

## CANADA &gt; AIR INDIA

# • Former prosecutor recalls frustration over tapes' erasure

Potentially crucial CSIS wiretap evidence lost, Air India inquiry told

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OTTAWA—The erasure of CSIS surveillance tapes of a key Air India bombing suspect was “indefensible incompetence,” a former senior Crown attorney recalled writing when he learned of the blow to his case 20 years ago.

James Jardine, now a British Columbia provincial court judge, yesterday stopped short of saying the tapes' erasures ultimately doomed the prosecution's efforts.

“We'll never know” if the tapes could have helped build a stronger case against the only person ever convicted in Canada's deadliest terror act or his accomplices, Jardine said at the Air India inquiry.

But it was clear Jardine felt hampered by the loss of potentially crucial evidence.

“Those tapes would have been a very helpful piece of information either to demonstrate the person's involvement or to demonstrate the person was not involved,” he recalled telling investigators in 1986.

Appearing before the inquiry led by former Supreme Court justice John Major, Jardine outlined frustrations during a six-year battle with CSIS for full disclosure of the intercepted communications of Talwinder Singh Parmar.

Parmar, leader of the Sikh separatist organization Babbar Khalsa, was later determined to be mastermind of the Air India bomb plot. He fled Canada after prosecution efforts failed against him, and died in a police gunfight in India.

In the end, only bomb-maker Inderjit Singh Reyat pleaded guilty to

charges Jardine brought in connection with a test blast in Duncan, B.C., three weeks before the June 23, 1985, bombs that killed 329 Air India passengers and two Japanese baggage handlers. Reyat was also later convicted of manslaughter in the deaths. Two other suspects, Ripudaman Singh Malik and Ajaib Singh Bagri, were acquitted after a lengthy trial in 2005.

Barely a week after the 1985 tragedies, Jardine was assigned to help RCMP investigators get their own court authorizations for wiretaps and search warrants.

From the get-go, he pressed RCMP investigators to ensure the fledgling Canadian Security Intelligence Service safeguarded all tapes and evidence in its possession.

“I asked that all evidence or information or tapes or surveillance be retained for use in this prosecution if possible.”

CSIS resisted requests to reveal information that could divulge its methods of operation, or identities of agents or sources, citing the need to protect national security — an ongoing dilemma for the service, said federal lawyer Barney Brucker when he cross-examined Jardine.

More than two years after he first called for tapes to be retained, Jardine said he got confirmation of the tapes' erasure from a CBC News interview on December 1987 with the then-new CSIS director Reid Morden. Morden said the tapes were erased “as a matter of policy” because CSIS only collected “information strictly necessary to ongoing investigations.”

Jardine vented his immediate frustration on the back of a meeting memorandum.

“In the brashness of the moment, I wrote: ‘Inconceivable, incomprehensible, indefensible incompetence,’” he testified.