VOLUME ONE
THE OVERVIEW

CHAPTER VI: TERRORIST FINANCING

6.0 Introduction

Before 2001, Canada did not expressly prohibit terrorist financing. The 2001 *Anti-terrorism Act* (ATA)[1] introduced specific crimes relating to the financing of terrorism, and provisions to allow the revocation of the charitable status of any charity involved in terrorism. It also added combatting terrorist financing to the mandate of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).

These laws and the implementation of other government initiatives are no guarantee of success. Until very recently, these laws yielded few successful terrorist financing prosecutions.

The struggle to curtail the financing of terrorism is an uphill battle. One impediment is the small cost of terrorist acts. It has been estimated that the bombing of Air India Flight 182, which claimed 329 lives, probably cost the perpetrators less than $10,000. The direct costs of the 2004 Madrid train bombings which claimed 191 lives have been estimated at €15,000.

The methods to acquire and move the small sums necessary for terrorism are limitless. They include direct fundraising, extortion, the use of charities and not-for-profit organizations, legitimate employment and business income, organized crime and state support. There are near infinite means to move those funds through formal and informal financial institutions, as well as physically through the use of trusted couriers.

Currently, much of Canada's anti-terrorist financing initiative is based on a money laundering model that focuses on transactions over $10,000. This model is not well-suited to terrorist financing.

Laws against terrorist financing are at best a limited tool. If one sector such as financial institutions is regulated, terrorists can quickly move to another sector such as informal money transfer systems. Revoking the charitable status of a charity may not impair the flow of funds since donors to extremist causes are unlikely to be deterred by the loss of a tax receipt. The former charity may survive nicely as a non-registered, not-for-profit entity that continues to channel funds to terrorists.

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1 S.C. 2001, c. 41.

Currently, Canada is not making optimal use of the extensive and costly measures that it has taken against terrorist financing. Agencies responsible for combating terrorist financing, most notably the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Canada Revenue Agency (CRA), which deals with charities, are not sufficiently integrated into the intelligence cycle to detect terrorist financing or to provide the best financial intelligence to CSIS and the RCMP. Moreover, transactions involving the small sums needed to finance terrorist acts are not likely to be discovered through the routine collection and processing of information by FINTRAC and the CRA.

Discovering terrorist financing activity amidst millions of reports about financial transactions or thousands of applications for charitable status is like finding the proverbial needle in a haystack. It will often be necessary for FINTRAC and the CRA to be guided in this search by intelligence from CSIS, CSE and their foreign partners, as well as by tips from the RCMP. At the same time, FINTRAC and, to a lesser extent, the CRA face restrictions on the information they are free to share with other agencies. Both are "arms length" bodies because of their obligations to protect the confidentiality of the information they collect. There are some legitimate needs to protect the financial and taxpayer information they possess, as well as legislated restrictions on what they can pass on to other agencies. Nonetheless, there may be a need to redress the balance between privacy and openness to reconsider some restrictions in order to accommodate legitimate needs for information sharing.

6.1 The Importance of Legislating Against Terrorist Financing

Although laws against terrorist financing may not be the most effective instrument to prevent terrorism, they are a practical necessity. Canada ratified the *International Convention for the Suppression of the Financing of Terrorism* in 2001. Various UN Security Council resolutions commit Canada to taking efforts to prevent and suppress terrorist financing. Canada should and does take these international obligations seriously.

The G7 countries established the Financial Action Task Force (FATF) as an inter-governmental body. FATF standards have been endorsed by more than 170 jurisdictions. Canada must live up to these standards. The international community has recognized that, in a world with increasing globalization, all countries must take steps to ensure that they do not become safe havens for terrorist financing. If one country does not do its share, the success of the entire global fight against terrorist financing is jeopardized.

The freezing of assets or the launching of a terrorist financing prosecution may be useful means to disrupt a terrorist network long before any act of terrorism has been committed. Professor Bruce Hoffman warned that the failure by the authorities to actively counter terrorist fundraising activities also means "consigning [ethnic and religious] communities to be preyed upon by their co-religionist [brethren] or by their ethnic brethren."[2]

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2 Testimony of Bruce Hoffman, vol. 19, March 9, 2007, p. 1842.

The intelligence produced by initiatives against terrorist financing is increasingly recognized as a valuable asset in global terrorism investigations. More raw intelligence on individuals (and thus terrorists) is available in the financial databases of the Western world than in any other database. Financial intelligence provides a means to identify the networks that support terrorism, as well as the links between people, organizations and even countries.

6.2 The 2001 and 2006 Reforms

The 2001 *Anti-terrorism Act* amended the *Criminal Code* to prohibit terrorist financing and to provide for court-ordered freezing of terrorist assets. Parliament gave an existing entity, FINTRAC, the mandate to collect and analyze financial data to enable it to assist in the detection, prevention and deterrence of terrorist financing. FINTRAC's governing legislation, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), imposes record keeping and reporting requirements, primarily on private sector entities. It also permits FINTRAC to receive information provided to it voluntarily by other agencies and to disclose certain information to agencies specified in the legislation. Canada's regime to combat terrorist financing depends on the sharing of information between various agencies as well as the reporting by the private sector of suspicious and other transactions.

The ATA also created the *Charities Registration (Security Information) Act* (CRSIA), which provides for the use of classified information to justify a decision to revoke the charitable status of an organization, without disclosing that information to the organization.

In late 2006, additional legislation was enacted to respond to deficiencies in Canada's terrorist financing laws. The new legislation creates a registration regime for money services businesses. It strengthens the client identification process required in the case of wire transfers, strengthens measures against the use of charitable organizations for terrorist financing, and enhances CRA's authority to disclose information to disclose information to CSIS, the RCMP and FINTRAC.

6.3 The Money Laundering Model

Although there are similarities between money laundering and terrorist financing, the differences outnumber the similarities. In money laundering, the money has been accumulated for reasons of greed, through criminal activity, and is processed to disguise its illicit origins. Terrorist organizations are motivated by ideology rather than money. While they can be financed through "dirty" money, they can also be financed by money of legitimate origin – from charitable donations, foreign states or even a terrorist's own bank account.

Terrorist financing can involve much smaller sums than are typically involved in money laundering. The money is processed or transferred in ways that seek, not

to disguise its criminal origins, but to disguise its purpose of funding terrorism. Techniques that may work well to identify money laundering, such as a focus on transactions over $10,000, may not work as well to identify those transactions indicative of terrorist financing.

6.4 FINTRAC and its Private Sector Partners

The PCMLTFA requires certain entities ("reporting entities") to report financial transactions to FINTRAC. The ability to add new financial sectors to the list of reporting entities is important since those who finance terrorism will adjust their behaviour to avoid detection through reporting requirements.

FINTRAC's outreach efforts seemed more focused on money laundering than on terrorist financing. FINTRAC should make every effort to provide reporting entities with information that will improve their ability to identify suspicious transactions in terrorist financing matters. When sending information to reporting entities, FINTRAC should prioritize indicators of terrorist financing over indicators of money laundering. In particular, FNTRAC and other authorities should supply up-to-date and user-friendly lists of terrorist entities.

Some reporting entities do not see terrorist financing as a high profile issue. CSIS and the RCMP could help more effectively train reporting entities on terrorist financing issues.

6.5 Information Supplied to FINTRAC Voluntarily by Other Agencies

Information provided voluntarily to FINTRAC by other agencies is vital for FINTRAC's efforts against terrorist financing. About 90 per cent of the terrorist financing cases that come to FINTRAC's attention do so because law enforcement agencies or CSIS have made voluntary reports to FINTRAC. The number of terrorist financing cases discovered solely by FINTRAC is minimal.

A 2008 FATF Mutual Evaluation of Canada (an assessment of Canada's implementation of standards to tackle money laundering and terrorist financing) criticized FINTRAC for excessive reliance on voluntary reports. However, the smaller sums typically at issue in terrorist financing limits the ability of FINTRAC to generate leads on its own.

6.6 Information Sharing

FINTRAC and, to a lesser extent, CRA have an arm's-length relationship with other agencies, particularly law enforcement agencies. There are valid concerns that the police and CSIS may use FINTRAC and the CRA to avoid warrant requirements that would normally apply to obtaining private information. For these reasons, the type of information that FINTRAC or the CRA can disclose to the police or CSIS is closely regulated.

Limits on the information that they can disclose to other agencies, however, should not be confused with limits on the information that FINTRAC and the CRA can receive. FINTRAC, for instance, is required to receive ("shall receive") a broad range of information from other agencies about suspicions of terrorist financing.

One of the dominant themes emerging from the Air India narrative is that agencies all failed to share relevant intelligence, most notably with those who had front-line responsibilities for aviation security. Too often, agencies excessively concerned about protecting information remained isolated in their silos. Every effort should be made to avoid repeating these mistakes in the context of terrorist financing.

The Commission has recommended that the Prime Minister's National Security Advisor be given the added responsibility to work on problems associated with the distribution of intelligence, and to make decisions about what information should be shared, when and with whom. The National Security Advisor could help ensure that intelligence agencies provide FINTRAC and the CRA with relevant information. The National Security Advisor could work on co-ordination issues that are made more difficult when agencies – such as FINTRAC on one hand, and CSIS, the RCMP and the Canada Border Services Agency (CBSA), on the other – fall under different departmental portfolios.

The exchange of information must not be one sided, and it may become necessary to revisit the nature and extent of information that FINTRAC can provide to intelligence and law enforcement agencies. CSIS, CSE, the RCMP, CBSA and CRA must continue to provide FINTRAC with information voluntarily through "Voluntary Information Records" (VIRs). The VIR process is vital to the success of FINTRAC's work on TF. Once it receives a VIR, FINTRAC assesses the information to determine if it can disclose "designated information" to assist the agency that submitted the VIR. However, limits on the types of information that FINTRAC can or must disclose need to be reviewed. For example, a FINTRAC analysis of a particular case cannot be disclosed to another agency unless the agency first obtains a production order. Allowing such disclosures without a production order would add value and context to the financial intelligence that FINTRAC provides.

6.7 Secondments, Joint Training and the Kanishka Centre

An effective approach to terrorist financing would require both increased sharing of information among agencies and increased investment in human capital. One way to achieve the second goal is to facilitate increased secondments among the agencies.

Another is to invest in human capital by providing joint training on terrorist financing across agencies. Joint training might even reduce costs by reducing the duplication of training resources.

Government needs to draw on resources found in the private and academic sectors. One possibility is to provide funding for an academic centre or centres to study terrorism and counterterrorism. A precedent for such a research program exists in the long-running Security and Defence Forum sponsored by the Department of National Defence. The Department funds 12 "centres of expertise" in Canadian universities. Modest sums spent in this way on terrorism and counterterrorism issues could allow the government to receive valuable private sector and academic advice. At the same time, such centres could provide a place for officials to receive training, especially about international best practices. It would be appropriate to name such an institution "the *Kanishka* Centre," to commemorate one of the planes that were targets of the terrorist bombings.

6.8 The Value of Continual Review of the Effectiveness of Anti-terrorism Measures

The National Security Advisor is well positioned to evaluate how FINTRAC works with partners that cross agency lines. One of the enhanced roles recommended for the National Security Advisor is to provide oversight of the effectiveness of national security activities, including those involving terrorist financing. This new role must, however, be exercised reasonably. Too many reviews would monopolize Canadian agencies' resources unnecessarily. A balance is required.

6.9 Charities and Terrorist Financing

The Canada Revenue Agency (CRA) has reported that a significant number of charities associated with terrorism have been denied registered status. Significantly, these denials were not based on the new powers in anti-terrorism legislation but on traditional grounds, not related to terrorism.

The National Security Advisor could also work on problems of integrating the CRA into the intelligence cycle and could also address concerns about the CRA's effectiveness in terrorist financing matters.

The CRA's counter-terrorism work can be assisted by the proposed Director of Terrorism Prosecutions.

The traditional privacy concerns that have surrounded income tax information need to be reconsidered. Bill C-25 started this process. Largely because of provisions introduced by this Bill in 2006, the CRA can now share more information (including "publicly accessible charity information" and "designated taxpayer information") with other agencies. Despite the expanded disclosure now allowed, the *Income Tax Act* still prevents the CRA from disclosing some information that may be relevant to terrorist financing.

6.10 Intermediate Sanctions

"Intermediate sanctions," which are penalties that fall short of revocation of charitable status (for instance, monetary penalties or the suspension of a charity's power to issue tax receipts for donations), can be a valuable tool to alert donors, directors and trustees of government concerned with the operation of a charity. Like targeted prosecutions, they have proven their worth in other jurisdictions as an effective and creative approach to combatting the misuse of charitable status. It is helpful for the CRA to make full use of those intermediate sanctions to encourage charities to "clean house."

6.11 Non-Profit Organizations: A Gap in the System

Although about 95 per cent of the value of donations given to the non-profit sector in Canada goes to registered charities, a small percentage is directed to not-for-profit organizations (NPOs) that do not have charitable status. These organizations can become conduits for terrorist financing because they lack even the modest supervision to which charities are currently subject. Aside from the income tax consequences of having charitable status, the regulation of charities and NPOs is an area of provincial jurisdiction. The evidence before the Commission indicates that provincial regulators are often poorly resourced and not fully aware of relevant information linking NPOs to terrorist financing.

Rules governing NPOs vary among the provinces. In fact, there are few reporting rules in any of the provinces. The problem lies in the ability of NPOs to operate in a clandestine manner and to ignore what rules there are, making it almost impossible to identify terrorist financing within them.

The federal government should take the lead in bringing together provincial authorities to coordinate responses to the abuse of charitable or not-for-profit organizations. It is especially important to ensure that regulators are provided with the information and assistance they need to identify the abuse of charities and not-for-profit organizations for terrorist financing.