

**FEDERAL COURT**

BETWEEN:

ANDRIY VOLODYMYROVYCH PORTNOV

Applicant

- and -

THE MINISTER OF FOREIGN AFFAIRS

Respondent

**AFFIDAVIT OF KEVIN REX**

I, Kevin Rex, Director of Eastern Europe and Eurasia Division, Global Affairs Canada, of the City of Ottawa in the Province of Ontario, AFFIRM THAT:

1. I am employed by the Department of Foreign Affairs, Trade and Development, currently styled as Global Affairs Canada, as Director in the Eastern Europe and Eurasia Division. I have been employed by Global Affairs Canada since May 2009 and have been in my current position since August 18, 2016. I have personal knowledge of the matters hereinafter deposed to by me, except where same are stated to be based on information and belief and, where so stated, I verily believe them to be true.

2. I make this affidavit in support of the response of the Attorney General of Canada, on behalf of the Minister of Foreign Affairs (the Minister), to this application for judicial review and for no other or improper purpose.

3. The Eastern Europe and Eurasia Division (the Division) is accountable for Canadian bilateral, commercial and development relations with 19 countries including Ukraine. The Division is responsible for developing and coordinating policy advice from our network of

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embassies, analysts and officers, as well as from relevant Departmental and inter-departmental policy and program divisions to the Minister on all matters relating to Canada's bilateral relations with these countries, including on such matters as trade, treaties, the environment, technical and humanitarian assistance (as needed), consular matters, security, human rights and any other issues that might impact bilateral relations. In addition, we advise on issues relating to the application of the *Freezing Assets of Foreign Officials (Ukraine) Regulations* (the Ukraine Regulations), in consultation with colleagues from the Criminal, Security and Diplomatic Law Division of the Legal Affairs Branch.

4. The *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA), enacted in 2011, contributes to strengthening Canada's bilateral relations and to efforts to combat corruption by providing the Government of Canada with a tool to assist countries in a state of political turmoil or transition. The Ukraine Regulations were enacted in March 2014, in the context of the fall of the Yanukovich government and serve to prohibit dealings in Canada or by Canadians abroad in the assets of individuals listed in the schedule to the regulations who held positions in that government, or those closely associated with such individuals, and who are suspected by Ukraine of misappropriating property of Ukraine or acquiring property inappropriately by virtue of the office they held (or their close associates held) while in power.

5. The Ukraine Regulations are the direct result of a written request from Ukraine to Canada identifying these individuals and requesting their assets in Canada be frozen, and the Governor in Council being satisfied that:

- a) Each of the individuals identified by Ukraine is a "politically exposed foreign person" in relation to Ukraine, as that term is defined in the FACFOA;
- b) There is internal turmoil or an uncertain political situation in Ukraine; and
- c) The making of the Ukraine Regulations is in the interest of international relations.

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6. As a result of the March 3, 2014, request from Ukraine to Canada, the applicant is listed as a 'Politically Exposed Foreign Person (PEFP) on Schedule 1 to the Ukraine Regulations.

7. Section 2 of the FACFOA defines a PEFP as follows:

means a person who holds or has held one of the following offices or positions in or on behalf of a foreign state and includes any person who, for personal or business reasons, is or was closely associated with such a person, including a family member:

- (a) head of state or head of government;
- (b) member of the executive council of government or member of a legislature;
- (c) deputy minister or equivalent rank;
- (d) ambassador or attaché or counsellor of an ambassador;
- (e) military officer with a rank of general or above;
- (f) president of a state-owned company or a state-owned bank;
- (g) head of a government agency;
- (h) judge;
- (i) leader or president of a political party represented in a legislature; or
- (j) holder of any prescribed office or position.

8. Section 13 of FACFOA provides a mechanism for persons listed as PEFPs to apply in writing to the Minister to cease to be the subject of the regulation that lists them as a PEFP, on the grounds that the person is not a PEFP.

9. On receipt of an application, the Department examines relevant information and documentation supplied by the applicant(s), as well as other information from publicly available sources. The Department may also consult with the foreign State, if appropriate, all with a view to preparing recommendations to the Minister.

10. I am advised that the applicant's request to cease to be subject of the Ukraine Regulations was received by Global Affairs Canada on December 3, 2015. As detailed in the Applicant's affidavit, it was followed by correspondence between the Applicant and officials of Global Affairs Canada during the period from January 1, 2016 to August 22, 2017.

11. Throughout this period, the applicant's request was under active consideration, including consultations with the relevant divisions within Global Affairs Canada. The Division also consulted mission who was in direct communication with the Ukrainian Ministry of Foreign Affairs on the matter. The Division also sought assistance from the Ukraine embassy in Ottawa. The Division routinely also consulted colleagues from the Criminal, Security and Diplomatic Law Division to better understand the regulations and, therefore, the responsibility of the Division to provide sound advice to the Minister to address Mr. Portnov's request. In addition, the Division had policy considerations to factor in as well.

12. On March 15, 2016, March 6, 2017, and January 11, 2018, Global Affairs Canada received correspondence from the Ukrainian Embassy in Canada. Based on the content of this correspondence, the Department was satisfied that there was still an ongoing investigation in regard to the Applicant for his suspected role in acquiring state property through the abuse of office.

13. In June 2017, the Division drafted a memorandum for decision for the Minister of Foreign Affairs. The draft of this memorandum was circulated internally within the Department for comments and contributions by various divisions. The need to include all relevant considerations in this draft memorandum also prompted the Division to further consult Ukraine once Mr. Portnov had submitted further documents in October 2017. This further consultation resulted in the above noted correspondence received on January 11, 2018.

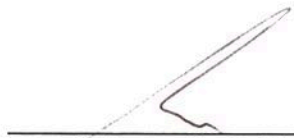
14. It should be noted that communications with a foreign state, especially one that is addressing the request of such nature, can be a time consuming endeavour. A foreign state may not prioritize the request in the same manner Canada does.


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15. On February 13, 2018, I approved a Memorandum for Action for the Minister of Foreign Affairs, which was subsequently approved by the Director General, Circumpolar, Eastern Europe and Eurasia, and by the Assistant Deputy Minister for Europe, Middle East and Maghreb, signed by the Deputy Minister of Foreign Affairs, and transmitted to the Minister. The Memorandum will serve as the basis of the Minister's response to the applicant's request to be delisted from the Ukraine Regulations.

16. As of the date of affirming the present affidavit, I have not been made aware that a decision has been made by the Minister. Of paramount importance in arriving at a decision, and consistent with the purpose of FACFOA, is Canada's bilateral relationship with Ukraine.

Affirmed before me at the City of Ottawa in )  
the Province of Ontario on February 26, 2018. )  
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Commissioner for Taking Affidavits, etc.  
Sonia Barrette, Member in good standing  
of the Law Society of Ontario  
LSUC #45147V

  
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Kevin Rex