

Fighting Terrorism Financing—Implications for the Legal and Financial Sectors*

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Thank you Mr. Potter for your kind introduction.

Good morning ladies and gentlemen.

I would like to thank the institute for inviting me to take part in this seminar. The issues which are the subject of these two days touch all Canadians and our response to them should very much reflect the values that are important to us as a country.

In my comments today, I intend to focus on three themes:

- First, the international money-laundering architecture that has evolved since the 1988 Vienna Convention which was aimed at the international drug trade;
- Second, expansion of this architecture as a response to curbing terrorist financing, post September 11th; and
- Third, I would like to speak to the proportionality of these actions.

I. INTERNATIONAL ARCHITECTURE

Money moves with ease from institution to institution and from country to country. Weaknesses will be identified and exploited by terrorists and criminals alike. To protect against this vulnerability, international standards must be agreed to and domestic legislation must be compatible with that of other countries.

In 1989, in response to the abuse of the international financial system by the international drug trade, the G7 established the Financial Action Task Force, or FATF. This organization is now comprised of 29 countries, including Canada, and two international organizations, the European Commission and the Gulf Cooperative Council. Through 40 recommendations, the FATF has put in place international standards

covering the criminal justice sector, as well as the financial system and its regulation, by fostering international cooperation in developing and promoting policies to combat money laundering.

As a member of the international community, Canada has been a full participant in meeting these standards. In 1989, the *Proceeds of Crime (Money Laundering) Act*¹ received Royal Assent. In 1991, Canada introduced client identification and record-keeping provisions for large financial transactions. It also required financial institutions to voluntarily report transactions relevant to the identification of money laundering. In July 2000, the legislation was amended and these reporting obligations became mandatory (this amendment did not come into force until November 2001).

The legislation also established the Financial Transactions and Reports Analysis Centre of Canada or FINTRAC. This agency receives and analyzes reports relevant to money laundering and is authorized to provide limited information to law enforcement and investigative agencies. More detailed information would be made available pursuant to a production order issued by a judge.

While these initiatives focused on money laundering by criminals, terrorist financing was also identified as a serious problem as early as 1994 in a CSIS [Canadian Security Intelligence Service] Public Report. The significance of the problem led to the *International Convention for the Suppression of the Financing of Terrorism*² on December 9, 1999, in which Canada played a lead developmental role.

At the heart of the convention is the requirement for countries to criminalize the provision and collection of funds for use in terrorist acts. The UN Security Council also issued Resolutions 1267 and 1333 on October 15, 1999, and December 19, 2000, respectively.³ These Resolutions require member states to freeze the assets of the Taliban, as

¹ S.C. 1991, c. 26, rep. by S.C. 2000, c. 17.

² GA Res. 54/109, UN GAOR, 54th Sess., UN Doc. A/RES/54/109 (1999).

³ *On the situation in Afghanistan*, SC Res. 1267, UN SCOR, 1999, UN Doc. S/RES/1267 (1999); *On the situation in Afghanistan*, SC Res. 1333, UN SCOR, 2000, UN Doc. S/RES/1333 (2000).

well as those of Oussama Ben Laden and his associates (283 entities listed today; resolutions 1267 and 1333 were subsumed under Resolution 1390⁴ on January 16, 2002).

II. POST SEPTEMBER 11

September 11, an event that directly affected people from 86 countries (US State Department figures), galvanized international resolve to take steps not only to counter-terrorist activity but also to prevent it. Curbing terrorist financing was a logical place to start. As criminals need working capital, so too do terrorists.

On September 28, 2001, the UN Security Council passed *Resolution 1373*.⁵ Canada responded with the *United Nations Suppression of Terrorism Regulations*⁶ under the *United Nations Act*⁷ and the subsequent listing of a broader range of terrorist entities and persons that are subject to having their assets frozen (40 listed today, for example, Hamas, L.T.T.E., F.A.R.C.). The Resolution also requires States to criminalize the financing of terrorism. Canada had already indicated its commitment to criminalizing terrorist financing by signing the UN terrorist financing convention in February 2000.⁸

On October 31, 2001, the FATF issued eight recommendations on terrorist financing which have since become international standards. In part, these include the confiscation of terrorist assets, the reporting of suspicious transactions linked to terrorism and the application of the standards to alternative remittance systems.

⁴ *On the situation in Afghanistan*, SC Res. 1390, UN SCOR, 2002, UN Doc. S/RES/1390 (2002).

⁵ *Threats to international peace and security caused by terrorist acts*, SC Res. 1373, UN SCOR, 2001, UN Doc. S/RES/1373 (2001) [hereinafter *Resolution 1373*].

⁶ S.O.R./2001-360.

⁷ R.S.C. 1985, c. U-2.

⁸ *Supra* note 2.

In concert with these international norms the Government of Canada brought forward *Bill C-36*, the *Anti-terrorism Act*.⁹

This Act criminalizes terrorist financing; facilitates the freezing, seizing and forfeiture of terrorist assets through the listing of terrorist entities; sets in motion requirements for reporting suspicious terrorist financing transactions and requires anyone to disclose to the RCMP and CSIS the existence of any property in his or her possession or control that he or she knows is owned or controlled by or on behalf of a terrorist group. These measures place clear obligations on financial institutions and intermediaries. In addition, bodies that are subject to the *Proceeds of Crime (Money Laundering) Act* must also report the information to the FINTRAC.

It should be noted that the legislation, while not yet in force, expanded the mandate of the FINTRAC to analyzing the financial transactions it receives for terrorist financing. In addition, the legislation protects reporting entities from criminal and civil liability when they submit suspicious transaction reports in good faith.

I should note that the Office of the Superintendent of Financial Institutions (OSFI) has, in its regulatory role of financial institutions, provided significant guidance on the requirements and implications for financial institutions with regard to the terrorist financing issue (the OSFI Website is helpful in this regard and our Department will have a direct link to the site).

It is not just domestic legislation that will have an impact on financial institutions. For instance, as a result of the United States Patriot Act,¹⁰ institutions that deal with terrorists will not be doing business in the United States.

III. ARE THESE MEASURES REASONABLE AND PROPORTIONATE?

In giving Royal Assent to *Bill C-36*, the Parliament crafted a regime which carefully balances national security requirements and individual rights. For instance, a listed entity has the right to a judicial

⁹ S.C. 2001, c. 41 [hereinafter *Bill C-36*].

¹⁰ *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*, Pub. L. No 107-56, 115 Stat. 296-342.

review of the decision to list. The listed entity will be given sufficient information on which to base a defence, and will have the ability to introduce evidence, call witnesses and be able to respond.

While different approaches have been taken, 150 countries and jurisdictions have issued orders to freeze terrorist assets and the UN Security Council Counter-Terrorism Committee is ensuring that all countries implement *Resolution 1373*.

In closing, Canada's approach has been consistent with these international norms while also meeting Charter requirements.

Thank you for this opportunity to speak.