The Committee for Justice in Canada
B'NAI BRITH CANADA
Le comité pour la justice au Canada

Submission to the Standing Committee on Foreign Affairs and International Development for its Study of Canada's Sanctions Regime
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B'nai Brith Canada is Canada's oldest grassroots Jewish community organization dedicated to eradicating racism, antisemitism and hatred in all its forms, championing the rights of the marginalized, while providing basic human needs for members of the Jewish community. Our overriding objective is combatting antisemitism.

EXECUTIVE SUMMARY

The *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* and the *Special Economic Measures Act* enable Canada to implement targeted sanctions to combat gross violations of human rights and/or significant corruption. In the five years since the passage of the *Sergei Magnitsky Law*, however, it has fallen into disuse for the combatting of gross violations of human rights, with only the *Special Economic Measures Act* being used for this purpose. In these written submissions, the provisions and operation of these pieces of legislation are described, including in the context of Canada's overall sanctions schemes. Recommendations are provided to address weaknesses and bolster strengths. Specifically, B'nai Brith Canada recommends that the Standing Committee on Foreign Affairs and International Development's (hereinafter "the Committee") final report includes recommendations for the Government of Canada to:

1. **Investigate why the *Sergei Magnitsky Law* is not being used to combat gross violations of human rights;**
2. **Propose solutions to rectify the general incoherence of Canada's sanctions schemes, including by instituting clear and publicly available policy regarding which legislation is used in which circumstances, and ensuring that the various sanctions legislations are used in an internally consistent and cohesive manner;**
3. **Increase transparency including by facilitating the establishment of a coordination group, with a clear and formalized pathway for civil society to communicate requests to multiple governments for the implementation of targeted sanctions;**
4. **Support the utilization of the new mechanism to repurpose assets of sanctioned individuals and entities, and facilitate the establishment of a clear role for victims in this process, including a role for individual claimants, and the possibility of using assets to assist victims in war-torn countries and conflict zones; and**
5. **Support the passage of legislation such as Bill S-247 that would, in the enforcement of sanctions, enable restrictions and prohibitions on activities in relation to family members, making it more difficult for gross human rights violators and kleptocrats to avoid the enforcement of sanctions by transferring, giving or selling their property to family members.**

I. THE PROVISIONS OF THE *JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS ACT (SERGEI MAGNITSKY LAW)* AND THE *SPECIAL ECONOMIC MEASURES ACT*

The *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* and the *Special Economic Measures Act* are two relevant pieces of legislation that are available to implement targeted sanctions on individuals and/or entities with responsibility for gross violations of human rights and/or significant corruption.

Similar acts exist in many countries around the world, generally allowing for the implementation of targeted sanctions on officials of foreign states who have engaged in significant corruption or gross violations of internationally recognized human rights. Sanctions can include property-blocking sanctions and visa restrictions, so that individuals sanctioned under the law may have their assets frozen and visas, if any, revoked.

Similar legislation exists in the United States, the United Kingdom, the European Union, Estonia, Lithuania, Latvia, Gibraltar, Jersey, Kosovo, Norway, Australia, and the Czech Republic.

Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)[1]

Canada's *Sergei Magnitsky Law* allows for the implementation of targeted sanctions on officials of foreign states who have engaged in significant corruption and/or gross violations of internationally recognized human rights. Specifically, the following foreign nationals may be subjected to sanctions:

a. Foreign nationals responsible for or complicit in extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in any foreign state who seek (i) to expose illegal activity carried out by foreign public officials, or (ii) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms;
b. Foreign nationals acting as agent of or on behalf of a foreign state in a matter relating to an activity described in point [a] above;
c. Foreign public officials or associates of such officials responsible for or complicit in ordering, controlling, or otherwise directing, acts of significant corruption, including bribery, expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, or the transfer of the proceeds of corruption to foreign jurisdictions; and
d. Foreign nationals materially assisting, sponsoring, or providing financial, material or technological support for or goods or services in support of an activity described in point [c] above.

The *Sergei Magnitsky Law* permits property-blocking and travel sanctions on listed individuals. Specifically, pursuant to section 4, the governor in council may "by order, cause to be seized, frozen or sequestrated … any of the foreign national's property situated in Canada". In addition, the governor in council may prohibit "any person in Canada [and] Canadians outside Canada" from:

a. Dealing, directly or indirectly, in any property, wherever situated, of the listed foreign national;
b. Entering into or facilitating, directly or indirectly, any financial transaction related to a dealing described above;
c. Providing or acquiring financial or other related services to, for the benefit of, or on the direction or order of the listed foreign national;

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[1] Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) S.C. 2017, c. 21, available at https://laws.justice.gc.ca/PDF/J-2.3.pdf.

d. Making available any property, wherever situated, to the listed foreign national or to a person acting on behalf of the listed foreign national.

Canada's *Sergei Magnitsky Law* amended the *Immigration and Refugee Protection Act (IRPA)* to designate these foreign nationals inadmissible to Canada on grounds of human or international rights violations.

Special Economic Measures Act

Pursuant to section 4 (1.1) (c) of the *Special Economic Measures Act*, sanctions may be implemented if "gross and systematic human rights violations have been committed in a foreign state."[2] If this circumstance applies, the governor in council may order that property situated in Canada be seized, frozen, or sequestrated, if such property belongs to the foreign state, any person in that state, or a national of that state who does not ordinarily reside in Canada. The governor in council may also restrict or prohibit dealing with the foreign state in a variety of ways, including restricting or prohibiting Canadians (or persons in Canada) from dealing in property held by nationals of that foreign state.[3]

One key difference between the *Sergei Magnitsky Law* and the *Special Economic Measures Act* is that the *Sergei Magnitsky Law* allows for targeted sanctions only on individuals, while the *Special Economic Measures Act* allows for sanctions on individuals as well as entities.

Another key difference between the Acts is that, unlike the *Sergei Magnitsky Law,* where individuals are added to a list, the *Special Economic Measures Act* allows for flexibility insofar as the implementation of sanctions is accomplished through the passage of regulations.

New Legislation Permits the Repurposing of Assets

Amendments to the *Sergei Magnitsky Law* and the *Special Economic Measures Act,* passed through the 2022 *Budget Implementation Act,* now permit the Government of Canada to sell off assets of sanctioned foreign officials and entities, and use the proceeds to compensate victims.[4]

The mechanism is through an application to the Federal Court of Canada, wherein the Government of Canada commences an application to request assets held by sanctioned officials and/or entities in Canada to be repurposed, with proceeds used to compensate victims.[5] This new ability to repurpose assets may apply to those sanctioned under the *Sergei Magnitsky Law* and/or the *Special Economic Measures Act.* Those with an interest in the property have rights within the proceedings.

II. THE OPERATION OF THE *JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS ACT (SERGEI MAGNITSKY LAW)* AND THE *SPECIAL ECONOMIC MEASURES ACT*

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[2] *Special Economic Measures Act* S.C. 1992, c. 17, available at https://laws-lois.justice.gc.ca/eng/acts/S-14.5/page-1.html.

[3] *Ibid.*

[4] *Budget Implementation Act,* 2022, No. 1 (S.C. 2022, c. 10), available at https://laws-lois.justice.gc.ca/eng/annualstatutes/2022_10/page-30.html#h-166.

[5] *Ibid*; also see Steven Chase, "Canada giving itself power to turn over sanctioned Russian assets to Ukraine", *The Globe and Mail,* April 26, 2022, available at https://www.theglobeandmail.com/canada/article-canada-giving-itself-power-to-pay-out-compensation-from-sanctioned/.

The *Sergei Magnitsky Law* Has Fallen Into Disuse

Although the provisions of both the *Sergei Magnitsky Law* and the *Special Economic Measures Act* allow for the implementation of targeted sanctions to combat gross violations of human rights, only the *Special Economic Measures Act* is, in practice, presently used for this purpose. From 2018 until August 2023, the *Sergei Magnitsky Law* was not used, at all, to implement targeted sanctions. Still, the *Sergei Magnitsky Law* has not been used, since 2018, in response to gross violations of human rights. The 3 Lebanese nationals added to the schedule of the *Sergei Magnitsky Law* in August 2023 were listed because of their involvement in significant corruption.[6]

It is not clear why the *Sergei Magnitsky Law* fell into disuse, nor why it continues to not be used to combat gross violations of human rights. 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.

The *Sergei Magnitsky Law* amended the *Special Economic Measures Act* with its passage in 2017, so in that sense, the *Sergei Magnitsky Law* is still being used every time the *Special Economic Measures Act* is used to implement targeted sanctions in response to gross violations of human rights. However, the fact that the *Sergei Magnitsky Law* is not, itself, used for this purpose leads to a confusing and incoherent sanctions regime in general. The confusion is not helped by the fact that, often times, reporting on the implementation of targeted sanctions by Canada falsely characterizes them as "Magnitsky sanctions", or misleadingly as "Magnitsky-style sanctions", when it is not, in fact, the *Sergei Magnitsky Law* that is being used.[7]

Multilateralism as an Unwritten Requirement

Another feature of the operation, in practice, of the *Sergei Magnitsky Law* and the *Special Economic Measures Act* is that the Government of Canada's decisions concerning whether or not to implement targeted sanctions in any given case has seemingly as much to do about politics as it does about gross violations of human rights or significant corruption. One important political consideration seems to concern whether or not Canada's allies have implemented targeted sanctions in response to a particular event. If Canada's allies have implemented targeted sanctions using their own Magnitsky or Magnitsky-style legislation, Canada is more likely to follow. This is in spite of the fact that nowhere in the *Sergei Magnitsky Law* or the *Special Economic Measures Act* is there a requirement that sanctions be implemented multilaterally. This exacerbates the general confusion surrounding Canada's sanctions schemes.

It also appears to not be sufficient that the United States has implemented sanctions. Canada appears to require a broader coalition. For instance, the United States has implemented a total of 107 sanctions in response to the atrocities committed against Uyghurs, with 57 Chinese companies and 33 Chinese officials

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[6] "Canada imposes new sanctions against Lebanese nationals", News Release, Global Affairs Canada, August 10, 2023, available at https://www.canada.ca/en/global-affairs/news/2023/08/canada-imposes-new-sanctions-against-lebanese-nationals0.html.

[7] See, for example, reference to the Foreign Affairs Minister's press secretary, Adrien Blanchard, describing Canada's sanctions on Russian officials as "Magnitsky style": Steven Chase, "After much fanfare, Canada has hardly used the Sergei Magnitsky Law to target human-rights abusers", *The Globe and Mail,* November 24, 2022, available at http://www.theglobeandmail.com/politics/article-magnitsky-law-canada-sanctions/.

and government agencies sanctioned by the United States government.[8] In contrast, Canada, the European Union, and the United Kingdom have only sanctioned four Chinese officials and one entity, namely, Zhu Hailun, Wang Junzheng, Wang Mingshan, Chen Mingguo, and Xinjiang Production and Construction Corps (XPCC) Public Security Bureau.[9]

It was not likely the case that the Government of Canada had insufficient information to sanction further individuals with responsibility for gross violations of human rights against Uyghurs. In January 2020, Uyghur Rights Advocacy Project submitted ten names of Chinese officials to the sanctions division of Global Affairs Canada.[10] Only one of those ten names (Zhu Hailun) was subsequently sanctioned by Canada, the European Union, and the United Kingdom. Eight of the ten have been among those sanctioned by the United States.[11]

Similarly, the United States sanctioned a number of Cuban officials and entities with responsibility for gross violations of human rights in the aftermath of the July 11, 2021 peaceful protests[12], including Brigada Especial Nacional of the Interior Ministry (The Black Berets of the Interior Ministry), Tropas de Prevención of the Revolutionary Armed Forces (The Red Berets of the Revolutionary Armed Forces), Álvaro López Miera, Lázaro Alberto Álvarez Casas, Oscar Callejas Valcárcel, Eddy Manuel Sierra Arias, Pedro Orlando Martínez Fernández, Roberto Abelardo Jimenez Gonzalez, Roberto Legrá Sotolongo, Andres Laureano González Brito, and Romárico Vidal Sotomayor García.[13] Prime Minister Justin Trudeau, as well as the Foreign Affairs Ministry, condemned the violent crackdown by Cuban officials. However, the Government of Canada did not follow the United States in imposing targeted sanctions on Cuban officials and/or entities with responsibility for the gross violations of human rights. This is also in spite of a recent petition to Global Affairs Canada, by the nongovernmental organizations Democratic Spaces and Cuba Decide, to formally request that Canada implement targeted sanctions, in response to the crackdown, on the above-named individuals and entities already sanctioned by the United States.[14]

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[8] U.S. Sanctions List, Uyghur Human Rights Project, available at https://uhrp.org/sanctions/.

[9] Sarah Teich, *Justice for Uyghurs* (Macdonald Laurier Institute, 2022), available at http://macdonaldlaurier.ca/wp-content/uploads/2022/07/July2022_Justice_for_Uyghurs_Teich_PAPER_FWeb.pdf.

[10] *Ibid.* The ten names provided were: Hu Lianhe, Deputy Head, Secretariat for Coordinating Xinjiang Work, Central Political and Legal Affairs Committee of the Chinese Communist Party; Shohret Zakir, Chairman of Xinjiang Uyghur Autonomous Region (XUAR) (2018-2021); Chen Quanguo, Former Party Secretary of XUAR, Political Commissar of the Xinjiang Production and Construction Corps (XPCC), and member of the 19th Politburo of the CCP; Zhu Hailun, Former Secretary of the Political and Legal Affairs Committee of the XUAR; Sun Jinlong, Former Political Commissar of XPCC; Peng Jiarui, Deputy Party Secretary and Commander, XPCC; Shawket Imin, Head, United Front Department, XPCC; Zhou Jianguo, XUAR armed police commander; Guan Yanmi, former commander of the XUAR armed police; and Yang Huan Ning, Executive Vice Minister of Security).

[11] *Ibid.* Every name above has been confirmed as sanctioned by the United States except for Zhou Jianguo, XUAR armed police commander; and Guan Yanmi, former commander of the XUAR armed police.

[12] On July 11, 2021, the people of Cuba engaged in large peaceful protests. Hundreds of thousands of Cubans took to the streets. In response, the Cuban regime cracked down in violent repression, committing so many arbitrary arrests that Cuba now has more than a thousand political prisoners. Human Rights Watch further found systematic use of "arbitrary detention, ill-treatment of detainees, and abuse-ridden criminal prosecutions" by Cuban officials, as well as routine use of "brutal abuses" in detention, including sexual violence.

[13] Steven Chase, "Canada asked to hit Cuba with sanctions for repressing thousands after major protests", *The Globe and Mail,* November 14, 2022, available at http://www.theglobeandmail.com/politics/article-canada-cuba-sanctions-protests/.

[14] *Ibid;* "Democratic Spaces and the Cuba Decide Promoters Request the Imposition of Targeted Sanctions on Cuban Officials and Entities", November 14, 2022, available at https://cubadecide.org/2022/11/democratic-spaces-and-the-cuba-decide-promoters-request-the-imposition-of-taregted-sanctions-on-cuban-officials-and-entities/?lang=en.

These above examples demonstrate that Canada appears to require, in practice, a broad, multilateral coalition to implement targeted sanctions, even under the *Special Economic Measures Act.* However, the lack of transparency concerning this requirement, and any other political considerations that might play into these decisions, is problematic.

<u>Other Sanctions Regimes Add to the Confusion</u>

The general confusion and unwieldiness are exacerbated by the existence and use of other sanctions regimes, beyond the *Sergei Magnitsky Law* and the *Special Economic Measures Act.* Beyond these two pieces of legislation, there also exists, the *United Nations Act,* immigration designations, and *Criminal Code* sanctions. The *United Nations Act* enables the Governor in Council to make orders and regulations to enable sanctions authorized by the United Nations Security Council. Use of immigration designations allow Canada to block individuals' entry into the country and/or revoke existing visas using the *IRPA*. Under the *Criminal Code,* an entity may be listed as a terrorist entity, which would have the effect of barring entry of its members to Canada, as well as numerous further effects: banking and other financial institutions would have to provide reports, on a regular basis, to their regulating authority, regarding what assets, if any, of the entity they are holding onto. It would also become a crime for a Canadian, anywhere in the world, to participate in or facilitate any activity of the listed group, if it is for the purpose of enhancing their ability to carry out terrorist activity. It would also become a crime for a Canadian, anywhere in the world, to provide property or services to the group.

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 regime as a whole.

For instance, immigration designations were leveraged in 2022 to bar some members of the Islamic Revolutionary Guard Corps (IRGC) from entering Canada. The stated reasoning was that the IRGC are "terrorists". Deputy Prime Minister and Minister of Finance, the Hon. Chrystia Freeland, stated unequivocally:

> "The IRGC leadership are terrorists. The IRGC is a terrorist organization. Today, Canada is formally recognizing that – and acting accordingly. The actions we are taking today to hold senior members of the IRGC to account will ensure that Canada will never be a haven for its money, for its leaders, or for their henchmen. Canada is proud to stand with the brave people of Iran."[15]

However, immigration designations were used. *Criminal Code* sanctions were not used to list the IRGC as a terrorist entity. It is nonsensical that the government implement immigration designations because the IRGC is a terrorist entity, and then fail to list the IRGC as a terrorist entity under the *Criminal Code.*

The government's failure to list the IRGC as a terrorist entity under the *Criminal Code* is a long-standing problem with no clear rationale. B'nai Brith Canada has called on Canada to list the IRGC as a terrorist entity under the *Criminal Code* for years. In 2018, there was a motion unanimously passed in the House of Commons to this effect. There is even, presently, an ongoing Federal Court case challenging the government's inaction on this front. The Government of Canada's use of immigration designations against some members of the IRGC is an improvement upon doing nothing, but as described above, use of immigration designations comes with significantly less in terms of legal consequences compared to *Criminal Code* sanctions. It is also internally inconsistent with its stated rationale of sanctioning the IRGC

[15] "Canada to implement new measures against the Iranian regime", *Prime Minister of Canada Justin Trudeau,* October 7, 2022, available at http://pm.gc.ca/en/news/news-releases/2022/10/07/canada-implement-new-measures-against-iranian-regime.

because it is a terrorist entity. There is no transparency from government concerning its reasoning for imposing only immigration designations in this case.

This is emblematic of the general incoherence of the sanctions regimes in Canada. Immigration and *Criminal Code* sanctions should be used coherently and in an internally consistent manner. The entire sanctions regime – encompassing the *Sergei Magnitsky Law,* the *Special Economic Measures Act,* the *United Nations Act,* immigration designations under the *IRPA,* and *Criminal Code* sanctions – should be internally consistent and utilized in internally consistent manners, with clear and transparent rationales. The Standing Committee on Foreign Affairs and International Development similarly recommended in 2017 that the Government of Canada ensure that sanctions be "imposed in a complementary and coherent manner".[16] That recommendation has not been sufficiently implemented by the Government of Canada.

III. RECOMMENDATIONS

As described above, there are issues with the operation of the sanctions regimes in Canada. These include the disuse of the *Sergei Magnitsky Law* to combat gross violations of human rights, the general incoherence of the sanctions schemes, and a lack of transparency. At the same time, Canadian sanctions legislation has strong, positive features, including the ability to sanction entities under the *Special Economic Measures Act,* and to repurpose assets. Strengths should be supported, and weaknesses addressed. Specifically, B'nai Brith Canada recommends that the Committee's final report includes recommendations for the Government of Canada to:

1. Investigate Why the *Sergei Magnitsky Law* is Not Being Used to Combat Gross Violations of Human Rights

The fall into disuse of the *Sergei Magnitsky Law* is not, in itself, a serious issue. Targeted sanctions can and are being implemented using the *Special Economic Measures Act.* However, the fact that reporting on Canada's implementation of targeted sanctions under the *Special Economic Measures Act* often misleadingly characterizes those sanctions as Magnitsky or Magnitsky-style generates confusion and a lack of transparency. This should be addressed.

If the Government of Canada prefers the branding of "Magnitsky", it should investigate why the *Sergei Magnitsky Law* is not being used, and rectify the problems that may be causing the disuse. For instance, if the *Sergei Magnitsky Law* is not being used because, unlike the *Special Economic Measures Act,* it does not provide for flexibility through the use of regulations, then perhaps the *Sergei Magnitsky Law* should be amended to provide for flexibility through the use of regulations.

2. Propose Solutions to Rectify the General Incoherence

There should also be clear and publicly available policy regarding which legislation is used in which circumstances, and the various sanctions legislation should be used in an internally consistent and cohesive manner.

In principle, there are two types of sanctions: sanctions on the innocent to pressure the guilty, and sanctions on the guilty. The *Sergei Magnitsky Law* can be used to implement sanctions on the guilty, where the *Special Economic Measures Act* can be used to implement sanctions on the innocent to pressure the guilty. Specifically, and following any amendments necessary to encourage the use of the *Sergei Magnitsky Law,* a policy can be instituted directing the Government of Canada to utilize the *Sergei Magnitsky Law* to

[16] See Recommendation 1 of the FAAE Committee Report, available at https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-7/page-87.

implement targeted sanctions on those responsible for gross violations of human rights and/or significant corruption, and the *Special Economic Measures Act* for broader based sanctions.

Before any such policy is implemented, the *Sergei Magnitsky Law* should be amended to permit the implementation of sanctions on entities with responsibility for gross violations of human rights and/or significant corruption, as well as individuals, so that Canada does not suddenly find itself unable to sanction guilty entities.

There should also be clear and publicly available policy regarding the use of immigration designations and *Criminal Code* sanctions, and when each of those is used. They should be used in a cohesive and internally consistent manner. The IRGC should be listed as a terrorist entity under the *Criminal Code*. Generally, it should not be the case that immigration designations are used based on a rationale of terrorism, without also leveraging the terrorism provisions of the *Criminal Code*.

3. Increase Transparency and Facilitate the Establishment of a Coordination Group

All of the above should be clearly communicated to the public, especially civil society. Nongovernmental organizations can be instrumental in providing critical information to the Government of Canada concerning human rights abusers and kleptocrats. These organizations should have a clear understanding of which sanctions legislation is utilized under which circumstances.

These organizations should also have a clear and formalized pathway to communicate requests to implement sanctions to the Government of Canada. Presently, nongovernmental organizations may send emails containing information to the sanctions division of Global Affairs Canada. However, Global Affairs Canada is not required to reply. The government should be required to reply, with reasons, communicating its decision to implement or to not implement any requested sanctions.

There should also be a clear and formalized pathway to communicate requests to multiple governments. As described above, there appears to be an unwritten requirement that Canada will only implement sanctions in concert with its allies. As such, there should be a mechanism for nongovernmental organizations to file a sanctions submission to a group of rights-respecting countries, all at once. Presently, submissions need to be adjusted to each jurisdiction and filed individually. This presents a burden on civil society, and does nothing to encourage the requisite communication and cooperation between Canada, the United States, the United Kingdom, the European Union, and others.

Professor Irwin Cotler proposed in 2020 that "Canada should establish an international contact group for the coordination of Magnitsky sanctions".[17] If this has not already been done, it should be, and a formalized and transparent mechanism for civil society submissions can and should be built into this group. Cotler also noted that "given the highly discretionary and opaque nature" of Canada's targeted sanctions legislation, "instituting a higher degree of transparency would help build trust", and "[f]ormalizing a role for the public and Parliament in the process would … strengthen standards and expand expertise".[18] We agree with this assessment.

Assisting with the goal of enhancing transparency, there should also be a centralized informational resource, possibly in the form of a website, wherein the public is kept informed about which individuals and entities are subject to sanctions, in which jurisdictions, and using which legislation.

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[17] Irwin Cotler and Brandon Silver, "The Case for a New and Improved Magnitsky Law", *Policy Magazine,* September 12, 2020, available at https://www.policymagazine.ca/the-case-for-a-new-and-improved-magnitsky-law/.
[18] *Ibid.*

4. Support the Utilization of the Ability to Repurpose Assets

As described above, the 2022 *Budget Implementation Act* made amendments to the *Sergei Magnitsky Law* and the *Special Economic Measures Act* to permit the Government of Canada to repurpose assets of sanctioned foreign officials and entities, to compensate victims.[19] The mechanism is through an application by the Government of Canada to the Federal Court of Canada.[20]

In December 2022, Minister Mélanie Joly announced that Canada begun the process to repurpose assets totaling US $26 million from Granite Capital Holdings Ltd., a company owned by Russian oligarch Roman Abramovich. Abramovich is sanctioned under the *Special Economic Measures (Russia) Regulations*.

This mechanism should be utilized in other instances as well, with proceeds used to compensate victims. Moreover, there should be a clear role for victims in this process. As Professor Irwin Cotler proposed, there should also be a role for individual claimants, perhaps in an analogous manner to the operation of the *Justice for Victims of Terrorism Act,* which enables victims of terrorism to seek monetary damages in civil courts.[21] This would have the effect of empowering victims of human rights abuses, rather than forcing them to rely on the Government of Canada to take the step of filing an application to the Federal Court.

5. Support the Passage of Legislation to Enable the Enforcement of Sanctions on Family Members

In the enforcement of sanctions, it is also important that activities in relation to family members of sanctioned individuals be restricted or prohibited. This may be done by amending section 4 of the *Sergei Magnitsky Law,* as recently proposed in Bill S-247, *An Act to amend the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),* introduced by the Honourable Senator Housakos.

If passed, Bill S-247 would amend the *Sergei Magnitsky Law* by, among other things, replacing paragraphs 4(1)(a) and (b) with the following:

> (a) make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection (3) in relation to a foreign national <u>or a family member of the foreign national</u> that the Governor in Council considers necessary;
> (b) by order, cause to be seized, frozen or sequestrated in the manner set out in the order
>   <u>(i)</u> any of the foreign national's property situated in Canada<u>, or</u>
>   (ii) <u>any of the property of any family member of the foreign national that is situated in Canada and that the Governor in Council has reason to believe has been transferred, given or sold to the family member for the purposes of impeding the enforcement of this Act;</u> …

Analogous amendments to the *Special Economic Measures Act* may also be pursued. These above amendments or similar ones would make it more difficult for gross human rights violators and kleptocrats to avoid the enforcement of sanctions by transferring, giving or selling their property to family members.

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[19] *Budget Implementation Act,* 2022, No. 1 (S.C. 2022, c. 10), available at https://laws-lois.justice.gc.ca/eng/annualstatutes/2022_10/page-30.html#h-166.
[20] *Ibid*; also see Steven Chase, "Canada giving itself power to turn over sanctioned Russian assets to Ukraine", *The Globe and Mail,* April 26, 2022, available at https://www.theglobeandmail.com/canada/article-canada-giving-itself-power-to-pay-out-compensation-from-sanctioned/.
[21] Irwin Cotler and Brandon Silver, "The Case for a New and Improved Magnitsky Law", *Policy Magazine,* September 12, 2020, available at https://www.policymagazine.ca/the-case-for-a-new-and-improved-magnitsky-law/.

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