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Legislative Summary

BILL C-281: AN ACT TO AMEND THE DEPARTMENT OF FOREIGN AFFAIRS, TRADE AND DEVELOPMENT ACT, THE JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS ACT (SERGEI MAGNITSKY LAW), THE BROADCASTING ACT AND THE PROHIBITING CLUSTER MUNITIONS ACT

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BJ Siekierski

Research and Education

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Legislative Summary of Bill C-281
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-281: AN ACT TO AMEND THE DEPARTMENT OF FOREIGN AFFAIRS, TRADE AND DEVELOPMENT ACT, THE JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS ACT (SERGEI MAGNITSKY LAW), THE BROADCASTING ACT AND THE PROHIBITING CLUSTER MUNITIONS ACT

1 BACKGROUND

Bill C-281, An Act to amend the Department of Foreign Affairs, Trade and Development Act, the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), the Broadcasting Act and the Prohibiting Cluster Munitions Act (short title: International Human Rights Act) was introduced in the House of Commons by Philip Lawrence (Northumberland—Peterborough South) on 13 June 2022.¹

The bill creates a new requirement for the Minister of Foreign Affairs to table an annual human rights report, which includes a list of “prisoners of conscience” and actions the Government of Canada has taken to support them; a new requirement for the Minister of Foreign Affairs to table a response to a parliamentary committee recommendation for an order or regulation (sanction) pursuant to the *Sergei Magnitsky Law*; places new restrictions on the Canadian Radio-television and Telecommunications Commission’s ability to issue or renew a licence to carry on a broadcasting undertaking; and adds new restrictions on financial assistance and investments in relation to cluster munitions, explosive submunitions and explosive bomblets.

Bill C-281 passed second reading on 16 November 2022 and was referred to the House of Commons Standing Committee on Foreign Affairs and International Development (FAAE). The bill was reported to the House of Commons with amendments on 4 May 2023. The Speaker of the House of Commons ruled one of those amendments beyond the scope of the bill and ordered that it no longer form part of the bill as reported by the committee. The bill completed first reading in the Senate on 9 June 2023.

2 DESCRIPTION AND ANALYSIS

Bill C-281 contains eight clauses and amends four acts:

- the *Department of Foreign Affairs, Trade and Development Act*;²
- the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*;³
- the *Broadcasting Act*;⁴ and
- the *Prohibiting Cluster Munitions Act*.⁵

Below is a description and analysis of the changes to each Act.

2.1 DEPARTMENT OF FOREIGN AFFAIRS, TRADE AND DEVELOPMENT ACT (CLAUSE 2)

Clause 2 of Bill C-281 amends section 10 of the *Department of Foreign Affairs, Trade and Development Act*, which enumerates the “powers, duties and functions” of the Minister of Foreign Affairs, by adding in new section 10(4) a requirement for the minister to table an annual report that:

- outlines the measures that the Government of Canada has “taken to advance human rights internationally as part of Canada’s foreign policy”; and
- includes a list of “prisoners of conscience” (defined as: “an individual who, in contravention of international human rights standards, has been detained or otherwise physically restricted solely because of their identity or their conscientiously held beliefs, including religious or political beliefs”) for whose release the Government of Canada is working.

The list, which is to be included in the annual human rights report, must include the following information:

- the number of prisoners of conscience detained by each government or detaining authority;
- the names of the prisoners of conscience;
- the circumstances of the detentions;
- the efforts that the Government of Canada has made to visit those prisoners and to attend their trials or hearings, including the number of requests made for such visits and the responses of the detaining governments or authorities;

- other actions the Government of Canada has taken to support prisoners of conscience including those detained or experiencing treatment in contravention to human rights standards; and
- a description of the Government of Canada’s communications with the families of prisoners of conscience and its consultations with civil society on matters of human rights.

New section 10(5) requires the minister to make “all reasonable efforts” to consult with the family members or representatives of prisoners of conscience. It also gives the minister the authority *not* to include certain information in the report if the family members or representatives of the prisoner of conscience request its exclusion, or the minister believes it would not be “in the best interests of the advancement of human rights or the personal safety of the prisoner.”

2.1.1 Context and Speaker’s Ruling

Some of Canada’s like-minded international partners publish annual human rights reports that vary in terms of content. Since 1997, for example, the United Kingdom’s Foreign Commonwealth & Development Office and its predecessor, the Foreign & Commonwealth Office, have voluntarily published an annual Human Rights and Democracy Report that provides detailed information on the Office’s activities to defend human rights and promote democracy abroad.⁶

The United States (U.S.) Department of State has also, for nearly five decades, published *Country Reports on Human Rights Practices*, which “strive to provide a factual and objective record on the status of human rights worldwide.” In 2021, those reports covered 198 countries and territories.⁷ They do not, however, summarize the U.S. government’s actions in defence of human rights. The United States Commission on International Religious Freedom – an independent, bipartisan federal government agency – also maintains a “Freedom of Religion or Belief Victims List” that, of 20 December 2023, showed 2,210 victims.⁸

The Government of Canada, to a certain extent, outlines its efforts to promote human rights globally through Global Affairs Canada’s Departmental Results Report and the report to Parliament on the Government of Canada’s international assistance⁹ – a requirement under the 2008 *Official Development Assistance Accountability Act*.¹⁰ The Minister of International Trade is also required, under the *Canada–Colombia Free Trade Agreement Implementation Act*,¹¹ to table an annual report:

containing a general summary of all actions taken under the authority of [the] Act, and an analysis of the impact of these actions on human rights in Canada and the Republic of Colombia.¹²

During Bill C-281’s consideration in FAAE, Heidi Hulan (Assistant Deputy Minister and Political Director, International Security and Political Affairs, Department of Foreign Affairs, Trade and Development) told the committee that the department would welcome the proposed annual report on Canada’s human rights engagement, as it would “demonstrate the breadth of Canada’s activities to advance human rights internationally, including our support of human rights defenders worldwide.” At the same time, she noted that there was no international or domestic legal definition of “prisoners of conscience” and expressed concern that publishing the names and circumstances of their imprisonment could “impede” the government’s ability to assist in their release.¹³

Alex Neve, a Senior Fellow at the University of Ottawa’s Graduate School of Public and International Affairs and the former Secretary General of Amnesty International Canada, echoed those concerns in his FAAE appearance, but also recommended a “whole-of-government international human rights action plan” that would ground the annual report in a “strong foundational framework.”¹⁴

FAAE made several amendments to Bill C-281 that sought to address these concerns. The amendments allowed the minister to exclude certain information from the annual human rights report, defined prisoner of conscience, and introduced a duty to establish a human rights action plan or strategy.¹⁵ In a Speaker’s ruling on 18 May 2023, however, the “new obligation on the minister to develop and maintain a government-wide international human rights strategy” was deemed to propose a new concept that “exceeds the scope of the bill as adopted at second reading” and was struck from the bill as reported by the committee.¹⁶

2.2 *JUSTICE FOR VICTIMS OF CORRUPT FOREIGN OFFICIALS ACT*
(SERGEI MAGNITSKY LAW)
(CLAUSE 3)

Pursuant to the *Justice for Victims of Corrupt Foreign Officials Act* (*Sergei Magnitsky Law*), the Government of Canada can impose targeted measures – commonly referred to as “Magnitsky Sanctions” – against foreign nationals who, in the opinion of the Governor in Council (i.e., Cabinet), are

responsible for or complicit in gross violations of human rights; or are public officials or an associate of such an official, who are responsible for or complicit in acts of significant corruption.¹⁷

Clause 3 of Bill C-281 amends the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* by adding new section 5.1, which includes:

- A requirement for the Minister of Foreign Affairs to table in the House of Commons, Senate, or both Houses – within the timeline specified in the rules of the Senate or the Standing Orders of the House of Commons for responses to committee reports – a response to a recommendation by a parliamentary committee for an order or regulation in relation to a foreign national pursuant to section 4 of the *Sergei Magnitsky Law*. That is, a “Magnitsky Sanction.”
- A requirement for this response to be posted prominently on the Global Affairs website the day after it is tabled.
- Provisions to ensure that neither the prorogation nor dissolution of Parliament prevents the response from being tabled.

In the first reading version of Bill C-281, the Minister of Foreign Affairs was required to table a response within 40 days. During consideration in FAAE, Ms. Hulan expressed the department’s concerns that the 40-day timeline could impact “the current rigour and judiciousness of Canada’s approach to the imposition of sanctions.”¹⁸

FAAE amended Bill C-281 to change the requirement for a ministerial response within 40 days to align the timeline with the rules of the Senate or the *Standing Orders of the House of Commons* for responses to committee reports.¹⁹ This change in turn required amendments to harmonize the timelines in the bill’s provisions on prorogation and dissolution, which FAAE also adopted.

In the first reading version of Bill C-281, the ministerial response was also required to indicate “whether or not the order or regulation is to be made and [set] out the reasons for the decision.” Ms. Hulan argued that this presupposed Governor in Council approval of an order or regulation and risked making sanctions ineffective, since potential targets would be given the “opportunity to move assets out of the country.”²⁰ FAAE amended Bill C-281 to require a response advising the committee whether the order or regulation “has been made.”

Of note, Bill C-281 only requires a response to a committee recommendation for an order or regulation pursuant to the *Sergei Magnitsky Law* and not to the *Special Economic Measures Act (SEMA)*. Some observers have highlighted the Government of Canada’s more frequent use of SEMA, as opposed to the *Sergei Magnitsky Law*, for the imposition of human rights sanctions.²¹

2.3 *BROADCASTING ACT*
(CLAUSE 4)

Sections 9(1)(a) to 9(1)(e) of the *Broadcasting Act* set out the Canadian Radio-television and Telecommunications Commission's (the Commission) powers with respect to the issuance, amendment, renewal, suspension, and revocation of licenses to carry on a broadcasting undertaking. These powers do not extend, however, to "online undertakings," such as Netflix and other streaming services.²²

Section 22(1)(a) of the *Broadcasting Act* specifies that no licence can be issued, amended or renewed if the broadcasting undertaking is in contravention of a direction to the Commission issued by the Governor in Council under section 26(1) of the Act. More specifically, section 26(1)(c) states that the Governor in Council has the power to direct the Commission, "respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted."²³

Clause 4 of Bill C-281 adds a new section 22(1.1) to the *Broadcasting Act* to prohibit the Commission from issuing or renewing a licence to a broadcasting undertaking that is "vulnerable to being significantly influenced by a foreign national or entity" that has committed acts or omissions that the Senate or the House of Commons has recognized as genocide, or is subject to an order or regulation made under section 4 of the *Sergei Magnitsky Law* or SEMA.

Mr. Lawrence, Bill C-281's sponsor, cited the March 2022 Commission process of removing RT and RT France from Canadian airwaves as the basis for the *Broadcasting Act* amendment, noting that the Commission had to use a "broad" public interest justification, because "there was no current mechanism" to remove it "when it was clearly using Canadian airwaves just to spread its propaganda."²⁴

FAAE made several amendments to Bill C-281. First, it removed the prohibition on the Commission *amending* a broadcasting undertaking, which Ms. Hulan argued would allow the regulator "to reduce the potential influence of a bad actor while maintaining the prohibition on the issuance and renewal of licences."²⁵

Second, FAAE added the clarification that the prohibition on the Commission issuing or renewing a license is "despite any measure that the Commission could take under this Part." Finally, it added the adverb "significantly" before "influenced by a foreign national or entity."

The rationale for these amendments was that they would acknowledge that the Commission already had tools to address propaganda and ensure that the "vulnerability to influence" threshold is high enough.²⁶

2.4 *PROHIBITING CLUSTER MUNITIONS ACT*
(CLAUSES 5–8)

On 16 March 2015, the *Prohibiting Cluster Munitions Act* came into force, allowing Canada to ratify the *Convention on Cluster Munitions* the same day. The Convention “bans the use, development, production, acquisition, stockpiling and transfer of all cluster munitions” and Canada is one of 112 States Parties (as of early 2024).²⁷

Clauses 5 to 8 of Bill C-281 make amendments to “strengthen” the *Prohibiting Cluster Munitions Act*.²⁸ Clause 5 amends section 4 of the Act – its “Purpose” – to emphasize Canada’s obligations under Article 5 (Victim assistance) and Article 6 (International cooperation and assistance) of the Convention. It also clarifies that the bill prohibits the provision of financial assistance and restricts investments in relation to cluster munitions, explosive submunitions and explosive bomblets.

Clause 6 adds new section 6(d.1) and amends sections 6(e), 6(f), 6(g) and 6(h) of the Act to add a new prohibition on directly or indirectly, as a shareholder or a lender, acquiring or having a “pecuniary interest” in a person who has committed – or has aided or abetted in the commission – of the Act’s existing prohibitions. Those are: the use, development, acquisition, possession, import, export, and transportation of cluster munitions, explosive submunitions, and explosive bomblets, and conspiring with, assisting, or counselling another person to commit any of these prohibited acts.

Clause 7 harmonizes the new prohibitions with the exceptions in sections 11(3)(a), 11(3)(b) and 11(3)(c) of the Act. Finally, clause 8 is a transitional provision” that delays the application of the new “pecuniary interests” prohibitions for one year following the day Bill C-281 comes into force.

FAAE adopted only one amendment to Bill C-281’s *Prohibiting Cluster Munitions Act* provisions. The amendment broadened the “Purpose” of the Act to explicitly refer to Canada’s specific obligations (Articles 5 and 6) under the Convention.²⁹

NOTES

1. [Bill C-281, An Act to amend the Department of Foreign Affairs, Trade and Development Act, the Justice for Victims of Corrupt Foreign Officials Act \(Sergei Magnitsky Law\), the Broadcasting Act and the Prohibiting Cluster Munitions Act](#), 44th Parliament, 1st Session.
2. [Department of Foreign Affairs, Trade and Development Act](#), S.C. 2013, c. 33, s. 174.
3. [Justice for Victims of Corrupt Foreign Officials Act \(Sergei Magnitsky Law\)](#), S.C. 2017, c. 121.
4. [Broadcasting Act](#), S.C. 1991, c. 11.
5. [Prohibiting Cluster Munitions Act](#), S.C. 2014, c. 27.
6. Foreign Commonwealth and Development Office, [Human Rights and Democracy Reports](#), 13 July 2023.

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7. United States Department of State, [2021 Country Reports on Human Rights Practices](#), 12 April 2022.
8. United States Commission on International Religious Freedom, “[Frank R. Wolf Freedom of Religion or Belief Victims List](#),” Database, accessed 20 December 2023.
9. Government of Canada, [Report to Parliament on the Government of Canada’s International Assistance: Global Affairs Canada](#).
10. [Official Development Assistance Accountability Act](#), S.C. 2008, c. 17.
11. [Canada–Colombia Free Trade Agreement Implementation Act](#), S.C. 2010, c. 4.
12. Government of Canada, [Annual Report Pursuant to the Agreement Concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia – for the period January 1, 2021 to December 31, 2021](#), 16 May 2022.
13. House of Commons, Standing Committee on Foreign Affairs and International Development (FAAE), [Evidence](#), 23 March 2023, 1205 and 1225 (Heidi Hulan, Assistant Deputy Minister and Political Director, International Security and Political Affairs, Department of Foreign Affairs, Trade and Development).
14. FAAE, [Evidence](#), 28 March 2023, 1210 (Alex Neve, Senior Fellow, Graduate School of Public and International Affairs, University of Ottawa, As an Individual).
15. FAAE, [Bill C-281, An Act to amend the Department of Foreign Affairs, Trade and Development Act, the Justice for Victims of Corrupt Foreign Officials Act \(Sergei Magnitsky Law\), the Broadcasting Act and the Prohibiting Cluster Munitions Act](#), Sixteenth report, May 2023.
16. House of Commons, [Debates](#), 18 May 2023, 1550 (Hon. Anthony Rota).
17. Government of Canada, [Justice for Victims of Corrupt Foreign Officials Act](#).
18. FAAE, [Evidence](#), 23 March 2023, 1205 (Heidi Hulan, Assistant Deputy Minister and Political Director, International Security and Political Affairs, Department of Foreign Affairs, Trade and Development).
19. FAAE, [Bill C-281, An Act to amend the Department of Foreign Affairs, Trade and Development Act, the Justice for Victims of Corrupt Foreign Officials Act \(Sergei Magnitsky Law\), the Broadcasting Act and the Prohibiting Cluster Munitions Act](#), Sixteenth report, May 2023.
20. FAAE, [Evidence](#), 23 March 2023, 1205 (Heidi Hulan, Assistant Deputy Minister and Political Director, International Security and Political Affairs, Department of Foreign Affairs, Trade and Development).
21. FAAE, [Evidence](#), 30 March 2023, 1245 (William Browder, Head of the Global Magnitsky Justice Campaign, Author, and Founder and Chief Executive Officer, Hermitage Capital Management Ltd.).
22. [Broadcasting Act](#), S.C. 1991, c. 11.
23. Ibid.
24. House of Commons, [Debates](#), 7 October 2022, 1340 (Philip Lawrence, Northumberland–Peterborough South, CPC).
25. FAAE, [Evidence](#), 23 March 2023, 1205 (Heidi Hulan, Assistant Deputy Minister and Political Director, International Security and Political Affairs, Department of Foreign Affairs, Trade and Development).
26. FAAE, [Evidence](#), 25 April 2023, 1110 (Sameer Zuberi, Pierrefonds—Dollard).
27. See Government of Canada, [Conventional Weapons](#); and Convention on Cluster Munitions, [States Parties and Signatories by region](#).
28. FAAE, [Evidence](#), 23 March 2023, 1110 (Philip Lawrence, Northumberland—Peterborough South, CPC).
29. FAAE, [Bill C-281, An Act to amend the Department of Foreign Affairs, Trade and Development Act, the Justice for Victims of Corrupt Foreign Officials Act \(Sergei Magnitsky Law\), the Broadcasting Act and the Prohibiting Cluster Munitions Act](#), Sixteenth report, May 2023.