

CANADA UPDATES OFFICIAL TERRORIST ENTITIES LIST – WHAT IT MEANS FOR YOUR BUSINESS

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On February 3, 2021, the Canadian government [announced](#) that it had placed the Proud Boys, along with 12 other new groups, on the [list of terrorist entities](#). Although the announcement comes shortly after the events of January 6, 2021 at the U.S. Capitol, the Proud Boys had been under review by the Canadian government for some time.

Key Implications

- The *Criminal Code* prohibits Canadians from knowingly i) dealing directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group, ii) entering into or facilitating, directly or indirectly, any transaction in respect of such property and iii) providing any financial or other related services in respect of such property for the benefit of or at the direction of a terrorist group.
- This means that businesses that might contract with or deal in property or financial services for the benefit of the Proud Boys or other terrorist groups will need to establish compliance protocols to take reasonable steps not to do so.
- This is especially noteworthy for financial services firms or firms that provide goods and services to groups (e.g., accommodations, transportation services and venues).
- Companies should also ensure that employees that potentially transact with groups receive training to ask appropriate questions to flag suspicious transactions.

Criminal Prohibitions on Transacting with Terrorist Groups

As noted above, the *Criminal Code* prohibits Canadians from knowingly engaging in financial or other property transactions for the benefit of or at the direction of a terrorist group. However, the prosecution does not necessarily need to establish actual knowledge on the part of the accused. The elements of the offence can be satisfied by showing that an accused turned a “blind eye” to suspicious transactions. “Willful blindness” is a substitute for the knowledge requirement when the accused is deliberately ignorant. The accused has to know there was a need for inquiry, and deliberately declined to make the necessary inquiries.

Accordingly, if a company suspects that it may be dealing with a listed entity but fails to make further inquiries

in order to satisfy itself that the entity is not a listed entity, the company could find itself in trouble under the *Criminal Code*. That being said, if a company holds a genuine belief that an entity is legitimate after making the appropriate inquiries, it should not face conviction.

The *Criminal Code* also requires that Canadians report to the RCMP or to CSIS, without delay, i) property in their possession or control that they know is owned or controlled by or on behalf of a terrorist group and ii) information about a transaction or proposed transaction in respect of such property. This is in addition to the obligations on certain financial services companies to routinely assess whether they are in possession or control of property of a listed terrorist organization and abide by the rules related to money laundering and terrorist financing.

Failure to comply with these requirements can mean significant fines in the discretion of the court or the possibility of imprisonment for individuals.

What Does This Mean For My Business?

The addition of the Proud Boys and other groups to the terrorist entities list has both immediate and long-term consequences for companies operating within Canada. Companies currently doing business with any of the newly listed entities should cease their dealings with the group and disclose any information pertaining to the group's transactions or property to CSIS or the RCMP. This would include terminating straightforward transactions, such as the purchase or supply of products to the listed entity, as well as more complex financial transactions.

Because actual knowledge is not always essential to establish a *Criminal Code* offence, companies must remain diligent and make appropriate inquiries when dealing with groups that raise any suspicion. For example, if a company is aware that a terrorist group is planning an event nearby during certain dates, the company should make further inquiries when transacting with a group that is requesting use of their property or services during those times to ensure that the group is legitimate. Compliance screening may be difficult as there is often no comprehensive list of group members publicly available, as is the case with the Proud Boys. Instead, companies should either maintain their own list of openly known group members to use for screening purposes or work with a service provider to assist them.

If you have any questions about these developments, please do not hesitate to reach out to us or to your usual McMillan contact.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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