



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 028 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Monday, October 24, 2016

Chair

The Honourable Robert Nault

Standing Committee on Foreign Affairs and International Development

Monday, October 24, 2016

• (1530)

[English]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, welcome back to the work of the foreign affairs committee 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 by our committee.

This afternoon we have two departments and witnesses. The Canada Border Services Agency is represented by Andrew LeFrank, the director general, enforcement and intelligence operations; and Lesley Soper, acting director general, enforcement and intelligence programs. From the Department of Citizenship and Immigration, we have Maureen Tsai, director, migration control and horizontal policy, admissibility branch.

Welcome to all three of you.

I understand that Mr. LeFrank will be making the presentation. On behalf of the committee, I will turn it over to you for your presentation, Mr. LeFrank.

Mr. Andrew LeFrank (Director General, Enforcement and Intelligence Operations, Canada Border Services Agency): Thank you very much, Mr. Chair and honourable members of the committee. You have already introduced my colleague, so I won't waste any time with that again.

[Translation]

As the committee is aware, CBSA's role is to manage the flow of people and goods to and from Canada. We have a dual role of facilitating legitimate trade and travellers while ensuring the security of Canadians. We prevent the movement of goods and people across the border that represent harm to Canada and Canada's security interests internationally.

Mr. Chair, the agency administers over 90 acts, regulations and international agreements on behalf of other federal departments and agencies, the provinces and territories. It is through the authority of the Customs Act that the CBSA administers and enforces the United Nations Act, the Special Economic Measures Act, and the Export and Import Permits Act, on behalf of Global Affairs Canada. In parallel, the Immigration and Refugee Protection Act provides the agency with legislative tools to address the admissibility of people into Canada pursuant to sanctions regimes under the UN Act.

[English]

Turning first to import and export controls, under the United Nations Act and the Special Economic Measures Act, trade and

economic sanctions are imposed and implemented in Canada through regulations. These regulations restrict or prohibit the export of certain goods to foreign states and/or designated entities and the import or acquisition of goods from the countries under sanction. Under the Export and Import Permits Act, Canada imposes trade sanctions on goods and establishes an area control list. This list is created and maintained by Global Affairs Canada. Export permits are required for all goods destined to a country on Canada's ACL. The CBSA administers those aspects of the regulations that relate to the import and/or export of goods. Generally speaking, import and export prohibitions and restrictions cover a wide range of commodities that include arms and related material, luxury goods, nuclear and nuclear-related goods, and rough diamonds.

The CBSA uses an intelligence-led and risk-based approach to identify and interdict goods subject to controls under this legislation. With respect to enforcing the United Nations Act, the Special Economic Measures Act, and the Export and Import Permits Act, Border Services officers review declarations and other shipping documents to determine if goods are subject to prohibition or restriction. Goods that appear to contravene sanctions may be detained by a BSO based on the authority of the Customs Act. The agency will then notify Global Affairs Canada of a possible infraction. Global Affairs Canada will determine whether the transaction falls within the scope of the legislation on trade and economic sanctions. Where Global Affairs determines that the transaction violates the UN Act, it will notify the Department of Justice of its findings. The Department of Justice and the Royal Canadian Mounted Police will then proceed with the execution of a seizure and the laying of charges. The CBSA may take an enforcement action under the Customs Act, ranging from the imposition of fines to the seizure of the goods as forfeit, or even the laying of criminal charges under the following conditions: where Global Affairs Canada determines that the transaction is controlled under the Export and Import Permits Act, where Global Affairs determines that a transaction violates sanctions imposed pursuant to the Special Economic Measures Act, where a permit request to the Minister of Global Affairs is absent, or where the Minister of Global Affairs denies a request.

The CBSA is also an important player in Canada's counter-proliferation and intelligence communities. The CBSA conducts research and analysis on procurement activity and on the types of commodities being shipped to countries of concern. We work with local and international law enforcement partners, government agencies, and industry partners to identify, interdict, and prevent the illicit export, diversion, and proliferation of chemical, nuclear, radioactive, and biological goods and technology. Specifically, the CBSA prevents exports to countries that pose a threat to us or our allies, countries involved in or under imminent threat of hostilities, and countries under UN Security Council and/or Canadian sanctions.

● (1535)

Mr. Chair, the CBSA is also responsible for denying access to and removing persons from Canada where persons have been determined to be inadmissible under the Immigration and Refugee Protection Act. This work is central to the mandate of the agency, and is carried out at ports of entry and through enforcement within Canada. IRCC is responsible for the immigration processes that take place prior to the arrival of an individual in the country, for example, issuing visas, as well as overall immigration policy and citizenship; and our two organizations work closely to safeguard the immigration system. All foreign nationals who make an application to enter Canada are examined to ensure they are not inadmissible. A person can be rendered inadmissible for a variety of reasons, including involvement in human or international rights violations, criminal activity, security concerns, and involvement in organized crime. In the context of sanctions, for example, an officer may refuse entry to a person who is restricted pursuant to a decision, resolution, or measure of an international organization that imposes sanctions, of which Canada is a member. The United Nations is a good example. Should a foreign national be determined by an officer to be inadmissible, they can be refused the necessary documents required to be issued before entering Canada, such as a temporary resident visa or an electronic travel authorization, known as an eTA, and, as a result of that refusal, be prevented from travelling to Canada.

[Translation]

Mr. Chair, the Customs Act, United Nations Act, the Special Economic Measures Act, the Export/Import Permits Act, and the Immigration and Refugee Protection Act are important instruments to enforce domestic and international norms and laws.

I hope that I have clarified the role of the CBSA in supporting this legislation.

My colleagues and I will gladly take any questions you may have.

[English]

To assist the committee, Mr. Chair, in directing its questions, I will be pleased to respond to those related to compliance and enforcement on goods. My colleague Ms. Soper will be best placed to speak to the admissibility of people at the border and after arrival in Canada, and Ms. Tsai will be able to discuss the admissibility and facilitation of individuals prior to their arrival in Canada.

Merci.

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

We'll go straight to questions.

Colleagues, we have roughly 50 minutes. I'll start with Mr. Kent.

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

Thanks to all of you for being with us today.

We're in the early stages of this study, but we have heard from a number of witnesses that there seem to be some gaps and some interdepartmental dysfunction or non-connection.

With regard to admissibility, on the first day of our study, I raised the case of Vitaly Malkin, who I'm sure you are familiar with, and his 20-year attempt to get into Canada and to gain Canadian citizenship, despite evidence of quite a history of criminal activity and ill-gotten gains.

We heard from the Office of the Superintendent of Financial Institutions that it's up to banks, basically, to police the funds that come in and out, through FINTRAC, I suppose. We heard from the RCMP that in setting their priorities they're focused these days on anti-terrorism, not necessarily on notorious individuals who might be on another tier of priorities.

We also heard that in the case of Mr. Malkin, for example, Foreign Affairs deferred to CIC, to Immigration, and there were separate CSIS secret files, which have not been opened, with immigration officers regularly denied admission. In the end, an immigration judge disagreed with the immigration officer on the interpretation of the word "entrepreneur", and allowed Mr. Malkin and millions of dollars into the country.

I'm wondering if you could comment on the interconnection—or not—of the various agencies that have a role in deciding who gets into Canada with what.

● (1540)

Mr. Andrew LeFrank: I'll speak initially to some of that and then I'll go to my colleagues.

The Canada Border Services Agency works within the legal framework that we have and applies the legislation. It uses a number of factors to ensure that goods and people are in compliance with the laws that we administer and enforce. We work very closely with a number of our partners. We have great communication, collaboration, and co-operation, I would suggest, with Immigration, Refugees and Citizenship Canada, the Canadian Security Intelligence Service, the Royal Canadian Mounted Police, and Global Affairs Canada in the execution of that.

With respect to the various things that we have at our disposal as they relate to admissibility, I'll turn to my colleague.

Ms. Lesley Soper (Acting Director General, Enforcement and Intelligence Programs, Canada Border Services Agency): Perhaps I will start by saying that I'm familiar with your raising of the question of Mr. Malkin. I'm sorry that we can't speak to specifics of cases—

Hon. Peter Kent: I understand.

Ms. Lesley Soper: —but to speak to the overall admissibility framework, we have what is structured as a multiple-border strategy to deal with admissibility as far away from Canada as possible.

Our diligent officers, who are well-trained, Canada-based staff, are making serious inadmissibility decisions in the visa process overseas before people have access to Canada. That information is brought to bear from the CBSA in the work we do in the security-screening space and is provided to these officers overseas, and decisions are taken with a wealth of information in order to make those admissibility decisions. When individuals arrive at our border, we employ the same tools in order to protect Canada.

I think the cohesion among the CBSA, IRCC, and GAC involves a challenging balance of considering diplomatic interests, upholding what is a principles-based immigration framework, and trying to protect the security and integrity of Canada's immigration system.

Hon. Peter Kent: Thank you.

With regard to the Freezing Assets of Corrupt Foreign Officials Act, when it lists those who are identified as politically exposed foreign persons, it doesn't include a new generation of lower-level foreign police or jailers who, as we have seen in the general example of Russia, have accumulated, on credible accounts, large amounts of money, far beyond the lifetime salary that they as lower-level public servants in Russia would be expected to gain. Is that a shortcoming in the corrupt foreign officials act, do you think?

Ms. Lesley Soper: The current admissibility framework within the Immigration and Refugee Protection Act is quite broad in its delineation of inadmissibilities. It addresses security. It addresses international sanctions. It also addresses organized criminality, and criminality, of course. So there's a broad set of tools available to officers, where there are reasonable grounds to believe wrongdoing may be happening, whether or not the person is listed under a sanction, or whether they're outside of a sanction. There's certainly enough reference material in the public domain that would allow our officers to make a well-founded admissibility decision.

• (1545)

Hon. Peter Kent: Is there a record somewhere that accumulates this information, available in the public domain, whereby all of your agencies and departments would work from a common decision-making base?

Ms. Lesley Soper: Yes. The foundation of our security screening process is that we have a common resource library in order to inform decision-making on admissibility.

Hon. Peter Kent: I would like to ask all of you, including Madame Tsai, whether you believe that targeted sanctions are more effective and easier to enforce than broad-based general sanctions, in your experience.

Mr. Andrew LeFrank: I can't comment on that particular beast, and whether or not I find one particularly better than the other.

Hon. Peter Kent: You enforce the laws.

Mr. Andrew LeFrank: That's what we're providing.

Hon. Peter Kent: Madame Tsai.

Ms. Maureen Tsai (Director, Migration Control and Horizontal Policy, Admissibility Branch, Department of Citizenship and Immigration): I don't have anything to add to that.

Hon. Peter Kent: In the case of Mr. Malkin, as an example but not speaking to his case specifically, when a border officer in immigration makes a regular denial of admissibility, is there any further appeal up the line when that is overruled?

Ms. Lesley Soper: Yes, certainly. All admissibilities at port of entry need to be referred to the Immigration and Refugee Board for consideration in front of the immigration division. Consideration of that file can also be judicially reviewed by the Federal Court. Decisions made, taken in the visa context overseas, similarly have access to judicial review, but not in the same scope that's supported at the Federal Court when a person is in Canada and confronted with allegations of inadmissibility.

The Chair: Thank you, Mr. Kent.

We'll now go to Mr. Fragiskatos, please.

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

I have a question about the Immigration and Refugee Protection Act. Paragraph 35(1)(b) of the act notes that human rights violations are grounds on which inadmissibility can be determined. Genocide is mentioned. War crimes are mentioned. Crimes against humanity are mentioned, but so too are systematic and gross human rights violations.

Could you expand on those later two points, systematic and gross human rights violations, and what that means?

Ms. Lesley Soper: I don't think I'm able to describe or give you an example of how that might be applied, but I'll tell you how it's utilized in practice.

IRPA's admissibility framework is a fully principles-based framework. It doesn't look to designate specific atrocities, or specific regimes. It looks at the activities of the individual, and admissibility is formed on the basis of those. Regardless of Canada's relationship vis-à-vis the country where the human rights violation may have occurred, if there is a known, documented circumstance in which an individual is implicated in a human rights violation, the admissibility framework stands to render that individual inadmissible to Canada.

Mr. Peter Fragiskatos: In your view, then, there are measures in place, in existing law, that do take into account human rights violations. When those have taken place, it can be determined that an individual cannot be allowed into the country.

I mean, these speak to large-scale human rights violations carried out by officials.

Ms. Lesley Soper: Yes.

Mr. Peter Fragiskatos: Can you speak to that point?

Ms. Lesley Soper: This is precisely the legislation we have in place. It is meant to be blind to the event. It is supposed to recognize all aspects of this type of activity.

Mr. Peter Fragiskatos: Okay.

With regard to the minister's powers, the Minister of Immigration, Refugees and Citizenship has the power to determine, on the basis of public policy concerns, that a foreign national is not eligible to become a temporary resident. Human rights violations also fall under that, I believe, as a criterion on which inadmissibility can be granted. Can you speak to that, please?

● (1550)

Ms. Maureen Tsai: Yes. I believe you are referring to an authority under section 22.1 of our legislation that we commonly refer to as the “negative discretion” authority of our minister. That provides our minister with the ability to look at a range of public policy considerations and, as you said, declare that a foreign national may not become a temporary resident for a period of up to three years.

In addition to our legislative authority, we do have guidelines that are available on our website. They refer to activities or behaviours that could attract the attention of our minister. Under those guidelines, we have three types of activities listed. The first would be individuals who are promoting criminal or other terrorist activity. The second section, which I believe you are referring to, would be foreign nationals from sanctioned countries or corrupt foreign officials. The last category would be foreign nationals who may pose a public health risk to Canada.

Mr. Peter Fragiskatos: Thank you very much, Ms. Tsai.

Mr. LeFrank, in your presentation you spoke about permits. Could you expand on that and tell us a bit about the role CBSA plays in the approval of permits?

Mr. Andrew LeFrank: Certainly. Essentially the Canada Border Services Agency is responsible for reviewing declarations that are made with respect to goods that are exported from the country to ensure that they're in compliance with the various pieces of legislation, most notably in terms of the Export and Import Permits Act, the United Nations Act, the Special Economic Measures Act, as well as goods on the area control list.

Within that framework, Canada Border Services Agency officers will screen the exports to determine and ensure that any that look like they pose a potential risk to non-compliance are referred over to a Border Services officer in the field, who will conduct an examination to determine whether or not the goods actually line up with what the export declaration says. In addition, they'll determine whether or not those goods are subject to any types of permits. If they believe the goods are actually subject to permits, they'll ask the exporter of record to provide any additional documentary evidence to ensure that the goods are actually going to where they say they're going, that they're the goods they and the origin certificates say they are, and a number of different types of items.

They then refer that to Global Affairs Canada, which is responsible for the issuance of those permits. Global Affairs Canada will determine whether or not it issues that permit and validate

whether or not the permit is the right permit for that. If it's not, then the Canada Border Services Agency will take appropriate action.

Mr. Peter Fragiskatos: It sounds like a very thorough and robust process. Why is it so important, or why has the process been crafted in that way? Why is it so critical? Perhaps the answer is obvious, but I think Canadians want to know as well.

Mr. Andrew LeFrank: As I mentioned at the beginning, we have a dual role. One is about the facilitation of legitimate trade. Our export industry is significant and important to the prosperity of Canada. In addition to that, though, a number of countries would seek to acquire goods that could represent harm to us or our international partners.

It's very important that the Canada Border Services Agency be very judicious in ensuring that only those goods that represent a risk are not unduly delayed or referred for inspection, and that we take appropriate measures to ensure that any goods, before they do leave, are in compliance and conformity with all of the responsibilities and all the legislation that we enforce.

Mr. Peter Fragiskatos: Thank you very much.

The Chair: Thank you, Mr. Fragiskatos.

[Translation]

You have the floor, Ms. Laverdière.

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

I would like to thank the witness for his very interesting presentation.

How does the Canada Border Services Agency convey the necessary information to importers and exporters so that they can comply with not only our laws, but also with our regulations and decisions made by the government?

I know the Office of the Superintendent of Financial Institutions has guidelines in this regard, but they have not been updated for six years.

How does CBSA convey this information? Is the agency responsible for providing that information to importers and exporters and, if so, how does it do so?

● (1555)

[English]

Mr. Andrew LeFrank: It's a good question and it's an important question. There are a number of means by which importers and exporters can have access to information.

The agency website has a number of things that help importers and exporters and guide them in terms of what the regulations are, and, probably just as importantly, it shares with them where in fact they need to go and which other particular agencies are involved in ensuring that they're in compliance.

Related specifically to things subject to the Special Economic Measures Act, the Global Affairs Canada website has a list of goods that are subject to export controls and sanctions, and countries that are involved. In combination with that and the information available through the CBSA on our website and through our business information service line that's available for exporters and importers to ask questions, there are a number of ways in which importers and exporters can avail themselves of the appropriate information.

[Translation]

Ms. Hélène Laverdière: On your website, do you have a complete list of the individuals, countries and everyone who has been subject to sanctions, specifically under the Special Economic Measures Act?

[English]

Mr. Andrew LeFrank: Certainly Global Affairs Canada has on its website a list of any of those goods and/or countries that are subject to special economic measures. As far as a list of individuals goes, I'm not familiar with any.

Ms. Lesley Soper: Actually, I think Justice publishes in its consolidated statutes a list of all goods and persons scheduled under SEMA.

[Translation]

Ms. Hélène Laverdière: Just out of curiosity, are goods that should not be exported often intercepted at the border?

Is there a difference between small and large companies in this regard? Instinctively I would expect that small companies with very few exports in well-defined niche markets are perhaps less aware of the laws, but that is just an assumption on my part.

Thank you.

[English]

Mr. Andrew LeFrank: Right. I don't think I would differentiate between those large importers or small importers/exporters. All of the regulations and all of the requirements are available for everybody.

Again, the Canada Border Services Agency applies the law equally. It doesn't take into consideration whether it's a small importer or a large importer/exporter. All of the companies that are exporters are required to comply with the law and provide that information.

I would suggest that small first-time exporters/importers are non-compliant with the law probably just as regularly as are large regular importers or exporters.

The Chair: *Merci.*

Mr. Levitt, go ahead, please.

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

I'm wondering if you can give us an idea of how many times CBSA has identified inbound and outbound breaches of Canadian sanctions regulations. I ask that because we were a little surprised in one of our earlier sessions to hear of the relatively small number of investigations and prosecutions by another agency.

Mr. Andrew LeFrank: I brought some figures in anticipation that that might in fact be the case.

Mr. Michael Levitt: Sure.

• (1600)

Mr. Andrew LeFrank: Just to give you an idea of the order of magnitude, in 2015, about \$480 billion worth of goods was exported from Canada. The CBSA receives approximately 800,000 electronic export declarations and approximately 44,000 paper declarations each year. However, not all exports are required to be reported, and there are some instances in which goods aren't reported, so that doesn't represent the whole list.

With respect to the enforcement we've done, I can tell you how many investigations we've conducted. We conducted 11 investigations, and as you're aware, there were two prosecutions. But I think it's important to recognize that the goal of the legislation is not so much to necessarily get a prosecution as to prevent the goods from actually leaving and causing harm, or causing benefit to an unfriendly company.

In the past 250 days, CBSA has prevented approximately 250 export shipments to sanctioned countries. Of those, 64 exports were assessed as prohibited under the Special Economic Measures Act; 41 of those shipments were actually seized as forfeit; 112 of these cases involved shipments destined to Iran in violation of the Special Economic Measures Act, Iran regulations; three involved sanctions against Libya, and two, against North Korea.

Mr. Michael Levitt: Given the relatively low number—11 investigations and two prosecutions—is this an issue of resources? Is it an issue of priorities? What would you say is the major determinant of that? If more resources were available, could this be more robust? Would we see more investigations taking place? I understand you need to prioritize resources where you feel they can best be allocated.

Mr. Andrew LeFrank: Right. I wouldn't say that additional resources would necessarily lead to more investigations. However, I would point to the fact that the 2016 audit of controlling exports at the border did find the staffing levels of coverage for export control were not sufficient to monitor or control all exports at all times. The OAG audit found that some export shipments at potential risk were exported before CBSA was able to examine or detain them. Recognizing the importance of enforcing export control, federal budget 2016 has proposed the provision of 13.9 million over five years starting in 2016-2017 to improve export verifications by enabling CBSA to enhance the identification process and increase examination rates of high-risk shipments. The allocation of these funds has not yet been approved by Treasury Board.

Mr. Michael Levitt: Thank you for that, and thank you for that level of detail. That's helpful to this committee.

How does your organization coordinate and co-operate with like-minded states and international organizations in the application and enforcement of sanctions measures? Are there best practices or lessons we can learn or adopt from other like-minded partners?

Mr. Andrew LeFrank: Certainly our Five Eyes partners are critical partners, most notably the United States because of the close interaction and trade between our two countries. We exchange best practices regarding ways that we identify potential shipments. We also exchange intelligence with our partners on potential individuals and countries with regard to their modus operandi, in particular dealing with shipment needs and emerging goods that could have dual use or potentially serious use issues in hostile countries.

Mr. Michael Levitt: Thank you very much.

The Chair: Thank you, colleagues. We're now finished the first round. We'll go to the second round, and we'll start with Mr. Miller.

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

Thank you for your testimony.

You've heard today that we're examining potential holes in the current legislative scheme, including what may be missing, what's desirable, and what's needed to fix it. There has been some focus on human rights violations. It sounds as though in the legislative scheme you operate under there isn't a hole and that it's just a question of being able to do your job.

The issue I want to focus on—and it has to do with what Mr. Levitt brought up—is precisely the ability to do your job and to effectively capture an item, a good, or a person that would otherwise get out or get in, particularly in the area of dual-use equipment. Just walk me through—I have a very simplistic approach to this—the difference between a washing machine and a centrifuge that might end up, depending on how it's used, being used for cleaning clothes or for refining something.

• (1605)

Mr. Andrew LeFrank: In fairness, I like to keep it simple as well. I leave it up to the technical experts when we get down to the precision of what we're dealing with.

It's not necessarily obvious when an officer goes out to determine whether a good has a dual-use technology, but that officer is supported by individuals in our headquarters office and in our counterproliferation operations section. They have tremendous training and experience, and those individuals make the referral based on what they believe are potential risks based on something like a dual-use type of technology. When officers from there go out to do their examination, they will perhaps take photos of those items and provide the photos. Then we'll confer with experts in CSIS and in defence, in order to determine whether a good, which on the surface appears to be no different from something you're using in your home, has an application, perhaps, in a nuclear capacity.

Mr. Marc Miller: Thank you.

My understanding is that a lack of resources is really the biggest impediment to you being able to do your job, and I think you said that was also what the 2016 audit showed. Is there anything else that poses an impediment from an operational perspective?

Mr. Andrew LeFrank: There are challenges—and I think they were alluded to by my colleague from the RCMP—with respect to the conversion of intelligence to evidence. That does pose a particular problem when you're dealing with sensitive sources. You otherwise might have to find ways to utilize that and act on that

information to prevent those goods from going. That's probably the largest impediment I see, and in many ways, is the difference between doing a civil and regulatory action to seize goods or require that the goods be taken back and not exported and pursuing with a criminal investigation, which requires a lot more effort and is a lot more complicated since you have to gather the evidence to prove that you have a criminal offence.

Mr. Marc Miller: All right. I guess, from your perspective, your job is done once you've stopped whatever it is from going in or coming out, but I guess you're saying is there's frustration with then not seeing anything happen.

Mr. Andrew LeFrank: Our primary responsibility is to interdict or prevent the goods from leaving, but there are also secondary and tertiary issues, in either working with the RCMP or conducting our own criminal investigation to prevent the organization from going again. There's also a concern with the goods themselves, and whether you allow those goods to go back to the exporter or you want to seize those so that they can't be diverted or sent somewhere else when they try again.

Mr. Marc Miller: Okay, thank you.

The Chair: Thank you.

Mr. Kmiec, go ahead, please.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you all for coming.

I've gone over the notes here, and I've been listening to this conversation so far, so I'm going to start my questions with admissibility of persons.

Mr. LeFrank, in your speaking notes you say that a person can be rendered inadmissible for a variety of reasons, and you list all the reasons they could be excluded. When a person tries to enter the country, what type of information is the officer seeing on the screen to make that determination of whether to do a secondary screening or ask more questions? What do they see that would tell them that this person should not enter the country? What's on there?

Ms. Lesley Soper: There are a number of tools that officers would use. If that individual had already been through a visa screening process overseas, that full visa file would be available to the officer at the port of entry for consultation, if needed, for an understanding of the decision-making. If it's an impromptu arrival at the port of entry, we would have already looked at the individual through an advanced passenger targeting process. If that individual was coming in by air, we would have cross-referenced any index or any indicator that would have been flagged against that individual, either through a lookout or through a target set against that individual if they were a known risk to Canada.

• (1610)

Mr. Tom Kmiec: How are those indexes created? How's that information compiled?

Ms. Lesley Soper: That can come from a number of sources. Typically, it comes through research into open source information about individuals: criminal history, organized criminal history....

Mr. Tom Kmiec: They don't google at their desks, though, I hope. They're not just googling their names? They have access to actual—

Ms. Lesley Soper: No. We have a number of officers who are working in various countries and who are quite aware of some of the issues that might arise. We certainly come into contact with those individuals through—

Mr. Tom Kmiec: How often is that information updated?

Ms. Lesley Soper: It is updated as often as it needs to be updated in order to be accurate and available to officers to make decisions in real time.

Mr. Tom Kmiec: Okay.

How closely do you work with CSIS or with military intelligence services to update what officers are getting to see on their screens to make a determination of whether someone should come in? I ask because in the case that my colleague brought up, that of Mr. Malkin, there were 21 lines of secret information in his immigration file that a Federal Court of Canada judge ruled were too sensitive to reveal then. Obviously, if an immigration officer is making the determination of whether or not to let someone into the country, that's the type of information they would likely need to know right away before they allow the person to enter the country and to then be able to use our system to appeal endlessly in order to stay here. That's why I ask this question. Where's this information coming from? How sensitive is it? From that moment of collection to the moment it is used, is that intelligence available to our officers so they can make the best determination possible?

Ms. Lesley Soper: Yes, it is, but if they had questions about the nature of the file in order to make an admissibility decision at the border, they also have access to our officers, who are specialists in security screening. We may place a lookout in the system if we know the individual and we have a specific history on that individual. We have shared information systems between IRCC and CBSA, so our officers have access in a secondary examination to look at an individual's full immigration case file.

There are a number of tools available to officers that will help them make decisions around access to Canada.

Mr. Tom Kmiec: Mr. LeFrank.

Mr. Andrew LeFrank: On the intelligence front, I'll just let you know that, 24 hours a day, seven days a week, we have intelligence professionals who are working with partners. We generally break up our intelligence into three levels: strategic, operational, and tactical. On the tactical side, whenever we have information of an exigent circumstance that has anything to do with the national security of Canadians, that information is uploaded and provided to appropriate end-users in an extremely expeditious fashion.

We work very closely with the Canadian Security Intelligence Service and the RCMP to make sure that information that is required by our front-line officers or any decision-makers, including our counterparts at IRCC overseas and at Global Affairs Canada, is made available to them as soon as possible.

Mr. Tom Kmiec: Okay. How much time do I have, Mr. Chair?

The Chair: You have another minute.

Mr. Tom Kmiec: Okay.

I would like to ask about countries of exclusion. Do you coordinate with allies, with security services in other countries like the United States or the United Kingdom? Would they have exclusion lists of individuals they are choosing to exclude from their countries for certain reasons? Is that information made available to Canada to help us to make a determination as well, or is that information that we don't have access to?

Ms. Lesley Soper: We do have certain information-sharing agreements with certain partners, certainly with the United States. We also have access to high-risk traveller information. We have full access to U.S. criminal indexes at our front line.

With regard to overseas, perhaps my colleague from IRCC could speak about the information-sharing for the visa system.

Ms. Maureen Tsai: Certainly often countries publish lists that are publicly available, so those would be available to any visa officer.

I just want to emphasize what Lesley was saying. We do have some information-sharing agreements with certain partners to support the administration of our immigration laws.

Sorry—am I missing parts of your question? Those are the things that come to mind immediately.

● (1615)

Mr. Tom Kmiec: It was more about the information-sharing and how those lists are shared with our officers on the front lines so they can make a determination. But listening to the conversation here, I had one question. When a person is excluded, say, from the United Kingdom or the United States, is that exclusion information then provided to Canadian authorities if someone, say Vitaly Malkin, had been at some point excluded from another country? I'm just using him as an example. Would that information on exclusion be provided to Canada?

Ms. Maureen Tsai: It depends on the country and whether we have an information-sharing agreement. For example, if someone makes an application to enter Canada and applies for a temporary resident visa, and we have an information-sharing agreement with the U.S., they can advise us on information they have that would support the administration of their law. I'm speaking rather generally because I don't know the specifics of U.S. immigration law.

The Chair: Okay.

Thank you, Tom.

For the committee's information, I'm very interested in understanding the difference between the freezing of assets of corrupt foreign officials and their public duties as an official. Freezing their assets is one area that we focus on. Does that cause an individual to be inadmissible to Canada for official work, or is there flexibility under the immigration act to allow a minister of a foreign government who might be on the list to continue to do their duties, even though their assets may be frozen because of your work?

Ms. Maureen Tsai: As Lesley previously explained, we have our inadmissibilities, which we certainly apply on a case-by-case basis. In the case of individuals who have been listed pursuant to the Freezing Assets of Corrupt Foreign Officials Act, there are potential inadmissibilities, for example, with respect to true criminality or organized crime.

As I previously mentioned, my minister has this authority, which we call the negative discretion authority, and we have publicly available guidelines that lay out categories that might attract the attention of our minister. When we developed those guidelines, we certainly consulted with other departments, because just being listed, pursuant to the regulations under the Freezing Assets of Corrupt Foreign Officials Act, doesn't make you automatically inadmissible, as Lesley explained. We wanted to support the tools we already have so my minister could potentially on a case-by-case basis consider whether he wanted to use his negative discretion authority for an individual who has been listed pursuant to those regulations.

The Chair: Does the same thing apply to the economic measures act?

Ms. Maureen Tsai: Yes.

The Chair: Okay. Let's assume that Canada decides to add ten more foreign officials who work, and Mr. Kent was alluding to this to some extent. They're not automatically inadmissible to Canada in their duties working for that particular country. They're put through some sort of review structure, and they're looked at case by case. Is that correct?

Ms. Maureen Tsai: That is correct.

The Chair: Okay. Thank you. That's very helpful.

I'll go to Mr. Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): I want to pick up on that point, especially the point of flexibility, and I want to get a better understanding of temporary resident permits. In 2014, 10,000 TRPs were issued to foreign nationals who were inadmissible under the Immigration and Refugee Protection Act. Two of those people were inadmissible for human or international rights violations. Can you please explain how a decision comes about to issue a TRP?

• (1620)

Ms. Maureen Tsai: The authority to issue a TRP is given to officers, and as you've heard before, each decision is made on a case-by-case basis. In issuing the TRP, the officer would consider the reason for the visit, the circumstances around the visit, as well as potential risk to the safety and security of Canada, and they would make a decision based on the balance of those considerations.

Mr. Raj Saini: This is what I don't understand. If 10,000 people are deemed inadmissible, how is it that they're okay to enter the country then? Is there a criteria issue or is there something else? I'd like to know why the number is so large.

Ms. Lesley Soper: In most instances TRPs are issued for very short periods of time for very bona fide reasons to enter the country. An example might be an entry to attend a funeral in Canada. Many of these are issued at the border to Americans who have minor criminality convictions, such as driving under the influence. The officer makes a risk assessment with the individual in front of them, who's been very transparent about their criminal history, and renders a decision around the issuance of a permit. Very few are issued in relation to serious inadmissibilities, such as human rights violations. I think you cited two permits issued in those circumstances.

Mr. Raj Saini: Is there any way you can tell us why those two were issued?

Ms. Lesley Soper: I couldn't speculate, but I certainly would think that decision called for a very senior level of decision-makers in order to issue those permits. I would posit that those individuals are current members of government.

Mr. Raj Saini: Can you provide some written details maybe?

Ms. Lesley Soper: I'm not familiar with those cases.

Mr. Raj Saini: Ms. Tsai, is there any way you could provide those details?

Ms. Maureen Tsai: We generally don't speak to specific decisions, so I don't see how we could provide details without getting into potential privacy considerations.

Mr. Raj Saini: Okay.

You mentioned something else called "non-discretionary authority" that the minister has. If the Minister of Foreign Affairs determines that someone is inadmissible because of economic sanctions or targets someone, does the Minister of Immigration have the authority to supersede that decision? Am I understanding that right? If someone is determined by the Minister of Foreign Affairs to be inadmissible, then the immigration minister has the...?

Ms. Maureen Tsai: If I understand you correctly, the Minister of Foreign Affairs lists someone under SEMA or FACFOA, and you're wondering whether the Minister of IRCC would do something to allow that person to enter Canada. Is that your question?

Mr. Raj Saini: I mean whether he would use his discretionary—

Ms. Maureen Tsai: You mean use his discretionary authority?

Mr. Raj Saini: Yes.

Ms. Maureen Tsai: Just to be clear, we have many authorities under the act to provide discretion to allow people in. We really have only one discretionary authority to keep people out. The temporary resident permit would be an example of how, despite being inadmissible, an individual would be permitted to enter Canada. As I mentioned before, the decision-making on temporary resident permits is by an officer. As Lesley mentioned, when there's a serious inadmissibility involved, that decision is made by a very senior official.

Mr. Raj Saini: Okay, thank you.

The Chair: Colleagues, that wraps up our hour of discussion with our witnesses.

I want to thank both the Border Services Agency and Immigration, Refugees and Citizenship Canada. Just keep in mind that we might call you back as we work our way through this. One of the issues we're grappling with is that under the FACFOA, there's a lot of discussion about the individuals who are put on the list. One of the questions that pop up is whether those decisions are made in

multilateral fora, in the sense that they all seem to resonate around some of our partners. There are no individuals on the list, at least none that we're aware of, who are on the list simply because Canada has put them on it; they exist on other countries' lists as well. There is a process of communication and discussion, and we'd like to follow that up at some point with you. We did not have the time to do that today. We are going to be going, at some point, clause by clause through the legislation, and before we do that, we will certainly either be writing to you or be requesting that you come back to the committee again.

On behalf of the committee, thank you very much for spending some time with us this afternoon, and we look forward to speaking to you again.

Colleagues, we'll take a five-minute break, and then we'll go into in camera discussions on our study of countries of focus.

[Proceedings continue in camera]

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>