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Chair

The Honourable Robert Nault

Standing Committee on Foreign Affairs and International Development

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• (1530)

[English]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Good afternoon, colleagues, ladies and gentlemen.

I wanted to start by reminding my colleagues and everyone here that pursuant to the order of reference of Thursday, April 14, 2016, and section 20 of the Freezing Assets of Corrupt Foreign Officials Act, statutory review of the act, we will begin this review this afternoon by hearing from some officials of the Government of Canada.

We're going to start off this afternoon with Global Affairs Canada and Hugh Adsett, the director general, legal affairs and deputy legal adviser, and Marc-Yves Bertin who is the director general, international economic policy.

I wanted to remind everyone that this is also a part of the Special Economic Measures Act and a number of other acts relating to this piece of legislation called the Freezing Assets of Corrupt Foreign Officials Act. For those who are following this, this is a section in the act that deals with an automatic review after five years. The intent of the committee is to do its legal work based on the aspects of that legislation and then to report back and recommend to Parliament, the minister, and the department as to what we think of the legislation and how it's working in the context of today.

With that, I'm going to turn it over to Marc-Yves Bertin who is going to do a joint presentation. Colleagues, this will be the first hour, and then we'll go with questions for an hour. Then we will proceed with the Royal Canadian Mounted Police and the Office of the Superintendent of Financial Institutions.

I'll turn it over to you, Marc.

Mr. Marc-Yves Bertin (Director General, International Economic Policy, Department of Foreign Affairs, Trade and Development): Thank you, Mr. Chair.

My colleague, Hugh Adsett, and I are delighted to be here to support the committee's work, particularly given our respective responsibilities over policy and operations under SEMA and FACFOA. We recognize that the committee is interested in issues of sanctions, a matter that is quite horizontal and may go into areas beyond areas of our responsibility and may very well be interested in covering discussions around other statutes. I'd simply like to reassure the committee that Global Affairs Canada is willing and very much able to make officials available as your deliberations unfold.

[Translation]

Good afternoon. On behalf of Global Affairs Canada, I want to thank the committee for having us here.

The review of the Special Economic Measures Act and the Freezing Assets of Corrupt Foreign Officials Act comes at an opportune moment.

The Canadian government is revisiting policies and programs to ensure Canada's international efforts are adapted to current global realities. This includes a number of policy reviews that were highlighted in ministerial mandate letters.

Internationally, the current conflicts have global dimensions. For example, the war in Syria has resulted in a refugee crisis spreading from the Middle East to Europe. States such as North Korea continue to challenge international stability and security. Given this context, a review of legislative instruments is important.

The Special Economic Measures Act was introduced in 1992 to improve Canada's ability to join other states in promptly and effectively applying economic sanctions. This was done in the context of the increasing trend by the international community to use economic sanctions as a means of maintaining international peace and security while reducing the recourse to military force.

The act allows Canada to adopt regulations to restrict or control the activities of Canadians and persons in Canada by prohibiting their engagement in what would otherwise be lawful business or economic activities with a foreign state or with persons or entities associated with that state.

The act specifically allows Canada to impose economic sanctions through regulations in two situations: first, when an international organization or association, of which Canada is a member, calls on its members to take economic measures against a foreign state; and second, when a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis.

Asset freezing—for example, the prohibition from dealing in any property held by a designated person—is one of the targeted tools that can be used to impose economic measures once an act criteria has been met. The determination of individuals and entities to designate for asset freezing is usually done in coordination with like-minded countries.

In the case of the Special Economic Measures Act, Canada typically imposes sanctions to complement existing UN-mandated sanctions, for example, in the case of Iran or North Korea, or when the United Nations Security Council is unable to reach a consensus, such as the case of sanctions against Russia for its actions in Crimea. Canada's use of sanctions imposed under the act has increased over the past decade, growing from one regime in 2007 to nine in 2016. Canada currently has sanctions imposed under the act against Burma, Iran, Libya, North Korea, Russia, South Sudan, Syria, Ukraine and Zimbabwe.

• (1535)

[English]

With respect to FACFOA, I should first note that it was enacted in 2011 to response to the Arab Spring events. Accordingly, it provides a responsive tool for Canada to support a foreign state that is in political turmoil and seeks to transition towards democratic rule and governance. The FACFOA authorizes the Governor in Council to temporarily freeze the assets of allegedly corrupt foreign officials, at the request of a foreign state, to allow this foreign state the opportunity to seek the ultimate seizure and recovery of assets through mutual legal assistance frameworks. Canada currently has regulations freezing the assets of politically exposed persons in relation to Ukraine and Tunisia.

In closing, I note that while FACFOA is utilized on behalf of a foreign state, the SEMA authorizes the Governor in Council to take action against a foreign state. In this respect, FACFOA sits apart from Canada's sanctions regime.

With these considerations in mind, my colleague and I look forward to your questions.

Merci.

The Chair: Thank you.

We're going to go right to Mr. Kent, please.

Hon. Peter Kent (Thornhill, CPC): Thank you.

Thank you, gentlemen for joining us here today.

I'd like to ask if there is any legislation in place today that would allow Canada to ban the visas of individuals, individuals about whom credible evidence exists with regard to human rights abuse or corruption abroad, and their attempts to bring that money to Canada?

Mr. Hugh Adsett (Director General, Legal Affairs and Deputy Legal Adviser, Department of Foreign Affairs, Trade and Development): I think that question is a question of admissibility to Canada. It's a question that I think is probably better answered by colleagues from Immigration, Refugees and Citizenship Canada. I suspect it's linked to their legislation.

Hon. Peter Kent: I asked that question with the case of Vitaly Malkin in mind. Vitaly Malkin, with whom I assume you're familiar, tried for 20 years to gain entry into Canada and to gain citizenship in Canada, but was prohibited. He was associated with money laundering, arms trafficking, trading in conflict diamonds, embezzling United Nations aid monies, and allegedly using profits from organized crime to subvert the democratic process in Russia. He was interviewed by CSIS and banned by officers of Canada Immigration,

a prohibition which was overturned by an Ontario judge based on a definition of Russian entrepreneurship in Canada.

I'm just wondering whether SEMA or FACFOA has any effect on prohibiting an individual like Mr. Malkin from entering Canada, bringing wealth to Canada, and becoming a citizen of Canada.

Mr. Hugh Adsett: I can say that neither SEMA nor FACFOA addresses questions of admissibility. There are provisions in the Immigration and Refugee Protection Act to deal with admissibility, but there is nothing in the Special Economic Measures Act that deals with questions of admissibility.

Hon. Peter Kent: I understand I'm getting into a sensitive area here, but would Foreign Affairs be aware of the reported 21 lines of secret information that the federal judge, in overturning the immigration ban, ruled too sensitive to be released to the public?

• (1540)

Mr. Hugh Adsett: I'm not—

Mr. Marc-Yves Bertin: The short answer is that we're not aware. I think it would be inappropriate to offer a view for a number of reasons, including the sensitivities I think you're alluding to, given the way that you've posed your question, not the least of which, though, is that IRPA is the responsibility of another department and another minister.

Hon. Peter Kent: I understand.

In the absence of what Parliament last year voted unanimously for in the form of the Magnitsky Act.... When the minister appeared before us and in other venues, he has expressed opposition to the Magnitsky Act on the grounds that it would interfere with Canada's relationship with Russia on the Arctic Council. I'm wondering whether you see any possible or potential conflict that would arise should Parliament in its wisdom pass the Magnitsky Act in the coming months.

Mr. Marc-Yves Bertin: We very much recognize that the Magnitsky case and potential legislative approaches to responding to that are of interest to this committee. We recognize, of course, as well, that there are a few bills in play, from both the previous session and this session, that will provide a good opportunity to debate and consider the merits of these statutes.

The work of this committee, as well, is going to be interesting and important, and we'll follow it with interest since there will no doubt be a lot of discussion of this issue over the weeks and months as your work program unfolds.

As part of our own examination of SEMA and FACFOA, of course, we'll be looking at the discussions and the public debates around these issues as we formulate our own view. Therefore, at this time, I think it would be premature for us to offer a government position on something that is still under consideration.

Hon. Peter Kent: With regard to FACFOA and the point that you made in your opening remarks, many people see as a shortcoming of FACFOA the temporary freeze on the assets of allegedly corrupt foreign officials and the fact that SEMA would not be capable of blocking an individual, such as the one I described earlier, from bringing in funds acquired through corruption and abuse of human rights abroad and placing those funds in Canadian financial institutions or real estate.

Mr. Marc-Yves Bertin: Hugh will have some views on this, but I may add some at the end.

Mr. Hugh Adsett: I will be brief. You've correctly pointed to the provision in the Freezing Assets of Corrupt Foreign Officials Act that makes the duration of an order under that act temporary. It's for five years. Those orders can be renewed if a foreign state requests that the regulation be renewed. It is a five-year limitation, but it can be renewed, and that renewal can be for more than one period of time if the foreign state requests that.

Marc-Yves, maybe you want to add more.

Mr. Marc-Yves Bertin: You made some points about SEMA and our inability to deal with individuals who might be coming in. Without speaking to the powers that the government would have under another statute, such as IRPA, I would note that it is important to remember that a number of the actions we take under various statutes are actually Governor in Council decisions, which by their very nature implicate a collective decision-making process, multiple ministers around the table. This means that departments have to work together and coordinate, both to support these types of decisions and to ensure a whole-of-government coherence in the way they are looking at what they may be considering under various policy and operational contexts under their own statutes.

I think the issue at the core of your question is whether we have a bit of a gap in coordination and coherence because of the statutes. You will know better than I that, in our western model of government, ministerial accountability or collective accountability of the cabinet process is an interesting dynamic, but it doesn't take away from individual ministerial responsibilities and accountabilities under statutes before Parliament. Therefore, we have to work within those constructs.

The construct or the solution to that challenge, inherently, is interdepartmental collaboration.

• (1545)

The Chair: Thank you, Mr. Kent.

I'll go to Mr. Fragiskatos, please.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you very much, Mr. Chair.

Thank you for coming today to appear before the committee.

In your remarks, you mentioned that sanctions have always been seen as an alternative to military force. With that in mind, I wonder whether you could tell the committee how effective sanctions are, in your view, as a tool in achieving restoration of international peace and security, democracy promotion, human rights protection, counterterrorism, and many other laudable goals that we would like to see in the international domain.

Mr. Marc-Yves Bertin: First and foremost, we do see sanctions as an exceptional tool because of the restrictions we are inherently applying to what are otherwise completely legal activities, as well as because of the risks associated with the use of sanctions. The way we look at their effectiveness is an interesting one insofar as effectiveness, in terms of persuading a change of behaviour and a policy shift, is a very difficult thing to attribute results to, in an international context.

Sanctions are a complementary instrument. We use them, generally, when other mechanisms or other steps that have been taken and tried have failed. Because we do that as part of a broader suite of interventions—whether that's negotiations, participation in peace processes, or international advocacy activities—it is difficult to know what the tipping point is.

What complicates it even further is that we tend to use this instrument, importantly, along with other countries. We harmonize our approach with other countries, which means that the relative weight of Canada's intervention, versus the relative weight of the European Union, the United States, or what have you, is difficult to discern in that context.

As I mentioned, we tend to view them as most effective when they are a selective complement linked to a clear policy outcome or a desired shift in policy and behaviour on the part of a foreign country, when they are applied universally, and when they are tailored—or “smart”, to use our internal jargon—insofar as they are focused on key decision-makers and their associates.

Mr. Peter Fragiskatos: Well, you have avoided a lot of jargon today, so on behalf of the committee I think I can say thank you.

I have a question as far as SEMA goes, specifically. Obviously, when an international organization, the UN for example, issues a determination under chapter VII that a grave breach of international peace and security has taken place, then it is clear that this determination has been made and Canada can act in kind. I am more interested in the second aspect here, when “a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis”. It is not clear that an international organization has deemed it that way, but Canada, still under SEMA, has the power to impose sanctions.

Who determines how international peace and security are defined in that instance? Who does the determination, and how is that defined, exactly?

Mr. Hugh Adsett: At the end of the day, it's a decision for the Governor in Council. The Governor in Council makes the determination under the act as to whether there has been a “grave breach”. “Grave breach” isn't defined in the act itself. It really is a question of the context. Advice will be given to ministers. Ministers will then take that into consideration, make the determination, and make a recommendation to the Governor in Council. That's the process, and in a way that's the substance, too.

Mr. Peter Fragiskatos: You say there's no clear definition in the act. Do you think that is problematic or is that something that shouldn't be of concern?

Mr. Hugh Adsett: I won't venture an opinion because I think that would be for the committee's views and for ministers to speak to. I would say that my recollection from having looked at the parliamentary record for the time when the act was adopted is that there was a debate about various elements of the act. Part of the conclusion of the debate seemed to have been that it was beneficial to have a broad scope for possible action to allow the Governor in Council essentially to make decisions in very fluid contexts where a number of things might be at stake.

● (1550)

Mr. Peter Fragiskatos: I have one last question. With everything that you've said, is it possible that human rights violations could fall under a definition of a "grave breach of international peace and security"? Could they be captured under that category?

Mr. Hugh Adsett: I should perhaps put a caveat on what I say because one of my roles is to provide legal advice in the department. Without my providing legal advice at all, I will say that certainly there have been situations where there have been serious violations of human rights. These have formed part of the conclusion that there was a "grave breach of international peace and security", such as would cause an international crisis.

Mr. Peter Fragiskatos: That would include abuses perpetrated against whistle-blowers, for example, given that those kinds of violations usually take place within the context of mass human rights violations?

Mr. Hugh Adsett: Essentially, it goes back to what the test is in the legislation itself. It could be human rights abuses. It could be violations of international humanitarian law. It could be a number of different elements that allow you to reach that point of it being a "grave breach of international peace and security". I wouldn't want to say that there's any one specific element that will necessarily trigger that, whether it's your example of abuses against whistle-blowers or something else. It really depends on that entire context. It's very hard to take one specific aspect out.

Mr. Peter Fragiskatos: Okay. Thank you.

The Chair: Thank you, Mr. Fragiskatos.

[Translation]

Ms. Laverdière, go ahead.

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): Thank you, Mr. Chair.

Thank you to the two witnesses for being here today. I hope you'll show a little tolerance because we're only just beginning this study.

I'm trying to sort out how everything works. My colleagues have asked the questions I wanted to ask.

I want to go back to the issue of the sanctions' effectiveness. The issue has been thoroughly debated. When we introduce sanctions, we must avoid harming the people in a country.

Have comprehensive analyses been conducted? Has the United Nations conducted an analysis of the sanctions' effectiveness that could shed light on the matter?

Mr. Marc-Yves Bertin: Yes, indeed. I see Mr. Adsett nodding.

Analyses have been conducted. There's no shortage of them. A number of good analyses in the public domain have been conducted by firms, academics or international organizations such as the United Nations. In general, the research and findings vary greatly, of course, depending on the information base used, meaning the cases examined. As I said before when speaking about effectiveness and impact, it's very difficult to determine whether sanctions, as a whole, have been effective or less effective.

Ms. Hélène Laverdière: Thank you.

I'll be asking questions about who does what, about what Global Affairs Canada does and about everyone's responsibilities. You're welcome to make comments or provide information to help us understand.

I have a more specific question about the freezing and seizing of assets. I'm thinking in particular of the brother-in-law of former Tunisian president Ben Ali. The man fled to Canada and his assets were then seized. Tunisia asked for the assets back. I think only a tiny fraction of those assets have been returned.

How does the process work?

Mr. Marc-Yves Bertin: I could start by describing the roles and responsibilities, then let Mr. Adsett speak about asset freezing.

Regarding our role, I could give you an overview of who does what, or, at least, who we work with and in what context.

Our role is to provide advice and recommendations to the Minister of Global Affairs, who is responsible, under the act, for making decisions and for recommending to the Governor in Council the establishment of sanctions. We work, of course, with the Department of Finance agencies. Representatives from some of those agencies will be here today to talk a little about their role regarding information for financial institutions, with the understanding that we alone, as a department, have the statutory duty of working under the act. Obviously, we also work with the RCMP and Canada Border Services Agency on enforcing and implementing the act. Our coordination role also has an international dimension, meaning we work with other countries that share our perspectives and with international organizations in the context of the United Nations. We therefore play an important role in terms of coordination. We also still work with the Department of Finance, especially when establishing proposed regulations that affect restrictions as part of a collective decision.

I'll stop here and turn the floor over to Mr. Adsett.

● (1555)

Mr. Hugh Adsett: Thank you, Mr. Bertin. Thank you, Ms. Laverdière, for the questions.

[English]

The Freezing Assets of Corrupt Foreign Officials Act of course does provide for asset freezes. In the specific case of Tunisia, something in the order of 123 different individuals were identified as politically exposed foreign persons whose assets could be frozen in Canada. I'm not in a position to be able to speak to specific individuals or specific cases. However, I would note that what happens under the act is that the assets are frozen. If the foreign state wishes to have the return of those assets, they need to take a further step to be able to have the assets returned. That usually will be in the nature of a mutual legal assistance request in order to have assets returned.

As suggested, the Freezing Assets of Corrupt Foreign Officials Act is very much in the spirit of a temporary measure in a very particular set of circumstances to allow for that temporary freezing of assets.

The Chair: Just to make it a little easier for the committee, one of the objectives of the exercise is to connect the dots vis-à-vis the machinery of government. As you know, a number of acts are attached to the work we're doing.

I think Madame Laverdière's question relates to a little more in-depth interest by the committee on matters like export permits, which are connected matters that deal with the decision-making process through the order in council; matters that relate to the United Nations Act; and why we would prefer to use these pieces of legislation versus what's being recommended at the UN. There are a number of connecting pieces.

If you can, or if it's possible, try to inform the committee as much as you can about how the machinery operates to connect the dots. If you can't, and someone else needs to be at the table, we'd very much like you to let us know that, because it's our intention to go through the exercise. As you might imagine, at some point we will be going clause by clause through this legislation. A number of pieces in this legislation we could ask you about today, but it's a little early. That's not to say that the committee won't do it, but it's the objective to get a better understanding of that. For example, in this section dealing with the Freezing Assets of Corrupt Foreign Officials Act, it talks about the fact that we are asked by another country to put this in place, and they would ask for it to continue after five years. The obvious question to ask is at what point we do our own review and say that it might not be appropriate. Those are the kinds of machinery-of-government issues that I think we want to make sure the Government of Canada can deal with in the legislation. I just wanted to bring you back to that larger discussion that we need to have early on. The machinery of government seems to be a big part of how we'll deal with this.

There's a second part that you may not be aware of. We are aware that some other countries, such as the U.S., arrive at this decision from a different machinery-of-government structure. We will be looking at how the U.S. does it and how Britain does it just to compare and contrast, to see whether theirs is more effective than ours. That's part and parcel of the process.

That's just to give the witnesses a sense of what I think the committee is looking for.

I'll go to Mr. Levitt now.

• (1600)

Mr. Michael Levitt (York Centre, Lib.): Thank you.

I'm going to forward on from there a bit. How does the government coordinate and co-operate with like-minded states and international organizations in the design, application, and enforcement of sanction measures? Maybe you can use the two examples of Myanmar and Russia, which are currently quite active files for this committee and others.

Mr. Hugh Adsett: In a very high level and a very broad sense, the government uses particularly its diplomatic channels, its diplomatic missions, in order to coordinate our activities with like-minded states. We actually do work on sanctions quite closely with like-minded partners, whether it's the United States, the European Union, Australia, or others that we often work together with on a lot of international issues.

There are different networks depending on the specific sanctions regime, and different groupings of diplomats who might come together in some manner to discuss sanctions. Those can unfold depending on the circumstances, really.

That's I think probably one of our principal ways of coordinating: through our missions abroad and our diplomatic network.

Mr. Michael Levitt: In terms of Russia and Myanmar, can you give us a bit of an insight into how those sorts of sanctions would come about with our allies?

Mr. Marc-Yves Bertin: As Hugh was pointing out, I think we tend to work in various offices, in various points on the map, so to speak. If we're talking about a rapidly unfolding event that is the concern of the international community, there will be a lot of attention paid to this in New York City. The UN and our mission on the ground would work with other countries to identify and influence the course of action on how things are materializing.

Once the UN acts, for example—and perhaps to tie the knot on a question the chair was pointing out—and once the UN decides that there are going to be sanctions, if they can agree, then we, under the UN act, are compelled to do so, and then we implement. The discussions at the UN will tend to be at a sufficiently high level in terms of the breadth with which they'll identify the types of actions that should be taken. We will work interdepartmentally to identify just what makes the most sense within a Canadian context in terms of the types of sanctions or the elements of the sanctions that we'd like to pursue.

At the same time, there may be instances where an area or an issue of concern isn't playing out at the UN because, for example, one of the Security Council members won't agree with the others. Within that context, the conversation will be pursued in different venues. It could be in the Commonwealth. It can be in other such venues where the international community will come together, so there's a degree of like-mindedness that often characterizes the way we behave with others and how we behave among others, and that is in trying to pursue a harmonized approach.

Invariably, what that means is that it takes a degree of entrepreneurial spirit on the part of Canada's diplomatic corps and the diplomatic corps of other countries in the way that they'll make their arguments and have positions brought forward—that is, the arguments and positions of their governments.

Mr. Michael Levitt: In terms of a bit of a follow-up on that, obviously sanctions are dynamic, in that things are changing all the time within the countries that we're dealing with. How often are our sanctions reviewed once they're in place? Using Russia as an example, maybe, how are the lists of individuals and entities that are subject to the sanctions measured and derived? How often are those updated?

• (1605)

Mr. Marc-Yves Bertin: Sanctions, once applied, are monitored on an ongoing basis. Because they're part of a broader bilateral response in terms of.... Sorry, let me define that. Insofar as the sanctions are often taken within the context of a number of other discussions and activities that are going on, we will, in our missions in particular, play a front-line role in terms of assessing just how things are being met and the implications on the ground. They'll get feedback from the public, including, for example, the private sector, which might have views in terms of trying to do business in a given context or market. We do that, and we do that on an ongoing basis.

That said, the act, SEMA, actually has, under its administration and enforcement section, a requirement for the Governor in Council to issue a report within 60 days of the lifting of a regulatory measure, i.e., sanctions. Once they're fully lifted, we'll issue a report. We have to issue a report. Thus far, we've applied SEMA in 11 instances. Twice, it has been lifted completely—Haiti and Yugoslavia—and in both instances we've issued a report within the 60 days—so there's tactical and then there's strategic.

The Chair: You have one minute.

Mr. Michael Levitt: Going on to fact four, for a second, you mentioned Ukraine and Tunisia. Have any requests from foreign states requesting sanctions under fact four been denied?

Mr. Hugh Adsett: I'm not aware of any having been denied.

The Chair: Thank you very much, Mr. Levitt.

Just on that matter, with regard to Canada's regulations for the freezing of the assets, you said something in your comments that some 200 have been applied at one point. Is that right?

Mr. Marc-Yves Bertin: Sorry?

The Chair: How many politically exposed persons have been put on the list versus how many are right at this moment still in effect?

Mr. Hugh Adsett: I'm just going to look at my own notes.

We had adopted regulations under the Freezing Assets of Corrupt Foreign Officials Act in the cases of Tunisia, Egypt, and Ukraine. The total number of listed persons was 289, and currently there are eight individuals listed under Tunisia, and 18 under Ukraine. Those are the current numbers.

The Chair: So eight and 18?

Mr. Hugh Adsett: That's correct.

The Chair: Out of the original 289?

Mr. Hugh Adsett: That's correct.

Originally, it was 123 for Tunisia, 148 for Egypt, and 18 for Ukraine.

The Chair: Okay.

Before I go to Mr. Miller, I want to ask a question that I may not get an answer to right off the bat, but I want you to think about it.

We are very interested in having a conversation, and more than just a hypothetical one. It's my interest, as the chair, in making sure the committee is well informed.

I want to ask Global Affairs whether you would be allowed to come in camera to have a discussion, just with the committee if

necessary, so we could talk about specifics in order to get a better sense of how this all works. The only way to do that, of course, would be in camera.

I would be interested in your views of that, not necessarily at this moment, but I'd like you to get back to the committee with that particular request, if that's possible.

With that, I'll go to Mr. Miller.

Thank you.

Mr. Marc Miller (Ville-Marie—Le Sud-Ouest—Île-des-Socurs, Lib.): Thank you, Gentlemen.

As Bob alluded to earlier, we're beginning an extensive review of these two legislative regimes and their connected acts. Part of the exercise is to figure out, actually, what they do and what they don't do, what they should do, and what is desirable for this committee to recommend if there are holes. They are complicated; they're intertwined. Obviously what has been on the top of our minds, in light of the testimony that's been given in prior meetings of this committee, is the topic of gross violation of human rights, regardless of the country or officials perpetrating them.

The question really is, when you examine the legal regimes that exist in Canada, is there anything that addresses the ability of the government to freeze assets in the presence of a gross violation of human rights by a foreign official or a foreign person in the absence of terrorism? They would not fall under section 83 of the Criminal Code, the proceeds not being from that of crime. Literally, it's assets of a person in Canada, and then in the manifest presence of gross violation of international human rights, as assessed by some standard, which we don't need to go into at this point, that does not rise to a violation or a grave concern for international peace and security.

That sort of scenario takes us out of SEMA, and out of a requesting country under the FACFOA. In my mind, there's a void there, but you're the experts, and I would like you to speak to that.

• (1610)

Mr. Hugh Adsett: I could maybe give a very factual answer to the question.

I took notes to make sure that I have the paradigm that you have in mind down correctly. Essentially, you're talking about a situation where, although there are gross violations of human rights, it doesn't rise to the threshold of a grave breach of international peace and security. You're talking specifically about freezing assets as opposed to admissibility questions, for example, so situations where an individual may not be admissible to Canada because of the application of the Immigration and Refugee Protection Act.

I'm not aware of an existing legislative instrument that has those specific criteria. As I was saying, with the Special Economic Measures Act, there are a couple of what we call "triggers", but the trigger for our own autonomous sanctions is the grave breach of international peace and security. That might be in a situation where there are gross violations of international human rights, but that is not the term itself that's used in the act.

The other potential vehicle that exists would be if the Security Council were to make a decision in that context, and then we would have to implement sanctions in that context.

Mr. Marc Miller: Is there anything that prevents the government from just doing it, with respect to foreign nationals and their assets situated in Canada, other than investment treaty protections?

Mr. Hugh Adsett: Sorry, can you, perhaps...?

Mr. Marc Miller: Can the government just freeze assets of a foreigner situated in Canada?

Mr. Hugh Adsett: That question probably goes beyond my competence in the sense that... I'm not aware of an ability of the government simply to freeze assets. It would need a legislative basis of some kind. But I can't speak with any definitiveness either on whether there are instruments out there or on what the full range of instruments might be.

Mr. Marc Miller: As a final question or observation, I would say far be it from Canada to act in a unilateral way in such a sensitive situation. The situation I'm describing is really one in which a large part of the international community could readily ascertain that, as you mentioned or at least alluded to earlier, you would prefer to act in concert in imposing sanctions.

So, if there's a hole of the nature I described that needs to be filled, what are the pitfalls internationally with respect to countermeasures that a country that may be stronger than ours or weaker than ours may enact against our nationals, which would obviously be foreign to them? What measures could be taken on a trade level against Canada should it choose a path that would be truly unilateral as opposed to working with its multilateral partners?

I'd be glad if you would like to comment on that. If it's outside the ambit of your presentation, that fine.

Mr. Marc-Yves Bertin: With respect to sanctions in general, whether unilateral or not, they always entail some obvious consequences both for the target state and target individuals and for the sanctioning state. These include loss of commerce. Adversity can affect civilians, including in the form of lost jobs and economic hardship.

With respect to the imposing country, the country that is sanctioning, the same is also true insofar as business opportunities for firms can be lost. In fact, if countries institute import substitution programs, the economic implications can be lasting.

There are also implications for citizens who want to send remittances, for example, to a targeted state. You always expose yourself to retaliation by the target state and its allies. If you do something, they'll do something back. That's why we look at these sanctions as an exceptional measure, and that's why we've always used them in a harmonized manner with other countries, as well as in combination with other diplomatic measures.

There's been a bit of an evolution in international practice since SEMA was first instituted. We have gone towards more targeted measures, that is, going after and targeting decision-makers and their associates, for the simple reason that in many respects, there was a concern in the early days of sanctions practice that broad-based embargoes actually had a negative impact on populations. The interesting thing about a more tailored approach, at least as the economic theory goes, is that by taking the targeted approach, you end up mitigating the implications for third parties—other countries and their citizens and entities or private-sector players. That has the virtue, in theory, of reducing and mitigating the desire to defy a sanctions regime.

All that is to say that there are obvious implications with sanctions, whether unilateral or multilateral, and we always have to be prudent in the way we look at them.

• (1615)

The Chair: Thank you very much.

I'll now go to Mr. Kmiec, please.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you, gentlemen, for coming in today for the beginning of this study.

I'm going to begin with the Special Economic Measures Act. My first question to you is about the "grave breach of international peace and security". How is that defined by your department right now? I understand there's a definition that's purely up to the government to decide, but what is the definition the department is using right now?

Mr. Hugh Adsett: I'm not sure that my answer is going to be entirely satisfactory. The practice is to look at the context. It's to look at the facts of the situation and determine if, in the view of those analyzing the situation, it seems to be one that would be a grave breach of international peace and security. I think that's probably about all I can say about it.

Mr. Tom Kmiec: Do you rely on international institutions or on internal analysts who say that the situation is a breach, and then you bring it up to the level of the government?

Mr. Hugh Adsett: We would always look at the analysis of the situation, not only by our own diplomatic missions but also by other international organizations, whether that's the United Nations, or the Organization for Security and Co-operation in Europe if it's an event taking place in Europe, or the Organization of American States. That kind of reporting that the department receives from its missions abroad, from multilateral institutions, and from public reporting and otherwise would all form part of the analysis of the situation.

Mr. Tom Kmiec: To change pace here, on the Freezing Assets of Corrupt Foreign Officials Act, you mentioned that no request has been denied so far, but are there any requests pending that have not been dealt with yet?

Mr. Hugh Adsett: Not that I'm aware of.

Mr. Tom Kmiec: Okay.

Maybe I'll speak more broadly. On how many countries does Canada currently have broad-based state sanctions?

Mr. Hugh Adsett: Just give me one moment. I'll make sure I give you the correct number.

Mr. Marc-Yves Bertin: Under SEMA, we've applied the statute against 11 countries, and there are currently nine active regimes.

Mr. Hugh Adsett: That's right.

Mr. Tom Kmiec: Beyond SEMA...?

Mr. Hugh Adsett: I was just looking at my notes to see if I had broken this down into SEMA and the United Nations Act, because of course there are UN sanctions as well. I might have to get back to you with the precise number just to make sure—

Mr. Tom Kmiec: Yes, sure.

Mr. Hugh Adsett: It's not hard information.... I just want to give you the right number. There are a number of others. I'll see if I can find it in my notes.

Mr. Tom Kmiec: In how many of those—this might be something you could get back to the committee on—situations do the state sanctions then become very specific to organizations or to actors within national governments that are taking actions that are a grave breach of international peace and security or that would fall under the Freezing Assets of Corrupt Foreign Officials Act?

It seems that when you're targeting a national government there are individuals making those decisions within that. I'm just trying to get at how many of those, then, are also being targeted as part of state sanctions, potentially, as opposed to individualized seizures of their assets and prohibitions from travel.

• (1620)

Mr. Hugh Adsett: Marc-Yves and I were just having a quick exchange here. I think in all situations that would be the case.

Mr. Tom Kmiec: In all situations? Can you get back to the committee on the details of it so we can have that information for future study?

The state sanctions that we levy against different governments and administrations have these individuals, then, but it seems to me that if we're punishing them for taking certain actions we disagree with, shouldn't we also be barring them from entering the country and doing business with Canadian companies?

Doesn't that go part and parcel with sanctioning them without affecting third parties or other states that might do business with them, which we may be allies with or on friendly terms with?

Mr. Marc-Yves Bertin: Yes—

Mr. Hugh Adsett: Go ahead.

Mr. Marc-Yves Bertin: It goes back to a previous question.

We obviously have to work within the legal institutional construct, which is our Government of Canada and the way that ministerial responsibilities are attributed and the space within which they operate. We have an immigration minister who deals with admissibility issues. We have a foreign minister who deals with matters under SEMA.

When we look at a situation in our bilateral relationship with a country and we are of the view that something that's going on is inconsistent with our foreign policy objectives, broadly speaking, I think it's fair to say that there are a number of cards we can play.

Sanctions would be one of them. Sanctions is not necessarily a legal term. Just in general terms, sanctions can relate to limitations on travel or limitations on the import and export of goods or technical data, as under SEMA. It could involve the imposition of asset freezes, financial services being denied, or even restrictions and prohibitions in terms of transport, marine and air transport.

We have a number of things that we could be doing and that we may elect to pursue at a given time. As the situation evolves, we might decide that we want to ratchet things up or ratchet things down in terms of the types of sanctions that we can take, but also in terms of other types of activities we may want to pursue, such as diplomacy and advocacy on the international stage, if that's even programmatic. There might be something that from a technical assistance perspective we might do in a foreign country in order to buttress or promote human rights or another public policy objective. Whether it's legislative, programmatic, or just operational in terms of advocacy, there are a number of instruments that we can deploy. When looking at a bilateral relationship, our geographic desks have the lead to balance out all of these considerations in terms of where the government wants us to bring the relationship. Therefore, they have to make a calculation as to which instrument they want to deploy and when.

The Chair: We'll go to Mr. Saini, please.

Mr. Raj Saini (Kitchener Centre, Lib.): Thank you very much.

Just out of curiosity, let's say, hypothetically, that you have one country and there's a change in government, either peaceful or non-peaceful. Some of the criteria that you've noticed here are that there has to be inner turmoil in that country and that the political situation is uncertain. How do we decide that the country that's requesting us to make an order to disclose information is not seeking retribution for a political entity, whether it be a dictatorship or a democracy? How do we know that it's not retribution that's being asked of us, but rather a legitimate question?

Mr. Hugh Adsett: That's an important question. What I can tell you is that every time there is a request under the Freezing Assets of Corrupt Foreign Officials Act, an analysis is done. A number of considerations are taken into account. It's also possible under the act for the Governor in Council to determine not to impose a regulation if it's viewed to be inappropriate to do so.

• (1625)

Mr. Raj Saini: If you have an individual who's under this act and you're going to freeze their assets, one of the things that we've seen, especially in international finance, is that this person may have cloaked their investments in the country either through a corporation or maybe through someone else's name. What resources do we have to make sure that we have the ability to search and to know exactly what assets this person actually does have in this country?

Mr. Hugh Adsett: I'm wondering if perhaps I can wait on the question of resources because I think the question there may relate to activities of the Office of the Superintendent of Financial Institutions.

The Chair: Thank you.

I have a couple of matters.

First, I want to advise the officials that it is very likely you'll be called back. As you might imagine, this was fairly quick, and the beginning of a process. I want to remind you of what I call connecting the dots. When it comes to machinery of government, it's extremely important.

One of the issues that I know is going to be talked about significantly in this committee is the multilateral significance of these pieces of legislation. If you look at SEMA, and the nine sanctions that are still in place, I'll be interested in having you answer some questions at some point. Were these taken independently or were we following the lead of other countries that had already put sanctions in before Canada put its sanctions in? Are there any on the list at all that were done independently of other nations, or are these all connected multilaterally? Is the review based on information of other countries that are making these kinds of decisions as well? I think that's important to know and to keep in mind.

The other issue that we will be again exploring is to look at the differences. For example, I don't imagine the economic sanctions in Burma are the same as the economic sanctions of the other eight. There's a fairly broad context of how you arrive at economic sanctions. I wonder if you could categorize them for us, meaning there might be simple sanctions for certain countries, and much more complex and elaborate ones, especially on the financial side, for countries like Russia, Ukraine, and then potentially even Iran.

I want to get those differences because they would make the discussion flow a little simpler, I think, if we could do that.

On behalf of the committee, I want to give you the chance to say a last few words, and then we'll go on to our next witnesses. I want to thank you for this opportunity to begin the dialogue, and I want to stress "begin the dialogue".

Mr. Adsett.

Mr. Hugh Adsett: Mr. Chair, thank you for that.

I only wish to give the response to the question that I was asked earlier regarding the number of United Nations Act regulations. There are 16 United Nations Act regulations. I apologize for not having that at hand, but that's the information.

The Chair: Thank you very much.

We'll take a five-minute break, and then we'll get to our next witnesses.

• (1625) _____ (Pause) _____

• (1635)

The Chair: Thank you, colleagues.

We're now into the second hour of the reference that was referred to earlier on section 29 of the Freezing Assets of Corrupt Foreign Officials Act, and our statutory review of the act.

In the second hour, we're going to hear from the Royal Canadian Mounted Police, Superintendent Steve Nordstrum, director, federal policing criminal operations, national security; Sergeant Peter Hart, federal policing criminal operations; and the Office of the Superintendent of Financial Institutions, Christine Ring, managing director.

Welcome to you all.

Mr. Nordstrum, you have the floor.

Superintendent Steve Nordstrum (Director, Federal Policing Criminal Operations, National Security, Royal Canadian Mounted Police): Good afternoon.

Thank you for your time today, ladies and gentlemen.

My name is Superintendent Steve Nordstrum, and I'm with the Royal Canadian Mounted Police.

[Translation]

I'll speak mainly in English since my French is very rusty.

[English]

I'll begin today with an overview of the RCMP's role in relation to SEMA and the Freezing Assets of Corrupt Foreign Officials Act, FACFOA.

I'm also going to share some examples of a couple of investigations that were successful pursuant to those acts, and I'll briefly address some of the challenges that we face not just within the investigation prosecution of these acts, but writ large in the criminal justice area.

The RCMP's mandate is a multi-faceted one, and it includes preventing and investigating crime, maintaining peace and order, enforcing laws, and providing vital operational support services to other law enforcement agencies in Canada and abroad.

While the RCMP leads national security enforcement efforts, we can't do that without our partners provincially, regionally, municipally, and at the city level. We will refer to them as co-operative ventures. The RCMP also works in partnership with other federal government departments and agencies, predominantly in this area that we're going to discuss today, such as the Canadian Security Intelligence Service; the CBSA; Global Affairs Canada; Immigration, Refugees and Citizenship Canada; and FINTRAC. We also work with international law enforcement and industry, both from here and abroad, through our liaison officers, and we work within the Export and Import Permits Act, as well.

With CBSA, we work to address inbound and outbound breaches of sanctions and regulations at ports of entry, and we identify travellers who are ineligible for entry into Canada pursuant to the Immigration and Refugee Protection Act, or IRPA. The RCMP also has a shared responsibility with the CBSA to investigate cases linked to the proliferation of strategic goods and technology.

With FACFOA, the RCMP receives information from banks and other financial institutions reporting that they have blocked all financial services to someone subject to the act or its regulations. Financial institutions are also regularly mandated to search their records and inform the RCMP if they freeze assets and if they identify prohibited financial transactions pursuant to FACFOA.

While the RCMP's role with respect to sanctions has included enforcement and investigations, we also provide training, participate in industry outreach activities, and contribute to general policy development as it relates to sanctions and counter-proliferation. Any individual, company, or Government of Canada department can provide information to the RCMP relative to a possible federal offence. In the cases relating to sanctions, the referrals are often made by CBSA and our international law enforcement partners such as the Federal Bureau of Investigation or the immigration and customs enforcement branch, or ICE, in the U.S.A.

Specifically, the UN act, its regulations, and SEMA also require anyone in Canada, and Canadians abroad, to provide the RCMP with information they know pertaining to property that could belong to anyone on a sanctions list. This includes information about transactions or proposed transactions relating to such property.

When the RCMP receives information, it is assessed to determine whether it is within the law enforcement mandate and what the appropriate next steps may be. Within the national security arena, the RCMP utilizes the priority rating of operational files, or PROOF, which was designed to assess information to determine the next steps, the level of risk that may be incurred as a result of the information, and the level of governance that the federal policing criminal operations, national security, must exercise.

When it is a medium or a high risk, that is when our national security governance mechanism comes into play.

● (1640)

Matters that receive a low priority or a low PROOF get referred to other government departments, potentially CSIS or to the police of jurisdiction. That all depends on whether it relates directly to a national security criminal offence or another federal statute.

The RCMP relies on the expert controls division at Global Affairs Canada to determine whether a good or technology is controlled under the export control list. Such determinations are essential to investigations and even more essential to a successful prosecution.

Once the RCMP determines that it may commence an investigation and what degree of oversight is required, the mechanics of police work kick in. Federal statute investigations are complex, resource intensive, and onerous. It's very likely that they will meet the definition of what we call a major project and if that's the case, then we have a prioritization process for major projects.

Many of the major project investigative techniques require approval from national headquarters, so when an operational plan is written that includes such an investigative technique, it will come into the headquarters from the divisional level. My shop will then assess it and will move it up the line to the assistant commissioner for federal policing operations for approval.

At the same time, we have what we call a project prioritization scale. Within that scale, what we're looking for is the effective use of major case management techniques to enhance the likelihood of successful prosecution. The prioritization model results in the federal policing operations information management personnel looking at all of the factors surrounding that project and assigning to it some scores.

Then there's a standing committee within our national headquarters of personnel, such as myself and chaired by the director general of federal policing criminal operations, that will assign a tier to that file. Tier 1 are the highest priority files and they require significant oversight from federal policing criminal operations. Tier 2 requires less, and tier 3 won't require any sort of NHQ oversight.

This isn't a stop-start process. The investigators are still building a case, gathering evidence, and submitting their operational plans for assessment. Once the investigation is approved, the specialized investigative techniques are put into play, and it's deemed a priority one or a priority two, and that's really when the police work starts. We can't do that without good partnerships, particularly with our Public Prosecution Service of Canada personnel.

Many of our integrated national security enforcement teams have embedded crown prosecutors with them, which is very helpful. Not that we're led by the crown, but it's nice to have that specialized legal background to help us manoeuvre through some of the trickier areas of the law. Of course, at the end of the day, the attorney general has to give consent to many charges being laid pursuant to the Anti-Terrorism Act or some of these acts that we have here, SEMA, in particular.

There are two investigations that I'll mention briefly that have been successful in these areas. The first is the Yadegari case. As I spoke to partnerships earlier, it was a referral from the U.S. immigration and customs enforcement and it came by way of CBSA. It resulted in a project called OWATCH in 2009 and it determined that a male named Mahmoud Yadegari, who was an Iranian-born Canadian citizen was using a front country to procure pressure transducers or a pressure sensor from manufacturers and distributors in the U.S.A and Canada in contravention of the Iran regulations, the Export and Imports Permit Act, the Canada Customs Act, the Canadian Nuclear Safety and Control Act, and the Criminal Code of Canada.

These transducers were to be exported from Canada to Dubai, but intended for use in Iran's nuclear program.

● (1645)

The investigation was an onerous one, as I said before. It gathered evidence to show that Mr. Yadegari had falsified export documents, removed identifying labels on the transducers, received large amounts of cash deposits and international money transfers, and contacted over 118 companies and exchanged more than 2,000 emails with suppliers and manufacturers, both domestically and abroad. This case was complex, resource-intensive, and dependent upon the co-operation of our other governmental partners.

At the conclusion, there were sufficient grounds to conduct the first-ever Canadian prosecution of charges pursuant to the United Nations Iran regulations and the Canadian Nuclear Safety and Control Act. That resulted in a guilty finding under the acts previously mentioned, and Mr. Yadegari was sentenced to a total of four years and three months in prison.

In another case, in May 2011 CBSA intercepted a shipment of highly specialized rubber rings with dual uses: for Alberta's oil fields, or oil fields generally, and in a nuclear program. In a joint investigation, the RCMP and CBSA investigated Lee Specialties Limited, a company in Red Deer, Alberta, that manufactures oil field equipment. The investigation determined that in fact Lee Specialties was exporting the rubber rings as a prohibited good in contravention of the United Nations Iran regulations, SEMA, and the Canada Customs Act. On April 14, 2014, Lee Specialties Limited pleaded guilty to charges under SEMA and was fined \$90,000. This was the first successful charge and prosecution in Canada under SEMA.

Investigations into transgressions of the above-discussed and other federal acts require a sound, in-depth knowledge of Canada's export control lists, intersecting domestic and international legislation, close collaboration with domestic and international partners, and investigative expertise in what is a constantly evolving arena. The investigation of these statutes is dependent upon a number of determinations. Whether a good is allowed to be exported is a highly complex and time-consuming process that requires assistance from experts outside of the RCMP. Once major project investigations do commence, they are lengthy and resource-intensive, and require dedicated personnel across a spectrum of agencies and departments to work co-operatively to enhance the likelihood of a successful prosecution.

In conclusion, I'd like to highlight that the RCMP, as Canada's national police force, has a broad mandate to prevent, disrupt, and investigate some of the most serious criminal and federal statute violation activity in Canada and abroad. It relies upon its domestic and international partners to safeguard Canada, Canadians, and our allies.

Thank you.

The Chair: Thank you, Mr. Nordstrum.

I want to go now to Madam Ring for her remarks. Then we'll go right to questions.

Ms. Christine Ring (Managing Director, Office of the Superintendent of Financial Institutions): Good afternoon.

Thank you for inviting me here today to discuss the role of the Office of the Superintendent of Financial Institutions as it relates to the Special Economic Measures Act, SEMA, and the Freezing Assets of Corrupt Foreign Officials Act, FACFOA.

The Office of the Superintendent of Financial Institutions, or OSFI, as we are known, is Canada's primary prudential regulator and supervisor of federally regulated financial institutions, such as banks, insurance and trust companies, and private pension plans. We promote financial stability by keeping a close eye on the solvency, liquidity, safety, and soundness of federally regulated financial institutions.

OSFI, like other major financial regulators, is a member of the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors. We subscribe to these bodies' core principles of prudential supervision, which are recognized by the Financial Action Task Force, or FATF, the organization that sets international anti-money-laundering and anti-terrorist-financing standards.

OSFI's expectations are outlined in guidance that forms the basis of its anti-money-laundering assessment program. This program focuses on whether an institution has put in place the appropriate risk management systems and controls to detect and deter money laundering and terrorist financing.

Although OSFI does not have a legislative role under SEMA or FACFOA, it assesses the quality of controls in place at federally regulated financial institutions to comply with criminal anti-terrorist sanctions under the United Nations Act and the Criminal Code.

This work is included as a module in our general AML/ATF assessment program. We leverage this work to address similar controls that are required to comply with SEMA and FACFOA and require institutions to address weaknesses in this regard.

While OSFI is permitted to share certain information with FINTRAC, OSFI does not share information with those responsible for enforcing SEMA or FACFOA.

To help financial institutions, OSFI has published an overview of AML/ATF sanctions in an instruction guide on its website. Most federally regulated financial institutions subscribe to OSFI's email notification system alerting them to changes. This in turn enables them to implement the searching, blocking, freezing, and reporting obligations set out in regulations.

OSFI's AML and compliance group also acts as OSFI's liaison with other Canadian international stakeholders on financial crime-related matters. OSFI, for example, is a member of the advisory committee on money laundering and terrorist financing, which meets semi-annually under the leadership of the Department of Finance.

Today I've touched briefly on OSFI's role as it relates to the area of study by this committee, and I would be pleased to answer any questions that you have in due course.

• (1650)

The Chair: Thank you very much.

I'll now go to Mr. Kent.

Hon. Peter Kent: Thank you, Chair.

Thanks to both of you for attending this meeting.

Did you attend the entire hour of the testimony of the witnesses from Foreign Affairs previous to this?

Ms. Christine Ring: Yes.

Hon. Peter Kent: I want to speak to the case of an individual, Vitaly Malkin. I won't go through the list of alleged and credible evidence of wrongdoing, but here is the case.

Superintendent, you spoke to the interdepartmental partnerships, but I think the Vitaly Malkin case, over more than two decades, is a good example of interdepartmental dysfunction to a certain extent. We see a case where the immigration department regularly and quite frequently refused his entry to Canada and eventually refused and blocked his application for Canadian citizenship, with his access to Canada overturned by a judge. Russian foreign ministers intervened with the foreign affairs department of Canada on his behalf.

Also, CSIS has a file, we understand, which cannot be released because of its sensitive contents. We know that Mr. Malkin, although eventually allowed entry if not citizenship, has brought tens of millions of dollars into Canada and has acquired real estate properties and investments well known to you—I assume—as well as other authorities, and certainly well known in my home city of Toronto.

I'm wondering if either of your corners of government are aware of any other cases wherein the international criminal activity of a person, supported by credible and abundant evidence, was known to these government agencies, your agencies, and if other individuals, as well as Mr. Malkin, were able to bring their assets into this country.

Supt Steve Nordstrum: Thank you for the question, sir. I have no knowledge of the specifics of that case.

•(1655)

Hon. Peter Kent: In general terms...?

Supt Steve Nordstrum: If we did have an investigation on that, I would not be able to confirm or deny its existence or speak to it.

I would say that there is a great deal of intelligence in these financial areas, but as I said to you earlier, in my opening remarks, converting that into evidence that is useable for a criminal court is always the key, and this is not an easy task. We call it the intelligence-to-evidence conundrum. Without getting into the specifics further, I think I'll leave it at that.

Hon. Peter Kent: Would you agree with the previous witnesses that there are gaps in the interruption of known criminals bringing ill-gotten gains of substantial amounts into Canada?

Supt Steve Nordstrum: I've been warned about making opinions. Therefore, I won't make one. Thank you, sir.

Hon. Peter Kent: All right.

The Office of the Superintendent of Financial Institutions?

Ms. Christine Ring: I cannot comment on this, as this particular matter is beyond the scope of OSFI's mandate.

Hon. Peter Kent: I would like to move on to the Freezing Assets of Corrupt Foreign Officials Act. As we have discussed here today, it applies to politically exposed foreign persons, and there is quite a long list of individuals. It doesn't apply to the owners of foreign banks. It doesn't apply to state security officials. There is abundant evidence from Russia of prison officials and security officials accumulating great wealth, far beyond even their lifetime anticipated

payroll as civil servants, and these individuals do move money around the world to other countries, safe havens, if you will.

I'm just wondering how the Freezing Assets of Corrupt Foreign Officials Act would apply to someone who isn't listed as a politically exposed foreign person but who is exceptionally corrupt. Again, from credible evidence from Russia, for example, we know that there are a good number of these individuals, who wouldn't fit these definitions and who could potentially, as Mr. Malkin did, move tens of millions of dollars into Canada.

Supt Steve Nordstrum: I could take the first piece of that. You are talking about something outside of FACFOA.

Hon. Peter Kent: Has either of you read *Red Notice*, by Bill Browder?

Supt Steve Nordstrum: No.

Ms. Christine Ring: No.

Hon. Peter Kent: I would suggest that maybe it would be good bedside reading in the weeks and months ahead, as we come to advocate for the Magnitsky Act to fill in some of the gaps that exist between these two current pieces of legislation.

I'm sorry for interrupting.

Supt Steve Nordstrum: It's not a problem at all, sir. Thank you.

If you are talking about prosecutions or investigations outside of FACFOA, that's an entirely different sort of arena from what we are talking about here. There are some areas—and I listened to the discussion before—but I am not entirely sure about an answer as to what could be done.

If you are talking about the seizure of foreign assets or the assets of a person such as that who has come to Canada—

Hon. Peter Kent: And the denial of their entry into Canada....

Supt Steve Nordstrum: I would think—and this is me going out on a limb and speculating—that there is something in there that could be done pursuant to the Customs Act. I was looking briefly at the Proceeds of Crime and Terrorist Financing Act on my BlackBerry while I was listening before, and I saw that there are powers to seize currency that is moved into Canada by a variety of means. I don't want to get nailed down into the specifics and give you a yes or no, but just from my perspective, maybe there are some things that can be done outside of FACFOA.

The Chair: Thank you.

Now we'll go to Mr. Sidhu, please.

Mr. Jati Sidhu (Mission—Matsqui—Fraser Canyon, Lib.): Thank you for coming out today.

In your opening remarks, you touched on the mechanism of working with international and internal agencies. When it comes to resources, does the RCMP set aside or dedicate enough resources, human and financial, to enforce these orders?

• (1700)

Supt Steve Nordstrum: As I spoke to in my opening remarks, the prioritization process is involved. The RCMP has limited resources, and these processes have been developed to ensure that we focus them on the right files at the right time, and to leverage the help of our partners to ensure that justice is done for the highest priority files. I believe that we do have the resources required across the law enforcement community to address the high-priority files.

Mr. Jati Sidhu: Just to follow up, what's the success rate when you start investigating a certain number of people? What do you think the success rate is, in your experience?

Supt Steve Nordstrum: On that, I've always said we're Canadian and we measure success by putting a prosecution to the crown counsel, and then we wash our hands of it. If we've done our job pursuant to the justice system, we're quite happy.

Mr. Jati Sidhu: Thank you.

The Chair: Okay, thank you.

Just so I can be clear, in your comments you said, relating to a couple of the cases, that on April 14, 2014, Lee Specialties Ltd. pleaded guilty to charges under SEMA and was fined \$90,000. This was the first successful charge and conviction in Canada pursuant to SEMA.

So am I led to believe and understand that this is the first one since the legislation came into effect in 2010?

Supt Steve Nordstrum: That is correct, sir.

The Chair: Okay.

Supt Steve Nordstrum: 1992.

The Chair: Sorry, 1992. So this will be the first since 1992.

Supt Steve Nordstrum: That is correct, sir.

The Chair: Okay.

I don't want to speculate or suggest, but it would seem to me that that's a long time never to have a conviction under a piece of legislation. It would almost suggest that it hasn't got a lot of strength to it, and/or, as in the question Mr. Sidhu put to you, maybe the RCMP has no resources. Or maybe, as Mr. Kent is suggesting, there are some gaps in the legislation. It all leads you to wonder, because this was supposed to be put in place in fact to deal with these kinds of sanctions and yet it's only been successful once since 1992.

Do you have any particular view of why that is?

Supt Steve Nordstrum: No, not a view, sir. I will say that we work with the legislation that's been passed by Parliament, and again, we try to prioritize to address the highest priority projects and crimes, predominantly to prevent the loss of life and investigate terrorist acts that could lead to the loss of life, or other such items that do receive a higher priority rating.

The Chair: Okay.

Madam Laverdière.

[Translation]

Ms. Hélène Laverdière: Thank you, Mr. Chair.

Your question is very interesting and relevant.

[English]

It seems also on the monitoring side some people are wondering whether or not there are gaps. One recent example is the Streit Group, which exported arms to South Sudan, even though there are sanctions, and sanctions that apply to Canadians abroad, and Canadian companies applying abroad. We learned of the Streit Group's activities through the media.

Were you aware of that? Were you already monitoring or investigating the situation? And if the group is prosecuted or whatever, what are the potential penalties for that group?

Supt Steve Nordstrum: Again, I must say that I can neither confirm nor deny that there is an investigation into the Streit Group under way. As far as penalties go, I would never seek to fetter the investigative team's ambit and would let them go where the evidence takes them to arrive at the appropriate charges.

[Translation]

Ms. Hélène Laverdière: My next question is for Ms. Ring.

In its 2010 instruction guide, the Office of the Superintendent of Financial Institutions states that it does not expect to amend the guide as the laws change. We can also see on your website that the information on the sanctions against Russia dates back to 2014, even though the sanctions and regulations were modified in 2015 and 2016.

Why?

• (1705)

[English]

Ms. Christine Ring: Could I ask for the latter part of the question to be repeated?

Ms. Hélène Laverdière: Okay, I'll repeat it in English.

It's two questions.

First, your 2010 guide for financial institutions says that you will not modify the guide when the laws themselves and the regulations are modified. I want to know why you've decided that you won't adapt the guide to further modifications to the laws and the regulations.

Also, on your website, all the information about sanctions against Russia date from 2014, even though there have been changes to those sanctions after 2014.

I'm trying to understand why you don't want to modify the guide and why the website isn't updated.

Thank you.

Ms. Christine Ring: The process within OSFI with respect to issuances of guides and guidance is at a point of time....

OSFI does issue notices on our website when there are changes to regulations, to the UN regulations, or SEMA, and FACFOA, as they are updated. The process with respect to notifying the industry is through our website when changes are implemented.

[Translation]

Ms. Hélène Laverdière: Okay, but in Russia's case, I still don't understand the situation. You provide information on the site, but it hasn't been modified. Regardless, I think it would be worthwhile for the committee to look at your guide to better understand things.

As we know, it's an issue for many Canadians. For example, as a result of the sanctions against Iran, many people in Canada's Iranian community, including students, have had their bank accounts closed. I think it would be important to see how information is sent to financial institutions. It would certainly be useful to look at your guide.

In addition, does your website have a complete list of all persons and entities targeted by Canadian sanctions that can be easily consulted?

Thank you.

[English]

Ms. Christine Ring: OSFI does not maintain a consolidated list. It's OSFI's expectation that federal financial institutions go to the direct source for the listings.

We can provide the committee with a copy of our instruction guide. We can leave that with the clerk today.

The Chair: Thank you.

Mr. Fragiskatos, please.

Mr. Peter Fragiskatos: Thank you very much, Chair.

To follow up on that, I think it's a very good question that my colleague asked.

What is the rationale for not providing a clear list of names, a clear list of consolidated individuals who have been designated under Canada's sanction statute? That would go a long way, I think, to helping financial institutions across the country in determining who they should be on the lookout for.

Ms. Christine Ring: The rationale is related to OSFI's mandate. OSFI does not have a legislated role with respect to SEMA or FACFOA.

Mr. Peter Fragiskatos: I understand that's not within the purview of OSFI, but why was that not included? Why is that not under your purview, basically? It seems to me to be a huge gap.

• (1710)

Ms. Christine Ring: I cannot comment on that particular gap. I would suggest that the committee ask the policy-makers or Parliament as to why this is not included in OSFI's mandate.

Mr. Peter Fragiskatos: When OSFI is engaging with financial institutions, are you hearing from them that this would be helpful? I think it would present a huge burden on those organizations to carry out the screening obligation on their own. They ought to, but we should be providing mechanisms to assist in that process.

Are you hearing that kind of feedback?

Ms. Christine Ring: I can't comment on comments or concerns from the industry. I would suggest that the committee may want to seek input from industry itself to speak to these matters.

Mr. Peter Fragiskatos: The chair raised a very interesting point as far as the success of SIMA and the April 14 case. Even in that case, Lee Specialties, Ltd. pleaded guilty. So even there, if they didn't plead guilty perhaps we wouldn't have any success rate in our convictions.

Superintendent Nordstrum, I know you can't comment on opinions. But with your experience in mind, can you sketch out what an effective piece of sanctions legislation might look like that would increase convictions? If it's up to you to decide what an effective piece of legislation looks like, what provisions should be in that legislation to ensure greater success?

Supt Steve Nordstrum: Parliament just passed a piece of legislation, and we the police, working with our partners, simply try when we can to enforce it. I won't speak to whether it has gaps or whether there could be more. I simply would say that like the Criminal Code, which is the one we predominantly use, it is a challenge to find evidence that can be used in court.

Mr. Peter Fragiskatos: So you're not willing to comment on specific drawbacks in the legislation that are preventing the RCMP from carrying out investigations leading to a higher conviction rate. What is it within SIMA that is preventing it from moving forward? That's what I'm most concerned with.

Supt Steve Nordstrum: I don't see anything in SIMA that prevents us from moving forward on an investigation that it's deemed a priority to move forward upon.

Mr. Peter Fragiskatos: I know I'm putting you in a difficult position. However, when we see that they pleaded guilty, and it's our only case of a successful conviction, I think there are some questions that need to be asked. That's why I'm pushing. I understand your position, but it's about coming up with a strong piece of legislation. It is on the books. What gaps potentially exist that we could rectify? I suppose I'll have to follow up with another witness at another time. This will be a long study so there'll be many opportunities for that.

Thank you very much.

The Chair: Thank you.

Mr. Levitt.

Mr. Michael Levitt: Ms. Ring, I was wondering if you could take us through a bit more of the disclosure and other compliance obligations that have been imposed on financial institutions by our sanctions regime. We heard that it's primarily proactive. There's not even some sort of list that's able to give them an insight into who may be on it with the onus on them.

How difficult is it for a financial institution to determine whether it's in possession or control of property designated as belonging to an individual or an entity that might be subject to the sanctions regime? What about transactions monitoring and screening processes? What are financial institutions using in that area? Can you give us a little more insight into the flow of information? I go back to my colleague's point. Is this system the reason that we're seeing so little conviction and success at the other end?

Ms. Christine Ring: I can speak to work that OSFI does specifically. For questions pertaining to the difficulty with respect to a financial institution's ability to search listed individuals and entities, I would suggest the committee meet with the industry to ask those specific questions.

As part of our supervisory work, OSFI looks at a variety of components. One of those is with respect to the scope of the sanction's work, and that's an institution's ability to meet its obligations to search individuals. You mentioned transaction monitoring. We also look at institutions' ability to search transactions and meet their legislative obligations.

• (1715)

Mr. Michael Levitt: Thank you.

Superintendent Nordstrum, as we've seen here and abroad, sometimes lists like these contain errors, and we've heard of situations with things like no-fly lists where people with a similar name end up getting caught in the process. Have there been individuals or entities that have inadvertently been caught by these sanctions, cases that you hear about in trying to prosecute them? Is there any margin for error inherent in the system?

Supt Steve Nordstrum: There's been none to my knowledge. I look to my colleague, here, who says that very few times do we get mistaken identity issues such as you've just raised.

Mr. Michael Levitt: Thank you.

The Chair: Mr. Kmiec, go ahead, please.

Mr. Tom Kmiec: Thank you all for coming in today.

I'm going to start with you, Ms. Ring.

What happens if a credit union or a quasi-bank, like ATB Financial, which is not directly regulated by OSFI, has questionable transactions? Are they receiving training as well? Do they get any oversight from you, any assistance in tracking potentially illegal transactions?

Ms. Christine Ring: The entities that you mentioned do not fall within the scope of OSFI's mandate. Credit unions fall under the scope of FINTRAC. I would suggest the committee may want to ask the question of FINTRAC.

Mr. Tom Kmiec: Okay. What about ATB Financial? It's a quasi-bank in Alberta, owned wholly by the Alberta government.

Ms. Christine Ring: Is it registered as a money service business?

Mr. Tom Kmiec: It has its own act.

Ms. Christine Ring: It has its own act. It may fall under provincial regulation.

Mr. Tom Kmiec: Okay.

Ms. Christine Ring: That again would be outside of OSFI.

Mr. Tom Kmiec: Is FINTRAC effective, then?

Ms. Christine Ring: I'm not in a position to comment on the effectiveness of another agency.

Mr. Tom Kmiec: But you do interact with it?

Ms. Christine Ring: We do interact.

Mr. Tom Kmiec: Do you find it effective, then? You're saying that it covers credit unions. How effective is that? Do you know?

Ms. Christine Ring: I do not know.

Mr. Tom Kmiec: Okay.

Maybe we'll just switch to you, sir. Superintendent, thank you for coming in.

I just want to start with a question on investigations. I'm not going to ask specifics about them. I'd like to know whether you are aware of how many times you've received information from United States sources, using their Magnitsky Act, to either inform or start off investigations in Canada.

Supt Steve Nordstrum: I have no knowledge of any, but I will ask Sergeant Hart.

He is not aware of any.

Mr. Tom Kmiec: Okay. Is it possible that the RCMP has received it through a different office and that this information is passed on?

Supt Steve Nordstrum: That question would be for Sergeant Hart.

Sergeant Peter Hart (Federal Policing Criminal Operations, Royal Canadian Mounted Police): Could you say that again, sir? I couldn't quite hear you.

Mr. Tom Kmiec: I'm just wondering whether in situations in the United States, where they've passed the Magnitsky Act, under which they do collect information and cite individuals, any of that information is ever received by your agency at some point to inform investigations, to receive assistance, or to kick off an investigation in Canada.

Sgt Peter Hart: You mean in relation to this Magnitsky Act that you're talking about? I'm not aware of that happening.

Mr. Tom Kmiec: Okay.

Superintendent, in your comments, you said "the UN act, its regulations, and SEMA also require anyone in Canada, and Canadians abroad, to provide the RCMP with information... pertaining to property that could belong to anyone on a sanctions list."

Is that sanctions list you're referring to a public document that anybody can have access to?

Supt Steve Nordstrum: That's right out of the acts, SEMA and FACFOA.

Mr. Tom Kmiec: It would be right there. Is it a document that's easily accessible by the public? If all Canadian institutions and Canadians are responsible for complying with the act, it should be something that's readily available and that's updated on a pretty consistent basis.

Supt Steve Nordstrum: I don't know anything about who would update that. I don't know how accessible it is to Canadians.

• (1720)

Mr. Tom Kmiec: Then, how would a Canadian who was looking to understand...? As one of my colleagues mentioned, in the case of a company in Alberta that admitted fault and admitted that it had indeed made a transaction that was illegal, how would it have then figured out that it was not supposed to be selling those particular items to an Iranian company?

Supt Steve Nordstrum: To answer your first question, my colleague Sergeant Hart informs me that Global Affairs Canada administers that act. I would defer that first question to them.

For the second question, I'm sorry, I was a little distracted trying to get an answer to the first question. Could you just repeat it?

Mr. Tom Kmiec: There was a case of a company, Lee Specialties Ltd. specifically, that pleaded guilty. How would it figure out that it was not supposed to be selling these particular goods to Iran, if it couldn't find that information readily online somewhere where all the sanctions information would be listed so a Canadian company or individual would easily know that these groups are off-limits and it's not supposed to transact with them?

Supt Steve Nordstrum: Thank you, sir. I defer that, again, to whoever compiles the export control list. I believe it's Global Affairs Canada.

Mr. Tom Kmiec: Mr. Hart, do you have a comment on that?

Sgt Peter Hart: It is available online.

Mr. Tom Kmiec: Can you talk a little more about the interactions you have with the CBSA? In these cases, it seems like the CBSA plays a really big role in identifying investigations and in seizing property through the border at some point that something is in the country illegally or is attempting to be entered into the country illegally. What is your interaction with the CBSA? Is it a working group? Is it a task force? How seamless is this integration with the CBSA?

Supt Steve Nordstrum: I'm just going to speak from experience. The CBSA performs a very valuable and front-line role at the ports of entry and exit, and at the seaports and airports, etc. Their front-line personnel are skilled, particularly when it comes to this counter-proliferation area and these asset areas pursuant to sanctions. It's pretty specialized work.

I was fortunate enough to be posted abroad to London as a liaison officer for three years, and I worked with the London Met police fellows who did counter-proliferation. They did it with the U.K. border agency. I would describe it as a similar situation to what we have in Canada. The UKBA personnel have very specialized knowledge in the sort of thinking, in the intelligence behind what to target to get to these prescribed goods. Without speaking too highly of the CBSA, I would just say they're very similar here.

Mr. Tom Kmiec: Mr. Chair, do I have some more time?

The Chair: No, you don't.

We'll go to Mr. Miller, please.

Thank you, Tom. You'll get your chance.

Mr. Marc Miller: I have a quick comment about what my colleague raised about the success of SEMA. It seems to me, as I've read SEMA, that the success of the legislative regime doesn't necessarily depend on how many prosecutions there are. I think the role that you play is one of prevention and enforcing the fact that there may be export and import restrictions that are imposed upon a country. A lot of that has to do with information sharing and the work at the border in preventing stuff from going to the place where it shouldn't be going and then in turn coming in as part of enforcing the regime. It's surprising there is one prosecution only and one successful conviction.

When we're talking about assets, they may be ill-gotten or they may be "properly gotten", or whatever the expression is.

The thing that interests me with you is the life cycle of what you do in freezing an asset. In my mind that's freezing a bank account, seizing a house, freezing a security, or preventing an export. How difficult are any of those four things to do once you get the green light, and how long does it take, typically, once you have the green light?

Supt Steve Nordstrum: Are we talking under FACFOA or SEMA?

Mr. Marc Miller: Any one you choose to discuss.

Supt Steve Nordstrum: Any federal statute?

Mr. Marc Miller: FACFOA, let's say.

Supt Steve Nordstrum: I'm not aware of any asset seizures under FACFOA. With asset forfeitures, without getting into the specifics of it, we have to work in concert with our partners to gather the evidence and determine what we can and can't do. Quite often there are processes in play that are outside of our control with, for example, the Public Prosecution Service of Canada and the international assistance group, IAG, at the Department of Justice when we have to get letters rogatory or MLATs exercised in order to satisfy a judge that the asset, or some other seizure, or a forfeiture is a valid one.

I can speak to a process that is under way right now, hypothetically, where it is completely outside of our control with respect to what to do with the seized assets. None of this is easy. It's a very complex piece of law, and as I said earlier, that's why we have the Public Prosecution Service of Canada with us right from the start of an investigation.

I apologize if I can't fully answer your question.

•(1725)

Mr. Marc Miller: In any of the legislative regimes that you have authority to act under, how difficult is it? What is the life cycle of a simple thing like freezing a bank account?

Supt Steve Nordstrum: Freezing a bank account is outside of our control. It requires judicial authorization to do. Getting the records for a bank account is within our control, or we would seek a production order from a judge by putting an information to obtain or an affidavit before the judge.

I would ask if my partner, Sergeant Hart, has any further information that he can impart to you on that.

Sgt Peter Hart: There are times when the bank that's identifying an individual who's listed in any of these regulations may take its own action and stop a transaction and advise the police. The boss is right, it takes a lot of paperwork to freeze assets in general.

Supt Steve Nordstrum: It's out of our control.

Mr. Marc Miller: When the threat exists, obviously this has to be done in a somewhat confidential situation to prevent the person from moving the money, in a very fluid transactional world, out of the country, or in some other fashion of obscuring the asset, in an effort to avoid detection and freezing, I guess. If there's a frustration related to the time period, that's a real hole in the implementation of the legislation, in my mind.

Supt Steve Nordstrum: I wouldn't describe it as anything to do with the legislation. I would just say that these types of realities are what we face every day in trying to be timely in our enforcement actions.

Mr. Marc Miller: Okay. Thank you.

That's it.

The Chair: Thank you very much.

Madame Laverdière has a short question, and then I have a short one before we wrap it up.

[Translation]

Ms. Hélène Laverdière: Thank you, Mr. Chair.

Mr. Nordstrum, you mentioned a number of times that investigations are conducted based on an order of priority, which is normal. We understand that very well. That said, I was wondering how priorities were determined.

Since there has been only one prosecution in 25 years, does it mean that prosecutions under the Special Economic Measures Act are not considered priorities?

[English]

Supt Steve Nordstrum: *Merci*, Madame.

The prioritization process I described in my opening remarks really is based upon a totality of the facts. Our office of information management assesses all of the facts and assigns ratings pursuant to a benchmark of definitions. When the standing committee that I referenced sits to meet, prior to that meeting we're provided with the operational plan itself and a scoring matrix that we can look at. We can read it, we can put our minds to what all is entailed in that investigation, and then determine whether it's a tier 1, tier 2, or tier 3 investigation.

Over the past year and a half, in my current role, my experience is that the highest-priority files are Anti-terrorism Act investigations.

They really are about potentially saving lives and getting to people who could perpetrate acts that will make the front page of the news. That is our job, and that's why we take it very seriously. That's not to say that SEMA or the other acts do not have a role to play, but as the other member said earlier, it could potentially be in the disruption, which is part of our mandate as well, to prevent crime, that the answer lies, rather than the prosecution.

In summary, I think the prioritization of files, the way it is right now, works, and we're getting our resources allocated to the right files.

● (1730)

The Chair: I want to thank Superintendent Nordstrum, Sergeant Hart, and Madam Ring for a very good presentation.

I will remind the committee that we'll be inviting the Canadian Bankers Association to make a presentation to our committee. We'll be inviting the border customs folks to come and talk to us a bit about the whole issue of prevention vis-à-vis permits and how that works through the Special Economic Measures Act.

I just want to make the comment that it's the beginning of a very important and complex file. This legislation has many components to it. I want to thank the witnesses for doing their very best to lay it all out for us from a legal perspective, both financially and through the RCMP. On behalf of the committee, I want to thank you for that. We do understand the sensitivity of discussing ongoing investigations. I'm sure the committee is aware that we will confront that pretty much all through this process as we work our way through it. I want to encourage everyone to keep that in mind.

Again, on behalf of the committee, thank you very much.

I will see the committee back here on Wednesday.

The meeting is adjourned.

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