

Calling a Spade a Spade: Canada's Use of Sanctions

by Andrea Charron and Paul Aseltine
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► Executive Summary

Canada's use of sanctions is little studied which means the full scope and effect of this tool are not appreciated. Until 2006, Canada applied sanctions in support of the United Nations almost exclusively. Since then, Canada has also applied discretionary sanctions in support of allies such as the European Union and United States' measures in addition to those required by the UN Security Council. Lacking extraterritorial reach and with this new tendency to layer sanctions (applying UN and additional measures) requires the navigation of multiple pieces of Canadian legislation. Banks and private companies, which are largely responsible for giving effect to Canada's sanctions, must navigate this legislation. This has ensnared a few Canadians in the process with little evidence that Canada's application of sanctions is compelling its targets (people, companies, and states) to change their behaviour. Canada's application of sanctions is a signal of its desire to support multilateral, collective security efforts – nothing more or less.



INTRODUCTION

Canada's use of sanctions is arguably the least studied of Canada's foreign policy tools.² And yet, successive Canadian governments continue to impose sanctions either because of legal obligation and/or to support allies in a collective effort. But to what effect? To answer this question, we need to look at when and how Canada has imposed sanctions since 1990 and against which states.

WHAT IS THE STATE OF CANADA'S SANCTIONS' PRACTICE SINCE 1990?

Surprisingly, this is a question seldom asked. Indeed, in sanctions literature generally and Canadian foreign policy literature specifically, Canada's machinery for the application of sanctions is largely out of sight and out of the mind.³ And yet, the demands on Canadian banks and businesses to comply with Canada's sanctions regulations require the navigation of a labyrinth of legislation; the effectiveness of Canada's sanctions is almost entirely dependent on these third parties.

Canada has had a high rate of application of sanctions since the 1990s as a result of a very active UN Security Council (UNSC) and Canada's obligation to carry out those measures.⁴ Of late, however, Canada's sanctions have been imposed by choice rather than obligation – usually applied to demonstrate (in sanctions parlance “signal”) support to the European Union (EU) and to the US (and other allies such as Australia and New Zealand) rather than by requirement of international law. As Canada is not a member of the EU, and Canada and the US have no sanctions treaty, Canada's decision to apply similar sanctions as these allies is discretionary.⁵

Since consultation by the Government prior to the application of sanctions is not required, all of Canada's sanctions are applied via regulations stemming from standing Acts (such as the *United Nations Act*⁶ or the *Special Economic Measures Act*⁷) or via application of statutes like the Criminal Code. It is not surprising, therefore, that most sanctions regimes tend to go unnoticed unless one is in the habit of examining the *Canadian Gazette* or the Global Affairs' website on a regular basis.

In the case of UN-mandated sanctions, Canada transcribes the sanctions measures outlined by the Security Council into regulations that may be applied against any person in Canada or any Canadian outside of Canada. This means that Canadian regulations do not have extra-territorial jurisdiction.⁸ It cannot, for example, reach into Sierra Leone and prevent a US national from travelling within Africa in violation of UN-mandated travel ban. Canada could only prevent the US national from entering Canada via its *Immigration and Refugee Protection Act*. As a tool of collective security, therefore, sanctions exist only if states apply the necessary national legislation to give the measures effect.

When Canada wishes to apply sanctions absent a UN Security Council resolution -- as is increasingly the case, it has many other instruments it can use. These include:



- the *Special Economic Measures Act* (SEMA)⁹;
- Area Control List (ACL) under the *Export and Import Permits Act*¹⁰;
- the *Freezing Assets of Corrupt Foreign Affairs Act* (FACOFA)¹¹ ;
- Anti-terrorism measures under the *Criminal Code*;
- *Immigration and Refugee Protection Act*; and
- other Acts (such as the *Bank Act* or *Vienna Convention on Diplomatic Relations* or [Old Age Security Act](#), or the [Canada Pension Plan](#)) or the [Garnishment, Attachment and Pension Diversion Act](#) or the [Pension Benefits Division Act](#) etc.

These other measures can accommodate just about any measure Canada wishes to impose or restrict.

Table 1: Canada's Sanctions Regimes 1990 to October 2016

Region	# of Canadian sanctions cases	% of Total	Main Partners/Authorizing organization
Africa	21	52.5	All, except 3 are UN-led sanctions 2 are with the EU 1 is with the EU and UN
Americas	1	2.5	UN, Organization of American States (OAS)
Asia ¹²	3	7.5	UN, US, EU
Europe ¹³	6	15	UN, US, EU
Middle East	7	17.5	UN, US, EU
Global Terrorism	2	5	UN
Total	40	100	UN alone = 29/40 = 72.5%

Table 2: Canada's Sanctions since 1990 Organized Temporally

Time Period	Sanctioning Partners	# of Canadian Cases
1990 - 1998	All UN	12 UN (the majority to deal with conflicts in Africa)
1999 – 2008	UN and coalition with EU and US	13 UN (global terrorism, weapons proliferation, conflicts in Africa) Note sanctions against Iran in 2010 and North Korea in 2011 added additional measures in coalition with the EU and US under the SEMA. 3 coalition with EU and US (Burma, Belarus and Zimbabwe to deal with governance/human rights issues)
2009 - 2016	UN and coalition with EU and US	5 UN only (Taliban and Associates, Eritrea, Guinea Bissau, CAR and Yemen) 2 UN + coalitions (Libya and South Sudan) 3 EU and US coalitions (Syria, Russia, Ukraine) 2 EU coalition Egypt and Tunisia



Forty cases of Canadian sanctions have been applied since 1990, equally divided, roughly, into three time periods. More than half of the cases (22) are still active today, including sanctions against Somalia first applied in 1992. The sanctions measures and objectives of the cases have shifted over time. The first twelve sanctions cases initiated in the 1990s were in response to sanctions required by the UN. Six dealt with conflicts in Africa of which one, against Libya, was for its state sponsorship of terrorism. The others dealt with acts of aggression by Iraq, the unconstitutional change of government in Haiti, and the wars in the Balkans. At the time, the UN was learning how to use sanctions, and Canada was instrumental in that learning process.¹⁴

The next thirteen cases between 1999 and 2006 were all UN-mandated and dealt with everything from weapons proliferation, to interstate wars, stopping global terrorism, and addressing civil wars in Africa. The last three cases applied between 2006 and 2008 dealt with the governance of three troublesome states -- namely Belarus, Burma and Zimbabwe, all with governments that run roughshod over due process, thus sowing a climate of insecurity for any opposition. Absent a UN mandate, Canada chose to join with the EU and US in sanctioning the governments of these states despite there being no legal imperative to do so.

The last time period between 2009 and 2016 covers a mix of UN and coalition measures. In several cases, Canada chose to include additional measures beyond those recommended by the UN in coalition with the EU and US (and others), as well as sanctions with just the EU and US, and two with just the EU. Sanctions measures were layered one on top of the other. Canada of late has been picking and choosing not only which cases but with which allies to partner. Moreover, while the rate of increase of sanctions called for by the UN has declined for a variety of reasons including increased tensions among P5 members of the Security Council, Canada has used the myriad of its own standing legislation to apply sanctions in conjunction with allies. Surprisingly, Canada has never sanctioned with just the US since 1990; there is recognition that the more states that sanction, the more likely the collective effect of the measures will elicit change from the target and the more protected sender states will be from potential, often economic, retaliation.

The EU (with its 28 states) and the US (and Canada) often sanction similar targets. This does not mean, however, that Canada has matched all EU sanctions automatically. For example, the EU has sanctions in place against Guinea (Conakry)¹⁵ and had sanctioned individuals in Moldova,¹⁶ but Canada did not follow suit. Nor does Canada necessarily lift sanctions at the same time as its allies. For example, mandatory UN sanctions against Liberia were formally removed by the UN Security Council via S/RES/2288 on 25 May 2016 with immediate effect. The EU lifted the arms, technical assistance ban vis-à-vis weapons manufacturing and maintenance as well as the individual travel and financial asset sanctions in June 2016. Canada has yet to pass regulations to lift any of these measures. (The same can be said of sanctions against Côte d'Ivoire lifted by the UN via S/RES/2283 on 28 April 2016). Whether this is purposeful or a reflection of a lack of personnel dedicated to the task is yet to be determined.



This tendency to layer sanctions complicates compliance considerably. Seven Canadian cases require two or more of these Acts¹⁷ (and of course this doesn't include the 28 cases that have or had a travel ban which require invocation of the *Immigration and Refugee Protection Act*). The Acts have different penalties for noncompliance and different definitions for the measures applied such as seizure of "property" and "assets".

On rare occasions, the Canadian government will advertise its measures in more than just the *Canadian Gazette* and Global Affairs' "Canadian Economic Sanctions" website.¹⁸ The list of names of individuals in Russia¹⁹ and Ukraine,²⁰ who are subject to asset freezes and financial prohibitions, was a major news story in Canada. The rhetoric associated with each news update suggested that Canada's measures, together with allies, would compel Russia to change its course of action and demonstrate support for Ukraine. This meant, however, that Canadian businesses and banks needed to review their connection to the targets continuously rather than checking against an omnibus list. More often than not, the intent of the measures and many of the individuals and entities listed by Canada, the EU, and the US are the same. Of course, none have listed Putin; sanctions rarely target sitting heads of state or senior foreign affairs officials as such a practice could undermine discussions between leaders oriented toward solving the conflict at hand.²¹

BUT HAS CANADA MANAGED TO CATCH ANYONE?

Since Canada does not have extraterritorial reach, the unilateral effect of its sanctions is limited. The sanctions do, however, contribute to collective security when Canada acts multilaterally with a coalition of other willing states and takes action against sanction-busting. There have been several cases of prosecutions of individuals violating Canadian sanctions regulations. In 1997, US and Canadian citizens were accused of plotting to export helicopters to Iraq while it was a target of sanctions.²² In another case, a Canadian individual and a Canadian company were convicted of violating sanctions against Libya (S/RES/748) by illegally shipping aircraft parts to Libya. The company was fined CA\$400,000 and the individual was ordered to do 100 hours of community service and received two years of probation in 1992.²³

A third case occurred on 6 July 2010 in an Ontario Provincial Court.²⁴ Mr. Yadegari was accused of attempting to ship to Iran through Dubai dual-use items (pressure transducers). He was found guilty of knowingly violating Canadian sanctions. He was sentenced to 51 months imprisonment (less 31 months' credit for pre-sentence detention).

Most recently, in May 2016, the Canada Border Services Agency (CBSA) announced it had stopped the shipment of gun parts to Iraq in violation of the UN sanctions in place.²⁵

A final case involving Lee Specialties Ltd. of Red Deer, Alberta, however, is causing concern among businesses. On 14 April 2014, the company pleaded guilty to failing to comply with an order under the SEMA, the UNA and the Customs Act for shipping O-rings to Iran.²⁶ It was fined \$90,000. While only worth about \$15 in total, the Viton O-rings that Lee Specialties



shipped intended for the UAE were shipped to Iran while under sanctions. The reason for the concern is that O-rings are an example of a common good that no one would expect to be the subject of sanctions. Few companies have the resources to scour all of the extant trade regulations let alone additional, changing sanctions.

Enforcement of sanctions has recently been in the news again because a Canadian arms company, Streit, operating in the UAE was accused of selling banned vehicles to Sudan, South Sudan, and Libya despite all being under UN sanctions.²⁷ In the case of sanctions against Libya, the arms embargo applied pursuant to UN resolution 1970 (2011) reads:

All Member States are required to prevent the sale or supply to Libya of arms and related materiel of all types, including weapons and ammunition, **military vehicles** and equipment, paramilitary equipment, and spare parts for the aforementioned (with an exception for the Libyan government for non-lethal materiel, technical assistance, training or financial assistance); prohibits the export by Libya, and procurement by Member States, of all arms and related materiel.²⁸ (emphasis added)

The UN Libya Panel of Experts outlined in its latest report that “[i]n August 2012, Armoured Personnel Carriers (APCs) were transferred from the UAE to the ‘Libyan Ministry of Interior’ without prior notification. The vehicles, including Cougar, Spartan, and Cobra types, were produced by Streit Group.”²⁹ While Streit insists it complied with UAE regulations, neither the Streit Group nor the UAE informed the UN Libyan Sanctions Committee of the impending transfer as is required by the UNSC. Given that the country of origin of the 131 armoured vehicles is listed as Japan/US/Canada/UAE on the UAE Document Clearance manifest, each of these states is looking to see if the Streit Group violated corresponding national regulations.³⁰

Even more problematic, but less well known, are cases of Canadians wrongly targeted as subject to sanctions. One such case involved Abousfian Abdelrazik who was denied the right to return to Canada from Sudan. In announcing his judgment in the case of *Abousfian Abdelrazik v The Minister of Foreign Affairs and the Attorney General of Canada*,³¹ Justice Russel Zinn noted that Mr. Abdelrazik had become ensnared in overly zealous application of the anti-terrorism sanctions, thus breaching his right as a Canadian citizen to enter Canada pursuant to section 6 of the *Canadian Charter of Rights and Freedoms* (Charter).

WHAT DOES ALL OF THIS MEAN FOR CANADA'S SANCTIONING RECORD?

Several conclusions can be drawn. First, Africa is overwhelmingly the target of sanctions – not just by Canada but by the international community as a function of the UN Security Council's preoccupation with dealing with conflicts there and the requirement of UN member states to comply with mandatory UN Security Council sanctions. Whether Africa has been such a consistent and important Canadian foreign policy interest is up for debate, but Canada has certainly targeted its fair share (17 of the 54) of African states -- often on multiple occasions.



Second, over time there has been a shift in the objectives of sanctions as applied by the international community, a shift from stopping armed conflict (in which case sanctions applied against all parties to the conflict often via a blanket arms embargo) to targeting specific peace spoilers (in which case sanctions are partial and apply against specific individuals or groups -- via travel bans, for example). This is mirrored in Canada's sanctions record. Canada's sanctions in the 1990s and early 2000s are in response to mandatory UN sanctions. Of late, perhaps due to the difficulties of gaining approval for action from the UN Security Council, Canada, the US and Europe have created an informal coalition that is prepared to impose selected sanctions against states that have violated international peace and security – in the absence of a UN mandate. The unique impact of Canadian sanctions is likely limited, particularly compared to the larger EU and US economies. Nevertheless, the symbolism of Canadian participation can be important and appreciated by allies.

Given the tendency to use multiple pieces of legislation to apply sanctions which makes compliance even more complicated, Canadian companies and banks have three choices:

1. spend an enormous amount of money to ensure compliance which means that the sanctions become a penalty for the company/bank; or
2. factor in paying fines for inadvertent sanctions busting to be a cost of business which means costs for goods and services increase for consumers generally; or
3. stop doing business altogether with the state in question which means sanctions become more coercive than originally intended.

Third, the Canadian Government has had plenty of experience applying and presumably enforcing sanctions measures. There have been 40 cases (nearly one case a year since 1990), and this does not include the great number of changes that are made to sanctions regimes that require concomitant changes to Canadian legislation. The sanctions branch of Global Affairs has highly skilled and dedicated staff, but like most departments, there are too few of them. The same can be said of the other government departments charged with enforcing Canadian legislation -- including the CBSA, the RCMP, the Department of Justice, the plethora of provincial chief financial officers and of course, the banks and businesses which operationalize the sanctions.

The Canadian Government has potentially carte-blanc in terms of the measures it can enact and the stances it can take with the existing legislation. Of course, taking executive action is the prerogative of elected governments, but the following remain problematic impacts of those actions:

- a) the unintended consequences of sanctions (such as ensnaring innocent civilians);
- b) the cost downloaded onto banks and businesses to comply with the number of rules and regulations;
- c) the truly dizzying number of sites one must check for Canada's current sanctions;³² (While it has improved, communication still consists of a hodge-podge of links to other internet sites under the misleading title of "economic" sanctions.)
- d) the inconsistency of penalties and definitions across the various sanctions legislation;



- e) the sometimes considerable time-lag between the decision to apply or lift sanctions and the necessary Canadian regulations coming into effect; and
- f) the fact that more Canadian sanctions rarely result in more compliance by the target state/individual/entity. Sanctions applied by Canada are wrongly assumed to be tools that can compel a change in target behaviour. They are at best, a signal of Canada's desire to support collective action.

The House of Commons is currently reviewing sanctions and export laws. It has done so in the past with little change or effect. The tendency is to call for “more” layers of measures and “tougher” enforcement including calls to adopt a version of the US Sergei Magnitsky law narrowly focused against Russian human rights abusers and currently before the Canadian Senate. That is not what is needed. Rather, a keener understanding of existing legislation and its limitations as outlined above would be more beneficial in understanding the actual scope and effect of Canada's use of sanctions.



² This brief is restricted to “economic” sanctions and not “trade” sanctions. Economic sanctions are measures/restrictions applied in response to a violation of international law, to address peace and instability in the world, and/or in support of sanctions applied by an organization to which Canada is a member (for example, the UN). Trade sanctions are measures put in place to restrict the import or export of goods into and out of Canada that are tied to an international or bilateral trade deal or Canadian trade regulations.

³ The only book dedicated to Canadian (and Australian) use of sanctions is Kim Richard Nossal's *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. Toronto: University of Toronto Press. (1994). Michael Rossignol wrote a paper entitled: “Sanctions: the economic weapon in the new world order” for the Research Branch of the Library of Parliament in 1993. Paul Aseltine's MA thesis entitled “Canada's Sanctions' Regimes: An Investigation into Canada's Use of Sanctions between 1990 and 2014” (Winnipeg: University of Manitoba, 2015) is the only work to consider just Canada's use of sanctions.

⁴ The UN authorized two mandatory sanctions regimes during the Cold War (against Southern Rhodesia and South Africa) which Canada respected. Canada also subscribed to a number of voluntary sanctions regimes as well as sanctions against Iran in the 1980s for the hostage crisis and against Pakistan, India, the European Economic Community, South Korea and Japan for failing to respect proper nuclear safeguards. See Andrea Charron, “Canada's Domestic Implementation of Canadian Sanctions: Keeping Pace?”, *Canadian Foreign Policy Journal*, 14 (2) (2008):1-18. and Gary Clyde Hufbauer, Jeffrey J. Schott and Kimberly Ann Elliott, *Economic Sanctions Reconsidered: Supplemental Case Histories: 2nd Edition*, (Washington DC: Institute for International Economics: 1990): 373-385.

⁵ When a coalition of states chooses to sanctions absent a resolution by the UN Security Council, Canada has choice as to whether or not to apply sanctions. Often, it is to create collective action and support allies. In the case of sanctions against Russia and in support of Ukraine, being a good ally was not Canada's primary rationale for action. The Canadian government at the time believed that action had to be taken and wanted to work with a coalition of the willing to do so.

⁶ R.S., 1985, c. U-2.

⁷ S.C. 1992, c. 17.

⁸ Canada does not have the ability to take legal action beyond our national borders. Canadian sanctions regulations can be used to seize the property and assets of individuals and states in Canada, or the property/assets of Canadians abroad, but our legislation cannot target non-Canadians abroad.

⁹ S.C. 1992, c. 17.

¹⁰ R.S.C., 1985, c. E-19.

¹¹ S.C. 2011, c. 10. Note, the FACFOA is initiated when a foreign state, in writing, requests assistance. See Article 4(1). Therefore, it is not Canada which initiates the FACFOA.

¹² Includes sanctions against Taliban and Associates. This became a stand-alone regime separate from sanctions applied against Al Qaeda, ISIS and others via Resolution 1988 in 2011.

¹³ Russia is categorized as part of Europe even though its capital Moscow is geographically part of Asia because the sanctions are for the annexation of Crimea and the conflict in Ukraine which is part of Europe.

¹⁴ See Andrea Charron, “Three Canadians and their Contribution to UN Sanctions: A Tribute to Margaret Doxey, David Malone and Robert Fowler”, *Canadian Foreign Policy Journal*, 16 (3) (Fall 2010): 1-15.

¹⁵ The EU had an arms embargo in place from 2009 to 2014 after a violent crackdown on demonstrators by Government forces. Financial and travel sanctions continue to apply against certain individuals. See 2009/788/CFSP.

¹⁶ The EU imposed travel sanctions against the leadership of the Transnistrian region of Moldova for preventing progress in arriving at a political settlement in the region and against those people responsible for a campaign against Latin-script schools in the region. The ban was imposed on February 27th 2008 pursuant to 2008/160/CFSP until 22 February 2010.

¹⁷ North Korea (UNA/SEMA); FRY (UNA/ACL), Iran (UNA/SEMA); Burma (SEMA and ACL); Libya II (UNA/SEMA); Ukraine (FACOA/SEMA); South Sudan (SEMA/UNA)

¹⁸ See <http://www.international.gc.ca/sanctions/index.aspx?lang=eng>. The website has lots of information, but one needs to drill down to find the regulations and understand the penalties etc. One



also needs to appreciate that not all of Canada's sanctions are "economic". The title of the webpage is misleading.

¹⁹ Special Economic Measures (Russia) Regulations SOR/2014-58

²⁰ Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations (SOR/2014-44)

²¹ The exception is UN sanctions applied against Ghaddafi in 2011 via S/RES/1970 (2011).

²² Anonymous, "US and Canada Allege Plot to Sell Helicopters to Iraq" (22 July 1997) See <https://www.washingtonpost.com/archive/politics/1997/07/22/us-and-canada-allege-plot-to-sell-helicopters-to-iraq/255b9coa-ae59-442b-92f7-b7ab44907242/>

²³ These first two cases were reported in my article entitled "'Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," *Canadian Foreign Policy* 14, no. 2 (2008): 1-18.

²⁴ R. v. Yadegari, 2011 ONCA 287. See <http://caselaw.canada.globe24h.com/o/o/ontario/court-of-appeal-for-ontario/2011/04/12/r-v-yadegari-2011-onca-287.shtml>

²⁵ CBSA, "CBSA officers stop the illegal exportation of gun parts at the Toronto Pearson International Airport", Press Release (31 May 2016). Found at <http://news.gc.ca/web/article-en.do?nid=1077339&tp=1>

²⁶ Jennifer Brown, "Parts sent to Iran net Red Deer company \$90,000 fine" *Inhouse Magazine* (21 April 2014) [http://www.canadianlawyermag.com/5101/Parts-sent-to-Iran-net-Red-Deer-company-\\$90000-fine.html](http://www.canadianlawyermag.com/5101/Parts-sent-to-Iran-net-Red-Deer-company-$90000-fine.html)

²⁷ Steven Chase, "The Streit Spartan APC. Arms deal by Canadian firm violated international embargo: UN report" *Globe and Mail*, (5 April 2016). Found at <http://www.theglobeandmail.com/news/politics/arms-deal-by-canadian-firm-violated-international-embargo-un-report/article29536456/>

²⁸ UN Security Council, Subsidiary Bodies (Sanctions), "Security Council committee established pursuant to resolution 1970 (2011) concerning Libya" <https://www.un.org/sc/suborg/en/sanctions/1970> accessed 8 October 2016.

²⁹ S/2016/209: p.137.

³⁰ S/2016/209: Annex 26.

³¹ *Abousfian Abdelrazik (Applicant) v. The Minister of Foreign Affairs and the Attorney General of Canada (Respondents)* [2010] 1 F.C.R. 26. Judgement delivered in Ottawa 4 June 2009. For a full account of the facts and case, see

https://www.law.yale.edu/system/files/documents/pdf/Intellectual_Life/Abdelrazik_v._Canada.pdf

³² For example, the US Office of Foreign Assets Control's (OFAC) Specially Designated Nationals and Blocked Persons list is available for all to consult. While it is a very, very long list, it is up to date and searchable to ensure companies are not inadvertently doing business with individuals and entities on sanctions lists.

► **About the Authors**

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