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What's In A List? Examining Canadian Terrorist Listing

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Policy Commented On: Terrorist listing pursuant to section 83.05 of the *Criminal Code of Canada*

In 2001, Canada enshrined into law a public-facing list of terrorist entities as a part of the *Criminal Code*, RSC 1985, c C-46. In theory, this list is meant to simplify one aspect of Canada's exceedingly complex terrorism prosecutions. In practice, the listed entities have only been relied on in Canadian criminal proceedings six times. More often than not, the listed entities are referenced during Immigration and Refugee Board decisions. This post provides a brief review of how the list is used within Canada, and then looks to Australia, the United Kingdom and New Zealand as case studies for best-practices of listing and delisting. Finally, we recommend that the federal government should evaluate the procedural safeguards within the listing process and the continued use of the listed entitles within the immigration context.

Setting the Scene: Executive Terrorist Listing Regimes in Canada

Terrorist listing is the listing of an entity, by an individual nation or by the United Nations, as a terrorist entity. An entity can be a person, a group, or an organization (see *Criminal Code*, section 83.01).

The first Canadian listing regime was created in 2001 following UN Security Council Resolution 1267. The resolution imposed a series of demands upon member states, including Canada, to suppress the activities of the Taliban. A United Nations committee maintains a list of individuals with ties to terrorism, the "1267 List", which prevents those individuals from traveling internationally and freezes their assets (see Carmen Chung, "Challenging the UN Security Council", British Columbia Civil Liberties Association). That regime, still in place, is incorporated into the Canadian sanctions regime pursuant to the *United Nations Act*, RSC 1985, c U-2 at section 2-3 (*UN Act*). The *UN Act* requires that United Nations Security Council Resolutions be enacted into Canada, by way of orders and regulations made by the Governor in Council who can create offences punishable by up to 10 years imprisonment. In Canada, the 1267 List is implemented through a regulatory sanctions regime, *United Nations Al-Qaida and Taliban Regulations*, SOR/99-444, and makes illegal the buying or selling (or facilitating buying or selling) of services and products to any of the entities listed on the *Al-Qaida Sanctions List* pursuant to these Regulations.

Following 9/11, United Nations Security Council Resolution 1373 led to the creation of the *Regulations Implementing the United Nations Resolutions of the Suppression of Terrorism*, SOR/2001-360, which was also pursuant to the *UN Act*. The regulations enable the Minister of Foreign Affairs to recommend that the Governor in Council place persons on a list scheduled to the Regulations (1373 List). The Governor in Council must, before listing someone, believe on

reasonable grounds that the person has committed one of the acts carried out in ss 2(1)(a)-(c) of the Regulation. The 1373 List now is effectively defunct and has not been updated since 2006, instead, more recent listings are found under the list created by the *Criminal Code* (see Craig Forcese & Kent Roach, Yesterday's Law: Terrorist Group Listing in Canada at pp 3-4).
The *Criminal Code* criminalizes terrorist activity through a series of provisions found in Part II.1 of the *Code*. Most of these provisions were implemented soon after 9/11, and are, by design, largely targeted at terrorist groups. This is evidenced in the construction of the provisions which criminalize, among other things, participating, facilitating, instructing and harbouring terrorist groups (section 83.18 of the *Criminal Code*). A terrorist group is defined under section 83.01(1) of the *Criminal Code* as (a) an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity, or (b) a listed entity, and includes an association of such entities. The focus of this post will be on (b) –referred to here as the *Criminal Code* Executive List. Section 83.05 creates the process for a list to exist:

> **83.05** (1) The Governor in Council may, by regulation, establish a list on which the Governor in Council may place any entity if, on the recommendation of the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that
> **(a)** the entity has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or
> **(b)** the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a).

This provision does not criminalize membership, but instead criminalizes certain conduct in association with listed entities. It also sets out the standard upon which "recommendations" might be made by the Minister of Public Safety and Emergency Preparedness to the Governor in Council, which is that the Governor in Council must have "reasonable grounds to believe" that the entity in question meets the requirements laid out in the *Criminal Code*. This standard has been described by the *Supreme Court of Canada* in the following way: "...reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 (CanLII)). It is lower than both the criminal standard, beyond a reasonable doubt, and the civil standard, against a balance of probabilities (*Moreno v Canada (Minister of Employment and Immigration)*, 2005 SCC 40 (CanLII)).

As of March 2018, there are fifty-three listed entities, including Daesh (ISIS) (see Currently Listed Entities).

There are several ways in which this listing process is relevant to Canada's national security landscape. First, as might be expected, it is used in criminal prosecutions for terrorist activity in the *Code*. Second, the list is used in peace bond applications and in immigration proceedings. The balance of this post will explore the use of the *Criminal Code* Executive List in both criminal and immigration contexts and suggest potential reforms to make that list more *Charter* compliant, as well as more effective, with an eye to systems thus far implemented by other commonwealth countries.

What Have You Done for Me Lately? The Use of the *Criminal Code* Executive List in Terrorism Prosecutions and Immigration Proceedings in Canada

The Criminal Context

In both contexts, criminal law and immigration law, concerns have been raised as to use of this *Criminal Code* Executive List as constitutionally problematic. In the criminal context, a critical reader will note that the fact that a group is a "terrorist group" is an essential element of many terrorism offences, and therefore should be proven beyond a reasonable doubt. A prosecutor relying on an executive listing, which was made on a lower standard of proof than beyond a reasonable doubt, may have their prosecution subjected to some scrutiny. An accused who does not accept the validity of this listing may challenge the prosecution's reliance upon it. A *Charter* challenge to the *Criminal Code* Executive List could be made on the basis that the entities on it were recommended to the list based on the lower reasonable grounds standard (Forcese & Roach at pp 4-5 and 20). This may either force the prosecution to instead prove the existence of the group beyond a reasonable doubt within the criminal proceeding, or provide disclosure showing why the *Criminal Code* Executive List listing that the Crown is relying on shows that the existence of the group can be proven beyond a reasonable doubt.

In doing so, an accused may provoke the need for an *in camera* hearing pursuant to section 38 of the *Canada Evidence Act*, RSC 1985, c C-5 if the information relied upon cannot be disclosed because it is potentially injurious to national security, self-defence or international relations (for more on section 38 and the Intelligence to Evidence question, see: Kent Roach, Ten Ways to Improve Canadian Anti-Terrorism Law at pp 112-117; Leah West Sherriff, The Problem of 'Relevance': Intelligence to Evidence Lessons from UK Terrorism Prosecutions at p 13). As Canada is often described as a "net importer" of intelligence, the government may be wary about spooking information sharing partners concerned about Canada's broad disclosure obligations pursuant to *Stinchcombe*, and may elect to stymie the prosecution altogether (*R v Stinchcombe*, [1991] 3 SCR 326, 1991 CanLII 45 (SCC); see also Kent Roach, *Review and Oversight of National Security Activities and Some Reflections of Canada's Arar Inquiry* at p 82). Otherwise, sensitive information may be shared or may be kept from an accused pursuant to that section 38 hearing. Either way, much time and resources will have been lost in pursuit of keeping that information secret.

At best then, the listing process might be seen, in a criminal proceeding, as a way for prosecutors to lighten a heavy evidentiary burden in a terrorism prosecution, but at worst it is an avenue towards complex *Charter* litigation that threatens the disclosure of sensitive information. An avid watcher of terrorism prosecutions in Canada may point out that although these listed entities exist, few prosecutions in Canada have relied on them. As noted by Roach and Forcese, though the listing provisions are "potent in principle" they are rarely used, and even less so used for their intended purpose (Forcese & Roach at p 1).

The listings under section 83.01(b) have only been utilized in *Criminal Code* proceedings six times: *R v Thambithurai*, 2011 BCCA 137 (CanLII) (Canada's only terrorist financing case), *R v Hersi*, 2014 ONSC 1368 (CanLII) (where the listed entity was Al-Shabaab in Somalia), and several cases involving Daesh, including one youth case out of Manitoba and another out of

Quebec. The *Hersi* decision, which came at the end of a trial as opposed to a guilty plea, asserted Al-Shaabab as a terrorist group with reference to this executive list, but in that case the Crown also relied on the expert evidence of Matthew Bryden. The judge found that Mr. Bryden's evidence proved that Al-Shaabab had been a prominent terrorist group fighting against foreign occupation for years in Somalia (*Hersi* at paras 19-20). The listing then may have been seen as a manner of confirming the judge's finding of fact as opposed to making it for him. A Quebec decision found that the terrorist group was the Islamic State, and that the group was a terrorist group because it was listed pursuant to section 83.05 of the *Code* (*LSJPA — 1557*, 2015 QCCQ 12938 (CanLII)). The only other instances of the Crown resorting to the executive list were guilty pleas, and were thus unchallenged in court, including the recent plot involving the Larmond brothers in *R v Larmond*, 2016 ONSC 5479 (CanLII).

The Immigration Context

While use of the listed entities set out in section 83.01(b) in the context of criminal proceedings is rare, these entities are frequently referred to within the context of immigration decisions. A quick search any of the 53 listed entities' names into a CanLII, LexisNexis, or Westlaw database will, as noted, turn up only a handful of results relating to criminal proceedings. In the vast majority of those criminal proceedings the mention of a listed entity is not being used to make out a criminal charge against the accused (an example can be found in *R v Ajami*, 2010 ONCJ 284 (CanLII) where mention is made of Hezbollah. However, the group is only referred to incidentally in order to make out the defence of duress). However, in the case of well-known entities like Al-Shaabab, Al-Qaida or Daesh, the same type of search will return anywhere from fifty to over a hundred decisions relating to immigration issues.

This section of the post aims to provide a brief summary of the role of *Criminal Code* listed entities in the area of immigration law. It will detail the situations in which the section 83.01(b) list is utilized by immigration lawyers, administrative decision makers, and judges. The aim here is to provide the reader with a sense of the role that the listed entities play when it comes to determining whether or not an individual should be able to stay in (or come to) Canada.

When Listed Entities are Used

Section 83.01(b) entities are cited most often when the administrative decision makers of the Immigration and Refugee Board of Canada (IRB) are determining whether or not an individual seeking to come to Canada is admissible. The standard of proof used in determining *inadmissibility* is set out in section 33 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). That standard is "reasonable grounds to believe" (see *Mohammad v Canada (Minister of Citizenship & Immigration)*, 2010 FC 51 (CanLII) at para 50). As noted earlier on, this standard is lower than both the criminal standard, beyond a reasonable doubt, and the civil standard, against a balance of probabilities (*Mohammad* at para 50). Case law regarding this standard of proof was set out in *Canada (Attorney General) v Jolly*, [1975] FC 216, 1975 CanLII 1058 (FCA) at para 22 as it relates to immigration, stating that "…the fact itself need not be established." The "reasonable grounds to believe" standard applies when immigration decision makers—or federal courts carrying out judicial review—are determining whether an applicant is inadmissible under one of the nine categories of inadmissibility set out in sections 34 – 42 of the

IRPA. Unsurprisingly, section 83.01(b) entities come up most often under the "security" category of inadmissibility as set out by section 34 of the *IRPA*. This is demonstrated in *Kanaan v. Canada* (Public Safety and Emergency Preparedness), 2008 FC 241 (CanLII), *Mahjoub (Re)*, 2013 FC 10 (CanLII), *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 (CanLII), and *Hassanzadeh v Canada (Minister of Citizenship & Immigration)*, 2005 FC 902 (CanLII). Section 34 of the *IRPA* reads as follows:

> 34 (1) A permanent resident or a foreign national is inadmissible on security grounds for
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> (a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;
>
> (b) engaging in or instigating the subversion by force of any government;
>
> (b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;
>
> (c) engaging in terrorism;
>
> (d) being a danger to the security of Canada;
>
> (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
>
> **(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c)**. (emphasis added)

It is clear that the aim of section 34(1)(f) of the *IRPA* is to target individuals who are members of terrorist organizations but have not committed terrorism themselves. When dealing with such individuals the section 83.01(b) list of entities functions as an effective tool for establishing inadmissibility. A decision maker need only find grounds to "reasonably believe" that the impugned individual was a member. This efficiency is bolstered by the fact that the term "member" as used in section 34(1)(f) of the *IRPA* is given broad interpretation (*Kanendra v Canada (Minister of Citizenship & Immigration)*, 2005 FC 923 (CanLII) at para 23). Membership in the listed entity *prima facie* establishes inadmissibility under the category of "security". Unlike in the criminal context there is no requirement of specific intent to materially contribute to the listed entity (see *R v Khawaja*, 2012 SCC 69 (CanLII) at paras 48-51). Taken together, the broad interpretation of the term "member", the low standard of "grounds reasonably believable", and the use of the section 83.01(b) list make findings of inadmissibility a particularly easy thing to do.

Occasionally, decision makers and judges seek to explain *why* a particular group is listed as a terrorist or describe the impugned individual's activities in relation to the listed entity (see *Sancho v Canada (Public Safety and Emergency Preparedness)*, 2008 CanLII 91061 (CA IRB) and *Ansari v Canada (Public Safety and Emergency Preparedness)*, 2015 CanLII 47604 (CA IRB)). Generally, the IRB—or federal courts conducting judicial review of IRB decisions—regularly rely on the section 83.01(b) list of entities, and little more, to establish inadmissibility

on the ground of security. Paradoxically, but unsurprisingly, the mentioning of fear of a listed entity by an individual seeking entry into Canada as a refugee does not make the application process easier or any more streamlined. Under section 95(1) of the *IRPA*, in order for refugee protection to be conferred on an individual they must either be a "convention refugee", or a "person in need of protection" (*IRPA*, s 95(1)). The person seeking refugee protection must meet the definition of either of those terms as they are set out in the *IRPA* at sections 96-97. Generally, an individual's claim that they fear persecution from one of the listed entities is not enough to classify them as a convention refugee or a person in need of protection. In such cases the *IRB* will make the effort to see if that fear is justified and that the claimant has exhausted options such as "Internal Flight Alternatives" (*Olalere v Canada (Minister of Citizenship and Immigration)*, 2017 FC 385 (CanLII)).

Overall, there are obvious upsides to the use of the listed entities when considered in the context of immigration law. Kent Roach notes that inadmissibility hearings are increasingly being used to deal with some terrorist activity (see Kent Roach, Sources and Trends in Post 9/11 Anti-Terrorism Laws at p 11). When mention is made of a claimant being a "member" of such an entity, administrative decision-makers are easily able to find that individual inadmissible for entry into Canada. Undoubtedly, the lower standard of proof and generous interpretation of "membership" also play a role here. Furthermore, the listed entities do not function as swinging doors; for better or for worse, refugee claimants are unable to simply rely on claiming fear of persecution from such entities as the immigration process requires something more. The use of listed entities in immigration serves Canadian national security interests well. However, the usefulness of the listed entities within the immigration context does not preclude any type of reform to the process of listing or de-listing.

Can We Fix It?

In the criminal context, obvious concerns might be raised as to the constitutionality of using an executive list to propose that a group exists beyond a reasonable doubt. This is likely why prosecutions rarely rely on this listing outside of the context of a guilty plea. In the immigration context, the use of immigration as a national security tool is questionable. Academics have questioned even the ethics of such a decision as it threatens to simply move a national security threat from Canada to another country (see Roach at page 66).

Canada relies on security and intelligence reports to found an assertion that groups should be listed as terrorist organizations. An entity will be listed if the Minister is satisfied on reasonable grounds that the entity has "knowingly carried out, attempted to carry out, participated in or facilitated a terrorist activity; or the entity is knowingly acting on behalf of, at the direction of or in association with, an entity involved in a terrorist activity" (Public Safety Canada fact sheet). There is no requirement for criminal proceedings or substantive proof to provide a foundation for the listing of an organization. In examining alternative methods for listing terrorist organizations, or processes by which Canadian procedures can be refined, it is helpful to quickly poll the processes engaged by our allies.

Australia

Listing

Australia has taken an approach that requires substantive proof to ground the terrorist listing of an organization. An organization can only be listed in two ways: (1) if found by a court, pursuant to the prosecution of a terrorist organization offence, to be a terrorist organization; or, (2) pursuant to having been listed by the government pursuant to the Australian *Criminal Code* (Australian National Security, Protocol – Listing terrorist organisations under the Criminal Code). The specific acts in the Australian *Criminal Code* that must be prosecuted for an entity to be subject to terrorist listing are largely contained at divisions (akin to the Canadian *Criminal Code* "section") 100-105 and include terrorist act offences, terrorist organization offences, and financing terrorism offences (see Australian Government, *Laws to combat terrorism*. It should be noted that there are other sections of the Australian *Criminal Code* that could afford grounds for an organization to be listed. A more complete list can be found here).

De-Listing / Review

Australia only allows an organization to be listed for 3 years from the time the listing takes effect (as noted here). This is intended to ensure that there is regular oversight and review of the factors that resulted in the listing. In addition to the 3-year limit on listing before review is undertaken, entities listed have the opportunity to submit a de-listing application. Where the application is made on the grounds that there is insufficient evidence to support the listing, the Attorney-General is required to consider de-listing. During these considerations, the Attorney-General is able to consider intelligence that exists. At this stage of the proceedings, the decision on listing more closely resembles the Canadian process.

The United Kingdom

Listing

The United Kingdom *Terrorism Act 2000* allows for the listing, referred to as proscribing, of an organization when the Home Secretary believes the organization is involved in terrorism and further believes that listing is proportionate in the circumstances (*Terrorism Act*, section 3(6)). This is clarified in the *Act* as meaning that the organization commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism, or is otherwise concerned with terrorism (see British Home Office, *Proscribed Terrorist Organisations*). Although the "otherwise concerned with terrorism" clause seems, at first glance, to be fairly broad, it is balanced by a need for the Secretary of State to engage in a proportionality analysis wherein a variety of factors will be considered before the organization is subject to listing. These factors include the nature and scale of the organization; the specific threat posed in the United Kingdom; the specific threat posed to British nationals living elsewhere, the extent of the organization's presence in the United Kingdom, and the need to "support other members of the international community in the global fight against terrorism". As noted in *Proscribed Terrorist Organisations*, proscribed organizations are organizations which commit or participate in acts of

terrorism, prepare for terrorism, promote or encourage terrorism, or are otherwise concerned in terrorism.

De-Listing/Review

De-Listing (deproscription) will only be considered by the Home Secretary upon application by the listed party. The ability to apply for delisting is granted under section 4(1) of the *Terrorism Act* and limited by section 4(2) of the Act to those organizations or individuals affected by the proscription. This is noteworthy in light of the fact that the *Terrorism Act* does not appear to contain a mandatory review of listed organizations.

New Zealand

Listing

The New Zealand *Terrorism Suppression Act* was enacted in 2002 (amended 2007) and established, among other things, the ability of the Prime Minister to designate individuals and entities as terrorist groups or associated entities. New Zealand defines "designated terrorist entity" as an entity (including an individual) designated under section 20 or 22 of the *Act* as a terrorist entity or associated entity or an entity that has been designated by the United Nations as a terrorist entity (*Terrorism Suppression Act*, section 2(1)). Sections 20 and 22 are the sections that deal with how long an entity will remain listed as a terrorist organization: section 20 addresses interim designations while section 22 addresses final designations (New Zealand Police, *Terrorist Designation Process*).

The New Zealand Prime Minister is granted, via section 22, the discretion to designate an entity as a terrorist entity. In addition to a requirement to consult with the Attorney-General and the Minister for Foreign Affairs and Trade about the proposed designation, this discretion is constrained by section 20(3) to include only those entities that the Prime Minister has good cause to believe:

> (a) is knowingly facilitating the carrying out of 1 or more terrorist acts by, or with the participation of, the terrorist entity (for example, by financing those acts, in full or in part); or
> (b) is acting on behalf of, or at the direction of,
> (i) the terrorist entity, knowing that the terrorist entity has done what is referred to in subsection (1); or
> (ii) an entity designated as an associated entity under subsection (2) and paragraph (a), knowing that the associated entity is doing what is referred to in paragraph (a); or
> (c) is an entity (other than an individual) that is wholly owned or effectively controlled, directly or indirectly, by the terrorist entity, or by an entity designated under subsection (2) and paragraph (a) or paragraph (b).

With respect to the duration of designation as a terrorist entity, sections 21(e) and (f) address interim designations. Section 21(e) requires that an interim designation expire "on the close of

the 30th day after the day on which it was made unless it was revoked at an earlier time". Section 21(f) allows the organization to remain a designated entity in the event of an ongoing process before the courts concerning the entity. With respect to entities made subject to final designations, the designation remains in effect unless it is revoked.

De-Listing

The designation of entities pursuant to section 22 (final designation) expires 3 years after the date on which it takes effect unless the designation is earlier revoked or renewed (*Terrorism Suppression Act*, s 35). Directly affected entities or third parties that have an interest in the designation may make application to the Prime Minister to have the terrorist entity designation revoked or the Prime Minister may revoke the designation on their own accord.

Scrap it?

Returning to the Canadian context, another alternative may be to scrap the *Criminal Code* listing altogether. Although the feasibility of doing away with the list hasn't been explored much by academics in the field, there is some merit to the idea. Given the potential for constitutional challenge, the fact that the listings are very rarely relied upon by the prosecution and almost never to the exclusion of other evidence, and the fact that prosecution services in Canada have so far shown themselves capable of proving the existence of terrorist groups beyond a reasonable doubt, the listing process isn't in fact very useful to the criminal prosecution of terrorism anyway (see Forcese & Roach at pp 3-4). The list then may be more theoretically than factually convenient. As noted by Forcese and Roach, given that terrorism propagated by individuals as opposed to as a group is increasing, another *Code* provision focused around listing entities who are primarily groups (as opposed to individuals) may prove less and less relevant.

Further, even if this list was invalidated as far as criminal consequences are concerned, it could still be maintained as a "form of intelligence with respect to terrorism financing and border controls" (Forcese & Roach at p 7). In some respects, this might be preferable from a national security perspective as it does not risk the same disclosure of protected or secret intelligence in the same way the current system might.

There are counterpoints to consider: terrorist travelers and terrorism peace bonds come to mind.

In 2013 the federal government added a new provision to the *Criminal Code* targeted at terrorist travelers. Since it was put into place, several successful prosecutions have taken place, including for example, *Larmond, LSJPA,* and *Hersi* mentioned earlier. In those cases, which involved guilty pleas, the list of entities was relied upon to make out the offence. This begs the question whether the list of entities might be used more frequently in these types of prosecutions (Forcese & Roach at p 7). In these cases, the accused entered a guilty plea. It seems unlikely that a prosecutor would attempt to rely on the list of entities if whether a terrorist group in fact existed was a contentious issue at trial (given the potential for a *Charter* challenge).

Terrorist peace bonds are granted, as other peace bonds are, pursuant to section 810 of the *Criminal Code.* A peace bond is not a criminal conviction, but instead a method of controlling

either a person not charged with a criminal offence, or a person released from custody, and imposes certain conditions upon that person that limits their freedoms (*About the Anti-Terrorism Act*). Typically, this applies to geographical locations - in the terrorism context it might limit, for example, access to the Internet. Peace bonds appear to have been used about 20 times in terrorism contexts, including the famed Aaron Driver case (see Roach). In the context of peace bonds, the use of the executive listing might certainly ease the burden of the police officer making an application. However, proposed reforms to the peace bond process in terrorism proceedings may limit the usability of the list at all as peace bonds will be applied for on the basis that they are necessary to stop a terrorist act as opposed to likely to do so.

Conclusion

In looking at Australia, the UK, and New Zealand, the most notable difference in the processes is that New Zealand and Australia have mandatory expiration periods on the listing of terrorist entities. Further, all three jurisdictions provide an opportunity for listed entities to apply for the listing to be reviewed, with New Zealand offering the opportunity for third party applications. All of the jurisdictions appear to have more robust listing standards with Australia going so far as requiring a criminal process before listing can occur.

Adopting the Australian process of requiring a criminal process to ground a listing could help to alleviate concerns that listing can or does infringe on *Charter* granted liberty rights. Adopting a mandatory expiry of the listing would align with Canadian adherence to the rule of law in that it would provide an impartial control to the use of power by the Government of Canada. Additionally, instituting a mandatory review period would also accomplish this.

These changes would allow Canada to meet its international obligations regarding listing terrorist entities, would allow Canadian national security interests to be properly addressed insofar as terrorist listing furthers these ends, and would allow for efficient use of the terrorist list in immigration proceedings.

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