

CHAPTER 9 - AIA/TSB AND OTHER COORDINATED INVESTIGATIONS

INTRODUCTION

1. The *CTA/ISB Act* contains provision for coordinated AIA/TSB occurrence investigations when both a “Military Conveyance” and some sort of Canadian civilian facility or aviation resource is involved. There is a detailed working arrangement in place to explain the way that such investigation should take place but this chapter outlines the general principles for such circumstances. This AIA/TSB agreement parallels the ICAO Annex 13 investigation standards and cooperation principles.
2. In general, the principles of this cooperation will be extended in like circumstances for situations where joint investigation is called for but no formal agreement has been reached. This refers to investigations when other military safety investigation bodies are involved with a DND/CAF aviation resource but neither a STANAG nor other agreement has been signed. Similarly, for situations where a DND/CAF aviation resource is involved in a foreign country and that country is required or wishes to investigate an occurrence, the principles of cooperation in this chapter will guide the actions of DND/CAF airworthiness investigators.
3. When the AIA is involved with investigations with other NATO nations, STANAG 3531 governs the investigation process. Similarly, other agreements exist with some allied forces, like the Air and Space Interoperability Council (ASIC) Air Standard 85/2A that applies to Canada, Australia, New Zealand, the UK, and the US.

NOTIFICATION FOR COORDINATED INVESTIGATIONS

4. Recognising that prompt and efficient occurrence notification of is a key element in an effective investigation, the signatories to an agreement will notify each other immediately when they become aware of an aviation occurrence that could result in a coordinated investigation. Signatories may also inform each other regarding an occurrence that has the potential to advance FS even though they may not fall under the provisions of Section 18 of the *CTA/ISB Act*. Signatories will pass information on reported occurrences on a routine basis.

PURPOSE OF INVESTIGATIONS

5. Coordinated investigations neither assign fault nor determine civil or criminal responsibility, but rather advance aviation safety. This principle, already well-established in Canadian aviation safety organizations, will be used to guide coordinated investigations where no agreement is in place; this is also found in ICAO guidelines for aviation safety investigations, which may be useful in setting up general guidelines in cases when none exist.

6. Some coordinated investigation situations with other airworthiness authorities (such as TC) could lead to enforcement action by the authority and, in cases such as this, the sharing of information can be quite complicated. To guard the investigation principle of not “assigning fault” in AIA/TSB investigations, only the factual information may be shared with enforcement agencies; however, no portion of the investigation that uses privileged information (such as analysis) can be shared with enforcement authorities without specific AIA permission and concurrence (see paras 11-14 below).

PROCEDURES

7. The TSB investigation of an aviation occurrence will be conducted IAW the *CTA/ISB Act*, the TSB Manual of Investigations (Air) (MOI (Air) 2-4) and the TSB (Air) Major Occurrence Investigation Checklist. The AIA’s investigation of an aviation occurrence will be conducted IAW the Canadian *Aeronautics Act*, the *CTA/ISB Act*, the A-GA-135-001 - Flight Safety for the Canadian Armed Forces, and this Airworthiness Investigation Manual.

8. In cases where no coordinated investigation agreement exists, the lead organization will likely wish to use their procedures manual as the basis for the investigation. DND/CAF investigators should try to assess the procedures manual in question to determine if there is some procedure in place that is contrary to AIA procedures, particularly for privileged information (CVR, witness statements or submissions to the investigation), release of information and the use of final investigation information or recommendations. Should this assessment identify diametrically opposed purposes to DND/CAF norms or should the possibility of compromise for the position or reputation of the CAF FS system exist, the AIA must be notified and a means plotted to avert such circumstance.

COORDINATION

9. Within Canada, the coordinated investigation team will be comprised of both TSB and DND/CAF participants. The team lead, IIC, will be from either TSB or DFS IAW the DND-TSB Working Arrangement. The agency with the member status will appoint a main POC for its personnel. A similar arrangement will be arrived upon when an investigation is required and no agreement exists.

NATIONAL SECURITY COMPROMISE

10. In cases where elements of the investigation of an aviation occurrence could, in the opinion of DND/CAF (as per Chapter 3, para 2), compromise national security and the required security clearance is not held by the assigned TSB investigators, the AIA will conduct an investigation of those elements and will advise TSB, in writing, of the specific reasons for this classification. To the extent that there is no threat to national security, DND/CAF will inform TSB of any findings and causes, including safety deficiencies identified in its

investigation of security sensitive elements contributing to the aviation occurrence.

SHARING OF COORDINATED INVESTIGATION INFORMATION

11. Investigation information, including privileged information, obtained by one of the participants will be made available to the other participant's investigators without undue delay. Except as required by law, no information obtained from DND/CAF or TSB will be released without the mutual consent of DND/CAF and TSB.

12. Release of statement information will be IAW the *CTA/ISB Act* article 30. On-board recordings, flight data recordings, event recordings, and communication records from coordinated investigations will be made available to the other participant, subject to protection of privileged information as per *CTA/ISB Act* article 28 and 29 and the requirements of national security in relation to the MND as per *CTA/ISB Act* article 24 (7).

13. If a coordinated investigation takes place with an agency where no agreement exists, the DND/CAF investigators will attempt to determine if shared information can be offered the protection that applies in Canadian law. Should such protection be evident, then information will be shared in the above manner. If that is not the case, then the AIA will seek legal counsel regarding sharing of information, with the view to having a legally binding agreement signed by the foreign party, which will ensure information protection and privilege.

14. When the investigation is conducted under foreign law that does not recognize the privileges associated with this information, the AIA (through the DND/CAF lead investigator, legal counsel and foreign liaison) will make that fact known and seek such privilege. Again, if this is not forthcoming, the AIA will make a decision regarding AIA participation in the investigation with respect to harm possibly done to the CAF FS system should such privilege not be offered.

LEGAL ORDER FOR SUBMISSION OF PRIVILEGED INFORMATION

15. Where one participant is served with a legal order for production of privileged information or where it otherwise intends to release it as required by law, the other participant will immediately be notified so that it may, prior to any surrender of that information, have a reasonable opportunity to make representations to the appropriate court or other authority.

SUPPORT

16. Cost sharing, transportation sharing and mutual training details are contained in the DND-TSB Working Arrangement. Essentially, extra costs brought on as a result of the other participant's needs must be borne by that participant. Similarly, while transportation is shared, incremental costs are borne by the participant that incurs those costs. Finally, each participant agrees that

should training opportunities arise, the participants agree to allow each other to benefit from the situation. These principles will be used to guide situations when DND/CAF investigators are involved in multi-participant investigations where no agreement exists.

NOTIFICATION OF SAFETY DEFICIENCIES REQUIRING IMMEDIATE CORRECTIVE ACTION

17. Should a safety concern requiring prompt corrective action be identified by either participant, the other participant will be notified immediately. The participant responsible for recommending corrective actions will advise the other participant of the recommendations made and of the corrective action taken, or planned to be taken, by the agency responsible. This allows each participant to retain its independence to take safety measures in an expeditious manner while respecting other participant's need to be aware because there is no requirement to negotiate a broad safety action with all participants that could entail lengthier response times.

EVIDENCE DISPOSAL

18. If required, wreckage, things and other releasable information will be returned to the owner once the participants have mutually determined that there no longer is a requirement for their retention.

REPORTS

19. The DND-TSB Working Arrangement contains details on review of reports, both at the draft and final stages. The arrangement calls for circulation, return of comments and appropriate amendments of reports prior to final release to the public. Of note, the arrangement calls for notification of safety recommendations that are directed to Other Government Departments (OGDs) such as TC or, in the case of TSB-led investigations, to the MND. This notification is aimed at providing advance notice of these safety recommendations to OGDs as provided for in the *CTA/ISB Act* (subsection 24(6)).

ACCESS TO OCCURRENCE SITES AND OTHER EVIDENCE

20. The participants recognize each other's investigators' authority in controlling access to occurrence sites, evidence and documentation IAW the legislation governing both participants' activities respectively. Generally, this means that the local police authority (at the federal, provincial, or municipal levels) will have the task of providing security to occurrence sites not identified as military transportation facilities. For occurrence sites at military facilities, the CAF Military Police or designated military personnel will provide site security.

AVIATION OCCURRENCES INVOLVING A TSB EMPLOYEE

21. A detailed process is identified in the DND-TSB Working Arrangement for situations where a TSB employee is involved in an aviation occurrence. The

TSB may, to avoid potential conflict of interest, delegate DFS to conduct the investigation of the transportation occurrence on its behalf. The arrangement calls on DFS to use its procedures and a slightly modified review process where TSB releases the final investigation to the public, though the report can only be altered by DND/CAF authorities. TSB assumes all costs for such investigations.

EXCHANGE OF TECHNICAL INFORMATION

22. The participants will, on a regular basis, exchange information on current and new investigative technology and procedures, which may be implemented by either participant. Both participants will provide information from each other's safety databases for aviation safety investigation purposes.

PRESS RELEASE

23. Public release of accident investigation information will be coordinated in advance by the lead participant with the member participant. The final authority for release of public information will rest with the lead participant.

AGREEMENT MODIFICATION AND REVIEW

24. Any dispute regarding the interpretation or implementation of the arrangement will be settled only by consultation between the participants; it will not be referred to a national tribunal or any other third party for settlement.

25. At least once a year, preferably in the first quarter of the calendar year, the appropriate staffs of both participants will meet to discuss their working relationship, investigations in progress and the need to amend the arrangement.

26. Either participant may propose to change to the arrangement at any time; amendments may be consented to in writing.

TERMINATION

27. Either participant may terminate the DND-TSB Working Arrangement on three months written notice to the other participant. The arrangement may be terminated at any time with the mutual written consent of both participants.