

The background of the image is a dark red gradient. It is filled with numerous stacks of US dollar bills, primarily \$100 bills, which appear to be falling from the top. The stacks are rendered with a semi-transparent effect, allowing the red background to show through. On the right side of the image, there is a vertical strip of black background, where the stacks of money are shown in their original, solid colors, appearing to fall from the top edge.

CANADA

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Canada lacks legislation or policy requiring or encouraging investigations into sanctioned assets. The full-scale Russian invasion of Ukraine prompted the adoption of an innovative law that enables the direct confiscation and repurposing of assets frozen under sanctions.⁴³ There are two ongoing cases under this new law but no known criminal or civil proceedings into the potential illicit origin of sanctioned assets.

Legislative and institutional framework

Shortly after the 2022 Russian invasion of Ukraine, the Canadian parliament adopted the C-19 Budget Implementation Act which allows judges to forfeit sanctioned assets owned directly or indirectly by sanctioned individuals or states on the application of the Minister of Foreign Affairs.⁴⁴ The C-19 Budget Implementation Act amended two existing Canadian sanctions regimes: the 1992 Special Economic Measures Act (SEMA)⁴⁵ and the 2017 Justice for Victims of Corrupt Foreign Officials Act (Magnitsky Act).⁴⁶

- » SEMA allows the Canadian government to impose sanctions on states and individuals for breaching international peace and security and was the sanctions legislation of choice to impose sanctions on Russian oligarchs after the invasion of Ukraine.
- » In contrast, the Justice for Victims of Corrupt Foreign Officials Act enables the Canadian government to impose targeted sanctions on individuals and entities for human rights violations and involvement in significant acts of corruption. It has been used to sanction Russian individuals accused of human rights abuses in the past.

The Canadian Foreign Affairs Minister emphasised her intention to use the new legislation to confiscate the assets of Russian people who have been sanctioned at the time of its passage.⁴⁷ However, there have only been two known cases testing this new tool, both under the SEMA regime. In the first case, Canadian authorities are attempting to forfeit USD 26 million from Granite Capital Holdings, owned by sanctioned oligarch Roman Abramovich.⁴⁸ The second case is linked to a Russian aircraft: An-124-100-150 in Lester B. Pearson International Airport in Toronto.⁴⁹

The confiscation (in Canada referred to as a forfeiture) process under this new legislation contains two steps. Firstly, a Governor-in-Council Order is issued to seize or restrain targeted property or assets. After obtaining this order and securing the asset, the Minister of Foreign Affairs may then apply to the provincial court where the asset is located for an order requesting its permanent forfeiture.⁵⁰

A little later then its allied sanctioning jurisdictions from G7 countries, Canada also established an interdepartmental committee, mandated to oversee the implementation of Russian sanctions. Concretely, the committee aims to “review and analyse potential assets in Canada and make recommendations under Canada’s new asset forfeiture authorities”.⁵¹ Co-chaired by Global Affairs Canada and the Department of Finance, it also includes representatives from Public Services and Procurement Canada (PSPC), the Department of Justice, Public Safety Canada, the Canada Border Service Agency and the Royal Canadian Mounted Police (housing the Sanctions Unit).



Investigations into assets linked to sanctioned individuals

The new legislation allowing direct confiscation of sanctioned assets introduced by the C-19 Budget Implementation Act has taken centre stage in the Canadian sanctions debate. While one of its kind among the G7 countries, these amendments are not without questions about their compatibility with the right to property.⁵² Whether they will be accepted by the courts and whether they can succeed in confiscating sanctioned assets need to be tested in practice.

Despite the prominence given to the topic with the introduction of the new law, little attention has been given to using existing criminal or civil asset recovery tools, with no known targeting of the assets of sanctioned individuals using such tools.⁵³ If at any point in the future authorities decide to open such an investigation, it is highly likely that they would pursue non-conviction-based forfeiture, rather than a confiscation via criminal proceedings. Similarly to other jurisdictions, this would allow law enforcement officers to alleviate hurdles over cooperation with their foreign counterparts or having to physically bring the accused individuals in front of the Canadian courts.⁵⁴

Canada has limited experience in prosecuting sanctions violations, with only a handful of prosecutions over violations of sanctions in Canada taking place in the past.⁵⁵ An example of this is the 2011 police investigation into an attempt to ship dual-use items to Iran through Dubai.⁵⁶ More recently, in the *R. v. Kalai* case, an individual was accused of making an investment in Syria. This however resulted in an acquittal in 2020 due to lack of evidence.⁵⁷ There are no known cases of prosecuting sanctions violations that have started in the past couple of years, whether related to Russian sanctions or other sanctions regimes.

Relatively low amounts of assets have been frozen in Canada in relation to sanctions on Russia after 2022. The reported estimate is around USD 90 million.⁵⁸ Canadian authorities face a considerably high caseload, together with challenges in accessing information on both the beneficial owners of real estate, as well as companies, due to the lack of a centralised register.⁵⁹ To overcome some of these challenges, legislation introducing a free, publicly accessible beneficial ownership registry of corporations, which contains a basic data verification, as well as an error-flagging mechanism, was adopted in November 2023.⁶⁰ This is key to effectively trace and freeze assets that should be sanctioned and to identify potentially illicit assets. However, it is not clear if the new register will also include information on beneficial owners of trusts and partnerships. Furthermore, the vast majority of businesses are incorporated in Canada at the provincial level, and therefore, the federal registry is perceived as a starting point, which will hopefully be able to connect with provincial registers in the future.⁶¹