

COMMENT

The terror connection

Dr. Peter M. German KC*

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On 29 January 2024, the US Justice Department announced charges of conspiracy to use interstate commerce in the commission of murder-for-hire against an Iranian national and two Canadians. Prosecutors allege that an Iranian national, Naji Sharifi Zindashti, plotted the assassination of an Iranian defector living in Maryland. Zindashti allegedly used an encrypted communication service to contact a Canadian member of the Hells Angels motorcycle club, to arrange a team of shooters to undertake the assassination in the US. Fortunately, the murder did not take place, although the reason has not been disclosed.¹

The report of Canadians being contracted to undertake killing in the US was a “jaw-dropper” for law enforcement and organised crime experts. Not only was it a new and troubling development, but the fact that the target was a political dissident, and the killing was allegedly being orchestrated by a member of a notorious outlaw motorcycle gang, crossed a threshold seldom seen in Canada and the US.

The organised crime provisions of Canada’s Criminal Code have proven largely ineffective against outlaw motorcycle gangs.² The reason is quite simple. Individual club members function as free agents, to make legal and illegal arrangements with other members of the club, or of “puppet” or subordinate groups. The club performs

the service of vetting potential members, bringing these like-minded individuals together in a fraternal manner, and ensuring that they abide by club rules and norms. The operating model provides a form of organisational deniability.

Enter civil forfeiture, popular in many Canadian jurisdictions as an alternative to asset recovery through criminal prosecution. Civil forfeiture is intended to serve as an expedited means by which the government can forfeit illegally obtained property from criminal actors.

The longest running civil forfeiture trial in Canadian legal history was an action against three Hells Angels clubhouses in British Columbia. Despite false starts, Charter of Rights applications, procedural snafus, and a fair amount of lawyering, the case finally reached the British Columbia Court of Appeal in 2023.³ A three-judge *coram* sided with the provincial Director of Civil Forfeiture and ordered that the clubhouses be forfeited.⁴ In its judgment, the Court of Appeal considered the anticipated future use of the clubhouses, were they to remain in the hands of the gang.⁵

In so doing, the Court of Appeal threw off the shackles of a restrictive approach to the purpose of the clubhouses and looked at their larger role in supporting a criminal lifestyle, regardless of how individual crimes and conspiracies germinate. In the absence of legislation which prohibits organisations such as the Hells Angels from existing, the court likely went as far as it could to associate an organisation to ongoing criminality.

Now that the spectre of a Hells Angel allegedly recruited to undertake a political assassination has reared its ugly head, there is value in asking if a line has been crossed. Assuming the allegations are founded and there is a nexus between the accused and the club, does that not make the Hells Angels a “terrorist organisation” and, if not, what more is required?

Canada’s Criminal Code defines “terrorist activity” to include “an act or omission that is committed in or outside Canada, ... in whole or in part for a political, religious or ideological purpose, objective or cause”.⁶ A “terrorist group” is one which “has as one of its ... activities facilitating or carrying out any terrorist activity”.⁷ With the development of sanctions regimes, being designated as a terrorist organisation has greater implications than members facing criminal charges. Canada and most other countries now sanction terrorist groups and their principals, with the intent of depriving them of the financial means to conduct their nefarious activities.

* President of the International Centre for Criminal Law Reform and Criminal Justice Policy, Vancouver, Canada. Former Deputy Commissioner and Director General Financial Crime, Royal Canadian Mounted Police, Canada. Member, Law Societies of B.C. and Ontario.

¹ US Department of Justice, “One Iranian and Two Canadian Nationals Indicted in Murder-for-Hire Scheme” (29 January 2024), <https://www.justice.gov/opa/pr/one-iranian-and-two-canadian-nationals-indicted-murder-hire-scheme>.

² The “criminal organisation” offences in Canada’s Criminal Code, R.S.C. 1985, C-46, s.467.1, et sub., are not only difficult to prosecute, but difficult to find, hidden away in Pt XIII re “Attempts — Conspiracies — Accessories”.

³ *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd* 2023 BCCA 70 (CanLII).

⁴ The Supreme Court of Canada refused leave to appeal—*Angel Acres Recreation and Festival Property Ltd. and All Others Interested in the Property v Director of Civil Forfeiture* 2023 CanLII 92310 (SCC).

⁵ *British Columbia (Director of Civil Forfeiture) v Angel Acres Recreation and Festival Property Ltd* 2023 BCCA 70 (CanLII) at [319].

⁶ Section 83.01(1) “terrorist activity” (b)(i)(A).

⁷ Section 83.01(1) “terrorist group” (a).

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In the instant case, the US imposed sanctions on Zindashti, concurrent to the laying of charges, describing him as a drug trafficker who leads a network that targets Iranian dissidents for assassination and kidnapping.⁸ Former US diplomat, David Luna, an expert on illicit economies, recently expressed American concern with Canada being used as a transnational crime hub for Iranian regime-backed proxies to finance terrorism.⁹ To date, Canada has not sanctioned the entirety of Iran's Islamic Revolutionary Guard Corps (IRGC), as has the US.¹⁰ Is it now time to consider the imposition of financial sanctions on the Hells Angels organisation or, at very least, those club members who seek to engage in terrorist activity?

Western democracies are witnessing increased political interference with their democratic institutions. Reportedly, both China and Russia have mounted operations against Canada, directly or indirectly, through social media and

direct action. These allegations recently led to the establishment of a Foreign Interference Commission in Canada.¹¹ The spectre of Canadians collaborating with an Iranian terrorist organisation and posing a threat to the US homeland, is sure to ratchet up American and international concern and tension. End-to-end sanctions must be imposed on all participants in terrorism and the financing of terror. Where individual actors or organised crime gangs are proxies for terrorists, the law must act swiftly.

Let us never lose sight of the fact that organised crime is a blight on the landscape of democracy. Terrorist groups aim to destroy the core Rule of Law which gives life to democracy. To allow organised crime groups to merge with terrorist organisations is to allow Ernst Blofeld and SPECTRE free rein to corrode our society from within.¹² James Bond would never allow it, nor should we.

⁸ US Department of Justice, "One Iranian and Two Canadian Nationals Indicted in Murder-for-Hire Scheme" (29 January 2024).

⁹ Joe Adam George, "Canada's failure to act against transnational crime is imperiling US national security" (3 February 2024), *The Hill*, <https://thehill.com/opinion/4445527-canadas-failure-to-act-against-transnational-crime-is-imperiling-us-national-security/>.

¹⁰ Kevin Gallagher, "Trudeau says Canada could list IRGC as a terrorist organization" (9 January 2024), *CTV News*, <https://www.ctvnews.ca/politics/trudeau-says-canada-could-list-irgc-as-a-terrorist-organization-1.6717180>.

¹¹ Public Inquiry into Foreign Interference in Federal Electoral Processes and Democratic Institution available at: <https://foreigninterferencecommission.ca/>.

¹² A fictional villain and global criminal organisation created by writer, Ian Fleming.