

**Notes for Appearance Before the Senate Foreign Affairs and International Trade
Committee**

**Comprehensive Review of the Provisions and Operation of the Sergei Magnitsky Law and
the Special Economic Measures Act**

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1. Thank you for inviting me to participate once again in Parliament's review the *Special Economic Measures Act* ("**SEMA**") and the *Justice for Victims of Corrupt Foreign Officials Act* (the "**Sergei Magnitsky Law**").
2. I have been practicing international trade and investment law since my call to the Bar in 1995. My practice focuses on economic sanctions and anti-terrorism laws, export and technology transfer controls and anti-corruption law and policy, and in particular on the interaction of these Canadian regimes with their counterparts in the United States, the European Union, the United Kingdom and other countries.
3. Before addressing questions and comments from Committee members, I would like to use my five minutes of initial speaking time to discuss challenges facing the Canadian business and community under Canada's economic sanctions regime, including SEMA and the Sergei Magnitsky Law.
4. I hope to highlight and commend some positive measures that have been taken since the 2017 Report on *A Coherent and Effective Approach to Canada's Sanctions Regimes Sergei Magnitsky and Beyond* (the "**2017 Report**"), as well as to reiterate and expand on the issues that continue to make it difficult for Canadians to navigate Canadian sanctions.
5. I intend to provide a practitioner's point of view. We act for a broad range of clients interacting with Canada's economic sanctions regime, including large Canadian companies, financial institutions, pension and private equity funds, exporters and investors, SMEs, as well as public sector entities, not-for-profits, NGOs, charities and individuals. That being said, the views that I express here are my own, and I am not appearing on behalf of anyone else, including any of our firm clients.
6. Recent global events, including Russia's invasion of Ukraine, and the killing of Mahsa Amini and the commission of gross human rights violations in Iran, have caused Canada to quickly ramp up its sanctions measures in the last few months.
7. Canada has indeed become a global leader in announcing swift and severe sanctions; however, the transparency and resources necessary for the effective administration of our sanctions regime have significantly lagged behind.

Some Limited Improvements

8. When I last testified before you, I described the Canadian sanctions regime as broken. It is still broken, as I will explain, but I do wish to acknowledge improvements that have been made since 2017.

9. Perhaps most importantly, the Government adopted the 2017 Report Recommendation 12, which emphasized the need for a mechanism to enact sanctions in response to gross human rights violations and corruption. This was adopted through the 2017 amendments to SEMA, which expressly permit the imposition of sanctions on the grounds of gross and systematic human rights abuses and acts of significant corruption, as well as the adoption of the Sergei Magnitsky Law. The SEMA amendments in particular have been fundamental to the imposition of sanctions against Russian and Iranian targets over this past year. The changes also represent an important step towards aligning sanctions legislation with Canada's broader policy objectives, coordination with our allies, and our nation's role as a global leader in promoting human rights.
10. Another recommendation that emerged out of the 2017 Report was that the government should increase resources for sanctions enforcement (Recommendation 3). Such announcements of additional funding of Canada's sanctions efforts have been made in the past with little positive impact on the administration and enforcement of these measures. Nonetheless, we are hopeful that Prime Minister Trudeau's recent announcement of a \$76 million investment to create a dedicated sanctions bureau within Global Affairs Canada ("**GAC**") and to strengthen the RCMP's enforcement capacity will make an impactful change.
11. The creation of the Consolidated Canadian Autonomous Sanctions List on GAC's website was another positive response to the 2017 Report's recommendation that a consolidated list be created to help Canadian individuals and entities comply with sanctions (Recommendation 5). This list includes both SEMA and Sergei Magnitsky Law-sanctioned individuals and entities; however, the list is limited in a number of ways. It does not cover entities or individuals listed under the *Freezing Assets of Corrupt Foreign Officials Act*, the *Criminal Code* or the *United Nations Act*. It also does not have the force of law and has from time to time included errors. Most importantly, Canada's Consolidated Canadian Autonomous Sanctions List provides very little, if any, identifying information on listed individuals and entities that would help Canadians determine whether they are dealing with sanctioned parties – this is further discussed below.

Russia Sanctions Have Brought Matters to a Head

12. On February 24, 2022, upon Russia's invasion of Ukraine, Canada and its allies began to impose what quickly became the most impactful sanctions program in modern history. Although the sanctions measures themselves are not as broad as those we apply against North Korea or Syria (or Iran up until 2016), the impact on the Canadian business community is unprecedented.
13. Never before have we targeted a country and its entities, including financial institutions, that have been so integrated in the international financial system and the world economy at large.
14. Many of the problems that I, and others who testified back in 2016, identified as needing to be fixed were not addressed. Since the implementation of post-invasion sanctions against Russia and Belarus, Canadians have been scrambling to figure out how the Canadian government applies and interprets these measures. This has resulted in GAC being overwhelmed with inquires and permit applications (in the hundreds).

Lack of Guidance for Canadians

15. Recommendation 4 of the 2017 Report recognized the necessity of providing comprehensive and publicly available written guidance to the public and private sectors. Over five years later, the Canadian government has failed to respond.
16. As Canadian sanctions expand to affect a growing number of individuals and businesses, clarity and transparency become increasingly important. Unfortunately, the publicly available resources issued by the Canadian government has not kept pace with the broad swath of measures being implemented. The Canadian government is still failing to provide necessary clarity to Canadian businesses operating abroad.
17. Perhaps the most important example of this is the question of whether Canadians are prohibited from engaging in dealings involving entities that are wholly or partially owned or controlled by sanctioned persons. Sanctions authorities in the United States, the European Union, and even in the United Kingdom, a relative newcomer to sanctions enforcement, have published specific guidance on their sanctions laws that address this question (typically referred to as the “50% rule” – e.g., entities owned 50% or more by listed person are treated as if they are listed as well). In contrast, the Canadian government has published no such guidance for Canadians.
18. This is but one example of a myriad of questions Canadians are seeking to have clarified in published guidance from GAC. In the absence of such clear guidance, GAC is flooded with inquiries, and often permit applications, seeking clarification on these questions, many of which could be simply addressed with FAQs or other forms of guidance that we see is readily issued by sanctions authorities in other jurisdictions.
19. The result is that GAC becomes overwhelmed and, at current staffing levels, is unable to respond on a timely basis. It is no surprise then when we see firms engage in “over-compliance” or refuse to engage in any activities involving countries subject to sanctions even if those sanctions are minor in nature. This should concern us all as it creates a disconnect between the intention of Canadian foreign policy makers and what the Canadians are actually doing.
20. Importantly, the administration of Canada’s current sanctions regime is now placing Canadians at a competitive disadvantage to their US, EU and UK counterparts who are able to obtain clear guidance and mitigate risk more effectively when doing business abroad.

Other Challenges for Canadians

21. Lack of written guidance in our sanctions regime is one key source of competitive disadvantage for Canadians doing business abroad, and there are many others. A few more examples are described below.
22. Unlike other sanctions authorities, the Canadian government has failed to grant general permits to allow for limited activities that are not contrary to the objectives of the sanctions measures. For example, US OFAC has issued a general licence allowing US companies to engage with the Russian Ministry of Finance and the Central Bank of Russia, both sanctioned entities, in order to protect intellectual property rights. Canada has not issued any such general permits.

23. Further, Canada's sanctions regime does not provide exceptions to allow for the winding down and/or withdrawal of activities with sanctioned countries or entities. Again this is in stark contrast to exceptions we often see in the United States.
24. In addition, as noted above, Canada still does not provide significant identifying information on listed parties to assist Canadians in determining whether one of their counterparties with the same or a similar name is the intended target of the listing.
25. For example, consider the information made available for Canada's listing of Yelan Mizulina under Schedule 1 of the *Special Economic Measures (Russia) Regulations* as set out on the Consolidated Canadian Autonomous Sanctions List :

Last Name: Mizulina

Given Names: Yelna Borisovna

26. Compare that with the information made available for the same Yelena Mizulina on the [Sanctions List Search](#) website of the US Office of Foreign Assets Control:

Last Name: Mizulina

First Name: Yelena Borisovna

Title: Member of the Federation Council of the Federal Assembly of the Russian Federation

Date of Birth: 09 Dec 1954

Place of Birth: Bui, Kostroma, Russia

Gender: Female

Nationality: Russia

Fairness and Transparency

27. The ability of the government to quickly list and target bad actors, rather than take a broad swipe at all economic activities with a target country thereby punishing the population as a whole, is a critical feature of any economic sanctions regime. And the amendments to SEMA and the Sergei Magnitsky Law in 2017 to allow sanctions designations on the basis of gross violations of human right and acts of significant corruption were important improvements to that mechanism.
28. The government, however, can and does make mistakes. From time to time, and in the rush to quickly impose measures in response to rapidly evolving international developments, and to be seen to be acting in an impactful way, the government may make errors or fail to understand the complete picture. We have seen this happen with both individuals and entities improperly added to Canada's sanctions lists.
29. The consequences of an incorrect listing can be devastating even if the person has no presence or assets in Canada. We have seen many cases where a sanctions listing in Canada has triggered financial institutions and entities outside of Canada to refuse to

engage with Canadian-listed parties even if it is permitted under their local sanctions laws. We have also seen examples of individuals listed under Canadian sanctions being immediately targeted and listed by other countries relying on Canada's erroneous designation.

30. In its Recommendation 8, the 2017 Report called for the amendment of SEMA and the Sergei Magnitsky Law to "allow for an independent administrative process by which individuals and entities designated by these Acts can challenge that designation in a transparent and fair manner". Recommendation 9 was to "provide a clear rationale for the listing and delisting of persons under the Special Economic Measures Act and ensure that the information is easily accessible to the public". It is our experience that these recommendations have not been adopted.
31. Today, in acting for individuals and entities whom we believe have been incorrectly listed by Canada, we see no transparency from the Canadian government. No or only minimal details are provided on reasons for listing or on the progress of de-listing applications.
32. We have seen instances in which individuals improperly listed by Canada cannot open a bank account in other countries or are prevented from seeing a dying family member in Canada. Given the potentially devastating impact of these sanctions listings, Canada can and must do better in ensuring that there is a transparent process in place that allows listed parties to understand the basis of their designation and effectively challenge it.

Continued Blind Spots in Canada's Sanctions Regime

33. Canada's sanctions regime still has a particular "blind spot" for small and medium sized business, not-for-profits, non-governmental and charitable organizations and individual Canadians. Because of their limited resources, they are in a more vulnerable position when trying to mitigate the risk of sanctions exposure in their activities abroad.
34. When they approach GAC for guidance or advice on compliance with sanctions measures, they are often told to consult a sanctions lawyer. This can be costly and in many cases, a significant barrier for these organizations in achieving their objectives.
35. Among the most impactful changes Canada could make to its sanctions regime is to issue guidance that these organizations can rely on and to address the other issues raised above, including making greater use of general permits and exceptions and providing more clarity on listed persons. In addition to helping make GAC's heavy workload more manageable, these will reduce costs and barriers for SMEs and non-profit organizations who need to interface with Canada's sanctions regime.
36. As a final note, I want to acknowledge the very hard work of the skilled GAC officers and employees in the Sanctions Policy and Operations Coordination Division, especially over these last few months. This GAC division, created in 2018, has been extremely responsive – a significant improvement over what we have dealt with in the past. Government now just needs to give them the proper resources and tools to get the job done.
37. Thank you for this opportunity to discuss these issues and I look forward to addressing any comments or questions from the Committee members.