

CHAPTER 8 - COLLATERAL INVESTIGATIONS

INTRODUCTION

1. Serious aviation occurrences often result in the initiation of not only airworthiness investigations, but also concurrently other investigations by the chain of command. These investigations all have different objectives and processes and are subject to different laws and regulations. Moreover, each investigation has an important role to fulfill and airworthiness investigators must respect this fact.
2. There are several problems associated with this situation. First of all, there is only one set of physical evidence associated with an occurrence. Therefore, ways must be found to ensure that the examination and analysis of this evidence is conducted properly and safely by qualified individuals. Furthermore, much of the information that can be derived from this physical evidence is time-sensitive and, therefore, the examinations must take place in a timely manner. Finally, there is only one set of witnesses and participants. The *CTA/ISB Act* sections that apply to the MND specifically preclude the sharing of “privileged” information, such as witness statements and on board recordings, with other investigations except under very specific conditions. As can be seen, there are several challenges associated with the passage of appropriate information between investigations.
3. The objective of this chapter is to outline how airworthiness investigations will deal with collateral investigations.

TYPES OF INVESTIGATIONS

4. There are eight types of investigation with which an airworthiness investigation may be asked to share information. These are as follows:
 - a. a Royal Commission convened under the *Inquiries Act*;
 - b. a Coroner’s Inquiry;
 - c. a police investigation;
 - d. a BOI or a Summary Investigation;
 - e. a foreign government investigation (possibly due to the location of the occurrence);
 - f. an investigation by another airworthiness authority (such as TSB, NTSB, TC or another military aviation safety organization);
 - g. an airworthiness technical assessment; or

- h. any other official inquiry looking for access to investigation material.
5. Royal Commission. A Royal Commission convened under the *Inquiries Act* is relatively rare and is usually an investigation that has precedence and both extraordinary investigation powers and access to evidence. Normally, this type of investigation takes a while to initiate and so time should not be a factor. Therefore, if such an investigation is convened, the AIA will normally seek legal advice from the CAF Legal Adviser as to what information can be passed to this investigation.
6. Coroner's Inquiry. A Coroner's Inquiry has very broad legal powers. For example, a Coroner's Inquiry must be provided "privileged" information if it is requested. All information provided to a Coroner's Inquiry will be released through the AIA. When this situation arises, the AIA will seek legal advice as well, so that privileged information is only released as required by law and its use will be known or followed by AIA staff. Note, this applies to Canadian Coroners only; foreign Coroners do not have jurisdiction in Canada and these provisions, therefore, do not apply (see para 13).
7. Police Investigations. A police investigation is normally conducted for serious aircraft occurrences, such as a category "A" occurrence, or associated with acts of malfeasance such as sabotage or vandalism. These investigations can be conducted by local or provincial police forces, the RCMP or the CAF National Investigation Service. The main focus of these investigations is to determine if there was any wrongdoing that could result in criminal charges. Given the different objective of this type of investigation from an airworthiness investigation, there is seldom any interaction between the two investigations. However, it is important to note that the CVR or other types of recordings are afforded privilege and their release is prescribed under the *CTA/ISB Act*. Also, there's privilege associated with statements and interviews given to a safety officer so these things must be respected when interfacing with a police investigation. Finally, it is a good idea for FS personnel and qualified technical personnel to monitor such investigations so that shared evidence is preserved and aircraft or other aviation resources damage is minimized.
8. Board of Inquiry or Summary Investigation. A BOI or a Summary Investigation (SI) is the most common type of collateral investigation with which an airworthiness investigation interacts. The BOI or SI convening order can require findings to be made that closely mirror those of an airworthiness investigation. However, the BOI and SI are dramatically different from an airworthiness investigation. The most significant differences are as follows:
- a. a BOI and an SI are convened under the *NDA* whereas an airworthiness investigation is convened under the *Aeronautics Act* and the *CTA/ISB Act*;

- b. a BOI or an SI is convened by the CoC and is responsive to CoC objectives, timelines and review whereas an airworthiness investigation is convened by the AIA, who is independent from the CoC; and
 - c. a BOI or an SI are administrative in nature and must make multiple findings whereas the sole purpose of an airworthiness investigation is to identify effective PMs that will either prevent or reduce the risk of a similar occurrence.
9. In dealing with BOIs and SIs, the following principles will be used:
- a. the investigations will be kept separate to the maximum extent possible;
 - b. the Chairperson of the BOI or SI should be directed to contact the AIA's Chief Investigator (DFS 2) prior to any FSI interaction with either the BOI or the SI. The AIA's Chief Investigator will outline to the Chairperson the information that can and cannot be passed by the AIA to the BOI or the SI;
 - c. the airworthiness investigation will normally provide the BOI or the SI with factual information and a statement of cause (if known) only. If possible, Part 1 of the Preliminary Report will be provided to the BOI or SI;
 - d. all information provided to the BOI or SI shall only be released by the AIA or his designate IAW Chapter 6 AIA authorizations; and
 - e. the AIA will identify, to the best of their knowledge, any legislation, orders or policy that should be brought to the recipients attention concerning the information's use and privilege that may effect further distribution or preclude disclosure (such as *CTA/ISB*, *Privacy* or other *ATI Act* provisions, ACOs etc).
10. Factual information includes the following information:
- a. general information such as the aircraft type, aircraft role, unit of ownership and number of crew;
 - b. history of the flight including the type of mission, aerodrome of departure and location of the occurrence;
 - c. a summary of injuries to personnel including the number of fatalities, critically injured and major injuries to crew, passengers and others. Names are not to be used and crew members will be referred to by their crew position (e.g. pilot, co-pilot, flight engineer etc);

- d. damage to the aircraft;
- e. aircraft salvage and any environmental damage;
- f. a summary of the personal information of individuals involved in the occurrence including crew position, rank, qualifications, medical expiry date, total flying time, total flying time on type, flying hours in the last 30 days, duty hours during the last 24 hours, flying hours during the last 24 hours and flying hours on the day of occurrence. Names are not to be used and crew members will be referred to by their crew position (e.g. pilot, co-pilot, flight engineer etc);
- g. aircraft information including any significant aircraft maintenance information;
- h. meteorological information;
- i. pertinent information with respect to aids to navigation
- j. pertinent information with respect to communications equipment;
- k. aerodrome or alighting area information;
- l. general information regarding flight recorders such as the type of recorders (CVR/FDR). In no case will specific information on cockpit voice recorders or video recordings of crew reactions be included;
- m. wreckage and impact information;
- n. general medical information;
- o. fire, explosive devices and munitions information that is not classified;
- p. survival aspects of the occurrence;
- q. test and research activities but excluding any analysis from these activities;
- r. organization and management information pertinent to the occurrence;
- s. flight data recorder data;
- t. pictures of the occurrence (still and video); and
- u. pictures of the occurrence site other than those depicting human remains and/or injuries to personnel.

11. Foreign Government Investigation. Should a DND/CAF aircraft crash in a foreign country, usually a STANAG or similar agreement will take effect and the AIA will investigate the accident as per normal procedures but within the laws of the foreign government. However, not all situations will be covered by such agreements and in cases where no agreement exists, the AIA through the CAF CoC will attempt to get concordance with the government in question to try and proceed in the normal manner. Should that not be possible due to the laws of the foreign government, the AIA will attempt to gain DND/CAF presence in the investigation and will attempt to get the protections that would be present if the accident happened in Canada or a negotiated STANAG location. The next DND/CAF perspective will be to try and behave as if ICAO agreement applied to the accident. Regardless, the laws of a foreign government will be fully respected and cooperation to the extent possible will be offered.

12. Sharing information with another airworthiness authority or aviation safety investigation of a foreign military is covered in Chapter 9.

13. Other Official Inquiry. Occasionally an inquiry may arise that does not fit into any of the previously mentioned categories. Under such circumstances the AIA will make decisions for release of information such that the integrity of the statutory privileges and the FS system are maintained. Typically, factual information may be released should the FS investigation be completed; however, the AIA will retain the authority for release of information to such inquiries.

INVESTIGATION PRECEDENCE

14. At each occurrence site, there is an order of precedence for the authorities charged to investigate the occurrence. When there has been a fatality, the Coroner has precedence over all other investigations. Because of this precedence and from the due diligence perspective, AIA representatives, such as on-scene FS personnel, shall make all data regarding hazards associated with aircraft crashes known to the Coroner or their representatives. This will include but not be limited to, aircraft component hazard data sheets, cargo hazard lists, WHIMIS data and any other information sources available. Occasionally the Coroner may wish to have an inquiry based upon "Public Safety" issues, but these typically arise at times well after the accident and the field phase of the AIA investigation may have already been completed. Once the Coroner has released the site for investigation or with no fatality involved, a crash site is usually considered a "crime scene" due to the value associated with the loss of an aircraft or damage on the ground, thus making the police investigation next in the order of precedence. This usually suits the AIA's objectives because the police use their powers and resources to cordon the scene and restrict access, even from property owners. However, police rarely follow-up the crime scene activity with additional investigation and, once it is established that no evidence of criminal activity exists, the airworthiness investigation is generally allowed the next order of precedence.