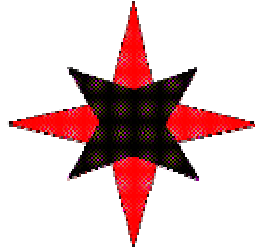


# **CANADIAN ANTI-TERRORISM LEGISLATION: *HOW MAY IT AFFECT CHARITIES AND INDIVIDUALS?***



## **A BRIEFING FOR CANADIAN QUAKER MEETINGS AND BODIES**

**NOVEMBER 2002**

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### **INTRODUCTION:**

In response to the terrorist attacks in the United States on September 11<sup>th</sup>, 2001, a number of pieces of legislation were prepared by the Canadian Government and introduced in the House of Commons as a part of the Government's Anti-Terrorism Plan. The stated purpose of the legislation is to "combat terrorism" by creating measures to "deter, disable, identify, prosecute, convict and punish terrorist groups; provide new investigative tools to law enforcement and national security agencies" and to ensure that the "Canadian values of respect and fairness are preserved..."

Many individuals, non-governmental organizations, associations (including the legal profession), and religious organizations vigorously registered their opposition to the legislation, concerned that it would unnecessarily (and illegally) contract civil liberties, target certain groups for scrutiny, and create a "chill effect" on legitimate protest. The threat of labeling people, groups or organizations as "terrorists" is an effective way to discourage people from becoming involved in protest movements. This is not unique to Canada and should be seen to be part of a global trend to discourage organized protest. Similar legislation exists in many countries including the USA, Britain, China, Singapore and Australia.

There are five pieces of Canadian legislation, which could have a great impact on Meetings, charities and individuals, and which include amendments to existing legislation (such as the Proceeds of Crime Act).

## **BRIEF OVERVIEW OF LEGISLATION AND IMPLICATIONS:**

### **BILL C-35**

Bill C-35 amends the *Foreign Missions and International Organization Act* and was proclaimed in force as of April 30th 2002. This act widens such definitions as "international organization" which now encompasses inter-governmental bodies such as the G-8 or World Trade Organization (WTO), and "internationally protected persons" which has been extended to include foreign representatives such as diplomats, and other government officials.

Under Bill C-35, any threatening or commission of acts against those defined as "internationally protected persons", "official premises", or "means of transport" would meet the definition of "terrorist activity". In other words, the specific areas where "internationally protected persons" are to meet are protected under this bill, which affects where protesters are allowed to protest, and those protesters may be at risk of accusation of committing a "terrorist activity". Similarly the new bill gives much power to the Royal Canadian Mounted Police (RCMP), which operate federally and provincially, and who, through Bill C-35, have the power to limit the rights of protesters "as they deem necessary".

This new development infringes on the *Charter of Rights and Freedoms*, which is entrenched in Canada's Constitution. It directly limits the ability for nonviolent direct action. If protesters block a road that stops officials reaching an international summit the protesters could be deemed to be terrorists. This could have particular impact on globalization demonstrations and Aboriginal groups, which both have histories of such actions.

### **BILL C-42**

Bill C-42 is an act to amend the *National Defence Act*. It was withdrawn on April 24<sup>th</sup>, 2002. This bill proposed to amend the *National Defence Act* by giving power to the Minister of Defence to broaden a "military security zone", which could be used to limit the right to protest and certainly lessen the visibility of protesters.

### **BILL C-55**

Bill C-55 is a modified version of C-42 called the *Public Safety Act*, which expands the definition of "military security zones" in the above withdrawn legislation (C-42) with the term "controlled access military zones", which include defence establishments, Canada Forces persons and property and property of visiting forces. It received first reading on 29<sup>th</sup> April 2002, but died on the order paper when Parliament was prorogued in September 2002.

### **BILL C-17**

Bill C-17 was introduced on 31st October 2002. It is an amended version of Bill C-55. Although it remains the same in many key areas, the significant area of change is the removal of the "controlled military access zone" provision. It states that this legislation needs to be re-engineered and reintroduced at a later date. In the interim, "controlled access zones" have been established at three naval bases (Canadian Forces Marine Testing Range, Nanoose Bay,

BC; Canadian Forces naval bases in Halifax, NS and Esquimalt, BC) aiming to restrict admittance to and movement around these areas.

If the "controlled access military zone" legislation is reintroduced it may be used to subdue legitimate protesters, or political dissent. It also puts Meetings, churches, hospitals etc. at risk if they operate to house, assist or treat protesters if those protesters infringe upon the zones. More specifically bodies, like a Meeting or a hospital, must be aware of the implications of aiding protesters. Organizations that sponsor or organize demonstrations at government-sponsored summits may be placed under martial law under this new Bill.

### **BILL C-36**

Bill C-36 was passed into law on December 18, 2001. It amends and incorporates 20 statutes including the criminal code, *Income Tax Act*, *Evidence Act*, *Canadian Human Rights Act*, *Immigration Act*, *Proceeds of Crime Act*, *Access to Information Act*, *Privacy Act*, *Official Secrets Act*, and *Charities Registration Act*, in an effort to penalize those who engage in or support terrorist activities. Bill C-36 revises the Criminal Code to criminalize terrorist activities as much as possible, it amends the *Proceeds of Crime Act* and which is now the *Terrorist Financing Act*, and it enacts the *Charities Registration Act*. It covers activities both inside and outside Canada.

Bill C-36 has potentially huge implications for Meetings, charities, NGO's and individuals. Bill C-36 amends the federal Criminal Code to include a definition of "terrorist activities" and "terrorist group" and defines a terrorist offense. The main concern that arises is the broad yet vague nature of the definitions, and the new criminalization of "facilitating" and financing terrorist activity.

Under Bill C-36 a terrorist activity is deemed to be "facilitated" whether or not:

- a. the facilitator knows that a particular terrorist activity is facilitated
- b. any particular terrorist activity was foreseen or planned at the time it was facilitated
- c. any terrorist activity was actually carried out

Under Bill C-36, it is a criminal offence to (in terms of facilitation and financing of terrorism):

- a. directly or indirectly provide or collect property that is intended to be used or knowing that it will be used in whole or in part in a terrorist activity.
- b. directly or indirectly collect property, provide property, or invite a person to provide property, financial or other "related services" that facilitates or carries out a terrorist activity.
- c. deal with property owned or controlled by or on behalf of a terrorist group, facilitate, directly or indirectly, any transaction with respect thereof or provide any financial or other related services in respect thereof

- d. directly or indirectly participate or contribute to any activity that enhances the ability of any terrorist group to facilitate or carry out a terrorist activity
- e. directly or indirectly instruct any person to carry out a terrorist activity.
- f. financial institutions (which may include charities) are obligated to determine if they possess property of a "listed entity".

The following examples illustrate the impact that the criminal code offences could have upon charities:

- a. A hospital foundation raises funds for the general operations of a hospital that provides medical care to student protesters at an anti-globalization protest who erect a road block leading to an international economic summit
- b. A religious denomination provides funding to a local church that assists student protesters by providing sleeping facilities in its church basement. These protesters then block a road leading to an international economic summit.

The definitions and examples listed above could have profound affects on organizations, Monthly Meetings or church groups in terms of where they donate money, what projects they support abroad, as well as affecting individual protesters (political, environmental or economic), unions or groups that challenge governmental policy or regimes. Not only could an organization be deemed as aiding or facilitating a "terrorist activity", they could be considered to have committed a criminal offence by supporting groups that may be legitimately voicing political dissent.

#### **PROCEEDS OF CRIME ACT**

In addition, C-17 and C-36 contain amendments to the *Proceeds of Crime (Money Laundering) Act*. This act was originally was produced to deal with organized crime and to establish the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). FINTRAC was created to detect, prevent and deter money laundering; however, since September 11<sup>th</sup>, it has been expanded to include terrorist financing. The amended act, renamed by C-36, has become the *Proceeds of Crime (Money Laundering) and Terrorist Act* ("Proceeds of Crime Act").

The amendments within C-36 refer to reporting obligations on "specific persons or entities". It states that financial entities (which may include charities), security dealers, legal counsel, accountants and real estate brokers, now have to report all transactions to FINTRAC where there "is reasonable ground to suspect that the transaction is related to a money laundering offence".

The alterations to the *Proceeds of Crime Act* within C-17 will empower FINTRAC and other government bodies to share and collect information with various agencies that monitor and regulate banks, lawyers, trust companies, accountants, etc. Furthermore, FINTRAC would have the power to collect information from government agencies if they pertained to national security or law enforcement. It may also make it mandatory for lawyers, bankers and accountants to report to FINTRAC any large monetary transactions made by any type of charity or organization. In addition lawyers, bankers or accountants could deem any

monetary transaction by a charity to be suspicious and report the charity without the charity's knowledge.

### **CHARITIES REGISTRATION ACT**

In addition, Bill C-16, the *Charities Registration Act*, was amended through Bill C-36. Bill C-16 gives authority to the Solicitor General and Minister of National Revenue to issue a certificate to a charity (such as a Monthly Meetings, CFSC or CYM) if there are reasonable grounds to believe that they are involved directly or indirectly supporting "terrorist activities". This may be based on a real or perceived relationship with a "listed entity", that is, an organization that has been identified by the government as undertaking or supporting terrorist activities. Ministers can rely on information collected from government agencies or institutions and this information is not available to the legal counsel, or the organization that has been issued the certificate. The Minister would then refer the certificate for judicial review; the decision by the court is absolute and there is no appeal process. The certificate would then be valid for three years and the organization, or charity cannot apply for charitable status within that time period. A certificate may be issued if a charity:

- Has made, makes or will make available any resources, directly or indirectly to a listed entity.
- Made available any resources, directly or indirectly to an entity that was and continues to be engaged in terrorist activities or activities in support of them.
- Made available any resources, directly or indirectly to an entity that engages in or will be engaged in terrorist activities or activities in support of them.

Even if a certificate is not issued and a charity is not charged with a criminal code offence a possible and unwitting violation of a criminal code offence may result in a charity losing its charitable status without the protection of due process of law. It is also possible that the charity may also face a freeze, seizure, restraint or forfeiture of its charitable property (assets), and its directors could face fines, penalties and even imprisonment.

Bill C-36 is extensive, for a full description of the legislation go to:

<http://www.carters.ca/bulletin/chylb10.htm>  
<http://www.gc.ca>

One of the major problems with this legislation is that it is vague and almost impossible with which to fully comply. To attempt to comply the following steps would need to be taken:

- a. Board members, staff and volunteers would need to be educated regarding the laws and subject to a security check.
- b. Organizations/charities would need to develop an anti-terrorism policy statement.
- c. A checklist for new and existing charitable programmes would need to be devised and the programmes would need to be vetted for compliance to the anti-terrorism laws.

- d. All organizations/charities receiving donations from other organizations/charities would need to ensure that they are each complying with anti-terrorism laws by having their own anti-terrorism statements.
- e. The list of our donors should be regularly reviewed to ensure that no money is received from 'terrorist' groups.

Quakers need to decide to what extent they are willing (and able) to comply with these laws and the implications that full compliance may have on the ability to carry out Quaker leadings.

### **WHAT IS BEING DONE TO ADDRESS CONCERNS ABOUT THIS LEGISLATION?**

CFSC is a member of the Canadian Council for International Cooperation (CCIC), a membership-based coalition of organizations involved in peace-building and international development that undertakes research, education, and advocacy. CCIC helped facilitate the creation of an independent International Civil Liberties Monitoring Group (ICLMG). CCIC is also "housing" the Monitoring Group.

The purpose of the Monitoring Group is to serve as a round-table for discussion and exchange - including international and North/South exchange - among organizations and communities likely to be affected by the application of anti-terrorist laws, and to provide a point of reflection and cooperative action in response to the laws and their effects.

Specific actions will include:

- Monitoring the application of Canada's security and "anti-terrorist" laws and their impact on civil society organizations and communities;
- Disseminating information to interested and affected organizations and communities;
- Joint and concerted responses to ensure transparency and due process where specific organizations and/or vulnerable communities are affected;
- Promoting public awareness of the implications of the laws; and
- In ways relevant to the above aims, to support links with Southern Civil Society Organizations (CSOs) whose work, and their relations with Canadian counterparts, may be impacted by the application of security laws in Canada and/or countries with which Canada harmonizes its security policies internationally;
- The ultimate aim is to overturn these laws.

One of the results of the ongoing research and monitoring carried out by Monitoring Group is concrete evidence that the new anti-terrorism legislation has already been used to intimidate activists and discourage protests. Below are some examples that the Monitoring Group has gathered.

- Two members of the West Coast Warrior Society, an Aboriginal group, had their house searched by the RCMP. A search warrant was issued after the RCMP heard an allegation

that weapons were being stockpiled in the activists' house. (The West Coast Warriors do not self-identify as committed to non-violence, nor do they specifically espouse the use of violence as a strategy.) In the search, no weapons were found. The activists were given no further information as to why they were targeted and were told that the details would not be disclosed. The authorities did say that they used the ant-terrorist legislation as grounds for the search.

- Members of the Muslim community have stated that they have been harassed and interrogated by the by the Canadian Security and Intelligence Service (CSIS). The Muslim Lawyers Association believes that roughly 1,000 of these interviews have taken place, although people are reluctant to speak out as they fear reprisals.
- Members of the anti-globalization movement have also been harassed and intimidated by the authorities. The protesters have been informed that if they fail to cooperate with questioning then they risk prosecution under the anti-terrorism laws.

The International Civil Liberties Monitoring Group brings together NGOs, churches, unions, environmental advocates, civil rights advocates, other faith groups and groups representing immigrant and refugee communities in Canada as well as Canada's Indigenous peoples. Participating organizations include: CCIC, Canadian Council for Refugees, Canadian Ethno-Cultural Council, CCOOP, Canadian Labour Congress, Carter & Associates, Council of Canadians, Council of Muslim Associations, Muslim Lawyers Association, CUSO, Inter Pares, Oxfam Canada, Rights and Democracy, United Steelworkers of America, Assembly of First Nations, Amnesty International, David Suzuki Foundation, and Mennonite Central Committee.

Quakers may wish to consider alignment and involvement with the ICLMG. Contact CFSC if you are interested in the work of the Monitoring Group and potential public actions.

#### **WHAT ACTIONS CAN MEETINGS, INDIVIDUALS AND ORGANIZATIONS UNDERTAKE TO COUNTER THIS LEGISLATION?**

If the potential uses and impacts of this legislation concern you, use the information in this briefing to write a letter to your Member of Parliament (MP) and the Prime Minister. Letters can be sent at no charge to MPs. They can be reached at:

Name of Member of Parliament or Prime Minister  
House of Commons  
Ottawa, ON  
K1A 0A6

#### ***INFORMATION CREDIT:***

*Most of the above information was extracted from publications by Terrence Carter and Associates law firm. The documents "Bulletin #10" and "Bulletin #14" are available from <<http://www.charitylaw.ca>>. Information on the Monitoring Group is from CCIC.*