

A Note on the Terrorism Financing Offences in Bill C-36

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I INTRODUCTION

After the horrific events of September 11, 2001, several nations have rushed to enact new legislation to prevent the occurrence of further terrorist attacks. With Bill C-36,¹ Canada became one of those nations. The question is whether the proposed changes are effective or even necessary to ensure the security of our nation. This note assesses the proposed changes to the financing provisions in the *Criminal Code of Canada*² and the *Proceeds of Crime (Money Laundering) Act*³ that are meant to cut off the supply of funds to terrorist organizations. Part II discusses the new financing offences that will be added to the *Criminal Code* and canvasses some problems with the legislation. Part III analyses changes to the *Proceeds of Crime (Money Laundering) Act*. Finally, Part IV

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¹ Bill C-36, *Anti-Terrorism Act*, 1st Sess., 37th Parl., 2001 (Passed by the House of Commons: Nov 28, 2001) [hereinafter Bill C-36].

² *Criminal Code*, R.S.C. 1985, c.C-46 [hereinafter *Criminal Code*].

³ *Proceeds of Crime (Money Laundering) Act*, R.S.C. 2000, c.17 [hereinafter *PCA*].

outlines the similarities and differences between the seizure and forfeiture provisions under Bill C-36 and those in Part XII.2 of the *Criminal Code*.⁴ Ultimately, I conclude that the new financing provisions are unnecessary and grant too much discretionary authority to law enforcement officials.

II FINANCING PROVISIONS UNDER THE *CRIMINAL CODE*

Bill C-36 proposes to add Part II.1 to the *Criminal Code*. This Part, entitled "Terrorism," creates several new offences relating to the financing of terrorist organizations. Sections 83.02, 83.03 and 83.04⁵ deal with different aspects of owning, controlling or providing property for use in terrorist activities. Each makes it an offence to deal in property "directly or indirectly," "intending that it be used or knowing that it will be used ... in whole or in part" to aid terrorists. These provisions differ according to the accused's level of involvement in the terrorist act: for the offence in section 83.02, the accused must have intended or known that the property would be used "in order to carry out ... terrorist activity;" section 83.03 requires that the accused intended or knew that a terrorist group would benefit from his or her conduct; and section 83.04 states that the accused must have acted "for the purpose of facilitating or carrying out a terrorist activity." All three are indictable offences with maximum sentences of ten years imprisonment.

Another set of provisions impose on citizens and institutions the duty to be wary of transactions which could be related to terrorist activities. Subsection 83.08(1) makes it an offence to deal knowingly in property owned or controlled by a terrorist group, enter into or facilitate any transaction with such property, and provide any financial or related service with respect to such property. Subsection 83.08(2) indemnifies individuals from this offence if they took "reasonable steps to satisfy themselves that the relevant property was owned or controlled by or on behalf of a terrorist group." Sections 83.1 and 83.11 provide that individuals and institutions have a duty to disclose to the appropriate authorities any property that they may have in their possession or control that they believe is linked to terrorist activities. Failure to ensure that one is not dealing in terrorist property and to disclose such activity can result in imprisonment of up to ten years.⁶ Finally, section 83.19 provides for the offence of "facilitation" which makes it an offence to knowingly facilitate a terrorist activity "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; or (c) any terrorist activity was actually carried out." This offence carries a maximum sentence of fourteen years imprisonment.

The sheer breadth of these new criminal offences is readily apparent. Criminal liability is attracted regardless of whether the actions of the accused were "direct or indirect" and the *mens rea* requirement is that of "intending or knowing." There are

⁴ This is the section that deals with proceeds of crime.

⁵ See "Appendix A" below for the full citation of the proposed amendments in question.

⁶ Similar provisions are also found in the *PCA* and are discussed below.

several problems with these new provisions. First, sections 83.03, 83.04 and 83.08 are internally inconsistent as a result of the inclusion of “facilitation” as a component of the offence. Second, stemming from other problems related to the definition, many of these provisions are overbroad and vague. Finally, provisions that impose duties on institutions and individuals to determine and disclose whether they are in possession or control of terrorist property may be problematic.

Facilitation

There is an internal inconsistency with the mental element required for the offences listed in sections 83.03, 83.04 and 83.08. While the stipulated mental element for those offences is knowledge or intention, “facilitation” is also included as a potential aspect of the offence. However, the Bill does not include a full definition of facilitation, nor is the scope of facilitation clarified by the partial definition provided in section 83.19. A common definition of the word facilitate is to “make easy, promote, help forward,” but section 83.19 adds:

- (2) For the purposes of this Part, a terrorist activity is 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; or
 - (c) any terrorist activity was actually carried out.

Reading the legislation in its best possible light, one can interpret subsection (2)(a) as emphasizing the word “particular” which would mean that the facilitator need not know *which* terrorist activity is being assisted. The accused need merely know that they are somehow assisting in *a* terrorist activity. Similarly, subsection (2)(c) can be understood to mean that the act of aiding is itself the offence regardless of the plan’s outcome.⁸ However, subsection (2)(b) provides a temporal problem for the *mens rea* minimal requirement of “knowledge.” How can a person knowingly facilitate a terrorist activity that has not even been foreseen, much less planned? This provision may be meant to catch those who know that they are aiding terrorists without regard for the unlawful acts that the terrorists may potentially commit. However, the *mens rea* requirement is seriously distorted by requiring knowledge of future, possible offences.

There are two potential outcomes for this awkwardly worded provision. It may be impossible to convict anyone under this charge because the burden of proof on the Crown will be impossible to meet. This would be the likely outcome if, as I have suggested, one cannot know that one is aiding in a plan that is not even foreseen. More worrisome is the possibility that section 83.19 may be used to stretch the meaning of “knowledge” far beyond its logical boundaries to include cases where officials believe that an accused is complicit in the general activities of a terrorist group but have

⁷ *The Concise Oxford Dictionary*, 7th ed. (Oxford: Clarendon Press, 1984).

⁸ This provision would therefore be akin to other criminal law offences relating to “attempts” and “conspiracies.”

difficulties relying on any of the other new terrorist offences. In other words, this offence could become the “catch all” provision for anyone with even the most limited—real or perceived—links to terrorists if two requirements are met: (1) there was interaction between the accused and a person the accused believed to be a terrorist; and, (2) the interaction involved some sort of property or service exchange. If this became the test, renting an apartment to suspected terrorists, serving them in a restaurant,⁹ or selling them goods at a local store could become criminal offences. The addition of this offence is also puzzling since the offence of “participation”¹⁰ captures any actions that contribute to the activity of a terrorist group for the purpose of enhancing that group’s ability to carry out a terrorist act.¹¹ In fact, the offences of participation and facilitation overlap so significantly that anyone charged with participation could just as easily be charged with facilitation, which would mean a possible sentencing of twenty-four years imprisonment as a result of the Bill’s consecutive sentencing provision.¹²

Charter Concerns

The problem with the offence of facilitation and other aspects of the proposed amendments discussed above is that they may not meet the standards of the *Canadian Charter of Rights and Freedoms*.¹³ Section 7 of the *Charter* states: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The Supreme Court of Canada has held that overbreadth and vagueness are both contrary to the principles of fundamental justice.¹⁴ Some of the financing offences are so vaguely worded that they could also be invalidated for overbreadth. According to Hogg, vague laws are contrary to fundamental justice for two reasons: first, a vague law may not provide citizens with fair notice of the law and leave doubt as to what constitutes an offence; and, second, without clear standards as to what is prohibited, this may lead to selective enforcement

⁹ In his article entitled “Cutting off the Flow of Funds to Terrorists: Whose Funds? Which Funds? Who Decides?” Kevin Davis uses this particular example to argue that the financing provisions would criminalize a wide range of remote interactions with terrorists: in R. Daniels, P. Macklem & K. Roach eds., *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001) 299 at 301.

¹⁰ Bill C-36, *supra* note 1, s. 83.18.

¹¹ However, the offence of participation quells some of the concerns about remoteness since it requires a knowing participation or contribution to “any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity.” Therefore, there the accused must at least know that he is assisting with the terrorist plan.

¹² Section 83.26 requires that any sentences imposed under ss. 83.02 to 83.04 and 83.18 to 83.23 are to be served consecutively.

¹³ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 [hereinafter *Charter*]. The proposed financing offences raise concerns about a number of *Charter* rights including possible violations of freedom of expression and freedom of association. These two concerns will not be discussed here but could become important issues depending on the enforcement of the offences once they become law.

¹⁴ See *R. v. Heywood* [1994] 3 S.C.R. 761, and *R. v. Nova Scotia Pharmaceutical Society* [1992] 2 S.C.R. 606.

of the law.¹⁵ If the law does not adequately identify which behaviors are criminal offences, individuals cannot govern their conduct so as to ensure compliance with that law.

While these provisions are subject to judicial interpretation, the law must be clear enough to provide “an adequate basis for legal debate” and must “give sufficient indications that could fuel a legal debate.”¹⁶ The existing internal inconsistencies generate such confusion regarding the *mens rea* requirement that the argument could be made that there is insufficient guidance for legal debate. This would invalidate at least some of the proposed offences. There are also other terms that require elaboration. For instance, what does it mean to say that someone has “indirectly” collected or used property? What does it mean to provide “related services” to terrorists under section 83.08? Would this include the provision of legal services? Unfortunately, in its attempt to be expansive, the drafters created legislation that is both vague and overbroad, and thus contrary to section 7 of the *Charter*.

Duties of Discovery and Disclosure

Sections 83.1 and 83.11 raise numerous questions about the imposition of positive duties that attract criminal sanctions for lack of compliance. While it is beyond the scope of this note to discuss these issues in detail, it is important to note some of the key aspects and point out some potential problems.

It is important to note that is uncommon to impose positive duties in criminal law. Indeed, there are few duties in Canada that attract criminal sanctions, and generally, those that do, relate to a duty of care with respect to another individual. For instance, section 215 codifies duties arising from relationships of care and protection and section 217 discusses duties arising from an undertaking to act.¹⁷ However, sections 83.1 and 83.11 require individuals to report any knowledge they have of any transactions by terrorists. This information must be conveyed to either the Commissioner of the Royal Canadian Mounted Police or the Director of the Canadian Security Intelligence Service.¹⁸

Barring questions about how people are to identify members of terrorist groups, how can individuals face criminal sanctions for not disclosing business transactions in which they were not involved? A core principle of fundamental justice is that the morally innocent should not be punished under the criminal law. Do these provisions transform the innocent bystander into the “morally guilty” by failing to disclose information that was overheard? Furthermore, it is unclear whether any defenses are available to those charged under these two provisions. One can imagine situations where the failure to report is not intended to aid or conceal terrorist activities but results from a

¹⁵ P. W. Hogg, *Constitutional Law of Canada* 4th ed. (Toronto: Carswell, 1996) at 1106.

¹⁶ *Ontario v. Canadian Pacific* [1995] 2 S.C.R. 1031 at 639-640.

¹⁷ *Criminal Code*, *supra* note 2.

¹⁸ While s. 83.1 (1) states that both the Commissioner of the RCMP and the Director of CSIS must be informed, s. 83.12 states that it is not an offence under s. 83.1 to disclose to only one of these two people.

fear of reprisals or because of the accused's relationship to the suspected terrorist.¹⁹ If this offence became an absolute liability offence, it would be difficult for it to withstand *Charter* scrutiny because of the criminal sanctions attached for non-compliance.

III CHANGES TO THE *PROCEEDS OF CRIME ACT*

Bill C-36 also makes a number of changes to the *PCA* not the least of which is to change the name of that Act to the "*Proceeds of Crime (Money Laundering) and Terrorist Financing Act*." The changes to the *PCA* appear to be lengthy, but most merely add the phrase "the financing of terrorist activities" where "money laundering" was the only previous offence. But the change that may have a considerable affect is the new section 7.1 of the *PCA*. This provision makes it a duty for anyone who would file a report under section 83.01 of the *Criminal Code* to also report under the *PCA* to the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC), a new agency created to serve as the reporting centre for any and all suspicious financial transactions in Canada.

The *Proceeds of Crime (Money Laundering) Act* received assent on June 29, 2000. It created FinTRAC and imposed a duty on all financial institutions, law firms and other listed entities to report suspicious behaviour and transactions by their clients to that new agency.²⁰ The Supreme Court of British Columbia has already heard and decided a case challenging provisions of the *PCA* related to the duties imposed on lawyers to report on their clients.²¹ The Law Society of British Columbia argued that lawyers cannot be forced to disclose privileged information since this would violate the principles of fundamental justice. The BCSC granted the interlocutory injunction stating that "[w]hile the Government's goal of deterring and prosecuting money laundering offences is laudatory, the fundamental values of the Constitution must be protected."²²

While this case was primarily about the privilege that exists between solicitor and client, there are also concerns about how lawyers are to determine what activities are suspicious and must be reported. The kind of conduct that lawyers are now duty-bound to report is ambiguous at best. Section 7 of the *PCA* states that prescribed entities must report every financial transaction "in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a money laundering [or a terrorist activity offence]."²³ With the addition of "terrorist activities" to the conduct listed in the *PCA*, the list of duties on the part of financial institutions and other organizations is also increased. Not only are they now expected to analyze whether there are reasonable grounds to believe that their clients are involved in money laundering, but

¹⁹ An interesting case would be that of a wife who learns of her husband's conduct. Would this duty to report somehow trump spousal privilege not to testify against one's spouse?

²⁰ The list of entities that are required to report suspicious transactions is found in the *PCA*, *supra* note 3, s. 5(a-m).

²¹ *The Law Society of B.C. v. A.G. Canada; Federation of Law Societies v. A.G. Canada* (2001) B.C.S.C. 1593.

²² *Ibid.*, para. 107.

²³ The material in brackets is one of the proposed amendments in Bill C-36. Bill C-36 makes this addition to the *PCA* after every mention of a "money laundering offence."

they need also to be concerned with whether their clients are engaged in terrorism. And, the failure to do so could mean sanctions under sections 75-77 of the *PCA* and the new sections 83.1 and 83.11 of the *Criminal Code*.

IV SEIZURE AND FORFEITURE

Bill C-36 also contains new provisions on the seizure and forfeiture of terrorist assets for those charged with the new offences under Part II.1 of the *Criminal Code*. In other words, these new search and seizure provisions would be used *in lieu* of similar provisions in Part XII.2 - the Proceeds of Crime section - of the *Criminal Code*. Under the existing law, crimes that fall under the banner of "enterprise crime offences" are subject to the search, seizure and forfeiture sections of the *Criminal Code*.²⁴ And, Bill C-36 proposes to add "terrorism offences" to the list of enterprise crime offences.²⁵ The implication then is that existing seizure and forfeiture provisions would be applicable to all property which is owned or controlled by suspected terrorists. The question that follows is why a separate set of provisions is proposed to deal exclusively with terrorist offences. The answer seems to lie in some subtle yet important differences between the two sets of provisions.

The process by which property is seized through the two provisions is nearly identical: the Attorney General must file an application with a judge²⁶ and the judge must be satisfied that "there are reasonable grounds to believe that there is in any building, receptacle or place any property in respect of which an order of forfeiture may be made under" the designated forfeiture subsections.²⁷ However, there is one difference in the new seizure provisions. Under Part XII.2, an application to manage seized property must be made under the *Seized Property Management Act*.²⁸ The terrorist property seizure provision has a built-in management order that can be requested at the same time as the order itself. A management order under the terrorism offences allows the court to "appoint a person to take control of, and to manage or otherwise deal with, all or part of the property in accordance with the directions of the judge."²⁹ This management order includes the power to sell perishable or rapidly depreciating property and the power to destroy property of little to no value.³⁰ There is no comparable power to destroy seized property under the *Seized Property Management Act*. Therefore, under the new provisions, the power to manage seized property is facilitated by the inclusion of a built-

²⁴ These provisions are found at ss. 462.3 through 462.37.

²⁵ This amendment is proposed in Bill C-36, *supra* note 1, ss. 14 and 15.

²⁶ In the existing provisions, "judge" means a judge of a superior court of criminal jurisdiction (s. 462.3) whereas under the new provisions, "judge" means a judge of the Federal Court (s. 83.13).

²⁷ The designated provisions are s. 83.14(5) for terrorist financing offences, and s. 462.37(1) or s. 462.38(2) for enterprise crime offences.

²⁸ *Seized Property Management Act*, R.S.C. 1993, c.37.

²⁹ Bill C-36, *supra* note 1, s. 83.13 (2)(a).

³⁰ Bill C-36, *supra* note 1, s. 83.13 (4).

in management order.³¹ Whether this distinction will make a difference in practice is unclear.

However, the forfeiture provisions are drastically different in scope and purpose. The existing forfeiture provisions are intended for use after a person has been convicted of an enterprise crime offence, and “the enterprise crime offence was committed in relation to that property.”³² If the second aspect of this test is not met, section 462.37(2) allows for the forfeiture of the property if the court is satisfied beyond a reasonable doubt that the property constitutes proceeds of crime. The new terrorism forfeiture provisions are much less stringent. Proposed section 83.14 states that the Attorney General can request an order of forfeiture from a Federal Court judge for property that is: (a) property owned or controlled by or on behalf of a terrorist group; or (b) property that has been or will be used, in whole or in part, to facilitate or carry out a terrorist activity.³³ Furthermore, a judge need only be satisfied of these requirements on a balance of probabilities.³⁴ One can easily see how this provision could be used arbitrarily to punish without requiring an actual criminal conviction for any offence. As argued by Davis, this feature “permits property to be forfeited even in the face of a fair amount of uncertainty about whether it will actually be used to facilitate or carry our terrorist activity.”³⁵ However, since the *Charter* does not provide for property rights, a legal challenge could be difficult even in the face of seemingly selective prosecution under the proposed forfeiture provisions.

V CONCLUSION

In drafting Bill C-36, the government intended, among other things, to eliminate terrorist funding to prevent future terrorist attacks. Such pre-emptive legislation comes at a price. This extremely broad legislation has the potential to seriously undermine civil liberties. This note has argued that existing provisions in the *Criminal Code*, *Proceeds of Crime (Money Laundering) Act* and *Seized Property Management Act* serve similar functions as proposed amendments under Bill C-36. It seems then that the new provisions were drafted broadly so as to catch all actions that would not be caught by existing legislation. But should the actions discussed above or, in some cases, failures to act, be caught classified as criminal offences? Giving government the power to selectively arrest, prosecute and forfeit the property of possible terrorist connections is not a palatable alternative to possible terrorist actions. The events of September 11 served to heighten our need for security, but enacting sweeping legislation will not quell these worries. Instead, Bill C-36 creates a whole new set of concerns.

³¹ Interestingly, Bill C-36 also proposes changes to the *Seized Property Management Act* which would add “terrorism offences” to the list of offences that could warrant management orders. Again, why the government felt it necessary to make this change is difficult to understand in light of the internal management clause in s.83.14.

³² *Criminal Code*, *supra* note 2, s. 462.37 (1).

³³ [Emphasis added].

³⁴ Bill C-36, *supra* note 1, s. 83.14 (5).

³⁵ Davis, *supra* note 9 at 310.

Appendix A

83.02 Every one who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out

- (a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of “terrorist activity” in subsection 83.01(1), or
- (b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

83.03 Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

- (a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or
- (b) knowing that, in whole or part, they will be used by or will benefit a terrorist group,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

83.04 Every one who

- (a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, or
- (b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity,

is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

83.08 (1) No person in Canada and no Canadian outside Canada shall knowingly

- (a) deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group;
- (b) enter into or facilitate, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or
- (c) provide any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of, a terrorist group.

(2) A person who acts reasonably in taking, or omitting to take, measures to comply with subsection (1) shall not be liable in any civil action arising from having taken or omitted to take the measures, if the person took all reasonable steps to satisfy themselves that the relevant property was owned or controlled by or on behalf of a terrorist group.

83.1 (1) Every person in Canada and every Canadian outside Canada shall disclose forth-with to the Commissioner of the Royal Canadian Mounted Police and to the Director of the Canadian Security Intelligence Service

- (a) the existence of property in their possession or control that they know is owned or controlled by or on behalf of a terrorist group; and
- (b) information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

(2) No criminal or civil proceedings lie against a person for disclosure made in good faith under subsection (1).

83.11 (1) The following entities must determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity:

- (a) authorized foreign banks within the meaning of section 2 of the *Bank Act* in respect of their business in Canada, or banks to which that Act applies;
- (b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;

- (c) foreign companies within the meaning of subsection 2(1) of the *Insurance Companies Act* in respect of their insurance business in Canada; (c.1) companies, provincial companies and societies within the meaning of subsection 2(1) of the *Insurance Companies Act*; (c.2) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities, and insurance companies and other entities engaged in the business of insuring risks that are regulated by a provincial Act;
- (d) companies to which the *Trust and Loan Companies Act* applies;
- (e) trust companies regulated by a provincial Act;
- (f) loan companies regulated by a provincial Act; and
- (g) entities authorized under provincial legislation to engage in the business of dealing in securities, or to provide portfolio management or investment counselling services.

(2) Subject to the regulations, every entity referred to in paragraphs (1)(a) to (g) must report, within the period specified by regulation or, if no period is specified, monthly, to the principal agency or body that supervises or regulates it under federal or provincial law either (a) that it is not in possession or control of any property referred to in subsection (1), or (b) that it is in possession or control of such property, in which case it must also report the number of persons, contracts or accounts involved and the total value of the property.

(3) No criminal or civil proceedings lie against a person for making a report in good faith under subsection (2).

(4) The Governor in Council may make regulations (a) excluding any entity or class of entities from the requirement to make a report referred to in subsection (2), and specifying the conditions of exclusion; and (b) specifying a period for the purposes of subsection (2).

83.12 (1) Every one who contravenes any of sections 83.08, 83.1 and 83.11 is guilty of an offence and liable

- (a) on summary conviction, to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both; or
- (b) on conviction on indictment, to imprisonment for a term of not more than 10 years.

(2) No person contravenes section 83.1 if they make the disclosure referred to in that section only to the Commissioner of the Royal Canadian Mounted Police or the Director of the Canadian Security Intelligence Service.

83.19 (1) Every one who knowingly facilitates a terrorist activity is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(2) For the purposes of this Part, a terrorist activity is 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; or
- (c) any terrorist activity was actually carried out.