

# Canada

## AIR INDIA INQUIRY

# CSIS's erasure of tapes 'indefensible incompetence'

BY BILL CURRY OTTAWA

The erasing of key wiretap recordings by CSIS, Canada's spy agency, presented a major challenge to the government's legal case against the suspected perpetrators of the Air India bombing, a senior Crown lawyer said yesterday.

The public inquiry into the 1985 terrorist attack heard yesterday from James Jardine, who is now a B.C. Provincial Court judge but who was the Crown prosecutor on the Air India file.

At times displaying visible frustration as he spoke of the spy agency, Mr. Jardine told the inquiry about a note he wrote upon learning that CSIS erased wiretap evidence of the prime suspects.

"In the brashness of the moment, I wrote: 'inconceivable, incomprehensible, indefensible incompetence,'" said Mr. Jardine, who was speaking as an individual and not as a judge.

The families of the victims of the Air India bombing have long cited the erasure of the tapes as a key reason why no one has been convicted of murdering the 329 passengers. While not drawing that specific conclusion, Mr. Jardine's testimony adds a senior government voice to the chorus of criticism of the erasure.

In particular, Mr. Jardine had hoped to obtain the original intercepts of prebombing phone



James Jardine, a former Crown prosecutor on the Air India file, testifies in Ottawa yesterday. JONATHAN HAYWARD/THE CANADIAN PRESS

conversations involving Talwinder Singh Parmar, the alleged ringleader of the plot, and Inderjit Singh Reyat. Both men had been secretly followed by CSIS agents to Vancouver Island three weeks before the bombing, where the men were seen entering the woods and an explosion was heard.

The erasures opened the door to speculation on both sides that the lost material would have either exonerated or incriminated the suspected

terrorists, he said. Mr. Jardine said the erasures also left the Crown vulnerable to accusations from the defence that CSIS deliberately destroyed evidence that would have exonerated their clients.

In a 1986 letter, Mr. Jardine wrote to the RCMP that the lack of CSIS tapes meant he did not have enough evidence to convict Mr. Parmar on even the lesser charges of possessing explosives.

"If in fact the C.S.I.S. has destroyed tapes of the private

communications of Mr. Parmar which they intercepted in June of 1985 we have lost a major piece of evidence which would be essential to the unfolding of the narrative at any subsequent trial," he wrote.

Through a full day of testimony, Mr. Jardine outlined the behind-the-scenes battles waged by himself and the RCMP to pry evidence from the resisting hands of CSIS.

The inquiry is seeking to highlight the difficulties that arise when CSIS is in sole pos-

session of material needed as evidence by police and government lawyers. Canada's spy agency was created in 1984 to focus on assessing threats to national security. Should its work uncover possible criminal activity, CSIS is expected to urge police to conduct their own investigation.

Over the coming weeks, the inquiry will focus on whether the sharing of information between CSIS and the RCMP would be any smoother today in the aftermath of a terrorist

attack.

Mr. Jardine's testimony highlights the many difficulties that arose between the two agencies as they worked out the ground rules of their new relationship.

He said that, weeks after the bombing, he specifically told the RCMP to tell CSIS that he would need all evidence, including wiretaps, as he went about building a case that would stand up in court. Yet at virtually every turn, the recently created spy agency resisted out of fear that supplying evidence was outside its mandate and would compromise national security.

Four CSIS officials are scheduled to testify this week to explain the agency's position on the tapes.

A November, 1990, memo referred to yesterday - written by R. I. MacEwan, a senior CSIS official - said the agency was simply following ministerial policy to erase all tapes after 30 days, provided they do not "significantly incriminate a target in subversive activity."

The official went on to express doubt that CSIS claims of innocence regarding the erasures would ever be believed.

"In spite of the Service's best efforts, I doubt that the Crown, and possibly the RCMP to this day 'accept' the reasons for, and the application of the Service's tape retention/destruction policy," the official wrote.