

VOLUME FIVE

TERRORIST FINANCING

CHAPTER II: CANADIAN LEGISLATION GOVERNING TERRORIST FINANCING

2.1 Introduction

Canadian legislation relating to TF consists of criminal and regulatory provisions. In a paper prepared for the Commission, Professor Anita Anand summarized the current Canadian legislative framework dealing with TF:

Although anti-terrorist financing law did not exist in 1985 when Air India Flight 182 was bombed, today's legal regime appears to be comprehensive.... These legislative initiatives cover significant regulatory ground in terms of substantive law, and, generally speaking, they also accord with private and public international law on terrorist financing.¹

2.2 The *Anti-terrorism Act (ATA)*

Within a few months of the events of September 11, 2001, Canada followed the example of several other countries and enacted anti-terrorism legislation – in Canada's case, the *Anti-terrorism Act*² (*ATA*). Parliament included several TF offences in the *ATA*, to comply with the *Financing of Terrorism Convention* and UN Security Council Resolution 1373. The *ATA* also introduced various means to combat TF.

In its Memorandum of Evidence on Terrorist Financing, the Department of Finance described the *ATA* as "...designed to strengthen the ability to identify, prosecute and convict terrorists, in part by providing new investigative tools to law enforcement and national security agencies."³ The *ATA* amended the following acts:

- the *Criminal Code*;⁴

¹ Anita Indira Anand, "An Assessment of the Legal Regime Governing the Financing of Terrorist Activities in Canada" in Vol. 2 of Research Studies: Terrorism Financing Charities and Aviation Security, p. 121 [Anand Paper on Legal Regime Governing Terrorist Financing].

² S.C. 2001, c. 41.

³ Exhibit P-227, Tab 3: Department of Finance Memorandum of Evidence on Terrorist Financing, February 28, 2007, para. 1.6 [Department of Finance Memorandum of Evidence on Terrorist Financing].

⁴ R.S.C. 1985, c. C-46.

- the *Proceeds of Crime (Money Laundering) Act*, and renaming it the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*⁵ (PCMLTFA);
- the *Security of Information Act*;⁶
- the *Canada Evidence Act*;⁷ and
- the *National Defence Act*.⁸

The ATA also created the *Charities Registration (Security Information) Act*⁹ (CRSIA).

The ATA introduced three TF offences into the *Criminal Code*. They cover (i) providing or collecting property for certain activities, including terrorist activities, (ii) providing property or services for terrorist purposes, and (iii) using or possessing property for terrorist purposes. The full text of these offences reads as follows:

Providing or collecting property for certain activities

Section 83.02 Every one who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out

(a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of “terrorist activity” in subsection 83.01(1),¹⁰ or

(b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

⁵ S.C. 2000, c. 17.

⁶ R.S.C. 1985, c. O-5, which replaced the *Officials Secret Act*.

⁷ R.S.C. 1985, c. C-5.

⁸ R.S.C. 1985, c. N-5.

⁹ S.C. 2001, c. 41, s. 113. The Act was created by the *Anti-terrorism Act*.

¹⁰ These subparagraphs contain references to various treaties and the related offences under the *Criminal Code* that give effect to the treaties in Canadian domestic law. For example, offences under s. 7(2) implement the *Convention for the Suppression of Unlawful Seizure of Aircraft*. See the earlier section on the Canadian definition of “terrorism.”

Providing, making available, etc., property or services for terrorist purposes

Section 83.03 Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

(a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or

(b) knowing that, in whole or in part, they will be used by or will benefit a terrorist group,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

Using or possessing property for terrorist purposes

Section 83.04 Every one who

(a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, or

(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

Sections 83.18 and 83.19 of the *Criminal Code* create offences for participating in or contributing to the activities of a terrorist group to facilitate terrorist activity. Section 83.2 makes it an offence under the *Criminal Code* to commit an indictable offence under any Act of Parliament for a terrorist group, and section 83.21 creates an offence for instructing any person to carry out activities in support of a terrorist group. TF activities may violate these provisions.

The ATA also created a process in the *Criminal Code* for designating (“listing”) entities that, once listed, are considered “terrorist groups” under the Code. The listing process and related Code provisions are discussed more fully below.

Besides renaming the *Proceeds of Crime (Money Laundering) Act* as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, the ATA amended the act to give the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) the added mandate to collect and analyze financial data relating to TF. The PCMLTFA is now the central law in combatting TF in Canada. Its main provisions are explored later in this volume as they apply to FINTRAC and other agencies. The 2008 FINTRAC Annual Report summarizes the general thrust and evolution of the PCMLTFA:

This statute establishes FINTRAC to collect, analyze, assess and disclose financial information with respect to money laundering and terrorist activity financing. Other parts of the Act require financial institutions and intermediaries to take prescribed customer due diligence, record keeping, transaction reporting and compliance program requirements and establish Canada's cross-border currency reporting system. Originally enacted as the *Proceeds of Crime (Money Laundering) Act* in June 2000, it was amended in December 2001, to add combating terrorist activity financing to FINTRAC's mandate. In December 2006, the Act was substantially amended to bring it in line with international standards by expanding its coverage, strengthening its deterrence provisions and broadening the range of information that FINTRAC may include in its financial intelligence disclosures.¹¹

In her paper, Professor Anand explained the relationship between the *Criminal Code* provisions and those under the PCMLTFA:

While the *Criminal Code* addresses a variety of activities that relate to terrorist financing (from providing property, to assist in terrorist financing, to money laundering) and criminalizes such activity, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* deals with reporting requirements, cross-border movement of currency, and the creation of an agency to administer the Act.¹²

When the ATA created the *Charities Registration (Security Information) Act (CRSIA)*, the purpose was to allow the use of secret evidence in decisions to deny or revoke charitable status in order to reduce the possibility of groups using their charitable status to facilitate TF.¹³

¹¹ Financial Transactions and Reports Analysis Centre of Canada, *FINTRAC 2008 Annual Report*, p. 26, online: Financial Transactions and Reports Analysis Centre of Canada <<http://www.fintrac.gc.ca/publications/ar/2008/ar-eng.pdf>> (accessed May 13, 2009).

¹² Anand Paper on Legal Regime Governing Terrorist Financing, p. 127.

¹³ The CRSIA is discussed in greater detail in Chapter VI.

Section 145 of the *ATA* requires a comprehensive review of the *ATA* within three years of the Act receiving Royal Assent, which occurred on December 18, 2001.¹⁴ The *PCMLTFA* requires a review of that Act every five years.¹⁵

2.3 Bill C-25

On December 14, 2006, Bill C-25 received Royal Assent, becoming *An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act*.¹⁶ The Department of Finance Memorandum of Evidence on Terrorist Financing stated that the Act would "...bring Canada's regime in line with FATF international standards, responding to changing domestic risks and addressing the recommendations of the Auditor General of Canada, Treasury Board and the Standing Senate Committee on Banking, Trade and Commerce."¹⁷

Bill C-25 created a registration requirement for money services businesses.¹⁸ It strengthened the identification requirements for wire transfers.¹⁹ It also strengthened the regime to confront the misuse of charitable organizations for TF purposes by providing authority to the Canada Revenue Agency (CRA) to disclose more extensive information to CSIS, the RCMP and FINTRAC.²⁰

Bill C-25 amended the *PCMLTFA* to allow FINTRAC, when certain conditions are met, to disclose information to the CRA for purposes related to determining charitable status.²¹ It added to the *PCMLTFA* the obligation for a reporting entity to report an "attempted" transaction where the entity suspects that the attempt was related to the commission or attempted commission of a money

¹⁴ See also House of Commons Canada, Final Report of the Standing Committee on Public Safety and National Security, Subcommittee on the Review of the *Anti-terrorism Act, Rights, Limits, Security: A Comprehensive Review of the Anti-terrorism Act and Related Issues*, March 2007, online: Parliament of Canada <<http://www2.parl.gc.ca/content/hoc/Committee/391/SECU/Reports/RP2798914/sterrp07/sterrp07-e.pdf>> (accessed May 25, 2009); The Senate of Canada, *Fundamental Justice in Extraordinary Times: Main Report of the Special Senate Committee on the Anti-terrorism Act*, February 2007, online: Parliament of Canada <<http://www.parl.gc.ca/39/1/parlbus/commbus/senate/Com-e/anti-e/rep-e/rep02feb07-e.pdf>> (accessed February 17, 2009).

¹⁵ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, s. 72 [*PCMLTFA*].

¹⁶ S.C. 2006, c. 12. Even though Bill C-25 has received Royal Assent, and thus has officially become a law, it is commonly referred to as Bill C-25 and not by its proper name, *An Act to amend the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and the Income Tax Act and to make a consequential amendment to another Act*.

¹⁷ Department of Finance Memorandum of Evidence on Terrorist Financing, para. 1.9.

¹⁸ A money services business is defined as "a person or entity that is engaged in the business of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments. It includes a financial entity when it carries out one of those activities with a person or entity that is not an account holder.": *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, S.O.R./2002-184, s. 1; *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, S.O.R./2001-317, s. 1.

¹⁹ Bill C-25, s. 8, adding s. 9.5 to the *PCMLTFA*.

²⁰ Bill C-25, s. 45.

²¹ Bill C-25, s. 26(4), introducing s. 55(3)(c) to the *PCMLTFA*.

laundering or terrorist activity financing offence.²² Bill C-25 also required the Privacy Commissioner of Canada to review the measures taken by FINTRAC to protect the privacy of the information it receives or collects under the *PCMLTFA*. This review is to occur every two years.²³

Later chapters explore in greater detail the changes that Bill C-25 brought to Canada's anti-TF program.

The changes brought by Bill C-25 came into force progressively. The Act was fully in force in December 2008, and further changes can occur through regulation. For example, Bill C-25 introduced the concept of "politically exposed persons" to the *PCMLTFA*,²⁴ and the concept may be further defined by regulation.

2.4 The Listing Processes

2.4.1 The *United Nations Al-Qaida and Taliban Regulations (UNAQTR)*²⁵

UN Security Council Resolution 1267 established the Al-Qaida and Taliban Sanctions Committee (the "1267 Committee"²⁶) and made it responsible for designating individuals associated or involved with the Taliban, Al-Qaida and associates of Usama bin Laden. Bin Laden was also designated. The main purpose of putting individuals on the Committee's list was to facilitate the freezing of money and property used for terrorism purposes:

²² Bill C-25, s. 5, replacing s. 7 of the *PCMLTFA*.

²³ Bill C-25, s. 38, replacing s. 72(2) of the *PCMLTFA*. For comments on the *PCMLTFA* from a privacy standpoint, see the submission by Jennifer Stoddart, Privacy Commissioner of Canada, to the Standing Senate Committee on Banking, Trade and Commerce, June 21, 2006, online: Office of the Privacy Commissioner of Canada <http://www.privcom.gc.ca/information/pub/sub_ml_060621_e.asp> (accessed February 18, 2009). For the Privacy Commissioner's comments specifically on Bill C-25, see her opening statement and submission to the Standing Senate Committee on Banking, Trade and Commerce, December 13, 2006, online: Office of the Privacy Commissioner of Canada <http://www.privcom.gc.ca/parl/2006/parl_061213_e.asp> and <http://www.privcom.gc.ca/parl/2006/sub_061213_e.asp> (accessed February 18, 2009).

²⁴ Bill C-25, s. 8, introducing s. 9.3(3) to the *PCMLTFA*. A politically exposed person is defined as "... a person who holds or has held one of the following offices or positions in or on behalf of a foreign state: (a) head of state or head of government; (b) member of the executive council of government or member of a legislature; (c) deputy minister or equivalent rank; (d) ambassador or attaché or counsellor of an ambassador; (e) military officer with a rank of general or above; (f) president of a state-owned company or a state-owned bank; (g) head of a government agency; (h) judge; (i) leader or president of a political party represented in a legislature; or (j) holder of any prescribed office or position. It includes any prescribed family member of such a person."

²⁵ Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services Canada, 2006) [*A New Review Mechanism for the RCMP's National Security Activities*] describes these regulations as the *United Nations Afghanistan Regulations*: p. 238, note 411. The Regulations themselves use both names. The title of the Regulations is *United Nations Al-Qaida and Taliban Regulations*. The preamble to the Regulations states, "Her Excellency the Governor General in Council . . . hereby makes the annexed *United Nations Afghanistan Regulations*." For consistency, this volume refers to the regulations as the *United Nations Al-Qaida and Taliban Regulations* and uses the acronym UNAQTR.

²⁶ Also known as the "Al-Qaida and Taliban Sanctions Committee": see online: United Nations <<http://www.un.org/sc/committees/1267/information.shtml>> (accessed February 17, 2009).

The 1267 Committee lists entities and individuals upon the request of a member state. Therefore, an individual or entity listed as a terrorist by the United Nations may have their assets seized or frozen in any or all UN member states that incorporate the listings into their domestic laws.²⁷

The 1267 Committee advises states to submit names as soon as they gather the supporting evidence of association with Al-Qaida and/or the Taliban. A criminal charge or conviction is not necessary for inclusion on the 1267 list as the sanctions are intended to be preventive in nature.²⁸

Canada has incorporated the listing process under Resolution 1267 into Canadian law by way of the *United Nations Al-Qaida and Taliban Regulations (UNAQTR)*,²⁹ made under the *United Nations Act*.³⁰ Any individual or entity added to the 1267 list by the 1267 Committee is automatically subject to the provisions of Canada's UNAQTR.³¹

Among other restrictions, sections 3, 4 and 5 of the UNAQTR prohibit any person in Canada or any Canadian outside Canada from dealing with property or providing financial services to the Taliban, Usama bin Laden or any of their associates, as designated by the 1267 list.

Section 5.1 provides that specific Canadian entities,³² including banks, trust companies and insurance companies, have a "duty to determine" on a continuing basis whether they are in possession of, or in control of, money or property that belongs to the Taliban, Usama bin Laden or any of their associates. The entities must report periodically to their regulators whether or not they are in possession of such property.

Section 5.2 imposes a "duty to disclose." Every person in Canada and every Canadian outside Canada must disclose to the Commissioner of the RCMP and to the Director of CSIS the existence of property in their possession or control that they have reason to believe is owned or controlled by, or on behalf of, the Taliban, a person associated with the Taliban, Usama bin Laden or his associates.

²⁷ A *New Review Mechanism for the RCMP's National Security Activities*, pp. 192-193.

²⁸ Exhibit P-383, Tab 1: DFAIT Modifications to *A New Review Mechanism for the RCMP's National Security Activities*.

²⁹ S.O.R./99-444.

³⁰ R.S.C. 1985, c. U-2.

³¹ *Response of the Government of Canada to the Final Report of the Standing Committee on Public Safety and National Security, Subcommittee on the Review of the Anti-terrorism Act, Rights, Limits, Security: A Comprehensive Review of the Anti-terrorism Act and Related Issues*, pp. 9-10, online: Parliament of Canada <http://cmte.parl.gc.ca/Content/HOC/committee/391/secu/govresponse/rp3066235/391_SECU_Rpt07_GR/391_SECU_Rpt07_GR-e.pdf> (accessed May 25, 2009) [Canada Response to House of Commons Report on the ATA].

³² S. 5.1(1) indicates that the entities are those referred to in ss. 83.11(1)(a) to (g) of the *Criminal Code*.

They must also disclose information about any transaction or proposed transaction in respect of that property.

The Minister of Foreign Affairs is the Minister responsible for the UNAQTR,³³ while the 1267 Committee is responsible for the actual listing.

The UNAQTR also allow individuals to petition the Minister of Foreign Affairs to be removed from the list.³⁴ The delisting process may involve Canada making representations to the 1267 Committee.

2.4.2 Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST)

A second listing process was established under UN Security Council Resolution 1373. It was incorporated into Canadian law by the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (RIUNRST)*³⁵ under the *United Nations Act*.

Resolution 1373 created a framework for each country to develop its own list. This list is not "...restricted in geographic and affiliative [*sic*] scope as are the UNAQTR."³⁶ In essence, Resolution 1373 provides that countries must criminalize persons who wilfully commit TF, and allow for the quick freezing of the following:

...funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.³⁷

The response of the Government of Canada to a 2007 review of the ATA observed that, in the absence of an international consensus as to the identification or designation of the entities involved, the Security Council left the decision as to which entities should be listed to member states.³⁸ This was because there was often no consensus about whether a group was a terrorist group. The LTTE is one example. Canada did not list it until 2006, several years later than some other countries.

³³ No specific provision in the UNAQTR states this, but the Minister of Foreign Affairs is the only minister mentioned in the regulations.

³⁴ S.O.R./99-444, s. 5.3(1).

³⁵ S.O.R./2001-360.

³⁶ Canada Response to House of Commons Report on the ATA, p. 10.

³⁷ S. 1(c), online: United Nations <<http://daccessdds.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>> (accessed February 13, 2009).

³⁸ Canada Response to House of Commons Report on the ATA, p. 10.

Each country designates entities for listing under Resolution 1373 (for instance, by way of the RIUNRST in Canada). Peer pressure among countries often leads recalcitrant countries to list certain entities. Under the RIUNRST, the Governor in Council may, on the recommendation of the Minister of Foreign Affairs, list an individual or an entity if the Governor in Council is satisfied that there are reasonable grounds to believe that they may have been involved in certain terrorist activities specified in the RIUNRST.³⁹ The Department of Foreign Affairs and International Trade (DFAIT) is the lead department in the RIUNRST listing process.

The consequences of listing consist primarily of the freezing of assets and a prohibition on fundraising.⁴⁰ Sections 3 and 4 of the RIUNRST impose requirements to freeze assets similar to requirements in the UNAQTR. Among other restrictions, the RIUNRST prohibit any person in Canada and any Canadian outside Canada from dealing with property or providing financial services to a listed person. Also, like the UNAQTR, the RIUNRST impose a “duty to determine” (section 7) and a “duty to disclose” (section 8).⁴¹ In short, these provisions in the RIUNRST operate in a way that is almost identical to these provisions of the UNAQTR.

2.4.3. Criminal Code Listing Process

The ATA introduced a third, exclusively Canadian, listing process – in this case, through the *Criminal Code*. This third listing process is considered to fulfill an important part of Canada’s obligation to implement both Security Council Resolution 1373 and the *Convention on the Suppression of Terrorism Financing*. The *Criminal Code* provides for consequences beyond freezing assets and prohibiting fundraising.

Section 83.05 of the *Criminal Code* provides for the Governor in Council to create a list of entities on the recommendation of the Minister of Public Safety⁴² – rather than the Minister of Foreign Affairs, as is the case with the RIUNRST. For an entity to be included on the *Criminal Code* list, the Governor in Council must have reasonable grounds to believe that the entity “...has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity” or that the “...entity is knowingly acting on behalf of, at the direction of or in association with” such an entity.

³⁹ S.O.R./2001-360, s. 2(1).

⁴⁰ Canada Response to House of Commons Report on the ATA, p. 11.

⁴¹ An amendment to the *PCMLTFA* contained in Bill C-25 requires that a report also be provided to FINTRAC if the person or entity is subject to the *PCMLTFA*: see Bill C-25, s. 6, amending s. 7.1(1) of the *PCMLTFA*.

⁴² The Minister of Public Safety and Emergency Preparedness identified in the *Criminal Code* was renamed the Minister of Public Safety. The Department, Public Safety and Emergency Preparedness Canada (PSEPC), was renamed Public Safety Canada (PSC). All references to PSEPC in this document should be read as a reference to Public Safety Canada (PS). Prior to this change, PSEPC had incorporated the “core activities of the former Department of the Solicitor General of Canada with those of the Office of Critical Infrastructure Protection and Emergency Preparedness, and the National Crime Prevention Centre”: Public Safety and Emergency Preparedness Canada, *Report on Plans and Priorities 2004-2005*, online: Public Safety Canada <http://www2.ps-sp.gc.ca/publications/corporate/rpp_2004_e.asp> (accessed February 18, 2009).

The Government of Canada states that "...the *Criminal Code* listing regime carries a higher standard, that is, the belief that the subject has knowingly been involved in a terrorist activity or acted on behalf of a terrorist entity. In contrast, the standard for the RIUNRST mechanism is based on the requirements of Resolution 1373."⁴³

Section 83.01(1) of the *Criminal Code* defines the term "listed entity" as "...an entity on a list established by the Governor in Council under section 83.05." Section 83.01(1) defines "terrorist group" to include a listed entity. Hence, an entity listed under section 83.05 is by definition a terrorist group under the *Criminal Code*. There were 41 listed groups as of February 2009.⁴⁴ These definitions help Canadian prosecutors since they do not have to prove independently that the entity is a terrorist group. If the entity is listed under the *Criminal Code* listing process, the entity is considered a terrorist group.

Section 83.08 forbids any person in Canada, and any Canadian anywhere, from knowingly dealing with property or providing financial or other related services to terrorist groups. Offenders face a fine, incarceration, or both. Section 83.11 requires a number of reporting entities to determine on a continuing basis whether they are in possession of such property. The entities must make monthly reports to their supervisory agencies – for example, the Office of the Superintendent of Financial Institutions (OSFI). The reporting entities described in section 83.11 have similar reporting obligations under the *PCMLTFA* (the obligations under the *PCMLTFA* are examined in Chapter III). The main difference between the reporting obligations imposed under the *PCMLTFA* and those imposed by section 83.11 of the *Criminal Code* is that the *Criminal Code* obligations apply mainly to institutions taking deposits.

Section 83.1 also creates an obligation for every person in Canada to disclose to the Commissioner of the RCMP and to the Director of CSIS the existence of property in their possession that they know is owned or controlled by or for a terrorist group. In addition, every person or entity obliged to make a disclosure under section 83.1 must also report to FINTRAC if that person or entity is also subject to the *PCMLTFA*.⁴⁵

To ensure compliance with the *Charter*,⁴⁶ the Code provides procedures for listed entities to apply to be de-listed. Under section 83.05(2) of the Code, the entity can request the Minister of Public Safety to consider recommending de-listing within 60 days. A similar process is available under section 83.07 in cases of mistaken identity. Under section 83.06, the entity can seek judicial review of the listing, albeit in a manner that allows the judge to consider intelligence that is not disclosed to the entity on the grounds that disclosure would injure national security or endanger the safety of other people.⁴⁷ The *Criminal Code*

⁴³ Canada Response to House of Commons Report on the *ATA*, p. 12.

⁴⁴ *Regulations Establishing a List of Entities*, SOR/2002-284.

⁴⁵ *PCMLTFA*, s. 7.1.

⁴⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁴⁷ Security-cleared special advocates might play a useful role in such proceedings. They could challenge the intelligence used to support the listing while not risking the further disclosure of the intelligence, some of which might have been shared with Canada by allies on condition that it not be disclosed.

also requires that the Minister of Public Safety review the list every two years.⁴⁸

The following chart, prepared by Public Safety Canada, illustrates the process for listing entities under the *Criminal Code* listing scheme.⁴⁹

Procedure For Listing Entities Under the *Criminal Code*



⁴⁸ R.S.C. 1985, c. C-46, s. 83.05(9).

⁴⁹ Exhibit P-383, Tab 11: Public Safety Canada's Submission to the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, October 24, 2007, p. 3.

To help publicize the entities listed under the *Criminal Code*, RIUNRST and UNAQTR, the Office of the Superintendent of Financial Institutions regularly updates a consolidation of the lists on its website.⁵⁰

Because countries develop their own listing processes in accordance with Resolution 1373, and possibly under their own domestic legislation (such as the *Criminal Code* listing process in Canada), listings among countries may not match, except for listings made under Security Council Resolution 1267.

2.5 Conclusion

Before 2001, like most other countries, Canada did not expressly prohibit TF. The 2001 *Anti-terrorism Act* introduced new crimes dealing with TF, a procedure for “listing” terrorist groups, new obligations to report financial transactions and provisions that allowed charities involved in terrorism to have their charitable status revoked or denied. These new provisions provide a weapon in combatting the complex phenomenon of TF and in ensuring that Canada complies with its international obligations to suppress TF. As subsequent chapters discuss, efforts against TF involve cooperation among many government agencies and private sector entities.

⁵⁰ Online: Office of the Superintendent of Financial Institutions Canada <http://www.osfi-bsif.gc.ca/osfi/index_e.aspx?DetailID=525> (accessed February 17, 2009).

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CHAPTER III: THE ROLES OF FEDERAL DEPARTMENTS AND AGENCIES IN EFFORTS TO SUPPRESS TERRORIST FINANCING

Many federal departments and agencies¹ are involved in national security matters:

- Canada Border Services Agency (CBSA);
- Canada Revenue Agency (CRA);
- Canadian Security Intelligence Service (CSIS);
- Communications Security Establishment (CSE)²;
- Department of Finance (Finance Canada);
- Financial Transactions and Reports Analysis Centre of Canada (FINTRAC);
- Department of Fisheries and Oceans/Canadian Coast Guard;
- Department of Foreign Affairs and International Trade (DFAIT);
- Department of Justice (DOJ);
- Department of National Defence (DND) and the Canadian Forces (CF);
- Integrated Threat Assessment Centre (ITAC);
- Office of the Superintendent of Financial Institutions (OSFI);
- Privy Council Office (PCO);
- Public Safety Canada (PS); and
- Royal Canadian Mounted Police (RCMP).³

The focus of this chapter is on the roles of many of these agencies in attempts to suppress terrorist financing (TF). The role of the Canada Revenue Agency (CRA) is examined separately in Chapter VI.

¹ To simplify the narrative in this chapter, the terms “department” and “agency” are used interchangeably. The use of one term includes the other where the context requires.

² The official acronym is now CSEC, but the acronym CSE is still commonly used.

³ The agencies are not necessarily listed in order of the importance of their role in TF matters. Other documents and reports describe the inner workings of these agencies; see, for example, the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *A New Review Mechanism for the RCMP's National Security Activities* (Ottawa: Public Works and Government Services Canada, 2006) [*A New Review Mechanism for the RCMP's National Security Activities*].