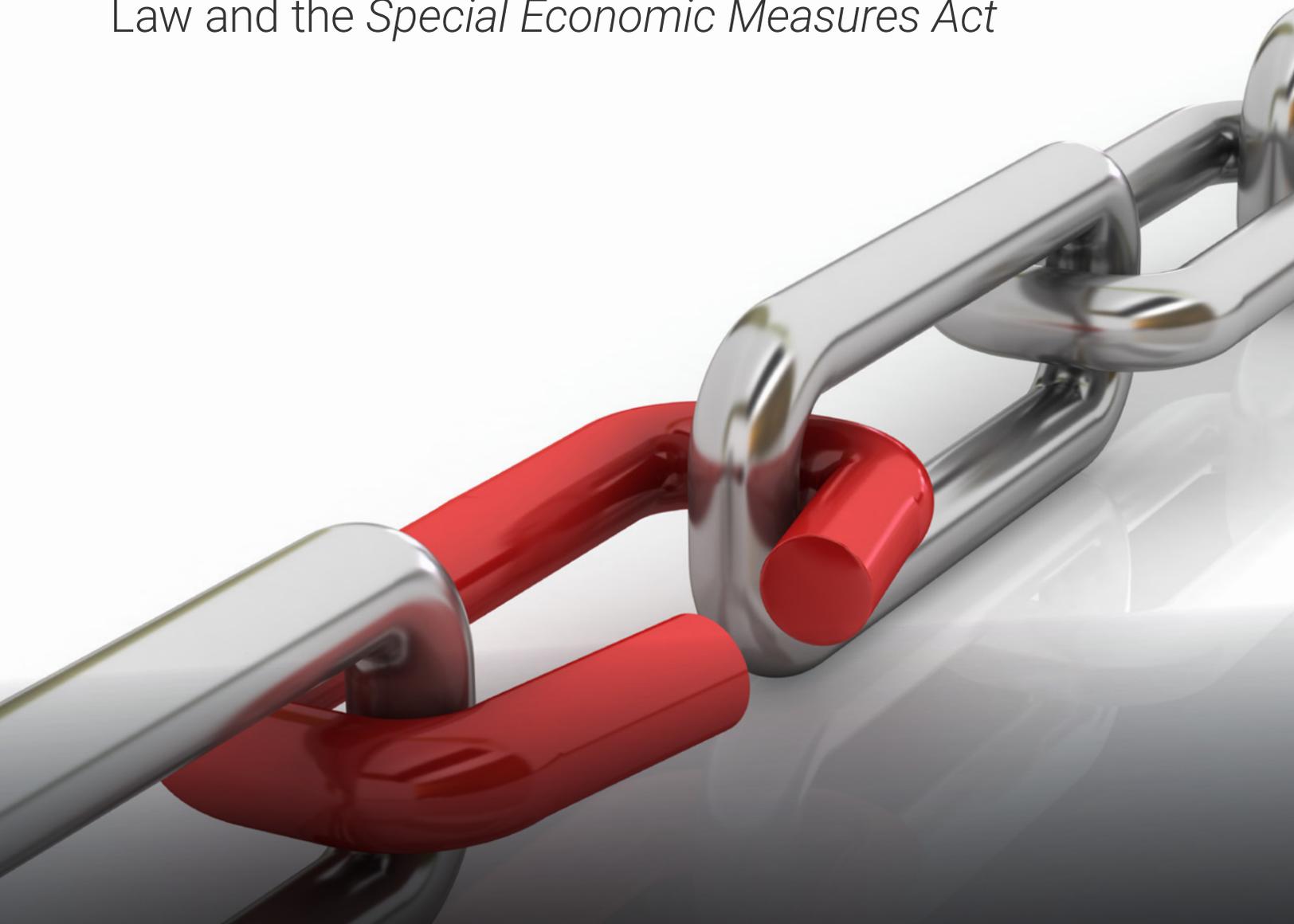


Strengthening Canada's Autonomous Sanctions Architecture:

Five-Year Legislative Review of the Sergei Magnitsky Law and the *Special Economic Measures Act*



Strengthening Canada's Autonomous Sanctions Architecture:
Five-Year Legislative Review of the Sergei Magnitsky Law and the *Special Economic Measures Act*



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ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Monday, October 17, 2022:

The Honourable Senator Boehm moved, seconded by the Honourable Senator Yussuff:

That the Standing Senate Committee on Foreign Affairs and International Trade be designated to conduct a comprehensive review of the provisions and operation of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* and the *Special Economic Measures Act*, pursuant to section 16 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*;

That, in accordance with subsection 16(2) of the Sergei Magnitsky Law, the committee submit its report on this review no later than June 23, 2023.

The question being put on the motion, it was adopted.

Interim Clerk of the Senate

Gérald Lafrenière

THE COMMITTEE MEMBERSHIP



The Honourable
Peter M. Boehm
Chair



The Honourable
Peter Harder,
P.C.
Deputy Chair

The Honourable Senators



Gwen Boniface



Mary Coyle



Marty Deacon



Amina Gerba



Stephen Greene



Leo Housakos



Michael L.
MacDonald



Mohamed-Iqbal
Ravalia



David Richards



Yuen Pau Woo

Ex-officio members of the committee:

The Honourable Senator Marc Gold, P.C., or Raymonde Gagné
The Honourable Senator Donald Plett or Yonah Martin

Other Senators who have participated in the study:

The Honourable Senator Diane Bellemare
The Honourable Senator Margaret Dawn Anderson
The Honourable Senator Bev Busson
The Honourable Senator Tony Loffreda
The Honourable Senator Paula Simons
The Honourable Senator Julie Miville-Dechêne

Parliamentary Information, Education and Research Services, Library of Parliament:

Nadia Faucher, Analyst
Brian Hermon, Analyst

Senate Committees Directorate:

Chantal Cardinal, Procedural Clerk
Louise Martel, Administrative Assistant

Senate Communications Directorate:

Amely Coulombe, Communication Officer

Recommendations

Recommendation 1

The Government of Canada should work with its allies to establish a formal mechanism for the coordination and implementation of autonomous sanctions and for the sharing of best practices on how to maximize sanctions effectiveness.

Recommendation 2

The Government of Canada should seek to be consistent in its global application of autonomous sanctions imposed in response to human rights violations.

Recommendation 3

The Government of Canada should provide clear policy guidance surrounding its authority to use the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, including by articulating the circumstances in which either Act may be used and the rationale for using one Act over the other.

Recommendation 4

The Government of Canada should specifically outline the objectives associated with a given sanctions regime and clearly communicate those objectives to the public.

Recommendation 5

The Government of Canada should work with its allies, civil society and the academic and research community to develop methodology to evaluate the effectiveness and impact of Canadian sanctions, including their effects and any consequences of an unintended nature.

Recommendation 6

The Government of Canada should regularly review the humanitarian exceptions in Canadian sanctions regulations to ensure that the public has

clarity and guidance in relation to the delivery of humanitarian assistance in a state targeted by Canadian sanctions.

Recommendation 7

As part of establishing a specialized sanctions bureau, the Government of Canada should ensure that the officials involved in administering Canada's sanctions receive training on the specifics of Canada's sanctions regimes.

Recommendation 8

As part of establishing the specialized sanctions bureau, the Government of Canada should expand interdepartmental coordination on sanctions so that all relevant departments and agencies, including the Canadian Security Intelligence Service and the Communications Security Establishment, can contribute to identifying individuals and entities that could be subject to autonomous sanctions by Canada.

Recommendation 9

The Government of Canada should invest greater financial and human resources in enforcing sanctions by providing new funding specifically for this purpose to the Royal Canadian Mounted Police and the Canada Border Services Agency.

Recommendation 10

The Government of Canada should provide more detailed identifying information on sanctioned individuals and entities in the regulations made pursuant to the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. The government should also include detailed identifying information in the Consolidated Canadian Autonomous Sanctions List, along with the justifications for listing individuals and entities.

Recommendation 11

The Government of Canada should evaluate the feasibility, advantages and disadvantages of having the consolidated list include individuals sanctioned under the *United Nations Act*, the *Freezing Assets of Corrupt Foreign Officials Act* and the terrorist entity provisions of the *Criminal Code*.

Recommendation 12

The Government of Canada should amend the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to require the government to table in Parliament a detailed annual report on the implementation of Canada's sanctions regimes. This report could include information on the impact and effectiveness of Canada's sanctions regimes and the value of frozen assets and blocked transactions under each sanctions regime.

Recommendation 13

The Government of Canada should make it a priority to develop and provide the public and the private sector with specific and comprehensive written guidance on the interpretation of Canada's autonomous sanctions laws and regulations. This guidance should be updated in a regular and timely manner to reflect new regulations made under Canada's sanctions regimes.

Recommendation 14

The Government of Canada should evaluate how it could use its existing authority to grant general permits under the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

Recommendation 15

The Government of Canada should establish an effective, transparent process to review applications for delisting with specific service standards. The Government of Canada should also inform individuals and entities subject to autonomous sanctions of the action taken against them, along with an explanation as to why they have been sanctioned and how to submit an application for delisting.

Recommendation 16

The Government of Canada should establish specific service standards for the processing of permit applications sought in relation to the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

Recommendation 17

The Government of Canada should engage with its allies, including as part of the Russian Elites, Proxies and Oligarchs Task Force, to share best practices regarding the forfeiture and repurposing of sanctioned assets.

Recommendation 18

The Government of Canada should amend the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to require that committees of the Senate and the House of Commons conduct a comprehensive review of the two Acts every 10 years.

Recommendation 19

The Government of Canada should amend the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to require that new regulations made under either Act include a sunset clause that would prescribe a date for the termination of a sanctions regime unless renewed prior to the expiry of the term.

Strengthening Canada's Autonomous Sanctions Architecture:
Five-Year Legislative Review of the Sergei Magnitsky Law and the Special Economic
Measures Act

Introduction

Pursuant to an order received from the Senate on October 17, 2022, the Standing Senate Committee on Foreign Affairs and International Trade (the committee) has conducted a legislative review of Canada's two core pieces of autonomous sanctions legislation: the *Justice for Victims of Corrupt Foreign Official Act (Sergei Magnitsky Law)* (Sergei Magnitsky Law) and the *Special Economic Measures Act (SEMA)*.¹ The order was issued pursuant to section 16(1) of the Sergei Magnitsky Law which requires that parliamentary committees carry out a comprehensive review of the provisions and operation of these two Acts within five years of the Sergei Magnitsky Law coming into force. The Sergei Magnitsky Law received Royal Assent on October 18, 2017. The law is named in honour of Sergei Magnitsky, a Russian tax lawyer who died in a Moscow prison in 2009 after being detained without trial, tortured and denied medical care.

As part of its legislative review, the committee heard from more than 20 witnesses over the course of approximately 12 hours of testimony. These witnesses included legal and banking experts, academics and researchers, members of civil society, as well as officials from three government departments. The Honourable Raynell Andreychuk – a former Senator, former chair of the committee and the sponsor of Bill S-226 (which enacted the Sergei Magnitsky Law, among other measures) – and Bill Browder, who has led a global campaign to ensure justice for Sergei Magnitsky and other victims of human rights abuse, also testified before the committee. In addition, the committee received several written briefs which informed its work and recommendations.²

The committee's study was an occasion to review lessons learned since the enactment of the Sergei Magnitsky Law five years ago. It was also a timely opportunity to consider whether Canada's autonomous sanctions remain fit for purpose given the current geopolitical situation. The study was undertaken against the backdrop of Russia's unprovoked, illegal and barbaric war on Ukraine. Russia's aggression against Ukraine has caused the largest and fastest displacement of people in Europe since the Second World War. Within Ukraine, approximately 18 million people are in urgent need of humanitarian assistance and protection. Schools, hospitals and critical infrastructure – including roads, bridges and electrical grids – have been destroyed. Most appallingly, thousands of civilians have been killed and injured, and evidence of war crimes and other

¹ Senate, *Journals*, 1st Session, 44th Parliament, October 17, 2022.

² Standing Senate Committee on Foreign Affairs and International Trade (AEFA), *Briefs and Other Documents*.

human rights atrocities have been widely documented. As part of its investigation into alleged international crimes committed in Ukraine, the International Criminal Court issued an arrest warrant for Russian President Vladimir Putin on March 17, 2023. The arrest warrant alleges that President Putin is responsible for the unlawful deportation and transfer of children from occupied areas of Ukraine to Russia.³

The international community has responded to Russia's aggression against Ukraine with the most comprehensive sanctions ever imposed on a major global economy. In coordination with its allies, the Government of Canada has imposed dozens of rounds of sanctions on Russian individuals and entities, as well as broad restrictions on sectors of the Russian economy. Targeted sanctions have also been imposed against Belarus for supporting Russia's violation of the sovereignty and territorial integrity of Ukraine.

Part one of the committee's report puts Canada's autonomous sanctions regimes in context. It begins with background on the Sergei Magnitsky Law and the SEMA, before considering the current global sanctions environment. Next, the report examines testimony regarding how to improve the coherence, and better assess the effectiveness, of Canada's autonomous sanctions regimes. The second part of the report looks at the domestic machinery of Canada's autonomous sanctions regimes, including the administration and enforcement of Canadian sanctions. This part of the report examines the transparency of Canada's sanctions regimes, including how the government communicates sanctions to the public, and how it interacts with the private sector to facilitate sanctions compliance. The report concludes by examining issues surrounding due process and procedural fairness in the context of Canada's sanctions administration.

³ International Criminal Court, *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, Press release, March 17, 2023.

Part I: Canada's Autonomous Sanctions Regimes in Context

The Legislative Framework

Canada imposes sanctions by way of the regulatory authority granted by three acts: the *United Nations Act* (UN Act), the Sergei Magnitsky Law, and the SEMA.⁴ The UN Act is the legal mechanism by which the Government of Canada implements decisions of the UN Security Council. A decision by the UN Security Council to impose economic and trade sanctions imposes legal obligations on UN member states to introduce the relevant measures into domestic law. By contrast, the Sergei Magnitsky Law and the SEMA allow for the application of sanctions in the absence of a UN Security Council resolution. Referred to as “autonomous sanctions,” the Sergei Magnitsky Law and the SEMA allow Canada to impose restrictive measures based on its foreign policy considerations when certain qualifying criteria as set out in the two statutes are met.⁵

The Sergei Magnitsky Law empowers the Governor in Council to impose sanctions on foreign nationals who are responsible for, or complicit in, gross violations of human rights⁶ and acts of significant corruption. Under the SEMA, the Governor in Council may impose sanctions on a foreign state, or specified individuals or entities within a state, when an international organization that Canada is a member of has called for economic measures to be taken against a foreign state; when a grave breach of international peace and security has occurred that has resulted in an international crisis; when gross and systematic

⁴ While the *United Nations Act*, the *Special Economic Measures Act* (SEMA), and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* (Sergei Magnitsky Law) are the core pieces of Canada's sanctions regime, other legislation also plays a complementary role. This legislation includes the *Immigration and Refugee Protection Act*, the *Export and Import Permits Act*, the *Freezing Assets of Corrupt Foreign Officials Act*, and the *Criminal Code*. For more information on the role played by these pieces of legislation in the context of Canada's sanctions architecture, see Scott McTaggart, *Sanctions: The Canadian and International Architecture*, Publication no. 2019-45-E, Library of Parliament, November 18, 2019; and Government of Canada, “[Frequently Asked Questions](#),” *Canadian Sanctions*.

⁵ On April 20, 2023, Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on March 28, 2023, was introduced in the House of Commons. Division 10 of Part 4 of Bill C-47 proposes to amend the SEMA and the Sergei Magnitsky Law, including by adding an interpretation of “deemed ownership,” by expanding some of the restricted or prohibited activities under SEMA to individuals “outside Canada who” are not Canadians, and by listing additional departments which may assist Global Affairs Canada (GAC) in the administration and enforcement of the statutes.

⁶ More specifically, the human rights trigger in the Sergei Magnitsky Law allows for sanctions to be imposed when a foreign national is responsible for – or complicit in – gross violations of human rights against government whistleblowers, or individuals who are seeking to expose illegal activity or “obtain, exercise, defend or promote internationally recognized human rights and freedoms.” See: *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, S.C. 2017, c. 21, s. 4(2).

human rights violations have been committed in a foreign state; or when acts of significant corruption have been committed by public officials or their associates in a foreign state. The latter two triggers for imposing sanctions under the SEMA – gross and systematic human rights violations and acts of significant corruption – were added to the SEMA in 2017 pursuant to amendments made to the Act by Bill S-226.

Orders and regulations made under the Sergei Magnitsky Law and the SEMA permit the imposition of a number of obligations, restrictions and prohibitions, including the seizure of assets, as well as restrictions on financial transactions and the transfer of technical information. These types of restrictions are often referred to as targeted sanctions as they are intended to be narrowly directed against specific individuals or entities. Targeted sanctions stand in contrast, for example, with economic embargoes which prohibit most economic activity with a designated country. As noted above, while measures imposed under the Sergei Magnitsky Law may only be applied in reference to designated foreign nationals, the SEMA is broader in scope and allows for measures to be imposed in relation to states and entities.

In June 2022, Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures, received Royal Assent.⁷ That bill amended the SEMA and the Sergei Magnitsky Law to allow the minister to apply to a court requesting the forfeiture of assets in Canada frozen by a Governor in Council Order under either Act. The amendments made pursuant to Bill C-19 also allow for the disposal of forfeited property and for the proceeds to be used for specified purposes, including to compensate victims affected by a grave breach of international peace and security. Alexandre Lévêque, Assistant Deputy Minister, Strategic Policy, Global Affairs Canada (GAC), referred to these amendments as a “significant new development,” noting that Canada was the first country in the world to pass this kind of legislation.⁸

The Global Sanctions Environment

The sanctions environment in Canada and globally has undergone a significant transformation in recent years. The committee heard that dynamics at the UN Security Council – where the five permanent members (China, France, Russia, the United Kingdom (U.K.) and the United States (U.S.)) hold veto power – have become increasingly contentious. Clara Portela, Konrad Adenauer Visiting

⁷ [Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures](#), 44th Parliament, 1st Session.

⁸ AEFA, [Evidence](#), October 26, 2022 (Alexandre Lévêque).

Scholar on Transatlantic Relations, Centre for European Studies, Carleton University, told the committee that the frequency of sanctions imposed by the UN Security Council has been decreasing over time. According to Professor Portela, between 1990 and 2015, the UN Security Council established 25 sanctions regimes.⁹ By contrast, she indicated that there have only been three UN Security Council sanctions regimes since 2015, the most recent one of which was established against Haiti in late 2022.

Professor Portela told the committee that the “growing reticence of the Russian Federation to agree to any new sanctions regimes” was a specific reason for the decline in UN sanctions regimes. According to Professor Portela, “[t]he moment in which Russia became the target of Western sanctions in the year 2014, after the annexation of Crimea, it became far less favourable to the imposition of new sanctions regimes or even to the renewal of previous sanctions regimes.”¹⁰

Overall, Erica Moret, Senior Researcher and Coordinator, Sanction and Sustainable Peace Hub, Geneva Graduate Institute, described the current global sanctions context as follows:

Worldwide, a fast-growing number of countries and regional organizations around the world, spanning advanced economies, emerging powers and developing countries, are employing autonomous or unilateral sanctions outside the UN framework in an increasing variety of contexts for an ever-greater assortment of objectives and against a mounting range of targets. This means that there's a mounting, growing complexity of sanctions and other regulations.¹¹

In her brief, Ms. Moret indicated that the increase in autonomous sanctions globally is due to the impasse at the UN Security Council, as well as the flexibility afforded by their use.¹² She also told the committee that Canada is increasingly working in multinational sanctions coalitions with allies such as the U.S., the U.K., and the European Union (EU), a trend that she said is “likely to continue in the months and years to come.”¹³

⁹ AEFA, *Evidence*, October 27, 2022 (Clara Portela). There are currently 14 active UN Security Council mandated sanctions regimes. For more information on current and terminated UN Security Council sanctions regimes, see United Nations Security Council, *Sanctions*.

¹⁰ AEFA, *Evidence*, October 27, 2022 (Clara Portela).

¹¹ AEFA, *Evidence*, December 1, 2022 (Erica Moret).

¹² *Brief* submitted to the committee by Erica Moret, December 1, 2022.

¹³ *Ibid.*

Despite the increase in their use, the committee also heard that autonomous sanctions are not without their detractors, with some states refusing to accept their legitimacy or legal authority. Craig Martin, Professor and Co-Director, International and Comparative Law Center, Washburn University School of Law, noted that “some autonomous sanctions, particularly comprehensive sanctions regimes, may be viewed as being coercive and thus rise to the level of constituting unlawful intervention in the sovereign affairs of the target state.”¹⁴ In particular, Professor Martin said that “many states in the global south” have taken the position at the UN and elsewhere that these kinds of sanctions are a violation of the principle of non-intervention.

In Canada, the declining use of the UN Act has occurred in parallel with a significant increase in the application of autonomous sanctions under the SEMA. The SEMA was used only twice – in relation to the former Yugoslavia and Haiti – in the years between its enactment in 1992 and 2006. In contrast, Mr. Lévêque noted, the SEMA has been used on more than 120 occasions since 2007.¹⁵ Today, SEMA regulations apply to 15 countries.¹⁶ Mr. Lévêque summarized this shift, explaining that “[o]ver the past five years, Canada’s use of sanctions as a targeted diplomatic tool of last resort has shifted to become an option of preference utilized early on to address the most pressing international issues.”¹⁷

While Canadian sanctions practice was already in the midst of a transition when Russia initiated its full-scale invasion of Ukraine in February 2022, this shift has since intensified dramatically. When he testified before the committee in October 2022, Mr. Lévêque indicated that Canada had imposed more than 44 rounds of autonomous sanctions in 2022, representing an 83% increase over the total from the previous four years combined.¹⁸ In the time since his appearance, this total has continued to increase, with multiple sanctions packages having been imposed under the SEMA, including on individuals or entities from Belarus, Myanmar, Haiti, Iran and Russia.¹⁹

The overwhelming majority of Canadian targeted sanctions under the SEMA have been imposed in response to Russia’s aggression in Ukraine. Since Russia’s invasion of Ukraine on February 24, 2022, Canada has imposed

¹⁴ AEFA, *Evidence*, November 16, 2022 (Craig Martin). For more of Mr. Martin’s analysis regarding the use of sanctions under international law, see: Craig Martin, *Economic Sanctions Under International Law: A Guide for Canadian Policy*, Rideau Institute, November 2021.

¹⁵ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

¹⁶ Government of Canada, *Canadian sanctions legislation*.

¹⁷ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

¹⁸ *Ibid.*

¹⁹ For the complete list of regulations made under the *Special Economic Measures Act*, see: “Regulations made under this Act,” *Special Economic Measures Act*, S.C. 1992, c. 17.

sanctions on more than 1,600 individuals and entities from and in Russia, Ukraine and Belarus. The vast majority of these targeted sanctions have been imposed using the grave breach of international peace and security trigger under the SEMA.²⁰ Specifically, these sanctions impose an asset freeze and dealings prohibition on designated persons, barring persons in Canada and Canadians abroad from dealing in property held by or on behalf of a designated person or making goods available to such a person. Canada has also imposed wide bans on the provision of goods and services to Russia, including prohibitions related to dealings with Russia's oil, gas, chemical and manufacturing sectors.²¹

International Coordination and Cooperation

Since the invasion of Ukraine in February 2022, Canada has imposed multiple rounds of sanctions on Russia under the SEMA in coordination with allies, including the U.S., the U.K., and the EU. While international coordination is customary for sanctions imposed pursuant to UN Security Council resolutions, the degree of multilateral cooperation with respect to the autonomous sanctions imposed on Russia has been unprecedented.

Witnesses indicated that such coordination is critical from a sanctions' effectiveness perspective. Meredith Lilly, Associate Professor and Simon Reisman Chair in International Affairs, Norman Paterson School of International Affairs, Carleton University, told the committee that research indicates that when "we act together in a coordinated, multilateral approach, we're more likely to be successful than if we go [at] it alone." She added that it is important to work "with big countries because that is where it's likely the assets are going to be located."²² Mr. Lévêque put it bluntly: "[w]e cannot act alone. Sanctions are only effective when they are done along with a number of other countries. Maximum coordination leads to the maximum impact."²³

Notwithstanding overall sanctions coordination in response to Russia's aggression in Ukraine, the committee heard that Canada, the U.S., the U.K., and the EU were missing opportunities to achieve greater impact by not

²⁰ See: Minister of Justice, *Special Economic Measures (Russia) Regulations*, SOR/2014-58, current to April 4, 2023.

²¹ Ibid; and Government of Canada, *Canadian Sanctions Related to Russia*. Canada has also imposed multiple rounds of sanctions on Belarus in response to its support for Russia's aggression against Ukraine. See: Minister of Justice, *Special Economic Measures (Belarus) Regulations*, SOR/2020-214, current to April 4, 2023; and Government of Canada, *Canadian Sanctions Related to Belarus*. Sanctions have also been imposed on Ukrainian individuals and entities who have acted in support of Russia's aggression against Ukraine. See: Minister of Justice, *Special Economic Measures (Ukraine) Regulations*, SOR/2014-60, current to April 4, 2023; and Government of Canada, *Canadian Sanctions Related to Ukraine*.

²² AEFA, *Evidence*, November 2, 2022 (Meredith Lilly).

²³ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

“multilateralizing” their Magnitsky-style sanctions specifically.²⁴ Magnitsky-style sanctions refer to those expressly imposed in response to gross violations of human rights and acts of significant corruption. As noted above, in Canada, most of the targeted sanctions on Russia have been imposed using the grave breach of international peace and security trigger under the SEMA. The practice of “multilateralizing” sanctions occurs when more than one jurisdiction applies sanctions against the same person or entity.

Amanda Strayer, Supervising Staff Attorney, Accountability, Human Rights First, referred the committee to a report produced by Human Rights First and other non-governmental organizations in November 2022 entitled *Multilateral Magnitsky Sanctions at Five Years*.²⁵ That report found that the overwhelming majority of Magnitsky-style sanctions are imposed without structured cooperation between allies. According to the report, by not multilateralizing sanctions, Canada and its allies are missing opportunities to increase their impact on a targeted person, including by freezing more of their assets, further restricting their ability to travel and blocking their ability to engage in financial transactions in other jurisdictions.²⁶

Criticisms were also levied for the perceived selectivity with which some countries employ their Magnitsky-style sanctions programs. For example, Elisabeth Braw, Senior Fellow, Foreign and American Defence Policy, American Enterprise Institute, noted that there “is almost a complete lack of Magnitsky sanctions imposed on Southeast Asia where the U.S. and Europe don’t really have very strong geopolitical interests.”²⁷ This point was also made in the *Multilateral Magnitsky Sanctions at Five Years* report, which indicated that Canada, the U.S., the U.K., and the EU have focused “disproportionately little attention on certain regions of the world, in particular South and Central Asia.”²⁸ Ms. Braw argued that if Magnitsky-style sanctions are to be respected, they need to be viewed – not as a tool to be used against adversaries – but as an instrument to safeguard human rights in every country where such rights are under threat.²⁹

Witnesses indicated that the autonomous sanctions field would benefit from more formalized mechanisms for coordination. Brandon Silver, Director of Policy

²⁴ For a comparison of Magnitsky-style legislation enacted in Canada, the United States, the United Kingdom and the European Union, see: Martin Russell, *Global human rights sanctions: Mapping Magnitsky laws: The US, Canadian, UK and EU approach*, European Parliamentary Research Service, Briefing, November 2021.

²⁵ AEFA, *Evidence*, February 15, 2023 (Amanda Strayer); Human Rights First et al., *Multilateral Magnitsky Sanctions at Five Years*, November 2022.

²⁶ Human Rights First et al., *Multilateral Magnitsky Sanctions at Five Years*, November 2022.

²⁷ AEFA, *Evidence*, February 2, 2023 (Elisabeth Braw).

²⁸ Human Rights First et al., *Multilateral Magnitsky Sanctions at Five Years*, November 2022.

²⁹ AEFA, *Evidence*, February 2, 2023 (Elisabeth Braw).

and Projects, Raoul Wallenberg Centre for Human Rights, recommended that an international contact group, composed of jurisdictions with Magnitsky-style laws, be established to assist with the coordination and multilateralization of sanctions implementation.³⁰ According to a brief submitted by Mr. Silver on behalf of the Raoul Wallenberg Centre for Human Rights, countries with Magnitsky-style laws are today “limited to informal bilateral conversations between sanctions units and occasional intelligence sharing on prospective targets.”³¹ The brief argues that an international contact group would not only assist with effective sanctions implementation but would also “provide a forum for the sharing of best practices and learning from the implementation of this relatively new legal mechanism.”

The creation of such a formalized body for coordinating autonomous sanctions amongst allies was an idea also suggested by Ms. Moret. She testified:

Given the fact that Canada is highly likely to continue working very closely with its other partners and potentially an expanding group of countries, the need for formalized structures and processes to allow for this type of collaboration to happen in as streamlined a manner as possible is essential. I think we've seen some positive steps on this front in recent times with regard to Russia's sanctions that could potentially be expanded elsewhere.³²

More formalized mechanisms for the coordination of autonomous sanctions may also enable Canada and its allies to explore new ways to use sanctions as a foreign policy tool. For example, Ms. Moret indicated that the use of sanctions to tackle modern slavery and human trafficking in an autonomous capacity is not currently widespread but “is starting to grow to varying degrees” within many western countries.³³ Ms. Strayer also pointed to a number of other human rights abuses, such as violence against LGBTQ and Indigenous persons, that she suggested have been overlooked by sanctions administrators.³⁴

In a context where the UN Security Council is increasingly perceived as unable to function properly, the need to work closely with like-minded countries to maximize the impact of autonomous sanctions has become all the more crucial. The committee believes that, while the SEMA and the Sergei Magnitsky Law give Canada the power to act alone, the Canadian government should always

³⁰ AEFA, *Evidence*, February 15, 2023 (Brandon Silver).

³¹ *Brief* submitted to the committee by the Raoul Wallenberg Centre for Human Rights, February 2023.

³² AEFA, *Evidence*, December 1, 2022 (Erica Moret).

³³ *Brief* submitted to the committee by Erica Moret, December 1, 2022.

³⁴ AEFA, *Evidence*, 15 February 2023 (Amanda Strayer).

seek to impose autonomous sanctions in concert with its allies. A formal mechanism for the coordination and implementation of autonomous sanctions would provide Canada and its allies opportunities to better share intelligence and best practices, as well as tools to streamline and more effectively impose such measures.

Recommendation 1

The Government of Canada should work with its allies to establish a formal mechanism for the coordination and implementation of autonomous sanctions and for the sharing of best practices on how to maximize sanctions effectiveness.

Recommendation 2

The Government of Canada should seek to be consistent in its global application of autonomous sanctions imposed in response to human rights violations.

The Coherence of Canada's Autonomous Sanctions Regimes

Mr. Silver told the committee that Canada has become a global leader in imposing Magnitsky-style sanctions. According to Mr. Silver, among the jurisdictions that have Magnitsky-style sanctions legislation, Canada is second only to the U.S. in the number of Magnitsky-style sanctions that have been imposed. He argued that this leadership was "all the more admirable and remarkable when one considers that we have a fraction of the resources of any of them, whether the EU, [the] U.K., or the U.S."³⁵

At first blush, Mr. Silver's comments would appear to contradict the testimony of other witnesses who indicated that the Sergei Magnitsky Law has fallen into disuse. Since it was enacted in 2017, the law has only been used in response to five situations; moreover, it has not been used since 2018. In total, only 70 foreign nationals have been listed pursuant to the Sergei Magnitsky Law.³⁶

However, Mr. Silver was referring not only to sanctions imposed under the Sergei Magnitsky Law, but also to what are termed *Magnitsky-style* sanctions. As noted earlier, Bill S-226 amended the SEMA to add gross and systematic

³⁵ AEFA, *Evidence*, February 15, 2023 (Brandon Silver).

³⁶ Minister of Justice, *Justice for Victims of Corrupt Foreign Officials Regulations*, SOR-2017-233, current to April 4, 2023.

human rights violations and acts of significant corruption as triggers for imposing sanctions. In other words, in effect, every time the SEMA is used to implement targeted sanctions in response to gross and systematic human rights violations and acts of significant corruption, Magnitsky-style sanctions are being imposed.

Nevertheless, the committee heard that confusion exists about why the Sergei Magnitsky Law is not itself being used. Mr. Browder told the committee that it “felt like a great victory” when Canada enacted the Sergei Magnitsky Law in 2017. However, noting that the law has not been used in almost five years, Mr. Browder said: “I scratch my head and I ask, why not? I don’t have a good explanation.”³⁷ For its part, B’nai Brith Canada posited the following in a brief:

It is not clear why the Sergei Magnitsky Law has fallen into disuse. Perhaps it is due to bureaucratic inertia in the sense that government officials are more familiar with the Special Economic Measures Act, and so for that reason prefer to use it over the Sergei Magnitsky Law. Perhaps government officials prefer the flexibility provided by the Special Economic Measures Act to enact sanctions via regulations. Perhaps government officials favour the Special Economic Measures Act because it allows for the implementation of targeted sanctions on entities as well as individuals. Perhaps it is a combination of several of these factors.³⁸

These possible explanations notwithstanding, B’nai Brith argued that “the fact that the Sergei Magnitsky Law is not, itself, used for the implementation of targeted sanctions leads to a confusing and incoherent sanctions regime in general.” This was a perspective shared by Mr. Browder who told the committee “[i]t is not clear to me why Canada has two pieces of legislation that have the same basic impact.”³⁹

Mr. Silver called it confusing, including for allies, that Canada has two “seemingly disparate but largely similar sanctions mechanisms.” A brief submitted by the Raoul Wallenberg Centre for Human Rights expanded on this point, noting:

the current communications strategy in government
announcements regarding the implementation of sanctions

³⁷ AEFA, *Evidence*, November 24, 2022 (Bill Browder).

³⁸ *Brief* submitted to the committee by B’nai Brith Canada, December 22, 2022.

³⁹ AEFA, *Evidence*, November 24, 2022 (Bill Browder).

under the various frameworks gives the erroneous impression of their being rather disparate, even though they have the same effects and are implemented for the same acts of criminality.⁴⁰

Mr. Silver referred to much of the discussions surrounding when to use the SEMA over the Sergei Magnitsky Law, or vice versa, as “perhaps a question of messaging rather than substance or legal thresholds.” For the sake of clarity, he suggested that Canada refer to all human rights and corruption designations as “Magnitsky-style sanctions” regardless of whether they are imposed pursuant to the SEMA or the Sergei Magnitsky Law. According to Mr. Silver, this is the practice used in the U.S. regardless of the executive or legislative instrument used to impose human rights or corruption-related sanctions.⁴¹

For its part, B’nai Brith stated in its brief that there “is a lack of transparency concerning which sanctions regime is used in which circumstances, and rationales for using one over another, exacerbating the general confusion surrounding the sanctions regimes as a whole.” B’nai Brith called on the Government of Canada to provide publicly available guidance on which legislation is used in which circumstances and for Canada’s various pieces of sanctions legislation to be used in an “internally consistent and cohesive manner.”⁴²

Clarifying the Use of the SEMA and the Sergei Magnitsky Law

In response to a question about how the SEMA and the Sergei Magnitsky Law differ, Mr. Lévesque told the committee that the two pieces of legislation “are heavily complementary,” have a “significant amount of overlap,” and that “one does not punish or dissuade or deter more than the other.” According to Mr. Lévesque, the main gap between the two statutes concerns the question of inadmissibility to Canada.

⁴⁰ [Brief](#) submitted to the committee by the Raoul Wallenberg Centre for Human Rights, February 2023.

⁴¹ AEFA, [Evidence](#), February 15, 2023 (Brandon Silver). United States (U.S.) sanctions may be established by way of congressional legislation or presidential executive orders pursuant to authorities granted to the President by Congress. In 2016, the U.S. enacted the *Global Magnitsky Human Rights Accountability Act*, which authorizes the President to impose sanctions against any foreign persons or entities responsible for gross violations of human rights or acts of significant corruption. The U.S. also imposes sanctions pursuant to *Executive Order 13818*, which implements and builds on the Global Magnitsky Act by expanding the range of sanctionable conduct and persons. Originally signed in December 2017 for a period of one year, that executive order has been renewed annually and is currently in place under December 2023. For more information on the U.S. Global Magnitsky Act and *Executive Order 13818*, and how the two mechanisms work in parallel, see: Michael A. Weber, [The Global Magnitsky Human Rights Accountability Act: Scope, Implementation, and Considerations for Congress](#), Congressional Research Service, December 3, 2021.

⁴² [Brief](#) submitted to the committee by B’nai Brith Canada, December 22, 2022.

Currently, being subject to sanctions in relation to gross human rights violations and acts of significant corruption are grounds for inadmissibility to Canada under the *Immigration and Refugee Protection Act*. However, SEMA sanctions imposed in response to a grave breach of international peace and security are not currently grounds for inadmissibility.⁴³ Mr. L  v  que indicated that this gap is being addressed by Bill S-8, An Act to amend the Immigration and Refugee Protection Act, to make consequential amendments to other Acts and to amend the Immigration and Refugee Protection Regulations. Should it be adopted, Mr. L  v  que indicated that Bill S-8 would close the gap between the SEMA and the Sergei Magnitsky Law to the point where the "Venn diagram between the two is at 90% similar."⁴⁴ As of the tabling of this report, Bill S-8 was at committee stage in the House of Commons.⁴⁵

Put simply, the significant overlap between the SEMA and the Sergei Magnitsky Law raises the question of why Canada requires both pieces of autonomous sanctions legislation. Andrea Charron, Director and Associate Professor, Centre for Defence and Security Studies, University of Manitoba, said Canada enacted the Sergei Magnitsky Law in 2017 when the SEMA already had "the potential to achieve what the [Sergei Magnitsky Law] sought to address."⁴⁶ Put differently, it may have been possible for the objectives of Bill S-226 to have been met by amending the SEMA in a comprehensive way rather than establishing a second autonomous sanctions statute.

While the committee has concerns about the coherence of the SEMA and the Sergei Magnitsky Law, it is not recommending a repeal or legislative overhaul of either Act. Instead, the committee urges the Government of Canada to take the advice of witnesses and provide clarity and policy guidance surrounding the use of both Acts.

That policy guidance is also an opportunity to address other inconsistencies in the Acts and concerns about legislative coherence. For example, the Honourable Raynell Andreychuk called on the government to better define what is meant by "gross and systemic human rights violations," which is the language used for the human rights trigger in the SEMA. The word "systematic" does not appear in the human rights trigger in the Sergei Magnitsky Law, which

⁴³ For more information on Bill S-8, see Madalina Chesoi and Brendan Naef, *Bill S-8: An Act to amend the Immigration and Refugee Protection Act, to make consequential amendments to other Acts and to amend the Immigration and Refugee Protection Regulations*, Preliminary (unedited) version, Library of Parliament, May 27, 2022.

⁴⁴ AEFA, *Evidence*, October 26, 2022 (Alexandre L  v  que).

⁴⁵ For the current status of Bill S-8, see: LEGISinfo, *Bill S-8, An Act to amend the Immigration and Refugee Protection Act, to make consequential amendments to other Acts and to amend the Immigration and Refugee Protection Regulations*, 44th Parliament, 1st Session.

⁴⁶ AEFA, *Evidence*, November 2, 2022 (Andrea Charron).

allows for sanctions to be applied against a foreign national who is responsible for or complicit in “gross violations of human rights.” The Honourable Raynell Andreychuk questioned whether “systematic” excluded a single horrific act or a series of acts.⁴⁷ She told the committee that “[t]he government should explain that.” The committee agrees.

Recommendation 3

The Government of Canada should provide clear policy guidance surrounding its authority to use the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, including by articulating the circumstances in which either Act may be used and the rationale for using one Act over the other.

Setting Objectives for Canadian Sanctions

Over the course of its hearings, the committee heard testimony about the various purposes for which sanctions may be imposed and about the challenges associated with measuring their impact. While there is no universally accepted methodology for assessing whether “sanctions work,” there was general consensus among witnesses that any attempt to evaluate the effectiveness of sanctions must begin by assessing outcomes against objectives.

The committee heard from witnesses that sanctions may be imposed for a wide number of reasons. Historically, the committee was informed that sanctions have generally been imposed to compel behavioural change, to restrict or deter a target’s ability to carry out an activity now or in the future, or to signal disapproval of a target’s actions or policies. Several witnesses also highlighted symbolism or a desire to show solidarity as rationales for imposing sanctions. For example, Evgenia Kara-Murza, the spouse of jailed Russian opposition politician and journalist Vladimir Kara-Murza, explained that Magnitsky-style sanctions send a “message of solidarity and support” to people living under autocratic regimes.⁴⁸ Speaking about the sanctions that have been imposed on Russia in a global context, Mr. Lévêque said that the hope is that “other countries are watching this and are taking note of the fact that when the international community witnesses truly egregious acts, we are prepared to step up.”⁴⁹

⁴⁷ AEFA, *Evidence*, February 15, 2023 (The Honourable Raynell Andreychuk).

⁴⁸ AEFA, *Evidence*, November 24, 2022 (Evgenia Kara-Murza).

⁴⁹ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

Professor Portela also pointed the committee to research suggesting that one of the purposes of sanctions is to increase the popularity of the sender government. According to this research, which was focused on the United States, sanctions might be imposed – not with the idea of bringing about a policy change – but with the objective of showing that administrations are proactively dealing with an international crisis.⁵⁰

A desire to punish was also emphasized by witnesses as a possible reason for imposing sanctions. Professor Lilly explained that the adoption of the Sergei Magnitsky Law in 2017 reflected a desire on the part of parliamentarians across the political spectrum to punish those responsible for Sergei Magnitsky's death.⁵¹ For her part, Ms. Kara-Murza explained that Magnitsky-style sanctions tell actual or would-be violators of human rights "that they can't violate human rights and go unpunished."⁵² While suggesting that "most sanctioning powers or actors would claim that their sanctions are not intended to punish," Ms. Moret said that in the case of sanctions on Russia "there does seem to be the very strong punitive function there."⁵³

Professor Portela told the committee that the most important factor for evaluating the effectiveness of sanctions is first to determine their objective. She commented:

If human rights abuses have been perpetrated and we impose sanctions, what action exactly are we expecting? Do we want the perpetrators to be brought to justice in the country where the events have taken place? Do we want an indictment by the International Criminal Court? Do we want the violence or the abuses to stop? How effective the sanctions are really depends on the objectives.⁵⁴

Professor Portela said that, on the basis of existing legislation, "it is not very clear — neither to the general public nor to perpetrators or victims — what exactly the listing of these perpetrators is meant to achieve." Without such an

⁵⁰ AEFA, *Evidence*, October 27, 2022 (Clara Portela). Professor Portela provided the committee with following two articles that elaborate on this strand of research: Taehee Whang, "[Playing to the Home Crowd? Symbolic Use of Economic Sanctions in the United States](#)," *International Studies Quarterly*, Vol. 55, No. 3, September 2011, pp. 787–801; and A. Cooper Drury, "Sanctions as Coercive Diplomacy: The U.S. President's Decision to Initiate Economic Sanctions," *Political Research Quarterly*, Vol. 54, No. 3, September 2001, pp. 485-508.

⁵¹ AEFA, *Evidence*, November 2, 2022 (Meredith Lilly).

⁵² AEFA, *Evidence*, November 24, 2022 (Evgenia Kara-Murza).

⁵³ AEFA, *Evidence*, December 1, 2022 (Erica Moret).

⁵⁴ AEFA, *Evidence*, October 27, 2022 (Clara Portela).

explicit objective, she said that it is very difficult to assess whether sanctions are effective or not.

Currently, the Government of Canada outlines the objectives of its sanctions as part of the regulatory impact analysis statement that accompanies sanctions regulations. However, the objectives presented in those documents are often broad statements of intent. The committee was told that these objectives should be as specific as possible and transparently communicated to the public. The committee agrees and believes that clearly outlining the objectives of a sanctions regime is a critical first step to assessing outcomes.

Recommendation 4

The Government of Canada should specifically outline the objectives associated with a given sanctions regime and clearly communicate those objectives to the public.

Assessing the Impact and Effectiveness of Canadian Sanctions

The committee heard that assessing the impact and effectiveness of sanctions is complicated by a wide number of factors. Variables that may influence sanctions effectiveness include the interplay between the sender and receiver of sanctions – e.g., their level of economic interdependence – as well as the political and economic conditions within a target country. As noted above, the degree of international cohesion when imposing a particular sanctions regime may also influence their effectiveness. Moreover, given that sanctions are not normally implemented in isolation, their success may ultimately depend on the extent to which other policy instruments – e.g., diplomatic negotiations, coalition building in international organizations, military assistance, or the threat of force – play an effective role in influencing behaviour.

During its study, the committee heard about several situations that are generally regarded as examples of sanctions being used effectively to change behaviour. Professor Portela noted, for example, that international sanctions imposed against apartheid South Africa are commonly “considered the beacon in terms of sanctions effectiveness.”⁵⁵ She also suggested that there “is a good case to be made” that global sanctions were effective in incentivizing Iran to “sit down at the negotiating table and negotiate in good faith” in relation to what became the 2015 Joint Comprehensive Plan of Action (also known as the

⁵⁵ Ibid.

Iran Nuclear Deal). In both of those situations, broad international sanctions were imposed on the countries pursuant to UN Security Council resolutions.

By contrast, the committee heard about other situations where the effectiveness of sanctions is more opaque. With regard to international sanctions that have been imposed against North Korea, Professor Portela said, “[in] terms of compelling a change in the behaviour of the leadership, I think that it is pretty obvious that not much has been achieved.”⁵⁶ She did, however, suggest that on other measures, such as preventing the influx of new technology to North Korea that could be used to accelerate its weapons programs, sanctions may have a more successful record.

At the same time, the committee heard that sanctions can have unintended consequences. For example, Thomas Juneau, Associate Professor, Public and International Affairs, Faculty of Social Sciences, University of Ottawa, noted that sanctions, especially the “sweeping kind,” can in some cases “entrench authoritarianism and corruption.”⁵⁷ According to Professor Juneau, in certain situations, sanctions can alienate civilian populations and help entrench underground networks in target countries. The committee also heard that the longer a sanctions regime is in place, the more opportunity exists for adaptation or evasion by elites within a target country. Referring to trade or economic sanctions, Paul James Cardwell, Professor of Law and Vice Dean of Education, King’s College London, noted that wealthier individuals have more ability to adapt to sanctions and withstand their effects. He said, “if goods become more expensive because of sanctions, then it is the less well off in society who suffer the most.”⁵⁸

For her part, Ms. Moret highlighted concerns about the possible effects that complex sanctions regimes can have on ordinary civilian populations, including their ability to access bank accounts, as well as on the delivery of humanitarian assistance.⁵⁹ In an effort to increase safeguards for civilians, Ms. Moret said that the humanitarian community is pushing for the use of standing humanitarian exceptions across as many sanctions regimes as possible. The committee heard from Professor Martin, however, that some humanitarian exceptions are ineffective because companies and others that could provide humanitarian support within a target state may over-comply with sanctions for fear of violating them.⁶⁰

⁵⁶ Ibid.

⁵⁷ AEFA, *Evidence*, October 27, 2022 (Thomas Juneau).

⁵⁸ AEFA, *Evidence*, February 2, 2023 (Paul James Cardwell).

⁵⁹ AEFA, *Evidence*, December 1, 2022 (Erica Moret).

⁶⁰ AEFA, *Evidence*, November 16, 2022 (Craig Martin).

The effectiveness of global sanctions against Russia was a topic of particular interest during the committee's study. The committee heard, for example, that the fact that President Putin has not ordered Russian troops out of Ukraine could be seen as evidence that sanctions are failing to achieve their ultimate goal. At the same time, the committee was encouraged to consider the counterfactual – that is, to think about how President Putin would have behaved had the international community not responded to Russia's aggression against Ukraine with comprehensive sanctions. Professor Lilly stated:

What if no countries imposed any sanctions, then where would we be at this point? I think he would be further emboldened. I think, perhaps, other countries would be watching and thinking, "Oh, the world didn't really care when Putin went after Ukraine, so I'll just move into my neighbour's territory over here or over there."⁶¹

While it is not possible to measure the absence of behaviour, Ms. Moret argued that global sanctions against Russia send a strong signal to "other would-be detractors," who might consider doing something similar, that the international community does not accept this behaviour. More concretely, Ms. Moret said that the sanctions on Russia which limit its access to financial resources, weapons systems and dual-use goods all play a role in slowing down the country's war effort.⁶² Another assessment of the impact of global sanctions on Russia was provided by Mr. Lévêque, who indicated that sanctions have resulted in critical shortages of goods and technologies in Russia which he said are having direct effects on its military machinery. He further noted that the Russian economy witnessed its sharpest decline since 2009 and indicated that it is projected to fall further in 2023.⁶³

Overall, the committee was told that Canada would benefit from better tools to assess the impact and effectiveness of its sanctions, including any unintended consequences associated with a particular sanctions regime. While Mr. Lévêque said that GAC does assessments to measure the effectiveness of sanctions, he acknowledged that "we are all struggling with various ways of measuring the final impact and, therefore, the effectiveness."⁶⁴

The need to demonstrate that autonomous sanctions are being used carefully and effectively has only grown as their use has expanded. However, Ms. Moret

⁶¹ AEFA, *Evidence*, November 2, 2022 (Meredith Lilly).

⁶² AEFA, *Evidence*, December 1, 2022 (Erica Moret).

⁶³ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

⁶⁴ *Ibid.*

told the committee that – to her knowledge – methodologies designed to assess the impact of Canadian sanctions do not yet exist. By contrast, she said that the EU recently commissioned a major study to better allow it to assess its autonomous sanctions. She also noted that the U.S. Treasury recently appointed a new senior staff member to lead similar research. Ms. Moret said, “Canada could consider doing something similar.”⁶⁵ The committee believes the Government of Canada should take this advice.

Recommendation 5

The Government of Canada should work with its allies, civil society and the academic and research community to develop methodology to evaluate the effectiveness and impact of Canadian sanctions, including their effects and any consequences of an unintended nature.

Recommendation 6

The Government of Canada should regularly review the humanitarian exceptions in Canadian sanctions regulations to ensure that the public has clarity and guidance in relation to the delivery of humanitarian assistance in a state targeted by Canadian sanctions.

⁶⁵ AEFA, *Evidence*, December 1, 2022 (Erica Moret).

Part II: The Domestic Machinery of Canada's Autonomous Sanctions Regimes

Administration and Enforcement of Sanctions

GAC is responsible for administering and enforcing autonomous sanctions legislation. Since the enactment of the Sergei Magnitsky Law, the Government of Canada has made some changes to the way it administers the autonomous sanctions regimes. Budget 2018 committed just over \$4 million annually to GAC and the Canada Border Services Agency (CBSA) to strengthen the implementation of Canada's sanctions regimes.⁶⁶ This money has been used in part to establish "dedicated capacity for sanctions policy and operations."⁶⁷ To date, this new "capacity" has been used to bring stronger coherence and coordination within the Government of Canada on sanctions policy, maintain links with allied countries, and develop tools for communicating with the public about the sanctions regimes. GAC has also been able to streamline processes for permit and delisting applications as well as to ensure that these requests are considered "in a timely manner."⁶⁸

Subsequently, in October 2022, Prime Minister Justin Trudeau announced that the Government of Canada would invest \$76 million to establish a new specialized sanctions bureau at GAC and provide additional support to the Royal Canadian Mounted Police (RCMP) to assist in investigating, identifying and gathering evidence regarding assets controlled by sanctioned individuals. This new funding will improve the administration of sanctions and help freeze and seize sanctioned individuals' assets. This new bureau will also address the exponential rise in the use of sanctions. The new funding will mean that Canada's capacity to implement its sanctions regimes will be more in line with that of its allies.⁶⁹

Machinery of Government

During his appearance, Mr. Lévêque told the committee that "[autonomous] sanctions are imposed through a Governor-in-Council regulatory process." He outlined the steps leading up to the adoption of each sanctions regime to

⁶⁶ Budget 2018 proposed to provide \$5 million in 2018-2019, \$4 million per year from 2019-2020 to 2022-2023 and \$4.3 million per year thereafter. Government of Canada, *Equality Growth: A Strong Middle Class*, February 27, 2018.

⁶⁷ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

⁶⁸ Ibid.

⁶⁹ Prime Minister of Canada Justin Trudeau, *Canada to implement new measures against the Iranian regime*, News Release, October 7, 2022; AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

ensure due process and procedural fairness. However, he did not specify when, and through what process, the government decides which legislation – the SEMA or the Sergei Magnitsky Law – it will use to impose autonomous sanctions.

First, a draft list of potential sanctionable individuals and entities is drawn up using open-source information collected by Canada's network of missions abroad, government officials and civil society stakeholders. Extensive research is then undertaken to verify the information, validate the relationships of these individuals and maximize knowledge about them.⁷⁰

At the next step, GAC works with the Department of Justice, which conducts a critical analysis of all the evidence and data collected to ensure that it is sufficient to place individuals or entities on the sanctions list.⁷¹

Following that step, the Government of Canada begins the order in council process. To complete this process, the appropriate documentation is submitted to the Minister of Foreign Affairs and then to Cabinet. The order in council is then approved by the Treasury Board and sent to the Governor General. The order in council becomes a regulation once signed by the Governor General. Mr. Lévêque noted that this process takes longer than in other countries, such as the United States, which may impose sanctions pursuant to presidential executive order.⁷² He added that recently, due to the increased use of sanctions, the "regulatory process is often crunched in very little time."⁷³ He noted that it would be appropriate to study the mechanism Canada uses in order to strike the right balance between expediency and thoroughness. The committee encourages GAC to focus on due process, procedural fairness and transparency as basic criteria for analyzing other models.

Witnesses also discussed the priorities that GAC should focus on as part of the investments announced in October 2022. Professor Lilly urged the committee to promote a sanctions administration and enforcement model that opts for "a formal and professionalized approach that reflects the broad systemic nature of sanctions activity we now see happening in Canada and by our allies."⁷⁴ Professor Charron argued that the government should consider the training and skills needed for the officials who will join the new GAC bureau responsible for coordinating the administration of sanctions.⁷⁵ She noted that these officials –

⁷⁰ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ AEFA, *Evidence*, November 2, 2022 (Meredith Lilly).

⁷⁵ AEFA, *Evidence*, November 2, 2022 (Andrea Charron).

whose responsibilities will include gathering information from public sources that will help draw up lists of potential sanctioned individuals and entities – should receive sanctions training that includes a component on the specifics of Canada's sanctions regimes. Professor Charron added that the new bureau will also need staff with legal expertise.

Recommendation 7

As part of establishing a specialized sanctions bureau, the Government of Canada should ensure that the officials involved in administering Canada's sanctions receive training on the specifics of Canada's sanctions regimes.

Interdepartmental Coordination

Various departments and agencies have responsibilities under the SEMA and the Sergei Magnitsky Law. During their appearances, the RCMP and CBSA outlined their roles in the implementation and enforcement of the autonomous sanctions regimes. Superintendent Denis Beaudoin, Director, Financial Crime, RCMP, told the committee that the RCMP supports GAC through the collection and analysis of information in accordance with regulations, including information on financial transactions related to property controlled by sanctioned individuals. The RCMP can establish the ownership, value and location of property controlled by a sanctioned person or entity. He added that the RCMP is also responsible for conducting investigations into potential breaches of the SEMA, mostly in relation to export controls.⁷⁶

In connection with the new funding announced in October 2022 to implement the sanctions regimes, Superintendent Beaudoin said that the RCMP is planning to create positions to support asset tracing. They are also looking at creating a centre of expertise in Ottawa to assist GAC in implementing the autonomous sanctions regimes.⁷⁷ During his appearance, Superintendent Beaudoin told the committee that since February 24, 2022, more than \$121 million in assets have been frozen and more than \$290 million in transactions have been blocked under the *Special Economic Measures (Russia) Regulations*. He added that the work that the RCMP does involving sanctions has "really increased" since the Russian invasion of Ukraine.⁷⁸

⁷⁶ AEFA, *Evidence*, October 26, 2022 (Denis Beaudoin).

⁷⁷ Ibid.

⁷⁸ Ibid.

The committee heard that the CBSA's mandate with respect to the administration and enforcement of sanctions regimes is twofold. The CBSA has a role in implementing certain provisions of the *Immigration and Refugee Protection Act* and in relation to export control. During his appearance, Richard St. Marseilles, Director General, Immigration Policy and External Review, CBSA, told the committee that with respect to the CBSA's responsibility for immigration and admissibility, the funding provided by Budget 2018 was used to establish a coordination function with GAC in order to maintain a watch board list of sanctioned individuals who would be inadmissible to Canada. The coordination function ensures that information on sanctioned individuals is entered by the CBSA into the systems of records used by Immigration, Refugees and Citizenship Canada and the CBSA. According to the CBSA, as much as the increased volume of individuals sanctioned since 2022 has resulted in a somewhat higher workload, they are not seeing "a need on the immigration and admissibility side for additional incremental coordinating resources."⁷⁹

The CBSA is also responsible for enforcing export controls on goods leaving Canada. According to Dan Anson, Director General, Intelligence and Investigations, CBSA, it is mostly the border services officers "who are absolutely delivering on the real operational intent behind this range of legislation." The CBSA vets information received about goods and conducts a risk assessment of goods destined for export. Mr. Anson pointed out that given the increased volume of sanctions, risk analysis is considered more important. Certain goods are referred for additional examination in part to ensure that these goods are not what would be deemed sensitive or dual-use technologies. The CBSA indicated that additional resources to support its export control responsibilities might eventually be needed.⁸⁰

Some witnesses told the committee that other departments and agencies play or could play a role in the administration and enforcement of sanctions. Michael Nesbitt, Associate Professor, Faculty of Law, University of Calgary, said that the Canadian Security Intelligence Service, the Communications Security Establishment and the Public Prosecution Service of Canada (PPSC) could also be involved. According to Professor Nesbitt, the PPSC is responsible for prosecuting sanctions offences.

Professor Nesbitt noted that these three agencies should also be involved in the decision-making process to draw up lists of individuals and entities to be sanctioned. He said that the government has to be listing "the right people in the first place and [has] to have the intelligence to support that listing."⁸¹ In

⁷⁹ AEFA, *Evidence*, October 26, 2022 (Richard St. Marseilles).

⁸⁰ AEFA, *Evidence*, October 26, 2022 (Dan Anson).

⁸¹ AEFA, *Evidence*, November 16, 2022 (Michael Nesbitt).

this regard, he added that the security agencies may have knowledge and access to information that could be useful for drawing up these lists.

Recommendation 8

As part of establishing the specialized sanctions bureau, the Government of Canada should expand interdepartmental coordination on sanctions so that all relevant departments and agencies, including the Canadian Security Intelligence Service and the Communications Security Establishment, can contribute to identifying individuals and entities that could be subject to autonomous sanctions by Canada.

Enforcement

The committee was told that, unlike other countries, such as the United States, which take an enforcement and prosecution approach, Canada has autonomous sanctions regimes that are, in practice, compliance-based. Sabrina A. Bandali, Partner, International Trade and Investment, Bennett Jones, explained the concept of compliance as follows:

Canada has not historically been an active enforcer of its sanctions laws. There have been so few prosecutions that, as a practical matter, the regime depends on entities and individuals being aware of their obligations and acting accordingly, including by withdrawing from business that was legal before particular sanctions were introduced.

In practice, that means the effectiveness of our sanctions is driven by compliance — by Canadians taking their legal obligations seriously and trying to comply with sanctions laws because they know they should.⁸²

For example, under the SEMA and the Sergei Magnitsky Law, the onus is on third parties to disclose to the RCMP that they are in possession of property of a sanctioned individual or entity.⁸³

The committee heard that Canadian businesses are taking these responsibilities very seriously. Angelina Mason, General Counsel and Vice-President, Legal and Risk, Canadian Bankers Association, said that since 2017, “[r]esponding to their enactment and expansion, banks operating in Canada have invested heavily in

⁸² AEFA, *Evidence*, November 2, 2022 (Sabrina Bandali).

⁸³ AEFA, *Evidence*, October 26, 2022 (Denis Beaudoin).

their efforts to comply with, and thus enable, the Sergei Magnitsky Law and SEMA."⁸⁴

While the private sector is taking its obligations seriously, some witnesses argued that it would be worthwhile for Canada to invest more heavily in sanctions enforcement. Citing his research, Professor Nesbitt said that no one has been charged with failing to comply with sanctions imposed under the Sergei Magnitsky Law and that, in over 30 years of SEMA enforcement, only one individual and one company have been charged with violations.⁸⁵

Professor Juneau expressed concern about Canada's apparent difficulty enforcing sanctions. In his view, "Canada has a reputation among our friends but also among our rivals for not enforcing sanctions well." He argued that not only is this an irritant for Canada's allies, but it also sends a message to sanctioned individuals and entities that Canada is "not serious about penalizing them."⁸⁶ During his appearance, Professor Nesbitt also said that enforcing sanctions legislation has a deterrent effect by signaling to "bad actors" and allies that Canada is taking its responsibilities seriously.⁸⁷

Recommendation 9

The Government of Canada should invest greater financial and human resources in enforcing sanctions by providing new funding specifically for this purpose to the Royal Canadian Mounted Police and the Canada Border Services Agency.

Communication and Transparency

Over the course of its study, the committee heard about ongoing challenges in the way that the Government of Canada communicates and shares information about its sanctions. These challenges remain notwithstanding recent efforts by the government to improve the transparency of its sanctions regimes.

Since 2018, GAC has introduced the following tools to improve communication with the public and stakeholders in the area of sanctions policy:⁸⁸

⁸⁴ AEFA, *Evidence*, November 16, 2022 (Angelina Mason).

⁸⁵ AEFA, *Evidence*, November 16, 2022 (Michael Nesbitt).

⁸⁶ AEFA, *Evidence*, October 27, 2022 (Thomas Juneau).

⁸⁷ AEFA, *Evidence*, November 16, 2022 (Michael Nesbitt).

⁸⁸ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

Strengthening Canada's Autonomous Sanctions Architecture:
Five-Year Legislative Review of the Sergei Magnitsky Law and the *Special Economic Measures Act*

- an email address;
- a dedicated telephone line; and
- a website with a frequently asked questions section on Canada's sanctions regimes.

According to Mr. Lévêque, the email address and telephone line can be used to obtain information about Canada's sanctions, contact GAC with any sanctions-related questions and submit any permit applications. Mr. Lévêque noted that while these resources could be used to obtain information on what the sanctions legislation prescribes, the department cannot provide legal advice.⁸⁹

In addition, the government created the Consolidated Canadian Autonomous Sanctions List in 2018. While recognizing the utility of this list, several witnesses made extensive recommendations for how the consolidated list could be improved. According to Stephen Alsace, Global Head, Economic Sanctions with the Royal Bank of Canada, information about sanctioned individuals and entities is not always complete. He suggested having consistency in the amount of information provided when an individual is listed by including the full legal name, date of birth and address.⁹⁰ In his brief, John W. Boscarior, Leader, International Trade and Investment Law Group, McCarthy Tétrault LLP, highlighted the difference in the way Canada and the United States present information for the same sanctioned individual. He explained that, while Canada provides only the individual's name, the United States also provides the date of birth and address.⁹¹

Mr. Boscarior recommended that the list be consolidated to include individuals and entities sanctioned under the *United Nations Act*, the *Freezing Assets of Corrupt Foreign Officials Act* and the terrorist entity provisions of the *Criminal Code*.⁹² According to Professor Charron, the consolidated list would be more useful as a means of communicating with the public and private sector if it were searchable and included the reason why individuals are being sanctioned – information that is currently in the regulations.⁹³ According to Mr. Alsace, the consolidated list would also be more useful if there were some consistency in the information included in the lists of all countries imposing autonomous sanctions.⁹⁴

⁸⁹ Ibid.

⁹⁰ AEFA, *Evidence*, November 16, 2022 (Stephen Alsace).

⁹¹ *Brief* submitted to the committee by John W. Boscarior, November 2, 2022.

⁹² AEFA, *Evidence*, November 2, 2022 (John W. Boscarior).

⁹³ AEFA, *Evidence*, November 2, 2022 (Andrea Charron).

⁹⁴ AEFA, *Evidence*, November 16, 2022 (Stephen Alsace).

The committee also heard that the registration date listed in the regulations announcing new sanctions is sometimes a few days earlier than the date on which the regulations are made public, often through a government news release. According to Ms. Bandali, “[w]e’ve had situations where sanctions have been announced and published in the *Canada Gazette*, but actually came into effect days prior.”⁹⁵ According to Mr. Alsace, this approach leads to “frustration” as banks must use two processes, one manual and one based on automated lists, to enter the names of newly sanctioned individuals and entities.⁹⁶ Despite this, Ms. Mason believes that the process used by GAC to make changes to the sanctions list poses only “minor operational challenges.”⁹⁷

Lastly, in order to improve communication with the public regarding the effects and implementation of autonomous sanctions, several witnesses recommended that the Government of Canada regularly publish information about its sanctions regimes. In this regard, Professor Lilly recommended that GAC’s new sanctions bureau “issue a public report annually, itemizing the value of assets frozen and seized under” Canada’s sanctions laws.⁹⁸

Recommendation 10

The Government of Canada should provide more detailed identifying information on sanctioned individuals and entities in the regulations made pursuant to the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. The government should also include detailed identifying information in the Consolidated Canadian Autonomous Sanctions List, along with the justifications for listing individuals and entities.

Recommendation 11

The Government of Canada should evaluate the feasibility, advantages and disadvantages of having the consolidated list include individuals sanctioned under the *United Nations Act*, the *Freezing Assets of Corrupt Foreign Officials Act* and the terrorist entity provisions of the *Criminal Code*.

⁹⁵ AEFA, *Evidence*, November 2, 2022 (Sabrina A. Bandali).

⁹⁶ AEFA, *Evidence*, November 16, 2022 (Stephen Alsace).

⁹⁷ AEFA, *Evidence*, November 16, 2022 (Angelina Mason).

⁹⁸ AEFA, *Evidence*, November 2, 2022 (Meredith Lilly).

Recommendation 12

The Government of Canada should amend the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to require the government to table in Parliament a detailed annual report on the implementation of Canada's sanctions regimes. This report could include information on the impact and effectiveness of Canada's sanctions regimes and the value of frozen assets and blocked transactions under each sanctions regime.

Private Sector Outreach

Apart from the consolidated list and regulations adopted under the SEMA and the Sergei Magnitsky Law, little information is publicly available on the implementation of Canada's autonomous sanctions regimes. The committee heard about the need for greater transparency and clear guidance on how to interpret the sanctions regulations and the types of activities that are permitted.

The committee learned about GAC's increasing willingness to work with the private sector on sanctions issues, including on how to establish or maintain international business activities in a manner consistent with Canadian sanctions. In addition to developing a section on its website with frequently asked questions about sanctions regimes, GAC also held discussion sessions with the legal sector.⁹⁹ Witnesses shared their experiences with GAC's outreach efforts. For Mr. Boscarior, GAC's outreach with the legal sector has improved since the creation in 2018 of a sanctions policy and operations coordination division within GAC. Lawrence L. Herman, Counsel, Herman & Associates, told the committee that GAC has offered "intermittent advisories" with respect to doing business in Myanmar and Xinjiang in China.¹⁰⁰ For his part, Mr. Alsace said that he had not received a response to some questions submitted to GAC regarding possible exceptions to the sanctions regime against Russia.¹⁰¹

The House of Commons Standing Committee on Foreign Affairs and International Development recommended in its 2017 report *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond* that the Government of Canada provide the public with comprehensive guidance regarding the interpretation of sanctions regulations. The committee is disappointed that this guidance has not yet materialized.

⁹⁹ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque); AEFA, *Evidence*, November 16, 2022 (Angelina Mason).

¹⁰⁰ AEFA, *Evidence*, December 1, 2022 (Lawrence L. Herman).

¹⁰¹ AEFA, *Evidence*, November 16, 2022 (Stephen Alsace).

Witnesses were unanimous on the importance of having clear guidance on the interpretation of sanctions regulations. As Ms. Bandali explained, it is crucial that the government provide clear guidance to businesses because Canada's autonomous sanctions regimes is based largely on the principle of compliance. She also argued that the consequences of the lack of guidance are exacerbated by the virtual absence of prosecutions. Few prosecutions for violations of sanctions laws means meagre case law in Canada to provide law firms with guidance for interpreting sanctions regulations and advising their clients.¹⁰² In addition, by providing clear guidance, GAC could help remove some of the barriers for the private sector and civil society. Ms. Bandali told the committee that clear guidance is critical for small and medium-sized businesses and individuals, who often cannot afford to hire legal counsel to clarify their sanctions obligations.¹⁰³

For many witnesses, the most glaring example of a lack of guidance is the lack of specific direction from the Government of Canada regarding entities partially or wholly controlled by sanctioned individuals. In contrast, according to U.S., EU and U.K. guidance, entities owned 50% or more by a listed person should be treated as if they are listed as well.¹⁰⁴ Mr. Boscarior told the committee that in his practice he sees companies making up for the lack of Canadian guidance by using guidance from other countries, such as the U.S.¹⁰⁵

The lack of guidance has several negative consequences for both the private sector and the reputation of Canada's sanctions architecture. Ms. Bandali said that the lack of guidance can indirectly lead to commercial disputes. For example, parties to a contract may develop different legal interpretations about whether or not continuing with a particular contract or transaction is allowed in light of sanctions imposed.¹⁰⁶ She added that, without clear guidance, some private sector companies may mitigate the risk of inadvertently violating sanctions by overcomplying. Mr. Boscarior noted that the lack of clear policy guidance not only creates unnecessary costs, but also puts Canadian companies operating outside the country at a competitive disadvantage with companies in countries that provide such guidance.¹⁰⁷ He is also concerned that a lack of guidance could contribute to Canada becoming a haven for sanctions evasion.¹⁰⁸

¹⁰² AEFA, *Evidence*, November 2, 2022 (Sabrina A. Bandali).

¹⁰³ *Ibid.*

¹⁰⁴ *Brief* submitted to the committee by John W. Boscarior, November 2, 2022.

¹⁰⁵ AEFA, *Evidence*, November 2, 2022 (John W. Boscarior).

¹⁰⁶ AEFA, *Evidence*, November 2, 2022 (Sabrina A. Bandali).

¹⁰⁷ *Brief* submitted to the committee by John W. Boscarior, November 2, 2022.

¹⁰⁸ AEFA, *Evidence*, November 2, 2022 (John W. Boscarior).

During the study, the committee heard about practices employed by other countries that could be worth implementing in Canada. According to Mr. Boscarior, unlike the U.S., Canada does not provide for exceptions to allow for the gradual winding down of activities with sanctioned countries or entities.¹⁰⁹ Nor has Canada used existing powers in the SEMA and the Sergei Magnitsky Law to grant general permits to allow limited activities that are not contrary to the objectives of the sanctions measures. Mr. Boscarior noted in his brief that the contrast with the U.S. is striking. He explained, for example, that “the U.S. [Office of Foreign Assets Control] has issued a general licence allowing U.S. 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.”¹¹⁰

Lawrence L. Herman summed up what the private sector is asking of the government when it comes to guidance on sanctions:

It's not a question of providing legal advice on a specific transaction but providing a way in which companies can navigate through very treacherous, increasingly treacherous, complex and dangerous waters.¹¹¹

Professor Lilly suggested that GAC's new sanctions bureau be mandated to provide specific guidance to the public on how to implement sanctions. She even suggested that the SEMA be amended to compel the government to provide such guidance.¹¹² It is notable that other Canadian laws and regulations include provisions requiring the Government of Canada to provide guidance on their implementation and administration.¹¹³

Recommendation 13

The Government of Canada should make it a priority to develop and provide the public and the private sector with specific and comprehensive written guidance on the interpretation of Canada's autonomous sanctions laws and regulations. This guidance should be

¹⁰⁹ [Brief](#) submitted to the committee by John W. Boscarior, November 2, 2022.

¹¹⁰ *Ibid.*

¹¹¹ AFEA, [Evidence](#), December 1, 2022 (Lawrence L. Herman).

¹¹² AEFA, [Evidence](#), November 2, 2022 (Meredith Lilly).

¹¹³ For example, section 38 of the [Investment Canada Act](#) states that “[t]he Minister may issue and publish, in such manner as the Minister deems appropriate, guidelines and interpretation notes with respect to the application and administration of any provision of this Act or the regulations.”

updated in a regular and timely manner to reflect new regulations made under Canada's sanctions regimes.

Recommendation 14

The Government of Canada should evaluate how it could use its existing authority to grant general permits under the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

Ensuring Procedural Fairness and Due Process

During the study, various witnesses raised concerns about procedural fairness and due process surrounding Canada's autonomous sanctions regimes. In particular, they expressed concerns about the permit and delisting application processes. They also addressed the implementation of new authorities allowing for the forfeiture and redistribution of assets seized under the SEMA and the Sergei Magnitsky Law. Lastly, witnesses recommended that the government consider introducing sunset provisions into the SEMA and the Sergei Magnitsky Law.

Applications for Delisting

Under the SEMA and the Sergei Magnitsky Law, the Minister of Foreign Affairs is authorized to remove the names of individuals or entities from the sanctions list. Under the Sergei Magnitsky Law, the minister must issue a decision within 90 days of receiving the application for delisting. As for the SEMA, the deadline for issuing the decision is set out in the regulations made pursuant to this law.¹¹⁴

GAC reported that investments in the administration of the sanctions regime since 2018 have resulted in more efficient processing of applications for delisting.¹¹⁵ Information on how to [apply for delisting](#) or for a certificate of mistaken identity is available to the public on GAC's website. In a response sent to the committee following their appearance, GAC states that since 2018, it has received 18 applications for delisting, 7 of which were submitted by individuals who were sanctioned due to Russia's illegal invasion of Ukraine. GAC informed

¹¹⁴ For example, the [Special Economic Measures \(Russia\) Regulations](#) provide that the Minister must make a decision on applications to be delisted within 90 days after the day the application was received. However, other regulations, such as the [Special Economic Measures \(Haiti\) Regulations](#) and the [Special Economic Measures \(Iran\) Regulations](#), do not set out time limits for delisting applications.

¹¹⁵ AEFA, [Evidence](#), October 26, 2022 (Alexandre Lévêque).

the committee that it evaluates applications for delisting on a case-by-case basis, in consultation with the Department of Justice, to ensure that the principles of procedural fairness are followed. The applications for delisting received to date are at various stages of evaluation; no application has been accepted, and one application has been denied.¹¹⁶

Sanctioned individuals and entities are not officially notified that they are on the sanctions list or of what steps they need to take in order to be delisted.¹¹⁷ According to Professor Charron, this differs from the approach taken by the U.K. and the EU, which notify sanctioned individuals and entities that they have been placed on the sanctions list.¹¹⁸

Even though there is a process in place to submit applications for delisting, Mr. Boscarior told the committee that he deals with individuals who have been improperly listed. He added that these individuals face significant consequences, including the inability to travel to Canada to see family members. He noted that it is appropriate for these consequences to apply to individuals who are properly listed, but that the Government of Canada needs to “provide a fair system for challenging list-based decisions of the government” to sanction certain individuals and entities.¹¹⁹

Recommendation 15

The Government of Canada should establish an effective, transparent process to review applications for delisting with specific service standards. The Government of Canada should also inform individuals and entities subject to autonomous sanctions of the action taken against them, along with an explanation as to why they have been sanctioned and how to submit an application for delisting.

Permit Applications

The SEMA and the Sergei Magnitsky Law allow the Minister of Foreign Affairs to issue permits on an exceptional basis to persons in Canada or Canadians outside of Canada to carry out specified activities or transactions that are restricted or prohibited by the Act or regulations made under it. To obtain a permit, individuals must submit an application to GAC with a description of the proposed activity or transaction, an explanation of why it would violate the

¹¹⁶ GAC, Response to a question from Senator Marty Deacon at the meeting of October 26, 2022, November 8, 2022.

¹¹⁷ AEFA, *Evidence*, November 16, 2022 (Craig Martin).

¹¹⁸ AEFA, *Evidence*, November 2, 2022 (Andrea Charron).

¹¹⁹ AEFA, *Evidence*, November 2, 2022 (John W. Boscarior).

relevant regulation, and information on how the request meets the application criteria.¹²⁰

The committee heard that the explosion of sanctions imposed in response to Russia's aggression against Ukraine have put a particular strain on the permit system. Mr. Lévêque told the committee that the far-reaching nature of these sanctions means that many "little fish" – individuals who "have absolutely nothing to do with, and no connection to, Putin's regime" – have had transactions blocked or their funds frozen. As a result, Mr. Lévêque said that GAC has received "literally hundreds of applications for permits because people are asking for their funds to be released as they are not involved. It's a huge volume that we have to deal with."¹²¹ He added that the volume is such that setting up an office with the resources capable of handling this increase is "absolutely necessary."

Mr. Boscarior argued that many of these inquiries and permit applications could have been avoided with policy guidance from GAC.¹²² The result of this flood of applications, he indicated, is that GAC "becomes overwhelmed and, at current staffing levels, is unable to respond on a timely basis."¹²³ Ms. Mason noted that those seeking permits are not only large corporations, but "everyday Canadians... such as retail banking clients attempting to remit funds to family members in jurisdictions impacted by sanctions."¹²⁴

Mr. Lévêque told the committee that in the past five years, GAC has created more streamlined processes for permit, delisting and certificate applications and ensures that they are "considered in a timely manner."¹²⁵ He did not, however, define what is meant by "timely." GAC notes that the granting of a permit under the SEMA and the Sergei Magnitsky Law is done at the "discretion of the Minister of Foreign Affairs" and advises applicants not to "undertake any activities prohibited by sanctions until such a signed permit has been transmitted."¹²⁶

Several witnesses argued that GAC should develop specific service standards for the processing of permits applications. Ms. Bandali said that establishing service standards, as well as a system for tracking the status of a permit application, would be beneficial. Ms. Mason recommended that GAC hire

¹²⁰ GAC, *Permits and Certificates*.

¹²¹ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

¹²² *Brief* submitted to the committee by John W. Boscarior on November 2, 2022.

¹²³ AEFA, *Evidence*, November 2, 2022 (John W. Boscarior).

¹²⁴ AEFA, *Evidence*, November 16, 2022 (Angelina Mason).

¹²⁵ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

¹²⁶ GAC, *Permits and Certificates*.

additional resources to focus specifically on permit applications, and “ideally set out a mandate to complete all permit requests within a reasonable period — for example, 30 days.”¹²⁷

Mr. Boscarior said that GAC's Trade Control Bureau, which administers the *Import and Export Permits Act*, has in place service standards for the issuance of import and export permits. In his view, “[i]t is like night and day when you're dealing with export controls versus sanctions.”¹²⁸ The committee believes that the Government of Canada should remedy its permit application process in relation to the SEMA and the Sergei Magnitsky Law.

Recommendation 16

The Government of Canada should establish specific service standards for the processing of permit applications sought in relation to the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

Asset Forfeiture and Repurposing

On December 19, 2022, Foreign Affairs Minister Mélanie Joly announced that Canada was initiating its first process to pursue the forfeiture of assets belonging to sanctioned persons. In a news release announcing the action, Minister Joly said that President Putin and “his enablers” had been warned that they “would not be able to hide from the consequences of their actions.”¹²⁹ The Government of Canada has indicated that it will seize and pursue the forfeiture of US\$26 million from Granite Capital Holdings Ltd., a company owned by Roman Abramovich, a Russian oligarch sanctioned under the *Special Economic Measures (Russia) Regulations*.¹³⁰ To do so, the minister must first request that a superior court judge in the province where the assets are located order them forfeited to the Crown. If forfeited, the government said that the proceeds would be used for the reconstruction of Ukraine and for victim compensation.¹³¹

Witnesses indicated that this case will be watched closely as it could set a precedent for the forfeiture and redistribution of sanctioned assets in other countries. The committee believes that the Government of Canada should

¹²⁷ AEFA, *Evidence*, November 16, 2022 (Angelina Mason).

¹²⁸ AEFA, *Evidence*, November 2, 2022 (John W. Boscarior).

¹²⁹ GAC, *Canada starts first process to seize and pursue the forfeiture of assets of sanctioned Russian oligarch*, News release, December 19, 2022.

¹³⁰ *Order Respecting the Restraint of Property Situated in Canada (Roman Arkadyevich Abramovich)*, SOR/2022-279.

¹³¹ GAC, *Canada starts first process to seize and pursue the forfeiture of assets of sanctioned Russian oligarch*, News release, December 19, 2022.

proceed prudently with respect to any forfeiture process to both ensure due process and to mitigate any unintended consequences.

Some of the possible unintended consequences associated with asset forfeiture and repurposing were highlighted by Ms. Braw, who told the committee that pursuing the forfeiture of sanctioned assets could put western companies operating abroad in danger of retaliation from adversaries. Ms. Braw also underscored the importance of judiciously guaranteeing due process and the rule of law as part of any forfeiture claims. In her view, governments should pursue forfeiture claims after thorough investigations and only when the assets of sanctions targets can be linked to criminality. The appearance of acting arbitrarily, she suggested, "would remove the moral high ground that we have worked for so long to establish for ourselves."¹³²

Mr. Lévêque told the committee that the implementation of this new asset forfeiture and repurposing tool requires "care, due diligence and a whole-of-government approach."¹³³ The committee is encouraged by those comments and it urges the Government of Canada to seek the input of civil society, legal experts and other stakeholders in Canada as it further contemplates the use of this tool. The committee also encourages the Government of Canada to engage with its allies that may be considering this kind of legislation to share ideas and best practices. To this end, the committee urges the Government of Canada to continue to engage with its allies as part of the Russian Elites, Proxies and Oligarchs (REPO) Task Force as it looks for ways to hold accountable those sanctioned in connection with Russia's aggression against Ukraine.¹³⁴

Recommendation 17

The Government of Canada should engage with its allies, including as part of the Russian Elites, Proxies and Oligarchs Task Force, to share best practices regarding the forfeiture and repurposing of sanctioned assets.

Periodic Reviews of Sanctions Regimes

During its study, several witnesses urged the Government of Canada to establish automatic review provisions within Canada's autonomous sanctions regimes. The committee was told that not enough thinking has been done to

¹³² AEFA, *Evidence*, February 2, 2023 (Elisabeth Braw).

¹³³ AEFA, *Evidence*, October 26, 2022 (Alexandre Lévêque).

¹³⁴ For more information on the efforts of the Russian Elites, Proxies and Oligarchs Task Force, see: Department of Finance Canada, *Statement on Russian Elites, Proxies and Oligarchs) Task Force results*, Statement, February 24, 2023.

plan for the lifting of sanctions when they are deemed no longer effective or necessary. Ms. Moret noted that, generally speaking, a lack of planning surrounding how and when to repeal sanctions can lead to protracted regimes which increase the risk of circumvention and unintended consequences.¹³⁵

Professor Juneau referred to sanctions as “easy to announce but hard to withdraw.” He argued that there comes a point when sanctions are no longer worth maintaining but removing them becomes challenging. He said that governments “can feel cornered when it comes time to rationally, strategically or morally” remove a sanction that is no longer necessary because it could be viewed as politically risky to do so. Professor Juneau urged further consideration to be given to establishing processes to remove sanctions “when it becomes in our interest to do that, to avoid tying the hands of future governments, even though sometimes that may be tempting.”¹³⁶

Professor Lilly offered a practical suggestion for streamlining the repeal of sanctions. She said that amendments could be made to the SEMA “to accompany new sanctions with automatic sunseting clauses of a duration, for instance, of five years. After five years, the sanctions would lapse, unless the government renews them.” According to Professor Lilly, a sunseting measure could “ensure that outdated and unnecessary sanctions are removed, and it can also decrease the politicization of the sanctions.” She further argued that automatic sunseting clauses “force a discipline on the public service to continuously monitor and stay abreast of the developments to inform any renewal decisions.”¹³⁷

Sunseting clauses for sanctions regimes are widely used internationally. For example, in October 2022, the UN Security Council adopted Resolution 2653 (2022), which imposed sanctions on the leader of an alliance of Haitian gangs and established a sanctions committee to identify other individuals and entities that could be sanctioned in the future.¹³⁸ The measures prescribed by Resolution 2652 (asset freeze, targeted arms embargo, travel ban) are in place for one year with the possibility of renewal. The EU also includes specific review dates within its sanctions regulations to ensure that the measures are evaluated at regular intervals and are in line with current developments.¹³⁹

¹³⁵ [Brief](#) submitted to the committee by Erica Moret on December 1, 2022.

¹³⁶ AEFA, [Evidence](#), October 27, 2022 (Thomas Juneau).

¹³⁷ AEFA, [Evidence](#), November 2, 2022 (Meredith Lilly).

¹³⁸ United Nations Security Council, [Resolution 2653 \(2022\)](#), S/RES/2653 (2022), October 21, 2022. In accordance with Resolution 2653, Canada adopted regulations under the *United Nations Act*. See: Minister of Justice, [Regulations Implementing the United Nations Resolution on Haiti](#), SOR/2022-237, current to February 8, 2023.

¹³⁹ For more information on European Union sanctions, see: European Commission, [EU Sanctions Map](#).

Professor Portela told the committee that the benefit of sunset clauses is that “every year there is a compulsory review of how that sanctions regime is going and whether the listings are still relevant. It provides an opportunity to take stock that otherwise wouldn’t be there.” She added that this “has the advantage of making it easier to terminate the sanctions regime when it is necessary, so it’s never defined as an open-ended exercise.”¹⁴⁰

The committee believes that the review provisions in the SEMA and the Sergei Magnitsky Law should be strengthened in two specific ways. First, the Acts should be amended to require recurring parliamentary reviews at specific intervals. Currently Section 16(1) of the Sergei Magnitsky Law only requires a one-time review of the SEMA and the Sergei Magnitsky Law – five years after the coming into force of the Sergei Magnitsky Law. Indeed, section 16(1) of the Sergei Magnitsky Law is the reason for the committee’s study. The committee believes that legislative reviews of Canada’s autonomous sanctions regimes add value and should occur regularly. Second, the committee believes that the government should include a sunset clause as part of any new sanctions regime imposed pursuant to the SEMA or the Sergei Magnitsky Law. As witnesses indicated, this provision could help depoliticize the repeal of sanctions, impose a discipline on policymakers and, most importantly, ensure that sanctions remain fit for purpose.

Recommendation 18

The Government of Canada should amend the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to require that committees of the Senate and the House of Commons conduct a comprehensive review of the two Acts every 10 years.

Recommendation 19

The Government of Canada should amend the *Special Economic Measures Act* and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* to require that new regulations made under either Act include a sunset clause that would prescribe a date for the termination of a sanctions regime unless renewed prior to the expiry of the term.

¹⁴⁰ AEFA, [Evidence](#), October 27, 2022 (Clara Portela).

Conclusion

The committee's comprehensive review of the provisions and operation of the Sergei Magnitsky Law and the SEMA comes at a pivotal time in the use of autonomous sanctions in Canada and around the world. As explained in this report, autonomous sanctions have become a preferred diplomatic course of action, one that has been used quickly and extensively to address a large number of international crises. Most notably, the report explains that Canada's use of this tool since Russia's invasion of Ukraine in February 2022 has skyrocketed. This legislative review is also the first one conducted since the Sergei Magnitsky Law was enacted in 2017 and since the Government of Canada's announcements in 2018 and 2022 of new investments in the administration of autonomous sanctions.

Witnesses highlighted various improvements made in relation to Canada's sanctions administration over the past five years, including the creation of the Consolidated Canadian Autonomous Sanctions List. Yet, they also pointed out that the Government of Canada needs to improve the way it communicates information on autonomous sanctions to the public. Witnesses unanimously called on the Government of Canada to immediately develop clear guidance on the interpretation of sanctions regulations.

Canada's use of autonomous sanctions continues to spark discussions and raise questions about coherence and effectiveness. After hearing from numerous sanctions experts, the committee has concluded that Canada must set out the objectives it wishes to achieve through the imposition of sanctions and analyze the results on a regular basis.

Lastly, although the committee believes in the usefulness of the Sergei Magnitsky Law and the SEMA, it is recommending several amendments to improve their coherence and operation. In particular, the committee recommends amendments to require that new regulations made under either Act include a sunset clause that would prescribe a date for the termination of a sanctions regime. Further, in order to ensure that Canada's autonomous sanctions regimes remain fit for purpose, the committee recommends that committees of the Senate and the House of Commons conduct a comprehensive review of the two Acts every 10 years.

APPENDIX A: WITNESSES

Wednesday, February 15, 2023

The Honourable A. Raynell Andreychuk, Former Senator (As an Individual)

Brandon Silver, Director of Policy and Projects, Raoul Wallenberg Centre for Human Rights (As an Individual)

Amanda Strayer, Supervising Staff Attorney, Accountability, Human Rights First (As an Individual)

Thursday, February 2, 2023

Elizabeth Braw, Senior Fellow, Foreign and American Defence Policy, American Enterprise Institute (As an Individual)

Paul James Cardwell, Professor of Law and Vice Dean (Education), The Dickson Poon School of Law, King's College London (As an Individual)

Thursday, December 1, 2022

Lawrence L. Herman, Counsel, Herman & Associates (As an Individual)

Erica Moret, Senior Researcher and Coordinator, Sanction and Sustainable Peace Hub, Geneva Graduate Institute (As an Individual)

Thursday, November 24, 2022

Bill Browder, Head (Global Magnitsky Justice Campaign)

Evgenia Kara-Murza, Advocacy Coordinator (Free Russia Foundation)

Wednesday, November 16, 2022

Stephen Alsace, Global Head, Economic Sanctions (Royal Bank of Canada)

Craig Martin, Professor and co-Director of the International and Comparative Law Center, Washburn University School of Law (As an Individual)

Strengthening Canada's Autonomous Sanctions Architecture:
Five-Year Legislative Review of the Sergei Magnitsky Law and the *Special Economic Measures Act*

Angelina Mason, General Counsel and Vice-President, Legal and Risk (Canadian Bankers Association)

Michael Nesbitt, Associate Professor, Faculty of Law, University of Calgary (As an Individual)

Wednesday, November 2, 2022

Sabrina A. Bandali, Partner, International Trade and Investment, Bennett Jones LLP (As an Individual)

John W. Boscariol, Leader, International Trade and Investment Law Group, McCarthy Tétrault LLP (As an Individual)

Andrea Charron, Director and Associate Professor, Centre for Defence and Security Studies, University of Manitoba (As an Individual)

Meredith Lilly, Associate Professor and Simon Reisman Chair in International Affairs, Norman Paterson School of International Affairs, Carleton University (As an Individual)

Thursday, October 27, 2022

Thomas Juneau, Associate Professor, Public and International Affairs, Faculty of Social Sciences, University of Ottawa (As an Individual)

Clara Portela, Konrad Adenauer Visiting Scholar on Transatlantic Relations, Centre for European Studies, Carleton University (As an Individual)

Wednesday, October 26, 2022

Dan Anson, Director General, Intelligence and Investigations (Canada Border Services Agency)

Superintendent Denis Beaudoin, Director, Financial Crime (Royal Canadian Mounted Police)

Stephen Burrige, Director, Sanctions Policy and Operations Coordination (Global Affairs Canada)

Shawn Hoag, Director General, Commercial Programs (Canada Border Services Agency)

Strengthening Canada's Autonomous Sanctions Architecture:
Five-Year Legislative Review of the Sergei Magnitsky Law and the *Special Economic Measures Act*

Alexandre Lévêque, Assistant Deputy Minister, Strategic Policy (Global Affairs Canada)

Lynn McDonald, Director General, International Economic Policy (Global Affairs Canada)

Richard St. Marseilles, Director General, Immigration Policy and External Review (Canada Border Services Agency)