

Fall 2016

Criminalizing Terrorism in Canada: Investigating the Sentencing Outcomes of Terrorist Offenders From 1963 to 2010

Joanna Amirault

Martin Bouchard

Graham Farrell

Martin A. Andresen

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

Recommended Citation

Joanna Amirault, Martin Bouchard, Graham Farrell, and Martin A. Andresen, *Criminalizing Terrorism in Canada: Investigating the Sentencing Outcomes of Terrorist Offenders From 1963 to 2010*, 106 J. CRIM. L. & CRIMINOLOGY (2016).
<https://scholarlycommons.law.northwestern.edu/jclc/vol106/iss4/4>

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

CRIMINALIZING TERRORISM IN CANADA: INVESTIGATING THE SENTENCING OUTCOMES OF TERRORIST OFFENDERS FROM 1963 TO 2010

JOANNA AMIRAULT,* MARTIN BOUCHARD,
GRAHAM FARRELL*** &
MARTIN A. ANDRESEN******

Despite having endured significant terrorist incidents over the past 50 years, terrorism-specific offenses were not criminalized in Canada until the implementation of the Anti-Terrorism Act (ATA) in 2001. One of the primary goals of this legislation was to provide law enforcement with the tools necessary to proactively prevent terrorist incidents; however, the effectiveness of these new legal measures in preventing terrorist incidents, and the potential for the increased punishment of offenders sanctioned under them, remains unclear. Using a sample of convicted terrorist offenders (n = 153) from the Officially Adjudicated Terrorists in Canada (OATC) dataset, the current study investigates variability in the sentencing outcomes of offenders sanctioned in Canada between 1963 and 2010. The findings indicate that offenders were significantly less likely to successfully complete an offense following the implementation of the ATA; however, offenders previously convicted of general Criminal Code offenses were sanctioned more harshly than those convicted of terrorism-specific offenses alone. Furthermore, changes in the legal processing, and demographic structure, of terrorist offenders are uncovered as the findings highlight how changing contextual environments impact the sentencing outcomes of terrorist offenders.

* Ph.D. Professor, School of Social and Community Services, Humber College.

** Ph.D. Professor, School of Criminology, Simon Fraser University.

*** Ph.D. Professor of International and Comparative Criminal Justice, Centre for Criminal Justice Studies School of Law, University of Leeds.

**** Ph.D. Professor, School of Criminology, Simon Fraser University.

TABLE OF CONTENTS

INTRODUCTION.....	770
I. LEGAL RESPONSES TO TERRORISM IN CANADA	775
II. SENTENCING OUTCOMES OF TERRORIST OFFENDERS	780
III. THE PRESENT STUDY	782
A. Data and Methods.....	783
B. Measures.....	784
1. Dependent Variable.....	784
2. Main Independent Variables	785
C. Control Variables.....	788
D. Analytic Strategy	790
E. Results.....	793
DISCUSSION AND CONCLUSION.....	803
APPENDIX 1. CODE OF CRIMINAL CONVICTIONS	810

INTRODUCTION

When contrasted to countries such as Ireland or Spain, Canada's experience with terrorist incidents is comparatively limited.¹ Despite this, Canada has endured ongoing terrorist campaigns,² witnessed the first

¹ See David A. Charters, *The (Un)Peaceable Kingdom? Terrorism and Canada Before 9/11*, 9 INST. FOR RES. ON PUB. POL'Y 1, 8 (2008) [hereinafter Charters 1] (noting that, in general, the terrorist events experienced in Canada have been less in frequency and severity than those experienced by other countries); see also Ronald Crelinsten, *Canada's Experience With Terrorism and Violent Extremism*, in TERROR IN THE PEACEABLE KINGDOM: UNDERSTANDING AND ADDRESSING VIOLENT EXTREMISM IN CANADA, 9, 22–23 (David Garenstein-Ross & Linda Frum eds., 2012) [hereinafter Crelinsten 1] (detailing the domestic, international, and transnational terrorist incidents that have occurred in Canada over the past century).

² These terrorist campaigns include the SOF Doukhobors and the Front de Liberation du Quebec. The Front de Liberation du Quebec (FLQ) is the most significant terrorist campaign in Canadian history. Charters 1, *supra* note 1, at 16. With the objective of obtaining independence for Quebec, the campaign was active from 1963 to 1972. David A. Charters, *The Amateur Revolutionaries: A Reassessment of the FLQ*, 9 TERRORISM & POL. VIOLENCE 133, 138–140 (1997) [hereinafter Charters 2] (addressing the fluid membership structure of the FLQ, as well as the organizational structure and objectives of the campaign); see generally LOUIS FOURNIER, F.L.Q.: HISTOIRE D'UN MOUVEMENT CLANDESTINE (1982) (providing a detailed history of FLQ actions, and also of the political, social, and economic contexts that these events unfolded in); MARC LAURENDEAU, LES QUÉBÉCOIS VIOLENT (1990) (detailing the life-course of the FLQ campaign, key events, and the membership of the successive waves of FLQ activity). The ten years that the FLQ was active were characterized by nine identifiable waves of activity undertaken by 15 independent networks. LAURENDEAU, *supra*, at 322–27. The structure of the FLQ was fluid, and as there was no

political kidnapping and execution in North America,³ and in 1985, provided the setting where the plot to bomb Air India Flight 182 was prepared and executed.⁴ Due to differences in operational definitions and

official membership, anyone inspired to act on behalf of the FLQ could do so. Charters 2, *supra* note 2, at 138–40; Crelinsten 1, *supra* note 1, at 11. Unlike other terrorist organizations, the FLQ did not often intentionally target civilian populations; however, FLQ actions were directly responsible for the deaths of seven individuals. Charters 2, *supra* note 2, at 140–42; *see generally*, FOURNIER, *supra*; WILLIAM TETLEY, THE OCTOBER CRISIS 1970, xxxi–xxxviii (2007) (providing a timeline of major FLQ incidents, but focusing mainly on a comprehensive analysis of the October Crisis, and governmental responses to it); *see also generally* JAMES STEWART, THE FLQ: SEVEN YEARS OF TERRORISM (1st ed. 1970) (providing an extensive overview of the life-course of the FLQ, the social, political, and cultural context in which FLQ actions were taken, and criminal justice responses to the FLQ and the adjudication of convicted members). The FLQ relied predominantly on the use of explosive devices and, while the FLQ bombing of the Montreal Stock Exchange in February 1969 represented one of the largest and most destructive efforts of the FLQ's bombing campaign, it was their actions in the fall of 1970 that thrust the FLQ into the Canadian collective conscience and spurred the ensuing 'October Crisis'. *See generally id.* To date, the implementation of the War Measures Act during the 'October Crisis' remains a hotly contested issue, which serves as a reference point for how Canada has historically responded to acts of terrorism. Charters 1, *supra* note 1, at 17.

³ The kidnapping of James Cross, the British Trade Commissioner in Montreal, and the kidnapping and eventual execution of Pierre Laporte, the Quebec Deputy Premier and Minister of Employment and Immigration, was unprecedented and both the provincial and federal governments struggled with how to appropriately respond. Anthony Kellett, *Terrorism in Canada, 1960–1992*, in VIOLENCE IN CANADA: SOCIOPOLITICAL PERSPECTIVES, 58–60 (Jeffrey Ian Ross ed., 2004) [hereinafter Kellett 1] (presenting a comprehensive overview of terrorism incidents in Canada). The eventual implementation of the War Measures Act and Regulations allowed for immense police investigative powers and a restriction of the civil rights of Canadian citizens. RONALD D. CRELISTEN, THE INTERNAL DYNAMICS OF THE FLQ DURING THE OCTOBER CRISIS OF 1970, 10, 63–64 (1987) [hereinafter CRELISTEN 2], J. STRATEGIC STUD., 59, 63 (detailing the organizational structure of the FLQ during the October Crisis of 1970); *see also* TETLEY, *supra* note 2, at 81–86.

⁴ Charters 1, *supra* note 1, at 16–17, 20; *see generally* Crelinsten 1, *supra* note 1, at 8–23; Kellett 1, *supra* note 3, at 284–85 (presenting a comprehensive overview of terrorism incidents in Canada); ANTHONY KELLETT ET AL., TERRORISM IN CANADA 1960–1989 (1990) (providing the most comprehensive and in depth analysis of patterns of terrorism in Canada from 1960–1989) [hereinafter KELLETT 2]; *see also generally* Stephane Leman-Langlois & Jean-Paul Brodeur, *Terrorism Old and New: Counterterrorism in Canada*, 6 POLICE PRAC. & RES. 121, 122–29 (2005) (describing terrorist incidents in Canada, as well as motivations, strategic goals, and counter-terrorism responses); Stephane Leman-Langlois & Genevieve Ouellet, *L'Evolution du Terrorisme au Canada, 1973–2006*, in TERRORISM ET ANTITERRORISM AU CANADA, 58 (Stephane Leman-Langlois & Jean-Paul Brodeur eds., 2009) (describing terrorism trends in Canada from 1973–2006); Sam Mullins, 'Global Jihad': The Canadian Experience, 25 TERRORISM & POL. VIOLENCE 734, 734–35 (2013) (investigating the role in which Canadians have participated in the 'Global Salafi Jihad,' and

inclusion criteria, estimates of the total number of terrorist incidents perpetrated in Canada varies, ranging from 326 to 500 reported incidents between 1960 and 2006.⁵

Despite enduring significant terrorist incidents, Canada's legal response to terrorist offenses has historically been cautious.⁶ However, in

examining the demographic variables of the perpetrators, operational variables of the incidents, and investigations and outcomes of criminal justice responses); Genevieve Ouellet, *Les Causes Celebres*, in *TERRORISM ET ANTITERRORISM AU CANADA* 73 (Stephane Leman-Langlois & Jean-Paul Brodeur eds., 2009) (detailing significant terrorist movements and groups in Canadian history such as the SOF Doukhobors, Direct Action, the Liberation Tigers of Tamel Eelam, and the Kadhr family); Kent Roach, *Canadian Experiences in Preventing and Combating Terrorism*, in *UNDERSTANDING TERRORISM IN AFRICA: BUILDING BRIDGES AND OVERCOMING THE GAPS*, 117, 118–19 (Wafula Okumu & Anelli Botha eds., 2008) [hereinafter Roach 1] (describing both historic and contemporary responses to terrorism in Canada, such as the use of the War Measures Act, the implementation of the Anti-Terrorism Act, and the use of immigration law to address terrorist threats).

Prior to the September 11 attacks on the World Trade Center in New York and the Pentagon in Washington, the bombing of Air India Flight 182 was the gravest aviation terrorist attack in history. HON. BOB RAE, *LESSONS TO BE LEARNED* 1, 36–42 (Air India Review Secretariat ed., 2005). For an overview of terrorism in Canada prior to 2001, see Charters 1, *supra* note 1, at 14–21.

⁵ In the wake of the Air India bombings the Canadian government commissioned an investigation to explore the scope, and nature, of terrorism in Canada. In the resulting report, Kellett and Kellett et al. present that between 1960 and 1989, 428 terrorist events took place in Canada equaling an average of 14.8 terrorist incidents per year over 29 years. See Kellett 1, *supra* note 3, at 285; Kellett 2, *supra* note 4, at 47. Of 428 events reported by Kellett, 366 were domestic while the remaining 62 were international. Kellett 1, *supra* note 3, at 286. Kellett's reported rates of terrorist incidents excludes 511 other events, as well as 93 actions undertaken to support terrorist efforts. Kellett 2, *supra* note 4, at 47. During the same time period, an examination of politically motivated offenses in Canada conducted by Ross suggests that between 1960 and 1985 approximately 500 'political terrorist events' were executed, that results in an average of 20 terrorist incidents per year over during those 25 years. Jeffrey Ian Ross, *Attributes of Domestic Political Terrorism in Canada, 1960–1985*, 11 *TERRORISM* 213, 213–14 (1988) (identifying terrorist incidents in Canada from 1960–1985, and discussing the challenges of accurately classifying these incidents). More recently, Leman-Langois & Ouellet indicate that between 1973 and 2006, 326 terrorist incidents occurred resulting in an average of 9.9 terrorist events per year over 33 years. See Leman-Langois & Ouellet, *supra* note 4, at 60.

⁶ See KENT ROACH, *THE 9/11 EFFECT: COMPARATIVE COUNTER-TERRORISM* 363–64 (2011) [hereinafter ROACH 2] (providing a comprehensive account of historical and contemporary Canadian responses to terrorism, placing special emphasis on the criminalization of terrorism offenses under the auspice of the ATA, as well as the use of immigration law, security certificates, and preventative detention as a means to address potential terrorist threats); Irwin Cotler, *Thinking Outside the Box: Foundational Principles for a Counter Terrorism Law and Policy*, in *THE SECURITY OF FREEDOM: ESSAYS ON CANADA'S ANTI-TERRORISM BILL* 119 (Ronald Daniels, Patrick Macklem & Kent Roach

the wake of September 11 the Canadian Government implemented the Anti-Terrorism Act (ATA), and for the first time criminalized terrorism-specific offenses.⁷ The events of September 11 marked a turning point not only in how a terrorist threat is constructed globally, but also in the nature of terrorist activity in Canada. In the fifteen years following September 11, Canada has seen a proliferation in the number of terrorist offenders motivated by an Islamic extremist ideology.⁸ In 2004, Momin Khawaja, the first offender to be charged under the ATA, was arrested for his involvement in a terrorist plot that was intended to be executed in the United Kingdom.⁹ Khawaja was to provide the expertise that his counterparts needed to remotely detonate explosive devices.¹⁰ Two years later, the Toronto 18 network was disrupted while plotting to detonate large-scale explosives targeting governmental offices and agencies, as well as media outlets.¹¹ In 2007, Said Namouh was arrested and eventually convicted for participating in an online group that was involved in the spreading of terrorist propaganda.¹²

Although some terrorist incidents that occurred in Canada during the

eds., 2001) (addressing the civil and legal rights that need to be accounted for when drafting counter-terrorism law and policy and criticizing these shortcomings); Kent Roach, *Must We Trade Rights for Security? The Choice Between Smart, Harsh or Proportionate Security Strategies in Canada and Britain*, 27 CARDOZA L. REV. 2151, 2156–58 (2006) [hereinafter Roach 3] (debating the balance that must be achieved in protecting civil rights, and ensuring public safety when developing counter-terrorism measures); Donald Stuart, *The Dangers of a Quick Fix Legislation in the Criminal Law: The Anti-Terrorism Bill C-36 Should be Withdrawn*, in THE SECURITY OF FREEDOM: ESSAYS ON CANADA'S ANTI-TERRORISM BILL 205 (Ronald Daniels, Patrick Macklem & Kent Roach eds., 2001) (warning against the dangers of rapidly implementing anti-terrorist legislation, of over-broadening the definition of terrorism, and of irrevocably increasing state powers).

⁷ See Anti-Terrorism Act, S.C. 2001, c 41, (Can.).

⁸ Crelinsten 1, *supra* note 1, at 16; Mullins, *supra* note 4, at 735–38.

⁹ ROACH 2, *supra* note 6, at 407.

¹⁰ *Id.* at 407.

¹¹ *Id.* at 408.

¹² Robert Diab, *Sentencing of Terrorism Offenses After 9/11: A Comparative Review of Early Case Law*, in TERRORISM, LAW AND DEMOCRACY: TEN YEARS AFTER 9/11, 351–353 (Craig Forcese & Francois Crepeau eds., 2013) (addressing the legal changes made to the CCC following the implementation ATA, as well as presenting case studies of the first offenders prosecuted under the new terrorism-specific offences). Hiva Mohammad Alizadeh, Misbahuddin Ahmed, Khurram Syed Sher, Matin Abdul Stanikzy, Mohamed Hershi, John Nuttall, Amanda Karody, Chiheb Esseghaier and Raed Jasser all remain in pre-trial custody for their alleged involvement in Islamic Extremist inspired terrorist plots. Mullins, *supra* note 4, at 744.

1980s and 1990s were motivated by imported grievances (i.e., conflicts that originated outside of Canada),¹³ the interconnectedness of offenders and the accessibility of resources in today's globalized world present new challenges to law enforcement.¹⁴ The ATA impacted all aspects of the criminal justice system; however, following the criminalization of terrorism-specific offenses, prosecutors now face increasing scrutiny to not only successfully convict terrorist offenders, but also achieve the harshest sentences possible. While one of the key goals of criminalizing terrorist related activity has been to proactively prevent terrorist incidents, the ability of these new criminal provisions to function as deterrents for terrorist activities has been questioned. It is commonly noted that the threat of long periods of incarceration would not dissuade individuals from committing terrorist offenses.¹⁵ Akin to this sentiment, Roach cites Canadian legal scholar Douglas Schmeiser who, following the October Crisis in 1971,¹⁶ stated that, "the ordinary criminal law adequately covers dangerous conduct by insurgents."¹⁷ However, the extent to which this holds true in the current

¹³ For example, the bombing of Air India Flight 182 is one example of an imported grievance as the incident is believed to have been perpetrated by Sikh extremists in retaliation for actions carried out by the Indian Government in the Punjab state of India in 1984. Crelinsten 1, *supra* note 1, at 18.

¹⁴ Charters 1, *supra* note 1, at 22–28; Crelinsten 1, *supra* note 1, at 25–27; Leman-Langlois & Brodeur, *supra* note 4, at 134–139; GOVERNMENT OF CANADA, BUILDING RESILIENCE AGAINST TERRORISM: CANADA'S COUNTER TERRORISM STRATEGY 9 (2011) (detailing Canada's counter-terrorism strategies and the four pillars of prevent, protect, deny, and respond).

¹⁵ Kent Roach, *Canada's Response to Terrorism*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 511, 519 (Victor V. Ramraj et al. eds., 2005) [hereinafter Roach 4] (providing a detailed analysis of the ATA, the criminalization of terrorism offenses and the establishment of investigative hearings, security certificates and the emphasis on public safety and security); Kent Roach, *The Criminal Law and Terrorism*, in GLOBAL ANTI-TERRORISM LAW AND POLICY 129, 137 (Victor V. Ramraj, Michael Hor, Kent Roach & George Williams eds., 2005) [hereinafter Roach 5] (addressing the strengths and limitations of criminalizing terrorism offenses in the context of the limits of the law); Martha Shaffer, *Effectiveness of Anti-Terrorism Legislation: Does Bill C-36 Give Us What We Need?*, in THE SECURITY OF FREEDOM: ESSAYS ON CANADA'S ANTI-TERRORISM BILL 195, 196–201 (Ronald Daniels, Patrick Macklem & Kent Roach eds., 2001) (questioning if the criminalization of terrorism-specific offenses are an effective way to address terrorist threat, as well as if the proposed measures are constitutional).

¹⁶ The October Crisis refers to the abduction of James Cross, the British Trade Commissioner in Montreal, and the abduction and execution of Pierre Laporte, the Quebec Deputy Premier and Minister of Employment and Immigration, by the FLQ in October, 1970. See FOURNIER, *supra* note 2.

¹⁷ Kent Roach, *The New Terrorism Offences and the Criminal Law*, in THE SECURITY OF

climate is unclear.

The current study investigates variability in the sentencing outcomes of terrorist offenders sanctioned in Canada between 1963 and 2010, focusing on the potential impact that the implementation of the ATA has had on the legal processing of terrorist offenders. The 47-year observation period is divided into three periods. Period 1 (arrests between 1963 and 1982) is comprised exclusively of members of the Quebec Liberation Front (FLQ) while Period 2 (arrests between 1983 and 2001) includes offenders motivated by Sikh extremism and eco-terrorism. Finally, Period 3 (arrests between 2002 and 2010) includes offenders who were motivated by Islamic extremism and adjudicated following the enactment of the ATA. We investigate if there are discernable periods where offenders are sanctioned more punitively than others, and if offenders prosecuted after the implementation of the ATA are sanctioned more or less severely than those prosecuted prior to it. As terrorist offenders have been identified as a unique offending population in need of specialized legal designations, it is imperative to examine if the sentences issued under terrorism-specific offenses are more or less punitive than those issued under general criminal provisions.

I. LEGAL RESPONSES TO TERRORISM IN CANADA

Similar to other countries (e.g. United Kingdom, United States), Canada has primarily adopted a legislative response to terrorism. The use of legal measures to respond to terrorist activity is referred to as the “criminal justice model,” whereby terrorist activity is identified as a distinct legal category of crime.¹⁸ While many states had experience prosecuting terrorist offenders prior to September 11, few had enacted legislative policies that

FREEDOM: ESSAYS ON CANADA’S ANTI-TERRORISM BILL 151, 154 (Ronald Daniels et al. eds., 2001) [hereinafter Roach 6] (*quoting* Douglas Schmeiser, *Control of Apprehended Insurrection: Emergency Measures vs. The Criminal Code*, 4 Man. L.J. 359, 365 (1971)) (detailing each of the new criminal offenses in Section 83 of the Criminal Code of Canada as established by the ATA).

¹⁸ Ronald Crelinsten, *Perspectives on Counterterrorism: From Stovepipes to a Comprehensive Approach*, 8 PERSP. TERRORISM 2, 3 (2014) [hereinafter Crelinsten 3] (contrasting different models of counter-terrorism such as coercive counter-terrorism, proactive counter-terrorism, persuasive counter-terrorism, and defensive counter-terrorism); Ronald Crelinsten & Alex P. Schmid, *Western Responses to Terrorism: A Twenty-Five Year Balance Sheet*, 4 TERRORISM & POL. VIOLENCE 307, 309 (1992) (identifying differing responses to counter-terrorism by western nations and their successes and failures globally over the past 25 years).

codified specific terrorist offenses into their penal code. However, the past decade has seen a proliferation in the legal measures implemented to prevent and prosecute terrorist offenses.¹⁹

Canada's Anti-Terrorism Act (Bill C-36) was granted Royal Assent on December 18, 2001, 98 days after the September 11th attack. Over the past 32 years, the Canadian Charter of Rights and Freedoms (established in 1982) has functioned to temper Canadian responses to terrorist incidents. This was also true during the drafting of Bill C-36.²⁰ For the first time the

¹⁹ See Crelinsten 1, *supra* note 1, at 3; see also Gary LaFree & Gary Ackerman, *The Empirical Study of Terrorism: Social and Legal Research*, 5 ANN. REV. LAW. SOC. SCI. 347, 364–65 (2009) (providing an in-depth overview of the individual and macro level causes of terrorism, as well as the defining characteristics of terrorist offenders and counter-terrorism strategies); Gary LaFree & James Hendrickson, *Build a Criminal Justice Policy for Terrorism*, 6 CRIMINOLOGY & PUB. POL'Y 781, 783–84 (2007) (arguing that the advantages of developing a criminal justice policy model for responding to terrorism include helping to understand best practices for the criminal justice system in responding to those who commit terrorist actions, helping to identify the etiology of terrorist behavior, and helping to understand the adjudication of terrorist offenders); see generally John Braithwaite, *Regulating Terrorism*, in CRIMINOLOGISTS ON TERRORISM AND HOMELAND SECURITY 383 (Brian Forst et al. eds., 2011) (suggesting the criminal justice model of responding to terrorism is insufficient and that a public health model including primary, secondary, and tertiary models would be more efficient); David Klinger & Charles Heal, *Manifestations of Aggression: Terrorism, Crime and War*, in CRIMINOLOGISTS ON TERRORISM AND HOMELAND SECURITY 17 (Brian Forst et al. eds., 2011) (providing an overview of the differentiation between terrorist acts as criminal offenses and acts of war, and describing the context in which terrorist actions emerge).

Historically, Canada's legal response to terrorist offenses and offenders has been limited. The Emergencies Act 1988 was implemented as a means to revise the legal powers established under the War Measures Act. The Emergencies Act concerns public order, international and war-related emergencies; however, while it currently remains in effect it has yet to be employed. Charters 1, *supra* note 1, at 32; Stuart, *supra* note 6, at 208. The aftermath of the Air India bombing called into question the roles and responsibilities of Canada's intelligence and policing agencies, and consequently Canada has had a National Counter-Terrorism Plan in effect since 1989. Jeffrey Ian Ross, *From the McDonald Report to the Kelly Committees: The Government Research and Policy Making Process Connected to Oppositional Political Terrorism in Canada*, 8 J. HOMELAND SECURITY & EMERGENCY MGMT. 1, 10 (2011) (presenting an overview of the development of the policies developed in Canada in responses to oppositional political terrorism from 1977 to 1999). The Emergencies Act was the last security-related legislation to be implemented prior to the ATA. Charters 1, *supra* note 1, at 32.

²⁰ Cotler, *supra* note 6, at 120; Kent Roach, *Did September 11 Change Everything? Struggling to Preserve Canadian Values in the Face of Terrorism*, 47 MCGILL L.J. 893, 942–944 (2002) [hereinafter Roach 7] (discussing the changes and challenges faced by the Canadian government in balancing public safety with sovereignty and democracy following September 11); see generally ROACH 2, *supra* note 6, at 363; Roach 3, *supra* note 6, at 2152;

ATA legally defined terrorism, and established specific terrorism-related crimes in the Criminal Code of Canada (CCC).²¹ The CCC was amended on the assumption that offense classifications that had previously been used to prosecute terrorist offenders were no longer sufficient following September 11 owing to the fact that they were predominantly reactive as opposed to proactive.²² As such, terrorism was defined under Section 83.01 of the CCC as:

An act or omission, in or outside Canada, that is committed (A) in whole or in part for political, religious or ideological purpose, objective or cause, and (B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada.²³

Along with providing a definition of terrorist activity, the ATA introduced five new indictable offenses with maximum punishments ranging from ten years to life imprisonment.²⁴ Previously, terrorist offenders in Canada were prosecuted using existing Criminal Code offenses such as first degree murder, conspiracy, kidnapping, hostage taking, possession of explosives with the intent to discharge, possession of illegal weapons, accessory after the fact, and threatening to murder an internationally protected person.²⁵ The ATA established the offenses of: participating in the activities of a terrorist group, facilitating terrorist activities, instructing the carrying out of terrorist activities, instructing activities for terrorist groups to enhance their ability to carry out terrorist activities, and harboring or concealing

Stuart, *supra* note 6, at 211.

²¹ Cotler, *supra* note 6 at 121–22; ROACH 2, *supra* note 6, at 376; Roach 3, *supra* note 6, at 2160–62; Roach 4, *supra* note 15, at 513–21; Roach 6, *supra* note 17, at 154; Shaffer, *supra* note 15, at 196. *See generally* KENT ROACH, THE UNIQUE CHALLENGES OF TERRORISM PROSECUTIONS: TOWARDS A WORKABLE RELATION BETWEEN INTELLIGENCE AND EVIDENCE (2010) [hereinafter ROACH 8] (providing an overview of the ATA and the criminalization of terrorist offenses in Canada, as well as the challenges that prosecutors face when trying terrorist offenders).

²² Cotler, *supra* note 6, at 118; Diab, *supra* note 12, at 369 (addressing legal changes made to the CCC following the implementation ATA, as well as presenting case studies of the first offenders prosecuted under the new terrorism-specific offences); ROACH 2, *supra* note 6, at 376.

²³ Criminal Code of Canada, R.S.C. 1985, c. C-46 § 83.01.

²⁴ Roach 6, *supra* note 17, at 160.

²⁵ *Id.* at 152.

terrorists.²⁶ Unique to all terrorism-specific offenses is the requirement for prosecutors to prove that their commission was motivated by either a political, religious, or ideological belief.²⁷

Furthermore, the ATA criminalized offenses related to the financing of terrorist activities, specifically either directly or indirectly providing, collecting, possessing, or making property or services available to those who wish to engage in terrorist activities.²⁸ As a part of these legal designations, individuals are required to report “(1) the existence of property in their possession or control that they know is owned or controlled by a terrorist group or (2) information about a proposed transaction involving such property” to law enforcement.²⁹ The inclusion of these offenses was done in part to ensure compliance with UN Security Council Resolution 1373 and the UN International Convention on the Suppression of Terrorist Financing.³⁰ Additionally, in 2001, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act introduced additional mechanisms designed to “detect and deter money laundering and terrorist financing.”³¹ This Act further stipulates that individuals must legally report monetary transactions, or property holdings, if they are potentially connected to terrorist activities, to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).³²

In the years immediately following the implementation of the ATA, prosecutors continued to respond to terrorist threats by utilizing immigration law, as opposed to criminal law, and the first terrorism-specific

²⁶ *Id.* at 152, 160–66.

²⁷ See ROACH 2, *supra* note 6, at 378–79; ROACH 8, *supra* note 21, at 94.

²⁸ Criminal Code of Canada, R.S.C. 1985, c. C-46 § 83.01–83.04; see ROACH 2, *supra* note 6, at 376; ROACH 4, *supra* note 15, at 514–15.

²⁹ Kent Roach, *The Three Year Review of Canada’s Anti-Terrorism Act: The Need for Greater Restraint and Fairness, Non-Discrimination, and Special Advocates*, 54 U.N.B. L.J. 308, 316–17 (2005) [hereinafter Roach 9] (describing the successes and failures of Canada’s ATA three years following its implementation, and highlighting that restraint is needed in legally defining terrorism, offenses, and terrorist groups, and in the treatment of terrorist suspects who are not legal citizens of Canada).

³⁰ Kent Roach, *Sources and Trends in Post 9/11 Anti-Terrorism Laws*, 6 (U. of Toronto, Legal Studies Research Paper No. 8899291, 2006) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=899291; see ROACH 2, *supra* note 6, at 361, 382; Roach 5, *supra* note 15, at 133.

³¹ Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c 17 as amended by S.C. 2001 c 41, s.3(a), <http://laws-lois.justice.gc.ca/eng/acts/P-24.501/page-2.html#h-3>.

³² Roach 4, *supra* note 15, at 517; Roach 9, *supra* note 29, at 317; see generally ROACH 2, *supra* note 6, at 376.

charges were not laid until 2004.³³ Despite the emphasis of the ATA on proactive responses, as well as public safety and security, the changes made to the CCC were not without criticism. Legal scholars not only questioned the necessity of amending the CCC, but also the speed at which these changes were implemented.³⁴ One of the key criticisms was the inclusive definition of ‘terrorism.’ Roach noted that the definition of terrorism included in Bill C-36 was broader than those utilized by either the United Kingdom or the United States.³⁵ He further cautioned that Canada’s expansive definition of terrorism, in conjunction with new investigative powers, offense classifications and strict punishments allowed by the Act, could be applied to citizens who were simply engaged in political protests (such as environmental issues, Aboriginal land claims, or anti-globalization protests).³⁶

Further terrorism-specific offenses were added to the CCC in 2004 and 2013. Under the auspice of the Public Safety Act, committing a hoax related to terrorist activity was criminalized in 2004.³⁷ In 2013, both the Combating Terrorism Act and the Nuclear Terrorism Act were implemented. Reflective of the ATA’s goal of proactively preventing terrorist activity, the Combating Terrorism Act criminalized offenses related to leaving Canada in order to participate in, or carry out, terrorist activity, as well as concealing a person who has, or is likely, to carry out terrorist activity.³⁸ The Nuclear Terrorism Act instituted four nuclear terrorism-related offenses. In doing so, this allowed Canada to ratify the “Amendment to the Convention on the Physical Protection of Nuclear

³³ Diab, *supra* note 12, at 357.

³⁴ See generally Roach 4, *supra* note 15, at 511–33; Shaffer, *supra* note 15, at 196–204; Stuart, *supra* note 6, at 205–12; Gary T. Trotter, *The Anti-Terrorism Bill and Preventative Restraints on Liberty*, in *THE SECURITY OF FREEDOM: ESSAYS ON CANADA’S ANTI-TERRORISM BILL 239*, 240–46 (Ronald Daniels, Patrick Macklem & Kent Roach eds., 2001) (noting the need for caution when implementing restrictive measures on a citizenry that are intended to prevent terrorism, as well as the use of peace bonds as preventative measures).

³⁵ Roach 7, *supra* note 20, at 904.

³⁶ Roach 7, *supra* note 20, at 897–98, 913.

³⁷ Kent Roach, *Ten Ways to Improve Canadian Anti-Terrorism Law*, 51 *CRIM. L.Q.* 102, 109 (2005) [hereinafter Roach 10] (highlighting key aspects that could improve Canada’s anti-terrorism laws, such as tightening the definition of terrorism, reforming preventative arrests and amending the Canada Evidence Act).

³⁸ Combating Terrorism Act, S.C. 2013, c. 9 (Can.) (adding the following offenses to the CCC: “Leaving Canada to participate in the activity of a terrorist group,” “Leaving Canada to facilitate terrorist activity,” “Leaving Canada to commit an offence for a terrorist group,” and “Concealing a person who carried out terrorist activity.”).

Material and the International Convention for the Suppression of Acts of Nuclear Terrorism.”³⁹

II. SENTENCING OUTCOMES OF TERRORIST OFFENDERS

As indicated by the criminalization of specific terrorism-related offenses, terrorist offenders have been identified as requiring special legal provisions. Despite this, few studies have investigated the legal processing of terrorist offenders. When comparing differences between the sentencing outcomes of terrorist and general offending populations, previous studies report that when convicted of similar offenses, terrorist offenders are sentenced more severely, and that the most salient aggravating factor for terrorist offenders is having a political motivation.⁴⁰ For individuals accused

³⁹ Nuclear Terrorism Act, S.C. 2013, c. 13 (Can.) (adding the following offenses to the CCC: “Possession, etc., of nuclear material, radioactive material or device,” “Use or alteration of nuclear material, radioactive material or device,” “Commission of indictable offence to obtain nuclear material,” and “Threats” to commit such offences).

⁴⁰ Mindy S. Bradley-Engen et al., *Punishing Terrorists: A Re-Examination of U.S. Federal Sentencing in the Postguidelines Era*, 19 INT’L. CRIM. JUST. REV. 433, 445–49 (2009) [hereinafter Bradley-Engen 1] (contrasting the average sentencing outcomes achieved for terrorist and non-terrorist offenders convicted of similar crimes where findings indicate that revisions to sentencing guidelines have impacted sentencing disparities between terrorist and non-terrorist populations); Brent L. Smith & Kelly R. Damphousse, *Punishing Political Offenders: The Effect of Political Motive on Federal Sentencing Decisions*, 34 CRIMINOLOGY 289, 298–300 (1996) [hereinafter Smith & Damphousse 1] (reporting that political motivation is a salient extra-legal factor that functions to increase sentence severity for terrorist offenders); Brent L. Smith & Kelly R. Damphousse, *Terrorism, Politics and Punishment: A Test of Structural-Contextual Theory and the “Liberation Hypothesis”*, 36 CRIMINOLOGY 67, 68 (1998) [hereinafter Smith & Damphousse 2] (finding evidence to support that both the structural-contextual theory and liberation hypothesis can account for disparities in the sentence lengths issued to terrorist offenders when committing similar crime types as general offending populations); see generally Kelly R. Damphousse & Chris Shields, *The Morning After: Assessing the Effect of Major Terrorism Events on Prosecution Strategies and Outcomes*, 23 J. CONTEMP. CRIM. JUST. 174, 174 (2007) (addressing changes in prosecutorial strategies and the sentencing outcomes of terrorist offenders both preceding and following major terrorist incidents); Brian D. Johnson, *Cross-Classified Multilevel Models: An Application to the Criminal Case Processing of Indicted Terrorists*, 28 J. QUANTITATIVE CRIMINOLOGY 163, 163–87 (2011) (providing an overview of the offense, offender, case processing terrorism incident, terrorist group and court characteristics that have the potential to impact the criminal justice processing of terrorist offenders); Christopher A. Shields, Kelly R. Damphousse & Brent L. Smith, *Their Day in Court: Assessing Guilty Plea Rates Among Terrorists*, 22 J. CONTEMP. CRIM. JUST. 261, 261–65 (2006) (investigating differences in the rates at which terrorist and general offending populations enter guilty pleas, and the legal and extra-legal factors that predict this decision); Brent L. Smith et al., *The Prosecution and Punishment of International Terrorists in Federal*

of terrorist offenses, having co-defendants both reduces the likelihood of going to trial and of being convicted.⁴¹ Furthermore, the timing of an offender's adjudication has been found to play a significant role in the sentencing outcomes of terrorist offenders. Damphousse and Shields report that terrorist offenders prosecuted in the two years following a major terrorist incident are sanctioned less severely than those punished prior to it.⁴² The observed discrepancies in sentence outcomes can in part be attributed to changing prosecutorial strategies such as broadening the definition of terrorism and removing focus from the political nature of the crime.⁴³

Following the establishment of the ATA, in order to successfully prosecute offenders charged with terrorism-related offenses, the Crown must prove that an offender was motivated by a political, religious or ideological motivation.⁴⁴ In addition to this extra burden of proof, Section 718.2 of the CCC has deemed that where evidence exists to indicate that an offense was a terrorist offense that it should also be considered as an aggravating circumstance.⁴⁵ While some legal scholars have called into question whether or not terrorism is in fact a distinct type of crime, or if it should merely be considered as an aggravating factor at sentencing, it appears that in Canada participation in terrorism is both a legally distinct crime type, as well as an aggravating factor.⁴⁶

To date, only one study has attempted to investigate the impact of extra-legal and legal factors on the sentence severity of terrorist offenders

Courts: 1980–1998, 1 CRIMINOLOGY & PUB. POL'Y 311, 311–29 (2002) (contrasting differences in the criminal justice processing of domestic and international terrorists, and reporting that international terrorists are subject to more politicized trials, are less likely to plead guilty and are subject to longer sentences).

⁴¹ See Johnson, *supra* note 40, at 183. See generally Bradley-Engen 1, *supra* note 40, at 444–49; Shields et al., *supra* note 40 at 270–71; Damphousse & Shields, *supra* note 40, at 184–90; Smith & Damphousse 1, *supra* note 40, at 303–12.

⁴² Damphousse & Shields, *supra* note 40, at 187.

⁴³ *Id.* at 190–91.

⁴⁴ Roach 7, *supra* note 20, at 903.

⁴⁵ See generally Clayton C. Ruby et al., SENTENCING, 254–56 (8th ed. 2012) (discussing factors that can serve as aggravating and mitigating circumstances for violent, weapons and terrorist offences in Canada).

⁴⁶ Diab, *supra* note 12, at 353–56; Mohammed Saif-Alden Wattad, *Is Terrorism a Crime or an Aggravating Factor in Sentencing*, 4 J. INT'L CRIM. JUST. 1017, 1027–29 (2006) (arguing that terrorism is not a unique crime type, as terrorists do not have increased culpability when compared to general offending populations, but do pose a greater threat to society and as such should be sanctioned more severely).

convicted in Canada following the implementation of the ATA. After reviewing the sentencing outcomes of Khawaja, members of the Toronto 18 and Namouh, Diab reports that the mitigating factors uncovered for these offenders were similar to those of general offending populations.⁴⁷ As such, being younger, not having a prior record, accepting responsibility and expressing remorse, willingly participating in rehabilitation, entering a guilty plea, and having familial responsibilities were all found to decrease sentence severity.⁴⁸ However, while some of the aggravating factors identified, such as the use of firearms, planning to commit an offense, and not expressing remorse, are typical of general offending populations, other aggravating factors identified are unique to terrorist offenses. Diab notes that having a leadership role, recruiting others, knowingly participating in a terrorist offense, planning an offense that would lead to mass murder, planning to execute a crime motivated by race, ethnicity, or religion, and being known to have actively participated in online groups all functioned to increase sentence severity.⁴⁹

III. THE PRESENT STUDY

Canada has a storied history of terrorist incidents motivated by grievances originating both within, and outside, of Canada.⁵⁰ Despite the significance and gravity of terrorist incidents that occurred in the 1970s and 1980s, it was not until the implementation of the ATA that terrorism-specific offenses were criminalized in Canada.⁵¹ While much is known about the incidents themselves, less is known about how the criminal justice system has historically responded to terrorist offenders, and how the current response to this offending population compares to past reactions. While Diab presents a primary investigation of the sentencing outcomes of a selection of terrorist offenders prosecuted after the implementation of the ATA, he relies on a review of case law for his analysis and, as such, does

⁴⁷ Diab, *supra* note 12, at 357–70.

⁴⁸ See generally Diab, *supra* note 12, at 357–70 (reviewing initial prosecutions under the ATA, and identifying the aggravating and mitigating factors that have been utilized by the courts in these initial cases).

⁴⁹ *Id.* at 357–70.

⁵⁰ See Crelinsten 1, *supra* note 1, at 10–17; KELLETT 2, *supra* note 4, at 47–72; Charters 1, *supra* note 1, at 14–20; Leman-Langlois & Brodeur, *supra* note 4, at 122–29; Jeffrey Ian Ross & Ted Robert Gurr, *Why Terrorism Subsides: A Comparative Study of Canada and the United States*, 21 COMP. POL. 405, 408–14 (1989).

⁵¹ See ROACH 2, *supra* note 6, at 376; Roach 4, *supra* note 15, at 513; Roach 6, *supra* note 17, at 160–67; Shaffer, *supra* note 15, at 196–201.

not empirically test the impact of legal and extra-legal factors on sentencing outcomes.⁵² Furthermore, Diab does not compare the sentencing outcomes of recently adjudicated terrorist offenders to cases historically prosecuted in Canada. The current study seeks to build on Diab's work by investigating variability in the sentencing outcomes of terrorist offenders sanctioned in Canada between 1963 and 2010, focusing on the potential impact that the implementation of the ATA has had on the legal processing of terrorist offenders. We investigate if there are discernable periods where offenders are sanctioned more punitively than others, and if offenders prosecuted after the implementation of the ATA are sanctioned more or less severely than those prosecuted prior to it.

A. DATA AND METHODS

In order to investigate the sentencing variability of terrorist offenders sanctioned in Canada, a new dataset was created. The Officially Adjudicated Terrorists in Canada (OATC) dataset is comprised of 153 offenders who were convicted of terrorist related offenses in Canada between 1963 and 2010. Offenders who had been convicted of terrorist related activities were identified as extensively as possible in one of three ways. First, the website compiled and maintained by Canadian terrorism expert Dr. Leman-Langlois (Terrorism and Counterterrorism Research Group (TCRG)) was consulted to acquire any names of terrorist offenders identified in the extensive list of Canadian terrorist incidents cited there.⁵³ Second, keyword searches in three legal databases (CanLII, Best Case and Quicklaw) were undertaken, and, third, relevant texts and news sources were consulted. Once identified, offenders were subject to a name search in the three legal databases. Additionally, each legal database was searched using the keywords "terrorism," "terrorist," "terror," and "political violence." If an offender was identified in one legal database, a name search was then undertaken in the other two to ensure that all legal documents available pertaining to a specific case were located. The use of texts and news sources (e.g. Canadian Broadcasting Corporation) was especially important for identifying historical cases. Lastly, a Google search was subsequently employed for each individual identified in order to collect any other relevant information.

⁵² See Diab, *supra* note 12, at 357–70.

⁵³ TERRORISM AND COUNTERTERRORISM RESEARCH GROUP (TCRG), <http://www.erta-tcrg.org/liens.htm>.

A total of 279 legal documents, 5 texts, and 227 news sources were consulted in the construction of the OATC. Of the 153 offenders, 70.6% ($n = 108$) were convicted for their participation in FLQ activities. Legal documents were available for 30% ($n = 46$) of the individuals, which was in large part due to the high proportion of FLQ members and the limited availability of historical legal documents. News sources and texts were available for 91.5% ($n = 140$) of the sample. For each case, 182 variables were coded pertaining to the offender's age, place of birth, religion, motivation, participation in the offense, charge counts, conviction counts, sentence issued, appeals undertaken by either the Crown or Defense, and the final sentence rendered.

As sentence outcome serves as the key dependent variable in these analyses, only offenders for whom a final sentence outcome could be identified were included. Initially, 183 cases were identified; however, 30 were excluded for the following reasons: sentence information could not be located, the offender was still in pre-trial custody, or charges have been laid but the offender remains at large. Two offenders convicted in connection with the plot to bomb Air India Flight 112 were excluded given that their convictions were overturned in 1992 and that they were granted a stay of charges in 1996. Furthermore, Inderjit Singh Reyat (the only offender convicted in connection with the Air India bombings) has been tried on four separate occasions for his involvement in the incident. In light of this, only his final trial, concluding in 2010, is included. There were five offenders who were each convicted of two separate offenses related to their involvement in the FLQ. However, given the small number of recidivists, it was not possible to control for this in the multivariate models.

B. MEASURES

1. *Dependent Variable*

Sentence Length. The key outcome variable of interest is sentence length, which was coded at both the end of the offender's initial trial and following any appeals pursued by either the Crown or Defense. Consequently, the final sentence issued is utilized and, in keeping with previous studies examining sentencing outcomes, measured in months.⁵⁴ On

⁵⁴ Mindy S. Bradley-Engen et al., *The Time Penalty: Examining the Relationship Between Time to Conviction and Trial vs. Plea Disparities in Sentencing*, 29 JUST. Q. 830, 839 (2012) [hereinafter Bradley-Engen 2] (investigating how the timing of an offender's guilty plea can impact sentence severity, noting that time to conviction has a significant

average, offenders were sentenced to 88.72 months. The shortest sentence issued was 2 months, while the longest was 300. All but 12 of the offenders ($n = 141$) were incarcerated in prison. Of the remaining 12 offenders, 10 were issued suspended sentences and 2 were issued probation terms. Though we preserved the original sentence length meted out for these 12 offenders, we added a control for “suspended sentence/probation” in our multivariate models to account for the difference between these cases and the majority of others.⁵⁵

2. Main Independent Variables

Contextual Factors. In order to investigate how being arrested at different time points, and convicted under different sections of the Criminal Code, impacts sentencing outcomes, a series of contextual factors were coded. The 47-year observation period was divided into three periods: Period 1 (offenders arrested between 1963 and 1982), Period 2 (offenders arrested between 1983 and 2001), and Period 3 (offenders arrested between 2002 and 2010). For many of the historical cases it was challenging to identify the offender’s year of conviction, and as a result, year of arrest is utilized throughout. Period 1 is exclusively comprised of FLQ members ($n = 108$). Although FLQ actions terminated in 1972, six members of the FLQ cell responsible for the kidnapping of James Cross fled Canada upon his release, and did not return until the late 1970s and early 1980s (1978–1982). Upon their return, they were prosecuted for their involvement in the October Crisis, and as a result of this, the first period is extended to 1982, the year in which the last FLQ member was arrested. With the exception of these residual FLQ members, no other terrorist offenders in our dataset were arrested between 1972 and 1982.

Period 2, ranging from 1983 to 2001, contains a large proportion of offenders motivated by political grievances and Sikh extremism, as well as the only two offenders motivated by eco-terrorism ($n = 22$). For Period 2,

impact on sentence outcomes); see Bradley-Engen 1, *supra* note 40, at 441; Damphousse & Shields, *supra* note 40, at 187; Smith & Damphousse 1, *supra* note 40, at 302; Jeffery T. Ulmer & Brian Johnson, *Sentencing in Context: A Multilevel Analysis*, 42 CRIMINOLOGY 137, 148 (2004) (examining the impact of contextual level and individual case level influences on sentencing).

⁵⁵ We also considered dropping these cases entirely from the multivariate analysis. Doing so, however, did not substantially change any of the results. Given the small sample of Canadian cases available, we opted to preserve all cases we could, and simply control for differences in sentence dispositions issued in the statistical models.

the end date of 2001 was selected as it marks the implementation of the ATA, and the creation of new legal dispositions that could only be applied to offenders arrested from 2002 onwards. Period 3 consists of offenders who were arrested after the implementation of the ATA from 2002 to 2010 and, as such, this period serves as a means to explore changing criminal justice responses to terrorist offenders after the implementation of this new legislation ($n = 23$). The third period contains the 11 members of the Toronto 18 who were successfully prosecuted for their involvement in this terrorist plot, as well as Momin Khawaja. Each period variable was coded as 'offender not arrested' during period (0), or 'offender arrested' during period (1).

In order to investigate whether being convicted of terrorism-specific offenses impacts sentencing outcomes, three variables were created to capture whether or not offenders were sanctioned under terrorism-specific or general legal provisions. The first measures whether or not an offender was convicted of a "Terrorism Offense" only and was coded as "not convicted of a terrorism offense" (0), or "convicted of a terrorism offense" (1). Following the implementation of the ATA, only 7.3% ($n = 11$) of offenders were convicted solely of a terrorist offense. In contrast, 89.5% ($n = 137$) of offenders were convicted of a "General Criminal Code Offense" only and were coded as "offender not convicted of a general Criminal Code offense" (0), or "offender convicted of a general Criminal Code offense" (1). Only 3.3% ($n = 5$) of offenders were convicted of both a "Terrorism Offense" and a "General Criminal Code Offense." This factor was coded as "offender not convicted of both a terrorism and general offense" (0), or "offender convicted of both a terrorism and general offense" (1).

Terrorism-Specific Factors. A series of terrorism-specific factors were coded in an effort to explore the changing nature of terrorist activity in Canada over the past 47 years, as well as the potential impact that factors unique to terrorism cases have on sentencing outcomes. Drawing on previous empirical investigations, the current study examines eight terrorism-related factors.⁵⁶ The first considers whether or not the offender was able to complete their offense (Completion), and is measured as "offense detected prior to completion" (0), or "offense completed" (1). In total, 79.1% ($n = 121$) of offenders were able to complete their offense.

⁵⁶ See Bradley-Engen 1, *supra* note 40, at 441–44; Diab, *supra* note 12, at 357–70; Damphousse & Shields, *supra* note 40, at 183–84; Christopher A. Shields et al., *supra* note 40, at 268–70; Smith & Damphousse 1, *supra* note 40, at 302–03; Brent L. Smith et al., *supra* note 40, at 317–19.

Next, a series of dummy variables were coded in order to capture varying offense severities. The first dummy variable accounts for whether or not the offender's actions resulted in the death of a civilian (i.e. first degree murder, manslaughter) and was coded as "actions did not result in the death of an individual" (0), or "actions did result in the death of an individual" (1). Approximately one quarter of the offenders engaged in activities that resulted in the death of a civilian (23.5%). The second dummy variable considers offenders who engaged in an offense that posed an increased threat to human lives or resulted in the injury of civilians, such as armed robbery, assault, attempted murder, participating in the actions of a terrorist group, facilitating terrorist activity, and attempting to participate in terrorist activity. In total, 60.1% of offenders participated in such an offense and this factor was coded as "no increased threat to human lives or civilian injury" (0), or "increased threat to human lives or civilian injury" (1). Lastly, a third dummy variable was created to account for offenses that posed no threat to human lives, such as perjury, accessory after the fact and sedition, and was coded as "threat to human lives" (0), "no threat to human lives" (1). The remaining 16.3% of offenders engaged in an offense that posed no direct threat to human lives.

Motivations were organized into seven categories: (1) nationalism/separatism ($n = 108$), (2) Islamic extremism ($n = 14$), (3) political (e.g. the Israel/Palestine conflict, protest of the Armenian Genocide, capitalism) ($n = 17$), (4) Sikh extremism ($n = 6$), (5) personal (e.g. assistance of a family member, retaliation for personal grievance) ($n = 5$), (6) eco-terrorism ($n = 2$), and (7) financial ($n = 1$). A total of five weapons were utilized, or intended to be utilized, by the offenders: (1) explosive devices, (2) firearm, (3) arson, (4) explosive device and firearm and (5) no weapon utilized. The most commonly utilized weapons were explosive devices (49.7%), while 15.7% of the offenders did not utilize a weapon in the commission of their offense. As terrorist offenses have the potential to cross international borders, the location of the completed, or planned, offense was also considered. Almost all of the offenders either completed, or intended to complete, their offenses in Canada (96.7%), while those who looked outside of Canada's borders either planned, or completed, their offense in the United Kingdom, the United States or Bosnia.⁵⁷

⁵⁷ One offender was convicted for his participation in the spreading of terrorist propaganda online. As a result of this the location of this offense was coded as "No specific location intended."

The extent to which attending a training camp affects sentencing outcomes for both historically and recently adjudicated offenders remains unclear. Participation in a terrorist training camp was coded as “did not attend terrorist training camp” (0), or “attended terrorist training camp” (1). In total, 21.6% of the offenders attended a training camp or actively prepared for their involvement in terrorist activities in some way. Training camps and preparatory actions were undertaken in Quebec (60.6%), Ontario (21.1%), British Columbia (15.2%), and Pakistan (3%). Four offense variables were operationalized to investigate the changing nature of terrorist activity over time: Terrorism, Violence, Weapons and Other. For each offender, convictions for only the most serious offense were recorded, and as such, the variables are mutually exclusive. Terrorism offenses are those identified by Section 83 of the CCC (i.e. facilitating terrorist activity, training for terrorist purposes, instructing others to carry out an activity for a terrorist group) and were coded as “no conviction for terrorism offense” (0), or “conviction for terrorism offense” (1). Violent offenses included first-degree murder, attempted murder, assault, and manslaughter and were coded as ‘no conviction for violent offense’ (0) or ‘conviction for violent offense’ (1). Weapons offenses included possession of an illegal weapon, activating an explosive substance, and possession of an explosive with the intent to discharge and were coded as ‘no conviction for weapons offense’ (0) or ‘conviction for weapons offense’ (1). Theft/Other offenses included auto theft, perjury, sedition, accessory after the fact, and kidnapping and were coded as ‘no conviction for theft/other offense’ (0) or ‘conviction for theft or other offense’ (1). In total, 10.5% of offenders were convicted of a terrorism offense, 34% of violent offense, 28.8% of a weapons offense, and 26.8% of a theft/other offense.⁵⁸

C. CONTROL VARIABLES

Demographic Characteristics. Four demographic characteristics were included. As terrorist offenders have been identified as typically being older than general offending populations and given that Diab has identified that being younger serves as a potential mediating factor at sentencing, the offender’s age was included.⁵⁹ On average, offenders were 26 years old at

⁵⁸ See Appendix 1 for the offense types for which terrorist offenders have been convicted in Canada.

⁵⁹ Diab, *supra* note 12, at 363. If the offender’s Age at sentencing was reported it was coded as such. However, often the offender’s age was reported at the time of their arrest, but no formal date of birth was reported. In these cases the offenders reported age was subtracted

the time of their arrest. Similar to general offending populations, terrorist offenders are predominantly male; however, in order to examine gender diversity in convicted Canadian terrorist offenders, gender was coded as “female offender” (0) or “male offender” (1). Only 8% of terrorist offenders arrested, and eventually convicted, were female. A previous study conducted by Johnson, Van Wingerden, and Nieuwbeerta, investigating the sentencing outcomes of offenders adjudicated in a country not of their birth, indicates that foreign offenders are sanctioned more harshly, and as such, two variables were included to investigate the citizenship and place of birth of the offenders.⁶⁰ Together, 96.1% of the offenders were legal citizens of Canada, and this factor was coded as “offender a legal citizen” (0), “offender not a legal citizen” (1). Almost one-fifth of the offenders had immigrated to Canada, as 19.6% of the offenders were recorded as being an immigrant, which was coded as “not an immigrant” (0) or “immigrant” (1). Offenders immigrated to Canada from 18 different countries, with the greatest proportion emigrating from India.⁶¹

Extra-Legal and Legal Factors. In order to investigate changing legal responses to terrorist offenders in Canada, four legal and extra-legal variables are included. First, the amount of time an offender spent in pre-trial custody was considered. On average offenders served 2.21 years prior to being sentenced with a range of 1–6 years served. The amount of time spent in pre-trial custody is measured as a count variable. Previous studies have illustrated that, for both general and terrorist offenders, entering a Guilty Plea can serve to reduce sentence severity.⁶² Just over one quarter of the offenders entered a guilty plea (27.5%), and it was coded here as “no guilty plea” (0) or “guilty plea” (1). In a recent study, Johnson reports that

from the year of arrest, onset etc. to approximate the offender’s date of birth.

⁶⁰ Brian D. Johnson et al., *Sentencing Homicide Offenders in the Netherlands: Offender, Victim and Situational Influenced in Capital Punishment*, 48 *CRIMINOLOGY* 981, 1002–03 (2010) (exploring the extent to which prosecutorial recommendations, victim/offender relationships and extra-legal factors impact sentencing outcomes for a sample of homicide offenders convicted in the Netherlands).

⁶¹ Offenders emigrated from: Afghanistan, Algeria, Armenia, Belgium, Egypt, Hungary, India, Iran, Jordan, Kazakhstan, Lebanon, Morocco, Netherlands, Pakistan, Saudi Arabia, Somalia, Sri Lanka, and Syria.

⁶² See Bradley-Engen 2, *supra* note 54, at 848; Bradley-Engen 1, *supra* note 40, at 450–51; Rodney L. Engen & Randy R. Gainey, *Modeling the Effects of Legally Relevant and Extralegal Factors Under Sentencing Guidelines: The Rules Have Changed*, 38 *CRIMINOLOGY* 1207, 2019 (2000) (finding that offenders who plead guilty receive shorter sentences even accounting for additional extra-legal factors).

terrorist offenders who have an increased number of co-defendants are less likely to go to trial and to be convicted. This in part may be attributed to the fact that there is a dispersion of culpability among co-defendants and an increased likelihood of plea negotiations.⁶³ Approximately half of the sample (48.7%) were tried with co-defendants, and this factor was coded as “no co-defendants” (0) or ‘co-defendants’ (1). On average offenders had 9.02 co-Offenders, with a range of 0 to 23. The number of co-offenders is also included as a count variable.

D. ANALYTIC STRATEGY

In order to investigate how the sentencing outcomes of terrorist offenders convicted in Canada have varied across time, the current study utilizes time-series plots, bivariate analyses, and ordinary least squares (OLS) regression. The structure of the data presented a challenge as the convicted offenders were not only organized into three periods, but members of the FLQ were further grouped among their co-offenders. This created a differential structure within the data that was only characteristic of the FLQ. While there was no appropriate way to recode the remaining cases to control for their involvement with co-offenders, a null hierarchical linear model was run using a period indicator to explore the potential necessity of multilevel modeling. However, upon inspection it was found that the intraclass correlation was not significant indicating that multilevel modeling was not the best modeling strategy for the data.⁶⁴ In order to explore the effect of each group of covariates on sentencing outcomes, the variables were first entered into independent regression models (demographic characteristics, terrorism-specific, extra-legal and legal factors, and sentencing context). A final model was then run, including all of the covariates in order to explore any mediating effects.

⁶³ Brian D. Johnson, *Cross-Classified Multilevel Models: An Application to the Criminal Case Processing of Indicted Terrorist Offenders*, 28 J. QUANTITATIVE CRIMINOLOGY 163, 183 (2012).

⁶⁴ See generally G. David Garson, *Fundamentals of Hierarchical Linear and Multilevel Modeling*, in HIERARCHICAL LINEAR MODELING: GUIDE AND APPLICATIONS 3–26 (G. David Garson ed., 2013) (presents an overview of the utility and structure of hierarchical linear models).

Table 1
Demographic Characteristics (n = 153)

	<u>Total Sample</u>	<u>Period 1</u>	<u>Period 2</u>	<u>Period 3</u>
Length of Period (In Years)	49	20	19	10
Number of Offenders	153	108	22	32
Average Age of Offenders	26 (18 – 61)	24 (18 – 48)	30 (21 – 59)	31 (20 – 61)
Male Offenders	92.2%	91.7%	90.9%	95.7%
Legal Citizens	96.1%	99.1%	90.9%	87%
Immigrants	19.6%	1.9%	54.5%	65.2%

Table 2
Bivariate Associations (n = 153)

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
1. Age	-												
2. Immigrant	.28**	-											
3. Success	.15	-.11	-										
4. Death	-.17*	-.04	.29***	-									
5. Increased Threat	.16*	.10	-.22**	-.68**	-								
6. No Threat	-.03	-.09	-.03	-.2**	-.54***	-							
7. Training	-.01	.02	-.32***	.19*	.005	-.23**	-						
8. Guilty Plea	.003	.21**	-.04	-.03	.20*	-.23**	.21**	-					
9. Co-Defendants	-.23**	.01	.05	.29***	.02	-.36***	.28**	.10	-				
10. Co-Offenders	-.29**	-.27**	.08	.39**	-.41**	.08	.13	-.12	-.007	-			
11. 1963 – 1982	-.39**	-.69***	.16*	.23**	-.26**	.09	-.12	-.34***	.06	.41**	-		
12. 1983 – 2001	.31**	.36***	.21**	-.09	.18*	-.13 [†]	.02	.17*	.23**	-.39**	-.64***	-	
13. 2002 – 2010	.20*	.53***	-.41***	-.19*	.16*	.01	.14 [†]	.27**	-.30***	-.14	-.65***	-.17*	-
14. FSM	.06	.36**	.03	.29***	.07	-.44**	.29**	.31**	.17*	-.09	-.35**	.29**	.15

[†] $p < .10$, * $p < .05$, ** $p < .01$, *** $p < .001$

E. RESULTS

Table 1 provides descriptive information about the sample, while Table 2 provides measures of association among the covariates. The key finding throughout these analyses is that the periods are defined more by their differences than by their similarities, and the observed differences begin with the demographic characteristics of our offending sample. Over time, the average age of offenders convicted of terrorist offenses has increased as the lowest mean age was reported in Period 1 ($M = 24$), and the highest mean age was reported in Period 3 ($M = 31$). Being older was significantly associated with being an immigrant ($Rho = .28, p < 0.01$) and participating in an incident that posed an increased threat ($Rho = .16, p < 0.05$). Collectively, offenders convicted of terrorist offenses have been overwhelmingly male, and there has been little variability in the proportion of female offenders over time. The greatest amount of variability in the demographic characteristics across periods is evident in the number of offenders who are legal citizens and immigrants to Canada. While legal citizenship declines over time, the number of immigrants convicted of terrorist offenses increases. Only two members (1.9%) of the FLQ were immigrants; however, 54.5% of the offenders in Period 2 and 65.2% of the offenders in Period 3 immigrated to Canada.

Table 3
Terrorism Related Factors (n = 153)

	Total Sample 1963 - 2010 (n = 153)	Period 1 1963 - 1982 (n = 108)	Period 2 1983 - 2001 (n = 22)	Period 3 2002 - 2011 (n = 23)
Offense Completed	79.1%	83.3%	100%	39.1%
Severity				
<i>Actions Resulted in Death</i>	23.5%	29.6%	13.6%	4.3%
<i>Increased Threat to Human Lives</i>	60.1%	51.9%	81.8%	78.3%
<i>No Threat to Human Lives</i>	16.3%	18.5%	4.5%	17.4%
Motivation				
<i>Nationalism/Separatism</i>	70.6%	100%	0	0
<i>Islamic Extremism</i>	9.2%	0	0	60.9%
<i>Political¹</i>	11.1%	0	54.5%	21.7%
<i>Sikh Extremism</i>	3.9%	0	22.7%	4.3%
<i>Personal²</i>	2.6%	0	13.6%	8.7%
<i>Eco-Terrorism</i>	1.3%	0	9.1%	0
<i>Financial</i>	.7%	0	0	4.3%
Weapon				
<i>Explosive Device</i>	49.7%	49.1%	31.8%	69.6%
<i>Firearm</i>	28.1%	30.6%	45.5%	0
<i>No Weapon</i>	15.7%	16.7%	9.1%	17.4%
<i>Arson</i>	2.6%	.9%	0	13%
<i>Explosive Device/Firearm</i>	3.9%	2.8%	13.6%	0
Location of Offense				
<i>Canada</i>	96.7%	98.1%	95.5%	91.3%
<i>Other</i>	2.7%	1.9%	4.5%	4.3%
<i>No Specific Location Intended</i>	.7%	0	0	4.3%
Training Camp/Preparation	21.6%	18.5%	22.7%	34.8%
Offense Type				
<i>Terrorism</i>	10.5%	-	-	69.6%
<i>Violent</i>	34%	39.8%	40.9%	0
<i>Weapons</i>	28.8%	31.5%	31.8%	13%
<i>Theft/Other</i>	26.8%	28.7%	27.3%	17.4%

¹ Political Motivations include: Protesting the Bosnian War; ASALA; Direct Action; Israel/Palestine Conflict; LTTE; capitalism.

² Personal Motivations include: Retaliation for grievance, protest of gun control laws, assistance of family member.

We found significant variability in the ability of terrorist offenders to complete their offenses across periods. The offenders in Period 2 were all able to complete their offenses, while 83.3% of the offenders in Period 1, and only 39.1% in Period 3, were able to complete their offenses (See Table 3).⁶⁵ At the bivariate level, being able to complete an offense was negatively associated with posing an increased threat ($\Phi = -.22, p < 0.01$), attending a training camp ($\Phi = -.32, p < 0.01$) and being arrested in Period 3 ($\Phi = -.41, p < 0.01$), and was positively associated with causing the death of a civilian ($\Phi = .29, p < 0.01$), and being arrested in Period 1 ($\Phi = .16, p < 0.05$) and 2 ($\Phi = .21, p < 0.01$). In a similar vein, there is an overall downward trend in the deaths of civilians over time as 29.6% of the offenders in Period 1, 13.6% of the offenders in Period 2, and 4.3% of the offenders in Period 3 were involved in an offense that resulted in the death of a civilian. Conversely, there is a general upward trend in the proportion of offenders who were involved in offenses that posed an increased threat to human lives as 81.8% of offenders in Period 2, and 78.3% of offenders in Period 3 engaged in these types of activities.

In total, seven primary motivations were identified. Again, as all of the offenders in Period 1 were participants in FLQ activity, 100% of the offenders in this period were motivated by nationalism/separatism. However, Period 2 saw a rise in terrorist incidents motivated by imported grievances. Over half of the offenders in Period 2 (54.5%) were motivated by political grievances composed of offenders participating in the Armenian militant groups, the Armenian Secret Army for the Liberation of Armenia (ASALA) and Justice Commandos for the Armenian Genocide (JCAG)/Armenian Revolution Army (ARA). Also included in this period are the members of Direct Action who were not motivated by an overarching political ideology, but whose objective was to motivate others to engage in political action through their militant actions. The second most common motivation in Period 2 was Sikh extremism (22.7%), and includes offenders who were involved in the attempted assassinations of Malkiat

⁶⁵ Only four offenders plotted to commit, or committed, their offenses outside of Canada. The two members of Period 1 were involved in a plot to bomb the Statue of Liberty. FOURNIER, *supra* note 22, at 93. The one member of Period 2 was involved in an incident that occurred while participating in the Bosnia War. *R. v. Ribic* (2008), 67 W.C.B. 2d 523 (Can. Ont. Sup. Ct. J.). The one member of Period 3 was to provide the expertise necessary to utilize remote detonators in a plot that was intended to be executed in the United Kingdom. Mullins, *supra* note 4, at 736–37 (citing *R. v. Khawaja*, 2008 CarswllNat 675 (Can. Ont. Ct. J.)).

Singh Sidhu and Tara Singh Hayer.⁶⁶ The motivations change drastically in Period 3, as over half of the offenders adjudicated were motivated by Islamic Extremism (60.9%). In Period 3, political motivations included the Israel/Palestine conflict, support for the Liberation Tigers of Tamil Eelam, and capitalism.

Offenders participated in training camps across all periods, as 18.5% of offenders in Period 1, 22.7% of offenders in Period 2 and 34.8% of offenders in Period 3 engaged in activities to prepare for their involvement in terrorist events. Ironically, doing so does not facilitate offense completion, as we find that attending a training camp is negatively associated with being able to complete an offense ($\Phi = -.32, p < 0.01$). Only one offender (in Period 3) went abroad to attend a training camp that was located in Pakistan.⁶⁷ Finally, in both Periods 1 (39.8%) and 2 (40.9%), offenders were most commonly convicted of violent related offenses. However, following the criminalization of terrorism-specific offenses in Period 3, no offenders were convicted of violent offenses, while 69.6% were convicted of terrorism-specific offenses. This finding highlights the criminal justice system's active use of these new legal provisions and the use of terrorism-specific offenses in place of violent offenses.

⁶⁶ As noted above, Inderjit Singh Reyat (the only offender convicted in connection with the Air India bombings) has been tried on four separate occasions for his involvement in the incident. As only his final trial is included here, he is a member of Period 3.

⁶⁷ Only four offenders plotted to execute, or executed, their offenses outside of Canada. The two members of Period 1 were involved in a plot to bomb the Statue of Liberty. FOURNIER, *supra* note 2, at 93. The one member of Period 2 was involved in an incident that occurred while participating in the Bosnia War. *R. v. Ribic* (2008), 67 W.C.B. 2d 523 (Can. Ont. Sup. Ct. J.). The one member of Period 3 was to provide the expertise necessary to utilize remote detonators in a plot that was intended to be executed in the United Kingdom. Mullins, *supra* note 4, at 736–37 (citing *R. v. Khawaj*, (2008), CarswllNat 675, 737 (Can. Ont. Ct. J.)).

Table 4
Legal and Extra-Legal Factors (n = 153)

	Total Sample 1963 - 2010 (n = 153)	Period 1 1963 - 1982 (n = 108)	Period 2 1983 - 2001 (n = 22)	Period 3 2002 - 2010 (n = 23)
Time in Pre-Trial Custody (in years) ¹	2.13 (1 – 6)	-	1.36 (1 – 6)	2.87 (1 – 5)
Guilty Plea	27.5%	17.6%	45.5%	56.5%
Co-Defendants	49%	50.9%	77.3%	13%
Number of Co-Offenders	10.09 (0 – 23)	11.80 (0 – 23)	2.33 (0 – 4)	9.13 (0 - 17)

¹ It was not possible to consistently identify the amount of time that members of the FLQ spent in pre-trial custody and as such they have been excluded.

As for legal and extra-legal factors, note that, on average, offenders sanctioned in Period 3 spent the longest time in pre-trial custody, averaging 2.87 years, which is more than double the average time spent by offenders in Period 2 (See Table 4). The number of offenders who entered guilty pleas increased over time as well. More than half of the offenders sanctioned in Period 3 (56.5%) entered guilty pleas, while only 17.6% of the offenders in Period 1 entered a guilty plea.

Figure 1
*Average Sentence Length and Number of
 Terrorist Offenders in Canada
 by Year of Arrest from 1963–2010*

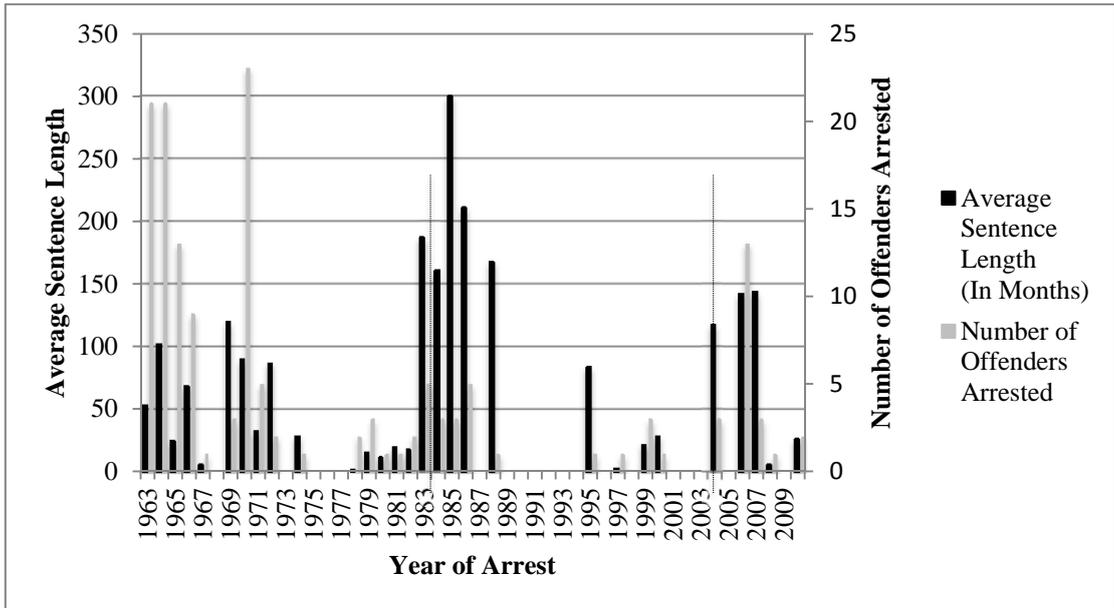


Figure 1 illustrates the average sentencing outcomes and number of offenders who were arrested from 1963 onwards. As a direct result of the FLQ campaign, the greatest number of offenders were arrested in Period 1. Yet, the average sentence length achieved in Period 1 ($M = 66.23$ months) was the shortest among the three periods. Period 2 was characterized by the highest average sentence length at 168 months, an average that decreased to 119 months in Period 3. At the bivariate level being arrested in Period 2 ($Rho = .29, p < 0.01$) was found to be significantly associated with an increased sentence severity, while being arrested in Period 1 ($Rho = -.35, p < 0.01$) was found to be significantly associated with a decreased sentence severity. Furthermore, being an immigrant ($Rho = .36, p < 0.01$) and attending a training camp ($Rho = .29, p < 0.01$) were also found to be significantly associated with having an increased sentence severity.

Figure 2
Average Sentence Length by Conviction Type and Period

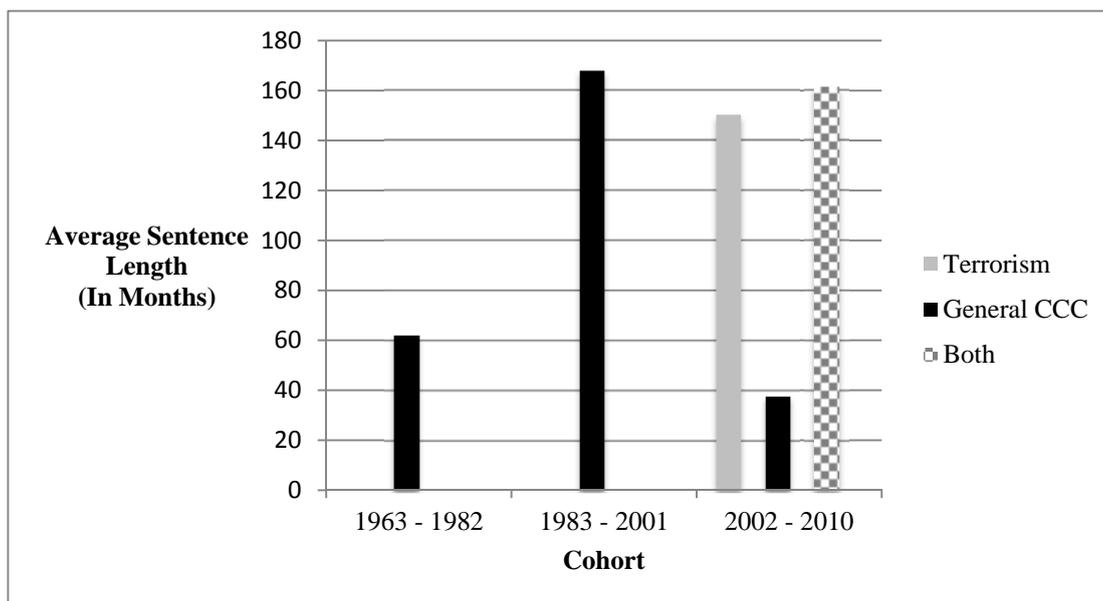


Figure 2 illustrates the average sentence length achieved by conviction type and period. As terrorism-specific offenses were not criminalized until 2001, offenders sanctioned in Periods 1 and 2 could only be convicted of general criminal code offenses. Breaking down the sentencing outcomes achieved in Period 3 by conviction type helps to highlight the impact that the criminalization of terrorism-specific offenses has had on sentencing outcomes. In Period 3 offenders convicted solely of terrorism-specific offenses were sanctioned 3.9 times more severely ($M = 150.27$ months) than those who were convicted of a general Criminal Code offense alone ($M = 38$ months). However, offenders who were convicted of both offense types received the harshest penalties recording an average sentence length of 161.40 months.

Given the impact of many of the covariates on sentence length at the bivariate level, an OLS regression was employed to test the impact of the covariates at the multivariate level (See Table 5).⁶⁸ To begin, each group of

⁶⁸ Due to methodological constraints, not all covariates could be included in the OLS models. While it would have been desirable to include the offender's motivation in the OLS

covariates was entered into an independent model. In the first model testing the impact of demographic characteristics, being an immigrant was found to significantly increase sentence severity ($b = 91.76$; $p < 0.01$), while the offender's age was found to have no impact on sentencing outcomes. As age, and in particular being younger, has been identified as a potential mediating factor at sentencing, the fact that age did not emerge as a significant predictor of sentence length may be attributable to the average age of the sample, which is higher than what has previously been reported as the average age of terrorist offenders.⁶⁹ Next, the terrorism-specific factors were tested. When compared to offenders who participated in an offense that resulted in the death of an individual, offenders who participated in an offense that posed an increased threat ($b = -36.62$; $p < 0.05$), and no threat ($b = -86.08$; $p < 0.01$) were both sanctioned less severely. Furthermore, attending a training camp ($b = 47.41$; $p < 0.05$) was found to be predictive of an increased sentence length. The only terrorism factor found to be unrelated to sentence outcomes was whether or not the offender was able to complete their offense.

models, potential multicollinearity issues and the small occurrence of some of the motivations identified in the data presented challenges. Note, however, that the Nationalism/Separatism motivation (FLQ) is already controlled for when including the contextual indicator of Period 1, which is true but to a lesser extent when we introduce controls for Period 2 (i.e., Political motivation) and Period 3 (i.e., Islamic extremism). Furthermore, due to the high proportion of offenders who were legal citizens this factor could not be entered into the model. Finally, it also would have been desirable to include the conviction type that offenders were sanctioned of; however, terrorism-specific offenses were only introduced in Period 3, which indirectly acts as an indicator for conviction type.

⁶⁹ Diab, *supra* note 12 at 363; LaFree & Ackerman, *supra* note 19, at 352.

Table 5
OLS Regression Testing the Impact of Offender Characteristics, Terrorism Factors, Extra Legal and Legal Factors and Sentencing Context on Sentencing Outcomes (n = 153)

	Model 1	Model 2	Model 3	Model 4	Model 5
	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)	<i>b</i> (SE)
Offender Characteristics					
Age	5.87 (30.14)				-10.86 (31.03)
Immigrant	91.76 (18.82)***				52.37 (23.87)*
Terrorism Specific					
Success		12.61 (20.32)			-1.72 (21.29)
Severity ^a					
Increased Threat		-36.62 (19.14)*			-76.78 (20.37)***
No Threat		-86.08 (25.52)**			-113.20 (25.01)***
Training Camp		47.17 (19.99)*			36.68 (19.13)*
Extra Legal and Legal Factors					
Guilty Plea			35.94 (17.05)*		6.20 (16.37)
Co-Defendants			17.86 (15.27)		-28.33 (16.34) [†]
Co-Offenders			-.98 (.89)		-1.26 (.95)
Disposition			-72.78 (28.13)*		-58.00 (24.81)*
Sentencing Context^b					
Offender Arrested 1983 – 2001				101.77 (20.87)***	75.63 (26.30)**
Offender Arrested 2002 - 2010				52.29 (20.49)*	14.16 (30.01)
Adjusted R ²	.14	.13	.07	.14	.33

[†]*p* < .10, **p* < .05, ***p* < .01, ****p* < .001

^a Offenders who participated in an activity that resulted in death are used as the reference group for severity.

^b Offenders arrested between 1963 – 1982 used as the reference group for sentencing context.

In order to control for the 12 offenders who were issued suspended sentences or probation terms, we add one additional factor to the series of extra-legal and legal factors in the multivariate model to control for the disposition issued. Of the four extra-legal and legal factors tested, the only factor to emerge as a significant predictor of increased sentence length was entering a guilty plea ($b = 35.94$; $p < 0.05$). This finding is contrary to prior

studies that have found that entering a guilty plea serves to reduce sentence severity.⁷⁰ However, given that previous studies have further reported that terrorist offenders who have an increased number of co-offenders and who are tried with co-defendants often are subject to decreased penalties,⁷¹ the effect of entering a guilty plea found here might be the result of the challenges the criminal justice system faces when prosecuting multiple terrorist offenders at the same time, or of the courts acknowledging an increased level of offender culpability. Lastly, when exploring the impact of sentencing context on sentencing outcomes, the regression model provides further support for findings that have already been uncovered in the descriptive and bivariate analyses. Being sanctioned in Period 2 ($b = 101.77$; $p < 0.05$) and Period 3 ($b = 52.29$; $p < 0.05$) was predictive of increased sentence outcomes compared to Period 1.

A final model was then run to explore any potential mediating effects among the covariates. When controlling for all covariates, being an immigrant ($b = 52.37$; $p < 0.05$), attending a training camp ($b = 36.68$; $p < 0.05$), and being arrested in Period 2 ($b = 75.63$; $p < 0.01$), all remain significant predictors of increased sentence length. Additionally, when compared to offenders whose actions resulted in death, posing an increased threat ($b = -76.78$; $p < 0.01$) and no threat to human lives ($b = -113.20$; $p < 0.01$) continue to be predictive of a decreased sentence severity. The impact of entering a guilty plea and being arrested in Period 3 are lost, but the effect of being part of Period 2 on increased sentence lengths remains. The final model highlights the importance of controlling for not only legal and extra-legal factors but also demographic characteristics and terrorism-specific and contextual factors when investigating the sentencing outcomes of terrorist offenders.

⁷⁰ See Bradley-Engen 2, *supra* note 54, at 849; Bradley-Engen 1, *supra* note 40, at 450; Engen & Gainey, *supra* note 62, at 1219.

⁷¹ Johnson, *supra* note 40, at 183.

DISCUSSION AND CONCLUSION

The current study sought to investigate variability in the sentencing outcomes of terrorist offenders adjudicated in Canada between 1963 and 2010. The findings indicate that offenders convicted of general Criminal Code offenses were sanctioned more harshly than those convicted of terrorism-specific offenses alone, and that the period in which offenders were adjudicated significantly impacted sentencing outcomes. Further, across the observation periods there was a visible shift not only in the demographic characteristics of offenders prosecuted for terrorism-related offenses, but also in the motivations of these offenders, their ability to complete their offenses, and the severity of the crimes perpetrated. Together, these findings highlight not only the changing nature of terrorist offenses and offenders in Canada but also how changing criminal justice responses have impacted both terrorist activity and the sentencing outcomes of this unique offending population.

As noted by Charters, Leman-Langlois, & Brodeur and Crelinsten, and further supported by the results reported here, imported grievances have served as the motivation for many terrorist incidents perpetrated in Canada.⁷² Across Periods 1, 2, and 3 the proportion of offenders who were legal citizens of Canada declined by 12.1%, while the percentage of individuals who were immigrants increased by 63.3%. As of 2011, 20.6% of Canada's total population was foreign born, and between 2006 and 2011, almost 1.2 million people immigrated to Canada.⁷³ Immigrants were shown to receive longer sentences. This finding is consistent with what Johnson et al. have previously reported in that foreign offenders who are convicted in a country not of their birth are sanctioned more harshly.⁷⁴ Given the small sample size and the absence of a matching control group, this study cannot provide the final word on whether these results reflect a systematic bias in the sentencing of immigrants, or whether the acts committed by these individuals were more serious overall. One potential hypothesis for this observed disparity could be that offenders who emigrated to Canada, especially those convicted in Period 3, participated in the purported "new terrorism." Under this model, terrorist action is intended to be as destructive

⁷² Charters 1, *supra* note 1, at 18; Crelinsten 1, *supra* note 1, at 17–22 (documenting numerous cases of international terrorism); Leman-Langlois & Brodeur, *supra* note 4, at 127 (pointing out that terror occurring in Canada is usually aimed at other countries).

⁷³ STATISTICS CANADA, IMMIGRATION AND ETHNOCULTURAL DIVERSITY IN CANADA 4 (2013) (identifying trends in Canadian immigration).

⁷⁴ Johnson et al., *supra* note 60, at 1007.

as possible, lacks a specific political objective, and is often motivated by religious, as opposed to political, ideology.⁷⁵ The effect of immigrant status was mediated (though not completely) by the inclusion of severity and contextual factors in our regression models. It is entirely possible that additional controls for case and offender characteristics would have further reduced the effect of immigration. While outside of the focus of this specific study, this result clearly deserves more attention from scholars.

Another finding that deserves greater attention relates to the variation in the ability of offenders to complete their offenses across periods. Over 80% of the offenders sanctioned in Period 1 and 100% of the offenders sanctioned in Period 2 were able to complete their offenses. However, following the perfect success rate recorded in Period 2, only 39.1% of offenders sanctioned in Period 3 were able to complete their offenses. There are different ways to interpret this result, depending on the role one attributes to counter-terrorist measures in preventing the completion of terrorist conspiracies. One plausible interpretation is that increased resources invested in the detection and investigation of terrorism cases following 9/11 prevented these events from happening. One of the key objectives of the ATA was to provide law enforcement with the tools necessary to proactively prevent terrorist incidents, while further criminalizing many offenses that focus on the preparation of terrorist acts.⁷⁶

This study, and the nature of the data it uses, is not designed to systematically evaluate the effect of the ATA or specific counter-terrorism measures. We can only raise potential scenarios, and establish some of the research questions that should be tackled in future studies. One of these questions is: Would all of the events prevented prior to their completion have actually occurred without the intervention of law enforcement agencies? Seen the other way, how many terrorist conspiracies dissolve prior to their actualization without external intervention by law enforcement agencies? If we work under the assumption that close to all of the prevented events of Period 3 would have been completed without the additional resources invested, the high prevention rate of Period 3 suggests a diminished capacity for terrorist offenders to carry out their offenses in contexts where law enforcement is provided with additional resources

⁷⁵ See generally WALTER LAQUER, *THE NEW TERRORISM: FANATICISM AND THE ARMS OF MASS DESTRUCTION* 127 (1st ed. 1999) (providing an overview of the history of terrorist movement, and of the role of religion in terrorist actions).

⁷⁶ Diab, *supra* note 12, at 353–56; see ROACH 2, *supra* note 6, at 376; Roach 4, *supra* note 15, at 513–21.

specifically designed to prevent to terrorist activity.

A similar emphasis on counter-terrorist measures was also found in Period 1 as a response to the FLQ campaign. In 1964, the Combined Anti-Terrorism Squad, which consisted of the Royal Canadian Mounted Police (RCMP) and the Quebec Provincial Police, was implemented in Quebec as a means to actively suppress FLQ activities.⁷⁷ Additionally, as the FLQ continued their campaign in May 1970, the RCMP established a new 'G' Division whose sole purpose was to address 'separatist-terrorist' activities in Quebec.⁷⁸ In fact, the only context in which specialized task forces or legislations specifically implemented to prevent terrorist activity were not operational was the 1983–2001 period where our data indicate that no terrorist conspiracies were prevented by law enforcement agencies. The absence of these specialized mechanisms in Period 2 was most likely the result of there being no perceived need for additional measures during this time period as no terrorist campaigns comparable to the FLQ's activities were being executed and 9/11 had yet to occur. As shown in Figure 2, the rate of terrorist events in Period 2 was also slower than in other periods, especially in the 1990s. In the end, at the very least, our data points to a careful separation of completed versus non-completed events when analyzing trends in terrorism in Canada. Research into the differences between these conspiracies, the offenders who participate in them, and the process that leads to detection is also needed.

The central focus of this study was on the variation in the sentencing outcomes following the ATA. Results reveal the ATA appears to not only have coincided with an increase in the number of terrorist plots that were uncovered prior to their completion, but also with changes in the ways that the criminal justice system processes terrorist offenders. Offenders sanctioned in Periods 1 and 2 were most commonly convicted of violence-related offenses. However, following the implementation of the ATA, none of the offenders sanctioned in Period 3 were convicted of violence-related offenses alone, and instead 69.6% of the offenders adjudicated in Period 3 were convicted of terrorism-related offenses. As such, in the years following the implementation of the ATA the Canadian criminal justice system has relied on terrorism-specific offenses when prosecuting terrorist offenders. The availability of terrorism-specific offenses has resulted in a decline in the use of violent offense classifications that, historically, were

⁷⁷ FOURNIER, *supra* note 22, at 68.

⁷⁸ *Id.* at 334.

relied upon heavily when prosecuting terrorist offenders. Furthermore, changing legal responses are also evident in the number of offenders who entered a guilty plea, and the amount of time offenders spent in pre-trial custody. Over half of the offenders in Period 3 pled guilty, yet despite this, Period 3 is also characterized by the highest average time spent in pre-trial custody. Increasingly, prosecutors are challenged by the necessity to balance the interests of intelligence and evidence agencies when preparing and trying cases. The difficulties that they face in doing this, and the delays that result because of it, have led to terrorism cases being referred to as “mega-trials.”⁷⁹ This observed increase in the time spent in pre-trial custody may be an unintended consequence of the ATA.

Finally, in line with Damphousse and Shields, we uncover that the context that offenders were sanctioned in significantly impacts sentencing outcomes.⁸⁰ Across the three periods, offenders sanctioned in Period 2 received the longest average sentence lengths, while offenders sanctioned in Period 1 received the shortest average sentence lengths. The observed differences between Periods 1 and 2 is in part attributable to the differences in the nature of the terrorist activities that were undertaken in the two time periods. The FLQ rarely targeted civilian populations, and the actions that they engaged in generally posed a lesser threat to human lives. As a result, their offenses were more minor in nature, and accordingly the average sentence lengths achieved in Period 1 reflect this. Conversely, the offenders adjudicated in Period 2 engaged in actions that had the highest severity, and accordingly posed the greatest threat to human lives. While the increase in sentence lengths achieved in Period 2 may in part be the result of the high success rate at which these offenders completed their offenses, it is also reflective of the fact that these offenders engaged in more serious offenses. The seriousness of offenses committed in Period 2 may also account for the observed decrease in the average sentence outcome achieved in Period 3. Both September 11 and the implementation of the ATA serve as important contextual markers for Period 3, and while many of the offenders adjudicated during this time period posed an increased threat to human lives, in comparison to Period 2, offenders adjudicated in Period 3 perpetrated offenses that were less serious in nature.

Accordingly, Schmeiser’s (as cited by Roach) sentiment that, “the ordinary criminal law adequately covers dangerous conduct by insurgents”

⁷⁹ GOVERNMENT OF CANADA, *supra* note 14, at 24; ROACH 2, *supra* note 6, at 11.

⁸⁰ Damphousse & Shields, *supra* note 40, at 190.

is both confirmed and contradicted by the findings uncovered here.⁸¹ In support of this perspective, across periods, the highest average sentence lengths were achieved in Period 2, when offenders were prosecuted using general Criminal Code provisions only. However, the results presented throughout further indicate that the criminalization of terrorism-specific offenses may provide legal measures that result in an increased number of terrorist plots detected prior to completion. In this way, it appears that while general Criminal Code provisions offer adequate resources to punish terrorist offenders, the criminalization of terrorism-specific offenses may facilitate the prevention of terrorist incidents. These can only be tentative conclusions. The data did not provide us with an opportunity to investigate the failed attempts that did not come to the attention of the police, nor did our research design allow us to make strong conclusions on the impact of the ATA on the success rates of terrorist offenders. Specialized legal measures, and task forces, may not prevent terrorist offenses in all contexts, and we hope that future studies can be framed to systematically test the impact of counter-terrorism measures and legislations such as the ATA.

However, in line with the sentiments of Roach and Shaffer, the evidence presented here also indicates that the implementation of these new legal measures, and the threat of harsher punishments, have failed to act as deterrents for offenders plotting large-scale terrorist incidents.⁸² This finding is not particularly surprising given that deterrence is not an effective mechanism for preventing crimes motivated by a political, religious or other ideological goal.⁸³ While LaFree and Hendrickson offer that the criminal justice model of responding to terrorism acknowledges that terrorism can never fully be eradicated, only controlled, states utilizing this model need to ensure that they do not implement legal measures that infringe upon the civil rights of their citizenry.⁸⁴ In the wake of September 11, in addition to criminalizing terrorism-specific offenses, Canada, and countries such as the United Kingdom, implemented additional legal mechanisms designed to proactively prevent terrorist incidents such as preventative detentions and investigative hearings.⁸⁵ While the use of these mechanisms in Canada has

⁸¹ Roach 6, *supra* note 17, at 154 (citing Douglas Schmeiser, *Control of Apprehended Insurrection: Emergency Measures vs. The Criminal Code*, 4 MAN. L.J. 359, 365 (1971)).

⁸² Shaffer, *supra* note 15, at 196; Roach 4, *supra* note 15, at 528; Roach 5, *supra* note 15, at 137.

⁸³ Roach 4, *supra* note 15, at 528.

⁸⁴ LaFree & Hendrickson, *supra* note 19, at 785.

⁸⁵ Roach 4, *supra* note 15, at 522–28; Roach 10, *supra* note 37, at 128.

been infrequent, the indeterminate detention of non-citizens in the United Kingdom was deemed to be a violation of the European Convention on Human Rights in 2004.⁸⁶ If it is true that terrorism can never be fully eliminated, and only managed, then repressive measures alone will never achieve the desired outcome of preventing all terrorist incidents. As such, although challenging, the Canadian Government must work to achieve a delicate balance between protecting the safety, and civil rights, of Canadian citizens and it must resist the temptation to implement wide sweeping repressive measures in the wake of terrorist incidents.

Although these findings provide important insight into the punishment of terrorist offenders in Canada, some important limitations must be addressed. When assessing the changing nature of terrorist incidents and offenders, we do so only by examining offenders who have been officially adjudicated. As previous studies investigating the prevalence of terrorism in Canada have reported an average of 405 incidents, and the current study only includes 153 offenders, our sample is inherently characterized by a selection bias. Similarly, as sentence outcome was the key variable of interest in these analyses, only offenders for whom this information could be located were included in the data set. Consequently, not all offenders who have perpetrated terrorist incidents are included here, and this is especially true for historical cases such as those pertaining to the SOF Doukhobors' campaign. Open source information was used to code the data utilized, and as such some important case details may be missing. Further, given the historical nature of much of this data it was difficult to consistently locate information pertaining to the number of counts offenders were charged with and whether or not they were tried by a jury or a judge. As such neither of these legal factors are controlled for. Finally, although it is not possible to include a comparison group for offenders who were convicted of terrorism-specific offenses, it would have been beneficial to include a comparison group such that we could explore how, or if, the sentencing outcomes of terrorist offenders differed from general offending populations convicted of similar offenses during each of the time periods, and to what extent being prosecuted under this label served as an aggravating factor.

Notwithstanding these limitations, the findings presented in this study provide much needed information not only about the sentencing outcomes

⁸⁶ *A v. Sec'y of State for the Home Dep't* [2004- UKHL 56, [2005] 2 A.C. 68 (H.L.) [43] (appeal taken from Eng.); *see also* ROACH 2, *supra* note 6, at 279.

of terrorist offenders prosecuted in Canada, but about the changing nature of the offenders who perpetrate these offenses. Over time imported grievances have become a key motivating factor for terrorist incidents, and offenders who have immigrated to Canada are punished more severely than those who were born in Canada. Following the implementation of the ATA, the average sentence length of offenders convicted of terrorism-related offenses has decreased; however, so too has the rate at which offenders are able to successfully complete their offenses. Accordingly, the observed decrease in the sentence outcomes of terrorist offenders prosecuted over the past decade is perhaps better characterized by the relative success of law enforcement in disrupting terrorist plots rather than by a failure in the new legislation to achieve harsher punishment.

APPENDIX 1. CODE OF CRIMINAL CONVICTIONS

<u>Terrorism</u>	<u>Violent</u>
<ul style="list-style-type: none"> - Participation in a terrorist group - Providing or making property or services available to terrorist purposes - Training for terrorist purposes - Providing financial services knowing that they will benefit a terrorist group - Instructing others to carry out activity for a terrorist group - Counseling to commit fraud over \$5000 for the benefit of a terrorist group 	<ul style="list-style-type: none"> - Facilitating terrorist activity - Commission of an offense for a terrorist group - Engaging in a hoax regarding terrorist activity - Attempting to participate in terrorist activity - Recruiting others to participate in terrorist group <ul style="list-style-type: none"> - First degree murder - Manslaughter - Armed robbery - Capital murder - Attempted murder - Assault
<u>Weapons</u>	<u>Theft/Other</u>
<ul style="list-style-type: none"> - Intending to cause an explosion - Activating an explosive substance - Possession of a weapon for a dangerous purpose - Possession of an unregistered firearm - Possession of explosives 	<ul style="list-style-type: none"> - Importing firearms - Possession of an explosive with intent to discharge - Making or having possession of explosives - Careless storage of ammunition - Using explosives with the intent to cause property damage <ul style="list-style-type: none"> - Possession of stolen property over \$200 - Threatening to murder an internationally protected person - Auto theft - Breaking and entering - Perjury - Promotion of hatred - Uttering threats - Criminal negligence - Intimidation - Kidnapping - Contempt of court - Burglary - Attempted extortion <ul style="list-style-type: none"> - Conspiracy - Breach of recognizance to keep the peace and be on good behaviour - Arson - Theft over \$200 - Mischief - Accessory after the fact - Destruction of property - Obstruction of justice - Theft over \$5000 - Being complicit in a kidnapping - Sedition - Forcible confinement - Hostage taking