



Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.

Report of Findings as a Result of the Interviews of
Regulated Entities on the Topic of Terrorist
Financing In, Through and Out of Canada.

Submitted September 28, 2007



September 28, 2007

Privileged & Confidential

Commission of Inquiry
into the Investigation of
the Bombing of Air India
Flight 182

Attention: Mr. Roger Bilodeau QC

Subject: Assistance with Respect to Your Mandate for the Inquiry

Dear Roger:

Please find attached a copy of our final report which is being provided to you for use at the Commission of Inquiry. This final report provides you with our findings as a result of the interviews conducted and the responses supplied by those interviewed.

Yours truly,

Brian Tario, CFI
Associate Partner
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Attachment

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1 Executive Summary

1.1 Interview Findings

The results of our interviews are summarized below:

- 1.1.1 There is no clear differentiation between Anti-Money Laundering (“AML”) and Terrorist Financing (“TF”). This is based on a lack of understanding of how terrorist organizations finance their operations. TF is considered a subset of AML. There is also a lack of understanding that TF can be simply the transfer of what could be considered “good” money in small amounts as opposed to the laundering of ill gotten gains.
- 1.1.2 Of all those interviewed only a very small percentage have filed a suspicious transaction report which they would consider to be associated to terrorist financing.
- 1.1.3 FINTRAC is viewed as the “big black hole”. This is based on the fact that substantial reporting is done with little or no feedback from FINTRAC. Those interviewed would like to see more feedback from FINTRAC in terms of whether or not their reporting is assisting, is useful and is of a benefit based on the time, effort, energy and cost that each institution expends to comply with the legislation.
- 1.1.4 Of particular concern is the fact that FINTRAC has been in existence for over five years and has reported that they have identified terrorist financing activities as stated in their annual reports. The concern is that the topologies around the identification of these activities are not relayed to those required to report. The interviewees simply do not know if their institutions are being used and if so how. If they knew, all would put methodologies and policies in place to address the issues.
- 1.1.5 The same can be said about the RCMP and CSIS in that institutions get little, if any, feedback with respect to their efforts to assist in combating terrorist financing. There is concern that the legislation under which FINTRAC, the RCMP and CSIS operate may prohibit them from providing this important feedback. If that is in fact the case all interviewees believe it should be changed.
- 1.1.6 The interviewees believe that the enforcement agencies have considerable resource constraints which are having an effect on their ability to investigate those matters which have been referred by FINTRAC. This belief may be an out growth of the lack of feedback.
- 1.1.7 The current legislative regime is rule based which could result in terrorist financing occurring and being reported as the institutions are required to do. This does not stop the transactions from happening. This may be addressed with the proposed Bill C-25 amendments which many institutions see being a more risk based approach. A large number of institutions have implemented their own risk based approach to complying with the current legislation.
- 1.1.8 To be compliant with the current legislation institutions and organizations are spending considerable amounts of money on a yearly basis.
- 1.1.9 The current terrorist watch lists are seen to be ineffective in that there is little biographical data other than a person’s name on the list. This creates a good deal of extra due diligence work on the part of the institutions if a name match occurs. A significant number of false positives are occurring. This will become even more onerous when the requirement to check on Politically Exposed Persons comes into effect.

- 1.1.10 Alignment of Canadian reporting requirements with those of other FATF countries was raised as an issue in that some countries appear to espouse compliance in name only, i.e. there needs to be more international/independent auditing and review of compliance with FATF requirements by member countries.
- 1.1.11 The areas which were identified as being non-regulated and which could be used in terrorist financing were: the white ATM market, money service businesses, provincially regulated mortgage brokers, pre-paid credit cards, stored value cards, internet clearing houses such as Pay-Pal, internet gaming, precious metals, the legal community and the religious community. Interviewees advised that in their view, terrorists will seek the path of least resistance in the same way that money launders do in attaining their goals.
- 1.1.12 A common theme amongst all those interviewed is the fact that terrorist financing is not on anyone's radar screen. They all know about it based on their positions and knowledge of the legislation, however as Canada has not been the direct victim of a terrorist act there is a not heightened awareness around the issue.
- 1.1.13 In terms of charities and not for profits the same rigour in terms of the knowing your client rules are employed by most institutions. The interviewees have an awareness that these types of organizations can, and have been used, to financing terrorist activity. As a result they check them against the available lists and monitor the activity particularly if there are transfers of funds outside of Canada. The interviewees also believe that the government should take a more active role in the monitoring of charities and how their monies are distributed.
- 1.1.14 Major international charities are themselves aware that their programs and support delivery could be used to finance terrorist activity.

2 Restrictions

Our report is privileged and confidential and is prepared at the request of Mr. Roger Bilodeau QC Commission Counsel.

It is not intended for general circulation or publication, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance. We do not assume any responsibility or liability for losses incurred by the Commission or its employees or by any other parties as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph. We understand and acknowledge that this report will be used by the Commission of Inquiry and will be circulated to departments and individuals who have been granted standing before the Commission of Inquiry.

This report is based on information in our possession as at May 1, 2007. We reserve the right to review all findings and conclusions included or referred to in our report and, if we consider it necessary, to revise our report if any information is provided subsequent to the date of our report.

3 Purpose

On May 1, 2006 the Government of Canada announced that they would establish a Commission of Inquiry into the investigation of the bombing of Air India Flight 182 which resulted in the deaths of 329 men, women and children. The Canadian Government at the time of the announcement of the inquiry stated “It is our duty, as Canadians, to do everything in our power to prevent a similar tragedy from ever happening again.”

As a result of this announcement terms of reference were developed for areas that the Commission of Inquiry would explore and report on. The particular term of reference which was subject of Deloitte’s work was “whether Canada’s existing legal framework provides adequate constraints on terrorist financing in, from or through Canada.” In order to determine the adequacy of the current legislative system interviews were conducted with institutions and organizations that are currently required to report large cash transactions, suspicious transactions and cross border wire transactions.

The responses to Deloitte’s questions are to be reported to the Commission of Inquiry for its information and consideration for its final report. Deloitte was not asked to provide recommendations for legislative changes as a result of the interviews conducted.

4 Scope

4.1 SCOPE

- 4.1.1 A total of 42 individuals were interviewed during our review. The main focus of this interview group were those entities and institutions which are currently required to report large cash transactions, suspicious transactions and cross border wire transfers under the current legislation. In addition several interviews were conducted with individuals who are employed in industries or institutions where it was believed that terrorist financing could in fact occur.
- 4.1.2 Interviews were conducted with individuals from Schedule “A” banks, Schedule “B” banks, Credit Unions, Foreign Exchange providers, Trust Companies, Securities Dealers, Self Regulatory Bodies, The Insurance Industry, Value Card Providers, The Gaming Industry, Law Societies, The Legal Community, Charities and Law Enforcement.
- 4.1.3 In terms of the breakdown by industry sector 18 individuals were from the Financial Services Sector, 9 were from the Legal Community, 4 from Gaming, 3 from Charities, 2 from the Securities Industry, 2 from Value Card Sector, 1 from a Self Regulatory Body, 1 from the Precious Metals Sector, 1 from the Insurance Industry and 1 from Law Enforcement.
- 4.1.4 In those cases where there was a designated Chief Anti-Money Laundering Office (“CAMLO”) it was that individual that was interviewed.
- 4.1.5 For those entities and institutions which are currently not required to report under the legislation it was an individual from the security and or compliance department or an individual who had specific knowledge in the area of terrorist financing that was interviewed.
- 4.1.6 In order to cover all topics of inquiry an interview questionnaire was developed and used by the team. This questionnaire was discussed and reviewed by Commission Counsel, Mr. Roger Bilodeau Q.C. and Mr. Francis Barragan. A copy of the questionnaire is attached to this draft report as Appendix “A”. All interviews were conducted with the use of taping equipment with the average interview being of duration of between one and two hours. All interviews have been transcribed. All interviews were conducted on a confidential basis.
- 4.1.7 All quotes contained in our report are taken directly from the interviews conducted, however the specific individual from whom the quote is taken will not be identified rather; the financial or industry sectors to which they are attached will be noted. Quotes will be used to support the findings reached.
- 4.1.8 A letter of introduction was prepared in conjunction with legal counsel to the Commission and was supplied to each individual that was interviewed. This letter of introduction is attached to this draft report as Appendix “B”.

5 Findings

5.1 SUMMARY OF INTERVIEW FINDINGS

- 5.1.1 There is no clear differentiation between Anti-Money Laundering (“AML”) and Terrorist Financing (“TF”). This is based on a lack of understanding of how terrorist organizations finance their operations. TF is considered a subset of AML. There is also a lack of understanding that TF can be simply the transfer of what could be considered “good” money in small amounts as opposed to the laundering of ill gotten gains.

A member of a Self Regulatory Body stated:

“Terrorist financing is really a subset of the AML. I think it’s a more specific type of money laundering type of activity but the processes are similar.”

A CAMLO in the Insurance Industry stated:

“We wouldn’t try to guess and we really wouldn’t have anything on which to judge whether its money laundering or terrorist financing possibly.”

A CAMLO in the Financial Services Sector stated:

“Most of it is anti-money laundering and concentrates on that and what would be considered suspicious and that type of thing but the terrorist financing actual instruction to us as a financial institution is very minimal. So it’s easy to couch it under well it’s all anti-money laundering because of the fact that it, we really don’t have a lot of guidelines around that.”

An Executive in the Financial Services Sector stated:

“So no we don’t distinguish, but if we do know that it is terrorist financing then of course we don’t execute the transaction and how do we know that because we do, we run our client base and our beneficiary base against you know the watch lists around the world, for example the OSFI lists, the OFAC list and the bank of England list. Those lists were designed specifically to identify terrorist individuals and terrorist organizations.”

A CAMLO in the Financial Services Sector stated:

“We don’t have an awful lot of information on how it would manifest itself, other than through organizations and through money laundering type activity. So it gets pulled into the money laundering very heavily.”

“I figure that I’m fairly knowledgeable in the area of money laundering, I would have a real hard time telling you that I would be able to detect terrorism financing in all cases because it’s not well published. We hear what happened, the analysis of the account activity for instance with the fellows involved with nine eleven. A bank would never have picked that up.”

A CAMLO in the Financial Services Sector stated:

“We try to look for terrorist financing however it’s difficult to understand I guess what you’re, to try and find terrorist financing specifically, ‘cause again it’s clean money that’s being used for illegal purposes so kinda difficult.”

“The terrorist financing side is much more complicated because as we talked about earlier its clean money so the grasp and the understanding I think of people is more difficult for them to understand that.”

An Executive in the Precious Metals Industry stated:

“I would venture to say that the industry is certainly becoming more aware of the money laundering issue. I think the terrorist financing issue is one that probably has really not resonated with industry. We’ve really been concentrating on the anti-money laundering. There’s no formal sort of organizing of deterring terrorist financing.”

A CAMLO in the Financial Services Sector stated;

“The big difference with terrorist financing is that a lot of the money is legal money that is shipped to an account, and from the account the money goes to help people in their country. What can you do against that?”

A CAMLO in the Financial Services Sector stated:

“There’s always a connection that is difficult to make between terrorist activity and money laundering. To what point we can detect only that, it becomes a terrorist activity. I admit it’s a little difficult. Already, identifying money laundering per se is not always easy. So add to that the fact that it could be terrorist activity.”

- 5.1.2 Of all those interviewed only a very small percentage have filed a suspicious transaction report which they would consider to be associated to terrorist financing.

A member of a Self Regulatory Body stated:

“The only one that dealt with that specifically was the the one example that we had of the individual who had individuals who were clearly identified as being terrorists and he had allowed them to become clients and conducted business on their behalf.”

A CAMLO in the Trust Industry stated:

“No. No. That I would say that the majority of them appeared to be fraud. Somebody submitting false documentation. Nothing to indicate that it would be terrorist financing.”

- 5.1.3 FINTRAC is viewed as the “big black hole”. This is based on the fact that substantial reporting is done with little or no feedback from FINTRAC. Those interviewed would like to see more feedback from FINTRAC in terms of whether or not their reporting is assisting, is useful and is of a benefit based on the time, effort, energy and cost that each institution expends to comply with the legislation.

A member of the Self Regulator Body stated:

“FINTRAC is now able to give us some information back after the last bill was changed with respect to the money regs and they’re able to provide us some feedback on their Sales Compliance reviews or their Compliance reviews of Member firms but they don’t give us any of the other types of information that can only be provided to the police. Analysis or if they identify any particular types of information they can’t provide that to us. So in many ways it is a one way street.”

A CAMLO in the Financial Services sector stated:

“I wanted some level of assurance that the reporting and the amount of work that we’re doing is actually validated at some point and what we’re doing is, not just going into a big black hole somewhere and they wouldn’t answer that question.”

“I really want to convey to the staff that what they’re doing is vital and important and short of being able to give them a tangible situation where you know we reported on this and these people are now behind bars because of it, they need to have some assurance that all of the work that they’re going through is counting for something. I think that I can only have buy in from them if I can assure them that that it is important.”

A CAMLO in the Financial Services sector stated:

“Well we certainly hear that and it would be a lot easier to keep everybody in the organization engaged and to keep them aware of the risk if they had that information. We hear it a lot that you know this information you report it goes into a deep dark hole, how do we know if you’re over reporting or under reporting all of that type of stuff.”

A CAMLO in the Financial Services Sector stated:

“One of the largest obstacles to get people to continue to report is they have no idea what happens to that report.”

“So on the one hand there’s a lot of push to follow all the FATF recommendations, do all the compliance procedures, do all that stuff yet then on the other side of it, some of the feedback that you hear back is that, well yeah we did all those reports but we never hear anything about what results.”

“A real benefit if FINTRAC could somehow use the information that they do have to say this is how you guys have helped. I know they can’t talk about too many specifics and everything but, if there’s anything that they can do to the get that message across I think it would be great marketing for FINTRAC as well.”

An Executive in the Gaming Industry stated:

“You don’t get any disclosure. There’s not disclosure to the industry. Disclosure is to law enforcement or policing agencies only. I think it’s an error. What they’re saying is that the law enforcement agency i.e. the RCMP gets reports and is working on a target on a bigger picture issue. You don’t want to necessarily disseminate too much information to a regulatory body that is not law enforcement. But I think there can be exceptions to that. There has to be latitude in that, I think, I suggest.”

“I mean if you’re expecting the industry to sign MOU’s to do the regulatory enforcement for FINTRAC law within gaming or whatever that may be. But you flow nothing back. So what’s in it for us, quite frankly? Why would we expend resources other than you know the integrity of gaming to do these things when we get no flow back. And that’s a problem. Federal legislation should be changed to allow FINTRAC to disseminate general information if they want industry that’s involved in submitting it to them. I’m not talking about lottery corporation or service provider they’re clearly providers of the information but as a regulatory oversight of the industry what good’s FINTRAC to me. It’s of no value.”

A CAMLO in the Securities Industry stated:

“I think that the legislation itself, they’ve made a great effort at attempting to cover most of the financial areas in Canada. Where I find the frustration, what is suspicious to one person may not be suspicious to another, so that I guess maybe some more guidelines or some more specific examples of how these terrorist’s are utilizing the industry to launder their money.”

“As far as the agencies go, there doesn’t seem to be a lot of communication from FINTRAC. We put information into them but we don’t know what they’re doing with it. I think if they could relay some information to us, maybe on a no names basis, what sort of cases they’re following, maybe specific to our industry or each industry as they are affected any charges that would have been laid, just more on a case specific examples that can help us along and give us an idea of how they’re trying to infiltrate our industry.”

“The feedback from FINTRAC has been minimal it’s been few and far between. And we don’t know what they’re doing with the information that we provide them.”

An Executive in the Precious Metals Industry stated:

“I certainly don’t expect feedback from FINTRAC. My experience so far with FINTRAC is they are all about gaining information and not about giving it. So I have no expectation of any feedback from FINTRAC. Would it be useful? Absolutely in terms of, for example once we’re further down the line and we have a compliance program that we think will work if FINTRAC could provide feedback on whether that compliance program is actually giving them what they need that would be of use of course. If we’re gonna do this we might as well do it and get the results that are needed for law enforcement to carry forth. So I don’t have an expectation from FINTRAC but yes I would like feedback from FINTRAC.”

A CAMLO in the Securities Industry stated:

“One of the things we asked ourselves was, okay well if we’ve identified suspicious activity and we report it and then it happens again and we report it again, happens again we report it again, at what point does it, you know do we look at this and say we really shouldn’t be or we need to be looking at whether we want to be doing business with this particular firm or client or entity.”

A CAMLO in the Trust Industry stated:

“They’ve made it onerous on us in terms of now with the new Bill that was just passed C-25 which tells us we have to report suspicious transactions. I’m sorry, attempted transactions as opposed to suspicious transactions. So if transactions that haven’t really occurred and of course does that mean you have to chase somebody out in the parking lot

to get their license number? No. But we do it anyways on a lot of the clientele that if we see something that just doesn't look right, we'll report it anyways. But I think it puts a big strain on a lot of companies especially small places and like could be Credit Unions; you're taking about increase manpower etcetera. You might triple or quadruple the number of transactions that you would normally file to FINTRAC on an annual basis. But we know that it's always sitting in that big hole because we know the thousands and thousands of transactions that are being reported every year are not being followed-up on. I mean they tell us when they get you know seven or ten hits that's when they'll do their investigation, typically. Now I think last year they sent only a hundred and eighty transactions to law enforcement and how many were submitted."

A Member of the Legal Community stated:

"The weakness is that once this information is transmitted, what is done with it? I often have banking institutions that, when we meet with them as part of our criminal investigations, will tell us that they reported transactions, but the police force never have any results."

- 5.1.4 Of particular concern is the fact that FINTRAC has been in existence for over five years and has reported that they have identified terrorist financing activities as stated in their annual reports. The concern is that the topologies around the identification of these activities are not relayed to those required to report. The interviewees simply do not know if their institutions are being used and if so how. If they knew, all would put methodologies and policies in place to address the issues.

A CAMLO in the Insurance Industry stated:

"We've asked from an industry perspective for examples you know to get FINTRAC and OSFI to give us situations. Try and give us examples of real money laundering and terrorist financing situations that have occurred in the insurance industry so that we could be more knowledgeable and share that kind of awareness to staff and know what to watch for. But the very few, practical relevant examples, we've seen a few that have come from Europe"

A CAMLO in the Financial Services Sector stated:

"I think one area where this structure might be made more effective is and I only see this from you know one step, at least one step removed from the process but what I'm driving at the ability of law enforcement where they're investigating certain persons of interest to be able to access to the FINTRAC information to see whether or not there's any unusual large cash, wire payment activity that relates to those entities. Because there's a fairly complex process for individuals to get added to a terrorist listing and so it might be, you know there might be persons of interest out there that we don't have the opportunity to do screen against if we don't know that they exist."

"One other consideration is that the law enforcement and FINTRAC in Canada have real difficulty articulating the types of activity or topologies that might represent terrorist financing. Typically they've talked about a number of red flags and the red flags are the same types of red flags that would alert you to potential money laundering. So at the end of the day a lot of the transactions that we report as suspicious from money laundering perspective may well be suspicious from a terrorist financing perspective but how would we draw the determination and still the ultimate use of those funds, well we don't know where they're going. And then further to your opening comment if it's the funds are gathered through legitimate means and they're legitimate funds at the outset what are

they ultimately being used for and we have very little information available to be able to determine whether they might be used inappropriately. Other than a very broad generic view of certain countries that might represent higher risk from a terrorist financing perspective. Now Canada has not identified any specific countries as being state sponsors of terror so to speak the way the US government has done. We've built a country risk ranking model that considers the relevant money laundering and terrorist financing risks in a variety of jurisdictions and we do consider the information that's available from the US government and other governments in terms of potential terrorist financing activities. That said there's an awful lot of business that goes on in a variety of countries that might be considered high risk from a terrorist financing perspective and it's very difficult to discern the difference between good business and not so good business."

A CAMLO IN THE Financial Services Sector stated:

"There's no guidelines as to what is terrorist financing or what does it look like or what are some of the indicators that we should be watching for, there's nothing like that and would that be helpful?"

"So surely there must be some things that have occurred over the last six years that we should be aware of so that we can improve our stance in making sure that doesn't happen."

"I really feel that there's more feedback and more guidelines required and more tangible evidence that they want to keep us current up to date on trends and the legislation that was handed out in 2002, I'm sure was very applicable and is applicable today but that said there are so many things that have occurred in regards to funds being mishandled or different ways that that member's money has been compromised whether it's internet or mail or there's just so many things out there."

An Executive in the Financial Services Sector stated:

"To help us understand from a holistic perspective how our industry's been used and exploited by criminal organizations and terrorist financing organizations. That's how they can help us."

A CAMLO in the Financial Services Sector stated:

"We hear that there is the use of the charitable organizations again, what we would see. We would see charitable organizations coming in with money to deposit from all their different persons. We would never see that there was anything nefarious about that. You know so it's a very hidden activity and we don't get very much information at all."

A CAMLO in the Financial Services Sector stated:

"So the more information we have on what terrorist financing is, or on topologies, what are past cases, what have they shown, then we could say okay it's not money laundering so it's not reportable that way, however it could be terrorist financing and then perhaps we would make a report. Again my understanding is right now terrorist financing is very difficult to see but if we can again put the little pieces together with all the financial institutions and all the reporting entities and hopefully FINTRAC can piece that together but we have to be able, we have to be reporting those activities to begin with. So the more information we can get, the Act is doing a good job so far but I think it can be improved, maybe it's the guidance that FINTRAC provides us. They've had now four, four or five years now to put together more cases, more disclosures. In reading their

annual reports we understand more disclosures are being made in relation to terrorist financing so if we can get some of that information back. I understand there's a timely part of it, you can't obviously prejudice an investigation but hopefully now there's some information they can give us just to say, and as example this is how it works."

"I think statistics being what they are you can do anything with numbers that you want I guess but, and I apologize but I don't have the specific numbers, usually I do, of the disclosures made by FINTRAC in the most recent reporting year. I believe there's, a hundred and sixty seven or a hundred and seventy of them. Of that number and this has been the trend since they started releasing their annual report is that the number of cases, they always specify, of those disclosures X number were related to money laundering, X number were related to terrorist financing and X number were related to both. So I think in the past reporting year, one was related to both. I think there were twenty that were terrorist financing and the bulk of them as per usual was money laundering so I guess it begs a question it could be one of two things. Either the terrorist financing activity is not as prevalent as some people might think or the information isn't out there or the knowledge isn't out there for the reporting entities to report, resulting in a disclosure because if only ten percent or eight percent of the total disclosures made by FINTRAC result from terrorist financing. It tells you one of two things. Either the information is not being reported or there's not that much of it going on and I have a feeling it's more related to the fact that people don't know that it's happening and therefore they need to report it."

A CAMLO in the Financial Services Sector stated:

"You look at the topologies reports in, you know the official documentation, it's so generic it's useless. And they don't provide you any more meaningful information. The staffs at FINTRAC are very constrained about what they can say."

A CAMLO in the Securities Industry stated:

"From a FINTRAC standpoint we'd like more information as to situations that have resulted in either a terrorist or an anti-money laundering activity that has been identified and actually using more case studies, taking out the information to protect identity and confidentiality and all that good stuff, but actually allowing us to see situations that have resulted in either arrests or have resulted in charges being laid as a result of things that we're doing as an industry or in respect to the legislation. And I don't think there's enough of that."

"One of my concerns has been we go through this fairly onerous process of reporting a suspicious transaction and so I think that's too cumbersome for one thing but then we don't get any feedback on the actual submission."

A CAMLO in the Trust Industry stated:

"For every transaction that we put in and we put in about a hundred and fifty, we have never ever heard anything back from FINTRAC at all regarding any of those. What action was taken etcetera? The only thing we see is the annual statistics. Here's how many that were submitted. Here's how many went to law enforcement. Nothing ever beyond that. So we don't really know if it's working. We just think it, just goes into some black hole. So it's very frustrating."

"I go to a couple of these seminars a year and one of the frustrating things was that somebody standing up and there was a few hundred people there and FINTRAC and

OSFI were there doing this presentation and somebody asked how much has Canada, have we seized in terrorist financing and they wouldn't give us the number. They said it was irrelevant. Well a lot of us don't think it's irrelevant because companies have spent millions of dollars."

A CAMLO in the Financial Services Sector stated:

"We can talk all day long about notifying FINTRAC about questionable transactions. I'm convinced that the biggest problem is having such transactions raised by all the financial institutions or reporting entities that you may have questioned. Because the problem is that we get no feedback for the information that we provide to FINTRAC, the official organization. If they could at least confirm that the transaction sent to them is of interest and that it could be combined with others that were received or other information received from other institutions, maybe we'd be encouraged to dig deeper regarding a specific matter."

"It becomes clear that, it's unfortunate to say, but ultimately it's almost a huge waste of time because everyone is working on their own. No one shares information. We have so much data but the question is whether, ultimately, this information is actually being considered and investigated."

A CAMLO in the Financial Services Sector stated:

"I would say that for us it's a little difficult to see the how it all fits together. Essentially, we create a set of reports. We do submit that, and what is the end result? We don't see very much. We understand that there are matters of confidentiality and involving the investigation and so on, but the end result. On the other hand, what I can tell you is that it's an exercise for financial institutions, and I'm sure my colleagues would say the same, that it's quite tedious for us."

A CAMLO in the Financial Services Sector stated:

"There are two aspects, there is the terrorist financing aspect and the money laundering, or proceeds of crime aspect. With regard to the proceeds of crime, we know that everything is in place. It has cost a few million to ensure that we receive the reports, the caisses send their reports, the reports are analyzed, sent to FINTRAC, and frankly there are a lot of them. And as soon as there is a suspicious transaction with regard to financing activities and in terms of possible terrorist financing, we obviously handle that every month—at least I think the frequency that you have to do checks is every month. Once the checks are done, we don't hear anything more about it. And what is hardest for the caisses with regard to proceeds of crime is that they send reports over x period of time and in the end, there are usually no results."

"There could be more feedback. No doubt it would be interesting for us to have that information. And there's OSFI too, of course, because FINTRAC, in Canada mandated the OSFI, the Office of the Superintendent of Financial Institutions, to do certain parts. They give some information that we participate in. We are invited. But it's always more of training, information activity than feedback or a result of what happened in the end."

"We know that FINTRAC has a duty of confidentiality. That's for sure. On the other hand, what is extremely frustrating for the caisses is that if they detect something suspicious, it's not up to them to prove it, and as a financial institution we're not able to say "Look, we're going to take legal proceedings against these people," and all that. It has to go to FINTRAC, and from that point on, the provision by law is that you can't

disclose anything whatsoever to the person in question. So, obviously, based on that, there are reports that are sent and eventually a caisse that says: “Hey, what’s going on there? I never got any feedback. Nothing ever happens in that file. If there was something returned from FINTRAC, not on the individual cases, but to say: “Look, overall, you’ll have results in a certain number of files.” We should at least have that.”

“Have any specific patterns been identified? That would give us something a little more specific. Or in the least, would maybe make it a little easier.”

A Member of a Law Society stated:

“It may be important for the Law Society to have that information to provide to the lawyers to say okay, watch for this because if that’s happening you need to be asking yourself certain questions here. Without telling the lawyer what he or she ought to necessarily be doing but sort of saying okay you need to watch for this and need to ask questions and you need to be aware of the fact that that you might be crossing into an area that is gonna result in problems and difficulties for you.”

“I strongly support the idea of providing the information, educating, so that people are making informed choices as opposed to simply ending up in a situations where all of a sudden they say had been aware they would have made different choices. I mean that’s the important thing is to provide individuals with the information so that they make informed choices and are then responsible for that because they’ve made informed choices as opposed to someone who simply ends up being an innocent, and it also presumably allows that defense of, I didn’t know, not to be a very effective defense anymore because the information is there, people have been informed about it so that you’re able to, prevent that defense from being used inappropriately.”

- 5.1.5 The same can be said about the RCMP and CSIS in that institutions get little, if any, feedback with respect to their efforts to assist in combating terrorist financing. There is concern that the legislation under which FINTRAC, the RCMP and CSIS operate may prohibit them from providing this important feedback. If that is in fact the case all interviewees believe it should be changed.

A member of a Self Regulatory Body stated:

“We use to have a very good relationship with CSIS especially in 2001, 2002 and 2003 but due to the transfer of personnel and retirement of certain personnel they sort of shifted their interest and we no longer have a direct contact with them.”

“Well I think it affects how information is passed on. In the past we use to have a fairly significant informal relationship. Now we’d have to probably hunt and peck to find who to call and when to call and whether or not it’s the right person.”

An Executive in the Gaming Industry stated:

“As far as the charities side, we’re getting nothing from anyone with regards to if there’s a history of you know charitable proceeds going to terrorism groups, we’re getting nothing.”

A CAMLO in the Financial Services Sector stated:

“The feedback we get from FINTRAC and the RCMP on this is that you shouldn’t lose sleep over the fact that you’re not seeing any prosecutions for money laundering or terrorist financing.”

A CAMLO in the Financial Services Sector stated:

“I’d love to hear more information back from OSFI as well. How are people doing? Do most institutions have monitoring systems in place? How do they deal with terrorist financing; those kinds of generalities across the whole group would be great. The more information the better, absolutely for many, any regulatory organization.”

An Executive in the Precious Metals Industry stated:

“I’m not sure that that there has been enough emphasis on, on encouraging or, showing people the relationship between a suspicious transaction and what might occur down the road.”

“I think any industry that has a potential to be targeted by either terrorist financing or money laundering would gain a great deal by partnering with law enforcement. And again FINTRAC is sort of a new entity to us, so they’re not providing us with information. They are certainly dialoging with us which is a good thing and certainly willing to learn about our kind of industry versus the financial institutions that they’re used to working with. So that’s a good thing. So I wouldn’t say FINTRAC is necessarily assisting but in some ways they are, I guess to the best of their ability given their mandate.”

A CAMLO in the Financial Services Sector stated:

“There are now cases where we must be able to exchange information with our colleagues. We cannot do so because the law is too restrictive. FINTRAC is a good case in point, in that information flows in one way only. I understand the mandate of FINTRAC, the analysis centre. However, the banks need a bit of information in return to better manage and better circulate information so as to better manage their risk. Not only to unearth or find transactions of a criminal nature or related to terrorist activities and to combat money laundering, but also to help banks manage their own risks. I think that the financial system as a whole would be the winner.”

“I understand that it’s because of national security issues that we don’t necessarily need the big puzzle or the big picture. However, we need confirmation that the matter that we sent is really of interest and that we should continue to gather as much information as possible on the people involved or to make connections with such and such a person.”

“We could be much more proactive with these individuals if we were able to form joint law enforcement committees, experience has shown this. We need to set up committees to eventually prevent individuals who were found out from continuing their business elsewhere. This is not done today. That’s why I said earlier that we were wasting our time. It’s fine and dandy to invest millions and millions of dollars in development and training. Efforts are not being pooled and this is a problem.”

“If you look at who is ultimately in charge of national security, it’s CSIS. It’s CSIS that has to compile as much information as possible so that it can eventually be investigated by the police. With us, when we have a potential terrorist for any kind of allegation, we have to send the information to the RCMP and CSIS. You never hear anything about

CSIS. There's no exchange with those people. The information has always been hidden, security, but there could be more openness."

"The system should be solidified through a better exchange of information, fewer silos, less compartmentalization. That's intelligence. That's what intelligence is. I don't know of any other way to fight terrorism; so far, intelligence is the only way. That means you have to be able to implement logical intelligence in Canada and not have it scattered throughout multiple organizations concealed here and there."

"What does the financial institution get in return for the work it does? Nothing. There has to be some sort of exchange. What does it get in return? You can wonder about it. There is nothing, there's no one "returning the favour." You need to have a favour returned if you want the system to be effective, overall. Here, there is no returning the favour. Here, we're working in a vacuum."

A CAMLO in the Financial Services Sector stated:

"It's the police forces that have the most specific information on terrorist financing, or who have the most indicators. To share that with for-profit organizations like us."

"What we need is to have access to certain information; a mechanism should be set up where we can make inquiries through a police force. And it could well be the RCMP, all the major police forces. Which means they all have information units; everything could be monitored, everyone is familiar with how it works, it could be very, very easy. But if people really want to identify the terrorist threat, they'll have to find something like that. Without that, we couldn't detect it, not the way that terrorism works. And up to now, our country has not been hit, but do you have to wait until you're hit. You mustn't get paranoid about it either, but I think there are very simple ways to do things all the while protecting information."

- 5.1.6 The interviewees believe that the enforcement agencies have considerable resource constraints which are having an effect on their ability to investigate those matters which have been referred by FINTRAC. This belief may be an out growth of the lack of feedback.

A CAMLO in the Financial Services Sector stated:

"In terms of the regulatory agencies I think it would be helpful to get more information in the hands of law enforcement from FINTRAC because presently there are rather large volumes of suspicious transaction that are reported to FINTRAC and they never make their way to the law enforcement. Secondly, I think law enforcement is constrained in their resource capabilities to be able to investigate all of the information that's passed their way. Bearing in mind that financial institutions can only go so far in identifying suspicious or potentially suspicious activity including attempted transactions, completed transactions and we're meeting our obligations in reporting literally millions of transactions a year to FINTRAC both large cash and cross border wire payments and to a lesser extent suspicious transactions. I think it would of greater use if we could focus on that information. We're spending so much time and effort to assemble and to get more of it in the hands of law enforcement so that they can actually investigate."

"Federal I think is where I think most of the work is done in respect to terrorist financing They have somewhat limited resources and they've gone through a couple of rounds of restructure over the last number of years and so I think they're investigative processes, are perhaps more limited than they might be, to be truly effective."

A CAMLO in the Financial Services Sector stated:

“The Credit Union system in general is concerned about how onerous it is, exactly what we’re doing, the procedures that we’re doing for no public prosecutions or public results, given the amount of work that the industry is going through, the seeming lack of results once it gets into government.”

A CAMLO in the Financial Services Sector stated:

“We know that the money comes back here, we track it, we’re on its trail, and we can track them daily. We give this to the police and absolutely nothing gets done. What’s the point?”

“There is definitely a lack of resources in the public services. It’s really obvious. You see it in the papers every day. They’re not equipped or they don’t have enough resources. If they could at least give to the banks, since they’re asking them to do all the work. If, in exchange, they could at least give them the power to exchange information, better manage risk, it would be better than nothing. At least then they’d have access to multiple information.”

“It goes without saying that in this way, indirectly, you end up fighting terrorism. If, because you have the information, you intercept people who are trying to break into the Canadian financial system before they even get in, it’s to everyone’s benefit.”

A CAMLO in the Financial Services Sector stated:

“They don’t have the resources. I wouldn’t say that they have too much volume, no. They don’t have the resources. Because you need an analyst to do what needs to be done. It’s the data. It’s the numbers, the transactions. You need someone—a computer can’t do it—a person who puts things together, who analyzes it and produces a report in the end. It takes months. It takes months. You can look in FINTRAC’s annual report, the volume of analytical reports produced is 100 to 200. It’s not an enormous number. It’s all across Canada. I think we have more than that.”

A Member of the Legal Community stated:

“I think it always comes back to the same problem. And I find it unfortunate to say so, but I think it’s always a question of budget. It’s a question of staff.”

- 5.1.7 The current legislative regime is rule based which could result in terrorist financing occurring and being reported as the institutions are required to do. This does not stop the transactions from happening. This may be addressed with the proposed Bill C-25 amendments which many institutions see being a more risk based approach. A large number of institutions have implemented their own risk based approach to complying with the current legislation.

An Executive in the Financial Services Sector stated:

“In a risk based environment the emphasis or the onus is on the organization to ensure that they’re doing everything to prevent that activity. In a rule based environment you don’t need to prevent it.”

“We could be money laundering, we can knowingly facilitate money laundering and as long as we submit all the proper paperwork then we’re okay. In the United States you couldn’t get away with that. If you know you’re facilitating money laundering and you

haven't put systems in place or controls in place to prevent that activity, then you are also exposed to an investigation and subject to being charged. This is the challenge I've always had with the, with the legislation in Canada and why do we want the legislation to be strong? Because financial institutions do not want to be exploited. We want to have the controls in place. We want our competitors to have the controls in place to know that our companies and our industry aren't being exploited by criminal organizations or by terrorist, financing organizations."

"Ensure that it's a risk based system, shifting the onus on the financial institution to ensure that they have the proper controls in place and that they're not being knowingly used to facilitate money laundering or suspect terrorist financing."

"It's very difficult if you suspect something to be money laundering to distinguish whether it's a terrorist or you know a drug trafficker. I mean you just know it to be money laundering, so under those circumstances you submit a suspicious transaction report in Canada and life goes on, you've done the right thing, but you still facilitated the transactions, you still haven't prevented it."

"For a typical financial institution in Canada, a money service business, maybe a securities firm, maybe even a bank, unless they've got the back end processes and the risk management tools, they're not gonna pick up it. It's easy to do. It'd be easy, especially if it's sophisticated criminal organization or terrorist financing organization because they know the barriers they have to get through."

A CAMLO in the Securities Industry stated:

"I think its more rule based approach, it's more prescriptive than anything. You've got certain steps to follow and the legislation, it just covers your whole client base and I think that's something that we certainly talked about last week before the meeting with FATF was hopefully trying to emulate maybe Britain, where they've seemed to have adopted a risk based approach."

- 5.1.8 To be compliant with the current legislation institutions and organizations are spending considerable amounts of money on a yearly basis.

A CAMLO in the Financial Services Sector stated:

"If we look at the people that are dedicated to money laundering and terrorist financing compliance activities and the various systems, training and other initiatives that are underway I think it would be fair to say that we're spending well in excess of ten million dollars each year. So it's substantial."

A CAMLO in the Financial Services Sector stated:

"God knows that our bank has invested millions—and it's not the biggest bank. So I imagine that at the Royal Bank, it can be millions and millions in resources and in time and money to comply with legislation."

A CAMLO in the Financial Services Sector stated:

"It's many, many tens of millions of dollars. I think that, for an organization that is there to make profit, it's quite an expenditure."

A CAMLO in the Financial Services Sector stated:

“We invest an enormous amount of time and money poured into this activity. We make enormous investments with regard to all these points in terms of reports, in terms of tracking, in terms of systems.”

A CAMLO in the Financial Services Sector stated:

“We have not calculated an exact cost. We were too afraid of the answer. But it’s tens of millions. It’s tens of millions. Since 2001, we’ve invested that much just in systems. So, just that, we put at least five million in that, if not more. There’s training and just the cost associated with training our employees. I know its two hours, three hours. But for us, it’s definitely in the tens of millions.”

- 5.1.9 The current terrorist watch lists are seen to be ineffective in that there is little biographical data other than a person’s name on the list. This creates a good deal of extra due diligence work on the part of the institutions if a name match occurs. A significant number of false positives are occurring. This will become even more onerous when the requirement to check on Politically Exposed Persons comes into effect.

A CAMLO in the Insurance Industry stated:

“Well some of the proposals that are coming I think are, somewhat onerous. More onerous than realistic. And by that I mean you know they’re suggesting that, we have to start collecting information about politically exposed persons. We can put more questions on our forms and ask people to tick off, or are you, any of these things and occasionally we might get somebody that says yes to them. Well then they want us to do more due diligence. Well what more due diligence can we really do. We’re not police investigators here. We’re gonna get this form in, we’re gonna then maybe look them up on some database somewhere and say oh can we find this name and you know how suspicious does this look or whatever but I’m not sure that’s going to be that useful in the end. We’re gonna ask every single person to answer all these questions for what? So to me that was a bit onerous.”

“So it’s really asking us to collect a whole bunch more stuff which the customer could realistically say, what do you need this for.”

A CAMLO in the Financial Services Sector stated:

“Where Canadian financial institutions might benefit further is to have more information on topologies and countries and jurisdictions and activities that would be of particular concern and focus our investigative activities on. Perhaps even streamlining the ability to investigate certain names or entities you know at the specific request of law enforcement. I’m thinking of a process that they had in the United States where they before names are even designated or added to the terrorist listing they do have the opportunity to distribute those names out to financial institutions that require them to do specific investigation on certain names. Obviously that doesn’t fit within today’s legal framework in Canada but it’s something that’s worthy of consideration I think.”

An Executive in the Financial Services Sector stated:

“Well you get lot of false hits on all this. Because names can be very similar, like Mohammed and so you get a lot of false matches in all this. The lists really don’t provide

any more information other than the name of the organization or the name of the individual and the country. And they're all pretty consistent.”

A CAMLO in the Financial Services Sector stated:

One of the comments that has been made is it's difficult to keep staff motivated and interested in screening for these types of transactions without them feeling that they're contributing to something. So if employees are doing all of this work and checking the matches and doing this, sooner or later it becomes why am I doing this. You know there's no good coming out of it. It increases the costs to the institution obviously because it's had to create positions where positions weren't necessary before. There is uncertainty which also increases organization times so the Bill C -25 changes are areas we understand, the political reason to do so, given Canada's audit and everything else. But we also recognize as an industry that has to comply with them that just saying attempted transactions need to be screened, well if you go to your local ATM with your debit card, we call them member cards and you put it in, we can't track that there was an attempted transaction because it rejects it and spits it out. We don't know that it was you making that attempted transaction. There's a card, it was rejected. So how is it that you're going to comply with the attempted transaction rules under the new proposed legislation? It's that type of impracticality that you see throughout the legislation.”

A CAMLO in the Financial Services Sector stated:

“Those lists really they're completely unworkable. We have no information other than the name, by which we can make any sort of assessment as to whether or not this is bad guy or a good guy.”

“I don't think the name should be on the list unless they have a birth date or at least a country of origin or something by which we can make that assessment.”

A CAMLO in the Financial Services Sector stated:

“I think the understanding was they'd let us know if it actually was somebody that, it was actual match and we never get any response back and we've stopped doing that since because the RCMP have come back to all the financial institutions and said please don't send us these names. There's nothing we can do with them. So you know unless there's an actual match it's up to us to do our due diligence and so that's what we have to do now is our own due diligence.”

A CAMLO in the Securities Industry stated:

“Improved disclosure of information about known terrorists from OSFI if possible. And the reason is that, determining an exact match is almost impossible with the limited information that we're given. There are a lot of similar names that come through on those lists and they may provide dates of birth or they may not. Our view is that you really have to have a direct match. There's no provision there to say well if you got a close match you report it. It is an exact match because you're going on record as saying this is a terrorist that we have identified. So I think what you'll find across the industry is very limited reporting in this area.”

A CAMLO in the Trust Industry stated:

“If they are gonna put them on a list, they should put them on the terrorist list. We don’t need to be checking five different lists out there. I’m worried now that because there was some legislation that was passed last week in regards to Iran and they want it, they’re adding names to the list, those affiliated with the Nuclear Organization or the Atomic Energy Corp, there’s a whole another list. Now they’re gonna add them to the terrorist list but they said they’re gonna add them on a list like the terrorist list but don’t make us check. The resources that we’re spending on doing this is crazy. Put them all on one list, help us out and we’ll help you out. But we don’t want a separate list for terrorist, a separate list for Iran, a separate list for fraudsters. We don’t want that. It should all be on one.”

“They don’t give you a lot of guidance on what to do if you suspect someone’s on the terrorist list. There’s not a lot of information on the terrorist list. For instance if you have a name hit and that’s all you’ve have, what do you do. Like they don’t tell you what extra due diligence you should be doing and that’s a real problem.”

“Problem with the terrorist list is they don’t give you a lot of detail. Sometimes you’ll get a date of birth, sometimes you won’t. That’s the first thing we check for there is the date of birth. I mean there are some names that come pretty close. When you’re keying in a Mohammed, you may get a hundred hits. Now the other thing that they’re gonna do is they’re gonna add politically exposed persons to this list and we know that list, they haven’t added it yet, but we know that list is five hundred thousand names.”

A CAMLO in the Financial Services Sector stated:

“If we’re talking watch list, it’s the OSFI list. Let’s talk about that. That list is public. What terrorist is going to open a bank account in his name if he’s officially targeted by all governments, all countries, as an official terrorist? Of course he’s not going to open an account in his name. Which means that even though it’s been five years, the biggest issue for all those lists is the OSFI list. And that list cost hundreds of thousands of dollars to put in place. It has to be tracked daily. It takes an incredible amount of management. And then there are always potential, possible individuals, but in five years we’ve never caught a single customer positively identified as being on that list. It’s ridiculous. Completely disconnected from reality.”

“It’s very, very hard for us to know, is it terrorist financing? It’s considerably easier to identify money laundering. Even there, it’s not obvious whether its money laundering rather than terrorist financing. We agree on that. That’s why, if we really want to do better in this, is there any information that’s just a tiny bit more accurate. Because it’s really just names, and often they have four or five of them. And I’ll tell you, getting a computer match on that basis is not easy. So, just for starters, it makes the process even more complex—just using names.”

- 5.1.10 Alignment of Canadian reporting requirements with those of other FATF countries was raised as an issue in that some countries appear to espouse compliance in name only, i.e. there needs to be more international/independent auditing and review of compliance with FATF requirements by member countries.

A member of a Self Regulatory Body stated:

“The big gap is that as long as the institution is in an FATF approved location then the presumption there is, or there’s a deeming provision that you don’t need to go beyond that to verify if the clients themselves to meet the anti-terrorist financing requirements or

the AML requirements. And to be honest I don't think that's a particularly valid principle, concept.”

“The biggest issue will continue to be offshore and how information's obtained with respect to offshore jurisdictions, the reliance that we seem to put, I think it's probably questionable, on FATF approval. Because there's many many jurisdictions that I don't feel are necessarily complying with the FATF principles. They're not walking the walk. Certainly we've seen various levels of cooperation with offshore estates. And again some of those have changed with time as such things as economics of the secrecy has affected the economy of some Island states for example.”

A CAMLO in the Securities Industry stated:

“One of the biggest things that I have found and it was another point brought amongst the investment dealers when speaking before FATF was a harmonization around the world. I think that it's not a level playing field. There are countries like Canada who I think are trying to do a really good job in combating AML and terrorist financing. Whereas you've got these other jurisdictions around the world that aren't subject to the same requirements. And I think the biggest thing that concerns me about money laundering is who's on the other end. What have they gone through before the money gets to us? And so I think if all the standards were equal around the world it would be that much easier for us. Another point is education and training. More input from FINTRAC, Department of Finance and the Financial Action Task Force. Stiffer penalties for crimes known to support money laundering and terrorist financing. And again publication of money laundering offenses and case studies made available to all of us, it's just gonna help us.”

- 5.1.11 The areas which were identified as being non-regulated and which could be used in terrorist financing were: the white ATM market, money service businesses, provincially regulated mortgage brokers, pre-paid credit cards, stored value cards, internet clearing houses such as Pay-Pal, internet gaming, precious metals, the legal community and the religious community. Interviewees advised that in their view, terrorists will seek the path of least resistance in the same way that money launders do in attaining their goals.

A CAMLO in the Financial Services Sector stated:

“I think there's certainly the possibly of non registered type charities or fund raising organizations that might raise capital that can be diverted to terrorist financing activity. I think the less regulated money services business type activities are, can, could be an attractive vehicle to move money around the world. And of course the emerging technologies that enable internet based transactions and activities, enterprises, you know even something like an internet gambling operation could be, used as a vehicle to move money out of the country to some other jurisdiction and then in turn be used for some other illegal activities. And we're seeing from some of the studies of topologies that and just general stories that terrorist are now moving more and more towards criminal activities including the fraud and activities of that nature to raise funds and then there's like any other criminal activity where's the money wind up and what is it being used for. So there are a lot of different opportunities out there.”

An Executive in the Gaming Industry stated:

“I don't think the legislation touches or handles or deals or anything with internet gaming. Like that's the single biggest factor because money moves are all over the world by internet and electronic pay.”

“There’s no control on it. Who legislates it, who regulates it?”

“The first step is to shut down the onshore service sites. At least we have some control what’s onshore. The offshore I don’t think the Canadian legislation’s gonna impact it anymore than the American legislation’s gonna stop internet gambling.”

“For online gaming and it’s totally unregulated. You don’t even know who you’re dealing with. You’re dealing with, a computer image, that’s it.”

An Executive in the Gaming Industry stated:

“I’d say some religious organizations are collecting money from their community, ethnic community, whatever to use, non regulated, non reported, it’s just money. Who tracks it all? We just don’t know how much.”

A CAMLO in the Financial Services Sector stated:

“I’m really concerned about all debit card skimming, the fraud that’s occurring with debit card skimming. Huge profits are being made by someone. I don’t know who they are and I don’t know what they’re doing with it and the cases are big; they’re national, and no ones investigating them. Because they’re awkward and who has jurisdiction.”

A CAMLO in the Financial Services Sector stated:

“The one that comes to mind would be money service businesses. I know that they’re caught under the legislation so they are regulated in that sense. I don’t think they’re audited though. They’re not required to have internal audit departments or anything. But they’re moving money around and they’re moving lots of money around.”

“The MSBs are certainly used and while they are captured in legislation and they’re required to have compliance regimes in place and all that, my experience in auditing a number of them would, you know it’s very fundamental at best. Like they don’t have a real good understanding, nor are they really willing, I believe, to comply because there’s a lot of pressure on those places to keep their mouth shut and to move my money and don’t say anything particularly in certain areas where you know those MSBs are being used to launder and for the TF as well.”

“You could go through multi language newspapers and in the real small caption at the bottom of the newspaper it’d say we’ll move your money for X amount of dollars and a phone number. Well unless you could translate that or unless you, you know and we did do the translation services and we came up with literally hundreds who are not in the phone book, not in any kind of registry and even now that they have to register isn’t gonna be a guarantee that they’re all gonna all of a sudden come out of the woodwork and be registered because they’re still continue. So I think that’s where they have the capability to move the money. If they don’t move it themselves they’ll move it to somebody who will move it overseas.”

“Of course the precious metal dealers, jewelers, we think that’s definitely an area where one could store value in something that’s small and easy to transport.”

A CAMLO in the Financial Services Sector stated:

“Prepaid cards without mitigating controls. You can walk in and buy a gift card and essentially it is anonymous and you can go use it at a point of sale to buy the items that you need to build a bomb, you can use it to buy the plane ticket to do whatever you’re doing. You can buy a prepaid card that is useable both at the ATM and at the point of sale and mail it to somebody with the pin number and they have instant funds. It can be abused.”

An Executive in the Gaming Industry stated:

“One area outside of legalized gaming that we have heard significant intelligence on is legal internet gaming. That is something that could be linked to a terrorist organization through a multitude of different people or organizations very easily. Huge money. Illegal internet gaming. I mean the Americans have just shut down internet gaming through the use of credit cards and things of that nature. And it’s huge money. You have no idea where the proceeds go. I mean that’s a big problem.”

“I believe that part of the Americans recent legislative changes in relation to illegal internet gaming are linked to, if not the actual happening, to the potential of the amount of money that can be taken out of internet gaming into terrorist organizations. I think one of the factors. I don’t know to what degree that factor would be there but it is a concern.”

An Executive in the Precious Metals Industry stated:

“I don’t see that beyond anyone’s imagination to use something as easy as diamonds to move around the world, to move funds for any activity. So I certainly could see that to be an issue.”

“There are industry members who know lots of things that are going on out there but don’t necessarily report them.”

A CAMLO in the Securities Industry stated:

“A lot of talk these days about the white label ATMs and seems to be very limited regulation of any of these independent service operators.”

A CAMLO in the Trust Industry stated:

“The frustrating part about it is when I see unregulated companies that advertise and I’ll read it out, no proof of income or self employment, no verification of down payment, no self declared income letter, no proof of mortgage history, no proof of collection, no notice of assessment. So here’s somebody that could be using a lawyer, who is not bound by the legislation, coming in and dropping two and fifty grand into his trust account, without a trace.”

“So why would they come to us when they’ve got all these stringent rules in place. Now we know that terrorist, money launderers, they don’t care about fees, so they go to these other institutions, they pay another point. Big deal. We know they’re getting in and they’re getting out and lot of them do open mortgages. I’ll only have it six months. Maybe I’ll make a little bit of money but I’ve just washed my money.”

“Bring these provincially regulated mortgage brokers under the same legislation. I don’t see how the FATF can pass Canada with this going on. I really don’t. I have some very serious concerns.”

“It’s absolutely deplorable that lawyers are not under the legislation. I mean they should be. I mean we’re relying on them. They’re our last point of contact before we release the funds.”

A CAMLO in the Financial Services Sector stated:

“Imagine, they’re going to ask for sellers of precious metals to be on it. They forget all about cheque exchange offices, cheque cashers, pawnshops and “white-label” ATMs. It’s ridiculous. Those are the best money laundering tools in the world. Those white-label ATMs can be used for skimming, you can steal all the identity information on a card. You can wash money in your own business. There’s no legislation at all.”

“There were no cheque cashers, cheque exchanges about six or seven years ago. Why do they exist now? Because you can’t shovel dirty money into banks anymore; there are too many watchdogs. So that’s where they’re putting the money now. The cheques make the rounds and wind up in financial institutions.”

“If we’re talking about terrorism and money laundering, we’re not far from national security. How can a professional association (lawyers) rationalize hiding behind customer confidentiality, when it’s a question of national security? I don’t know, something doesn’t add up here. There’s a glaring hole. These lawyers have to be bound by the same rules as all other citizens.”

“We increasingly see individuals who open personal accounts and then use the Internet to transfer money. And you see that in Pay to Pay, in PayPal networks. And with these, you lose trace of it. You have this customer who may be at your bank because he is an agent for transmitting money, but you have many individuals who may be your customers who are going to take money out, who are going to send it to those customers. There are so many transactions that you practically can’t monitor them all. And from the time that money gets to customer X, or Y say, well, it’s all transferred in bulk to individual X or to company Y that we don’t know, and at a given time, it may be the easiest vehicle for sending money to a terrorist organization, these days.”

A CAMLO in the Financial Services Sector stated:

“A big weakness is that at a certain point, legislation will have to address we have a charter of rights and freedoms that’s ironclad. We’ll have to show where society’s interests begin. Because there are too many laws that contradict each other or prevent us from continuing in one way or another, in terms of access to information. We’ll start at the point where it’s not working to date. The people who are used most for money laundering and terrorist financing are facilitators: lawyers, notaries in Quebec, accountants. Which means that here, across Canada, notaries and lawyers don’t report. They’re not subject to the law. Personally, I think it’s a serious problem. They have mixed it up with business. I clearly understand solicitor-client privilege, but that’s not all there is. Who says it’s a professional secret. When a lawyer or a notary acts exactly as if he were an investment broker, I don’t see where that represents a solicitor-client privilege. So either you give that privilege to investment brokers or, in this case, you take it away from the notaries and lawyers. That, I think, is the big weakness. The day we can take that away is the day we will have a tiny bit more striking power to find signs of money laundering and terrorist financing.”

A Member of the Legal Community stated:

“It’s the Smart Card system, it’s another way, and if you ask me, it’s much easier. Much, much easier. Nobody but nobody ever looks at that.”

A CAMLO in the Financial Services Sectors stated:

“Unless we’re able to set up the elements of control on the Internet that would enable us to target these events, forget it. It’s all going to go over to those bases. You can be sure of it.”

“Acquisition cards, gift cards. They put a lot of money in them in some cases and then they’ll transfer sums of money from one country to another.”

A Precious Metals Specialist in Law Enforcement stated:

“The advantages of something like diamonds is they’re really small and they’re easy to carry, they’re concealable, they’re untraceable, all these wonderful qualities.”

“If we look at terrorist use of gemstones. We know that the Taliban has been linked to lapis lazuli, colored gemstone are out of Afghanistan. Al-Qaeda was linked to tanzanite, and apparently the tanzanite was used to fund the operations that went into the bombing of the US Embassy in, in Africa in the mid nineties.”

“There’s great opportunity to move money in and out of Canada through the use of gemstones.”

A Member of a Law Society stated:

“The Canadian Bar Association objected to the inclusion of reporting requirement for lawyers in the Act on the basis that’s it’s affected the independence of the bar and the lawyer’s loyalty to their clients as confidential advisor.”

“Now more recently of course the Money Laundering Act has been amended by Bill C - 25 to release statutorily the lawyers from the prescribed and suspicious reporting transactions. So they’re no longer subject to those requirements.”

“Well in the Act of course the reference is made to terrorist financing as a Criminal Code offence right. So it’s an illegal activity. In our rules, as a companion piece to the rules which (unintelligible) from receiving the cash amounts I described, we have amendments to our rules of conduct which in the form of commentary which require the lawyer to be vigilant when they’re representing a client and to be alert to situations which might raise the lawyer’s suspicions about the legitimacy of your client’s transaction.”

“If the Law Society was the first to learn of an issue with a lawyer involving criminal activities like that and it’s a matter of investigation that the Law Society, our statute prevents us disclosing the confidential information relevant to that investigation except on order of a court and we have a provision in our Act and in think it’s similar cross the country that if the Law Society Act to permit the Law Society to apply for an order to disclose the information to the authorities.”

“There are some Law Societies that have a mandatory requirement that he disclose what would otherwise would be confidential information to prevent death or harm.”

- 5.1.12 A common theme amongst all those interviewed is the fact that terrorist financing is not on anyone's radar screen. They all know about it based on their positions and knowledge of the legislation, however as Canada has not been the direct victim of a terrorist act there is a not heightened awareness around the issue.

An Executive in the Gaming Industry stated:

"I think here because we haven't had any issues that have affected us personally this is not on people's minds."

A CAMLO in the Financial Services Sector stated:

"As a country I feel that happens elsewhere. You get that sense of, whether you pick up the newspaper and read of articles on the situation or whether you talk to people over coffee, there is somewhat of a complacent attitude within this country. Oh couldn't happen to us."

An Executive in the Financial Services Sector stated:

"You know we are enforcement adverse and we don't talk about things that that scare the public and terrorists do. In the US there it's probably a little bit, they probably go overboard you know with the terrorist hype but in Canada we probably don't say enough about it."

A CAMLO in the Financial Services Sector stated:

"I think a lot more can be done when we read about terrorist acts the sort of the underlying funding of it and how that worked would be better result in better education of the general public. Like you know and also the understanding that a terrorist act takes very little money in overall scheme of thing."

"I also think we need to raise the profile of, not just the act itself but how does that act come to be, like where does it start, how does the money start, who's running it, who's doing it. I think there, more can be done to educate in that respect."

An Executive in the Gaming Industry stated:

"Canada should be publicizing more in relation to what a terrorist organization is, identify a terrorist organization. We're very slow at doing that and it isn't done widely across the country. Where do you find out which organizations within the country are classified as terrorist organizations, i.e. the Tamil Tigers which recently became a terrorist organizations, five years ago they weren't."

"I don't think that charitable gaming funding is in tune with the fact that an organization could be supporting a terrorist organization or be involved in supporting one in any way. I don't believe they're alerted to that. I don't think the mentality is there for that yet."

"I mean quite frankly the threat of terrorism, although we hear about it and we talk about it to some degree as a Canadian entity, it's not that high a profile. I think because nothing's happened in the country yet, that's my personal belief. Canadians as you know in general are very laid back people and until it really affects them specifically or personally even then it's hard for them to react. And I think that's what it is. People don't talk about terrorism, I was just in Washington, like Washington's a little different, terrorism is the talk of the bar."

A CANLO in the Financial Services Sector stated:

“We might all be a little naive when it comes to the fight against money laundering and terrorism, because the very essence of these organizations is to stay hidden in secrecy. It’s like the Cosa Nostra or the Pègre. No one talks about it. It’s camouflaged. It’s underground. So perhaps we’re only seeing the tip of the iceberg. What lies beneath we cannot see.”

A Member of the Legal Community stated:

“I think that the problem is that no one knows about it. It’s not a lack of interest; it’s a lack of awareness. The different people involved are not aware of this. They aren’t familiar with terrorist financing, or the techniques. You can’t go to school and take courses on it.”

“I think this is where the problem lies, because I’m convinced that terrorist groups know full well that with our capitalist North American mentality we cannot imagine that people will give large amounts of money or take chances with a purely ideological objective in mind.”

“I think that at one point something will have to happen for people to realize that the threat is very, very real.”

5.1.13 In terms of charities and not for profits the same rigour in terms of the knowing your client rules are employed by most institutions. The interviewees have an awareness that these types of organizations can, and have been used, to financing terrorist activity. As a result they check them against the available lists and monitor the activity particularly if there are transfers of funds outside of Canada. The interviewees also believe that the government should take a more active role in the monitoring of charities and how their monies are distributed.

A CAMLO in the Financial Services Sector stated:

“As a general rule we look at charities the same way as we’d look at any other customer from a Know Your Customer perspective in that we try to understand the nature of the charitable activities, how they raise funds and how they use those funds and how the monies moves through their bank accounts so that we can look for unusual activity.”

“I do believe that charities can be used to finance terrorist activities and we’ve seen from the Financial Action Task Force, topologies of terrorist financing and other sources example where that has been the case. I’m not sure that Canada’s legal regime has really taken sufficient steps to prevent that type of activity from occurring again. So we still believe that there is a risk of that that could occur.”

“I think that where there is a charity that is raising money in Canada and sending it to some far flown country how those funds would ultimately be used at that other side of the world is very difficult to maintain and I think we need to rely fairly heavily on government’s oversight of charitable organizations to satisfy themselves that charities are legitimate charities and using the money for good works. And how they determine that I think is something beyond the control of financial institutions and something that government needs to play a role in.”

“It seems to me that through the income tax provisions where the government has certain control and an oversight over the fund-raising and tax exempted activities of charitable organizations that they do have the capability to look at how funds are used and perhaps they could look further at investigating certain higher risk charities to determine and see documentary evidence and corroboration of where in fact they are using the monies.”

An Executive in the Financial Services Sector stated:

“Charities are considered high risk but again, we know that charities are a conduit for terrorist financing and that’s why it’s high risk but not all charities are used for terrorist financing and probably the majority aren’t. So we actually have legitimate charities but we actually drill down, we do due diligence on them and that investigation is done by the Compliance Department.”

A CAMLO in the Financial Service Sector stated:

“We do have a list of , it could be types of a client or it could be countries they are dealing with that we would categorize them as high risk and we have extra or enhanced due diligence. For those types of clients so we do stratify, we risk rate our client base in that sense. So a charity that for example was dealing with a high risk country would be classified as high risk.”

“I think if we only focus on charities we’re missing the boat, FINTRAC may come back and say in fact you know charities have been linked in every case of terrorist financing. But again I’d like that message then to be delivered stronger so that I can pass that on to my staff to educate them to look for that.”

A CAMLO in the Securities Industry stated:

“I think that because people tend to look at charities as good, right off the bat so you’ve got that to deal with right away. So the reason that’s important is because for a firm like us, if we start challenging or questioning a charity that turns out to be legitimate that’s not very good PR for us. So I think that there’s a bit of that in play as well, you really want to be sure if you’re gonna make a case on one of these organizations that you’ve really got your stuff together. The other reasons that charities are probably and not-for-profits, good areas for terrorists or money launderers are because it’s a lot harder to determine source of the funds. The charity can simply say their donations are coming from a variety of sources. Much harder for anybody to identify the actual source of the funds than it would be for a regular individual or in our case individual accounts or corporate accounts. We can always ask that question. Where are the sources of the funds coming from? A couple things another thing is charities are often layered, similar sounding names, so just a few of the reasons why I think they can be used.”

A CAMLO in the Financial Services Sector stated:

“Not-for-profit organizations, I don’t honestly think that they’re “the Klondike City of terrorism; where they’ve found a goldmine to finance terrorist activity.” I would be surprised if that were the case. Because, honestly, criminals use a lot of other techniques that are far more subtle, and that one, it’s too obvious. But if you look at it from a viewpoint of terrorist financing, the whole theory of not-for-profit organizations is based a lot on September 2001 and the small amounts of money that was used to carry out terrorist acts of that magnitude.”

A CAMLO in the Financial Services Sector stated:

“It’s the KYC rule, Know Your Customer. Whether it’s a charity organization, they all have the same rules. They must be positively identified, produce identification. There will be representatives; get a copy of their charter, and the person at the bank has to know them. The person really has to know your operations. For example, if they say it’s a charitable corporation that is some sort of church—I say a church, it can be a mosque, it can be anything—I don’t think they should be cashing car dealers’ cheques on that account. It should be in the sense of the activity. They have to be sure that the account’s economic activity matches the activity they cited when they opened the account.”

“Where you have to pay attention is that, unlike money laundering, terrorist financing is called “money soiling.” A charity organization calls for donations for an allegedly totally legitimate purpose, and as the money accumulates somewhere, and as the transfers are made, the money begins to get dirty. Then their real purpose begins to take shape. It’s only when it gets to its destination that the world will know that it was used to buy a bomb or to mount some attack somewhere. But at the source, the people who gave that money, they don’t know. Which means that, yes, you really have to know your charity organization. And even if it collects entirely legitimate donations, terrorist plots, and terrorist scenarios are put together as a result of people who give. And in this case, the money gets dirtier and dirtier until it reaches its final goal. Contrary to money laundering, which is the result of a criminal transaction, and attempts are then made to reintroduce the money into the system. The crime has already been committed. Usually, with terrorist financing, the crime is yet to come.”

- 5.1.14 Major international charities are themselves aware that their programs and support delivery could be used to finance terrorist activity.

A member of a Charities’ Executive stated:

“The concern may be that, third party fund-raising is always, the potential accounting problems because money is coming in and you don’t know whether all the money is coming to you or whether the money is being siphoned off so you have to be very careful there. Normally these arrangements are with domestic groups and that this is the problem but every now and then there there’s a group that’s potentially suspect and in those situations we’ll take special care to make sure that the organization is not suspect. To the extent that we can, we do screen groups and make sure the money doesn’t start being siphoned off, not getting to the charity for it’s intended purpose.”

“Our contractors are subject to Canadian law just as we are. So they are, also conscious not violating the criminal code by funneling money in into the wrong hands so we rely on them to make sure that the subcontractors they’re using are checked out and are clean, are not terrorist organizations they’re funneling money through.”

“If someone comes and says I’m gonna give you money and I want to give it to some organization overseas that we don’t have relationships with that won’t work.”

- 5.1.15 During the course of interviews the interviewees were asked to comment on how a terrorist organization could use their particular institution or industry to finance there activities.

A member of a Self Regulatory Body stated:

“It’s probably no different than any other type of money laundering situation. I mean the only difference is the identity of who’s doing it and for what purpose. What we have seen is public companies that have been created as shells and the money used to form the shells has been monies of questionable origins. The companies are then used to move money around either through false products, through bookkeeping or fictitious bookkeeping, transactions, opening or corporate accounts etcetera.”

“We legitimate companies involved in terrorist financing. What we have seen are companies that are used to transfer the funds from one jurisdiction to another in order to be able to make purchases of different types of material. Its one thing to actually create a company that produces that material; it’s another thing to just get the money to pay for it. Probably ones that we’ve seen the most of are gun running and payment for weapons. We see that going on and it’s no different than payments for drugs.”

A CAMLO in the Financial Services Sector stated:

“I think the most common thing would be just to describe, to conceal the nature of the true use of the activities behind some other legitimate business activity.”

A CAMLO in the Financial Services Sector stated:

“For terrorist financing it’s really gonna be the wire transfer product. It’s fast, it’s easy, and you can do it on a personal basis you can do it at a corporate vehicle, so you know not profit company could sign up. You could also have problems with prepaid cards. That’s another one that we’re very conscious of. Those would be our two high risks products.”

A CAMLO in the Trust Industry stated:

“They could buy properties here and flip them. It could possibly happen, slip through the cracks.”

A CAMLO in the Financial Services Sector stated:

“You asked earlier how it is that we can so easily finance money for a terrorist network. Fraud is the universal tool for everyone. A business, you’ll give an entity a corporate name, a registration number, or whatever, and then you say: I’m doing financing. And from that point on, your options are about as wide open as they can be!”

A CAMLO in the Financial Services Sector stated:

“He can buy a vehicle, \$40,000; he finances it, resells it, and exports it to somewhere else. In the end he goes bankrupt. He gets himself five, six credit cards, he goes into bankruptcy for \$80,000, so we agreed that after 9/11, terrorist acts cost \$50,000, and he just got himself \$80,000, he can easily finance a terrorist act. And how do you detect that? In Canada, bankruptcies are not investigated.”

“With the facility for getting credit in Canada, definitely, we’re a gold mine for terrorist financing.”

5.1.16 Additional comments we felt were worthy of being added to the report which did not fit directly into our findings.

A member of the Legal Community stated:

“I would suggest to Justice Major that this actual might be an opportunity for a more sober review or at least a commentary by the Commission on whether or not the cost of this anti-terrorism legislation in relation to charities actually makes sense. We’ve had, now I’m going in for a sixth year, has it ever been used to do anything and probably the answer is absolutely not. Is the records of the FINTRAC of monies going into terrorist activities fine and the answer is no. The last time I checked in relation to the submission they gave in three year review there was not high indication about concerns about terrorist activities flowing through charities.”

A CAMLO in the Financial Service Sector stated:

“The Canadian government is very much trying to be the leader of the pack, as my boss sometimes refers to it as you know the bleeding itch. They want to be perfect. There is no such thing as perfection. In their well intentioned effort to be proactive and come up with good regulation, they’ve sometimes not always included industry as much as they should. And by that I mean that there are assumptions made because they’re looking at it from a regulatory perspective. And they don’t necessarily understand the business environment and all the mitigating controls that are already there. And they’re not necessarily having that conversation to fully flush out what those mitigating controls are; to get to right you know result. We do have a mutual objective, how can we get it done. You have law enforcement, you have the regulator and you have industry. In a perfect world you have your equilateral triangle. It’s not always that way.”

“For anti-money laundering, fraud prevention purposes, where we’re trying to protect the consumer and the community as a whole, you know the privacy guys should be told to back off.”

An Executive in the Gaming Industry stated:

“FINTRAC, the Act is lovely but quite frankly they don’t necessarily enforce the rules to the way they should. I mean G 8 got them into FINTRAC and then government is saying we have a financial body that’s tracking money laundering etcetera and they get the large cash transactions and things of that nature but I don’t know how you can do that without having an enforcement body to enforce the regulating, through FINTRAC. Where’s the enforcement body that enforces the regulation with all of those people. FINTRAC doesn’t have it. They’re relying on other agencies to do it. Well good luck. That doesn’t work quite that way in my estimation.”

“It’s my personal belief after forty years in enforcement that you can’t have an intelligence body that is not directly linked to an enforcement body. I don’t think you can sit at arms length, correlate information and then disseminate for enforcement action. I don’t think it works. I think it has to be part of that. I think you both have to be part of that.”

A CAMLO in the Securities Industry stated:

“I think that our immigration policy caters to people from countries where there’s political strife and I don’t think that we do a great job on the backgrounds of a lot of people that are coming into our country. Yes they’re coming to get away from their political strife but they also are many times I think very supportive or sympathetic to

causes back home. And if that means supporting a terrorist organization to further the political goal that they may have back home I think that's very real possibility."

An Executive in the Precious Metals Industry stated:

"Its enforcement agencies either not talking to each other or not able to work together or they're too politically oriented, very territorial about what their mandates are. The sharing of that information there's a territorial thing that goes on or a political thing that goes on, this is my turf I guess would be the best term. So I think there could be a lot of work done there to change that so that there's better communication going on. I think that's difficult to implement unless it came from the top down. I think it's more the communication of the sharing of information and less territorial, less politically oriented would be of great benefits."

A CAMLO in the Securities Industry stated:

"We need to be quicker as a nation. The legislation has built in reviews every five years. In my opinion that's way too long. Terrorist financing the whole AML side is changing much quicker than that."

"Is there a way or, can we get access to government funding. I suggest some sort of matching formula to assist companies with acquiring state of the art technology solutions. I can tell you that there are a lot of shops out here that are still doing this in a very manual way and there's no doubt that there's good automated tools to assist us in doing the job."

A CAMLO in the Trust Industry stated:

"What we're seeing is the big disconnect between the regulators and the department of Finance. One the regulators and CMHC has come in here and said that there's so much money laundering going on which could be terrorist financing in the mortgage business it's incredible. And we got OSFI coming down hard on financial institutions like us to comply and then we've got our federal government who can't regulate these people, saying it's really not a big issue in the mortgage business. It's a severe disconnect and I think the fear with the Department of Finance is that they're worried the FATF is gonna find out. Well they may just find out because they're worried, 'cause Canada hasn't passed. They've been looked at twice 1993 and 1997 and both times didn't pass. So now there's a big fear."

"I think one of the frustrations is that you've got so many different pieces of legislation that you're basically being told pick the toughest one. You've got FINTRAC, you've got OSFI, you've got the Proceeds of Crime and anti-money laundering, terrorist financing, you've got Bill C-25. Throw them all under one umbrella. Don't give us different pieces and don't tell us, you know it is very frustrating when it says you must check the terrorist list at least once a month in a general form, one of the old guidelines and then have the government come in and say, okay now you gotta check it once a week, we want you to check, we're telling you have to check it once a week and then when they come in and do a review and say, well you're telling us that you're checking it once a week but where's your proof that you're checking it once a week. Okay so what do you want to see? Well we're not sure what you can provide us but what we want to see is a link showing me that this particular mortgage file was checked against a terrorist list. We don't have the manpower the resources to be able to do that. We don't even have the systems to be able to do that. And that's the frustrating part is that, here's the legislation and here's another body over here saying, you got all these different pieces guideline B

eight is another one put out by OSFI that says this one over here is the toughest one and that's the one we want you to follow.”

“From a financial institution point of view, we deal with a lot of new immigrants and this is not a derogatory mark against the government but we're letting in two hundred and fifty thousand immigrants a year and they're expecting the financial institutions to police them.”

A CAMLO in the Financial Services Sector stated:

“I think financial institutions should be allowed to exchange information more freely. Institutions would therefore be able to reduce their risk of doing business with money launderers. Because, ultimately, not only is there a risk to an institution's reputation, but especially a business risk”

A Member of the Legal Community stated:

“We have the Internet, we have a whole bunch of fast, international vehicles, but the problem is that the police don't have the tools to counterattack. And I'm not talking about giving them computers. When it comes to the kind of international cooperation we're able to get, when we want to freeze an account, we're still using paper records. The Criminal Code hasn't kept up with these technologies. Let's just adapt the Criminal Code. I think that could work. We have to stop focusing on regulatory agencies and develop effective tools in the good old Criminal Code. Then we'll be able to keep up with this technology. Because we haven't kept pace with this technology, legally speaking. That much is clear. The Evidence Act and the Criminal Code are out of sync with today's electronic environment.”

A Precious Metals Specialist in Law Enforcement stated:

“Our hands are not tied we just don't have specific tools, in terms of legislation aimed at the industry for police. So that's the one thing about legislation. The other thing is, the industry is controlled and especially the diamond industry. The jewellery industry is not controlled by any one body. There are several different Canadian government bodies involved in it. For instance they have Industry Canada and that's the department that looks at the precious metal marking Act. We have Department of Indian Northern Development. They're the government body that looks after the royalties in terms of royalties that are gained from the sale of Canadian diamonds abroad. We have Heritage Canada. This department looks after the Cultural Property Export and Import Act. We have Natural Resource Canada. This is the body that looks after the issuing of Kimberley Process certificates in compliance with the Kimberly process protocols under the Export Import of Rough Diamonds Act. We have the Competition Bureau that looks after the Competition Act. And we have both provincial and territorial bodies that have their own bureaucracies that look after the, industries, their own industries, depending on whether it be in Quebec or Northwest Territories or Ontario or what not. So there's really no one body that that sort of oversees this. And then if we transpose that then onto the jewellery industry, we look at them, there's really no body in the industry either, that brings all the steps from mining to market of diamond or importation of gemstones and the production of gold, into one body either.”

“The absence of laws allows for the perpetration or exploitation of these gemstones by criminal groups or terrorist or whoever would want to use them in the manner that they could generate finance.”

“Let’s say a terrorist group got a hold of a diamond and they were going to send them to me for a diamond grade. I’m gonna grade this diamond as this particular quality and they go oh boy this guy grades these diamonds really hard but I’ve heard about this other company down the road that has really loose grades and what’ll happen is they’ll send that same diamond to this company and the grade of the stone will come back higher. So because it comes with higher they can ask more money for it. And they can generate financing out of that. Now we’re talking several hundred dollars per carat. If you simply upgrade a stone by one clarity grade or one color grade on a one carat stone it’s easily four or five hundred dollars per carat. I can sell that one, that the stone is valued. Nobody in the general public will ever pick up on that, plus we don’t have any laws because it’s just a guideline with respect to stones that can catch that. Nor do we have a central body in Canada that centrally grades or looks at other people’s grade to make sure they’re standardized, to control that.”

“With the new anti-money laundering focused on the gemstone and precious metals industry including retail and wholesale jewellers, there might be also a registration or licencing that comes in for them, similar to the monetary side but I, don’t really know if they’ll want to venture down that path.”

“The industry is international and doesn’t matter if it’s gold or gemstones or diamonds when you’re crafting the legislation here we need to be mindful of the way other countries operate and what’s going on in the other countries in order to craft something in Canada that’ll be comprehensive enough considering that a lot the terrorist organizations operate in the other countries around the world and they have links to terrorists in Canada. So I’m afraid the legislation that we craft won’t consider that. It’ll just consider what we have and then that might afford loopholes for importation and what not.”

An Executive from a Major International Charity stated:

“Our concern with the Anti-terrorism Act is really more with our activities if we’re out there feeding people and half the people we’re feeding turn out to be terrorists but it’s in the situation where there’s actually disaster, are we theoretically breaching the Anti-terrorism Act by providing aid to terrorists and that’s concern that we struggling with.”

6 Glossary of Terms

Bill C-25	Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.
CAMLO	Chief Anti-Money Laundering Officer.
CMHC	Canada Mortgage & Housing Corporation.
CSIS	Canadian Security Intelligence Service.
FATF	Financial Action Task Force.
FINTRAC	Financial Transactions and Reporting Analysis Centre of Canada.
MOU	Memorandum of Understanding.
OFAC	Office of Foreign Assets Control.
OSFI	Office of the Superintendent of Financial Institutions.
RCMP	Royal Canadian Mounted Police.

7 Acknowledgement

The Deloitte team involved in this review would like to thank all those individuals interviewed during the course of our review. The cooperation provided, the candor and frankness in answering our questions and in providing us with information was greatly appreciated.

We would also like to thank the Commission Counsel, in particular Mr. Roger Bilodeau Q.C. and Mr. Francis Barragan for their guidance and assistance during the course of our review.

Appendix A

Air India Commission of Inquiry – Survey Questions

Air India Commission of Inquiry Survey Questions

The discussion and provision of information related to Terrorist Financing is important to assist in the better understanding of the issue, its essential nature and the improvement of existing safeguards. This consultative discussion with industry leaders and subject matter experts within respective disciplines seeks to gain insight into the effective use law, policy, procedure and operational tools to mitigate the threat of terrorist financing.

The terrorist financing techniques used by terrorists often differ from the techniques used by traditional money launderers. Traditionally funds generated from illegal or criminal activity are cleaned through financial institutions to legitimize the funds. These funds may well be used in TF. Additionally clean funds via not for profit, charities, religious organizations and relief funds may be used to finance terrorist activity. Your views on the issue and / or its description are of interest to this Commission.

- 1) What is your organization currently doing in terms of deterring terrorist financing?
- 2) Is the current legislation under which you are required to report suspicious transactions working? If yes, how? If not, please explain.
- 3) What are the strengths of the current legislation? Regulatory agencies activities?
- 4) What are the weaknesses, if any, in the legislation? Regulatory agencies activities?
- 5) If you were to offer recommendations on what you would like to see changed in the legislation or activities of the regulatory agencies, what would they be?
- 6) How does your organization handle the opening of accounts by charities and not for profits?
- 7) What does your organization do with respect to the monitoring of accounts belonging to charities and not for profits (including activities in Canada and abroad as may be the case)?
- 8) Do you consider charities to be a vehicle thorough which terrorist organizations can be financed? If so, why?
- 9) Do you know if your organization has reported activity which is suspected of being linked to terrorist financing? If yes, pls provide details.
- 10) What training have your employees received with respect to the possibility of transactions being used to finance terrorism? If so what were the circumstances?
- 11) What procedures or checks are made to determine if a customer or charity may be a terrorist financing vehicle?
- 12) How much does complying with the Proceeds of Crime (Money Laundering) & Terrorist Financing legislation cost your organization on a yearly basis?
- 13) Do you get any feedback from Fintrac? If so what is it?
- 14) What would like to see in terms of improvements to assist your organization in combating terrorist financing?
- 15) If a terrorist organization was to use your organization to facilitate its financing requirements, how would they do it?
- 16) What currently non-regulated organizations or institutions do you think are being used to finance terrorist activity?
- 17) Do you believe that Canada is being used to finance terrorist activity? If yes, why?
- 18) Do you believe that law enforcement and Fintrac are providing you with information on a current and timely bases to assist your organization in combating terrorist financing?

Appendix B

Interviewee Introduction Letter



February 26, 2007

Dear Interviewee,

Re: Interviews on the current legal framework in regard to constraints on Terrorism Financing and related topics

In my capacity as counsel to the Commission, I thank you for agreeing to participate in this interview. The information gathered from you and others will be important in helping us assess whether Canada's existing legal framework provides adequate constraints on terrorist financing in, from or through Canada, including constraints on the use or misuse of funds from charitable organizations.

The interview will be conducted by individuals from Deloitte & Touche LLP who have been engaged to assist the Commission. The interview will solicit your views with respect to the current legislative regime, including its strengths and weaknesses, as may be the case. In addition, you may also be asked to discuss various scenarios involving terrorism financing in your industry sector. You may also be asked to provide your thoughts with respect to any entities which are not currently regulated by the applicable Canadian legislation and how these entities could be used in regard to terrorism financing.

Our goal is to canvass a broad spectrum of individuals and entities who are subject to the reporting requirements of Canadian legislation and to use the information you provide in a generic way which is not attributed to you. To the extent allowed by law, your responses will remain anonymous.

Thank you in advance for your cooperation.

A handwritten signature in blue ink, appearing to read 'RBilodeau'.

Roger Bilodeau, Q.C.
Senior Counsel

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