsure then I would be happy to arrange for you to come down to JFK for two or three days and get a suitable briefing from Mr. Misra to help you in handling the one flight a week which you have.[174]

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170 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11629-11630.
171 Testimony of Herbert Vaney, vol. 89, December 5, 2007, pp. 11646-11647.
172 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11644.
173 Exhibit P-101 CAF0533, p. 9.
174 Exhibit P-101 CAF0533, p. 8. Note that the text of the telex is abbreviated in some places (e.g. "PLS" for "please" and "ACK" for "acknowledge") and the quoted passage has been rendered in plain language.

In fairness to Vaney, he was not trained in security procedures and was kept very busy with sales in Toronto. He testified that 75 per cent of Air India's 1985 Canadian sales revenue came from the Toronto market.[175] Vaney maintained that his duties at the airport were confined to sales, promotion, public relations and general administrative duties. Chopra described Vaney's duties similarly.[176] Vaney testified that it was his opinion that Mital was asking him to go to the airport to engage in public relations work for the flight,[177] although this seems at odds with the tone and content of Mital's message. Indeed, Vaney testified that Mital's remarks with respect to "airport handing/procedures" actually referred to the duties normally assumed by the airport manager. This suggests that Mital believed there was no need to send someone to replace Sarwal because he expected that Vaney was, by that point, "fully conversant" with the procedures.

After the bombing, Vaney's role continued to involve more duties than merely sales, public relations, and office administration. For example, he requested a report from Corrigan Instrumentation Services, the company that provided maintenance for the X-ray machine at Pearson, regarding its malfunction on the day of the bombing.[178] This again suggests Air India's personnel based in Canada would take on multiple roles as needed.

What can be concluded with respect to Vaney is that, even though his duties were focused on sales and promotion rather than airport operations or security, he was asked, and expected, to do more. The Air India officials outside Canada in all likelihood viewed him as a Toronto-based counterpart to Sarwal. Air India apparently expected him to juggle competing priorities and fill multiple roles, despite the fact that he had little practical knowledge of the demanding security requirements for Air India's flights. Conversely, Vaney maintained that his understanding was that he was not in a position of final authority on June 22, 1985, and that Yodh was filling in as airport manager.

These conflicting expectations are good examples of the organizational confusion within Air India as it strove to meet the heavy operational burden of expanding its services to a second major Canadian city.

Divyang Yodh

The statements given by Divyang Yodh to the RCMP investigators after the bombing provide yet another perspective on the organizational question.[179] Yodh indicated that he did not ordinarily work on the Toronto-Mirabel-Delhi flight. He was a passenger service agent from New York, and he replaced Sarwal at Pearson on June 22, 1985 because Sarwal was away on vacation. According to Yodh, however, his duties were limited to addressing "…any last minute problems which the crew may have regarding passengers, and traffic handling."

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175 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11674.
176 Testimony of Rajesh Chopra, vol. 43, June 14, 2007, p. 5330.
177 Testimony of Herbert Vaney, vol. 89, December 5, 2007, p. 11660.
178 Exhibit P-101 CAF0529.
179 Exhibit P-101 CAF0442 and CAF0795.

Despite the fact that he was at Pearson and Mirabel to replace Sarwal, he stated that he was nevertheless not in charge at Toronto, and that he answered to Vaney.[180] When asked who from Air India was performing Sarwal's duties on that day, Yodh replied that he did not know. He reiterated his belief that Vaney was responsible for Air India's operations in Toronto on that day, and stated that if he had any problems at Mirabel, he would discuss them with Derek Menezes, who he stated "…was the senior man at the Mirabel airport."[181] He was clearly unwilling to accept having any position of responsibility with respect to Air India Flight 181/182. In fairness, an RCMP overview of the various accounts from the Air India officials suggested that it was possible that when he was told to go to Toronto, Yodh had not been told he would be filling in for Sarwal as airport manager, and instead assumed he would perform the duties he had performed in the past.[182]

Jainul Abid

According to the statement made by Jainul Abid to the RCMP, he was on duty on June 22, 1985 at Mirabel as Air India's Traffic and Sales Representative. In addition to sales, his responsibilities included preparing boarding passes, supervising the check-in counter, allocating seats for pre-arranged seating, updating meal information, attending to VIPs and supervising the flight's loading plan for baggage and cargo. He also assisted Yodh, who he stated was in charge of the departure of Flight 182.[183]

At approximately 8:30 PM, Abid was informed by an Air Canada representative that the contents of three checked suitcases could not be identified on the X-ray machine being used by Burns Security in the baggage area, and that they were, accordingly, being treated as suspicious. Abid decided to wait for Yodh and D'Souza to arrive at Mirabel and let them take any action that was needed. Abid informed Yodh and D'Souza about the situation when they arrived at the airport, but, to his knowledge, neither Yodh nor D'Souza reported to the police or airport officials about the three suspect cases containing unidentifiable objects.[184] Abid himself did not advise the RCMP[185] or any other officials about the three suspect suitcases.[186]

In his testimony about the events at Mirabel on June 22, 1985, Abid stated that, normally, he worked at Air India's offices in downtown Montreal conducting sales, but went to Mirabel once a week to fulfill traffic duties for each flight. When the three suspicious bags were found, Abid was the only Air India representative at the airport.[187] In keeping with the multi-tasking environment seemingly expected of Air India officials, Abid testified that in the absence of the other officials, he would perform their tasks in addition to his own until they arrived.

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180 Exhibit P-101 CAF0442, p. 2.
181 Exhibit P-101 CAF0795, pp. 2-3.
182 Exhibit P-101 CAF0802, p. 1.
183 Exhibit P-101 CAF0092, p. 3.
184 Exhibit P-101 CAF0092, pp. 5, 7.
185 Exhibit P-101 CAE0249, p. 8.
186 Testimony of Jainul Abid, vol. 89, December 5, 2007, pp. 11719-11721.
187 Testimony of Jainul Abid, vol. 89, December 5, 2007, pp. 11694-11695.

Abid acknowledged that Sarwal's absence added some confusion to the handling of the flight, however, and that he was not certain about precisely what would be expected of him until the others arrived. He did not take any action with respect to the suspicious bags other than having them held off the aircraft. He believed that Burns security would handle the matter appropriately until D'Souza arrived. He told the Commission that Yodh also mentioned "in passing" that the X-ray machine at Pearson had malfunctioned.[188]

Abid professed no part in the decision to hold the bags off the flight without having them identified by the passengers or in the decision to clear the flight for departure before the authorities were notified. In particular, he rejected the assertion made in D'Souza's written statement that he had any part in the decision to allow Flight 182 to depart.[189] He reiterated that, as the station manager that night, Yodh was the decision-maker. According to Abid, his only involvement was to confirm the passenger head counts and confirm that there were not any "no show" passengers at Mirabel.

Abid also disputed D'Souza's assertion that he had made up his mind not to search the aircraft even before D'Souza had arrived at Mirabel. Abid's view of the Air India hierarchy at Mirabel was that Yodh had final authority over the flight, and D'Souza was responsible for all security decisions concerning the flight. He believed that it would have been up to D'Souza to notify the RCMP or Transport Canada about the situation. As far as his own place in Air India's reporting structure, Abid repeatedly denied that he had any role in the decision-making process. In essence, his testimony was that he was told what to do by the airport manager, and he did it.[190]

Ashwani Sarwal

Ashwani Sarwal's statement provides some clarification. It indicated that Yodh was filling in for him at Mirabel, along with the Air India Area Sales Manager at Mirabel, Menezes. When asked by the RCMP who the "boss" was at Pearson airport on June 22, 1985, Sarwal replied "Mr. Vaney."[191] This may mean that Vaney was in charge at Pearson, while Yodh, who flew to Mirabel with D'Souza, may have been the acting manager in conjunction with Menezes at Mirabel. This is a speculative scenario but it is one that makes some sense of the conflicting evidence.

Sarwal also stated that security supervision was not a part of the airport manager's duties, and that this was the responsibility of Air India's local security officer. On the Air India flights to Mirabel and Delhi on June 1 and 15, 1985, the security officer was a Mr. Polanki.[192] On June 22, 1985, the security officer was John D'Souza.

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188 Testimony of Jainul Abid, vol. 89, December 5, 2007, pp. 11696-11697, 11704-11710.
189 Testimony of Jainul Abid, vol. 89, December 5, 2007, pp. 11699-11701.
190 Testimony of Jainul Abid, vol. 89, December 5, 2007, pp. 11701-11702, 11711-11712.
191 Exhibit P-101 CAF0534, pp. 4-5.
192 Exhibit P-101 CAF0534, pp. 6, 8. The Air India flight on June 8, 1985 did not proceed to Mirabel because of an engine malfunction that resulted in the engine being removed and loaded aboard Flight 181/182 on June 22, 1985.

Derek Menezes

Just as Vaney was the Area Sales Manager at Toronto, Derek Menezes was Air India's Area Sales Manager for Eastern Canada at Montreal. According to his 1985 statement to the RCMP, Menezes stated that Yodh was replacing Sarwal as airport manager at Mirabel for the June 22, 1985 flight. Menezes stated that Yodh was responsible for traffic handling for the flight, which comprised the check-in of passengers and baggage, the loading of baggage, cargo and mail onto the aircraft, as well as approving the load and balance charts that indicated the weight distribution in the aircraft, and, finally, for overseeing the catering service. According to Menezes, security matters for the flight were the responsibility of the security officer, D'Souza.[193] Menezes added that, to the best of his knowledge, a security decision made by the security officer could not be overridden by the airport manager.

As for his own role, Menezes stated that he was present at the airport for a purely public relations function, as well as to provide assistance to Yodh.[194] He stated that he was completely unaware of the three suspicious bags that had been found by Burns personnel on June 22nd, and he did not go into the baggage handling area or aboard the aircraft.

Conclusion

Despite the confusing and often contradictory information regarding Air India's organization in the spring of 1985, a basic picture emerges as to the most likely organizational structure that existed on June 22, 1985 – or, at least, as to the structure that was intended. Air India seemed to believe that Vaney was a capable substitute for Sarwal as airport manager in Toronto. His duties were certainly broader than sales and public relations, and he often filled a role played by Sarwal, such as attending security meetings and forwarding threat intelligence to Canadian authorities. Moreover, the correspondence from Mital at New York indicates that much was expected of him. Nevertheless, at Vaney's request, Yodh was sent to assist him at Pearson in Sarwal's absence.

D'Souza was in charge of security operations at both Pearson and Mirabel, and although he answered to the airport manager, he evidently made the security decisions regarding the use of the PD4 and the handling of the three suspicious bags, and his concurrence seemed to be essential for other major decisions, such as the decision to clear Air India Flight 182 for departure.

When the *Kanishka* departed Pearson airport on the evening of June 22, 1985, D'Souza and Yodh were aboard. Vaney remained at Pearson. On arrival at Mirabel, D'Souza continued his duties as security officer. Yodh, now in conjunction with Menezes, oversaw the operations for the final leg of the flight as airport manager.

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193 Exhibit P-101 CAF0793, pp. 2-3.
194 Exhibit P-101 CAF0793, p. 3.

Nonetheless, Air India's reporting structure was poorly defined and confusing. While it is possible that some of the confusion is the result of various attempts to deny any of the blame for the poor decisions made on June 22, 1985, the evidence suggests that the Air India officials present that day were unclear as to who was actually in charge. The RCMP investigators who interviewed the Air India representatives even considered the possibility that "…it may well be that no one was acting in this capacity [as airport manager] on 85-06-22 through poor communication and/or misunderstanding of the assigned duties."[195]

The Air India representatives were expected to fill multiple roles as needed, and this led to increased confusion as to the final lines of authority. In that confused state, the airline's officials were unwilling to accept any of the responsibility or the blame for the poor security decisions made that day, and in the aftermath of the tragedy, they further clouded the picture in their efforts to absolve themselves and spread the responsibility to others.

5.5 Breakdown of the X-ray Machine and Use of the PD4

Owing to the risk of sabotage that Air India faced because of increased Sikh extremist activity and worrisome intelligence reports, particularly since the attack on the Golden Temple in June 1984, Air India's security program required that its checked baggage be searched prior to loading onto the aircraft. This was to minimize the risk of a concealed explosive device making its way onto a flight.[196] Air India relied upon Burns Security personnel at Pearson and Mirabel for these searches.

Air India's backup for the X-ray machine was the Graseby Dynamics PD4-C (PD4) explosives detection device, a hand-held electronic unit that examined air samples for explosive vapours. The PD4 was supplied by Air India and it was under its control when not in use.[197] Security personnel would pass the device along the seam of a piece of luggage and the device would, in principle, make a loud, high pitched noise if it detected explosive compounds. Prior to relying on the X-ray and PD4, however, Air India responded to bomb threats by simpler but more time-consuming methods, such as manually opening and searching each article of checked baggage before it would be loaded onto the aircraft. Air India had done so with success on prior occasions, including three flights in June 1984.[198]

The PD4 was a flawed device that should not have been relied on to detect explosives under any circumstances.[199] Tests conducted by the RCMP[200] revealed that the PD4 was unreliable and inadequately sensitive for the critical role it was expected to play in Air India's security. Two Air India officials, Ashwani Sarwal and

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195 Exhibit P-101 CAF0802, p. 1.
196 Exhibit P-101 CAF0119.
197 Exhibit P-101 CAF0801, p. 3.
198 Exhibit P-101 CAF0161, p. 2.
199 This is discussed extensively in Section 2.3.3 (Pre-bombing), Over-Reliance on Technology.
200 Exhibit P-101 CAC0268, p. 2.

Herbert Vaney, were present at one demonstration. After witnessing the poor performance of the PD4, the RCMP cautioned Air India against the use of the PD4.[201] Nick Cartwright testified that laboratory tests conducted by the RCMP also indicated that it was unreliable and unsuitable for use.[202] Another expert, Timothy Sheldon, concluded in 1988 that it was not effective as anything other than a deterrent.[203] While it could charitably be said about the PD4 that using it when the X-ray malfunctioned or was unavailable was "…certainly better than not doing anything,"[204] in reality it was appreciably worse because it imparted a false sense of security.

When the X-ray machine malfunctioned at Toronto airport on June 22nd, the Air India security officer, D'Souza, instructed the Burns personnel to use the PD4 sniffer, despite the fact that Air India was aware of the device's shortcomings in detecting explosives.[205] Air India did not notify the RCMP or Transport Canada of the failure of the X-ray machine, or of their decision to use the PD4 to screen the remaining checked baggage. The Air India flight was running over an hour late, and there is evidence that D'Souza's decisions that day were the result of a focus on avoiding any further expensive delays.[206] The flight was being held up due to a series of difficulties encountered in loading engine parts into the aircraft's cargo hold and mounting a fifth engine on its wing. The engine and its components were to be taken back to India for repairs.

D'Souza had demonstrated the PD4 in a cursory fashion by holding a lit match near the device, causing it to react by making a loud, shrill noise. As noted above, the Burns security officers were not otherwise experienced with the PD4, and did not realize that its alarm sound varied in pitch depending on the concentration of explosive vapour detected.[207]

There are conflicting accounts of what happened once the X-ray scanner failed and Burns security personnel began using the PD4 sniffer to inspect checked baggage. After the bombing, James Post, the Burns employee who used the PD4, stated that the PD4 did not react to any baggage, but that it made a "beep" when switched on and off.[208] Other Burns personnel who were present told RCMP investigators that the PD4 did react to a bag by making noise, but that the bag was put aboard the aircraft anyway.[209] The Burns employees' unfamiliarity with the PD4 and its inherent unreliability meant that any opportunity to avert the bombing by examining checked baggage was squandered when its use was authorized. A much more effective technique, known as passenger-baggage reconciliation, involved linking each bag to a passenger travelling on the aircraft

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201 Exhibit P-101 CAA0369, p. 2.
202 Testimony of Nick Cartwright, vol. 42, June 13, 2007, pp. 5108-5109.
203 *R. v. Malik and Bagri*, 2005 BCSC 350 at para. 30.
204 Testimony of Nick Cartwright, vol. 42, June 13, 2007, p. 5152.
205 Exhibit P-101 CAF0531, p. 3.
206 See Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.
207 Exhibit P-410.
208 Exhibit P-101 CAF0156, p. 2.
209 Exhibit P-101 CAF0159, p. 3.

before it was loaded aboard. [210] This was a time-consuming method, but it was without doubt the single most effective means of identifying an unaccompanied checked bag, such as the one carrying the bomb that destroyed Air India Flight 182. Such a system might well have segregated the bag carrying the bomb, as no passenger would have been associated with it.

After the bombing, the cause of the X-ray machine's failure was not fully determined, but the most likely reason was that the device was moved back and forth each week as Air India prepared for the Saturday flight. This movement was criticized as "unwise at best" by the president of the company that serviced the X-ray machine.[211]

Air India relied on technological tools like X-ray machines and PD4 sniffers to speed the screening process for checked baggage despite having good reasons to doubt their reliability and effectiveness. When the X-ray machine failed, Air India's security officer opted to have the remainder of the baggage screened by PD4 rather than by slower but more effective methods like passenger-baggage reconciliation. A theme that repeats throughout this Report is that Air India was overly concerned with the expenses and customer inconvenience caused by delay. It was not alone in this regard; many air carriers in North America placed customer satisfaction ahead of security in this period.[212] The bombing of Air India Flight 182 was the tragic wake-up call for an entire industry.

5.6 Handling of the Three Suspect Bags Incident at Mirabel

Daniel Lalonde, who worked for Burns International Security at Mirabel in 1985, was assisting with the examination of checked baggage by X-ray on June 22nd. Lalonde testified that, during the screening process, three bags were flagged as suspicious because their contents could not be identified on the X-ray image. This suggested that they might contain explosive devices. Lalonde was present when the suspect bags were found. He had no idea of who should be contacted or what to do in the case of the discovery of suspicious checked bags. He had received only limited training, and that was only in the context of carry-on baggage.[213]

When Abid, the Air India representative on duty, was informed of the bags, he had the three bags held off the flight and did nothing further. Two more Air India representatives, Yodh and D'Souza, would be arriving aboard Flight 181 from Pearson, and Abid decided to leave the matter up to D'Souza, Air India's security officer. Air India's security program required it to take specific action when suspicious bags were found. The passengers would have to be called off the plane to identify and open their bags; if the passengers could not be located,

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210 Section 2.3.3 (Pre-bombing), Over-Reliance on Technology, describes this process in detail.
211 Exhibit P-101 CAF0529, p. 3.
212 Exhibit P-157, p. 72.
213 Testimony of Daniel Lalonde, vol. 29, May 16, 2007, pp. 3120, 3136, 3139. Lalonde's observations and testimony are discussed in greater detail in Section 1.11 (Pre-bombing), The Cost of Delay – Testimony of Daniel Lalonde.

then the RCMP would have to be contacted and an explosives detection dog brought in to examine the bags. No one at Air India took either of these steps that evening.[214]

The written statement of Serge Goyer, an Air Canada employee who had been informed of the suspicious bags, stated that he had advised Abid to contact the RCMP about them. When Abid did not do so, Goyer contacted the RCMP himself at 10:00 PM and advised them about the three bags.[215] It was too late for the RCMP to assist, however, as within minutes of the call to the RCMP, Air India Flight 182 was airborne.[216] An RCMP officer, Special Constable Guy De La Boursodière, responded to the call at approximately 10:10 PM and went to the baggage room only to find, to his surprise, that the three suspicious bags – which at that point were still believed to potentially contain explosive devices – had been left unattended.[217]

RCMP Sgt. J. Normand Leblanc learned of the three suspicious bags from De La Boursodière, and he also went to the Air India baggage area.[218] Leblanc and De La Boursodière met Lalonde when he returned shortly afterwards. They requested the presence of an Air India representative, and were told that the security officer could not attend immediately.[219] At approximately 10:25 PM, D'Souza and Abid arrived.[220] The bags were run through the X-ray machine again and, as the images remained ambiguous, Leblanc asked D'Souza to have the bags identified by their owners. It was at that point that he was informed that the plane had already departed. Leblanc asked why the RCMP had not been advised of the suspicious bags much sooner, but he received no answer from either D'Souza or Abid. Leblanc decided not to have the plane recalled to the airport, however, as the suspicious bags were not aboard and they were aware of no other danger to the plane.[221] There was no discussion at this point of the failed X-ray machine at Pearson or the use of the ineffective PD4 for examining the checked baggage there.

The RCMP contacted the SQ dog handler, Serge Carignan, and requested that he and his explosives detection dog, Arko, come to the airport to examine the suspicious bags. The dog checked the bags with negative results. Carignan has been haunted by the bombing, and testified that he believed that he should have been called to search the baggage before the aircraft departed. When asked what he thought would have happened had he and the explosives detection dog Arko been able to search the unaccompanied baggage on the flight, he expressed his belief that they would have found the explosives.

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214 Exhibit P-101 CAA0118, p. 2.
215 Exhibit P-101 CAF0787.
216 Exhibit P-101 CAF0091, p. 2.
217 Exhibit P-101 CAA0226, p. 1, CAF0095.
218 Exhibit P-101 CAF0095, p. 3.
219 Exhibit P-101 CAA0226, pp. 1-2.
220 Exhibit P-101 CAF0089, p. 10, CAF0095, p. 3.
221 Exhibit P-101 CAF0095, pp. 2-3.

5.7 The Bombing of Air India Flight 182

At 07:14 Greenwich Mean Time (GMT) on the morning of June 23, 1985, Air India Flight 182 vanished from radar.[222] The Boeing 747 aircraft (known as *Kanishka*) disintegrated in mid-air, at an altitude of 31,000 feet, as a result of an explosion in its aft baggage hold. Its wreckage crashed into the ocean approximately 110 miles off the coast of Cork, Ireland. All 307 passengers and 22 crewmembers died.

The flight had entered Irish airspace at 07:06 GMT, and the flight crew engaged in routine communication with Shannon Air Traffic Control. Its last recorded communication was received at 07:09 GMT.[223] When the flight vanished from radar, Shannon Air Traffic Control sent a number of messages in the hope of re-establishing contact with the aircraft, but to no avail. At 07:30 GMT, Shannon Air Traffic Control advised the Marine Rescue Coordination Centre of the apparent loss of the flight.[224] Search and rescue operations commenced shortly afterwards, when a "PAN" urgency signal[225] directed all ships in the area to look for signs of wreckage, and, subsequently, an SOS was issued, directing them to converge on the location of the disaster for search and rescue operations.[226] The SOS message indicated that an Air India jumbo jet with more than 300 people aboard had been lost.

Wreckage was spotted by the crew of the cargo ship *Laurentian Forest*, the first of 19 vessels to arrive at the scene, at 09:13 GMT.[227] The ship was on its way from the St. Lawrence River to Dublin, Ireland, and was 22 nautical miles away from where the *Kanishka* had vanished.[228] Mark Stagg, a young officer aboard the *Laurentian Forest*, was on watch that morning when the urgency signal was received. He advised the master of the *Laurentian Forest* of the situation, and the decision was made to turn the ship around and move to the position given in the broadcast to join the search efforts. This decision was made despite the fact that the initial message had not identified the missing aircraft and had mistakenly reported its altitude as 3000 feet, giving the impression that a small aircraft had gone down into the water. Stagg emphasized that Captain Roddy McDougall made a brave decision in diverting the ship under these circumstances, as there was no obligation to do so.[229] Thankfully, he was more concerned with a potential rescue and less concerned about saving fuel and arriving at port on time. Had it been otherwise, the *Laurentian Forest* would have been much further away from the crash area by the time the subsequent SOS message was received.[230]

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222 Exhibit P-167, p. 2.
223 Exhibit P-157, p. 39.
224 Exhibit P-164, p. 5.
225 A PAN or "pan-pan" urgency broadcast is a warning of a vessel in distress but is distinct from a call of "mayday" or "SOS" in that it does not indicate that those aboard are in grave or imminent danger.
226 Exhibit P-164, p. 10.
227 Exhibit P-164, p. 63.
228 Statement of Mark Stagg, Transcripts, vol. 3, September 27, 2006, p. 330.
229 Statement of Mark Stagg, Transcripts, vol. 3, September 27, 2006, pp. 331-332.
230 Statement of Mark Stagg, Transcripts, vol. 3, September 27, 2006, pp. 331-332.

It was an overcast morning with intermittent rain and squalls and limited visibility. Every available hand from the *Laurentian Forest's* crew of 26 was called out to keep watch. Stagg described the crew's feeling of optimism that survivors would be found.[231] As the ship approached the last reported position of the *Kanishka*, the surface of the water grew slick with aircraft fuel and was strewn with floating wreckage. They sighted the first three bodies in the water at 09:40 GMT.[232] The *Laurentian Forest* lowered its main lifeboat for use in the recovery of bodies and wreckage and proceeded full steam ahead, its crew still hopeful of finding survivors. The enormity of the incident became apparent as the ship passed through some 30 bodies floating in the water.[233] Stagg felt sick, hit with a sense of shock and dismay. When it was concluded that there were unlikely to be any survivors, the *Laurentian Forest* altered course again. The ship turned around and returned to the location of its lifeboat, where a crew of searchers were recovering bodies and wreckage. The recovery operations in that area then continued. Sea King helicopters arrived shortly afterwards to assist, and began lowering bodies onto the decks of the *Laurentian Forest* and the *Aisling*, an Irish naval patrol ship that arrived later that morning. A number of civilian vessels joined in the search as the day wore on.

The efforts of the crew of the *Laurentian Forest*, and those of the other ships and aircraft that participated in the search and recovery mission, were heroic. Many civilians, as well as members of the British Royal Air Force and the Irish Offshore Navy Patrol, risked their lives in the recovery effort. A lifeboat launched from Valentia, Ireland, travelled far outside its normal 50-mile range to assist.[234] Several vessels were damaged by impacts with the debris during the operation, and divers from the *Aisling* repeatedly entered the frigid water despite rough seas, foul weather and a report of sharks in the area.[235] The psychological toll on the searchers was profound, with many exhibiting strong symptoms of post-traumatic stress disorder in the months and years that followed. Many have never received any form of counselling, and most continue to be haunted by the memories of the carnage they found in the water.

The recovery efforts were difficult physically, and emotionally exhausting. Not only were the conditions hostile, but the bodies were covered in fuel and very slippery. Few of those participating in the search had experience in recovering bodies from the water, and none were prepared for a task of this magnitude, working without relief or hope. Some of the bodies had been stripped of their clothing by the fall. Many showed signs of traumatic injuries, or were partially dismembered. One body was split nearly in two and had to be abandoned because it was only being held together by its intestines, and these were spilling out and entangling the rescue equipment when the RAF winchman attempted to retrieve it.[236] Understandably, the small bodies of children and infants had the greatest impact on the sailors and airmen:

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231 Statement of Mark Stagg, Transcripts, vol. 3, September 27, 2006, p. 333.
232 Exhibit P-164, p. 63.
233 Statement of Mark Stagg, Transcripts, vol. 3, September 27, 2006, pp. 333-334.
234 Statement of Seanie Murphy, Transcripts, vol. 3, September 27, 2006, pp. 270-271.
235 Exhibit P-18.
236 Exhibit P-1, p. 3.

> A winchman is lowered late morning. This is unusual. He is carrying something, and this has usually been wreckage. This time it's a baby. He is crying as he passes me this bundle. He leans his head to mine and shouts above the noise of the helicopter, "Sorry" and then he is gone. I looked down into the towel and he or she is perfect and beautiful.
>
> …
>
> I rested my cheek on the baby's head and it was cold, so cold. I didn't know what to do next. I put the baby in a plastic bag. It is six-feet long and a little soul lies at the bottom and is insignificant and I feel guilty.
>
> Sitting here now with all of you, I cannot begin to describe the utter wrongness of putting children into plastic bags. These words taste foul in my mouth and I can never escape how bad I felt then and how bad I feel now.[237]

The recovery operation continued long into the night and throughout the following day. The bodies of the victims were brought to Cork Hospital, Ireland, where a temporary morgue was assembled for post-mortem examinations and identification by family members. Despite the strenuous efforts of all those who participated in the recovery operation, the bodies of just 131 of the 329 victims of the bombing of Air India Flight 182 were recovered.[238]

Some comfort was brought to the families of the victims in their time of grief by the generosity and hospitality of the people of Cork, Ireland.[239] These people rendered all possible assistance to the recovery effort. They welcomed the families of the victims into their village and their homes. The children of Cork brought flowers for the coffins of the victims. The Commission heard many stories from the victims' family members of the great compassion shown to them as well as their feelings of enduring gratitude.[240]

5.8 The Bombing at Narita

CP Air Flight 003 arrived at Narita, Japan at 05:41 GMT on June 23, 1985, 14 minutes ahead of schedule.[241] The flight had originated in Vancouver. The airport's baggage handlers had offloaded the aircraft's baggage containers, and moved them to the baggage handling area. The baggage handlers removed all

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237 Statement of Mark Stagg, Transcripts, vol. 3, September 27, 2006, pp. 338-339.
238 Exhibit P-164, pp. 66-68.
239 Exhibit P-164, p. 193.
240 A collection of these can be found in statements within Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *The Families Remember*, (Ottawa: Public Works and Government Services Canada, 2007) pp. 93-97.
241 Exhibit D-1: Dossier 1, "Background and Summary of the Facts", p. 12.

baggage from Flight 003, and were in the process of unloading the remaining interlined bags when a bomb hidden in a bag still in the container exploded at 06:15 GMT. Two of the Japanese baggage handlers, Hideharu Koda and Hideo Asano, were killed instantly, and four others were injured. There is no doubt that the bag was intended to be loaded aboard Air India Flight 301, from Narita to Bangkok, Thailand. Had the bomb exploded while that aircraft was in flight, the results would have been the same as for Flight 182.

5.9 Conclusion

The loss of 331 innocent lives on June 23, 1985 is unforgettable. These deaths were the result of reprehensible deeds by murderous zealots. In the midst of sorrow, horror, anger and fear, however, were acts of heroism, generosity, and respect. Strangers from Canada, India, the United Kingdom and Japan worked to recover bodies and comfort the families of the victims. The goodwill and solace flowing from such acts of friendship continue to this day.