
HOUSE OF COMMONS FINANCE COMMITTEE TABLES REPORT ON TERRORIST FINANCING

*By Terrance S. Carter, Nancy E. Claridge and Sean S. Carter**

A. INTRODUCTION

The House of Commons Standing Committee on Finance (the “Committee”) released its report entitled *Terrorist Financing in Canada and Abroad: Needed Federal Actions* (the “Report”) on June 18, 2015.¹ The Report contains 15 recommendations that are designed to increase the effectiveness of Canada’s anti-money laundering and anti-terrorist financing regime, as well as contribute to global efforts to combat terrorist financing. In its discussion of the issues, the Committee noted the low level of terrorist financing that has been detected in Canada compared to other countries, but the Committee was careful to note that limited detection and prosecution of terrorist financing in Canada does not mean that there is a low risk of terrorist financing in Canada or that Canadian entities are not being used to raise or transfer terrorism-related funds abroad. As such, the Committee indicated that more could be done to detect terrorist financing and increase investigative capacity, which could lead to more prosecutions with these expanded capabilities. The following *Anti-terrorism and Charity Law Alert* discusses the consultation process the Committee conducted in preparation for the Report, for which Carters Professional Corporation was invited to take part, and includes a discussion of which recommendations affecting

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¹ Report of the Standing Committee on Finance, “Terrorist Financing in Canada and Abroad: Needed Federal Actions” (18 June 2015) 41st Parliament, 2nd Session, online:

<http://www.parl.gc.ca/Content/HOC/Committee/412/FINA/Reports/RP8048561/412_FINA_Rpt13_PDF/412_FINA_Rpt13-e.pdf>.

charities and not-for-profits were adopted by the Committee and those recommendations made by Carters that have yet to be adopted by the Committee.

B. CONSULTATION PROCESS

The Committee held six hearings in relation to the Report and described witness testimony and submissions as instrumental in informing their thoughts and recommendations on terrorist financing. As reported in the April and May 2015 *Charity Law Updates*, Carters Professional Corporation (represented through Terrance S. Carter) appeared on April 30, 2015 to make a submission to the Committee with regard to its study of the cost, economic impact, frequency and best practices to address the issue of terrorist financing, both in Canada and abroad.² A supplemental submission³ was made by Carters to the Committee on May 8, 2015, to bring to the Committee's attention the earlier recommendations made by the Standing Committee on Public Safety and National Security in their 2007 report,⁴ which were consistent with those contained in the earlier Carters submission. Also presenting before the Committee on April 30, 2015 was Samuel Schwisberg, in-house legal counsel for the Canadian Red Cross, who was appearing on behalf of the Canadian Bar Association ("CBA") Charities and Not-for-Profit Law Section. In his submissions, Mr. Schwisberg explained that charities can be an important asset in countering terrorism given their outreach to communities both within Canada and outside Canada.⁵

C. RECOMMENDATIONS THAT HAVE BEEN ADOPTED BY THE COMMITTEE

The Report makes several recommendations to help the federal government continue to recognize the cost and prevalence of terrorist financing, both globally and in Canada. These include educating legislators, law enforcement agencies and the public about the connection between terrorist financing and terrorist activity, particularly from the perspective of financing. The Report also recommends

² Terrance S. Carter, Nancy Claridge and Sean Carter, "Brief to the Standing Committee on Finance", submission to the House of Commons Standing Committee on Finance, Hearings on Terrorist Financing in Canada and Abroad, online: <http://www.parl.gc.ca/Content/HOC/Committee/412/FINA/WebDoc/WD7864617/412_FINA_TFCA_Briefs/CartersProfessionalCorporation-e.pdf>.

³ Terrance S. Carter, Re: Studying Terrorist Financing in Canada and Abroad (8 May 2015), online: <<http://www.carters.ca/pub/article/terrorism/2015/ltrtofin2015.pdf>>.

⁴ Report of the Standing Committee on Finance, "Rights, Limits, Security: A Comprehensive Review of the Anti-Terrorism Act and Related Issues", (March 2007) 39th Parliament, 1st Session, online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=2798914&Language=E&Mode=1&Parl=39&Ses=1>>.

⁵ Charities and Not-for-Profit Law Section, The Canadian Bar Association, "Terrorist Financing Study", submission to the House of Commons Standing Committee on Finance, Hearings on Terrorist Financing in Canada and Abroad, online: <http://www.parl.gc.ca/Content/HOC/Committee/412/FINA/WebDoc/WD7864617/412_FINA_TFCA_Briefs%5CCanadianBarAssociation-e.pdf>.

disrupting financing sources as a way to combat ISIL, as well as creating a private sector-led financial crime centre to act as a centre of excellence and to facilitate dialogue between the public and private sectors. The Report also emphasizes the roles of Financial Transactions and Reports Analysis Centre of Canada and the Royal Canadian Mounted Police in their preventative and investigative capacities.

Among the key recommendations made by the CBA and Carters was the creation of “made in Canada” guidelines that would allow charities that want to be compliant with Canada’s anti-terrorism legislation to have clear parameters with what they need to do and what they should not do, as well as be able to evaluate their performance. The Committee reflected this submission in the following two recommendations made by the Report:

- “The federal government, in light of the numerous global cases of charities being used to raise and transfer funds for terrorist financing purposes, continue its efforts to bring increased transparency to the charitable sector in Canada. As part of these efforts, the Canada Revenue Agency should be encouraged to work more closely with charities to ensure their compliance with anti-terrorist financing laws. Increased transparency in the charities sector should not unnecessarily burden legitimate charities.”
- “The federal government initiate a study to clarify the role of charitable organizations in order to protect legitimate entities in Canada’s charitable sector and to prevent charities from being used as vehicles for terrorist financing.”

D. RECOMMENDATIONS NOT ADOPTED BY THE COMMITTEE

Not surprisingly, given the nature of government submissions, not all of the recommendations by the CBA or Carters were adopted in the recommendations in the Report. The recommendations that were not adopted include the following:

- Amend section 83.19(2) of the *Criminal Code* to eliminate the strict liability element of the offence and to require the Crown to prove criminal intent to find any person guilty of such an offence;

- Create an exception for the delivery of humanitarian aid, particularly in response to a crisis, where such aid may incidentally support or benefit a terrorist organization;
- Institute a clear *mens rea* requirement to the *Charities Registration (Security Information) Act* in situations involving the potential deregistration where humanitarian aid had incidentally supported a member of a terrorist group.
- Amend the *Charities Registration (Security Information) Act* so that the Federal Court judge, to whom a certificate is referred, will not be able to find the certificate to be reasonable where an applicant or registered charity has established that it has exercised due diligence to avoid the improper use of its resources, and
- Amend the *Charities Registration (Security Information) Act* to allow for an appeal to the Federal Court of Appeal of a decision by a Federal Court judge that a referred certificate is reasonable.

E. CONCLUSION

The Report is an important document for all charities to consider, particularly those which work in conflict areas of the globe or within communities that might be perceived as being vulnerable to terrorist financing. Although the Report did not include all of the recommendations that it might have in order to protect *bona fide* charities from overly onerous anti-terrorism legislation, it did include much needed recognition that in pursuing increased transparency within the charitable sector anti-terrorism provisions “should not unnecessarily burden legitimate charities” and that CRA should be “encouraged to work more closely with charities to ensure their compliance with anti-terrorist financing laws.” These recommendations are certainly a step in the right direction in achieving an appropriate balance between the legitimate security interests of the State and the essential work of the charitable sector within Canada and abroad.

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