

Business of Law**Beware of sanctions against Russia | Sergio R. Karas**By **Sergio R. Karas**

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(May 6, 2022, 10:38 AM EDT) -- Russia's invasion of Ukraine has left millions of its citizens displaced. To provide support to Ukrainians during this unfortunate time, Canada is not only opening its doors to allow safe passage, but it continues to respond to the gravity of the situation using existing legislation and regulations to impose sanctions against Russia.

Sanctions may include economic, diplomatic, military and others. Canada has enacted three statutes that authorize the imposition of sanctions: (1) the *United Nations Act* (UNA), (2) the *Special Economic Measures Act* (SEMA), and (3) the *Justice for Victims of Corrupt Foreign Officials Act* (JVCFOA).

Canada has issued the SEMA (Russia) Regulation to tackle the ongoing crises. This Regulation was enacted in 2014 but is being amended regularly to cover the developing situation and actors in the conflict. The Regulation lists individuals and corporations who are subject to it because there are reasonable grounds to believe that they may have contributed to or engaged in conduct in support of the invasion or may have participated in human rights violations.

However, this raises significant concerns about how sanctioned individuals and entities may continue to be represented by lawyers who are concerned that representation may lead to a breach in the *Rules of Professional Conduct* or loss of reputation. The issue of lawyer representation of sanctioned Russian clients arose recently in *VTB Bank v. Taruta*, 2014-0062, where the Eastern Caribbean Supreme Court in the British Virgin Islands ruled that "sanctioned entities retain all their civil rights, including full access to the Courts and an entitlement to have their rights and obligations determined by this Court." This means that lawyers are not permitted to withdraw if it will prejudice the client's rights. The Ontario Superior Court of Justice in *Cengic v. Castro*, 2020 ONSC 986 made it clear that "lawyers are not free to desert their clients at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril."

These cases set a worrisome precedent as lawyers may find themselves in a tricky situation; they will need to ensure that they maintain the fiduciary duty owed to the client while complying with the *Rules of Professional Conduct*. Lawyers may be forced to continue to represent clients even if they no longer feel morally comfortable to do so.

The Federation of Law Societies of Canada (FLSC) policy counsel recently issued a report discussing the implications for the legal profession to mitigate the risk of representing sanctioned clients. Legal professionals must not assist clients engaging in illegal conduct and ensure that they exercise due diligence in determining whether the sanctions apply to a matter or client. This allows legal professionals to withdraw from representation if the client request means that the lawyer may be violating sanctions or the *Rules of Professional Conduct*. Lawyers should obtain information about the source and origins of the funds related to the legal services provided.

Lawyers may have a moral objection to representing sanctioned clients. They may have to choose between withdrawing their services to maintain their reputation in the legal profession or continue representation. Lawyers must keep in mind that representing sanctioned clients may potentially place them in jeopardy as this may result in their names to be listed as sanctioned individuals in the Regulation.

The SEMA sanctions also impact immigration. Russian citizens may wish to travel to Canada but may be inadmissible if they are connected to a sanctioned entity. Immigration lawyers should remain on high alert when it comes to assisting Russian clients who may wish to do business in Canada. This also applies to Canadian lawyers abroad. While those listed under the SEMA may not be specifically inadmissible, it may be considered when determining inadmissibility under the *Immigration and Refugee Protection Act (IRPA)*.

Lawyers continuing to represent sanctioned individuals or entities must be diligent in ensuring that they are aware of their potential inadmissibility. Immigration Refugees and Citizenship Canada should clarify its position with regards to the level of scrutiny and delays that will be imposed upon Russian applicants due to their involvement with sanctioned individuals or entities. This includes family connections that may come under scrutiny during an immigration application.

The panoply of sanctions imposed by countries around the world has resulted in law firms withdrawing representation to ensure compliance with the laws and regulations of various jurisdictions. Lawyers with Russia-related operations and client work have been scrambling to align their practices with the sanctions regime. Lawyers must remain on alert as this remains a grey area due to constant amendments to the sanctions and their severity. It may be wise to withdraw if the client is not prejudiced, or better yet, avoid their representation altogether.

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