

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[00:03] HUSEIN:** This is episode 86 of Lawyered. I'm your Husein Panju. On this week's episode, we're chatting about foreign investment law with partner, Dany Assaf, who is the co-chair of the corresponding practice group at Torys, as well as a repelie published author.

**[00:19]** First step, we'll chat about the federal government's new policy about foreign investment in the critical minerals sector. Involvement in this sector is now going to involve greater scrutiny on national security grounds and will require additional planning for foreign investors and lawyers alike.

**[00:34]** Next, we'll speak about a broad set of amendments to the Investment Canada Act known as Bill C-34. This monumental bill would fundamentally change the way that foreign investment works in Canada, including a new mandatory pre-closing file regime, as well as new permissions to allow the Canadian Minister to share privileged information with foreign governments.

**[00:54]** And this may impact the balance between welcoming investment at one end and protecting security interests on the other. And later, we'll also discuss a new mechanism for investors to voluntarily notify the government regarding certain investments that may raise national security concerns and we'll also consider the pros and cons of pursuing this approach.

**[01:14]** And finally, in our Ask-Me-Anything segment, we'll relay the questions submitted by our listeners about a range of topics, including gaining prosperity, cultural business nuances, and the practical role of political acuity. All of that and long words coming up in just a bit. This is Lawyered.

[Music Break]

**[01:40] HUSEIN:** Hello, everybody. Welcome to another installment of Lawyered. Hope you had a great Thanksgiving weekend, which is the time that this episode is coming out. I had a really fun time last week. I got invited to attend the CCCA, that's the Canadian Corporate Counsel Association's in-house council celebration. It was a really fancy gala downtown Toronto. So, I want to give a shout out to the organizers for an amazing event.

**[02:07]** It was so great to meet so many in-house councils from across the country, learn a lot about their work and their accomplishments. There was a bunch of awards that were doled out as well. So, congratulations to all the award recipients and nominees. Thanks especially to the organizers for inviting me.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[02:24]** Last episode, so two weeks prior, we published a bonus episode of Lawyered between Gina Alexandris about lifelong learning. As listeners of our show will know, we publish about 10 episodes per year, which are substantive law, so talking about recent developments in the X area of law. In addition to that, we also published bonus episodes, sprinkled two or three times throughout the year about things that are related broadly to this podcast goal, that of access to justice and what we can do to move the needle on that point.

**[03:00]** So we've talked about episodes on development. We've spoken about finding purpose in the public sector. I've done episodes for Lawyer Happiness. There's been a bunch. This was another episode which was, if I do say so myself, one of the best episodes I've published to date. We talked about a lot of core issues that I think are spoken about in a superficial way in many avenues about, you know, what does mentor mean and what does emotional intelligence mean.

**[03:31]** But on this episode, our guests really dove deep and talked about the practical aspects of how someone can actually develop these skills. So it's a very tactical episode if that's what you're looking for. So we spoke about those areas, mentorship and emotional intelligence. We also spoke about the business of law and things that people can do to help develop their own practice. We spoke about developing a curiosity mindset. We spoke about law school generally and potential areas for improvement. There's a lot in that episode. The full episode is almost two hours long.

**[04:04]** So we publish a short version on the general feed. If you want to check that out as a teaser of what the full one may include, if you like that, and I hope you do, you can check out the full episode if you join our crowd funding community. They're also all of our bonus episodes there, and just all the other rewards that we have for members. I won't repeat them here. I think I mentioned them pretty regularly. But you can check them out on the crowd funding website, which is [www.lawyeredpodcast.com/patreon](http://www.lawyeredpodcast.com/patreon).

**[04:34]** Today's episode is a really good one. Our guest is someone who is very well known in the subject area. He's got some pretty impressive credentials in the legal front. I think I would go so far to say that he's at least as well known for his impressive community work. This is someone who goes out of his way to help various groups of people with their various initiatives and challenges.

**[05:03]** He's also a repeatedly-published author. And I think his resume speaks for itself. And I would say that more so than other episodes, his credentials as an author really comes across in his thoughtful analysis of the issue we're speaking about in the legal context. And then his comments make for a very lively discussion as well. So, I'm really

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

excited to show this episode. The topic is about foreign investment law, which is an area that's going to even more important than what days to come, especially in light of a new bill that we're going to be speaking about. And with that, here is our episode with our guest, Dany Assaf.

**[05:45] HUSEIN:** Dany is the co-chair of the Competition and Foreign Investment Review Practice at Torys LLP, where he advises international and domestic clients on all aspects of competition law and foreign investment matters, including the area of national security reviews. Dany is a globally recognized lawyer with deep and broad international business experience and has worked on some of the largest and most complex global and Canadian mergers and investigations over the last 25 years.

**[06:10]** His international business experience includes opening the first offices for a major Canadian law firm in the United Arab Emirates and Qatar, and he also serves on the boards of UNI Health, the Canadian Race Relations Foundation, and Canada Sports Hall of Fame. He's also been involved in many community initiatives and projects over the years, including being the president of the Canadian Club of Toronto and an advocate for the No-Fly List Kids project to name a few.

**[06:37]**

Dany is also the author of an Amazon bestseller book called *Say Please and Thank You & Stand in Line: One Man's Story of What Makes Canada Special, and How to Keep it That Way*, and he's also the co-author of the recently published book called *Everybody's Business: How to Ensure Canadian Prosperity Through the 21<sup>st</sup> Century*, which draws on interviews with over 100 thought leaders, politicians, CEOs, UN leaders to craft a new way of thinking about our national opportunities.

**[07:04]** So Dany, thanks for joining us on the show today.

**[07:07] DANY:** Thank you, Husein, a pleasure to be with you. And also, one thing just to add in terms of the bio, which you were very generous and kind already in all that you highlighted, but also there's another event my wife and I, Lisa, have co-founded called Fast in the 6, which is an annual event here held in Toronto during the month of Ramadan. And its motto was diversity, unity, prosperity, to bring Canadians of all backgrounds together, to break the fast and share their spirit of Ramadan together. So that's another event that is close to our heart and we have been so grateful to share with Canadians of all backgrounds.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[07:47] HUSEIN:** Yeah, thanks for mentioning that. Yeah, I'm very familiar with this event. I know it's gotten a lot of traction in the last couple of years. It seems to get bigger every year as well.

**[07:55] DANY:** Yes.

**[07:55] HUSEIN:** So, thanks for all your work on that. I wanted to ask, before we get into the questions directly, I did have a question about your recent book. I think we're going to talk about this book a bit later on in the interview. But I was curious, throughout all these 100-plus interviews with all these thought leaders and politicians and all these groups, I was wondering if there's anything in particular that surprised you, that came up during the course of these conversations.

**[08:18] DANY:** Husein, one of the things that surprised me was the kind of clear appreciation of almost everyone that Canada is at a crossroads and that we are in jeopardy of losing this great way of life and all that generations of Canadians have been able to build to create one of the best countries in the world, and yet at the same time, a genuine belief that our best chapter can be ahead.

**[08:53]** And that is one of the interesting things about writing that book is, while people felt there is a pressure and there is a greater global competitiveness that is threatening our place in the world, at the very same time, there was a deep confidence that we have the people and the resources to still write the best Canadian chapter yet.

**[09:16] HUSEIN:** That's inspiring. And it must have been quite an endeavor to distill all these interviews and content to precise themes. But it's good to hear that there was this guiding light through all these conversations.

**[09:28] DANY:** It was, it was, and hopefully we're all going to be able to see that next best chapter together.

**[09:34] HUSEIN:** Glad to hear it. So, we're going to shift gears on talking about your area of expertise, one of your early expertise in illegal fraud, that being foreign investment law. I know that there's a lot going on in this area, especially in the last year or so. A lot of questions that are being raised, a lot of new amendments as well. And the very first topic I'm going to speak about is the area of critical minerals.

**[10:00]** Now, in October of 2022, the federal government introduced a new policy regarding foreign investments in the critical mineral sector. Under this policy, acquisitions of control of Canadian mineral businesses will only be approved in exceptional circumstances, and there will always be added scrutiny based on national

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

security grounds. And this approach may telegraph a new national approach regarding foreign policy, which will require additional planning from foreign investors and lawyers alike. So, Dany, I know I touched on this briefly in the preamble, but I was hoping you can tell us a bit more about what this critical mineral policy means tangibly.

**[10:35] DANY:** So more precisely, it's a policy that technically applies to state-owned enterprises acquiring critical mineral businesses. And in Canada, the government has identified 31 critical minerals. And they're minerals like cobalt and nickel and lithium, which are those minerals that are used to create batteries for electric cars and semiconductors, and so on. So you see how it relates both to the green economy and to the technology of the future. So those are the specifics. And what they're looking for there, there are many factors that are going into how the government is going to review and consider these investments.

**[11:15]** And the first kind of window is whether or not these investments are being made by people from friendly regimes as opposed to maybe less friendly regimes. And right now, there's a lot of conversation and there's really a lot of tension between Canada and countries such as China and Russia. That's not news. And really managing those relationships and managing how we're going to develop these critical aspects of our economy.

**[11:47]** In addition to that, these critical minerals as I identified, there are 31 of them, it is really looking at who owns them to ensure that we continue to have independence in terms of developing our economy, making sure we can collaborate and cooperate with our closest allies like the United States. And in addition to that, you're also the government is considering whether or not these businesses—and this is where you get into why it's relevant, is it a state-owned enterprise or a government investor, is ensuring that at all times these businesses are being managed in a commercial manner.

**[12:20]** Because governments are not really market actors in the truest sense of the word. And you could see the concern that maybe if a government owns an asset or a government owns a business, they would have non-commercial considerations that are more nationalistic in complexion. And they're not market-oriented, which of course makes it very difficult to predict how that business will be governed and how that business will be operated after the investment.

**[12:54]** I know that this new policy will have impacts on at least two different review processes. There's the net benefit review process and then the national security review process. Can you break down what these both mean?

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[13:05] DANY:** Net benefit gets to the things that are really going to be of ultimate commercial benefit to our economy. So in the Investment Canada Act, unlike other regulatory regimes, it really is an overriding economic policy type of review. So, they're looking under net benefit, they're saying, for example, is the key head office going to be continued to be located in Canada, where there'll be Canadian management involved in the company? Will the company maintain Canadian employment to the same level as before? Will they grow employment? Will they invest in Canadian research and development? Will they invest in capacity and building more plants and more factories and expanding their business in Canada?

**[13:52]** So it's really looking at: will this business, will this new investor grow this business in Canada for the net benefit of Canadians and the net benefit of the Canadian economy? Whereas on national security review, it really is a national security process. They're looking to see whether the Canada's national security is going to be jeopardized by this investor now controlling or taking an interest in this sensitive business

**[14:20] HUSEIN:** So then how does this critical mineral policy intersect with these review processes?

**[14:27] DANY:** Yeah, basically, they intersect on both fronts. So critical minerals really is a national security issue. That's where in the critical minerals area, it really is almost the same question in many instances, because you're looking at here at net benefit to Canada, part and parcel to that calculation is that you are not going to jeopardize national security as part of the net benefit. Because if you're not able to convince, if you're not able to show that this transaction is not going to jeopardize national security, it probably is not going to be a net benefit.

**[15:09] HUSEIN:** So, I know that this minerals industry is famously capital intensive. It takes a lot of money to get boots on the ground and start digging and scope in this area. So, I was wondering like, how do you think this new critical minerals policy will impact the ability of Canadian mineral companies to get the funding that they need to operate?

**[15:30] DANY:** It's going to impact them, and that's why you need to be balanced and we need to approach these things in a substantive way, not an emotional way and we really need to look carefully as to what our priorities are and sure we're not you know cutting off our nose despite our face. Because in the end, if these minerals are not mined and if we're not able to capture the benefit of these resources, we are going to be the ultimate losers.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[16:00]** And in order to do that as you point out, you need capital, and you need competition for capital as well because you don't want to put Canadian companies at a disadvantage. So when we're looking at that, I also co-head the competition group at Torys, which is another area of my practice, and where these two worlds they intersect on many fronts but including in capital, I say, you don't just need access to capital, you need competition for capital.

**[16:25]** And how I capture that in a very simple way is the banks here are very well capitalized in Canada, and you want to go for a mortgage, it's not that the banks don't have the capital to give you a mortgage, but how do you get a good deal on a mortgage? You do not go in there and show your passport and just say you're Canadian and they give you a good deal. You go in there and say I'm getting a deal at this bank and can you do better? And you do it in the normal way to basically take advantage of the different options you have for a mortgage to negotiate your best rate.

And that's the same thing for Canadians; even if Canadians have all the money in the world, you still want Canadian companies to benefit from as much competition as possible for that capital, so Canadians can get the lowest cost of capital to what? To make their projects internationally competitive and to be able to be participants in the market at the most competitive level. So that's why we don't want to say in advance we don't need anybody's money because it's not true. We need that competition for the... We need that capital and the competition for capital that creates and the better cost of capital terms that it provides Canadian companies.

**[17:37] HUSEIN:** Great. Okay, so let's talk about what this means for foreign investment lawyers. I imagine that going forward, investors who want to invest in critical mineral businesses, are going to need to engage a lot more, plan a bit differently in light of this new policy. So what does this policy mean in terms of your day-to-day work or the day-to-day work of other foreign investment lawyers?

**[17:59] DANY:** It really means being even more thorough and making sure that you have taken the broadest possible approach to assessing the path to getting that investment approved. And you need to be as transparent as possible with the government. Lack of transparency here will completely prejudice your ability to get the deal approved.

**[18:25]** So, in other regulatory instances, sometimes we think, you know, when do we go to the government? How do we go to the government? What is it that we should actually prepare for? In this particular case, with these foreign investment reviews and critical minerals, you need to really be thorough. You need to be transparent. You need

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

to be upfront. And you don't want any surprises. You do not want any surprises in any case, but in particular, these cases, because a surprise will ultimately be a rejection.

[Music Break]

**[19:02] HUSEIN:** Now in December of 2022, the federal government introduced Bill C-34 which would cause a broad set of amendments to the Investment Canada Act, also known as the ICA. And this bill is still in its deliberation stage at the time of this recording in the summer of 2023, but if passed, this bill would represent a significant shift into how governments regulate foreign investment to strike a balance between welcoming investment on one hand and safeguarding nation security interest on the other. So, Dany, I know that there's a lot in this bill, and one change that's getting a lot of attention is the proposed establishment of a mandatory pre-closing filing regime for certain types of investments. So, tell us more about what this means.

**[19:46] DANY:** So, as we were discussed in the previous segment on the two tracks of the investment review: net benefit and national security. Traditionally, there was a distinction in the process as well in the following way. With net benefit review, if your transaction meets the thresholds, you needed to file what was called an Application for Review in advance of closing to be able to go through the process and get designated, the transaction designated and approved as net benefit to Canada, and then you would be permitted to close.

**[20:19]** So you were actually prohibited from closing until you went through the Application for Review and got the net benefit approval. Whereas with national security, it was always, there was no formal notification regime, you notified the government on a post-closing basis, or the government round out about it on its own, and then they would reach out to you and inform you whether you were subject to a net benefit, to a national security review.

**[20:48]** Whereas today, what we're seeing is they are moving the national security regime more in line with these pre-closing and actually now requiring for investments in these sensitive sectors, they call them prescribed activities.

**[21:03]** We're going to get the list, which is of course going to include critical minerals, it's going to include IP, it's going to include tech, it's going to include data, it's going to include healthcare, it's going to include these sensitive sectors and saying: prior to completing a transaction, you're going to need to file this notification on a compulsory basis, and we're going to determine whether or not there's a national security review or not. So, this is where they're increasing through Bill C-34 overall, we'll talk about that

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

more. They want to increase transparency to the government so that they know what is going on and what investments are being pursued.

**[21:39] HUSEIN:** For someone who's been practicing in this area for so long, what do you think about this proposed process?

**[21:46] DANY:** You know, now where we are today, I think it's a good thing because really it takes the guesswork out of whether or not you should file voluntarily. So, we'll talk about this a little bit later. Right now, there's a voluntary notification regime. So, all of this has evolved from you basically don't need to tell the government anything until post-closing, to then the government in the last year or two, created a voluntary notification. So now you're sitting there on your own trying to think of whether or not you should file voluntarily.

**[22:15]** Obviously, as a regulatory lawyer, you're always looking for a lighter touch from government rather than a heavier touch, because we know the business operates most efficiently, most effectively and most adeptly when there's less friction than more friction, including regulatory friction. So, it comes with a little bit of a conflicted perspective, but I think you need to be practical in the moment in saying these things are bigger than all of us. These national security priorities are something that are absolutely at the top of every agenda in the world, including with our allies, our key allies. So, in the moment we might as well just do it in this more formal and clear way than leaving it to guesswork.

**[23:04] HUSEIN:** Yeah, and there's this benefit to the clients as well of having some clarity about what's expected to them as well, right? When they're expected to provide certain information or not.

**[23:13] DANY:** Exactly.

**[23:14] HUSEIN:** I want to shift to another area of this bill because a lot of commentators have been suggesting that this bill might enhance cooperation with our foreign allies, because it would allow the Canadian minister to share privileged information with foreign states' governments. So, can tell us more about your thoughts on this as a lawyer in this space.

**[23:34] DANY:** I'm not excited that governments will be sharing more information with other governments and losing control of our information. I mean, having that comfort that the information you're providing our government, is going to stay with our government is reassuring and is helpful in many cases. You know what information is being requested, who it's going to, and what its precise use is going to be. That is just a

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

normal thing that we all enjoy as opposed to our information is like a bird out of a cage. You don't know where it's going to end up.

**[24:09] HUSEIN:** And are there any parameters in the bill about what kinds of information can be shared or is it just anything?

**[24:14] DANY:** No, really, it's the information relating to the filing and relating to national security. So that's why here, again, we're looking at it in terms of cost benefit in the moment. Cost benefit in the moment is we do know, like with other cases that Canadians have seen play out with our allies, that there is no running away from our obligations and the expectations that our allies have of us.

**[24:41]** And there's no need to bury our head in the sand. If a key ally phones and says, we have a problem with this transaction or this investment, it's not like it won't be acted upon. It will be acted upon. So, we might as well, again, as a sign of the times, be transparent and be a little bit clear and have rules on how that information is being shared because we know it is a reality.

**[25:09] HUSEIN:** I know that there's also some provisions in the bill that would give the minister or the ICA minister a bit more flexibility and authority to make decisions about applications without having to go through the cabinet approval for some junctures. Is this something that would impact your work or the impact of the work of another foreign investment lawyer in their work?

**[25:31] DANY:** It's a great question. So as lawyers, we love checks and balances as a general thing. We do not like authority to be concentrated in the hands of one person and even a well-meaning minister. We enjoy the benefits of checks and balances, different perspective, and having again a broader kind of assessment of what it is that's relevant. There is that's balanced against efficiency and the potential benefits of getting things done quicker because the minister himself or herself can actually provide you feedback directly, can agree to these conditions, can agree to these undertakings. So, there is that benefit to it. It's a little bit of a mixed bag there, I think, with the minister getting that authority themselves. And we'll have to wait and see how that all really plays out.

**[26:28] HUSEIN:** Of course. And so I know that at the time of this recording, the bill is just that. It's not formally law. But assuming that bill C-34 does get enacted, how do you think this would actually change the day-to-day work of lawyers like yourself?

**[26:43] DANY:** Yeah, I think it's only going to accentuate some of the factors that I talked about earlier, which is transparency. Transparency as quickly as possible to the

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

minister, to, I said, being able to get them the information they need and give them the time that's going to be required for them to give it a thorough analysis. So much more upfront work. These things are a mix of economic policy, geopolitical relationships, public policy. You've got so many factors at play, and you really need to take a broad lens at all of these things and figure out, is there some material issue that's going to arise in any one of these spheres that's going to shut down and potentially prohibit your transaction?

**[27:33]** Whereas in the past, it was a little more clear as to what the path would be. You could calculate, we have 100 employees today, we're going to have 100 employees tomorrow. That's the benefit. We invested \$100 in the plant, then the lab house, we're going to invest \$110. It was basically you could measure these things, you could benchmark these things, whereas today it really is much more uncertain and you're looking at, again, softer issues and issues that are more political, they're more global, and they're things that are sensitive to much more judgment than just measure.

[Music Break]

**[28:16] HUSEIN:** The Investment Canada Act or the ICA always required foreign investors to notify the Canadian government of investments when they acquired ownership of a Canadian business. However, a new recently passed amendment will now allow other foreign investors to voluntarily notify the government of investments that may raise national security concerns. And this new mechanism may offer greater regulatory certainty for foreign investors to help them obtain quicker approvals. So, Dany, I know there was a lot of discussion about this amendment at the time it was going through that approval process, so before we get into what the change is, I was hoping you'd tell us more about the problem that an amendment as this was created to solve.

**[29:01] DANY:** Yeah, the problem was really for the government to have transparency and clarity and information on the investments that were being pursued in Canada. So, prior to that, they would either find out about them through media or other press. They'd find out about them through other sources of information or intelligence. And they would have to determine within 45 days whether there was a national security problem. And if they didn't get back to 45 days, then the transaction was immune from challenge.

**[29:33]** And that became and grew to be a bigger and bigger problem over time. So, what they did is they wanted to know directly about these types of investments that may jeopardize national security. And then what they did, so they created this voluntary

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

notification regime, and what they did, that's the stick, the carrot that they gave was, if you notify, you will be informed within 45 days whether your transaction will raise potential national security issues.

**[30:06]** And if they did not get a notification, your transaction could be in jeopardy for five years post-closing with the risk that the government can come and unwind your transaction or impose conditions. So, the carrot that they provided was they maintained that 45-day period for those who voluntarily notified.

**[30:30] HUSEIN:** So, tell us more about what this new amendment is for voluntary notification.

**[30:36] DANY:** The voluntary notification really gives an opportunity for investors from any non-Canadian investor and any investor who is acquiring any interest in a business in Canada to provide a voluntary notification to the investor that got Canadian government for them to tell you in advance whether or not this investment would raise a national security issue.

**[31:04] HUSEIN:** Because with national security reviews, they could be for any kind of investment. They could be for acquisitions of control which are the traditional territory of the review under the Investment Canada Act, for investments of any kind whether small or big and of any structure, any type of arrangement.

**[31:25]** So that's why this gives that greater certainty because in the national security realm where investment of any type, of any size, whether or not it hits a threshold or not, is subject to review, this gives a process by which you can file a notification, even if it's not an acquisition of control and get the government to tell you whether or not there's going to raise a national security issue within 45 days of notifying them as opposed to being in this state of uncertainty for five years of whether or not the government is going to come back and review your transaction.

**[32:01] HUSEIN:** And what do you think about this new mechanism as a way to increase the regulatory certainty?

**[32:08] DANY:** And then the sign of the times, I think it was positive, because it gave you a tool. It gave you some mechanism to be able to get some response from the government within a prescribed period of time and be able to determine whether or not there's going to be a national security review. And what that does is it permits the parties to negotiate an agreement that is even more clear, to allocate risk more appropriately, because you have the option of saying, I'm going to provide this notification form and voluntarily notify before closing.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[32:44]** And we'll wait to hear back from the government and see whether they're going to conduct a national security review. And then we will know how we're going to approach that problem, not only in terms of cooperating with the review and making sure that we collaborate in getting approval, but also in allocating the risk if that happens and what that would mean in terms of maybe the cost of the transaction, fees that would be paid from one party to another, and also the timing of closing. Because now you can say, if this occurs, we're going to extend closing by a certain period to permit that review to be completed.

**[33:25] HUSEIN:** It's simply analogous to like a licensing issue and then you want to have the license first before you actually go into the transaction proper. Is that?

**[33:33] DANY:** Yes, there is an analogy there. You want to have that key piece of the puzzle, unknown and certain before you close a transaction.

**[33:42] HUSEIN:** Sure, as a lawyer or a foreign investment lawyer, you must get asked by clients now frequently or thinking about whether the shooter should not notify voluntarily. So, what are some factors that you think clients should consider or lawyers should consider?

**[33:56] DANY:** So, the factors really are those that relate to whether or not your transaction could raise any material national security issues. And you start with some of the things we've talked about already, which is what is the subject matter of the investment? Is it something that's critical, sensitive technology, critical minerals, something that is going to touch any kind of national security aspect, including defense, of course, naturally, whether or not it's arms or sensitive radar material, a sense of radar technology, anything that can impact national security.

**[34:32]** In addition to that, the identity of the investor is the investor from the United States or the investor from China is the investor from a country that is a close ally as opposed to less of an ally. Where is the investment located? Is it located, for example, is the plant next to a military installation, for example, because that, if you or whoever owns that, could survey our military activities? And it also considering these supply chain issues that become notorious since COVID of whether or not something could be a bottleneck in a critical supply chain.

**[35:08]** And then, of course, what we're talking about more generally is just geopolitically, is this some kind of an investment that will cause a problem with our allies or not and trying to figure out whether there's any risk on that basis? So those are

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

the kinds of things that you put into the mix as you're trying to figure out today whether you're going to voluntarily notify or not.

**[35:29] HUSEIN:** And other down sides to notify voluntarily?

**[35:34] DANY:** No, I think in a side of the times, there are very few downsides other than what we talked about earlier is because it's voluntary, you're just naturally thinking, will it be perceived as defensive, really? Is this something you're apologizing for? You've looked at it on your own and you've said, I don't think there's a national security issue, but by virtue of making the voluntary filing, are you telegraphing something and showing a sensitivity to an investment that really should not get that kind of scrutiny?

**[36:05]** But again, that's balanced against the certainty that you get in the parties knowing whether or not it's going to be potentially subject to national security review. Because the worst thing that could happen, especially for a purchase service, you close the transaction, you're subject to a post-closing national security review, and then the government says you need to divest. I mean, that is the worst of all outcomes. So, these are the things that, again, you're calculating and you're trying to figure out the cost versus the benefit.

[Music Break]

**[36:42] HUSEIN:** And to wrap up this episode, we're going to do our Ask-Me-Anything segment with Dany to speak about some of the questions submitted by our listeners about foreign investment law. As our regular listeners will know, one of the bonus awards that we have for members of our lawyer crowdfunding community is opportunities to make questions that they want to hear answered on the show.

**[37:01]** We do a call for these questions about a week or so before each recording. So, if you want to learn how you can become a patreon, submit your own questions to upcoming guests and get other benefits as well, including early access to your new episodes, you can check out our crowdfunding website, which is [www.lawyeredpodcast.com/patreon](http://www.lawyeredpodcast.com/patreon).

**[37:22]** Okay, so Dany, we've got a bunch of questions about foreign investment law. The first question is actually a bit broader, because as I mentioned at the top of the show, I know that you recently co-authored a book about Ensuring Canadian Prosperity Through the Twenty-First Century.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[37:36]** So the question here is, how do you envision the partnership between government and business and concentrating on unleashing the potential of Canadian citizens? And are there any specific policies or initiatives that you think should be prioritized to achieve this?

**[37:53] DANY:** Yes, so we really enjoyed writing our book and the premise of the book is that technology has democratized the tools of productivity, and that with that, you are faced with a great potential for Canadians to create and build a future that is even brighter than the past because there what we want and what we would love to see is for government more generally to reorient itself from a deep focus on industry to a focus and a deep focus on the individual.

**[38:35] HUSEIN:** And what do you mean by that?

**[38:37] DANY:** Canada's early history was marked by a lot of immigrants coming to Canada to work in the agricultural space. You came here and people came to farm. And you were given the implements and the opportunity to farm. And in that agricultural age, from that we built one of the world's most modern economies and metropolises that people couldn't have dreamt of. So today, I like to think of it as it's the digital age, it's digital farmland.

**[39:10]** And in the same way, getting those technologies and those digital tools in the hands of Canadians, betting on Canadians one more time and seeing what they will come up with and build things that we can't even imagine today that are going to make our life even better in the future. So, it's really taking that same idea and using the tools of today and putting them into the hands of Canadians and letting them and their potential be unleashed.

**[39:42] HUSEIN:** And how do they, like, are there any specific policies that you have in mind, or are there things that other governments have done to make this happen? I think

**[39:49] DANY:** Key things is our access to technology, access to broadband, creating less friction for people to start their own businesses, whether it's in terms of regulatory friction to starting a business, tax incentives to really allow people to benefit from the opportunity and the risk they're going to take to start new businesses, and to ensuring that we use every opportunity to unleash the innovative potential of Canadians using new technology because we know, whether it's AI...

**[40:22]** For example, Canada is known for our ground-breaking work in AI, but who's going to commercialize that? Who are going to the VP, or are going to take this

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

technology and be able to say, I see a particular line where its utility is going to make a difference in the music industry, in the legal industry, in the financial industry?

**[40:46]** That cannot be centrally planned. There is no institution that's big enough to figure out all of the different applications of AI, for example. You really need 39 or 40 million people at their very best and to feel like they are empowered to be able to have access to that technology, to understand that technology, and to be able to think how they can best apply it in the world and in their communities around them. That's how you unleash the power of technology.

**[41:21] HUSEIN:** Fantastic. So, the next question that we have is, what aspect should foreign investors consider when they're looking to navigate the cultural and regulatory nuances when conducting business in Canada?

**[41:32] DANY:** Yeah, that's a great question. So, I think every foreign investor should certainly take and really consider how their investment fits into the overall national interest of Canada. So, we're talking about national security, we're talking about net benefit, but in the end, it's also a big component of it is what is the national interest of the country you're investing in, and making sure that what you're doing is consistent and promoting that national interest. That is going to get you even further with the government.

**[42:03]** And then thinking about the specific priorities of a country, including Canada, east and west and north and south, and resource versus technology and finance versus the insurance industry, which is a big industry here in Canada. It's trying to think of, again, very specifically how your investment is priority in an important way. So, I think those are the kinds of things that you really need to pay attention to when you're investing in Canada and knowing exactly where you're putting your money.

**[42:38] HUSEIN:** That all makes sense, but how do you tactically go about identifying how you fit into the broader landscape?

**[42:44] DANY:** So, I think you start with what it is that you are investing in and what the strength of that business or that investment would be. So, these are the things that it is most known for or going to be the most effective in the marketplace app. And then once you have that core value proposition identified, think about where could that be best deployed in Canada to make the biggest impact, right? And you think about that and you think, well, you know what, in Western Canada, if you applied this technology or this business crew out there, wouldn't that help with—let's say it's a priority of the

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

government to increase housing or education in Western Canada and say, okay, well, this is what we can do to make sure that we advance that government priority.

**[43:31]** So it's starting from always in life, start with the substance and the value of what it is that you're engaged in. And then thinking about how that can be deployed and applied to the priorities of your partners and the priorities of the place you're investing in working.

**[43:48] HUSEIN:** Fantastic. Next question that we have is, are there any specific strategies that you found useful for foreign investors who are trying to affect policy change within government?

**[43:59] DANY:** I think they're a little bit related to my prior point, which is that you're cognizant and you're sensitive to what the government's priorities are. You're speaking their language. You're giving them currency that is relevant to them. So, if you come in thinking about only the benefits to your business, it's not going to resonate with them because the government is not a commercial actor. Saying, oh, well, it makes sense. You're going to make 10% more?

**[44:24]** Well, of course, that's a fantastic thing. The shareholders are going to benefit and that makes commercial sense. You're having a conversation with the government who is looking at it from a different perspective and they're saying, how are we going to make our broader population better off?

How are we going to enhance the future of all Canadians? How are we going to make Canada this really more prosperous and even more peaceful place? So, you need to talk in the language that is most relevant to the government and in terms of promoting its priorities.

**[44:55] HUSEIN:** And are there specific sources where people could look at in terms of identifying what the government's priorities are? Because sometimes they seem conflicting depending on the department you're working with.

**[45:06] DANY:** They are. So, you get a lot of these in the beginning when ministers appointed or a government is elected to get the letters to the minister...

**[45:13] HUSEIN:** The mandate letters.

**[45:14] DANY:** Those mandate letters are fantastic because they give you a little bit of a roadmap of what they're asking those departments and those ministers to pursue. And you're also keeping a close eye on other things like the speeches that those ministers

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

are making or that the prime minister is making because things can change as well. So, the foreign policy priorities will be recalibrated or reoriented or whatever they may be.

**[45:37]** And you're also keeping a close eye on the general politics of the times because we all know we can see even the great ideas can reach a dead end because there is just no political appetite and people are like they're not interested in that. And as logical as it sounds in a very kind of precise way, when you put it into the more public realm, it just doesn't resonate or doesn't make sense.

**[46:06] HUSEIN:** And are these things that like foreign investment lawyers assist with, in terms of like speaking the language of government and identifying what the priorities are?

**[46:14] DANY:** Yeah, I think that's a key responsibility of foreign investment lawyers to be on top of that, and to say that's a great point, but it isn't as material or relevant to the government when we're trying to convince them of the benefits and show them the benefits of this investment.

**[46:30]** So downplay that and don't come in and make that your number one point. You can make it number eight or number nine. It's no problem. It's not a shy away from, but here's what I'm going to tell you which really, and that's like any conversation with anybody. It's, who is your audience? It comes back to very basic kinds of principles and they apply in the foreign investment context that is doing any others and you're paying your advisor to be able to guide you through that conversation in the most effective way.

**[46:59] HUSEIN:** That makes a lot of sense. Next question we have is ESG, also known as Environmental Social and Governance, has become a very hot issue at the domestic and global level. We did a podcast episode about this a couple years ago as well. The question is, tell us about the role of environmental and social considerations in the evaluation of foreign investment proposals in Canada.

**[47:22] DANY:** So, it's extremely relevant. It's extremely relevant both in the net benefit review and in the national security brand. So, in the net benefit, you explicitly ask and you're expected to give information and undertakings and commitments of how you're going to promote initiatives that are going to preserve and protect the environment,, that you're going to have, again, opportunities for Canadians and you're going to make sure that health and safety standards are at the highest level and you're basically treating people with the utmost respect in their workplace and protecting them.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[47:55]** And then also when we talked about governance that at the very basic level, Canadians are going to be in governance, that the business is going to be operated in a commercially oriented way, all the things we were talking about earlier. So those are all things that are relevant. And then today, when we're talking about national security or referred to this earlier, the green economy. The green economy is going to be a foundation of the 21<sup>st</sup> Century economy.

**[48:21] HUSEIN:** So, that is part and parcel, what's good for the environment is also good for business, is also good for the economy, because we know technology is going to drive us towards these fantastic new products, like electric cars and all the things that we know technology is able to offer us in the future.

**[48:42] DANY:** Great, that's good to hear. Last question that we have is, and this kind of touches on some themes that we've come up in the last couple of minutes. Question is, how important is it for foreign investment lawyers to have political acuity in their day-to-day work?

**[48:55] HUSEIN:** Yeah, I'll tell you. I joke, I've been doing this for over 25 years. And in Canada, it's a little bit unique. The competition lawyers also handle foreign investment reviews. Most competition lawyers will do that. And that's a product of history because in the beginning, it was the competition regulatory review. There was basically this rubber stamp, nascent investment candidate review. So really, the corporate lawyers gave these forms to the competition lawyers to fill out while they were at it.

**[49:26]** And I joke that the most important skill at that time was knowing how to fill out a form and not make spelling mistakes. Whereas today, it is on the critical path of every transaction, foreign investment. And you need to be able to not only be able to read the form and fill it out properly, but you need to be able to read and understand the headlines in domestic and international newspapers around the world to understand where your investment, where your investors, where your transaction, where that business fits into that overall domestic political and geopolitical landscape to understand what the risks of that investment may be, but more importantly, to appreciate how you're going to be able to get that transaction approved and that investment approved.

**[50:18]** Because you can speak in the language of government. You can make sure that this investment is not going to compromise the priorities of government, including the national security concerns of the government and Canadians, and be able to understand and to be able to articulate how this is also going to preserve all of the relationships with our key allies around the world.

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

**[50:40] HUSEIN:** I'm curious about how someone in your space actually keeps up with these political issues. It's one thing just within Canada, but the nature of your work involves countries from all over the world. So, what do you typically do to keep abreast of what's going on in all these industries in all these different countries?

**[51:01] DANY:** You need to make a commitment to stay informed. You need to read newspapers and periodicals, international ones from around the world, scan headlines from different places,, and to make sure that you make it your job to stay informed. So I joke and I think whether it's the Canadian economy, whether it's the practice of law, whether you're running in a race, 50 years ago to win the 100 meter dash, was 100 yard dash back then, they won it in 12 seconds. Whatever it was. Today, it's like 8.8 seconds. It's faster, it's more demanding. And if you want to participate at those levels, you've got to run at those speeds.

**[51:43] HUSEIN:** That is a perfect way to end this segment. So, every area of law is important, but this area really stuck out to me because it very much is the intersection between, you know, law and policy and politics as well. As you were saying, there's a lot of moving pieces in this area, and it's exciting to see how this area is evolving, both in response to and proactively to international issues and domestic policy issues as well. So I really appreciate you dissecting these issues in a way that's understandable for us, and we look forward to seeing you touch in the future.

**[52:16] DANY:** It's my pleasure. Thank you for making time for me. Thank you for including me. And I hope that your listeners and your audience are able to find something helpful in our conversation.

**[52:33] HUSEIN:** And that's a wrap on this episode of Lawyered. Thanks for listening. On today's episode, our guest was Dany Assaf, and you can learn more about him and his work at his firm website, which is [www.torys.com](http://www.torys.com). And as mentioned earlier, you can also check out his latest manifesto about domestic policy in his book that he recently co-authored, and the book is called *Everybody's Business: How to Ensure Canadian Prosperity in the Twenty-First Century*.

**[52:59]** And if you want to learn more about today's show and links to all of the bills and memories that we spoke about today, you can find those on our website, which is [www.lawyeredpodcast.com](http://www.lawyeredpodcast.com). On our next episode, we're going to be speaking about the area of public health law and health care law with our guest, Jess Sabo.

**[53:15]** And there's going to be a lot going on in the health care space, as of late, as you may have heard in the news. I'm going to break down some of the most recent

**Lawyered – Episode 86**  
**Foreign Investment Law ft. Dany Assaf**

developments in this area are regarding the areas of Ontario long term care, as well as new rules regarding medical assistance and dying for individuals with mental illness.

**[53:35]** And we're also going to chat about some of the new updates regarding different provincial approaches regarding accessing private medical treatment, as opposed to the public health system. So, it's going to be a very lively discussion and you're not going to want to miss it. And if you want to help to improve our show, I will get some neat and affordable legal rewards as well, including the opportunity to submit questions for our show and to hear all of our bonus episodes.

**[53:59]** The very best thing that you could do would be to become a patreon of our show. It would really help out quality of the show and longevity of the show as well. You can learn more about how to do that on our crowdfunding website, which is located at [www.lawyeredpodcast.com/patreon](http://www.lawyeredpodcast.com/patreon).

And I'll give a shout out to a number of our patrons, both past and present, including Muhammad Moledina, Mohan Pandit, Munawer Chattoo and Peter Chiykowski. Thanks so much for your support and keeping this show going.

**[54:28]** And to make sure that you never miss another episode of Lawyered, do yourself a favor and subscribe to this podcast. It's free on iTunes and anywhere else you can get podcasts. You can also follow the show on Facebook, LinkedIn, or on Twitter/X. And the Twitter/X handle is @lawyeredpodcast.

**[54:43]** Our sound editing work was managed by Solomon Krause-Imlach, our theme is provided by Ben Swirsky and the website is maintained by Steve DeMello.

**[55:01]** And finally, please be advised that while the show is aimed to be helpful and informative that it is not legal advice. But if you do want legal advice, please reach out to our lawyer directly to help you with a particular situation. And with that, we'll see you in two weeks. Until then, keep it legal.