

Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182

Final Submission

January 31, 2008

“Victims of terrorist acts are denied their most fundamental human rights. Accordingly, a counter-terrorism strategy must emphasize the victims and promote their rights. In addition, implementing a global strategy that relies in part on dissuasion, is firmly grounded in human rights and the rule of law, and gives focus to victims depends on the active participation and leadership of civil society.”

- Former United Nations Secretary General, Kofi Anan¹



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¹ Report of the United Nations Secretary-General: Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy. Presented at the sixtieth session of the United Nations General Assembly on 27 April 2006. Document A/60/825.

Acknowledgments

The Canadian Resource Centre for Victims of Crime appreciates the opportunity to participate in the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182. We cannot overstate the importance of a full and open public inquiry to the victims and survivors when a large-scale tragedy such as this occurs.

Our heartfelt gratitude must be extended to all of the family members who shared their personal stories of loss, their endless grief and their continued struggle to voice the total letdown they felt from their government during Part 1 of the Inquiry. These heartbreaking stories are a very important part of Canadian history.

We look forward with great anticipation to the recommendations of the Honourable Justice John C. Major and are certain our concern for the victims and survivors of terrorism will be echoed. As an organization dedicated to public safety we, along with the families, hope to see the Commission's findings and recommendations executed promptly by the government in order to prevent future loss of Canadian life due to terrorism.

*Terrorist acts aim at demolishing democracy, human rights and fundamental freedoms. By expressing solidarity with victims of terrorism – by restoring the victims’ ability to live freely, productively and in peace - we diminish the effects of terrorist acts and in so doing undermine the terrorists’ raison d’être. Providing support and rehabilitation for victims of terrorism should therefore be an integral part of efforts to combat terrorism.*²

Background

The Canadian Resource Centre for Victims of Crime (CRCVC) believes that Canada remains largely ill-prepared to meet the needs of Canadian victims of terrorism, whether an incident takes place within or outside of this country. This belief was conveyed in the findings of the research we conducted for the federal Policy Centre for Victim Issues which was completed in March of 2007,³ and is reflected in the previous submissions that we have made to this Inquiry. We must use this Inquiry to learn from our own experiences with terrorism, as well as to learn from other jurisdictions, such as New York City/Washington and Oklahoma City. While most municipalities across Canada are focused on emergency planning and preparedness, there is little, if any, discussion about continuing assistance, access to justice, administration of justice, and compensation to victims of terrorism.

As stated in our initial submission to the Commission in January 2007, the need for pre-planning to be able to adequately respond to the short and long-term needs of people victimized by terrorism is crucial. The jurisdictions above have warned that a lack of advance coordination can hamper a smooth delivery of services to victims; that funding for responding to victims of terrorist attacks must not outstrip funding for other victim services.

In the Phase 1 Report, the Commission stated, "It is evident and admitted that the Canadian officials arrived on the scene ill-equipped and too few in numbers to adequately aid the grieving families. Although compassionate and well-intentioned, the

² Office for Democratic Institutions and Human Rights, Background Paper for High-Level Meeting on Victims of Terrorism, 13-14 September, 2007, p.4.

³ Our report entitled "Responding to the Needs of Canadian Victims of Terrorism" was submitted formally as evidence to the Inquiry on 15 June 2007.

officials had limited means and no formal plan of action.”⁴ The response by the Canadian government, no matter how well-intended was insufficient and we value the work of the Commission in highlighting this. The ‘caregivers’ who assist victims and survivors in the immediate aftermath of victimization can have a significant impact on their healing. It is our submission that caregivers must be knowledgeable about the nature of terrorism and the unique needs of victims and survivors in order to provide effective support services.

Victims of terrorism have needs similar to victims of other kinds of violence, such as the need for information, support and counselling. The nature of the terrorism, however, requires specialized service delivery. This is due to the fact that there are unique issues facing victims of terrorism, such as:

- the ongoing discovery of body parts;
- identification/misidentification of those who do not survive;
- the body or remains of loved ones never being found;
- publication of victims’ identities;
- publicizing the nature of injuries;
- reporting of trials;
- security matters;
- access to hospitals and other institutions;
- intensified reactions, complicated grief, and a number of other short and long-term psychological injuries;
- legal battles;
- the ongoing fear of another terrorist attack; and
- media speculation/intensity, which can lead to re-traumatization.

If anything, the Phase 1 Report has confirmed that it is simply not good enough to rely on the good intentions of government in the aftermath of such an attack:

“These well-meaning people were placed in an untenable position. They were somehow expected by senior Canadian authorities to respond to this emergency. They were not trained for this task. It was obvious that in 1985 Canada did not have a response team that could react to such a

⁴Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Phase 1 Report, p. 110.

massive and unexpected attack. It was equally evident that those Canadian officials who testified were sincere, and the lingering pain apparent in their testimony speaks highly of them and their good intentions.”⁵

While we believe it is crucial that the three levels of government be prepared to respond to the unique needs of terrorism victims, we must caution that,

*“by singling out victims of terrorism from victims for treatment above that ordinarily provided to individuals who have suffered harm inflicted by other causes, there may be a risk of creating unproductive distinctions between classes of victims, or even a “hierarchy of victims”. In post conflict regions in particular, such hierarchies can intensify social divisions and therefore be counterproductive. Acts of terrorism should not be rewarded with intensification of social divisions, and as such caution must be exercised when considering the types of benefits victims of terrorism may receive as compared to those granted to other types of victims.”*⁶

The families

We feel it is especially important to highlight what the families, the survivors themselves, had to say during this Inquiry. The best lessons can be learned from their very real and horrific experiences.

Upon the conclusion of Part 1 of the Inquiry, Mr. Jacques Shore, counsel for the Air India Victims Families Association (AIVFA) said on Monday, September 17, 2007:

“The sentiment that the Canadian government’s response was woefully inadequate to the victims of Air India Flight 182 bombing was a consistent theme in a testimony provided by AIVFA members. In the aftermath of Air India Flight 182 bombing, according to the testimony by AIVFA members, without a comprehensive terrorist response plan in place, the government failed to immediately establish and maintain effective informational lines of communication with families of the victims.

⁵ Ibid.

⁶ Supra note 2 at 4.

Upon arrival in Cork, Ireland, the government failed to meet and assist all families of the victims. While in Cork, government officials were unprepared to assist with all the facets of the tragedy such as the transportation of bodies back to Canada and the burials and the cremations.

The government did not communicate to the families of the victims in both official languages. The government did not offer any administrative or emotional support in the form of grief counselling or other forms of social assistance.

The government's financial compensation was insufficient and no offer of legal assistance was provided by the government to assist families in negotiating compensation.

The criminal investigation and eventual laying of charges was long, drawn out and ineffective, in addition to failing to adequately keep families of the victims informed. The government waited 21 long years to establish a Commission of Inquiry into the investigation of the bombing of Air India Flight 182.

And in the end the government failed to take any responsibility and hold itself accountable for its part in preventing the Air India Flight 182 bombing, in addition to failing to effectively investigate the bombing and prosecute those responsible for it.

The Canadian government failed to recognize the Air India Flight 182 bombing as a terrorist incident, failed to incorporate this tragic event into its collective conscience in history and, as such, the families believed that they were ignored and this tragedy was not seen as a Canadian tragedy.

Government officials were attempting to respond to a major terrorist incident without the benefit of a written guidance document of policies and procedures. The lack of documented policies and procedures may explain why the government press release with toll-free hotline information of persons in Canada to call their government with respect to the disaster was released in an untimely fashion, two days after the bombing.

In Cork, Ireland, the consular contingent was understaffed and lacked the full complement of appropriate resources and skill sets to respond effectively to the families of the victims. None of the consular officials deployed to Cork spoke Hindi, Punjabi or Urdu fluently.

In addition, the consular response did not employ a Hindu, Sikh or Muslim religious figure, capable of providing religious guidance for grieving families. This heightened the already stressful circumstances under which families in Cork were grieving.”

Mr. Shore’s summation of the testimony of the families about their treatment in the aftermath of the bombing is consistent with what we have heard directly from a number of the survivors with whom we have been in contact. The lack of support and assistance the families have received since the murder of their loved ones, has only further compounded their grief and anguish.

We fully endorse all of the recommendations made, on behalf of AIVFA, by Mr. Shore on Monday, September 17, 2007. We have summarized these recommendations, and included them with our own recommendations found at the conclusion of this document.

The prosecution of terrorism cases

Our final submission to the Inquiry will speak to the unique challenges presented by the prosecution of terrorism cases, as per the terms of reference, b (vi).⁷

Victims of terrorism are individuals who have suffered harm by unlawful acts. Criminal law and other branches of the legal system exist to prevent, punish and deter unlawful behaviour. In doing so, however, they remove from the individual both the responsibility and the right to take remedial or retributive action against alleged offenders. This removal of responsibility should not lead to negative consequences for victims, by hampering the opportunity to protect themselves

⁷ Whether the unique challenges presented by the prosecution of terrorism cases, as revealed by the prosecutions in the Air India matter, are adequately addressed by existing practices or legislation and, if not, the changes in practice or legislation that are required to address these challenges, including whether there is merit in having terrorism cases heard by a panel of three judges.

*from the offender, to obtain fair restitution, or to be fully informed about the procedures which will apply in their case. In demonstrating solidarity with victims, States should endeavour to promote, protect and fulfill the rights of individual victims during any legal proceedings relevant to their situation.*⁸

University of Toronto Professor Kent Roach has said, “Canada has had a difficult experience with terrorism prosecutions. Many of these difficulties can be related to problems in managing the relationship between security, intelligence and evidence.”⁹ We do not have legal counsel or expertise in these issues and will therefore not comment on them.

There is no doubt that the prosecution of terrorism cases presents many unique challenges, not only for the Crown in successfully prosecuting such cases, but also in terms of providing information and support to the victims who have a strong need for justice for their loved one, as well as the need to be kept informed and provided the opportunity to participate in the proceedings. Throughout Part 1 of the Inquiry, family members echoed their strong feelings that the government failed to effectively investigate the bombing and prosecute those responsible for it. As stated previously, the families felt the criminal investigation and eventual laying of charges was long, drawn out and ineffective, in addition to failing to adequately keep families of the victims informed. We feel that specific policy and/or legislation is needed to ensure the appropriate treatment of victims and survivors in such cases in the future.

1. Three judge panel

We strongly agree with the Air India Victims Family Association (AIVFA) who spoke at the Special Senate Committee on the Anti-terrorism Act, on November 21, 2005, that “a three-judge system should be used for trials of terrorism-related cases of large magnitude such as Air India 182. A decision of this magnitude should not be left to one individual.”

⁸ Supra note 2 at 3.

⁹ The Unique Challenges of Terrorism Prosecutions: Towards a Workable Relation Between Intelligence and Evidence. Executive Summary, Kent Roach, p.1.

We support the Irish three judge system, wherein “if two judges agree and one disagrees, the judgment of the two comes out as a judgment of the court.”¹⁰

2. Services Required

Research in victimology shows that victims need information, support, reparation, protection, and a chance to participate in criminal justice processes. Meeting these needs enhances their recovery from their victimization. In mass victimizations, a large group is impacted profoundly due to the level of violence, scale of victimization, and context of the crime.¹¹

Victims have a personal interest in their case. They seek recognition and validation in the criminal justice system; typically they want to be informed of the developments in their case and consulted before decisions are made. Victims want to be included in the process, not hold decision-making power.¹² To avoid disappointment or anger later on, realistic expectations and outcomes should be discussed openly.

Victim services are very necessary, if and when, a case goes to trial. We believe that the model used by B.C. Victim Services during the Air India trial was an excellent model and we understand that the families were pleased with the services and support they received for the most part.¹³ Mr. Brent Thompson, British Columbia Ministry of the Attorney General, stated on December 10, 2007,

“The importance of communicating early with family members and to ensure that they receive information, ideally before the media receives information; to provide what they need, and help them identify -- to listen to identify what they need, and to provide that kind of a service. It was an expensive proposition, but I think very important that people who had experienced a catastrophic loss had the opportunity to witness some aspect of the justice process in action, and receive an informed briefing on what was going on, to be informed about our justice

¹⁰ Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Public Hearing, Volume 94, Wednesday, December 12, 2007, p. 12497.

¹¹ Joanne Wemmers, PhD. *Reparation and the International Criminal Courts: Meeting the Needs of Victims*, Report of the workshop held January 28, 2006. p. 18.

¹² *Ibid.*, p. 13-14.

¹³ Please refer back to the testimony of Mr. Brent Thompson, British Columbia Ministry of the Attorney General, on December 10, 2007, p. 12114 and 12115 of the Public Hearings, Volume 92, who described some of the measures to keep families informed throughout the laying of charges and prosecution stages of the trial.

system, and the specific details of the case as it was unfolding in front of them, and to maintain contact before, during and after, as we've tried to do and as the RCMP continues to do now. These are all important aspects of serving people properly. Recognizing the emotional needs of people, extremely important. We had a safe haven with a shrine in it and our case management staff were very skilled in establishing relationships with people and supporting them emotionally. So these are all features, I think, that are important to remember for future cases.”¹⁴

Victims need service providers who are aware of the unique issues they face in the aftermath of terrorism. However, services and support, including any compensation offered, should not create social distinctions or a “hierarchy of victims”.

3. Victim Impact Statements

Upon conviction, it is crucial that all victims who choose to, be given the chance to read or submit their victim impact statement so that the true devastation of the crime can be appreciated by the court and outside observers of the process. Logistically, this may be more difficult in cases of mass victimization however efforts must be made to accommodate all those who wish to participate. Victims should be told that consideration of the victim impact statement by the judge is mandatory. The *Criminal Code* is clear – where a victim impact statement has been prepared, the sentencing judge must consider the statement.

Canadian principles and International laws

At a meeting on October 1, 2003 Federal, Provincial, Territorial Ministers Responsible for Justice endorsed a new Canadian Statement of Basic Principles of Justice for Victims of Crime that modernizes the statement of principles issued at their 1988 meeting¹⁵, which was based on the 1985 UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹⁶.

¹⁴ Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, Monday, December 10, 2007, Public Hearing, Volume 92, p. 12132-12133.

¹⁵ Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003, accessed 17 January 2008, at: http://www.justice.gc.ca/en/ps/voc/publications/03/basic_prin.html

¹⁶ Adopted by General Assembly resolution 40/34 of 29 November 1985.

With respect to criminal justice proceedings, the Canadian Basic Statement states;

4. The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
5. Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
6. Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.
8. The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.

Unfortunately, the Canadian Statement of Basic Principles of Justice for Victims of Crime is only a statement. It does not afford legally enforceable rights to crime victims. In fact, the existing legal instruments of international bodies like the European Union, the Council of Europe and the United Nations concerning victims of terrorism are also relatively abstract or include victims of terrorism under the broader heading of victims of crime in general.¹⁷

Nonetheless, these international bodies do have instruments that speak specifically to victims of terrorism and their needs. In particular, in March 2005, the Council of Europe issued broad guidelines on the *Protection of Victims of Terrorist Acts*.¹⁸ Under these guidelines, the Council of Europe recommended that,

“1. States should ensure that any person who has suffered direct physical or psychological harm as a result of a terrorist act as well as, in appropriate circumstances, their close family can benefit from the services and measures

¹⁷ Standards for Victims of Terrorism conference web site, accessed on 17 January 2008, at [www.http://www.tilburguniversity.nl/intervict/conference/2008/](http://www.tilburguniversity.nl/intervict/conference/2008/)

¹⁸ Adopted by the Council of Europe Committee of Ministers at its 917th meeting on 02 March 2005.

prescribed by these Guidelines. These persons are considered victims for the purposes of these Guidelines.

2. The granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.

3. States must respect the dignity, private and family life of victims of terrorist acts in their treatment.”

The services and measures referred to are generally described and comprise:

- Emergency assistance;
- Continuing medical, psychological, social and material assistance;
- Effective access to justice and the law;
- Fair, appropriate and timely compensation;
- Protection of the rights to privacy and family life;
- Protection of individuals' dignity and security;
- Information; and,
- Specific training to persons responsible for assisting victims of terrorist acts.

It is important to note that Section 1 of the document states that the granting of these services and measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act.¹⁹

Also, the Commissioner should note that “there are a range of issues, such as publication of victims' identities, publicizing the nature of injuries, reporting of trials, security matters, access to hospitals and other institutions, which may be especially sensitive in terrorist cases.²⁰ This again reinforces the notion that a specialized response is needed, as well as the training of individuals who will assist victims and survivors of terrorism.

¹⁹ Section 1, entitled “Principles”, paragraph 2.

²⁰ Supra note 2 at 10.

During any trial/prosecution process, respect for the dignity and participation of victims is crucial. Protection of the victims must be provided during court proceedings. We would also like highlight the important role for non-governmental organizations and associations during court proceedings and for ongoing support.

OSCE High-Level Meeting on Victims of Terrorism, Vienna, Austria

Along with the Canadian Coalition Against Terror, the CRCVC attended the OSCE High-Level Meeting on Victims of Terrorism on 13-14 September, 2007.

The Office for Security and Cooperation in Europe (OSCE) has on various occasions stressed the importance of solidarity with victims of terrorism. The most important decision of the OSCE in this field is Permanent Council Decision No. 618²¹ of 1 July 2004 on Solidarity with Victims. The OSCE Participating States recognize “that acts of terrorism seriously impair the enjoyment of human rights and that there is a need to strengthen solidarity among participating States for the victims of terrorism and dependants and family members of persons who have died.” Furthermore, paragraph 1 “invites the participating States to explore the possibility of introducing or enhancing appropriate measures, subject to domestic legislation, for support, including financial assistance, to victims of terrorism and their families.”

Due to the large number of terrorist incidents that have occurred in European countries, these States have much expertise to share with North America in terms of responding to victims. The following information is taken from the Background Paper by the Office for Democratic Institutions and Human Rights (ODIHR) for the High-Level Meeting on Victims of Terrorism, September 2007, p. 11-13 and specifically addresses some important issues with regard to victims and legal proceedings.

²¹ OSCE Permanent Council Decision 618 encourages participating States to co-operate with relevant institutions and civil society in expressing solidarity with, and providing support for, the victims of terrorism and their families. Further, Article 13 of the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 reads: “Each Party shall adopt such measures as may be necessary to protect and support the victims of terrorism that has been committed within its own territory. These measures may include, through the appropriate national schemes and subject to domestic legislation, inter alia, financial assistance and compensation for victims of terrorism and their close family members.” The Council of Europe “Guidelines on the Protection of Victims of Terrorist Acts” (Adopted by the Committee of Ministers on 2 March 2005) is a series of minimum suggestions for how States should support victims of terrorism. Finally, since 2004, the European Commission finances projects to sustain the fight against terrorism, one of which is particularly dedicated to help victims of terrorist attacks. Each year on 11 March, the European Union dedicates a Memorial Day expressing its solidarity to all victims of terrorism.

VICTIM PARTICIPATION IN LEGAL PROCEEDINGS²²

Rights of protection and privacy are especially important in terrorist cases.²³ In some States, victims and other witnesses have been allowed to testify under protective measures; anonymously, from behind screens or by video or audio link. The significance of public appearance and cross-examination may vary between jurisdictions based on an inquisitorial or adversarial system. In either, however, the principle of justice being transparent and public and the principle of protecting a victim from further victimisation must be balanced with the rights of accused to challenge the evidence put against them.

Witness protection programmes may be a vital part of counter-terrorism efforts in persuading people that they will be safe testifying against alleged terrorists. They do represent, however, a significant and long-term commitment of resources. In some cases, it may also be necessary to provide systems of protection to victims or potential victims of terrorist acts. This may include physical security at home, guards, subsidised housing or even relocation. Access to such systems of protection must be based on objective, transparent and consistently applied criteria. Special provisions should be made available for child victims.

The European Forum Statement²⁴ proposes that victims should have the right to apply for compensation – one possibility being to compensate from assets seized from those convicted of the criminal acts. The UN International Convention for the Suppression of the Financing of Terrorism suggests that States shall consider establishing mechanisms whereby the funds derived from forfeitures are utilized to compensate the victims of terrorist offences. While such sources of funding doubtless have their appeal, the level of compensation for victims of terrorism should not be solely dependent on the vagaries of how much money could be extracted from individual terrorists or their organisations.

²² Supra note 2 at 11-13.

²³ *“Consistent with the UN principles of justice, the privacy of victims and other witnesses should be protected. The names of victims should not be published in the press or media, and details which would identify them should be withheld. The address of victims and other witnesses should not be made available to the defendant or read out in open court, unless the address is of specific relevance to the charge.”*

²⁴ The full text of the document is available at:

http://www.euvictimservices.org/EFVSDocs/criminal_justice_rights.pdf See also, Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure, 28 June 1985. And, also CoE Guidelines on the protection of victims of terrorist act, especially IV (“Investigation and prosecution”), V (“Effective access to the law and to justice”) and VI (“Administration of justice”).

State compensation schemes should be based on consistently applied methods of calculation, taking into account compensation for injuries, emotional distress and loss of earnings.

Conclusion

The government of Canada must strive to ensure that the words heard during Phase 1 of the Inquiry will never again be stated by Canadians impacted by terrorism, whether an incident occurs on Canadian soil or abroad. The families of the people killed in the explosion of Air India Flight 182 used the words: “invisible”, “inhumane”, “disrespectful”, and “unacceptable.”

Terrorism goes beyond individual violent crime, and assaults civil/democratic society by spreading fear and dread. There is a need for victims to be distinguished from others so that unique services may be provided. Canadian governments must provide sensitive and comprehensive long-term services without creating a hierarchy of victims.

There must be recognition that it is people who are harmed by terrorism, and States have a duty to protect their citizens. The needs of victims must be met on an ongoing basis by a multidisciplinary approach including non-governmental organizations and public actors. Assistance must be simple and transparent. No one single system is perfect; there are many possibilities for States to meet victims' needs. It is impossible to compensate fully for life lost or catastrophic injuries, but support and reintegration must be facilitated so that victims are not isolated.

Victims need reparation and access to legal proceedings. The impact and trauma generated by terrorism requires long-term mental health care and support, not only monetary compensation. The response of authorities in a disaster is important, as there is a need of victims to see the government as caring. We must hold those accountable who fund/mastermind the incident.

The silence of victims is the greatest triumph of terrorists. It is important to remember the victims, to acknowledge their suffering, and give survivors a voice by holding annual ceremonies and enacting monuments.

In your recommendations to the Government, Mr. Commissioner, we trust that you will thoroughly address all of the issues that were raised by the families and their advocates throughout this Inquiry. We thank you for your consideration.

RECOMMENDATIONS:²⁵

1. A terrorist response policy and procedure document be developed to coordinate the government's response at federal and provincial levels to a terrorist incident, in addition to contingency plans for Canadian consulates that specifically address response by consular offices to a terrorist incident involving Canadian citizens.
2. In the immediate aftermath of a terrorist incident, that an effective government communication and administrative action plan be executed that, among other things, provides timely information in both French and English to the families of the victims of the terrorist attacks vis-à-vis an internet website, 1-800 telephone number and multimedia news releases.
3. In the short-term after a terrorist incident that timely administrative assistance be provided by government to help with such things as obtaining passports and visas on an expedited basis and facilitating the transportation, home or elsewhere, of bodies of deceased family members.
4. The government, in the immediate aftermath of a terrorist incident, establish a dedicated government victims' family liaison officer who will serve as a dedicated liaison for communication by toll-free telephone in both official languages with families of the victims. It is recommended that in the period after a terrorist incident, continued assistance be provided by the dedicated toll-free government victims' family liaison officer with respect to ongoing communication to any subsequent criminal investigation and trial.
5. A government rapid deployment team be established with a full complement of appropriate skills and resources including relevant language skills, at a bare

²⁵ Please note that recommendations numbered 1-12 are a summary of the AIVFA recommendations made by their counsel on 17 September, 2007.

- minimum in both official languages, and a cultural background, adequate physical resources including Canadian government identification-related materials, adequate human resources with relevant training in such areas as grief counselling and religious spiritual guidance in order to respond effectively and in a sensitive manner while ensuring every effort is made to accommodate the unique needs of families of the victims of terrorism, wherever in the world a large terrorist tragedy involving Canadian citizens occurs.
6. In the immediate aftermath and period after a terrorist incident, that provision be made for government-funded counselling for grieving families of the victims that will be available on an ongoing basis in provinces and cities across Canada.
 7. In the short-term after a terrorist incident a provision be made for government-funded financial assistance to families of the victims in need where appropriate and necessary for such things as burial or cremation. In the period after a terrorist incident, adequate and timely government financial compensation, as well as the availability of government-funded legal counsel to assist with all facets of the consideration of compensation and related negotiation should be available.
 8. In addressing compensation, the government should avoid applying a strict legal assessment with respect to its potential liability. The government should recognize the suffering experienced by the families and the victims of terrorist attack, in addition to the devastating economic loss and psychological impact on families stemming from a terrorist attack.
 9. In the immediate aftermath of a terrorist incident, in a timely and appropriate manner, the government should provide a clear, public acknowledgement of the loss of Canadian lives.
 10. In the short-term after a terrorist incident, the victims of a terrorist attack should be honoured by appropriate means, such as flying flags across Canada at half-staff.

11. In the period after a terrorist incident, with the input from the families of the victims of terrorism, a permanent memorial should be considered by the government, where appropriate.
12. A public interest-based presumption in favour of the establishment of a public commission of inquiry with respect to the circumstances that led to a terrorist incident, establishing the facts regarding its occurrence and the appropriate response by government to the recommendations, if any, reached by such inquiry.
13. Similar to a project awarded by the European Commission, which aims to develop more extensive standards for the aid and assistance of victims of terrorism at European level, the federal government should undertake to develop similar standards for Canadian victims of terrorism. We further recommend that the Commissioner review the results of the 'STANDARDS FOR VICTIMS OF TERRORISM' project which is promoted by the European Forum for Restorative Justice (BE) in cooperation with the International Victimology Institute Tilburg (Tilburg University, NL) and with the support of the Catholic University of Leuven (BE), the Centre for the Study of Terrorism and Political Violence (University of St. Andrews, UK), and Victim Support Netherlands. The standards and the results of the literature review will be presented to the broader public at the project conference on 10 and 11 March 2008, at Tilburg University, in the Netherlands. See <http://www.tilburguniversity.nl/intervict/conference/2008/> for more information.
14. We recommend that the federal Parliament immediately pass Bill S-225 that will enable Canadian terror victims and their families to launch civil suits against foreign states and hold local Canadian organizations and individuals that have supported terrorist entities responsible for the death or injury of such victims.²⁶

This legislation is important to survivors in that it will enable them to seek justice for their loved one. "The civil process provides effective deterrence and a sense

²⁶ Canadian Coalition Against Terror, January 2008, *An Act to Amend the State Immunity Act and the Criminal Code* (detering terrorism by providing a civil right of action by perpetrators and sponsors of terrorism), p.1.

of justice for victims by publicly identifying terror sponsors, holding them civilly accountable, utilizing the discovery process to unravel the illegal sponsorships that terror sponsors so desperately try to obscure, as well as establishing as a matter of public record the victimization of the plaintiffs by the defendants, and society's revulsion for terrorist conduct."²⁷

15. We recommend that the government develop a policy to use Family Assistance/Compassion/Reception Centers (FAC) in the event of terrorist incident. Variations of this scheme have been used in the Oklahoma City, 9/11 and London bombings with significant success. FAC's are a place for families to gather near the incident. It is well-known that families of those injured or killed often to want to visit the scene in such incidents.

Following the Air India explosion, it would have been preferable if there had been a central place for families to go when they arrived in Cork. The London Family Assistance Centre Provisional Guidance Document describes a FAC as "a sophisticated facility where bereaved families and survivors can receive information and appropriate support from all the relevant agencies without immediate need for referral elsewhere. This support will take various forms and may require the provision of a wide range of services..."²⁸ In Oklahoma, a church was used. In 9/11, a hotel was used for families of those injured or killed at the Pentagon.

The purpose and mandate of the FAC may differ, for example, depending on whether all of the victims lived within the community where the incident occurred or not. The Canadian officials could have worked with their counterparts to set this up. For the purposes of Air India Flight 182, the main function of the FAC would have been to enable the timely two-way flow of accurate information between families and responders, such as the process for identifying bodies, why there was a delay, what families could expect, etc. Families could have been given daily briefings about the bombing, even if not much information was known

²⁷ A proposal to amend the *State Immunity Act* and the *Criminal Code* (detering terrorism by providing a civil right of action against perpetrators and sponsors of terrorism): Canadian Coalition Against Terror, January 2008, p.16.

²⁸ The full text of the document is available at:

www.londonprepared.gov.uk/londonplans/emergencyplans/fac.pdf

at the time to ensure the most accurate information was being provided. Work could have been started with families regarding the transportation of remains, the return to Canada, etc.²⁹

In order to ensure accurate information, high ranking officials should be the ones providing the information. For example, someone from the Medical Examiner's office could have explained the issues relating to identification of the bodies; someone from the Canadian government could have explained the process related to returning bodies and what the Consular office could do to assist, etc. A Memorial table could have been set up for families to display photos of their loved ones.

16. We recommend that Foreign Affairs develop policy guidelines and procedures with respect to pre-planning/coordination of a response to a terrorist incident on foreign soil involving Canadians. It is not yet clear that this work has been done.

We further recommend that the Department of Justice Canada, Public Health Agency Canada and Public Safety Canada work collaboratively to develop policy guidelines and procedures with respect to pre-planning/coordination of a response to a terrorist incident on Canadian soil.

One of the crucial lessons from 9/11 was "existing systems for emergency management or terrorism planning...were not developed to take into account the human impact of mass criminal incidents and did not recognize the social, psychological and economic toll..."³⁰

²⁹ Obviously, the Air India Flight 182 involved a large number of Canadians and the only reason officials from Cork were involved is because that was where the plane exploded. The response of the Canadian government, with the obvious cooperation with Cork officials, might be more involved than a situation like 9/11 where the attack was on American soil and most of those killed were Americans. In that kind of situation, it would not be appropriate for the Canadian government to take an active role in providing services or setting up a FAC. However, given that many of the families of the Canadians who were killed lived in or about the Toronto area, a smaller FAC type operation could have been arranged where the federal government could have worked with its provincial counterparts in victim serving agencies to address the needs of those families in the Toronto and other areas.

³⁰ *Responding to September 11 Victims: Lessons Learned from the States*, Office for Victims of Crime, 2004, p. ix.

17. We recommend intensive training for Consular officers and staff. This training needs to take into account the needs of those who have suffered traumatic or violent victimization, or those who are in crisis. Their needs are unique, and the victims must be approached differently than those who present with issues relating to illness, lost documents, visa problems or who suffered loss or harm from a natural disasters.

Consular training must identify these issues, and should include a discussion of the effects of mass trauma, and how to address the needs of the victims. Efforts must be made to ensure that the tools are in place to assist with victims of crime, victims of terrorism, and people in trauma. We recommend that Foreign Affairs work with the Public Health Agency Canada, Department of Justice Canada and Public Safety Canada to develop the training.

18. We recommend the creation of an International Victim Assistance Unit within Foreign Affairs (or other federal agency as deemed appropriate). Testimony provided at the Inquiry highlighted the fact that the needs of families do not end when the “incident” is over. They needed to be connected to services when they returned to Canada. Many spoke of the need for some kind of counselling. Some of these services may already exist but are difficult for families to connect with, especially when dealing with their grief, raising children, working, etc. This unit could be responsible for developing protocols and policies to ensure that the emotional and practical needs of the victims are being met.

19. We recommend the development of detailed information pamphlets for victims of crime/terrorism to be posted on the Foreign Affairs website³¹. These pamphlets should also be available from any consular staff responding to a tragedy. These pamphlets can contain general information about what Foreign Affairs will endeavour to provide, so that victims can understand immediately what assistance they will receive, as well as what issues/challenges they may face. Staff can then be updated during a crisis to provide specific information to the

³¹ There is currently a limited amount of “helping” information posted on the Foreign Affairs web site with respect to assault and death that occurs overseas and what victims in this situation can do.

- victims. There should also be a crisis line devoted to provision of information for victims who cannot reach consular staff or access the Internet.
20. The government of Canada should consult with the provinces and budget for/develop a fund to allow for compensation for victims of terrorism where no other form of compensation exists, or where current compensation schemes cannot address the on-going needs of victims of terrorism. The fund could be administered by the federal the Policy Centre for Victim Issues given their experience and expertise in administering the Victims Fund. Given the scope and impact of a potential incident, federal funds should be used to support victims of terrorism and mass violence.
21. We recommend the development of rapid deployment teams of trained professionals (similar to the NOVA/OVC models of crisis intervention) who can assist families in the immediate aftermath of a terrorist attack abroad. Public Health Agency Canada is doing work in this area and we recommend Foreign Affairs/Department of Justice/Public Safety consult with them to ensure teams can be deployed domestically and internationally, if needed.
22. We recommend the federal government develop a guide to be shared with all municipalities for delivering victim services in cases of mass criminal victimization based on the model used by B.C. Victim Services during the Air India trial.



Canadian Resource Centre for Victims of Crime
CORE SERVICES

Advocacy:

To advocate on behalf of crime victims and assist them in obtaining needed services and resources. As well, to ensure that the interests and perspectives of victims are heard, the CRCVC actively makes submissions, presentations and/or recommendations to all levels of Government, and its various agencies.

Education and awareness:

To promote victims' concerns by addressing current events and issues in the media and to conduct workshops/presentations at colleges, universities, community events, and conferences. As well, to act as a resource centre for victims by providing understanding and knowledge of the Canadian Criminal Justice System, and disseminating that knowledge through our monthly newsletter and web site.

Research:

To conduct research in the field of victimology in order to offer quality resource materials to crime victims and service workers across the country, and provide information to all levels of Government as to how the services provided to victims of crime may be strengthened and augmented.

Police Liaison:

To act as a liaison between victims/survivors and various police services and associations; providing assistance and support.

Survivor Outreach:

To proactively reach out to survivors of violent crime in Canada in hopes of fostering a helping relationship with those victims that may not be aware of the services available to them. The CRCVC also assists victims and survivors to connect with others who have been similarly victimized.

Memorial:

To provide long-term support and assistance to Next of Kin of fallen officers and coordinate events for those families attending the annual Canadian Police and Peace Officers' Memorial Service to honour their fallen loved ones.

Networking:

To promote and enhance the interaction and exchange of information and perspectives among other agencies and groups within the Canadian Criminal Justice System, and the international victim services community.