

**Counter-terrorist financing and its impact on the right to a
fair trial: A comparative study of the U.S., U.K. and Canada**

Rachel Louise Thomas LL.M

University of the West of England

**Submitted in accordance with the requirement for the
degree of Doctor of Philosophy**

May 2017

Acknowledgements

Firstly, I would like to express my sincere gratitude to my supervisor Professor Nicholas Ryder for his continuous support of my research and for his enthusiasm, patience and knowledge. Thank you Professor Ryder for being such a superb supervisor and a good friend.

Besides my Supervisor, I would like to thank the rest of my thesis supervisors, Dr Umut Turksen, Dr Noelle Quenivet and also Dr Sabine Hassler for all your insightful comments and encouragement.

Thank you also to my husband Andrew and 4 wonderful sons, Alex (9), Evan (9), Reuben (5) and Louis (1) for your love, motivation and understanding when my work has been a distraction. To my lovely mother in law Val and fantastic friends, Lizzie, Michelle & Gail, thank you for providing much needed moral support. I am grateful to you all for sharing your confidence in me on days when I needed a boost.

Last but by no means least, to my amazing parents, Steve and Cherrill, thank you so much for all your help. Words cannot express how grateful I am to you both for all your emotional and financial support and for always believing that I would finish this thesis. Special thanks must go to my best friend and chief babysitter, Mam for your countless hours spent caring for my boys to enable me to complete this research, I really couldn't have done it without you.

Abstract

With the steep growth in terrorism over the past few years, it is now more essential than ever to have effective counter terrorism measures in place. One of those measures is the prevention and detection of terrorist financing. It is believed that by limiting terrorist's access to funds, terrorist attacks can be prevented and terrorist groups can be dismantled. We have witnessed a surfeit of international and national Counter Terrorist Finance (CTF) provisions since September 2001. Notwithstanding the importance of such measures, their negative impact on the right to a fair trial is clear. Terrorist suspects have become the subjects of powerful sanctions, which designate them a terrorist and freeze their assets. This study compares the CTF approach of the U.S, U.K. and Canada and examines how their CTF measures impact upon a suspect and may potentially violate their right to a fair trial. The comparable CTF sanctions are enforced in the three case studies for a lengthy amount of time and in some instances indefinitely. Crucially, at this point no terrorist conviction or indeed charge has been laid against the suspect. The suspect is not afforded the opportunity to hear the case against them and to challenge evidence. Indeed many suspects have been the subject of a terrorist designation and asset freeze for a number of years and are never convicted or even charged with a terrorist related offence. With this in mind, this thesis argues that the punitive nature of these sanctions suggests that CTF sanctions are akin to being convicted of a criminal offence and as such they are wholly lacking in procedural protection.

On this basis, this thesis suggests that fundamental human rights such as the right to a fair trial should be permitted to apply in cases where CTF sanctions have been enforced. Currently, the CTF regime in the U.S, U.K. and Canada does not offer adequate procedural fairness and by underrating the importance of this human right, the CTF regime has been left open to legal challenges regarding its legitimacy.

The research concludes on the notion that the right to a fair trial should be enforceable. However as CTF measures are administrative sanctions, it is unlikely that the properties of the right to fair trial will be imposed. On this basis, recommendations are made for amendments to the CTF regimes in the U.S, U.K. and Canada, which offer improved procedural protection to suspects and ensure that action taken to designate and freeze assets is considered lawful.