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A RESPONSE TO C-55 AND REGULATIONS OF *THE PROCEEDS OF CRIME AND TERRORIST FINANCING ACT*

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A. RELEVANT AMENDMENTS TO THE *NATIONAL DEFENCE ACT*

Bill C-42 proposed to amend the *National Defense Act* to give the Minister of Defense power to proclaim a "military security zone". Many feared, among other things, that this legislation could be used in order to subdue legitimate democratic dissent that is guaranteed in the *Charter of Rights and Freedoms*. As the CBA Submission on Bill C-42 indicated, the right to engage in legitimate political protest and freedom of expression are the foundations of our democracy. At times when citizens choose to exercise these rights, charities are often on the front lines in providing assistance on religious or humanitarian grounds. As the guidelines for security and safety are redrawn, charitable organizations will be affected to the extent that they may be active in these situations.

Bill C-42 was ultimately repealed and re-introduced as Bill C-55, the *Public Safety Act, 2002*. Part 11 of Bill C-55 replaced "military security zones" with "controlled access military zones". While the change of terminology is not itself decisive, the new Bill limits the use of "Controlled Access Military Zones" to the protection of: (a) a defense establishment, (b) Canada Forces' property outside a defense establishment, (c) property of the visiting forces. The designation of "controlled access military zones" is now clearly subject to judicial review as a result of changes within Bill C-55. This important safeguard is now more manifest in Bill

C-55 because there is an objective test of being "reasonably necessary" to ensure the safety or security of Canadian or visiting forces property, rather than the subjective test previously in Bill C-42 of "in the opinion of the minister."

What is still missing, however, are legislative safeguards that will specifically restrict the use of the "controlled access military zones" so as not to be used, among other things, to quell legitimate political dissent. A "controlled access military zone" may be created around moveable military property with no other limitations on how it is to be used other than the provision that it "may not be greater than is reasonably necessary" to ensure the safety or security of the Canadian Forces or Visiting Forces property. Therefore, the possibility remains that Canadian Forces Property such as armored personal carriers, could be placed around the proximity of a G-8 Summit or placed in an anticipated site of protests and thereby be justified in "forcibly" removing any person or thing that enters into the zone.

Charities, such as hospitals that may provide medical assistance, or churches that provide accommodation for student protestors who infringe on a "controlled access military zone", will need to be aware of potential negative repercussions for aiding or facilitating in these situations. In addition, Canadian charities, concerned with humanitarian or civil libertarian issues, may decide to hold public rallies or demonstrations at a relevant summit and may be subject to the martial law imposed on those who are caught within a controlled access military zone. The creation and enforcement of controlled access military zones as set out in Bill C-55, therefore, may pose a real threat to the members and volunteers of charitable organizations that operate and provide assistance within these potential theatres of conflict.

B. RELEVANT AMENDMENTS TO *THE PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT*

Part 16 of Bill C-55 proposes to amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to expand the scope for information sharing and collection power by the Financial Transactions and Reports Analysis Centre (FINTRAC) and various other governmental agents. There is the potential that these changes within Bill C-55 may have direct impact upon charities where charities are found to be subject to amendments in Part 4 of Bill C-36, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.* Regulations under the same Act, released on May 14, 2002, will need to be considered in order to better

determine if charities will be implicated under the recent amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Part 4 of Bill C-36, containing the amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* contains a number of reporting obligations that will be phased in during 2002. The first reporting obligation, the reporting of suspicious transactions, took effect on November 8, 2001. Reporting entities such as financial entities, securities dealers, legal counsels, accountants and real estate brokers, etc, must report all suspicious transactions to FINTRAC where there is "reasonable grounds to suspect that the transaction is related to the commission of a money laundering offence." Failure to comply with the Act will result in fines up to $500,000.00 and/or incarceration for up to six months for the first offence.

While Bill C-55 retains the broad power given to FINTRAC under Bill C-42 to collect and share compliance related information with various agencies that regulate and supervise banks, trust companies, securities dealers, lawyers, accountants, etc, it expands FINTRAC's power to collect information from federal and provincial government agents for purposes related to law enforcement or national security. Bill C-55 contains a complimentary amendment to the *Office of the Superintendent of Financial Institutions Act* that would permit the superintendent to disclose FINTRAC information related to compliance by a financial institution. This clarifies that FINTRAC is permitted to collect information from government databases related to national security just as it may from law enforcement databases.

The expansion of the government's power to share and collect information with respect to compliance issues may have significant impact on charities. Firstly, a charity carrying out international fundraising or programs may unwittingly become a reported subject without being aware of being so. For example, a charity's bank, its lawyers or accountants are now required by law to report to FINTRAC any suspicious transactions or large cash transactions of the charity. Secondly, under Bill C-36, Part 6, *Charities Registration (Security Information) Act*, the Solicitor General and the Minister of National Revenue ("Ministers") are given a broad power to revoke a charity's charitable status or refuse to grant charitable status based on information that it collected both domestically and internationally. In this regard, information collected by FINTRAC might be made available to and used by the Ministries in considering whether to revoke a charity's charitable status or

to deny a charitable status application notwithstanding that the subject charity will have no opportunity to interrogate or cross-examine such information under Part 6 of Bill C-36.

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