



## LEGISLATIVE SUMMARY



### **Bill S-226:**

**An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act**

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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*Legislative Summary of Bill S-226*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL S-226: AN ACT TO PROVIDE FOR THE TAKING OF RESTRICTIVE MEASURES IN RESPECT OF FOREIGN NATIONALS RESPONSIBLE FOR GROSS VIOLATIONS OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS AND TO MAKE RELATED AMENDMENTS TO THE SPECIAL ECONOMIC MEASURES ACT AND THE IMMIGRATION AND REFUGEE PROTECTION ACT

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## 1 BACKGROUND

Bill S-226, An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act (short title: Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)),<sup>1</sup> was introduced in the Senate by Senator Raynell Andreychuk on 4 May 2016. It was passed by the Senate, unamended, on 11 April 2017 and received first reading in the House of Commons on 13 April 2017. Following second reading in the House of Commons on 13 June 2017, the bill was referred to the House of Commons Standing Committee on Foreign Affairs and International Development. **The committee's report was presented to the House of Commons on 22 June 2017. The bill was passed by the House of Commons with amendments on 4 October 2017. The Senate passed the bill as amended by the House of Commons on 17 October 2017. Bill S-226 came into force when it received Royal Assent on 18 October 2017.**

Bill S-226 creates a "Sergei Magnitsky Law" and makes related amendments to the *Special Economic Measures Act* (SEMA)<sup>2</sup> and the *Immigration and Refugee Protection Act* (IRPA).<sup>3</sup> The purpose of the bill is to provide for measures that can be taken against foreign nationals who have committed gross violations of internationally recognized human rights. The bill takes its name from Russian lawyer and whistle-blower Sergei Magnitsky, whose 2009 death in custody prompted widespread outrage internationally. Though the bill's preamble focuses on the case of Sergei Magnitsky, it includes references to the murders of Alexander Litvinenko and Boris Nemtsov, as well as the illegal imprisonment of Nadiya Savchenko, as motivating factors.<sup>4</sup> The preamble alleges that Russian officials are responsible for these acts, but also states that "all violators of internationally recognized human rights should be treated and sanctioned equally throughout the world."

The bill's amendments to the SEMA add gross violations of internationally recognized human rights and "significant acts of corruption" to the circumstances in which the Governor in Council can impose sanctions, which are currently limited to decisions of international organizations in which Canada is a member, such as the Organization of American States, or crises threatening international peace and security.<sup>5</sup> The preamble states that this new justification for the imposition of sanctions against foreign states and

nationals “furthers Canada’s support for human rights and better enables it to protect activists who fight for human rights.” Moreover, both houses of Parliament have unanimously adopted resolutions calling on the Government of Canada to explore sanctions as appropriate against any foreign nationals responsible for violations of internationally recognized human rights in a foreign country when authorities in that country are unable or unwilling to conduct a thorough, independent and objective investigation of the violations.

## 1.1 THE SERGEI MAGNITSKY CASE

Efforts within and outside Canada to create sanctions regimes that specifically target human rights violators and corrupt public officials have been motivated in large part by reaction to the case of Russian lawyer Sergei Magnitsky and the advocacy on his behalf of his former client, Mr. William Browder, founder and Chief Executive Officer of Hermitage Capital Management Ltd. Prior to his death, Sergei Magnitsky represented the firm, a British-based investment fund with significant Russian assets, in the context of a corruption investigation.

In 2007, Hermitage Capital’s Moscow offices were raided, as were the offices of the company’s law firm, Firestone Duncan, in what has been described as an officially sanctioned theft and tax fraud.<sup>6</sup> Hermitage Capital hired Firestone Duncan, the law firm for which Sergei Magnitsky worked as a tax lawyer, to investigate the theft. Through its counsel, Hermitage Capital filed criminal complaints with Russian law enforcement agencies.

In his November 2010 appearance before the House of Commons Subcommittee on International Human Rights, Mr. Browder explained that

instead of doing an investigation into the police officers involved in the crime, the police opened an investigation – criminal cases – against all seven of our lawyers from four different law firms.<sup>7</sup>

Six of the seven lawyers charged left Russia for the United Kingdom (U.K.). According to Mr. Browder, Mr. Magnitsky refused to leave because he believed that he had committed no crime and because he wished to see the perpetrators of the tax fraud brought to justice.

In 2008, Mr. Magnitsky testified “that he had uncovered a huge scam by top police officials to embezzle \$230 million in taxes from money that Hermitage Fund companies had paid in 2006.”<sup>8</sup> Following his testimony, three subordinates of one of the individuals who Mr. Magnitsky alleged to have been involved in the fraud against Hermitage Capital and the Russian Treasury were appointed to conduct a criminal investigation into charges against Mr. Magnitsky himself. Mr. Magnitsky was subsequently arrested on charges involving millions in dollars in tax fraud and held without bail.<sup>9</sup>

According to Mr. Browder, Russian police officials arrested Mr. Magnitsky in October 2008, one month after his testimony, and “then tried to get him to withdraw his testimony against the police officers. In order to do that, they tortured him.”<sup>10</sup> As a result of poor prison conditions and his treatment in prison, Mr. Magnitsky became ill

and prison doctors prescribed surgery. Shortly before his operation was scheduled to occur, Mr. Magnitsky was transferred to a maximum security prison with no medical facilities. Mr. Magnitsky's condition worsened and he was eventually transferred to another prison that had a hospital; however, on arrival, he was denied treatment, placed in a straitjacket in an isolation cell, and left for over an hour until he died.<sup>11</sup>

## 1.2 RESPONSE TO THE SERGEI MAGNITSKY CASE

### 1.2.1 DEVELOPMENTS INSIDE THE RUSSIAN FEDERATION

In July 2011, the Investigative Committee of the Russian Federation<sup>12</sup> found that Mr. Magnitsky had received inadequate medical care in prison. However, the committee also found that the lead investigator in Mr. Magnitsky's case had not committed any wrongdoing by ordering Mr. Magnitsky's transfer to a prison with minimal medical facilities or by refusing to permit medically prescribed follow-up treatment, despite repeated requests.<sup>13</sup>

On the other hand, then President Dmitry Medvedev (now prime minister) ordered the Presidential Council for Civil Society and Human Rights to investigate the case. The Council's July 2011 findings reportedly describe not only "the appalling conditions Mr. Magnitsky was subjected to but also names several prison officials and medical authorities who allegedly colluded in the abuse."<sup>14</sup> Media reports indicate that the Council also concluded that Mr. Magnitsky's initial arrest was unlawful.<sup>15</sup>

Further, according to the Council, at the time of his death in custody, Mr. Magnitsky "had suffered from pancreatitis and gallstones, and had been found with broken fingers and bruising to his body. ... There were, it said, grounds to suspect that he had died as the result of a beating."<sup>16</sup>

In February 2012, the criminal investigation of Sergei Magnitsky was reopened, and on 29 November 2012, a Russian prosecutor took additional steps to initiate posthumous criminal proceedings against Mr. Magnitsky and proceedings *in absentia* against William Browder.<sup>17</sup> Sergei Magnitsky was posthumously convicted of tax fraud ("qualified swindling") by a Russian court on 11 July 2013.

### 1.2.2 DEVELOPMENTS OUTSIDE THE RUSSIAN FEDERATION

#### 1.2.2.1 CANADA

##### 1.2.2.1.1 ACTIONS PRIOR TO BILL S-226

The death of Sergei Magnitsky provoked an international outcry, including in Canada, where Parliament has responded with a number of measures. These include private members' bills, motions, and studies by committees of both the Senate and the House of Commons.

In October 2011, the Honourable Irwin Cotler, MP, introduced Bill C-339 in the House of Commons.<sup>18</sup> This bill was subsequently reintroduced in the next session of Parliament as Bill C-689,<sup>19</sup> but neither bill was adopted. The preamble to Bill C-339

denounced Russia's "disregard for the rule of law" and "corruption-related crimes" and listed the international obligations that Russia had failed to meet, namely, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *International Covenant on Civil and Political Rights*; the *International Covenant on Economic, Social and Cultural Rights*; and the *United Nations Convention Against Corruption*. While that bill dealt exclusively with Russia, Bill S-226 deals with human rights violations in all countries.

On 25 March 2015, Mr. Cotler presented a motion in the House of Commons calling for the substance of Bill C-339 to be implemented. The motion was adopted with unanimous consent.<sup>20</sup> The same motion was introduced by Senator Andreychuk on the same day in the Senate Chamber and it was adopted there on 5 May 2015.

The motion called upon the Government of Canada to:

- (a) Condemn any foreign nationals who were responsible for the detention, torture or death of Sergei Magnitsky, or who have been involved in covering up the crimes he exposed;
- (b) Explore and encourage sanctions against any foreign nationals who were responsible for the detention, torture or death of Sergei Magnitsky or who have been involved in covering up the crimes he exposed; and
- (c) Explore sanctions as appropriate against any foreign nationals responsible for violations of internationally recognized human rights in a foreign country, when authorities in that country are unable or unwilling to conduct a thorough, independent and objective investigation of the violations.<sup>21</sup>

The House of Commons Subcommittee on International Human Rights studied the case of Sergei Magnitsky during the 3<sup>rd</sup> Session of the 40<sup>th</sup> Parliament and during the 1<sup>st</sup> Session of the 41<sup>st</sup> Parliament.<sup>22</sup> The subcommittee received an update during the 2<sup>nd</sup> Session of the 41<sup>st</sup> Parliament.<sup>23</sup>

#### 1.2.2.1.2 ACTIONS DURING THE 1<sup>ST</sup> SESSION, 42<sup>ND</sup> PARLIAMENT

In addition to introducing Bill S-226, Parliament took a number of actions related to the Magnitsky case in the 1<sup>st</sup> Session of the 42<sup>nd</sup> Parliament.

On 24 March 2016, the Standing Senate Committee on Foreign Affairs and International Trade tabled a report entitled *Taking Action Against Human Rights Violators in Russia*.<sup>24</sup> The report is based on testimony the committee heard on 10 March 2016 from three advocates for democracy in Russia:

- William Browder, now Head of the International Justice Campaign for Sergei Magnitsky and author of the book *Red Notice: A True Story of High Finance, Murder, and One Man's Fight for Justice*;<sup>25</sup>
- Zhanna Nemtsova, daughter of the late Boris Nemtsov; and
- Vladimir Kara-Murza, Coordinator, Open Russia and Deputy Leader of the People's Freedom Party.<sup>26</sup>



The Senate committee's report highlighted the failure of Russian authorities to investigate and to bring to justice those individuals implicated in the deaths of Sergei Magnitsky and Boris Nemtsov, as well as the intimidation and suspected poisoning of Mr. Kara-Murza. The report confirmed the ongoing validity and increased urgency of the motion adopted by the Senate in May 2015 on the issue of human rights and rule of law concerns in Russia. It reiterated its call for the Government of Canada to take action against human rights violators in Russia, including the imposition of sanctions. The three individuals also appeared before the House of Commons Standing Committee on Foreign Affairs and International Development on 10 March 2016.<sup>27</sup>

On 5 May 2016, Member of Parliament James Bezan introduced a bill similar to Bill S-226 in the House of Commons.<sup>28</sup> This bill – C-267 – has not progressed beyond the first reading stage.

In April 2017, the House of Commons Standing Committee on Foreign Affairs and International Development presented the results of its legislative review of the SEMA and *Freezing Assets of Corrupt Foreign Officials Act*<sup>29</sup> to Parliament. Entitled *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*,<sup>30</sup> the committee's report called for the expansion of the government's authority to impose sanctions under the SEMA to include gross violations of international human rights.

#### 1.2.2.2 UNITED STATES

In December 2012, President Barack Obama signed into law the *Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012* (U.S. Magnitsky Act).<sup>31</sup> The U.S. Magnitsky Act imposes visa bans or revocations<sup>32</sup> on persons on a designated list and requires the president to exercise the president's powers under the U.S. *International Emergency Economic Powers Act* to freeze and prohibit all transactions in all property of the said designated persons.<sup>33</sup>

The list of persons affected by the U.S. Magnitsky Act includes persons who

- are responsible for, or who benefitted financially from, the detention, abuse, or death of Sergei Magnitsky;
- participated in related liability concealment efforts; or
- were involved in the criminal conspiracy uncovered by Sergei Magnitsky,<sup>34</sup> either in their own capacity or as an agent.<sup>35</sup>

Designations, made by the president, are to be based on credible information,<sup>36</sup> including from Congress, non-governmental organizations and other countries.<sup>37</sup> The U.S. Magnitsky Act applies the same measures to anyone who committed human rights violations, including extrajudicial killings or torture, against human rights advocates or whistle-blowers in Russia.<sup>38</sup> There are currently **49** individuals sanctioned pursuant to this Act.<sup>39</sup>

The *Global Magnitsky Human Rights Accountability Act* was passed by Congress in December 2016.<sup>40</sup> This legislation enables economic sanctions and travel bans to be imposed on individuals anywhere in the world who are deemed to have engaged in acts that violate certain international human rights standards or that constitute significant corruption. In making its decisions, the U.S. administration is required to consider “credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights,” as well as information provided by certain committees of Congress.

### 1.2.2.3 EUROPE

In October 2012, recognizing the imminent passage of the U.S. Magnitsky Act, the European Parliament recommended to the Council of the European Union that measures similar to those contained in the U.S. legislation be implemented. The Parliament urged the Council to establish a common European Union (EU) list of officials responsible for the death of Sergei Magnitsky, and the subsequent judicial cover-up, as well as the ongoing harassment of Magnitsky’s family. It was further recommended that an EU-wide visa ban on listed officials be implemented. The Parliament also recommended a freeze of the financial assets held within the EU by the Russian officials and their immediate families.<sup>41</sup> On 2 April 2014, the European Parliament reiterated its recommendation and specifically mandated that the list include 32 names, some identified by the U.S. Magnitsky Act,<sup>42</sup> and others identified as the result of an “independent investigation.”<sup>43</sup> The Council has not yet adopted legislation pursuant to the European Parliament’s resolution.

On 8 December 2016, Estonia passed a law to forbid entry to people if “there is information or good reason to believe” that they took part in activities that resulted in the “death or serious damage to health of a person” or their “unfounded conviction for criminal offence on political motives.” Estonian President Kersti Kaljulaid said that this amendment to Estonia’s 1998 *Obligation to Leave and Prohibition on Entry Act*

was elaborated to consider the recommendations of the European Parliament and the OSCE [Organization for Security and Co-operation in Europe] Parliamentary Assembly regarding the refusal of a visa to those persons who are guilty of violating the human rights of Sergei Magnitsky and causing his death, which could be imposed in future similar situations.<sup>44</sup>

On 27 April 2017, Royal Assent was given to the *Criminal Finances Act 2017*<sup>45</sup> in the U.K. Part 1, Chapter 3 of this Act (“Civil Recovery”) adds to the definition of “unlawful conduct” contained in Part 5 (“Civil recovery of the proceeds etc. of unlawful conduct”) of the *Proceeds of Crime Act 2002*.<sup>46</sup> Unlawful conduct now includes conduct that occurs in a country or territory outside the U.K. and constitutes, or is connected with, the commission of a gross human rights abuse or violation. Conduct constitutes the commission of a gross human rights abuse or violation if a number of conditions are met. These conditions include elements similar to those found in Bill S-226. The addition of these definitions is important, as they expand the scope of the *Proceeds of Crime Act 2002*, which enabled “the enforcement authority to recover, in civil proceedings before the High Court or Court of Session, property which is, or represents, property obtained through unlawful conduct” (Part 5, Chapter 1). The *Proceeds of Crime Act 2002* now allows the government to apply to the High Court to freeze U.K. assets belonging to those involved in gross human rights abuses in

any country. This includes those who have targeted whistle-blowers or human rights activists for retaliatory action after they have uncovered corruption.

**In May 2018, the U.K. *Sanctions and Anti-Money Laundering Act 2018* received Royal Assent. The Act allows for a sanctions policy for the U.K. in view of its repeal of the EU sanctions framework following the 2016 U.K. decision to leave the EU. The U.K. can freeze the assets of, prevent the provision of financial services to, and/or impose visa bans on a designated person or entity that commits gross human rights violations.**

**On 16 November 2017, the Lithuanian Parliament passed the *Magnitsky Act*, which permits the Minister of the Interior to impose travel bans of at least five years on an alien when:**

there are serious grounds to believe that an alien has committed a serious or very serious crime against a person in a foreign state and has consequently violated universally recognised human rights and freedoms, or has committed a corruption-related offence or a criminal offence related to money laundering, or who has instigated or otherwise participated in the commission of such offences and/or for these reasons has been included in the national list of alerts for refusal of entry by an EU Member State, a member state of the European Free Trade Association, or a NATO member country.<sup>47</sup>

**The law also provides for targeted sanctions against people who violate, with impunity, the human rights of whistle-blowers of corruption cases. Previously, Lithuania could ban an alien from Lithuania only in cases where that alien posed a threat to national security or public order.<sup>48</sup> The Lithuanian *Magnitsky Act* came into force in January 2018.<sup>49</sup>**

### 1.3 PRE-EXISTING CANADIAN SANCTIONS LEGISLATION

#### 1.3.1 SPECIAL ECONOMIC MEASURES ACT

In Canada, the SEMA came into force in 1992 to permit Canada to impose sanctions, even where there is no United Nations Security Council resolution. The Act allows Canada to impose economic sanctions in either of the following situations:

- where an international organization to which Canada belongs calls on its members to take economic measures against a foreign state; or
- where a grave breach of international peace and security has occurred and is likely to result in a serious international crisis.

The SEMA thus authorizes the Governor in Council to make orders or regulations imposing sanctions against a foreign state. These may include restricting or prohibiting persons in Canada or Canadians outside Canada from exporting, selling or shipping goods to that foreign state, and from importing or acquiring goods from that state. An order may also cause to be seized, frozen or sequestered any property situated in Canada that is held by or on behalf of a foreign state, any person in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada.

Section 7 of the SEMA requires all orders and regulations to be tabled in both houses of Parliament within five sitting days after they are made, and allows for debate on the measures taken. A motion to amend or revoke an order or regulation laid before Parliament can be introduced in either House, but must be adopted by both Houses to enter into force.

Under section 8 of the SEMA, any person contravening an order or regulation under the Act is guilty of an offence and, upon indictment, liable to imprisonment for up to five years. Any prosecution under the Act may only be commenced with the consent of the Attorney General of Canada.

When sanctions are imposed under the Act, the names of listed persons are published in a schedule to the relevant regulation. In general, all prohibitions described in a regulation apply to all individuals or entities named in its schedule. Where a regulation includes more than one schedule, the prohibitions may apply selectively. Names may be added to or removed from a list by an amending regulation.<sup>50</sup>

### 1.3.2 *FREEZING ASSETS OF CORRUPT FOREIGN OFFICIALS ACT*

Under the *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA), which came into force in 2011, Canada may acquiesce to a demand by a state that it make orders directing that the property in Canada of a politically exposed foreign person (PEFP)<sup>51</sup> be seized, frozen or sequestered when there is internal political turmoil in that foreign state. The foreign state must assert that the PEFP has misappropriated property or acquired property inappropriately by virtue of his or her office, and Canada must be satisfied that the order is in the interest of international relations. The Act also allows the Government of Canada to make orders restricting the dealings with designated PEFPs. The orders expire after five years but can be extended. Unlike sanctions, which are generally punitive, the FACFOA restrictions are a form of assistance that Canada provides to the requesting state. The restrictions under the FACFOA are in addition to those regulating the provision of financial and other services to PEFPs under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.<sup>52</sup> Currently, regulations have been enacted under the FACFOA in respect of individuals associated with the former regimes in Ukraine<sup>53</sup> and Tunisia.<sup>54</sup>

Under section 7 of the FACFOA, a copy of each order or regulation made under the Act must be tabled in each House of Parliament within 15 days after it is made.

Section 8 of the FACFOA imposes a screening obligation on regulated financial institutions, including banks, credit unions, trust and loan companies, insurance companies, securities dealers and certain money services businesses. These institutions are required to determine, on a continuing basis, whether they are in possession or control of property owned or controlled by, or on behalf of, any person designated under the Act. For federally regulated financial institutions, the Office of the Superintendent of Financial Institutions has published an instruction guide<sup>55</sup> that sets out expectations with respect to this screening obligation. At present, there is no consolidated list of all names designated under Canada's sanctions statutes, which can make compliance with the screening obligation difficult.

Under section 9 of the FACFOA, there is an obligation to report to the Royal Canadian Mounted Police any property in a person's possession or control that is the property of a PEFP subject to a FACFOA order, along with information about transactions in respect of this property. Under section 10 of the FACFOA, it is a criminal offence to wilfully contravene an order made under the FACFOA or to contravene the obligation to screen transactions and report suspicious property. Upon indictment, the maximum sentence for these offences is five years' imprisonment. Prosecutions may only be commenced with the approval of the Attorney General of Canada.

## 2 DESCRIPTION AND ANALYSIS

**Clauses 1 to 16 of Bill S-226 enact the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. Clause 17 makes related amendments to the *Special Economic Measures Act*. Clause 18 of the bill makes related amendments to the *Immigration and Refugee Protection Act*.**

### 2.1 SERGEI MAGNITSKY LAW

#### 2.1.1 RESTRICTIVE MEASURES (CLAUSES 4 AND 5)

Clause 4 of Bill S-226 enables the Governor in Council to issue a number of orders relating to the property of a designated foreign national. Such orders may be made if **the Governor in Council is of the opinion that** the foreign national is responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights against whistle-blowers or human rights defenders.

The Governor in Council can also issue orders relating to the property of a **foreign public official or an associate who is a foreign national** who is responsible for, or complicit in, ordering, controlling or otherwise directing "acts of significant corruption." Examples of such corruption include the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources. **The significance of the act of corruption is determined based on its impact, the amounts involved, the foreign national's influence or position of authority, and the complicity of the government of the foreign state in question.**

The Governor in Council can restrict or prohibit **directly or indirectly** dealing in any property, **wherever situated**, of a designated foreign national by any person or entity in Canada, or by any Canadian citizen or corporation outside Canada. **The bill also allows the Governor in Council to restrict or prohibit individuals and entities in Canada, or Canadian individuals and entities outside Canada, from making any property, wherever situated, available to a foreign national or a person acting on their behalf.** The Governor in Council can also prohibit individuals and entities in Canada, or any Canadian citizen or corporation outside Canada, from entering into or facilitating financial transactions related to property held by the foreign national. In addition, the Governor in Council can restrict or prohibit individuals and entities in

Canada, or a Canadian citizen or corporation outside Canada, from providing **or acquiring** financial or **other** services **on the direction of, or for the benefit of, a** designated foreign national. These restrictions resemble those found in regulations and orders promulgated pursuant to the SEMA.<sup>56</sup>

**With the authorization of the Governor in Council, the Minister of Foreign Affairs may issue a permit to any individuals or entities in Canada or Canadian individuals or entities outside Canada, to carry out a specified activity or transaction, or a type of activity or transaction, that is otherwise restricted or prohibited. Likewise, the minister may impose terms and conditions, and amend, suspend, revoke or reinstate any permit.**

**Clause 5** states that a copy of each order or regulation made under clause 4 must be tabled in each House of Parliament within 15 days after it is made.

#### 2.1.2 IMPOSITION OF A “DUTY TO DETERMINE” AND A “DUTY TO DISCLOSE” (CLAUSES 6 AND 7)

**Clause 6** of the bill imposes a duty on certain types of businesses, both federally and provincially regulated, to determine on a continuing basis whether the business is in possession or control of property “it has reason to believe” is subject to an order or regulation. These businesses include banks, credit unions, insurance companies, fraternal societies offering insurance, trust and loan companies, as well as investment managers or consultants. The clause also enables the Governor in Council to prescribe (i.e., create) additional classes of entities.

**Clause 6(i)** requires that persons and entities dealing in foreign exchange, transmitting or remitting funds (including electronic), or issuing or redeeming money orders determine whether they are in control of property subject to an order or regulation when accounts are opened.<sup>57</sup>

**Clause 7(1)** requires every entity covered by clause 6 to make monthly disclosures to its principal provincial or federal supervisory body. **Clause 7(2)** imposes a duty on every individual or entity in Canada, or Canadian individuals or entities outside Canada, to disclose “without delay” to the Commissioner of the Royal Canadian Mounted Police or the Director of the Canadian Security Intelligence Service if they have reason to believe that they have property in their possession or control that is owned, held or controlled by a foreign national designated under clause 4. They must also disclose any information about a transaction or proposed transaction in respect of that property. **Clause 7(3)** provides immunity from civil proceedings to individuals or entities that make good faith disclosures under clause 7. The duties of determination and disclosure reflect those imposed by regulations and orders issued under the SEMA.<sup>58</sup>

**2.1.3 RIGHTS OF FOREIGN NATIONALS WHO ARE THE SUBJECT OF AN ORDER OR REGULATION (CLAUSE 8)**

**A foreign national who is the subject of an order or regulation may apply to the Minister of Foreign Affairs to cease being so. The minister must decide, within 90 days, whether there are reasonable grounds to make a recommendation to that effect to the Governor in Council, and the minister must notify the applicant without delay if the application is rejected. The foreign national may reapply if there is a “material change” in circumstances since the last application. This right reflects rights accorded by orders and regulations passed under the SEMA.<sup>59</sup>**

**2.1.4 MISTAKEN IDENTITY (CLAUSE 9)**

**Clause 9** of the bill provides an avenue for persons to request that they no longer be the subject of an order or regulation on the grounds that they are not a foreign national (i.e., they are either a Canadian citizen or permanent resident). The clause also allows the minister, in cases of mistaken identity, to issue certificates to persons claiming not to be a foreign national stating that they are not a foreign national subject to an order or regulation.

**2.1.5 EXEMPT PROPERTY (CLAUSE 10)**

Clause 10(1) of Bill S-226 accords individuals who are subject to an order or regulation under clause 4 the right to apply for a certificate exempting property that is “necessary to meet the reasonable expenses of the person and their dependents.”

**2.1.6 OFFENCES (CLAUSE 11)**

**Every individual or entity that knowingly contravenes an order or regulation under clause 4 may be found guilty of an indictable offence and may face imprisonment for up to five years. Alternatively, the offence may be prosecuted by summary conviction, with a maximum fine of \$25,000 or imprisonment for up to one year.**

**2.1.7 LIABILITY AND LEGAL CONSIDERATIONS (CLAUSES 12 TO 14)**

**Clause 12** limits the liability of individuals and entities facing civil actions arising from taking or omitting to take measures related to property subject to an order or regulation, so long as they can show that they took all reasonable steps to determine whether the property in question was subject to an order or regulation.

**Clauses 13 and 14** serve to minimize the impact of orders or regulations on the rights of others. **Clause 13** maintains the ranking of secured and unsecured interests or rights (e.g., a mortgage on a house) in property that are held by a person other than the foreign national who is the subject of an order or regulation. **Clause 14** provides that regulations or orders do not preclude the commencement of legal proceedings in which the property might be implicated.

2.1.8 PARLIAMENTARY REVIEW AND RECOMMENDATIONS  
(**CLAUSE 16**)

**Clauses 16(1) and 16(2)** establish a deadline of five years from the coming into force of the Sergei Magnitsky Law for a parliamentary review of both the law and the SEMA, and require that a report be submitted to Parliament with recommendations. In addition, **clause 16(3) allows for** parliamentary review of the list of foreign nationals designated under the Sergei Magnitsky Law by both a Senate and a House of Commons committee that are designated for that purpose. These committees **may** submit a report to Parliament together with their recommendations **on whether a listed foreign national should remain on or be deleted from the list**. This adds a monitoring function for Parliament not found in either the SEMA or the FACFOA.

2.2 AMENDMENTS TO THE *SPECIAL ECONOMIC MEASURES ACT*  
(**CLAUSE 17**)

**Clause 17** of Bill S-226 amends the SEMA by expanding the grounds upon which the Governor in Council may cause to be seized, frozen or sequestered any property in Canada that is held by or on behalf of a foreign state, any person in that foreign state, or a national of that foreign state who does not ordinarily reside in Canada. The grounds include those that can apply against a foreign national under the Sergei Magnitsky Law. An order of seizure can be made where **the Governor in Council is of the opinion that gross and systematic human rights violations have been committed in a foreign state**.

The Governor in Council can also cause to be seized, frozen or sequestered any property of a foreign state where a government official of that state, or an associate of such an official, is responsible for, or complicit in, ordering or otherwise directing, acts of significant corruption, including:

- the expropriation of private or public assets for personal gain;
- corruption related to government contracts or the extraction of natural resources;
- bribery; or
- the facilitation or transfer of the proceeds of corruption to foreign jurisdictions (new section **4(1.1)(d)**).

**Mirroring other language in the Sergei Magnitsky Law created by the bill, the significance of the act of corruption is to be determined based on its impact, the amounts involved, the foreign national’s influence or position of authority, and the complicity of the government of the foreign state in question.**



This represents a notable expansion from the current regime governed by the SEMA, which only authorizes the Governor in Council to take economic measures against a foreign state or national to implement a decision of an international organization or association of states, or in cases of a grave breach of international peace and security that resulted or is likely to result in a serious international crisis.

**2.3 AMENDMENT TO THE *IMMIGRATION AND REFUGEE PROTECTION ACT*  
(CLAUSE 18)**

Section 6 of the *Canadian Charter of Rights and Freedoms*<sup>60</sup> grants Canadian citizens the right to enter, remain in and leave Canada. Such a right is not extended to non-citizens. Canada already has in place measures that permit a minister to prohibit entry into Canada, either by providing ministerial or administrative discretion or listing grounds of inadmissibility. Thus, section 22.1(1) of the IRPA permits a minister, at his or her own initiative, to declare that a foreign national may not become a temporary resident or visit Canada if the minister is of the opinion that it is justified by public policy considerations.<sup>61</sup>

Division 4 of Part 1 of the IRPA lists a number of grounds of inadmissibility to Canada. Persons may be inadmissible to Canada for any of the following reasons:

- they pose a security threat;
- they have violated human or international rights;
- they have been convicted of a criminal offence (unless they have obtained a record suspension or are deemed to be rehabilitated);
- they are engaged in organized crime;
- they are likely to be a danger to public health or safety;
- they are unable or unwilling to support themselves financially; or
- they have withheld or misrepresented material facts that could induce an error in the administration of the Act.

Furthermore, section 35(1) of the IRPA currently provides that a permanent resident or foreign national is inadmissible to Canada on the grounds of violating human or international rights for committing or being tied to acts of terrorism, crimes against humanity or war crimes abroad. Section 35(1) also allows the Minister of Immigration, Refugees and Citizenship to exclude persons who are not permanent residents and whose entry into Canada is restricted if an international organization of states or association of states of which Canada is a member has agreed, pursuant to a decision, resolution or measure, to impose sanctions against a particular country.

**Clause 18** adds two new grounds of inadmissibility for human rights violations to section 35(1). One of these grounds refers to the additions made to the SEMA. Thus, a person will be inadmissible due to gross violations of internationally recognized human rights and acts of significant corruption. Second, a foreign national who is subject to an order or regulation made under clause 4 of the Sergei Magnitsky Law will also be inadmissible to Canada.

NOTES

1. [Bill S-226, An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament (S.C. 2017, c. 21).
2. [Special Economic Measures Act](#) [SEMA], S.C. 1992, c. 17.
3. [Immigration and Refugee Protection Act](#) [IRPA], S.C. 2001, c. 27.
4. Alexander Litvinenko was a former Russian spy turned Russian government critic, whose 2006 poisoning death has been linked to the Russian government. (See [“Alexander Litvinenko: Profile of murdered Russian spy,” BBC News](#), 21 January 2016.) Boris Nemtsov was a government critic murdered in 2015, the day before he was scheduled to lead an anti-government rally. (See The Associated Press, [“Boris Nemtsov’s murder investigated by group that answers to Putin,” CBC News](#), 1 March 2015.) Nadiya Savchenko is a Ukrainian member of parliament and former pilot who was charged in Russia for killing two journalists while she participated in fighting against rebels in eastern Ukraine. She was later transferred back to Ukraine as part of a prisoner exchange. (See Damien Sharkov, [“Ukraine’s Nadiya Savchenko Returns to Russia After Pardon,” Newsweek](#), 26 October 2016.)
5. SEMA, s. 4(1). Resolutions of the United Nations Security Council imposing economic or other restrictions or prohibitions may be implemented in Canadian law through regulations under the [United Nations Act](#), R.S.C. 1985, c. U-2.
6. Jerome Taylor and Cahal Milmo, [“Alexander Perepilichnyy: Supergrass who held key to huge Russian fraud is found dead in Surrey,” The Independent](#) [United Kingdom], 28 November 2012. The facts of the case are summarized as follows:
 

Hermitage Capital was once one of the largest foreign investors inside Russia until it became the victim of a \$230m (£144m) tax fraud scheme. Corrupt officials from Russia’s powerful Interior Ministry conspired with tax officers to steal corporate seals from Hermitage Capital following a police raid and apply for a series of tax rebates using those seals. Complicit courts and tax offices signed off on the deal and the money was transferred into a bank which was liquidated shortly afterwards.

Mr. William Browder provided a more detailed account of events in his testimony before the subcommittee in November 2010. See House of Commons, Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development [SDIR], [Evidence](#), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, 2 November 2010 (Mr. William Browder, Founder and Chief Executive Officer, Hermitage Capital Management).
7. Ibid.
8. [“Sergei Magnitsky uncovered Russia-to-Cyprus money laundering, and look what happened to him,” Financial Post](#), 22 March 2013.
9. Ellen Barry, [“Poor Care Led to Death of Lawyer, Russia Says,” New York Times](#), 4 July 2011.
10. SDIR, *Evidence* (2010) (Browder).
11. Ibid.

12. [The Investigative Committee of the Russian Federation](#) appears to be an umbrella body unifying various criminal investigative services. The information provided on the committee's website is scarce, but its list of activities seems to indicate an interest in investigations involving corruption.
13. Barry (2011).
14. Fred Weir, "[Russia's Medvedev sides with human rights activists on Sergei Magnitsky killing](#)," *The Christian Science Monitor*, 6 July 2011.
15. Ibid.; and Philip Aldrick, "[Crusading Russian lawyer Sergei Magnitsky 'beaten to death'](#)," *The Telegraph* [United Kingdom], 7 July 2011.
16. "[Magnitsky affair: Mystery over Russian's death in UK](#)," *BBC News*, 28 November 2012. In November 2012, following the departure of a number of vocal critics, new members were appointed to the Presidential Council for Civil Society and Human Rights by President Vladimir Putin. The Council is described as
 

a consultative body established to assist the President in the exercise of his constitutional responsibilities to guarantee and protect human rights and freedoms, keep the President informed on the situation in this area, facilitate development of civil society institutions in Russia, and draft proposals for the President on matters within its mandate.

See President of Russia, "[Council for Civil Society and Human Rights](#)," *Presidential Councils*.
17. "[Court Approves Posthumous Inquiry into Magnitsky](#)," *Sputnik International*, 27 February 2012; and Law and Order in Russia, "[Russia Moves Forward with the First Posthumous Trial in Russian History in the Magnitsky Case](#)," News release, 29 November 2012.
18. [Bill C-339, An Act to condemn corruption and impunity in Russia in the case and death of Sergei Magnitsky](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament.
19. [Bill C-689, An Act to enact the Global Human Rights Accountability Act and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament.
20. House of Commons, [Debates](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 25 March 2015 (Hon. Irwin Cotler, MP).
21. Senate, [Journals](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 25 March 2015 (Senator Andreychuk); and Senate, [Journals](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 5 May 2015.
22. SDIR, [Evidence](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 11 December 2012 (Browder); and SDIR, [Evidence](#) (2010) (Browder).
23. SDIR, [Evidence](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 29 April 2014 (Browder).
24. Senate, Standing Committee on Foreign Affairs and International Trade [AEFA], [Taking Action Against Human Rights Violators in Russia](#), March 2016.
25. Bill Browder, *Red Notice: A True Story of High Finance, Murder, and One Man's Fight for Justice*, Simon & Schuster, New York, 2015.
26. AEFA, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 10 March 2016.
27. House of Commons, Standing Committee on Foreign Affairs and International Development [FAAE], [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 10 March 2016.
28. [Bill C-267, An Act to provide for the taking of restrictive measures in respect of foreign nationals responsible for gross violations of internationally recognized human rights and to make related amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.

29. [Freezing Assets of Corrupt Foreign Officials Act](#) [FACFOA], S.C. 2011, c. 10.
30. FAAE, [A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, April 2017.
31. United States, [Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012](#), Public Law 112-208, 112<sup>th</sup> Congress, 126 Stat. 1496, 14 December 2012.
32. Ibid, ss. 405(a) and 405(b).
33. Ibid., s. 406(a).
34. Ibid., s. 404(a)(1).
35. Ibid., s. 404(a)(3).
36. Ibid., s. 404(a).
37. Ibid., s. 404(c)(3).
38. Ibid., s. 404(a)(2).
39. United States, Office of Foreign Assets Control [OFAC], [Sanctions List Search](#), (database), accessed **21 September 2018**.
40. United States, [S.284 – Global Magnitsky Human Rights Accountability Act](#), 114<sup>th</sup> Congress.
41. European Parliament, [European Parliament recommendation of 23 October 2012 to the Council on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case \(2012/2142\(INI\)\)](#), Strasbourg, 23 October 2012.
42. European Parliament, [European Parliament recommendation to the Council of 2 April 2014 on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case \(2014/2016\(INI\)\)](#), Brussels, 2 April 2014.
43. European Parliament, [“Magnitsky list’: MEPs call for EU sanctions against 32 Russian officials”](#), News release, 2 April 2014.
44. [“Estonia becomes first European nation to introduce a ‘Magnitsky law’”](#), EU-OCS [European Observatory of Crime and Security], 12 December 2016.
45. United Kingdom, [Criminal Finances Act 2017](#), 2017, c. 22.
46. United Kingdom, [Proceeds of Crime Act 2002](#), 2002, c. 29.
47. Lietuvos Respublikos Seimas [Legislature of the Republic of Lithuania], [“Seimas expanded the legal basis for banning aliens from Lithuania”](#), News release, **16 November 2017**.
48. Ibid.
49. [“Lithuania bans 49 Russians from entering the country under Magnitsky Act”](#), News release, [UAWIRE](#), 13 January 2018.
50. For current sanctions under the Act and related regulations, see [“Table of Contents”](#), SEMA.

51. The term “politically exposed foreign person” (PEFP) is defined in section 2 of FACFOA as a person who holds or has held one of the following offices or positions in or on behalf of a foreign state:
- (a) head of state or head of government;
  - (b) member of the executive council of government or member of a legislature;
  - (c) deputy minister or equivalent rank;
  - (d) ambassador or attaché or counsellor of an ambassador;
  - (e) military officer with a rank of general or above;
  - (f) president of a state-owned company or a state-owned bank;
  - (g) head of a government agency;
  - (h) judge;
  - (i) leader or president of a political party represented in a legislature; or
  - (j) holder of any prescribed office or position.

It includes any person who, for personal or business reasons, is or was closely associated with such a person, including a family member. PEFPs are also defined under section 9.3(3) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

52. [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) [PCMLTFA], S.C. 2000, c. 17.
53. [Freezing Assets of Corrupt Foreign Officials \(Ukraine\) Regulations](#), SOR/2014-44.
54. [Freezing Assets of Corrupt Foreign Officials \(Tunisia\) Regulations](#), SOR/2011-78.
55. Office of the Superintendent of Financial Institutions Canada, [Instruction Guide: Designated Persons Listings and Sanctions Laws](#), June 2010.
56. See, for example, [Special Economic Measures \(Zimbabwe\) Regulations](#), SOR/2008-248, s. 6.
57. See PCMLTFA, s. 5(h).
58. See, for example, [Special Economic Measures \(Burma\) Regulations](#), SOR/2007-285, ss. 14 and 15.
59. See, for example, [Special Economic Measures \(Iran\) Regulations](#), SOR/2010-165, s. 11.
60. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
61. This section must be read in conjunction with section 29(1) of the IRPA to cover visits to Canada.