PETER A. ALLARD SCHOOL OF LAW
THE UNIVERSITY OF BRITISH COLUMBIA

International Justice & Human Rights Clinic

BRIEF TO THE HOUSE OF COMMONS STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT ON CANADA'S HUMAN RIGHTS SANCTIONS REGIME

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About the International Justice and Human Rights Clinic

The International Justice & Human Rights Clinic ("IJRHC") is a legal clinic for upper-level law students at the Peter A. Allard School of Law at the University of British Columbia. The clinic works on pressing human rights and global justice concerns through hands-on work on international cases and projects. The clinic's Global Magnitsky team is part of an international consortium of lawyers working to develop submissions to countries with human rights and anti-corruption sanctions laws. The team has, since 2019, made human rights sanctions submissions to Canada, the United States, the European Union and the United Kingdom on 32 individuals and entities from different jurisdictions. The IJHRC, in collaboration with Human Rights First and in consultation with Global Affairs Canada (Sanctions Policy and Operations Coordination Division), has also created guides for individuals and civil society organizations interested in submitting evidence-based sanctions recommendations to the Canadian government pursuant to Canada's Justice for Victims of Corrupt Foreign Officials Act.

Executive Summary

This brief is prepared in response to the House of Commons Standing Committee on Foreign Affairs and International Development's follow-up study on Canada's human rights sanctions regime.[1] It makes six recommendations on how Canada can improve its practice of using government sanctions as a tool to combat corruption and promote human rights under the *Justice for Victims of Corrupt Foreign Officials Act* ("*JVCFOA*") and the *Special Economic Measures Act* ("*SEMA*"). Each recommendation is discussed further below.

1. **Recommendation 1: Protect Confidential Information.** Canadian sanctions legislation should include formal mechanisms, such as closed hearings and special advocate procedures, to protect confidential evidence and those providing confidential information. If sanctions information must be disclosed, procedures and guidelines should be in place to ensure only non-confidential information is disclosed and to protect those coming forward with information.

2. **Recommendation 2: Publish Listing Guidelines to Provide Clarity and Enhance Transparency.** Global Affairs Canada (GAC) should publish the procedures and criteria used to select sanctions targets and notify individuals and entities who submit sanctions recommendations of a) the timeline for review b) the outcome of the review and c) reasons for rejection, when possible.

3. **Recommendation 3: Publish Reasons for Listing to Enhance Notice, Transparency and Deterrence.** For each sanction issued, GAC should publicize the violation targeted and the open-source information relied upon in the Regulatory Impact Statement issued with the sanctions decision, the accompanying press release, or in other appropriate and publicly available documents. Where possible, GAC should also notify targeted individuals of the listing decision.

4. **Recommendation 4: Develop and Publish Delisting Guidelines to Ensure Fair Process.** GAC should develop and publish guidelines for a) the Minister of Foreign Affairs' assessment of delisting applications and b) the determination of what information may be disclosed to delisting applicants, in accordance with the standards of procedural fairness and existing case law.

5. **Recommendation 5: Publish Guidance for Sanctions Compliance to Support Implementation**. GAC should publish comprehensive guidance for sanctions compliance, including specific guidance on how to determine whether an entity is under the control of a listed individual. This guidance could come in the form of ministerial guidelines or an

[1] This brief was written by Mary Su, Rachel Herrold, Celine Xu, Farhia Mohamed and Valeriia Laut, clinicians in the IJRHC at the Peter A. Allard School of Law, University of British Columbia. IJHR Clinic Director Nicole Barrett and Research Associate Vannie Lau supervised and edited the brief. This brief reflects the views of the IJHRC and should not be attributed to other parties. The brief does not represent the official position of the Allard School of Law or the University of British Columbia.

updated FAQs section on its website, which answers the general questions GAC is receiving from Canadian businesses and financial institutions.

6. **Recommendation 6: Review and Update Sanctioning Listings to Enhance Accuracy and Fairness.** Canadian sanctions legislation should incorporate a guaranteed periodic review of sanctions listings. Names of individuals or entities no longer meeting the listing criteria should be delisted.

We submit that implementation of the recommendations above will increase the fairness and effectiveness of the Canadian sanction regime in human rights and anti-corruption cases under the JVCFOA and SEMA.

Background: Protecting Human Rights through Canada's Sanctions Regime

In 2017, Canada passed the *Justice for Victims of Corrupt Foreign Officials Act* ("*JVCFOA*") and amended the *Special Economic Measures Act* ("*SEMA*"). Both acts can be used to impose unilateral sanctions in response to human rights violations.[2]

The *JVCFOA* is dedicated to furthering Canada's support for human rights and advance its responsibility to protect activists who fight for human rights through imposing sanctions against foreign states and nationals. The *SEMA* conversely targets individuals engaged in severe and systematic human rights violations in foreign states.[3] The continued legitimacy and efficacy of Canadian sanctions is thus tied to their human rights outcomes. Compliance with human rights is also essential to upholding Canada's international treaty obligations and maintaining its authority as a global leader in human rights.

Imposing sanctions requires thoughtful and fair implementation of formal mechanisms to also protect the human rights of sanctioned individuals. Although sanctions are not associated with criminal proceedings, the nature of a sanction, which can include both asset freezes and travel ban, are sufficiently punitive to require regard to due process rights.[4] Due process rights include the sanctions regime's compatibility with procedural rights such as the right of access to a court, the right to a fair trial, and the right to a remedy.[5] In particular, the targeted individual must be notified of the reasons for the imposed sanctions, allowing them the opportunity to effectively understand and formulate their views on the decision.[6]

The European Court of Human Rights ("ECtHR") and the Court of Justice of the European Union ("CJEU") have on separate occasions held that targeted individuals have a right to judicial review[7] and a right to defence[8] to ensure their listing is not arbitrary. The right to defence includes an obligation on the state to communicate the reasons for a sanction listing such that the listed

[2] *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),* SC 2017, c 21 [*JVCFOA*]; *Special Economic Measures Act*, SC 1992, c. 17 [*SEMA*].

[3] The preamble to the *JVCFOA* states "adding gross violations of internationally recognized human rights as a ground on which sanctions may be imposed against foreign states and nationals would further Canada's support for human rights and advance its responsibility to protect activists who fight for human rights", see *JVCFOA,* preamble; Section 3.1 of *SEMA* states, "The purpose of this Act is to enable the Government of Canada to take economic measures against certain persons in circumstances where…gross and systematic human rights violations have been committed in a foreign state", see *SEMA,* s 3.1.

[4] See UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. (2020, July 21). Negative impact of unilateral coercive measures: priorities and road map. Report of the Special Rapporteur. UN Doc A/HRC/45/7, at para. 107.

[5] See Erika de Wet, "Human Rights Considerations and the Enforcement of Targeted Sanctions in Europe: The Emergence of Core Standards of Judicial Protection," in Bardo Fassbender (ed.), Securing Human Rights? Achievements and Challenges of the UN Security Council, Collected Courses of the Academy of European Law, ch.6 (Oxford, 2011; online edn, Oxford Academic, 19 Jan. 2012)

[6] *Ibid. Organisation des Modjahedines du Peuple d'Iran v Council,* Case T-228/02, [2006] ECR II-4665 at paras 91–2, 94, 116–17.

[7] *Al-Dulimi & Mont. Management Inc. v. Switzerland* (Judgement), no. 5809/08, ECHR 2016 at para 151.

[8] *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I-6351 at paras 336-349.

individual may have "full knowledge of the relevant facts" and "evidence used against them" prior to challenging their listing.[9] Without providing adequate reasons for listing up to the level of specificity required by the international standards, the Canadian targeted sanctions regime may be vulnerable to criticism.

Canada's targeted sanctions regime can be better clarified and refined to reflect international good practice of ensuring fairness in sanctions regimes. The recommendations offered in this brief seek to enhance GAC's protection of human rights in the decision-making process. **Recommendations 1-6 below**, if properly implemented, would bring the Canadian sanctions regime closer to the international due process standards.

Recommendation 1: Protect Confidential Information. Canadian sanctions legislation should include formal mechanisms, such as closed hearings and special advocate procedures, to protect confidential evidence and those providing confidential information. If sanctions information must be disclosed, procedures and guidelines should be in place to ensure only non-confidential information is disclosed and to protect those coming forward with information.

Safeguarding confidentiality demands the implementation of clear protocols governing the utilization of confidential evidence within sanctions legislation. Establishing such protocols is important to protect whistleblowers who provide sensitive, non-public evidence related to serious corruption and human rights abuses in support of sanctions. While the existing laws, such as the *Access to Information Act,*[10] may provide certain safeguards regarding the release of sanctions-related evidence, the introduction of well-defined procedures within the sanctions legislation is imperative to fortify these protections.

The European Union ("EU") General Court's ruling in *Commission and Others v Kadi* highlighted the adverse impact of withholding confidential information or evidence from the affected individual. The act of withholding prevents individuals from commenting on critical information, which compromises the fairness of the proceedings.[11] The Rules of Procedure of the General Court provide guidance for a party to disclose a minimum amount of information in court proceedings. Article 105 of the Rules of Procedure of the General Court stipulates that the party submitting confidential information shall apply for its confidential treatment, thereby initiating a court procedure which prompts the court to balance judicial protection and security interests and sets procedures such as making non-confidential versions or summaries.[12]

The current provisions of the *JVCFOA* require clarification around the disclosure and handling of confidential evidence within the Minister's review process. These clarifications include a) how to weigh confidential evidence against publicly available information; b) how to communicate

[9] *Ibid* at paras 336-337, 348.
[10] *Access to Information Act*, RSC 1985, c A-1.
[11] *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, at para 129.
[12] "Rules of procedure of the General Court" (2015) 58 OJEU 1 at art 105, online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015Q0423%2801%29>.

confidential evidence to affected individuals; and c) what mechanisms exist for third-party challenges or review beyond the Minister. The clarifications on how to disclose and handle confidential evidence are particularly crucial due to the significant discretionary authority vested in the Minister during the review of listings.

Closed hearings and special advocate procedures are two potential solutions to address the disclosure and handling of confidential evidence while preserving the confidentiality of evidence. These mechanisms effectively strike a balance between upholding the sensitivity of information and ensuring fair proceedings. Closed hearings minimize exposure of confidential information by involving only the directly involved parties, their legal representatives, and the presiding judge. Special advocate proceedings appoint independent lawyers to represent the interests of excluded parties in closed hearings. These procedures safeguard whistleblowers' concerns from potential retaliation, even if they are not physically present during the hearing. Canada already employs special advocate procedures in the *Canadian Security Intelligence Service Act*[13] and the *Immigration and Refugee Protection Act*,[14] as well as provisions regarding the protection of confidential or special operational information under the *Security of Information Act*.[15] By adopting similar measures, the *JVCFOA* and *SEMA* could effectively address these challenges.

Recommendation 2: Publish Listing Guidelines to Provide Clarity and Enhance Transparency. GAC should publish the procedures and criteria used to select sanctions targets and notify individuals and entities who submit sanctions recommendations of a) the timeline for review b) the outcome of the review and c) reasons for rejection, when possible.

Enhancing transparency in listing criteria and procedures would bring greater clarity to the Canadian sanctions regime. The United Kingdom ("UK") sanctions regime publishes main policy considerations that influences the UK's decision to impose sanctions, such as the risk of reprisal, the scale and impact of corruption, and other factors in alignment with the UK government's anti-corruption policy priorities.[16] While the UK's listed considerations are not exhaustive, their publication provides the public with insights into relevant factors for designations. Currently, the Canadian sanctions regime lacks the provision of policy considerations that illuminate how sanction designations are determined.

Members of the public, including victims of human rights abuses and civil society organizations, can make submissions requesting the Canadian government to sanction specific human rights violators.[17] Generally, those making submissions receive no updates as to the status of their

[13] *Canadian Security Intelligence Service Act*, RSC 1985, c C-23, s 18.
[14] *Immigration and Refugee Protection Act*, SC 2001, c 27, s 85.
[15] *Security of Information Act*, RSC 1985, c O-5, s 10.
[16] United Kingdom, "Global anti-corruption sanctions: consideration of designations" (26 April 2021), online: <https://www.gov.uk/government/publications/global-anti-corruption-sanctions-factors-in-designating-people-involved-in-serious-corruption/global-anti-corruption-sanctions-consideration-of-designations>.
[17] Bill Browder, Head of the Global Magnitsky Justice Campaign, see Canada, Parliament, Senate, Standing Committee on Foreign Affairs and International Trade, *Minutes of Proceedings and Evidence*, 44th Parliament, 1st Sess (24 November 2022).

submissions. Given the absence of publicly available listing criteria and procedures, concerns arise that the decisions to sanction individuals and entities might be limited and selective. GAC should consider responding to victims and civil society who submit sanctions recommendations, acknowledging and denouncing ongoing human rights abuses even if their recommendations do not qualify for Canadian sanctions under the listing criteria. By enhancing transparency in these ways, Canada's sanctions response to human rights issues could be seen as more consistent and legitimate, thus bolstering the overall effectiveness of the regime.

Recommendation 3: Publish Reasons for Listing to Enhance Notice, Transparency and Deterrence. For each sanction issued, GAC should publicize the violation targeted and the open-source information relied upon in the Regulatory Impact Statement issued with the sanctions decision, the accompanying press release, or in other appropriate and publicly available documents. Where possible, GAC should also notify targeted individuals of the listing decision.

Sanctions protect human rights by coercing targeted individuals to stop violating human rights and by denouncing and deterring other human rights violators.[18] Motivation to change behaviour will be low, however, if targeted individuals are uncertain of what behaviour triggered their inclusion on a sanctions list. The deterrence impact of sanctions could also be further strengthened by consistently targeting human rights abusers based on clear criteria.

Canada sanctions individuals by amending or passing new regulations under the *JVCFOA* or the *SEMA*. These changes are sometimes accompanied by a news release or publication of a backgrounder, which explains the general legislative authority under which the individual is sanctioned. The accompanying information will sometimes include a description of the regional, geopolitical circumstances or human rights abuses which give rise to the sanctions, but not the specific violations or acts justifying the individual sanctions. The clarity of Canada's sanctions list could therefore be enhanced by including a brief outline of reasons and the open-source information relied upon for sanctioning specific individuals and entities, a practice which is adopted in the UK's Sanctions List Publication.[19]

Unlike the United States ("US") and the EU, Canada does not notify individuals when they are listed.[20] The creation of sanction lists is not subject to public or Parliamentary debate. To demonstrate that listings meet legal requirements, including due process requirements, in

[18] Behaviour change and norm signalling are two of the commonly proposed goals of sanctions, see Canada, Parliament, House of Commons, Standing Committee on Foreign Affairs and International Development. *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond,* 42nd Parliament, 1st Sess (April 2017) (Chair Robert D Nault) at para 9.

[19] UK, Foreign, Commonwealth & Development Office, *The UK Sanctions List*. See: <https://www.gov.uk/government/publications/the-uk-sanctions-list>.

[20] Canada, Parliament, Senate, The Standing Senate Committee on Foreign Affairs and International Trade, *Strengthening Canada's Autonomous Sanctions Architecture: Five-Year Legislative Review of the Sergei Magnitsky Law and the Special Economic Measures Act*, 44th Parl, 1st Sess, No 10 (May 2023) at para 42 [*Five-Year Review*], see: https://sencanada.ca/en/info-page/parl-44-1/aefa-magnitsky-law/.

addition to publicizing the reasons and open-source information relied upon, GAC should also consider notifying individuals when they are listed.

Recommendation 4: Develop and Publish Delisting Guidelines to Ensure Fair Process. GAC should develop and publish guidelines for a) the Minister of Foreign Affairs' assessment of delisting applications and b) the determination of what information may be disclosed to delisting applicants, in accordance with the standards of procedural fairness and existing case law.

The effectiveness of sanctions in motivating behavioral change among targeted individuals is significantly compromised when the likelihood of sanctions being lifted upon behavior change is uncertain. This uncertainty also creates a situation where individuals may feel inclined to exacerbate human rights violations if they think sanctions are unlikely to be lifted.[21]

Under the Regulations, targeted individuals can apply to the Minister of Foreign Affairs to be removed from the sanctions list if they believe their listing is not justified.[22] The absence of published delisting criteria however poses a significant challenge for targeted individuals listed under the *JVCFOA Regulations* or the *SEMA Regulations* in formulating responses for their delisting applications, impeding their ability to exercise their due process rights. This opacity undermines the regime's transparency and procedural fairness, raising concerns about the legitimacy of the process.

Targeted individuals can seek judicial review of Ministerial delisting decisions before the Federal Court.[23] To date, the only concluded Federal Court decision related to a sanction designation under the *JVCFOA* or the *SEMA* was brought by the former Governor of the State of Bolivar in Venezuela, Rangel Gómez in *Gómez v Canada (Attorney General)*.[24]

Mr. Gómez alleged that the Minster's explanation provided in response to his request to be delisted from the *JVCFOA Regulations* violated procedural fairness, as it lacked specific information such as the alleged acts of corruption or the sources of information supporting his sanctions. In response, the Minister's Memorandum supporting the sanction decision asserted that an extensive and supplementary due diligence process had been conducted.[25] The Minister provided open-source materials, such as media reports, alleging Mr. Gómez 's government of

[21] Dursun Peksen & A Cooper Drury, "Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy" (2010) 36:3 International Interactions, at para 240.
[22] *JVCFOA, supra* note 2 at s 8(1); *SEMA Regulations, supra* note 2 at s 8(1), which states "a foreign national who is the subject of an order or regulation made under paragraph 4(1)(a) may apply in writing to the Minister to cease being the subject of the order or regulation".
[23] *Gómez v Canada (Attorney General), 2021 FC 1300,* at para 96
[24] *Gómez, supra* note 23. Notably, former Prime Minister of Haiti, Lauren Lamothe brought an application for judicial review in December 2022, challenging the decision to sanction him under *SEMA* (file T-2697-22). See: "Ex-Haiti PM contests Canada's sanctions, but experts say there is little recourse", CityNews, online: <https://kitchener.citynews.ca/2023/03/09/ex-haiti-pm-contests-canadas-sanctions-but-experts-say-there-is-little-recourse-6671100/>
[25] *Gómez, supra* note 23, at para 22.

trafficking and smuggling at mine sites, and bribery. The Minister said this process showed strong and reliable evidence of Mr. Gómez 's corruption. However, the reasons presented to Mr. Gómez did not encompass the open-source information that could specifically substantiate his personal conduct related to these specific claims.

The Federal Court dismissed Mr. Gómez's appeal in the notion that the Minister's reasons have been supported by credible and reliable open-source information, even when confidential evidence is considered. Descriptions of specific acts were not necessary to outline to the targeted individual.[26] The Court justified this stance by acknowledging the Minister's dual role as both a 'fact-finder' and a 'merits-decider' concerning the application of the *JVCFOA.*[27]

This case effectively highlights the extent of deference accorded to the Minister in considering a delisting application. Despite this established latitude, a clearer delisting criteria for individuals challenging their sanctions would allow the current regime to uphold due process rights, improving both the diligence and legitimacy of Canada's sanction regime.

Recommendation 5: Publish Guidance for Sanctions Compliance to Support Implementation. GAC should publish comprehensive guidance for sanctions compliance, including specific guidance on how to determine whether an entity is under the control of a listed individual. This guidance could come in the form of ministerial guidelines or an updated FAQs section on its website, which answers the general questions GAC is receiving from Canadian businesses and financial institutions.

The interpretation of sanctions compliance obligations poses a significant burden on private entities. To ensure compliance with sanctions, banks often opt for de-risking policies which can lead to fund freezing of private entities that conduct transactions with those under sanctions.[28] The due diligence required to precisely comply with sanction designations can be labour intensive, time-consuming, costly and demand investigative expertise that many institutions lack.[29] The frequency with which sanctions are changed, such as new listings and delistings of sanctioned parties, also make due diligence more challenging for companies and other actors.[30] The burden of these due diligence obligations prompts some businesses, particularly smaller businesses, to completely halt all transactions with the entire sanctioned jurisdiction to avoid potential violations.[31]

Overcompliance heightens the likelihood that Canadian sanctions, while well-intentioned, may inadvertently lead to unintended human rights consequences. During the ongoing coronavirus

[26] *Gómez, supra* note 23, at paras 122 and 125.
[27] *Gómez, supra* note 23, at para 73.
[28] UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. (2022, July 15). "Unilateral coercive measures: notion, types and qualification". UN Doc A/HRC/51/33, at para 43.
[29] *Ibid.*
[30] *Ibid,* at para 46*.*
[31] *Ibid*, at para 28*.*

disease (COVID-19) crisis, the US and Canada sanctioned countries such as the Islamic Republic of Iran, the Syrian Arab Republic and the Sudan. As a result of the sanctions, many manufacturers of medicine and medical equipment expressed fear and reluctance to ship supplies to the sanctioned countries. Banks also exhibited reticence in handling transactions related to these supplies.[32] Unintended human rights consequences arise as innocent civilian populations are unjustly deprived of access to medical products and humanitarian aid from states imposing sanctions due to these cautious measures taken by private entities.

Canadian financial institutions and businesses have voiced their need for executive guidance regarding the interpretation of sanctions laws,[33] but GAC has chosen not to publicly disclose its interpretation of specific sanctions provisions.[34] Most of the information in GAC's FAQs website consists of basic background information or information that can be found within sanctions legislation. By contrast, the US Office of Foreign Asset Control ("OFAC") website includes over 1000 Frequently Asked Questions, many of which clarify specific requirements and rules of compliance with OFAC sanctions, including specific due diligence steps that businesses are expected to follow.[35]

The *Budget Implementation Act*[36] recently introduced a new deeming provision to the *JVCFOA* and *SEMA.* This provision provides that if a listed person controls an entity, all property of that entity is deemed to be owned by the designated person. A listed person is deemed to control an entity if the person a) owns 50 percent or more shares, ownership interests or voting rights in the entity ("50 percent rule"); b) is able to change the composition or powers of the entity's board of directors ("board control rule"); and c) is able to direct the entity's activities ("direct activities rule").[37] While the new deeming provision aligns Canada with the UK and EU standards, there are practical compliance challenges for banking and business institutions. In particular, the board control rule and the direct activities rule require more nuanced scrutiny to determine control beyond simply tracing the ultimate beneficial ownership of an entity.[38] Unlike the UK, which has issued regulatory guidance on applying the deeming provision, in Canada there is no such

[32] Alena F. Douhan, "Statement at the virtual seminar on unilateral coercive measures in the context of COVID-19 pandemic situation" (November 30, 2020), as cited in *supra* note 28, para 12.
[33] Sabrina Bandali in Canada, Parliament, Senate, Standing Committee on Foreign Affairs and International Trade, *Minutes of Proceedings and Evidence*, 44th Parl, 1st Sess (16 November, 2022) at 16:16, 16:49.
[34] The reasoning given is that GAC does not offer legal advice. However legal and industry professionals have tried to make clear that they do not require GAC to interpret the specific application of the laws to particular facts, but rather to issue general guidance on how institutions should be understanding their general obligations. *Ibid*.
[35] Office of Foreign Assets Control, "Assessing OFAC Name Matches: 5. How do I determine if I have a valid OFAC match?" (30 January 2015), online: <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/5>.
[36] *Budget Implementation Act*, 2023, No. 1, S.C. 2023, c. 26
[37] *Ibid*., s. 252 & 260; See also: Shatiryan, V., Millen, R., Fraser, A., & Fast, J. "Key Amendments to Canadian Sanctions Legislation Now in Force." (2023). Blake, Cassels & Graydon LLP. <https://www.blakes.com/insights/bulletins/2023/key-amendments-to-canadian-sanctions-legislation-n> (*Key Amendments to Canadian Sanctions Legislation Now in Force*),
[38] *Ibid, Key Amendments to Canadian Sanctions Legislation Now in Force.*

guidance.[39] Due to the scarcity of judicial or executive guidance, entities are tasked with independently interpreting sanctions requirements. To date, Canada has only prosecuted a handful of cases related to enforcing sanctions. Most of these cases are related to the export of goods prohibited under the Area Control List of the *Export and Import Permits Act,* regulations of the *SEMA*[40] or the *United Nations Act*[41]. Based on publicly available information, there has only been one prosecution related to a prohibited financial transaction[42] under *SEMA Regulations*. This limited number of prosecutions has led to private entities assuming a substantial role in interpreting and enforcing sanctions within Canada. Without clear guidance, private entities may be interpreting the legal provisions differently. In short, GAC needs to provide clear compliance criteria so there is a uniform understanding of how to comply with the law.

Recommendation 6: Review and Update Sanctioning Listings to Enhance Accuracy and Fairness. Canadian sanctions legislation should incorporate a guaranteed periodic review of sanctions listings. Names of individuals or entities no longer meeting the listing criteria should be delisted.

The legitimacy of Canada's sanction regime depends not only on a transparent process for imposing and complying with sanctions, but also on mechanisms for review. Canada has in the past removed or delisted individuals from its *SEMA* sanction lists on four occasions, either for the purpose of correcting duplicates or in apparent coordination with the US or EU regimes.[43] Canada

[39]UK, Foreign, Commonwealth & Development Office, Office of Financial Sanctions Implementation, HM Treasury. "Ownership and Control: Public Officials and Control Guidance.", November 17 2023. <https://www.gov.uk/government/publications/ownership-and-control-public-officials-and-control-guidance/ownership-and-control-public-officials-and-control-guidance>

[40] In a highly publicized but unreported case, Lee Specialties Ltd. was charged under *SEMA*, *supra* note 2, the *United Nations Act*, RSC, 1985, c U-2 and the *Customs Act*, RSC, 1985, c 1 (2nd supp) for exporting O-rings with potential nuclear application to Iran. See: <https://www.cbc.ca/news/canada/calgary/alberta-firm-fined-90k-for-shipping-nuclear-use-product-to-iran-1.2609590>.

[41] *R. v. Yadegari*, 2011 ONCA 287 involved a number of charges under the *United Nations Act*, R.S.C., 1985, c. U-2, the *Export and Import Permits Act*, R.S.C., 1985, c. E-19, the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), the *Nuclear Safety and Control Act*, S.C. 1997, c. 9, and the *Criminal Code*, R.S.C., 1985, c. C-46, related to export of dual-use pressure transducers to Iran. Andrea Charron uncovered two additional prosecutions under the *UNA* through ATIP requests, see: Andrae Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?" (2008) 14:2 Canadian Foreign Policy 15.

[42] *R. v. Kalai*, 2020 NSSC 351 involved an investment in Syria which was allegedly prohibited under s 3.1(c) the *Special Economic Measures (Syria) Regulations*, SOR/2011-114, s 3.1(c).

[43] In 2016, the number of Iranian individuals sanctioned by Canada was cut in half following Iran's commitment to the Joint Comprehensive Plan of Action. In spring of 2019, Figuera openly supported a return to democracy despite his earlier involvement in President Maduro's intelligence service, prompting the US and Canada to remove Figuera from the list of sanctioned Venezuelans. Since 2011, Canada has removed eight names from the Syrian sanction list without explanation. Upon investigation, two of the repealed names were duplicated and others were removed from either the European Union's or the United Kingdom's sanctions. Canada also repealed nine duplicated names from the Russian sanction list in 2022.

has not removed any listed individuals from the *JVCFOA* since it came into force in 2017. Notably, deceased individuals remain listed.[44]

The *JVCFOA* empowers Senate and the House of Commons Committees to review sanctions listings.[45] The description of the actual review process and criteria however are not published online or available to the public.

A periodic review of the sanction regime could be used to evaluate the impact of sanctions, including unintended human rights consequences resulting from overcompliance by banking or business institutions. The recently imposed United Nations Security Council sanctions have implemented a one-year renewable period.[46] EU sanctions also incorporate specific dates for review and amendment.[47]

In sum, we conclude the recommendations proposed above will enable the *JVCFOA* and the *SEMA* to achieve their important objectives of supporting human rights and combatting corruption and will enhance the fairness, transparency and effectiveness of the Canadian sanctions regime.

[44] Michael Nesbitt, Associate Professor, University of Calgary, see Canada, Parliament, Senate, Standing Committee on Foreign Affairs and International Trade, *Minutes of Proceedings and Evidence*, 44th Parliament, 1st Sess (16 November 2022).
[45] *JVCFOA*, *supra* note 2 at s 16(3).
[46] United Nations Security Council, *Resolution 2653 (2022),* S/RES/2653 (2022), October 21, 2022.
[47] *Five-Year Review, supra* note 20 at para 46.