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The Honourable Robert Nault

Standing Committee on Foreign Affairs and International Development

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● (1530)

[*English*]

The Chair (Hon. Robert Nault (Kenora, Lib.)): Colleagues, I call this meeting to order. This is our 35th meeting as 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 and our statutory review of the act today, before us as a witness is Kimberly Prost from the Hague in the Netherlands. I understand it's about 9 o'clock at night there, or somewhere in that neighbourhood.

Kimberly, welcome to the committee. The process will be, as I am sure it's been explained to you, that you'll get some time to make some opening comments. Take the time you need. After that, we'll go to questions for maybe 40 or 50 minutes. That'll give us plenty of time to reflect on your statements, and we'll go from there.

I'll turn the floor over to you. Welcome to the Standing Committee on Foreign Affairs and International Development here in Canada.

Ms. Kimberly Prost (As an Individual): Thank you very much.

Good afternoon to everyone. As indicated, I will provide some comments based on my experience as Ombudsperson for the Security Council Al-Qaida Sanctions Committee for five years. I note that while that was an international role, I believe it had a lot of important lessons in terms of sanctions in a national context.

I will comment on both pieces of legislation that were referred to me. I'll start with some brief comments directly on the Freezing Assets of Corrupt Foreign Officials Act before I make some more general comments on the Special Economic Measures Act and the sanctions issue more generally. I do that because in addition to my background in sanctions, I did serve as Canada's head of the international assistance group at the Department of Justice for 10 years, working on mutual legal assistance and extradition, including assistance with asset freezing.

I've been away from Canada for several years, and I have to say that I was, and remain, a bit puzzled by the Freezing Assets of Corrupt Foreign Officials Act. I suppose my puzzlement is with regard to why, in Canada, we would need legislation of this nature when we have such a robust system for the restraint and forfeiture of assets, of proceeds of crime, and where we have a mutual legal assistance regime and a scheme of mutual assistance treaties.

I understand, because I practised in the area for many years, that dealing with the proceeds of crimes committed outside the country and dealing with freezing assets in the context of foreign officials who have corruptly taken assets is very challenging and can be very frustrating, but that's because the legislative scheme that's in place has checks and balances that even out the quest for the restraint and forfeiture of assets with the protection of individual rights. It seems to me, to address the frustrations, it would make more sense to work on amendments within the existing regimes, which have all these protections, rather than through a piece of legislation that, to me, just presents parts of restraint and forfeiture legislation and parts of mutual assistance but does not contain in any way a scheme of protections.

I would specifically note three things that struck me about the legislation: the very surprising absence of any requirement for the request from the foreign state to provide any information, if not evidence, as to the basis for the assertion that the funds were misappropriated or inappropriately obtained; the absence of any details, then, as to what the individual is said to have done in terms of misappropriation or inappropriate obtaining of the assets; and finally, the absence of the ability to challenge on the merits, as opposed to challenging status.

Those were just comments specific to that act. Now I will speak more broadly to the Special Economic Measures Act and the approach to sanctions.

As the first of two caveats, my comments will focus very much on the use of SEMA and the use of sanctions in a targeted fashion when they are directed at individuals, because that is the area where the question of rights arises. It's not in the context of state or sector sanctions, which of course bring into play political issues but not the same question of rights.

Second, I would emphasize that in principle—particularly today, with the very fractured, divided Security Council that is operating in New York—it is very useful and very appropriate for a country like Canada to have a power whereby it has the flexibility, as part of an international organization, collectively by agreement or even individually, to use a sanction power to address threats to international peace and security.

● (1535)

However, there are some very specific lessons I learned from working as the ombudsperson as to how that power can very much be called into question in terms of its credibility and its strength. There are three principles that certainly the Security Council has been criticized for, in terms of its sanction regimes. I think some of them have resonance in relation to this legislation and the current approach.

The first point I would make is that there are very specific purposes and policy reasons that underlie the use of sanctions, particularly in the context of international peace and security. I've looked at some of the previous testimonies. You've heard from some of the leading specialists in the area of sanctions, so I'm sure you've heard it repeated that the three basic aims of sanctions are to prevent, of course, the threat from materializing; to stigmatize the individuals; and perhaps most significantly, to change the conduct at which the sanctions are directed. Those are the policy reasons that sanctions legislation must be designed to address and must be used to address.

Unfortunately, sometimes sanctions are instead used as a replacement or a substitute for criminal investigations or criminal prosecutions, or for asset restraint and confiscation, by virtue of the fact that the restraint lasts for so long. The sanction regimes, quite simply, are not accompanied by the standards, the evidence, or the procedural protections that are central to those criminal and asset restraint processes and that provide a protection for rights.

The second and very related question is that when you're using a sanction power, it needs to be very carefully crafted, and that's particularly the case when you're targeting individuals. You need to be addressing a specific defined threat, using objective criteria that are predefined, in particular, when you're going to target individuals. It's not just about having a threat in place; there must be criteria that define when the individual becomes a part of or responsible for that threat, in whole or in part. You need to be able, then, to measure the individual's conduct against those criteria to a defined standard. That was the whole aim of the ombudsperson position. It was what I had to implement effectively in practice, and it was critically important.

The third point, of course, is that while it is at a much lower standard than in criminal proceedings, there must be very clear procedures that ensure fair process is given to those targeted individuals and entities, those listed. That includes the fundamentals of fair process: notice, although it can be after the freezing or the action is taken or the economic measure is taken; specific reasons that the individual has been listed: an opportunity to address those reasons and to be heard by the decision-maker; and, most importantly, an independent review by a body that can provide an effective remedy.

It's very challenging to try to achieve those principles at the international level, but it should not be in Canada, where there is a fully functioning legal and judicial system.

On applying those principles, I will just give a few brief comments on some of the concerns I see in SEMA and what it reflects in terms of the.... It's also applicable in many ways to the Freezing Assets of Corrupt Foreign Officials Act.

The first of the concerns is with the criteria on which the sanctions could be imposed, which are extremely broad and vague—the references to “grave breach” and “serious international crisis”, and in the other context, these concepts of misappropriation.

If you want to have this kind of broad reach, then at the very least, the orders and regulations underneath the legislation, and specific orders, must explain how the specific situation addresses or falls within the overall threat to international peace and security. I don't see any requirement for that in the legislation, and I don't see the orders doing that or explaining that connection.

● (1540)

Far more gravely, there are simply no criteria set out as to how the individuals then end up on the list. What are the criteria against which their conduct is measured, and, most significantly, what are the specific facts in either piece of legislation as to why that person is listed?

The second concern, and it's very related, is that if this is really sanction legislation with sanctions, aims, and purposes, you need to be demonstrating that in the legislation. I don't think this legislation does that. I put it this way—and it's something I said often when I was dealing with the AQ system—it's very difficult to use sanctions to get people to change their conduct if you don't tell them what the conduct is that you want them to change. I find that to be a glaring issue here.

Finally, on the third issue, the one that I've highlighted, the fair process requirements, I have to give a caveat. I've been out of Canada for many years, and I didn't refresh my administrative law. I suspect there is a judicial review path from a ministerial decision, because there is a ministerial review provided for. If there is not, then this legislation is worse than what I found when I got to New York in 2010 and looked at the al Qaeda regime, because it would have no objective review or effective remedy.

Even if it is available, what is very surprising is that none of the other aspects of fair process—notice, reasons, and things of that nature—are specified in the legislation, Also, you're taking actions and economic measures against individuals in foreign countries. It is appropriate to set out very clearly in the legislation, on the face of it, what the fair process protections are and what course of action that individual can take. I emphasize that a ministerial review is not going to meet the criteria of an objective and independent review as contemplated in fair process.

I'm going to leave it there because I'd much rather address whatever questions you might have. I know you've been working on this for a while and you've heard from many people. Having struggled for five years to protect these principles in an atmosphere not at all conducive to or equipped for fairness, I would simply urge this committee and the government, my government, to ensure a scheme of effective sanctions and sanction policy across both these pieces of legislation that can achieve the important policy aims while still safeguarding individual rights.

Thank you.

● (1545)

The Chair: Thank you very much, Ms. Prost. That was very helpful.

We'll go to straight to questions by members, and we'll start with Mr. Allison, please.

Mr. Dean Allison (Niagara West, CPC): Thank you, Mr. Chair.

Thank you, Ms. Prost, for your testimony before us.

I was listening to your testimony. What we're trying to accomplish is that we're trying to figure out those people who are grave human rights abusers. Obviously, there probably hasn't been an investigation. The context was around a global Magnitsky law, as passed in the United States and contemplated in other countries. That's part of the problem, right? First of all, the country isn't going to have an investigation, more or less.

I guess my question to you is, how do we work around that? You say sanctions are no substitute for an investigation if there's a cover-up or those kinds of things. Our concern is those individuals who would take advantage of their country and then put those assets in Western democracies where at some point in time they or their families could have access to them. We hear the argument that it doesn't actually happen, but it does happen, maybe not as much in Canada and maybe more so in places like the United States, the U. K., or some of the European countries.

I'd like your thoughts around that. We're struggling trying to figure out how we do this, and I'm hearing you say maybe that more amendments would need to be made, more definitions, and things like that. The end that we're trying to achieve is, where there's not that due process.... I can appreciate that if this is coming from a highly democratized country and there are already issues in place that arbitrarily throw people on a list or sanction them, having not gone through due process would not always make sense. Some of these countries don't always have that in place, so I'd like your comments around that.

You gave us some good things to think about. Is there any way around that, in your mind, that would strengthen it and make it fair and reasonable?

Ms. Kimberly Prost: Yes, those are very good questions, because that is the dilemma. We do want to be able to take action, especially in dealing with the corruption issue. It's is a major challenge for a great many countries, and very paralyzing, so certainly we do want to assist and be able to return assets.

Just focusing on that, I'll speak a little bit about the sanctions element, because they are two very separate things for me.

If you're dealing with a situation of individuals who are suspected or believed to have taken money from their country or inappropriately obtained it and you want to go after those assets, a number of measures already exist to attack the assets. Using the criminal conviction proceeds of crime approach is very difficult when it's foreign assets, but in several provinces—when I left, I think it was three, but there are probably more now—there are mechanisms for attacking the assets.

Therefore, you bring proceedings directly against the assets. You don't need the individual and you don't need the criminal offence; you attack the assets, and there is where you use mutual assistance to try to at least get information from the country as to what they believe the individual did or how the individual took the money out. It's not easy, but at least you get a better balance then, because you can go after the assets and at the same time have some modicum of protection.

The other problem that arises in these cases, and we've seen it in many situations, is you get one political regime ousted and then there's a new political regime; it can involve corruption, but it can also just involve a political fight, if I could put it that way.

My strong urge is to look very carefully at the already existing pieces of legislation and practice that Canada has. That's also consistent with the international approach. The United Nations Convention Against Corruption has a whole chapter aimed at that. That's what I would say on that side.

Then, if you're talking about trying to sanction people whose conduct is of concern or to prevent more international humanitarian violations, there you do have a much reduced standard. We're not talking about the kinds of standards you need for criminal proceedings. You can impose the sanctions on....

I used a test of whether there was sufficient information to provide a reasonable and credible basis for listing this person. You don't have to get a lot of information, and there's often intelligence that can be used, but it's just then allowing the person, if they want to, to be able to challenge it ultimately. It's providing a mechanism that most of the time doesn't get used, but at least you have the protection there in case a person wants to try to be delisted.

Those are some of my thoughts on the questions. I hope that's of some help.

● (1550)

Mr. Dean Allison: Sure, and I think we certainly understand regime changes. Ukraine, I think, is a good example of different governments coming in and sometimes going after previous ones, but how would you deal with a country like Russia, where there haven't been regime changes, and quite frankly, you're not going to get any help from the state at all?

As a matter of fact, the state is the one that's actually covering it up in most cases. How do you deal with the Russians versus...?

Ms. Kimberly Prost: Yes. The other thing is, of course, that you can use the sanctions in a very political way. I'm talking now about the sanctions regime versus trying to freeze the assets of someone who's taken them through criminal activity. You can say, as I think has been done in some instances, that you're going to sanction all of the members of the cabinet in Russia or you're going to sanction because you feel that they're contributing towards the aggression in Crimea, for example, or annexation. There's nothing wrong with taking that as the policy basis on which you are applying the sanctions. You simply have to be very specific that this is the aim of it, and then the list is based on people who fit those criteria, people who are ministers or whatever it may be, or officials.

There's nothing inappropriate with using it in that fashion. Then you have to allow them to challenge that by saying no, they're not a minister, or challenge whether or not the particular assets belong to them in that context.

Mr. Dean Allison: Thank you.

The Chair: Thank you, Mr. Allison.

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

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you, Chair, and thank you very much, Ms. Prost, for testifying in front of us today. It was a very interesting presentation.

I have a question that builds on Mr. Allison's question, about sanctions that would tend towards a human rights perspective.

Obviously with the legislation that we have in place now, specifically with respect to SEMA, there is a focus on international crises, a focus on violations of international peace and security. You spoke about and underlined the fact that even now, the way the legislation is phrased is quite vague. There has been an emerging current of thought, especially in the United States, that says that human rights ought to also be factored into sanctions legislation.

I wonder, though, if we go down this road, how one would phrase the wording in legislation so that it's not vague, so that it's quite specific. I wonder if we're trapped right from the outset, because human rights language is bound to be vague unless you specify it so that you're capturing quite systemic violations of human rights, the highest crimes—for example, genocide, war crimes, crimes against humanity. However, if you were so specific, those crimes would already be considered—by most, at least—to constitute violations of international peace and security, so I wonder if it even makes sense to go down that road, if you understand where I'm coming from.

I would ask you to speak to the danger of being vague in legislation if we're going to focus on human rights, and then also on the efficacy of going forward with sanctions legislation that would make human rights its primary target. I'm quite interested in those two issues.

Ms. Kimberly Prost: That has been a growing question in the international sphere.

Traditionally the council has generally used its powers—except in the case of apartheid in South Africa, where it was very directed at those policies—in cases of conflict and in response to conflict and in trying to end conflict, and also in the terrorism context. Increasingly, though, it has been in the context of violations of international humanitarian law and in gross violations of human rights. There is certainly scope for having sanctions legislation that gives you the flexibility to use it in human rights situations and in cases of gross violations of human rights or even violations of international humanitarian law.

The trick to it, though, is.... There's nothing wrong with having those broad terms in the legislation and including human rights specifically in those broad-scope gross violations and so on. Then if you have a system of specific orders, as you do—which I think is a good one—you can define it very specifically in the situation toward what you're aiming at, whether it's a violation of particular types of human rights or a particular scenario where you want to be more specific.

The difficulty for me is that there's nothing in between this broad statement about threats to international peace and security—which I think could include human rights, because the council certainly interpreted it that way—and an order in relation to a country. There's nothing in between explaining why it's a security breach, even just preambular language to the order, to say there have been these kinds of violations reported and we believe that's the situation. Then you take it one step further when you're targeting the individuals, and you have to say what they've done: they're leading the army or they're leading rebel groups, or whatever it might be, and in that role or that kind of thing.

I very much believe the legislation should give you the flexibility to do it, but then it becomes a decision of when you use it and how you use it, and that's probably the hardest part.

● (1555)

Mr. Peter Fragiskatos: Let me take advantage of your expertise here. If you were counselling legislators, as I guess maybe you are here, on the sort of phrasing they might consider using when it comes to proposing changes to the SEMA, for example, or any sanctions legislation related to human rights violations, what sort of phrasing could be used so that we properly capture human rights violations on a scale that merits the imposition of sanctions?

Ms. Kimberly Prost: Some automatically come to mind just because of the jargon that you often see in the gross violations of humanitarian rights standards, violations of the protocol. I would suggest you take a look at some of the resolutions that exist that have dealt with these issues, both at the Security Council level to some degree, what they say in Geneva at the Human Rights Council, and also even what the European system says, although it has a lot of challenges, as I'm sure you heard from Maya Lester.

You can use broad phrases of that nature. The tricky part is then deciding when you're going to apply it, but I would look to those resources in terms of the actual language.

Mr. Peter Fragiskatos: Perhaps I've misunderstood your comments from before. My understanding of what you're saying is that sanctions have a place, but there is also existing legislation that deals with things like human rights violations, very serious human rights violations. Could you speak to whether or not it makes more sense to use existing legislation that would capture very serious human rights violations, rather than going down the sanctions road? Will sanctions achieve anything beyond the existing legislation that's in place already? I wonder if we're playing a game with human rights here which no one, I think, wants to do.

When I say “playing a game”, I'm talking about trying to embarrass regimes or trying to target regimes for very political reasons related even to domestic politics, for instance.

However, please continue.

Ms. Kimberly Prost: On that point, I separate two things. One is that if you want to go after individuals by attacking their assets, that's where I think you have a lot of existing tools to go after them, in a way. On the other hand, it's perfectly appropriate to use sanctions. That's one of the main purposes, just to stigmatize and call out leaders and officials of governments. That's one of the main purposes of sanctions. I think that's a perfectly legitimate criterion, if Canada wants to follow that route, although it's much more effective when you're doing it as part of a multilateral organization or the UN when you're trying to stigmatize.

The problem is, of course, the tools for gross violations of human rights are in almost all cases going to constitute criminal offences. You're going to have the ability to prosecute for gross human rights violations, but that is our challenge today for the violations we see of international humanitarian law or the gross violations we see in Syria, for example. The solution to those is really prosecution and justice remedies, not sanctions. Sanctions may help to a degree.

However, maybe sanctions are the only opportunity we have in that context, especially when the international community isn't employing them at the moment. I do think there's still scope for using sanctions. I work at the International Criminal Court now. There are so many limitations to what we can do on the justice side. I think having the power to do it is still probably a good thing, but it's then choosing the situations when you're going to use it, and using it sparingly.

Mr. Peter Fragiskatos: Thank you, Chair.

● (1600)

The Chair: Thank you, Mr. Fragiskatos.

I'd like to now go to Madame Laverdière, please.

[*Translation*]

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

Ms. Prost, thank you for your presentation.

I would like to come back to the point raised by my colleague Dean Allison.

With regard to the Freezing Assets of Corrupt Foreign Official Act, you basically said that those tools already exist. Indeed, we have a mutual assistance agreement. We also have the possibility of targeting a country, ministers and so on. However, there is one situation that does not seem to quite be covered.

There have been cases, including a case of a Russian individual—I don't have his name at the moment—who was banned from entering Canada for corruption. This man is not being pursued by his own country, which is shielding him. So we cannot go through the mutual legal assistance treaty. He is part of a government whose actions people do not appreciate, but that is not why he was targeted. Rather, it was because he was recognized as a corrupt individual.

Isn't that something that is not covered by our other legislation?

[*English*]

Ms. Kimberly Prost: I think there are two issues, and let me be very clear. Canada has very good mutual assistance legislation and very good legislation dealing with proceeds of crime and freezing of assets. It's getting better, but it's never going to be foolproof. It's never going to be able to deal with all the cases, especially those involving corrupt officials who are being protected by their governments.

My view is that rather than trying to build specific pieces of legislation for every gap we run into—and we will continually run into gaps—we need to focus on fixing the regime as a whole. Is there more we could do in the mutual assistance provisions to make it clearer how we could freeze assets faster in situations where they don't have court orders? Maybe that's one thing that could be done.

Is there something that could be done in the definitions of "proceeds of crime"? Are there more things we can do in terms of going after assets and attacking assets through civil proceedings?

That's just on going after the assets, and I think that if you're talking about trying to go after the assets and corrupt officials, we have very good tools. To me, the best approach is to try to strengthen those tools, because they already have built-in protections and schemes.

The second thing that can be considered is the other side of this, which is sanctions. In the case of a corrupt official, if we're not going to be able to get to his assets, prosecute him, or get the government to properly prosecute him in the other country, then we can see whether there is a policy or a threat here that Canada wants to address.

The third option is simply to accept that it is not something that Canada can address, either through asset freezing or through a sanction, because it is outside Canada's reach. I think we also have to accept that there are some things we don't like that are just outside the reach of our legislative ability.

● (1605)

[*Translation*]

Ms. Hélène Laverdière: Right.

I simply want to point out that, in some cases, some of these assets can be here, in Canada. Often, the government may feel a moral obligation in this regard.

I'll move on to another question, not about human rights sanctions, but general sanctions against a country, leaders or other aspects. It seems to me that there is an ambiguity between wanting to be very precise in our definitions and giving ourselves the flexibility needed to act. For example, in the last 20 or 30 years, the nature of what is a threat to peace and security has changed enormously, and we don't know what to expect in the next 10 to 20 years.

Isn't there an advantage to keeping a formulation that is not excessively precise, so that we aren't confined to a straitjacket?

[*English*]

Ms. Kimberly Prost: I don't disagree at all, because the mandate of the UN Security Council is precisely described in relation to threats to international peace and security. I think you should keep the flexibility as broad.... I think it might be helpful to give examples of what can be a threat to international peace and security, saying this is what the broad mandate is and then presenting some examples of what it could be, but keeping it open. The key is that when you impose measures against a state, or particularly against an individual, it's at that point that you're very specific.

In this case, the threat to international peace and security is terrorism, terrorist attacks, a violation of humanitarian rights, or use of child soldiers. Whatever it may be, that's when you define it very specifically, but the governing legislation is always very broad.

I don't have any trouble with it as it's defined in the current SEMA. It's just that when it goes to the specific orders, it's really hard to see what precise situation falls within that. That's where I think you have to be careful to define it.

[*Translation*]

Ms. Hélène Laverdière: Do you think this is something that should be added to the current legislation, or that the reasons for sanctions should be specified when they are established?

[*English*]

Ms. Kimberly Prost: Absolutely. For me, that's the biggest, and on two levels. One is what the threat is in the particular situation—be it Burma, Ukraine, or whatever—and specifically defining why it's put under the threat to international peace and security. Then, very importantly, when are you going to hold an individual responsible, and why? That should be specified in objective criteria. When it's an official of that state, that's fine. At least you've said what it is, or when it's someone who's in the military, whoever it may be. To me, that's what's missing, because it's not specified. If I were the individual listed, I'd have no idea. Well, I'd probably know, but it should be specified in the order.

[*Translation*]

Ms. Hélène Laverdière: It's sort of the same in civil law. When someone is accused, he has the right to know the reason for the charge, so that he can defend himself, if necessary.

● (1610)

[*English*]

Ms. Kimberly Prost: Precisely.

[*Translation*]

Ms. Hélène Laverdière: Thank you.

[*English*]

The Chair: Thank you very much.

We will now go to Mr. Saini, please.

Mr. Raj Saini (Kitchener Centre, Lib.): Good evening, Ms. Prost. Thank you very much for appearing.

I want to ask you about the work you did at the UN as an ombudsperson, because I think judicial review is very important. When you arrived there, one of the public comments you made was that there was no test, or that you made it up as you went along. I want to ask you what test or standard you utilized to determine whether someone should be on a sanctions list in any capacity.

Ms. Kimberly Prost: I had many problems when I arrived—actually, the whole time I was there, but that's part of the job.

One of the two particular problems I had was that the Security Council had not been specific about what kind of review it expected from the ombudsperson, so the choice was either to do a post-review, as you would in judicial review classically, where you ask if the original decision to list this person was justified based on the information available at the time the person was listed, or to do more of a *de novo* consideration of the case now, asking if there is a sufficient basis to maintain this listing now, when the person has asked to be de-listed.

I think I chose wisely, in retrospect, because I might have been unemployed very quickly if I had gone the other way. I chose the present-day test. Basically, I was never asking about the original decision to list; I was asking, based on all the information we had now, whether this person should be on the list or not, today.

There was a real advantage to that, in the sanctions context. I had several cases—which was a bit of a surprise—of individuals who were actually prepared to admit their involvement or their links to al Qaeda, but had changed circumstances. Traditional judicial review would never have allowed me to look at those cases properly, and the approach of taking a *de novo* look, at the present time, did work. That's now been accepted by the committee. It's in the resolution.

The second issue was—sorry; did you want to...?

Mr. Raj Saini: No, it's okay. You can finish.

I wanted to ask you about the *de novo* process, but you go ahead.

Ms. Kimberly Prost: Okay.

The second issue, which is the one I find a bit puzzling in the legislation, is if you're going to objectively review listings, you need to know by what standard you are going to look at this person's conduct. That was where the council had given me no indication, other than saying it's not a criminal process. I had to look for a standard, and that's why I looked at a lot of other sanctions regimes and domestic legislation. That's how I chose the standard of sufficient information to provide a reasonable and credible basis for the listing.

Mr. Raj Saini: Just to follow up on your comment on the *de novo* assessment, when you're doing a *de novo* assessment, you may not have information that may be sensitive, that a government utilized to put someone on a sanctions list. The information you have is independent, as you've stated, and it's *de novo*, so you may not have that sensitive information. I also know that you had certain agreements with other countries to access that sensitive information.

Did you have high-level security to do that? How did that process work?

Ms. Kimberly Prost: One big challenge was that there was often, in these cases, confidential information that was justifying a listing, even sometimes presently.

I did two things. One was that because I had worked for the Canadian government for many years, Canada very nicely gave me high-level security clearance, which was then going to give me access to some information already under some of the sharing arrangements that the security clearance would carry. It also gave me credibility for certain states, which was very important. Then what I was able to work out with individual states was to just build up the trust: you share the information with me, and I share it with no one—not my staff, not the committee, not the individual. I can then take it into account in assessing the sufficiency of the listing.

That's what I did, and I managed to get a number of agreements.

Mr. Raj Saini: Another point I wanted to raise is that during your time at the UN you went from having observational powers to having powers whereby you could make recommendations.

I'm going to lead into another, final question, but can you explain and elaborate on the difference that made in the conduct of your work?

Ms. Kimberly Prost: It was huge, and it was very important. It was the first renewal, and the reason it was so important was that if I could only make an observation, then it was up to the committee, and one committee member could simply say, "I don't agree with delisting this person", and that would end it and would mean all of the work was for nothing.

The resolution change did two things. One was that they gave me a recommendation power. Quite frankly, my "observations" were recommendations; I just called them observations. Secondly and more importantly, they changed the burden and the trigger to provide that if I recommended delisting, the person would come off the list in 60 days unless the whole committee disagreed with me—and that never happened—or unless it went to the council for a vote, and that never happened. That was critical, because it meant it was consensus over term.

● (1615)

Mr. Raj Saini: I have one final question. We're reviewing SEMA and we're reviewing the sanctions regime. Obviously it's going to be a little bit different, because we're talking about the United Nations as compared with an individual state, but do you believe that the system or regime you created—the ombudsperson regime at the United Nations—could also work well in Canada, maybe with some variations? Do you think this is possible, and do you recommend it?

Ms. Kimberly Prost: I'm a very strong believer in the system now. At the beginning I had doubts, but now I think it's a really practical way to deal with the problems that arise in sanctions, particularly with confidential information, and it's very beneficial to the individual because it's swift and it's not costly, since you don't have to have a lawyer. It has lots of advantages over using traditional judicial review.

I've been a strong proponent of it for the European Union, as I know Maya is as well. Yes, I think domestically it could be a very good mechanism, rather than something such as ministerial review, which doesn't have the objectivity.

Mr. Raj Saini: Thank you very much.

The Chair: Thank you, Mr. Saini.

I'll go to Mr. Miller, please.

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

Ms. Prost, I want to focus a little more intensively on the standard that you came up with. You raised concerns which we echo concerning the rule of law, due process, whatever you want to call it. As a democratic country we don't have the luxury that some other countries may have of putting people on our list and doing certain things to them that we might want to do, but we can't, because we respect the rule of law.

I may be overstating the case as well, because there is a tendency immediately to jump to a more criminal standard and burden of proof, which may not be necessary in cases.

To back up, what we're examining is the potential holes in SEMA or FACFOA or concurrent criminal legislation with respect to gross violations of human rights and the ability to put someone who may have committed these gross and indecent acts on a list and freeze their assets in Canada, whether they're ill-gotten or not.

Some of the legislative tools that we have exist in Canada already, and they're subject to the standard review, more often than not by the courts. In SEMA that may not be the case; in FACFOA it may not be the case, and you have rightly highlighted that. As well, there is the UN act that is implemented here. The standard of administrative review through administrative action, on the other hand, might be too low a threshold.

I'd like to put this kind of tension in your hands and see what you think is a proper venue for a piece of legislation that would contemplate freezing the assets of someone who, on the balance of probabilities, has in fact committed such acts and whose assets are situated in Canada, and what sort of safeguards would be desirable.

Ms. Kimberly Prost: It's an interesting question.

My challenge was that I wanted to use a standard that wasn't attributable to one legal system or another. I had the big challenge of not wanting to take a common law standard or a civil law standard. What I researched were the different standards, and then I tried to draw concepts out of them to make a standard that wasn't specific to either system. That's where I got the idea of sufficient information to provide a basis that's reasonable and credible. Those are some of the components of all the standards.

If I were doing it in Canada, knowing the standards that are applicable in Canada, I'd probably use the search warrant standard of reasonable grounds to believe. Certainly, the criminal standard is not appropriate for sanctions, because you're not employing the kinds of measures that you are criminally.

I agree with you; I don't think the JR standard of reasonableness alone is sufficient. I think it's something in between. I think the search warrant standard is probably pretty good.

Also, I like what I came up with, but as I said, that was very much to mix the two legal systems. I think that's very important.

On the protections side, you just have to provide that remedy and the basics. You have to notify them and you have to give them reasons so they know what the case is against them. That's all pretty straightforward to do in the situations you're talking about. Then you have to give them, if they choose to pursue it, a means of accessing some kind of review—ombudsperson, JR, or whatever it may be. That should be up front in the legislation. It gives it credibility.

● (1620)

Mr. Marc Miller: To be clear, the freezing of assets can obviously have a chilling effect on these people, who may be at large, in their ability to perpetrate further actions that are undesirable.

On the other hand, the challenge at a domestic level is the ability of those people who, as foreign nationals, obviously don't have the same charter protections that we have as Canadian citizens, but who may have some form of protection they can use. Trying to build that in from the get-go, I believe, is a challenge. As you mentioned earlier with respect to the legislation that's in place, it's already in the Criminal Code with respect to proceeds of crime, or terrorism. There is obviously a built-in protection.

The other tension that exists has to do with the operational level. What do you present to a bank in terms of evidence or documents to have them freeze an account, or to prevent a security from being transacted?

I don't know if you have any experience with that, but I'd love to hear from you on it.

Ms. Kimberly Prost: Yes, we had these challenges when I was heading the mutual assistance section at the Department of Justice. You would have these requests come in with information that was maybe not sufficient to get a freezing order.

Internationally, this is a very well-known practice. The banks are a lot more sensitive, especially these days. Sometimes if you just disclose that information to them, you're going to have a pretty good chance of their freezing the money under the money-laundering requirements if it's money in the bank, even if you don't think you have enough to get the search warrant. I know that sounds a bit tricky, but it's certainly common practice, because the banks are much more sensitive about money laundering today, as we know.

Sometimes methods like that can at least buy you some time, and then you can try to gather more information, if that's what you need. Certainly notifying the banks is useful when you have suspicions. The Swiss do it all the time. That's how they get a lot of things frozen. I think it works.

Mr. Marc Miller: Money laundering is actually an important distinction, because what it prevents.... It's not so much the freezing but the effect of freezing, insofar as the bank that is holding the account or the security or whatever it is can't then transfer it out, because it does not have the proper assurances that it is going to the right place or is duly held by the person wanting to transfer it. I think that's an important distinction to make.

That's it for my questions. I will pass on the rest of my time.

The Chair: Thank you, Mr. Miller.

I'll go to Mr. Levitt now.

Mr. Michael Levitt (York Centre, Lib.): We spent a lot of time in this committee discussing the notion of gross human rights violations. I want to reflect on that a little bit.

In your opening remarks, you addressed using the UN and multilaterals as a more effective way of being able to gain effective sanctions with more teeth globally. You also have a background in the International Criminal Court. Can you comment more generally?

We're seeing a diminishing of power in some of those institutions. Lately we've seen a number of countries step away from the ICC, or at least threaten to step away from the ICC. We're seeing problems at the UN, certainly at the Security Council level. Let's take Syria and Russia as illustrative examples.

If there was agreement and we were able to work with like-minded allies through existing multilaterals, that would be an easier and potentially more effective way of not having to deal with it singularly or singularly with like-minded allies, who might have similar legislation.

Can you think ahead or look ahead or maybe gaze into the crystal ball a little? How do you see this happening? Are these complexities, and the withdrawal from some of the multilaterals, likely to impact this moving forward? If so, is it incumbent on countries like Canada, countries that want to be able to oppose things like gross human rights abuses, to be looking to have more informal groupings of countries that share these sorts of values and have their own domestic sanctions regimes?

● (1625)

Ms. Kimberly Prost: Just on the general atmosphere, I think the context of whether Canada should take that kind of approach is.... Personally, I was in Rome when the Rome Statute was adopted, creating the International Criminal Court. I remember the great enthusiasm, and we saw ratification in a shockingly short period of time. We've had great highs with the ICC. Now we're going through a patch where there's been some withdrawals, but we look at it as being very long term. It's a permanent institution.

International criminal justice is always going to have its ups and downs. That's the general perspective. I think that's the same with multilateralism in the area of human rights as well: you're going to have people pulling back, people going forward, states changing.

For me, it's all about Canada having the policy in place and having the flexibility to be able to do it when the situation arises. I think it's really good policy to have legislation, sound legislation. Then it becomes a choice of using it when the situations are good, and maybe you can get an alliance in certain circumstances.

I think it's all about having it in place. Then we ride through the bad times and get to the better times, and we can use the legislation in that manner.

Mr. Michael Levitt: Thank you, Mr. Chair.

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

On behalf of the committee, I want to thank Ms. Prost for taking time to give us her wisdom as it relates to her background and to some of the challenges that she's had at the Security Council.

Ms. Prost, if there is anything else that you would like the committee to be aware of, please feel free to correspond with us through the clerk, and we will certainly have a look at it.

One issue in particular that you did speak to that we didn't have a chance to talk about is the FACFOA part of our work. It is intended to be a review based on a piece of legislation that's been here for roughly five years, and after five years had a review clause in it.

One of the questions I've been asking whenever I get a chance is whether this piece of legislation is worth keeping on the books. Nobody seems to think that highly of it, at least from a witness point of view. You yourself didn't seem to think it was all that necessary. I'd be very interested in that, because one of the things we will recommend to the government, through the House, is whether we renew it, whether we put another review clause in it, or whether we just suggest that it should be removed off the books if it's not of any relevance to the government and the process of sanctions of some kind.

Those are the questions we have to ask ourselves when we report back to the House, so I'd be very interested in your views. I know we don't have enough time today, but I'm sure that you have a strong view of that as well.

On behalf of the committee, thank you very much for appearing this afternoon.

Ms. Kimberly Prost: Thanks very much. It was my pleasure.

The Chair: Now, colleagues, we'll take a couple of minutes and then we'll go to our next witnesses, the Canadian Bankers Association and the Canadian Imperial Bank of Commerce. We'll have them in front of us in a few minutes, and then we'll go to their presentations.

● (1625)

(Pause)

● (1630)

The Chair: I want to bring this meeting back into session. Before us you will find Sandy Stephens, the assistant general counsel for the Canadian Bankers Association, and from the Canadian Imperial Bank of Commerce, Mr. Stephen Alsace, the senior director, sanctions, global AML group.

Are we making one presentation, or are there two?

Mr. G. Stephen Alsace (Senior Director, Sanctions, Global AML Group, Canadian Imperial Bank of Commerce): It's just one, of introductory remarks, and I'm here for questions.

The Chair: My apologies, Ms. Stephens. I didn't realize that you had exited the room. Welcome back, and thank you for being here.

I think you've seen how the committee operates, so take the time to make your opening comments, and then we'll get right into questions. I'm going to turn it over to you.

Ms. Sandy Stephens (Assistant General Counsel, Canadian Bankers Association): Good afternoon.

We would like to thank the committee for inviting the Canadian Bankers Association to provide the banking industry's perspective on your review of the Freezing Assets of Corrupt Foreign Officials Act and SEMA.

The CBA works on behalf of 59 domestic banks, foreign bank subsidiaries, and foreign bank branches operating in Canada, and their 280,000 employees.

First I would like to emphasize that the CBA and its members do not have a position with regard to the policy objectives or the effectiveness of economic sanctions as a form of policy instrument. Those decisions are firmly at the discretion of the federal government. Banks do, however, play an important role in their implementation. Banks are on the front line of Canada's economic sanctions regime, as our institutions must restrict financial transactions or freeze the assets of individuals or businesses that have been designated by the government.

We believe that the committee's review of these two acts is timely. Our focus today is on how the administration of the economic sanctions regime in Canada can be improved to ensure that the government, as well as the private sector, is well equipped to respond to the expansion of sanctions programs over the last several years.

Banks have extensive and sophisticated control systems in place to ensure that they are compliant with the laws and regulations dealing with economic sanctions. As the banking industry's prudential regulator, the Office of the Superintendent of Financial Institutions has a mandate to ensure banks and other financial institutions are in sound fiscal condition and compliant with their governing statutes and supervisory requirements. This includes a legislative requirement imposed by the two acts currently being reviewed by the committee.

With respect to economic sanctions specifically, OSFI last issued guidance in 2010, outlining how banks are expected to comply with the legislative and regulatory requirements. Banks must demonstrate to OSFI that their control measures are capable of continuously searching records for individuals and entities subject to financial sanctions, determining whether the bank is in possession or control of property of designated persons, preventing prohibited activity with respect to property of designated persons, monitoring for and preventing prohibited transactions, disclosing information to the RCMP and CSIS concerning property of designated persons in the bank's possession or control, and reporting to OSFI monthly on the aggregate value of property of designated persons in the bank's possession or control.

The legislative and regulatory requirements associated with the economic sanctions regime are significant and require a substantial amount of resources to ensure compliance. This can be especially challenging for smaller financial institutions that are expected to meet the same requirements as larger ones.

We would like to share with the committee our recommendations, which we believe could help improve the effectiveness and the efficiency of the economic sanctions framework in Canada.

First, we believe additional comprehensive guidance from the government would assist financial institutions in complying with the laws and regulations with respect to economic sanctions. OSFI has issued guidance to enhance the understanding of existing laws, but that guidance has not been updated since 2010.

Further guidance from Global Affairs Canada to assist the private sector would be consistent with the approach used in other jurisdictions such as the U.K., the U.S., and the EU. Many Canadian businesses are now looking to those other jurisdictions for information on how to interpret similar measures implemented domestically. The increasing complexity of the sanctions regime, which includes not only list screening but also activity- and sectoral-based sanctions, reinforces the need for more comprehensive guidance and a collaborative approach between the government and industry.

● (1635)

Second, building on the theme of additional guidance from the government, we believe the framework for economic sanctions would benefit from increased collaboration between the government and the private sector. Greater dialogue would facilitate a deeper understanding by the private sector regarding the interpretation of the laws and regulations. In addition, the government would gain greater insight into the challenges faced by other stakeholders.

Options to consider could include the appointment of a financial services industry liaison to address issues specific to financial institutions, and the availability of telephone or online assistance to respond to questions from the public. This would be consistent with the approach used in the U.S. and would provide an open line of communication to facilitate compliance.

For example, when financial institutions are having difficulty determining whether an individual or a business has been flagged by the regime and what measures must be implemented to meet the expectations of the sanctions program, having direct and real-time assistance from the government would greatly assist in compliance with the regime. On another front, it would be beneficial if the private sector had a better understanding of the permit application process, in which there are often significant delays.

Third, we strongly believe that there should be one consolidated list of designated persons to which financial institutions can refer. Today, banks must refer to 19 separate lists of sanctioned individuals and entities. The absence of a systematic method of communicating the continuous updates to these lists imposes an unnecessary burden on the private sector and creates greater risk of non-compliance, which undermines the entire regime.

In closing, we believe that these recommendations would improve Canada's current economic sanctions regime, which would ensure that the government's foreign policy objectives can be achieved, while not impeding valid business transactions. Although our recommendations do not provide specific legislative amendments, they would nonetheless improve the efficiency and effectiveness of the current framework, as well as the compliance of the private sector, by providing greater guidance and clarity.

Banks take their responsibilities with respect to economic sanctions very seriously in an effort to ensure that they are fully compliant with the requirements. Banks in Canada recognize that economic sanctions are an important foreign policy tool for the government, and no bank wants to undermine the government's objectives or risk its reputation by being non-compliant with the various laws and regulations that comprise the regime.

Once again, thank you for inviting the CBA to be here today. We look forward to taking your questions.

● (1640)

The Chair: Thank you very much. I appreciate that, and I appreciate your opening comments.

We're going to go straight to questions, and we'll start with Mr. Kent, please.

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

Thanks, both of you, for making yourselves available today. It is interesting.... I'm sure the committee will take serious note of your recommendations, being entirely in line with testimony we've heard from lawyers who act for companies that are determined to comply with sanction regulations but are lacking any material advice to help them. Those who can't afford lawyers sometimes avoid potentially legal economic dealings with companies simply because they don't want to face any risk.

We've heard testimony that when it comes to monitoring and compliance by institutions like banks, as well as detection of violations and enforcement, very often there is a question of resources and prioritizing by the various groups responsible in this area. What resources do Canada's major financial institutions, the chartered banks, actually have in place, and what sort of economic burden does that place on the banks internally?

Ms. Sandy Stephens: I'm going to refer that to my colleague Stephen, as he has more practical experience in this area.

Mr. G. Stephen Alsace: Thank you, Mr. Chair and committee members, for allowing me to speak here today. I will take that question.

We're not critiquing the sanctions regime and we're not even here to critique the amount that it costs to comply with the sanctions regime. We're happy to do that in the sense that we understand the policy considerations and we're good corporate citizens. However, I will say that it is significant. It's substantial. We're not the biggest of the big five banks, but easily we spend millions of dollars a year in compliance. We're constantly cognizant of having to upgrade our systems, our processes. We have significant numbers of people and resources devoted just to reviewing sanctions and processes.

If you could indulge me just for two minutes, maybe I'll describe at a high level—

Hon. Peter Kent: Please.

Mr. G. Stephen Alsace: —what we do on a daily basis.

We screen our entire customer database, millions of clients, for any new hits that could arise, either on a sanctions list or in our current client database. We also review upwards of hundreds of thousands of transactions every day. Of those hundreds of thousands of transactions for list-based screening, we probably receive anywhere around 40,000 to 50,000 hits. These are potential matches.

My team doesn't do it. We have operational groups that do it. They do a first-level review to see if it's a true match, again because we're using fuzzy logic to catch all the variations of names. After that, it gets screened. It comes to my team, and they'll review it. We have to clear payments every day by a five o'clock cut-off because we don't want to interrupt the financial system. It is a burden, but we bear it. However, there significant costs to doing that.

● (1645)

Hon. Peter Kent: Another question involves looking beyond the formal list and the lack of a consolidated list of sanctioned individuals or entities through FINTRAC or through FACFOA.

Do you have a responsibility to pass on questionable transactions from sanctioned countries where entities or individuals are listed to organizations like the RCMP or the superintendent of financial services or, in fact, CSIS?

Mr. G. Stephen Alsace: We comply with regulatory requirements, and it comes through reporting. To the extent you make a positive match on a listed person, there are certain obligations under the various statutes to report to the RCMP directly, or to CSIS. We do that.

Beyond that, outside of the sanctions realm, potentially we could have transactions involving a listed terrorist organization separately with our other obligations. Then we report through FINTRAC. We may file a suspicious transaction report, and in some instances we may report directly to the RCMP and CSIS.

Hon. Peter Kent: Do you have a regular dialogue with Canada's security agencies, with Immigration Canada, with Global Affairs Canada, all of the different groups that have different areas of responsibility with regard to the various types of sanctions?

Mr. G. Stephen Alsace: Unfortunately, depending on the government department and agencies, they're less inclined to open collaboration. Typically we try to facilitate any types of dialogue with government agencies such as that through the Canadian Bankers Association. There are standing committees—for example, on security—that meet regularly with RCMP and some other groups, so it does occur, but not with every department.

Hon. Peter Kent: We talked a little bit in our study about unintended consequences. There's one case with which I'm familiar. It was a constituent, an injured veteran, who received a payout, a substantial amount of money, and for legitimate personal reasons, he deposited these funds in an international bank that has branches both in Canada and abroad. When it came time to withdraw those funds, he was unable to, because it was registered as a questionable and possibly illegal transaction.

Do many of those cases come up, of folks being caught in a net unintentionally or accidentally?

Mr. G. Stephen Alsace: If I understand the question, I'll take it that the—

Hon. Peter Kent: I don't want to name the bank.

Mr. G. Stephen Alsace: No, but the individual involved was not a listed person, I take it. He was not sanctioned.

Hon. Peter Kent: No, not at all.

Mr. G. Stephen Alsace: Okay.

Hon. Peter Kent: However, through FINTRAC, I believe, or through the bank's own internal prudence or caution....

Mr. G. Stephen Alsace: I can't really speak to that. I know that the banks do have monitoring systems in place to detect potential money laundering. There are various rules that are applied, so it is possible that suspicious activity could have been detected. It may or may not have been legitimate. It varies, but I do know that if there is a hit, banks—at least our bank—investigate it. They'll pursue it on a case-by-case basis, hopefully to a proper resolution.

Hon. Peter Kent: As for compliance, if a listed entity, a numbered organization or corporation, is in your possession, is it your responsibility or the security agencies' responsibility to keep track of possible associated...? If it's a numbered company or a subsidiary numbered company that is responsible for trying to mask some of the funds, either in or out of Canada....

● (1650)

Mr. G. Stephen Alsace: That's actually a very good question. I'm glad you asked that with respect to a listed entity and its subsidiaries, because that's one of the questions that we have for Global Affairs Canada. That's one of the areas where there's some ambiguity. We follow the guidance from 2010 that OSFI published, the OSFI guideline. There's a specific line in there that says that federally regulated financial institutions can approach the Department of Foreign Affairs—at that time, DFAIT—for guidance specifically on the interpretation of the legislation. We've actually tried that with Global Affairs in the last few years, without any success.

We met with Global Affairs in 2015 and we were hoping that we would have more collaboration, but it hasn't happened. In that regard, we had a question outstanding about listed entities and their wholly owned subsidiaries. Are they also caught? If you look at the property definition, it could apply to shares held in a subsidiary. We've asked that question directly of Global Affairs—

Hon. Peter Kent: Without an answer.

Mr. G. Stephen Alsace: —without an answer, and that has directly impeded economic transactions. We have a number of clients who have been basically in limbo for the last 16 months because we've actually submitted a permit application without any answer. We don't even get an answer regarding the timing of when we can expect an answer, and that's why we're here today. It's because we believe that's unacceptable.

Hon. Peter Kent: Thank you.

Thank you, Chair.

The Chair: Thank you, Mr. Kent.

We'll go to Mr. Sidhu, please.

Mr. Jati Sidhu (Mission—Matsqui—Fraser Canyon, Lib.): Thank you, Mr. Chair.

Thank you both for your testimony today.

We have heard from businesses during this particular study that sanction compliance places a heavy burden on banks facing complicated patchworks of compliance legislation. I met with the Canadian Credit Union Association, and one of the major concerns that they brought forward was that they were disadvantaged against the big banks because of the sanctions, the policies. Do you have any further information about the impact sanction legislation has on credit unions?

Mr. G. Stephen Alsace: I really can't answer that, being from a chartered bank. I can appreciate perhaps some of their frustration. I mentioned in my earlier testimony that there is a significant cost to compliance. We're not just looking at the Canadian regulations. We also have to look at other international regimes where we do business. When you layer that on top of Canadian requirements, it is fairly onerous.

A point that we wanted to make, though, quite frankly, is that Global Affairs Canada in the last few years hasn't made it much easier. Going back to 2010—no, I won't go that far back. I'll go back to 2013, when I first assumed my role. It was at a time when Global Affairs, DFAIT at the time, was much more collaborative. When there was an introduction, say, of a new sanctions regime, or a new country was added, they would host a conference call, and they would invite industry. They would do separate calls for banking, and I believe they did a separate call for credit unions at the time. They would answer questions fairly openly and would provide some much-needed guidance, because you won't see anything published, as you're aware. At Global Affairs, they don't publish frequently asked questions, as OFAC does in the U.S.

We found it frustrating, because since 2015 it's almost been radio silence. Earlier I could pick up the phone and speak to a lawyer in the economic law division and be able to get at least an indication if that sounded like something we'd need a permit for or if we were on the right track in our interpretation. Now, since 2015, there's nothing. They don't even provide that limited guidance. They'll say to submit an email or submit a permit application.

Well, we'd send an email without any real guidance. Basically their response would be, "You need to seek independent legal advice." We've heard from lawyers in the industry; it's circular. They don't have the advice. They need to go back to Global Affairs.

Ultimately it comes back to a permit process. You submit something, you ask for general advice, and they say, "No, we can't give you a general answer. It has to be specific." We wait for a transaction, a live transaction. We have clients waiting. They want to do a letter of credit, and you have to submit an application.

We've been waiting 16 months.

Ms. Sandy Stephens: I think the recommendations we're putting forward today would be helpful for all participants in the regime from a private sector perspective, including credit unions.

Mr. Jati Sidhu: Going back to the banks, do you have any experience with overcompliance? Can you pinpoint any one case when it became an issue with the banks?

● (1655)

Mr. G. Stephen Alsace: It happens fairly frequently.

Where there is ambiguity, where there is any kind of vagueness, banks—and I think credit unions would act the same way—err on the side of caution. You're conservative and you're more reluctant to complete transactions.

That's not necessarily our bank, but we've seen it with other international financial institutions, particularly those that have been subject to enforcement from other regulatory regimes. They will just block it, and they will not deal with certain countries at all. They don't even acknowledge that certain exceptions are permitted. They don't even want to look at that, because of the cost of compliance and the need to have the staffing to look at it and, indeed, because of the potential risk.

We take a position. We try to look at every transaction on a case-by-case basis. What a lot of Canadians don't realize is that although we may clear it as a Canadian bank, there's another party in another country that has to also be a participant in this transaction. They take a policy approach and they say they won't do it. That has had detrimental impacts on our customers. We try to explain to them that it's not us, that it's the other clearing bank that won't do the transaction.

Ms. Sandy Stephens: Better guidance will help banks in their need to be compliant, but it will also help businesses in their ability to grow and do these transactions.

Mr. G. Stephen Alsace: If I may, sir, what we've been looking for are just some guidelines, even a list of certain goods and certain countries that are permitted that won't require a permit. That would go a very long way in stimulating the Canadian economy, particularly with a lot of our clients interested in these emerging markets. They want to take advantage of them but they're prohibited from them because of the ambiguities in the legislation and lack of interpretation and guidance.

The Chair: Go ahead, Mr. Sidhu.

Mr. Jati Sidhu: Do you recall any business opportunities denied to the bank by these sanctions?

Mr. G. Stephen Alsace: Not directly. It impacts mostly our clients. Quite frankly, we're not necessarily racing toward many of these sanctioned countries to open up branches. That said, we have been asked to participate, perhaps in syndicated credit facilities, and we have declined that opportunity because of ambiguities in the sanctions regime, so yes.

The Chair: Madame Laverdière is next, please.

[*Translation*]

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

I would like to start by mentioning that the points raised by the witnesses today are things we have already heard. I'm not saying that your presentation was pointless, quite the opposite. You made an excellent summary of the points and problems we have already heard in terms of implementing this legislation, even the Special Economic Measures Act, or SEMA. In this regard, there has been one prosecution in 25 years under this act, so I think there are some very real problems.

I would like to ask you about overcompliance with the act. In particular, there were sanctions against Iran. I met with some Iranian students whose bank accounts were closed because the banks preferred to be cautious more than anything else. That is what's affecting these measures here in Canada.

I think that we have a good understanding of the problems, and that your recommendations will be very helpful. You are also required to comply with sanctions in other countries where you are able to operate, including in the United States, Europe and elsewhere. I suppose this also complicates things for the banks.

Is there anything the Government of Canada could do to ease the burden?

[*English*]

Mr. G. Stephen Alsace: That's an excellent question.

I would reiterate that yes, in our view, there are certainly things that the Canadian government can do. A large part is around some of the points we have already raised. It's around administration. It's around guidance. We don't find significant or material flaws in the legislation itself; it's just in support around that legislation, be it a consolidation of lists or being able to provide guidance on interpretation. That could help alleviate some of those issues.

Quite frankly, if there were an outlet, an ability for us to approach the government in those instances, to say we're not exactly sure with respect to these students and these new sanctions that came into force at that time—if we had that opportunity to have a dialogue with somebody in the government to allay those fears, etc., I'm sure it would not have had the same kind of consequence.

With respect to international sanctions, yes, there are concerns. Quite frankly, you raised Iran as an example. Although Canada has lessened the general sanctions regime against Iran, the United States, for the most part, hasn't, so we still have to be very concerned about any transactions that might be done in U.S. dollars. Some of the banks may have had or may continue to have restrictions on the ability to open up U.S. dollar accounts. Why? It's because U.S. dollar items need to clear through a U.S. correspondent bank, and they have to be concerned about the implication of sanctions.

Our belief—and we've made this clear in our position—is that the government could do more in supporting administration and infrastructure. If you were to look at Australia, you would see it is a good example of a jurisdiction where they do outreach. The government actually has a national road show twice a year. They meet with companies and industry to give guidance on sanctions. They actually attend conferences.

I've been to four international conferences in the last two years. There were two in Toronto, one in Washington, and one in New York, and they were organized by the American Conference Institute. I know directly, because I've spoken at each one of these conferences. They've asked me, “Who would you like to see attend from the Canadian government, as a Canadian representative, in addition to lawyers?” I said to each one of them, “Please invite Global Affairs Canada.” They've been invited four times. They have not appeared at any of these conferences.

It's not just Canadians who are participating, but the international community. You have lawyers. You have banks. They want to hear what the position is on Canadian sanctions.

● (1700)

Ms. Hélène Laverdière: Thank you very much. Those were very good points, again.

Also, our civil servants could learn from others' experience by going to those international conferences anyway.

Mr. G. Stephen Alsace: I agree.

Ms. Hélène Laverdière: Yes, absolutely.

Maybe I have one last question on guidance. We've seen the little booklet on guidance, which hasn't been updated since 2010. Do you need both a general framework guidance manual or something for sanctions in general, and then specific documents or exercises or outreach for every time there's a new regime of sanctions that comes into place? Would it be useful to have a kind of umbrella guidance, and then specific guidance, such as for sanctions on Iran or whatever?

Mr. G. Stephen Alsace: Yes, as a very short answer, I think that would be useful.

I think the OSFI guide is of use to smaller financial institutions, such as the credit unions. If you're starting up, it is quite useful. It goes into the basics, but it is fairly basic.

We really could have used outreach when the Russian sanctions came. I have to say from a practical perspective that when the Russian sanctions came down it was, quite frankly, almost pandemonium. They were a completely different type of sanction. They're not list-based per se. There's a portion, but you have three other schedules that are divided, and they separate credit and debt issuance transactions. They have different time periods. They say for any transaction that's a debt issuance in excess of 30 days, a credit transaction that is in excess of 90 days.... It's very complicated. Even to this day, we have to review anything that's a Russian type of transaction manually. We have to go through them to see if they fall within any of these new categories, or if it goes into, say, Arctic deepwater drilling or fracking. We don't even have a definition for "Arctic". There are three definitions used for the Arctic Circle internationally. The Europeans have one, the Americans have one, and we have one.

Ms. Hélène Laverdière: So then—

Mr. G. Stephen Alsace: So when you have to actually pinpoint the location, we actually ask for the site. Where are you drilling? I have analysts who try to plot that on a map, and they have to figure out the longitude and latitude to know if it actually falls within the sanction. It's very difficult to actually understand.

● (1705)

Ms. Sandy Stephens: Many areas of government do this. When there's a new regulation or they develop new guidance, they have a road show and they explain it to the industry. That is a typical type of process.

The Chair: Thank you very much, Madame Laverdière.

[*Translation*]

Ms. Hélène Laverdière: Thank you to the witnesses for their comments.

[*English*]

The Chair: Now we'll go to Mr. Fragiskatos, please.

Mr. Peter Fragiskatos: Thanks very much.

Mr. Alsace, please tell the committee when the sanctions regime against Russia was put into place.

Mr. G. Stephen Alsace: It was in July 2014, I believe.

Mr. Peter Fragiskatos: It was 2014. Okay.

You said there was a point when engagement was more positive with Global Affairs, and then things started to unravel a bit. When did that happen?

Mr. G. Stephen Alsace: It's hard to say. I think it was just before Russia. I started my role in October 2013, and it was a time when we would still get responses. They weren't hosting conference calls at that time, and then it kind of degraded after that, probably around the time of Russia, approximately.

Mr. Peter Fragiskatos: As I understand this, the previous administration was adamant that it was going to put in place a sanctions regime to deal with Russian actions, and it was going to be a robust sanctions regime. It knew full well that the burden of carrying out the sanctions regime would fall on Canadian businesses and Canadian banks, yet there was no real engagement.

Mr. G. Stephen Alsace: I'm not sure if there was really that much thought given to it. If you look at the pattern and you watch what happened with Russia, Canada followed suit. We followed the Europeans and the Americans with our sanctions. Although we have a stand-alone sanctions regime that applies to Russia and the Ukraine, I'm not sure if that actually even came up—

Mr. Peter Fragiskatos: It didn't even come up.

Mr. G. Stephen Alsace: In the sense that when you're talking about what we do with sanctions and you look at the support that we get from Global Affairs, I don't know if it was an issue with respect to any specific type of regime. I think it was more of a gradual deterioration that started since 2013 when they were a little more open.

If I had to pinpoint it to something, there was a change of staff, a senior member, that occurred around that time. With his absence, I think there wasn't anybody to come in who was willing to take the reins to actually host those conference calls anymore.

Mr. Peter Fragiskatos: Still, though, private enterprise matters a great deal in Canada. Our banks matter. Banking structure is essential to a market economy. If we're going to put in place mechanisms to enforce sanctions, a staff change shouldn't affect things drastically.

Mr. G. Stephen Alsace: I can't speak to that. You'd have to ask Global Affairs Canada more specifically as to the rationale around that.

Mr. Peter Fragiskatos: It's just puzzling, because the previous administration talked about being a government of private enterprise and then was trying to do something to deal with international problems at the same time. On the one hand, it was trumpeting its actions in the foreign realm, and then domestically it was asking the banks to do all the work and not providing the supports.

That said, I want to talk about the burdens that the banking sector faces, and businesses as well. Absent going through the UN, Canada has the ability, as you know, to impose sanctions unilaterally, either through the SEMA, through FACFOA, through the anti-terrorism laws in the Criminal Code, through the Immigration and Refugee Protection Act, or through several other acts. Sanctions, however, get layered. In fact, seven Canadian sanctions regimes at the moment require two or more of the acts I've just listed to be imposed.

The problem with this is that it creates a great deal of complication, because each act has a different penalty for non-compliance and a different definition on key issues, such as what constitutes property or what constitutes assets. This must be an absolute nightmare to deal with. Tell the committee how difficult it is to deal with, and whether you've been consulted at all on any of this.

Mr. G. Stephen Alsace: In general, the Canadian banking industry is supportive of sanctions. We comply with the regulatory requirements and the law. We've made the point already, I believe, that it's complicated and it can be a burden at times. Yes, it's—

Mr. Peter Fragiskatos: This seems more of a burden. I'm just thinking of it from your perspective and the perspective of anyone in the banking sector who's trying to figure this out on a daily basis. This is an absolute nightmare.

Mr. G. Stephen Alsace: I'm not sure if it's a nightmare. Quite frankly, when we look at the sanctions regimes, although they come, say, from various different lists for us, we use service providers who consolidate. Having them on different lists is a bit of an additional burden because we still have to do list validation, which means going back to the original source to test—

● (1710)

Mr. Peter Fragiskatos: I don't mean to cut you off, but my time is limited.

If I have to apply different definitions of what constitutes property, what constitutes assets, if there are seven sanctions regimes that require two or more acts to be imposed, maybe "nightmare" is overstating it, but I'm a politician and I tend to use hyperbole from time to time. What I'm trying to say is that it's extremely challenging, or I imagine it would be anyway.

Mr. G. Stephen Alsace: I'll be frank with you. From a list-based perspective, if you're on a list, it doesn't matter where it derived from, it's not so much of an issue. You're either on the list or you're not on the list. In 99.99% of screening we do, there are no hits. If you don't have any hits and if you're not an SDN, we don't have to drill down on the definition of property or assets; we're not dealing with the party. It's a non-issue, for the most part. From a day-to-day perspective, although there is a lot of screening required and infrastructure required to do it, it doesn't usually create problems.

It's the other sanctions—we'll call them sectoral—that are country-based, such as Russia, when you have to look at arms or munitions. You have to start, then, looking at goods. That's when it gets much more complicated, because we have to get into interpretation issues.

We're doing both simultaneously, but the burdens that you are speaking of, from a day-to-day perspective, are not actually realized.

Mr. Peter Fragiskatos: Okay, but you would like to see more engagement in general. That's something that we can look at as a committee. That's something that's glaring in your testimony.

Mr. G. Stephen Alsace: Yes, we would encourage it. Collaborative efforts are great.

We appreciate that sanctions are a political tool, so you may not want to consult before you're going to impose sanctions on a new country. However, we would appreciate a general dialogue if you're going to create new types of sanctions, such as the sectoral sanctions, because then we could provide some advice around having to be careful about how you characterize certain transactions.

Mr. Peter Fragiskatos: Since 2006, we've put in place mechanisms that tend towards unilateral sanctions, so I think you're talking about that factor complicating things, but there's still no engagement with the banking sector in any meaningful shape or form. There's a lack of dialogue. You were relying on one person in Global Affairs Canada to be your go-between, and when that person left, all of a sudden the banking sector lost its ability to have a voice. That's what I've taken here.

We can't have one person. We can't rely on one person's goodwill within a particular department. We need to take actions to address that, and I'm sorry you've dealt with these problems in the past, bearing the burden of putting in place and monitoring a sanctions regime while administrations would take the credit, or try to take the credit, for pushing forward a foreign policy to deal with authoritarian states.

Those are all my questions, sir.

The Chair: Thank you, Mr. Fragiskatos.

Go ahead, Mr. Levitt, please.

Mr. Michael Levitt: Can you take us through the life cycle of what compliance looks like for banks in really practical terms? Let's say the government publishes new regulations targeting certain individuals in a target state. You can use the Russian example if that's helpful. How do you learn about, interpret, and comply with this measure? What steps do you take to freeze assets you might hold and prevent transactions, and what does the timeline look like for this?

Mr. G. Stephen Alsace: How much time do you have, sir?

Mr. Michael Levitt: I have about five minutes, actually. It's pretty specific.

The Chair: I'm sure you can do it in five minutes.

Mr. Michael Levitt: Yes. Give the abbreviated version.

Mr. G. Stephen Alsace: When new sanctions are introduced, typically we will learn about them when they're published. We subscribe to various services. Global Affairs will give email updates through RSS, and we scan all the sites every day.

It's interesting you raised that, because some of the names, when they are first published, appear in various sources. Sometimes...and we'd never seen this before, but it was through a news release on the Prime Minister's website. That was new for us, and we didn't even think to look there. We typically just look at the Global Affairs website every day. We do look at the Justice Department website every day.

We may or may not receive notification. I think that when the Russian sanctions came down, I believe we got a heads-up from OSFI because they knew that they were coming, and that was nice. I also have my team. I have five lawyers on my team, and we have a legal department. We each pore over them and we analyze the impact.

If it's just adding to a list, then it's fairly simple. They're added to this list, and we ingest them. Either our service provider does it, or we do it manually. Then it goes into our system, and it's done usually the same day, or the very next day. If we get a hit, or blocks, then we take appropriate action. We freeze property or assets. If we get a false positive and we can't reconcile that, then we go back to the client and ask for additional information. We may ask for additional information from a remitting bank or an originating bank, if it's a wire type of transaction.

For something like sectoral sanctions.... Let's say they're opening a whole new sector. Let's say they want to add fishing somewhere. We hadn't seen that before, so usually we'll convene a CBA meeting. We'll have members get together and we'll talk as an industry and figure out what to do. We may reach out to our legal service providers and ask them for their interpretation, and we do our best.

It would be fantastic if we could go to Global Affairs, have them host the call, and have them walk through the new sanctions. That would be ideal. Those are some of the things that we're asking for. That's what other jurisdictions do. Then they can publish frequently asked questions that could come up, or they could even anticipate questions in advance. That would be great.

● (1715)

Mr. Michael Levitt: Would you benefit from a consolidated list? This is an issue that we've heard at a couple of meetings, the notion that there could be more comprehensive lists, rather than having to jump around various sources. I think that's something that's done in the States.

Mr. G. Stephen Alsace: Absolutely. Yes, it would definitely be beneficial, and it's something we've been asking for over a number of years. Your esteemed committee member mentioned the credit unions and the small financial institutions, and we believe for them especially it's a burden. For smaller banks, we know it's a burden having multiple lists. We know it's a burden for our service providers, because sometimes they miss a list. They're either U.S.-based or U.K.-based, and they're not aware that we have 19 different sources.

Mr. Michael Levitt: Beyond just the Canadian sanctions, you're also required to abide by sanctions and regulations in other jurisdictions, notably with the EU and the U.S. How does the patchwork of sanctions, regimes, and differing jurisdictional standards complicate compliance? What could the government do to reduce this burden for the banking sector?

Mr. G. Stephen Alsace: I'm not sure, quite frankly, if the Government of Canada could do much to impact sanctions from other regimes. That's always going to happen. We would encourage collaboration between states. It would be great if they could harmonize sanctions. It would be great if they could come up with an international harmonized sanctions list. That would be a dream.

We do appreciate that the Government of Canada has made a policy decision to have stand-alone sanctions, and that's fine. We can deal with that, but it does get complicated. I mentioned that earlier. Using Iran as an example, we have two very different regimes. We have to plow through either transactions or potential clients, drill down, get a lot of details, and make sure that there isn't a nexus to the United States.

That's not new, though. We've been dealing with having two different regimes and two different approaches for years in the case of Cuba. We've set up different infrastructure, for example, to make sure that U.S. employees recuse themselves from transactions. We insulate them to make sure that there's no tie whatsoever to the U.S. so that we can complete transactions for companies that are doing business in Cuba.

In the future we hope there will be some greater harmony, but we expect that there will always be differences.

Mr. Michael Levitt: I know you've touched on some of these things, but ideally what would the financial services industry look for? What kind of support from the government do you see as ideal to help ensure compliance with the Canadian sanctions regime? You've pointed out some examples. Are there any you would like to add to that?

Mr. G. Stephen Alsace: No, it's fairly basic. FAQs would be fantastic guides. We're not asking for 500-plus FAQs, such as OFAC has. A few would be great. Maybe even consider adopting something like the general licence regime that they do in the U.S., whereby you have common types of questions that come up. Rather than just issuing permits or licences on a one-off basis, they say, “Here's this type of transaction; everybody can do it”, and they publish it. That would be fantastic. It would make it a lot more efficient.

However, just providing outreach and the ability to contact and provide guidance....

Ms. Sandy Stephens: I think we mentioned a hotline or a telephone line for advice as well. The banking industry is appreciative of all the support the government has provided us. We're just looking for enhancements in that collaboration.

The Chair: Thank you, Mr. Levitt.

We'll go to Mr. Kmiec, please.

Mr. Tom Kmiec (Calgary Shepard, CPC): Thank you both for coming. This is probably the most interesting conversation so far, because it's about the technicalities and the administration of it too.

You said that you support sanctions regimes and you just want to comply with them in the easiest way possible. I'm one of those politicians who likes the details, so I'm glad you're here, because I get to ask you details.

Concerning these 19 separate lists, there are different ways that you go about checking them over, but they're not all Canadian lists, are they? You seem to be intimating that these are U.K. lists, UN lists.... Are these all in Canada?

● (1720)

Mr. G. Stephen Alsace: Just off the top of my head, I know that there are at least....

We're talking about not just lists but sources that you would find on various websites. It may not be actually 19 under the legislation or the regulations; I think it's just that the locations at which you would actually find the potential listings are in 19 different places all across the web.

Mr. Tom Kmiec: Would it be fair to say, based on some of the answers you've given to other committee members' questions, that you would prefer to have a sectoral or a very generic sanction and a more specific one aiming at specific individuals?

On the administration side, is it easier to find a list that says, “Such and such a person, who's the captain of such and such organization, is a person who is designated as someone you can't do X transactions with”, and just list them, as distinct from saying “anybody involved in offshore drilling who does business in Russia”? What's easier to administer?

Mr. G. Stephen Alsace: There are two things. One is that from a list perspective and for list administration, we're asking just to put it in one spot, as OFAC does. There would just be one list. It doesn't matter whether it comes from different pieces of legislation. Have one central list, and then you can even put in links or codes or colours—I don't know—to link it to a separate act, appreciating that there are different definitions of what you have to do. Ultimately, for screening purposes, just have one list.

The other piece of it that you mentioned is more around clarity and specificity. It's harder to do, because that's when you're drilling down into sectoral types of sanctions, or you may have an entity—let's say Russia, for example—that is a schedule 2 entity. Yes, they're on a sanctions list; however, what they're sanctioned for is debt transactions in excess of 30 days, so you're prohibited from entering into those. I'm not going to go into the details or dictate how the government should handle this. Maybe keep it in a separate schedule or something, but in the same spot, or code it differently. I'm not sure. Make it easier to use somehow.

Mr. Tom Kmiec: Let me ask you this, then. Could there be something more like a global Magnitsky Act that would be like a clearing house for sanctions, a place for you to go to find this consolidated list? There would be some agreement with other countries as well about what this would look like, so there wouldn't be the situation in which you would have to recuse some staff from dealing with certain specific cases, such as Cuba. You would be able to say, “On these particular cases, this group of countries agrees to sanction this individual or this sector in this country in the same way and the same fashion”, and then you would have a list that all these sanctioning countries agreed to. Russia is the example we're using right now.

Mr. G. Stephen Alsace: That would be helpful.

Mr. Tom Kmiec: It would be helpful—something like a global Magnitsky Act?

Mr. G. Stephen Alsace: Yes, that would be very helpful. Let's take Russia for that example. There are subtle differences among the U.K., the U.S., Australia, and Canada, but if those regimes could just agree on uniformity of language and approach, it would be ideal.

Mr. Tom Kmiec: Can I ask one more question? You're still waiting for the government to respond to some questions. Are you saying it's 16 months?

Mr. G. Stephen Alsace: That's for a permit application.

Mr. Tom Kmiec: That's for a permit application. Basically, you haven't heard at all, despite the change of government. There still has been no response, nothing from Global Affairs.

Mr. G. Stephen Alsace: Correct. Our lawyer follows up, and asks what's happening with it. The response is just that it's still in process.

Mr. Tom Kmiec: It's still in process.

You were mentioning this general licence concept whereby you wouldn't need to come back and reapply for another person when you had just told another company you're allowed to do this type of licence.

In the case of Canada, does this happen in any specific sanction, or does this not happen at all? Does it have to be a unique application every single time?

Mr. G. Stephen Alsace: Yes.

Mr. Tom Kmiec: You mentioned Australia as an example of a jurisdiction that does it the right way. Is there any other example of a sanctions regime, apart from Australia, that works well for you?

● (1725)

Mr. G. Stephen Alsace: If you're re-engineering the administration of sanctions, I would encourage the committee and the government to look at a number of jurisdictions and pick and choose elements that are the best from each, but you have to think about what works for Canada.

I picked Australia because it's about the same size as Canada. I could just say OFAC, but we appreciate that the Government of Canada may not want to use that kind of a model.

From my understanding, Australia is one regime that hasn't had a lot of complaints from the banks. It is collaborative. It provides guidance. It seems to work.

I've seen elements of the U.K. model. It provides certain guidance. I wouldn't necessarily use that as the gold standard.

I've seen good elements of the OFAC model, such as the FAQ and just being able to publish questions and answers. That's a great start. That's all we were actually asking Global Affairs to do. We even asked it to make it generic. We'd even offer to help draft what we think the answer is, and then just make sure it confirms that it's the correct interpretation and posts it, but there has been a general reluctance to do that.

The Chair: Thank you, Mr. Kmiec.

We'll go to Mr. Miller, please.

Mr. Marc Miller: Thank you for coming in.

I have a quick question as to the logistics of tagging a bank account or freezing a bank account or a securities account. You're talking to a former mergers and acquisitions lawyer who knows how conservative you are and has spent many Friday afternoons wondering why funds weren't wired, so I get it, and I get that you're conservative.

I'm now wondering about the rights of your custodian of funds or securities. I'm wondering about the people who have entrusted their funds to you, and what they expect their institution to be doing, and how there can be overcompliance and you're faced with this perhaps bureaucratic or logistical nightmare.

What happens when a law enforcement official or a public administration official comes and says an account is suspicious and you should freeze it? I'm being silly, but do you ask where the warrant is or ask where the proof is? What does your legal team ask at the outset?

Mr. G. Stephen Alsace: I'm no longer part of the legal team, but I think there are two different things you're talking about. One is our requirement and our obligation to comply with the law. You're all aware that sanctions are criminal statutes, so you do have to have a positive match. We have very specific requirements under the law to block and freeze and report.

We do everything in our power to make sure we identify the right entity or individual if we're ever going to do that. We make sure we have an exact match, and that's why I made the point earlier that it is very rare in Canada that it happens, from an account holder or even a securities transfer perspective.

What might be more common is that we see on the other side of a wire transaction that the recipient of funds may be a listed person. That's more common. It's either that, or the recipient looks likely to be listed—for example, there's an exact name match, but we don't have any other information.

Our process is to hold until we verify. Almost every international bank we deal with takes the same approach. You interrupt the transaction on the basis of information that leads you to believe that it is, in fact, a listed person because the name is either close enough or exact. Then you pursue additional avenues to clear that. It's based on information you can obtain on that transaction.

Mr. Marc Miller: Just as a conservative matter, you will preventively freeze until you have cleared any suspicion?

Mr. G. Stephen Alsace: Yes, but I want to distinguish between a listed person and sanctions—

Mr. Marc Miller: Correct.

Mr. G. Stephen Alsace: —from a suspicious AML activity. That's a very different threshold.

If the police are investigating in a potential crime, they will need a court order, typically, to interrupt a payment. It varies. If we suspect it may be money laundering, that's a whole other issue.

Mr. Marc Miller: There is a range of thought processes that you go through. I understand if we're talking about SEMA or FACFOA, your frustration is finding out in the first place, and then it's pretty easy to freeze, as opposed to more of a money-laundering situation.

Mr. G. Stephen Alsace: The advantage of sanctions is it's a bit more black and white. If you're dealing with a listed person, the obligations under the law are very clear. You have to block. You freeze and then you report, so we do that.

The Chair: Thank you, Mr. Miller.

Madame Laverdière has the last question.

Ms. Hélène Laverdière: Thank you very much, Mr. Chair. I would like first to apologize that I was on my BlackBerry, but I have journalists running after me to come and deal with an issue, so I'm just trying to deal with the crisis in question.

I'll go back to French, if you permit.

● (1730)

Mr. G. Stephen Alsace: Sure.

[*Translation*]

Ms. Hélène Laverdière: I was stunned by your remarks.

We see everything you do. You use service providers. You review all the lists to create sort of your own consolidated list. I imagine the Bank of Montreal, Scotiabank and all the major Canadian banks do the same thing. There is a kind of duplication of effort in what you are forced to do, and I'm not blaming the banks for that.

Before we set up a system that would be more useful for you, can you at least share some information or services?

Thank you.

[*English*]

Mr. G. Stephen Alsace: It's a valid point and a good question. The larger financial banks in Canada use service providers, quite frankly, to help us with list generation. Some of us use the same service providers. There are a number of them out there that are best in class.

We don't really share information around clients, etc. We do collaborate on a regular basis to talk about practice and some of the issues that we encounter, but there is no central list. I'm not sure if you would ever have one. You could do that for Canada, and that would be great, but you still have other jurisdictions that you have to derive lists from, so unless the United Nations or someone comes up with a master list and a service that everybody could use, we're kind of left to our own devices. Quite frankly, we use a service provider.

Ms. Sandy Stephens: A consolidated list for smaller institutions would be very helpful, absolutely. Just from an efficiency perspective, why not do it once, as opposed to, as you said, hundreds of times?

The Chair: Colleagues, I think that wraps up a good hour of discussion with the Canadian Bankers Association, and in particular the Canadian Imperial Bank of Commerce. I want to thank both of you for making this presentation. I very much appreciate your style of presentation, because it does give us recommendations. It does give us an opportunity to think about those recommendations from your perspective. We very much appreciate that.

I know a lot of questions have been asked of you. If there is any other information you want to supply the committee, please feel free to do so. Again, we very much appreciate the time you've given us this afternoon, so thank you.

Colleagues, I'll adjourn this meeting to the call of the chair, and I think that will be for tomorrow. It will be tomorrow morning at 8:45. Thank you.

The meeting is adjourned.