
JUSTICE FOR VICTIMS OF TERRORISM ACT RECEIVES ROYAL ASSENT

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

A. INTRODUCTION

The federal government has passed the controversial Bill C-10, commonly referred to as the *Safe Streets and Communities Act*, exceeding the government's original plan to pass the Bill in the first 100 sittings days of Parliament. Bill C-10 introduces significant new forms of potential liability for charities that are carrying on operations in conflict zones or may be carrying out programs that may be perceived to have ties to terrorist organizations. This *Anti-terrorism and Charity Law Alert* will provide a brief review of the new Bill.

B. BACKGROUND

Bill C-10, *An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts (Safe Streets and Communities Act)*,¹ was introduced on September 20, 2011 in the House of Commons and groups together nine Bills that had been dealt with separately during the 3rd Session of the 40th Parliament. The preamble to the Bill states that Parliament considers that it is in the public interest to enable plaintiffs to bring lawsuits against terrorists and their supporters, which will have the effect of impairing the functioning of terrorist groups and deter and prevent acts of terrorism against Canada and Canadians.

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¹ For the full Bill see online: Parliament of Canada

<<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5465759&File=35>>.

This Bill received Royal Assent on March 13, 2012. However, it is not yet binding because it has not been proclaimed in force. There is a distinction between the enactment of an Act and its proclamation. The former relates to the time it receives Royal Assent and the latter to the time when it becomes binding and capable of producing legal effects. The proclamation, or “coming into force”, provision of Bill C-10 prescribes that any of its provisions are to come into force on a day or days to be fixed by order of the Governor in Council. Such a delayed commencement of legislation gives the government discretion as to the commencement of an Act and may afford more time to await consensus or agreement on the legislation before its coming into force. It may also give the government an opportunity to achieve the policy goal underlying the Act using other ways to achieve the same purposes.

C. DETAILS OF THE BILL

There are five parts to Bill C-10, and of particular interest is Part I,² which includes reforms to deter terrorism by creating a new Act and amending the *State Immunity Act*. Part I is titled *Justice for Victims of Terrorism Act* and is enacted as “An Act to deter acts of terrorism against Canada and Canadians.” The purpose of this Act is to deter terrorism by establishing a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters. Under subsection 4(1), any person who has suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission that is punishable under Part II.1 of the *Criminal Code*, may bring an action to recover an amount equal to the loss or damage proved to have been suffered by the person and obtain any additional amount that the court may allow, from any of the following:

- (a) any listed entity or other person that committed the act or omission that resulted in the loss or damage; or
- (b) a foreign state or listed entity or other person that — for the benefit of or otherwise in relation to the listed entity referred to in paragraph (a) — committed an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

“Listed entity” has the same meaning as in subsection 83.01(1) of the *Criminal Code*,³ which means an entity on a list established by the Governor in Council under section 83.05. Pursuant to subsection 83.05(1) of the *Criminal Code*, the annexed *Regulations Establishing a List of Entities* establishes a list of entities

² For more information on Part II Sentencing, see *Charity Law Update March 2012*.

that have knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity or is knowingly acting on behalf of, at the direction of or in association with an entity that has knowingly carried out, attempted to carry out, or participated in or facilitated a terrorist activity.⁴

A court may hear and determine the action referred to above only if the action has a “real and substantial” (undefined in the Bill) connection to Canada, or if the plaintiff is a Canadian citizen or permanent resident. The defendant is presumed to have committed the act or omission that resulted in the loss or damage to the plaintiff if the court finds that a listed entity caused or contributed to the loss or damage by committing an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the *Criminal Code*, and the defendant — for the benefit of or otherwise in relation to the listed entity — committed an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*. These sections relate to financing, participating in, facilitating, instructing and harbouring terrorist organizations.

Bill C-10 also amends the *State Immunity Act* to lift state immunity where a state has supported terrorist activities, the general rule that prevents states from being sued in Canada’s domestic courts. However, only states included in a list to be established by the Governor in Council may have their immunity lifted and be sued. However, the new exception serves to remove state immunity only when the state in question has been placed on a list established by the Governor in Council on the basis that there are reasonable grounds to believe that it has supported or currently supports terrorism.

A limitation period in respect of an action referred to above does not begin before this Bill comes into force and is suspended during any period in which the person that suffered the loss or damage is incapable of beginning the action because of any physical, mental or psychological condition, or is unable to ascertain the identity of the listed entity, person or foreign state.

D. CONCLUDING COMMENTS

Charities and not-for-profit organizations working outside of Canada should carefully review this Bill, as there is risk of significant liability under the current provisions, especially in regard to issues of financing or

³ RSC, 1985, c C-46.

⁴ SOR/2002-284.

otherwise facilitating terrorists or terrorist activities. A repeated criticism of the facilitation provision in the *Criminal Code* is that the offence contains a diminished *mens rea* component, which results in the provision verging on point of a strict liability offence. As a result, a charity charged with facilitation need not have known of any terrorist act, nor of any planning, nor if it had been committed in order to be charged with this offence, and consequently to be exposed to liability under Bill C-10.



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