



January 30, 2026

Via email: mcu@justice.gc.ca, anita.anand@international.gc.ca

The Honourable Sean Fraser
Minister of Justice and Attorney General of Canada
Department of Justice
284 Wellington St.
Ottawa, ON K1A 0H8

The Honourable Anita Anand
Minister of Foreign Affairs
125 Sussex Drive
Ottawa, ON K1A 0G2

Dear Ministers Fraser and Anand:

Re: Use of the *Foreign Extraterritorial Measures Act* in Response to U.S. ICC Sanctions

I am writing on behalf of the Canadian Bar Association (CBA) and its International Law Section to draw attention to the extraterritorial application of recent United States sanctions against judges of the International Criminal Court and to outline the availability of Canada's *Extraterritorial Measures Act* as a legal framework for addressing their effects within Canada.

The CBA is a national association of more than 40,000 lawyers, notaries, academics and law students dedicated to improving the law and the administration of justice. The CBA's International Law Section brings together practitioners and scholars in public and private international law who advise on Canada's trade agreements, monitor developments at the WTO and other multilateral fora, and work across areas including treaties, international trade and investment, international economic law, and conflict of laws.

Background

On August 20, 2025, U.S. President Donald Trump issued sanctions targeting judges of the International Criminal Court ("ICC"), including Canadian ICC Judge Kimberley Prost (the "U.S. ICC Sanctions").¹

While framed as a matter of U.S. foreign policy, the U.S. ICC Sanctions are designed and enforced in a manner that gives them significant extraterritorial reach. Financial institutions, subsidiaries and foreign branches of U.S. corporations, and any persons with a sufficient nexus to the U.S. (including

¹ Imposing Sanctions on the International Criminal Court – The White House, [online](#).

the U.S. dollar system) are obligated to comply with U.S. sanctions in their international dealings to minimize compliance risk. The real personal impacts on ICC judges have been well-reported.²

The purpose of this memorandum is to provide a brief overview of the use of anti-blocking measures under the *Foreign Extraterritorial Measures Act*, R.S.C. 1985, c. F-29 (“FEMA”) as a potential response to protect Canadian sovereignty, and the functioning of international judicial institutions from the extraterritorial application of the U.S. ICC Sanctions in Canada.

The Statutory Basis and Use Case of Anti-Blocking Measures

An anti-blocking measure is a legal measure which restricts or prohibits compliance with the extraterritorial application of a foreign state’s laws within Canada.

Enacted in 1985, FEMA allows the Attorney General of Canada to impose anti-blocking orders against foreign measures which are contrary to international law and international comity, interfere with Canadian sovereignty or adversely affect significant Canadian international trade.³

Members of the CBA International Law Section have expressed concern that the ICC Sanctions are contrary to principles of international comity, non-interference in international institutions, judicial independence and the rule of law.

Further, the extraterritorial effects of U.S. ICC Sanctions are likely to infringe on Canada’s ability to give effect within its own territory to its international treaty obligations, including Article 86 of the *Rome Statute*, which requires Canada to cooperate fully with the ICC.⁴ Measures that impede the functioning of an ICC judge within Canada therefore engage core questions of Canadian sovereignty, treaty performance, and institutional independence.

Canada, as a founding member of the ICC and an advocate for international justice, has both a legal and institutional interest in ensuring that its nationals serving on international courts are able to perform their functions without external interference inside Canadian territory.

Process for Imposing Anti-Blocking Measures under FEMA

Under FEMA, the Attorney General of Canada may, with the concurrence of the Minister of Foreign Affairs (the “Minister”), take administrative action to counter the extraterritorial application of foreign laws in Canada.

Where the Attorney General and the Minister are of the opinion that a foreign law or provision is contrary to international law or international comity, section 2.1 of FEMA allows the Attorney General to place a foreign law on the Schedule to *FEMA*.⁵ Listing a foreign law in the Schedule does not itself prohibit compliance with that foreign law, but it enables the Attorney General to issue blocking or reporting orders under FEMA that can make compliance with that foreign law illegal in Canada.

Once a foreign measure is listed on the Schedule, section 5 of FEMA authorizes the Attorney General to issue specific orders where the Attorney General is of the opinion that a foreign measure is likely

² “Trump Sanctions Upend the Lives of I.C.C. Judges,” *New York Times*, January 10, 2026, [online](#).

³ *Foreign Extraterritorial Measures Act*, [RSC 1985, c F-29](#), ss. 2.1, 5 [FEMA].

⁴ *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), art. 86.

⁵ *FEMA*, s. 2.1.

to infringe Canadian sovereignty or adversely affect significant Canadian international trade interests or commerce. Among other things, the Attorney General may issue orders that:

- (a) require any persons in Canada to report the extraterritorial application of foreign measures, or of any directives, instructions, intimations of policy or other communications relating to such measures from a person who is in a position to direct or influence the policies of the person in Canada; or
- (b) prohibit any person in Canada from complying with such measures, or with any directives, instructions, intimations of policy or other communications relating to such measures from a person who is in a position to direct or influence the policies of the person in Canada.

FEMA further allows the Attorney General to, among other things:

- (a) prohibit the production or identification to foreign enforcement authorities of records which are in Canada or in the possession of Canadians, thereby preventing individuals from being compelled by foreign law to assist in the enforcement of offending foreign law in the Schedule;
- (b) designate laws under which any judgment shall not be recognized or enforceable in any manner in Canada;
- (c) authorize recovery proceedings once a judgment has been rendered against a Canadian party under a law in the Schedule; and
- (d) authorize suits against American plaintiffs in Canada to recover expenses incurred by Canadians in defending a foreign claim.⁶

All such measures are adopted by administrative order and take effect upon publication in the *Canada Gazette*. No secondary legislation is required.

Effects of Anti-Blocking Measures

The practical effect of these anti-blocking measures is that Canadian companies, directors, managers, and employees in positions of authority can be forbidden from adhering to the U.S. sanctions or assisting in their enforcement.

These measures do not invalidate the foreign law; rather, they make compliance with the law's extraterritorial foreign measures unlawful in Canada. This approach preserves Canadian legal autonomy while reinforcing the country's commitment to international law and judicial independence.

In this way, anti-blocking measures can help preserve the ability of Canadian ICC judges, including Judge Prost, to access services and perform their official functions in Canada without unlawful foreign interference, even where foreign sanctions continue to exist outside Canada.

Established Precedent for Anti-Blocking Measures

Canada has previously invoked FEMA in response to the extraterritorial application of U.S. sanctions. In 1992 (and later revised in 1996), the Government of Canada issued blocking measures to counteract U.S. sanctions against Cuba, which threatened Canadian businesses otherwise operating in compliance with Canadian law.⁷ That action demonstrated Canada's willingness to

⁶ FEMA, ss. 8, 9.

⁷ *Foreign Extraterritorial Measures (United States) Order*, 1992, [SOR/92-584](#).

defend its sovereignty by requiring Canadian actors to give priority to Canadian law over foreign extraterritorial demands.

Conclusions

The extraterritorial application of U.S. ICC Sanctions against ICC judges, including Canadian Judge Kimberley Prost, represents an infringement of Canadian sovereignty, international law and international comity and the independence of the ICC. FEMA offers an established, lawful mechanism to block or neutralize the effect of such foreign measures in Canada.

Thank you for the opportunity to provide our comments. Should you require any additional information, we welcome the opportunity to discuss any aspect of our submission further. Please do not hesitate to contact us.

Yours very truly,

(original letter signed by Yves Faguy for Liljana Stanic)

Liljana Stanic
Chair, International Law Section