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Chair: Mr. Ali Ehsassi





# Standing Committee on Foreign Affairs and International Development

Wednesday, September 27, 2023

• (1635)

[English]

**The Chair (Mr. Ali Ehsassi (Willowdale, Lib.)):** I call this meeting to order.

Welcome to meeting number 74 of the House of Commons Standing Committee on Foreign Affairs and International Development. Today's meeting is taking place in a hybrid format, pursuant to the House order of June 23, 2022, so members are attending in person in the room, as well as remotely by using the Zoom application.

I would like to make a few comments for the benefit of the witnesses and for the members as well.

Before speaking, please wait until I recognize you by name. Those participating by video conference can click on the microphone icon to activate their mikes. Please mute yourselves when you are not speaking. For those in the room, your mike will be controlled as normal by the proceedings and verification officer.

You may speak in the official language of your choice. Interpretation services are available for this meeting. You have the choice, at the bottom of your screen, of either floor, English or French. Those in the room can use the earpiece and select the desired channel. If interpretation is lost, please inform us immediately.

In accordance with the committee's routine motion concerning connection tests for witnesses, I am informed by the clerk that all witnesses appearing before us virtually have completed the required connection tests in advance of the meeting.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Wednesday, September 21, 2022, the committee resumes its study of Canada's sanctions regime.

I would now like to welcome our witnesses.

As individuals, we have Andrea Charron, professor, University of Manitoba; Madame Sophie Marineau, Ph.D. candidate; and Dr. Craig Martin, professor of law. We also have Tom Keatinge, director, Centre for Financial Crime and Security Studies.

Each of our four witnesses will be provided with five minutes for their opening remarks.

I would ask that you pay attention to the monitor, because when you're getting very close to the five minutes, I will hold up a sign. We would be grateful if you could wrap it up within 30 seconds of that. The same goes when members are asking you questions. Each

member is allotted a particular time frame. When they are approaching that time frame, I will hold up the sign.

We will start off with Madame Andrea Charron from the University of Manitoba.

Are you ready to take the floor?

**Dr. Andrea Charron (Professor, University of Manitoba, As an Individual):** I'm ready.

**The Chair:** Excellent. You have five minutes.

Thank you.

**Dr. Andrea Charron:** Thank you for the opportunity to present my recommendations.

I have three immediate ones that have been outlined in numerous reports, including the latest report published by the Senate in May 2023. I note that this current review is limited to Canada's autonomous sanctions legislation, but a review of the machinery and architecture of all of Canada's sanctions legislation and procedures—for multilateral situations, autonomous sanctions and the Freezing Assets of Corrupt Foreign Officials Act, which applies to Ukraine and Tunisia—is recommended for the future.

The three priorities are to better coordinate with our legislatively closest allies, the EU and U.K.; to report publicly on measures of effect and effectiveness in a yearly report to Parliament; and to develop Canadian-specific training and proactive guidance.

First, the EU and the U.K. have autonomous legislation similar to Canada's. They do not have extraterritorial reach, as does the U.S., and they sanction for reasons similar to Canada's, but there are differences. The EU has matched nine of the 11 SEMA regimes, the Special Economic Measures Act regimes, and has also sanctioned states that Canada has not, such as Bosnia-Herzegovina, but it no longer has sanctions against Sri Lanka and it sanctions China differently from Canada.

Canada recently adopted a 50% ownership rule, but the rule matches the U.S. for 50% or more and not the over 50% rule in the EU and the U.K. The EU and the U.K. provide public reports on sanctioning activity and publish far more information on targets, and the information is more easily searchable than the information in Canada.

While variation among the sanctions regimes is expected, particular attention should be paid to targets listed by some states and not by others. This encourages sanctions-busting shopping, whereby targets seek to export, import or store assets in the non-sanctioning states, delegitimizing western resolve and coordination. A recent study by me, Dr. Tilahun and Ms. Cherpako in 2021 found that only eight individuals and one entity out of over 2,000 listings, or a 0.4% congruence rate, were the same in both Canada and the EU for human rights abusers.

Next, Canada needs to publish and review measures of effect against the target and effectiveness for the sender on a regular and consistent basis. For too long, Canada has sought to improve the efficacy of sanctions by creating more legislation and adding new requirements, such as a mandatory inadmissibility clause, in sanctioning thousands of targets, but the government cannot answer the question: Are its sanctions effective?

Easily attained measures of effect can include import and export changes with the target state; the gender of targets; the type of entity sanctioned, whether state-based or private; what types of goods or services they produce; the number of delisting requests versus success rate or denial rate; and the number and type of retaliatory sanctions against Canadians.

Effectiveness measures include but are not limited to objectives: Are they to protest undemocratic changes to government or decry human rights abuses? What's the purpose? Is it to coerce, constrain, signal or stigmatize? Are the targets elites or state-owned entities?

Another measure is the number of permits sought and issued by Global Affairs Canada to authorize activities otherwise prohibited and requested. By whom are they requested? Categories could include individuals, businesses or NGOs, and the activity.

Finally, what about the number of court proceedings vs. prosecutions or dismissals?

Finally, as part of establishing a specialized sanctions bureau, it is incumbent upon the Government of Canada to ensure that the officials involved in administering Canada's sanctions receive training on the specifics of Canada's sanctions regimes and sanctions research generally.

I agree with Lawrence Herman that Canadians and Canadian businesses need proactive written guidance on sanctions application. After all, they are the first enforcers. Training and guidance will improve policy-making and enforcement. A number of academics are ready to assist and provide such curricula in their law, business and public affairs courses.

Thank you.

• (1640)

**The Chair:** Thank you very much, Professor Charron.

We will now go to Madame Marineau.

You have five minutes.

[*Translation*]

**Ms. Sophie Marineau (PhD Candidate, International Relations, As an Individual):** Thank you very much, Mr. Chair.

Study and analysis previous international sanctions regimes have shown that sanctions do not stop wars. However, sanctions regimes are still widely used by Western governments, even if results are always uncertain. If war is not an option, sanctions show that, even without binding means, it is possible to express disagreement, at least symbolically and diplomatically.

Sanctions are a relatively inexpensive political instrument in comparison to armed conflict. Nevertheless, it's impossible to define the exact level of measures required to have a real impact on the sanctioned state's policy.

However, certain factors are decisive in determining the effectiveness of a sanctions regime.

The most important factor is certainly the economic cost imposed on the sanctioned state. The higher the cost, the more likely it is to change its policy.

The second factor is the type of political regime in the sanctioned country. Sanctions are far more effective when imposed on a democracy than an autocracy.

The third factor is stability. A state that is rather weak or facing economic woes will be more vulnerable to the application of a sanctions regime. Even a dictator with little concern for the welfare of their people will have trouble managing a country on the brink of chaos.

The fourth factor has to do with ties between the sanctioning state and the sanctioned state. For sanctions to be effective, the sanctioning state must have a significant and well-developed economic relationship with the sanctioned state. If trade is significant, the sanctioned state will lose a more important source of revenue than if trade is limited.

The fifth factor relates to international cohesion. The majority of the sanctioned state's economic partners must impose sanctions to maximize their chances of success. In the absence of international cohesion, the sanctioned state may find alternative suppliers to those who are imposing the sanctions.

A phenomenon like rallying around the flag tends to limit the effectiveness of sanctions regimes. In some cases, if civil society decides that their country should not be placed under sanctions, national unity can strengthen around power.

This can also happen in entirely different circumstances: If the people are too reliant on their leaders for food and basic necessities, civil society may rally around the leaders because, as Moscow University law professor Andrei Kolesnikov explains, people prefer to support the hand that feeds them because if it were to disappear, they might not be fed at all.

Finally, time is also a major variable in determining the effectiveness of sanctions regimes. Sanctions often force sanctioned states to turn inward and develop their own industries to become self-sufficient, or to find new economic partners to replace those lost as a result of sanctions. In the long term, this makes the state more able to function as a dictatorship or less dependent on imports and goods from sanctioning states. The effects of sanctions then become extremely limited.

In the specific case of Russia, I'd like to quote the analyst Perun to show what can be expected from a sanctions regime:

• (1645)

[*English*]

“Sanctions don't so much stop production as force you to spend the time and the money to evade them. They are not so much bullet wounds as mosquito bites.”

[*Translation*]

Sanctions become effective through the cumulative effect of all these inconveniences.

Right now, around 70% of Russian banks' international assets are subject to sanctions and have been made inaccessible. At the same time, some 20 billion Euros in assets of more than 1,500 sanctioned individuals and entities have been frozen. In the past year, Russian exports have fallen, while imports have risen. Almost a third of Russia's budget is now devoted to military spending, which has slowed down its economic development.

It's certainly hard to determine what effects can be attributed to sanctions alone, let alone Canadian sanctions on their own. However, because international cohesion is paramount to the success of a sanctions regime, Canada's efforts must be analyzed in a more global perspective where the efforts of all partner states count.

Thank you very much.

**The Chair:** Thank you very much, Ms. Marineau.

[*English*]

We now go to Dr. Martin.

Dr. Martin, you have five minutes for your opening remarks.

**Dr. Craig Martin (Professor, Law, As an Individual):** Thank you, Mr. Chairman, and honourable members of the House, for the invitation to appear before you today. It's really an honour to be here. At the outset, I would like to applaud the work that you are doing in conducting this important review of Canadian economic sanctions law and policy.

By way of overview, my focus is on the broader international law issues implicated by the Magnitsky law and SEMA. I believe I was invited because of my policy report, “Economic Sanctions Under International Law: A Guide for Canadian Policy”, which was pub-

lished in 2021 by the Rideau Institute and the University of Ottawa Human Rights Research and Education Centre. I do commend the report for your review, as I can't possibly do justice to the nuance and complexity of all of the issues that were analyzed in there.

In short, I suggest that there's a tendency in the Canadian sanctions discourse to simply accept that autonomous sanctions—that is, sanctions that are not authorized by the UN Security Council or some other international legal organization—are lawful. There is this assumption that if all our allies are imposing similar sanctions regimes, they must be legitimate and they must be lawful. Indeed, the view is that such sanctions are not only lawful but virtuous and are the best way to peacefully enforce human rights and other international legal obligations.

This view was largely echoed in the recent Senate committee report, based on hearings that it conducted last year, and while I commend some of the recommendations that the report made for improving the Canadian sanctions regime, it too largely accepts this assumption that autonomous sanctions are lawful under international law. This somewhat uncritical view neglects serious questions that are being asked in international institutions, in international law scholarship, and in the statements and practice by states in other regions of the international community regarding the legality of certain kinds of autonomous sanctions. Indeed, there are sharp questions as to whether certain kinds of sanctions, including the kinds of sanctions that Canada participates in, often imposed in the name of human rights and the international rule of law, do not themselves violate international law obligations in various ways.

First, for instance, there's whether they do not themselves actually violate human rights norms and obligations, whether in terms of comprehensive embargoes that cause humanitarian suffering in target populations in a manner that violates human rights law or in terms of targeted sanctions that may violate the due process rights of individuals who are being targeted.

Second, there's whether they may constitute unlawful intervention in the sovereign affairs of target states in violation of well-established principles of non-intervention, or third, there's whether some targeted or secondary sanctions may violate international law principles of jurisdiction that prohibit the extraterritorial application of domestic law, all of which potentially, rather paradoxically and ironically, undermine the international rule of law that sanctions are trying to enforce.

These questions are even sharper with the recent suggestion that Canada would not only freeze the assets of certain targeted individuals but actually expropriate those assets and convert them for purposes of reparations to victims such as those in Ukraine, all in the absence of any trial or other process, which is viewed by many international law experts as being inconsistent with well-established international law on expropriation.

What is more, critical arguments about sanctions are most strongly made by states in the Global South, precisely where Canada has traditionally tried to champion the rule of law and human rights compliance. There are thus potential tensions between the human rights objectives of Canadian sanctions law and policy—the effectiveness of which are often very much in question—and the possibility that such law and policy cause real harm, undermine Canada’s broader foreign policy objectives, make Canada vulnerable to charges of hypocrisy, and are indeed inconsistent with Canada’s own constitutional values.

In closing, let me just say that this is only been a thumbnail sketch of what are really a very complex set of arguments and analyses. I’m happy to address questions on any of the issues in more detail in response to questions.

I don’t want to overstate the case; many of these questions that I addressed regarding the lawfulness of sanctions are unsettled and contested. However, the unsettled nature of these issues calls for caution. The primary point I would like to leave you with is that the Canadian government has not done enough to publicly address these questions and explain how its sanctions law and policy comply with international legal obligations.

I would suggest that there are ways in which Canadian law and policy may not be consistent with international law or with certain Canadian values and that doubts regarding Canadian non-compliance can operate to undermine Canadian efforts to strengthen human rights and the international rule of law. Thus, in my view, Canadian lawmakers and policy-makers need to be more sensitive to these international law implications, develop and implement economic sanctions law and policy more fully informed by the relevant principles of international law, and provide a fuller and more detailed public explanation of how such law and policy are compliant with international law.

• (1650)

Thank you, and I look forward to your questions.

**The Chair:** Thank you very much, Mr. Martin.

We now go to our last witness.

Mr. Keatinge, the floor is yours. You have five minutes.

**Mr. Tom Keatinge (Director, Centre for Financial Crime and Security Studies, Royal United Services Institute):** Thank you very much. Thank you for inviting me to speak to you this evening.

As mentioned, my name is Tom Keatinge. I run a—

**The Chair:** Mr. Keatinge, wait one second, please.

I’m so sorry. The clerk wants to advise us of something.

Mr. Keatinge, we just heard from the interpreters that they’re having a hard time hearing you. As I understand, you received headphones from the House.

**Mr. Tom Keatinge:** No, I didn’t, because I’ve been on holiday. I came back at midnight last night in order to participate. I’m wearing a Logitech headset, which I have owned for a couple of years.

**The Chair:** Then you do not have access to House-issued headphones. The clerk is advising me that this is against the regulations of the House.

Can we still ask questions of the witness?

I apologize.

**Mr. Tom Keatinge:** I went through a sound test 45 minutes ago, and I was cleared to participate.

**The Chair:** Yes, that was my first question to the clerk, as well. However, I’m afraid we’ve been advised that we can’t proceed with your opening remarks because the interpreters are having difficulties. Those are the rules. I’m terribly sorry about this, Mr. Keatinge.

Obviously, we would very much like to hear your views. Would it be possible for you to submit your remarks for the members’ consideration?

• (1655)

**Mr. Tom Keatinge:** I already submitted them in advance last night, having written them on holiday at the request of your clerk. I’m now having my time wasted. I take a pretty dim view of that.

**The Chair:** I’m terribly sorry. Those are the regulations and rules here.

Do the members have anything to say?

Yes, go ahead, Mr. Aboultaif.

**Mr. Tom Keatinge:** Do you want any perspective from across the Atlantic, or shall I go?

**The Chair:** We’re trying to sort this out. I will have to rely on the members to provide suggestions.

Yes, go ahead, Mr. Aboultaif.

**Mr. Ziad Aboultaif (Edmonton Manning, CPC):** With the permission of all members, if we can all gather what the professor is trying to say to us in English, let’s allow him to do his presentation. Again, that’s with the permission of everyone.

[*Translation*]

**The Chair:** Mr. Perron, you have the floor.

**Mr. Yves Perron (Berthier—Maskinongé, BQ):** I can’t agree to that, Mr. Chair. I’m very sorry for the witness Mr. Keatinge, but we can surely invite him to appear again.

This is covered in our guidelines. It’s also out of respect for the interpreters. The interpreters’ auditory health is constantly at risk in a hybrid Parliament. In fact, that’s why our political party wanted to limit the number of hybrid meetings.

Therefore, I’m truly sorry but I can’t agree.

[English]

**The Chair:** I'm terribly sorry, Mr. Keatinge. Given that those are the House rules, we cannot override them. I apologize to you. I understand there were unique circumstances you faced in not being able to receive them, but I'm afraid—

**Mr. Tom Keatinge:** Without any doubt, one hour ago I did a test with the interpreters, who approved my participation. Now you're basically humiliating me in front of the Canadian Parliament with this decision. I cannot tell you how embarrassing this is.

**The Chair:** I can assure you that it is not the objective. The rules state that we're not allowed to proceed—

**Mr. Tom Keatinge:** But why did the interpreters agree less than an hour ago?

**The Chair:** You raise a very valid point, Mr. Keatinge, but that is what I—

**Mr. Tom Keatinge:** Indeed, there was a further discussion about this, and then I was told, "Please continue."

**The Chair:** I'm terribly sorry. I completely understand your frustration.

Go ahead, Ms. Chatel.

**Mrs. Sophie Chatel (Pontiac, Lib.):** Thank you, Mr. Chair.

I'm terribly sorry. It has happened before in other committees. The rules have been very strict now because of health issues for our interpreters. It's really nothing about you, Mr. Keatinge. It's really about the safety of our interpreters. It's a rule now. It has created similar issues in other committees.

What I've learned is that there is a technical test, but it's not necessarily in the presence of the interpreters who are assisting our committee. I really like—

**Mr. Tom Keatinge:** I'm sorry to interrupt, but an hour ago, I did it in the presence of your interpreters. That's what I was told.

**The Chair:** Mr. Keatinge, allow me to emphasize once again that those are the rules of the House, and we apologize for the inconvenience.

**Mrs. Sophie Chatel:** I like the suggestion of Monsieur Perron. We would really like to hear your testimony. I think it's very important for this committee.

With your permission, Mr. Chair, I would like to make sure that we invite him—with the right headset—for another time, but I would really like to hear our witnesses today on this committee.

Thank you.

**Mr. Tom Keatinge:** I apologize to my fellow witnesses for this shambles.

**The Chair:** Mr. Keatinge, this is not a shambles. We all would have very much liked to hear from you, but the House has its rules and this is not unprecedented. It has happened to numerous—

• (1700)

**Mr. Tom Keatinge:** Okay. I'll tell you what. Let me save everyone's time. I will hang up on the call. You can continue with your hearing. If the clerk wants to get in touch with me and invite me back, we can figure something out, if I can be available.

Needless to say, this has not been a good experience with a fellow ally across the Atlantic on one of the most important topics that we face right now in international security.

I would have thought you would want to hear the view from Europe, where, obviously, sanctions play a critical role in response to Russia's—

**The Chair:** Mr. Keatinge, you have my sincerest apologies. We want to hear from you, and someone will be in touch with you.

Thank you kindly for your time.

**Hon. Michael Chong (Wellington—Halton Hills, CPC):** Mr. Chair, on a point of order—

**The Chair:** Go ahead.

**Hon. Michael Chong:** Mr. Chair, this is deeply embarrassing. I would hope that we don't end up in this situation again.

If somebody is cleared an hour ahead of the meeting or half an hour before the meeting, they should be able to proceed. I don't know what happened, but he should have never been cleared to proceed half an hour before the meeting.

Let's make sure, Mr. Chair, that this doesn't happen again because, frankly, this is embarrassing.

**The Chair:** I agree. That process is in place for a reason, but we can talk about that in committee business, if that's okay with everyone.

Now we will open the floor to questions from members. For the first round, we have five minutes each.

Mr. Hoback, you are up first. You have five minutes.

**Mr. Randy Hoback (Prince Albert, CPC):** Thank you, Chair.

Again, it is unfortunate that this has happened. I want to thank the other witnesses for being here this afternoon or evening, depending on where they're located.

One thing about having sanctions on a country or an individual is that they're only as effective as the ability of the country putting on the sanctions to enforce the sanctions. What recommendations would you make in light of the fact that Canada has not been doing that? What should we look at as a committee to see better enforcement and better follow through with regard to these sanctions when they're put in place?

I'll start with you, Mrs. Charron, and then go to Mrs. Marineau and Mr. Martin at the very end.

**Dr. Andrea Charron:** Thank you. That's an excellent question.

I think what we've heard from a lot of the testimony is that ultimately the RCMP and customs and the Border Services Agency, etc., are responsible for the enforcement of sanctions.

However, that's actually not quite correct. It is in fact Canadians—Canadian businesses and Canadian banks and financial institutions—that are on the front line of making sure that they understand sanctions and are able to make sure that they're not dealing with listed entities and individuals. That's why I'm calling for sanctions training, which Canada does not have, unlike the EU, the U.K. and the U.S. We don't provide guidance to Canadians.

For example, Guinea-Bissau is sanctioned by the UN Security Council. We are obligated to put those sanctions in place. You will not see Guinea-Bissau mentioned at all on the Global Affairs website.

We are missing information that allows Canadians and businesses to actually do their jobs and make sure they're at the front line of sanctions enforcement.

**Mr. Randy Hoback:** I only get five minutes, so I'll have to be a little quicker with the other witnesses. I wouldn't mind having your comment on that, quickly.

[*Translation*]

**Ms. Sophie Marineau:** In recent years, I've often been asked about the clarity of Canadian sanctions. People have often found the laws surrounding sanctions to be rather vague. That was particularly the case last year, when Bombardier engines were found on Ukrainian territory in Shahed drones made in Iran and used by Russia.

It's not extremely clear to everyone whether Canadian companies are in fact complying with sanctions. Even though, in this particular case, the engine was classified as an item used for civilian purposes, not military purposes, the difference between civilian purposes and military purposes is far from clear to most people and businesses. Even the classification on the Canadian government's website is far from clear on this subject. So businesses have to do a lot of research to find out whether their own products are subject to sanctions or not.

So there is a great deal of vagueness around the regimes currently being imposed.

• (1705)

[*English*]

**Mr. Randy Hoback:** Again, I only get five minutes.

Mr. Martin, I'm kind of curious. You've done a lot of international work in regard to this area. When Canada isn't perceived to be doing its share of the work when sanctions are put on, how does that impact our relationship with other countries around the world? Are we taken seriously around the world when we say that we're going to put serious sanctions in place and then we see no enforcement on the back end?

**Dr. Craig Martin:** It's not exactly my area of research.

I think that Professor Charron had her finger on the fact that when we think about enforcement, there tends to be this sort of focus on whether there are prosecutions, yet that sort of misses the point that sanctions often have their effectiveness in the way in which, for example, financial institutions refuse to process transactions or lawyers advise their clients not to engage in certain trade. Sanctions can actually have quite a profound effect, even without

any evidence that the law enforcement is actually prosecuting anyone for violation of sanctions, so you'd have to do a lot more granular research to determine whether in fact the sanctions are being violated in a way that would require prosecution.

In terms of the international perception, the thing that has been getting the most attention—from my perspective, when I'm at conferences where both legal scholars and law and policy experts are convening—is Canada's suggestion that it may start expropriating assets as opposed to just freezing assets. People are thinking that Canada is actually way out in front of everybody else, perhaps not in a good way, in terms of pushing the boundaries of international law with respect to expropriation.

**Mr. Randy Hoback:** Mr. Martin, I'd like to talk to you more about that part of it, too, because I think that's a very important conversation we should be having.

It comes back again, though, to this: If there are no benchmarks, if there's no transparency and if there's no way of seeing exactly what's going on, how do we know whether we're being effective or not? How do we know that companies are actually obeying? You say that you think they are, but I have no measure or no tools to say that you're right or wrong.

Maybe I'll go back to you, Ms. Charron. What type of benchmarks should be put in place, and how do we make sure they're established in such a way that we get good data?

**Dr. Andrea Charron:** I think you've hit the nail on the head. These testimonies have provided a lot of data, but it's not captured and it's not given to the public. This should become routine. Our other allies provide it. They say, "Here's a summary of our sanctions regimes for the year. Here's the number; here is who asked for delisting", and the like. That provides metrics to determine if, in fact, for Canada, things are effective.

Right now, the only metric we have is how long the lists are.

**The Chair:** I'm afraid, Ms. Charron, that you're considerably out of time. I apologize for interrupting you. I'm sure another member will ask for further clarification.

Next we go to MP Zuberi. You have five minutes.

**Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.):** I'd like to thank all the witnesses for being here.

I'd like to start with Professor Charron.

In your brief, you mentioned that an annual review of sanctions would be a good thing. Can you elaborate a little bit about what the value of an annual review would be, in your estimation?

**Dr. Andrea Charron:** Thanks.



As Sophie mentioned, the whole effectiveness of sanctions requires the sender to be reactive to events on the ground. However, Canada has a “fire and forget” approach. We put a name on the list, and then that's the last we hear from it. We know that Canada, for example, took three years to lift sanctions from Côte d'Ivoire and Liberia after the UN Security Council had. We spend a lot of time up front on whom to target, but we don't spend a lot of time on looking at what the effect is on these targets and whether we should be maybe adjusting with allies and in response to events on the ground.

**Mr. Sameer Zuberi:** That's perfect.

Don't you think an annual review would be a little bit onerous, though? Wouldn't you suggest maybe every two years or something along those lines? That's number one.

Number two is an open question, without leading you anywhere: Do you have any thoughts with respect to some sort of sunset clause or something along those lines, or a review mechanism that would require renewal?

Do you have any thoughts, Professor Charron, or anybody else?

• (1710)

**Dr. Andrea Charron:** It's not onerous, because the information is readily available. It requires somebody to put it together. When you think about the formatting, the first time is going to be difficult. However, we have legions of really smart graduate students. You could throw them at this, and they would have this licked easily. I think it is possible, but we have to determine the format that we need.

With regard to the sunset clauses, it depends. On the one hand, it then tells targets that they just have to sit it out and they'll be fine. They'll make sure that they do their bad behaviour after the sunset clause has ended the sanction.

What it really requires is regular reviews, with all of the players and with allies, to be responsive to events on the ground.

[*Translation*]

**Mr. Sameer Zuberi:** Ms. Marineau, you commented on the negative and unintended consequences of sanctions on your social media. Would you like to tell us more?

**Ms. Sophie Marineau:** Could you repeat the question in English, please?

[*English*]

**Mr. Sameer Zuberi:** On your social media, you mentioned something along the lines of unintended consequences and negative consequences with respect to sanctions. Would you like to elaborate a bit on this?

[*Translation*]

**Ms. Sophie Marineau:** Yes. Let me know if I have understood the question correctly.

When Canada imposes sanctions, it necessarily stops or tries to limit trade between it and a foreign country. To stop trade, on the one hand, trade must be happening. On the other hand, the country in question, in this case Russia, must suffer the consequences. However, Canada will also suffer.

An effective sanction will certainly have an impact on the sanctioned state, but the sanctioning state may also suffer the backlash. Relations are bilateral, sometimes multilateral. Canada and any of its allies must forgo trade with Russia. Whether we're talking about imports or exports, we're depriving ourselves of goods or revenue. Of course, if sanctions imposed by Canada or its allies are at all effective, the Canadian economy will feel the impact of them.

Does that answer your question?

**Mr. Sameer Zuberi:** Yes, thank you.

[*English*]

To all the witnesses, I'd like to ask what the value is in harmonizing with other countries or working in coordination with other countries with respect to our sanctions.

Would any of you like to elaborate on that point?

**Dr. Andrea Charron:** May I start?

**The Chair:** Could I ask that you provide a very brief 15-second response, please?

[*Translation*]

**Ms. Sophie Marineau:** All right.

A look at past sanctions regimes shows that in the absence of international cohesion, the country targeted by sanctions can quickly find other customers to replace the sanctioning state. Sanctions imposed by an international organization like the European Union, for example, with the full force of its partners, are far more effective than sanctions imposed by a single country. This brings to mind the U.S. embargo against Cuba, where Cuba was able to replace the Americans with other customers. So, the more customers—

[*English*]

**The Chair:** Thank you, Madame Marineau.

[*Translation*]

Mr. Perron, you have the floor for five minutes.

**Mr. Yves Perron:** Thank you very much, Mr. Chair.

First, I'd like to thank the witnesses for taking the time to join us today.

Ms. Marineau, you did a good job explaining the factors used to assess how effective measures are. It's just a shame that they are not being applied.

Almost a year ago in 2022, \$76 million in funding was announced to establish a specialized sanctions bureau, but no bureau has been established as of yet.

Do you feel that this delay is to be expected, given the structure to be established, or do you feel that it's laxity and they should be moving faster?

If I understood what you said correctly, you also said that this bureau would have to report regularly to the House. Could you clarify that, please?

• (1715)

**Ms. Sophie Marineau:** I think it was my colleague who brought that up, not me.

**Mr. Yves Perron:** Based on your criteria, Ms. Marineau, do you feel it's acceptable that we currently have no structure for sanctions, despite last year's announcement? Do you feel it's urgent that we establish the bureau? Could the committee recommend that to the government once it completes this study, for example?

**Ms. Sophie Marineau:** I feel that would be a good recommendation for the committee to make.

If we impose sanctions, we certainly need to have ways to test their efficacy. The efficacy of sanctions can't be calculated in a matter of days or months. The current sanctions regime was introduced in 2014 and it's been strengthened several times. Among other things, new and much stricter measures were introduced in 2022. If everything goes as planned, we should have some results for the years 2014 to 2020 or 2021. Surely we will soon have the data needed to gauge the efficacy of the sanctions and measures put in place last year.

**Mr. Yves Perron:** Thank you very much.

Ms. Charron, I believe you mentioned that the bureau would have to report regularly to the House. I assume you agree that a year is long enough, and that the bureau should be established immediately, right?

[English]

**Dr. Andrea Charron:** I'm sorry; is that directed to me?

[Translation]

**Mr. Yves Perron:** Yes, Ms. Charron.

[English]

**Dr. Andrea Charron:** I don't think we can overestimate how difficult it is to pull people together to get them trained. We don't have a culture of sanctions certification. The U.S., the U.K. and the EU have sanctions certification. People go on regular courses. It's recognized worldwide.

Canada is a day as part of that certification, and too few of us take that certification. One of the problems is going to be finding people to hire and then bringing them up to speed, because this is a very complicated topic.

[Translation]

**Mr. Yves Perron:** Thank you very much.

I will come back to you, Ms. Marineau.

Based on your criteria for evaluating the efficacy of sanctions, do you feel that, generally speaking, the sanctions Canada imposed on Russia are currently effective?

**Ms. Sophie Marineau:** As I said in my opening remarks, sanctions don't stop wars. Historically, if we go by the analysis of recent sanctions regimes in the 20th century, we shouldn't expect the sanctions against Russia to end the war. However, we can expect that the economic issues they cause for Russia will be severe enough that Russia will want to come to the table and get out of this war.

As to whether the sanctions are effective, we've clearly seen that they have had an impact, especially on the military industrial complex. Right now in Ukraine, Russia is being forced to use Soviet weapons. It has to blow the dust off weapons and old tanks from the USSR era. The same thing goes for its air force. So, are the sanctions working? Yes. They are depriving Russia of goods and the parts it needs to expand its military industrial complex.

**Mr. Yves Perron:** Thank you very much.

I'm glad to hear you say that the sanctions are working, but international cohesion is also needed. Several countries need to impose sanctions at the same time, because Canada's economic weight alone wouldn't be enough. That's what I understand from your speech.

Speaking of international cohesion, in your research you talk about black knights, namely countries that allow other countries to sidestep the sanctions imposed on them.

Who are the black knights right now? What could Canada do to stop them?

[English]

**The Chair:** Answer very briefly, please.

[Translation]

**Ms. Sophie Marineau:** Right now, Russia's main ally and economic partner is China, obviously. Since 2014, Russia has been rapidly turning to its Chinese partner, almost to the point of becoming dependent on it in many import and export markets.

Most of the other partners are part of BRICS, the group of countries attempting to challenge the current world order to some extent.

**Mr. Yves Perron:** Thank you very much.

[English]

**The Chair:** Thank you.

Next we go to MP McPherson. You have five minutes.

**Ms. Heather McPherson (Edmonton Strathcona, NDP):** Thank you very much, Mr. Chair.

Thank you to the witnesses for being here today. This is a very interesting conversation. Like some of my colleagues, I would love to sit and spend an awful lot of time picking your brains, but we have a very short amount of time here.

Dr. Charron, you testified before this committee in 2016 about the study of Canadian sanctions and you spoke a lot about your concerns with Canadian sanctions practices. The committee report made a series of recommendations, but we haven't seen a lot of those recommendations followed through on. I have two questions for you in that regard.

First of all, what is your assessment on how well the government has responded to that report? How well do you think they have met the recommendations or responded to them?

I'm going to assume that you're going to say there are some things, at least in part, wanting in that response. Why do you think that has been the case, considering that this is something that is key and has become an increasing part of our foreign affairs international policies? Why do you think these recommendations are so slow to be implemented?

I sort of answered your question there. Sorry about that.

• (1720)

**Dr. Andrea Charron:** It's a great question.

The fact that we have the same recommendations that come up time and time again and they're on the list and they don't seem to get ticked off is, I think, the metric that says we're not advancing.

I would say that this is not unique to any one party. This has been a long-standing problem. I started raising the concerns back 15 years ago.

We need to get a handle on our legislation. It's a bit sloppy; there's no coherence, and we're here again. I think because there is political merit in putting names on a list—for Canadians, we're doing something—but now we realize that's not sufficient and we actually need to integrate and coordinate with allies. Now we need to get down to the business of measuring how these are having an effect, because it's a much more complicated world.

**Ms. Heather McPherson:** For you to call some of our sanctions sloppy.... It's easy to put someone on a list when we don't have that follow-through. In the last session, we heard from witnesses who said that the rest of the world that we are sanctioning is in fact laughing at us because they know that the sanctions don't have any teeth to them and that these sanctions don't mean anything.

From your perspective, do the sanctions mean anything? We have also heard today that they are working in the case of Russia, but do you think the majority are actually doing anything? Do they even have a political value in terms of signalling to other countries our displeasure with their actions?

**Dr. Andrea Charron:** We can't answer that question unless we measure it. I will say that Canada has some of the best public servants in the world, but they are beleaguered and they don't have enough resources. We've had a tsunami of sanctions, and perhaps we need to put the brakes on and say that it's not about the number on the list. Let's look at the list and see how we can make those individuals and entities.... Let's make sure that we have the right people, and this requires conversations with our allies.

**Ms. Heather McPherson:** That's just it, right? If we have a tsunami, as you say, of sloppy sanctions, it doesn't do anything. It's better to have those targeted ones that are actually being enforced.

You also spoke to the CBC previously about the lack of qualified investigators and technical experts. You spoke today on this panel about the fact that we don't have the people in place.

First of all, are there other countries that are doing that better that we can learn from? I know you indicated the U.S. I'd like you to talk a little bit more about that. How do we do that? How do we get those skilled people in place? What are the next steps that the Canadian government needs to take?

**Dr. Andrea Charron:** Well, I'm sure Craig Martin is going to have some advice on this as well, but there are a number of associations that provide sanctions training and certification. You take an examination. It goes through the EU, U.K. and U.S. sanctions. They often spend a day on Canada, usually on our blocking legislation for Cuba.

We just don't have this culture of certification, and I think it would extend to money laundering as well. These are connected, yet we don't seem to have this culture of training. We don't see Global Affairs saying, like we see OFAC officials in the U.S. saying, "Let's talk about the latest sanctions. Here are some basic facts about them. Here is some guidance we can provide."

It's coming and it's improving, but it's going to take Canadian-specific training that Canadians, businesses and our allies take so that we can start to integrate and coordinate our sanctions better, and it will improve enforcement.

• (1725)

**Ms. Heather McPherson:** Thank you.

**The Chair:** Thank you.

We'll go to the second round now.

Mr. Aboultaif, you have three minutes.

**Mr. Ziad Aboultaif:** Thank you.

Dr. Charron, for the sake of the short time I have, I have three short questions that will probably require short answers.

The first one is this: If you had to rate Canada's transparency measures for sanctioning, how would you rate them?

**Dr. Andrea Charron:** They're poor. We have very little information about sanctions that's publicly available. On targets, we often don't even get birthdates.

**Mr. Ziad Aboultaif:** Considering Canada's cultural mosaic and the mysterious nature of our sanctioning system, do you believe the Canadian public should be aware of the sanctioning processes?

**Dr. Andrea Charron:** Absolutely. We are required to. It says quite clearly that if you engage in sanctions-busting activity, you are obligated to contact the RCMP, so yes.

**Mr. Ziad Aboultaif:** You mentioned the sanctions certification system. How much would you emphasize to the government to establish something like this?

**Dr. Andrea Charron:** Well, I don't think the government necessarily has to establish it, but they do need to inform some of the associations to make sure that the right Canadian sanctions training is being offered and available and to encourage sanctions practitioners and people in the government to take it.

**Mr. Ziad Aboultaif:** Is there a reasonable threat posed to the unity of Canadian society in not having sufficient transparency measures in place?

**Dr. Andrea Charron:** I'm not sure I would go that far, but it does weaken western coherence and legitimacy when, for example, the EU or the U.K. sanctions.... If they're going to sanction Gabon for their coup, but Canada doesn't, what does that say about Canada's respect for unconstitutional changes of government?

**Mr. Ziad Aboultaif:** If these are some of the unintended consequences, do you believe that the government is taking into consideration Canadian unity in approaching having a policy on the sanctions systems?

**Dr. Andrea Charron:** Well, I have no doubt that the Government of Canada is always concerned about the unity of the country. I mean, that is one of the number one national interests—

**Mr. Ziad Aboultaif:** No, I mean in this specific term, please.

**Dr. Andrea Charron:** I guess I'm not understanding your question.

**Mr. Ziad Aboultaif:** Do you believe that the current policy is taking into consideration these things? Is that why it's not effective?

**Dr. Andrea Charron:** I think there are a myriad of factors. I don't think we can distill it down to doing one thing and then all of a sudden everything will be terrific. It's really complicated. We're asking the sanctions bureau to change the tires on a car while it's careening down a highway. It's really difficult.

**Mr. Ziad Aboultaif:** Thank you.

**The Chair:** Thank you.

We next go to MP Oliphant. You have three minutes.

**Hon. Robert Oliphant (Don Valley West, Lib.):** It's just three minutes now?

**The Chair:** Yes, that's correct. Mr. Aboultaif got three minutes as well.

**Hon. Robert Oliphant:** Okay.

I have some quick questions.

Ms. Charron, you left an impression that I want to make sure you have a chance to correct, if you want to correct it, with respect to the difference between the autonomous sanction regime and the UN sanctions regime, as though we weren't sanctioning those from the UN.

We now have 15 regimes at the UN—country and individual regimes—which on the GAC website are pointed to but not listed, because of the complexity of the five or six different ways those happen. You sounded as though we aren't sanctioning Guinea-Bissau or any of the other 14 countries that we are sanctioning. Did you want to make sure that you are clear and that even though they're not listed on our autonomous regimes, they are effectively being sanctioned the same way?

**Dr. Andrea Charron:** No, what I'm saying is that the Global Affairs website has all sanctions—the UN sanctions, the autonomous ones, and the freezing of assets. Guinea-Bissau is not listed, because Global Affairs says it's only an inadmissibility sanction travel

ban, and they don't do travel bans. That's another department, so they're not going to list it on the Global Affairs website.

For Canadians, how are they to understand the totality of the sanctions if they have to know that you need to go to the Immigration and Refugee Protection Act and cross-list it with UN Security Council resolution 248 of 2012 to find the five names that are listed for Guinea-Bissau, which we are obligated to do? Global Affairs won't list Guinea-Bissau as a targeted state. That's what I'm saying.

• (1730)

**Hon. Robert Oliphant:** But there is a direct link to the UN website to do that. I want it to be really clear that we follow rigorously all UN sanctions. They're not volitional. We do not choose involuntarily or voluntarily. We follow every single one of them.

**Dr. Andrea Charron:** Yes; however, how are Canadians to know? That's the point I'm trying to make. At the end of the day, sanctions first and foremost are enforced by Canadians' understanding them. If they are not listed on the Global Affairs website, then how are we to know?

**Hon. Robert Oliphant:** We could probably argue that point because of the complexity of those 15 regimes that now have 11 organizing committees, etc. We could get into that and whether it would be effective to simply list something or whether they need more information than that.

I want to go to Ms. Marineau.

I really found your nine points very effective. I've read them as well. I wanted to congratulate you for helping us, because what is happening for me is that no matter what the problem is in Canada, we say, "Put in a sanction." I hear it all the time. If we're to follow your work on this, I think what you're saying is to be judicious.

**The Chair:** Mr. Oliphant, you're over the three minutes. Keep it very brief.

**Hon. Robert Oliphant:** Can you comment on the complexity in sanctions that you are pointing to in those nine—perhaps intended or unintended—consequences?

**The Chair:** Could you answer in 10 seconds?

[Translation]

**Ms. Sophie Marineau:** Yes.

We have limited means to demonstrate to a country that we're taking a stand against its policy. Sanctions are the one means we use. In very simple terms, we essentially have the following options: We do nothing, we wage war or we impose economic and diplomatic measures. Sanctions often—

[English]

**The Chair:** Thank you. I'm sorry; we're going to have to go to the next member. You have my apologies.

We go now to MP Bergeron. You have a minute and a half.

[*Translation*]

**Mr. Stéphane Bergeron (Montarville, BQ):** Thank you, Mr. Chair.

A few days ago, Professor Thomas Juneau told us that sanctioned states had set up mechanisms to sidestep the various sanctions, including going through what you call black knights, namely countries that undermine the cohesion of coordinated international sanctions.

How can we fight these black knights who enable sanctioned states to sidestep sanctions?

**Ms. Sophie Marineau:** I'd invert the question: Rather than seeking to limit the black knights, what can we do to encourage countries to impose sanctions?

In the specific case of Russia, the sanctions regime has been imposed by a huge number of countries. It's caused certain countries, like Monaco and Switzerland, to set aside their historical policy of neutrality. To the extent possible, it's an effective sanctions regime because there are so many allies.

Can we ask China to impose sanctions on Russia? That would be extremely hard to do. China is walking a very fine line of neutrality. It doesn't want to encourage the conflict in Ukraine or destabilize Russia. Nor does it want to sour its relations with the West.

It isn't necessarily about limiting the black knights. We should try to urge other partners to get behind the sanctions.

I'm not sure how well that answers your question.

**Mr. Stéphane Bergeron:** Unfortunately, I have no more speaking time to take this any further.

Thank you very much.

[*English*]

**The Chair:** Thank you.

We now go to MP McPherson. You have a minute and a half.

**Ms. Heather McPherson:** Thank you.

Dr. Charron, you spoke about the fact that we have had a lack of transparency on how our sanction regime has been implemented. You just spoke recently about things not being available on the website and about not being able to get that information.

We did have an announcement of \$76 million that would go to this area. That was last year. Of course, you've been raising the alarm for a long time. We had a study that came out with recommendations in 2017. You testified in 2016. Since the government's announcements last year of new funding for the sanctions bureau at Global Affairs Canada, have you noticed any difference?

• (1735)

**Dr. Andrea Charron:** Well, I am noticing frequently asked questions coming up.

For example, our autonomous sanctions list is so clunky to search. Its targets are listed based on the order in which GAC puts them on a list, as opposed to alphabetically. It's things like that. The

list may work for the government, but it's not working for the people who need to access the information to enforce the sanctions.

**Ms. Heather McPherson:** Realistically, we need to get moving on this and it's well overdue, and this is not just one government. It's been 15 years. This is a long time. A year has gone by after that \$76 million, yet we haven't really seen investment in folks who could be the experts in this area, the people who could do the enforcement, training, guidance and that sort of work. I assume you would see that as problematic.

**Dr. Andrea Charron:** It's complicated.

We're hemorrhaging people from the public service. You're asking people who do the work of 10 people, "Oh, could you just add this on too, and create a new sanctions bureau?" I have a lot of sympathy for public servants. I know this is difficult.

Canada, generally, is terrible with procurement. If we need to buy software, it's going to take more than a year.

**The Chair:** Thank you.

We'll now go to MP Epp. You have three minutes.

**Mr. Dave Epp (Chatham-Kent—Leamington, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses.

One cannot solve a problem that one cannot measure. I heard that in your testimony, Ms. Charron.

Specifically, can you point to one country that is appropriately measuring and reporting on the effectiveness of their sanctions regime?

**Dr. Andrea Charron:** Yes, and I would encourage you to ask Craig Martin about this as well.

The EU and the U.K. provide yearly reports. They're not in depth; it's broad-strokes information that helps correct course. The U.S. also provides all sorts of reports on their sanctions regime. It is normally done by our allies, and I'm sure we could do it too.

**Mr. Dave Epp:** Thank you.

I will ask Dr. Martin to comment.

**Dr. Craig Martin:** Thank you.

I'd probably agree with Professor Charron.

I also think the importance of these kinds of reports and the kind of transparency Professor Charron is talking about.... She's absolutely right that the EU and the U.K. are far more advanced in this area than Canada. It's not just about measuring effectiveness, and by the way, when we talk about effectiveness, we have to stop and ask ourselves how we measure that when we don't necessarily even articulate objectives. It's impossible to talk about effectiveness unless you know precisely what the objective is.

There's also the importance of the human rights aspects, particularly when we're talking about targeted sanctions. You need to have this transparency in reporting in order to assess whether, in fact, the sanctions are targeting the appropriate person and whether the evidence upon which that sanctioning designation is based is still current, accurate and just.

All of these factors are vitally important, yet right now there is a lack of that kind of transparency.

**Mr. Dave Epp:** Thank you.

I want to follow up on your earlier testimony.

You referenced the aspect of a cost-benefit ratio and also gave a caution around the legality, if I understand you, of the Canada sanctions regime within international law.

Please explain to my non-lawful mind—I don't mean that the way it sounds—whether there's a cost-benefit analysis in that.

**Dr. Craig Martin:** When we say “cost-benefit analysis”, we have to differentiate what kinds of sanctions we're talking about. When we're talking about broad sanctions against Russia, for example, the cost-benefit analysis.... Again, you have to identify what your objective is. If the objective is to stop the war, these sanctions are not going to be effective.

What I'm getting at more precisely are targeted sanctions, with which we're targeting, for example, Russian oligarchs. The purpose of that is to try to exert some pressure on Russian policy.

When you're talking about cost-benefit analysis, I think it's more to the point that you have to look at the possible due process or human rights violations that are part of this. Do we have the right guy? What is the evidence it's based on? Is it appropriate that we are effectively punishing by seizing or freezing assets?

More to the point, when you get to the suggestion that you're going to expropriate the individual's assets and assign these to victims as a form of reparation, you are implicating serious issues of due process. You would not be able to do that in a criminal justice system absent a trial, a conviction and so forth. How is it that we are simply moving automatically beyond all those procedures and expropriating an individual's assets without providing the information—

• (1740)

**Mr. Dave Epp:** I'm sorry to cut you off. If I could get one more question in for Ms. Marineau—

**The Chair:** I'm afraid not, Mr. Epp. You are a minute over.

We'll go to Ms. Chatel. You get the last question. You have three minutes.

[*Translation*]

**Mrs. Sophie Chatel:** Thank you very much, Mr. Chair.

First of all, let me say how honoured I am to be joining this very important committee. It's a great pleasure for me to be here with colleagues who are interested in international affairs.

As far as sanctions are concerned, a recurring theme in the testimonies was the need for more guidance and transparency to help

companies navigate the sanctions regime. Obviously, there's no question of enlarging the size of government, since we're in a period of fiscal restraint. So we have to be creative.

Canada isn't alone. It imposes sanctions with allies. Can you think of a coordinated approach to sanctions? For example, we could explore pooling our resources to impose coordinated sanctions, which would make them easier to enforce, or we could enter into multilateral agreements.

I'm going to ask you my second question right away. Given that these sanctions have a major impact on the financial sector, is it possible for experts in this sector to work with the government? Is it also possible to approach networks of professionals such as accountants, lawyers and bankers, and pool our resources? It's not true that we're going to create 1,000 new positions to offer everything that people are asking for. We can't afford to do that, because we have to be fiscally prudent.

I'd like to hear from Mr. Martin, then Dr. Charron and Ms. Marineau.

[*English*]

**Dr. Craig Martin:** Thank you.

I do think that there is obviously a benefit in coordination. I think there is a fair amount of coordination now, but to your point, and getting back to the arguments that Professor Charron has been making about transparency and reporting, that's rather difficult to do in a coordinated fashion.

If you look at the United States, you see that OFAC does report and does produce a great deal of information. That information may overlap and they may be reporting on an individual who is designated both under American sanctions law and by Canada, but Canada has to do its own reporting.

In my view, that individual deserves to know what evidence Canada is designating them for and on what basis they are being designated. That's a little bit more difficult to coordinate. It may be that there's information sharing between the United Kingdom, the United States and Canada, for example, but at the end of the day, Canada still has to produce the information and the reporting.

When you talk about the—

[*Translation*]

**Mrs. Sophie Chatel:** Thank you. I apologize for interrupting you, but I don't have a lot of time.

[*English*]

**The Chair:** I'm sorry. You're out of time.

[*Translation*]

**Mrs. Sophie Chatel:** Would it be possible for Dr. Charron, Ms. Marineau and Mr. Martin to send us a written response? I am very interested in their ideas on this.

[*English*]

**The Chair:** Mr. Chong has proposed that we have one more round. The reason is that all of your testimony has been very helpful. Should all three of the witnesses agree, we'd just like to take another 10 minutes of questions.

Is that okay? It is. Excellent.

We will go to Mr. Chong first. You have four minutes.

**Hon. Michael Chong:** Thank you, Mr. Chair.

I would like to ask one question about an issue that has popped up from time to time over the last eight years that relates to sanctions enforcement. More specifically, it relates to anti-terrorist financing and anti-money laundering.

As you know, last year new rules came into effect from law societies across Canada, which many people have said still give the self-regulatory system too many ways to avoid AML and ATF—anti-terrorist financing—rules. Critics have said that this self-regulatory system of law societies with respect to ATF and AML rules is just a smokescreen to avoid federal oversight.

Recently there have been a number of reports that have highlighted this self-regulatory system as a problem. The Financial Action Task Force has said that exempting lawyers from federal oversight with respect to AML and ATF constitutes a significant loophole, especially with respect to money laundering and real estate. The Cullen commission reached a similar conclusion in British Columbia. As well, a separate B.C. government-commissioned report written by the former deputy commissioner of the RCMP concluded that “Lawyers are the 'black hole' of real estate and of money [laundering] generally.”

In the United Kingdom, lawyers are ultimately overseen by the Financial Conduct Authority, which is an agency of the U.K. government, with respect to anti-money-laundering and anti-terrorist financing rules.

My question is this: Do you think it's time to enact federal legislation consistent with the 2015 Supreme Court of Canada ruling in *Canada v. Federation of Law Societies of Canada* so that we can return to the pre-2015 system by which federal authorities oversee lawyers with respect to anti-money-laundering and anti-terrorist financing rules?

• (1745)

**Dr. Andrea Charron:** I'm hoping that Dr. Martin can answer that question, because that is very specific.

**Dr. Craig Martin:** I think that's really outside of my wheelhouse. I haven't done a lot of research in that area.

As a Canadian lawyer, I have to say that my intuitive reaction is to resist federal oversight, but I don't really have an expert opinion on that. I'm sorry.

**Dr. Andrea Charron:** I would just add that we're talking about provincial regulations and jurisdiction as well. That's the wonderfulness that is the Canadian federated system. There are going to be several layers of jurisdiction to navigate.

**Hon. Michael Chong:** Just to clarify and maybe to help give you some more context, up until 2015, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act that was enacted in 2000 guided lawyers with respect to anti-money-laundering and anti-terrorist financing rules. The Supreme Court struck a portion of the law down because it constituted an unreasonable search and seizure of lawyers.

It also provided in its ruling a path for the federal government to enact new legislation that would allow for continued federal oversight. In the last eight years, no legislation has been forthcoming, so law societies have undertaken to enact self-regulatory rules themselves.

Many critics have said that you could drive a Mack truck through these rules. It's a big part of why we have significant sanctions evasion taking place here in Canada.

**The Chair:** Thank you.

We'll go to MP Oliphant. You have four minutes.

**Hon. Robert Oliphant:** Thank you.

I'm glad to get back to Professor Martin. I found your testimony quite fascinating.

My first half—like, two minutes—will be on this issue of legality. I'm not going to get into the seizure and repurposing issue, because that's going to be a huge legal battle at some point. Just generally on pushing into sanctions and their legality, it seems to be that it's legal until someone says it's not.

Who would test that? Would that be in a domestic court, or is that at the international courts? When you say that they are illegal, which laws is that under? Is that under international law or under domestic law? Has it been tested?

Just help me, because the way you were talking about it was kind of news to me.

• (1750)

**Dr. Craig Martin:** Thank you.

I have to say that it would be very difficult to answer that robustly within two minutes, and I do recommend the report that I wrote.

You're quite right, however. Whether it would be unlawful under international law or under domestic law would depend on which sanction and which context.

I will tell you that in the European Union, a very famous case named Kadi, at the European Court of Justice, held that UN sanctions, when implemented by the European Union, were in violation of the European Convention on Human Rights and were struck down, which was extraordinary, given that UN sanctions have the imprimatur of law under article 25 and under article 103 of the UN Charter. Those tend to trump treaty obligations. Nonetheless, those sanctions were held to be in violation of human rights law precisely because the individual was not given notice, was not given evidence upon which the sanctions were based, and was not given an opportunity to be heard, to make submissions, to test the finding and to get removed from the list.

If it was an individual who made the claim—

**Hon. Robert Oliphant:** I will read more that you've written. Thank you, and I'm going to commend it to our analysts as well.

I get confused in our testimony between what I would call “enforcement” and “compliance”. It seems to me that we keep mixing them up. Compliance has to do with companies, financial institutions, bodies, organizations complying with not dealing with sanctioned individuals and entities. Enforcement has to do with our government and its ability through CBSA and others to effectively do it. It would seem to me that differences are required for each. Information that is public isn't as necessary for enforcement as it is for compliance, because these are companies that need to have information.

I just wanted to give you a chance to comment on that because I think our committee is getting it quite murky between the two. Maybe Prof. Charron can answer first, and anybody else.

**Dr. Andrea Charron:** I think you're right. I think I was trying to respond to the fact that.... I don't want to give the impression that sanctions are in place, and then everybody takes a big step back and just waits for the RCMP and CBSA to swoop in and do something. No, we all have obligations, and you're right, so probably compliance is a much better term for that.

**Hon. Robert Oliphant:** Dr. Martin, would you comment?

**Dr. Craig Martin:** I would agree with that. I think it's an incredibly important distinction, because I think there often is far too much emphasis on enforcement and looking at prosecution metrics when compliance is actually what you ought to be looking at. Indeed, sometimes there's over-compliance. When we were testifying in the Senate, a number of lawyers for people who were subject to sanctions were commenting on the fact that there tends to be over-compliance, and there's this sort of chilling effect. That's another aspect that has to be considered.

**Hon. Robert Oliphant:** Thank you.

**The Chair:** Now we'll go to Mr. Bergeron. You have two minutes.

[Translation]

**Mr. Stéphane Bergeron:** Thank you, Mr. Chair.

On Monday, we were discussing the fact that the government tends to outsource its sanctions regime to the banking and private sectors, without giving any indication of expectations, which may explain the variable effectiveness of the enforcement of these sanctions.

I'll come back to you, Ms. Marineau. I didn't think I'd have any more time, so I'm very happy about that.

In February 2022 in the French newspaper *Marianne*, you stated that sanctions don't stop war. They may not stop war, but we must at least ensure that they'll have an impact on the sanctioned countries.

I'd like to come back to your earlier answer, which was very interesting. You yourself admitted that there were black knights who weren't going to comply with the sanctions regime, despite all the incentives that the international community could deploy.

So I come back to my basic question: how do we get around these black knights, who undermine the effectiveness of sanctions?

**Ms. Sophie Marineau:** As I said earlier, the best way to do this is to try to have as many partners as possible to apply the same sanctions regime, or to try to influence those who don't apply sanctions so that, at the very least, they aren't participating in the sanctioned country's war effort.

In the case of Russia, as I was saying, China is currently walking a very fine line of neutrality. It isn't participating directly in the war effort. It isn't selling weapons, nor is it selling parts needed to repair or produce tanks or warplanes. However, it's helping Russia by signing economic agreements. Russia has had to replace the European market and, since then, China has become its leading economic partner.

So there's no right answer to getting around black knights. The more countries that apply the same sanctions regime, the more effective the sanctions will be and the greater an impact they'll have. Sanctions don't stop wars, but they have an impact, and it's important to have means in place to measure those effects.

● (1755)

**Mr. Stéphane Bergeron:** Thank you.

[English]

**The Chair:** Now we will go to Madame McPherson for two minutes.

**Ms. Heather McPherson:** Thank you.

I'd like to ask these questions of Dr. Martin.

I know you said that it's very difficult for you to get the answers in the very short time that we give you, so whatever you can submit to our analysts would be fantastic, because your comments on the legality of the sanctions regime that we are putting in place, that has been proposed, are really important.



This committee was in Brussels last year, and the EU was looking very closely to see what Canada was doing with regard to the fees and repurposing. I'm just wondering where we should look next. What are the other pieces that this committee needs to look at in terms of how we determine the legality of that? How do we do this work? How do we make sure that this is possible, or is it possible, in your opinion?

You have a minute.

**Dr. Craig Martin:** The short answer to the last question is yes, I think it is possible. I think that the committee could rely on more international law experts on the one hand, because there's an international law aspect to this, and there's also a domestic law aspect. I really do think that Canadian individuals who are designated under these lists have rights issues that implicate domestic law. I do think that having legal experts advise you on the various aspects...and there are a lot of moving parts, a lot of different legal regimes, whether we're looking at human rights or whether we're looking at non-intervention rights. These are different aspects of international law, all of which I think do need to be considered.

As I said in my opening statement, I just would like to see the Canadian government be more mindful and be more informed of these international principles as they develop their sanctions regime. I'm not suggesting that sanctions regimes are necessarily going to be unlawful, but they do need to be informed by, and based on, an understanding of Canada's international legal obligations.

Just to refer very quickly back to something that Mr. Oliphant said, it's not necessarily that if you are in violation of international law or perceived to be in violation of international law that there's going to be some sanction against Canada or that there's going to be a prosecution of Canada, but the perception of illegality is hugely important, given that Canada stands as a champion of the international rule of law. If Canada is perceived to be violating the very principles that it's trying to enforce or is vulnerable to accusations of hypocrisy is really important, in my view, and that's why I think that taking into consideration the international legal principles is vitally important.

**Ms. Heather McPherson:** Thank you very much.

**The Chair:** At this point, allow me to thank our witnesses. This has been extraordinarily helpful, and we're very grateful.

I should also start by apologizing for the delay when our meeting commenced, but again, as soon as this report is drafted, we will certainly forward a copy to you.

Thank you very much.

**Dr. Craig Martin:** Thank you. It's been a pleasure.

**Ms. Sophie Marineau:** Thank you.

**The Chair:** Members, we will now be going into committee business. There's no one online, so we don't have any delays, correct?

*[Proceedings continue in camera]*

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