

NEW ANTI-TERRORIST LAWS
CANADIAN BUSINESS IS IN DIRECT FIRING LINE

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Impact of Canada's Anti-Terrorism Measures

Bill C-36, Canada's new *Anti-Terrorism Act*, was introduced in Parliament on October 15th and is working its way through Committee. Even with some adjustments before final reading to respond to human rights concerns, the legislation will represent a fundamental shift in Canadian criminal law and security policy.

Beyond vastly increasing governmental powers to investigate and prosecute terrorists, the Bill will also have a major impact on how Canadian business is conducted, whether at home or outside the country. As with the burdens on the public treasury, the costs to the private sector will be significant and will not diminish over time.

Even with changes to the definition of terrorism and a "sunset" clause, the main elements will remain intact. Stripped to its core, Bill C-36 will constitute a major ratcheting up of the power of the Canadian State to deal with the current international terrorist crisis and with the longer-term dangers posed by the kind of Islamic fundamentalism represented by Osama bin Laden and the Taliban.

Basic Ingredients of the Bill

The main thrust of Bill C-36 is to fill a gap in existing Canadian criminal law by defining "terrorism" and applying criminal sanctions to terrorist acts and a range of

terrorist-related activity. Notably, related acts such as “terrorist financing activities” and a range of other kinds of activities that facilitate, aid and abet terrorism now will be criminalized.

For the private sector, the reporting and monitoring obligations of banks, insurance companies, securities dealers and other financial institutions will be significantly increased. These businesses must be in a position to report all transactions of which there are “reasonable grounds” to suspect may be related to a terrorist activity financing offense. This makes it incumbent on them to create the appropriate early-warning mechanisms.

Criminalization of “Terrorism”

What the September 11th attacks brought home is that there was (and still is) nothing in the *Criminal Code* specifically directed to terrorism *per se*. Up to now, police have used ordinary criminal laws, such as laws preventing hijacking and other crimes like murder, extortion, etc., to prosecute terrorists.

Bill C-36 fills this gap. The *Criminal Code* will be extended to a wide array of terrorist-related activities, including the financing, facilitating and providing other “services” to terrorist organizations. These amendments seek to combat terrorism in its pocketbook, giving enforcement agencies the power to seize terrorist assets and root out ongoing financial support, the heart and soul of the global problem.

New Monitoring and Reporting Obligations

The Bill also changes the way Canadian corporations will have to behave in dealing with suspected terrorist groups and activities. It does this by enlarging the reporting and recording obligations already in place under the *Proceeds of Crime (Money Laundering) Act* and the *United Nations Suppression of Terrorism Regulations*.

The *Money Laundering Act*, passed last year, created the Financial Transactions and Reports and Analysis Centre (FINTRAC) as a new Federal agency. All persons are required to report to FINTRAC any transactions where there are “reasonable grounds” to suspect may be related to a money laundering offense.

Bill C-36 broadens the mandate and powers of FINTRAC beyond pure money laundering. Banks, trust companies, insurance companies and other enterprises will be required to report a wide range of transactions to FINTRAC on an ongoing basis -- irrespective of the amount -- and FINTRAC, in turn, is authorized to provide information on suspected terrorist activities to the RCMP and to CSIS and, in some cases, to local police forces.

The Definition of “Terrorism”

Under the Bill, “Terrorist activity” is defined in a three-pronged manner as: (1) any act or omission committed for political, religious or ideological purpose, objective or cause and (2) committed in whole or in part with the intention of “intimidating the public” or compelling anyone, including a government, from doing or refraining to do any act and (3) intended to cause death, bodily harm or serious risk to health or safety or substantial property damage or serious interference with or disruption of an essential service.

Together with this stand-alone definition, the Bill includes as a terrorist activity any of the offenses covered by ten U.N. treaties on terrorism, such as the Suppression of Terrorist Financing Convention and the Suppression of Terrorist Bombings Convention. This means that each of the separate offenses in these treaties are to be incorporated into Canadian law and will become as important as the stand-alone definition itself.

The *Criminal Code* will apply to acts committed inside or outside of Canada, extending the reach of Canadian law beyond Canadian territorial limits. The Bill also allows the Federal Cabinet to establish a list of persons and groups deemed to be terrorists, a point that has attracted comment by its opponents in the Parliamentary committees studying the legislation.

To be within the stand-alone definition of “terrorism”, each of the above elements must be proven. To protect acts of legitimate political protest, the definition specifically excludes activity involving lawful advocacy, protest, dissent or work stoppage not intended to result in the harm referred to above. The Minister of Justice has stated her belief that these safeguards will ensure that the Bill meets the requirements of the *Charter of Rights and Freedoms*.

Indirect Terrorist Activities

Together with direct acts, the Bill criminalizes many kinds of indirect activities in the financial and assistance area that are designed to aid or abet the commission of terrorism. Business will have to be cognizant of these changes:

?? The Bill makes it a criminal offense for anyone, directly or indirectly, willfully and without lawful justification, to finance terrorist activity by “providing or collecting” property intended for use in that activity.

?? Together with preventing financing without lawful justification, the Bill makes it a criminal offense to collect property, or to invite others to provide money or to assist in financing or in other services, intended to be used, in whole or in part, for terrorist activity or for terrorist groups.

?? Along with the usual provisions including conspiracy and being accessories to acts of terrorism, the Bill makes it a criminal offense to “*facilitate*” terrorist activity. Facilitation occurs whether or not the person knows that a particular terrorist activity is facilitated and irrespective of whether any such activity was planned or foreseen at the time.

Freezing and Seizing of Property

Extending the reach of the *United Nations Suppression of Terrorism Regulations* and the other regulations made under the *United Nations Act* that were specifically directed to the Taliban and Iraq, the Bill freezes assets of all listed terrorist groups by making it a criminal offense for any person in or outside of Canada to knowingly deal, directly or indirectly, in the property or assets of any terrorist group. It also will permit the Federal government, on *ex parte* application to the Federal Court, to seize any property on suspicion that it is owned or controlled or will be used by such terrorist group or to facilitate terrorist activity.

Extension of the Role and Powers of FINTRAC

As noted, the *Proceeds of Crime (Money Laundering) Act*, passed in 2000, requires banks, credit societies, insurance, trust and loan companies and a range of other

businesses and professions to keep records and to regularly report certain transactions and suspicious activities to FINTRAC.

The *Money Laundering Act* will be amended to extend the reporting requirements to all “terrorist activity financing offenses”. Such types of activities are spelled out in the new definitions in the amended *Criminal Code*, discussed above.

The right of seizure and detention by Federal authorities of monies, securities and other instruments contained in the *Money Laundering Act* is extended, as is the authority of search by enforcement officers, to cover terrorist activities and terrorist groups.

Where the Centre has “reasonable grounds to suspect that designated information would be relevant to threats to the security of Canada”, FINTRAC will be authorized to disclose such information to CSIS and the RCMP.

The Bill also extend the authority of the Minister of Revenue or any other specially designated minister as well as FINTRAC itself to enter into international agreements with both foreign States and international organizations. The exchange of confidential security-related information between the Centre and that foreign State or organization related to terrorist financing activities will be authorized, enhancing the network of international efforts to deal with the terrorist threat.

What CEO's Must Do

Clearly, the costs of fighting terrorism will have to be shared by the private sector. This will have to become an integral part of the operation of financial institutions and corporations large and small, irrespective of the nature of their international activity. At the end of the day, the burden falls squarely on CEOs and senior executives. They will

have to ensure all reasonable diligence has been used to scrutinize possible terrorist-related acts. Entire new monitoring and reporting systems will have to be put in place. The cost of fighting terrorism will not go away and these new burdens will have lasting implications for the Canadian business community.

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Ivey Business
Nov. 16/01