Charities face risks from wave of new anti-terrorism laws

By Terrance S. Carter

It is becoming increasingly important for charities, particularly those that operate internationally, to be aware of the developing plethora and complexity of anti-terrorism legislation in Canada that impacts the charitable sector.

Bill C-35, *An Act to Amend the Foreign Missions and International Organization Act,* has been proclaimed in force as of April 30. Bill C-42, *An Act to Amend Certain Acts of Canada and to Enact Measures for Implementing the Biological and Toxin Weapons Conventions in order to Enhance Public Safety*, was withdrawn on April 24, amidst a deluge of criticism that the breadth and ambiguity of its measures could pose a serious threat to the liberty and freedom of Canadians. A modified version was introduced on April 29 as Bill C-55, the *Public Safety Act 2002*. Despite some improvements over Bill C-42, a number of concerns remain that may impact charities. But as of the date of writing, Bill C-55 has not been passed into law.

Part 4 of Bill C-36, which amended the predecessor to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, refers to regulations elaborating on the definitions of specific entities within that Act and giving guidelines for reporting obligations. These regulations were issued on May 9.

The ramifications for charities from Bill C-35 are evident when viewed in the light of the amendments to the *Criminal Code* by Bill C-36, specifically the definition of "terrorist activities."

Under the new s. 83.01(1)(a) of the Code, the definition of "terrorist activities" includes actions taken against "internationally protected persons." Bill C-35 amends the *Foreign Missions and International Organization Act* and expands several important definitions, including "international organization" and "internationally protected persons." The bill extends the "internationally protected persons" status to foreign representatives, including diplomats and other officials. The definition of "international organization" is widened to include an "inter-governmental conference," such as a meeting of the WTO or the G-8.

The means of transportation for and the areas in which the "internationally protected persons" are to meet are also protected under Bill C-35. Any threatening or commission of acts against such "internationally protected persons," "official premises" or "means of transport" that will likely endanger the lives or liberty of such persons would meet the definition of a "terrorist activity" under Bill C-36. Protesters blocking a road to a WTO conference or G-8 Summit now run the risk of committing a "terrorist activity."

Section 10.1 of Bill C-35 gives the RCMP power to ensure the "proper functioning" of an "intergovernmental conference" and protection of "internationally protected persons." Citing this legislation, an RCMP news release June 21 announced creation of an "access control area" in downtown Calgary, nearly 100 km from the G-8 Summit in Kananaskis. In a news release entitled "Information for Protesters," the force warned it could limit the Charter-guaranteed rights and freedoms of protesters in the interest of the RCMP's responsibilities outlined in Bill C-35.

Bill C-42, the predecessor to Bill C-55, proposed to amend the *National Defence Act* by empowering the Minister of Defence to proclaim a broad "military security zone." Many feared the proposed law could be used to subdue legitimate democratic dissent. This concern remains with regard to Bill C-55, notwithstanding some improvements in the legislation.

Part 11 of Bill C-55 replaces "military security zones" with "controlled access military zones." The bill limits the use of such zones to the protection of defence establishments, Canada Forces property outside a defence establishment or property of visiting forces. The designation of such zones is now subject to judicial review, with an objective test of being "reasonably necessary" to ensure the safety and security of Canadian or visiting forces property, rather than the previous subjective test in Bill C-42 of "in the opinion of the Minister."

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What is missing in Bill C-55, however, are legislative safeguards that will restrict the use of the "controlled access military zones" so that such designation is not used, among other things, to quell legitimate political dissent.

Charities, such as hospitals, that might provide medical assistance, or churches that might offer accommodation or other forms of help to protesters who infringe on a "controlled access military zone" will need to be aware of the consequences that could result from aiding or facilitating protesters in these situations. In addition, Canadian charities that are involved in humanitarian or civil libertarian issues and decide to hold public demonstrations at a government-sponsored summit may become subject to martial law imposed on those caught in a "controlled access military zone." The creation and enforcement of such zones may pose a real threat to members and volunteers of charitable organizations who operate and provide assistance within these potential theatres of confrontations or conflict.

Bill C-55 also contains amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.* The original Act, the *Proceeds of Crime (Money Laundering) Act,* was created to combat organized crime and establish the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to assist in the detection, prevention and deterrence of money laundering. However, after September 11, its mandate was expanded by Part 4 of Bill C-36 to include terrorist financing. (Bill C-36 renamed the Act to include terrorist financing.)

Part 4 of Bill C-36 includes a number of reporting obligations on specified persons or entities that are to be phased in during 2002.

Bill C-55 strengthens the ability of FINTRAC and other government agencies to collect and share compliance-related information with various agencies that regulate and supervise banks, trust companies, securities dealers, lawyers, and accountants, as well as to expand FINTRAC's power to collect information from federal and provincial government agents for purposes related to law enforcement or national security. The bill also has a corresponding amendment to the *Office of the Superintendent of Financial Institutions Act* which will permit the Superintendent to disclose FINTRAC information related to compliance by a financial institution. This means FINTRAC is permitted to collect information from government databases related to national security just as it may from other law enforcement databases.

The expansion of the federal government's power to share and collect compliance information may have a significant indirect impact on charities. A charity that funds international programs may unwittingly become the subject matter of a reported transaction without being aware of it. For example, its bank, its lawyers or its accountants are now required by law to report to FINTRAC suspicious or large cash transactions of the charity.

As well, under Part 6 of Bill C-36, *Charities Registration (Security Information) Act,* the Solicitor General and the Minister of National Revenue are given extremely broad power to revoke or refuse to grant charitable status to a charity based on information collected domestically and internationally. In this regard, information collected by FINTRAC may be made available to and used by the Solicitor General or the Minister of National Revenue in considering whether to revoke a charity's charitable status or to deny a charitable status application, notwithstanding that under Part 6 of Bill C-36, the charity may be denied a chance to review or cross-examine such information.

Bill C-36 and Bill C-55 will also have a direct impact on charities to the extent that they are included in the definition of entities to which the Proceeds of Crime Act applies. Section 51(g) in Part 4 of Bill C-36, states that persons and entities "authorized under provincial legislation to engage in the business of dealing in securities" have a statutory obligation to record and report the financial transactions as defined in that Act.

Under the Ontario *Securities Act*, charities are generally exempted from the registration requirements in issuing and trading securities. Specifically, s. 35(2)7 states that registration under the Act is not required to trade in securities if the issuer is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no commission or other remuneration is paid in connection with the sale. As a result, in Ontario, where a charity fulfills exemption-qualifications requirements under the *Securities Act*, it is arguable that it may, in some situations such as raising funds by issuing bonds, have become "authorized to engage in the business of dealing in securities." If so, a charity in Ontario, and possibly in other provinces with similar legislation, may be subject to the mandatory recording and reporting obligations imposed under the Proceeds of Crime Act.

Charities may also be included in the expanded definition of entities required to report as described in the regulations under the Proceeds of Crime Act released on May 9. The regulations now include definitions of "financial entity" and "money services business," which in some instances may include charities. For instance, the definition of "financial entity" includes "a company to which the *Trust and Loan Companies Act* applies." In some circumstances a charity may be involved in trust activities that would require it to be registered under that Act.

Also, the definition of "money services business" is in part 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." For instance, Canadian charities that transfer funds to a healthcare or relief organization internationally or even domestically, might fall under this definition and be required to report.

If charities do fall within the definitions of entities that are required to report, there will be serious consequences if those charities fail to report as required by the Proceeds of Crime Act. Charities will therefore need to be diligent in monitoring whether they have become involved in circumstances which might unwittingly expose them to a duty to report.

Charitable organizations must become familiar with the increasing body of anti-terrorism legislation in Canada and develop a proactive response.

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